

E.P.

c.c. Mr Harris

cc Mr Partidge  
Mr Hilary  
Mr Hamilton  
Mr Mower



Mr Caffarey

The Home Secretary was extremely grateful for Sir Brian Cubbon's note of 27 March drawing his attention to correspondence in early 1979 between Mrs Thatcher and Mr Rees regarding advice to the police about dealing with pickets. He has noted that he was indeed involved in the correspondence, having in fact drafted some of the letters.

2. The Home Secretary was very glad to have been reminded of the correspondence and agrees with Sir Brian's assessment that there is nothing in it, on either side, which is particularly difficult in relation to the current posture. He has commented:

"It's all impeccably argued on both sides and not at all embarrassing!".

RECEIVED  
28 MAR 1984  
STATE

H Taylor

Private Office  
28.3.84.

H H TAYLOR  
Principal Private Secretary

127  
hcc: Mr Partridge  
Mr Hilary  
Mr Harrington  
Mr Mower

From: Sir Brian Cubbon  
27 March 1984

cc Mr R Harris

Secretary of State

.....  
I believe that you were personally involved in the attached correspondence in early 1979 between Mrs Thatcher and Mr Rees, then Home Secretary, about advice to the police about dealing with pickets. I thought that you might like to glance at it again. I see nothing in it, on either side, which is particularly difficult in relation to the current posture.

Although the Home Office papers containing<sup>ain</sup> the correspondence are strictly in the category of "papers of a previous Administration", I think it is entirely right to show you the correspondence, if only because of your previous involvement and, I believe, the publication of, at any rate, some of the letters.

132  
27 March 1984

From

**The Rt. Hon. Mrs Margaret Thatcher**

Conservative & Unionist Central Office, 32 Smith Square, Westminster SW1P 3HH

24th April 1979

*Dear Nelson*

Thank you for your further letter of 12th April about the position of the Home Secretary and the police as regards the law and picketing.

I have not suggested that you gave instructions to the police, but have suggested that you have given them advice. Innumerable statements are, of course, made in Parliament and by outside bodies such as the Trades Union Congress. By singling out particular statements and passing them on to chief officers of police you were in my view by implication advising the chief officers of the particular relevance of the points made in the statements to the discharge of their duties. I can see no other purpose in making such communications.

As regards the Trade Union and Labour Relations Acts of 1974, I note your reiteration of the view that you have previously expressed, but as you do not give any fresh reasons for holding it, I need not myself elaborate further on the differing view on these points that I have expressed in my earlier letters.

The Rt Hon Merlyn Rees

*Yours sincerely*  
*Margaret Thatcher*



QUEEN ANNE'S GATE LONDON SW1H 9AT

12 April 1979

Thank you for your further letter of 23th March about the position of the Home Secretary and the police as regards the law and picketing.

It is, and has always been, common ground between successive administrations that it is not the task of the Home Secretary to give instructions to the police about the day to day conduct of their job and that includes the enforcement of the law. Nor is it the Home Secretary's function to interpret the law. I am surprised that you should believe that, in passing on to the police the guidance issued by the Trades Union Congress or statements made in Parliament, I was seeking so to do. As my earlier letters made clear there are many circumstances - not just where there has been a change in the law - when it is appropriate for the Home Secretary to draw the attention of the police to particular developments.

As regards the Trade Union and Labour Relations Acts of 1974 and 1976, I am not persuaded that the possible effect of this legislation on the application of the Conspiracy and Protection of Property Act 1875 is of practical importance. I remain of the view that the point is narrow and legalistic. As I explained, the police have not suggested to me that this has had any effect on the proper enforcement of the criminal law in recent disputes.

M. Hees

The Rt. Hon. Margaret Thatcher.



The Rt. Hon. Mrs. Margaret Thatcher, M.P.

HOUSE OF COMMONS  
LONDON SW1A 0AA

RECEIVED BY

28 MAR 1979

PRIVATE SECRETARY

28th March 1979

Dear Sir,

Thank you for your further letter of 23rd March about the position of the Home Secretary and the police as regards the law and picketing.

I am glad to note that you accept that there may be occasions, such as the one arising in 1972, when it is appropriate for the Home Secretary to give guidance to the police, even if there has been no change in the law.

It seems to me, however, that your own examples of such guidance cannot properly be described as amounting merely to 'keeping chief officers informed of developments'. By passing on to chief officers the TUC's guidance to its affiliated unions on the conduct of industrial disputes you were, expressly or by implication, endorsing that guidance and suggesting that it was relevant to the discharge by the police of their own duties relating to industrial disputes. There have after all been many other statements of opinions as to the proper conduct of industrial disputes which you have not chosen to pass on to the chief officers. It is therefore in my view disingenuous to seek to minimise the proper role of the Home Secretary by describing such action as if it amounted to no more than conveying information.

I also find it surprising that you state that the Home Secretary does not interpret the law to the police, in view of the fact that you also state that you have drawn the Attorney General's statement of 25th January to the attention of chief officers of police. That statement undoubtedly amounted to an interpretation of the law



which you were again, at least by implication, endorsing.

I do, however, agree that it is not the task of the Home Secretary to give instructions to the police about the day to day conduct of their job and I have never made any suggestion to the contrary.

With regard to the Trade Union and Labour Relations Acts of 1974 and 1976, it is of course true that those Acts do not directly alter the criminal law, but they certainly do so indirectly.

In your letter of 7th February you cited the definition of lawful picketing in the 1906 Act in the context of police responsibilities with regard to picketing. In so doing you rightly accepted the relationship between the civil law and the criminal law in this area.

Section 7 of the Conspiracy and Protection of Property Act 1875, in the words of the Donovan Report, remains a statement of offences which pickets, as well as others, must avoid committing. (Paragraph 867). Moreover, according to the Encyclopaedia of Labour Relations Law that section is 'perhaps the most important provision to affect the criminal liability of those who embark on industrial action.' A person is only guilty of the offences set out in Section 7 if the acts described in that section have been committed 'wrongfully and without legal authority'. By making substantial changes in the civil law and greatly extending immunities from action the 1974 and 1976 Acts made many acts which previously would have been committed 'wrongfully and without legal authority' lawful, and therefore no longer a criminal offence under Section 7. This view of the relationship between changes in the civil law and criminal liability under Section 7 is fully reflected in paragraphs 863 to 868 of the Donovan Report.



I do not therefore regard this point as a narrow or unimportant one. The changes in the law in 1974 and 1976 have prevented the police from taking action under Section 7 in many cases where they could previously have done so. That is an important and in my view most undesirable consequence of this legislation.

Yours sincerely  
Raymond

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The Rt Hon Merlyn Rees MP



QUEEN ANNE'S GATE LONDON SW1H 9AT

23 March 1979

Thank you for your further letter of 20th February about the constitutional position of the Home Secretary and the police as regards the law and picketing.

On the question of guidance to the police there is no need for confusion. I have never sought to suggest that the only occasion when it would be proper to issue a circular to Chief Constables is when there has been a change in the law. It was quite reasonable in 1972 for the Home Secretary of the day to wish to draw to the attention of Chief Constables views that had been represented to him about the value of contacts between senior police officers and trade union officials. In the same way, during the current industrial disputes, I have drawn to the attention of chief officers of police both the statement the Attorney General made in the House of Commons on 25th January and the guidance which the Trades Union Congress has since issued to its affiliated unions on the conduct of industrial disputes. As you know, the latter document again places emphasis on contacts between union officials and the police. In addition I have, of course, brought to the attention of chief officers individual allegations of breaches in the criminal law put to me in the House or in writing by Members of Parliament.

There is, however, an important distinction, which I must re-emphasise, between keeping chief officers informed of developments in this way and instructing them how the law should be enforced. It is fundamental to our system of government that the Home Secretary does not interpret the law to the police or intervene in the operational responsibilities of chief officers, and this view has always been common ground for successive administrations.

As regards the Trade Union and Labour Relations Acts of 1974 and 1976, I would not accept the link you draw between the criminal law and the changes then effected. As the Attorney General made clear in his statement on 25th January, the enforcement of the criminal law is the responsibility of chief officers of police but the enforcement of the civil law is not. It is for those who suffer damage in consequence of civil wrongs to bring civil proceedings in the courts to restrain the commission of those civil wrongs or to recover damages. But it is not the role of the police to intervene on behalf of one or other party to a civil dispute nor to enforce any judgment obtained in the civil courts.

Of course I would accept that the 1974 and 1976 legislation altered the law as you suggest by making picketing lawful in circumstances where it might previously have been unlawful as involving the civil wrong of inducement of breach of contract.

/But that,

The Rt. Hon. Margaret Thatcher, M.P.



But that, as I have explained, is not a matter for the police. There has been no change of substance to the criminal law. No immunity has been conferred on pickets from criminal proceedings for obstruction, for threatening, abusive or insulting behaviour, for intimidation by the use of weapons or similar means or for demanding money with menaces, under the Trade Union and Labour Relations Act or any other legislation enacted in the current Parliament. The only possible argument that can be advanced is that in extending the definition of "trade dispute" to remove the host of anomalies to which the Donovan Report rightly drew attention, the Trade Union and Labour Relations (Amendment) Act 1976 may have extended an immunity which the Conservative Government had conferred on pickets in section 134 of the Industrial Relations Act 1971 by providing that attendance for the purpose of obtaining and communicating information did not constitute an offence under section 7 of the Conspiracy and Protection of Property Act 1875. But this is at best a narrow and arguable point which I do not believe has had any effect on the proper enforcement of the criminal law by the police in recent industrial disputes.

M. Lees



The Rt. Hon. Mrs. Margaret Thatcher, M.P.

HOUSE OF COMMONS  
LONDON SW1A 0AA

20th February 1979

Dear Mr. Naylor,

Thank you for your letter of 7th February about the position of the Home Secretary and the police as regards the law and picketing, and for the information contained in it about the number of arrests during the recent lorry drivers' dispute.

I should make it clear, however, that I do not accept that it is proper for the Home Secretary to give advice to the police only when the law has been changed. In the telex message referred to in your letter of 19th January, the Home Secretary of the day informed Chief Officers of police that he shared the view that contact between senior police officers and trade union officials was of great value. In saying that, he was plainly giving advice as to the best means of ensuring that picketing was conducted peacefully, and that advice was in no way related to any change in the law. You yourself indicated in your letter of 19th January that a change in the law was only one example of a situation which might make it appropriate for advice to be given to the police.

I also do not accept that there need be any confusion about the issues raised in my letter of 23rd January. Changes in the law made in the 1974 and 1976 Acts were of course changes in the civil law, but they have had the most direct consequences for the criminal law as well, and are therefore on any view extremely relevant to both the Home Office and the police.



You yourself cited the definition of lawful picketing in the Trade Disputes Act 1906 in the context of police responsibilities with regard to picketing. It is true that the actual wording of that definition has not been substantially altered in subsequent legislation but, nonetheless, the kinds of picketing covered by it have most certainly been affected both by the 1974 and 1976 Acts and by more recent judicial decisions. This is because of the overriding requirement in the definition that for picketing to be lawful it must be "in contemplation or furtherance of a trade dispute." It is therefore not correct to state, as you did in your letter of 7th February, that the legality of picketing depends essentially upon whether it is conducted peacefully. Picketing that is peaceful is not lawful unless it is also in contemplation or furtherance of a trade dispute.

By altering the definition of a "trade dispute" the 1974 and 1976 legislation not only extended trade unions' civil immunities, but also made picketing lawful in circumstances in which it had previously been unlawful. On the other hand, the recent cases which have applied what the Attorney General referred to as the "remoteness" test have made it clear that in certain circumstances picketing may not be sufficiently closely related to the original dispute to be "in contemplation or furtherance" of it, and may therefore no longer be lawful.



Consequently, even on the narrowest view of the circumstances in which it is appropriate for the Home Secretary to give advice, the recent important changes in the law have been more than sufficient to have made it both proper and desirable for such advice to have been given.

Yours ever  
Margaret

The Rt Hon Merlyn Rees M.P.  
Secretary of State for the Home Department.



intervene to prevent obstruction. There have been a number of references in the press to intimidation and to extortion by pickets. Where the police receive complaints of offences involving extortion or threats of violence they will, of course, act on them. But it is not appropriate for the police to concern themselves with the merits of a dispute. The criminal law is not affected by the distinction between primary and secondary picketing, nor by any distinction between "official" or "unofficial" pickets.

The reports reaching me from the police during the lorry drivers' dispute indicate that picketing has been generally peaceful and that breaches of the law have been rare - probably rarer than in previous disputes on this scale, despite some newspaper reports to the contrary. There have been occasional incidents and the police naturally pursue these vigorously. I have had reports of one arrest in Greater Manchester, one in Humberside, two in Lancashire, four in Merseyside and one in the West Midlands. There were no arrests in the Metropolitan Police District in connection with the lorry drivers' dispute, although six arrests have been made in other picketing incidents this year. I am assured that the comparatively small number of arrests indicates that picketing has for the most part been within the law. It is certainly not the case that the police have been failing in their duty - still less that they have been instructed to be lenient. That is nonsense.

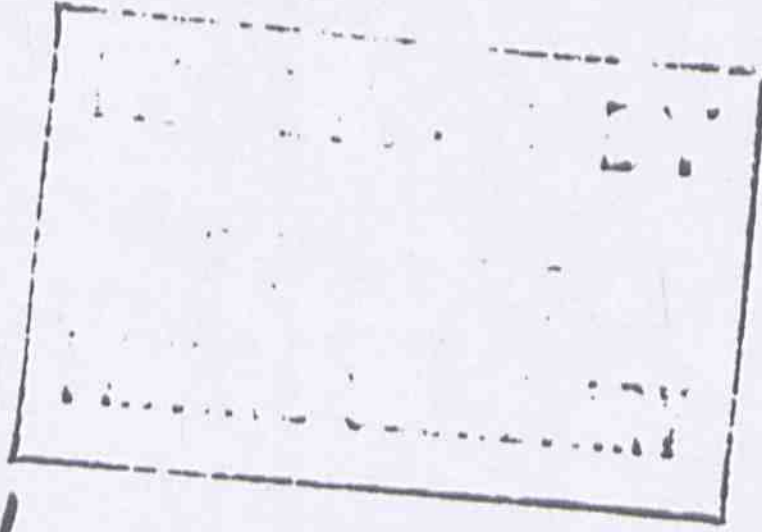
Yours Sincerely

M.A.

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The Rt. Hon. Mrs. Margaret Thatcher, M.P.



HOUSE OF COMMONS  
LONDON SW1A 0AA

23rd January, 1979

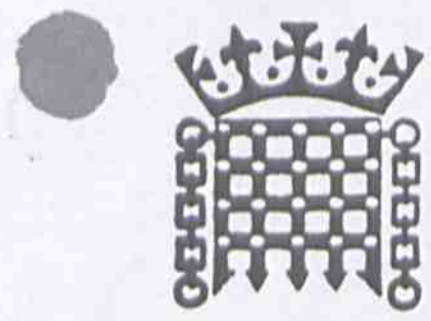
*Dear Nelson,*

Thank you for your letter of 19th January confirming the constitutional position of the Home Secretary vis-a-vis Chief Constables, and also for confirming that it has been the occasional practice, at least in recent times, for the Home Secretary of the day to give advice by circular or by other means.

What has particularly concerned me and my colleagues in Parliament, and I believe very many people in the country, is the fact that from a large number of reports, it is clear that some picketing has been illegal.

In such a situation it is recognised that the police are in an extremely difficult position, unless they themselves witness what has happened and hear what is said. However, I assume you call for regular reports and I would be very interested to know how many prosecutions there have been and where.

Your letter explains that advice may be given when the law is changed. The law was changed by the 1974 and 1976 Acts and changed substantially, first by extending Trade Union immunities and secondly by advancing the laws on the Closed Shop.



In the light of these significant changes in the law and in view of our "present grievous difficulties", what advice have you given or are you giving at this time?

*Yours ever*

*Rayart*

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The Rt. Hon. Merlyn Rees M.P.  
Secretary of State for the Home Department.





QUEEN ANNE'S GATE LONDON W1H 0AT

19 January 1979

Dear Margaret

You made a number of criticisms in the House on 16 January, about police responsibilities and advice to the police in the context of picketing. I dealt with one of these at the time, but I think it right to put the record straight in writing.

First, you suggested Chief Constables should be given advice about what they should be doing in the present situation. You now recognise, I think, that the Home Secretary has no power to give instructions to Chief Constables on how they should discharge their responsibilities to enforce the criminal law and to preserve public order. As to my giving guidance, it is appropriate for me to issue advice when, for example, the law is changed. However, the application of the law in the present situation is wholly a matter for chief officers of police. I am, moreover, assured that there is no doubt in their minds as to the way in which the criminal law applies to "secondary" picketing: provided it is peaceful, and does not cause obstruction, such picketing is not in breach of the existing criminal law. No occasion for my issuing advice on that score, therefore, arises.

Second, you cited an instance when it was suggested in the House on 14 February 1972 that Mr. Maudling had, as Home Secretary, issued a circular to chief officers of police giving advice on what steps they should take about picketing. On 9 February in the House of Commons Mr. Maudling had said (Col.1343) that general guidance had been issued (about the distinction between peaceful picketing and intimidation). He also said incidentally (Col.1338) that it is not for the Government to instruct chief officers of police in any way about how to carry out their duties, and in that he was, of course, correct.

But I have had the facts carefully checked in the matter of the issue of circulars: none was in fact issued before 14 February 1972. Circulars about the provisions of the Industrial Relations Act 1971, which came into force on 18 February 1972, were issued on 23 February and subsequently, and these drew the attention of Chief Constables to the new provisions of the Act which were about to come into force. All that was done in the context of the industrial situation before 14 February 1972 was the issue of a brief telex message to chief officers of police reporting that a

The Rt. Hon. Margaret Thatcher, M.P.

deputation of Members of Parliament from mining constituencies had told the Home Secretary, Mr. Maudling, that they attached great value to contact between senior police officers and trade union officials, to ensure that picketing could be conducted properly and peacefully: it went on to say that the then Home Secretary fully shared this view; and that he would bring to the notice of chief officers of police the strong feelings which had been represented to him on the importance of these contacts.

I think it necessary for me to write at some length to emphasise, as my predecessors in other Administrations have done, the proper constitutional position of the Home Secretary vis a vis chief officers of police, and also to make it clear that there is no basis for any suggestion that the law is not being properly enforced in the present situation.

Yours Sincerely

M. G.