



POWER To THE PEOPLE

'Policing linked to Onshore Oil and Gas Operations'

A Netpol briefing on the National Police Chief's Council (NPCC) Guidance



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Reclaim the Power camp at
Didcot in May 2015.

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'Policing linked to Onshore Oil and Gas Operations'

Briefing on the National Police Chief's Council's Guidance

Introduction

The new Guidance¹ was issued in July 2015 by the National Police Chief's Council (NPCC), which replaced the former Association of Chief Police Officers in April this year. The NPCC, like its predecessor, is responsible for coordination of national operational policing.

Although ostensibly authored by the NPCC's national lead on 'Fracking Protests and Public Order', Staffordshire Assistant Chief Constable Bernie O'Reilly, it was circulated to national anti-fracking campaign groups by Chief Inspector David Bird, an officer connected to national 'domestic extremist' units with a background in surveillance targeting animal rights and environmental protests.

Chief Inspector Bird is the Guidance's main point of contact and he has asked for comments. This briefing is intended to help anti-fracking groups understand what the Guidance sets out and covers:

1. The prevention of crime and disorder
2. Intelligence
3. Engagement, liaison and negotiation
4. Preventive Policing – a differentiated approach
5. Transparency

Questions for the NPCC raised by the Guidance are set out at the end of each of these five sections and all eighteen are summarised in Appendix 1

About Netpol

The Network for Police Monitoring (Netpol) was set up in 2009 and is a coalition of groups, activists, lawyers and researchers who monitor public order, protest and street policing. In 2014, Netpol received funding from the Joseph Rowntree Reform Trust to monitor the policing of future anti-fracking protests. More information about Netpol's work is available at <https://netpol.org/>

1 Available from <https://netpol.org/wp-content/uploads/2015/08/Onshore-Oil-and-Gas-Operations-2015.pdf>

1 The prevention of crime and disorder

The Guidance is striking in the amount of resources that the police continue to devote to anti-fracking protests. It describes a sophisticated policing operation involving Counter-Terrorism officers from the National Domestic Extremism and Disorder Intelligence Unit, extensive multi-agency working (including councils, traffic agencies and the Crown Prosecution Service) and advanced intelligence gathering programmes (including 'problem profiles' and 'target profiles' – see '**Intelligence**' on page 4) that will collect the personal information of a large number of people. The document itself compares the multi-agency approach proposed for the policing of fracking sites to that used for national emergencies of the type covered by 2004's Civil Contingencies Act.

It seems reasonable to question whether the extent of these policing operations are in any way proportionate to the low levels of criminality involved in anti-fracking protest to date. For example, despite 126 arrests at protests in Balcombe in Sussex, more than 70% of those charged and subsequently tried were acquitted or had their charges dropped during the court case², well below the Crown Prosecution Service's average conviction rate of 85%.

Where criminal actions have taken place, they have almost entirely consisted of the sort of minor offences commonly associated with civil disobedience and direct action. There have been some instances of 'aggravated trespass' on private ground that has some (often minimal) disruptive effect on those working there; minor criminal damage (such as damage to perimeter fencing); and, overwhelmingly, arrests for obstruction of the highway. There have been very few cases of criminality serious enough to be heard by a Crown Court, rather than by magistrates. The police themselves admit in the Guidance [at 1.10] that 'the vast majority of protest and actions taken by protesters continue to be entirely peaceful'.

The rationale for such extensive policing operations, with the involvement of specialist counter-terrorism and intelligence units, is therefore somewhat baffling, especially considering the financial restrictions currently faced by police forces across the country, and suggests a disproportionate policing response.

In our view, the desire for consistency across different forces neither appears to necessitate such an outlay, nor appears to justify such an emphasis on intelligence-led preventive policing, an approach which may have consequences for rights to freedom of assembly and expression.

2 '70%+ of Balcombe anti-fracking charges acquitted at trial – latest update' – Drill or Drop, 25 April 2014
<http://drillordrop.com/2014/04/25/70-of-balcombe-anti-fracking-charges-acquitted-at-trial-latest-update/>

Questions for NPCC

- What is the justification for such extensive and expensive policing and intelligence gathering operations, given that the history of anti-fracking protests to date is of predominantly small-scale, peaceful assemblies?
- In particular, what is the justification for the involvement of Counter-Terrorism officers and the National Domestic Extremism and Disorder Intelligence Unit?

2 Intelligence

At [2.2] the Guidance states that “key national pieces of work are being undertaken”, among which include:

- *a strategic intelligence requirement which will be reviewed and updated on at least a six monthly basis*
- *a regularly updated national threat and risk based problem profile.*

References to 'strategic intelligence requirement' and 'problem profiles' indicate the application of sophisticated and advanced intelligence gathering tools to the policing of anti-fracking protest. Netpol considers this unjustified, particularly as the level of criminality involved in anti-fracking protest does not appear to justify such intensive surveillance operations.

According to earlier guidance issued by NPCC's predecessor, ACPO, on the National Intelligence Model (NIM), a strategic assessment is “a dynamic document that focuses [on] priorities [and] other key threats identified in the strategic assessment. The purpose of the intelligence requirement is to gain more information on crime and disorder problems. Gaining that knowledge will result in identifying new intelligence gaps.”³

The NIM goes on to describes a 'problem profile' as a document compiled in collaboration with an intelligence analyst, which “provides a clear picture of the intelligence assembled on a problem”; “identifies intelligence gaps”; and “makes recommendations for prevention, intelligence collection and enforcement plans”. It states that a problem profile “may result in the identification of specific individuals for whom it is appropriate to compile a target profile.”⁴

3 National Intelligence Model p 64 <https://netpol.org/wp-content/uploads/2015/08/national-intelligence-model-2005.pdf>

4 National Intelligence Model p 66-70

The use of these tools strongly suggests that anti-fracking protesters, as well as local communities, may be subjected to intensive and sustained police surveillance activities, often targeting particular individuals. The Guidance also makes it clear that intelligence collection will use live video sources, including police body-worn video (BWV), supplemented by using social media sources.

Body-worn video raises particular concerns, as it will enable police intelligence gatherers to obtain photographic images of protesters, images that may be used to identify and record their presence for intelligence purposes, through the use of facial recognition technology or other identification mechanisms. We think the use of BWV equipment is unjustified and a violation of democratic rights in the context of political protest, with the potential to significantly undermine relations between police and protesters. We hope that a revision of the Guidance will endorse this view.

Questions for NPCC

- Will NPCC conduct a privacy impact assessment of the deployment of body worn video (BWV) cameras at anti-fracking protests?
- Will the NPCC advise against deploying this technology at such protests in the interests of developing more positive relationships between protesters and police?
- Will the NPCC publish its policy on extracting information on social media in relation to anti-fracking protesters? In particular, will NPCC provide publicly the answers to the two questions on page 19 of the report [4.7.4] ('What is actually required from social media research?' and 'what format will this product take to make it usable?')?
- In spite of the welcome commitment within the Guidance to honouring responsibilities under the Freedom of Information Act, the document lacks any indication whether the NPCC (and particularly the NDEDIU) have a similar commitment to disclose personal data in a timely manner under the subject access provisions of the Data Protection Act 1998. Will the NPCC include this in its Guidance?
- Bearing in mind that the vast majority of protest and actions taken by protesters are entirely peaceful, will the NPCC give an undertaking that police forces have not and will not deploy undercover police officers in the context of anti-fracking protests?

3 Engagement, liaison and negotiation

The Guidance makes frequent mention of the need for effective engagement, liaison and negotiation with protesters, for the purpose of enabling them to 'develop a relationship of trust between police and protesters' [2.12] and to 'influence a positive tone, style and manner of any protest' [3.7.3]. Furthermore, the use of police liaison teams, known by protesters as Police Liaison Officers (PLOs), is said to lead to 'a good degree of 'self-policing' within the protest groups' [5.3.5].

It is clear from the document that 'liaison', within policing circles, has a meaning that extends beyond mere communication, involving an expectation of active 'engagement' from both protesters and police and suggesting the routine use of negotiated measures.

The Guidance fails, however, to acknowledge that there is no obligation in law on the part of the protesters to engage with liaison policing. It is internationally recognised⁵ that freedom to protest is unacceptably restricted if it is dependent on obtaining the prior permission or agreement of state authorities. In UK law, there is a legal requirement for a group to **notify** the police if they plan to hold a procession or march, but here is no requirement to **negotiate**. If protesters plan to hold a static demonstration (such as a rally or a gathering that stays in one place) there is no requirement to notify or negotiate with the police at all.

Neither does the Guidance indicate what exactly is meant by 'self-policing', but the term raises many concerns. While all protest groups exercise some element of 'self-policing' in relation to their own shared values, the mechanisms by which Police Liaison Officers intervene to encourage their idea of 'self-policing' are not clear. Protest groups are likely to face concerns that this approach is intended to promote a sense of obligation on the part of protesters to inhibit or prevent others from engaging in direct action activities. There is, however, no legal obligation on protesters to restrict the behaviour of others, and this should be made explicit in the Guidance.

While engagement and negotiation may ostensibly offer advantages for both police and protesters, many protesters feel that there are also significant disadvantages to 'liaison policing', particularly in terms of their vulnerability to intelligence gathering. The continued pretence that this is not a key part of Police Liaison Officers' role heightens mistrust and placing pressure on protest groups to engage with liaison policing can create internal conflict within or between groups. It is therefore important that 'liaison policing' is always offered as a choice to protest groups, who must equally feel able to decline that offer.

5 See the Guiding Principles of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Council of Europe's Venice Commission 'Guidelines on Freedom of Peaceful Assembly', updated 2010

The Guidance fails to explicitly acknowledge that engagement with Police Liaison Officers is an option, not a mandatory requirement for protest groups. In recommending police forces outline “the responsibilities of the Police and the expected local conduct of the onshore oil and gas industry and protesters” [4.6.13] within a published 'Statement of Intent', it is essential that the drafting of such a document does not include a coercive expectation that protesters must engage with 'liaison policing'. The Guidance should contain a positive assurance that any decision by any protest group not to do so will not in itself be used as the justification for more 'robust' policing.

The Guidance also needs to significantly clarify the extent to which the police, particularly Police Liaison Officers, should respect the privacy and anonymity of those organising or participating in lawful protest and their rights under ECHR Articles 10 and 11. There have been numerous examples of PLOs seeking at great length to identify protest organisers, and to initiate contact in ways that many have considered to amount to harassment, including phone calls at work, the use of social media and visits to their homes. Protesters have also complained at previous protests that PLOs have been deployed within protest areas or inside camp sites, in ways that are intrusive and invasive.

Questions for NPCC

- **Will the NPCC provide advice and clarification on the mechanisms by which Police Liaison Teams are expected to intervene to encourage 'self-policing' and the self-policed' behaviours they are expected to influence?**
- **In the interests of transparency, can the NPCC clarify the intelligence gathering role of Police Liaison Teams at anti-fracking protests?**
- **Will the NPCC clarify the extent to which they view protesters' engagement with 'liaison policing' as a voluntary, rather than a mandatory activity?**
- **If 'liaison policing' is seen as a voluntary option, how does the NPCC intend to advise police forces on how they accommodate the preferences of those who do not wish to engage with Police Liaison Teams, both prior to and during anti-fracking protest?**
- **Can the NPCC give a positive assurance that any 'Statement of Intent' used by police forces will not attempt to coerce protesters into engagement with 'liaison policing'?**

- If protesters decide not to engage with Police Liaison Officers, how does the NPCC intend to ensure that the decision is not considered a trigger to apply differentiated or more 'robust' policing?

4 Preventive Policing – a differentiated approach

The Guidance places a consistent emphasis on the use of a differentiated response to what the police see as different groupings within anti-fracking protest.

As the document is concerned with preventive, rather than reactive policing, this different treatment is not based on any actual criminal behaviour of individuals. Instead, the Guidance is concerned with differentiating individuals or groups on the basis of their locality, or on a apparently arbitrary and subjective assessment of whether individuals or groups may be assessed as 'protesters', 'activists' or 'extremists'.

Differentiated policing can create problems for protest groups and for the wider protest movement, as it can foster distrust within (and between) protest groups, encourage division and decrease solidarity and mutual support. The police however, may see such division as useful in isolating 'risk' groups and enabling them to target more 'robust' policing on those they believe pose a risk of criminality.

Local Groups

The Guidance states that 'prolonged protest activity rarely, if ever, takes place without a level of local support often with entirely peaceful intentions'. [2.12] It then goes on to advocate 'early identification, liaison and negotiation' with such groups.

In practice, however, prolonged protest often involves a mixture of local people, national campaigns and those who have travelled from nearby towns and cities (and from further afield) to support it. This suggests a network of interacting and mutually supporting groups. The Guidance appears to suggest, however, that local groups alone have 'entirely peaceful intentions', that this is not necessarily true of other protesters and that local groups should therefore be singled out for 'early liaison and negotiation'.

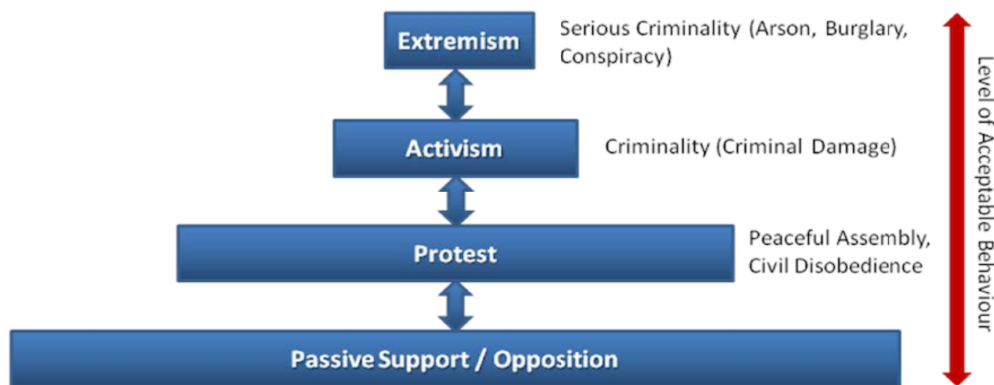
It would clearly be inappropriate for the police to differentiate their treatment of protest groups on the grounds that, for example, some consist of residents of a (possibly affluent) rural locality, while others may travel from less advantaged, urban locations. It is important that the police are consistent, open and transparent in all their communications with all protest groups, and this must be reflected for clearly in the Guidance.

The distinction between Protest, Activism and 'Extremism'

One of the most evident examples of differentiating individuals or groups presented in the Guidance is that between protest, activism and 'extremism'.

The chart presented in the document (see below) represents a hierarchy of protest from peaceful assembly and civil disobedience to 'Activism' that supposedly involves criminality such as criminal damage and 'Extremism' if this criminality is serious, with all criminal acts made more serious by the existence of a prior conspiracy.

The Structure of Protest



To begin with, the equation of 'Activism' with criminality is itself extremely alarming, as is the way that protest, activism and 'extremism' are presented in such definite terms, suggesting that there are clear differences between them. In practice, however, the same action – trespass for example – shows how these distinctions are often arbitrary.

Civil trespass may be construed as 'civil disobedience', as it is not normally a criminal offence. However, when the trespass also results in some 'disruption or obstruction' to activity taking place on that land (such as the operation of fracking companies), it may become aggravated trespass, which is a criminal act. According to the chart above, 'Protest' has now escalated to 'Activism'.

If a number of people have decided together (as protests groups tend to do) to plan and undertake the same trespass, it becomes a conspiracy. This, according to the chart, is a 'serious' offence, although the decisions of the courts in trials involving anti-fracking protests suggest magistrates do not share this view. Nevertheless, 'Activism' now becomes 'Extremism', bringing protesters to the attention of the National Domestic Extremism and Disorder Intelligence Unit (NDEDIU). This specialist unit defines 'domestic extremism' as conduct that "relates to the activity of groups or individuals who commit or plan serious criminal activity motivated by a political or ideological viewpoint". However, one of the very broad tests for 'serious crime' in the legislation covering the use of police surveillance powers, the Regulation of

Investigatory Powers Act 2000, includes “conduct by a large number of persons in pursuit of a common purpose”⁶ - which is almost a dictionary definition of what constitutes any political protest.

'Extremism' therefore applies not only to those who have committed these 'serious offences' but also to those who 'plan' to. An intelligence assessment suggesting that a group is conspiring to take some action that may involve some element of criminality (even if minor in nature), may therefore be sufficient for individuals in that group to be labelled 'extremist' and subjected to the extensive surveillance powers available to the police, regardless of whether the group then takes any action or its members are ultimately prosecuted or convicted for any offence.

Despite the vague and indistinct definitions of 'protester', 'activist' and 'extremist', the Guidance proposes that these categorisations will be used to 'tailor' police responses. It notes that 'identifying and tailoring police responses towards these different groups can...influence those at other levels in the model'. [2.16]

The 'tailoring' of a police response based on blurred and contentious categorisations is, in our view, fundamentally flawed and can have a significantly detrimental effect on freedom to protest. It provides considerable scope for rapidly escalating the policing of a protest as 'extremism' in a disproportionate way that then sanctions the use of more 'robust' policing, such as targeted surveillance, disruption activities such as restriction of movement or 'kettling', forced dispersal or pre-emptive arrest. Inevitably such measures have a 'chilling effect' on protest more generally

Questions for NPCC

- Will the NPCC provide further detail relating in its Guidance on the distinctions between protest/activism/extremism and explain how and by whom these decisions will be made? Are, for example, these distinctions made locally, or by the NDEDIU?
- Can the NPCC clarify what is meant by 'tailoring police responses towards these different groups' and explain how policing will be differentiated on the basis of the categorisation of protesters?
- Will the NPCC confirm that communications with all protest groups will remain consistent, open and transparent and provide further advice about the mechanisms by which this will be achieved?

⁶ Regulation of Investigatory Powers Act 2000 section 81 (3) (b)

5 Transparency

The Guidance covers in significant detail the establishment of good communications structures between relevant agencies, including the oil and gas industry, and the means of ensuring consistent and clear communication with the media. The use of multi-agency working does not appear to include protest groups (although there is a brief mention of the possibility of inviting protest groups to police briefings).

It is notable that the police have already liaised with the oil and gas industry in adopting the terminology of 'onshore oil and gas operations' rather than the term 'fracking' adopted by protest groups. The choice of terminology is not neutral, as the industry actively promotes a narrow interpretation of the term 'fracking'. Protesters will, for example, use the term 'fracking' to cover exploratory drilling where there are plans for the future use of hydraulic fracturing, whereas the industry will not.

This does not help to change the perception that the requirements of the industry have taken priority over the rights of protesters. There are ongoing concerns that the police (and other agencies) will defer to the needs and preferences of the oil and gas industry when issuing media communications, particularly in relation to protest activity. We therefore urge far greater clarity relating to the composition and remit of the 'operation specific multi-agency communications group' [4.6.2] proposed by the Guidance.

The commitment that 'all documents, where possible, should be written with a presumption in favour of publication' [4.7.20] is a welcome one, as this has not always been the case. Earlier this year, for example, North Wales Police refused a local Wrexham councillor's Freedom of Information request⁷ for details of powers under the Regulation of Investigatory Powers Act (RIPA) to monitor Borrás anti-fracking protesters. In 2013, Sussex Police flatly refused to provide any documentation relating to the decision to impose section 14 conditions at Balcombe⁸ and in 2014, it was only because of the poor redaction of a review that the public discovered the policing operation at Balcombe involved the use of covert intelligence gathering⁹.

It would therefore be helpful for the NPCC to set out in detail its recommended policy on the release of documents and those that that or will not be published. Will, for

7 'Police refuse to confirm if they have used surveillance on Wrexham anti-fracking protesters', Daily Post, 7 January 2015. See <http://www.dailypost.co.uk/news/north-wales-news/police-refuse-confirm-used-surveillance-8385746>

8 See https://www.whatdotheyknow.com/request/section_14_poa_order

9 'Sussex Police used covert intelligence-gathering at Balcombe anti-fracking protests', Drill or Drop, 21 June 2014, See <http://drillordrop.com/2014/06/21/sussex-police-used-covert-intelligence-gathering-at-balcombe-anti-fracking-protests/>

instance, transparency extend to the minutes of multi-agency meetings, gold/silver command logs, memoranda of agreement or operational briefings?

Questions for NPCC

- Can the NPCC provide more detail about the scope of recommended publication and an indicative list of documents likely to be published or disclosed freely under Freedom of Information legislation?
- Can the NPCC provide further information on the extent to which the oil and gas industry will a) contribute to or be briefed about police operational decision making, b) contribute to multi-agency / police media communications and c) be involved in the collection, dissemination or sharing of police intelligence data?

Appendix 1

Eighteen questions for the National Police Chief's Council

1. What is the justification for such extensive and expensive policing and intelligence gathering operations, given that the history of anti-fracking protests to date is of predominantly small-scale, peaceful assemblies?
2. In particular, what is the justification for the involvement of Counter Terrorism officers and the National Domestic Extremism and Disorder Intelligence Unit?
3. Will NPCC conduct a privacy impact assessment of the deployment of body worn video (BWV) cameras at anti-fracking protests?
4. Will the NPCC advise against deploying this technology at such protests in the interests of developing more positive relationships between protesters and police?
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7. Bearing in mind that the vast majority of protest and actions taken by protesters are entirely peaceful, will the NPCC give an undertaking that police forces have not and will not deploy undercover police officers in the context of anti-fracking protests?
8. Will the NPCC provide advice and clarification on the mechanisms by which Police Liaison Teams are expected to intervene to encourage 'self-policing' and the self-policed' behaviours they are expected to influence?
9. In the interests of transparency, can the NPCC clarify the intelligence gathering role of Police Liaison Teams at anti-fracking protests?

10. Will the NPCC clarify the extent to which they view protesters' engagement with 'liaison policing' as a voluntary, rather than a mandatory activity?
11. If 'liaison policing' is seen as a voluntary option, how does the NPCC intend to advise police forces on how they accommodate the preferences of those who do not wish to engage with Police Liaison Teams, both prior to and during anti-fracking protest?
12. Can the NPCC give a positive assurance that any 'Statement of Intent' used by police forces will not attempt to coerce protesters into engagement with 'liaison policing'?
13. If protesters decide not to engage with Police Liaison Officers, how does the NPCC intend to ensure that the decision is not considered a trigger to apply differentiated or more 'robust' policing?
14. Will the NPCC provide further detail relating in its Guidance on the distinctions between protest/activism/extremism and explain how and by whom these decisions will be made? Are, for example, these distinctions made locally, or by the NDEDIU?
15. Can the NPCC clarify what is meant by 'tailoring police responses towards these different groups' and explain how policing will be differentiated on the basis of the categorisation of protesters?
16. Will the NPCC confirm that communications with all protest groups will remain consistent, open and transparent and provide further advice about the mechanisms by which this will be achieved?
17. Can the NPCC provide more detail about the scope of recommended publication and an indicative list of documents likely to be published or disclosed freely under Freedom of Information legislation?
18. Can the NPCC provide further information on the extent to which the oil and gas industry will a) contribute to or be briefed about police operational decision making, b) contribute to multi-agency / police media communications and c) be involved in the collection, dissemination or sharing of police intelligence data?