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The Policing of the Miners' Dispute

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1. Background
2. The organisation of policing
3. The National Reporting Centre
4. The role of the Home Secretary
5. The Police and the Law
6. Road Checks
7. Picketing (Criminal Law)
8. The Law on industrial action
9. Appendices

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THE POLICING OF THE MINERS' DISPUTE

1. Background

The partial strike of the NUM now taking place is a consequence of the National Executive devolving decisions on striking to local areas. Some area executives called men out; others conducted a ballot of their members (See Appendix A). The result of this has been considerable picketing by those on strike of collieries where the men had voted to carry on working.

The scale of the picketing has been great - well in excess of TUC guidelines. On occasions, the Press have reported as many as 2,800 pickets operating on a single day (23rd March). On 15th March, a man died at Ollerton, Nottinghamshire, and other occasions of violent confrontation have occurred.

As the Home Secretary, Mr Leon Brittan, said in a statement on 15th March, "Any attempt to obstruct or intimidate those who wish to go to work is a breach of the criminal law. The mere presence of large numbers of pickets can be intimidating. The police have a duty to prevent obstruction and intimidation, and enable those who wish to go to work to do so. They have the power to stop and disperse large numbers of pickets, and to take preventative action by stopping vehicles and people". (Hansard, 15th March 1983, Col. 512)

The number of police involved has been in response to the large number of pickets. Their use has been a consequence of the judgement of chief constables seeking to preserve the police. Mr Brittan confirmed: "I have made it clear to the chief constables concerned that they have my complete support in taking every measure available to them within the law to keep the peace and protect the right to work and vote." (Hansard, 15th March 1983, Col.513).

2. The Organisation of Policing

(i) The Home Secretary

The Home Secretary has overall responsibility to Parliament, as laid down in statute, for law and order. He must satisfy himself that each of the 43 police forces in England and Wales are run efficiently, relying on reports from Her Majesty's Inspectorate of Constabulary to monitor the situation. He is entitled to call for reports from Chief Officers, but he has no power to direct the operations of the police.

(ii) Police Authorities

With the exception of London, where the Home Secretary is police authority, these are composed of elected county councillors and magistrates. They appoint the chief officers (subject to the Home Secretary's approval), and have responsibility for the control of the budgets of the police forces they supervise. It is the duty of all police authorities to maintain an adequate and efficient force, and in consequence they discuss general issues of policing policy with the Chief Constable of their force. However, operational decisions remain the responsibility of the Chief Constable and he is answerable to the courts for those decisions.

(iii) Funding of Police Forces

The Home Office pays, through the police grant, half the cost of policing. The remaining 50 per cent is funded from the rates, levied as a result of a precept by the Police Authority. In addition, the Home Office provides a wide range of services to police forces (for example to assist with training and the provision of equipment.) Although operational decisions of a Chief Constable may have financial implications, police authorities do not use these additional costs to attempt to influence the Chief Constable's professional judgement.

Section 14 of the Police Act 1964 requires the police authority of a force requiring mutual aid to pay the police authority providing such aid as a contribution towards the costs agreed upon by the two authorities.

3. The National Reporting Centre (NRC)

Under the terms of the Police Act 1964, chief constables are empowered to request mutual aid from colleagues when necessary. Where a problem is localised, such aid is arranged directly. In the event of more widespread difficulty, in which a number of forces are either seeking or supplying aid, arrangements are co-ordinated centrally by the National Reporting Centre, run by the current President of the Association of Chief Police Officers.

The Labour Party appear to regard the use of NRC as being a step towards a national police force and thus a move away from local accountability of the police. In fact, the NRC only exists as a consequence of the local basis of policing in this country, to deal with emergencies. If the arrangements for the NRC were not so based, it is likely that some form of national police force would be required.

4. The Role of the Home Secretary

The National Reporting Centre is run independently of the Home Secretary. He is entitled to call for reports from chief constables detailing deployment of police officers, but is not empowered to give them orders. Chief constables remain operationally independent.

Section 14 (1) of the Police Act 1964 establishes the right of chief officers of police to apply to colleagues for mutual aid. It is this section of the Act that has applied to recent circumstances. Section 14 (2) permits the Home Secretary to direct that police forces may provide mutual aid, though he may not make operational directions. In the present emergency, the powers under Section 14 (1) have worked well, and there has been no call for the use of the reserve powers of Section 14 (2).

5. The Police and the Law

Some of the more extravagant members of the Labour Party have suggested that the treatment of picketing during the miners' dispute shows that Britain is becoming a 'police state'.

This ignores two crucial points. Firstly, it is a prerequisite of the 'police state' that the police serve the government of that state. This is manifestly not the case in Britain; the police are not the servants of government, but of the law. Secondly, the actions of the police are not above the law, which applies to them as it does to all other citizens. In the event that police officers have exceeded their powers, or if their behaviour gives rise to complaint, procedures exist to investigate the allegations.

Complaints about the actions of individual police officers are recorded and investigated as required by law. Each investigation is subject to the independent scrutiny of the Director of Public Prosecutions and the Police Complaints Board, who deal with criminal and disciplinary matters respectively.

The Police and Criminal Evidence Bill, currently before Parliament, proposes both substantial improvements to this system, and strengthening of the independent element of supervision. It is a reflection of the changes within the Labour Party, and its current state of confusion, that they oppose these measures on the grounds that they do not go far enough when the current complaints procedure was set up only eight years ago by the last Labour Government.

6. Road Checks

During the dispute, police have stopped vehicles appearing to be carrying pickets from one area to another. The occupants have been advised that police forces in the area to which they were travelling (especially Nottinghamshire) fear that there might be a breach of the peace, and that as a result, pickets might be stopped before reaching their destination.

The Labour Party, in attacking this police action, have sought at the same time to raise public fears about the provisions for road checks in the Police and Criminal Evidence Bill. This is misleading, for the Bill, in accordance with the recommendations of the Royal Commission on Criminal Procedure, restricts and regulates the present ability of the police to set up road checks for the purposes of detecting criminal offences. The Bill does not deal with the power of the police to obstruct roads in order to prevent a breach of the peace. The Royal Commission on Criminal Procedure, on whose report the Bill is based, made it clear that the powers of the police which flow from their duty to prevent public disorder were outside their terms of reference - powers which were of course given to them by the Labour Government of the day.

Written Answers to Questions

Friday 16 March 1984

ATTORNEY-GENERAL

Picketing (Criminal Law)

Mr. Steen asked the Attorney-General whether, in view of the recent activities of pickets, he will make a statement on the criminal law on picketing.

The Attorney-General: The statement that I made to the House on 19 February 1980 still applies in all its essentials, though there have, since that date, been certain changes in the relevant civil law which I shall explain later in this answer.

So far as the criminal law is concerned, the position is, as it always has been, that the criminal law of the land applies to pickets as it does to anybody else. Picketing is permissible, in terms of criminal law, only if it is peaceful picketing, that is to say, it is carried out for the purpose of peacefully obtaining or communicating information or peacefully persuading another person to work or not to work. The freedom to picket is not a licence to obstruct or intimidate.

This reflects the fundamental proposition of our law that each of us has the right to go about his daily work free from interference by anybody else. Each one of us is free, as an individual, to come and go as he pleases to his place of work. The law specifically protects our enjoyment of this right. If any one tries to deter us from exercising it by violence or intimidation or obstruction, he is breaking the law and may be punished. The freedom to picket does not confer or imply any right to stop vehicles: still less do pickets have the right to stop people going about their lawful business. Pickets have no right to link arms or otherwise prevent access to the place that they are picketing.

If pickets by sheer numbers seek to stop people going to work, they are not protected by the law since their purpose is to obstruct rather than persuade. The courts have recognised that the police may limit the number of pickets in any one place where they have reasonable cause to fear a breach of the peace. This may involve not only asking some of those present to leave but also preventing others from joining the pickets. In this connection, the code of practice which was issued under the Employment Act 1980, with the approval of both Houses of Parliament, indicates that in general the numbers of pickets should not exceed six at any entrance to a workplace. The 1980 Act itself provides that the provisions of the code of practice may be taken into account in proceedings before a court.

It is, of course, primarily the duty of the police to uphold and enforce the criminal law. It is for them to decide, consistently with that duty, what action any particular situation requires them to take. But there is no doubt that if a constable reasonably comes to the conclusion that persons are travelling for the purpose of taking part in a picket in circumstances where there is

likely to be a breach of the peace, he has the power at common law to call upon them not to continue their journey and to call upon their driver to take them no further. Any person who fails to comply with a police request in those circumstances will be committing the offence of obstructing a police officer in the course of his duty.

Turning now from the criminal to the civil law, it is and always has been a civil wrong to persuade someone to break his contract of employment or to secure the breaking of a commercial contract. However, the Trade Union and Labour Relations Act 1974, as amended, gives immunity from liability in respect of such a civil wrong to pickets who are acting in contemplation or furtherance of a trade dispute. But, since the Employment Act 1980, this immunity operates only for the benefit of a person who is attending a picket at or near his own place of work or for the benefit of a trade union official attending a picket at or near the place of work of a union member whom he is accompanying and whom he represents; and in either case only if the purpose of the picket is peacefully to obtain or communicate information or peacefully to persuade any person to work or not to work. Since the Employment Act 1982, trade unions themselves may be held liable for organising picketing which involves the commission of a civil wrong.

I hope that this re-statement of the legal position, which the Lord Advocate agrees reflects the main principles of the law of Scotland also, will serve to remove any doubts that might remain in any quarter about the strict limits within which pickets may seek to press their views on their fellow-citizens. As I said in my earlier statement to the House, it is the function of the law to protect the right of every person to make his own decision, free from violence or any other form of intimidation, on whether or not to work. The law permits no interference with that right and recognises no privilege or immunity vested in any person, merely because he is engaged in picketing, to act in a way which constitutes a criminal offence. That has always been the law and I am sure that those responsible for enforcing it will have the support and encouragement of the vast majority of the people of this country in ensuring that it is indeed enforced vigorously and without fear or favour.

THE LAW ON INDUSTRIAL ACTION as it affects the Miners Dispute.

THE EMPLOYMENT ACT 1980:

- * restricts lawful picketing to a picket's own place of work;
- * makes unlawful secondary industrial action which is not directed at the business of the employer in dispute.

THE EMPLOYMENT ACT 1982:

- * makes trade unions liable to be sued if they organize unlawful industrial action;
- * restricts lawful trade disputes to disputes between workers and their own employer about, for example, their pay, conditions and jobs.

When is Industrial Action Lawful?

When a trade union or individual organizes industrial action which interferes with contracts, or threatens to do so, there are four basic questions to be asked in deciding whether the trade union or individual is acting lawfully:

- * Is there a trade dispute and has the action been called in contemplation or furtherance of that trade dispute?
- * Is it unlawful secondary action?
- * Does the action involve secondary picketing?

Secondary Picketing

There is also no legal protection for those who organize or take part in secondary picketing - that is, picketing at a place other than the picket's own place of work. This is so whether or not the picketing is in contemplation or furtherance of a trade dispute.

What constitutes lawful picketing is defined in Section 125 of the 1974 Act as amended by Section 16 of the 1980 Act. This provides that picketing is now lawful only if:

- * The person is picketing at or near his or her own place of work;
- * The purpose of the picketing is peacefully to obtain or communicate information, or peacefully to persuade a person to work or not to work.

Where picketing does not satisfy the conditions set out above it has no legal immunity and the pickets or their organizers may be taken to court by those who are damaged by the picketing. Picketing which is not peaceful - for example, if it involves violent or abusive behaviour or involves obstruction of the highway - may also be a criminal offence; and in such circumstances those responsible may be arrested and prosecuted by the police.

Code of practice on picketing

More detailed information about the law on picketing is contained in the 'Code of Practice: Picketing' issued under the powers given to the Secretary of State for Employment in Section 3 of the 1980 Act. This outlines the law on picketing and gives practical guidance on its conduct. Copies are available free of charge from Jobcentres, employment offices and unemployment benefit offices.

Summary of Legal Position

To sum up, then, the law does not protect those organizing industrial action and those taking part in picketing from being sued for inducing breaches of contract if:

- * the action is not in contemplation or furtherance of a trade dispute;
- * the action is unlawful secondary action;
- * the action constitutes secondary picketing;
- * the action is being taken against persons because they employ non-union (or union) labour or because they do not recognize a union;
- * those concerned commit unlawful acts other than inducing breaches of contract.

Trade union immunities are primarily concerned with civil not the criminal law. It is not a criminal offence to strike. But if in the course of a strike someone commits a criminal offence (for example, by assaulting another person or damaging someone's property), he or she has no special protection and is just as liable to be prosecuted by the police as any other member of the public.

APPENDIX A

Results of local ballots on strikes

NUM Area	Number Voting	% Against Strike (remainder voting for)
Derbyshire	8,360	50.1
Nottinghamshire	27,473	73.5
Northumberland	Not released	48
Leicestershire	1,614	89
South Derbyshire	2,756	83.6
Lancashire	6,360	59.2
Cumbria	492	78
Midlands	10,360	73
North Wales	871	68.3

Nottinghamshire delegate conference on 5 April 1984

On 5 April a meeting of 258 Nottinghamshire delegates (Branch officials and committee members) voted by 186 to 72 to overturn a previous recommendation of the area executive committee that the Nottinghamshire miners should set up their own picket lines and that members should be advised not to cross them.

APPENDIX B

Numbers of pits working/on strike

Date	Working Normally	Not Working
12.3.84	92	83
19.3.84	44	116
23.3.84	38	125
26.3.84	37	132
30.3.84	38	130
2.4.84	40	120
3.4.84	43	121
4.4.84	42	123
5.4.84	40	121
6.4.84	41	121

In addition, a small number of pits have been partially manned; some of these are producing small amounts of coal.