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FREE SPEECH UNION

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The Rt Hon Yvette Cooper MP
Secretary of State for the Home Office
Direct Communications Unit
2 Marsham Street
London
SW1P 4DF
United Kingdom

21st August 2024

Also by email to: public.enquiries@homeoffice.gov.uk

Dear Ms Cooper,

I am writing to you in my capacity as General Secretary of the Free Speech Union, a non-partisan, mass membership public interest body that stands up for the speech rights of its members and campaigns for free speech more widely.

This letter set out our concerns about a [post](#)¹ on X made by the Home Office's official account, which I assume you are ultimately responsible for. This post said: "These criminals will face the full force of the law", and included a Home Office infographic stating: "More than 1,000 arrests related to recent public disorder."

We are concerned that this post referred to all the people who have been arrested in connection with the recent public disorder as "criminals", including those who have not been charged, or who have been charged but have pleaded not guilty and have not yet been tried.

For example, one of our members, the 55 year-old woman who was arrested last week for wrongly identifying the attacker in Southport as an asylum seeker on X, has not been charged or made any admission of guilt. If she is charged, and if she pleads not guilty, we fear that there may be a risk that her trial is prejudiced because some of the jurors in her case may be one of the 2.3 million people who have seen the X post.

In addition to being the General Secretary of the Free Speech Union, I am a journalist and were I to describe an individual who has been arrested or charged but not yet admitted guilt, or is awaiting trial, as a "criminal", I would risk being in contempt of court and potentially either fined or given a custodial sentence.

¹ Home Office post on X, formerly known as Twitter, dated 14 August 2024. Accessed at 21:03 on 20 August 2024: <https://x.com/ukhomeoffice/status/1823671812917444803>

I'm also concerned that this post risks breaching the fundamental legal principles set out below, especially in conjunction with the fact that the Crown Prosecution Service ("CPS") is posting regular updates on X naming individuals who have been charged with various offences relating to the recent public disorder across the country,² not all of whom have pleaded guilty or been tried.

The legal principles and rights which are at risk of being breached are:

1. The foundational principle of criminal law, which is that all individuals who are charged with a criminal offence have the right to be presumed innocent until proven guilty, in accordance with Article 6(2), Schedule 1 of the Human Rights Act 1998.³
2. The right to a fair trial, in accordance with Article 6(1), Schedule 1 to the Human Rights Act 1998.⁴
3. The Code for Crown Prosecutors which states that the following terms should be used to describe those undergoing criminal proceedings:⁵
 - a. "Suspect" – used to describe a person who is under consideration as the subject of formal criminal proceedings;
 - b. "Defendant" – used to describe a person who has been charged or summonsed;
 - c. "Offender" – used to describe a person who has admitted guilt as to the commission of an offence, or who has been found guilty in a court of law.

While this is part of the Code for Crown Prosecutors, these guidelines are replicated in a number of other guidance documents on court reporting, which you and the Home Office should also follow in all public communications relating to ongoing criminal proceedings.⁶

All public posts relating to ongoing criminal proceedings must also avoid creating any risk of prejudicing or creating an impediment to the course of legal proceedings. The premature declaration of a defendant's criminal status in specific legal proceedings could potentially lead to a breach of Section 1 and 2 of the Contempt of Court Act 1981, which establishes that it is a contempt to publish anything that creates a substantial risk of serious prejudice or impediment to the course of justice in legal proceedings, irrespective of the intention behind the publication.⁷

In addition, the Home Office's post risks committing a false communications offence under section 179 of the Online Safety Act 2023.⁸ If your office posted a message conveying information it knew to be false (i.e, if it knew that not all those arrested in connection with the recent disturbances have pleaded guilty or been found guilty), but a decision was made to post it anyway with the intent of causing "non-trivial psychological harm" to a "likely audience" without reasonable excuse, then you, as the person ultimately responsible for what's posted on

² See example of one such post here. <https://x.com/CPSUK/status/1823668401119658010> – There are many of these, for a full list, see the search parameters here:

[https://twitter.com/search?q=charged%20\(from%3ACPSUK\)&src=typed_query&f=live](https://twitter.com/search?q=charged%20(from%3ACPSUK)&src=typed_query&f=live)

³ <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

⁴ <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

⁵ See 1.4 <https://www.cps.gov.uk/publication/code-crown-prosecutors>

⁶ For example: <https://www.ipso.co.uk/wp-content/uploads/2024/04/ipso-court-reporting-guidance-2022.pdf>

⁷ <https://www.legislation.gov.uk/ukpga/1981/49> and see also CPS Guidance: <https://www.cps.gov.uk/legal-guidance/contempt-court-reporting-restrictions-and-restrictions-public-access-hearings#:~:text=Section%201%20of%20the%20Contempt,the%20intention%20behind%20the%20publication>

⁸ <https://www.legislation.gov.uk/ukpga/2023/50>

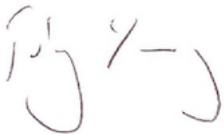
X by the Home Office, might be guilty of a criminal offence. It is reasonable to assume that this post could cause a reasonable person to fear that the presumption of innocence won't be extended to them if they are arrested in connection to the recent public disorder, which may cause anxiety and distress.

Given the above risks, we ask you to do the following:

1. Delete the post in question; and
2. Post an apology and a correction, confirming that individuals who have been arrested in connection with the recent disturbances, but who have not yet been charged or admitted guilt or been found guilty in a court of law, should not be described as "criminals" and affirming that the presumption of innocence will be extended to them and, should it come to it, they will be given a fair trial.

To be clear, we are not requesting any action against the individual who made the post, or any Home Office employees. We believe that responsibility for this serious error ultimately rests with you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Toby Young'.

Toby Young
General Secretary
The Free Speech Union
toby@freespeechunion.org