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FREE SPEECH UNION

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Chief Constable John Robins QPM
West Yorkshire Police Headquarters
6 Laburnum Rd
Wakefield
WF1 3QP

1 July 2022

Dear Chief Constable Robins,

This letter concerns the recent protests in Bradford and Leeds concerning the film *The Lady of Heaven*. Our members have expressed outrage and concern at the fact that this film was pulled from their local cinema, and we write on their behalf. For the reasons set out below, we believe that West Yorkshire Police failed to meet its lawful obligations to police the protests proportionately, and thereby secure the right of the local population to see the film, the right of the film's producers to artistic expression, and the right of Cineworld and Showcase to screen the film.

Facts

1. On 3 June 2022 *The Lady of Heaven*, an independent film written by Kuwaiti-born, UK-based Shia cleric Yasser Al-Habib was released in cinemas across the UK, including at venues owned by Cineworld, Vue and Showcase. The film tells the story of Islam's development from a Shia perspective.
2. There is a deeply rooted and well documented divide between the Shia and Sunni Islamic sects. Some of the latter, who make up 85% of all Muslims in the UK,¹ take offence to the Shia narrative outlined in *The Lady of Heaven*. The UK Muslim website *5Pillars*, called the film "pure, unadulterated sectarian filth" and The Bolton Council of Mosques labelled it "blasphemous."²
3. Cinemas in Bradford, Leeds, Sheffield, Bolton, Blackburn, Birmingham and Stratford have been targeted by protests demanding that *The Lady of Heaven* not be screened.³ The protests in Leeds and Bradford (together the "Protests") were among the most hostile in the country.

The Bradford protests

4. Those involved in the Bradford protests clearly signalled their intention to prevent other Bradford residents from watching *Lady of Heaven*. A tweet dated 2 June 2022 reads:

¹ <https://crestresearch.ac.uk/resources/british-muslims-full-report/>

² <https://5pillarsuk.com/2021/12/24/lady-of-heaven-pure-unadulterated-sectarian-filth/>; and <https://www.theboltonnews.co.uk/news/20189479.cineworld-bolton-pulls-lady-heaven-film-protest/>

³ <https://news.sky.com/story/why-is-the-lady-of-heaven-so-controversial-protests-across-the-uk-and-petition-signed-by-120-000-people-lead-to-film-being-pulled-from-some-cinemas-12630723> and <https://twitter.com/SkyNews/status/1535128373520846849>

In sha Allah we will be staging a protest outside Bradford Cineworld tomorrow [sic]. Highly sunni populated area should not allow such a blasphemous film to take place.

5. Further tweets followed on 5 and 6 June 2022 signalling the same intent to prevent others from seeing the film:

Although we have differences, within even creedal matters, the Muslims of the UK will unite against the Rafidhi Shia Kufri filth. I call on all brothers and sisters from all backgrounds to come forth and stand against this blasphemous movie. Start with boycotting the cinemas!

The movie has been cancelled in Birmingham and Sheffield. ALHAMDULILAH

6. Protestors at Cineworld not only expressed their wish to block the film (with signs reading “stop the screenings”) but also issued veiled threats in response to the film’s perceived “insult”:

Once you insult our prophet...you insult his wives, you insult his companions, you insult his family, then don't think that the Muslim is gonna sit quietly, no he is not. The Muslim will go out and he will stand for truth and he will stand for justice may Allah give us the ability to stand.⁴

The Leeds protests

7. Social media footage from 6 June 2022 shows protestors at the Leeds Cineworld blocking the entrance to cinema and chanting “Shia kaffir!”, a sectarian slur meaning “Shia unbeliever.” Two videos show the same episode – in neither of them is any police presence visible.
8. Video footage from 7 June 2022 evidences further hostility. In one video, a speaker, demonstrably angry and hostile, denounces the director of *Lady of Heaven* as a “pig of hell”, “dog of hell”, and “rat of hell”.⁵ In another video of the same day, the crowd demands with shouts and gesticulations that the cinema “bring him out” and have the manager of the cinema face the protestors.⁶ There is no evidence of a police presence in either video.
9. Cineworld subsequently pulled the film from all its venues. In a statement of 8 June 2022 it explained its decision: “Due to recent incidents related to screenings of *The Lady of Heaven*, we have made the decision to cancel upcoming screenings of the film nationwide to ensure the safety of our staff and customers” (emphasis added).⁷
10. From that, it is reasonable to infer that the decision to pull the film was made due to the pressure exerted by those wishing to have the film cancelled, by means of threats, either implied or explicit, to the safety of Cineworld’s staff and customers. It is also reasonable to assume, based on limited footage evidencing police attendance, that West Yorkshire Police (“the Force”) was called upon either by Cineworld or members of the public wishing to enter the cinema to watch a film.
11. At the time of writing another cinema chain, Showcase Cinemas, has followed Cineworld in cancelling screenings of the film. Only Vue is persisting in screening *The Lady of Heaven*. The

⁴ https://twitter.com/Bob_cart124/status/1532863615430279168

⁵ https://twitter.com/habibi_uk/status/1534205282762510336?s=20&t=1lQhCfhBUkkKwM-vu5euZg

⁶ https://twitter.com/habibi_uk/status/1534205362341089281?s=20&t=1lQhCfhBUkkKwM-vu5euZg

⁷ <https://www.bbc.co.uk/news/business-61729392>

producer of the film, Malik Shlibak, has now reportedly received death threats in the wake of the cancellations.⁸

Legal Framework

Public Order Act 1986

12. Subsection 14(1) of the Public Order Act 1986 (the “POA”) confers on senior police officers the power to impose conditions on public assemblies:

If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that—

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

Freedom of expression under Article 10 ECHR

13. Section 6 of the Human Rights Act 1998 (“HRA”) provides that the Force as a public authority must not act incompatibly with the rights and freedoms enshrined in the European Convention on Human Rights (ECHR).

14. Article 10(1) of the ECHR protects the right to receive and impart information and ideas:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

15. Due to the overwhelming importance of freedom of expression as one of the preconditions for a functioning democracy the European Court has found that, in addition to the negative undertaking of a State to abstain from interference with an individual’s right to freedom of expression, it must also positively ensure the “genuine and effective” exercise of the right, even in the sphere of relations between private parties (*Ozguir Gundem v. Turkey*, App. No. 23144/93 (2000), §43; *Dink v. Turkey*, App. No. 2668/07 (2010), §106; *Palomo Sánchez and Others v. Spain*, App. Nos. 28955/06, 28957/06, 28959/06 and 28964/06 (2011), §58-59).

⁸ <https://www.independent.co.uk/news/uk/home-news/cineworld-prophet-muhammad-fatima-lady-of-heaven-b2096633.html>

16. The European Court has specified that this type of ‘horizontal’ application of Article 10 is justified by the fact that a court decision in a conflict between private parties can be considered a measure of the State (*Pal Palomo Sánchez and Others v. Spain*, §60).

17. The European Court has specifically stressed that the State’s positive obligation under Article 10 requires that it create:

an environment conducive to the participation in public debates of all persons concerned, allowing them to *express their opinions and ideas without fear, even if these go against those... [of] a significant part of public opinion, or even are irritating or shocking for the latter* [emphasis added].⁹

18. Article 10 is a qualified right and the “protection of the rights of others” per Article 10(2) must especially be held into account. Furthermore, the scope of a Contracting State’s positive duty will inevitably vary depending on the facts of the situation, holding into account that no “impossible or disproportionate burden” should be imposed on the authorities.¹⁰

Freedom of association under Article 11 ECHR

19. The Force must also not act incompatibly with the right to protest protected by Article 11(1) of the Convention. It states:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

20. It is well known that public authorities, and particularly police forces, have a positive duty to facilitate citizens’ right to protest (*R (on the application of Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL, §36). Like the right to freedom of expression, the right to freedom of association is also a qualified right, and proportionate interference with the right can be lawful if it is necessary for the protection of the rights and freedoms of others.

21. The guarantees provided by Article 11 have been found not to apply where organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (*Kudrevičius and Others v. Lithuania*, App. no. 37553/05 (2015), § 92).

Grounds of claim arising

22. We believe that the Force’s actions give rise *prima facie* to the following claims:

- (a) irrational failure by the senior police officer to consider whether to exercise statutory powers under subsection 14(1) POA;
- (b) exercise of the section 14 discretion that was irrational and failed to take into account relevant considerations;
- (c) failure to give effect to the purpose of the statutory power conferred by section 14; and/or

⁹ *Dink v. Turkey*, App. No. 2668/07 [2010]

¹⁰ *Osman v. the United Kingdom*, App. No. 23452/94 [1998]

- (d) breach of section 6 of the Human Rights Act 1998 giving rise to claims under section 7 of that Act.

Irrationality

- 23. The senior police officer acted irrationally in failing to consider whether, having regard to the circumstance, the Protests:
 - (a) were reasonably likely to result in serious public disorder or serious disruption to the life of the community; or
 - (b) had as their purpose the intimidation of others with a view to compelling them not to do an act they have a right to do.
- 24. It is well established that a court's power to scrutinise the rationality of a public law decision increases when that decision involves interference with human rights (*R (on the application of Smith) v Ministry of Defence* [1996] 1 All ER 257 at 263e and 272j). We believe that the decision not to carry out the considerations set out at subsection 14(1) would attract the anxious scrutiny of the court, and be found irrational.
- 25. The Protests resulted in intimidatory interference with the right to freedom of expression – the cinema chain ceased showing the film, and cinema-goers refrained from going to see the film. It was foreseeable to any rational decision-maker that the Protests would have this effect. Protestors in Bradford signalled clearly their intention to prevent others from seeing *Lady of Heaven*, and in order to achieve that goal then protested in an angry and intimidating manner, including by blocking the cinema to anyone seeking to enter or exit. In Leeds, the occurrence of anti-Shia sectarian chanting and the use of highly intemperate language posed a clear threat to public order and were likely to intimidate anyone seeking to exercise their right to see the film. The demand that the cinema manager be brought before them clearly had as its purpose the intimidation of the cinema for exercising its right freely to screen the film.
- 26. The unavoidable inference is that the Force failed to carry out the subsection 14(1) considerations. Had it done so, the Force would have concluded that conditions of assembly were necessary in order to protect public order and the rights of others. That failure to carry out the subsection 14(1) considerations was irrational for the following reasons:
 - (a) a decision-maker acting rationally would have concluded, particularly in light of the intentions clearly signalled by Ali Asghar Al-Hanafi and the hostile and intimidatory conduct that followed, that the protests demanded consideration of the statutory power under subsection 14(1);
 - (b) in failing to consider whether to exercise the statutory power conferred by subsection 14(1) in circumstances for which the power was clearly designed, the senior police officer acted irrationally;
 - (c) the Force's failure to exercise its statutory power under subsection 14(1) was a breach of its positive obligation to protect the Article 10 rights of the cinema chains to screen the film, and of cinema-goers to watch the film; and

(d) the protestors' threats and intimidation either did not engage their Article 11 rights, or the Force's duty to facilitate those rights; or it would have been proportionate, and consistent with subsection 14(1) POA, for the Force to have imposed conditions that forbade intimidatory conduct by the protestors, and thereby protected the Article 10 rights of the cinema chains and cinema-goers.

27. In the alternative, if the senior police officer in fact *did* exercise the discretion required by subsection 14(1) POA, the subsequent decision not to impose conditions for the purpose of preventing intimidation was, in light of the protestors' conduct, irrational and inconsistent with section 6 HRA for the reasons set out at paragraph 20 above. A decision-maker acting rationally would have taken into account as relevant considerations the aggressive, intimidatory and volatile conduct of the protestors, and its impact on the cinema chain and cinema goers, and imposed proportionate conditions.

Unlawful fettering of discretion

28. Additionally or alternatively to the above ground of claim, in failing to carry out the subsection 14(1) considerations the senior police officer failed to give effect to the purpose of the statutory power conferred by that provision.

29. It is clear from that provision that Parliament intended senior officers to consider whether to exercise their statutory power in specific circumstances deemed important by Parliament – when there is risk of serious disorder, or an assembly will result in threats to those seeking to exercise fundamental rights. Senior officers do not have a free and untrammelled discretion to decide at a whim whether or not to exercise statutory powers conferred by Parliament for a specific purpose (*Padfield v Minister of Agriculture Fisheries and Food* [1968] 1 All ER 694 at 714F-I).

30. Section 14(1) POA must in addition be read in accordance with section 3 HRA, and alongside section 6 of that Act. It is clear that in response to the Protests the Force had a positive, and heightened, duty to consider whether they would result in intimidatory interference with the right to freedom of expression and, if so, to take action by imposing proportionate conditions.

Breach of section 6 of the Human Rights Act 1998

31. We believe that, for the reasons set out at paragraph 26, the Force has breached the Article 10 rights of the cinema chains, which wished to disseminate artistic material, and of the cinema goers who wished to enjoy that artistic material. We believe it would be open to those parties to bring proceedings against the Force under section 7 HRA, and will provide such assistance as we deem reasonable to any party who seeks our help in bringing such proceedings.

Questions

32. In advance of any pre-action letter under the pre-action protocol for judicial review, which will trigger the Force's duty of candour, we respectfully request a response to the following questions:

(a) Did the senior police officer consider the two tests at subsection 14(1) POA for imposing conditions on public assemblies in relation to the Protests?

(b) If the answer to (a) is 'yes', then:

- (i) what was the senior police officer's decision?
 - (ii) what were the reasons for that decision?
- (c) Was the Force aware of sectarian chanting during the Protests?
- (d) Was the Force aware of the social media posts of Ali Asghar Al-Hanafi signalling intent to prevent others from seeing *Lady of Heaven*?
- (e) Did the Force receive any complaints or other communications from members of the public or the cinema chains to the effect that the Protests had interfered with their freedom of expression?
- (f) What operational steps were taken to meet the Force's positive duties under Article 10 of the ECHR?
- (g) Did the Force advise any cinema chain not to show *The Lady of Heaven*?
- (h) Will any venue within the Force's police area which does decide to exercise its rights to show *The Lady of Heaven* be given appropriate support, including a police presence if necessary?
33. We would be grateful if the Force would provide answers to the above questions by 13 July 2022.

FOI Request

34. Further, we hereby request under subsection 1(1) of the Freedom of Information Act 2000 ("FoIA") copies of any policies and/or training materials that the Force holds regarding its duty to comply with its duties under Article 10 of the Convention.
35. Please provide the requested information as soon as possible and without undue delay; and in any event within the period prescribed by section 10 of FoIA which is within 20 working days of receipt of this letter.
36. To the extent that you consider that compliance with this request (in respect of any part of the information in question) is covered by any of the exemptions under the FoIA, please inform the Free Speech Union accordingly and read the request as though it related to that part of the information not covered by any such exemptions.
37. In relation to other personal data contained in the requested information, and in relation to any part of the requested information which engages the exemptions at sections 42 (Legal Professional Privilege) or 43 (Commercial Interests) of FoIA, we believe that the public interest in the police's policies and/or training material on the fulfilment of their legal duties under Section 6 of the HRA to enable and ensure exercise of the public's Article 10 rights outweigh the public interest in maintaining the exemption.
38. If you disagree, please set out your reasons why.
39. Finally, we remind you of the ICO Guide to Freedom of Information: "When estimating the cost of compliance ... [y]ou cannot take into account the time you are likely to need to decide whether exemptions apply, to redact (edit out) exempt information, or to carry out the public interest test."
40. Please confirm in writing that you have received this request.

Yours sincerely,

THE FREE SPEECH UNION

cc. Mark Burns-Williamson, West Yorkshire Police and Crime Commissioner
The Rt Hon Kit Malthouse MP, Minister for Policing