



Pop Festivals, Police Powers and Criminal Procedure

EVIDENCE TO THE ROYAL COMMISSION ON CRIMINAL PROCEDURE

1. Introduction

The Festival Welfare Services Trust (FWS) is a charitable trust comprising representatives of organisations concerned with welfare work at pop festivals and similar events. Its member organisations have provided a wide variety of services at free and commercial festivals throughout the country since 1973.

A Voluntary Services Unit grant has enabled Festival Welfare Services to employ a full-time Field Worker since June 1977, after an initial 6 month grant in the Summer of 1976. In addition to co-ordinating the welfare services at festivals, the Field Worker liaises with Local Government Departments and festival organisers, and provides information and advice on the running of festivals.

The organisations participating in the work of Festival Welfare Services are : BIT Information Service, British Council of Churches, British Red Cross Society (observers), British Youth for Christ, Civil Aid, Environmental Health Officers Association, National Association of Youth Clubs, National Association of Youth and Community Education Officers, National Council of YMCAs, Release, St John Ambulance Brigade, the Salvation Army, the Samaritans, Source.

Festival Welfare Services was represented on the Department of the Environment's Working Group on Pop Festivals, the first report of which ("Free Festivals", HMSO, 1976) deals in chapters 2 - 4 with some of the problems considered here.

2. The Police Role at Pop Festivals

Pop festivals necessarily create the kind of problems and difficulties inseparable from any large gathering of people in the open air. Some of the special problems are discussed in the Report and Code of Practice of the Advisory Committee on Pop Festivals (HMSO, 1973) as well as in the first report of the Working Group mentioned above. FWS fully endorses the conclusions and recommendations of both these bodies, although it should be noted that the Advisory Committee was thinking mainly in terms of commercial festivals.

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It has been found in practice that dealing with pop festivals can cause special difficulties for the police. There seem to be two main reasons for this. Firstly, the strength of local feeling which may be aroused by these events may put the police under some pressure to take action which is not strictly necessary, for the sake of showing that something is being done. Secondly, difficulties are caused by the fact that many of those attending festivals, particularly free festivals, are people whose appearance and demeanour arouses automatic police suspicion, not of any specific offence, but of some kind of association with drug-taking, squatting or deviant activities generally. In our experience it is undoubtedly the case that police feel free to treat such people in ways which most people in this country would find intolerable if applied to themselves - particularly in respect of the power of search under the Misuse of Drugs Act 1971 (considered more fully below) In spite of this, and of the high degree of mutual suspicion and hostility which undoubtedly exists in most cases between a festival audience and the police, a remarkable degree of surface calm and even of superficial friendliness is usually maintained so long as police behaviour is not overtly hostile. The Chief Constable of Hampshire has stated, in connection with the Isle of Wight festivals, "Certainly there was no violence and the crowds were far better behaved than those which normally attend a major football match" (Advisory Committee Report, p49)

As far as the commission of criminal offences at festivals is concerned, it seems to be generally agreed that the incidence of non-drug offences is uniformly low for the number of people involved. The issue of festivals and crime in practice reduces itself to that of festivals and drugs. The use of drugs is, of course, a matter which arouses strong feelings. It is relevant to point out however, that, as in non-festival situations, the vast majority drug arrests involves the possession of cannabis in small (indeed often minute) quantities for personal use. We must point out that the apprehension and prosecution of cannabis users has no relevance whatsoever to the work of FWS in dealing with the adverse consequences of drug abuse at festivals. The work of FWS is predominantly with the effects of alcohol and such drugs as the barbiturates, which are not controlled under the Misuse of Drugs Act, rather than cannabis. We note that penalties for cannabis offences are now under review following the recommendations of the Advisory Council on the Misuse of Drugs, and that it has in particular been recommended that such offences should no longer be "arrestable". We would suggest that the prevalence of the cannabis possession offence at festivals (if indeed the people involved are more likely to be in possession of it than if they had stayed at home, which we regard as most doubtful) provides no justification for the degree of police involvement which is sometimes justified by hysterical comments about "drugs". Whilst cannabis use itself very rarely results in people coming to any of the FWS groups, the methods used in the apprehension and prosecution of cannabis users does result in people contacting FWS because of the distress caused to them, particularly younger people.

The other controversial area of police involvement has been in regard to what are frequently, though incorrectly, called "illegal" festivals, by which is meant festivals held without the permission of the owner of the land on which they take place. The law in this regard is quite clear : unless actual or threatened violence or offensive weapons are

involved no criminal offence is committed (Criminal Law Act Part 11) the police have no duty to assist the landowner in removing trespassers, and should they choose to do so they will not be acting "in the execution of their duty". In practice, since the fiasco of the Windsor operation in 1974 police have not attempted to break up free festivals in such situations, nor have the landowners concerned asked them to do so. Nonetheless, "illegality" has been made the excuse for vast, intimidating and pointless gatherings of police strength - a tendency which reached its culmination at Seasalter in Kent in 1976, where, according to the Police Authority, more than £200,000 was spent on policing a festival at which attendance never exceeded 1500.

3. Commercial and Free Festivals - the Contrast

The police, as an organised and disciplined force, not surprisingly find the more organised and disciplined setting of the commercial festival, where the motives of the organiser are clear and acceptable, more congenial and easier to cope with than the free festival, where neither the motivation nor the responsibility of those involved may be at all easy to define. It is nonetheless surprising to discover quite how disproportionate the police reaction to the two types of event can be. To a large extent this seems to be due to purely practical factors associated with the substantially greater size of commercial events. If, as at the Knebworth festivals, the police must deal with the traffic and crowd-control problems associated with an attendance of several hundred thousand persons at an event held on a site adjacent to a motorway junction, it would clearly be difficult to mount any systematic effort to search for drugs. However, the apparent policy decision to make no attempt whatever to do so contrasts oddly with the treatment meted out to non-commercial events a fraction of the size. The ingenious attempts to harass those attending "illegal" festivals, of which the latest is the policy of the Wiltshire Police of issuing summonses under s.32 of the Road Traffic Act 1972 for "driving otherwise than on a road", further underline the type of discrimination which is almost universally practised.

There are few exceptions to this trend. The unfavourable treatment generally accorded to free festivals has not been found in Lancashire, where the police approach to the festivals held at Deeply Vale has been sensible and constructive. The more relaxed attitude to commercial festivals finds its exception at the Cambridge Folk Festivals, where the local Drug Squad establish themselves in a tent on the site and spend their time arresting those seen smoking cannabis - an activity which can only be described as a singularly bizarre allocation of police time and resources, especially in view of the fact that those apprehended are fined an average of £20 by the local Magistrates Court.

4. The Use of Powers of Search

s.23 (2) Misuse of Drugs Act 1971 provides that:

"If a constable has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of this Act or any regulations made thereunder, the constable may - (a) search that person, and detain him for the purpose of searching him; (b) search any vehicle or vessel in which the constable suspects that the drug may be found, and for that purpose require the person in control of the vehicle or vessel to stop it!"

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We have no doubt whatever that, at least in the festival situation, this provision is interpreted in practice as allowing random searches, both of persons and of vehicles, as well as searches based purely on appearance, contrary to Home Office circular 113/1971, which advises that appearance and manner of dress alone cannot justify a search. It is, of course, virtually impossible to prove the absence of "reasonable suspicion" in an individual case, given that the Court is unlikely to allow questioning about the source of alleged police information; there is also no incentive to a defendant to establish the illegality of a search, since anything found will undoubtedly be admitted in evidence in any event. However, in such a situation as that at Seasalter, where a very large proportion of those attending were searched more than once, it becomes clear that the power provided by the Act is in fact being used for a totally extraneous purpose - to "discourage" those attending the festival. There can be no serious prospect of finding drugs in a situation where it is well known to all concerned that everyone is being searched. At our suggestion, a group of 23 of those searched, in our view improperly, at Seasalter travelled to Canterbury Police Station to make official complaints. On their way back to the festival site they were stopped and searched again. Clearly, this would not have occurred had the officers responsible been aware of where they had been or for what purpose - another pointer to the fact that these searches were effectively random. Some other individual cases from Seasalter are described in the Compilation on "Stop and Search" by the Release organisation, already submitted to the Commission. The same technique, although not in quite so blatant a form, has been used on other occasions.

The fact that it is impossible to ensure that their use is kept within proper bounds and directed to the statutory purpose is not the only reason for disquiet about these powers. The success rate of searches for drugs is low in any event, and we suspect that it is even lower at festivals, although no separate figures are published. What is found in the majority of cases is an amount of cannabis measured in milligrams. It must be very doubtful whether results of this kind justify the considerable damage which is inevitably done to relations between young people and the police. At a festival like Seasalter a kind of "siege mentality" develops to an extraordinary degree, with many people afraid to leave the site for any reason. Further, the humiliating nature of the personal search often involved can cause considerable distress to some young people; FWS welfare workers have had to cope with such cases on a number of occasions. We believe that the power to search persons for drugs other than on arrest, unlike the similar provisions in respect of firearms and stolen goods, suffers from the fundamental defect that a superficial search is unlikely to be effective, while an effective search goes beyond what can reasonably be required, even in the interests of the prevention of crime, from an innocent citizen against whom no more than an undefinable degree of "suspicion" exists in the mind of a single police officer, immune from effective supervision by the courts. We recommend the abolition of this power. Failing that, it must at least be limited to drugs other than cannabis, restricted by some objective definition of "reasonableness", made enforceable by an automatic exclusionary rule in the courts, and subject to some official guidance as to the techniques which may properly be employed without arrest.

The descriptions appearing in police publications (e.g. Burnett; Police Review, 25 June 1976) are quite sufficient indication that present techniques go further than should be permitted without supervision.

5. Criminal Proceedings

Most of those charged with criminal offences arising from festivals are dealt with by the courts in the normal way, and no special issues arise. Difficulties may arise, however, when a large number of persons are arrested in a short time, particularly if they are held in custody in temporary facilities rather than in police stations (military barracks, and church halls have been used for this purpose) and then dealt with in a summary way by special courts at unpredictable hours. The most notorious example of this in the festival context was at Windsor in 1974. A full description is provided in the Release publication "Truncheons in the Park". Complaints later found to be substantiated included a number of failure to provide adequate feeding arrangements or adequate telephone facilities for persons in custody. It is suggested that the root cause of these problems was the failure to consider the possibility of police bail at an early stage, since most those arrested were charged with offences for which such bail is normally readily granted. It is only fair to say that such problems have occurred much more rarely in recent years. One problem which does recur, however, is that of access to persons in police custody by legal counsellors attending festivals in a voluntary capacity with FWS member organisations. The type of work done is described in the Advisory Committee's Report, pp. 52-3 and Appendix F. The policy of different police forces in relation to operations of this kind varies and the practical result depends both on the policy and on the attitude of individual officers on the spot. It also tends to depend on the entirely irrelevant consideration of whether the festival is "legal" or "illegal". The policy of the Thames Valley Police, for example, is that "unless there existed a normal solicitor/client relationship between a person arrested and a solicitor, access to an arrested person would only be given to a solicitor and not to an unqualified legal advisor". (Leonard Soper; 'Watchfield Festival' Appendix 1 to D. Holdsworth: "New Society?" Thames Valley Police Publication 1975). There does not seem to us to be any good reason for this; its practical effect is to deprive many defendants of any legal advice at all.

We feel that it should be recognised that those charged with offences at festivals often face considerable problems as a result of living some distance away. Special courts held during or immediately after a festival normally deal with only pleas of guilty. Such defendants are then faced with the decision as to whether to plead guilty, even though they may feel they have a defence, or to accept the necessity to return to the court, possibly more than once, which may well cost them more than the penalty if convicted. If the court requires a surety and the police refuse to accept anyone attending the festival in this capacity they find themselves in an even worse position. We believe that these is a very strong case, at least in relation to offences tried summarily, for acquitted defendants to be entitled to reimbursement of their travelling expenses as a matter of course, and for these to be taken into account in fixing the penalty where a defendant is convicted. We accept that this could not be confined to such situations as festivals and would urge that it should apply generally.

Recommendations.

1. Police should adopt a restrained attitude towards festivals, as some forces do now, and not regard them as suitable occasions for the mounting of large-scale "deterrent" operations.
2. The police attitude towards a festival should not be affected by considerations of the law of trespass involving no police duty.
3. The power of search provided by s.23 (2) Misuse of Drugs Act 1971 should be abolished. Failing that it should be restricted to drugs other than cannabis and to officially approved methods of searching, with an objective definition of "reasonable suspicion" and a corresponding exclusionary rule to be strictly applied by the courts.
4. Police should improve liaison and co-operation with welfare bodies at festivals. Rules to access to persons arrested should be clarified and made uniform. Such access should not be limited to solicitors.
5. Acquitted defendants should be entitled to reimbursement of travel costs from their home to the court as a matter of course; such costs should be taken into account in sentencing convicted defendants.