NUJ response to the Rapid Review of Counter Terrorism powers

Introduction

The National Union of Journalists (NUJ) represents 38,000 members working in all sectors of the media. Our membership includes staff and freelancers - writers, reporters, editors, sub-editors, illustrators and photographers.

The NUJ is pleased to be able to contribute to the Rapid Review of Counter Terrorism powers and specifically the use of terrorism legislation in relation to photography.

Media workers have a duty to take photographs or film incidents. The police have no legal powers or moral responsibility to prevent or restrict what they record.

The NUJ believes that police officers should never use terrorism powers to conduct arbitrary stop and searches and should instead use objective criteria.

Journalists should not be targeted by the police. The Press Card and related procedures provide adequate safeguards to verify accredited journalists and that message should be made clear to police officers. Press cards should never be seized by the police. Police officers should be sufficiently familiar with the card that we no longer have cases where police refuse to recognise press cards on the grounds that they may be forged.

In 2005, the NUJ began working with the British Press Photographers Association and National Association of Press Agencies to try to improve police treatment of media workers in general and photographers in particular. Our first major initiative was The Met Guidelines, adopted in January 2006. These have since been adopted by ACPO http://www.londonfreelance.org/fl/0704acpo.html and are the national guide as to how the police should afford access to media workers.

Since then, the NUJ have taken part in the public order training sessions at Gravesend, explaining the role of the Press Card and advising on police/press relations.

The NUJ meets with senior Met officers each year to discuss progress. Hotlines have been established for major events - Climate Camp, Notting Hill Carnival and the Papal Visit, for instance – whereby media workers can call the press bureau to help
with any problems they face from police officers. The most recent initiative was the invitation to a number of photographers to attend the operational briefing at New Scotland Yard ahead of the Papal Visit.

The NUJ are currently discussing the provision of sample press cards to officers at the Met.

NUJ members have leading roles in the campaign group ‘I’m a Photographer, Not a Terrorist’. The campaign includes people who value visual imagery, not just photographers. The legislative framework and police action has led to this grassroots campaign responding to attacks on photographers and photography. The abuse of the law has united amateur and professional photographers in defence of press freedom and civil liberties.

The group has protested against photographers being targeted as potential terrorists, whether amateur or professional, whether landscape, architectural or street photographers. The campaign argues that the possibility to create collective visual histories is extinguished by the abuse of anti-terrorist legislation. The campaign remains concerned that there are still swathes of laws that the police can and do still use to harass photographers.

**There is a disparity between the framework provided by legislation, policy and guidance when compared to the operational practice of police officers.**

Guidance on photography is mainly communicated to police officers via emails or through the police intranet. In practice, NUJ members have found that police officers are often ignorant of existing laws, policy and guidance.

Relevant legislation, policy, guidance and good practice examples should be promoted amongst police officers. Specific guidance on how to treat media workers should be included in police media policies, media training and public order training.

The guidance, policy and regulations set out below should be set on a statutory footing, promoted and enforced:

- Home Office policy - 012 / 2009
- Police (Conduct) Regulations 2008
- Association of Chief Police Officers (ACPO) Media Guidelines
- Home Office policy - ‘Photography and Section 58A of the Terrorism Act 2000’
- Metropolitan Police Service policy on s.58A Terrorism Act 2000

The police, Her Majesty's Inspectorate of Constabulary (HMIC) and the Independent Police Complaints Commission (IPCC) should measure and evaluate the effect of the codification, promotion and enforcement of the guidance, policy and regulations relating to terrorism powers.
Legislation and guidance should be introduced to ensure that private security guards should also receive information and compulsory training in relation to press freedoms, public order and terrorism powers.

Section 43 of the Terrorism Act 2000 gives the police the power to stop and search a person reasonably suspected to be a terrorist to discover whether they are in possession of articles which may constitute evidence that the person is a terrorist.

It should be made clear that carrying or using a camera or being a journalist is not sufficient evidence of suspicious activity related to terrorism. The officer concerned must have specific and defensible grounds for believing that the journalist in question is carrying out a terrorist activity. The definition of ‘reasonable suspicion’ needs to be amended so that the threshold is higher and less open to potential abuse. Police officers should be taught the specific definitions and implications.

Section 44 of the Terrorism Act 2000 gives officers the power to search anyone in an ‘authorised area’ without reasonable suspicion to discover whether they are in possession of articles which may constitute evidence that the person is a terrorist.

Police officers should not have the power to search anyone without reasonable suspicion. The existing powers contained within Section 44 should be abolished. If Section 44 remains, it should be considerably narrowed and restricted. Safeguards should be added to ward against abuse and it must be necessary to have prior judicial authorisation.

London is a police authorisation zone: The Metropolitan Police authorisation zone encompasses all of its territory: the whole of greater London. An authorisation is only in place for a period of 28 days, but can be continually renewed as it has been in London since 2001. This is unnecessary and counter productive.

Section 58 of the Terrorism Act provides that a person commits an offence if -
(a) S/he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or
(b) S/he possesses a document or record containing information of that kind.

The Home Office need to improve training and communications to police officers to ensure that the procedures are correctly followed. It should also be made clear to police officers that this section of the Act does not criminalise taking photographs of the police. Street level actions and lack of training on this issue is a problem in practice.

Sections 43, 44 and 58 of the Terrorism Act 2000 should be made expressly subject to the rules on Excluded Material (which includes Journalistic Material) and Special Procedure Material as set out in the Police and Criminal Evidence Act (PACE).

These provisions provide that the police must obtain a warrant to search for this type of material. It should also be made clearer that police officers must obtain a
court order to delete or destroy photographs, film or digital images. In practice, NUJ
members have faced police insistence they can view materials under this provision
and use this reason to delay, harass and prevent photographers from working.

**Section 58A of the Terrorism Act 2000.** Under the new section 58A (added by
section 76 of the Counter-Terrorism Act 2008), eliciting, publishing or
communicating information on members of the armed forces, intelligence services
and police officers which is “likely to be useful to a person committing or preparing
an act of terrorism” will be an offence carrying a maximum jail term of 10 years. It is
a defence for a person charged with an offence under this section to prove that they
had a reasonable excuse for their action. There should also be a clear public interest
defence for journalists.

**Recording stop and searches**
Police invoked powers afforded to them under section 44 to stop and search people
on 256,026 occasions in England and Wales between April 2008 and March 2009.
The Metropolitan Police and Transport Police were responsible for 95% of this total.
Of this figure, only 1,452 stops resulted in arrest, less than 0.6% of the total number,
and the vast majority of these were for offences unrelated to terrorism.

In November 2009, the Home Office published information to show a 37% decrease
in the use of section 44 for the first quarter of 2009-10, but the figure of 36,189 still
equates to an average of 398 people being stopped every day in April, May and June
2009.

There has been an abuse of stop and search powers, yet Theresa May wants to scrap
the form which records stop and search. Accountability and transparency are not
possible without this crucial monitoring - not least because stop and searches are
not always properly recorded.

**Legitimate journalistic activity should constitute reasonable justification.**

At present we believe there is too much discretion given to police officers and
insufficient safeguards in place to protect against the misapplication of Counter-
Terrorism legislation.

Terrorism powers should not be used to harass journalists or used to stop media
workers taking photographs, film or digital images.

**Public Order Intelligence Unit and the Criminal Intelligence Database**
In London, Forward Intelligence Teams (FIT) are managed by the Metropolitan
police’s ‘Public Order Intelligence Unit’, which is itself part of the public order unit.

The NUJ has evidence that there is a practice of targeting certain NUJ members by
the FIT. The police and the Home Office need to explain whether there is a policy in
place and, if so, what legitimate aim it serves.
There needs to be transparency on the purpose and means of monitoring journalists. How is information obtained by the FIT (relating to journalists) processed and retained? Are individuals listed by name and who has access to these records? For what period of time are the records, including video and audio footage, retained and what are the guidelines pertaining to the retention and use of information relating to members of the press?

**Protection of sources**
The NUJ is concerned about the use of Terrorism legislation in relation to the protection of journalist sources – a right well recognized in international law, specifically by the United Nations, Council of Europe, and the Organization for Security and Co-operation in Europe. The European Court of Human Rights has found in several cases that it is an essential part of freedom of expression.

The police and authorities have circumvented source protection by:
- Phone tapping, monitoring of internet traffic and mobile telecommunications
- Direct seizures of journalists’ material including computers and notebooks
- Requiring media to provide film as evidence
- Turning the journalist witness into the defendant.

A case brought by the NUJ on behalf of member Bill Goodwin resulted in a major landmark judgement at the European Court of Human Rights. The judgement set new case law for Europe and required the UK government to amend the law. Successive governments have failed to do so and the cases continue. In recent months and years anti-terrorism laws are being used against journalists. In the UK, particularly in Northern Ireland, there have been regular cases of the police searching and seizing journalists’ material under anti-terrorism laws.

Forcing journalists to disclose their sources compromises their professional ability to obtain information and to do their job. It also puts journalists in the firing line – leaving them vulnerable to being deemed an informant to the authorities and this puts their safety at risk. The Council of Europe recommended in 2007 that journalists should not be required to hand over notes, photographs, audio and video in crisis situations to ensure their safety.

Detection and/or investigative measures designed to identify a journalistic source should be prohibited and legislation on national security or anti-terrorism measures should make an exception for journalistic sources. The only acceptable exceptions to the principle of secret sources should be the exceptions acknowledged by the Council of Europe or the European Court of Human Rights.

**Redwatch**
The UK’s terrorist laws have been used against photographers but apparently not used against white supremacist terrorists and their organisations including those who are involved in the website Redwatch.
The Government should take action to close down this neo-Nazi website and take action against those behind the site.

Redwatch urges supporters to target journalists. As a result a number of NUJ members have been subjected to threats and intimidation. NUJ members have had their windows smashed, have been physically assaulted, have had their homes targeted and have had threats in the workplace - simply for doing their job.

- Please note the specific examples of NUJ member’s experiences followed by case law and evidence –
• NUJ examples

The following are given as examples of the ways in which terrorism legislation is currently misused.

WATERLOO STATION
The Member had been passing through Waterloo mainline station on his way to catch a flight on 8 May 2009 and witnessed a number of Police Community Support Officers (PSCOs) apparently detaining a male. The detained male lay on the floor in full view of the public and appeared distressed, crying out that he was hurt and had done nothing wrong. The journalist began to record the incident from a distance so as not to interfere with any police operation, wanting independent evidence of what had happened and hoping his presence would offer re-assurance. Instead the journalist himself became the subject of unwarranted and unlawful police attention. The journalist complained he was threatened with arrest if he did not delete the six photographs he had managed to take.

DOCKLANDS
In December 2008 an NUJ member was detained for more than 45 minutes by police while covering a wedding in London’s Docklands. Her camera was forcibly removed by an officer who told her: “we can do anything under the Terrorism Act.” She also says that she was “informed that she could not use any footage of the police car or police officers and that if she did there would be ‘severe penalties’.

KENT POLICE
The Member was subjected to a number of stop and searches by police during the protest at Kingsnorth Climate Camp in the week beginning August 8 2009. The Member was not part of the Climate Camp Protest and was stop and searched by the Police under s.44.
“This was a massive policing operation involving officers drawn from forces all over the country. The media were filmed and searched entering and leaving the field where the protest camp was. On one occasion after photographing a rather brutal arrest of protesters who had been filming the police we were detained for over an hour. We were then followed to a restaurant several miles away and were filmed through the window by the police Forward Intelligence Team. On that particular day I was stopped and searched three times and detained for over two hours.”

SKYLINE PHOTOGRAPHS
On 10th May 2010 the Member went to One Aldermandbury Square in the City of London, to take a portrait of one of the architects responsible for the change in London Skyline – Member approached by the Police who stopped him under s.44.

MATERIALS & INFORMATION
In 2008 the police instructed an NUJ Member to hand over materials in relation to his work reporting on terrorist organisations. Whilst the police can apply for such orders under the 2000 Terrorism Act, this case is believed to be unprecedented
because the main person of interest to the police has volunteered to speak openly to them. A Milton Keynes NUJ Member in 2008 was awaiting trial on charges alleging she illegally obtained information from the police.

- **Case law**

**Gillan v United Kingdom (4158/05)**

Police powers under section 44 of the Terrorism Act 2000 that authorised, and provided a wide discretion to execute, the stop and search of individuals in public without the need for reasonable suspicion of wrongdoing were neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse, and violated Article 8 of the European Convention on Human Rights 1950.

**Malik v Manchester Crown Court [2008] 4 All E.R. 403**

Although in principle a judge had been entitled to grant a production order pursuant to the Terrorism Act 2000 Sch.5, requiring a journalist to produce certain journalistic material for the purposes of terrorist investigation, in the circumstances the terms of the order were too wide.

**Wood v Commissioner [2009] 4 All E.R. 951**

The taking and retention of photographs by the police of a person connected with a group opposed to the arms trade as he left the annual general meeting of a company that organised a trade fair for the arms industry was an interference with his right to respect for his private life under Article 8(1) of the European Convention on Human Rights and the police failed to justify that interference as proportionate under Art.8(2).

- **Anecdotal evidence**

**14 September 2008** - Stephen Clarke was arrested on suspicion of taking pictures of sewer-gratings in Manchester. Although the police could not find any photos of sewer-gratings on his phone, he was held on suspicion of planning an act of terror and imprisoned for two days while the police searched his home, his phone and his computer. When they could not find anything suspicious, they released him, but kept his DNA on file, as the biometric of someone who had been accused of plotting a terrorist act. [http://boingboing.net/2009/03/03/manchester-man-arres.html](http://boingboing.net/2009/03/03/manchester-man-arres.html)

**November 2008** - BBC photographer Jeff Overs was stopped and searched while he took sunset photographs of St Paul's Cathedral. [http://www.amateurphotographer.co.uk/news/bbc_photographer_terror_stop_former_officer_blasts_met_news_292330.html](http://www.amateurphotographer.co.uk/news/bbc_photographer_terror_stop_former_officer_blasts_met_news_292330.html)
8 December 2008 - Photojournalist Marc Vallée and videographer Jason Parkinson were prohibited from covering a demonstration outside the Greek Embassy in 2008 for reasons of terrorist activity.  

Saturday 24 January 2009 – Justin Tallis, a London-based photographer, was covering the anti-BBC protest when he was approached by a police officer. Tallis had just taken a picture of the officer, who then asked to see the picture. Tallis refused, the officer then tried to take the camera away.  

April 2009 - Two Austrian tourists (man and his grandson) told to delete pictures of Walthamstow bus station. Unaware that police have no right to enforce deletion of images without a warrant, they complied.  
http://www.guardian.co.uk/uk/2009/apr/16/police-delete-tourist-photos

June 2009 - an amateur photographer was stopped in Cleveland by officers when taking pictures of ships. The photographer was asked if he had any terrorism connections and told that his details would be kept on file.  
http://www.telegraph.co.uk/comment/columnists/philipjohnston/4632459/Why-cant-we-take-pictures-of-policemen.html

July 2009 - Alexander Turner, an amateur photographer, was arrested under anti-terrorism laws for taking pictures of two officers as they question him for photographing a fish and chip shop in Kent. He was later released without charge.  

August 2009 - Police ordered train spotter Stephen White to delete images of train carriages taken during a holiday in Wales. CCTV near an oil refinery monitored him taking the pictures and alerted local police. Mr White refused.

November 2009 - Andrew White was stopped after taking photographs of Christmas lights on his way to work in Brighton. He was asked to give his name and address.

8 December 2009 – Photographer Grant Smith, a former chairman of the Association of Photographers, was briefly detained by Police after photographing the Bank of America-Merrill Lynch building.  

“I’ve got three section 44s in three weeks” – Grant Smith  

10 December 2009 - Guardian reporter Paul Lewis was stopped and searched while taking pictures of the Gherkin building in London.  
10 December 2009 - Amateur photographer Karol Berezowski was arrested under anti terrorist powers while taking photographs of posters on a building in Hounslow, west London. He was handcuffed and taken by car to Hounslow Police Station where he was held for three hours. 
http://www.amateurphotographer.co.uk/news/Police_detain_photographer_with_Leica_M6_in_London_suburb_update_Friday_11am_news_292842.html

11 May 2010 – Grant Smith (again) who is a professional photographer was looking for a location on London Wall appropriate to a portrait of one of the architects responsible for the City’s changing skyline. He went to One Aldermanbury Square, where an altercation with a security guard followed. The security guard asserted that Smith could not take photos of the building. Smith pointed out that the security guard was wrong. The police were called. Four officers arrived, followed by a police van with flashing lights. He was detained, he claims, under Section 44(2) of the Terrorism Act 2000. http://www.prisonplanet.com/city-police-still-using-terror-act-to-bother-photographers.html


26 June 2010 - photojournalist Jules Mattsson, who was documenting the Armed Forces Day parade in Romford, was questioned and detained by a police officer after taking a photo of young cadets. http://www.bjp-online.com/british-journal-of-photography/news/1719526/photojournalist-detained-army-cadet-pics