

RE: APPGDC INQUIRY INTO THE PROTECTION OF CONSTITUTIONAL RIGHTS AT THE CLAPHAM AND BRISTOL EVENTS IN MARCH 2021

WRITTEN SUBMISSIONS

Tab	Name	Relevance
	INDEPENDENT EXPERTS	
1	Lord Paddick	Former Deputy Assistant Commissioner of the Met, expert in public order policing
2	Fmr. Ch. Supt. Owen West	Former Chief Superintendent (Specialist Operations) for West Yorkshire Police, member of the Scientific Pandemic Influenza-Behaviours (SPI-B) Policing and Security Group (SAGE), expert in public order policing.
3	Dr Andy Aidin-Aitchison	Senior Lecturer in Criminology at the University of Edinburgh
4	Pippa Woodrow	Barrister specialising in criminal justice, immigration, and human rights.
5	Dr Genevieve Lennon	Chancellor’s Fellow at the University of Strathclyde, expert in policing and political violence

6(a)	Network for Police Monitoring (“NETPOL”)	NGO monitoring police conduct
6(b)	Dr Val Aston	Dr Aston was the lead author of the NETPOL submission. She subsequently provided an addendum (in response to a specific request from Lord Hendy QC during her oral evidence).
	CLAPHAM COMMON ATTENDEES	
7	CCA1	Attended the Clapham event
8	CCA2	Freelance journalist, attended the Clapham event
9	CCA3	Attended the Clapham event
10	CCA4	Attended the Clapham event
11	CCA5	Attended the Clapham event
12	CCA6	Involved in organising Reclaim These Streets
13	CCA8	Journalist present at the Clapham event
	BRISTOL ATTENDEES	
14	BA8	Journalist, covered Bristol events, collected a range of different individuals’ experiences of the Bristol events.

	POLICE	
15	Avon and Somerset Constabulary	
	ADDITIONAL PARTIES	
16	Fmr. Sgt. Paul Stephens (“ XRI ”)	Retired sergeant serving in the MPS, acts as liaison between Extinction Rebellion (“ XR ”) and various police forces.
17	Extinction Rebellion Legal Support Group (“ XR Legal ”)	Members of the government have indicated that the PCSC Bill is drafted, in particular, to target the activities of groups like XR. We considered it appropriate to hear their perspective.
18	Leo Smith (“ HS2 ”)	Researcher who provided evidence relating to the policing of protest around HS2.



RE: APPGDC INQUIRY INTO POLICING OF PUBLIC GATHERINGS, CONSTITUTIONAL RIGHTS, AND THE PCSC BILL

QUESTIONS FOR INDEPENDENT EXPERTS

Many thanks for considering a submission to the inquiry. The APPG is seeking to understand whether and/or how important rights, including the right to free expression and peaceful assembly, are respected and facilitated by the police during public gatherings. The APPG sees this as particularly relevant to its consideration of the Police Crime Sentencing and Courts Bill. The APPG is taking views on the below points from experts in a variety of disciplines. We are interested in your perspective as an expert in your own discipline and would be grateful if you would frame your answers in that context (there is no need to attempt an “exhaustive” response).

You may wish to structure your response around the following questions so far as you feel they are relevant from your expert perspective:

- 1. Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?**
- 2. What elements of national/international best practice in balancing, maintaining, and/or facilitating the rights to free expression and peaceful assembly (a) during the pandemic and (b) after the pandemic were relevant to (a) the Clapham Common vigil on 13 March (b) the Bristol protests between 26 and 29 March?**
- 3. How does the police approach and conduct at (a) the Clapham Common vigil and (b) the Bristol protests compare with relevant best practice?**
- 4. What, if anything, do the events at Clapham Common and in Bristol tell us about the propriety of the extension of police powers in the Police Crime Sentencing and Courts Bill?**

Please add anything else you consider relevant.

Please submit your answers in writing to Sam Fowles, Counsel to the Inquiry at sfowles@icdr.co.uk.

The deadline for submissions is Wednesday 14 April.



RE: APPG ON DEMOCRACY AND THE CONSTITUTION INQUIRY INTO POLICING OF CLAPHAM COMMON VIGIL

QUESTIONS FOR LEGAL ADVISORS

Many thanks for considering a submission to the APPG on Democracy and the Constitution's ("APPGDC") inquiry into the policing of the Clapham Common vigil on 13 March 2021. The APPG is seeking to understand whether and/or how important rights, including the right to free expression and peaceful assembly were respected and facilitated at the vigil. The APPG is interested in your recollection of the vigil and the events leading up to it.

The APPG would be grateful if you could include any documentary evidence (such as log-books, records, photographs, or recordings) to support or supplement your submissions.

You may wish to structure your response around the following questions:

- 1. Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?**
- 2. What did you understand to be the legal status of (a) the proposed vigil, and (b) the vigil that actually occurred?**
- 3. What do you understand to be the effect of the High Court's decision on 12 March 2021 in relation to (a) the proposed vigil and (b) the rights to free expression/peaceful assembly/protest in general?**
- 4. What, in your view, were the MPS duties in respect of the rights to free expression and peaceful assembly at the vigil and to what extent did the MPS properly discharge those duties?**

Please add anything else you consider relevant.

Please submit your answers in writing to Sam Fowles, Counsel to the Inquiry at sfowles@icdr.co.uk.

The deadline for submissions is Wednesday 14 April.

Evidence of Lord Paddick

1. Law and Guidance

- 1.1. There are two difficulties with the law and guidance. The first is the need to balance the law with people's human rights, in this case the right of freedom of assembly and freedom of expression. It is often a difficult judgement call whether it is necessary and proportionate to infringe people's Article 11 and Article 10 rights based on the need to protect public health.
- 1.2. The second difficulty is the difference between Tier 3 and Tier 4 rules. Protest is explicitly allowed under Tier 3 restrictions and is not explicitly allowed under Tier 4. In both cases the list of exceptions is not exclusive, so while there is a difference between the two Tiers, protest is not explicitly prohibited in Tier 4.
- 1.3. The High Court when considering whether to allow the Clapham Common protest made clear that whether a protest was lawful or unlawful depended on the circumstances of the particular case. HMICFRS in their inspection of the policing of Clapham Common pointed out that the police, including the Gold Commander in charge on the day, appeared to wrongly assume that any protest in Tier 4 would be illegal.

2. Best practice – balancing rights

- 2.1. Northern Ireland has an independent Parades Commission to determine whether a public procession can take place and whether to impose conditions, a power exercised in other parts of the UK by the police. To have an independent body making these decisions maybe advantageous both to protestors and the police, who might otherwise damage their relationship with the public in cases where conditions or a ban are imposed.
- 2.2. The Police Service for Northern Ireland at one time had human rights observers in control rooms during the policing of parades who could advise the police. This may be advantageous to the police in making difficult human rights judgements, particularly if the nature of the protest changes unexpectedly, and in terms of openness and transparency as far as relations with the public are concerned.
- 2.3. Generally, as a number of police officers pointed out to HMICFRS, quoted in their report 'Getting the Balance Right', it is more often a case of limited police resources rather than gaps in the law that dictates police strategy and tactics. Banning a protest is rarely effectively achievable with the police officer numbers available. A protestor who does not want to be arrested may need five officers to safely detain them, quickly depleting police officer numbers, for example.
- 2.4. Lord Scarman in his report on the Briton Riots in 1981 pointed out the need to balance enforcement of the law against maintaining public order. Policing in the UK is predominantly carried out with the support and cooperation of the public – policing by consent. The degree of force that can be threatened or used by a relatively small number of predominantly unarmed police officers relies on cooperation and compliance. As we saw in the riots of 2011, when sufficient numbers decide to break the law, there are insufficient numbers of police officers to contain them.
- 2.5. Police officer numbers have fallen significantly since 2011 and the HMICFRS report indicates a shortage of specially trained public order police officers because officers are reluctant to volunteer for often difficult duties, mainly at weekends.

Therefore, even more so than in 1981, the police and politicians must do everything possible to avoid confrontational protests, erring on the side of cooperating with protest organisers rather than seeking bans. Otherwise, enforcing existing laws, let alone new powers, will require a significant increase in police numbers.

3. Using the facts presented by HMICFRS in their inspection of the Clapham Common protest, the following appear to be failings to adopt best practice.
 - 3.1. Despite the local authority believing that a peaceful, safe and COVID-regulations compliant vigil was possible, the police would not give any undertaking to the organisers that they would not be prosecuted, forcing them to withdraw from the event. Best practice would dictate that an event is far more likely to be safe with the support and cooperation of the organisers and the local authority than if it were to be called-off at the last minute. Banning a protest is likely to attract, or attract more of, those seeking confrontation with the police and should be a last resort.
 - 3.2. The police received intelligence that those seeking confrontation with the police were planning to attend the event. Despite this, no Forward Intelligence Officers (FIOs) were deployed to identify potential troublemakers. Even when known activists were seen exiting a nearby Underground station, heading in the direction of the common, no action was taken to engage with them. Best practice would dictate the deployment of FIOs in such circumstances.
 - 3.3. There was an absence of Police Liaison Officers (PLOs), air support and senior police leadership at the event. PLOs are trained to engage with those participating in protests and to relay intelligence to the Gold and Silver Commanders in the Control Room. Police helicopter surveillance of the event, using powerful cameras that relay live pictures to the control room, was not used. Instead, the control room relied on CCTV from a police van parked 100 metres from the centre of the vigil. From 2pm until 5.45pm the Bronze police commander in charge of police officers on the ground was absent from the common, and it was only when the Bronze Commander returned that PLOs were deployed. As a result of failing to adopt best practice, at 5.45pm the Gold and Silver commanders believed that about 200 people were attending a sombre vigil, when in fact there were approximately 1,500 people at the event, being addressed through a public address system by a man who was calling on the crowd to turn on the police. The combination of PLOs and a Bronze police commander on the ground should have prevented the setting-up of the public address system that became a focus for the crowds and was used by those seeking confrontation.
 - 3.4. The forcible dispersal of the crowd at the vigil was unlikely to be achieved safely, either in terms of public health or injury to both protestors and police officers, or without the scenes broadcast, which damaged the reputation of the police service.
4. Lesson for the extension of police powers
 - 4.1. It appears from the HMICFRS report 'Getting the Balance Right', outside of London, there was little support for any extension of police powers, with many police officers citing a lack of police resources as a limiting factor, rather than gaps in legislation, and the need to balance the right to protest against the use of police powers.
 - 4.2. It is difficult to see how the provisions contained in the Police, Crime, Sentencing and Courts Bill could have been useful in dealing with the Clapham Common vigil.

7.4.2021

- 1. Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?*

No. The HMICFRS inspection of the events at Clapham Common¹ runs to three thousand words, over eight pages, in an attempt to summarise the legal position of protest during the pandemic. Most legal experts came to a relatively early view that there was (is) no ‘blanket ban’ against protest and that each proposed event would need to be considered alongside Articles 10 and 11 of the Human Rights Act (freedom of speech and assembly) and the ‘Positive’ and ‘Negative’ duty the Human Rights Act imposes on the police and local authority. Participating in protest is provided for in Tiers 1-3. It is not in Tier 4. However, a ‘reasonable excuse’ defence is available in ‘all tiers’ legislation.

There was much discussion and commentary among legal scholars, but the extent to which any legal interpretative resource was available to the public / protest community is debatable. It appears the public / ‘reclaim these streets’ et al, were left with a very complex and changing legal position to navigate.

In the case of the Sarah Everard vigil, the police were themselves uncertain as to the lawfulness of protest within Tier 4 areas and their final determination as to lawfulness was incorrect (Ibid, P, 27). Moreover, the HMICFRS find that the Metropolitan Police should have done more to surface the issue of ‘reasonable excuse defence’ with the protest community.

The legislative framework remains inadequate as a readily accessible and easily understood guide to the public / protest community.

¹The Sarah Everard vigil An inspection of the Metropolitan Police Service’s policing of a vigil held in commemoration of Sarah Everard on Clapham Common on Saturday 13 March 2021

2. What elements of national/international best practice in balancing, maintaining, and/or facilitating the rights to free expression and peaceful assembly (a) during the pandemic and (b) after the pandemic were relevant to (a) the Clapham Common vigil on 13th March (b) the Bristol protests between 26th and 29th March?

Authorised Professional Practice (APP - national doctrine and guidance) for protest policing is evidence – based following decades of crowd research in the UK and internationally. In APP the science has been distilled and operationalised in four principles – Communication, Education, Facilitation, Differentiation (see question 4).

In summation the approach may be described as a policy of engagement, dialogue and rapport building with protesters as a means to engender notions of legitimacy of the police and the inherent ability of crowds to self – regulate and set parameters for behaviour and actions. These principles apply in the planning, event, and post event phases.

There is evidence these principles were applied, at least in part, at the Clapham Common vigil though the Metropolitan Police is criticised for failing to deploy specialist protest liaison officers (an evidence led innovation in policing crowds) too late (ibid).

There is currently no publicly available analysis of the extent to which Avon and Somerset Police applied the principles to events in Bristol.

3. How does the police approach and conduct at (a) the Clapham Common vigil and (b) the Bristol protests compare with relevant best practice?

Both forces sought to implement Authorised Professional Practice to their respective events. There is detailed analysis of the Clapham Common operation which points out that the Metropolitan Police could have done more

to explore a facilitation of the event. Following the Sarah Everard vigil most forces recognised the centrality that facilitation plays in a peaceful event and facilitated local events where specialist protest officers were prominent throughout. It is suggested this was the initial response in Bristol and that, for a period, events in Bristol were peaceful.

- 4. What, if anything, do the events at Clapham Common and in Bristol tell us about the propriety of the extension of police powers in the Police Crime Sentencing and Courts Bill?*

Timing

Opposition to the protest measures in the Bill is self – evidently generating protest activity which appears to be gathering momentum. This coincides with a period of extraordinary challenge for the police and their local authority partners during a pandemic. As restrictions lift, pre – pandemic protest is likely to return such as Black Lives Matter, Extinction Rebellion, HS2, anti – fracking etc. Given the perceived threat to freedoms of expression and assembly in the Bill, it is likely that protest activism will increase in momentum, scale, and frequency.

Relaxed restrictions see a phased return to pubs and nightclubs reopening as well as large sporting, music and cultural events. Operationally the police are weakened in terms of experience, resources, and ability to mobilise as they strive to rebuild pre 2010 capabilities and capacity. Current events in Northern Ireland raise the prospect of a police mutual aid mobilisation of public order officers to Northern Ireland from forces in England and Wales.

However, for the short to medium term at least the threat remains one of public health, not one of public disorder. However, the scale of opposition to the Bill is increasing incidents of conflict and violence between police and protest communities.

Consequently, when disorder happens it will have a detrimental impact on public health, potentially facilitating the spread of disease, making the re-imposition of measures to control the spread of Covid -19 next to impossible. A return to square one².

The protest elements of the Bill, and the timing of the Bill during a pandemic, is arguably bringing about the the very public health risks (as people seek to publically protest against it) which led to the imposition of limitations of public gatherings in the first place.

Operational Challenges

The current panoply of law and powers available to the police for protests, principally contained within the Public Order Act 1986, is entirely adequate. Indeed, taken alongside developments in guidance and doctrine, most noticeably in the 2009 HMIC report 'Adapting to Protest: Nurturing the British Model of Policing'³, the Police have a world leading, evidence – based, and Human Rights compliant operational framework which complements the consent – based foundation and hallmark of the service. If enacted, the protest measures in the Bill will see more, not less, police interventions on protest crowds which may lead to conflict and disorder.

There is consensus amongst noted psychologists and crowd conflict researchers that three elements are needed for violence and disorder to occur in the crowd context – grievance, deteriorating notions of legitimacy, and the presence of an 'outgroup', in this case the police.

² Public Disorder and Public Health: Contemporary threats and risks SPI-B Policing and Security Sub – Group. Stott, C., West, O., Harrison, M., (2020) A Turning Point, securitisation and policing in the context of covid -19: Building a new social contract between state and nation? In Policing: a journal of policy and practice, vol 14, issue 3, pp 574-578

³ Her Majesty's Chief Inspector of Constabulary (2009) 'Adapting to Protest': Nurturing the British Model of Policing. London: HMIC

Grievance – self - evidently there is an obvious sense of grievance for those opposing the Bill that see it as a means to limit, and in some cases prohibit, the democratic principles of free speech and expression.

Legitimacy – high profile policing responses to protest and freedoms (Clapham Common, Bristol, Covid – 19 enforcements), have led some to question the legitimacy of the police in enforcing current powers and there is controversy surrounding the policing response to the Coronavirus regulations.

Outgroup – protest activism is being generated by this Bill, which during a pandemic, is lowering the threshold for the police to intervene. This is leading to violence between both parties and further fuelling concerns around grievance and legitimacy.

Indeed, arguably the lowering of the police intervention threshold (during the pandemic) is a foreshadowing of what is likely to be seen if the Bill is enacted. Once a lower threshold for police intervention is provided in law there will be an expectation, not least at the political level, for the police to exercise that power which may lead to conflict.

Current police doctrine for protest centres on four principles which have been established through decades of crowd conflict research. They are Communication, Education, Differentiation, Facilitation. These principles have long been considered vital to successful de - escalation and good management of crowds⁴. Indeed, an entirely new type of police role in protest policing – the

⁴ Gorringe, H., Stott, C., Rosie, M., (2012) „Dialogue Police, Decision Making, and the Management of Public Order During Protest Crowd Events“. In *The Journal of Investigative Psychology and Offender Profiling*, 9, 111 – 125 Wiley Online. Holgerson, S., Knutsson, J., (2011) ‘Dialogue Policing – A means for Less Collective Violence?’ In Madensen, T., Knutsson, J., (eds) *Crime Prevention Studies: Preventing Collective Violence*. Boulder, Colorado Stott, C., (2009) ‘Crowd Psychology and Public Order Policing’: An overview of scientific theory and evidence. University of Liverpool Stott, C., Scothern, M., Gorringe, H., (2013b) *Advances in Liaison Based Public Order Policing in England: Human Rights and Negotiating the Management of protest?* In *Policing*, Oxford University Press, 1 – 15. Stott, C., Gorringe, H., (2013a) „From Sir Robert Peel to PLT“s“: Adapting to liaison –based public order policing in England and Wales. In Brown, J., (ed) *The Future of Policing*, Routledge, 239 – 251

protest liaison officer was created to operationalise the known science on how best to work with crowds⁵.

The protest measures in the Bill will potentially see less application of the Differentiation and Facilitation principles. It appears there would be less police / local authority facilitation of protest and that differentiation of participants would be negated as all participants would be considered to be in breach.

This represents a highly significant shift from police operational orthodoxy that emerged following the death of Mr Ian Tomlinson at the G20 protests in 2009.

A power to ban static assemblies is proposed. Operationally a ban is often more challenging than facilitation. A ban does not prevent people from attending the proposed event. Indeed, for many it can act as a catalyst to attend in breach of a measure they would see as lacking legitimacy. The police therefore would still be required to mobilise large numbers of officers to deal with those intent on attending the banned event.

For example, where a public procession is banned, the police charged with enforcing the ban face the prospect of arresting any instances of two or more people walking in the area with a common purpose (definition of a public procession being two or more people). This is practically impossible and of course extremely resource intensive. A similar position would be presented if static assemblies were to be banned. Operationally it is always better to facilitate a protest event than to restrict or ban such activity taking place. Once a ban is proposed it is often the case organisers will break off dialogue and planning cooperation with the police in favour of unannounced and multiple 'pop up' activity which can be extremely difficult for the police to deal with.

⁵ Waddington, D., (2012) "A Kinder Blue": analysing the police management of the Sheffield anti – Lib Dem protest of March 2011. In *Policing and Society: An International Journal of Research and Policy*, 23:1, 46 – 64

A measure to prevent disruption to business / organisations is proposed. As currently drafted, this appears to suggest that the business / organisation need not actually be the focus of the protest activity. For example, a protest focused outside a crown court building may be restricted or banned if an adjacent or nearby business / organisation complains of disruption (or asserts they might be so disrupted) to its operation because of the presence of the assembly. This gives third party organisations a leverage on the freedoms of free speech and assembly that would be unprecedented in the UK. It would also introduce another layer of complexity for the police in dealing with the protest, any counter protest, the local community and now, if enacted potentially multi – national companies and organisations.

Protesters have no right to insist on a particular venue or site for their protest. The final decision is often made in negotiation and dialogue with the police and local authority. Some groups, such as the English Defence League, have been known to return to particular cities or towns on multiple occasions where they have been denied their initial location of choice. The proposals carry the prospect that usual sites of protest (outside City Hall, Police Stations, Council Buildings etc) will be rendered unavailable because of possible disruption to commercial enterprises nearby.

Protesters want to be seen and heard; these are the very defining characteristics of protest. To negate this expression is, as has been said elsewhere, to render protest effectively meaningless. This may further cement notions of the illegitimacy of the police (in enforcing such measures) and a denial of procedural justice⁶ in the eyes of the protest community. The ability to protest outside a multi - national conglomerate HQ or local office appears to be under direct threat.

The Bill proposes that the police determine the level of noise and disruption generated during a protest and its ‘relevant impact’ on third party persons

⁶Sunshine, J., Tyler, T., (2003) „The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing“ in Law and Society Review, Vol 37, No 3, 513 – 547

present near the protest. It is for the police to decide if such a person is experiencing 'serious unease', 'alarm or distress' and the 'likely intensity of that impact' by the protest's noise. The Bill is silent on what happens when any counter protesters complain about their rival's noise level as a tactic.

Once the police have decided if the noise is disruptive, alarming, or distressing. Once they have decided the impact of the intensity of that noise to anyone in the vicinity, and once they have decided if someone - anyone anywhere near the protest - is experiencing 'serious unease' then Section 14 of the Public Order Act 1986 is amended in respect of the power to impose conditions on the protest.

The Bill gives a power to impose 'such conditions as appear to the officer necessary to prevent the disorder, damage, disruption, impact or intimidation mentioned in the subsection'. The implications are clear. The police will need to think about the protest, the noise generated in and around it, nearby premises or 'organisations' that may experience noise disruption, and the intensity of the noise for anyone, involved or not, near the protest. Ditto any counter protest.

If the noise / disruption threshold is met, the Public Order Act 1986 is amended to provide for the imposing of conditions on the numbers, duration, and location of the protest. This was available under the 1986 Act, but with a higher necessary threshold i.e., '*public disorder, serious damage to property or serious disruption to the life of the community*'.

It is likely conditions would be applied more commonly under the proposed Bill than has hitherto been the case. This may lead to increased instances of violence and disorder than is currently the case.

Conclusion

Following the death of Mr Ian Tomlinson in 2009 the then HMIC produced a landmark report on the principles of protest policing. Chapter 4 of that document distils the science and evidence of crowd psychology with direct evidence of the impact of police tactics and interventions on crowd behaviour. Vitality, Chapter 4 makes clear that crowds are in fact very often rational and self - policing, this is a direct contrast to what is known as 'classic theory' that crowds are inherently irrational and disposed to violence⁷.

The 2009 HMIC report was universally welcomed by police, legal and human rights scholars and by the protest community as being evidence – based, and human rights compliant. It saw highly significant reforms in protest policing that have, until now, protected and perhaps even enhanced the vital covenant between the police and the public.

Owen West is a recently retired (2019) Chief Superintendent in West Yorkshire Police. In a 30 year career Owen specialised in policing crowds and protests for over 20 years. He has commanded some of the largest police mobilisations for protest in northern England and has exercised the use of water cannon and firearms (in crowd contexts) with the Police Service of Northern Ireland.

Owen is a former member of the Policing and Security Group of SPI – B (Scientific Pandemic Influenza – Behaviours) and has co - authored a number of academic papers in peer reviewed journals. He is a regular contributor to Policing Insight magazine.

Owen holds a Master's degree (distinction) in Criminology and Police Management from Cambridge University where he is a graduate of the National Police Executive Programme. He has presented on crowd policing in America, Sweden, and Switzerland and is a former Research Fellow at Keele University.

⁷ Reicher, S., (1984) "The St. Paul's Riot: an explanation of the limits of crowd action in terms of a social identity model". In The European Journal of Social Psychology, Vol 14, 1 – 21.

Reicher, S., (1996) "The Battle of Westminster": developing the social identity model of crowd behaviour in order to explain the initiation and development of collective conflict in. In The European Journal of Social Psychology, vol. 26, 115 – 134

INQUIRY INTO RESPECT FOR THE CONSTITUTIONAL RIGHTS TO FREE EXPRESSION AND FREE ASSEMBLY AT THE CLAPHAM COMMON VIGIL ON 13 MARCH 2021 AND THE BRISTOL PROTESTS IN MARCH 2021

Response to call for written evidence

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Introductory comments

This brief responds to the four questions posed by the *All Party Parliamentary Group on Democracy and the Constitution* in relation to public protest and the *Police, Crime, Sentencing and Courts Bill*. I write in my capacity as an **academic criminologist with around 20 years' experience, and with a focus on the relationship between police, democracy and human rights**. For the last 15 years, I have been employed as Lecturer, then Senior Lecturer, at the University of Edinburgh.

The call for evidence concerns public order policing at the Clapham Common vigil of 13 March and Bristol protests of 26 and 29 March 2021. I focus on the former, not because the issues at the latter are any less pressing. Indeed in terms of initial evidence of particular use of force (e.g. 'chopping' actions with riot shields on prone demonstrators) and treatment of journalists and observers, the latter are alarming in the extreme. But in the context of limited time for submissions, and the available evidence, it is possible to say something with a firmer foundation regarding the Clapham Common events.

Key points

- Procedures prior to the 13 March vigil show that law on public assembly during the COVID19 pandemic was **subject to misinterpretation** suggesting no public gatherings were permissible, rather than the necessity to read regulations through the primary provisions of the Human Rights Act in reaching individualised decisions on a case-by-case basis.
- Human Rights case law emphasises the importance in democracies of **tolerance of non-violent gatherings**, including spontaneous gatherings which form an immediate response to circumstances.
- As key parties to decision on public assembly (e.g. conditions, prior advice on lawfulness, enforcement), **police have a conflict of interest in cases of assembly protesting against police or otherwise calling them to account**.
- At Clapham Common a protest emerged after the vigil (somewhere after 1800hrs). Police took a decision on enforcement by 1830 hrs. **This does not suggest protestors were given sufficient time to manifest their views and express solidarity**.
- Under principles of horizontal responsiveness, any extension of police powers in relation to public assembly should require **an extension and strengthening of powers of other actors** to scrutinise police decision making, to hold decision makers to account, and to act as a check against a 'chilling effect' of decisions on public participation in protest.

1. Clarity of law on public gatherings

Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?

The Inspectorate of Constabulary report (HMICFRS, 2021) on police activities around the Clapham Common vigil, published in response to requests from the Home Secretary and the Mayor of London, shows that **the law on public gatherings during the coronavirus pandemic has not been sufficiently clear**. In particular, the relative position of *All Tiers* regulations in England and the *Human Rights Act* (1998) seems to have been a point of misunderstanding. It appears from the report that the former were treated as primary, and that there was confusion, or at least a plurality of views, within the Metropolitan Police Service, and between the MPS and interlocutors, over whether *any* gathering for purposes of public protest could be lawful. Vigil organisers were shocked at the point that MPS informed them they could be liable for arrest under the Serious Crimes Act if they encouraged attendance; they were also told they could be liable for fixed penalty notices of up to £10,000. The fact that the parties needed to seek guidance at the High Court is indicative that, prior to Mr Justice Holgate's decision (in *Leigh v Commissioner of Police of the Metropolis*), **there was not adequate clarity for organisers or potential attendees to make an informed decision on the likely lawfulness of attending, or encouraging attendance at, an event in advance of that event**.

2. Best practice

What elements of national/international best practice in balancing, maintaining, and/or facilitating the rights to free expression and peaceful assembly (a) during the pandemic and (b) after the pandemic were relevant to (a) the Clapham Common vigil on 13 March (b) the Bristol protests between 26 and 29 March?

Assessing best practice in the context of the pandemic is difficult, given the dynamic situation with regards to public health factors and related regulations (the level and distribution of infection, emerging new variants, changes in the R-number, changes in regulations). There is a lack of precedent in the sense of directly comparable cases to the specific context of 13 March. *Leigh* reinforces two earlier cases to state that a blanket ban on protest is not compatible with the Human Rights Act, and points to a case by case approach in which article 10 and 11 rights to expression and assembly are accounted for. These rights have to be balanced in relation to other considerations, including the other rights, and considerations of public health and security.

Some case law at the level of the European Court of Human Rights gives general guidance on maintaining and facilitating the right to expression and assembly, which would generally apply outside the context of the pandemic, but which may also give some guidance taking into account the latest scientific knowledge on how COVID19 (or similar viruses) spread. This is key not just to maintaining human rights, but is fundamental to the role of police in a democracy, something I have written on separately with Jarret Blaustein (now at Monash University, Australia) and Ceren Mermutluoğlu (MEF University, Istanbul) under the heading of Policing for Democracy.

Policing for Democracy

The effective and equitable provision of a secure space in which free political action and communication can take place constitutes policing for a democracy.

Aydın-Aitchison and Mermutluoğlu, 2021, pp. 76.

Police are not simply passive agents shaped by their political environment but they help shape that environment and the system of government (Bayley, 1969: 12–13, 409)... Minimum standards of police practice are necessary, if not sufficient, to support political democracy. Policing for democracy is policing that does not damage, but actively supports, the development of the core elements of democracy... In terms of practical implications, policing for democracy calls for a combination of restraint and positive obligations rooted in protecting the exercise of political freedoms... These restraints and obligations help to ensure that institutions act in their legally constituted manner, that there is a free and open line for communication between citizens and political representatives and that public space is available for political debate.

Aitchison and Blaustein, 2013, pp. 498-499.

Public and private assembly is a key means by which citizens communicate with each other and with governing authorities (Aydın-Aitchison and Mermutluoğlu, 2021, p 90). The contrast between police action and ECtHR decisions in *Molnár v Hungary* and *Bukta v Hungary* is instructive. Both cases highlight the importance of ‘a certain degree of tolerance’ on the part of public authorities towards peaceful gatherings, even where these have not been formally notified; they also highlight issues around circumstances in which the only adequate response on the part of the public is an immediate demonstration. In *Molnár*, these circumstances were not seen to pertain, as protest concerned events having taken place approximately 2 months before the gathering; moreover, the police allowed demonstrators approximately 8 hours of gathering, with the court assessing this as **adequate time to manifest views and show solidarity**. In the case of *Bukta* demonstrators responding to an event only notified the prior day were moved on swiftly by police, using the lack of prior notification as a justification. The court found this to be disproportionate when dealing with a peaceful protest. Similar concerns have been identified in cases concerning Turkey (*Balcık v Turkey*, *Oya Ataman v Turkey*, and *Aldemir v Turkey*), with the court remarking on ‘authorities’ impatience’ to end demonstrations.

In the case in point, interference with the right to assembly may be justified where it protects the interests listed in paragraph 2 of Article 11 of the ECHR, including public safety and the protection of health, but I have found nothing comparable in ECtHR case law that would provide an example of good or bad practice.

A further point comes under a second element in the relationship of police and democracy – democratically responsive policing. Here the concern is not with how the police impact, positively or negatively, on democracy in a given polity. Rather, it is a matter of whether the police, as a public body, are governed in a way which is democratic, defined through a range of elements of responsiveness.

Democratically Responsive Policing

Democratically responsive policing... focuses on the mechanisms and structures surrounding police policy and action... this can go beyond the police to include, for example, prosecutorial and judicial bodies. Following Kuper, Aitchison and Blaustein focused on democratic police governance as characterised by responsiveness. This demands that policing is shaped in response both to the population of a polity (vertical responsiveness) and to other institutions (horizontal responsiveness). Commonly identified features of democratic policing feed into structures which demand police respond to citizens and to legal and political institutions. These features speak to vertical aspects (redress, participation, reaction, accessibility), horizontal aspects (competition, distribution of power, accountability) or both (information). Vertical forms of responses refer to a more direct means by which citizens can signal their interests to the state, whereas horizontal responsiveness defines an institutional arrangement that favours different authorities in a relationship requiring compromise and consensus building to maximise the system's responsiveness "to the views and best interests of the public." This responds to the epistemic impossibility of a single perspective representing 'perfect knowledge' or the 'totality of political knowledge'. As such, Kuper proposes multiple authorities dependent on each other to fulfil their functions²² and presenting each other with "an ongoing and credible threat of exposure and sanction."

Aydın-Aitchison and Mermutluoğlu, 2021, pp. 76.

Here, I have a concern about a potential **conflict of interests in police decision making** around the Clapham Common vigil of 13 March. That is to say that while the vigil was intended to commemorate Sarah Everard, it was also in effect a public critique of, and protest against, police and broader shortcomings in providing security to women. **Where police are making decisions on public assemblies which protest against police policy or action, principles of horizontal responsiveness suggest that, as a minimum, their decisions must be subject to strong external oversight, but more strongly that they not be left in the position of sole decision makers in such instances.**

3. Clapham Common and best practice

How does the police approach and conduct at (a) the Clapham Common vigil and (b) the Bristol protests compare with relevant best practice?

While the HMICFRS report indicates that the vigil proceeded to become confrontational after 1830 hrs, it still does not indicate demonstrators engaging in acts of violence and so suggests that the 'certain degree of tolerance' advocated by the ECtHR remains relevant, but for the matter of the pandemic. The chants that come from crowds at this point do suggest the transition from a vigil for Sarah Everard as a victim of murder, into a protest against the police.

Chants observed at Clapham Common after 1830hrs, 13 March 2021

Who do you serve? Who do you protect?

Arrest your own

How many women? How many more?

Protect our women

HMICFRS, 2021, pp. 35

While I would be cautious about drawing too clear a line between vigil and protest, I think that some degree of separation is credible, and as such there is question **about the extent to which police**

should have been tolerant of an emerging demonstration which followed on from the vigil, and which could be said to have started somewhere between 1800 and 1830 hrs. This transition was recognised by police who observed a shift to a static gathering, speeches and placards. Already at 1830hrs, enforcement action was authorised, and by 1944hrs, five arrests had been made. **But for the pandemic, it seems doubtful that this would meet the requirements of tolerance of non-violent (if confrontational) protest. In terms of making views manifest and demonstrating solidarity, only a limited time was available before instructions to disperse and the authorisation of enforcement action.**

I am reluctant to comment on the public health rationale for the decision to commence enforcement action so swiftly upon the emergence of a distinct protest after the vigil, as I have inadequate knowledge of the relevant science relating to transmission risks and have not had direct sight of images of the Common and the gathering at the relevant point in time.

4. Extending police powers

What, if anything, do the events at Clapham Common and in Bristol tell us about the propriety of the extension of police powers in the Police Crime Sentencing and Courts Bill?

The proposed changes to the Public Order Act 1986 would empower the police to impose conditions on public processions and public assemblies in relation to noise which may cause ‘serious disruption to the activities of an organisation which are carried on in the vicinity of the procession’ or which may have a significant relevant impact on ‘persons in the vicinity’. This extends beyond conditions imposed because of the threat of serious public disorder, serious damage to property, serious disruption to community life, or intimidation of others. The amendments are focused on sections 12 and 14 of the existing act and leave untouched section 13 regulating the prohibition of assemblies. The bill therefore proposes extending the powers available to police to set conditions on public assembly with the possible consequences of criminalisation of organisers and attendees, with maximum sentences increased from 3 months’ to 51 weeks’ imprisonment for organisers.

The possibility of conditions being imposed in such a way that the threat of criminalisation has a ‘chilling effect’ on those who might otherwise take the opportunity to express their political preferences to fellow citizens and public authorities through peaceful (if noisy) public protest should not be taken lightly in a democratic society. If such powers are to be held, principles of horizontal responsiveness require a robust set of arrangements to ensure that multiple authorities are involved to provide fair and reasonable decision making. For example, in the case of prohibiting public assembly the power does not lie with the police, but requires police to apply for an order from the relevant municipal government, or in the case of the City of London and Metropolitan Police, to the Secretary of State. **The greater the power to impose conditions, the greater the need for immediate scrutiny of police decision making, particularly in, but not limited to, instances where public assemblies are held to express public preferences about policing or to hold the police to account.** The current bill would be a case in point, and provisions for extended scrutiny are absent.

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**BEFORE THE ALL PARTY PARLIAMENTARY GROUP
ON DEMOCRACY AND THE CONSTITUTION**

**RE: INQUIRY INTO RESPECT OF FREEDOM OF
EXPRESSION AND ASSEMBLY DURING THE
COVID-19 PANDEMIC**

WRITTEN SUBMISSION

I. INTRODUCTION

1. The following submissions are drafted in response to a request for evidence on behalf of the All Party Parliamentary Group on Democracy and the Constitution (“the APPG”) in relation their inquiry into respect of constitutional rights to freedom of expression and assembly at the Clapham Common Vigil on 13 March 2021 (“the Vigil”) and subsequent protests in Bristol. I understand the APPG also intend to consider related aspects of the proposed ‘Police Crime Sentencing and Courts Bill 2021’ (the “PCSC Bill”).
2. My evidence below is set out in accordance with specific questions put by counsel on behalf of the APPG. Thereafter a number of further matters are addressed which I believe to be of relevance to the APPG’s inquiry and hope are of assistance.
3. I am a barrister, called in 2014 and currently practice at Doughty Street Chambers I have a mixed legal practice which broadly covers ‘human rights and criminal justice’. More specifically my practice areas include criminal litigation and actions against the police as well as other areas of crime-related public law, prison law, extradition, immigration and asylum law and international criminal law including death penalty cases. My chambers profile can be accessed here <https://www.doughtystreet.co.uk/barristers/pippa-woodrow>
4. Since April 2020 I have been instructed to advise and to act in numerous cases concerning the criminal offences and police enforcement under the various of ‘Coronavirus Regulations’ applicable in England and Wales. Between May and August 2020, along with Kirsty Brimelow I was also involved in producing open advice and

guidance in relation to the content and operation of criminal offences under the Coronavirus Act 2020 and the various iterations of the Coronavirus (Health Protection) (England) Regulations. A number of these cases have concerned individuals subject to enforcement when seeking to gather with others, including for the purpose of protest.

5. On 11 March I was instructed by Bindmans Solicitors to act (led by Tom Hickman QC and Adman Wagner) for Jessica Leigh, Anna Birley, Henna Shah and Jamie Klinger ('The Claimants'). The Claimants represented a larger group of women ("RTS") from the Clapham area (or nearby) who had come together to found the #reclaimthesestreets movement and were seeking to facilitate a Vigil at Clapham Common on Saturday 13 March in memory of Sarah Everard. The Vigil was to be held both for Ms Everard and for all women who feel unsafe, who go missing from streets, or who face the fear of violence every day to channel their grief and distress. It was intended to raise awareness and provoke change in attitudes towards and understanding of the pervasiveness of threats faced by women.

II. RESPONSE TO QUESTIONS ASKED ON BEHALF OF THE APPG

Q1) Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?

6. In my view the answer to this question must be no.
7. It is a basic requirement of Articles 10 and 11, as well as the common law principles of 'legality' and the 'rule of law', that restrictions on the exercise of fundamental rights – particular where they are contained in criminal law prohibitions, must be accessible to those concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.¹ This principle is particularly important in the context of criminal law.² Also, the law must be sufficiently clear in its

¹ *Maestri v. Italy* [GC], no. [39748/98](#), § 30

² *Warner v Metropolitan Police Commissioner* (1968) 52 Cr.App.R. 373, 414. Per Lord Morris of Borth-y-Gest: "...in criminal matters it is important to have clarity and certainty."

terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to interfere with the rights guaranteed by the Convention.³

8. The experience of the Claimants provides a clear demonstration that the law and guidance has failed to achieve this: women who had proactively engaged with the police, sought expert legal advice, and sought the assistance of the High Court were still unable to know whether or not their proposed actions would amount to an offence and/or whether they would be subject to criminal justice sanctions. MPS officers also appeared entirely unable to tell the Claimants what form of event (in their view) the law would or would not permit and whether the Claimants would be liable to receive eye-watering fines of £10,000 - regardless of how the Vigil was organised.
9. Further, and beyond the particular experience of the RTS Claimants it has become very clear both before and since the High Court proceedings on 12 March 2021 that neither the police (nationwide, and not limited to MPS) nor the public, nor indeed government ministers, have been unable to understand the law as it relates to gatherings for the purpose of protest during the pandemic unless it has been expressly set out in the Regulations themselves.
10. This confusion and lack of clarity as to what the law does or does not permit has had a chilling effect on the right to protest. Many people, including but certainly not limited to, the Claimants have been dissuaded from exercising their rights by the threat of criminal sanction. I am aware of numerous cases in which regular protest events have ceased on the basis that participants feared criminal sanction, despite the fact that those events are highly likely to have been lawful throughout lockdown. This is a matter which ought to be of grave concern - as set out below state authorities have a duty not only to refrain from unlawful interference with protest but positive duties to protect and facilitate rights to freedom of expression and assembly. The *chilling* of protest (whether deliberate or otherwise) beyond that which is necessary and in accordance with the law is corrosive of the democratic process, and contrary to fundamental human rights

³ *Liu v. Russia*, no. [42086/05](#), § 56, 6 December 2007; *Gülmez v. Turkey*, no. [16330/02](#), § 49, 20 May 2008; *Vlasov v. Russia*, no. [78146/01](#), § 125, 12 June 2008; and, *mutatis mutandis*, *Bykov v. Russia* [GC], no. [4378/02](#), § 76, 10 March 2009

protections. That this should occur at a time when political representatives are making decisions with some of the most far-reaching consequences in modern times is particularly, serious both from a legal and a societal perspective.

11. Below I have sought to set out what the law is, what appears to have been the central failure of understanding in the approach adopted by police, and what the root causes are of the confusion and lack of clarity in the law and its application.

What is the law?

12. The Health Protection Regulations have, in various forms, imposed restrictions upon leaving home and gathering with others and have made it a criminal offence to breach those restrictions without a ‘reasonable excuse’. Various ‘exceptions’ to the general prohibition or examples of what could be considered a ‘reasonable excuse’ have been set out in the Regulations and have changed with new versions of the Regulations (of which there have now been 71 sets⁴).
13. The Police (and other ‘authorised persons’) are given powers to enforce these restrictions, including the power to issue fixed penalty notices (which begin a process towards criminal prosecution) where they “*reasonably believe [a person] has committed an offence under [the] regulations*” Police have further powers of arrest under the s24 of the Police and Criminal Evidence Act 1984 where they have “*reasonable grounds to suspect that an offence has been committed.*” There is no appeal against an FPN, and recipients are told that non-payment will lead to criminal prosecution for the alleged offence in the Magistrates Court.
14. On 12 October 2020 protest was, for the first time, listed as an explicit exception to the restrictions on gatherings under the new ‘tiered’ restrictions then introduced⁵ (subject to restrictions in terms of the identity of organisers and the completion of adequate risk assessments). At other times however the Regulations have been silent in relation to gatherings for protest.

⁴ The various Regulations have been helpfully tabulated by Adam Wagner whose table can be found here, along with a table of cases which have been concerned with coronavirus restrictions <https://docs.google.com/document/d/1ne4zhPYAZK8G867D1lz0Gg2ZJFLGmF2K/edit>

⁵ Health Protection (Coronavirus, Restrictions) (All Tiers) (“England”) Regulations 2020

15. At the time of the Vigil, the relevant provisions were contained in Schedule 3A of the ‘All Tiers’ Regulations⁶ and included restrictions on participating in, or organising, a ‘relevant gathering’ – the definition of which would have included the proposed Vigil.
16. In contrast to provisions relating to Tiers 1-3, there was no express exception within the Tier 4 restrictions to the prohibition on gatherings for the purpose of protest. Although, notably, there was an express exemption of the purpose of ‘picketing’ which provided as follows:
- “(25) *Exception 17 (to the prohibitions on gatherings) is that:*
- (a) *the gathering is for the purposes of picketing which is carried out in accordance with the Trade Union and Labour Relations (Consolidation) Act 1992, and*
 - (b) *the gathering organiser takes the required precautions in relation to the gathering.*

The Right to Protest

17. The Health Protection (Coronavirus Restrictions) Regulations (in various forms) are secondary legislation and are therefore always subject to primary legislation including the Human Rights Act 1998 (the “HRA”) Section 1 of the HRA gives effect to “the Convention Rights” which are set out in Schedule 1 to the Act, and include the right to freedom of expression and freedom of assembly protected by Articles 10 and 11 of the European Convention on Human Rights (ECHR) respectively.
18. Section 6 of the HRA provides that no public authority may act incompatibly with a Convention right. Section 3(1) provides that “[s]o far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
19. The fundamental role of freedom of expression and assembly as “one of the essential foundations” of a democratic society has been repeatedly underscored by the European Court of Human Rights (for example, *Handyside v United Kingdom* (1979-80) 1 EHRR 737). Protest is a right protected under both Article 10 and Article 11 and applies to

⁶ *Ibid.*

both those participating in, and organising, a gathering.⁷ A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction.⁸

20. The right of freedom of peaceful assembly covers both private meeting and meetings in public places, whether static or in the form of a procession. The right can be exercised by individual participants and by the persons organising the gathering.⁹ Moreover, the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, within the limits established by paragraph 2 of Article 11.¹⁰

21. In *DPP v Ziegler* [2019] EWHC 71 (Admin) the position in domestic law was helpfully summarised by Singh LJ and Farbey J as follows:

48. The right to freedom of expression in article 10 of the ECHR is one of the essential foundations of a democratic society. This has long been recognised by the European Court of Human Rights. It has been recognised by the courts of this country, both before and since the introduction of the HRA. It has also been recognised by the highest courts of other democratic societies, for example in the United States, where freedom of speech and freedom of assembly are protected by the First Amendment to the US Constitution.

49. The jurisprudence, which is too well known to require citation here, discloses the following essential bases for the importance of the right to freedom of expression:

(1) It is important for the autonomy of the individual and his or her self-fulfilment. It is clear that the right extends far beyond what might ordinarily be described as “political” speech and includes, for example, literature, films, works of art and the development of scientific ideas. It is also clear that the right protects not only expression which is acceptable to others in society (perhaps the majority) but also that which may disturb, offend or shock others.

(2) It is conducive to the discovery of truth in the “marketplace of ideas”. History teaches that what may begin as a heresy (for example the idea that the earth revolves around the sun) may end up as accepted fact and indeed the orthodoxy.

(3) It is essential to the proper functioning of a democratic society. A self-governing people must have access to different ideas and opinions so that they can effectively participate in a democracy on an informed basis.

⁷ *Yılmaz Yıldız and Others v. Turkey*, (Application no 4524/06), 2014, §41

⁸ *Kudrevičius v Lithuania* (2016) 62 EHRR 34, §146

⁹ *Djavit An v. Turkey*, 2003, § 56; *Barraco v. France*, 2009, § 41; *Yılmaz Yıldız and Others v. Turkey*, 2014, § 41

¹⁰ *Sáska v. Hungary*, 2012, §§ 21-23

(4) It helps to maintain social peace by permitting people a “safety valve” to let off steam. In this way it is hoped that peaceful and orderly change will take place in a democratic society, thus eliminating, or at least reducing, the risk of violence and disorder

50. It is also clear from the jurisprudence of the European Court of Human Rights (like that of other democratic societies such as the United States) that the right to freedom of expression goes beyond what might traditionally be regarded as forms of “speech”. It is thus not confined, for example, to writing or speaking as such. It can include other types of activity, even protests which take the form of “impeding the activities of which they disapproved”: see Hashman and Harrup v United Kingdom (1999) 30 EHRR 241, para 28. ...”

22. The Regulations cannot therefore, and do not, amount to a blanket ban on gatherings for the purpose of protest – even where the relevant prohibitions appear to omit any exception for the purpose of protest. The Courts in Dolan v Secretary of State for Health [2020] EWCA Civ 1605 and again in Leigh have made clear that where protest is not expressly provided for, the right to protest under Articles 10 and 11 is given effect through the mechanism of the ‘reasonable excuse’ element of the offence under the Regulations. The Court of Appeal in Dolan stated as follows:

“101. Article 11 guarantees the right to peaceful assembly and association. On the face of it, [regulation 7](#) as originally enacted in March 2020 might be thought to have taken away this right altogether. Nevertheless, it must always be recalled that [regulation 9\(1\)\(a\)](#) provided a general defence of “reasonable excuse”.

...

103. The first difficulty with Mr Havers' submissions on article 11 is that he submits that the regulations must necessarily be regarded as being incompatible with article 11 in all, or nearly all, circumstances. It is difficult to see how that can be so when the regulations themselves include the inbuilt exception of “reasonable excuse”. That would necessarily focus attention on the particular facts of a given case in the event of an alleged breach. In our view, the regulations cannot be regarded as incompatible with article 11 given the express possibility of an exception where there was a reasonable excuse. It may well be that in the vast majority of cases there will be no reasonable excuse for a breach of [regulation 7](#) as originally enacted. There were powerful public interests which lay behind the enactment of [regulation 7](#), given the gravity of the pandemic in late March.

104. Furthermore, as Sir James submits, the phrase “reasonable excuse” is not materially different from the phrase “lawful excuse”, which is used in [section 137 of the Highways Act 1980](#) and which was construed by the Divisional Court in DPP v Ziegler [2019] EWHC 71 (Admin); [2020] QB 253 as being capable in principle of embracing the exercise of Convention rights, in particular article 11, depending on the particular facts: see paras. 58 to 65 in the judgment of the Court (Singh LJ

and Farbey J). In particular, we would emphasise the way in which the Divisional Court concluded, at para. 65: "This is inherently a fact-specific inquiry".

...

106. Finally, Sir James reminds us that the HRA is primary legislation, whereas the regulations are subordinate legislation. If there were any conflict between them, it is the HRA and not the regulations that would have to take priority. It would be possible to resolve any potential conflict by the process of interpretation required by [section 3 of the HRA](#) were there an incompatibility with a Convention right: see [Poplar Housing and Regeneration Community Association Ltd \[2001\] EWCA Civ 595; \[2002\] QB 48](#), at para. 75, in particular at sub-para. (a) (Lord Woolf CJ)."

23. The Coronavirus Regulations (and the absence of any exemption for protest) therefore cannot be the 'starting point' when determining the lawfulness of participating in (or organising of) a 'relevant gathering'. Where a gathering is capable of engaging the restrictions within the Regulations, the starting point is an assessment under Articles 10 and 11. Unless interference with that gathering is 'necessary' for one of the purposes listed under Article 10 (2) and 11(2) respectively (which include protection of health) then any participant or organiser will be acting with a 'reasonable excuse' and will not therefore have committed any offence. Further, and importantly, there will be no basis upon which the police may seek to exercise methods of enforcement under the Regulations.

The MPS approach: a presumption of illegality

24. Notwithstanding the representations made by counsel and lawyers on behalf of MPS in court cases, the actions, written policies and oral statements (both public and private) of which I am aware in relation to the Vigil and subsequent protests, it is clear that police officers (at all levels) have not understood the Regulations as they relate to gatherings for protest, nor their proper role and function in facilitating such gatherings.
25. In practice, for much of the pandemic (certainly during periods in which an exception for protest has been omitted from the Regulations) the police appear to have been operating on the basis that gathering for protest is not permitted - i.e., that there is, in effect a blanket ban, in which the only discretion arises in the context of enforcement. Put another way, the police position has been to presume that all gatherings for protest are contrary to the Regulations and that organisers/participants of gatherings for the purpose of protest are therefore committing an offence ('the presumption of illegality').

The approach has then been to consider their discretion as to whether and to what extent take enforcement action in any given case.

26. The failure of MPS to understand the law, and the ‘presumption of illegality’ approach has become evident from:

- a. Communications and pre-action correspondence with police during the course of litigation, as well as statements made by MPS officers in meetings with the Claimants between 10 – 15 March;
- b. Public statements by the Commissioner herself in press conferences and in interviews as to the status of the Vigil and the justification for those attending earlier in the day (such as the Duchess of Cambridge) which have been legally flawed and often inconsistent/confused;
- c. The MPS Strategy document for policing large gatherings under Tier 4 restrictions entitled ‘Op Pima’.¹¹ The strategy makes no mention at all of Article 10 and 11 rights and emphasises only that protest is ‘not exempted’ from the restrictions on gatherings. No guidance or other consideration is given as to how Article 10 and 11 rights may affect the legality of gatherings for protest, or how ‘proportionality’ is to be assessed. The clear inference arising from this document is that the policy presumes gatherings for protest are not permitted within the Tier 4 restrictions and the discretion is only relevant at the enforcement stage (e.g., by seeking to deploy the ‘4 E’s approach’.
- d. Findings of the HMICFRS which noted that MPS decision makers had failed to understand the law, stating at page that:

In the Metropolitan Police decision to follow Operation Pima, there remains some evidence of the legal confusion we have identified above. For instance, there is the suggestion in the Gold Commander’s log that:

“Whilst we do need to consider peoples article 10/11 rights throughout our decision making, a good chunk of this consideration has been done by Parliament, in that, in the All Tiers/National lockdown restrictions there was no exemption for protest/larger gatherings (where COVID safe measures had been taken), this measure was clearly in place in the Tier 2/3 restrictions so the intent of Parliament seems clear.”

This is an incorrect interpretation of the All Tiers Regulations. For the reasons we have explained above, the fact that there was no exception

¹¹ This document was referred to by Mr Justice Holgate in his ruling on 12 March 2021 is now publicly available but is provided in soft copy for convenience.

for protests under Tier 4 restrictions does not mean that any and all protests will be unlawful, and where COVID-19 safety measures are taken, this will be particularly relevant to whether or not a “reasonable excuse” defence is likely to be available...

- e. Other examples of enforcement action throughout ‘lockdown’. I am aware of other cases in which protestors, even in very small numbers (in one case as few as 2 people conducting a static demonstration) have been subject to enforcement under the Regulations in circumstances where it is difficult to discern any health risk above that which is permitted by activities that are expressly exempted.

27. This presumption of illegality approach represents a failure to understand the law. As set out above, and setting aside any other legal restrictions (e.g., concerning public order etc) in the context of Regulations made under powers to protect public health, the correct position is that this means the right to protest in any given case can only be interfered with where it is strictly necessary to do so in order to protect health. This requires a fact specific proportionality assessment which must have regard to all the relevant circumstances relating to any given event. The starting point must be that protest (which is otherwise in accordance with the law) is legal (i.e., it will amount to a non-listed ‘reasonable excuse’ for gathering) unless it can be shown that the risk to public health is disproportionate in all the circumstances. It is only in those circumstances that the police will have any powers to take any enforcement action at all under the Regulations (including ‘encouragement, engagement, and explanation’).

28. As indicated above, the result of the unlawful approach taken by MPS (and other forces) has been that protest has been restricted and ‘chilled’ beyond what the law requires, and it is highly likely that there have been systemic breaches of fundamental rights.

Why has there been confusion?

29. In my view, there are two core difficulties in the law which have led to widespread confusion amongst police, politicians and the public as to legal status of protest or of particular protest gatherings:

- i. The operation of the ‘presumption of illegality’ approach by police (including promotion of this misconception by the National Police Chiefs and the College of Policing in their published guidance); and

- ii. the complexity and lack of guidance in how the law should be applied to any given facts, even once it is understood.

These two difficulties, and their causes are addressed in turn below.

(i) Why have the authorities been operating a presumption of illegality:

30. The MPS' failure to understand that gatherings for protest are presumptively legal is likely to have resulted from 3 interrelated reasons:
 - a. The lack of clarity arising from the structure and wording of the Regulations themselves;
 - b. The guidance from the College of Policing which proceeds on the same mistaken interpretations/assumptions which have affected MPS decision-making;
 - c. The consistent practice of ministers in issuing guidance which is inconsistent with the law, without making these differences clear.

The structure and wording of the Regulations themselves

31. A point repeatedly made by MPS (and other forces) has been that the Tier 4 Restrictions do not contain an express exemption for protest, and that this was in contrast to the provisions relevant to Tiers 1-3 which did have express exemptions. The logical inference relied upon by police was therefore that Parliament had intended to ban protest in Tier 4 areas and could not be relied on as an exemption or reasonable excuse for gathering.
32. Looked at in isolation, this is perhaps a logical interpretation of the Regulations, and a misapprehension that might have even been inevitable, at least in respect of 'rank and file' officers. Being realistic, it unlikely that every officer would have had the capacity to read and understand the detailed case-law concerning relevant convention rights or indeed the Court of Appeal ruling in Dolan. Officers are likely to have been reliant, at least to some extent on accurate and clear guidance from those in leadership positions including the National Police Chiefs and the College of Policing who have issued various 'briefings' on the Coronavirus Restrictions throughout the pandemic, designed to assist the police and the public in knowing what the law does or does not permit.

Misleading guidance

33. Unfortunately, following the Dolan decision there was no guidance issued, or other efforts made to educate officers as to the relevance and application of Article 10 and 11 rights.
34. The guidance issued by the College of Policing (much like the Op Pima strategy document) deals with the text of Regulations, emphasising that there is no ‘exception’ for protest. It contains no reference to Article 10 or 11, nor the possibility that protest might amount to a reasonable excuse, nor of the need for an assessment of necessity or proportionality in any given case. The ordinary officer or member of the public considering that guidance was bound to assume that gathering for protest was presumptively illegal and could not be permitted under the Regulations.
35. A further operational example arises from the Gold Commander Log cited in the HMICFRS Report (set out above) in which the Gold Commander appears to presume and to direct his officers, that protection of Article 10 and 11 rights and the ‘balancing exercise’ required are already reflected in Regulations themselves. It is effectively presumed that because the Regulations do not exempt protest it must be unlawful and therefore proportionate to enforce under Articles 10 and 11. It may be unrealistic to expect that officers on the ground tasked with enforcing the orders of Gold Command would be equipped to undertake their own detailed legal analysis of the proportionality and legality of any given gathering.

Blurring of law and ministerial ‘guidance’

36. It has been a consistent feature of ministerial messaging throughout lockdown that government guidance is presented as if it reflected and has the status of law. Guidance has frequently been more restrictive than the law itself. I have seen many examples in various different contexts of police officers seeking to enforce guidance which is not reflected in law and thus subjecting people to criminal justice sanctions where they have acted entirely lawfully throughout. It is likely therefore that in the context of protest specifically, government ‘guidance’ or public ‘comments’ seeking to dissuade gatherings – including for protest - may have contributed to an erroneous belief that protest was not legally permitted. Police have no powers to enforce guidance - indeed to do so is unlawful and poses real questions for the constitutional role of police.

37. I note that these errors of understanding, and dependence upon ‘guidance’ rather than law has been to some extent a result of the way legislation has been drafted and published throughout the pandemic. It has become a *modus operandi* for secondary legislation to be published very shortly (in some cases mere hours) before they are due to come into force, leaving members of the public and police with little time to digest and understand it, and dependent upon public statements and media reporting (which largely reflects ministerial statements) in order to know what the new restrictions permit. Parliamentary oversight has been extremely limited in substance, and often has only been sought after the Regulations have come into effect. This way of operating has been very unhelpful both for the public and for police, and it has materially contributed to errors in policing and the inevitable breakdown in trust that results from unlawful police interference.

The outcome of fact-specific proportionality assessments are difficult to predict

38. As set out above, the legality of participation in a gathering for the purpose of protest is dependent upon a fact-specific assessment of proportionality under Articles 10 and 11 ECHR. However, this may be difficult to determine in advance (at least for a participant¹²). Ordinarily an assessment of proportionality under Articles 10 or 11 arises after the event, and is conducted by a court considering detailed evidence, hearing legal argument and coming to a reasoned decision as to the proportionality of state interference. This exercise is not well suited to providing the clarity and foreseeability required for criminal prohibitions which must be clearly knowable in advance.

39. Further, there is little or no guidance available to the police or the public as to how such an analysis is properly to be conducted, or what factors should (at a minimum) be taken into account. In the absence of such guidance as to how proportionality is to be assessed, it will be almost impossible in many cases for a participant considering attending in a gathering to know in advance of attendance whether or not they will be committing an

¹² The ‘organiser’ offence is somewhat different in that it should be possible for organisers to know what event would, in principle, be lawful. They would then be able to make decisions about whether or not this was achievable. The prospect of unforeseen developments should not, in principle be relied upon as reason for lack of clarity. In the event that an unforeseen event occurs which is outside of the scope of what was ‘held’ by the organisers they would not be liable and should not be threatened with potential enforcement in respect of such matters. (See paragraph 41 below)

offence. The ‘reasonable excuse’ mechanism for protection of Article 10 and 11 rights is therefore, in my view, insufficient to enable people to know in advance the consequences of their conduct and therefore to ensure that those rights are protected.

40. I note that the Court in *Dolan* considered the argument that the Regulations (then in force) were sufficiently clear to be compatible with Article 10 and 11 rights. However, subsequent events – including the policing of the Vigil provide a clear compelling basis for that aspect of the decision to be revisited.

The ‘organiser’ offence

41. Finally, there has been a further lack of clarity as to the content and scope of the ‘organiser’ offence with which the Claimants were threatened – police being unable to indicate whether or not they would be fined in the event they proceeded with organising the Vigil. (It is unclear whether this was because police considered the legality of the gathering to be unclear - which would be of real concern, or whether this was because they did not want to commit to decisions about enforcement in respect of a gathering which was unlawful - which is a more reasonable position.)
42. The MPS position, as set out in, and endorsed by the HMICFRS report was that they could not commit to a position in advance of the gathering because there may be unforeseen developments for which they could not plan, and in respect of which they – perfectly reasonably – would not want to tie their hands. However, in my view this position misses the central point. If the law is adequately clear and certain it should be possible to know, as a matter of principle, what form of event would be lawful and what would not. In the event that participants go on to act unlawfully there is then no difficulty in moving to enforcement.
43. The difficulty in this case was that the police declined to engage in any meaningful way with the RTS organisers and refused to give any indication as to what arrangements would or not be within their interpretation of what the law permitted. It should have been possible to do so. The ‘organiser’ offence criminalises ‘holding, or being involved in the holding of’ a ‘relevant gathering’ without a reasonable excuse. It should have been possible for the organisers to know what arrangements would have been lawful in all the circumstances – and could then have made decision as to whether and how to

proceed, including whether they thought this was achievable. The potential for ‘unforeseen events’ should not have caused any difficulty in terms of legal clarity. If the gathering had for reasons beyond the Claimant’s control become ‘unlawful’ and materially different from what they had facilitated, there is a good argument to suggest that they would not have been ‘involved in the holding’ of that subsequent unlawful gathering. It should have been possible therefore for the Claimants to have a clear indication of the legal limits of any event in order to enable them to make decisions and exercise their rights accordingly. The failure to provide this effectively prevented them from doing so.

Q2) What did you understand to be the legal status of (a) the proposed vigil, and (b) the vigil that actually occurred?

44. It very difficult to give a definitive answer to these questions. This both demonstrates the lack of clarity in the law, but also arises in respect of question 2(a) from the fact that meaningful negotiations with between the organisers and MPS were not permitted to take place. Whilst organisers sought clarity as to what arrangements the police felt would be permitted (including suggestions of spreading the event out over the course of the day, limiting numbers, providing sound systems to avoid crowding, presence of covid marshals to maintain social distancing etc) no such clarity was forthcoming and therefore a firm set of arrangements for a proposed event were never formalised. It is difficult therefore the assess what risks would have arisen in the event an RTS organised event had gone ahead.

45. However, as set out in the legal opinion published after the Judgment (attached as Annex A) the Judgment of Mr Holgate means that there must have been some version of an event which could have taken place within the law. The following matters are of particular note, although necessarily speculative in some respects:

- a. By the time of Holgate J’s ruling, and thereafter, it was clear that large numbers of people were likely to attend Clapham Common regardless of whether the Claimants were involved;
- b. The Claimants including women in positions of local leadership and with skills in event management who had deliberately set out to ensure that the inevitable gathering could be conducted as safely as possible – and to that end had actively

sought engagement with local police and other authorities including the council who were overwhelmingly supportive and undertook to provide marshals to assist with managing Covid-19 risks;

- c. The Claimants were undertaking detailed risk assessments, not just in relation to Covid-19 but also other risks such as that arising from open flames on public land, and the possibility that small numbers of people may attend the event for reasons inconsistent with the planned Vigil;
 - a. Gatherings of the same size of that at Clapham Common would have been expressly permitted under the regulations is had amounted to a ‘picket’. It is unclear why ‘protests’ of this particular type are inherently likely to be less of a health risk than protest in another cause;
 - b. Evidence from Professor Chris Whitty and Sir Patrick Vallance on 9 March before the House of Commons Science and Technology Committee had suggested that outdoor mass gatherings (including moving protest marches where social distancing is less likely) have not resulted in spikes of Covid-19, and, whilst not ‘risk free’ appeared to hold relatively low risk of transmitting the virus;¹³
 - c. Given the matters which had given rise to the public desire for an event, and the strength of feeling amongst women – including in the local community, visible police enforcement (as opposed to organisation and coordination by a group of local women) was less likely to be effective in securing consent and cooperation;
 - d. If an organised event had been facilitated throughout the day with clear messaging rather than simply having to be cancelled, the numbers in attendance later in the evening may have been better managed. Many attendees attended on the basis that it had been previously advertised for 6pm, but are likely to have

¹³ See page 27 of the transcript of this hearing in which Sir Patrick Vallance stated: *I reiterate that our view has always been—it is clear in the SAGE papers—that outdoors is much lower risk than indoors, but it is not completely risk free. It is the case that it is difficult to see how things like large beach gatherings and so on can cause a spike. The same was the case in a protest march in New York; they did not really see any spikes after that. It is lower risk, but the other thing that can happen with outdoor events, and so on, is that, when indoor things are also open, you start to get people congregating indoors around that. That can increase risk, but outdoors itself is lower risk.* <https://committees.parliament.uk/oralevidence/1845/html/>

been willing to attend at different times in the day if this had been advertised and facilitated;

- e. Gatherings occurred around the bandstand throughout the day on 13 March as people attended to lay flowers and pay their respects. These people notably included the Duchess of Cambridge. In my view, the people who attended were very likely to have been lawfully participating in a gathering with a reasonable excuse under Article 10/11 (suggestions that some attendees were ‘working’ or attending with some other ‘reasonable excuse’ are legally misconceived in my view and reflect a reluctance to accept that any version of the event could have been lawful). There is no clear reason why, in my view, the police could not have worked with the Claimants to facilitate a ‘rolling’ event of a similar nature to that which occurred organically throughout the day on 13 March.

46. In respect of later developments, it would not be appropriate to express a definitive view on the status of the gathering later on in the absence of all relevant information. However, it is very far from clear that the later gathering was in fact unlawful or that those participating were committing an offence under the Regulations. The legal burden lies with the MPS to demonstrate that interference (including both the fact of enforcement and the extent of force used) was strictly ‘necessary’ in accordance with Articles 10 and 11. On the evidence thus far it is not clear they are able to do so. There is also good evidence, on the information available, to suggest that the police enforcement action was potentially unlawful and disproportionate (notwithstanding reports of poor behaviour by some people present on the Common for example in the HMICFRS report). The following matters are likely to be of relevance:

- a. It is arguable, on the basis of the information available, that the public health risk remained relatively low and was not disproportionate having regard to the rights being exercised and the reasons for the gathering (see evidence from Sir Patrick Vallance and Chris Whitty referred to above). There is no evidence that this evidence was taken into account at all;
- b. It is properly arguable that in failing to facilitate any form of event - including in cooperating with the Claimants, the MPS failed in their positive Article 10 and 11 duties. This has potential consequences for the legality of later enforcement decisions;

- c. There is evidence which gives rise to the question whether any increased risk to public health was contributed to by the actions of police (both in failing to engage with organisers, and in terms of operational decisions). In those circumstances, the MSP actions are likely to be proportionate. Many of the reasons given by the MPS seeking to justify the use of force appear to have been made far more likely as a result of the failure to engage with RTS and could well have been avoided if they had done so. By way of example, one explanation offered was that people had begun to move closer together and towards the bandstand when speeches were being given in an effort to hear what was being said, and that the risk to public health thereby became unacceptable. It is notable that RTS had procured a speaker-system as part of their planning in order to minimise this risk. RTS had also been offered the support of the council and significant numbers of covid marshals to help maintain social distancing;
- d. It is notable that other events took place elsewhere in the country on the same day (both in the form of socially distanced Vigils and other large groups watching football matches without appearing to engage in efforts to mitigate risks of covid-19 transmission) which were not subject to enforcement and presumably therefore were not deemed to pose an unacceptable health risk.

Q3) What do you understand to be the effect of the High Court decision on 12 March 2021 in relation to (a) the proposed vigil and (b) the rights to free expression/peaceful assembly/protest in general?

47. The Claimants' legal team provided a short advice on Saturday 13 March 2021 which sets out the meaning and consequences of the ruling and was made publicly available by the Claimants. It is attached here as Annex A and is not repeated.

Press reporting

48. It is worth noting that much of the media reporting after the hearing did not appear to accurately reflect the Judge's ruling, was broadly mis-leading and in many instances positively unhelpful in creating further confusion as to the legality of the intended gathering at Clapham common, and the potential legality of future gatherings for the purpose of protest. I do not consider that the errors in reporting were in any way deliberate. It is likely to have been a consequence of a number of factors including (i)

the complexity and lack of clarity in the law itself (ii) the lack of time many journalists will have had to digest the proceedings before filing reports (iii) the fact written judgment was not immediately available as the Judge gave his ruling *ex-tempore* (orally) (iv) the urgency of the application and the time it was being heard meant that the hearing itself was conducted in a way that would have been difficult for observers to follow (v) the press release issued by police shortly after the hearing which created an impression that the claimant's had 'lost' the case and that the event could not go ahead as a consequence. I note that a number of journalists were in contact with me and others after the ruling seeking help in understanding the scope and meaning of the ruling having listened to the proceedings remotely but struggled to fully appreciate the significance of the ruling.

49. By way of example: common errors in reporting appear to suggest/imply that the Claimant's had 'lost' their challenge and that as a result the event could not go ahead. This was fundamentally incorrect:

- a. The Court was not asked to rule on whether this gathering would or would not be lawful and whether or not it could go ahead. It would simply not have been possible for the court to answer this question on an emergency basis. The Judge do not therefore express any view as to whether or not the Vigil should be allowed to go ahead/facilitated.
- b. What the court was asked to do was to clarify the law so that discussions could be had with police as to how the event might be facilitated. The reason that was necessary was because prior to the hearing police communications had consistently appeared to suggest that however much they might wish to facilitate the event they could not do so because of the Regulations which made large gatherings for the purpose of protest illegal. Their position was effectively that their 'hands were tied' and they appeared quite clearly to be under the impression that gatherings for protest were subject to a 'blanket ban' because they were not specifically provided for within the listed Tier 4 'exceptions'.

- c. To the extent that the Claimant's 'lost' this was more a matter of form than substance. In reality Counsel for the Commissioner conceded moments prior to the hearing that the Claimants were correct on the law and that any blanket ban on protest could not be lawful. On the basis that there was no longer any disagreement between the parties as to the law the Judge considered *inter alia* that any formal declaration to that effect was therefore unnecessary – although the Judge sought to assist by setting matters out in the substance of his ruling. It is notable that the Judge indicated he would have been minded to refuse any application from the Commissioner for Costs (which would normally follow upon 'success') on the basis that the need for proceedings had only arisen because the police had, until moments prior to the hearing, appeared to adopt an unlawful position. The Claimants therefore 'lost' only in the sense that the formal declaration they sought was not given, their case as to the law (clarification of which was the reason for seeking an interim hearing) was conceded by the Commissioner and vindicated in the Judgment. However, the narrative in media reporting - fuelled by the MPS public statement that the Claimants had 'lost' their challenge added to the confusion as to what the Court had, or had not, decided.
- d. Having restated the law in his ruling (albeit not in the form of a 'declaration' as the Claimant's had originally asked) the Judge made clear that the legality of this Vigil had not been raised in this interim hearing (indeed it could not have been) and that he anticipated there would likely be on-going discussion between the organisers and police to determine whether and how some version of the Vigil could be facilitated.

Q4) What, in your view, were the MPS duties in respect of the rights to free expression and peaceful assembly at the vigil and to what extent did the MPS properly discharge those duties?

50. Articles 10 and 11 of the ECHR (enshrined in Schedule 1 HRA) impose positive duties to facilitate 'protest'¹⁴, as to well as to refrain from interference (including 'chilling' or discouraging citizens from exercising their rights) save where this is 'in accordance

¹⁴ [Öllinger v. Austria](#), 2006, § 35

with the law’ and is a truly ‘necessary’ means of achieving a ‘legitimate aim’ in a democratic society. This necessity must be ‘convincingly established’¹⁵

51. States must not only refrain from applying unreasonable restrictions upon the right to assemble peacefully but also safeguard that right. Although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected¹⁶, there are in addition positive obligations to secure the effective enjoyment of these rights¹⁷.
52. The positive obligation includes protecting participants from violence: In *Frumkin v. Russia*, 2016, the Court found that the disruption to a peaceful demonstration was a consequence of the failure of the police to take “*simple and obvious steps*” to provide a reliable channel of communication with the organisers before the assembly, and found a violation of Article 11 of the Convention. Courts have also stressed the importance of taking preventive security measures, such as ensuring the presence of first-aid services at the site of demonstrations, in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature.¹⁸
53. “Unlawfulness” of a protest does not give *carte blanche* to the authorities; they are still restricted by the proportionality requirement of Article 11. Thus, it should be established why the demonstration was not authorised in the first place, what was the public interest at stake, and what risks were represented by the demonstration. The method used by the police for discouraging the protesters, containing them in a particular place or dispersing the demonstration is also an important factor in assessing the proportionality of the interference.¹⁹
54. It is certainly arguable that in refusing to contemplate or discuss, in good faith, how they event might be able to proceed safely, to advise what (in their view) would have been lawful (and therefore would have avoided liability for an offence) and instead to

¹⁵ [Nemtsov v. Russia](#), 2014, § 72

¹⁶ [Associated Society of Locomotive Engineers and Firemen \(ASLEF\) v. the United Kingdom](#), 2007, § 37; [Nemtsov v. Russia](#), 2014, § 72

¹⁷ [Djavit An v. Turkey](#), 2003, § 57; [Oya Ataman v. Turkey](#), 2006, § 36; [Gün and Others v. Turkey](#), 2013

¹⁸ [Oya Ataman v. Turkey](#), 2006

¹⁹ [Primov and Others v. Russia](#), 2014, § 119

make unspecific threats of fines and criminal prosecution the police failed in their duties to the Claimants and to others who would have wished to attend a safe and socially distanced event.

III. FURTHER MATTERS

‘Protest’ or ‘Vigil’

55. Some commentators and MPs during the course of other inquiries appear to have drawn a distinction between those who attended for the purposes of a ‘vigil’ and those who attended for the purpose of ‘protest’ or raise political issues. Comparisons have been invited between women who stood holding candles, and those who stood holding placards for example²⁰). The inference appears to be that enforcement action is more likely to have been appropriate and proportionate in respect of the latter group.
56. This distinction between the label ‘vigil’ and ‘protest’ has no legal basis and demonstrates a concerning hostility to protest of itself. Whether the Clapham Common event is described as a ‘vigil’ or a ‘protest’ it was clearly protected by Articles 10 and 11 ECHR. Indeed – ‘protest’ is the activity that is more obviously protected by fundamental rights. The rights of those attending and the duties owed by MPS should not therefore be viewed any differently depending on whether the views being expressed (orally or by way of signs or clothing) are deemed to be ‘political’. The risk to public health is unlikely to be affected by the content of speech of expression and so cannot justify any difference in approach under the Regulations.
57. To condone, or to require the police to have adopted a difference of approach depending on whether the gathering is defined as a ‘vigil’ or ‘protest’ (justifying more enforcement in respect of ‘political’ activity) is also dangerous for the legitimacy of the police themselves. It amounts to ‘politicising the police’ - requiring them to suppress or interfere with different types of speech for reasons which cannot be justified under the Health Protection Regulations. The legitimacy of police as a neutral, and apolitical law enforcement agency in those circumstances is likely to be substantially damaged.

²⁰ See recording of questioning by MPs during the evidence session before the Home Affairs Committee on 24 March 2021 from 10.8

Striving for ‘consistency’

58. As the HMICFRS report makes clear, in making decisions about whether and how to engage with the Claimants (and in subsequent operational decisions) the police were driven by a desire to be (and be seen to be) ‘consistent’ in relation to other events which had been prevented or subject to enforcement. This, of itself, is a reasonable goal – in order to perform their role effectively the police must inspire trust and confidence. If they are perceived to be acting in ways which are irrational or arbitrary, public confidence and the legitimacy of police powers are likely to be undermined.

59. However, the heavy emphasis on ‘consistency’ (whether substantive or perceived) was, and remains, particularly problematic in relation to the Clapham Common Vigil, and protest events more regularly:

- a. **First:** the law specifically requires that the legality of any given event (and thus whether police have any enforcement powers at all, presuming it is otherwise lawful) will depend on a proportionality assessment having regard to the public health risk and taking into account the particular circumstances of that event. No two events are likely to be identical and therefore treating them in the same way – whilst easier to justify to the public – is unlikely to be a lawful approach.
- b. This puts the police in a very difficult position and risks them being perceived to be picking and choosing between causes – something which is likely to undermine their legitimacy. In reality, in order to ensure they could justify enforcement against some groups they are likely to adopt a restrictive approach against all, for fear of being criticised for ‘inconsistency’. It is clear that in respect of the Vigil the MPS felt they could not be seen to be actively facilitating that event as a result of their failure to do so in other cases.
- c. **Second:** as set out above, the HMICFRS specifically found in their report into the policing of the Vigil that the police had not understood the law relating to gatherings for the purpose of protest (and thus their obligations towards those attending). It is, in my view, problematic to prioritise consistency once it is acknowledged that the approach taken previously has been erroneous. Seeking

to justify an unlawful approach on the basis that police have previously adopted that unlawful approach towards others is itself likely to undermine public confidence in policing and rides roughshod over the rule of law.

FPNs and accountability

60. Under the Health Protection Regulations (in various forms), police have been given unprecedented powers to issue fines and to charge people in respect of universal and common activities (such as leaving one's home). An issue of real concern throughout the pandemic and which has been, largely overlooked is the lack of accountability and oversight of the way these powers have been exercised during the pandemic.
61. A particular gap has arisen in the context of fines (or FPNs). The Health Protection regulations have given police (and other 'relevant persons' who may include PSCOs and local authority officers) powers to issue fines where they 'reasonably believe' that an offence has been committed under the Regulations.
62. The consequences of giving fines are significant and not widely understood. The giving of a fine is effectively the initiation of a criminal justice process, the next stage of which is prosecution. Those who receive FPN notices are told that they have a binary choice: pay or risk criminal prosecution. There is no right of appeal against an FPN (unlike fixed penalty notices in other contexts – e.g., for driving offences). There is therefore no formal process to challenge an FPN which has clearly been issued in error, or on the basis of a failure to understand the relevant law.
63. I, along with other colleagues have had some success in making representations to different police forces inviting them to withdraw FPNs which have been wrongly issued. Some have been prepared to engage in this formal process and have withdrawn fines in many cases. However, other forces have consistently failed to engage with this process and have resisted any invitations to reconsider or review decisions to give FPNs even where it is clear no offence has been committed and/or there has been an error of law. The position of these forces, including the MPS has been to say that there is no mechanism to require police to reconsider or withdraw improper fines and those that are unhappy can avoid paying by pleading their case in the Magistrates Court.

64. This position is hugely problematic, and corrosive of the rule of law, for a number of reasons:

- a. As a matter of principle, it is wholly unreasonable to suggest that those who have already been subject to unlawful interference with fundamental rights should be required to undergo criminal prosecution (entailing further anxiety, distress, costs, and further risk to reputation) as the only means of avoid paying a substantial fine that was unlawfully issued. The coercive threat of criminal prosecution should not be dismissed lightly. In many cases innocent people have felt compelled to pay unlawful fines because the prospect of being a criminal defendant is too frightening – and in many cases likely to be seriously prejudicial to their jobs, reputation, resources and/or mental health. Innocent people compelled to hand over money have included those on low incomes already struggling financially in the Pandemic. The coercion of citizens to pay money to avoid criminal prosecution having broken no law (and in many cases fundamental rights having been breached) should be a matter of serious concern;
- b. There is no guarantee that Magistrates Court proceedings will be less financially taxing than payment of an FPN - indeed, it may give rise to even greater financial loss. The cost of defending proceedings in the Magistrates Court - even on acquittal are not recoverable at private rates and most people are unlikely to qualify for legal aid in these cases. It is therefore irrational to suggest that the financial liability for payment of an unlawful fine can be substantially or substantively avoided by ‘electing’ to become a criminal defendant;
- c. Criminal proceedings are not concerned with providing oversight or accountability of police actions in giving and FPN. The court will consider only whether it is proved that the Defendant committed an offence. If a defendant is acquitted there are no adverse consequences for police, and no findings will be made as to whether issuing of the FPN was lawful. A Defendant may be able to avoid paying the fine, but Magistrates Court proceedings do nothing to vindicate or remedy a wrong already occasioned by police interference with fundamental rights (e.g, by punishing or preventing a person from protesting);

- d. The MPS position also fails entirely to recognise the harm occasioned by the giving of an FPN above and beyond any financial imposition, including reputational damage, the chilling effect on the exercise of fundamental rights and serious anxiety and distress caused by the prospect of criminal prosecution. Indeed, if fundamental rights have already been breached by giving an FPN unlawfully, criminal prosecution would only serve to exacerbate them further.
 - e. The fact of having received an FPN carries ongoing prejudice which cannot be remedied or address by the Magistrates Court, regardless of whether or not the sums demanded remain payable. Previous responses to FOI requests have confirmed that FPNs are recorded on police databases and may appear in criminal record checks. Further, the value of any subsequent fine will be inflated to reflect the fact of this first fine having been given (even if unpaid).
65. Under Coronavirus legislation police have been given unprecedented coercive powers to arrest and fine people. Despite the draconian nature of the restriction and the breadth of police powers, there had been virtually no mechanism by which to scrutinise or oversee the exercise of these powers and no mechanism to secure accountability where they have been deployed unlawfully. The resistance of particular forces including the MPS to any level of reflection or review of their own actions – even where no substantive justification is available or offered for police conduct – is of real concern.
66. Further evidence of this abdication of responsibility for the protection and upholding of rights during lockdown has been illustrated by recent reports (during #killthebill protests) of fines and arrests of legal observers. At the relevant time legal observers fell within listed exemptions to the restrictions on movement for those working or volunteering. Reports that police have told legal observers that the law is unclear and so “we’ll let the courts decide” reflect a willingness to breach rights and confidence in subsequent impunity. These reports also reflect a consistent tendency for officers to adopt the most restrictive possible interpretation of the Regulations where it suits their purpose in restricting or frustrating protest events.

Politicisation of police: lessons relevant to the PCSC Bill.

67. The Vigil at Clapham Common and policing of protest more generally during the pandemic has offered an opportunity to test and observe how police forces have operated when given extremely broad powers to suppress protest in the context of vague legislation capable of varying interpretations.

68. The lessons to be appear to be that:

- a. Laws which afford police broad discretion (or license) to decide what should or should not be treated as ‘legal’ place the police in a very difficult position. In effectively making them the de facto gatekeepers of protest rights they may be perceived as picking and choosing which events are legitimate and lawful and which are not. It inevitably creates a situation in which police are seen as ‘political’ actors;
- b. legitimate concerns about the need to be (and to appear to be) consistent and ‘apolitical’ are likely to result in the police adopting the most restrictive possible approach towards *all* groups and events. It is only by taking enforcement action against all that they are able to justify enforcement against those groups who are the focus of their concerns;
- c. In the absence of any mechanism to ensure accountability and oversight for policing decisions officers are likely to feel embolden to use (rather than refrain from using) enforcement measures in the event of doubt about the scope and content of legal restrictions.

69. These are lessons are important in the context of the PCSC Bill which proposes to grant police broad powers to limit protest by introducing vaguely defined criminal offences. The provisions of the PCSC bill are likely to be subject to many of the same difficulties of interpretation and enforcement as the Covid restrictions on gatherings have posed. The result of vague laws and broad discretion during lockdowns has been an effective ban on protest altogether. There is no reason to suppose that the outcome of this exercise would be any different under the PCSC Bill than it has been under the Health Protection Regulations – a systemic suppression of basic constitutional and democratic freedoms of expression and assembly. Those with any respect for fundamental rights should be

very slow before burdening police with further broad powers pursuant to ill-defined criminal laws.

**PIPPA WOODROW
DOUGHTY STREET CHAMBERS
19 APRIL 2021**

13 March 2021

To the Organisers of Reclaim These Streets,

We have been asked to set out in very brief terms the implications of the *ex tempore* Judgment handed down yesterday by Mr Justice Holgate.

The application for judicial review and the Judgment

1. The Tier 4 regulations that are currently in effect across England, prohibit outdoor gatherings of more than two people subject to certain exceptions. The right to protest is not identified as a specific exception (although picketing is). It is however not an offence to participate in a gathering where a person has a “reasonable excuse”. Regulations applicable at other times have identified protest as an express exception.
2. The position of the Metropolitan Police earlier this week was understood to be that in the absence of any express exception in the Tier 4 rules for protesting, outdoor gatherings for that purpose are currently prohibited. This was understood to be the reason why the police refused to support the Vigil on Clapham Common. This appears to reflect the Metropolitan Police’s policy towards protests generally under Tier 4 rules as well as being the apparent position of other police forces.
3. At the application issued on Friday 12 March 2021, it was argued on behalf of Reclaim These Streets that this position is erroneous in law. It was argued that Tier 4 regulations do not prohibit protest where persons are legitimately exercising their rights under Articles 10 and 11 of the European Convention on Human Rights, which rights are protected by the Human Rights Act 1998.
4. The Judge confirmed that Reclaim These Streets’ assessment of the law is correct: not all protest is, or can be treated as, illegal under the Tier 4 rules. The court agreed that,
 - (i) The law set out by the Court of Appeal in *Dolan v Secretary for State for Health*:

<https://www.bailii.org/ew/cases/EWCA/Civ/2020/1605.html>

in the context of the first lockdown regulations that were applicable from 26 March 2020 is equally applicable to the Tier 4 regulations currently in effect insofar as the judgment relates to the exercise of Articles 10 and 11 rights.

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- (ii) This means that the Tier 4 regulations must be read consistently with rights protected by Article 10 and 11.
 - (iii) Therefore, unless it is necessary and proportionate to prevent persons gathering to exercise their right to freedom of expression and assembly, having regard to the individual facts and circumstances of the protest in question, such a protest is not prohibited by the Tier 4 regulations.
 - (iv) A person participating in a protest in these circumstances would have a “reasonable excuse” to be participating in a gathering.
5. The Judge also indicated in the course of argument that the application of a “blanket ban” on protests by the police would not be lawful.
 6. After the application had been filed, the Metropolitan Police stated in correspondence that they did not have a policy that all protests were unlawful. In the course of the hearing, the police also accepted that the Tier 4 regulations did not allow them to prevent people from exercising their rights under Article 10 and 11 unless it was necessary and proportionate for them to do so.
 7. The Judge stated during the hearing that:

“If [the police] are not careful it seemed to be coming across that [their position was that] because it appears in the Tier 3 Restrictions doesn’t appear in Tier 4 Restrictions, protest is not exempted. That would be a mistake. It fails to take on board the Dolan Point....

I think the problem from the Claimant’s perspective is that it may well be that the need to take into account Arts 10 and 11 which the Defendant does acknowledge, has become lost in discussions and has been misunderstood as the Defendant applying a blanket policy that protest is immediately limited”
 8. In his ruling his Lordship stated

“[The Police] rightly accepted that if a police force has a policy which imposes a blanket prohibition on protest irrespective of the specific circumstances and irrespective of articles 10 and 11, that would be unlawful.”
 9. The Judge was not asked (and did not decide) whether or not the Reclaim These Streets Vigil was or was not a proportionate exercise of Article 10/11 rights. He could not have made that assessment within the confines of the emergency hearing yesterday. He was asked to clarify the law in light of the fact the Metropolitan Police appeared to be treating gatherings for protest as automatically banned and had not refuted solicitors’ correspondence and had referred to a policy that did not take into account the need to allow protests where this was necessary to comply with Article 10 or 11. He made clear that the police must assess the particular circumstances of the event proposed with Article 10 and 11 in their minds and applying the proportionality assessment they require.
 10. The Judge’s ruling also stated:

“[The Claimants] correctly accepted leaving aside the facts of the case, these regulations are capable of being applied to protests and demonstrations in general. It is possible when article 10 and 11 are being applied, that the outcome of applying the relevant test is that a particular protest or demonstration should not go ahead [but] that is a matter to be considered in the circumstances of each case” (Emphasis added).

11. In effect, this means that Articles 10 and 11 require police to facilitate and uphold the right to protest and that they only prevent it where, following a proper assessment, this is necessary and proportionate in the particular circumstances of the protest in question. In our view this requires that police meaningfully engage with organisers, identify risks so that solutions can be proposed and found, and in general seek to facilitate a protest taking place in a way which is proportionate to any risk.

Implications

12. It follows from the Judge’s clarification of the law that some version of the Vigil could be lawful (and the same is true of other similar vigils that had been planned for today). Whether or not it an event is proportionate is a matter that the police must consider carefully and anxiously. It is not a matter of discretion. Ultimately, it is a legal question which is subject to correction by the Courts if the police get it wrong and disproportionately restrict the right to protest.
13. The circumstances which, in our view, must be considered when assessing the proportionality of a proposed protest in the context of the current pandemic would likely include:
 - a. The importance of the right being exercised (certain forms of freedom of expression attract special protection);
 - b. Whether a risk assessment has been conducted;
 - c. Whether social distancing will be maintained and other mitigations, such as wearing of face coverings, will be adhered to;
 - d. The overall risk to public health, having regard to the location of the event, compliance with public health guidance, and other safety measures in place (e.g. marshalling); and
 - e. The consequences of not permitting the event, including the possibility that people might still attend in significant numbers without coordinated and organised safety measures being in place.
14. The Judge did not grant the declarations that were sought on behalf of Reclaim These Streets principally because the combined effect of the concessions made by the Metropolitan Police and reasoning of the Judge meant that it was unnecessary to make such declarations. In respect of the blanket policy of the police, he could not be satisfied on the basis of the evidence before him as to precisely what the police’s policy was.

Attendance at commemorative event in groups of 6 or as a bereavement support group

15. Having a ‘reasonable excuse’ is also not the only basis on which a vigil might be held.
16. We would refer people to the following provisions within the Regulations which allow for attendance at commemorative event in groups of 6 or as a bereavement support group of no more than 15 (including any number of children under 5).

17. Schedule 3A deals with the restrictions in Tier 4. Paragraphs 6(7) and 6(11) of Schedule 3A provide exceptions to the prohibition on gatherings of more than 30 people in a public outdoor place as follows:

Exception 6: support groups

(7) Exception 6 is that—

(a) the gathering—

(i) is of a support group,

(ii) consists of no more than 15 persons, and

(iii) takes place at premises other than a private dwelling, and

(b) it is reasonably necessary for members of the group to be physically present at the gathering.

(8) In determining whether the limit in sub-paragraph (7)(a)(ii) is complied with, no account is to be taken of any child who is below the age of five.

Under s2: “support group” means a group or one to one support which is organised by a business, a charitable, benevolent or philanthropic institution or a public body to provide mutual aid, therapy or any other form of support to its members or those who attend its meetings, including those providing support—

(g) to those who have suffered bereavement;

Exception 11: commemorative event following a person's death

(16) Exception 11 is that—

(a) the gathering is for the purposes of a commemorative event to celebrate the life of a person who has died (for example, a wake or stone setting ceremony),

(b) the gathering consists of no more than 6 persons,

(c) the gathering takes place at premises other than a private dwelling, and

(d) the gathering organiser or manager takes the required precautions in relation to the gathering.

18. The legislation can be found here:

<https://www.legislation.gov.uk/ukxi/2020/1374/schedule/3A/paragraph/6>

19. The Metropolitan Police are aware of these provisions. In written submissions made to the Court immediately before the hearing, they said:

“It may be that the event planned might also be regarded as potentially falling within exception 11, as it may be a “gathering is for the purposes of a commemorative event to celebrate the life of a person who has died”. However, such a gathering is limited to no more than six persons.”

20. It is our intention to provide a fully reasoned advice addressing these issues early next week.

Yours sincerely,

Tom Hickman QC
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This submission is made by Dr Genevieve Lennon, University of Strathclyde with input from the POLACS (Police Accountability - towards international standards) research group.¹

A. Introduction

This submission will focus primarily on how greater accountability and independent oversight may be inserted into the process of determining whether and under what conditions a ‘public assembly’ or ‘public procession’ (hereafter ‘assembly’) may take place.² This, of course, addresses only one of the myriad issues concerning protests and the policing of protests, yet it is worthwhile for a number of reasons. First, removing the police as the primary arbiters in this process (judicial review aside) and inserting independent, transparent decision-making may increase community trust and confidence in the decisions. Second, it is arguably likely to also reduce some of the tension that can occur between the police and protesters. Its relevance to the current Inquiry is underlined by the contested narratives over who failed to achieve a compromise that would permit the vigil for Sarah Everard to proceed.³ Third, the process may facilitate adherence to the positive obligations under the right to protest, as well as repositioning the right to assembly as the default position.⁴

This submission will propose that an independent, quasi-judicial body - an ‘Assembly Commission’ - determines the conditions that may be imposed upon an assembly, drawing upon the Northern Irish Parades Commission model.⁵ The background to the Parades Commission is radically different to the situation in England and Wales today, the former being grounded in ‘the Troubles’ and the accompanying community divisions. However, there are commonalities. An overarching objective of the ‘North Report’ that led to the creation of the Parades Commission was to increase the trust and confidence of communities in both the process of determining which parades could go where and in the police themselves.⁶ It seems uncontroversial to note that there are today in England and Wales tensions between communities (or parts thereof) and the police (or parts thereof). The Sarah Everard Vigil in London and the protests in Bristol served, in part, to articulate a lack of confidence in the police. In the absence of more muscular protection of the rights to assembly and free speech,⁷ inserting accountable and transparent decision-making into the process offers a way in which this confidence may be rebuilt.⁸

B. The current law

There are oversight mechanisms in relation to orders prohibiting an assembly. The chief constable must apply to the district council for a prohibition order, with the council then required to seek the

¹ The UK team is funded by the ESRC (ORA6). The other research partner countries are: Canada, Japan, France and Germany.

² Though the Public Order Act 1986 distinguishes between assembly and procession, and Northern Ireland adds its own variants, for the sake of simplicity ‘assembly’ will be used throughout.

³ Casciani, D ‘Sarah Everard: What went wrong at the Clapham vigil?’ (BBC News, 14 March 2021 <<https://www.bbc.com/news/uk-56394344>>)

⁴ ECHR, article 11.

⁵ Public Processions (Northern Ireland) Act 1998.

⁶ North, P ‘Review of Parades and Marches in Northern Ireland’ (Belfast Stationary Office, 1997).

⁷ Compare, e.g. Germany’s Basic Law, Article 8 which guarantees the right to assembly without prior notification or permission. See further: Aden, H ‘Germany’ in Abuja M & Born, H (eds) *The Role of Parliament in Police Governance: Lessons learned from Asia and Europe* (DCAF, Geneva 2017).

⁸ Grundgesetz, Article 8 .See further Fahrman, J, Aden, Hartmut & Clemens, Arzt ‘Versammlungsfreiheit – auch in Krisenzeiten!’ (15 April 2020) <<https://verfassungsblog.de/versammlungsfreiheit-auch-in-krisenzeiten/>>;

consent of the Secretary of State.⁹ Yet, this does not go far enough and there is little transparency to encourage confidence in the process and, more profoundly, this applies only to prohibition orders, not the imposition of conditions.

The police are permitted broad discretion under the Public Order Act 1986, s.12 to impose conditions on an assembly if the senior police officer reasonably believes it may result in serious public disorder, serious damage to property or serious disruption or that the assembly is being organised to intimidate others. There is little to no transparency over the operation of s.12 and although it may be subject to judicial review, the statutory discretion is so broadly stated that a successful challenge is unlikely.

There is no independence in the current structure. As the North Report stated, 'it is not right that the police both make the decision in relation to a contested parade and then enforce it' (para.51).¹⁰ Independence from this decision making can be advantageous for the police. Lord Kerr in *DB v Chief Constable PSNI* noted that 'the police were responsible for deciding whether parades should be permitted to proceed. This placed them in a wholly invidious position. Their impartiality was questioned and they were accused of taking sides'.¹¹ While this references the situation facing the police in Northern Ireland prior to the Public Processions (Northern Ireland) Act 1998, there are parallels with aspects of policing protests in England and Wales today. The proposed 'Assembly Commission' could serve to diffuse tensions between participants and communities more broadly and increase trust and confidence in the police. Having an independent quasi-judicial body determine what assemblies should proceed and under what conditions, if any, will increase transparency and accountability and offer the police a route from this 'invidious position'.

C. Proposed changes

A variant on the Parades Commission is proposed. This section will detail key elements and suggested changes.

A referral system is necessary to distinguish between small and/or uncontentious assemblies and potentially problematic ones. It would be both undesirable and unfeasible for the 'Assembly Commission' to review all assemblies. In Northern Ireland all parades must be notified to the police who in turn must notify the Parades Commission.¹² The Commission examines parades it deems to be 'sensitive', on the grounds they could raise community tensions. Clearly a different filter is needed in England and Wales. This could focus on parades likely to be 'contentious' or with a risk of serious disorder. Equally, depending on the resources of the 'Assembly Commission', the police could filter the notifications they receive, only forwarding those that, eg raise a risk of serious disorder and may require that conditions be imposed.

One negative impact on assembly, from the perspective of organisers, would be a lengthened notification period. The notification period is 21 days in Northern Ireland, reflecting the often contested and also more regularised nature of parading.¹³ While the notification period may need to increase somewhat to accommodate due consideration by the proposed 'Assembly Commission', it should remain far closer to the current 6 days rather than 21 days.¹⁴

⁹ Public Order Act 1986, s.13(1)-(2). The process is slightly different in London with the relevant Commissioner of Police required to obtain the consent of the Secretary of State to make an order prohibiting the procession (Public Order Act 1986, s.13(4)).

¹⁰ North 'Review of Parades and Marches' (above n.7) para.51.

¹¹ [2017] UKSC 7 at [7].

¹² Public Processions (Northern Ireland) Act 1998, s.6. There is an exception in relation to funerals and Salvation Army parades.

¹³ Public Processions (Northern Ireland) Act 1998, ss 6-7.

¹⁴ Public Order Act 1986, s.11

The Parades Commission consults with a range of groups, including assembly organisers/organisations, the police, local groups and broader community groups. It may hold evidence sessions. Imposing a broad requirement to consult all relevant parties would have the benefit of simplicity, although a more detailed, albeit non-exhaustive, list could aid clarity and consistency, particularly at a national level. The Parades Commission facilitates dialogue between parties (see further below) and where conciliation is not possible, it may impose conditions on the assembly. These conditions - broadly - mirror those under the Public Order Act 1986. The Parades Commission thus, in essence, steps directly into the role the police currently hold in England and Wales. Its decisions are subject to judicial review.¹⁵

The Parades Commission has no power to prohibit a parade - that power lies with the Secretary of State, as in England and Wales.¹⁶ Whether the 'Assembly Commission' should be able to prohibit a parade is open to debate. Perhaps a more achievable outcome would be its participation in such decision-making, for example, its role could be to make a provisional recommendation which would be subject to approval by the Secretary of State and district Council.

The Parades Commission produces a Code of Conduct, relevant for participants, communities and the police.¹⁷ The development of a similar Code at a national level in England and Wales would improve consistency in the treatment of assemblies across the countries. Providing a baseline of expected behaviours should be useful to participants and members of the community in which the assembly occurs. It may also go towards realigning the perceptions of both protesters and police as to acceptable behaviour, as recommended over a decade ago by the Joint Committee on Human Rights.¹⁸ While the detail of such a Code is beyond this short submission, the starting point must be that permitting an assembly is the default position. This reflects the positive duty under the ECHR Article 11 and follows the recommendation made by the HMIC in 2009.¹⁹ Commitment to transparency and regular publication of data on its working should be explicit in the statute or accompanying Code.

A novelty of the Parades Commission is its mediation role, which is one of its four statutory functions.²⁰ While this reflects its roots in the contested civic landscape of 'the Troubles', mediation and dialogue would play a useful role in assemblies in England and Wales. Indeed, there is much literature on dialogue and policing protests, albeit largely focussed on behaviour during rather than prior to a demonstration.²¹ The functions of the Parades Commission cannot be simply transferred to the current context, but this gives an opportunity to consider what the appropriate functions would be in light of communities' needs and broader principles, in particular human rights.

¹⁵ See further McAuley, I 'Reforming the law on contentious parades in Northern Ireland' (1998) Public Law 44-56.

¹⁶ Public Processions (Northern Ireland) Act 1998, s.11; Public Order Act 1986, s.13.

¹⁷ Parades Commission 'Parades and related protests: A code of conduct' (Belfast, 2005).

¹⁸ JCHR 'Demonstrating respect for Rights' (2008-09, HC 320-1).

¹⁹ *Plattform Ärzte für das Leben v Austria* (1991) 13 EHRR 204; HMIC 'Adapting to Protest' (2009).

²⁰ Its functions are: a) to promote greater understanding by the general public of issues concerning public processions; b) to promote and facilitate mediation as a means of resolving disputes concerning public processions; c) to keep itself generally informed as to the conduct of public processions and protest meetings; d) to keep under review, and make such recommendations as it thinks fit to the Secretary of State concerning, the operation of this Act (Public Processions (Northern Ireland) 1998, s.2).

²¹ See, eg. Hilton, M 'The GODIAC Project' (2011) 6 European Law Enforcement Research Bulletin 19-21; Fillieule, O. & Jobard, F. 'A Splendid Isolation: Protest Policing in France' (10 Oct 2016, <<https://booksandideas.net/A-Splendid-Isolation.html>>); Reicher, S., C. Stott, J. Drury, O. Adang, P. Cronin, and A. Livingstone, "Knowledge-Based Public Order Policing: Principles and Practice Policing", *Policing*, 2007, 1 (4), pp. 403-415.

The Parades Commission membership is appointed by the Secretary of State with a requirement for cross-community and gender balance, as well as a range of experience and competences. For the proposed 'Assembly Commission', appointment at a more local level, for example, by the Police and Crime Commissioners and/or district Councils or London equivalents, would offer more local accountability than appointment by the Home Secretary.

D. Conclusions

The North Commission was concerned to 'avoid creating an Orwellian structure that bears down oppressively on the rights of groups and individuals', but a well conceived 'Assembly Commission' would do the opposite, providing a transparent and accountable process for determining what assemblies should proceed and under what, if any, conditions.²² The proposed Commission does not challenge police operational independence. The police retain full discretion regarding how to enforce the Commission's decision and how to police the protest in accordance with the law. The 'Assembly Commission' would not speak to issues arising from the policing of an assembly nor to subsequent actions such as the use of bail conditions on protester. However, by ensuring that the decision to impose conditions upon an assembly is conducted by an independent body, through transparent and accountable mechanisms, it would serve to insert a degree of trust and confidence into, at least part of, the system.

²² North 'Review of Parades and Marches in Northern Ireland' (Belfast Stationary Office, 1997) para.79.



The Network for Police Monitoring

Submission to the Inquiry Into Respect For The Constitutional Rights To Free Expression And Free Assembly At The Clapham Common Vigil On 13 March 2021 And The Bristol Protests In March 2021.

This paper is a response to the call by the All Party Parliamentary Group on Democracy and the Constitution to help inform their inquiry into policing of public gatherings, constitutional rights, and the PSCS bill.

The paper is submitted by Netpol is a coalition of campaigners, legal support groups, lawyers and academics concerned with monitoring protest policing in Britain. We have been working alongside social movements to document issues arising from the policing of protest since 2009.

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Executive summary

The key points that we seek to make here are these:

The need to protect public health and curtail Coronavirus transmission amounts to a legitimate aim for the restriction of assembly rights. However, the failure of governments to acknowledge the importance of protest as a means of political expression even in the midst of a pandemic, and the effect of Convention rights on Coronavirus regulations, created an unnecessary layer of uncertainty and confusion.

The language of 'balancing', used frequently by policing bodies, is not always helpful. If protest is viewed as inherently problematic and 'inconvenient' rather than as a necessary and important element of a free society, the 'balance' will almost always fall on the side of maintaining order and preventing crime.

What is needed, in our view, is a rights-based approach in which the state acknowledges both its negative duty to refrain from interference in assembly rights unless there is a pressing social need; and its positive duty to facilitate protest and ensure the safety of protesters.

Clear and positive protections for those participating in expressive assemblies based on OSCE ODIHR guidelines, such as those contained in Netpol's Charter for Freedom of Assembly Rights, would be a positive step forward in this regard.

In particular there should be a clear recognition that the scope of Article 11 encompasses 'direct action' protest, and that participants in disorderly or obstructive protest will retain the protections of the right to freedom of peaceful assembly as long as they do not have violent intent; and that much more needs to be done to ensure that protesters are protected against unnecessary restriction of their assembly freedoms and the use of disproportionate force.

We are particularly concerned at the violent nature of the police response to protests in Bristol over the last month, in which at least 62 people were injured.

Respect For The Constitutional Rights To Free Expression And Free Assembly At The Clapham Common Vigil On 13 March 2021 And The Bristol Protests In March 2021

Netpol is grateful for the opportunity to make this submission. We address the questions posed by the All Party Parliamentary Group on Democracy and the Constitution in turn.

Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?

In order to be compliant with the Convention, any interference with qualified rights must be 'in accordance with law'. This has been interpreted by the European Court of Human Rights (ECtHR) as a requirement that the law must be 'formulated with sufficient precision to enable the citizen to regulate his conduct'.¹ The individual must be able – if necessary with appropriate advice – 'to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail'.²

There is a wider question in play here as to the extent to which protesters are able to foresee the application of public order and protest law even in non-pandemic times. The police have numerous powers to restrict obstructive or disruptive protest: and almost all protest is, to some extent, obstructive or disruptive of others. Police decisions as to when those powers are used (and the manner in which they are used) vary considerably over time, and across different police forces.

Netpol has often encountered over the years confused and angry protesters who have found that their form of protest, previously tolerated or facilitated by the police, has suddenly warranted pre-emptive clamp-downs and/or arrests. Such uncertainty undoubtedly has a profound effect on the right to freedom of assembly.

There has certainly been a great deal of uncertainty as to the application of Coronavirus regulations. Some degree of uncertainty has probably been inevitable, given the rapid response required of governments to a developing and serious public health emergency.

Nevertheless, it should be borne in mind that the public have been required to navigate frequently changing regulations; apparently blurry distinctions between regulations (binding) and guidance (non-binding); and (particularly from a Welsh perspective) an insufficient recognition on the part of the UK government of the geographic scope of measures and the role of devolved powers.

1 Sunday Times v United Kingdom (No.1) (1979) 2 EHRR 245 [49]

2 Sunday Times v United Kingdom (No.1) (1979) 2 EHRR 245 [49]

A more fundamental difficulty has perhaps been a general failure of UK governments to specify the way in which they expected Coronavirus regulations to apply to expressive assemblies, and in particular to acknowledge the relevance of Convention rights. There has been a consistent message, from policing bodies and governments that *all* assemblies (other than those explicitly exempted in the regulations) are unlawful and that participants may be arrested and/or prosecuted.

However, as has been confirmed by the High Court in *Leigh v Commissioner of Police for the Metropolis* the effect of Articles 10 and 11 mean that Coronavirus regulations did not – and could not – amount to a blanket ban of protest. The failure of governments to properly address the issue of protest meant that potential opportunities to facilitate safer protest, perhaps through social distancing and mask-wearing, may have been missed. In this respect expressive assemblies have been treated very differently from other types of assembly (such as weddings, funerals, and gatherings in workplaces and schools).

Protesters (and would-be protesters) have been faced with a very confused picture of what would, or what would not be acceptable conduct. Early on in the pandemic there was considerable tolerance of socially distanced protests by nurses and doctors calling on the government to provide a greater volume of personal protective equipment (PPE).

There was tolerance too of some larger protests: in June 2020 in Cardiff, a 'Black Lives Matter' (BLM) protest took place without significant police intervention. But in January 2021, the organiser of another, similarly-sized Cardiff protest (called when a Mohamud Hassan, died after police contact) was issued with a £500 coronavirus fine. In both cases the demonstrations were in breach of Coronavirus regulations (although different regimes were in force).

In other cases protesters have been faced with more coercive policing measures. We discuss proportionality concerns below, but it is relevant here to note that we have been concerned at many of the policing strategies that have been adopted, some of which appear to be likely to exacerbate rather than mitigate COVID risks.

In particular we note the use by the Metropolitan police of containment strategies – or 'kettles' – in which protesters have been squeezed together in such a way as to make social distancing impossible. These appear to have been used during Black Lives Matter protests in June 2020,³ and during protests against the PCSC Act in April 2021.

3 Netpol, *Britain Is Not Innocent'*: A Netpol report on the policing of Black Lives Matter protests in Britain's towns and cities <https://netpol.org/black-lives-matter/>

What elements of national/International best practice in balancing, maintaining, and/or facilitating the rights to free expression and peaceful assembly (a) during the pandemic and (b) after the pandemic were relevant to (a) the Clapham Common vigil on 13 March (b) the Bristol protests between 26 and 29 March?

The language of 'balance' here is potentially misleading. A straightforward approach to balance is only possible when each side of the 'scales' is given an appropriate weighting, yet the value of protest is often overlooked, while the requirements of law enforcement and order maintenance is consistently accorded a greater 'weighting'.

Even in a pandemic, protest assemblies play an important role, not least as a means of highlighting pandemic issues. At the beginning of the pandemic, for example, socially distant protest by nurses and doctors drew public and press attention to their complaints about a lack of personal protective equipment (PPE).

Protest also plays an important role in highlighting injustice and holding public bodies, including the police and government to account, a role which has not lost its urgency despite concern for public health. Yet these valuable features of protest appeared to play no role in government thinking during its pandemic planning at different stages of the pandemic.

The Home Office did commission advice on protest from the Security and Policing Sub-Group of Scientific Pandemic Insights Group on Behaviours in April 2020⁴, but the terms of reference framed protest firmly and solely as a public order concern, emphasising concerns that 'allowing' protest would undermine public health measures by encouraging people to use protest as a 'lawful way to socially gather', and would exacerbate community tensions and increase risk of disorder.

As a result, while the government sought to facilitate safer environments for gatherings of other types, protest was side-lined as something which was, at best unhelpful, and at worst dangerous.

In pre-pandemic times we have seen a similar approach from the Home Office in relation to protests by Extinction Rebellion (XR) and other environmental groups. Priti Patel found the inconvenience and disruption resulting from XR protests to be unacceptable, and that they should therefore be stopped and prevented from engaging in further protest.

Over the 11 years that Netpol has monitored protest, we have seen too little evidence of state bodies genuinely facilitating protest, but have amassed a great deal of evidence of intolerance of even minor levels of obstructive or disruptive protest.

4 SAGE/SPI-B Security and Policing Sub-Group: Home Office SAGE Commission on Protest Security & Policing Workstream: 04/05/2020

In this context, we find the language of 'balance' unconvincing. The scales are inherently weighted against protest: the 'balance' between protest rights on the one hand, and maintaining order on the other, is one that rarely falls on the side of protest.

What is required is not 'balance' but recognition that the Convention imposes two obligations on state bodies: the first is a negative obligation not to interfere with protest unless certain conditions are met; the second is a positive obligation to positively facilitate and protect protest rights where it is possible to do so.

The conditions required for interference with the freedom of peaceful assembly are laid out in Article 11(2): the interference must be in accordance with the law; and it must be necessary and proportionate to a legitimate aim.⁵

It is important to remember that these obligations applied both to the Clapham Common vigil, and to the Bristol protests. Neither the fact that the protest itself may be considered 'unlawful', nor that some protesters may be acting unlawfully, necessarily deprives participants in these protest of the protections of Article 11.

The European Court of Human Rights (ECtHR) has asserted, 'where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance'.

As such, Article 11 has been held to cover a wide range of protest activities, including pickets,⁶ processions,⁷ rallies,⁸ sit-ins,⁹ roadblocks,¹⁰ occupations of buildings,¹¹ and the public reading of press statements.¹² Forms of 'direct action' protest considered to fall within the scope of Article 11 have included the obstruction of a public road in order to disrupt access to a naval base;¹³ the creation of a rolling barricade of vehicles across several

5 These obligations form the basis of the Charter for Freedom of Assembly Rights, which sets out Netpol's views on what the public should expect from the policing of protests <https://netpol.org/charter/>

6 *Shmushkovych v Ukraine* App no. 3276/10 (ECtHR 14 November 2013)

7 *Christians against Racism and Fascism v the United Kingdom* (1980) 21 DR 138

8 *Kasparov v. Russia* (2018) 66 EHRR 21

9 *Çiloğlu and others v Turkey* App no. 73333/01 (ECtHR 6 March 2007)

10 *Kudrevičius and Others v. Lithuania* (2016) 62 EHRR 34

11 *Cissé v. France*, App no. 51346/99 (ECtHR 9 April 2002)

12 *Oya Ataman v. Turkey*, App no. 74552/01 (ECtHR 5 December 2006)

13 *Lucas v. the United Kingdom*, App No. 39013/02 (ECtHR Decision on Admissibility, 18 March 2003)

lanes of the motorway in order to slow down traffic;¹⁴ and a mass demonstration which obstructed a major highway for a period of 48 hours.¹⁵

Nor does the fact that a protest amounts to a threat to public safety necessarily take protests or protesters outside the scope of Article 11. In *Kudrevičius* farmers protesting a lack of agricultural subsidies were charged with incitement to riot for blocking three major roads for around 48 hours. While the Court acknowledged that these acts were potentially dangerous, the conduct of the demonstrators was not 'of such a nature and degree as to remove their participation in the demonstration from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention ...'.¹⁶

The implications of this ruling is that a potential threat to public health from possible transmission of Coronavirus does not remove protesters from the protection of Article 11, and any intervention must therefore be in accordance with law, necessary and proportionate.

Article 11 rights are applicable only to peaceful protest, but it is also critical that state bodies do not interpret 'violence' too broadly. The fact that there has been violence at a demonstration does not alter the rights of those who have not engaged in that violence. The ECtHR has held that a person 'does not cease to enjoy the right to freedom of peaceful assembly due to sporadic acts of violence or other wrongdoing committed by others'¹⁷ as long as 'the individual in question remains peaceful in his or her own intentions or behaviour'.¹⁸

The mere risk or anticipation that violence will occur at a demonstration is not sufficient to take an assembly outside the scope of Article 11, if the *intention* of the assembly is not violent: the ECtHR has emphasised that 'even if there is a real risk that a public demonstration might result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of Article 11 § 1, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision.'¹⁹

If the police seek to remove the protections of Article 11 from protesters on the basis that they have violent intentions, incite violence 'or otherwise reject the foundations of a democratic society'²⁰, there must be evidence of such intention.

14 *Barraco v France*, App No. 31684/05 (ECtHR 5 March 2009)

15 *Kudrevičius and Others v Lithuania* (2016) 62 EHRR 34

16 *Ibid* [98]

17 *Mesut Yıldız and others v Turkey* App No. 08157/10 (ECtHR July 18 2017), 27

18 *Ezelin v France* App No 11800/85 (ECtHR 26 April 1991) [34]

19 *Kudrevičius and Others v Lithuania* [94]

20 *Sergey Kuznetsov v. Russia* App no. 10877/04 (ECtHR 23 October 2008) [45]

In *Schwabe v Germany*, the German police claimed that anti-G8 protests intended to incite 'very violent' anti-globalisation activists with banners calling for the freeing of prisoners, and that one of the applicants had assaulted a police officer during an identification check. This was not sufficient, however, to take any of the applicants outside the scope of Article 11.²¹

Assemblies will also remain within the scope of Article 11 if the violence which occurs results from disproportionate state interventions.²² In *Nurettin Aldemir v Turkey* the Court was content to extend the protection of Article 11 to circumstances in which a disruptive but peaceful protest became violent after state interventions which consisted of 'considerable force' and which caused 'tensions to rise, followed by clashes.'²³

The application of Article 11 does not, of course, mean that police interventions will themselves be unlawful, but it does mean there are obligations on the state to facilitate and protect peaceful protesters; to exercise a degree of tolerance; and to ensure that any interventions are both necessary and proportionate to a legitimate aim.

For the reasons we lay out below, we do not accept that this was the case either at Clapham Common or Bristol.

21 In this case the Court found that there had been a violation of Article 11 as state actions had a chilling effect on expression and were not necessary as less intrusive measures had been available.

22 *Primov and others v Russia* App No. 17391/06 (ECtHR 12 June 2014)

23 *Nurettin Aldemir v Turkey* [2007] ECHR 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 (ECtHR 18 December 2007) [45]

How does the police approach and conduct at (a) the Clapham Common vigil and (b) the Bristol protests compare with relevant best practice?

Setting aside concerns as to whether the law in place was sufficiently clear and accessible as to be in 'accordance with law' the police response to the vigil for Sarah Everard was grossly disproportionate.

Following the discovery of the body of Sarah Everard – allegedly kidnapped and murdered by a serving member of the MPS – women in Clapham began to organise a vigil in her memory, and reflecting the nationwide outpouring of concern and anger about violence against women. The organisers of the vigil took every possible measure to ensure a peaceful assembly, by cooperating with both the Metropolitan police (MPS) and the local council, and by planning and publicising preventative measures to ensure a COVID-19 safe assembly.

Following the decision of the MPS (apparently under political pressure) to withdraw cooperation and prohibit the assembly, on the basis that their hands were tied by the 2020 (Coronavirus) Regulations, the organisers appealed to the High Court on 12 March.²⁴

Nevertheless the MPS refused to facilitate the protest but took the decision to characterise the assembly which went ahead at Clapham Common as unlawful. This was, in our view, a manifest failure of their responsibilities under Article 11. They failed in their duty to facilitate peaceful assembly and took enforcement action which was neither necessary nor proportionate: by making physical interventions and arrests the police arguably increased the risk of virus transmission to at least some of those present.

It is notable that other vigils took place the same night, both elsewhere in London and around the UK, which were at least tolerated if not actively facilitated.

The picture of protest policing in Bristol is far more complex and the details are still emerging. Our concern here is that while some protesters may have acted unlawfully, the police did not do enough to protect those who were not acting violently, and that the reaction of the police was in any case grossly disproportionate.

It is important perhaps to remember that the focus of these protests was in particular the opposition to increased powers provided to the police by PCSC Bill. There was potential that, faced with hostility from an angry crowd, the police would react in a way which exacerbated rather than mitigated the risk of disorder. Whether this was, in fact, the situation is not yet clear.

As we have already established, the mere fact that a protest poses a risk of disorder does not in itself remove protesters from the protection of Article 11. The fact that protests took place after a night of significant disturbance on 21 March did not relieve Somerset and Avon Police of their obligation to protect and facilitate peaceful protest as far as it was possible to

²⁴ See above, *Leigh v Commissioner of Police for the Metropolis*

do so, and to ensure that their interventions were limited to those which were necessary and proportionate to the aim of maintaining order and preventing crime.

Observers on the scene have communicated to Netpol their view that this was not the experience of many protesters, and we have received numerous reports of a disproportionate use of force against those who had no violent intent.

One such report concerned the use of a police dog unit to disperse around 150 protesters and their families from a public park on 23rd March, apparently prompted by a decision to remove protesters from the area before dark. The protesters were sitting on the floor and chanting “peaceful protest” as riot police gathered nearby. Several of them were subsequently hospitalised.

A journalist at the scene described it as “the most violent and disgraceful policing I’ve ever seen in the UK”, commenting “it’s difficult to put into words the extreme violence I witnessed, as police attacked, arrested and hospitalised people, and police horses and dogs were used to charge at crowds.”²⁵

Further, local legal observers have characterised policing subsequent to 21 March as “revenge policing”, in which police interventions did not appear to be related to, or conducted in response to the actions of protestors. As one witness stated, police officers appeared to unleash a real [and personal] anger onto protestors, irrespective of who they were or whether they had taken part in the first demonstration on 21 March.

We are aware that at least 62 people sustained injuries as a result of police actions, 22 of which were head wounds, and 7 of which required hospitalisation.

REPORTED INJURIES IN BRISTOL BETWEEN 21-26 MARCH 2021²⁶	
People were hit by batons	20
People were hit by shields	11
People were hit by shields/batons	13
People were kicked, punched or physically assaulted by police hands/bodies	3
People were bitten by police dogs	7
People were pepper sprayed	12
Injuries occurred in ways that are unclear	5

25 Eliza Egret, Last night I saw the most violent and disgraceful policing I’ve ever seen in the UK. The Canary 24th March 2021. <https://www.thecanary.co/opinion/2021/03/24/last-night-i-saw-the-most-violent-and-disgraceful-policing-ive-ever-seen-in-the-uk/>

26 Netpol: Figures reveal scale of Bristol protesters injured by police Apr 14, 2021 <https://netpol.org/2021/04/14/figures-reveal-scale-of-bristol-protesters-injured-by-police/>

Netpol has received further reports from legal observers and eye-witnesses of unprovoked police violence taking place on Friday 26 March when riot police were used to disperse a crowd outside Bridewell police station.

Again, legal observers present at the scene reported that the demonstrators were seated on the floor chanting and singing when riot police charged the crowd just after 10pm, only seconds after ordering the crowd to disperse. Contemporaneous notes record "riot police...pushing and shoving activists with their hands up- batons out" and "TSG using shields as weapons- lifting them and hitting people".

The police then proceeded to use horse-mounted police and a dog unit, in addition to Territorial Support Group (TSG) officers using batons, shields and pepper spray, to push a dense crowd back into a small walled courtyard on the edge of Bristol's shopping district. During this manoeuvre several people received head injuries and were at risk of being trampled by the dense crowd which was unable to disperse as the line of riot police advanced.

With what appears to be remarkable disregard for public safety, the riot police line then cleared protesters onto a busy-two lane highway without stopping traffic, leaving protesters caught between moving vehicles and horse-mounted police.

The failure of the police to differentiate between peaceful protesters and those posing an immediate threat is illustrated by the fact that several legal observers and volunteer first aiders in clearly-marked hi vis bibs medics suffered violent attacks by police officers. Press were also caught up in the violence, and a journalist from the Daily Mirror shared a video of themselves being pushed and hit with a baton by a police officer while identifying himself.²⁷

First-aiders reported being prevented from giving support to those who were injured and in one instance, police refused to allow a volunteer medic supporting a semi-conscious protester who had received a significant head injury to move through the police line to the roadside where they were attempting to reach an ambulance and paramedics.

While we accept that the police have a duty to maintain order and prevent crime, they have a corresponding and equivalent duty to ensure that the right to freedom of assembly is adequately protected. 'Balance' is not achieved if the maintenance of order and the prevention of crime is a 'trump card' which justifies unnecessary constraint on protest assemblies or the use of disproportionate force.

The correct approach is not to attempt a subjective balancing of protest against law enforcement, but to ensure that the default position is one of facilitation not constraint; that police interventions are made only they are necessary, i.e. where there is a pressing social need; and that those interventions are kept to the minimum necessary for meeting that social need.

²⁷ Police Accused of Assaulting Newspaper Reporter Matthew Dresch at Protest in Bristol, Protection and safety of journalists (coe.int)

What, if anything, do the events at Clapham Common and In Bristol tell us about the propriety of the extension of police powers in the Police, Crime, Sentencing and Courts Bill?

The 'problem' of protest is not that police have insufficient powers, as suggested by the Home Secretary: rather we believe that it is that police have powers which are too broadly drawn, and which are not always exercised in accordance with Convention rights.

We do not intend to provide here a detailed analysis of all provisions of the PCSC Bill, many of which we consider to be problematic. We are content to make the general point that Bill contains proposed police powers which are intended to be used to restrict peaceful protest. On this basis we consider that the Bill is not compliant with the obligations placed on government by Article 11 to facilitate peaceful protest, and as such it poses a serious threat to fundamental rights.

The government have argued that existing legislation, including the 1986 Public Order Act, is out of date, and is thus seeking through the PCSC, for example, to extend – and augment – the provisions of the POA applicable to processions to static assemblies. Yet the published rationale indicates that this measure is not intended to address the threat of serious crime or violent disorder, but specifically to place limits on peaceful protest.

The government's *Protest Powers Fact Sheet* states such measures are required “*specifically to deal with protests where people are not primarily violent or seriously disorderly but, as in this instance, [The 2020 Extinction Rebellion Protests] had an avowed intent to bring policing to its knees and the city to a halt and were prepared to use the methods we all know they did to do that*”.²⁸

This reasoning potentially limits and frustrates peaceful protest, where there is a perceived “intent” to cause disruption but not of serious criminality or violence. As we have established above, disruptive protest falls within the scope of Article 11 protections, and some measure of inconvenience must be tolerated if protest is not to lose all substance and meaning.

We are concerned that these proposals enable the Secretary of State to reduce the threshold at which s12 and 14 conditions may be imposed on assemblies and processions, and to restrict protest because it involves the creation of noise or amounts to a broadly defined offence of 'nuisance'. Aiming such measures at peaceful protest is clearly out of kilter with aims of Article 11.

The government's argument here is that we must trust the police to use their powers only where they are necessary and proportionate to a legitimate aim. This appears to us to be a laughable prospect.

28 Police, Crime, Sentencing and Courts Bill 2021: protest powers factsheet – GOV.UK (www.gov.uk)

Netpol has been monitoring protest for over a decade, and in that time we have documented very, very many instances of disproportionate or unnecessary interference with protest. The primary consideration of the police, it seems to us, is not whether constraints on protest are *necessary*, but rather whether available powers would be *useful* in preventing crime or maintaining order. This is a much lower threshold, and one which unacceptably limits the exercise of fundamental rights.

The government's proposals follow the case of *Jones & Ors v Commissioner of Police for the Metropolis*, in which the Court ruled that conditions imposed on a series of proposed assemblies linked to Extinction Rebellion (XR) were *ultra vires*. The ruling was, however, limited in its application: there is nothing in this judgment that prevents the police from imposing conditions on an instant assembly under s14 Public Order Act 1986; the issue arose only when the police attempted to impose conditions on a number of potential future assemblies, as this amounted to a *de facto* ban on certain types of protest over a designated period.

It should be noted that the police already possess very broad powers to intervene in protests where disruption occurs. The police may impose time, manner and place restrictions on assemblies where serious violence, serious damage to property or serious disruption to the community may occur. In this context 'serious disruption to the community' has been very broadly defined. We do not consider that there is any justification to widen this further.

Network for Police Monitoring (Netpol)

April 2021

BRIEFING NOTE: ACCESS TO STATISTICAL DATA RELATING TO THE POLICING OF PROTEST.

This briefing note has been compiled by Dr Val Aston of Swansea University in response to a question by Jonathon Djanogly. It addresses the difficulties researchers and monitoring bodies face in accessing statistical data from relevant bodies relating to the policing of protest.

Access to data on protest policing.

Police monitoring groups, protest groups and academic researchers face considerable difficulties in accessing statistical data relating to the policing of protest. While police forces have obligations under the Freedom of Information Act 2000 to disclose data (subject to exemptions), in practice very little data is made public.

Unavailability of data.

In particular, data relating to the following policing interventions can be difficult to get *in the context of protest*.

- Arrests (and the relevant offences)
- Charges
- Convictions
- Public order interventions eg stop and search

Data tends to be unavailable either because it is not collected in an appropriate form, or because it is simply not shared. Where data exists, police forces often take an inconsistent approach to releasing it.

Much data which would be valuable to the independent monitoring of protest policing is unavailable because the police do not consistently record data in connection to specific events or policing operations. Thus we can know the number of people stopped and searched on a particular day in a particular force area; but not how many of those were stopped and searched as part of a particular protest policing operation.

This is a particular problem in relation to conviction data, as recognised by HMICFRS in their recent report¹. It is not possible to ascertain from available data what proportion of particular offences, such as violent disorder, occur during protest, or to effectively track the relationship between arrest rates and conviction rates.

Why is this a problem?

Data is essential if researchers / monitoring groups are able to accurately evaluate the proportionality of any policing or public order interventions. There are concerns for example, that protest arrest rates are disproportionately high relative to conviction rates. Joanna Gilmore's examination of an anti-fascist protest in Bolton in 2010 showed that from 55 arrests, only two protesters were convicted of offences.² Similarly of the 231 arrests made during six months of anti-fracking protest at Barton Moss to April 2014, only 35 of those people were ultimately convicted of

¹ HMIC, 'Getting the balance right? An inspection of how effectively the police deal with protests' (2021)

² Joanna Gilmore, 'Lessons from Orgreave: Police Power and the Criminalization of Protest' (2019) *Journal of Law and Society* 46(4)

any offence. But in order to obtain this data she had to go to extraordinary lengths, spending many months carrying out participant observation at protest events, interviews with protesters and legal representatives, and lengthy observations at court hearings. This is not a methodology routinely available to most researchers.

What needs to be done?

At a minimum, we suggest the following:

- Police forces should be obliged to collect and publish data relating to specific protest policing operations. This data should include the use of police interventions, including arrests, searches, seizures and the imposition of s12/s14 POA conditions.
- There should also be a corresponding duty on the police and/or CPS to identify and collate information relating to the prosecution of protest-related offences so that researchers are better able to track the progress of cases from arrest to conviction/acquittal.

It is difficult to see why the collection of protest data is not current practice. The police are under an obligation to review the proportionality of their policing operations, and to consider the impact of those operations on the local community. It is difficult to see how this can be done effectively where protest data is not specifically recorded.

However, it is essential that police forces also have a commitment to sharing statistical data, and there should be clear and consistently applied policy guidelines to that effect.

20th May 2021.



RE: APPGDC INQUIRY INTO POLICING OF PUBLIC GATHERINGS, CONSTITUTIONAL RIGHTS, AND THE PCSC BILL

QUESTIONS FOR ATTENDEES AT THE GATHERING

Many thanks for considering a submission to the inquiry. The APPG is seeking to understand whether and/or how important rights, including the right to free expression and peaceful assembly were respected and facilitated at the gathering that you attended. The APPG is interested in your recollection of the gathering and the events leading up to it.

The APPG would be grateful if you could include any documentary evidence (such as photographs, or recordings) to support or supplement your submissions.

You may wish to structure your response around the following questions:

1. **Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?**
2. **Did you understand your attendance at the gathering to be lawful or unlawful? If unlawful, why did you attend?**
3. **How did you and other attendees behave at the gathering?** Were people socially distancing and wearing masks? Was anyone violent or aggressive? Did you feel the event was hijacked in any way?
4. **To what extent do you believe police officers respected and facilitated your right to free speech and peaceful assembly?** How did police officers behave towards you and others at the gathering? Do you believe they behaved appropriately?
5. **How would you describe the actions of the police at the gathering?** When did police officers make arrests? What other actions did you see police officers take? Did you see police officers acting or speaking aggressively or violently?
6. The Police Crime Sentencing and Courts Bill will expand the circumstances under which the government and police can limit public gatherings, and their powers in relation to those gatherings. **Given your experience, would you like to comment on this?**

Please add anything else you consider relevant.

Please submit your answers in writing to Sam Fowles, Counsel to the Inquiry at sfowles@icdr.co.uk. The deadline for submissions is Wednesday 14 April.



RE: APPG ON DEMOCRACY AND THE CONSTITUTION INQUIRY INTO POLICING OF CLAPHAM COMMON VIGIL

QUESTIONS FOR ORGANISERS OF THE VIGIL

Many thanks for considering a submission to the APPG on Democracy and the Constitution's ("APPGDC") inquiry into the policing of the Clapham Common vigil on 13 March 2021. The APPG is seeking to understand whether and/or how important rights, including the right to free expression and peaceful assembly were respected and facilitated at the vigil. The APPG is interested in your recollection of the vigil and the events leading up to it.

The APPG would be grateful if you could include any documentary evidence (such as log-books, records, photographs, or recordings) to support or supplement your submissions.

You may wish to structure your response around the following questions:

- 1. Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?**
- 2. In the week before the vigil what discussions were there between the MPS and organisers of the proposed vigil?** What was proposed? What did the MPS do or consider to facilitate the rights to free expression and peaceful assembly?
- 3. How did the MPS address the issues raised by the High Court's judgment on 12 March 2021?** Did the MPS hold further talks with organisers and was an announcement of the MPS stance on the vigil made while these were still ongoing?
- 4. How were attendees behaving at the vigil?** What measures were in place to ensure the event was "covid-safe"? Were social distancing and mask wearing observed? Did MPS actions cause a reduction in social distancing, if so how? Were attendees at any point violent or aggressive towards MPS officers? Do you believe MPS officers behaved appropriately?
- 5. Do you believe the MPS sought to facilitate the rights to free expression and assembly at the vigil and, if so/not, why?** Was the vigil, at any point, hijacked by other protesters? Were you told that arrests would be made and why? What force was used and against whom?

Please add anything else you consider relevant.

Please submit your answers in writing to Sam Fowles, Counsel to the Inquiry at sfowles@icdr.co.uk. The deadline for submissions is Wednesday 14 April.

1. Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?

I believe that the law and guidance in place at the time was insufficiently clear. I took measures that I imagine many fellow attendees may not have, including reading around the law prior to attending. I consider that the High Court, handing down judgment in the application for interim relief brought by the *Reclaim These Streets* organisers, did not provide sufficient protection for those planning to attend the event. However, neither did it prevent the gathering from proceeding. I understand that Article 10 and 11 rights can be limited, provided that a balance is struck between the rights to free expression/peaceful assembly and - in this case - public health concerns. From speaking to fellow protestors (at the Clapham Common event and others) general belief seems to be that COVID regulations render all protest immediately unlawful. At the event itself, I overheard some police officers and police liaison officers saying: “[T]his is a serious breach of the regulations. There will be enforcement soon”. Police are meant to administer the law, a role for which understanding of the law is surely a pre-requisite. The policing of the event made it clear that the police had no regard to attendees’ Article 10/11 rights, and did not consider the *RTS* judgment adequately.

2. Did you understand your attendance at the gathering to be lawful or unlawful? If unlawful, why did you attend?

In light of the above, and my understanding of the law that neither the right to freedom of expression/peaceful assembly nor public health concerns automatically trump the other, I did not believe that my attendance at the gathering was unlawful. My understanding is that the role of the police in the context of protests is to facilitate the gatherings/marches so that they can proceed safely. Instead of taking the opportunity to liaise with organisers to this end, I understand that the police refused to engage whatsoever. I did not read this refusal to engage to mean that the protest would therefore be unlawful. In certain circumstances, it may be impossible to facilitate a COVID secure gathering, for example, a large group of people without face-masks protesting the same. In this scenario, it would be more challenging to strike a balance between Article 10/11 rights and public health, and the latter may have to take precedence over the former, rendering that particular protest unlawful. In the Clapham scenario however, organisers and attendees themselves took precautions (see below). I therefore did not consider that specific protest, nor my attendance, to be unlawful.

3. How did you and other attendees behave at the gathering? Were people socially distancing and wearing masks? Was anyone violent or aggressive? Did you feel the event was hijacked in any way?

I was present from around 6pm until everybody dispersed. I did not see anybody not wearing a mask, though I cannot exclude the possibility that some attendees were not. Some people were standing close to one another in groups, though it is likely they were from the same/linked households. At the beginning of the gathering, it appeared as though social distancing was being observed by all attendees. The mood was calm, with everyone listening to the speakers in the bandstand. This atmosphere shifted when it became dark, and the police entered the bandstand. From what I could see, they were trying to stop the speeches from proceeding. People began chanting, but nothing aggressive. I remember chants of “let her speak”, but I did not feel that any attendees were trying to stoke tensions, moreover collectively demand that their rights be respected.

4. To what extent do you believe police officers respected and facilitated your right to free speech and peaceful assembly? How did police officers behave towards you and others at the gathering? Do you believe they behaved appropriately?

I do not believe that the police facilitated my rights to freedom of expression and peaceful assembly. Conversely, what I saw strongly indicated that the police were attempting to shut down the protest regardless of how COVID secure it may have been. What started as a very peaceful gathering quickly deteriorated, though it was clear that this was a result of police actions and not any one group of attendees. Once it became dark, tens of police officers moved towards the front of the crowd, and formed a ring around the bandstand. I saw a couple of attendees ask some police officers what was going on, in a purely inquiring manner, though the officers appeared to have been ordered not to engage at all. They simply looked straight ahead and ignored neutral requests for information. It felt very militarised. Some of them were treading on the flowers and tributes, which upset some attendees. Around the same time, police at the back of the crowd began pushing people closer towards the bandstand by moving forward in unison. It was impossible to remain socially distant once the crowd had been pushed closer together. Some police (they were always travelling in groups of at least 10) at one point moved from the outside of the crowd to the front (bandstand) with their arms linked. As they moved through the crowd, they were shouting for everyone to move to one side to make space. It was impossible to move, as there was no space to move into. This meant that a lot of people were pushed to the ground. Some officers were actually going out of their way to shove people, bursting momentarily out of their unit to push people to the ground. It was very aggressive.

I was at the front of the crowd, right in front of the line of officers preventing anyone from entering the bandstand. Having previously refused point-blank to engage with any attendees, the officers all very suddenly and simultaneously started shouting, almost incoherently. I think they may have been shouting for the crowd to move back, though this was (owing to lack of space) impossible. I could not see what was happening inside the bandstand, but I could see three young women standing by the railings of the stand looking out on the crowd ripped from where they were standing, violently thrown to the floor, and arrested. It was unclear what they had done, other than simply stand there. The arrests seemed almost completely random.

I could not see what was happening at the back of the crowd, but from what I was told the police had started picking people off and arresting them. I made my way to the back of the crowd and saw a group of at least ten officers marching a young man down the Common. I walked alongside the unit as I wanted to talk to the arrestee, to ask if there was anyone he wanted me to contact on his behalf. It was impossible to speak to him, as he was blocked on all sides by the officers. There were a number of police vans (and TSG vans) parked near the road, and as he was being marched towards one of them I tried to pass him a card with legal information. I ended up having to put it in his mouth as I could not reach his pocket and he had been handcuffed, and police would not stop to allow me to hand it to him. I asked a woman officer which station he was being taken to, to which she shouted aggressively: "How would I know with all of this going on?" I asked a second officer what the man had been arrested for, who refused to provide any information, and instead told me to go home. I returned to the bandstand area, by which time most people had left. I came across a woman who appeared to be seriously distressed. She said that she had seen a young woman – who looked more like a child – get arrested, separated from the people she was with, and taken to a police van. She told me that no officers had told her which station she was being taken to, or what she had been arrested for.

5. How would you describe the actions of the police at the gathering? When did police officers make arrests? What other actions did you see police officers take? Did you see police officers acting or speaking aggressively or violently?

See above.

6. The Police Crime Sentencing and Courts Bill will expand the circumstances under which the government and police can limit public gatherings, and their powers in relation to those gatherings. Given your experience, would you like to comment on this?

I am incredibly concerned by the proposed legislation, and the power that this will give police to make arrests. In light of my experiences, taking into account the Clapham Common event, the Black Lives Matter protests which surged in Summer 2020, and the more recent protests against the PCSC Bill, the police do not need more powers. I am concerned that the wording effectively gives officers carte blanche to make arrests without any good reason. Amongst other provisions, s.59 of the Bill creates an offence where someone “does an act which causes serious harm to the public or a section of the public”, “serious harm” being defined as where someone is “put at risk of serious annoyance or inconvenience”. Given that anything and everything has the potential to seriously annoy someone, it is difficult to envisage any meaningful protest action which falls outside the scope of this offence. This cannot be dressed up as anything other than a catch-all provision which, if passed, will strike at the heart of democracy. Some people may be dissuaded from exercising their rights to freedom of expression and peaceful assembly, while others may be arrested and prosecuted for acting in a way which “risks causing serious annoyance to a section of the public”. From my experience attending and monitoring protests, I have no doubt that the police will not hesitate to exercise any powers they are given as they see fit on the day.

Aside from the affront to Article 10 and 11 rights which the Bill presents, the vague and broad provisions therein show complete disregard for the functioning of the criminal justice system, The backlog in the courts, which pre-dated COVID but has since been exacerbated, is leaving defendants, victims, and witnesses alike with delays of over a year for their cases to be heard. It goes against all logic to introduce legislation which will undoubtedly lead to more arrests, and further clog the system.

**Submission to the All Party Parliamentary Group on Democracy and
Constitution inquiry into the Metropolitan Police Service's treatment of
key constitutional rights at the vigil for Sarah Everard at Clapham Common,
Saturday 13 March, 2021**

CCA2

Evidence from [REDACTED], Sunday 11 April, 2011

1. Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?

Not especially, although I think it is broadly understood that for public gatherings, such as protests and the Sarah Everard vigil, maintaining a safe distance between people and wearing masks outdoors reduces the risk of Covid-19 transmission significantly. It is unfortunate that Reclaim the Streets, the original organisers, were not able to come to an agreement with the Metropolitan Police to ensure a safe vigil because other public gatherings have taken place safely during the pandemic. I viewed my attendance at the vigil as a calculated risk worth taking.

2. Did you understand your attendance at the gathering to be lawful or unlawful? If unlawful, why did you attend?

I understood it to be unlawful. However, I weighed up the risks of gathering outdoors while wearing a mask, arranged to meet some friends so we could form a socially distanced group, and I wanted to be there to remember and honour the life of Sarah Everard and to be part of a call for new approaches to preventing violence against women. I believe that the vigil made this particular call in a respectful manner despite a few attempts to hijack the event.

Throughout the day, my friends and I kept an eye on the news and social media to arrange a safe meet-up. I took a tube from Morden, where I live, to Clapham North as I was sure that would be a less crowded station than Clapham South or Clapham Common, which turned out to be the case. I also saw reports on social media of police questioning people at Clapham South and Clapham Common tube stations, which was another reason to use Clapham North.

When I got off the train at Clapham North, I saw a man harass two young women as they boarded a train - this strengthened my resolve to attend the vigil as supposed "low-level" examples of sexual harassment are not always taken seriously by police and need to be stopped to prevent worse violence.

3. How did you and other attendees behave at the gathering? Were people socially distancing and wearing masks? Was anyone violent or aggressive? Did you feel the event was hijacked in any way?

My friends and I arranged to meet outside Holy Trinity church on Clapham Common as there is plenty of space around it and it is an easy-to-find public place. We all wore masks for the entire time we were at Clapham Common, I only spotted two elderly women not wearing masks (and they were most likely already vaccinated), and people were taking care not to make physical contact with other people.

My friends and I formed a socially distanced group toward the edge of the gathering with plenty of space around us. The crowd of almost 100% women was not violent or aggressive.

Before the vigil commenced, a man who was not wearing a mask started loudly addressing the crowd from the bandstand - he claimed that Sarah Everard was breaking lockdown rules on the night she disappeared, was clearly anti-mask and anti-lockdown, and made inappropriate statements that could prejudice the trial of PC Wayne Couzens. We started shouting, "Not your place!" at him. It was good that he was removed from the bandstand by police as he was not wearing a mask, he was using the event to make political statements that were not suitable for a vigil, a group of grieving and angry women did not attend the vigil to be lectured by a man, and the statements that could prejudice the murder trial were an example of the limits of free speech.

I saw a couple of people with Palestinian flags, which I did not think was appropriate for such an event. After I left and saw the rest of the coverage on television and on social media, I saw pictures of men with placards including those supporting Julian Assange, which I would also say was an example of hijacking the event for an entirely unrelated cause.

However, I do believe the overwhelming majority of attendees were there with good intentions and were not interested in violence or using the event to push other unrelated causes/

4. To what extent do you believe police officers respected and facilitated your right to free speech and peaceful assembly? How did police officers behave towards you and others at the gathering? Do you believe they behaved appropriately?

The police started out well for the most part. When the maskless man started addressing the crowd from the bandstand, it was right that he was escorted away. To begin with, the police

presence was reasonably low-key and mostly female officers. No police officer was inappropriate toward me personally.

After Reclaim the Streets withdrew their participation from the event, another group, Sisters Uncut, took over the organisation in an unofficial capacity. The vigil was well-run, the speech was respectful without being political, and everyone participated peacefully. Legal observers were also in place.

However, around 6:30pm, the style of policing changed entirely, which was when my friends and I decided to go home. It looked like a wholesale change of shift as large numbers of officers in hi-vis vests moved in, with a lot more male officers. My friends and I were not comfortable with this heavy police presence and as we left, we could hear the crowds becoming louder as the police tried to get people to move on. By the time I got home, the scenes I saw on television and social media were shocking.

I believe that if the crowd was allowed to disperse of its own accord, the event would have ended without any major incidents. It was a cold night and people were already starting to leave when the police started taking a more heavy-handed approach.

A crowd of mostly women was told to move on by mostly male officers - this was an obvious catalyst for anger and outrage. We had already raised our voices to ensure the maskless man who was making inappropriate statements was removed so it should have been obvious that police actions that involved men telling women how to behave would not be received well.

In addition, I saw a police van waiting in a laneway near Clapham Common when I walked down from Clapham North tube station at around 5pm. I have consulted Google Maps to work out which street in particular - I think it was either Prescott Place, Stonhouse Street or Venn Street. This indicated that the police planned to impose a heavy-handed presence on the event. One of my friends saw three police vans parked in different locations in Clapham when she was on her way to the vigil at around 5pm-5:30pm.

5. How would you describe the actions of the police at the gathering? When did police officers make arrests? What other actions did you see police officers take? Did you see police officers acting or speaking aggressively or violently?

As I have already stated, the police actions started off as appropriate but very quickly became inappropriate. When my friends and I arrived at the bandstand around 5:30pm, the event was

being policed by police liaison officers in light blue vests. Their presence was not overbearing and the officers were mostly women, which was reassuring.

When the man I mentioned earlier was arrested after making an offensive speech without wearing a mask, the officers were applauded. At this point, it still felt like the vigil would be able to go ahead without any major incidents.

However, it was the change of shift, a move away from police liaison officers to officers in yellow hi-vis vests that marked a change in the mood of the event. I have arthritis so my feet, ankles and knees were starting to hurt, which was my first cue that it was time to go home at around 6:30pm. My friends agreed and I started walking to Clapham Common tube station with one of my group. As we were leaving the bandstand, the noise levels increased, it was the beginning of police starting to demand that the women move on, and the angry reactions and chants should have been expected. There was no reason to try and move on a group of women gathering peacefully outdoors with almost 100% mask-wearing compliance.

It was the overbearing police actions that led to the event becoming more of a protest and I do not think this would have been the case if the police took a step back and let everyone go home of their own accord.

I did not specifically see police being physically violent or aggressive toward women but I was shocked by the images I saw on TV and social media when I got home. However, I heard the unmistakable sounds of police giving orders and the women reacting understandably angrily.

6. The Police, Crime, Sentencing and Courts Bill will expand the circumstances under which the government and police can limit public gatherings, and their powers in relation to those gatherings. Given your experience, would you like to comment on this?

Given that the police behaved inappropriately at the Clapham Common vigil - and were subsequently cleared of any wrongdoing by a farcical internal report into the evening's events - under existing law, any furthering of government and police powers in relation to public gatherings is unnecessary, unwarranted and would only serve to make public gatherings, especially those where protest is involved, either intentionally or as a consequence of events.

The internal report which cleared the police of any wrongdoing makes this inquiry by the All Party Parliamentary Group on Democracy and Constitution so important. I am horrified that no officers have been held accountable for their actions at Clapham Common, especially after

reports emerged that a woman was not taken seriously by a male officer when she attempted to report an allegation of indecent exposure as she left the vigil.

There are already limits to freedom of speech in this country, such as restrictions on commenting on ongoing trials. This is why it was appropriate for the man who tried to hijack the vigil with remarks that could prejudice PC Wayne Couzens's trial to be removed by police. But when women tried to speak out in response to police attempts to move them on, this was not a reason for the heavy-handed arrests, such as that of Patsy Stephenson. That was an unacceptable, illiberal restriction of freedom of speech and assembly.

The Police, Crime, Sentencing and Courts Bill is effectively at least seven bills in one. This is too much content for a single bill as it is unwieldy at 307 pages, will not be properly read by every MP who has to vote on it, and it makes it difficult to amend. There are likely worthwhile aspects to such a large bill, such as increased penalties for assaulting emergency services workers and causing death by dangerous driving, but making amendments will be difficult - and voting down the entire bill will simply embolden the government to accuse nay-voters of being opposed to law and order. I suspect this was done deliberately by those who drafted the legislation.

I have downloaded the bill and intend to read it in its entirety, particularly if I am called to give oral evidence.

Thank you for the opportunity to give evidence to this very important inquiry. I hope it can be a catalyst for positive change within London's Metropolitan Police Service. If anyone has any further questions for me, I am willing to give oral evidence. In addition, I can be called on 0778 680 6581 or emailed on georgia.anne.lewis@gmail.com

Additional material (two links plus two photographs I took at Clapham Common)

1. A blog post I wrote the day after the vigil:

[REDACTED]

2. A blog post I wrote a week after the vigil:

[REDACTED]

3. A photograph I took from where I was standing for the vigil. Social distancing was difficult but the risk of transmission outdoors is very low and there was almost 100% mask-wearing compliance:



4. A photograph I took after I laid down some flowers for Sarah Everard. There is one person toward the back with a “Defund the police” sign, which I do not think is particularly relevant in a UK context but it does demonstrate that such people were a tiny minority. This photo also demonstrates the high level of mask-wearing compliance:



CCA3

Hi there Sam,

Many thanks for reaching out with this request; apologies for getting my response back just on the wire! Below are my thoughts.

I'm happy for this to be on record in my name, and if necessary, I'd be comfortable with giving oral evidence.

Many thanks,



1. Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?

As only an attendee of the vigil on Clapham Common, I did not know of or seek out any law or guidance in respect of public gatherings during the pandemic, so it may or may not have been sufficiently clear to those more informed on the topic. Though perhaps that in itself suggests it was unclear, since such guidance was not widely publicly known, or intuitive. By any measure, it was my understanding that the High Court judge ruling on 12 March 2021 made it clear that protests were not banned per se, and were in fact possible to go ahead in a manner that was proportionate and safe. That seems sufficiently clear in regards to lawfulness in principle, but very unclear in terms of the practical implications.

2. Did you understand your attendance at the gathering to be lawful or unlawful? If unlawful, why did you attend?

I understood my attendance at the gathering to be lawful based on two things – first, the High Court ruling as mentioned above, and second, the basic human right to assembly and protest covered by the Human Rights Act and the European Convention on Human Rights. I was aware that there was contention over this particular event and that the Reclaim These Streets organisers had personally pulled out of their organising role due to fear of legal ramifications. That didn't change my understanding of the legality for ordinary attendees, or on principle, however.

3. How did you and other attendees behave at the gathering? Were people socially distancing and wearing masks? Was anyone violent or aggressive? Did you feel the event was hijacked in any way?

I found the behaviour of the attendees to be highly respectful; almost all were wearing masks and people were courteous in trying to make space for each other. It was not socially distanced, which made me feel somewhat uncomfortable, but since the vast majority were wearing masks I thought this was tolerable. The behaviour that displeased me was that of journalists and photographers; they treated the attendees as a spectacle, getting far too close with cameras, talking through the minute of silence, not wearing masks and chatting loudly while the tone was somber and reflective. I had to ask four separate cameramen to stop taking photos of me or getting too close, and they responded with derision at worst, indifference at best. There was also an attempt to hijack the event by an anti-lockdown protestor who took to the stage early in the event, but was booed off.

In terms of the vigil “host”, this changed hands from Reclaim These Streets to Sisters Uncut less than a day before the event, due to the aforementioned threat of legal action that the former group faced. The latter group, well known for being comfortable with going up against the police and state, obviously felt it important that the event go ahead regardless, and I was personally in agreement. This undoubtedly changed the overall tone of the event, from one of quiet reflection to a more agitated, overtly political nature. Arguably the police could have overseen an event with a much milder tone (plus marshals, infrastructure, ‘soft’ speakers like local politicians etc) had they worked constructively with Reclaim These Streets as they were encouraged, rather than letting it fall into the hands of those who would proceed regardless. I wouldn’t describe this as “highjacking” on the part of Sisters Uncut – when a woman has been allegedly murdered by a police officer, after many years of many similar offences taking place, it seems proportionate and right that a peaceful protest would ensue; every woman has equal claim to heartache and fury, regardless of her political expression or approach. I don’t think it’s for anyone to arbitrate or “police” the content and tone of women and allies mourning the loss of another woman to (alleged) police violence. The speakers at the event were impassioned but respectful, and they didn’t encourage violence or aggression in any way I could perceive. Their words were fiery, but their behaviour was remarkably measured. It’s my strong belief that had police not intervened disproportionately, the event would have fizzled out quite naturally and peacefully, as was becoming evident in the minutes prior to police intervention.

4. To what extent do you believe police officers respected and facilitated your right to free speech and peaceful assembly? How did police officers behave towards you and others at the gathering? Do you believe they behaved appropriately?

I do not believe that police officers respected or facilitated my right to free speech or peaceful assembly. Prior to their disproportionate intervention, clusters of police officers were gathered around the edges of the crowd, talking among themselves and not interacting with attendees. Had there been genuine concern about public safety, the police in attendance could have been encouraging or facilitating mask-wearing and social distancing – to me, this would have been a valuable, constructive, welcome contribution. At one point myself and my partner were standing next to a small cluster of police officers, numbering perhaps five or six, and I overheard them chatting about the content of the speech being made. One said something along the lines of “oh she’s moaning about police violence now...”. I can’t precisely remember what was said, but I remember raising my eyebrows and looking at them, trying to catch an eye to show I could hear, because I found it distasteful to comment in such a manner. It felt like police officers were purposefully avoiding interacting or engaging with the participants until the point at which they physically intervened and took to the stage to arrest/dislodge participants. This felt odd as I remember exchanging eye contact or smiles with police officers at other protests and events in the past.

5. How would you describe the actions of the police at the gathering? When did police officers make arrests? What other actions did you see police officers take? Did you see police officers acting or speaking aggressively or violently?

I’d describe the actions of the police officers as disproportionate, inappropriate and deeply concerning. As aforementioned, participants were naturally disbanding prior to their intervention – it was cold, dark, and hard to properly hear the speakers – so their intervention prolonged participants’ attendance and increased shouting and pushing.

At the start of the vigil, the sun had only just started to set and it was a pleasant, if somber, tone; I felt it was suspicious and disingenuous that the police acted forcefully in the name of “public health” only after the sun had set when the event had been going on for at least 90 minutes already (in their presence). Why disband the event only in the darkness, when the event was materially the same as it had been during light hours? It created significant tension and disquiet (which hadn’t existed prior)

when the police officers marched into the thick of the crowd, pushing and shoving past participants, to get to the bandstand. It was hard to see precisely what entailed from my vantage point; I could hear women screaming and the crowd started chanting “let her speak”. I stood on a bench to see more and could see a scuffle between police and the participants on the bandstand, as other attendees tried to help women hold the stage against police aggression. It was very frightening and surreal.

6. The Police Crime Sentencing and Courts Bill will expand the circumstances under which the government and police can limit public gatherings, and their powers in relation to those gatherings. Given your experience, would you like to comment on this?

If the policing of events like protests and vigils was guaranteed to be carried out in a proportionate and appropriate manner, where the police acted as a facilitator of our rights to assemble, I would be broadly comfortable with “increased police powers”. Their capacity in such an event should be marshalling, peacefully deescalating any rising tensions, offering help to vulnerable people, and bearing witness to a lively democracy. Given what I’ve experienced of the police and government – their reticence to allow protests to take place in the first instance, their aggression and use of force towards those acting non-violently – I am very worried about any expansion of state powers in this area. We can only call ourselves a democratic nation when people have full legal protections to freely and non-violently speak and assemble in the name of any personal or political cause. I fear we are therefore dangerously close to losing that title.

CCA4

Hi Sam

Really sorry for taking so long to get this to you.

Here are my responses:

1. No. Everyone, including the crown court, had said that the event could go ahead and it was only the Met Police who said it could not. I believe the reason they gave for this was not being able to properly police the event, however there was a police helicopter there from at least 5:30pm and *nine* vans of police officers, so this clearly wasn't a real concern. The Met Police should not be able to define which protests are lawful or not.

2. I believed my attendance to be lawful, perhaps with an asterisk due to the Met's stance. I attended because my partner and her friend believed it was important to show our solidarity at a vigil for a woman abducted 20 metres from our home. They felt it was important to go - regardless of the legality - and I offered to accompany them because (a) they both felt uneasy being women out alone at night given what had happened, and (b) I had a gut feeling that the police would escalate things.

3. At first the vigil was very tame and almost quite boring. Everyone was socially distanced and almost everyone was wearing masks. (The exceptions to this were the police, who took it upon themselves to weave through the crowd, breaking social distancing). There was a minute's silence at 6pm, then a few people on the bandstand started to make speeches. There was no megaphone or sound system, so it was hard to hear. There were some chants of "Whose streets? Our streets!" and "Sisters united will never be defeated" but this seemed like a reasonable thing to do after a woman has been abducted and murdered whilst walking home. I don't feel like the event was hijacked - people have the right to make speeches in public, especially after a woman was abducted and murdered nearby by a serving metropolitan police officer (allegedly). Families were there. People had brought their dogs, their kids, their babies. Having been to many protests, this wasn't a "typical" protest crowd.

4/5. Walking to the vigil, it was already tense. There was a police helicopter overhead at 5:30, which seemed not only unnecessary for a vigil, but - again - the police had claimed there was no resource for the event. At the vigil, there were a number of PCSOs and mostly female officers. It remained calm up to a point, then two things happened. Firstly, the speakers told the crowd about how in the 70s, during the time of the Yorkshire ripper, police told women to stay inside. This was met with jeers. A male PCSO went up onto the bandstand and asked the speakers to leave. The crowd - which had already started to filter away as it was cold and not much was happening - reacted to this by chanting "let her speak". Then, darkness fell. Suddenly the female officers disappeared and large numbers of mostly male police started making a line through the crowd to the bandstand. Again, this escalated tensions with the crowd. Chants of "arrest your own" and "shame on you" started - pertinent given the nature of the vigil. It felt a lot like the police were trying to shut down criticism and protest against the actions of their own. At every step, instead of de-escalating, the police responded with more aggression, more officers and more force. As the crowd could see police start to grab the young women speaking on the bandstand, social distancing broke down as they closed around it. At one point, the police had effectively been kettled by the crowd. Members of the crowd stepped in to try and help the women being manhandled by the police, only to be met with more violence. Police ended up trampling on flowers, candles and cards that had been laid in memory of Sarah Everard.

There is absolutely no doubt in my mind that had the police not decided that the vigil had to end it would have naturally come to a close within half an hour. By the time the police started acting aggressively, lots of people were leaving - it was cold, dark and the speeches could barely be heard. My partner asked me to leave, when we could see the police using quite extreme force on young women, so we did. As we left we walked past *nine* police minibuses. To me, the most obvious action on behalf of the police would have been to leave the event alone. There was no need for police to be there at all. In fact - given the nature of Sarah Everard's murder - it was quite unpleasant that they were there at all. But most bizarre of all is the contradiction between saying the protest/vigil could not go ahead because they didn't have the personnel to police it safely, and the helicopter and huge numbers of officers who ended up being there. It was clearly a lie that the resources were not available. And it happened so quickly, that the decision to send the officers in must have been made well before the event began. There's no way nine vans of police officers could suddenly react to a peaceful vigil, and descent upon it 30 minutes after the event had started. Who made the decision to send that number of officers and when? Why lie that there were no officers available, when there clearly were.

I have uploaded every image and video I took on the evening to this dropbox folder: https://www.dropbox.com/sh/85quyho84t46sdz/AABOjQjbnf3KM14_UJPuwLL7a?dl=0


Could you let me know once you have downloaded it, so I can save space on my drive?

I've labelled each clip with the time it was taken (the first 4 numbers), to give you a better idea of the timeline.

I'll gladly give oral evidence if needed.

All the best



From: [REDACTED] [REDACTED] 
Subject: Re: Parliamentary Inquiry - Deadline 14 April 2021
Date: 12 April 2021 at 09:25
To: Sam Fowles sfowles@cornerstonebarristers.com

SL

sfowles@icdr.co.uk sfowles@icdr.co.uk

Dear all,
CCA5

My name is [REDACTED], and I am 26 years old. Please see below for my submitted evidence to the APPG on Democracy and the Constitution inquiry.

Thank you to the APPG for considering evidence from attendees at the Clapham Common vigil.

Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?

Did you understand your attendance at the gathering to be lawful or unlawful? If unlawful, why did you attend?

1. Having planned to attend the vigil since I saw it circulating on social media, I felt the Met police decision to refuse to let the event go ahead sowed the seeds of tension and confrontation that took place later that evening.
2. Seeing public figures like Kate Middleton attending the vigil, it made little sense to me that a planned vigil could be seen as unlawful. It didn't seem to be consistent that some people were deemed eligible to attend, and others weren't.
3. Many mass protests and gatherings had been taking place across the summer – from BLM marches, to anti-lockdown gatherings (often maskless and without social distancing) and football celebrations in Leeds, Liverpool and Glasgow. The police in these instances had chosen a deescalating, hands-off approach – it seemed odd that the same was not applied to the Clapham Common vigil.
4. I chose to attend regardless because I feel strongly about the issue of women's safety. I wanted a space to gather with other young women, to grieve for Sarah Everard and to express our sadness and despair at the stories so many women had shared about sexual assault and violence in recent days. I did not view it as a protest, but I don't believe those that did had any different intentions other than to express solidarity and demand change.

How did you and other attendees behave at the gathering? Were people socially distancing and wearing masks? Was anyone violent or aggressive? Did you feel the event was hijacked in any way?

5. I arrived at the Common around 5.50pm (the vigil was due to start around 6pm) and walked down along Clapham High Street and through the park towards the bandstand. There were a few thousand people gathered, heavily young women, with 99% in masks. It wasn't always possible to have a one metre distance, but the crowd was calm and respectful – many had flowers or candles, and things were very quiet, almost sombre in terms of atmosphere.

To what extent do you believe police officers respected and facilitated your right to free speech and peaceful assembly? How did police officers behave towards you and others at the gathering? Do you believe they behaved appropriately? 5

How would you describe the actions of the police at the gathering? When did police officers make arrests? What other actions did you see police officers take? Did you see police officers acting or speaking aggressively or violently?

6. At around 6.30pm, some speeches had begun from women on the bandstand. Given the event was not authorised, there had been no PA system

bandstand. Given the event was not authorised, there had been no PA system in place, so it was hard to hear – but I didn't see anyone moving forward or gathering closer to hear the speeches, as they were amplified with a call and response from others around the bandstand.

7. From around 6.30-45pm, police started moving onto the bandstand to remove those trying to make speeches. Up until this point the police presence had been minimal, but their choice to stop women from speaking on the bandstand led to more frustration from the crowd and created an atmosphere that was more antagonistic. The chants started to be less about Sarah Everard and about women's safety, and more directed at the police presence (shouting things like "get your hands off our sister" and "who do you serve, who do you protect"). To me, these weren't aggressive chants, but reaction to the police choosing to shut down elements of the vigil.

8. At this point, it was beginning to get dark and crowds were starting to thin out naturally (given it was cold and the event was due to take place at sundown). Around 6.50pm, myself and my sister moved away from the clustered crowd to look at the memorials left at nearby trees.

9. At 7pm, as we were leaving the crowd, we saw the police gesture to one another to gather at the side of the crowd. Given this was precisely at 7pm, I believe this was pre-planned. At this point, the police formed a line that would snake through the crowd to the bandstand, intended to break up the women standing on the bandstand itself.

10. Whilst not a formal kettle, this did have the effect of pushing the crowd in on itself, making social distancing much more difficult.

11. At around 7pm, you could see police making arrests and hear people audibly shouting and protesting more in reaction. I didn't personally see any arrests made, but I did see police being physically dominant towards the women – standing on the flowers left by the crowd in order to get onto the bandstand and pull women off the bandstand.

12. To me, the police presence and activity at the vigil was unnecessary and inflammatory. Had the event been allowed to continue peacefully, I believe it would have remained calm and the crowds would have disseminated naturally. Instead, the choice by police to shut down the event and remove the speakers from the bandstand, using aggressive methods, was a decision that caused an angry reaction from the crowd, generating tension where none had been previously.

The Police Crime Sentencing and Courts Bill will expand the circumstances under which the government and police can limit public gatherings, and their powers in relation to those gatherings. Given your experience, would you like to comment on this?

13. Given the operational choices made by the police at the event, and the refusal for senior police and political figures to condemn or criticise the actions of the police, I have severe concerns about handing more powers to this force to limit public gatherings. My trust in the police was severely undermined, and I began to understand and empathise more with others who have reported instances of police over-reach and over-reaction. Policing by consent is a cornerstone of our civil society, and I feel granting more power a force with an inclination (and now, with the rubber stamp from those in authority) to overextend their authority is a dangerous situation to be enabling.

Many thanks,

██████████

On Mon, Apr 12, 2021 at 8:20 AM Sam Fowles <sfowles@cornerstonebarristers.com> wrote:

Dear all

Many thanks again for your interest in the APPG on Democracy and the Constitution inquiry into Policing of Public Gatherings, Constitutional Rights and the PCSC Bill.

This is to confirm that the oral hearing will be heard via Zoom from 12:00-14:00 on 22 April. The deadline for written submissions is 14 April (this Wednesday). Please indicate on your submission if you wish to remain anonymous (your name and identifying details will be redacted before your submission is passed to the APPG).

Our website is up and running and the calls for evidence and more information about the inquiry can be found at <https://www.icdr.co.uk/bristol-clapham-inquiry>

On behalf of both myself and the APPG, thanks in advance for making a submission and we very much look forward to reading it.

All the best

Sam

Dr Sam Fowles FRSA
Barrister (Counsel to the Inquiry)
Cornerstone Barristers



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Evidence to the APPG on Democracy and the Constitution inquiry into 'Policing of Public Gatherings, Constitutional Rights and the PCSC Bill' from Reclaim These Streets

We are grateful to members of this APPG for the focus on the policing and for the opportunity to discuss ways in which public bodies police and protect women. The events in the lead up to the arrests on Saturday 13th March took us all by surprise, and we have been incredibly disappointed and concerned by the way that the police have interacted with us, with those who attended on Saturday, and all the women in towns and cities around the country who also worked to organise vigils in their own neighbourhoods.

CCA6

For any further questions, please contact [REDACTED] on reclaimthesestreets@gmail.com

Background

Reclaim These Streets is a small group of women – friends and others who later joined us – who came together on Wednesday 10th March 2021 around a shared sense of grief at the disappearance of Sarah Everard, fear of being out alone in our local neighbourhood as a result, and anger at the narrative that yet again the answer to violence against women was to require that women change their behaviour rather than tackling male violence against women.

We wanted to stand up together – because of our collective grief at the events of the past week, because we wanted to show and feel solidarity with other women in our area, and because we wanted raise awareness and show our unhappiness at the dangers, harassment and violence that women face. The vigil sought to remember Sarah as well as highlighting the tragic number of women who go missing or are subject to violence every day, and to provoke a change in understanding of violence against women and society's attitude to this.

Our group includes two local Lambeth councillors, as well as women with community, communications and events organising experience. We felt that as a group we had the skills and experiences to organise a vigil in a way that put being Covid-19 safe at its heart. I had experience during lockdown conditions of safely organising groups of volunteers, others in the group had organised large scale events previously, and others had worked many times with police. It was clear from social media that other women were planning on doing something and that people would be gathering on Saturday in response to Sarah's case. We felt like we were in a good position to help organise something that would be safe, despite the pandemic.

The planned vigil

On Wednesday 10th March we discussed the timings, format and actions needed for an event.

We decided to hold it on Saturday 13th March 2021 because this was the first weekend following the arrest of a suspect. Many By the time of the call, it was clear that many people living in the

Lambeth area (including myself) feel were in shock by about what is believed to have happened to Sarah, and wanted to grieve and commemorate her, and stand up for women's safety. We also wanted to reclaim space for women, to recognise her passing and other women in the area and across the UK who lose their lives due to violence and misogyny by making a statement that public spaces, whether parks, commons, town squares or streets, belong as much to women as they do to men.

We decided to hold the event in Clapham Common for two reasons. First, because this is believed to have been on Sarah's walk home when she disappeared. There had been a lot of publicity around the police search that was taking place within Clapham Common, and images of police officers searching the common were covered extensively which made local women feel anxious about being on the Common alone.

Secondly, Clapham Common was chosen because it is a huge open, outdoor space (220 acres of grassland) which would more than allow for people to socially distance themselves from one another. As a common rather than a park, there are no fences or gates meaning people can move around freely without being funnelled into entrances or exits.

Safety was a priority from the start, and we discussed our risk assessment on this first call. Social distancing and masks were flagged as compulsory on every piece of literature produced as well as being in the original event invitation on Facebook. We registered with the Government test and trace system so that we could put QR codes on every tree and lamppost for attendees to check in.

We planned to recruit stewards and sourced several Hi-Viz jackets to remind people of the need to be socially distanced and wear their masks. We planned to recruit first aiders on site as well as mental health first aiders given the emotive and potentially triggering subject matter. We began organising a PA system so that people would not need to crowd to the front to be able to hear what was happening. We reached out to a number of trade unions who have extensive experience in organising protests and events so that we could draw on their expertise. We procured 900 LED tealights as we were aware that the common's bylaws do not permit open flames.

Before our plans were finalised, however, we contacted the council and the police. We felt it was important to being working with them as soon as possible to ensure the vigil would be safe. On the night of Wednesday 10th March, we proactively wrote to the council's Community Safety assistant director as well as the Metropolitan Police Borough Commander for Lambeth and Southwark, informing them of our intentions.

Police relations ahead of court

Just as we had hoped it would be, the council was, and remains, supportive of the event without any reservations and keen to work with us to ensure it was safe.

We received a reassuring email reply from the police on 11th March 2021:

The shocking and disturbing circumstances around Sarah's disappearance has sent waves of anger and dismay throughout our local BCU and the wider Met and our thoughts and prayers are with Sarah, her family, loved ones and friends. I tried calling you both this morning and am now emailing you in regards to the Reclaim the Streets Vigil, planned for Saturday 13th March, Clapham Bandstand, Clapham Common and would be interested to know what the timings are for the event, estimated numbers and whether there will be any local stewards supporting the event. We are currently developing a local policing plan, but would be grateful for

any additional information that you may be able to provide that will assist us with developing an appropriate and proportionate local response.

We then organised a meeting with the police so that we could discuss the vigil – specifically to talk through our plans for stewarding and safety and to take on board any suggestions for ensuring we addressed any public health concerns.

Their reply was unsettling:

Let/s aim for 2:30 we are just confirming all the legal ramifications for all this including the current COVID legislation and in gathering the police team together to discuss all the aspects for consideration – we do need to bear in mind that organising an event is still illegal and we are trying to navigate a way through at no notice, please bear with us

We did not believe the vigil to be “illegal” or anticipate that the police would say so – especially when they had not yet discussed with us how we would balance public health concerns with our rights under Articles 10 & 11 of the Humans Rights Act.

This meeting took place at 14:30. The police advised that the vigil could not go ahead because of the Covid-19 Regulations. Specifically, we were told by the police that the vigil would contravene the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 and that their “hands are tied” because of the law. They said they had to be consistent in not letting any events go ahead. They told me that the organisers of the event, which would include me, could be fined £10,000 each, and we might be breaking the law under s.44 and s.45 Serious Crime Act 2007. They advised that attendees of the vigil could also be fined.

We clearly explained that as responsible organisers and local representatives we wanted to ensure that this was a safe event, and that, given a number of other events had previously popped up on social media, by working with us we could meet the need of our community to come together but in a way where we had some control over the safety measures. We explained it was to be done in the safest way possible and asked for their input into how what they would consider to be safe and lawful – they did not offer any suggestions and this did not change their view. Instead they continued to assert that they needed to act consistently with regards every event or protest planned and that this meant this and any other event was unlawful. They did not mention how Articles 10 & 11 in the Human Rights Act featured in the development of their view, and did not point us to any risk or proportionality assessment made.

We felt very disheartened and disappointed that the metropolitan police had changed their views from initial conversations to preventing the event from happening. With the suspect being a serving officer, we felt it was their responsibility to make sure they supported women in the capital.

Legal action

We sought legal advice, given the serious nature of the proposed fines and potential criminal prosecution, as well as because of our unease at what appeared to be a blanket ban on protests or vigils.

Our understanding was, and remains, that the police are not correct in saying that vigil organisers or participants would necessarily contravene the All Tiers Regulations should the event go ahead. Our rights to free expression, protected by Article 10 of the European Convention on Human Rights and free assembly, protected by Article 11 of the ECHR are engaged. Public authorities, including the

police, are required by the Human Rights Act 1998 to interpret the All Tiers Regulations compatibly with these rights.

We also understood that the Court of Appeal recently said in a case called *Dolan v Secretary of State* that the regulations can be read compatibly with the Human Rights Act because being outside and/or gathering is permitted under the Regulations where there is a 'reasonable excuse'.

We therefore applied to the High Court for an urgent Order confirming that the Metropolitan Police's understanding of the law was incorrect, and for an urgent interim declaration that:

1. Schedule 3A to the All Tiers Regulations 2020 insofar as it prohibits outdoor gatherings, is subject to the right to protest protected by the Human Rights Act 1998;
2. the Metropolitan Police Service's policy prohibiting all protests irrespective of the specific circumstances, is accordingly erroneous in law;
3. persons who are exercising their right to protest in a reasonable manner will have a reasonable excuse for gathering.

We were represented by Doughty Street Chambers, Bindmans and Blackstone Chambers and the case was heard by Mr Justice Holgate. The transcript of the verdict can be found here:

[https://www.bindmans.com/uploads/files/documents/Leigh Ors v The Commissioner of the Police of the Metropolis \(12.03.21\)\(JUD\).pdf](https://www.bindmans.com/uploads/files/documents/Leigh_Ors_v_The_Commissioner_of_the_Police_of_the_Metropolis_(12.03.21)(JUD).pdf)

After the court case, we met again with the Metropolitan Police. We understood the ball to be in their court – that they had a responsibility as had just been outlined by Justice Holgate to exercise proportionality in their policing of the vigil, and that the onus was therefore on them to help define what an acceptable event would look like under the regulations. We made many constructive suggestions including staggering start times or splitting the event into time slots, but police officers attending did not engage with these nor offer suggestions of their own.

At 19.55, while we were still in a meeting with the Metropolitan Police, they issued a statement telling people to stay at home or "find a lawful" alternative way of expressing their views. You can find a copy of the statement here:

<https://www.mynewsdesk.com/uk/metpoliceuk/news/met-statement-following-court-judgement-423201>

That evening, the National Police Chiefs' Council (NPCC) told forces across England and Wales that gatherings could not be allowed.

By issuing those statements while we were still in a meeting with police officers, and while we were trying to be constructive, felt hugely disrespectful, premature and deeply inappropriate. We are incredibly disappointed that given the many opportunities to engage with organisers the Metropolitan Police remained unwilling to commit to anything. We were careful to distinguish between Lambeth officers and Scotland Yard – local police understood the need for women to come together in the face of a tragedy on their doorstep but the officers from Scotland Yard refused to engage and were, on occasion, hostile and rude. We felt intensely frustrated, belittled and silenced.

Cancellation

In light of the lack of constructive engagement from the police, we felt forced to cancel and issued regular advice to people not to turn up. We worked with the Feminists of London on an online vigil, organised a small group of local MPs to light a candle for each of the women that have been killed by

men over the past 12 months, and organised a doorstep vigil across the country where people lit a candle outside their front door and held a minute's silence.

Despite official cancellation, many people still went to Clapham Common – as we had warned to the police officers would happen anyway. Whether people didn't see the information cancelling the event or felt that the importance of coming together outweighed the risk of fines, we couldn't second guess their intentions and won't be drawn into casting judgment on other women. No organisers attended the vigil on Saturday, although I was present earlier in the evening to give a Sky News interview and saw that the crowds were already growing. In our meeting the day before, the police had already discussed the inevitability of a degree of gathering.

We were quite upset at the scenes that unfolded – images of women being manhandled by male police officers. We felt that it could have been avoided. The police put those women at risk not just by their heavy handedness on the night, but by refusing to engage constructively with us on how to ensure any gathering was Covid-safe. Had they worked with us, there would have been a proper risk assessment, PA system, Covid marshals and event stewards, mental health first aiders and a first aid tent on site, QR codes for track and trace, and a much more sensitive approach to policing such as ensuring it was predominantly local and female officers.

Vigils elsewhere in the UK

While our efforts were focused on Clapham Common, the topic of women's safety clearly hit a nerve with women across the country. Many got in touch informing us of their own plans to hold vigils at the same time as us. By Saturday we had been made aware of 32 events – other accounts suggest at least 40 were planned.

Other organisers have contacted us about their experience with their local police forces. We are aware of only two which worked collaboratively to enable something safe and in-person to take place – in Nottingham and Gwent. Some other organisers cancelled in response to our choice to do so in Clapham, others experienced more direct approaches from the police which they found intimidating. One organiser was issued with a cease-and-desist letter to her home – despite having already cancelled the in-person event and having communicated that to officers. Another was threatened with weekly phone calls to enable the police to check in. Another was phoned on a number the police only had access to because she had been a victim of a crime previously and they used her data from that case to contact her. Elsewhere, being threatened with a £10,000 fine seemed to be a common approach.

Going forward

The handling of what happened at Clapham Common on 13th March has been questioned and strongly criticised in the media. Commissioner Cressida Dick has sought to explain her officers' actions, but what is remarkably absent from her explanation is anything that indicates that she or any other officer sought to balance the Article 10 and 11 rights of would-be and actual attendees against the other factors they had to consider in deciding whether those present had a reasonable excuse to be there and deciding what to do if they did not.

Given this and our broader concerns about policing of violence against women and misogyny, *#ReclaimTheseStreets* contacted the Commissioner on the morning of Sunday 14th March and asked for a meeting. This took place on 15th March, though in the end the Commissioner had to leave after 15 minutes.

It appeared to us that the Metropolitan Police have not shifted their interpretation of the law – in fact they have doubled down, despite the experience of Nottingham and Gwent showing that a vigil can be safe and legal. Commissioner Cressida Dick refused to answer the question of what a lawful exercise of our rights under Articles 10 & 11 of the Human Rights Act 1998 could look like and offered no answer on whether any proportionality exercise had been carried out while we were in active discussion with the Police before Saturday.

In fact, Assistant Commissioner Jenny Stevens made clear to us in that meeting that the interpretation of the law and the ruling of Mr Justice Holgate remains a “fundamental point on which we disagree” and reiterated that there was no exemption for protest in any form.

We and our lawyers pressed those who remained after Commissioner Dick left on what form of gathering might be allowed, asking whether a gathering of 30 standing 10 metres apart from each other would be permitted, for example. We were told ‘no’. We asked DAC Connors whether any gathering of more than two people exercising Article 10 & 11 rights was permitted, to which her reply was “[i]n terms of gatherings, you know, it’s two people. More than two people and the way we deal with it - and that, that is within the definition of gatherings - but the way that we proportionately police and do those is through the engagement.” This was a reference to the first ‘E’ in the Police’s enforcement strategy which assumes there is unlawful conduct. When DAC Connors was asked to confirm that any gathering of more than two was unlawful Jenny Leonard interjected to say that depended on whether there was a reasonable excuse.

All of this left us none the wiser as to whether any exercise of our Article 10 & 11 rights would be considered lawful. One thing was very clear though, particularly from DAC Connors’ comments, which was that although the Police could or would not positively say what they would allow, any gathering even of small numbers of people spaced very far apart was not considered lawful in the sense of those participating having a reasonable excuse if they were exercising Article 10 and 11 rights. This makes it impossible for #ReclaimTheseStreets or any other organisation to plan any meaningful gathering without fear of prosecution.

Our legal team has written on our behalf to the Police and the Government’s lawyers to express these concerns and to request that they provide us with documents referred to in press reports. Those documents were supplied to our lawyers recently, and we are reviewing appropriate next legal steps.

END

14 April 2021

Statement to the APPGDC Inquiry into Policing of Public Gatherings, Constitutional Rights, and the PCSC Bill

CCA7

Submitted by [REDACTED], writer.

1) Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?

Even as a political journalist with experience of politics and campaigning, I have found it hard to keep myself entirely up-to-date with changing guidance on free expression during the pandemic.

Nonetheless, it was clear from police statements and media reports, which I followed closely, that the Met Police would consider any gathering of women on Saturday 13 March in Clapham Common to be unlawful. In that sense, I make no pretence that women who were arrested there had not been warned.

It has been confusing in the past week to see members of the public laying wreaths in memory of Prince Philip and congregating at what appear to be vigils – just like the vigil planned for Sarah Everard. Although it has been made clear that this is unlawful, such vigils do not appear to be actively discouraged. Widely distributed pictures show temporary queue markings being erected by police to facilitate queuing and the laying of floral tributes at royal palaces. In an article in The Telegraph newspaper of 15th April 2021, apparently briefed by the royal household, we are told: “each evening, the tributes are taken, with great care, to the private gardens at Marlborough House at St James’s Palace to be laid out by police officers.” The flowers laid in memory of Sarah Everard, by contrast, were trampled underfoot by police officers.

<https://www.telegraph.co.uk/royal-family/2021/04/15/prince-charles-camilla-prince-philip-death-funeral-tribute/>

I fully understand that members of the public feel a strong emotional connection to the royal family and have wished to share their solidarity in grief – however, the women who laid floral tributes to Sarah Everard were driven by a very similar need to state their solidarity in the experience of public grief. Both appear to have been unlawful – but only women expressing their sorrow at the widespread experience of sexual violence seem to have had their tributes defaced.

2. Did you understand your attendance at the gathering to be lawful or unlawful? If unlawful, why did you attend?

I attended in my capacity as a journalist. I understood my attendance to be lawful for that reason.

I am a columnist, not a reporter, and I therefore do not claim impartiality about the subjects of my writing. I thought it highly likely that I would end up writing about the gathering because of my longstanding interest and involvement in campaigns to end sexual violence. In this

capacity, I would still need to be present to analyse with any accuracy and clear-sightedness the politics of the event on the ground. My presence was therefore ‘work’ and protected under media freedom exemptions.

More personally, as I told BBC Women’s Hour during my broadcast with them on 15 March 2021, in the aftermath of Sarah Everard’s death I felt a strong need to be around other women. I live alone, which has been difficult during the pandemic, and conversation sparked by Sarah Everard’s death inflamed difficult memories of sexual violence both for me and for other female friends who got in touch. Many the women I spoke to at the gathering, who attended despite the possibility that their attendance was unlawful, had very similar emotions that week and felt a strong need to be around other women.

3. How did you and other attendees behave at the gathering? Were people socially distancing and wearing masks? Was anyone violent or aggressive? Did you feel the event was hijacked in any way?

The overwhelming majority of attendees were sober in behaviour, deeply saddened, and treating the event as a sombre vigil. Most attempted to keep a social distance. I cannot recall seeing any woman who was not wearing a mask.

However, the geography of the location was such that whoever occupied the bandstand was always going to be in a position to lead chanting and any ‘protest’ aspect of the gathering. Because of the court rulings on the previous day, the women who had assumed leadership of the ‘Reclaim These Streets’ organisation stayed away. Instead, it was clear that a well-organised group from ‘Sisters Uncut’ had arrived very early, taken control of the bandstand, and had approached this event as a protest which they would lead.

When speeches and chanting began from the bandstand, I made my way to the front to observe what was going on. This was also where floral tributes had been laid out which I wanted to see. However, after about 10 minutes I felt it appropriate to give way for other people to get a chance to see the tributes, and because I was slightly concerned by the closeness of the crowd at the bandstand. I drifted out to a part of the crowd where there was a bench, at one point standing on the bench to get a view of the bandstand. By the time the police began to circle the bandstand, clearly about to move in make arrests, I was well away from the centre, and thus cannot claim to have had a direct view of exactly what went on between individual protestors / vigil attendees and the police.

As for ‘hijacking’: it has always been my view that Sisters Uncut do not represent the great majority of women who were moved by the death of Sarah Everard, and who were impelled in the week of 13 March to share in solidarity our own experiences of sexual violence and harassment in public space. However, although I do not share their specific politics, I saw nothing in the behaviour of the leaders on the bandstand that seemed to go beyond the basic expression of civic protest, to which we are all entitled. I saw absolutely no violence or incitement to violence.

Many of the women who had gathered in the crowd, whether or not they had ever heard of Sister Uncut, shared a deep sense of anger – one I understand myself – that the Met Police institutions had failed to protect women in public spaces. The fact that a serving police officer has been charged in this case clearly fuelled that anger. In that context, attendees were easily led into echoing the chants led by Sisters Uncut from the bandstand – but in all my experience

of protests and political events, this not unusual and it is not unlawful or an indicator of potential violence. It is quite common at mass political gatherings for particular political groups to take advantage of a crowd's anger to assert leadership - but this does not normally lead to people being arrested.

I was concerned that the content of some of the chants, if circulated or republished, my constitute contempt of court. It was also striking that this was the only vigil I've ever heard of for a person murdered in public circumstances where nobody from the victim's family was present. Many women – myself amongst them – feel strongly that sexual violence in society has been ignored for too long, and the death of Sarah Everard has been a moment that has inspired many to come together to demand change. Yet I remain deeply uncomfortable by the blurred lines between this important catalyst for feminist organisation and the particular tragedy of a private family. The fact that this vigil was not in any way endorsed by Sarah Everard's family gave me great unease about the ethical position of the event.

There was some more clear-cut 'hijacking', in that I spotted a couple of clearly eccentric or extreme protestors on their own, who seemed to be supporters of Julian Assange, as well as propagators of 'anti-vax' conspiracies. One such man was verbally aggressive. They did not appear to me to be affiliated with the Sisters Uncut group on the bandstand and frankly, I've covered or joined enough political gatherings in my life to know that such people turn up to any protest going – but they are, and were here, easily ignored.

4. To what extent do you believe police officers respected and facilitated your right to free speech and peaceful assembly? How did police officers behave towards you and others at the gathering? Do you believe they behaved appropriately?

Every police officer I noticed during the early part of the gathering was polite, non-confrontational and respectful. There appeared to be hands-off approach at first. At one point I saw police officers engaging constructively with legal observers about crowd safety.

By the time police officers began circling the bandstand area, I had moved back from the centre. The officers' backs were to me, and I couldn't see exactly what was going on, so I would not like to make conjectures about what really went on beyond this point. My phone was no longer working, things appeared to be about to get ugly and I was worried about getting home safely without a working phone, so I left soon after that.

I have read the report by HMICFRS and it does not satisfy me that the Metropolitan Police have respected and facilitated the right to free assembly. In particular, I am not satisfied by the report's defence of the forces decision not to work with the organisers of the moderate group, Reclaim These Streets, to facilitate an official vigil. This defence is laid out on pages 44 and 45 of the report.

As I have made clear, Sisters Uncut were able to assert leadership over the event on Saturday 13 March despite being an organisation that did not represent my views or, I believe, the majority of women who have moved by the death of Sarah Everard. (Although I saw nothing to justify the arrest of any member of this group. Being effective political organisers is not a crime.) The organisers of a more moderate movement, Reclaim These Streets, were ordered by the court to stay away, and being law-abiding people, did so. Anyone could have predicted that

this would create the space – literally – for groups with a less positive attitude to the police to set up camp at the Clapham Common bandstand and capture the country’s attention.

On page 45 of the HMICFRS report, the most ‘compelling’ justification of the decision to ban an ‘official’ vigil is described as follows:

“The third reason, which we consider to be the most compelling, is that the planning would have needed to involve some assumptions about the nature of the gathering and the intentions of those who would be there. By Friday 12 March, the police had intelligence that Sisters Uncut had shown an interest and were likely to attend the vigil. It is not uncommon for gatherings to attract those who protest for various causes. Such groups can present significant problems for the police. Any planning assumptions would sensibly have needed to allow for civil disobedience and a failure to observe social distancing.

In this particular case – while recognising that the event was conceived as a vigil for Sarah Everard – the principal cause for protest was the promotion of societal improvements in women’s safety. However, it was clearly attended by those with other causes in mind.”

The report clearly states that the decision to ban a vigil led by Reclaim These Streets was made because of fears that Sisters Uncut would instead be a major presence at the gathering. This strategy was evidently self-defeating. The retreat of Reclaim These Streets created a vacuum which Sisters Uncut eagerly filled. Instead of an event led by moderate feminists in co-operation with the police, the Met’s decisions created the conditions for a far more radical, far less Covid-secure event, which gave a major platform to the very group over which the Met had expressed most concern, and inspired copy-cat protests in cities across the country.

I am not at all sure that it is the role of the Met to choose between feminist organisations of different stripes as to who gets the right to protest. The HMICFRS report, however, suggests they specifically attempted to contain Sisters Uncut. In this, they clearly failed.

As a final note, I would like to point out that I am Deputy Chair of Index on Censorship, an organisation which supports media freedom around the globe. Index on Censorship has raised major concerns about the impartiality of the HMICFRS report, after revelations by a whistleblower, Alice O’Keeffe. Full coverage in the Guardian newspaper of Ms O’Keeffe’s complaint can be found at this link: <https://www.theguardian.com/uk-news/2021/mar/31/police-watchdog-accused-of-skewing-report-to-back-protests-clampdown>

19th April, 2021

I attended protests in Bristol in a personal capacity at the first of these protests, on Sunday 21st March (masked and at the edges) and as a reporter on Tuesday 23rd March, Friday 26th March and Saturday 3rd April. I interviewed protesters on the Tuesday before and after the eviction. This account is specifically about the protest on Tuesday 23rd March, as that's the one I spent the longest at. I didn't see direct violence, but I have accounts from friends at the protests and also people I interviewed, and can attest to the atmosphere of the protests generally.

I hadn't expected anything much to happen at Tuesday's protest, as it was just a sit-down occupation of College Green. I only went to interview people about the criminalising trespass part of the Bill as part of my ongoing coverage into issues affecting Bristol's Gypsy and Traveller communities. This protest was a sit-down occupation rather than a march and was very quiet. Earlier on there'd been a bit of dancing but most of the time people were sat down listening to speeches, poems and songs.

People I spoke to said they'd been in touch with police liaison officers, who weren't around for most of the protest. One person I spoke to after, who said he had been acting as a go-between between protesters and the police in the hours before the eviction, said the liaison officers they were talking to during the occupation didn't seem to know that an eviction was imminent.

I've been surprised by how much police tactics have changed between protests, and how unpredictable it's been. It's made planning our coverage of the protests difficult, as we haven't known whether we would need more reporters on together to keep each other safe – my colleagues were shoved and threatened with arrest during the protest despite displaying press credentials. On Tuesday and Friday following the riot outside Bridewell Police Station on the previous Sunday there were more riot police than seemed necessary and treatment of protesters seemed unnecessarily rough and violent. On the following one I attended, after the ban had been lifted, there was a reasonably large police presence until later on, when a lot more suddenly appeared, but they were very hands off – even allowing protesters to do an unscheduled march up the M32 long after the regular protest had ended, and only got intervened after a scuffle between some young people and some of the protesters – at which point they arrived in huge numbers, but without riot shields and not wearing their helmets. The arrests I saw on the Saturday seemed gentle and cautious. This amount of unpredictability of police tactics felt unnerving as a journalist covering the protests, because you never knew what to expect.

The police response on that Tuesday – the numbers of police and force they used – seemed extremely disproportionate to the atmosphere of the occupation of College Green. In the hours running up to the eviction, there had been speeches, poems and protest songs sung quietly. There had been people collecting litter and everyone I spoke to in the hours leading up to the eviction said that they were keen to distance themselves from the scenes outside Bridewell Police Station the previous (Sunday 21st) protest. It was a very peaceful occupation, they'd been planning to stay there until the next day and the people I spoke to didn't seem to be expecting an eviction. I've heard different accounts as to whether police had warned people they were being evicted at 10pm or not. One person I interviewed said there was no indication it was going to happen and that it was very sudden. People I spoke to after said they hadn't had chance to remove their possessions and that their property – including tents and an accordion – was taken to Bristol Waste and I think many possessions weren't there when people went to get them.

As I had left before the eviction, I missed the moment police advanced – I have interviews from people about how they surrounded the Green on three sides and walked in, trampling people – but I

didn't see this firsthand. When I arrived, I was on the outside of the Green. I was surprised by the numbers of police deployed for so few protesters who had been sat down.

My personal opinion is that the eviction of this protest was extremely disproportionate in terms of police numbers and the force used. It felt like it might have been in response to the violence at Sunday's protest, but these were different people, here for a different cause and using different tactics. The numbers of protesters on Tuesday were also very low – I'm pretty sure there were more police than protesters.

On the Friday and Saturday protests I reported at after, I saw people standing in front of the line of riot police and talking to them, and some of the chants were provocative and aimed at the police rather than the Bill. I understand that it's a high stress job, especially at the protests where police had to stand for hours before they were allowed to move in. It's normal that you'd have pent up aggression and stress after spending several hours like that, but riot police are trained professionals. Again, this is my personal opinion, but the aggressive treatment of protesters during the protest ban makes me feel very nervous about the law changing to allow police more powers to deal with protesters – I feel like this has shown us what happens when riot police are given such a free reign to shut down protests and am concerned that it would change the face of protests if the powers police were temporarily given during the protest ban were made permanent. One possible consequence is that it would turn protests into the democracy equivalent of an extreme sport and the expectation of police violence would deter all but the most hardcore protests, making protesting become something that only people who weren't easily intimidated were happy doing, and protesting is something that everyone should feel safe doing.



RE: APPG ON DEMOCRACY AND THE CONSTITUTION INQUIRY INTO POLICING OF CLAPHAM COMMON VIGIL

QUESTIONS FOR METROPOLITAN POLICE

Many thanks for considering a submission to the APPG on Democracy and the Constitution's ("APPGDC") inquiry into the policing of the Clapham Common vigil on 13 March 2021. The APPG is seeking to understand whether and/or how important rights, including the right to free expression and peaceful assembly were respected and facilitated at the vigil. The APPG is interested in your recollection of the vigil and the events leading up to it.

The APPG would be grateful if you could include any documentary evidence (such as log-books, records, photographs, or recordings) to support or supplement your submissions.

You may wish to structure your response around the following questions:

1. **Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?**
2. **In the week before the vigil what discussions were there between the MPS and organisers of the proposed vigil?** What was proposed? What did the MPS do or consider to facilitate the rights to free expression and peaceful assembly?
3. **How did the MPS address the issues raised by the High Court's judgment on 12 March 2021?** Did the MPS hold further talks with organisers and was an announcement of the MPS stance on the vigil made while these were still ongoing?
4. **How were attendees behaving at the vigil?** What specific breaches of the law (if any) occurred? Were social distancing and mask wearing observed? Did MPS actions cause a reduction in social distancing? Were attendees at any point violent or aggressive towards MPS officers?
5. **How did the MPS seek to facilitate the rights to free expression and assembly at the vigil?** What was the operational plan and how did this change? Why were arrests made and how were particular individuals selected for arrest? What force was used and why?

Please add anything else you consider relevant.

Please submit your answers in writing to Sam Fowles, Counsel to the Inquiry at sfowles@icdr.co.uk. The deadline for submissions is Wednesday 14 April.

E: APPGDC INQUIRY INTO POLICING OF PUBLIC GATHERINGS, CONSTITUTIONAL RIGHTS, AND THE PCSC BILL

QUESTIONS FOR AVON AND SOMERSET POLICE

Many thanks for considering a submission to the inquiry. The APPG is seeking to understand whether and/or how important rights, including the right to free expression and peaceful assembly were respected and facilitated at the gathering that you attended. The APPG is interested in your views of the gathering and the events leading up to it.

The APPG would be grateful if you could include any documentary evidence (such as log-books, records, photographs, or recordings) to support or supplement your submissions.

You may wish to structure your response around the following questions:

- 1. Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?**
- 2. In the week before the gathering what discussions were there between the police and organisers of the proposed gathering(s)?** What was proposed? What did the police do or consider to facilitate the rights to free expression and peaceful assembly?
- 3. How did the police address the issues raised by the High Court’s judgment on 12 March 2021?** While the judgment referred specifically to the Clapham Common vigil on 13 March 2021, it has implications for all gatherings during lockdown.
- 4. How were attendees behaving at the gathering?** What specific breaches of the law (if any) occurred? Were social distancing and mask wearing observed? Did police actions cause a reduction in social distancing? Were attendees at any point violent or aggressive towards police officers?
- 5. How did the police seek to facilitate the rights to free expression and assembly at the gathering(s)?** What was the operational plan and how did this change? Why were arrests made and how were particular individuals selected for arrest? What force was used and why? The APPG would be grateful if you would comment specifically on accusations of “blading” and excessive force.

Please add anything else you consider relevant.

Please submit your answers in writing to Sam Fowles, Counsel to the Inquiry at sfowles@icdr.co.uk. The deadline for submissions is Wednesday 14 April.

E: APPGDC INQUIRY INTO POLICING OF PUBLIC GATHERINGS, CONSTITUTIONAL RIGHTS, AND THE PCSC BILL

SUMMARY OF AVON AND SOMERSET CONSTABULARY'S PUBLIC POSITIONS

INTRODUCTION

1. Avon and Somerset Constabulary (“**A&SC**”) was contacted in early April. The Call for Evidence (“**CFE**” - tailored for A&SC) is included in the bundle. On 8 April ACC Reilly informed me that A&SC was not in a position to contribute because “we are not currently in a position to answer the questions provided due to ongoing investigations”.
2. The Secretariat therefore compiled a bundle of public statements made by or on behalf of A&SC and examined these to determine whether they assisted in answering the questions in the relevant CFE. We were fortunate in that A&SC has made public statements which speak to all of the questions raised in the CFE. Almost all of these statements predate ACC Reilly’s response. Given the importance of ensuring balance in this inquiry, and the ready availability of obviously relevant statements by or on behalf of A&SC, I have compiled this document to assist members in understanding A&SC’s perspective.
3. Below are identified extracts from public statements by or on behalf of A&SC which speak to the questions in the CFE. For context, the full documents from which the statements are taken are included in the Evidence Bundle. Where necessary I have interpreted aspects of A&SC’s position based on their statements.

4. In the interests of objectivity, I have drafted this document before looking at any submissions provided by attendees at the Bristol events. A copy of this document was sent to A&SC on 19 April and will be updated with any comments received.

Q1. Do you consider the law and guidance in place at the time to be sufficiently clear in respect of public gatherings for the purpose of protest/free expression/peaceful assembly during the coronavirus pandemic?

Supt. Mark Runacres, interviewed on BCFM Radio (29 March):

“The Covid regulations prohibit protests from taking place”

Ch. Supt. Claire Armes (26 March):

“In Avon and Somerset we remain committed to facilitating peaceful protest when it’s safe and lawful to do so, however gatherings remain a breach of COVID restrictions and risk increasing the spread of coronavirus. We urge you not to come.”

5. A&SC does not appear to have engaged with Regulation 10 of the Health Protection (Coronavirus Restrictions) (All Tiers) (England) Regulations 2020 (“**the 2020 Regulations**”). That provides for an exemption to the prohibition on gatherings if the person has a “reasonable excuse”.
6. It appears that, after 29 March, A&SC considered peaceful protests to be *prima facie* lawful on the basis that, after that date, the regulations in force contained an explicit exemption for protest:

Statement 15 April:

“While gatherings of more than six people or two households aren’t allowed under coronavirus regulations, there is an exemption for protests to take place providing organisers take the required precautions to limit the spread of the virus.”

Supt. Mark Runacres, 29 March:

“Following changes to COVID regulations, there is now an exemption to allow peaceful protests. However, this exemption only applies if the organisers take the required precautions to ensure people’s safety is not put at risk.”

Statement 3 April:

“Following a change to COVID regulations, there is now an exemption to allow peaceful protests providing organisers take the required precautions to ensure people’s safety is not put at risk.”

Q2. In the week before the gathering what discussions were there between the police and organisers of the proposed event? What was proposed? What did the police do or consider to facilitate the rights to free expression and peaceful assembly?

Supt. Runacre’s, interview on BCFM (29 March):

[The fact that the 2020 Regulations prohibit protests] “means we’ve been unable to engage with protest organisers to establish their plans”

7. There is a degree of ambiguity as to whether this reflects the official position. In his statement of 22 March Ch. Con. Marsh stated that, although A&SC did not identify a specific organiser prior to the event, it engaged with “a number of organisations who had expressed an interests in attending to discourage them due to the Covid-19 restrictions.”

Q3. How did the police address the issues raised by the High Court’s judgment on 12 March 2021? While the judgment referred specifically to the Clapham Common vigil on 13 March 2021, it has implications for all gatherings during lockdown.

8. I have not been able to identify any public statement by or on behalf of A&SC which engages with Holgate J’s decision in *Leigh*.

Q4. How were attendees behaving at the gathering? What specific breaches of the law (if any) occurred? Were social distancing and mask wearing observed? Did police actions cause a reduction in social distancing? Were attendees at any point violent or aggressive towards police officers?

9. Bristol experienced a series of protests from 21 March. Several of these appear to have differed in character and A&SC has given its own account of each one. I take them here in sequence.

21 March:

“Following a protest held earlier today, several hundred people congregated outside Bridewell police station in Bridewell Street, Bristol, during the afternoon.

“What started out as a peaceful protest has been turned by a small minority into a violent disorder.

“Officers have been subjected to considerable levels of abuse and violence. One suffered a broken arm and another suffered broken ribs. Both have been taken to hospital. These are men and women out there with the intention of serving and protecting the public – they should never be subjected to assaults or abuse in this way.*

“At least two police vehicles have been set on fire and damage has been caused to the outside of the station. Protestors are not inside the building.

“Overnight seven arrests were made – six for violent disorder and one for possession of an offensive weapon – and a full investigation is now underway.

“A total of 20 officers were assaulted or injured”

[It was subsequently clarified that, in fact, no officer suffered broken bones. A&SC assert that “there was no intention to mislead”]

24 March

“Mutual aid from neighbouring forces was requested to assist in dispersing the gathering on College Green – which began at 4pm – after efforts to encourage people to leave were unsuccessful.

While many left the area, a significant number gathered on Deanery Road and refused to disperse.

A total of 14 people were arrested for offences including breaches of COVID-19 legislation and obstruction of a highway.

“Officers had engaged with protestors and asked them to disperse, but tents and a sound system were set up so it was abundantly clear they were intent on remaining at the location, in spite of legislation in place to protect public health.”

30 March

“Between 200 and 300 people gathered for the protest, which began at College Green and then involved a march through Bristol city centre, coming to a stop in Bridewell Street where they remained for several hours.

“From the outset we had a very positive dialogue with those gathering at College Green, led by our police liaison officers.

“We’d like to thank all those who engaged with us and to those who expressed their views in a peaceful and respectful manner.”

3 and 4 April

Protests were generally described as “peaceful”

“The largest demonstration was in Bristol and was attended by around 1,500 people.”

“A number of those who attended the Bristol protest chose to remain in the city centre after the main event had concluded at around 7.30pm.”

“At approximately 10.15pm around 100 protestors began marching through the city centre for a second time.”

“They briefly occupied both carriageways of the M32 motorway before turning back when officers blocked them advancing beyond Junction 3.”

“Then, at around midnight, a Section 35 Dispersal Order was implemented requiring people to leave the city centre. This followed several instances of minor disorder between protestors.”

“Seven people were subsequently arrested.”

Q5. How did the police seek to facilitate the rights to free expression and assembly at the vigil? What was the operational plan and how did this change? Why were arrests made and how were particular individuals selected for arrest? What force was used and why? The APPG would be grateful if you would comment specifically on accusations of “blading” and excessive force.

22 March

“A tactical decision was made to deal with these criminals retrospectively and not make a significant number of arrests last night, which would have impacted significantly on our resources at the scene and created a greater risk of damage to property and injuries to the reduced number of officers left to deal with the disorder.”

“What the public will see now is a huge police investigation in which we’ll be gathering evidence from CCTV, Body Worn Video, social media content and images/video sent in by the public. We are appealing for people to send in footage so all those responsible can be identified – full details of where to send these will be issued on our website and social media later.”

“This will undoubtedly lead to one of the biggest appeals for wanted suspects that we’ve ever done. There will be significant consequences for behaviour like this and we will leave no stone unturned.”

24 March

“Mutual aid from neighbouring forces was requested to assist in dispersing the gathering on College Green – which began at 4pm – after efforts to encourage people to leave were unsuccessful.”

“Highly trained public order officers from Avon and Somerset, British Transport Police, Devon and Cornwall, Dorset, Dyfed Powys, Gloucestershire, Gwent and Wiltshire were deployed to move protestors on at 10pm.”

“Specialist police dog units, horses, the National Police Air Service and a police drone unit were also involved in the operation.”

“Throughout the operation officers continued to urge protestors to move on – at no time were they contained – but there came a time when enforcement was necessary as gatherings are still not permitted.”

In relation to the use of force and “blading” (from Supt. Runacre’s interview (29 March):

“I’ve been in policing for over 25 years now, and it’s an unfortunate reality that in public order policing, the tactics that are used – the shield strikes that you’re

referring to – that’s an absolutely legitimate and trained tactic that officers are coached on in their public order training.”

“It’s approved by the College of Policing, and if they can justify that act, as a proportionate response, they are entitled to do it, and it’s for each officer to justify their individual uses of force, that’s a matter for them to justify, and if there are any complaints, they will be investigated and they need to justify what they have done,”

“In terms of that tactic, it may look unsightly and shocking to some, but in terms of the reality of public order policing, and policing disorder, it’s a legitimate tactic that an officer can use, if it’s necessary to move someone away from an area, if they are a threat, or to keep themselves safe.”

“That might be unpleasant for some, but it’s difficult for me because I can’t sit here and criticise officers for doing something that they’ve been trained to do. It is scary. I feel uncomfortable saying this, but that’s how it’s supposed to be, when we are dealing with public order policing, part of the way you want to operate is when you are in that mode.”

SAM FOWLES

ICDR and CORNERSTONE BARRISTERS

16 April 2021

The Sarah Everard vigil

An inspection of the Metropolitan Police Service's policing of a vigil held in commemoration of Sarah Everard on Clapham Common on Saturday 13 March 2021

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1. Introduction

Background

Sarah Everard, a 33-year-old marketing executive, went missing after leaving a friend's house in Clapham, south London, on 3 March 2021. She was last seen on CCTV at around 9.30pm that evening, apparently having walked across Clapham Common on her way home. After an extensive police inquiry, searches and public appeals for help, her body was found in woodland in Ashford, Kent, on 10 March 2021.

On behalf of all those who have worked on this report, we send our heartfelt condolences to the family and friends of Sarah Everard.

Miss Everard's death unleashed an outpouring of fears and concerns for their own safety among many women and girls across this country. As a national debate rapidly gathered speed, many spoke of their own experiences of feeling vulnerable or of suffering harassment and abuse from men on the streets or public transport. This highlights arguments about the responsibility of some men for their role in creating a society in which so many women feel unsafe.

The voices of those who have spoken out must not be ignored. The problems raised must be addressed by our society. They have relevance and urgency for all those involved in policing, and such problems are often a feature of our inspections. At the time of publishing this report, we are about to consult the public on our proposed policing inspection programme and framework for the year 2021/22. The programme includes a proposal for an inspection into how well the police tackle violence against women and girls.

On 9 March 2021, the Metropolitan Police Service arrested Wayne Couzens, one of its serving officers. On 12 March 2021, Couzens was charged with the kidnap and murder of Sarah Everard.

There was widespread media reporting that Couzens was also suspected of indecent exposure, at a fast food restaurant in south London on 28 February 2021. The Independent Office for Police Conduct (IOPC) has started an independent investigation into whether Metropolitan Police officers responded appropriately to a report of indecent exposure, following a conduct referral from the Metropolitan Police in relation to two officers.

The IOPC has announced two further investigations relating to the investigation of Sarah Everard's death. The first will examine how Couzens sustained head injuries on 10 and 12 March 2021 while in police custody on suspicion of Sarah Everard's murder. The second will investigate the conduct of a probationary police constable

who was on duty at a cordon supporting the search operation for Miss Everard. It is alleged that the officer sent an inappropriate graphic to colleagues via social media on 11 March 2021.

Events developed rapidly over the course of a few days. The role of the Metropolitan Police Service and its officers came under scrutiny, while an intense and impassioned debate continued about male violence towards women and the safety of women to live their lives as they would like, without fear of violence.

Policing across the country is operating under the extraordinary circumstances created by the coronavirus pandemic. Regulations have been introduced, amended, relaxed and re-imposed at speed over the past year to answer the need to protect human life by placing restrictions on the movement of citizens that would previously have been considered unthinkable. Police officers have been in the front line as they enforce regulations designed to protect public health.

Members of Reclaim These Streets (RTS) proposed to organise a vigil for Sarah Everard on Saturday 13 March 2021 on Clapham Common, close to where she had last been seen.

With the country still under severe movement restrictions due to the coronavirus pandemic, Metropolitan Police officers met the organisers of the vigil and told them that such a gathering was likely to be in breach of regulations to protect public health. Legal arguments were made by both sides at a hearing at the High Court in London on 12 March 2021. Further discussions followed between the police and RTS.

On 12 March 2021, the police released this statement:

“Today’s ruling in the High Court has confirmed that the Metropolitan Police may conclude that attendance at a large gathering could be unlawful. In light of this ruling, our message to those who were looking to attend vigils in London this weekend, including at Clapham Common, is stay at home or find a lawful and safer way to express your views.”

RTS announced on the morning of 13 March 2021 that the organised vigil they had planned would not go ahead.

Nonetheless, members of the public went to the bandstand at Clapham Common in small groups during that afternoon, many laying flowers or lighting candles. As the afternoon wore on, numbers grew. What began as a quiet, sombre affair, with a minute’s silence for Miss Everard at 6.00pm, became a rally, complete with microphones, a public address system, placards and a dense crowd. Police made nine arrests as they moved to disperse the crowd. Photographs and video footage of the scenes, including police officers detaining people, were widely circulated on social media and published in the media.

That evening and through the rest of the weekend, politicians, the media and members of the public raised questions about the police response to the event on Clapham Common. Both the Home Secretary and the Mayor of London asked for immediate explanations from the Metropolitan Police.

Our commission

On 14 and 15 March 2021 respectively, the Home Secretary and the Mayor of London separately commissioned Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) to inspect how the Metropolitan Police Service handled the policing of the vigil in memory of Sarah Everard held on Clapham Common on Saturday 13 March 2021.

The Home Secretary wrote:

“Following the tragic killing of Sarah Everard and the unofficial vigil held in her memory on Clapham Common on Saturday 13 March, under powers in Police Act 1996, section 54(2B) I wish to commission HMICFRS to undertake a bespoke thematic inspection into the Metropolitan Police Service's handling of this event – its operational decision-making, application of the law in the context of the COVID regulations and its engagement with those at Saturday's event and the wider public.

I would be most grateful if this could be prioritised within your current programme and for you to report your findings within two weeks.”

The Mayor of London wrote:

“I request that Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services review the activities of the MPS in relation to the above event, with the following specific areas of focus:

- how effectively did the MPS plan and prepare for the 'Reclaim these Streets' vigil, including discussions between the organisers and the Central South BCU [Basic Command Unit] in the days leading up to it and the subsequent change in approach from the MPS;
- how the MPS adjusted those plans following the decision to cancel the original vigil;
- how did the MPS engage, collaborate and communicate with local partners and local communities in preparation for and during the vigil;
- the leadership and operational decision-making during the vigil itself, in the context of the COVID-19 regulations, and whether the MPS achieved the right balance between enforcing the law and the rights of those attending the vigil; and
- what lessons can be learned from the policing of this vigil for the policing of future events.”

This report has been compiled in response to these two commissions because it would not be practicable, or sensible, to conduct two separate inspections.

The inspection team's work has been guided throughout by the [ten principles relating to taking and reviewing risk](#) specified in the College of Policing (CoP)'s Authorised Professional Practice (APP). These relay consistent messages in relation to support for those who take risks in their response to incidents. For example, recognising the need for judgment and balance in considering the possible benefits and harms involved in coming to a decision. They are particularly apposite in this instance.

Methodology

This inspection has been carried out with speed, intensity and due thoroughness. Working from the start to a strict timetable, we set out to gather a wide range of views and perspectives. The inspection team organised and carried out more than 30 interviews. This included speaking with police officers at various levels of seniority, the RTS organisers, politicians and officials in central and local government.

With the co-operation of the Metropolitan Police, Lambeth Council and others, we gathered approximately 700 documents, including statements, minutes of meetings, emails, police logs and legal submissions. These were sifted for relevance and selectively reviewed by our team of inspectors. We gathered and reviewed many hours of body-worn video from officers at the heart of the events at Clapham Common, an audio recording of police radio communications, and video recorded by others at the scene.

We examined publicly available commentary on the events at Clapham Common and other vigils held nationally. This included material on social media and news websites.

We are grateful to all those whose co-operation and assistance have allowed this inspection to be completed within the time requested by the Home Secretary and the Mayor.

2. The legal context

The Metropolitan Police's actions in relation to the vigil were largely guided by its understanding of the law. As such, we consider it necessary to describe in detail the regulations and wider legal context in which events unfolded.

The Secretary of State for Health and Social Care has made a series of frequently changing health protection regulations by way of statutory instrument, laid before Parliament under section 45R of the Public Health (Control of Disease) Act 1984.

These are legal rules, with the explicit objective of containing and suppressing the transmission of coronavirus. Different versions of the regulations apply in different parts of the UK.

The regulations have been implemented at different points to:

- restrict travel or movement outdoors;
- limit the size and location of gatherings;
- restrict domestic and international travel;
- require people to wear face-coverings in shops and on public transport; and
- restrict (or even close) places of work, education and recreation.

This chapter focuses on the relevant regulations in force in England at the time of the planned vigil on 13 March 2021. They are formally called the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020. We will refer to them as the 'All Tiers Regulations'. Importantly, we will also consider the effect and implications of human rights legislation and case law as they pertain to the events that we describe.

The All Tiers Regulations were made on 30 November 2020 and came into force on 2 December 2020. They were amended on 20 December 2020 to add Tier 4 to the original Tiers 1, 2 and 3. The current regulations are due to expire at the end of 31 March 2021.

As our inspection came to an end, Parliament extended restrictions by six months. The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 were made on 22 March 2021 and came into force on 29 March 2021.

Implementation of Tier 4 restrictions

The police service (including the Metropolitan Police) has had to respond to frequently changing national restrictions, lockdowns and definitions of tiers. There have been six phased governmental approaches to implementing restrictions on the rights and activities of citizens. The first national lockdown in England was between late March and June 2020. The Department of Health and Social Care (DHSC) established these, based on expert advice available at the time and aligned to the Health Protection Regulations.

On 19 December 2020, the Prime Minister announced the introduction of a new Tier 4. The DHSC rationale was the increase of coronavirus cases attributed to a new variant of the virus. On 30 December 2020, after the first tiering review under the new 4-tier system, approximately 75 percent of the country was under Tier 4 restrictions.

National lockdown restrictions, under phase 6, were reintroduced for a third time on 6 January 2021.

The law applicable to protests during the COVID-19 pandemic in March 2021

Part 1 of the All Tiers Regulations provides definitions and other provisions. Part 2 provides for different restrictions to apply to Tiers 1, 2, 3 and 4, as set out in more detail in separate schedules for each tier. Part 3 makes provision for “relevant persons” to enforce the restrictions, and for offences and penalties for those who breach the restrictions. Part 4 makes final provisions – for example, concerning review, expiry and revocation of the regulations.

Schedule 3A provides for the restrictions that apply in Tier 4 areas. All England has been within Tier 4 since 6 January 2021 (see Part 3 of Schedule 4).

Restrictions in Tier 4 areas

The All Tiers Regulations state that, in a Tier 4 area, a person may only leave home if they have a “reasonable excuse” to do so:¹

“(1) No person who lives in the Tier 4 area may leave or be outside of the place where they are living without reasonable excuse.

(2) For the purposes of sub-paragraph (1)—

(a) the circumstances in which a person has a reasonable excuse include where one of the exceptions set out in paragraph 2 applies...”

A non-exhaustive list of 20 circumstances (called “exceptions”) where a person will have a “reasonable excuse” to leave home is then provided². The wording of paragraph 1 makes it clear that this list of “exceptions” is non-exhaustive: “the circumstances in which a person has a reasonable excuse **include** where one of the

¹ Paragraph 1 of Schedule 3A.

² For a list of those exceptions, see paragraph 2 of Schedule 3A.

exceptions set out in paragraph 2 applies” (emphasis added). In other words, the list includes, but is not limited to, the “exceptions” that are mentioned expressly.

As a result, even though leaving home to protest or attend a vigil is not an express exception, a person who does so could still have a reasonable excuse, depending on the particular facts and circumstances.

The All Tiers Regulations state that in a Tier 4 area, a person may not participate in a “gathering”³ that (i) takes place outdoors; (ii) consists of more than two people; and (iii) to which no exception applies:⁴

- “(1) No person may participate in a gathering in the Tier 4 area which—
- (a) takes place outdoors in a place which satisfies the conditions in sub-paragraph (4) and consists of more than two people; or
 - (b) takes place in any other outdoor place and consists of two or more people...
- (3) Sub-paragraphs (1) and (2) do not apply if any of the exceptions set out in paragraph 6, 7 or 8 applies.”

The list of gatherings that are exceptions to this prohibition, and therefore permissible under the All Tiers Regulations in a Tier 4 area, does not expressly include protests or vigils.⁵

Organisers of gatherings

The All Tiers Regulations also consider the role of “organisers” of gatherings. The relevant paragraph states that, in a Tier 4 area, a person may not hold or be involved in holding a gathering that (i) consists of more than 30 persons; (ii) is in a public outdoor place; and (iii) is not a gathering to which an exception applies:⁶

- “(1) No person may hold, or be involved in the holding of, a relevant gathering in the Tier 4 area.
- ...
- (3) A gathering is a “relevant gathering” for the purposes of this paragraph if it falls within sub-paragraph (4) or (5).
- ...
- (5) A gathering falls within this sub-paragraph if (not falling within sub-paragraph (4)) it—
- (a) consists of more than 30 persons,

³ Defined in regulation 2(6)(e): “a gathering takes places when two or more persons are present together in the same place in order (i) to engage in any form of social interaction with each other, or (ii) to undertake any other activity with each other”.

⁴ Paragraph 4 of Schedule 3A.

⁵ Paragraphs 6, 7 and 8 of Schedule 3A.

⁶ Paragraph 5 of Schedule 3A.

(b) takes place— ...

(iii) on land which satisfies the condition in sub-paragraph (6), and

(c) is not a gathering in relation to which any of the exceptions set out in paragraph 6 or 7 (so far as capable of applying to the gathering) applies.

(6) Land satisfies the condition in this sub-paragraph if it is a public outdoor place which is not—

(a) operated by a business, a charitable, benevolent or philanthropic institution, or

(b) part of premises used for the operation of a business, a charitable, benevolent or philanthropic institution, or a public body.”

Police powers to enforce the All Tiers Regulations

The police have powers to enforce the All Tiers Regulations by taking “such action as is necessary”⁷ (subject to the caveat referred to below):

“(1) A relevant person⁸ may take such action as is necessary to enforce any Tier 1 restriction, Tier 2 restriction, Tier 3 restriction or Tier 4 restriction.”

In relation to gatherings held in contravention of the All Tiers Regulations, the police may (i) direct the gathering to disperse, (ii) direct any person to return to where they live, or (iii) remove any person from the gathering. They may use reasonable force to remove such a person if necessary:⁹

“(2A) Where a relevant person considers that a person is outside the place where they are living in contravention of paragraph 1 of Schedule 3A, the relevant person may direct that person to return to the place where they are living.

(3) Where a relevant person considers that a number of people are gathered together in contravention of a restriction imposed by paragraph 1 of Schedule 1, paragraph 1 or 2 of Schedule 2, paragraph 1 or 2 of Schedule 3 or paragraph 3 or 4 of Schedule 3A, the relevant person may—

(a) direct the gathering to disperse;

(b) direct any person in the gathering to return to the place where they are living;

(c) where the relevant person is a constable, remove any person from the gathering.

(4) A constable exercising the power in paragraph (3)(c) to remove a person from a gathering may use reasonable force, if necessary, in exercise of the power.”

⁷ Paragraph 9(1) of Part 3.

⁸ A ‘relevant person’ includes a constable and a police community support officer.

⁹ Paragraph 9(2A)-(4) of Part 3.

We mentioned above that there was an important caveat to the police’s exercise of these enforcement powers: the powers must only be exercised when it is “necessary and proportionate” to ensure compliance with the restrictions under the All Tiers Regulations:¹⁰

“(7) A relevant person may exercise a power under paragraph (1B), (1D), (2A), (2B) or (3), (5) or (6) only if the relevant person considers that it is a necessary and proportionate means of ensuring compliance with a restriction referred to in paragraph (1C), (2A), (2B) or (3).

(8) A relevant person exercising a power under paragraph (1B), (1D), (2A), (2B) or (3), (5) or (6) may give the person concerned any reasonable instructions the relevant person considers to be necessary.”

Offences and penalties under the All Tiers Regulations

A person will commit an offence under the All Tiers Regulations if, “without reasonable excuse”, he or she (i) contravenes a restriction under the relevant Tier rules; (ii) contravenes a direction given by police seeking to enforce the restrictions; (iii) fails to comply with a reasonable instruction given by the police seeking to enforce the restrictions; or (iv) obstructs the police in carrying out their functions under the All Tiers Regulations:¹¹

“(1) A person commits an offence if, without reasonable excuse, the person—

(a) contravenes a Tier 1 restriction, a Tier 2 restriction, a Tier 3 restriction or a Tier 4 restriction,

(b) contravenes a requirement imposed, or a direction given, under regulation 9,

(c) fails to comply with a reasonable instruction ... given by a relevant person under regulation 9, or

(d) obstructs any person carrying out a function under these Regulations (including any person who is a relevant person for the purposes of regulation 9).”

A person who commits an offence under the All Tiers Regulations may receive a fixed penalty notice¹² or a fine¹³ and may be arrested.¹⁴

¹⁰ Paragraph 9(7)-(8) of Part 3.

¹¹ Paragraph 10 of Part 3.

¹² Paragraph 11 of Part 3.

¹³ Paragraph 10(2) of Part 3.

¹⁴ Paragraph 10(5) of Part 3.

Restrictions in Tiers 1, 2 and 3

In contrast to Tier 4, the All Tiers Regulations specifically recognise that in Tiers 1, 2 or 3 a person may participate in a gathering for the purpose of protesting. Protest is an expressly recognised exception:¹⁵

“Exception 14: protests

(20) Exception 14 is that the gathering is for the purposes of protest and—

(a) it has been organised by a business, a charitable, benevolent or philanthropic institution, a public body or a political body, and

(b) the gathering organiser takes the required precautions in relation to the gathering.”

The difference in wording of the restrictions in Tiers 1, 2 and 3, and the restrictions in Tier 4, lies at the heart of the dispute that arose between RTS and the Metropolitan Police, which we describe later.

Human rights legislation and case law

The Court of Appeal in *Dolan v Secretary of State for Health* [2020] EWCA Civ 1605, [2021] 1 All ER 780 considered a judicial review challenge to the Health Protection (Coronavirus, Restrictions) (England) Regulations (SI 2020/350), which were the first form of ‘lockdown’ regulations made on 26 March 2020.

One aspect of the challenge was whether Regulation 7, which prohibited gatherings of more than two people unless they came from the same household or were gathering for specified purposes, was compatible with Article 11. The Court of Appeal concluded that the challenge to the legislation was unarguable because a “reasonable excuse” defence was available, which enabled consideration to be given to Article 11:

“... the regulations cannot be regarded as incompatible with article 11 given the express possibility of an exception where there was a reasonable excuse. It may well be that in the vast majority of cases there will be no reasonable excuse for a breach of regulation 7 as originally enacted. There were powerful public interests which lay behind the enactment of regulation 7, given the gravity of the pandemic in late March.”

It is important to note that the judgment focused purely on whether the regulations were compatible with human rights, and not any particular decision taken before or during a protest. Such decisions require highly fact-specific analysis of human rights considerations by the police.

Police have a legal obligation to act compatibly with the human rights of people taking part in a ‘public assembly’, which includes static protests, protest marches and commemorative vigils by virtue of Article 11 (freedom of peaceful assembly) and Article 10 (freedom of expression). The police must not intervene to restrict

¹⁵ Paragraph 3 of Schedule 1 (which applies to Tier 1). See also paragraph 4 of Schedule 2 (which applies to Tier 2) and paragraph 4 of Schedule 3 (which applies to Tier 3) for materially similar provisions.

these human rights unless it is necessary and proportionate to do so (these are sometimes called the police's 'negative obligations'). In addition, the police also have positive obligations. They must, for example, consider how people can access first aid services and try to maintain channels of communication with protest organisers. These positive obligations are sometimes described as the police's obligation to 'facilitate peaceful protest'.

But under Article 10 (freedom of expression) and Article 11 (freedom of assembly) of the ECHR (which take effect in UK law through the Human Rights Act 1998), the police can also lawfully restrict freedom of expression and freedom of assembly. Under Article 11(2), the legal test is whether any interferences by the police are "prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". Article 10(2) makes similar provision.

The overarching question in every case is how to strike a fair balance between the conflicting rights and interests of the protesters on the one hand and the general community on the other, and how this balance should be struck in a public health crisis. This is at the centre of defining the reach and content of the rights protected under Articles 10 and 11 and is an area that we report on with specific reference to the Metropolitan Police's policing of the events on 13 March 2021, later in our report.

How the All Tiers Regulations are incorporated into policing guidance and strategy

The All Tiers Regulations and subsequent amendments are drafted by the DHSC. Because the DHSC doesn't have oversight of policing, it liaises with the Home Office, which then consults with the National Police Chiefs' Council (NPCC) for its view on how the police will apply the regulations. The NPCC works with the College of Policing and their respective legal teams to produce draft guidance.

The police's draft guidance is returned to the Home Office and its lawyers endeavour to ensure that it aligns to legislation and policy. Police guidance is circulated to forces only after the regulations have been signed off by the Secretary of State for Health and Social Care.

In the early stages of the pandemic, this presented a challenge because regulations were issued at speed before guidance could be drafted. The regulations have been in force for several months, with less frequent change, so the NPCC has had greater opportunity to develop and refine national police guidance.

The NPCC has implemented [Operation Talla](#) to provide a national policing response to the pandemic. The College of Policing publishes the [related guidance](#).

The Metropolitan Police’s ‘open letter’ to persons organising and/or participating in public gatherings

The Metropolitan Police publishes an open letter on its website giving advice to anyone considering organising and/or participating in public gatherings. The force told us that the first version was devised in late August 2020 and it has been updated with every change in regulations. The force sends a copy to every self-declared event organiser.

The open letter is an advisory document, which outlines some of the legal complexity and reminds an organiser or participant of their responsibility to ensure that they are not committing an offence. The letter says that the Metropolitan Police will take appropriate enforcement action when necessary.

The framing of these statements leaves room for the “reasonable excuse” defence to be applied to the circumstances of individual cases.

We think that the letter could have spelt out the position on protest more fully, by referring to the existence of a “reasonable excuse” defence and how this requires the police to consider whether people are exercising their human rights under Articles 10 and 11.

The letter also refers to certain specific ‘exemptions’ (the All Tiers Regulations contain ‘exceptions’) but does not list the exceptions exhaustively; instead, it refers the reader to the relevant part of the gov.uk website.

3. Chronology of events

Following Sarah Everard's disappearance, local police in Lambeth, the south London borough that includes Clapham Common, mounted extra patrols to provide some reassurance to those who had expressed increasing concerns for the safety of the public. Uniformed officers patrolled Clapham Common and the surrounding area, talked to residents, and briefed local councillors and Lambeth council officials. A contact desk was set up, staffed by local police officers, to take calls from the public.

The police prepared community impact assessments. They discussed these assessments with councillors and others to explain what the police were doing to reassure the public about the safety of those on the street in the evening, especially lone females.

Communication with residents

The organisers told us that some women were angered by police advice to 'stay in'. They said this approach made them feel that, yet again, they were being asked to change their behaviour to reduce violence against women. In response to these reports, while speaking in the House of Lords on 10 March 2021, Baroness Jones of Moulsecoomb called for a curfew on men to keep women safe. This advice was cited by the group of individuals who formed RTS as one of the reasons they did so.

We were told that police and council representatives had knocked on doors to talk to residents. This was part of their efforts to reassure the community in the wake of Sarah Everard's disappearance.

We established that police officers were given a 'daily script' to help guide their conversations with residents. This script was authorised each day by a member of the local Lambeth police command team. It included an update on the investigation and asked for anyone with information to come forward. Also, it explained that the vigil planned for Saturday 13 March 2021 could only be held if it complied with the All Tiers Regulations.

We are aware of the significance of any wider 'stay at home' advice, reports (including in [evidence given to the Home Affairs Committee on 24 March 2021](#)) that some residents received such advice, and how it appears to have angered people.

However, we found no evidence indicating that the police, or council, set out to routinely advise women to stay at home for their own safety. We were unable to establish whether any such advice might have been given by individual officers, or whether any officer's advice had been misinterpreted by a recipient. Of course, general 'stay at home' advice is the norm during lockdown.

Wednesday 10 March 2021

Reclaim These Streets is formed

RTS is a small group of women from south London who are friends, or friends of friends. Two of the group are local councillors and one owns a company specialising in events management.

As we understand it, the group met (virtually) for the first time on Wednesday 10 March 2021 and consisted of approximately ten members. They wanted to do something in memory of Sarah Everard and for women who feel unsafe, go missing or face violence.

On the evening of 10 March 2021, one of the organisers sent emails to the local police commander in Lambeth and to the assistant director of community safety at Lambeth Council, informing them of their intention to hold a vigil.

Thursday 11 March 2021

The emails sent by the RTS organiser caused a flurry of activity on the morning of 11 March 2021. The Metropolitan Police's HQ Central South (which covers Lambeth and Southwark) became aware of the proposed vigil. Officers there contacted RTS and explained that they were:

“... developing a local policing plan but would be grateful for any additional information that you may be able to provide that will assist us with developing an appropriate and proportionate local response.”

RTS organisers interpreted this as support for the vigil. They told us that, from the outset, they recognised their responsibility for public safety and took it very seriously.

Lambeth Council representatives arranged to meet the organisers and the police virtually at 2.30pm. Such meetings are good practice when either the council or police become aware of a planned event with public safety implications. In the context of COVID-19, many meetings have taken place to discuss events that would breach the All Tiers Regulations and Lambeth Council told us they had previous experience of organising events locally during pandemic restrictions.

The police told us the usual response was that events of this nature remained with local officers (i.e. those at Lambeth) unless the central headquarters function (New Scotland Yard) decided to take control. This could occur for various reasons, often to do with the scale of resources required to police the event.

Initially, the police had an indication through their intelligence work that 1,200 people would be attending, with another 2,000 showing an interest. Such numbers would constitute a mass gathering. Police interviewees told us they needed to understand the risks, and what the organisers and public wanted. The police emphasised to us that they sought to balance individuals' rights under the Human Rights Act 1998 with the restrictions under the All Tiers Regulations and the potential risk to public health.

Meeting: 2.30pm Thursday 11 March 2021

Police were represented by officers from Lambeth and the operations and events unit at HQ Central South. Lambeth Council was represented by senior community safety and public protection officials. RTS was represented by two vigil organisers, who are also elected Lambeth councillors.

Minutes of the meeting show that the purpose was to bring interested parties together so that the event could be made safe and dealt with proportionately.

Organisers explained the vigil proposal, stating that it would start at 6pm on Saturday 13 March 2021, and last for one hour. They provided details of safety considerations and efforts to make the event safer. Clapham Common had been chosen because it was a large outdoor area. The organisers considered that social distancing was possible, even with large crowds.

The organisers had registered for NHS track and trace QR codes and all vigil communication stated the need for masks to be worn. Local by-laws prevented open flames on the Common and therefore 'bring a light' was encouraged. The organisers told us they had acquired 1,000 battery tealight LED lamps to prevent candles having to be used. First aiders, as well as mental health first aiders, had been arranged and a gazebo as a first aid post.

A separate press area was to be established as well as missing child points and a public address system to prevent crowding. Hand sanitisers had been ordered and the organisers proposed to enlist 40 volunteers to ensure safety and support social distancing. Other broader threats and risks had been identified and the organisers told us that they were developing a full event risk assessment.

However, during the meeting, the organisers were unable to persuade police officers that this was an accurate or appropriate assessment of the situation. The event was attracting considerable and growing interest on social media. In the Metropolitan Police's view, the organisers could not offer adequate plans to marshal or control an event of this scale.

It was clear to the council representatives that the vigil was likely to go ahead, whether supported or not, from the levels of interest being expressed on social media and the fact that other local planned events had been cancelled in favour of this one. To that end, they felt there was an opportunity to make the event safer by working together.

The Lambeth police also spoke of legal concerns, having consulted before the meeting with the Metropolitan Police legal services team. They explained that an organised event with a set time and location for a gathering would be in breach of the All Tiers Regulations.

During the meeting, police provided the organisers with the open letter (described above). It summarised the legislation and advised that any continuance of a planned event may find them liable to enforcement under the All Tiers Regulations. The letter also highlighted that organisers could face arrest under section 44 of the Serious Crimes Act 2007, for encouraging or assisting the commission of an offence. We presume this to mean by encouraging others to breach Tier 4 lockdown restrictions. This information shocked the organisers.

One of the organisers acknowledged that the legal position was challenging but was reported to have said:

“There is a political will for this to happen. The community need this vigil. It is important to build trust between [the police] and women around the capital.”

One police participant interpreted this to mean that the organiser believed this vigil would not require the same level of policing as other events that had recently taken place elsewhere in the capital. They had concerns about the potential numbers attending and that it needed to be handled both carefully and sensitively. The view of the police was that, if they ‘cherry-picked’ which events to facilitate, their decision could be challenged in court. Lambeth police were keen that, if an event took place, local officers with knowledge of their communities should be present to engage with those attending.

Before the meeting concluded, one of the organisers informed the group that they would consider challenging the Metropolitan Police interpretation of the All Tiers Regulations.

From our interviews, we sensed that many participants (including some police officers) felt that supporting the event was the right thing to do for the community. But some police representatives believed that they were constrained by the All Tiers Regulations and that the event would be illegal. There is no doubt the picture was uncertain. Both parties were in receipt of legal advice. Views differed.

The organisers thought that the police stance had changed from what they believed had been support to a greater focus on the differing interpretations of the All Tiers Regulations. They were keen to look at ways in which the event could still go ahead, and everyone agreed to meet again the following day (Friday) at 12.00pm.

The legal dispute over the vigil

Social media posts had attracted attention from prominent London law firms offering to help the organisers to challenge the Metropolitan Police, should the force decide not to support the vigil. RTS instructed a law firm and worked through the night to prepare papers for a judicial review. They started a crowd fundraising site that raised £37,000 in a remarkably short time.

Lawyers for RTS wrote to the Metropolitan Police on 11 March 2021, stating:

“Our understanding is that the MPS position is that all demonstrations and protests are currently prohibited and that the police must prevent these from occurring. We understand that the MPS position is that whilst they would wish to facilitate the vigil, “our hands are tied” by the All Tiers Regulations ...”

They continued:

“You will be aware that public authorities such as the MPS must interpret the All Tiers Regulations, which are secondary legislation, compatibly with the Human Rights Act 1998, which is primary legislation ... Our clients believe that the proposed vigil would not contravene the All Tiers Regulations because organising and/or participating in it would constitute a lawful and proportionate exercise of

their (and others') rights to freedom of expression and assembly under Articles 10 and 11 of the European Convention on Human Rights and they would therefore have a 'reasonable excuse' for being outside or gathering."

In response, on 12 March 2021, the Metropolitan Police explained that:

"The proposed gathering does fall within the general prohibition on outdoor gatherings consisting of more than two people, imposed solely on grounds of protecting public health."

The Metropolitan Police explained its view further:

"It is common ground that there is a general prohibition in paragraph 3 of Sch 3A to the Regulations, which provides for the Tier 4 restrictions on gatherings of more than two people in an outdoor place, other than for specified exceptions, of which there is an exhaustive list. There is no exception for protest. Thus, there is currently a general prohibition on gatherings in Tier 4 areas which would apply to gatherings of more than two for the purposes of protest. While it is accepted that this is a significant interference with a person's Article 11 right, it is not an absolute prohibition on all protests in outdoor areas. Protests can be made in ways that do not involve breaching the general prohibition on gatherings."

The Metropolitan Police also observed that protest is recognised as an exception to the prohibition on gatherings in Tier 3 (as we have noted above). It concluded that:

"Thus, the inclusion of protest as an exception for Tier 3, but not for Tier 4, makes it plain beyond any real debate, that it was the deliberate intention of Parliament to include all gatherings for the purposes of protest within the general prohibition on gatherings when Tier 4 restrictions apply."

However, the Metropolitan Police also stated that it:

"... does not consider that all protest is prohibited, irrespective of circumstances. It has no such policy."

The Metropolitan Police acknowledged that a person faced with a fine or prosecution for participating in a gathering that does not fall within one of the permitted exceptions may seek to rely on the "reasonable excuse" defence. However, they argued that it could not be said in advance of a widely publicised large planned gathering that the defence would necessarily apply to those organising or attending such a gathering.

A statement on Twitter from the Women's Parliamentary Labour Party showed their support of the vigil in memory of Sarah Everard and in support of the right of every woman and girl to walk our streets without fear of violence. It said:

"We believe that Reclaim These Streets vigils in memory of Sarah Everard and in support of the right of every woman and girl to walk our streets without fear of violence are consistent with COVID-19 regulations which recognise that the right to protest is a human right.

We therefore urge the police to confirm that they will work with the organisers and local communities to ensure that if vigils take place they are done as safely as possible with COVID-secure measures in place."

Correspondence from Harriet Harman to the Metropolitan Police

Harriet Harman QC MP, chair of the Parliamentary Joint Committee on Human Rights, sent a letter to the Metropolitan Police commissioner asking that she:

“... confirm that in view of the fact that Parliament has not specifically acted to constrain the right to demonstrate, so long as social distancing is observed this vigil will be perfectly lawful.

I look forward to hearing from you, and also wish to let you know that I will be attending the vigil myself.”

Our analysis

It is correct that neither Parliament, in primary legislation, nor the Secretary of State, in the All Tiers Regulations, has **prohibited** protest. However, the All Tiers Regulations do impose restrictions on the freedom to demonstrate (and in that sense they “constrain the right to demonstrate”). There will be certain instances of protest activity that lawfully occurred before the pandemic that would not be lawful while the All Tiers Regulations remain in force.

However, it does not follow that the All Tiers Regulations violate human rights under Articles 10 or 11. As explained below, the range of permissible protest activity under the All Tiers Regulations is itself set by reference to the content of those human rights through the “reasonable excuse” defence; and the need to protect public health will in certain circumstances justify restrictions on the exercise of Article 10 and 11 rights that would not have been justified before the pandemic.

It is also correct that whether social distancing can be observed during a planned protest will be an important factor for the police in deciding whether the protest is likely to be lawful under the All Tiers Regulations. However, planned social distancing is not the only factor that the police may lawfully consider. For instance, there may be concerns about whether social distancing is likely to be maintained.

For the police, such decisions are not easy, particularly when the full facts about the planned event may not be known (as was the case for the planned vigil). However, the police have a positive duty under Article 11 to engage with organisers (and that duty has not been removed by the All Tiers Regulations).

In the current COVID-19 crisis, the collection and use of information to enable the police to decide on whether a protest is likely to take place lawfully is essential. To the extent that the Metropolitan Police had thought that its “hands were tied” by the All Tiers Regulations, with the result that it could not plan to police a protest because that would be to allow an unlawful gathering, that position risked failing to provide enough protection for human rights.

The Metropolitan Police had to consider whether there was a way in which the protest could proceed lawfully, or whether the risks to public health were simply too great. In liaising with organisers to see whether an event can be planned in such a way that protestors’ conduct does not constitute an offence, including by operation of the “reasonable excuse” defence, the police would ensure Article 11 is protected. This is not, however, to say that the police are required by law to provide a blanket assurance

that anyone attending a particular planned protest will necessarily have a reasonable excuse irrespective of how events unfold during the protest.

Friday 12 March 2021

The National Police Chiefs' Council and selected chief constables meeting: 8–9am

The NPCC and selected chief constables (representing forces within their region) hold an Operation Talla conference call every Friday, primarily to discuss the police response to the pandemic. The meeting on Friday 12 March 2021 discussed the police's national position on the vigils planned for the weekend of 13–14 March 2021.

Those at the meeting recognised the public felt very strongly about what had happened and wanted to show respect for Sarah Everard and support for the broader problem of violence against women and children.

However, the meeting was united in the view that the All Tiers Regulations needed to be adhered to and enforced if necessary, and that vigils should not go ahead. There was a consensus that people should be encouraged to express their views and grieve in a different way.

Ministerial and police meeting: 9–10am

Details of the Operation Talla conference call were relayed to a ministerial conference call at 9am. During the pandemic, Ministers, NPCC members (often including the Metropolitan Police Commissioner) and other interested parties usually meet twice weekly. A chief constable is also invited on a rotational basis. We interviewed various parties who were present on this conference call.

The Metropolitan Police felt that the vigil couldn't go ahead within the All Tiers Regulations. The Metropolitan Police Commissioner was seeking ministerial support for this position. We were told that the Home Secretary (represented by her private secretary) broadly agreed with the proposed approach and stated that she intended to issue a public statement asking people not to attend the vigil but to show their respects in other ways.

The NPCC produced a single briefing note from both meetings that was circulated to all chief constables. It encouraged forces to have early engagement with organisers of vigils within their force areas. It explained that the risk to public health is so great that large gatherings shouldn't go ahead, in order to avoid spreading the virus further. This briefing note encouraged the police service to apply the All Tiers Regulations consistently. It told chief constables that the Minister for Crime and Policing and the Home Secretary supported this position and would be releasing public messaging during the day to discourage people from gathering.

A police interviewee suggested that, as the afternoon went on, the Government support wasn't forthcoming in the manner expected and the anticipated message from the Home Secretary was "watered down".

A [newspaper later reported details of this briefing note](#) and commented that some chief officers felt that policing had been "hung out to dry".

However, we established that, after the 9.00am ministerial and police meeting, the Home Secretary was advised to wait for the High Court's Judgment before commenting. Such advice would be hard to criticise.

Meeting: 12.00 noon

As planned, police, RTS organisers and Lambeth Council met again (virtually). By this point, legal proceedings had advanced. The Metropolitan Police had been served with notification of the judicial review by the organisers, who were joined at the meeting by members of their legal team.

The Metropolitan Police COVID-19 [Gold Commander](#) was also present. We were told that this was to ensure a consistent police response to events during the pandemic and to offer support to the BCU, to ensure an understanding of the whole situation as regards the pandemic.

The Metropolitan Police was aware of the concerns among its colleagues on the multi-agency strategic co-ordination group, in relation to large gatherings. Each borough has an 'outbreak management' plan and local 'surge testing' to manage outbreaks of new variants of concern. Despite the success of the vaccine programme, there were concerns over 'vaccine hesitancy', particularly within Black, Asian and minority ethnic communities. Targeted local communication campaigns were in place to tackle that. There were also concerns that infection rates might change due to schools re-opening on 8 March 2021. The Government's general message remained 'stay at home'. Police understood that the situation in London was concerning and travelling from other places into the area where the vigil was to take place might adversely affect the infection rates in local communities as well as elsewhere.

The police representatives had several concerns. We were told that the numbers showing an interest in attending the vigil had risen from 2,000 to 6,000. They were conscious that others were watching to see how the police applied the regulations in this instance, which could then have an effect on future proposals for events.

Also, the force was uncertain which other groups would attend the vigil to promote their own causes.

The organisers sought assurances that enforcement action would not be taken and immunity from their own liability as organisers. The police gave no such assurances. The numbers were expected to exceed those permitted by the All Tiers Regulations irrespective of the arrangements proposed by the organisers.

The police told us that they believed the organisers had started the plans with the best of intentions but had been unaware of the consequences and had inadvertently created a situation that they were, through no fault of their own, ill-equipped to manage. The police felt that imminent legal proceedings, and their inability to give assurances of immunity from prosecution to the organisers, limited opportunities to find common ground during this meeting.

The organisers maintained that the planned vigil had public and political support with increasingly significant public interest being shown. They felt the police were not supporting the event as a result of a perceived blanket ban on events, but they thought it could not be ignored that there would be a gathering in some form.

The police had to balance the public health risks and the volume of people expected to attend against individual rights under the Human Rights Act 1998. They wanted to keep people safe. The COVID Gold Commander was amenable to supporting a 'COVID compliant' event, i.e. if attendance was limited to those attending in pairs and family groups, which might have necessitated organisers spreading the event over several days.

Interviewees commented on a discernible change in the atmosphere since the meeting the previous day. A council representative told us that the police position had "hardened". We were told by people we interviewed that little progress was made during this meeting. Both sides believed that they had reached an impasse.

The organisers stated that going to court was the right thing to do to ensure that the law was interpreted correctly by the police. They sensed that there was a difference in opinion between Lambeth police officers and those from New Scotland Yard (NSY).

Organisers believed that local Lambeth officers wanted to adopt a more collaborative approach and understood the trust that needed to be rebuilt with the community, given the circumstances of Sarah Everard's death. It was clear to us that the Metropolitan Police's view was in favour of maintaining consistency between the handling of this event and others that had been unsupported.

Unable to reach an agreement, the meeting was paused until after the High Court had considered the case.

Separately, the Metropolitan Police emphasised to us that some of its officers held extensive experience in planning and carrying out protest policing operations in these circumstances, whereas the organisers were a new group, formed only days earlier. Also, the force strongly suggested that, at this stage, RTS had not adequately addressed the scale of anticipated attendance and associated risks.

The High Court judgment

At 3.15pm on 12 March 2021, the parties were notified that the High Court hearing was scheduled for 3.45pm that day.

Mr Justice Holgate heard an application for three declarations by RTS and handed down a short judgment (the 'Judgment').¹⁶ A declaration is a formal statement of the law made by a court. RTS asked the court to make declarations in the following terms:

1. Schedule 3A to the All Tiers Regulations 2020 insofar as it prohibits outdoor gatherings, is subject to the right to protest protected by the Human Rights Act 1998.
2. The Metropolitan Police Service's policy prohibiting all protests irrespective of the specific circumstances is, accordingly, erroneous in law.
3. Persons who are exercising their right to protest in a reasonable manner will have a reasonable excuse for gathering under that Schedule.

¹⁶ [2021] EWHC 661 (Admin).

The judge did not make these declarations. It is important to be clear why he declined to do so. It was not because the absence of an express exception for protest in Tier 4 areas under the All Tiers Regulations makes all protest activity in Tier 4 unlawful. On the contrary, as the Metropolitan Police accepted, a protest **can in certain circumstances** be lawful under the All Tiers Regulations even in Tier 4.

We set out the judge’s reasoning below and then explain why the declaration was not made.

First, relying upon the earlier decision of the Court of Appeal in *Dolan v Secretary of State for Health*,¹⁷ which addressed the compatibility of the first version of COVID-19 restrictions with the right to protest, Mr Justice Holgate held that the All Tiers Regulations should, and could, be read compatibly with Articles 10 and 11, the rights to freedom of expression and peaceful assembly, which are protected under the Human Rights Act 1998. As in the *Dolan* case, the judge explained that the way in which the All Tiers Regulations can give effect to human rights protections is through the “reasonable excuse” defence.¹⁸ In other words, where a person is breaching a restriction under the All Tiers Regulations but is doing so because they are exercising the human right to protest, they may have a reasonable excuse to what would otherwise be a criminal offence under the All Tiers Regulations.

Second, the judge relied on the decision of *DPP v Ziegler*¹⁹. This concerned whether protestors who obstructed a highway had a “lawful excuse” to an offence under section 137 of the Highways Act 1980 (obstructing the highway) by virtue of the fact they were protesting. The judge considered that the approach set out by the High Court in that case was correct – namely, that:²⁰

“... it is relevant to consider whether a person is exercising rights given by Article 10 or 11. It is also relevant to consider whether a public authority, in this case the police, would be interfering with those rights by enforcing the 2020 Regulations. Then, the legitimacy of the aim of those Regulations is a relevant consideration, together with the question whether the interference is necessary to achieve that aim. The 2020 Regulations are aimed at the protection of public health. All this gives rise to the proportionality exercise ...”

Third, the judge made two important statements about the relationship between human rights law and the All Tiers Regulations:²¹

1. “[i]t is possible that the outcome of applying the relevant tests in relation to Articles 10 and 11 is that a particular protest or demonstration should not go ahead. That is a matter to be considered in the circumstances of each case”; and
2. “it is inappropriate to treat the 2020 Regulations as if they give rise to a blanket prohibition on gatherings for protest, because that would fail to give effect to the law as laid down by the Court of Appeal in *Dolan* on the way in which the Regulations are to be read and applied compatibly with Articles 10 and 11.”

¹⁷ [2020] EWCA Civ 1605, [2021] 1 All ER 780.

¹⁸ §14.

¹⁹ [2019] EWHC 71 (Admin), [2020] QB 253.

²⁰ §16.

²¹ §17.

At the hearing, the parties agreed that the reasoning set out above accurately stated the law. As a result, in the end, there was little difference between the parties as to the correct approach in law.

Mr Justice Holgate went on to consider whether to make the declaration RTS had sought. He emphasised that there was no decision of the Metropolitan Police that was being challenged, but rather that the application had arisen “because of the change of stance on the part of the police, as it appears, and the perception it gave rise to that they considered their hands to be tied by the 2020 Regulations and so for that reason the event could not take place”²². Therefore, as to each part of the declaration (as set out above), he concluded:

1. There was no need to make the first part of the declaration because it simply sought to restate the law as already stated in *Dolan and Ziegler*²³.
2. As to the second part, counsel for the Metropolitan Police had stated that there was no policy whereby the police applied a blanket prohibition to protest. He also accepted that, if a police force had such a policy, that would be unlawful because it would be incompatible with the human right to protest²⁴.
3. The third part of the declaration would be an “incomplete analysis of the law” because “[f]or example, it assumes that a particular protest may take place at all once the Regulations are applied together with Articles 10 and 11... it is one possible and lawful outcome in a specific case that such a protest may not lawfully take place”.²⁵

Contrary to some of the press and media reporting, there was no ‘victory’ for one side or the other. Nor did the court simply tell the parties to resolve the matter between themselves. The Judgment clarifies the law in a crucial respect.

Can protests in Tier 4 ever be lawful under the All Tiers Regulations?

The answer, as confirmed by the Judgment, is yes. The fact that the All Tiers Regulations do **not** make protest an express exception to the general prohibition on gatherings does not mean that any and all protest activity will be unlawful.

Documents we have seen from the Metropolitan Police, in which the All Tiers Regulations are discussed prior to the Judgment, show that there was a degree of confusion as to the correct legal position. That stemmed from the fact that there is no exception for protest, whereas such an exception is provided for under the restrictions that apply in Tiers 1, 2 and 3. However, as confirmed by the Judgment, the All Tiers Regulations must be interpreted in a way that protects and gives effect to human rights.²⁶ The All Tiers Regulations must be read subject to the Human Rights Act 1998, and not the other way around.

The police are required, therefore, to decide on the specific facts of each protest that is proposed or is taking place. This decision must carefully assess whether, in all the circumstances, enforcing the restrictions in the All Tiers Regulations would be a

²² §19 of the Judgment.

²³ §21 of the Judgment.

²⁴ §24 of the Judgment.

²⁵ §22 of the Judgment.

²⁶ S. 3 of the Human Rights Act 1998.

disproportionate interference with the protesters' human rights such that, if prosecuted for an offence under the All Tiers Regulations, they would be able to establish a "reasonable excuse" defence.

We have read comments in Metropolitan Police documents that suggest there was a significant concern about the need for consistency between different protest groups. The Metropolitan Police (and other forces) must remain neutral in terms of the problems the groups are protesting about and the messages they are seeking to convey. But this need for consistency cannot substitute for an individualised proportionality assessment that considers the specific facts of each case.

Given the current public health concerns, the decision about whether a protest would be lawful will very probably need to include whether and what risk assessments have been conducted, whether social distancing will be adhered to and maintained, and any other measures that may assist in managing the risk to public health, such as marshalling. The more effective the measures to manage the risk to public health at a protest, the more likely it is that the protest will be lawful under the All Tiers Regulations. However, there may be circumstances in which the threat to public health is simply too great and a planned protest cannot lawfully go ahead. In such a case, the reasons why a less restrictive approach cannot be taken need careful consideration.

Such decisions are not easy. The police may be asked by organisers to decide in advance of a protest happening, as was the case of the vigil planned for 13 March 2021, when the full facts about the planned event may not be known. However, the police have a positive duty under Article 11 to engage with organisers.²⁷ The All Tiers Regulations have not removed that positive duty, although they allow a different balance to be struck in the light of the public health emergency.

In the current COVID-19 crisis, it is essential that police collect and use information to enable them to decide whether a protest is likely to take place lawfully. An unchanging position that a force could not plan to police a protest, because that would be to allow an unlawful gathering, risked failing to provide enough protection for human rights. The Metropolitan Police had to consider whether, based on the circumstances, with all the information and intelligence available to them, including their experience, there was a way in which the protest could proceed lawfully, or whether the risks to public health were simply too great. Our position is that the police can and should advise as to whether or not a protest is likely to be subject to enforcement action (without providing blanket assurances to this effect).

Meeting: 7.00pm

After the Judgment, the police, council and organisers met again. No written judgment was available, and individuals were trying to understand what the court had determined.

The police view was that the court decision hadn't changed anything.

The organisers believed that they were meeting with the Metropolitan Police to agree a way for the vigil to take place. To that end, they raised proposals during the meeting. The main change related to the allocation of staggered times for attendees, which

²⁷ [Frumkin v Russia](#) (2016) 63 EHRR 18.

would have helped maintain social distancing and overcrowding. They also asked for immunity against prosecution for those attending.

The police were aware that they had to consider the circumstances of each event. If the vigil did go ahead, it would be important to prevent large gatherings. They remained clear that the vigil was in breach of the All Tiers Regulations. A senior police officer told the organisers that assurances – including promises of immunity – could not be given.

The council representatives were firmly of the view that, irrespective of an agreement, an event of some sort was going to take place. They wanted to have contingencies in place, including deploying marshals to make the event as safe as possible. They believed that a plan, even at this late stage, could be agreed. The police did agree that a vigil that was spread out in time and location might not comprise a gathering under the All Tiers Regulations. But the sticking point was the organisers' request for a guarantee of immunity from prosecution.

During the meeting, the organisers became aware that the Metropolitan Police had released a statement to the media, which they construed as the police informing the public that the vigil had been cancelled. They were disappointed by this action, feeling that the police had been disingenuous in entering negotiations.

A senior Metropolitan Police officer told us that the press release did go out towards the end of the meeting, but it did not state the vigil had been cancelled. Instead, it stated that the court had confirmed that the Metropolitan Police was right in concluding that attendance at a large gathering could be unlawful. It reinforced the message to stay at home adding:

“I [a Metropolitan Police commander] understand this ruling will be a disappointment to those hoping to express their strength of feeling, but I ask women and allies across London to find a safe alternative way to express their views.”

[It was reported that a barrister representing RTS described the statement as “premature”.](#)

The Metropolitan Police's view was that, during the negotiations, RTS issued press releases that misrepresented some of the facts.

The organisers felt let down and considered that there was little point in continuing with negotiations. They were angry, upset and disappointed.

A council representative felt the position adopted by the police in this case became a bar to the negotiations. They thought that there was a strong likelihood of a disorganised gathering the following day without any safety measures in place. In other smaller local events, they had all worked together to reduce the risks of illegal gatherings.

Organisers met later to discuss their next steps. They felt an overwhelming sense of failure. They believed they had tried to do something, with women and the wider community at the heart of their plans, but had been unable to achieve what they set out to do.

They decided that they had to cancel the vigil or risk many women being fined for turning up to an event that they had created. As organisers, they would also be liable to prosecution and, if convicted, significant fines.

The sense of responsibility they felt was palpable. One organiser told us that the threat of police action and the consequences of a criminal conviction were too much for some women and that they had no option but to cancel the event.

After cancelling, the organisers decided not to go to Clapham Common the following day. Instead, they arranged a doorstep vigil for 9.00pm on Saturday and set up another crowdfunding event. At the time of our interview, this had raised £525,000 to support women's and girls' organisations in the UK.

The council told us that they discussed their operational plan with the police because it was clear that an event would still take place despite its formal cancellation. In their view, the cancellation increased the risk factors. They feared there was potential for things to go wrong and felt that it may have been better to go ahead with organisers on board.

Consultation with other parties over three days

We were informed that the Metropolitan Police's COVID Gold Commander briefed London MPs and specifically talked to Harriet Harman QC MP, seeking support. In addition, the Commissioner spoke personally on many occasions over the period from Thursday 11 March 2021 to the morning of Saturday 13 March 2021, to both Ministers and officials in the Government, and to the Mayor, Deputy Mayor and officials at City Hall. She also briefed some London local authority chief executives and council leaders.

The conversations (in the context of wider briefings on the events surrounding Sarah Everard's death) were designed to brief colleagues about the proposed vigil and the potential for a mass gathering. They were also designed to alert them to police concerns that involvement in such a gathering could result in enforcement action, including potentially arrests.

The Commissioner was seeking support for communications and measures such as an alternative marking of Miss Everard's death (such as the placing of candles on doorsteps), which would reduce the likelihood of large numbers of people gathering unlawfully. The Deputy Commissioner engaged in some similar briefings.

Saturday 13 March 2021

The RTS organisers posted on social media, announcing the cancellation of the vigil.

The Metropolitan Police's decision following the Judgment

On the morning of Saturday 13 March 2021, the Metropolitan Police decided that the strategy dated 6 January 2021 (Operation Pima) was appropriate to apply in the circumstances. Operation Pima covers many aspects of the police's response to COVID-19, but as regards protest it states:

“Under National lockdown regulations, gatherings for the purposes of protest are not exempt, and therefore the policing response will need to respond to this, in what is a rapidly deteriorating position with a virus variant that will transmit much more easily. This means there are more risks associated with large groups, both to the groups themselves, communities and officers dealing. There is a clear need [for] enforcement action to deal with any large groups.”

It identifies one of the Metropolitan Police’s strategic objectives as follows:

“Provide an effective and proportionate response to protest. In doing this we will take into account the [All Tiers Regulations] for national lockdown that place significant restrictions on gatherings. If these are breached we will ensure that there is an effective, consistent and well-communicated response (which will include enforcement where appropriate).”

In the Metropolitan Police decision to follow Operation Pima, there remains some evidence of the legal confusion we have identified above. For instance, there is the suggestion in the Gold Commander’s log that:

“Whilst we do need to consider peoples article 10/11 rights throughout our decision making, a good chunk of this consideration has been done by Parliament, in that, in the All Tiers/National lockdown restrictions there was no exemption for protest/larger gatherings (where COVID safe measures had been taken), this measure was clearly in place in the Tier 2/3 restrictions so the intent of Parliament seems clear.”

This is an incorrect interpretation of the All Tiers Regulations. For the reasons we have explained above, the fact that there was no exception for protests under Tier 4 restrictions does not mean that any and all protests will be unlawful, and where COVID-19 safety measures are taken, this will be particularly relevant to whether or not a “reasonable excuse” defence is likely to be available.²⁸ There is also evidence of the concern for consistency between protest groups, which, as noted above, should not lead to an approach of treating all protest activity as invariably unlawful.

However, it does not follow that the police response to the events planned for 13 March 2021, or to the events that occurred on the day, was wrong. The Gold Commander’s log explains why the Metropolitan Police considered that, following discussions with the organisers, a large planned gathering simply could not go ahead safely:

“... when balancing the article 10/11 rights of a much larger gathering, where the organisers themselves outlined that they had no direction or control over the numbers coming, where large numbers would be traveling to and from the venue, and people from across London would be mixing, and the organisers had no control over who was coming or what they would do, this clearly pushed the balance firmly towards the event being in breach of the [All Tiers Regulations] and for our role to be saving lives and protecting the community from COVID.”

²⁸ It should also be noted that the All Tiers Regulations are secondary legislation made by the Secretary of State, not primary legislation enacted by Parliament.

These are all relevant considerations in deciding where the balance should be struck in relation to a planned event.

By Saturday morning, the organisers having cancelled their proposed vigil, the Gold Commander described the intended policing response to any unplanned protest gatherings:

“In dealing with any gathering that happens for the purposes of a vigil, we will deal with each event/gathering individually. We will consider at the time the article 10/11 rights of those present, and ensure that there is a proportionate response.”

“This does not mean doing nothing, and we will remain consistent in our duties and where appropriate moving to enforcement action under the [All Tiers Regulations]. However, our approach to enforcement and the speed with which we move through the 4E’s²⁹ will be commensurate with the event and the numbers present. However, we will if proportionate and necessary move to enforcement action to keep the community safe ...”

“At start no [[police support units](#) (PSUs)] are to attend the vigil locations in carriers unless directed by Bronze – we should be on foot and talking to people. I do not want carriers doing laps of Clapham Common, I want a low key and proportionate (and if possible local) response. I would expect proportionate police visibility on foot patrolling to prevent crime and to engage with and support the public ... It is critical that we use the 4E approach, however also clear that if this does not work we will be prepared to move to enforcement, either by directing people to leave or even issue FPN if engaging, explaining and encouraging have not worked.”

“Silver must be informed before any [All Tiers Regulations] enforcement action is taken at a Vigil, and the Bx [Bronze commander] will [discuss] the circumstances, the engagement that has taken place and why we are now at the point where we need to enforce which in these circumstances will be as a last resort. (This is clearly distinct from my clear position re egregious, wilful and deliberate breaches where the risks are great e.g. [unlicensed music events], house parties and indeed some protests where people do not take any precautions, do not socially distance and clearly placing the community at risk).”

“Look and Feel of policing response tonight will be essential – we are appalled, shocked, saddened but have a job to do as well. We also need to be prepared that any gatherings could be attractive for terrorists who have had no opportunities to date, so we must remain alert. We must also be prepared for a number of people turning up who are ‘anti-police’ and who will blame us for the fact the vigils have been cancelled by the organisers. We must be empathetic to this point of view, but equally enforce the law without fear or favour.”

The approach described above is entirely appropriate. It expressly considers protesters’ rights under Articles 10 and 11 and identifies the need to decide what is a necessary and proportionate policing response in the individual circumstances of the case.

²⁹ The “4 E’s” are engage, explain, encourage and enforce.

Summary of tactical plan

The Silver tactical plan contained the threat assessment that identified that the primary risk was to public health from the spread of COVID-19. Public disorder was considered a low threat. The tactic to address the public health risk was to apply the 4Es, with the emphasis on the first 3Es of engage, encourage and explain. This was supported by social media messaging. Enforcement could only be applied with the express authority of the Silver Commander.

The plan considered the potential impact that the policing of the vigil could have on policing subsequent events in London.

How well was the tactical plan applied?

The previous day (Friday 12 March 2021), police had received intelligence that members of an organisation called Sisters Uncut were planning to attend the Clapham Common vigil. An interviewee described Sisters Uncut as a “low turnout high impact” group.

During the morning and afternoon of Saturday 13 March 2021, a series of briefings took place for officers working on the vigil. They were briefed that Sisters Uncut may attend and the [police liaison team](#) (PLT) officers made further enquiries to learn more about this group.

However, because the Silver Commander had decided to keep the policing relatively low profile, there were no plans to deploy forward intelligence officers to identify people associated with Sisters Uncut (or any other protest groups) with a view to speaking to them before they arrived at Clapham Common. But we understand that local community officers deployed to the Common were briefed to look for and engage with people associated with Sisters Uncut.

It would have been preferable to have briefed and deployed officers to look for people associated with Sisters Uncut or other known protest groups at and around London Underground stations and bus stops near the Common. The Gold Commander’s log included “pre arrival engagement and comms with people before they arrive (after 4pm Saturday) – so around tube stations ...”. But the plan didn’t appear to include intelligence collection at these places.

The Gold and Silver commanders and their support staff were in the force command suite at Lambeth. There were no people present from other emergency services or the local authority.

Bronze Commanders’ roles

A command structure of Bronze Commanders was working to the Silver Commander. Some had functional responsibilities, such as intelligence, and others had geographic responsibility.

The role of ‘Bronze Community’ was to engage with local contacts, with whom there were long-standing relationships. In the week before the planned vigil, this officer had overseen reassurance patrols in the community. On the day of the vigil, Bronze Community was positioned on the Common but had no command responsibilities for

the officers there. That was the role of 'Bronze 3', whose job was to oversee all officers deployed to Clapham Common.

The 'Bronze Engagement' Commander had a pan-London responsibility for engagement with other organisations and communities. It was expected that this officer would have contact with Bronze Community. However, during the event, Bronze Engagement had no communication with Bronze Community, so no updates were passed to the Silver Commander.

Following briefings on the morning of Saturday 13 March 2021, Bronze 3 deployed officers onto Clapham Common.

According to evidence given to us, Bronze 3 went to Clapham Common at 12.30pm, left around 2pm and instructed the officers to report to him any change in the situation on the Common, including around the bandstand. Bronze 3 was away from Clapham Common until 5.45pm. He spent some of the intervening period briefing officers. During that time, Bronze 3 did not ask for, or receive, any update about events, numbers of people or crowd behaviour. This was consistent with the log entries we reviewed.

Meetings were scheduled for 10am, 2pm and 5pm when it was expected that all Bronze Commanders would give updates of the current situation to allow the Silver Commander to review the operation and consider changes. In our view, and in that of the Gold Commander, updates should not have been limited to just those that were pre-planned. In an email briefing on the morning of Saturday 13 March, the Gold Commander said:

“Supervisors / Inspectors or [Bronze Commanders] will assess each site, and escalate in the event that there are larger numbers coming, or if it is clear that there are significant breaches [of the All Tiers Regulations] which is likely to place people in danger, or if there is a threat to public order / Queens Peace. At this point more officers will attend, assess and if necessary [act].”

Insufficient communication leading to inadequate situational awareness

At about 4.30pm, HRH the Duchess of Cambridge arrived with her protection officers. She left flowers at the bandstand before paying her respects and departing without incident. The Silver Commander learnt of her visit only when it was reported by Sky News.

While we understand that it may be the tactic of protection teams to minimise pre-warning of VIPs' movements, this is a matter of concern. The incident illustrates the absence of effective communication to the Silver Commander about changing events on the ground.

During the day, a local officer saw Mr Piers Corbyn, a man with a history of organising protests against COVID-19 restrictions. He had just come from a 'Live London Live' rally in Wimbledon as part of his campaigning, in which he encourages "You resist, you defy, you do not comply". He was seen, with approximately 20 of his supporters, leaving the underground station at Clapham and making their way towards the common. Mr Corbyn's arrival at Clapham is noted on the Silver Commander's log at 4.38pm.

Mr Corbyn was later seen at 5.30pm positioned at the front of the crowd at the bandstand. The Silver Commander was not told about this and was therefore unable to determine whether the situation was changing, and whether any action was needed.

We are also aware that at some point during the afternoon, people had brought a microphone and public address system and erected them on the bandstand, but this went unnoticed or unreported by the officers nearby.

In the absence of updates from the scene, the Silver Commander relied on a CCTV van positioned 100 metres from the bandstand. He became concerned that the images were giving the impression that the crowd was becoming dense and sought clarification from officers at the scene. Local officers assured him that, at that time, there were no matters of concern.

Together, these shortfalls in updates seriously compromised the Silver Commander's situational awareness of what was happening on Clapham Common.

Bronze 3 returned to Clapham Common at 5.45pm, to find that crowd numbers had significantly increased (estimated to be about 1,500.) There was a very different atmosphere in the crowd. Some people were displaying placards more akin to a protest than a vigil. A man (whom we now believe to be an associate of Mr Corbyn) was attempting to address the crowd by shouting at them from the bandstand using words to the effect of "the police are oppressing us, they are murderers". A chant began from the crowd of "Not your place, not your place" and "Get him off". This man was escorted off the bandstand by police.

However, based on the information that the Silver Commander had, the assessment was that this was still a sombre event with a small crowd of about 200 people.

Lambeth Borough Council told us that their council Gold Commander had tried to contact the Metropolitan Police Gold Commander in Central Command during the evening but could not get through to him. Having seen WhatsApp messaging and videos, he was concerned that the event was starting to get out of control. The council raised this with the BCU Commander the following morning.

The period from 5.45pm

To help us form an independent view of what happened over the following hours, we examined body-worn video, officers' statements and other material. Given the time constraints on our inspection, we didn't view all the available footage or read all the statements. Instead, we prioritised based on officers' roles. We are confident that we reviewed enough material to enable us to form a reliable view.

Soon after 6pm, Bronze 3 updated the Silver Commander, who revised his assessment of the event. He told us that the 'look and feel' changed around that time. The transient vigil turned into a crowd around the bandstand and developed into something better described as a rally. Updates from the ground showed that it was no longer a sombre affair. The Silver Commander considered that to be the tipping point.

Police liaison team not deployed early enough

Bronze 3 had been allocated PLT officers. PLTs are formed of specialist officers with good communication skills and training to establish and maintain dialogue with groups, adopting a community policing style. They were deployed at 5.45pm by Bronze 3 on his arrival back at Clapham Common. We agree with the observations of an interviewee who described such a late deployment as a missed opportunity. The PLT may have been able to engage with individuals and groups before more people arrived, including those bringing the microphones and public address equipment. By the time the PLT got to the bandstand, there was already a large crowd and several people on the bandstand making speeches.

The College of Policing's APP explains how PLTs may be deployed before, during and after events. Their prime function is that of liaison. One consideration in their deployment is that it may help to minimise recourse to the use of force during an event. They can feed information to organisers, groups and the policing operation. We would have expected to see PLT officers deployed earlier.

6.00pm: a minute's silence

Based on video footage and other material, there appeared to be a minute's silence at 6pm on the bandstand. After the minute's silence, a woman (whom we understand to be a local councillor) addressed the crowd from the bandstand announcing that the vigil was over, thanking them for attending and telling them: "We do all now need to disperse obviously peacefully and everything else."

This exhortation was not heeded by everyone. Many people remained.

6.30pm: decision to authorise enforcement

The Gold Commander decided at 6.30pm to authorise enforcement.

The Silver Commander's log states that at 6.30pm a communication was given to Bronze 3 from the Silver Commander:

"Decision to move on to enforcement stage towards those on bandstand as it has turned into a rally with limited or no social distancing. The initial attempts to go through 3 E's [engaging, explaining and encouraging] have been unsuccessful."

Soon after 6.30pm, PLT officers were briefed by Bronze 3 that enforcement would be adopted at the bandstand. They were instructed to move from the bandstand to the periphery, and to tell people that the event was over, and they needed to leave.

Bronze 3 was directed to move to enforcement but to continue to apply the first 3Es. The Silver Commander said to us:

"The style and tone were always around engaging, explaining and encouraging. Just because there was enforcement in one area didn't mean we were doing that with the whole crowd."

The Gold Commander's rationale for authorising enforcement was documented in an email that he sent to the Silver Commander at 6.36pm:

"I am concerned that in last 30 minutes what [was] a mobile and transient people at the bandstand at Clapham Common has now become a growing static gathering with people standing on the bandstand making speeches."

"I am concerned that this is now a gathering which will present a health risk, and it would appear that there are other groups there with placards inc one large flag. The numbers cause me concern in the sense of COVID-19 and the risk to health."

"It is important now that we begin concerted engagement with those present, to make clear that this has now changed from people attending and placing flowers in ones and twos, or household groups coming in leaving flowers and paying respects into a large and growing gathering placing increasing risk to health, and is increasingly wilfully breaching the [All Tiers Regulations]."

"We now need to move to the 4E process, both with those individuals making speeches, and the crowd, to outline that the gathering is in our view contrary to the [All Tiers Regulations], and that they need to disperse, or provide reasonable excuse."

"I have considered the article 10/11 rights, and am clear that the [All Tiers Regulations] were established to keep the whole community safe and to save lives. We must engage and establish if those present have a reasonable excuse, to what is apparently a gathering in breach of the [All Tiers Regulations], but if they do not we must move to explain and encourage them to leave. If they fail to leave then we will move to enforcement action as a last resort."

6.31pm: PLT officers make their way through the crowd to get to the bandstand

With body-worn video that started at 6.31pm, the PLT officers squeezed past people to make progress through the crowd, which was far from being socially distanced. A large ACAB (common acronym for "All Coppers Are Bastards") placard is visible. As the officers stepped onto the raised centre of the bandstand, there were at least three people wearing orange tabards with "Legal Observer" printed on them.

An officer could be seen trying to speak to a group of women at the edge of the bandstand who were facing the crowd and chanting: "[sisters and/or women] united will never be defeated". The women ignore the officer, who can be heard encouraging people to "please go home".

A woman started shouting repeatedly at one of the officers: "How dare you?" She was joined by another woman who shouts: "This is a fucking vigil for a dead woman that you fucking killed."

The officer spent several minutes negotiating with people trying to explain and encourage them to leave and asking them to encourage others to leave. The officer was polite, calm and considered despite repeated provocation.

One officer said to a colleague: “I appreciate it’s really difficult, we need to just keep on trying.” The officers continue to try and encourage people to leave without success.

The Bronze 3 Commander deployed further officers onto the bandstand to bolster numbers and have a greater capacity to employ the 3Es (not including the 4th E of enforcement) as a tactic to reduce the crowd size and density and enforce COVID-19 legislation.

The Silver Commander told us that, when these officers went into the crowd, they met verbal resistance and were prevented from engaging, explaining and encouraging. A small group (thought by the Silver Commander to be Sisters Uncut) was “whipping up” the crowd. He discussed the development with the Gold Commander and explained his rationale for adopting the fourth ‘E’ of enforcement.

The decision to authorise enforcement at this event has been subjected to much public debate, political commentary and media attention. The rationale shows that this decision was not taken lightly and was one made soon after information was relayed from Bronze 3 to the Gold Commander via the Silver Commander that changed the assessment of the event.

The PLT supervisor described how they followed the strategy of ‘engage, explain and encourage’. They tried repeatedly as a team, with a gradually escalating approach involving numerous warnings, to explain that enforcement would follow because people’s lives were being put at risk due to the large, dense crowd and potential spread of the disease. He was met with verbal abuse and people on the bandstand refusing to comply – the abuse and hostility further increased as he explained that enforcement action would be taken if people failed to move away. When enforcement was authorised, he and his team left the bandstand area and continued to engage and encourage the wider crowd to disperse, which in the main they did.

During the tension at the bandstand, the Metropolitan Police used social media messaging to ask people to disperse or go home.

As the PLT left the bandstand, they were replaced by other officers who occupied that space to prevent anyone from using the microphone to make speeches. Their inspector said that, as people took to the bandstand and started shouting, the crowd became more febrile and refused to engage with the officers. He tells of repeated attempts by him and his officers to engage with a group of four people who failed to respond or move away. They were asked to provide their details so that fixed penalties could be issued but, because they did not provide their details, they were subsequently arrested. Once the four people had been arrested and taken away, the crowd started to disperse.

Media imagery

There is no doubt that media coverage and images disseminated on social media laid the foundation for concern over the proportionality of the decisions to make arrests, the use of force and the policing of the event. Our inspection reviewed evidence relating to these arrests including statements, police body-worn video and other footage.

Summary of conditions on Clapham Common

The following summary describes the conditions in which the officers were working.

On the outskirts of the Common, there were very few people. As officers walked onto the Common, there were a small number of groups walking towards them, leaving the Common.

Within 10 metres of the bandstand, the crowds were dense, noisy and more agitated. It was difficult for people to lay flowers at the bandstand because of the density of the crowd.

There was loud chanting, although the wording changed. People closer to the bandstand were more confrontational with police officers. A small number of people were expressing a strong view that the police presence at the vigil inflamed the situation.

Chants included:

- “Who do you serve? Who do you protect?”
- “Let her go” (referring to one of the arrested women)
- “Arrest your own”
- “Police go home”
- “Shame on you”
- “How many women? How many more?”
- “Her name was Sarah”
- “Where are your flowers? Where’s your candle? Why aren’t you mourning?”
- “Protect our women”

An officer’s statement describes the arrest of a female who was carried back to a police vehicle. When the officers were carrying the detainee, other members of the public circled the police and the detainee and shouted verbal abuse towards the police.

Another statement describes the arrest of an “older male” who was wearing an Extinction Rebellion high-visibility vest. The detainee was carried to the police vehicle after being described as “going floppy”.

One officer gave this account:

“We were heavily outnumbered at this protest. There were only six of us covering the bandstand stairs with a hostile crowd right in front of us. I had limited room to move either forward or back.

I do not feel that we had the right amount of cover or police officers and felt that I was in a dangerous position stood in front of a hostile crowd.

I did fear for my safety as I had no reasonable place to [withdraw] to and only had behind me the bandstand which was completely covered by the hostile crowd.

The crowd was mixed consisting of males and females, some old, some young. A white male aged in his 50s or 60s ... was threatening towards us outside the stairs of the bandstand and I saw him go towards another officer. Whilst stood on the stairs I was made aware that that officer's baton had been taken by a member of the crowd.

This increases the risk as a member of the crowd had a piece of police [equipment] in their possession which they could have used against us. A police baton when used can inflict a serious injury on to someone depending on level of force used.

I also saw what I believe to be a liquid substance thrown in the air whilst stood on the stairs and also heard over the radio that missiles had been thrown at police.

We were heavily outnumbered with nowhere to move to.”

One officer's statement described that, at 7.57pm, they had a very calm discussion with a man who had come on his bike. He said that he knew that the original organisers had cancelled the event but a woman, whom he knew through his work, had “hijacked” the event.

One female officer's statement recorded:

“During the incident, I distinctly remember multiple women coming up to me throughout the incident, wishing I was raped, with one female saying words to the effect of: ‘I hope you get raped, so you know what it's like’. Another woman also said words to the effect of ‘I hope you get murdered and that your face is all over the news once you've been murdered’...”

The officer described being shocked and disgusted but also sad that:

“... women, who were protesting to end violence against women, were then wishing severe/fatal harm come to other women.”

A police supervisor's statement said:

“I could see a Palestine flag on a pole being waved from within the large crowd facing the [bandstand], and could (hear) chanting coming from within them, but couldn't make out what they were saying.”

“... this didn't feel like a vigil, there was a mixed atmosphere. I then saw small pockets of around 8–10 people stood away from the bandstand area in small circles on the grass looking down at lit candles and flowers on the ground. They were clearly having a peaceful, dignified vigil. ...This felt like two events running at the same time, in the same place, with the crowd partaking in a protest whilst people on the outside (were) having a respectful vigil.”

The officer went on to say that, after arrests were made and he walked across the common, several people walking in the opposite direction were abusive and said things like “try not to rape and murder anyone on your way home”.

Police reported being physically assaulted. One statement reported that a constable had been punched in the face by a woman.

Another officer's statement described mixed responses from the crowd to police engagement as some people asked police if they were ashamed at what they were doing: "... others thanked us for being polite and left the area."

A different officer recorded in his statement: "Some of the verbal abuse directed at officers was some of the worst I have come across in my 16 years of policing."

Our review of footage from this period leads us to conclude that these officers' accounts are not exaggerated.

Arrests

The body-worn video from officers who carried out arrests at Clapham Common provides a picture of officers using the 4Es approach and moving to arrest only after giving warnings. Those arrested were taken away to police vehicles parked away from the Common, surrounded by a 'bubble' of police officers. There was abuse directed at officers during these journeys. We saw no evidence of officers retaliating to this abuse. The arresting officers appear to be calm and polite. In some cases, a person wearing a 'Legal Observer' tabard stays with the group, calling advice to the arrested person.

Summary of a constable's body-worn video covering one arrest

A sergeant confirmed at 6.57pm that enforcement was authorised by way of issuing fixed penalty notices (FPNs) if people refused to leave after engaging, explaining and encouraging.

The officer engaged extensively with a lot of people and remained calm when people tried to argue with him. The officer repeatedly asked one person to leave, who replied, "I'm at a protest."

A woman asked the officer if she could ask a question. The officer was dealing with someone and said he would return in two minutes. He did return and had a conversation with her about crime levels for several minutes. The woman thanked him for his time.

At 7.31pm, a sergeant told a police constable that arrests were going to be made in the bandstand so to expect a 'flare-up' in crowd mood.

Officers approached the bandstand. An officer tried to engage with a group but was ignored. The officer asked them to leave and warned them that they would be arrested if they didn't leave. They didn't leave. He took the arm of a person with their back to him and arrested her. Her friends tried to pull her away. Police formed a bubble and escorted her, without handcuffs, to a police carrier.

Following the arrest and throughout the encounter, the officer's conduct was exemplary. He looked after the woman's medical needs and gave her his water bottle when she felt faint. For some time, the woman refused to provide her personal details. It took much persuasion and negotiation with her to provide them. Once they were provided and verified, she was de-arrested. She was notified she would receive an FPN through the post and the process was explained.

Numbers of arrests and FPNs

Based on the material we reviewed, we have calculated that, during the incident, the following police enforcement activity took place:

- Nine arrests were made (eight for breaches of the All Tiers Regulations, one for an offence under section 5 of the Public Order Act 1986).
- Of the nine people arrested, seven were de-arrested at Clapham Common after they provided their names and addresses.
- Nine FPNs were issued (including eight to people arrested).
- Two of the arrested people were taken into custody: one was given an FPN; the other was released under investigation.

What changed following enforcement?

It was evident that the arrest of, primarily, women at the bandstand had an influence on the crowd's behaviour.

The mere sight of enforcement action was enough for some people, particularly at the periphery, to decide to leave and not risk enforcement or being drawn into a hostile crowd. Others, also towards the periphery, engaged with the PLT officers and PSU officers, and appeared to have been very receptive to the officers applying the 3Es.

Within minutes, there was a migration away from the bandstand.

We were provided with the update that was recorded at 7.44pm by the chief of staff to the Silver Commander:

“c500 remain refusing to leave. 5 arrests [so] far (believed) plus enforcement actions directing people to leave who have then complied. Crowd was dense enough that officers could not easily move through it, adding to the risk of disease transmission and justification for move to enforcement through 4E approach.”

Over the subsequent 45 minutes, officers continued the 3Es approach and the crowd gradually dispersed. By 8.35pm, the bandstand was clear of police and protesters with only about a hundred people in the vicinity of the bandstand. Police resources were withdrawn.

4. Political and legal commentary in the following days

Before and after the vigil, some senior politicians (and lawyers) challenged and/or sought clarification of the legal position, both from the Metropolitan Police and through the media.

Radio 4 interview with the Minister for Crime and Policing

The central problem of the legality of protests and large gatherings during the current lockdown restrictions was also the subject of many media interviews, including a BBC Radio 4 interview with the Minister for Crime and Policing on 15 March 2021.

Interviewer: “Well, let’s be clear, can there be lawful protest in this country, during the coronavirus pandemic. Is it possible?”

Minister: “Well, that’s what it says, that large gatherings and assemblies are illegal. And you understand that the objective here Nick, is the protection of everybody’s health. Look, we recognise the enormous anger, feel it ourselves. And the police are also devastated by the implications of this particular crime. But it speaks to a repressed sense of concern about violence against women and girls, particularly in the streets, but generally in society, and that this was always going to be a difficult moment for everybody. The [HMICFRS inspection] over the next couple of weeks will get to the bottom of what actually happened and the decision making ...”

BBC Radio 4 interview with Lord Sumption

Also, on 15 March 2021, in an interview on BBC Radio 4, Lord Sumption, a former Supreme Court judge, was asked if there could have been an agreement for the vigil for Sarah Everard to have gone ahead safely. He said:

“I don’t see how they could. Whether you call it a demonstration or a vigil or a protest doesn’t make any difference. All of these things are forbidden by the regulations which prevent you from leaving your house, except for certain purposes which do not include congregating with other people in order to make their views on issues like this felt.”

Asked if the police were in an impossible situation, he said:

“Of course they were. They were required to enforce regulations which were brutal in their application to absolutely everything that people want to do together outside their homes. The problem lies in the framing of the regulations ...”

Views of the Parliamentary Joint Committee on Human Rights

On 17 March 2021, the [Parliamentary Joint Committee on Human Rights \(JCHR\)](#) [published a report](#) calling on the Government to amend the law to make it clear that protest is permitted if conducted in a manner that reduces public health risks. Committee Chair Harriet Harman QC MP said:

“When people have to go to court to establish whether their actions are lawful or criminal, as has happened most recently in the Reclaim These Streets Clapham vigil, it’s clear that the law is in a mess.”

Vigils in other parts of the country

In addition to all this political and media attention focused primarily on the Clapham vigil, there was interest in the way that the police dealt with other vigils across the country.

On 19 March 2021, it was reported by the Press Association that the Sussex Police chief constable had defended her force’s handling of protests in Brighton following the death of Sarah Everard. Speaking at the performance and accountability meeting, chaired by the Sussex police and crime commissioner, the chief constable said:

“The events at the weekend presented a real wicked problem for policing. We are still in the midst of a global pandemic and during this crisis we have had a role to play in enforcing the Government’s health regulations which are designed to limit the spread of that infection and ultimately save lives.

On the other hand we have people’s right to gather and in ordinary times to express their views through public gatherings and through protest.”

The chief constable said Sussex Police officers had taken no action as people came to pay their respects in Brighton last Saturday (13 March 2021) but had stepped in when the large crowds began to get closer together. She said:

“I absolutely cannot criticise any of my frontline officers for what they did. However, I can completely understand what the perception is and I think it is really important that we do listen and we do understand that perception.

Could we and should we have policed that event differently and more sensitively? On reflection, having listened to all of that feedback, there is a balance that we could have done that and I think it would be wrong of us not to listen to some of those perceptions.”

We established (mainly from news articles) that vigils also took place in Liverpool, Birmingham, Cardiff, Humberside and Nottingham. These appeared to be much smaller affairs that generally went without incident. Because of their apparent scale and character, close comparisons between the policing of these events and Clapham Common would be inadvisable.

Furthermore, other police forces in England and Wales tend not to attract the consistently high levels of national and international attention that the Metropolitan

Police attracts. And they may be less likely to be confronted by charges of inconsistency in the way they approach gatherings and protests.

On 20 March 2021, [the BBC reported](#) that:

“More than 60 MPs and peers have written to the Home Secretary calling for a change in the COVID-19 legislation to allow protests to happen during lockdown.”

On 22 March 2021, various media sources reported that, from 29 March 2021, as part of England’s ‘roadmap out of lockdown’, the Government may alter, suspend or remove measures that in effect allow protest activity to (once again) be permitted as an exception within the regulations.

5. Our conclusions

The media coverage of this incident led to what many will conclude was a public relations disaster for the Metropolitan Police. It was on a national and international scale, with a materially adverse effect on public confidence in policing. Many commentators, including some in a position of considerable influence, publicly expressed their concerns. Their comments have reach.

Two weeks later, we have had a better opportunity to gather and evaluate the evidence. We have reflected on all the material we examined. We have heard strongly-held and well-articulated views from interviewees at different levels of seniority, from different backgrounds and with different motivations. The evidence we have collected prompts us to address four fundamental questions about the Metropolitan Police's handling of this event.

1. Did the force's desire to maintain consistency justify its stance towards the vigil?

A dominant feature of the Metropolitan Police's explanation for its approach was the force's wish to be – and to be seen to be – consistent in its approach. As we explained earlier, a desire to maintain consistency cannot obviate the need for the police to take a decision about any individual gathering or proposed gathering on its specific facts. Any policy which adopts a blanket approach to protests, by treating them as automatically unlawful under the All Tiers Regulations, is incompatible with human rights.

Most, but not all, interviewees were generally supportive of the force's emphasis on consistency.

Generally, there are major benefits to society when the police behave consistently and within the spectrum of reasonable decisions open to them in the light of the circumstances of the case. The British policing model is based on public consent (which we expand on later in this report). Police efficiency and effectiveness – the lenses through which we must always look to reach our judgments – are preserved or enhanced when there is public consent to policing. In our reports, we often comment on police legitimacy too: the extent to which the police's behaviour, particularly when enforcing the law, is seen as legitimate in the eyes of the public. Legitimacy, consent to policing and confidence in the police go hand in hand. But public consent is hard-won. It is fragile and may be withdrawn at any time.

It was – and remains – wholly legitimate for the Metropolitan Police to place a high value on preserving public consent and confidence, by behaving legitimately. And it is

consistent with the oath of office, taken by all police officers, which requires them to serve with impartiality.

In the context of the policing of gatherings during lockdown, legitimacy, impartiality and consistency are closely related concepts.

The British people have made extraordinary sacrifices during the pandemic. They have been denied the opportunity to do so many things that would normally be taken for granted. Across the UK, more than 100,000 fixed penalty notices have been issued for breaches of the All Tiers Regulations.

The vigil for Miss Everard was far from the first gathering in London at which the Metropolitan Police took enforcement action during the pandemic. The force provided us with a long list of others. This list appears at Annex A. It reveals a generally low number of arrests and offence reports at most gatherings (and in some cases the absence of any arrests or offence reports). This, we believe, offers some reassurance that a proportionate approach has been adopted by the Metropolitan Police. We learned that, on the same day as the vigil for Miss Everard, there was a vigil in Tottenham for another murder victim. Interviewees told us they policed that event in a similar way but never needed to resort to enforcement – the fourth ‘E’ – as people left the gathering when asked.

Public perceptions of inconsistency at gatherings during lockdown – whether accurate or not – are likely to damage public confidence in policing, and so jeopardise consent to policing. They may also affect public behaviour. Put simply, if people think the police are reticent to enforce the law, they are more likely to break it.

At the time of writing this report, there have been 126,000 COVID-19 related deaths in the UK. Of course, it is impossible to say how many are attributable to infections spread by mass gatherings. In the present public health emergency, mass gatherings that would normally be planned may not be able to happen under the All Tiers Regulations. And when, on the night, a substantial number of people closely congregated around the bandstand and began shouting or chanting, it was justifiable to adopt the view that the risks of virus transmission were too great for the police to ignore.

There will be those who take the view that the circumstances surrounding Sarah Everard’s death were so extraordinary that they should have prompted the police to behave differently – in particular, to stop short of making arrests. The All Tiers Regulations empower police to take such enforcement action as is ‘necessary’ to enforce Tier 4 restrictions, which includes but does not mandate arrests.

Indeed, the circumstances and the strength of feeling that led to the vigil marked this event above most others as one where the police should be particularly alive to the need to exercise their discretion carefully, with reference to the particular circumstances.

The Metropolitan Police has been clear that there was not – and could not be – a blanket ban on protest. It must follow that it was possible that at some point, somewhere a gathering could be allowed to take place. This requires the police to evaluate a range of factors including whether and what risk assessments have been

conducted, whether social distancing will be maintained, and what other measures may assist in managing the risk to public health.

While this evaluative judgment categorically does not require (or indeed permit) the Metropolitan Police to take on the role of adjudicating on the merits of the cause behind each gathering, there remains a risk that that is what the public will perceive the police to be doing if one gathering is permitted and another is not. Such a role is not compatible with impartial policing.

Public opinion may be a guide to understanding whether a particular event is regarded widely as of vital importance. In this case, events had moved quickly over a few days, giving little opportunity to arrive at a settled view regarding public attitudes. A [snap YouGov survey](#) conducted within 48 hours of the vigil suggested that 40 percent of people thought that the Metropolitan Police should have allowed the event to go ahead as the organisers planned, with 43 percent taking the opposite view.

Given that the fundamental right to protest remains in force even during the pandemic, it is entirely reasonable to put forward the view that a vigil on Clapham Common could legally have taken place. The competing arguments on this question have been made with vigour from both perspectives, as would be expected in a democratic society.

As inspectors of constabulary, our role is to offer our independent judgment on the actions of the police in this case. With strong arguments on both sides, we are satisfied that – on balance – the Metropolitan Police acted appropriately in taking as its starting point the desire to achieve consistency in the policing of mass gatherings during lockdown. But in order to adopt a lawful approach it was essential for the Metropolitan Police to go beyond that starting point and to consider the specific facts regarding the events planned for 13 March 2021 and then the events as they unfolded on the day. It is our conclusion that the thought processes and actions of the Metropolitan Police satisfied this requirement.

2. Should the force have done more work with Reclaim These Streets organisers or Lambeth Council to plan the vigil, particularly after the court case?

In the light of our conclusion concerning the arguments in favour of consistency, we turned to this question. Some Lambeth-based police officers appear to have adopted a more receptive stance to the idea of a vigil as proposed by RTS, before the involvement of the Directorate of Legal Services and more senior personnel from New Scotland Yard. It is important to emphasise that we do not judge the latter groups as unreceptive, un-cooperative or insensitive. They believed they were faithfully pursuing a policy of consistency, which – for the reasons set out above – we broadly support.

Nevertheless, for some of our interviewees, this perceived difference in approach was a source of considerable frustration.

Any discussion about whether the vigil could have been planned and conducted in a manner less likely to breach the All Tiers Regulations and minimise the risk of virus transmission necessarily involves a degree of speculation. We have concluded that there were three principal reasons why planning a more ‘COVID-friendly’ event was not a realistic option.

The first relates to the number of people anticipated to attend. As many public order policing events have shown in recent years, the power of social media in mobilising large numbers of people is very substantial. By lunchtime on the Friday, the police knew that 6,000 people had shown an interest in attending. Clapham Common covers about 89 hectares (220 acres). From a theoretical viewpoint at least, it could comfortably accommodate a large number of people while allowing for social distancing. However, the bigger the 'spread' of people, the greater the resource requirement for crowd control purposes would be. And, in any case, the bandstand had been identified as a focal point to which people would be drawn.

The second relates to the limited time available for the planning. Understandably, all the parties wished to await the High Court's decision. In the event, the Judgment wasn't available until the evening of Friday 12 March. That left less than 24 hours to plan the event. In any case, soon after the Judgment emerged, the RTS organisers, very understandably, gave up on their proposal to hold a vigil.

The third reason, which we consider to be the most compelling, is that the planning would have needed to involve some assumptions about the nature of the gathering and the intentions of those who would be there. By Friday 12 March, the police had intelligence that Sisters Uncut had shown an interest and were likely to attend the vigil. It is not uncommon for gatherings to attract those who protest for various causes. Such groups can present significant problems for the police. Any planning assumptions would sensibly have needed to allow for civil disobedience and a failure to observe social distancing.

In this particular case – while recognising that the event was conceived as a vigil for Sarah Everard – the principal cause for protest was the promotion of societal improvements in women's safety. However, it was clearly attended by those with other causes in mind.

3. Were police actions at the event proportionate?

The strategy and planning for policing the vigil had at its heart the 4Es approach, with the option of enforcement held in reserve to be used as a last resort. From our inspection, the evidence is clear that the officers on duty at Clapham Common did their level best to peacefully disperse the crowd and took such action only at the point in time where the numbers of those present and the public health risks were such that the crowd could not safely be permitted to remain in place. We viewed hours of body-worn video footage and heard officers patiently pleading with people to go home. It was clear that officers were explaining and encouraging people to leave. Officers were reluctant to enforce the All Tiers Regulations, even when the crowd grew larger and more tightly-packed. Indeed, we would not have been surprised, having viewed the footage, to find that rather more fixed penalty notices had been issued, or arrests made. Our conclusion was that police officers remained calm and professional when being subjected to some extreme and abhorrent abuse.

There is clear evidence that the police at Clapham Common made sincere attempts to communicate with the crowds. In many cases, the use of engage, explain and encourage – the first 3Es – was enough and most of the crowd dispersed.

When the decision to ‘move to enforcement’ was made, our review found nothing to suggest that officers acted inappropriately or in a heavy-handed manner. In fact, we found evidence of patience and professionalism during engagement prior to, during and after arrest. Those arrested were led away, flanked by police officers to provide a protective bubble from the crowd. Twelve public complaints have been made. Police received 463 messages of praise and 181 messages of criticism.

Our inspection has led us to conclude that police officers at Clapham Common worked, in sometimes challenging circumstances, to maintain public safety and keep the peace. Unlike the public, who chose to be there, the police were there because they serve to keep us safe.

4. What factors contributed to this event?

If it is accepted that public confidence in the Metropolitan Police suffered as a result of the vigil – and it is our view that it did – then there are four contributory factors.

The first is (some) decisions taken by the Metropolitan Police on the day of the vigil. Our conclusions are laid out above. We have made minor criticisms of some procedures on the day. However, these seem to lie within the bounds of what might normally go well, or less well, on any of the public order events police deal with on a regular basis. They had very little influence on the conduct of the vigil.

There is no doubt that the Metropolitan Police were alive to the possibility of having to enforce the law at Clapham Common. Indeed, the force had taken some care to ensure that the Home Office, the Mayor’s office and other parties were prepared for that eventuality, while stressing that such an outcome would be avoided if possible. We observe, however – and with the acknowledged benefit of hindsight – that the Metropolitan Police’s case for its officers’ actions at Clapham Common made little impression when set against the impact of the images of women under arrest that were rapidly shared on social media. To protest that Twitter should not drive press and broadcast coverage of an event is as futile as to complain about the weather. In this social media age, police forces need to find ways to make their perspective count early. We heard the Metropolitan Police’s response to events described as ‘tone deaf’; we acknowledge that a more conciliatory response might have served the force’s interests better.

The second factor concerns the nature and complexity of the law. The All Tiers Regulations are controversial. That alone is problematic for the police. Furthermore, the police have to consider the relationship between the All Tiers Regulations and human rights law. Theoretically at least, the relationship is relatively straightforward. But matters are rarely that simple in practice.

Increasingly, senior police officers are required to demonstrate an advanced understanding of human rights law. Where police officers are faced with making finely-balanced decisions in difficult circumstances, it is essential that the law is clear. It is incumbent on the legislature to provide a set of rules that is (first) readily capable of being accurately interpreted and applied and (second) likely to attract a high degree of public acceptance and consent.

The third factor is the behaviour of those attending the vigil after 6.00 pm. Our evidence shows that the vast majority of those attending behaved in a way that was dignified and respectful. Any engagement they had with police officers attending was friendly and co-operative. However, as is frequently the case, the peaceful and reasonable intent of the many was overshadowed by the malign actions of a few. Although not remotely comparable with the violence of some protests – including some in the days since the Clapham Common vigil – there was still a degree of aggression, rancour and animosity directed towards officers.

Police officers are ordinary men and women doing their jobs. They are citizens in uniform, part of the community. Just as much as their fellow citizens, they are entitled to be treated with decency. They are expected to act with restraint when faced with severe provocation. Many would argue that such restraint is too rarely seen among a small minority of protesters apparently prepared to hurl abuse at officers who are seeking to uphold the law.

Fourth, the chorus of those condemning the Metropolitan Police, and calling for the resignation of the Commissioner, within hours of the arrests – and presumably, with a very limited understanding of what had happened – was unwarranted. Whereas a certain degree of uninformed commentary, particularly on social media, is inevitable, in this case some of the leading voices were those in positions of some responsibility. It is one thing – as in the case of the Home Secretary – to recognise that the scenes were worrying or upsetting (and to order an inspection such as this). It is another to jump to conclusions – and in doing so, undermine public confidence in policing – based on very limited evidence.

To do so shows a distinct lack of respect for public servants facing, as we have described, a sensitive and complex situation.

6. The principle of policing by consent

In the UK, policing by consent is not an empty catchphrase: it is an essential reality. Among many countries, the UK is unusual. The police are not the coercive arm of an oppressive and authoritarian government, established and operated to create and maintain public obedience through fear. They are not the agents of the executive government at all. They are us: our fellow citizens, citizens in uniform, charged with preventing crime and disorder and enforcing the criminal law established by or under the authority of Parliament and the courts.

Peelian principles

When Parliament established the Metropolitan Police in 1829, the first Commissioners issued general instructions – which have become known as the principles of the then Home Secretary Sir Robert Peel – laying down a number of essential principles which hold as good today as they did then. They apply to all policing and have enduring relevance and significance. Among them are:

- the need to recognise the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect;
- the requirement to seek and preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to the law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws; and
- the maintenance at all times of a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full-time attention to the duties which are incumbent on every citizen in the interests of community welfare and existence.

Public consent is a broad concept. It does not mean individuals' optional and voluntary compliance with laws; that would be a recipe for anarchy. It is founded and dependent upon impartiality in the encouragement of the public to obey laws established by due process in a democratic society, and the judicious enforcement of those laws in cases where people break them.

In doing so, the police are often required to endure significant degrees of provocation, including insults, open defiance, and violence. These require of police officers considerable degrees of professional restraint, restraint which many other people would find impossible.

When the criminal law – established under democratic authority for common protection – is being broken, and explanation, encouragement and exhortation have failed, public toleration of flagrant violations must diminish. Constables have discretion in relation to how they handle such law-breaking, and in many cases of minor violations the better approach can be admonition and warning. But when things escalate, and conspicuous defiance, with physical resistance, come into play, it is not the constable's duty to withdraw. Toleration and restraint have their own limits; the obligation to enforce the laws established by and for the community, through lawful means, intensifies.

The Peelian principles emphasise impartiality, and that is what the police must always show by their actions. The criminal law is established by the community for the community.

Annex A – Summary of major London protests

The summary below has been provided by the Metropolitan Police. It details the major protests that took place in London between March 2020 and March 2021, together with the relevant regulations in force at the time of these protests. We have not verified the Metropolitan Police’s description of the restrictions or the associated data. References to ‘reports’ are references to people reported for offences.

Date	Event	Arrests and reports
26 March 2020	First COVID Regulations <ul style="list-style-type: none"> • Cannot leave home without reasonable excuse • Public gatherings in excess of 2 people prohibited 	N/A
9 May 2020	Anti-lockdown protest	1 arrest 22 reported
13 May 2020	2nd Amendment to Regulations <ul style="list-style-type: none"> • Cannot leave home without reasonable excuse (some additional exemptions included) • Public gatherings in excess of 2 people still prohibited 	N/A
16 May 2020	Anti-lockdown protest	19 arrests 6 reported
23 May 2020	Anti-lockdown protest	2 reported
30 May 2020	Anti-lockdown protest	7 arrests
30 May 2020	Extinction Rebellion protest	7 arrests 15 reported
31 May 2020	Anti-lockdown protest	No arrests
31 May 2020	Black Lives Matter protest	23 arrests

Date	Event	Arrests and reports
1 June 2020	3rd Amendment to Regulations <ul style="list-style-type: none"> Removes prohibition on movement but bans overnight stays at another's house Public gatherings in excess of 6 people prohibited (subject to exemptions) 	N/A
1 June 2020	Anti-Lockdown protest	No arrests 1 reported
1 June 2020	Black Lives Matter protest	7 arrests
3 June 2020	Black Lives Matter protest	13 arrests
6 June 2020	Black Lives Matter protest	29 arrests
7 June 2020	Black Lives Matter protest	28 arrests
13 June 2020	4th Amendment to Regulations <ul style="list-style-type: none"> Concept of linked households (aka 'support bubbles') apply to gatherings Public gatherings in excess of 6 people remain prohibited (subject to exemptions) 	N/A
13 June 2020	Black Lives Matter protest and counter protest	129 arrests
4 July 2020	Second COVID Regulations <ul style="list-style-type: none"> Public gatherings in excess of 30 people prohibited (subject to a much broader list of exemptions) Introduced exemption for 'political body' subject to risk assessment Concept of linked households remains 	N/A
25 July 2020	Beyond Politics protest	No arrests
28 August 2020	Second Regulations – 2nd amendment <ul style="list-style-type: none"> Public gatherings in excess of 30 people prohibited (subject to a much broader list of exemptions) Organisation/ facilitation offence created to include a fixed £10,000 fine for persons who 'hold or are involved in holding' a non-exempt gathering of 30 people or more Concept of 'political body' remains an exemption subject to 'risk assessment clauses' 	N/A
28 August 2020	Extinction Rebellion protest	6 arrests
29 August 2020	Anti-lockdown protest	1 arrest

Date	Event	Arrests and reports
30 August 2020	Unlicensed music event	4 arrests
31 August 2020	Extinction Rebellion protests	3 arrests
1–10 September 2020	Extinction Rebellion protests	671 arrests 41 reported
5 September 2020	Anti-lockdown protest	3 arrests 2 reported
5 September 2020	Ivory Coast protests	3 reported
10 September 2020	Ethiopian Embassy protest	16 arrests
14 September 2020	Second Regulations – 3rd amendment <ul style="list-style-type: none"> • Public gatherings in excess of 6 people prohibited ('rule of six') • Concept of 'qualifying groups' apply to larger gatherings where groups of 6 or fewer (or larger if part of a linked household) can attend larger gatherings so long as they do not 'mingle' with other groups • Offences for organisation, facilitation and participation in gatherings remain • Protest is a specified exemption subject to the 'risk assessment clauses' 	N/A
19 September 2020	Anti-lockdown protest	34 arrests
23 September 2020	Anti-lockdown protest	1 arrest
26 September 2020	Anti-lockdown protest	15 arrests 7 reported
4 October 2020	Punjabi farmers protest	1 reported
10 October 2020	Anti-lockdown protest	2 arrests

Date	Event	Arrests and reports
14 October 2020	Local COVID alert levels – medium <ul style="list-style-type: none"> • Law regarding public gatherings remains substantially the same • Protests remain subject to ‘risk assessment clauses’ 	N/A
17 October 2020	Local COVID alert levels – high <ul style="list-style-type: none"> • Law regarding public gatherings remains substantially the same • Protests remain subject to ‘risk assessment clauses’ 	N/A
24 October 2020	Anti-lockdown protest	18 arrests
30 October 2020	French cartoon protest	3 reported
31 October 2020	Unlicensed music event	7 arrests
31 October 2020	Extinction Rebellion	2 arrests 1 reported
1 November 2020	Hatun Tash protest	1 arrest 2 reported
5 November 2020	Fourth Regulations <ul style="list-style-type: none"> • Public gatherings of more than 2 prohibited (subject to exemptions) • Indoor gatherings banned (subject to exemptions) • Protest removed as an express exemption 	N/A
5 November 2020	Million masked/anti-lockdown protest	147 arrests 33 reported
7 November 2020	Julian Assange protest	4 arrests 1 reported
11 November 2020	Armistice Day protest	3 arrests
21 November 2020	Anti-lockdown protest	3 arrests
24 November 2020	Anti-vax protest	4 arrests 2 reported

Date	Event	Arrests and reports
28 November 2020	Anti-lockdown protest	143 arrests 28 reported
2 December 2020	All Tier Regulations – Tier 2 <ul style="list-style-type: none"> Public gatherings of more than 6 prohibited (subject to exemptions) Protest a specific exemption subject to the ‘risk assessment clauses’ 	N/A
6 December 2020	Punjabi farmers protest	11 arrests
12 December 2020	Save the Children protest	1 reported
14 December 2020	Anti-lockdown protest	13 arrests 2 reported
16 December 2020	All Tier Regulations – Tier 3 <ul style="list-style-type: none"> Public gatherings of more than 6 prohibited (subject to exemptions) Protest a specific exemption subject to the ‘risk assessment clauses’ 	N/A
19 December 2020	Anti-lockdown protests	19 arrests 22 reported
21 December 2020	All Tier Regulations – Tier 4 <ul style="list-style-type: none"> Cannot leave home without reasonable excuse Public gatherings of more than 2 prohibited (subject to exemptions) Protest removed as a specific exemption 	N/A
21 December 2020	Julian Assange protest	2 reported
23 December 2020	Supreme Court protest	1 reported
31 December 2020	Anti-lockdown protest/New Year’s Eve party	1 arrest 4 reported
1 January 2021	Anti-lockdown protest	3 reported

Date	Event	Arrests and reports
2 January 2021	Anti-lockdown protest	22 arrests 5 reported
4 January 2021	Anti-lockdown protest	1 reported
5 January 2021	NHS food protests	1 reported
6 January 2021	All Tier Regulations – Tier 4 amendment <ul style="list-style-type: none"> • Regulations for public gatherings remain substantially the same • Reduction in certain exemptions for being outside your dwelling 	N/A
6 January 2021	Anti-lockdown protest	36 arrests 7 reported
9 January 2021	Anti-lockdown protest	No arrests 16 reported
11 January 2021	Anti-lockdown protest	8 arrests 3 reported
16 January 2021	Anti-lockdown protest	8 arrests 1 reported
18 January 2021	Brexit protest	7 reported
26 January 2021	Anti-lockdown protest	3 arrests 37 reported
27–31 January 2021	HS2 protest	18 arrests 9 reported
1–28 February 2021	HS2 protest	35 arrests 8 reported
13 February 2021	Mayoral campaign protest	3 reported
20 February 2021	Mayoral campaign protest	1 arrest 1 reported
27 February 2021	Anti-lockdown protest	2 arrests 2 reported
6 March 2021	Anti-lockdown protest	14 arrests 7 reported
13 March 2021	Clapham Common vigil/protest	4 arrests 4 reported NOTE: HMICFRS data shows 9 arrests

Date	Event	Arrests and reports
14 March 2021	Violence Against Women and Children protest	No arrests No reports
15 March 2021	Kill the Bill protest	5 arrests
16 March 2021	Kill the Bill protest	2 arrests
20 March 2021	Anti-lockdown protest	35 arrests

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www.justiceinspectorates.gov.uk/hmicfrs

From: paul stephens pauljstephens64@gmail.com  
Subject: APPG Update from XR
Date: 1 June 2021 at 17:51
To: geraint.davies.mp@parliament.uk, sfowles@icdr.co.uk

PS

Evidence of government influence on the policing of a peaceful protest

Submitted to the APPG

Please find attached to this email the gold log disclosed by police mentioned below and a link to an article written by the defence lead in the case Raj Chada.

On Friday 21st May 2021 during the trial of protesters for the Broxbourne News Corp. action, Judge Fudge ordered that the police disclose the gold log of events. I provide it to assist with the understanding of how government interference changed the course of the police response at great expense to the taxpayer.

This is my recollection from 4/5th September 2020 Broxbourne News Corps.

I attended the Broxbourne Press Action in the role of police liaison from 2230 Hrs following a call out. My role was to be the point of contact for protesters, to optimise safety and ensure that protesters understood the legal consequences of their actions. The protest was already constructed at the time I arrived. It consisted of two bamboo towers, two vans plus lock-on tube structures all secured with protesters locked in place. I checked that in the event of an emergency, they could quickly move one van to provide access to an ambulance.

I liaised with an Inspector who identified himself as Oscar One.

He stated that the police respected our right to protest but would like everyone to move from the road to the grass verge to allow access to the print works. The protesters politely declined.

Oscar One had conversations with the manager of the print works and then explained that the print work would be sent electronically to an alternative site so we may as well go home. The protesters did not believe this so politely declined. Oscar One then stated that there were 200 employees that could not drive home due to the protest and we should consider their situation. The protesters replied that they sympathised with the staff but it was an automated site with less than 200 staff and Mr Murdoch could possibly offer them cabs home on this occasion. **I highlighted the fact that in the event of an emergency, the van could be moved very quickly to allow an ambulance through. This is not included in the gold log.**

When Ch. Insp. Richard Johnson arrived I was asked by protesters to make him aware that they would unlock themselves and submit to arrest at an agreed time if he allowed the protest to stand. The reply was that if protesters unlocked within the hour then it would be considered otherwise, no and they would begin protest removals as soon as the PRT (Protest Removal Teams) arrived. **The protesters stated that they would unlock at 11am and I communicated this to Ch. Insp. Johnson. I note that**

this is not mentioned in the gold log.

The police response was huge and included officers in L3 riot gear and several PRT's working simultaneously. Police interactions with protesters were good humoured, courteous and professional.

The arrest of all protesters was completed at 11.37am. This was only possible at this time because protesters who were still locked on or suspended from the two towers, unlocked themselves at 11am and submitted to arrest as promised. It is likely to have taken several more hours to complete the policing operation if the protesters had not done this.

All of the blockading protesters were subsequently charged and their names and addresses posted on the Herts Police Facebook page within 24 hours. Although this information is in the public domain, it is extremely unusual for police to publish personal details prior to sentence and even more unusual to publish it on Facebook. I would usually expect a public safety rationale for doing this. It was perceived as a way of punishing peaceful protesters yet to be convicted of an offence, with the implied threat of the media doorstepping defendants.

Last weekend we saw Animal Rebellion use similar tactics to peacefully protest outside 4 meat production depots. The police response was very different. At Heywood and Coventry, the police checked that everyone was safe and withdrew to minimal police presence with an agreed finish time and no arrests were made. There were 8 arrests at Basingstoke and 6 at Hemel Hempstead.

During the September Rebellion, the major police over-reactions in Westminster involved the close proximity to a bridge: Lambeth Bridge, 6 hour closure and unlawful arrest of 200; Greta the Lighthouse (seized close to Tower Bridge despite abiding by a S12 order); the final march being blocked on the Embankment (with no warning) on the way to Parliament Square, close to Westminster Bridge. It appeared that the police had strong direction to protect the bridges from any protests but each decision appeared rushed, heavy handed and poorly executed. In addition, there was no communication with XR prior to such police action. It would not surprise me in the slightest if the MO6 Command Team were subject to interference from the Home Office that compromised their operational independence.

If the Government interferes this much to suppress peaceful protest with the current legislation, I dread to think what will become of our right to protest if the protest section of the PCSC Bill is passed.

Best Regards

Paul Stephens
Police Liaison XR

<https://www.lag.org.uk/article/210928/-are-the-police-applying-the-laws-of-the-land-or-serving-the-executive-branch-->



ER_POPS_Command_...d-1.pdf

Official (Sensitive) / Secret / Top Secret
(Delete as appropriate when completed)



Eastern Region POPS Command

DECISION LOG (Delete as appropriate)

OPERATION NAME		Op Rumex	
INCIDENT NATURE		Extinction Rebellion protest	
FORCE AREA		Hertfordshire	
NAME OF COMMANDER/POPSA		ACC Owen Weatherill	
ROLE		Gold POPS	
DATE COMMENCED	05/09/20	DATE COMPLETED	06/09/20
SPONTANEOUS	X	PRE-PLANNED	

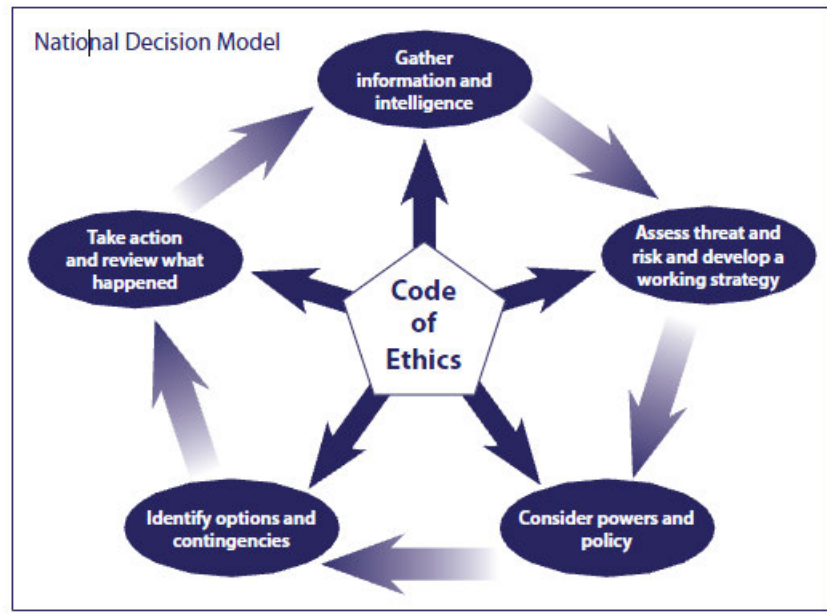
Official(Sensitive)/Secret/Top Secret
(Delete as appropriate when completed)

GUIDANCE TO OFFICERS COMMANDING OR PLANNING FOR PUBLIC ORDER INCIDENTS.

- A command Log will be maintained by the Gold, Silver and Bronze Commanders of all Public Order Public Safety operations. For Public order & public safety events those commanders must be operationally competent and professionally accredited through the College of Policing.
- It is the duty of Commanders to ensure that command decisions are brought to the attention of and understood by relevant officers engaged upon the incident.
- The command Log for pre-planned events should be commenced as soon as the commander is appointed and the planning process initiated. All planning meetings and decisions prior to the operation must be recorded and signed by the Commander (and Loggist, if appointed)
- The command log should not be concluded until all events from the debriefing process have been recorded and resolved following the operation.
- The command Log for a pre-planned event is complementary to and not a replacement for an operational order. The operational order may be referred to in the Command Log.
- It should be borne in mind that this document will be the subject of disclosure should there be subsequent court proceedings.
- Completed Beds, Herts and Cambs Command Logs should be forwarded to [REDACTED], for filing.
- Completed Norfolk and Suffolk Command Logs should be forwarded to the [REDACTED].
- Completed Essex Command Logs should be forwarded to [REDACTED]

Commanders should refer to guidance notes contained within the following documents;

- Authorised Professional Practice (APP) – Public Order



Role of Police at Events:

Core Policing Responsibilities are:

- *preventing and detecting crime*
- *preventing or stopping a breach of the peace*
- *traffic regulation (only under statutory powers relating to events)*
- *activating contingency plans when there is an immediate threat to life*
- *Coordinating emergency response activities associated with a major incident taking place at the event.*

6 Core Principles of POPS Policing:

- Policing Style and Tone
- Communication
- Use of NDM/JDM
- Command
- Proportionate Response
- Capacity and Capability

TIME LINE

Time line entries should be annotated by number where they refer to a command decision or advice. These decisions are recorded in the 'command decisions' section with the rationale.

Decision/ advice no	Date/Time	Command Decision/Advice/Rationale
1	23.51hrs 04/09/20	<p>Initial Information: Phone call from Genna Telfer (Duty Gold in Herts) asking for assistance with a spontaneous demonstration by Extinction rebellion at News International, Waltham Cross.</p> <p>To note, I was not on call at home. Request being made as Genna is not an accredited PO Gold commander. Key information passed to me:</p> <ul style="list-style-type: none"> • Genna/control room had tried other Herts PO Gold's, with all either declining or not being contactable • No PO Silver or Bronze's on duty either in Herts and therefore not yet identified • PM and Home Secretary already taking an interest • Around 100 protestors • Lockons already established at protest • Vehicles and protest blocking access road to premises preventing delivery of newspapers <p>Decision 1 I agreed to act as PO Gold for this incident and asked Genna to locate a Silver and Bronze for me whilst I made initial contact with Oscar 1 to scope suitable L2 trained assets</p> <p>Rationale Event as described requires a fully accredited command structure and deployment of specialist L2 and PRT resources Command protocol agreed that Genna would continue to be Gold for all other matters for Herts, with me as Gold for the protest response alone.</p>

2	00.01hrs 05/09/20	<p>Call to Oscar 1 to assess L2 PO asset capability.</p> <ul style="list-style-type: none"> • 36 x L2 officers on duty in Herts at present and being mustered to Herts HQ • Details of on-call PO tac adviser given as Sgt Liz O'Brien and contact number <p>Decisions 2 Oscar 1 directed to locate 3 full L2 PSU's for deployment to the incident. Oscar 1 directed to seek mutual aid from BCH initially and if needed to go beyond BCH to rest of region. I will discuss PRT capabilities and need with TacAd</p> <p>Rationale Engagement with XR protestors and especially those using lockon's will require suitably trained L2 resources. My immediate considerations were time needed to mobilise sufficient resources, and hence early decisions to get this process moving.</p>
	00.06hrs 05/09/20	<p>Call from CC Hall</p> <ul style="list-style-type: none"> • Home Sec has been on phone to him seeking early intervention and removal of protestors • I updated that there is currently no accredited command structure in place and that suitably trained resources are not yet fully identified and/or mustered into PSU's • He advised that MPS Commissioner had just spoken to him and offered MPS resources – reported to be 3 x PSU's and PRT capability being deployed to assist Herts • Informed him that I would speak with MPS and update further once command and resources fully mobilised and in a position to engage with protestors
	00.14hrs 05/09/20	<p>Call to TacAd Liz O'Brien</p> <ul style="list-style-type: none"> • Discussed resources and tactics/options • Agreed that sufficient resources now being stood up or travelling – but not yet a full command capability in place • She is enroute from Beds with 2nd TA – Andy Wilde • Agreed to RV at Herts HQ
	00.35hrs 05/09/20	<p>Calls to Herts duty Silver (Steve O'keefe – not PO Silver) and corp comms (██████████) to discuss wider resource needs and comms messages</p> <p>Steve O'Keefe will manage local resources (i.e. non PO specialists) and also arrange for prisoner handling resources.</p>
	00.46hrs 05/09/20	<p>Following update from Oscar 1, call to CI Richard Johnson who has been identified by Oscar 1 as an available PO Bronze</p> <ul style="list-style-type: none"> • He is being called out from home - off duty and not on call • Brief given to him on resources available or being mustered • He is enroute to Herts HQ to kit up and RV with PSU's

	00.53hrs 05/09/20	<p>Call to Cmdr Jane Connors (MPS) to discuss MPS resources</p> <ul style="list-style-type: none"> • Confirmed as 1 x L2 PSU, 2 x L3 BDU and PRT team • Agreed MPS resources will standby at Enfield until command team established and able to brief to determine tactics and response
	01.20hrs 05/09/20	<p>Departed HA to travel to HQ to RV to meet with TacAd and command from HQ</p>
	01.25hrs 05/09/20	<p>Following update from Oscar 1, call to Supt Ed Wells (Essex) who has been identified as Silver</p> <ul style="list-style-type: none"> • Briefed him on information thus far, resources available and command team • He is on duty in Essex having just completed a PSU deployment in Essex • Traveling from Chelmsford with an Essex Bronze plus TA, all of whom are on duty from same Essex deployment <p>Decision 3 Silver will deploy directly to Brookfield Farm Cheshunt</p> <p>Rationale Given travel time and distance, and mindful that I am using an Essex Silver who does not have local knowledge and contacts, deploying Silver to locality of scene will:</p> <ul style="list-style-type: none"> • Aid Silver's situational awareness • Save time and avoid further delays • Enable Silver to make an early assessment of protest, environs, and liaise directly with Bronze and PRT Insp on tactics • Enable more effective command of resources being deployed from multiple forces

4, 5 & 6	01.35hrs 05/09/20	<p>Arrival at Herts HQ – FCR. Briefing with TacAd’s x 2 and BX. 3 PSU’s as requested not yet formed, but 1 x Herts PSU is now formed and ready to deploy.</p> <p>CC Hall also in attendance at HQ and present in MIR, so briefed on update thus far.</p> <p>Decision 4 Formed Herts PSU x 1 and BX to deploy immediately to Brookfield Farm to RV with SX</p> <p>Rationale With full command team now in place, the Herts PSU x 1, in conjunction with MPS resources will enable initial, tactical response to be developed and put in place when appropriate</p> <p>Decision 5 All late shift resources in Herts to remain on duty</p> <p>Rationale Engaging the protest groups and removing lockon’s will require considerable resources to transport prisoners, manage any potential disruption to roads network, as well managing any additional unforeseen events or breakaway protests. CI Lillitou (Herts duty County Bronze will manage this process and specifically prisoner handling arrangements)</p> <p>Decision 6 Gold strategic objectives (in hierarchical order) briefed to BX (and subsequently relayed to SX by phone):</p> <ol style="list-style-type: none"> 1. Keep A10 open 2. Secure access into printworks and Hotel to enable businesses to operate 3. Facilitate protest at a location, provided this does not interfere with first two objectives <p>Rationale</p> <ol style="list-style-type: none"> 1. The A10 is a significant road and a key part of the roads infrastructure in immediate proximity to a major M25 interchange. If this becomes blocked it will directly impact upon the M25 and wider roads networks, causing even greater widespread disruption and business impacts. Given the location of the current protest, I therefore see this as the primary objective, in order to mitigate the risk of the protest moving into, or being unintentionally displaced onto the A10 as a result of any tactical deployment of specialist resources. In this respect I draw on personal experience of a motorway closure for several hours, and the extensive impact this had not just on the immediate area, but also neighbouring counties and the entire flow of the M25. I am also mindful of previous XR tactics, and that this may be a secondary objective of the protestors.
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		<p>I am very clear that any police response must not unwittingly enable this to occur. It is therefore imperative in my mind that the A10 remains open.</p> <p>2. My second objective is to enable both businesses immediately affected to be able to operate as normal. This will necessarily require protestors to be removed from lockon's, and/or moved to a more suitable location which does not create disruption/disturbance to businesses, the roads network, or wider public. Objective 2 (enabling the printworks and hotel to operate) can only be achieved if the A10 remains open, as this is the only apparent route by which vehicular access to enable distribution of newsprint can be facilitated.</p> <p>3. Mindful of our duties under HRA legislation, we will seek to facilitate lawful and peaceful protest if and where possible, but only where this can be achieved without impacting upon the first two objectives.</p>
7	02.03hrs 05/09/20	<p>Phone call with SX</p> <ul style="list-style-type: none"> • Gold objectives discussed to ensure clarity of understanding • SX and BX currently working up a tactical plan, with a supporting risk assessment • PRT Insp has viewed protest site and lockon's and assessment is that there are approx 48 protestors locked on to a variety of towers, in/on/under vehicles, and to each other • PRT Insp described this as "very well considered and complex lockon plan" and likely to take 7-8 hrs to remove them all • HART team not yet in attendance and will be required before tactical plan can be executed • The significant number of protestors locked on and the complexity of the lockon's has been well thought through with a deliberate intent to frustrate police PRT tactics <p>Decision 7 Silver not yet in a position to safely deploy PRT's as RA not yet completed and required resources not yet fully in place</p> <p>Rationale The MPS PRT Insp has notable experience in dealing with XR lockons and has been deployed in London on XR protests all week- as such I take his advice fully on board, as the most experienced person to advise both myself, my TacAd and SX on both the best approach to take and the time required to remove the protestors. I am also very mindful of the nature of the lockon's which means that heavy duty cutting equipment will be required, as well as working at height to remove those lockon's on top of vehicles and on tripods/towers. HART are an essential resource to have on site to enable appropriate and suitably trained staff in support of PRT tactics as a contingency in the event of injury to officers or protestors during the removal process.</p>

	02.20hrs 05/09/20	<p>Call to Merseyside Gold, following message from FCR that they have a similar protest. Discussion to share information and agreed to update them further with any key updates.</p> <p>Their protest using similar tactics, again at a printworks belonging to News International. Similar prevalence of lockons.</p>
8	02.30hrs 05/09/20	<p>Notification from Oscar 1 that 2 x Herts PSU's are due on duty at 6am to travel to Kent on mutual aid for a Kent deployment</p> <p>Decision 8 The Herts PSU staff due to start at 6am will be held back in Herts to support this operation</p> <p>Rationale This operation is ongoing and remains in its early stages. As such, given the likely time required to remove all protestors as advised by PRT Insp, it appears likely that we will need to rotate staff at some point in the early shift. Holding back these PSU staff will therefore provide me with the ability to refresh staff already deployed to this operation, some of whom will have been on duty from the late shift and will need to be sent home for their own welfare.</p>
9	03.22hrs 05/09/20	<p>Update from SX, he is almost ready to start protest removal stage of operation. He seeks support to deploy all staff in L3 kit. Protestors being given final warning to disperse before PRT begin their operations to remove lockons</p> <p>Decision 9</p> <ul style="list-style-type: none"> • BCH staff and Essex PSU to remain in L2 dress • 1 x MPS PSU to be kitted in L3 dress as a contingency and able to deploy dynamically if/as required <p>Rationale Previous XR demonstrations have shown their protestors to be passive and as such, I view the need for L3 dress to be a contingency only. I therefore regard L2 dress to be the most suitable for the initial engagement with protestors at this stage and will also assist with engagement and maintain a style/tone of policing response which promotes optimum engagement. TacAd endorses this decision</p>
	03.32hrs 05/09/20	<p>Call to Merseyside Gold. Updated that we are about to begin protestor removal phase. They advised that they have not done so yet and are intending to do so later in the morning. Rationale given by them is that their printworks manager had already advised that the cut off time for getting print out had already passed, and as such, Merseyside assess no imminent need to take removal action.</p>

10	04.45hrs 05/09/20	<p>Following discussion with CC Hall, he asked is we could expedite the removal process by PRT team. This follows further contact from Home Secretary through the night asking for updates and seeking a faster dispersal or protestors. Discussion with SX who has consulted with PRT Insp</p> <p>Decision 10 No further PRT capability to be requested, as it is not possible to safely expedite the protestor removal phase</p> <p>Rationale Existing PRT team is 22 strong, and all are highly experienced PRT staff. They are already working on up to 3 lockon's simultaneously. Even if more PRT staff were available, the confines of the operating environment are such that his assessment is that it would not be safe for any additional PRT staff to operate in such close proximity to each other.</p>
11	05.38hrs 05/09/20	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
	05.45hrs 05/09/20	Progress review with TacAd and Ambo commanders
	5.49hrs 05/09/20	Call to CC Hall with progress update
	06.00hrs 05/09/20	Discussion with [REDACTED] to agree comms messages and review incoming media questions. Lines agreed and discussion re request for radio interview with Times Radio at 7am
	07.15hrs 05/09/20	Further call with Merseyside – they are just beginning removal of their protestors. Update given on our progress and numbers arrested so far, as well as lockon's encountered
	09.10hrs 05/09/20	Comms lines reviewed and revisions agreed with [REDACTED]
	9.29hrs	Call to Cmdr Adelan MPS re cell space in MPS. Request for additional cell space as Herts cells will be full. Details provided of Herts DI managing prisoner handling to enable discussions (DI Griffiths)
	09.38hrs	Call to SX for update on progress ahead of call with Home Secretary. Removal stage still ongoing with arrests continuing to be made.
	10.00hrs	Conf call with Home Secretary, CC Hall and CC Cooke

DEBRIEFING PROCESS.

POST INCIDENT "HOT" DEBRIEF		TIME:	
LOCATION:		DATE:	
ATTENDEES: 			
NOTES TO TAKE FORWARD FOR COMMAND DEBRIEF.			

Post Event

Please remember to complete the Post Event Reporting Form from NPOCC

Extinction Rebellion Legal Support Team

Submission of Written Evidence to the AAPG Parliamentary Inquest into the Policing of the Sarah Everard Clapham Common Vigil

The Extinction Rebellion Legal Support Team is grateful for the opportunity to make this submission.

Below, we address the questions posed by the All Party Parliamentary Group on Democracy and the Constitution.

We apologise for the brevity of these submissions. This is due to time constraints placed on submission of evidence.

1. To what extent is the right to protest sufficiently protected in current law?
 1. The right to protest is protected by the European Convention on Human Rights (given effect in UK law through the Human Rights Act (HRA) 1998) and by principles of common law. However, the police have wide ranging powers, notably under the Public Order Act 1986, to place limitations on protest. These powers are frequently found to have been drastically misused - for instance, in *R on the application of Jones & ors v The Commissioner of Police for the Metropolis* [2019] EWHC 2957 (Admin), where a police ban on protest was struck down by the courts. By the time the court had intervened, hundreds of Extinction Rebellion protestors had been unlawfully arrested.

The police have also misinterpreted various iterations of the Covid-19 restrictions regulations, imposing at times “blanket bans” on protest, either formally stated in police guidance, or informally stated to protestors and organisers. The fact that our law is so open to misinterpretation and misuse by the police is evidence in itself that the right to protest is insufficiently protected. The Public Order Act, the acts which succeed it, are illiberal, and have a chilling effect on the right to protest.

The policing of the Clapham Common Vigil on the 13th March 2021 is another example of a protest where police inappropriately shut down democratic action. The violent tactics used by the Metropolitan Police Service (MPS), such as kneeling on women’s necks and grabbing and pushing protestors around, are the symptoms of a system that is not fit for purpose. Standing back from the matter, it is obviously inappropriate that MPS officers manhandled peaceful protestors who gathered to mourn the loss of a woman’s life and to protest violence against women. That there is even a debate about the legality of such action is evidence that the right to protest is insufficiently protected. For the right to be protected, it must be capable of being clearly understood by those who enforce the law.

2. How was this affected by the various Coronavirus regulations?

a. The Coronavirus (Health Protection) Regulations provided police with powers to issue Fixed Penalty Notices (FPNs) or arrest anyone they considered to be in breach of said regulations. It is clear to us that the police saw this as an opportunity to use these powers to break up all protests, by threatening to issue protestors with FPNs or with arrest if they did not disperse and leave the protest. This is something we saw from the beginning of the wave of Black Lives Matter protests of 2020 protesting institutional racism within the police force, following the death of George Floyd at the hands of the police in Minnesota, right through to the vigil of Sarah Everard, commemorating her death, allegedly at the hands of a serving MPS officer, and even more recently at the numerous Kill the Bill protests, demanding that the Police, Crime, Sentencing and Courts Bill is scrapped.

Our position is that the MPS has disproportionately, and unlawfully, used the powers granted to it through the Coronavirus Regulations to shut down protests. There are two aspects to the problem. First, the regulations have been poorly drafted, and often ambiguous as to whether people have been permitted to gather in order to protest. The law has changed a bewildering number of times in the last year, and the drafting of the regulations regarding protest has shifted between explicit statements and provisions on permitted gatherings and numbers, to no reference to protest being provided whatsoever. This has created huge difficulties for those organising protests, who have been exposed, as well as the protestors, to the threat of criminal sanctions. Second, the police have exploited ambiguities in the law and been heavy handed in the management of protests - even those where every precaution has been taken to prevent transmission of the virus. This is the result of poor training and guidance, and cannot all be blamed on the deficient drafting of the regulations.

3. Do you believe the coronavirus regulations were correctly applied by police at Clapham and Bristol?

. We submit that the Coronavirus Regulations were applied disproportionately and incorrectly by the police. We would like to draw your attention to the recent admission from the Avon and Somerset police force that its 'blanket ban' on protest during the January lockdown was unlawful. Whilst more lenient regulations are now in place, the police force's use of the Coronavirus Regulations (among other legislation) to take away people's right to protest has only increased, as we have seen in the most recent Kill the Bill protests in both Bristol and London, but also across the country. We also submit that the use of the Coronavirus Regulations at the Clapham Common vigil was exceedingly over-zealous, and in various respects, unlawful. Police guidance states that they should follow the '4 E's' method to enforce the Coronavirus Regulations. However, as Legal Observers who were present at the vigil in an independent capacity to monitor police activity saw, the police did not follow their own guidance on the enforcement of the regulations and instead of asking four of the women to disperse before they reached the 'Enforcement' stage, they arrested them without giving them a chance to leave the site. Furthermore, the police constantly threatened Legal Observers, who were independent from the protest, with arrest or with a FPN which we would consider to be an unlawful use of the powers available to them.

4. How was the right to protest affected by the coronavirus regulations?
- . Several of the iterations of the Coronavirus Regulations contained a specific exemption from said regulations if one were to gather for the purpose of a protest; the Tier 4 Regulations did not explicitly state this exemption, but also did not directly state that it would outlaw protest.

The police acted as if the Coronavirus Regulations allowed them to ban protest in its entirety. This was held to be unlawful by the High Court, following a legal challenge by Reclaim These Streets. The police use of force against protestors and Legal Observers also has a chilling effect on protest - people will understandably be wary of attending protests when they see the police acting violently.

5. To what extent does the PCSC Bill give sufficient clarity about police powers and duties and how they can be exercised?
- a. The PCSC Bill, if passed, would be a vast expansion of police powers specifically in relation to restriction of all forms of protest by the police. We submit that the bill does not provide 'sufficient clarity about [any new] police powers'. In our opinion, the terms used within the bill such as "nuisance", "noise" and "alarm" are incredibly vague, and leaves the police a huge amount of discretion to decide if they will deem a protest unlawful.

The powers that would be granted to the police would allow them to characterise a protest as 'unlawful' more so than current legislation would allow them to do. To add to this, the police do still currently unlawfully use the powers available to them to deem a protest unlawful, as we saw in the October 2019 XR Autumn Uprising protest, with the MPS imposing a blanket ban on protest across London. This was subsequently judicially reviewed (*Jones & Ors v Commissioner of Police for the Metropolis*) and a quashing order was granted. We recognise that had they used their powers proportionately and lawfully in this situation, that they would have been able to deal with the alleged disruption caused by the protest and that Section 14 of the Public Order Act would have been more than sufficient (in terms of legislation) for them to deal with this scenario.

In our view, it is apparent that the police have an agenda in terms of restricting protests and if granted more powers which would allow them to further their agenda, they would be consistently acting in a way that is not in accordance with protestors rights to protest.

As we have seen with the Coronavirus Regulations, the police grossly misuse the powers that are granted to them and it is, in our view, inevitable that the police will use these new powers (granted by the bill, if passed) to further clamp down on all forms of protest.

6. In situations in which some protesters are acting violently while others are not, how should police regulate the use of force?

7. Could police behaviour in Bristol (“presumption of illegality”, using riot police to clear peaceful protestors on College Green, taking a confrontational approach without sufficient person power to back it up) have contributed to the risk of violence?

a. This question, in our opinion, could be considered as slightly misleading. It is in our view exceptionally rare that a protestor goes out to protest with the intention of violence. We submit that there is a direct correlation between police using unlawful force against peaceful protestors (such as in Bristol, London and at the Clapham Common vigil) and reported violence at such protests. It is in our view that it is not the protestors who initiate this violence, but instead that it is the often unlawful use of force by police that initiates this violence and that instead the protestors are often acting in self defence against an unlawful assault on themselves and their fellow protestors.

8. There have been reports of “blading” (the use of the narrow edges of riot shields to hit people on the floor) at the events in Bristol. A&SC have stated that this technique is lawful. What is your view?

9. Was police use of force appropriate in Clapham and Bristol and to what extent?

. In response to the two questions posed above:

We recognise and accept that the police have authority to use force in the execution of their lawful duties (as is provided by Section 3 of the Criminal Law Act 1967 and Section 117 of the Police and Criminal Evidence Act 1984). However, the force that is used must be both reasonable and proportionate in its nature for it to be considered as a lawful use of force. Blading is clearly an inappropriate tactic to use against protestors - it is an act of aggression and violence

We would submit that the force used by police in Bristol and at the Clapham Common vigil was neither reasonable or proportionate, and thus such use of force would be unlawful and could be considered as an assault.

10. In your view do the police have sufficient powers to police protest and is there sufficient accountability for the use of those powers?

a. We submit that the police do have sufficient powers to police protests. For example, we would draw your attention to Sections 12 and 14 of the Public Order Act 1986, which give the police powers to impose conditions on protest to restrict the time, location and the number of protestors allowed to be present. We would also

like to draw your attention to the power (under Section 137 of the Highways Act 1980) to clear an obstruction of the highway if they deem the use of the highway to not be proportionate. This is used in a very broad range of circumstances already, demonstrating that they do have powers to reduce disruption already.

We also submit that there is very little in terms of accountability of the police misusing the powers that are currently available to them. We rarely see successful challenges to police misuses of powers available to them, such as with the Coronavirus Regulations. That is often because the cost of bringing legal action against the police is prohibitively expensive.

Concerns around policing - reasons to rein in police powers and not extend them.

The failure of the police to uphold Human and Civil Rights during HS2 protests has been on going since work on the HS2 project began. Below are some of the concerns around policing and include:

- the lack of response by the police when illegal and violent actions are taken against protestors by private security firms – even when the police are present;
- failure of the police to act on reports of violence against protestors;
- lack of police independence and duty to the public when employed/paid by HS2;
- constant acts of wrongful arrests;
- withholding food and water from protestors.

Regular and Repeated Violent actions, in excess of 100 to date, witnessed by and reported to the police and made by the NET and other security companies employed by HS2, but the police take no action to stop this or hold the security companies and HS2 to account. This includes strangling protestors, unsafe evictions, breaking bones, and female protestors being molested.

One example of a young man, Sebastian Maxey, being choked and passing out while the police watch: <https://vimeo.com/416868476>

Another is of a peaceful protector, Karl, being punched in the face and given a broken and bloody nose by the then NET climbing supervisor. Not only have the police refused to take this assault seriously, they initially began investigating HS2's unfounded allegation that the protector committed an assault. This is one of many examples where the police default to believing HS2 employees version of events and arrest protestors when they are clearly innocent and/or the evidence does not support such an arrest. In this case HS2 employees maliciously alleged assault against the protector to delay and avoid Karl's legitimate claim that he had been assaulted.

21.4.20 - Off-duty Police use excessive force on an older lady, (Ann) and give other officer's police numbers (not their own) to the witnesses. This incident was reported to local MP Rob Butler at the time, but no action was taken.

<https://vimeo.com/410707682>

7.1.20 – The eviction of the Harvil Road Protest Camp, Hillingdon, watched on by police, was undertaken before HS2 had possession of the field where the camp was located, and where the protestors had permission from the owner of the field to be there – some having lived there for over 2 years. This was proven by the protestors returning to the field soon after the eviction, when the illegality of the eviction became apparent, but not before the encampment was flattened by the NET. The National Eviction Team (NET) who undertook this, were not able to show any proof at the time of having an eviction order when asked.

<http://stophs2.org/news/18988-hs2-attempting-eviction-harvil-road-eviction-order>

Many unnecessary and what should be illegal arrests are made by the police, and many of these are unrecorded. Protestors are regularly arrested and then released

without any charge, and it seems no record is kept of many of these. **Mark Keir** has been trying to find out the scale of this problem through FOI's.

(Plain clothed police arrest protestor - <https://vimeo.com/445372890>)

Illegal arrests

A London court found, on Friday 19th January 2021, that HS2 did not have a possession order for the land at Euston Square Gardens despite the fact that the eviction commenced, with police support, on 27th January. A Possession order was finally granted on Monday 22nd February, but the police continued to arrest people before the order was in place. Again, there are many examples of HS2 carrying out evictions without proper legal authority and the police failing to challenge them on this and exercise due diligence.

(I have also been informed of unlawful arrests made and protestors strip-searched, one under age, but have not had time to follow this up. LS)

Slow response of the police when called by protestors (as with Ron's Garage below) but appear immediately and in force when called by HS2. This is a frequent pattern and is undermining confidence in and support for the police, who attempt to hold the official line that they are 'neutral' and enforcing the law equally whether alleged breaches come from HS2 or wildlife protectors.

12 May 2020 – Eviction: Ron's Garage – Dews Lane, Hillingdon. Again, the NET evicted protestors from this building, destroying part of it in the process, without an eviction order. The police were called by protestors but did not come, as we can hear in this video below. This was undertaken early in the pandemic when evictions were supposedly halted.

https://www.facebook.com/watch/live/?v=2651368548480981&ref=watch_permalink

Food and sleep deprivation

During the protest in Parliament Square (September 2020) when protestors lived in trees for three weeks, the police also stopped and restricted access to food and water for the three protestors. This is a regular action used by police and security at protest sites.

Other acts of deprivation include: continual machinery noise and using floodlights to keep protestors awake at night; and the removal of covering to leave protestors exposed through the night – these actions are undertaken by security and HS2 staff - the police are made aware of these but take no action.

<https://vimeo.com/401912496>

<https://vimeo.com/401617128>

<https://vimeo.com/455725867> (Parliament Sq.)

The removal and loss of property by the police, (as well as security firms) when protestors are evicted or arrested, has also been an on-going issue. One example is **Dr Larch Maxey's** possessions removed by the police from Parliament Square, mentioned above. Some of the possessions were returned to his friends after his arrest, but many are still missing and the police are not willing to take any responsibility, even after extended correspondence that proves they can only have been removed by or with the knowledge of the police.

(Contact Leo Smith for further information)

Recent protest at the G7 Summit in Cornwall (June 2021), where police targeted the **Animal Rebellion** peaceful protestors and camping site, arresting 29 people, some just arriving at the campsite, and taking away computers, phones, cars, ID's... (Go to Instagram site: @animal_rebellion)

The independence of the police – given HS2 are known to be paying the police, how can they be trusted to protect the public and their Rights, when employed by a company that is breaking laws and infringing Human and Civil Rights – making the police directly or indirectly complicit in these actions?

This article highlights the way HS2 is funding policing and this is now resulting in biased policing:

https://www.constructionnews.co.uk/civils/hs2-national-police-group-established-secure-project-23-04-2019/?fbclid=IwAR0Xq1NpRij2c6sDQAtUbkrBqdSkCCFRqmanW-29qP_Jx3XdfPw2dkocAqg

All of these actions - whether physical attacks, limiting movement through injunctions, *loosing* the protestors possessions, acts of deprivation, or failure to respond to calls to the police by protestors - are actions that undermine and limit Human and Civil Rights. Police should not be given more powers but should have their powers controlled and curtailed, and they need to be accountable.

Contacts – for further information on issues listed here:

(information collected by) Leo Smith: [REDACTED]

[REDACTED]

[REDACTED]