

The Rt Hon Yvette Cooper MP
Home Affairs Select Committee
House of Commons
London
SW1A 0AA

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Dear Chair,

Ahead of the Committee session on Tuesday I thought it would be useful to share with you and the committee the MPS's reflections on the HMICFRS report¹ into the policing of the Sarah Everard vigil. As you know this report was the subject of two separate commissions. One by the Home Secretary and one by the Mayor. The MPS welcomed these commissions and worked collaboratively at pace with the inspectorate to support their inspection.

HMICFRS Report

As the committee will be aware the report captures the significant engagement activity that the Met undertook in the run up to the vigil, the legal considerations, the policing of the day itself and the commentary following the vigil. HMICFRS concluded that the MPS acted appropriately at the vigil held in memory of Sarah Everard on Clapham Common. Importantly the inspectorate found that:

- police officers at the vigil did their best to peacefully disperse the crowd;
- police officers remained calm and professional when subjected to abuse; and
- police officers did not act inappropriately or in a heavy-handed manner.

As you would expect the report also draws out some learning opportunities for the MPS. The report specifically draws out that public confidence in the Met may have suffered as a result of the vigil. This is something I take extremely seriously, and improving trust and confidence in the Met is one of my personal priorities as Commissioner. We are determined to do everything we can to keep London safe and are not complacent about the challenges facing the MPS and policing more widely.

As we touched on last year when I appeared before the Committee, policing during a health emergency has come with very considerable challenges and we haven't always got everything right. However I am proud of how the MPS and our people have stepped up to the challenge to help keep London and Londoners safe during the pandemic – in the vast majority of the millions of interactions between the police and the public, our people have responded with professionalism and common sense in the best traditions of British policing.

¹ <https://www.justiceinspectorates.gov.uk/hmicfrs/news/news-feed/metropolitan-police-acted-appropriately-at-the-sarah-everard-vigil/>

It should be recognised that Government and Parliament asked the police to enforce regulations which have sought to significantly restrict individual freedoms in order to reduce community transmission of COVID-19 and ultimately save lives. These regulations have changed frequently and sometimes extremely rapidly. This has meant that within the space of a few weeks what might have been legal became illegal and vice versa. Police officers have had the challenging job of working with our communities to explain the regulations and as a last resort enforce them.

Legal context

The regulations that have been put in place over the past year meant that the MPS had to consider how the regulations in place at the time applied to persons attending or organising such an event as we have done with many other events over the past 12 months. This consideration was one of the central aspects of the HMICFRS report. They looked specifically at how the MPS considered and applied the regulations (The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020) which were in place on the 13th March. In addition they also gave consideration to how the MPS gave weight to Articles 10 and 11 when making decisions about the policing of the event and enforcing regulations if necessary and proportionate.

I expect that the Committee will want to discuss this at the session in more detail but I thought it would be useful to summarise briefly the MPS legal position with regards to the vigil:

- At the time of the vigil, England was in Tier 4. Tier 4 restrictions are set out in Schedule 3A to the regulations. There was a general prohibition in paragraph 4 of Schedule 3A on gatherings of more than two people in an outdoor place, other than for specified exceptions.
- The vigil at Clapham Common was an event which in the MPS's view fell within the restriction on gatherings under the All Tiers Coronavirus Restrictions given its scale, timing and location.
- At the time, there was no specified exception for protest in Tier 4 restrictions. If a person attended a gathering in contravention of the restrictions they would have been committing an offence, unless they had a reasonable excuse.
- "Reasonable Excuse" operates as a defence to a criminal charge. It is for an individual charged with an offence to establish, on a case-by-case basis, that they had a reasonable excuse for what would otherwise be a criminal offence. There is also an obligation on police to ensure that any interference with the exercise of ECHR rights is necessary, proportionate and in accordance with the qualifications contained within the ECHR. It is acknowledged that the restrictions within the Health Protection Regs are required to be read in a way which is compatible with the ECHR, and that exercise of such rights could amount to a 'reasonable excuse' (and the individual would, as a consequence, not be committing an offence under the Regs).
- The potential for a 'reasonable excuse' to include the exercise of Article 10 and 11 rights was specifically addressed by the Court of Appeal in the case of *Dolan*. In considering this the court observed that "...the regulations cannot be regarded as incompatible with article 11 given the express possibility of an exception where there was a reasonable excuse. It may well be that in the vast majority of cases there will be no reasonable excuse...There were powerful public interests which lay behind the enactment...given the gravity of the pandemic...". The Court of Appeal also observed, "There are also powerful arguments that the restrictions, time limited and subject to review as they were, were in any event proportionate."

- The MPS understood the effect of the *Dolan* decision to be that persons seeking to exercise their Article 10 and 11 rights would not have a 'reasonable excuse' if the restriction imposed on those rights was proportionate.

As is now well documented #ReclaimTheseStreets challenged the Met's interpretation of the law at the High Court. The judge, Mr Justice Holgate, declined to make the declarations sought by #ReclaimTheseStreets. He concluded it was possible that the outcome of applying the relevant tests in relation to Articles 10 and 11 was that a particular protest or demonstration should not go ahead. That was a matter to be considered in the circumstances of each case. Following the hearing and outcome #ReclaimTheseStreets asked the MPS to guarantee there would be no prosecutions in the event that the vigil went ahead. As I know the committee will understand the MPS could not offer such a guarantee to the organisers as it was impossible to predict what might happen on the day. On Saturday morning #ReclaimTheseStreets then cancelled the event.

On the day (13th March)

The HMICFRS report provides an independent assessment of how events on the day unfolded. The report also highlights how the MPS Gold Commander balanced the health regulations in place at the time with individual's rights under Articles 10 and 11. The report also draws out how the tactical plan on the day was to use the 4Es (Engage, Encourage, Explain and Enforce) with the emphasis on the first 3Es.

During the day many hundreds of individuals, family units and small groups attended the bandstand area of Clapham Common to pay their respects, lay flowers and have moments of reflection before moving on. Throughout this period local officers were deployed mostly in pairs at a distance from the bandstand providing a low key presence.

Around 6pm the events of the day transitioned into a different look and feel more closely resembling a rally than what had happened an hour earlier. The HMICFRS report documents in detail how this changed the assessment of the command team and the balance of Article 10 and 11 rights. As such the command team deployed officers to engage, explain and encourage attendees in line with the 4Es approach. The HMICFRS report highlights the significant efforts with which officers attempted to engage with those present. In undertaking this engagement some officers were at the receiving end of extremely unpleasant verbal abuse. Despite this the report underlines the level of professionalism demonstrated by officers.

The report recognises that despite the best efforts of officers some individuals refused to engage with officers which ultimately led to a small number of enforcements. The report documents 9 arrests of which 7 were de-arrested at Clapham Common once they had provided their names and addresses. The HMICFRS report once again recognises the professionalism of officers. They include a summary of a review of the Body Worn Video camera footage from one officer of one of the arrests. They state "Following the arrest and throughout the encounter, the officer's conduct was exemplary."

I recognise that some of the immediate concern that followed the vigil was on how these arrests took place. It is important to recognise that making an arrest safely often requires a number of officers to keep everyone safe particularly in crowded environments. The HMICFRS report states:



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“When the decision to ‘move to enforcement’ was made our review found nothing to suggest that officers acted inappropriately or in a heavy-handed manner. In fact, we found evidence of patience and professionalism during engagement prior to, during and after arrest. Those arrested were led away, flanked by police officers to provide a protective bubble from the crowd.”

The Met has welcomed the HMICFRS report. I look forward to discussing the Met’s response to this report and our work to reduce violence against women and girls when we meet tomorrow.

Yours
Cressida

**Cressida Dick
Commissioner**