**APPG Democracy and the Constitution: Inquiry into policing of public gatherings, constitutional rights, and the PCSC Bill.**

Hearing Transcript for 13th May 2021

**Panel 1- 9:30 to 10:15**

In Attendance

Geraint Davies MP (Chair)

Daisy Cooper MP

Lord John Hendy

Jonathan Djanogly MP

John Nicolson MP  
Dawn Butler MP

Sam Fowles (Counsel)

Witness  
Assistant Commissioner Louisa Rolfe

Dawn Butler MP (DB)- Do you consider that the law and the guidance in place at the time was sufficiently clear in respect of public gatherings and protests?

AC Louisa Rolfe (ACR)- I think it’s really important to say at the beginning, I know we’re here to speak about the vigil at Clapham Common and I think it’s important to say how saddened and shocked we were at the Met by Sarah Everard’s death and the particularly the circumstances around it. In HMIC’s review of our actions regarding policing at the vigil, they looked at how we had considered and applied the regulations and how we had given weight to human rights articles 10 and 11 in particular; people’s right to assemble and right to freedom of expression. Our understanding of the law at the time is that tier 4 contained a prohibition on gatherings of more than 2 people from separate households. The vigil came within that general prohibition given its scale, its timing, and its location. We were in tier 4 at the time/ You’re right that things changed an awful lot because of the pandemic. We worked incredibly hard at policing at both the national level in the NPCC and in the Met were as you’ll be aware there are generally more protests in London than anywhere else in the country and we have a lot of very experienced officers. But we also worked with our leading services team of experts in this, and that tier 4 contained no specified exemption for protests. But a person attending a gathering in contravention of the regulations may be committing an offence unless they have a reasonable excuse. But it’s for the individual not the police to work out what that reasonable excuse is. There was a non-exhaustive list of what those reasonable excuses might be. In terms of protest there was not an exception. But also, what I think is really clear from HMIC’s review of our actions is we did consider the human rights act element of this and considering people’s rights when it comes to policing protests. it's not for the police to work out whether a protest itself will be lawful or not we have an obligation to understand that if we’re going to take any police action and if you're in particular going to interfere with people’s human rights then our action must be proportionate and necessary and so I hope that address your question in terms of our understanding of the law at the time.

DB- Do you think the Law is clear, because the law changes quite rapidly you know, the government say one thing and then say something else. Is your understanding of the law Assistant commander, is it the same as another assistant commanders understanding of the law of all could you possibly interpret the law differently?

ACR- So I think because the law was changing rapidly and because it's complex and all of us in taking any action would refer to our experts in our legal services team so and throughout our work with the organisers ‘Reclaim These Street’s’ we did refer to our legal services department to ensure that we had expert advice in our interpretation of the law. But also, there was very clear guidance that came from the National Police Chief’s Council I think we had a clear understanding of the legal position at that time.

DB- Okay and going forward, how do you see the police’s role in regards to peaceful assembly and vigils. There’s likely to be another protest this weekend and going forward is it still clear? Or would you do things a little bit differently?

ACR- The law has changed in terms of the regulations since March 13th and we are no longer in tier 4 and people are now allowed to gather for purposes of protest. But in terms of our approach so HMIC where really clear that they saw us are seeking to achieve consistency throughout the pandemic whilst the regulations changed and the HMIC assessment of our actions was that on balance we acted appropriately in taking a starting point of a desire for consistency and they were really clear that we had to consider whilst we tried to be consistent we also consider each protester event on its own merits and particularly in terms of peoples human rights they concluded that our thought processes and our actions satisfied all of those requirements.

DB: I understand, and I understand the ruling, but I think, and it is the fact that no outside protest has resulted in a spike of infection. So, in a way this isn't really for the police it’s for the government and the law and legislations. I think the government has put the police in a very difficult situation. But thank you very much for coming and answering the questions today.

Geraint Davies, Chair (GD)- I would just like to ask a couple of very quick general questions to help us set the scene. I wanted to ask the police commissioner what role do you see protest having in a democracy and what would you say is the role of the police in that in general?

ACR- I think that first part of your question it is not a question for the police, and I think it's really important that our considerations to be around that we are really clear on obligations in terms of and if we are going to interfere with people’s rights to protest that our actions must proportionate and necessary. But in terms of the role of protest in a democracy, it’s not a question for the police. A role for the police in terms of protest, our job is to impartially hold up the law and it’s for Parliament to set those laws. It’s really important that we understand the role and if we’re going to take any action and that we have operational independence, in terms of our assessment of whether those actions are proportionate and necessary and that we should be considering each case on its merits.

GD- So should some protests be treated more leniently than others? When talking about the current law, obviously there is a roll of protest historically people protesting and expressing themselves in a peaceful way in a democracy. Some can be more noisy etc but with some forms of protest, should I be treated more leniently than others?

ACR- I think the impartiality of our actions and the impartial upholding the law is incredibly important and really strongly imbedded in the British policing model. So, the cause for which people are protesting should not affect our assessment. What is might do is that our intelligence might tell us that some forms of protest attract more likelihood for disorder, some forms of protest attract people who may wish to speak their views. So, in that regard we might take into account the nature of the protest. But the cause should be immaterial, we should, whatever our personal views on the worthiness of cause that people are protesting for, but it should not affect our assessment are our actions proportionate and necessary.

GD- In the case of Clapham, how did the Met facilitate freedom of expression and peaceful assembly at the Clapham Common Vigil?

ACR- A couple of things, I’ll talk about the law in a moment but in terms of the day in Clapham for more than six hours there was a minimal police presence. There were many hundreds it's not thousands of people attended within the regulations in twos or family groups to peacefully pay their respects and to leave flowers and to leave again. Therefore, the policing presence was minimal, and we worked very hard to ensure that people could exercise their rights appropriately. In terms of freedom of assembly and freedom of expression those are a qualified rights under the Human Rights act and police interference with them is often seen as a- we consider the lawfulness of any interference with those rights and when it comes to an obligation to facilitate- this is an interesting point within the law, within UK law there is not an obligation for policing to facilitate protest. There is caselaw which comes from the European Court that talks, but in very different circumstances and we would consider positive obligations if others were seeking to inhibit people’s rights if we saw that it was necessary for the protection of people’s rights to intervene for example when you might get violent counterprotest. Many protests or gatherings might not require any policr presents at all. I’m sure you’re aware that in London there are many things that go ahead every day that may not require any policing presence at all. We are not required in policing to ensure that every person can hold up a placard in Parliament Square but when we are aware that a protest or gathering might through its scale or size might interfere with the rights of others, we might need to take some action, so we would get involved.

GD- But there is a balance isn’t there so if we wanted to do a protest tomorrow about rocket attacks Palestine for example, I presume that the police’s position on this would be to facilitate it and to ensure it was a peaceful gathering and didn’t interfere with other groups and to allow that expression to occur. Subject to other counter-groups coming along to cause a problem in which case presumably the police would partition them?

ACR- So no we wouldn't have an obligation to facilitate it that would be for the organisers, but we would need to consider whether it's going ahead might cause either serious disruption and therefore we might consider conditions if it were a precession or an assembly. But also, if we were aware that others would seek to counterprotest and there could be serious disruption or violence and then we might consider what police action could be taken to enable people to protest.

Lord John Hendy (JH)- Assistant Commissioner I wanted to ask about events immediately prior to the Clapham Common gathering on the 11th of March. You were kind enough to indicate to my friend Dawn Butler a moment ago that you felt you had a clear understanding of the legal position having taken expert advice and the advantage of guidance from the police chiefs council and that your view was that gatherings of more than two were not permitted under the coronavirus regulations but that there was an exception where there was a reasonable excuse and in connection with that you had in mind the provisions of the Human Rights act. Can I ask, was it your view then that a vigil on Clapham Common was lawful or not lawful?

ACR- So it is not the police’s place to decide whether a protest would be lawful or not lawful. The reasonable excuse exception is for the person themselves who may be committing an offence to work out. I mean I know that might sound like I'm dodging the question, but I’ll try to explain. So, our advice to organisers beforehand is that there may be a breach of regulations should the vigil go ahead, and this is based on our assessment of the numbers likely to attend, so you may be aware, the event Saturday, March 13th, the first contact between organisers and us was Wednesday the 10th of March, so only a couple of days beforehand. At that stage more than 2000 people had expressed on social media and an intent to attend, by Friday that had increased to nearly 6000. Our advice to organisers was that a gathering of that scale, because it was described as a gathering, as a vigil with a focal point. Whilst Clapham Common is a large area and all credit to the organisers had put huge effort into seeking to marshal, to see how they could maintain social distancing. But our assessment is that as an organisation who themselves had only been formed a matter of days earlier, our assessment was that we didn't see the capability to achieve that kind of social distancing. Some of this is set out in caselaw, the Dolan case that went to the Court of Appeal which talked about the potential for people’s exercise of rights to be a reasonable excuse, and it was cleat at the Dolan case that when regulations were not incompatible with human rights given the express possibility of an exemption but there where powerful public interest behind the restrictions, we were in a public health pandemic. And Dolan said that in the vast majority of cases, no reasonable excuse may be available and there’s a powerful argument that the restrictions in themselves were proportionate. So, in applying that assessment, describing to the organisers that it could be a matter for you to have a reasonable excuse, but our advice was that if this goes ahead, you as the organisers could be liable to enforcement or we may take enforcement action. The organisers were seeking from us a guarantee of no enforcement action and our assessment was that we could not give that guarantee.

JH- We've been told that you were a bit more proactive with the organisers than that. That the MPS threatened to prosecute them under section 45 of the Serious Crimes Act which is a section designed to deal with organised criminal gangs; OCG’s. Is that right?

ACR- The reference to section 45 of the Serious Crimes Act is in the open letter that the MET has published, and I know that was shared with organisers. It's unfortunate if that was interpreted as a threat because I know from the numerous meetings with organisers, the focus was on the regulations, the health regulations to protect people from the pandemic. The open letter set out all of the potential legislation that people might find themselves falling foul of should they organise the gathering. It wasn’t unique to these organisers or ‘Reclaim these Streets’, it was shared with organisers by the local team in those initial conversations. As soon as our HQ team who have been leading on Covid and leading on protests through the coronavirus pandemic became involved, they were very clear that what the organisers might fall foul is the coronavirus regulations.

JH- You say it wasn't to be perceived as a threat but to say to somebody that they might be prosecuted under section 45 of the Serious Crimes Act, couldn’t be interpreted as anything but a threat, could it?

ACR- I disagree, it was in an open letter, it says to people that these are all of the things that you could fall foul of should you go-ahead with the gathering. I don't believe a specific threat was made to those organisers. I agree with you, that legislation is predominantly for dealing with organise crime.

JH- But the consequence of the intervention of the MPS and the interaction you had with the organisers is that the organisers then withdrew, is right?

ACR- The organisers made a decision to cancel the vigil which they published on the Saturday morning yes.

JH- And the consequence of that was that the vigil was unorganised which made a worse position for the police trying to prevent disorder or anything carrying out their functions, do you agree?

ACR- I disagree with you on HMIC’s assessment which is very thorough would disagree with that position as well. They concluded that by Friday, before the organisers withdrew, there were already 6000 people expressing an intent to attend. We were already aware that a number of groups were intent on protest and were seeking to attend as well. Whilst the organisers, as I said, with best endeavours made every effort to look at how they might Marshall, we've not seen anything in our vast experience of dealing with large-scale events, we've not seen anything gave us assurances that it could be done adequately.

JH- That may be the case but surely it would've been better to have supported the organisers in order to have had at least some semblance of organisation to the vigil.

ACR- But I think, going back to my first points about the law, our understanding of the law at the time was that the vigil as described would fall within the general prohibition on gatherings and I'm sure you wouldn't expect the police to facilitate something falls within the prohibition that has been set by Parliament. .

JH- I am conscious of the time let me ask one more question directed to that point. You had the advantage of course of the judgement from Mr Justice Holgate at which the MPS was represented and put forward its own case. So, you knew that the judge had held that this proposed gathering was lawful.

ACR- No that’s incorrect, the judge declined to make the declaration sought by Reclaim These Streets and he concluded that it was possible that the outcome of applying the relevant tests, in relation to articles 10 and 11 was that a particular protest or demonstration should not go ahead. His conclusion was very much in line with our assessment. I know there were mixed media reporting about a suggestion of a ban on protest and I think as we were clear at the court hearing we've never had a blanket ban on protest and as I said earlier it's not our role to decide that a protest should go ahead or not but to conclude that it should not go ahead because it's likely to be in breach of regulations was entirely appropriate. As said at the judgement.

JH- We have the advantage of a judgement as well and we can look at that in due course but it's right that the MPS put out a press release immediately after that judgement, isn't it?

ACR- Yes, that’s right

JH- Do you think that press release did justice to the judgement of Mr Justice Holgate?

ACR- The press release focused on a number of things and in terms of our assessment at the time and of course we will run a full debrief and we are running a full debrief on all of this event including the planning and learning from that. We will be keen to know if there’s anything we could do differently. But having read the press release is quite focused on us seeking to encourage people to think of other ways that they could conduct a vigil or paying respects whether that was candles on doorsteps, like clap for carers because we were really conscious of people’s strength feeling. And as I said at the beginning, incredibly shocked and saddened ourselves. In the limited time available we felt it appropriate to say something because at this point, the judgement was received at 7 pm on Friday evening for the event going ahead on Saturday. It was important to say something.

JH- thank you for your help Assistant Commissioner I’ve probably used up too much of my colleague’s time

ACR- thank you

GD- Our legal counsel Sam Fowles is on the line so you can perhaps by the end of the meeting look up this judgement because there seems to be some misunderstanding here because my understanding of the judgement was that the vigil could go ahead. I wonder whether you could comment Assistant Commissioner as to whether you thought that what was meant to be vigil of people gathering, largely women for a dead woman were different in character to, for instance, the Bristol protest and therefore should be treated more sympathetically?

ACR- Our policing plan for the day, not with-standing the discussion about organisers and cancellation of course we knew something was going to go ahead on Clapham Common. The policing plan for the day, for more than six hours the policing presence and was very low key. The commander on the ground was a senior female officer with a team of local officers and mixture of male and female officers that we did have a focus of female officers during the day. From midday until nearly 6 pm when people came and paid their respects. Our policing approach only changed when the nature of that event changed quite dramatically.

Daisy Cooper MP (DC)- As somebody who was watching the events unfold through the TV it was abundantly clear to me that people were going to turn up anyway regardless of what the police had said and in the independent report that was held which you referred to into the police conduct, it was made clear in the report that some officers themselves felt that it should be allowed to go ahead. Can I ask what is it also abundantly clear to you and your colleagues’ people were going to turn up anyway?

ACR- Yes it was. We knew from Wednesday the point we were contacted by organisers that people were likely to turn up. At that point, we were anticipating that it could be up to 2000, by Friday we were anticipating it could be up to 6000.

DC- But it was abundantly clear to you that people would turn up anyway irrespective of what interactions you had and what decisions you took as a police force?

ACR- Yes. But we were seeking to encourage people to think of other ways because of the law that time, set by parliament, we were seeking to be extensively engaged with a number of stakeholders to seek to find other ways that people could. Because we were really conscious of the strength of feeling.

DC- So given that it was abundantly clear that people would turn up anyway and they wanted to do something in a collective spirit, did you at some point realise that decision was between having an organised gathering and a disorganised gathering?

ACR- I think as I have set out before, the law at that time was that there was a general prohibition on gatherings and our job is to uphold the law. So, it's not a decision for the police to make. I know the organisers appealed to the court and the court reinforced what the law was at that time. In terms of our efforts throughout the day, our policing plan was to ensure that people could pay their respects. For more than six hours many hundreds if not thousands of people arrived in small family groups and pairs and paid their respects and left and they had very positive interactions with the police officers there as well.

DC- Thank you. So, on that point about and interaction, we have received evidence that outlines a number of things it would be helpful if you could address them in turn. So, we’ve heard evidence that the enforcement action was predominately by male police officer, I’d be interested to hear whether that was correct. We’ve also received evidence that officers stood in clusters and didn't in fact engage with attendees and I wonder what your responses to both particular pieces of evidence that we’ve received.

ACR- In terms of the policing during the day, we know senior office on the ground, the bronze commander was a woman, and we had a number of female and male officers. We increased our number of officers only when it became abundantly clear that the crowd had gathered, was growing and people where not dispersing. At that point the gold commander made the assessment that it got to that point where we felt we could not keep people safe without intervening and as the commissioner and I talked about at the Home Affairs select committee on Tuesday, we did consider could we have an all-female team. But having consulted with our staff, we found that it would be un-practical and could be considered divisive by our teams as well. But we did have a mixed group of male female offices HMIC who looked at hours of body worn video from the officers at the scene were very clear that they saw clear evidence of officers making sincere attempts to communicate with the crowds. they described it as patiently pleading to more than 90 minutes. They said that there was nothing to suggest that officers acted in a heavy-handed manner and they concluded that officers worked in challenging circumstances to maintain public safety and to keep the peace. In terms of the comments about predominantly male officers, I'm aware of the very emotive images people saw on TV and on social media and what I’d say is that policing public order can look very messy, it is incredibly complicated, but a huge amount of thought goes into the tone, the style and the approach. Having seen the gold command and silver commanders’ briefings at the event, it was all about being as low-key as possible, engaging with the crowd. We absolutely follow the national guidance surrounding the four E’s, explaining, engaging with people and enforcement is the very last resort. Those officers who made arrests had patiently pleaded with people for over 90 minutes. I know it can look like it's over the top if you have three officers leading somebody away but when faced with resistance, often the safest way to remove someone, and HMIC have said this, it was a conscious decision to have 3 officers per detainee to put a safe bubble around them and to lead them through what was an increasingly hostile and difficult crowd.

DC- The MPS itself has said, and you’ve reiterated as well that the look and feel changed, there was a turning point in the evening. And the MPS said that it was because a sound system was set up, however attendees said that there wasn’t a sound system. Some people have said that the look and feel changed as a result of police action. In terms of cause and effect, what would be your assessment as to why the look and feel of the event changed and what the events where the lead to the look and feel of the event changing?

ACR- so HMIC are really clear in their assessment that actually we did not deploy the additional officers into Clapham Common until the crowd had gathered. It became more tightly packed around the bandstand, potentially up to 1500 people. And there were a number of people who were chanting and starting chants on the bandstand and there were speeches, that’s when the look and feel changed. Some of our officers, including our female officers received vile abuse. There where female officers and I've seen only body worn video footage of female officers trying to make their way through dense packed crowds with people shouting and screaming in their face. “It should've been you”, “You should be raped”, horrible vile abuse. And those officers, HMIC states behaved in an exemplary manner. Yes, decisions were made to get onto the bandstand and it's really difficult sometimes to explain to somebody in a busy crowd why police are taking certain actions. HMIC were really clear that those actions were thought through and those decisions to intervene and to make arrests were not taken lightly and they were taken after considerable efforts and encouraging people to disperse. A great many people did disperse, and a great many people responded very positively to police intervention. Officers there on the ground asking people please to leave, many members of the public heeded that advice and left quite quickly. And by 8 o'clock things were effectively calm again.

DC- Thank you. Two very short ones left from me. First of all, we’ve heard evidence that police officers in fact pushed and shoved attendees and therefore reduced social distancing at the event. What's your comment on that?

ACR- HMIC reviewed many many hours of officer’s body worn video footage from the event and their assessment was that the officers behaved in an exemplary manner. To get through a dense crowd, I’m sure officers may have had to get through and of course you might have to sometimes force your way through but the assessment of all of that action by HMIC who are independent, and their assessment of policing is not known to be soft touch. They were very clear that those officers behaved in an exemplary manner and made every effort to respond appropriately to this.

DC- Thank you. And the last one from me is that a number of commentators have observed that actually there was a fundamental difference between those who wanted to just go and grieve and attend a vigil and others who perhaps were part of a very different protest who effectively were there to hijack it. And those perhaps were some of the ones were insulting your officers. Do you feel as though there was a distinction, and they were effectively two different groups of people and that the protest was hijacked and if you do, do you believe that any of the decisions that the MPS made in the run up to the event may have actually contributed towards people turning up to try and hijack it?

ACR- In terms of the last bit of your question I don't believe so. I understand and I’d need to go back and check the timeline of this, but I understand some of the groups who were there to be more disruptive had expressed an intention attending before the police had communicated about the event not going ahead and before the court action. In terms of the event, yes, I do believe that there were different elements there. Certainly, our officers on the ground, we didn’t deploy the police liaison team because they’re a protest resource, we didn’t deploy them early in the day but when things became different, and it became more of a rally or a protest then we did deploy officers later. We had picked up through the day, monitoring those arriving, that there were a number of elements there who we’ve seen at other protest and who might be there for a broader cause than the vigil.

GD- Thank you. Over to Jonathan.

Jonathan Djanogly MP (JD)- Thank you chair. Assistant Commissioner, if I could just go to look now at the proposed powers under the PCSE bill that is currently going through the house. But to do that, I just want to look at the potential conflict that a lot of our witnesses have been discussing in relation to the MPS or the police in these situations both deciding whether the vigil would be considered lawful and then also enforcing that decision. I appreciate that we had a discussion before on the question of whether the police are deciding whether something is lawful or considering the application of the law but whichever it is, there are two different aspects to it: the decision and then enforcing the decision. Leaving aside the constitutional propriety, which I don’t think is for you as a Police Officer, from an operational perspective, do you think it’s right for the Police to operationally be dealing with both of these issues?

ACR- I’m afraid I disagree with you and I don't think we are dealing with both of these issues. I don't think we are deciding whether a protest is lawful. We are advising organisers as to our understanding of the law that the activity they are participating in could be lawful. But the matter of, whether its lawful or not, and whether they would have a reasonable excuse because at that time the only lawful way of gathering would be if you had a reasonable excuse, is a matter for the organisers. We were doing our best to advise the organisers to our interpretation of the lawfulness of the protest but we’re not making the decision. The court was very clear that our interpretation is correct. I hope that answers your question, sorry please remind me of the second part of your question?

DJ- To whatever extent you have a say regarding whether the demonstration should go ahead or not, is there a conflict between you having that element and then also enforcing. In other words, being the enforcer and the decider?

ACR- Yes, we do disagree. We don't decide whether a protest is lawful or not and in terms of our later role in enforcement, that enforcement, as we discussed earlier must always consider people’s human rights and must consider particularly articles 10 and 11; the right to assemble and the freedom of expression. We can only take police action where it is proportionate and necessary. But those are qualified rights, they’re absolute rights

DJ- So the proposed new legislation which will amend the 86 public order act draft and will allow police to impose conditions on protests that are noisy enough to cause intimidation or harassment or serious unease, alarm or distress. A number of commentators are saying that you could therefore be asked to decide for instance, if shops along proposed routes might be adequately disturbed. In other words, potential areas of conflict that currently exist could be exacerbated by the proposed legislation. Would you agree with that?

ACR- I think those are matters for Parliament. It is a matter of public record in the HMIC report that the proposals that the MET has made in relation to the bill and the things that we might find helpful to us. And those relate specifically to the things that are currently quite difficult for us. You’ll be aware of the highly publicised protests that in the past have caused London great serious disruption and are difficulties in dealing with things like people locking themselves on and the things that they might bring to cause disruption in London. In terms of the other aspects of the bill, I think those are a matter for Parliament and not policing.

DJ- Of course in Northern Ireland they have a different approach to this where the legality of protest is determined by an independent panel. Have you given any thought to this? Would you like to see this here? Would it make your job easier?

ACR- So, I think the independent panel there fulfils a very useful function, but I don’t believe it determines the legality of protest. I think there is specific legislation which was really brought in to consider and promote greater understanding by the public of issues concerning public possessions. I don’t believe that they decide on the legality of protest. They consider restrictions that might be applied to protest and there are requirements by organisers to disclose the nature or intent of their protest or procession. But I don’t believe they make the final decision on the legality of it.

DJ- Would you find it helpful to have such a body here to determine restrictions?

ACR- Probably something that I’d want to go away and think about. I’ve not given that a huge amount of thought. I can see that certainly, where they are such an emotive issue in Northern Ireland that it fulfils a very useful function there, and anything that could promote a standing of the law and help people to understand how they might have their voices heard and effectively protest, but in a way that is lawful can only be good.

DJ- Finally, you mentioned that there were certain elements coming out of the extinction rebellion protest that led the police to want further powers. What further powers do you think would be useful?

ACR- I think in particular for us to be able to prevent or effectively deal with people who lock themselves on to either structures or bring kit and equipment that enables them to lock on and therefore cause significant disruption.

DJ- Thank you.

GD- Thank you, now over to John Nicholson.

John Nicholson MP (JN)- Thank you chair. Chair I wonder if I might be in order, I happen to notice that council Mr Fowles sent us a message saying that he could answer the question that you posed earlier on about the judge’s ruling?

GD- Okay, Sam Folwes, do you have an answer to the judgement by Judge Holgate?

Sam Folwes APPG Legal Advisor (SF)- Mr Chair, I’m grateful. The Holgate judgement, the legality of the specific Clapham common vigil was never before Mr Justice Holgate in that matter. That wasn’t considered. And what Mr Justice Holgate did find was that in line with Dolan, the regulations were lawful because there was the defence of reasonable excuse. It’s also worth noting however that, and I believe that this was conceded by the MPS during the hearing, that the fact that there was no specific exemption for protest under Tier 4 did not mean that protest could not be a reasonable excuse under Tier 4. I think all of the parties actually, despite disagreeing with that in pre-action correspondence, agreed about that when it actually got to court. So, the summary of Holgate’s judgement would be that it is possible for the protest in general, and this protest in particular to be lawful because it would have a reasonable excuse under the regulations. But it was for others to determine and was not for the court on that day to determine whether there was a particular reasonable excuse regarding that particular protest.

JN- Thank you very much indeed and thank you for that summary. Assistant Commissioner, you said earlier on that your intelligence tells you whether or not some protests are more likely to attract trouble that others. What was the intelligence that you had as far as Clapham was concerned? Did you assess that as likely to be a troublesome protest or not?

ACR-Our assessment at Clapham related to the numbers attending. So, I think it’s important to say that we often have limited intelligence about protests but we a sense of the scale of those attending in terms of 2000 on the Wednesday, up to 6000 on the Friday expressing an intent to attend. We knew that one or two groups including Sisters Uncut had expressed an intent to attend and we do know from past experience with Sisters Uncut that they are a lobby group who have particular causes but can seek to disrupt often. Therefore, we considered that there was a potential for this. But also, we were alive to the fact that the vast majority of people wanted to come and pay their respects which was why we had a policing plan that sustained from midday until 6pm that was incredibly lowkey and enabled people to attend in pairs or family groups to pay their respects and then leave.

JN- So, who were, as you mentioned saying very disturbing things to women police officers about how “they should have been raped” earlier on, which is grotesque. Who were those people?

ACR- I don’t know. On the day our enforcement action focused upon a very small number of people. I think we made nine arrests, the vast majority of those people were de-arrested as they were arrested for failing to provide details to receive a fixed penalty notice for a breach of the regulations and they were de-arrested when those details were provided. I think there was an arrest also for a public order act offence. I think officers were incredibly tolerant. The scale and the numbers there meant that we could not arrest everybody who threw insulting words at us.

JN- Just looking at the protest, and clearly all social distancing broke down entirely, and watching on the television, it looked to me and tell me if I’m wrong, as if people were being pushed into a confined space. I can see you’re shaking your head so perhaps I’m wrong about this. Is there an argument that the police action actually in the end reduced social distancing?

ACR- No, my understanding was that there were 1500 people there, the social distancing reduced when people were chanting and shouting speeches from the bandstand. Our original officers, who were incredibly dispersed were small in number. We then sent in I think initially 50 officers. It was only after the patiently pleading and seeking for people to disperse. Now those 50 officers could not possibly surround 1500 people.

JN- Okay, so people could have left at any point throughout the police operations? No one was confined, any protestor could have left at any point?

ACR- Yes absolutely, and that was our intent. We spent 90 minutes encouraging them to do so and as I said, a great many people did leave of their own accord.

JN- Can I ask you what conversations the police had with the Home Secretary in advance of the day itself?

ACR- I know that the commissioner spoke to a number of senior stakeholders. The police have a weekly meeting with the Home Secretary and the policing minister. I don’t know the detail of those conversations, and I know that the commissioner is police advisor to the Home Secretary and the Mayor and therefore those conversations may be confidential. But we absolutely did speak to, because of our concerns about people’s strength of feeling and the fact that we may find ourselves in a very difficult position seeking to uphold the regulation which was put in place because of the public health emergency but knowing that people will feel very strongly about any action that we take.

JN- I’m interested in what the Home Secretary said to you rather than what you said to the Home Secretary. Did the Home Secretary in any way try to persuade the police to take a particular stance? Did the Home Secretary say to you, you know what this looks as if it could get out of hand, I need you guys to take no nonsense. Or a variation of that?

ACR- Not that I am aware of no.

JN- Okay. Sadly, I see we’ve run out of time so I shall surrender any further questions and go back to the chair.

DC- Chair, could I ask one extra question relating to John’s last one?

GD- Yes

DC- Thank you. The independent report that looked at police action which you have referred to a number of times, did indicate that support from the government had waned during the Saturday after court judgement and in advance of the vigil. Are you aware of that?

ACR- No, I’m not. And I’ve read the report. No, that’s not my interpretation of it.

DC- Okay, I’ll go back and double check that.

GD- Finally, could I ask from what you’ve said, would you say that you’ve got any regrets or any lessons to be learned from the operations of the police during the vigil following Sarah Everard’s death?

ACR- So, HMIC certainly identified some areas of learning. They did say, in considering those points of learning, they fell well within the bounds of what might go well or less well in any policing of public order operation. But we take all of that incredibly seriously, we take very seriously feedback about the tone of our communications, we’ve thought very hard about that. But all of this has made us incredibly determined to do even more when dealing with violence against women and girls. I think that so much has come out of this that we will take all of the learning, it’s part of our own debrief process as well. We’re proud of our transparency in what we do and the fact that we are scrutinised. We welcome scrutiny and we welcome the opportunity to do things better.

GD- Can I ask you then, because we’ve heard evidence that women who attended this vigil obviously in grief, and it was a quiet vigil with people paying their respects. And at a certain point people were actually wanting to go home because it was getting colder and darker, that there was a sudden change of tone and the police intervened. And at that point, people told us that they then decided to hang about as things were ‘kicking off’ so to speak. You’ve talked about an increasingly hostile and difficult crowd, you’ve talked about forcing your way through, to having to get to the bandstand. Did you feel that in that circumstance that the police took a sudden change of mood and behaviour to get people to disperse when they were already dispersing. In fact, was counter-productive, unnecessary and led to less social distancing and therefore more danger to the crowd in terms of the regulations you were trying to enforce?

ACR- No I disagree, and I think HMIC are very clear on that point that there was a crowd of nearly 1500 people, a small number of police officers who tried incredibly hard to patiently plead with people to leave. With a crowd of that size its very likely that many of them did not even see the police action. When we did interact with people, many chose to leave which was great. HMIC go into detail through Gold Commander’s decision making, who made every effort to ensure the police facilitate people leaving peacefully and only at the point were weighted up the protection of people because of the public health emergency versus how we are going to respond to this and what might be the consequences of police action. HMIC were very clear that he made good decisions that led to the right outcome. Notwithstanding, we never would have wanted to be in that position.

GD- So just that I’m crystal clear on the plan. There was a number of people gathered, originally for a very peaceful vigil. And at some point, the police decided to intervene. What was their purpose? In other words, what where they literally trying to do, they were cutting through the crowd in a sort of wedge in order to stop people speaking and giving speeches and then dispersing the crowd? What was happening? I really don’t see the logic of this behaviour here I must confess.

ACR- If I can be really clear, the people who attended during the day in small pairs or family groups paid their respects and actually left. It was at the point that we had a large crowd of 1500 people with people chanting, shouting speeches, some people had placards, there were small outbreaks of disorder.

GD- Just so I’m clear on that, there were people chanting, giving speeches and holding placards. It doesn’t seem to me that it was sufficient reason for police intervention at all.

ACR- The law, in terms of the prohibition on gatherings was set by parliament not policing.

GD- If they were social distanced, I mean.

ACR- Well they weren’t. They were not socially distanced before any police intervention. The presence of people on the bandstand chanting led to the crowd surging around the bandstand and all social distancing had stopped. It wasn’t the police cutting a wedge through the crowd, those were your words not mine. What I’ve seen on body worn video footage is small groups of officers starting to try and persuade people to leave and a small number of officers making their way to the band stand and then patiently pleading for 90 minutes of more with people seeking to persuade them. We could see those individuals were whipping up the crowd and causing the rally like atmosphere. I don’t think people hung around because of police action. The police action was very discreet. We called in more officers when it became quite clear that our best efforts at engagement and persuasion were not working. GD

GD- So the idea was that people speaking on the bandstand which were causing less social distancing and therefore you had to intervene for public safety and stop the people speaking on the stage, is that basically right?

ACR- I think you’re putting words into my mouth.

GD- I’m trying to interpret the rationale for what you did, I’m just checking that’s what it is?

ACR- I don’t have all of the Gold Commanders decision making log in front of me, I can certainly go away, but it’s all publicly set out in the HMIC report which clearly sets out the rationale for the intervention. HMIC’s assessment was that the Gold Commander, in balancing and weighing up the threat to the public and the requirement for intervention, made the right decision in seeking to intervene at that stage. So, the HMIC are very clear that we did the right thing.

GD- Right, and you’d do the same thing again?

ACR- I think those were a unique set of circumstances and of course take on board any feedback so we may not follow exactly the same line because we may learn. And if there was any action, we can learn from to take that would lead to a different outcome, of course we would follow that. But faced with exactly the same set of circumstances, and with the endorsement from HMIC that we were faced with a set of circumstances in which we had limited options and we took the right one, yes, I’d endorse that.

DB- One question on the back of what you’ve just asked please. Assistant commander, the threat to the public was the lack of social distancing?

ACR- The threat to the public was the public health emergency.

DB- But the lack of social distancing, it wasn’t a threat of violence or anything. Just for clarity, the threat was a lack of social distancing? Which is fine, because as you’re saying that was in line with the law, but the threat was the lack of social distancing?

ACR- Yes, the Gold Commander’s assessment weighed up the threat to public health. That is all set out in HMIC’s report. However, I do know that officers on the ground may have faced pockets of other threats. There were some small outbreaks of disorder with a bit of pushing and shoving of officers as well.

DB- Thank you.

GD- Thank you so much Assistant Commander, you’ve been very helpful and generous with your time. Thank you very much for your very illuminating evidence.

Panel 2- 10:15 to 11:00

In Attendance

Geraint Davies MP (Chair)

Daisy Cooper MP

Lord John Hendy

Jonathan Djanogly MP

John Nicolson MP

Sam Fowles (APPG Legal advisor)

Witnesses

Dr Val Aston

Paul Stephens (XR)

Lord John Hendy (JH)- Dr Aston, leave aside the Coronavirus restrictions on demonstrating and so on, can we have your thoughts on the adequacy of the current law to protect the right to demonstrate and to ?

Dr Val Aston (VA)- Thank you. Well, the law is enshrined internationally, in article 21 of the international covenant on political and civil rights of which we are a signatory. That is interpreted through general comment 37 which specifically looks at how states should implement the right to freedom of assembly. An yes, obviously you have your convention rights. The OSCE office for democratic institutions and human rights have produced extensive guidance on that as well in their guidelines on freedom of assembly and those are very comprehensive documents. But where I see the difficulty is that the guidance, there is a divergence between the interpretation of human rights at an international level and how it is seen to be implemented at UK level were in particular there is this divergence on the obligation of the state. General comment 37 and the OSCE guidelines are very clear that there is a positive obligation on the state to facilitate and protect the right to freedom of assembly. As well as a negative obligation not to interfere unless that is necessary and ‘necessary’ takes on a Strasbourg definition here of oppressing social need. Whereas what I see at a UK level is that the application of Human rights is simply is there a law, is something unlawful, if something is unlawful the police can intervene as long as that is proportionate. And proper recognition of the positive role of the state in facilitating protest, and to leave one alone wherever they can, those aspects of the human rights framework I think have been lost.

JH- You see a tension between the application of these rights in UK law and article 21 of the international covenant. Is there any tension between article 21 of the International covenant and article 11 of the European convention or are they entirely congruous?

VA- I see no divergence there, certainly nothing that I have noticed.

JH- A questions of particular significance to me before I come to coronavirus, which is do you consider the right to picket, which is specifically protected by section 220 of the Trade Union Labour relations consolidation act 1992, is sufficient protection of that freedom of assembly?

VA- I am not an expert in Trade Union law but I would say that pickets are an assembly which are also covered under all the provisions that relate to an assembly. They are not distinct, the right to freedom of assembly is a very broad one that covers all forms of assembly and that includes the right to picket.

JH- I assume that when you talk about the right to assembly under article 21 of the convention and other international provision should include also the right to freedom of expression under article 10 of the European conventions and so on.

VA- Yes, in the UK we have a tendency to see rights as distinct things whereas the convention actually sees things in terms of a cluster. The right to protest comes from the interaction between article 10 and article 11. It’s that combination of both political expression and assembly which gives politically expressive assemblies a particular higher level of protection than other assemblies such as social or sporting assemblies.

JH- We’ve been discussing with the assistant commissioner this morning the impact of the coronavirus regulations. I don't want to go into the details of those but in relation to the assembly at Clapham and then subsequently in Bristol, do you have any observations on the application of the coronavirus regulations there and whether the police correctly applied them?

VA- I've heard the evidence of the commissioner and I agree with Mr Fowles’ analysis of cases of Lee and Dolan. The issue is reasonable excuse in in the first instance. Protest should be considered as a potential reasonable excuse. The duty on the police in all circumstances is to consider in the first instance is an assembly peaceful. That should be the default position. Not is there a breach of the law or is there some measure of illegality, but in the first instance, is this assembly a peaceful assembly? And if so, the default position should be not to interfere and to positively facilitate that peaceful protest. Now where I do recognise that there are circumstances in which there is a pressing need to intervene with some assemblies and the issue of public health is a legitimate aim. That would justify intervention as long as that was necessary and proportionate. But there would have to be a significant reason, a positive justification for that further level of intervention not merely that it was a breach coronavirus regulations. And that I am not convinced existed at all at Clapham. And in Bristol, the issue became at certain points in relations to certain demonstrations became an issue of public order not coronavirus regulation. Different considerations as a result come into play. But where there is no public disorder, where you are dealing with a peaceful demonstration or a peaceful assembly, the obligation is to facilitate that and not to interfere.

JH- Just one final question arising out of that. You heard the last evidence from the assistant commissioner, and she said that the reason for the police intervening at Clapham at the end of the vigil was that there were speeches and chanting which caused people to gather around the bandstand and that posed, as Dawn Butler elicited, a threat to public health. What are your observations on that?

VA- It remained a peaceful protest and that is the fundamental issue here. That regardless of coronavirus regulations, this remained a peaceful protest. The approach that should have been taken here was given that this was a peaceful protest, is intervention necessary and would that be proportionate? You could argue that some intervention was necessary for the purposes of preventing public health, certainly that would be a legitimate aim. But the question would be would intervention actually be helpful to that end? Would a police intervention produce a better outcome in terms of public health at that point? And I’m not convinced that it would. You have people that are gathering, they are gathering in a peaceful manner. Police interventions at that point could make things worse rather than better. And that should have been the consideration here, is that not only do we have an obligation to try and facilitate but is an intervention really necessary and is it proportionate in terms of if we do intervene does it actually achieve the aim that we want it to. Is it proportionate to the aims of protecting public health? And when you have police intervention, you do tend to have people coming together even more, you have people moving as a crowd. I wasn’t at Clapham common, but the likelihood is that when you have police intervention of that sort, that social distancing becomes even more difficult.

JH- Thank you Dr Aston. I fear I’ve used up my allowance now chair.

Geraint Davies MP (GD)- Thank you very much John, over to you Daisy.

Daisy Cooper MP (DC)- Thank you. I’m going to put the first question to Paul. How has the right to protest been affected by the different versions of the coronavirus regulations and specifically how it has affected Extinction Rebellion (XR)?

Paul Stevens (PS)- Good morning. I’d like to take you back to when we first came out of the lockdown, right at the beginning as soon as coronavirus was going to be a very serious issue, XR decided that we would take the guidance of our doctors, we’ve got XR doctors, many of them specialised in Covid. So, we took their advice, and we didn’t want to hinder in any way role of the NHS and the job of the NHS so we wanted to step back from protest and not do anything that could either lead other groups to come out and increase the risk to the public or for ourselves to increase the risk to the public, so we were very careful at the beginning. We came out of lockdown in May, and we tentatively did an action in Trafalgar Square with 1000 children’s shoes and a few people, you may have seen the image. It was just for a photo shot. And a handful of people took half an hour to distribute these shoes and then local police arrived and basically said ‘well you’re not increasing the risk of Covid so crack on, we don’t want to end up arresting you and picking up all the shoes so please carry on’ and the action took place and there was no issue whatsoever. Two weeks later, we wanted to come out in Parliament Square and give a strong message to Parliament that we had to build back better from Covid pandemic, in a green sustainable and not going back to investing in fossil fuels. We discussed it with our doctors, we decided to do an action with people 4 metres apart in full PPE in Parliament Square just for a photograph so it would take around an hour. People would travel there independently, and we would tell the police all about it. So, I spoke to Commissioner Cressida Dick, I wrote to MI6, the public order command and explained that we felt it was a good reason to protest and we understood that section 6 meant that you couldn’t ban protest even in a pandemic. And at that time, it was unlawful to gather in numbers of more than two without good reason, so we knew that. So, we asked them how they felt about this and that we feel that it is a good reason and was very important for us to be there and that we were going to do it in a way that doesn’t increase the risk, and of course we’re always peaceful. We weren’t going to shout, we weren’t going to chant because of aerosol increase, so it was a silent action. I got a reply, and it’s funny because they sent me the DLS reply, that’s their solicitors because they’d said ‘we don’t understand this, please have this’. Which basically explained that it would be unlawful and that the Secretary of State has balanced the right to protest against the public health risk in writing the legislation. So, they stepped back from any balance of rights and said well the legislation is there.

DC- Could you please clarify exactly when this was?

PS- It was just prior to May 30th

DC- So well before the September version of the Covid legislation.

PS- Yes. So that was to me, passing the buck back to the Secretary of State. The senior officer at the time was a Chief Inspector that I spoke to. He had busloads of officers not wearing masks. I said ‘We’re here for an hour but we’re happy to reduce it to 20 minutes just to get the photograph. You can see that everybody’s out there in PPE and 4 metres apart’. And he said ‘sorry, no I’ve got my orders, we’re going to move in and do four E’s and arrest people if they don’t go home.’ And I said ‘ Well, if you do that, would you please reconsider because we think it is a good reason, but if you do that, could you please ask your officers to wear masks?’ And he responded ‘No, that’s a personal decision of each officer, if they choose not to wear masks then that’s up to them’. I offered them sterile masks that I’d brought with me and they refused. They then went in, arrested 7 people and gave around 20 fixed penalty notices. I’d made the point that the only risk to public safety was the police action at the time. So that was May 30th . The same day, in over 40 locations around the UK, the same action took place, the police came out, used their discretion and states that ‘there was no increasing risk, we will allow it to happen.’ What I found that was very interesting from the doctor was the Human Rights aspect. The said that it’s exactly in line with the College of policing advice and the APP. And that’s what we use as well, we read that. But the MET are not in line with that and the HMIC FRS report says that should be changed. So, I have grave concerns about what they are planning to do. Because we always say, ‘How are you going to facilitate this protest that is absolutely peaceful’ and the MET reply often is that they do not have a duty to facilitate. The lower ranks that read the College of Policing advise state that they do but the higher ranks state that they don’t. It’s a very interesting situation as to what they recognise as their role in protest.

DC- Thank you very much. A question to both of you is to what extent does the PCSE bill give sufficient clarity about police powers and duties and about how they can be exercised?

VA- There are issues of clarity with the PCSE bill and there are issues of criminalisation, I would like to stress that as well because there is an obligation on states in international law not to criminalise activities that are peaceful protest. And I think that’s what this does. From the outset, there are provisions in the PCS bill that fundamentally set themselves against human rights framework in terms of what they are rather than in terms of any inherent uncertainty or vagaries in the provisions. Having said that, there is also considerable vagary and uncertainty in the provision as to how these provisions will be enacted. The provisions themselves are vague and uncertain and horrendously broad and provide a significant realm of discretion for the police. It’s that operation of discretion that concerns me the most. The argument is that the measures are human rights complaint because they would only be used by police where that is both necessary and proportionate. The difficulty is that where the police don’t fully recognise their obligations under articles 10 and 11 to refrain from intervening and their positive duty to facilitate protest, I don’t believe that those provisions will be interpreted in accordance with human rights framework. And what you’ll get is a simple process why the police go ‘okay, there’s a protest, it is breaking the law, therefore we have these powers to use therefore we will use them in relation to this law breaking. And the use of this legislation is necessary and proportionate because they are breaking this law.’ It is that failure really, to recognize those positive and negative obligations which taken alongside the very vague and broad measures that are in the PSCE bill which are so problematic.

DC- Thank you. I’m going to slightly reframe it for Paul but to be my last question. Very briefly Paul, could you give us some examples of things that XR has done or might do in the future that could potentially become arrestable offences under the draft PCSE bill?

PS- Oh yeah, well that’s easy. For example, many young people who have been locked down have been researching the climate emergency. Many of the people I deal with know more about the science than I do. And they know that the government are making decisions which are contributing to the risk in the future. And they also know that CEOs of banks are contributing by investing billions of pounds into fossil fuels, so a good example is that if young people from XR turn up at a bank HQ and make noise which makes the CEO feel seriously uneasy about his investment in fossil fuels, that would be enough to trigger conditions for police to tell them to move away. Surly, for young people thinking about their own lives and their own future and food and water here and especially in the global south, that should be their intent, to try and send a message to CEO’s who have the power to change things.

DC- And by your understanding, a single young person, as in an individual young person going to make noise outside of a bank, would that too be problematic?

PS- Absolutely. Especially with the Home Secretary having power to define what serious disruption is and it came out recently in the Telegraph, yesterday I believe that they want specifically attention paid to Black Lives Matter and XR because we’re ‘woke activists.’ I mean, it is just ridiculous. We just want to protect the lives of the children. We have a very broad church of ideology; we support Black Lives Matter of course because what would do, we want to live in; one with racial equality or without. This has to be addressed together with global justice.

DC- Thank you. Chair, over to you.

GD- Thank you very much Daisy for that. John Nicolson has left us, so I’ll take up his questions. Can I ask Dr Aston, if this is a mixed situation where some protestors are acting violently and others are basically peaceful, how do you feel the police should regulate that?

VA- There is rarely a clean easy line between a peaceful protest and one which is violent however what is important to take into account is that the police should retain an obligation to facilitate the protest of everybody who is acting in a peaceful way. Therefore, if there are isolated incidents of violence within a demonstration the police clearly have the powers to react to those isolated incidents. But they retain an obligation to continue to facilitate the protest of those who are not acting violently. And this is set out in Strasbourg, and legislation, but it is not something I actually see happening on the streets where you get any instance of illegality or disorder within a demonstration, what tends to happen is that the demonstration is viewed as a violent demonstration and that justifies interventions. And that in my view is not compliant with human rights legislation.

GD- And what about clinical interventions to sort of take out the troublemakers so if you can see that there’s one person behaving ridiculously, throwing bricks or whatever he’s doing. Is it reasonable presumably for them to intervene in a targeted way as opposed to having to disperse the whole crowd?

VA- That would be in line I think with human rights framework as long as the intervention and the use of force was proportionate, but dispersal should be the absolute last resort.

GD- Have you got records of the police behaviour at Clapham and Bristol? It’s been aimed at the issue of ‘blading ‘, which is basically the idea to hit people on the floor with the edge of a riot shield, which is lawful. So ,do you have any comment on that as to whether you believe it to be lawful? It doesn’t sound very lawful to me I’ve got to say.

VA- I don’t have evidence from Clapham, I do have some evidence from Bristol which were compiled by legal observers who were out on the demonstration there. And the reports that I have had, and I made a specific request for information on this to the legal observers, the reports that I had suggested that the police were using rectangular shields as opposed to the rounded shields. And the use of the shields was to bring them down on protestors who were sitting on the floor. I do not see how the use of any weapon, and this is a weapon in this circumstance, against peaceful protestors who were sat on the floor could ever be proportionate. I do not understand any argument that suggest that that could be proportionate in those circumstances.

GD- And so you think, firstly at Clapham secondly at Bristol, that the force used by the police was necessary and proportionate?

VA- I don’t actually have extensive data on the use of force at Clapham, I do have more in relation to Bristol. And we do have a number of accounts of force that appears to be entirely disproportionate. Obviously, there were demonstrations where the was disorder but following those there was a serious of further demonstrations in which there was no serious disorder and yet we have received considerable reports of disproportional violence against people who were sat on the floor or were holding their hands up and chanting peaceful protest. One of the legal observer’s referred to this as ‘revenge policing’. There was violence before, but now in a later demonstration which was peaceful, the police were using disproportionate force on the basis that they were seeking some sort of revenge for what had happened before. And that’s how it appeared to one of the observers on the ground. We had reports of legal observers being assaulted. One of my legal observers said that over a series of 3 demonstrations, there were reports of assaults on observers on every single shift that they did. We have reports of medics being assaulted whilst they were on the ground trying to treat people’s injuries. There is substantial evidence of disproportionate force used against people who were not acting in a criminal or a violent way.

GD- What we’ve got here is a situation where we’ve got an armed force with various forms of armaments, such as truncheons and shields against a civilian gathering or protesting. And this use of violence against people because of damage to property, is that right? So, we have an armed force who are able to commit violence against a civilian group for damage against property and not violence itself, is that how you’d see it?

VA- I think I would go further than that. In many instances, this was not a reaction to damage of property at that time. There was a decision to disperse the protest which was peaceful protest. think the underlining issue here, is that there was a decision that protest was troublesome, it was problematic, it was risky, it was potentially dangerous therefor it should be dispersed. And I don’t think that is an acceptable decision. Given that at that time when the decision was made, they were dealing with entirely peaceful protest.

GD- We heard in the case of Bristol from one witness that on one day, the police were particularly violent and on the subsequent day, they weren’t. Does that perhaps suggest that there are different behavioural options for the police and as we’ve just heard from the Met that they don’t regret anything, and they would have done everything just the same. Isn’t there reason to believe that there are different ways of policing the same protest with different outcomes, and that we should learn to do the least violent one?

VA- I would agree, absolutely.

GD- Okay, over to Jonathan.

Jonathan Djanogly MP (JD)- Thank you. So, the Government is saying that a lot of the reason for the PCS bill and the protest provisions are related to XR actions in 2019, particularly in relation to static protests, sit ins and erecting structures. And also, the following court action, Jones and Commissioner of the police where basically it was seen that the police where wrong to issue orders treating the demonstrations as one single protest. And also, that the police were effectively prohibiting future protests which was a power not provided by the 86 acts. On that basis, is the Government wrong to be looking at new legislation?

PS- Absolutely yes. It criminalises young people and people who care about the future of life on the planet. Everybody focuses on the judicial review, but on the 20th of September prior to that was the Global Climate Strike, and the police put out another section 14 on the day before. This had been planned for 6 months, in 160 different countries, millions of people coming out on the streets, parents making arrangements for their children etc. And the police, the day before, put out a section 14 to say that if they were going to protest, that they had to be in Millbank until 3:30 anywhere else in London was illegal. That put a lot of parents off sending their children out or going with them. It really stamped on the right to protest there. This was being challenged, we had a retired Chief Superintendent from Devon and Cornwall who wrote a letter to the police’s Superintendents Commission and they didn’t reply. The Royal College of Psychiatrists has come out on the 6th of May with extreme concern for young people. The new bill is hugely radicalising. If you have young people who cannot express their concern for their own futures and stamping on their right to protest, then it will create huge frustration and escalate. It’s ironic as XR were accused of being radicalisers and reported to Prevent in the early days. And we’re committed to non-violence so we’re probably the least radicalising influence that you could have. Can I read out the Royal College of Psychiatry’s summary? It’s very brief.

GD- Yes, go on.

PS- ‘The disruption of life posed by the Climate and Ecological Emergency presents an unprecedented threat to out health in the UK and worldwide. The Climate and Ecological Emergency is a mental health emergency. Our mental health is intwined with the natural world. We have no choice, but to join the voices of those calling for urgent action and declare a Climate and Ecological Emergency to avert a health and mental health catastrophe.’ They have also said that ‘Young people are already of the risks that face them with the climate emergency. This bill will remove their sense of agency effectively, not allowing them a voice to protest and increase the risk of radicalisation.’ And of course, they don’t have the Murdoch press to get their message out there. It is a very serious issue for young people in this country and this bill will criminalise them.

JD- Thank you. Dr Aston, last question if I may. Is there a sufficient accountability for the use of police powers at the moment?

VA- My instinct is to say that there isn’t very much at all. The main accountability comes through the courts where people are prosecuted for criminal offences. The difficulty comes when you have police actions that do not involve prosecution of individuals and those very rarely come before the courts. The opportunity for protest groups to challenge police actions through judicial review is limited, it’s very expensive, it’s beyond the grasp of many protest groups to take that route. In the absence of that, it’s very hard to see what accountability actually exists beyond bodies like yourselves in seeing how police operate. It’s a huge difficulty. And at the heart of this, it’s actually a difficult of transparency as well. It is extraordinarily difficult to get data from police relating to protest actions. It’s been a bugbear of mine and a number of researchers have raised this that trying to find out even basic data about police strategies or results of police interaction is enormously difficult. The police do not keep good data on how they police protests and what decision they make and what outcomes there have been from their interactions. It becomes extremely difficult to actually evaluate those interventions at all from an academic perspective.

JD- If you have evidence that shows that the police don’t keep good records, perhaps afterwards if you could send it to us that would be helpful, I think.

VA- Yes, I will certainly do that.

JD- Thank you. Thank you Chair.

GD- Dr Aston, to your knowledge, is there a proper system were individual police officers who may commit offences are in fact brought to justice?

VA- The avenue for protesters is to make a complaint through the police complaints process. That is extremely problematic. It involves a degree of trust in the first instance, which very often isn’t there for some communities that are worse affected by police actions. Even when people do go through that process, they find it extremely obstructive, and the outcome are rarely align with the expectations of those who make the complaint in the first place. We have had accounts of people reporting bullying behaviour by police when trying to make complaints at police stations as well. The only real accountability structure in terms of individual harm and injury is through civil procedure and to take a civil claim against police officers, but that has also become extremely difficult by funding constraints. Where once that was an avenue that was open, it’s now much more difficult for people to follow that line to.

GD- Thank you. So, Paul, you mentioned for example a case of police breaking the law in respect to not wearing masks. Perhaps not a break of the law but a breach of guidance. What experience have you had of the police breaking the law or offending somebody and whether there’s any recourse to justice? And do you think that that should perhaps be changed in the forthcoming police bill which is focused on more police power, but should there be more civilian recall or justice?

PS- Absolutely. I don’t think we’ve got enough time here unfortunately for me to go through everything, and it doesn’t make me happy to say that because I did 34 years in the Met. I think the main thing is the strategies that have been used. Before Covid, if they called a peaceful protest a public nuisance, based on historic events and historic protests, you can then arrest people supplying the protest with food for conspiracy to cause public nuisance and that they must have conspired with someone to get the food. So, if you arrest a van driver with catering equipment or food or portable toilets which is what happened during the October rebellion, whilst they are arrested, you can seize their phones and devices and download all their data to see who they’re in connection with for evidence of conspiracy. I’ve used conspiracy before against proper criminals, that was my job, but I couldn’t believe that it was being used on peaceful protesters. And that was also being used, for example outside a warehouse, they would arrest a van driver outside a warehouse they’d then go in and search the warehouse under section 32 of the Police and Criminal Evidence Act and seize everything in the warehouse. This was in October 2019, and that has been used continuously. Nobody had been brought to court, there’s been no court oversight of their behaviour here and we can’t afford to take it to the royal Courts of Justice every time, so it is very difficult to get. In my opinion, for this to be used strategically, this is malfeasance. They are mis-using the law. It’s not to take people to court, it is purely to get us off the streets and to be disruptive and to stop the right to protest.

GD- What would you regard as unreasonable protest where the police should intervene?

PS- We’re committed to non-violence. If you look at the cracked windows, the bank windows that’s quite controversial. But there were six weeks of discussion amongst the people involved with regards to whether cracking a window and peacefully sitting down until you are arrested, whether that constitutes violence or non-violence. They looked into it historically and whether property damage is violent or not and at the end of it was a matter of the heart. They had to do it because they felt it was justified by the threat we faced. Anything that looks violent or appears as though it might be harmful to someone is unreasonable. That’s why we have a blue light policy, despite the reasons given in parliament for backing this bill, for example such as the ambulance that was blocked. The ambulance that was blocked in September was blocked by the police who blocked Lambert bridge for 6 hours so that they could arrest everybody on the bridge without giving them the opportunity to leave, and that’s what blocked the ambulance on Milbank.

GD- And if you stop a tube, for instance, and there’s a huge crush of people that could be a risk to life or to public health, is that something that the police should intervene in?

PS- Well they did intervene, there is the malicious damage act which carries a two-year sentence. That also isn’t evidence for this new bill. I didn’t agree with that action, they poorly chose the wrong station that is in the wrong demographic obviously, but they chose that station so that it wouldn’t trap people on the train because of the position on the line. So, they did think of the safety angle. But over 70% of XR didn’t agree with that action. It was a hugely contentious one. I think it was a mistake, most XR people think it was a mistake.

GD- And do you think that there’s any need for any change in the law in this new bill? In terms of police powers and the right to protest? Do you think the law is okay as it is and doesn’t need fixing?

PS- There’s parts of the policing bill which are good, for example having profoundly deaf people on a jury. There are parts of it that are excellent.

GD- I’m going to ask John and Daisy whether they’ve got a couple of quick crisp questions that they want to put at the end.

Lord John Hendy (JH)- Thank you chair. I represent the Trade unions in the undercover policing enquiry. Can I ask both of you very quickly whether there is any evidence of undercover policing in recent times in relation to this kind of protest?

VA- Do you mean in addition to those who are currently under investigation into the enquiry that goes up to 2009-2010?

JH- So far, the investigation is still stuck in the 1970’s.

VA- There is evidence of undercover policing involvement in protest up until and including I think 2009. I’m not sure there is actual evidence beyond that, but I am unconvinced that there has been a massive shift in policy. But yes, certainly up until 2009 and in relation to protests like this. Absolutely.

JH- Paul, what about since the birth of XR?

PS- One of the reasons I joined was that I walked into the main headquarters of XR as it was then and it said, ‘everyone’s welcome and every part of everybody’. The fact that I was an ex-officer wasn’t an issue for most people. So therefore, anybody who works in the police can join a chat room and get involved and report back but obviously it would amount to infiltration and that wouldn’t be authorised officially. I’ve been approached to be a covert human intelligence source (CHIS) since I joined which was quite a long time ago. Well, I can guarantee that word has gone out to CHIS handlers across the Met, anyone involved with XR, to feedback information. I’m sure that’s happened. That’s quite a cheap method to do it, and its very low authorisation. As far as intrusive surveillance, I don’t think so, I hope not because it wouldn’t be justified. Directive surveillance, yes. I think the HMIC report flags that up as well.

JH- Thank you.

GD- Can I just follow that up. So, under the new legislation with CHIS, covert human intelligence sources are able to have legal immunity. Is there risks they could go into XR and be action provocateurs and actually provoke people in XR to committing crimes and they would have legal immunity? And alongside banning protest, that would inflame the whole thing? Is that a theoretical possibility?

PS- Yes absolutely. We’ve had incidents like that during October 2019 where a woman joined a demonstration and then started a fight with someone to see if there would be any reaction, of course everyone’s committed to non-violence so there wants. But it was a very weird thing that happened. And then she made an allegation against someone and it turned out that she was a police officer in plain clothes.

GD- Do you feel that if this bill goes ahead and basically closes down lots of protests, that that will drive anger underground, for want of a better expression or into meetings which will be more susceptible to people saying that if they’re not allowed to protest, they must do something more dramatic. And on top of that, if the person making those suggestions are undercover agents with illegal immunity, that creates a dangerous cocktail for the future at a time where people naturally are exercised about climate change and maybe other issues?

PS- Absolutely. My view is that the legal immunity decision should be made by the judiciary, it should be independently made. That makes complete sense to me.

GD- On that question Val, is that your view as well? That they should have independent decision making on whether protests can go ahead?

VA- I see that as being an interesting but contentious proposal which throws up some interesting opportunities but also, I think some significant challenges as to how such a body would be constituted.

GD- On behalf of everybody, can I thank you both for giving us you time and if you’ve got any further thoughts do send them in. Thank you.