

Legal framework and practices of public order management in England and Wales

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〈Abstract〉

Public order management is one of the most important areas in policing. Drawing on the legal framework and policy, this study aims to assess practices of criminal justice practitioners, especially, police and prosecutors, in England and Wales.

Using qualitative interviewing, four main themes are identified: (1) an emphasis on a right to protest, (2) police practices on public order management, (3) the development of police/prosecutor liaison, and (4) the value of video evidence. Based upon these findings, several legal, policy and practice implications are drawn. These implications involve a wide range of aspects concerning strategic, operational, and tactical interventions by the police, as well as collaboration between police and prosecutors.

Although the criminal justice context in England and Wales is very different to South Korea, some practices and distinctions can be useful to consider in the Korean context. This study suggests that more gains can be made if legislation, policy, and practice across criminal justice nodes can be coordinated and approached holistically.

주제어 : Public Order Management, Legal Framework, Policy, Practice,
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I. Introduction

As police strategies and tactics regarding protests have a significant influence on civilians and politics, the handling of disorder has become a controversial and debatable issue in most parts of the world (Brewer, Guelke, Hume, Moxon-Browne, & Wilford, 2016). As such, it is imperative to keep a close eye on police strategies and tactics to deal with large public order events such as demonstrations and marches/processions.

In this study, public order management in England and Wales (E&W) will be investigated. More specifically, how police and prosecutors respond to public disorder events will be examined. It is known that criminal justice practitioners engage in their work based on the legal framework and policy. As such, it is of importance to look into them at the outset of this research. It will also explore whether criminal justice practitioners undertake public order management within the legal framework.

In order to have a close look at their practices, a qualitative interviewing approach is adopted to investigate the research topic in detail. This study therefore focuses on public order law, policing and prosecutions in E&W. The examination will disclose some

legal, policy and practice implications and those implications are expected to provide meaningful insights for South Korea.

The nature and emphasis of public order requirements are perhaps very different between E&W and South Korea. The South Korean concern is mainly regarding large demonstrations for political or economic reasons. In this aspect, public order management or policing is more concerned with riot and violence (Waddington, 2007). On the other hand, in E&W, low level/high volume public order incidents involving small numbers of people affected by alcohol and the night time economy account for the bulk of police intervention. As with Europe more generally, there is also a heavy focus on policing crowds for sporting events, especially football fans, which is not such a demanding issue in South Korea. While disorder around sporting events is not common in South Korea, just as massive demonstrations about US beef are not common in E&W, there are many similarities between all public order events and the lessons learned from them.

II. Legal framework and policy

The legal framework in E&W is not based on a single penal code, but on a series of individual Acts of Parliament over a number of years which are also amended by Case Law. In comparison to South Korea, it is important to understand the primary sources of law and how it works in practice. First, Primary Legislation is created by Acts passed by Parliament. These can include several elements of the law on different topics and effectively amend and adapt previous legislation, which makes applying the law complex. These acts are binding and judges must follow them. However, appeals can be made where the application of the law is not clear. Rulings by Higher Courts in such cases result in Case Law which then establishes a precedent for future application of law in similar cases. This adds to the complexity as it is necessary to refer to the original Court report of the case and apply the judge's decision from it. Additionally, Common Law allows for long established customs and practices to be

considered as setting a precedent.

It is also important to understand that the Crown Prosecution Service (CPS) in E&W only commenced in 1986 (Joyce, 2016), and is relatively weak in its scope and powers compared to the South Korean Supreme Prosecutors' Office. The police control all aspects of investigations, although they sometimes ask for CPS advice. The police statutory powers and duties in relation to the policing of protest are based on the following legislation (College of Policing, 2013a):

- Public Order Act 1986
- Criminal Justice and Public Order Act 1994
- Criminal Law Act 1967
- Police and Criminal Evidence Act 1984
- Common law powers and duties, including powers to prevent breaches of the peace.

The College of Policing provides overall guiding or 'core' policing principles at a national level, so that forces can apply these in local circumstances in relation to the legal framework and new developments within it. Of course, these will be affected by local variations and rulings according to common law, custom and practice. Variations can be considerable if the UK is taken as a whole (practices and law will be different in Scotland and Northern Ireland).

The six core principles that apply to all public order policing operation are defined in turn below. These principles underpin the 'Planning and deployment', authorised professional practice model provided by the College of Policing (2013b).

〈Table 1〉 Core principles of public order policing

Principles	Details
Policing style and tone	(1) commanders need to set the policing style and tone at the start of an operation and be aware of the potential impact on public perceptions (2) police should be impartial, fair, approachable, accessible and legally compliant (3) policing by consent should underpin operations (4) police should be readily identifiable
Communication	(1) use engagement and dialogue whenever possible (2) establish and maintain links with communities, groups, partners, event organisers and others to build trust and confidence (3) messages should be planned, unambiguous, clear and coordinated (4) neighbourhood policing teams and other local policing assets should have established a network of local information and intelligence sources capable of highlighting increasing community tensions (5) opportunities for disseminating and receiving information provided through open-source and other social media channels should be explored (6) media (including social media) should be used to explain police activity
Use of the National Decision Model (NDM)	(1) NDM is the key framework for operational decision making (2) use audit trail to record decisions and show rationale
Command	(1) public order commanders must be trained, accredited and operationally competent (2) command structure should be appropriate and resilient to meet the requirements of an operation
Proportionate response	(1) demonstrate consideration and application of relevant human rights principles (2) police powers should be used appropriately and proportionately (3) planning should be based on information and intelligence
Capacity and capability	(1) public order resources trained to the agreed national standards (2) deployed equipment and vehicles meet national requirements (3) sufficient trained and accredited resources and equipment are available to meet local and national public order commitments (4) police support unit (PSU) deployments both in force and out of force comply with the national definition of a PSU

※ Source : College of Policing (2013a)

The National Decision Model (NDM) is widely used throughout police practices. In addition, the NDM can be used at the preparation, operational, and after-event stages. Drawing on this model as a structural framework, police commanders and officers can

note and rationalise their decision-making processes. This in turn results in reasonable and proportionate public order management.

III. Research methods

In addition to the review of legislation and policy, a qualitative approach is taken in this study. This approach is useful for discovering the meanings that research subjects assign to their experiences or events (Bryman, 2016). It was expected that a qualitative approach could shed light on practices and applications of criminal justice practitioners.

In order to carry out a qualitative study of public order management in E&W, it was imperative to adopt a research method which provides an in-depth understanding of practices and appreciations. A qualitative interviewing approach was chosen as an appropriate method for this purpose because the scope of this study was broad. The authors used an unstructured interview which does not accompany any sort of prepared questions. In this technique, an interviewer keeps only an area of interest and a list of topics in mind. Before an interview, we provided interviewees with the aim and purpose of this research and research topics, such as law, strategies, practices, policies, etc. This allows a large flexibility in garnering detailed information (Robson & McCartan, 2016).

In terms of selecting samples, in qualitative research there is no set of standards on the minimum number of interviewees (Bryman, 2016). It depends on research problem, questions, objectives, and orientation. In this study, only two interviewees were chosen. Although the small samples is a limitation of this research, this can be justified because of the scope and orientation of this study. Firstly, since this study examined a broad spectrum of public order management, ranging from the legal framework to strategies and to practices, an interviewee needed to be aware of the wide range of the subjects. Interviewees therefore needed to be or have been in a senior position in criminal justice agencies. Second, it was preferred to have interviewees from different agencies. As public order is managed by both the police and prosecutors, acquiring accounts from

both was necessary to examine the subjects fully. It should be recognised that it was very challenging to recruit interviewees who met these criteria. This indicates that purposive sampling was used for the selection of the interviewees.

This study interviewed both a senior public order commander¹⁾ from the MPS ('Interviewee A') and a regional crown prosecutor from the CPS ('Interviewee B') with experience of major incidents that required adaptation and to some extent development of practice within the legal framework.²⁾ Due to the extensive experience based on their senior positions, these two interviewees were considered national experts in this field. Interviewing the two high-ranking government officials, respectively, in Metropolitan Police Service (MPS) and Crown Prosecution Service (CPS) will provide strategical, operational, and tactical approaches that these two agencies take.

Interview data were analysed using thematic analysis to identify themes within the data. This is one of the most frequently used techniques in qualitative research. Drawing on an analysis process by Braun and Clarke (2006), six phases were carried out in this research: (1) familiarizing yourself with your data, (2) generating initial codes, (3) searching for themes, (4) reviewing themes, (5) defining and naming themes, and (6) producing a report.

IV. Results and analyses

1. An emphasis on a right to protest

UK citizens have a right to protest and assemble freely. This is tied up with free speech, but has to be balanced against the disruption and stress caused to local residents. The main issue for Interviewee A, in his experience of policing public order in London, is the distinction between 'lawful' and 'peaceful' protest. If lawful permission is denied

1) As a commander, he was in charge of G20 protests in 2009 and London Olympics in 2012, etc.

2) At the time of the research, these two interviewees were not serving but trained their previous organisations because they were considered national experts.

on application, but protesters arrive and are peaceful, it is really a question of managing the assembly rather than enforcing against it. The second key distinction, is between an ‘assembly’ (which is static) and a ‘procession’ (which is usually a march). As the legal framework and policy section above shows, the law treats these differently and they need to be policed differently. Most assemblies cannot be stopped, but conditions can be applied for, such as changing the route of a march.

Interviewee A agreed that the E&W law can make it difficult to always be clear on your powers. The Public Order Act 1986 (POA) was very clear, but subsequent amendments, case law, precedents and new Acts have made it very difficult to operate, in common with much of the E&W legal process.

Interviewee A also stated that no ‘places’ in E&W were restricted. However, parliament itself did have to change the law through a sessional order – limiting the noise during voting etc. However, there is still a right to assemble outside parliament and there are no special measures to clear roads etc. so there are sometimes tented villages opposite the Palace of Westminster.

New legislation (eg, the Serious and Organised Crime Act and Police Reform (2015) and Social Responsibility Act (2011)) can have an impact on this type of public order policing, even though it is not ostensibly concerned with public order, but because of the way that law is made in E&W.

2. Police practices on public order management

The UK does not have as specialist paramilitary police force to control public order like Sweden’s RRTEF, or France’s CRS. Instead, standard officers are trained and equipped to perform this function if required. The Metropolitan police does have its Territorial Support Group (TSG), which some claim is a paramilitary force, while others argue it is not.

Private property creates more problems. During the Occupy Movement’s tented village set up outside St Paul’s Cathedral, the Dean allowed them to stay initially, but the police had to say that he would then need to apply for an injunction to remove

them, without which the police would have no power to disperse. Similarly, the access route to the London 2012 Olympic Village was owned by many different landowners. In order to prevent occupation, Parliament had to ask for a list of landowners and request them all to apply for injunctions.

Traffic disruption is not a reason to be able to stop a march, but it may be for a static assembly. One flash mob targets London rush hour traffic and has done so for 20 years. They gather on cycles until there is a critical mass every last Friday of the month and then cycle into central London causing traffic jams. Police application for conditions under POA 1986 was rejected because there was 20 years of established custom and practice under common law.

If a group has a history of violence, it is possible to prohibit assembly, but not a march. The latter would require an application to the Home Secretary for a banning order and there would have to be evidence of likely serious threat of injury that the police are not equipped to deal with. It is effectively a claim that the police are not capable of managing public order and it is therefore rarely used. Prohibition must be for specific time period and location.

As with the cycling example above, if there is no leader of the group to prosecute, which is a deliberate policy, enforcement against it is more difficult. The POA 1986 requires application to police 6 days in advance, but this is only an offence by an organisation. In fact, recent forms of protests, such as anti-globalisation movement, have no clear leadership with a loose coalition of multiple groups (Reicher et al., 2007). If a leader is not identified and there is no evidence that those taking part know it is illegal, it is very difficult to prosecute. The police then have to start looking at the start point, and the end point and whether they can be classified as an assembly, to apply for dispersal. Interviewee A said that most groups have good intent and agree to negotiated route changes. A few deliberately choose a route to antagonise a specific community. Therefore, it should be noted that the police's understanding of intentions, identities, and priorities of protest groups in the crowd is critically important (Reicher, Stott, Cronin, & Adang, 2004).

London has specific issues. 300 languages are spoken. Most countries have embassies

there and some are targeted by their own national groups due to conflict in their country. It can be embarrassing that you cannot accede to requests for removal of protesters.

It is usually better to negotiate. There is no power to insist on stewards or marshals and they are not qualified or even effective sometimes. Since 2009, the need for structured dialogue has been a stronger emphasis in police practice, but it is not as structured as it is in Sweden and South Korea. There are now Protest/Event Liaison Teams in the Metropolitan Police who are assigned on application by demonstration groups. There is ideally joint planning which includes local community views as well as the applicants. The police Bronze commander is the conduit for engagement. Explanations are offered as to why routes are changed and very few marches or assemblies now result in disorder. But there is sometimes a tension between the police liaison officer role and the police intelligence gatherer role in the dialogue. Protest liaison teams are following the Swedish model, but it is adapted to the UK context. Mostly, the aim is not to arrest, as this creates tension and soaks up manpower.

3. The development of police/CPS liaison (A case in a county)

Interviewee B used a case of an English Premiership football match where there was serious disorder to demonstrate the key issues involved in managing such events. He was the most senior prosecutor in charge of the case.

The event was the first football match for some time between Portsmouth and Southampton football clubs. They have mostly been in different divisions, but in March 2004, they played a match at Portsmouth's home ground Fratton Park. This led to serious public order problems outside the ground, which is in a residential area, and therefore difficult to police. Predominantly, Portsmouth home fans attacked the smaller number of travelling Southampton fans who were being escorted by police back to the train station to depart. There were 20,000 spectators at the game, 400 police and 300 rioters.

The police Chief Superintendent in that area and interviewee B as the Chief Prosecutor at the time met and arrived at a joint strategy, which proved to be very effective. The key components were:

- A deliberate strategy of efficient use of video evidence as proof of offending rather than trying to compile what would have been over 1,000 statements from witnesses, victims, etc., which would have taken a long time and drained resources.
- Agreement with the courts to use a single judge for all cases, with CPS to use same prosecution team, and with police to use the same court preparation team for consistency.
- A decision to select and charge offenders only with cases that video evidence could show were clearly committing a single serious public order offence (S.2 of the public order act 1986, violent disorder). Those with evidence lower than S.2 were not charged.
- No plea bargaining or watering down was contemplated, so only the cases with sufficient evidence were committed for trial.
- The target was to send all defendants straight to Crown court, where the most serious 7% of cases are heard.

This produced 98 cases, with strong evidence and little need to hear witnesses etc. 40% of the offenders had previous convictions (making custodial sentence more likely). Only 3 witness statements were required: 1 police officer; 1 CCTV/video camera operator; and a woman who had been getting a pizza who got caught up in the fracas. Statements from arresting officers were also prepared as it is a legal requirement, and offender statements after arrest were also available.

The result was a lot of guilty pleas, 95 convictions, all with custodial sentences. It is also important to note that the police are unlikely to apply for S.1 of the POA 1986, riot, as this makes the police liable for the damage caused by it.

The approach was considered controversial at the time by many in criminal justice and the families of youths who were convicted (BBC, 2005). However, it has become

standard practice since and the return fixture at Southampton in 2010 was relatively easy to police. There was no use of riot gear, dogs or horses. Video evidence was again used. There was less trouble than in 2004. A smaller number of arrests and charges (21) were made, resulting in 19 custodial convictions, all of which were guilty pleas, reducing time and cost. Police and CPS had identified that a barrier had been attacked and pulled down, so they agreed that act would be classed as S.2 and anyone shown to be attacking it in the videos was then charged with it. Again, there were no charges for offences below S.2 and no plea bargaining.

The 2004 event had been the biggest football public order case in E&W and its success helped cement better coordinated liaison and joint CPS/police working. There is now a CPS national network that police can consult 24 hours a day, which has reduced plea bargaining.

New developments since are that: away fans cannot travel (both directions) without an official match transport tickets on dedicated buses; police managing fan movement from transport to the ground in a 'bubble' (adopted from Celtic/Rangers games in Scotland); and barricades to cordon and separate opposing fans.

The use of banning orders was also developed from this period. This now allows a court order to ban an offender from all professional football matches in all leagues for 3 to 5 years. If their team is drawn in a European match, or there is a national team match abroad, this also requires surrender of passports over that period. This also impacts heavily by restricting social life and there is also a prison sentence if caught denying the ban. Interviewee B thought this was very effective in reducing hooliganism and therefore effecting better public order.

4. The value of video evidence

Police in E&W were prepared with riot gear, horses and dogs to control the fans. However, interviewee B mentioned that the most important weapon for the prosecution was the extensive use of CCTV and video camera evidence for 40 minutes before and after the event³⁾. While some arrests can be made on the day of an event, the emphasis

is on control, containment and dispersal. However, the extensive video footage can then be used after an event to (1) identify offenders and (2) provide the evidence for their prosecution.

Interviewee A agreed on the value of CCTV and video evidence which ties in with an interviewee B's case below. Interviewee A noted the value and skills of video teams and indentifiers. As with the case below, most detected crime through video evidence will be followed up later using video evidence and there is always a senior detective role during a demonstration to facilitate this.

V. Legal, policy and practice implications

It is vital that policing policy, practice, and research form constructive relationships regarding the successful public order management (Stott, Adang, Livingstone, & Schreiber, 2008). A number of implications can be drawn from the qualitative interviews.

First, in E&W, despite the existence of specific public order statutes (laws) and case law relating to them, it may be that they do not relate to the exact circumstances of a particular case where public order (or other) issues are encountered by the police. Unlike in South Korea, where the penal code can be amended, making it easy and clear, in E&W, judges must look at a number of sources and make their decision accordingly. These are: (1) case law covering 'similar' or analogous situations, (2) custom and practice (often going back many years), (3) what courts have decided in similar situations in other countries (particularly those with common law legal systems), (4) respected academic legal writings, government and industry reports, reports in Hansard⁴), (5) consider what would be fair and just in all the circumstances, and (6) consider the impact of a certain decision and whether or not this is something that should be referred to Parliament (legislature) and which may result in new legislation. It is also worth remembering that

3) This event refers to the same football related violent incident in the previous section.

4) Edited verbatim report of proceedings of both the House of Commons and the House of Lords

Acts that make no reference to Public Order may well contain sections that amend those that do, including the creation of new offences (eg, Serious and Organised Crime Act (2015) and Police Reform and Social Responsibility Act (2011)).

Second, in most cases, through training and updating, police public order commanders are expected to know their legal position and can order operational action without consulting the Crown Prosecution Service for legal advice or permission. As interviewee B has noted, this has evolved over time from de facto police autonomy (including prosecution role), through a relatively conflictual period after the Crown Prosecution Service (CPS) was founded in the 1980s, to a more cooperative and collaborative relationship as outlined by interviewee B. However, there are 43 police forces in E&W and the CPS is organised on a different regional basis so that relationships and working practices can vary between them.

Third, when police and CPS collaborate well and before a known event, such as the Portsmouth-Southampton football games, it is clear that public order management is much smoother and more effective. In the football match case above, it also resulted in: changes to the threshold at which offences would be selected (ie, the most serious cases); jointly establishing what evidence would be accepted as proof of this; charging only these cases; accepting no plea bargaining; and extensive reliance on filmed/video evidence to enhance evidence quality and certainty, reduce time and resources normally required to interview witnesses, and write statements. The retrospective use of video evidence in practice by these two interviewees also meant that the relatively small number of officers on the day could focus on calming the situations and fast dispersal of the crowd, including offenders, without the resource implications of mass arrests and the drain on manpower that would incur. Also, it was important for both police and CPS to also establish a clear relationship with the court/sentencers so that a strategy could be agreed in advance. Once this working relationship was established, it would be more effective also when responding to future spontaneous public order incidents.

Fourth, all operational police public order commanders must understand the distinction between 'lawful' and 'peaceful' protest in E&W. Even if permission is applied for and denied, if protesters still arrive, but are peaceful, the police are required to

'manage' that situation well rather than prioritising enforcement against it. Crowd management is preferable to crowd control and the latter should be used as a last resort (Cabinet Office, 2009).

Fifth, both the public order laws and police practice must manage assemblies (gathering in one place) and processions or 'marches' (moving along a route) differently. The latter can end in the former, requiring to different approaches over time on the same day. Traffic disruption alone, even outside parliament, is not a valid reason to stop a procession, but can be used for assemblies.

Sixth, a number of factors can add to the difficulty of policing public order including: (1) private property is much more difficult to police if the land owner has initially allowed access (2) all prohibitions or conditions applied for by the police must be for specific time periods and geographical locations, (3) most groups are reasonable and agree to negotiated changes of route and assembly. However, groups who deliberately do not have an identifiable leader are more difficult to prosecute as the Public Order Act 1986 presumes an offence by an organisation. Stewards/marshals are not required to be trained in E&W and are not reliable if trouble develops. Negotiation teams are used, but this is not as well established in E&W.

VI. Conclusion

In looking at E&W public order policing and prosecutions, it is clear that the criminal justice context is very different to South Korea. The two major differences are that (1) the E&W legal framework is much more complex, difficult to follow, and also open to challenge and interpretation, compared to the South Korean Penal Code and (2) the responsibilities of police and prosecutors are very different between the two countries. While the CPS has gained in importance in E&W since the 1980s, it is still relatively weak in influencing police operations compared to South Korea and collaboration can vary between police force areas.

However, there are some practices and distinctions that may be useful to consider

in the South Korean context. The different management processes and powers for assemblies compared to processions, and the changes in these if the two categories overlap is important to consider, perhaps, in the main, to avoid the problems that E&W police face in managing this. It is also worth considering ensuring that leaderless groups/flash mobs are catered for in South Korean legislation.

The research findings provide some policy implications to the South Korean police. First, they need to adopt crowd management rather than crowd control. Instead the Korean police have intended to control protests by judging whether a protest is legal or not (황문규, 2017). They have approached protests from a legal point of view rather than considering a wider context to see if it is peaceful. Like the E&W, if a protest is peaceful although illegal, crowd management should be preferred. Second, a collaboration between the police and prosecutors needs to be emphasised. The coordination between them in E&W have produced successful investigations and prosecutions of offenders. Once this working relationship is established, it would be more effective also when responding to future spontaneous public order incidents. Lastly, the use of camera/filming/recording of events needs to be encouraged. This certainly has a positive impact on the effectiveness of managing public order events effectively, ensuring faster dispersals and use of limited manpower and resources while ensuring more efficient levels of evidence and prosecutions following the event. It is here that the biggest gains can be made if legislation, policy, practice and training across police, prosecutions and courts can be coordinated and approached holistically.

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【요 약】

잉글랜드와 웨일즈의 공공질서 관리 관련 법적 틀 및 법집행 형태

정제용 · Tom Ellis

공공질서 관리는 형사 사법 제도에서 중요한 부분 중 하나이다. 본 연구는 법적 틀과 정책에 기반하여 영국 잉글랜드와 웨일즈의 형사 사법 기관들의 공공질서 관리 관련 법집행 형태를 평가하고자 한다.

질적 인터뷰를 통해, 다음의 4가지 주제를 발견하였다. (1) 집회시위권에 대한 강조, (2) 공공질서 관리에 대한 경찰 법집행 형태, (3) 경찰/검찰의 협업, 그리고 (4) 비디오 증거의 가치. 이러한 결과를 토대로 몇 가지 법적, 정책 및 법집행 관련 함의가 도출되었다. 이러한 함의는 경찰과 검찰의 협력뿐만 아니라 경찰의 전략적, 운영적, 전술적 개입에 관한 다양한 측면을 포함하고 있다.

잉글랜드와 웨일즈의 형사 사법 제도의 맥락은 한국과 다르지만, 일부 법집행 형태와 우수한 점은 한국적 맥락에서도 고려될 수 있을 것이다. 본 연구는 형사 사법 정부 기관 간에 법률, 정책 및 법집행이 전체론적으로 조정되고 접근될 수 있다면 더 많은 효과를 얻을 수 있다고 제안한다.

Keywords: 공공질서 관리, 법적 틀, 정책, 법집행 형태, 경찰과 검사의 협력