

BIG BROTHER WATCH

**COVID-19 – House of
Commons General Debate
briefing**

September 2020

About Big Brother Watch

Big Brother Watch is a civil liberties and privacy campaigning organisation, fighting for a free future. We're determined to reclaim our privacy and defend freedoms at this time of enormous technological change.

We're a fiercely independent, non-partisan and non-profit group who work to roll back the surveillance state and protect rights in parliament, the media or the courts if we have to. We publish unique investigations and pursue powerful public campaigns. We work relentlessly to inform, amplify and empower the public voice so we can collectively reclaim our privacy, defend our civil liberties and protect freedoms for the future.

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Introduction

Since the Coronavirus Bill was first introduced, we have been scrutinising emergency powers, providing policy analysis and emphasising the importance of parliamentary process. We have been producing monthly reports on the Government’s response to Covid-19, emergency

powers and their impact on civil liberties and parliamentary democracy and have circulated the reports to parliamentarians.¹

We believe this public health crisis has had a dramatic impact on our rights and freedoms. Over the past months we have seen **parliamentary scrutiny devalued, the rule of law undermined, freedom of expression quashed and the NHS partnering with unaccountable Big Tech companies for mass data gathering.**

Some of these the measures put in place to respond to the pandemic may have been temporary, such as the nationwide 'lockdown', but we fear they will have lasting impact on the rule of law. Other measures, such as mass health data collection and censorship on social media, have been hugely accelerated by this public health crisis. There is a long history of emergency measures enduring long beyond their purported goal; we only need to look to the emergence of mass government surveillance in the wake of 9/11 and its continuation today to see what is at risk for our rights.

It is right that the government takes action to combat a public health crisis. But where these measures overstep what is necessary and proportionate, and where they have no end-date, we should all be concerned about the future of our society.

Recommendations

RECOMMENDATION: The Government must end the use of 'urgency' as an excuse for bypassing Parliamentary scrutiny and approval of Regulations.

RECOMMENDATION: Given the serious confusion around the Regulations amongst police officers and documented excess policing, police chiefs should urgently instigate a national review of all fixed penalty notices issued under the lockdown Regulations.

RECOMMENDATION: The Government should introduce a means for individuals to challenge lockdown fixed penalty notices by way of administrative review or appeal, without having to risk magistrates' court proceedings.

RECOMMENDATION: Schedule 21 of the Coronavirus Act has proved an unnecessary and dangerous power, used exclusively to detain innocent and healthy people. It must be repealed.

RECOMMENDATION: The Covid-19 Data Store collects and processes vast quantities of highly sensitive data, without full transparency about how this data is used. The most recent contracts must be published to ensure full scrutiny of these deals.

RECOMMENDATION: The Department of Health and Social Care must make an assessment of its use of data analytics in the NHS Covid-19 Data Store, ideally in Data Protection Impact Assessment.

RECOMMENDATION: The Government must provide assurances that protesters of all kinds will not face criminalisation, rather than allowing the right to protest to depend on the discretion of police forces.

¹Emergency Powers and Civil Liberties Reports (April - July) – Big Brother Watch:
<https://bigbrotherwatch.org.uk/campaigns/emergency-powers/>

RECOMMENDATION: Government must provide transparency and civil society engagement in relation to the activities of the new 'Rapid Response Unit' and its role in removing 'harmful' content online.

RECOMMENDATION: Social media companies should not censor content beyond the limitations on free speech set by domestic law. Platforms should carefully consider the impact of their new content restrictions not only on their PR but on the health of the right to freedom of expression online.

Parliamentary Scrutiny

For much of this period, parliamentary democracy and scrutiny has been undervalued by the Government, and in many cases, ignored.

The Coronavirus Act

The Coronavirus Act 2020 came into force on 25th March 2020 after just three days of parliamentary consideration. Across 342 pages, it contains the most draconian powers ever seen in peace-time Britain. We are concerned that there was more time available to engage Parliament on the legislative response to the emergency than the three days afforded. The Health Secretary Matt Hancock delivered the Bill to the House of Commons, with the apparent reassurance that,

*"... the Bill has been drafted over a long period, because it started on the basis of the pandemic flu plan that was standard before coronavirus existed and has been worked on over the past three months at incredible pace by a brilliant team of officials right across Government."*²

However, this raises the question as to why Parliament was not engaged sooner in those three months.

It is absolutely vital that this Act remains to be seen through the lens of the premise on which it was passed – as an emergency statute that must only be in place for as long as is absolutely necessary. Yet the duration of this Act sets a worrying precedent: it has a two-year duration. Powers exercised under the Act can last for six further months (s.90), meaning the Act could last 2.5 years; whilst s.91 of the Bill would give far-reaching powers to ministers to extend the Act beyond two years simply by regulation. This is an extraordinary expansion of ministerial power and an unacceptably long time for exceptional, emergency powers to be at the disposal of Government.

To maintain the presumption against exercise of emergency powers, they should not be open to use for such a long period of time.

Health Protection Regulations

The Health Protection Regulations (of which there have been three sets in England, with multiple and frequent amendments) have enacted perhaps the most significant curtailment of normal life in the history of modern Government: a national lockdown. Such considerable

² HC Deb (23rd March 2020) vol. 674, col. 38: <https://hansard.parliament.uk/Commons/2020-03-23/debates/F4D06B4F-56CD-4B60-8306-BAB6D78AC7CF/CoronavirusBill>

powers deserve considerable scrutiny, yet the Government has consistently delayed or denied every opportunity for parliamentary approval of these Regulations.

As the lockdown restrictions ease in line with the Government's previously published roadmap, it becomes increasingly unjustifiable to bypass parliamentary scrutiny by claiming that the situation is too 'urgent' to be debated. This began as a thin excuse and has only become thinner as weeks have progressed. It also led to the absurd situation where on 15th June, the same day as the two Regulations came into force, the House of Lords was debating Amendment No. 2 (made on 13th May), and the House of Commons was debating Amendment No. 3 (made on 31st May) – Regulations and thus versions of the lockdown that had since been superseded.

Members across the House of Lords and Commons rightly protested the Government's repeated and deliberate evasion of meaningful parliamentary scrutiny.

Shadow Health Minister Justin Madders said:

"It is important that this Chamber has a role because these are not minor or consequential changes that can be nodded through without debate. They affect millions of people's lives, and we know that if we get it wrong, the consequences will be devastating.

"Debating them weeks after the event, and in some cases when they have been superseded by the next set of Regulations, demeans parliamentary democracy. (...) We are not merely a rubber-stamping exercise to create the veneer of a democratic process."³

Criticism also came from the Government's own benches. Conservative MP Mark Harper said:

"I do not see what would have prevented a draft of those regulations being laid for debate on Thursday, so that the House could have taken a decision on them before they came into force. (...) That would have been better for our legislative process."⁴

Conservative Peers also criticised the Government's approach. Lord Cormack said:

"A series of one-minute statements is not parliamentary scrutiny, and we have to hammer that home through [the Health Minister] (...) He must tell his political masters that this is not acceptable. Retrospective endorsement of government fiat is inimical to parliamentary democracy, and of course it adds to the muddle, to which many of your Lordships have referred during this debate."⁵

It is unacceptable that the parliamentary process has been consistently degraded throughout this period. This cannot be allowed to continue.

Volume of new legislation

³ HC Deb (15th June 2020) vol. 677, col. 587-8:

<https://hansard.parliament.uk/commons/2020-06-15/debates/D38A42EF-77BA-410E-9E46-0382DD500705/PublicHealth>

⁴ HC Deb (15th June 2020) vol. 677, col. 584:

<https://hansard.parliament.uk/commons/2020-06-15/debates/D38A42EF-77BA-410E-9E46-0382DD500705/PublicHealth>

⁵ HL Deb (24th July 2020) vol. 804, col. 2489: [https://hansard.parliament.uk/lords/2020-07-24/debates/3BAA97BA-06CC-45DC-972E-6C95FA1AFDD4/HealthProtection\(CoronavirusRestrictions\)\(No2\)\(England\)Regulations2020](https://hansard.parliament.uk/lords/2020-07-24/debates/3BAA97BA-06CC-45DC-972E-6C95FA1AFDD4/HealthProtection(CoronavirusRestrictions)(No2)(England)Regulations2020)

The volume of emergency legislation now in place is vast and growing. Ronan Cormacain, Senior Research Fellow at the Bingham Centre for the Rule of Law, warned that as “the process of rushing legislation through becomes normalised (...) the risk is that we become so used to emergency laws that they become part and parcel of ordinary procedure.”⁶

Indeed, since the first Coronavirus-related statutory instrument was laid on 28th January 2020, there has been a total of 242 laid before parliament at the time of writing, averaging at 8 new coronavirus-related statutory instruments a week.⁷ Including in devolved administrations, there are now over 400 statutory instruments with the word ‘coronavirus’ in them. The statutory instruments have been laid using powers from 100 different Acts of Parliament, 3 Orders and one EU Regulation.

Just 3.3% of these statutory instruments have been subject to the ‘draft affirmative’ procedure, which requires them to be approved by parliament before they are passed into law. It is clear that Parliament has had very few opportunities to scrutinise and influence the Government’s approach to legislating this crisis.

RECOMMENDATION: The Government must end the use of ‘urgency’ as an excuse for bypassing Parliamentary scrutiny and approval of Regulations.

Over-policing and the Rule of Law

Regulations introducing lockdown were, and continue to be, the most restrictive rules placed on our liberty in a generation. They effectively put the public under house arrest, leaving limited reasons for which a person can lawfully leave their place of residence. However, the rules were, and continue to be, overwhelmingly respected and adhered to by the public, who clearly understand the risks to themselves and others. The rapid behavioural change and adoption of new ways of living – social distancing, working from home, home-schooling, limited shopping and exercise – has been remarkable.

Despite the high-level of public co-operation in observing the restrictions, some police forces have approached the pandemic as a public order challenge rather than a public health crisis. We have seen police misinterpret the Regulations and enforce them unnecessarily harshly. This punitive approach has alienated and alarmed members of the public, eroded trust in authorities, sown confusion and undermined the rule of law.

Several police forces began enforcing a lockdown before laws had been passed. On 24th March, West Midlands Police forcibly dispersed a barbecue attended by a group of people including children and over-60s in Coventry. One woman shouted, “my children need to eat,”

Case study

Derbyshire Police attracted significant public attention after posting a social media video on 26th March 2020 of drone surveillance footage it had taken of people who were walking and exercising in the Peak District. The video shames the walkers and states, “The Government advice is clear. You should only travel if it is essential. Travelling to remote areas of the Peak District for your exercise is not essential.” The Regulations did not prohibit travel to exercise and, as subsequent police guidance clarified, people may wish to travel a reasonable distance to safely exercise.

but officers tipped over the barbecue.⁸ No laws were in place at that time that would have rendered the gathering illegal. The following day, officers in Crewe stopped cars to ascertain whether they were making essential journeys.⁹ There were no laws in place at this time which restricted people's ability to travel. On the same day, the British Transport Police stopped and questioned people on trains in and around London as to their reasons for travel.¹⁰ Whilst we appreciate their good intentions, it has been concerning how rapidly police have been willing to act without legal authority - the rule of law is the foundation of our democracy.

Case studies

Journalist Paul Burstyn stated on Twitter that he was directed to go home by an officer who told him that walking did not count as exercise, and that only jogging or cycling were permitted. West Midlands Police posted a video where an officer tells men who are boxing in the park that they must go home, as this form of exercise can be done at home. A woman complained that her son had been told to go home while exercising; his cycling did not count as exercise as he "wasn't sweating." In one case a woman with a joint condition reported being questioned by police in Queen's Park, Glasgow after resting with a heavy load of shopping. She reported that, despite explaining she was disabled, she was threatened with a fine, yelled at, asked if she was going to disinfect the bench, ordered to move on and followed to ensure she was travelling home.

It
is

understandably difficult for police to incorporate new Regulations so rapidly. However, this

Case study

On 9th April, an officer from South Yorkshire Police was recorded instructing a family that they were not allowed to be in their front garden. The officer was recorded telling the man, whose young children are heard crying in the background, "You cannot come onto your front garden. I'm recording. You cannot come on your front garden (...) We have Government powers to ask people to stay indoors."

critical process appears to have been thoroughly mismanaged. This wave of excessive policing is likely to have a lasting impact on policing practices and public attitudes. A YouGov survey conducted 3-5th April showed within the first week of emergency legislation, policing had caused concern and discomfort: 40% of people criticised policing, saying either that some

⁸ Police break up 20-strong barbecue buffet during coronavirus lockdown – Express and Star, 24th March 2020: <https://www.expressandstar.com/news/uk-news/2020/03/24/police-break-up-20-strongbarbecue-buffet-during-coronavirus-lockdown/>

⁹ Crewe Police, Twitter, 25th March 2020:

<https://twitter.com/PoliceCrewe/status/1242818838330257408?s=20>

¹⁰ Police tell some commuters: 'We don't want to see you tomorrow' – Simon Harris, ITV News, 25th March 2020: <https://www.itv.com/news/london/2020-03-25/police-tell-commuters-we-don-t-want-to-see-you-tomorrow/>

cases had gone too far or that the overall approach was too heavy-handed. As police have increased intrusive surveillance methods, 43% of people polled were uncomfortable with the use of drone surveillance, 42% were uncomfortable with the encouragement to report on others who breach restrictions and 24% were uncomfortable with road checks.¹¹

RECOMMENDATION: Given the serious confusion around the Regulations amongst police officers and documented excess policing, police chiefs should urgently instigate a national review of all fixed penalty notices issued under the lockdown Regulations.

RECOMMENDATION: The Government should introduce a means for individuals to challenge lockdown fixed penalty notices by way of administrative review or appeal, without having to risk magistrates' court proceedings.

Schedule 21

Schedule 21 of the Coronavirus Act contains some of the most extreme police detention powers in modern British legal history and has proven a real risk to human rights. It gives unprecedented, almost arbitrary powers to the police and immigration officers to detain any "potentially infectious" members of the public, including children, potentially indefinitely in unspecified locations.

Schedule 21 detention powers have been used for 141 prosecutions – every single one of which was found unlawful by the CPS on review.¹² Schedule 21 is responsible for the unprecedented record of 100% unlawful prosecutions under the Coronavirus Act.

Big Brother Watch, Kirsty Brimelow QC and the Times newspaper investigated and analysed case studies of policing with Schedule 21 powers. We found that innocent and healthy individuals were being arrested and even held in police cells unlawfully under these powers and called for a CPS review, which the CPS is now conducting monthly, in an unprecedented step.

Despite the nation enduring a peak of the pandemic, there has been no evidence over the past six months that Schedule 21 is necessary or safe – yet overwhelming evidence that it endangers rights and should be repealed. It is plainly unacceptable that people have been charged, exclusively wrongly, under this extreme law for six months.

The Department of Health's two-monthly reviews of the necessity of Coronavirus Act powers have failed to acknowledge a single unlawful prosecution under Schedule 21, failed to make a case for the necessity of Schedule 21, and refused to revoke these dangerous powers. Clearly, the Government's reviews have proven an inadequate safeguard.

RECOMMENDATION: Schedule 21 of the Coronavirus Act has proved an unnecessary and dangerous power, used exclusively to detain innocent and healthy people. It must be repealed.

NHS and 'Big Tech' Companies

The outsourcing of public health measures to data-hungry Big Tech companies has come to characterise the Government's response to the Covid-19 pandemic. From allowing Serco responsibility for the Test and Trace program (despite it being forced to pull out of a NHS

¹¹ Policing the COVID-19 lockdown, YouGov / Crest Survey Results (3-5 April 2020) – 8th April 2020, YouGov: https://docs.cdn.yougov.com/7jrz6rsm5q/Crest_CoronaPolicing_200405.pdf

¹² August's coronavirus review findings – Crown Prosecution Service, 25th September 2020: <https://www.cps.gov.uk/cps/news/augusts-coronavirus-review-findings>

contract in 2012 for falsifying data)¹³, to taking advice from Google executives on health data collection (whose DeepMind project was found to have illegally collected NHS patient data)¹⁴, scant regard has been shown for patient confidentiality, data protection or privacy rights.

Data Store

The Government's 'NHS Covid-19 Data Store', a vast database containing sensitive data from a range of sources, built to provide ministers with "real-time information about health services, showing where demand is rising and where critical equipment needs to be deployed."¹⁵ A range of companies including Palantir, Faculty, Microsoft, Amazon and Deloitte are involved in collecting and analysing this data, which is in turn fed into 'daily dashboards' informing the Government response to the pandemic.¹⁶

The scope of this datastore is staggering: contracts between the NHS and Palantir reveal that personal contact details, personal details, work contact details, employment details, racial or ethnic data, political affiliations, religious or similar beliefs, criminal offences, proceedings and sentences and physical or mental health conditions are all collected. There can be absolutely no justification for such wide-ranging, intrusive data gathering. This raises serious questions as to the intentions of the data collection.

Lina Dencik, co-director of Cardiff University's Data Justice Lab, said NHSX's deal with Palantir "goes beyond privatisation":

*"What this will do (...) is to increase dependency on [Palantir's] technological infrastructure over time. The implementation of these technologies are restructuring organisational practices in such a way that risks displacing public infrastructure and the way policy is made. This gives [Palantir] enormous power in a different way to typical outsourcing."*¹⁷

RECOMMENDATION: The Covid-19 Data Store collects and processes vast quantities of highly sensitive data, without full transparency about how this data is used. The most recent contracts must be published to ensure full scrutiny of these deals.

RECOMMENDATION: The Department of Health and Social Care must make an assessment of its use of data analytics in the NHS Covid-19 Data Store, ideally in Data Protection Impact Assessment.

Social media analysis

¹³ NHSX denies conflict of interest over DeepMind founder's advisory role – Andrea Downey, digitalhealth, 5th June 2020: <https://www.digitalhealth.net/2020/06/nhsx-denies-conflict-ofinterest-over-deepmind-founders-advisory-role/>

¹⁴ Serco gave NHS false data about its GP service 252 times – Felicity Lawrence, the Guardian, 20th September 2012: <https://www.theguardian.com/society/2012/sep/20/serco-nhs-false-data-gps>

¹⁵ UK government using confidential patient data in coronavirus response – Paul Lewis, David Conn and David Pegg, the Guardian, 12th April 2020: <https://www.theguardian.com/world/2020/apr/12/ukgovernment-using-confidential-patientdata-in-coronavirus-response>

¹⁶ NHS COVID-19 Data Store privacy notice – NHS England:

<https://www.england.nhs.uk/contact-us/privacy-notice/how-we-use-your-information/covid-19-response/nhs-covid-19-data-store/>

¹⁷ Secret data and the future of public health: why the NHS has turned to Palantir – Oscar Williams, New Statesman, 21st May 2020: <https://www.newstatesman.com/politics/health/2020/05/secret-data-andfuture-public-health-why-nhs-has-turned-palantir>

As part of its Covid-19 response, the Ministry for Housing, Communities and Local Government hired Faculty (in its ninth Government contract) to “provide urgent additional capacity and data science capability (...) to support critical analytical work to inform the response of MHCLG to the COVID-19 crisis.”¹⁸ As with virtually all of the Government’s Covid-19 related contracts, this was a non-competitive process.

The original contract provided little detail and the Government was forced to publish a more detailed contract after enquiries from Parliamentarians. The updated contract showed that the Ministry has hired Faculty for “Topic analysis of Social Media to understand public perception and emerging issues of concern to HMG arising from the COVID-19 crisis.”¹⁹ Faculty has been scraping social media accounts for content without our consent or even our knowledge. Worst still, this personal content was automatically processed to unknown ends using machine learning, a tool which has little accountability or public trust.

This covert capture and storage of potentially hundreds of thousands of pieces of personal content, content that the Government admits cannot be made anonymous, represents a serious breach of privacy and threatens freedom of expression.

Despite a string of high profile failings and controversies surrounding Big Tech firms and the NHS over the course of the pandemic, the Health Secretary told the All-Party Parliamentary Group on NHS Data that the pandemic has been “a very big moment” for the private sector’s role in “entrenching data in decision-making” in the NHS.²⁰ The continuation of this, he said, is “mission-critical.” Alexander de Carvalho, co-founder of PUBLIC, a venture firm set up to help technology start-ups gain government contracts, also told the APPG that “there’s been a loosening, or an improvement, of data sharing agreements (...) a lot of it has been in the context of the Covid-19 response, but as much as we can keep some of this positive momentum in place post this response, the better.”²¹

We know from experience that emergency measures can easily become the new normal. It is concerning to see weaker data protection, enabled by the pandemic, being touted as an improvement and a model for the future.

Freedom of Expression

Peaceful protests

A major human rights issue arising from the current Regulations and the ongoing restriction on gatherings is that the right to protest has been, and continues to be, significantly curtailed.

The right to protest is an essential part of democracy and cannot be restricted unless absolutely strictly necessary. This has proved even more pressing in light of the wave of protests that have been held across the country, primarily the Black Lives Matter protests against police brutality following the death of George Floyd at the hands of police in the US.

¹⁸ Data scientists for MHCLG Covid-19 response– Ministry of Housing, Communities & Local Government, 3rd June 2020 (initial contract, since removed)

¹⁹ Data scientists for MHCLG Covid-19 response– Ministry of Housing, Communities & Local Government, 18th August 2020 (updated contract):

<https://www.contractsfinder.service.gov.uk/Notice/Attachment/244384>

²⁰ Matt Hancock encourages private sector involvement in post-pandemic NHS technology - Sebastian Klovig Skelton, Computer Weekly, 9th July 2020:

[https://www.computerweekly.com/news/252485870/Matt-](https://www.computerweekly.com/news/252485870/Matt-Hancock-encourages-private-sector-involvement-in-post-pandemic-NHS-technology)

[Hancock-encourages-private-sector-involvement-in-post-pandemic-NHS-technology](https://www.computerweekly.com/news/252485870/Matt-Hancock-encourages-private-sector-involvement-in-post-pandemic-NHS-technology)

²¹ Ibid.

Despite the clarification provided by the amendment that came into law on 28th August, protesters continued to face difficulties, and even fines under the Regulations. The threat of a £10,000 for organising unsanctioned protests is an extreme and authoritarian approach to public health and chills freedom of assembly and expression, as people may be unwilling to risk organising a lawful protest due the vast potential fines.

Case study

A protest against the Coronavirus Act and the lockdown measures led to the arrest and

Case study
Trans Rights Collective UK was forced to cancel their planned protest, after the Metropolitan Police “informed [them] that there is a likelihood that [they], any participants, stewards and even BSL interpreters of the Trans Rights Protest will be arrested on 5th September.” The group had previously received assurances from police that they would not face enforcement action and the reason for the sudden reversal was not explained.

Other groups, including Extinction Rebellion, Resist the Government, Move One Million, have also faced enforcement action, with the Metropolitan Police handing out twenty £10,000 fines to protest organisers.²²

The right to protest is now contingent on police approval. Police decisions as to who can protest and under what terms appear to have been made in an arbitrary fashion.

Raj Chada, head of Hodge Jones & Allen’s Crime Department said:

“It defies belief that even when protestors are peaceful and socially distanced, that the police have a power to arrest or issue a Fixed Penalty Notice. We urge the police not to use these regulations to interfere with the right to protest, particularly at a time where many feel so strongly about the Black Lives Matter movement and disproportionate policing.”²³

Preventative action regarding protests has been taken too. On 25th June, police in Northumbria used a ‘Section 14 order’ (of the Public Order Act 1986) to prohibit any public assembly other than a planned Black Lives Matter vigil.²⁴ David Mead, a professor specialising in protest and public order law at UEA Law School, questioned whether this was lawful, as this “could only have been imposed under s14A with H/Sec consent & applied to all.”²⁵ It sets a worrying precedent if police begin to select which protests can and cannot take place, particularly if the powers used are of questionable legality.

²² Twenty protest organisers face £10,000 fines following Extinction Rebellion demonstrations in central London – Imogen Braddick, Evening Standard, 5th September 2020: <https://www.standard.co.uk/news/uk/protest-organisers-fines-extinction-rebellion-protests-londona4541081.html>

²³ Lawyers from HJA raise concerns that COVID regulations are being used to clamp down on peaceful protest – Hodge Allen & Jones, 3rd June 2020: <https://www.hja.net/pressreleases/lawyers-from-hja-raise-concerns-that-covid-regulations-are-being-used-to-clampdown-on-peaceful-protest/>

²⁴ Northumbria Police, Twitter, 25th June 2020:

<https://twitter.com/northumbriapol/status/1276149988981125123?s=20>

²⁵ David Mead, Twitter, 28th June 2020:

<https://twitter.com/SeethingMead/status/1277142051868610566?s=20>

It would appear that in some cases, the restriction on gatherings has been used to prevent or punish ordinary democratic behaviour.

Case study

On 24th June, a Twitter user reported that police tried to disperse a crowd watching and filming the arrest and restraint of a black teenage boy by six police officers by threatening to issue “tickets for violating COVID 19 regulation.” Neighbours had gathered to observe and question police who had handcuffed the teenager, tied his legs and carried him into a police van. Threatening to use the restrictions on gatherings to prevent observation and intervention by members of the public during a forceful arrest is an attempt to utilise the Regulations to avoid essential public scrutiny of police actions. It demonstrates how these restrictions can easily creep into preventing any kind of unwanted acts of public democracy.

The right to protest – particularly in the face of poor public health management, laws that suspend freedoms, and measures that fundamentally alter society – is essential to any democracy and can only be restricted if absolutely necessary. It has been concerning to see this right significantly curtailed throughout the pandemic and serious barriers remaining

Recommendation: The Government must provide assurances that protesters of all kinds will not face criminalisation, rather than allowing the right to protest to depend on the discretion of police forces.

Online speech

We have already expressed concerns that the Government’s ‘Online ‘Harms’ proposals will seriously curtail freedom of expression and erode online privacy.²⁶ Unfortunately, it appears that the Covid-19 pandemic has been used as an excuse to accelerate this censorious and unevidenced approach.

A Government press release on 30th March 2020, titled “Government cracks down on spread of false coronavirus information online”,²⁷ revealed that a Rapid Response Unit has been set up to operate from within the Cabinet Office and No.10 to tackle “harmful narratives online”. The press release explained that the unit is working with the ‘Counter Disinformation Cell’ led by the Department for Digital, Media, Culture and Sport (DCMS).

Little information has been provided about the make up or activities of these teams. The press release states that “When false narratives are identified, the government’s Rapid Response Unit coordinates with departments across Whitehall to deploy the appropriate response” which can include “working with platforms to remove harmful content.” It remains that “harmful” content is an elusive and undefined concept that includes lawful, free expression.

²⁶ Big Brother Watch’s response to the Online Harms White Paper Consultation – July 2019: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/02/Big-Brother-Watch-consultation-response-on-The-Online-Harms-White-Paper-July-2019.pdf>

²⁷ Government cracks down on spread of false coronavirus information online – Cabinet Office and DCMS, 30th March 2020: <https://www.gov.uk/government/news/government-cracks-down-on-spread-of-false-coronavirus-information-online>

We welcome the promotion of health information at this critical time. Indeed, Article 15 of International Covenant on Economic, Social and Cultural Rights acknowledges the right of everyone to “enjoy the benefits of scientific progress and its applications.”²⁸ However, the important promotion of reliable scientific information does not necessitate the censorship of views that are scientifically unproven. This is particularly relevant in a pandemic, where scientific discovery is rapidly developing and research - for example, on the impact of face masks, the development of immunity, the validity of tests, and certain drug interactions - is in early and inconclusive stages, with opinions shifting and diverging as research grows.

Supplanting critical literacy with censorship ultimately harms the public forum, trust in authorities, and as such can harm public health. It is through a free forum of ideas that citizens understand, contextualise and trust information, not through harsh restrictions on information sharing. The right to freedom of expression protects our ability to freely share ideas, opinions and information without interference. This vital democratic right has never been restricted to the expression of views that are rational, desirable or proven to be true.

RECOMMENDATION: Government must provide transparency and civil society engagement in relation to the activities of the new 'Rapid Response Unit' and its role in removing 'harmful' content online.

RECOMMENDATION: Social media companies should not censor content beyond the limitations on free speech set by domestic law. Platforms should carefully consider the impact of their new content restrictions not only on their PR but on the health of the right to freedom of expression online.

²⁸ International Covenant on Economic, Social and Cultural Rights:
https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf