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FREE SPEECH UNION

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Chief Constable John Robins QPM DL
West Yorkshire Police HQ
6 Laburnum Rd,
Wakefield WF1 3QP

11th August 2023

Dear Chief Constable,

Arrest of autistic teenage girl for so-called ‘homophobic public order offence’

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 concerns the widely circulated video of your officers arresting an autistic teenage girl for saying that an officer resembled a lesbian member of her family. We are writing to ask that no further action be taken against the girl, and to ensure that no Non-Crime Hate Incident (NCHI) or other adverse record has been recorded against the girl’s name.

This case raises serious concerns about officers’ lack of understanding of free speech, as evidenced by our own research.¹

Background

As we understand from West Yorkshire Police’s own statement,² the girl was arrested for a “homophobic public order offence”. The “offence” in question appears to be that the 16 year-old, who we note again is autistic, commented that a female police officer in attendance “looked like her lesbian nana”. The comment was made in her own home and, as far as we can understand, the female police officer was also in the same home.

¹ <https://freespeechunion.org/wp-content/uploads/2023/03/The-Urgent-Need-to-Teach-the-Police-About-Free-Speech.pdf>

² <https://www.westyorkshire.police.uk/news-appeals/statement-social-media-video-leeds>

We are aware of no reason to think that the comparison was intended to be pejorative. As your officers should have known, one of the characteristics of people with Autism Spectrum Disorders can be that they may make comments which seem to others to be inappropriate.

The girl can be seen cowering behind a corner as your officer states: "I don't care" that she is autistic. Seven officers appeared to be in attendance.

The girl was eventually arrested and kept in police custody. As per your statement, she was then released on bail pending "pending further enquiries and advice from the Crown Prosecution Service".

The Public Order Act 1986

As I'm sure you're aware, it says in the Act that a defence if you're accused of "intentional harassment, alarm or distress" is that the accused was "inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling".

Surely, that defence is applicable in this case since the exchange between the 16 year-old girl and the women police officer took place inside the girl's home?

But even if the 'dwelling exemption' does not apply, the girl's behaviour does not meet the threshold for an offence under the Public Order Act. If the facts are as we understand them, West Yorkshire Police should make clear that the girl will not be prosecuted. Every moment of delay must be causing stress and concern to the family concerned, and will undermine wider public confidence in the police.

Non-Crime Hate Incidents

We are also concerned about the possibility of an NCHI having been wrongly recorded against the girl's name in this case. The statutory guidance³ on the recording of Non-Crime Hate Incidents states:

The starting point for recording authorities is that not all reported incidents – as perceived by the complainant or any other person – should necessarily be recorded as an NCHI.

The guidance also states that:

An NCHI – and relevant personal data – should only be recorded if it is deemed proportionate and necessary to do so in order to mitigate a real risk

³ <https://www.gov.uk/government/publications/non-crime-hate-incidents-code-of-practice/non-crime-hate-incidents-code-of-practice-on-the-recording-and-retention-of-personal-data-accessible>

of harm. The recording authority is also required to utilise judgement and common sense when considering whether it is objectively reasonable to record an incident. All steps taken in the process should be done using the least intrusive method. This should include consideration to ensure that making an NCHI record would not conflict with freedom of expression protections.

In addition, the guidance specifically cautions against the recording of NCHIs against children:

in deciding whether an NCHI should be recorded, the recording authority should take into account the personal characteristics of the individuals involved in the incident. This includes the characteristics of the subject as well as the complainant. In particular, the recording authority should consider age, and should bear in mind that a child who is the subject of a report may have lower appreciation of the impact of their words or behaviour – accordingly, they may be less likely to have breached the Additional Threshold Test, and recording their personal data may be a disproportionate response.

Finally, the guidance states that an NCHI should not be recorded “if the complaint is trivial”.

In the video evidence available your officers have acted disproportionately, without common sense and, it seems, without regard for whether the comment in question was motivated by hostility and have not taken into account the fact that the remark was made by an autistic child. The incident does not meet the threshold for an NCHI recording, much less, as above, for a prosecution.

Further Action

We therefore seek assurance from you that no further action will be taken against the girl; and that no NCHI was recorded, nor any other adverse record made against the teenager, and that if one was recorded it will now be deleted from your databases.

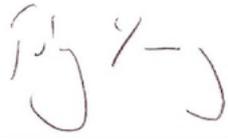
West Yorkshire Police states that the video circulating on social media provides a “limited snapshot” of the entire incident. But unless West Yorkshire Police possesses evidence which casts the whole episode in an entirely different light, a formal apology is also clearly required.

Finally, we would welcome an undertaking from yourself that your officers will undergo training on Article 10 of the Human Rights Act 1998 so that officers understand the importance of protecting individuals’ freedom of speech, including, in the words of Justice Sedley, speech that is “irritating, the contentious, the eccentric, the heretical, the unwelcome and provocative”.

The officer at the centre of this may have felt irritated or insulted by the remark the girl made. But there is no evidence that the comment was malicious, and irritation is not

grounds for the intimidation and arrest of a child, far less the recording of an NCHI, particularly when both parties are inside a domestic dwelling.

Yours sincerely,

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

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

Cc: Ms Tracy Brabin, Mayor of West Yorkshire

Cc: The Right Hon. Chris Philp MP, Minister for Policing