

**EMERGENCY POWERS AND
CIVIL LIBERTIES REPORT**

[NOV 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 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

“The British public has not even begun to understand the seriousness of what is happening to our country.”¹ This was the warning from Lord Sumption, days before the second national lockdown was announced. Yet again, the Prime Minister instructed the public to stay at home and informed us of the suspension of our most basic freedoms, ahead of any parliamentary vote on the matter, absent legal authority. As expected, Parliament voted overwhelmingly in favour of the second lockdown, having already had the lockdown announced to the nation, having received the text of the Regulations only the night before the vote, and having been fed data from models we now know to have been drastically wrong.

Our parliamentary democracy is in rapid decline, particularly as the adversarial system has become defunct. The damage to parliamentary democracy, the rule of law and human rights has been made possible by the resounding failure of the Opposition to demonstrate courage in leadership. It will not be forgotten. There is no historical precedent to suggest that our democracy will spring back into full health ‘after’ this crisis, whenever that is – we will be living with the consequences of these days and weeks for the years and decades to come.

In this dramatic month, England entered a national lockdown whilst devolved administrations dipped in and out of lockdowns and harsh restrictions. The maze of restrictions, tiers and regulations spanning the four nations is unnavigable. Understanding the current restrictions, even in one nation, is a purely academic task – as you will find in this report. The rules impose illogical and contradictory restrictions on social interactions, even among our own families. Never in modern history has a democratic state attempted to instruct citizens as to how and when they can see their children or their parents. The rules stretch the notion of a contract between the State and its citizens beyond absurdity, supposing that the government’s illusory control of the minutiae of our private lives is the roadmap to public health and then liberty. When compliance to this extreme degree is equated with freedom, we are no longer in a democratic social contract but in the grips of social control.

Protests against the restrictions were met with particularly harsh policing. We have written to the Metropolitan Police twice this month to raise serious rights concerns about their policing of anti-lockdown protests. On 5th November, police tried to send journalists home from a protest, misinformed them that they required permission from the police to report on the protest, and in some cases even assaulted them. On 27th November, the Metropolitan Police issued misleading public statements ahead of a protest planned for the following day, wrongly claiming there was “no exemption” for people to protest. There was no legal basis for this claim – there was indeed an exemption for protests. Coaches were reversed and over 150 people were arrested for attending the protest. The police’s detachment from the law that they are tasked to uphold, particularly in order to obstruct freedom of the press and freedom of assembly, is profoundly disturbing.

If you are reading this report, it is likely you share our concerns about the seriousness of what is happening to our country. This is a time for action. We urge parliamentarians reading this report to endorse and act upon the recommendations within, to protect the rights and democracy that underpin our country.

¹ Government by decree: Covid-19 and the Constitution – Lord Sumption, Cambridge Freshfields Annual Law Lecture, 27th October 2020: https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf

Recommendations

RECOMMENDATION 1: Restrictions on freedom of assembly must be strictly necessary to be compatible with the Human Rights Act. Politicised exemptions for national memorials whilst maintaining strict restrictions on religious and political gatherings raise serious questions as to their lawfulness.

RECOMMENDATION 2: Considerable legal scholarship supports the view that the imposition of a national lockdown via the Public Health Act was ultra vires. If a broad restriction on freedom of movement were necessary to protect public health, it should be introduced under the Civil Contingencies Act which contains the relevant safeguards including the requirement of regular, meaningful parliamentary scrutiny.

RECOMMENDATION 3: The publication of Regulations, of arguably the greatest impact on the lives and livelihoods of citizens in a generation, hours before they are due to be debated and enforced obstructs scrutiny and undermines parliamentary democracy. Further, it leaves businesses, police and the public little time to understand and prepare for new restrictions. Such a legislative timescale must not be repeated again without serious justification.

RECOMMENDATION 4: The Government must stop relying on complex and ever-changing criminal sanctions to enforce restrictions. Instead, clear, widely publicised and easily accessible guidance should be made available across a range of mediums.

RECOMMENDATION 5: Police forces must enforce the Health Protection Regulations lawfully and proportionately. Use of police dogs, drones, kettling and other aggressive or invasive enforcement measures are disproportionate and counter-productive.

RECOMMENDATION 6: The NPCC must reiterate to all police forces that there is no requirement for individuals to provide evidence of an exemption to the requirement to wear a face covering. Insistence that individuals with disabilities 'prove' their exemptions to police is discriminatory and unlawful.

RECOMMENDATION 7: Life-changing £10,000 on-the-spot fines for gatherings are disproportionate and put those unable to pay at a risk of prosecution – they should be repealed.

RECOMMENDATION 8: Police forces may be in breach of the Public Sector Equality Duty if they do not address the serious ethnic disparity in their issuing of lockdown fines. Police forces must urgently instigate a review of all fixed penalty notices issued under the lockdown Regulations.

RECOMMENDATION 9: The Government should introduce a means for individuals to challenge fixed penalty notices issued under coronavirus restrictions by way of administrative review or appeal, without having to risk magistrates' court proceedings.

RECOMMENDATION 10: The CPS should review whether the Single Justice Procedure is appropriate for prosecutions under coronavirus laws, given the high rates of unlawful prosecutions and the importance of accuracy, transparency and fairness in the enforcement of these laws.

RECOMMENDATION 11: Health officials sharing extensive, sensitive and identifiable personal data for virtually any purpose related to the control or monitoring of coronavirus undermines privacy and data protection rights. The data sharing provision under the Welsh Regulations must be significantly narrowed to what is strictly necessary and lawful.

RECOMMENDATION 12: The four nations should seek to harmonise and clarify restrictions wherever possible to avoid confusion and enable coherent national communications.

RECOMMENDATION 13: It remains the case that every prosecution under Schedule 21 of the Coronavirus Act has been unlawful. These extraordinary detention powers must be repealed.

RECOMMENDATION 14: Schedule 22 of the Coronavirus Act contains draconian powers to prohibit gatherings that have never proven necessary. It must be repealed.

RECOMMENDATION 15: Punitive fines are being used to prop up a failing Test and Trace system. The Government should replace this harsh approach with adequate financial and social support for those required to self-isolate.

RECOMMENDATION 16: Proposals for immunity passports, health certificates and mandatory vaccination certificates as a gateway to the enjoyment of rights would result in widespread discrimination and a de facto digital ID system. The Government must be clear that 'immunity passports' will neither be pursued nor supported.

RECOMMENDATION 17: Many new uses of workplace surveillance, whether through physical tags or intrusive digital monitoring, are likely to breach privacy rights and data protection laws. Employers must refrain from invasive employee monitoring. The Information Commissioner should consider conducting an investigation and issuing new advice on workers' rights and the growing phenomenon of employee surveillance.

RECOMMENDATION 18: We urge all companies, authorities and institutions to immediately cease use of thermal cameras and observe the MHRA's advice that "using these products for temperature screening could put people's health at risk."

RECOMMENDATION 19: Collective worship is essential to the right of freedom of religion, protected by the Human Rights Act. It is likely that the prohibition on collective worship during the second national lockdown breached the right to freedom of religion and was ultra vires of the Public Health Act. Such a ban must not be repeated under future coronavirus restrictions.

RECOMMENDATION 20: Interference with lawful discussion online in relation to coronavirus, whether by state or corporate authorities, undermines freedom of expression. Supplanting critical literacy with censorship harms the public forum, trust in authorities, and as such can harm public health. Social media companies should carefully consider the impact of their coronavirus content restrictions and consult rights groups. Government must provide transparency in relation to the activities of the 'Rapid Response Unit' and other state agencies in interfering with lawful content online.

RECOMMENDATION 21: Political protests should be exempt from restrictions altogether. The requirement for a protest organiser to complete a risk assessment and implement health and safety measures should be changed to guidance, supported by online resources, rather than a legal requirement to avoid criminalising organic democratic participation and political dissent.

RECOMMENDATION 22: The Metropolitan Police's misrepresentation of the law on protest rights threatens the rule of law and human rights. This must be addressed. Police forces must make it clear that protest is permitted under the Regulations and work to facilitate safe demonstrations.

RECOMMENDATION 23: Local authorities should immediately cease the use of Covid OneView and provide full information to the public as to where the data is sourced, how it has been processed and to what effect.

RECOMMENDATION 24: Universities should boost student support, not subject students to increased surveillance, intimidating security forces, fines, or false imprisonment.



A compounding concern is that many governments appear reluctant to let go of new powers, echoing the negative historical precedent of a permanent shift of power towards the executive following an emergency. Such permanent changes in the balance of power present profound and long-term impact on the rule of law and rights, and our research shows this does not correlate with a better response to COVID-19. States must instead adopt long-term strategies to combat the virus, but also to restore ordinary democratic processes and the rule of law.”

— Nyasha Weinberg, Research Fellow in the Rule of Law at the Bingham Centre, and Dr Joelle Grogan, Senior Lecturer in UK and EU Public Law at Middlesex University London²

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Effective Pandemic Management Requires the Rule of Law and Good Governance - Nyasha Weinberg and Dr Joelle Grogan, Verfassungsblog, 4th November 2020: <https://verfassungsblog.de/effective-pandemic-management-requires-the-rule-of-law-and-good-governance/>

Emergency Laws

The Hansard Society's Coronavirus Statutory Instrument Dashboard records a total 304 new statutory instruments, an additional 19 since Big Brother Watch's last monthly report.³ At the time of writing, a total of 569 statutory instruments have been passed across the United Kingdom which have 'coronavirus' in the title. A total of 107 Acts of Parliament, 3 Orders and one EU Regulation have been used to pass coronavirus legislation. The Coronavirus Act 2020 has been used to pass only 17 pieces of secondary legislation.

These pieces of legislation represent serious restrictions and alterations to every element of public and private life, yet only 15 were passed using the 'draft affirmative' procedure, meaning that they are laid before parliament in draft form and require parliamentary approval before coming into force.⁴ Stephen Parkinson and Charlie Roe of Kingsley Napley's Public Law team write:

"These statistics point to a significant weakening of parliamentary scrutiny." (...)

"Notwithstanding the government's recent commitment to consult Parliament and "*wherever possible*" hold votes before new regulations come into force, we should be concerned about the consistently casual attitude taken towards the role of Parliament when introducing secondary legislation throughout the pandemic."⁵

Health Protection Regulations

Return to lockdown

November saw the return of England to the 'stay at home' requirement, with people only being allowed to leave their homes, gather with others, travel and operate businesses under exemptions in Regulations. The new national lockdown, which replaced a three tier system, was enforced hurriedly from 5th November after Cabinet leaks forced a rushed national announcement. Unlike the national lockdown in March, the Health Protection (Coronavirus, Restrictions) (No. 4) (England) Regulations 2020 were passed after just a 3 hour debate and vote in Parliament on 4th November. The Regulations were published less than 24 hours before they were debated.

Data for lockdown

There was directed criticism of the quality of the data used to justify the second national lockdown. The UK Statistics Authority voiced concerns that, at the televised briefing on 31st October at which the lockdown was announced, the graphs presented to the public were out of date and over-estimated deaths. The graphs indicated that the number of deaths were four times higher than they were at the time, and had been made prior to the introduction of the tier system.⁶

Professor Chris Whitty, who presented the data at the Government's press briefing, admitted that there had been "overblown rhetoric" to the Science and Technology Committee on 3rd November, to which

³ Coronavirus Statutory Instruments Dashboard — Hansard Society (updated 30th November 2020): <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>

⁴ Ibid.

⁵ Parliamentary scrutiny in the time of Coronavirus - Stephen Parkinson and Charlie Roe, Lexology, 11th November 2020: <https://www.lexology.com/library/detail.aspx>

⁶ Covid: Regulator criticises data used to justify lockdown – BBC News, 5th November 2020: <https://www.bbc.co.uk/news/health-54831334>

former Health Secretary Jeremy Hunt replied, “Talking about 4,000 deaths was not overblown rhetoric; some slides were presented to the public.”⁷

In the debate on the lockdown Regulations on 4th November, Theresa May, Sir Iain Duncan Smith and Mark Harper all pointed out that the data was exaggerated and out of date. Conservative Peer Lord Forsyth said during the debate:

“The fact that we were all scared by headlines over the weekend telling us that 4,000 people a day would die, and learned within hours that this came from a discredited model which predicted four times as many deaths as occurred in real life on 1 November, is worrying to say the least.”⁸

Former Prime Minister Theresa May, unusually, delivered sharp criticism of the Government’s approach, remarking that “for many people it looks as though the figures are being chosen to support the policy, rather than the policy being based on the figures.”⁹

The Government has justified unprecedented restrictions on our rights and freedoms with the use of modelling, and professed objectivity: that it is merely ‘following the science’. However, the promotion of statistics from models that are at best incorrect, or at worst, deliberately exaggerative, is irresponsible, wrong, and deeply damaging to trust in the Government’s extraordinarily authoritarian decision-making. Moreover, incorrect models could seriously affect the necessity and proportionality assessment of the rights interferences incurred by the Government’s measures.

The Health Protection (Coronavirus, Restrictions) (No. 4) (England) Regulations 2020

The Health Protection (Coronavirus, Restrictions) (No. 4) (England) Regulations 2020 required all businesses to close, unless listed in Part 3 of the Schedule to the Regulations, and prohibited the entire population from “leav[ing] or be[ing] outside of the place where they are living without a reasonable excuse.”¹⁰ There was a long, complex list of exemptions to this requirement, including to buy goods from any business or service permitted to open, for exercise, to visit an outdoor public place for “open air recreation”, to attend a place of worship, to attend an event commemorating Remembrance Sunday, to visit a member of a linked household, to collect food, drink or other goods that have been ordered from a business, to visit a waste disposal centre, for the purpose of work (if it is “not reasonably possible” to work from home), for education, to provide care or emergency assistance, to access critical public services, for competition or training if the person is an elite athlete, for medical need, to attend a support group, to visit a dying person, to attend a funeral or wedding, for children to move between households, for animal welfare, if returning home from a holiday which began before the Regulations came into force, or for prison visits.¹¹ This is a non-exhaustive list.

Gatherings of two or more people were prohibited except for members of the same or linked household, for work purposes, for educational purposes, to provide emergency assistance, to enable a person to escape harm, to provide care, to facilitate a house move, to fulfil a legal obligation, for gatherings in criminal justice accommodation, for support groups of no more than 15 people, to provide respite care, to attend a birth, to attend a funeral or marriage (provided that one of the parties to the marriage is seriously

⁷ Oral evidence: UK Science, Research and Technology Capability and Influence in Global Disease Outbreaks, HC 136 – Science and Technology Committee, 3rd November 2020: <https://committees.parliament.uk/oralevidence/1122/default/>

⁸ HL Deb (4th November 2020), vol. 807, col. 750: [https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89FA-4CBF-9A14-0192B2FC11F0/HealthProtection\(Coronavirus\)\(Restrictions\)\(England\)\(No4\)Regulations2020](https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89FA-4CBF-9A14-0192B2FC11F0/HealthProtection(Coronavirus)(Restrictions)(England)(No4)Regulations2020)

⁹ HC Deb (4th November 2020), vol. 683, col. 342: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

¹⁰ Regulation 5(1)

¹¹ The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020, Regulation 6

ill), to visit a dying person, for the purpose of training or competition for elite sportspeople, for children to move between households or for an event commemorating Remembrance Sunday.

Political exemptions

An amendment to the Regulations also provided an exemption for events commemorating Armistice Day.¹² This is despite no exceptions on the restrictions on gatherings for significant religious holidays such as Easter, Yom Kippur or Eid, the latter of which was effectively cancelled with just a few hours' notice for those in the North of England. Furthermore, tight restrictions remained on protests, as explored later in this report.

The lack of equivalence in exemptions made for significant gatherings is impossible to justify. It is a disappointing reflection on this Government's attitude towards rights, freedom of expression and freedom of religion. The specific exemption for Remembrance Sunday, yet maintenance of harsh penalties for other cultural, religious and political gatherings appeared to be a politically-guided rather than health-guided decision – and, many remarked, did a disservice to the spirit of Remembrance Sunday.

RECOMMENDATION 1: Restrictions on freedom of assembly must be strictly necessary to be compatible with the Human Rights Act. Politicised exemptions for national memorials whilst maintaining strict restrictions on religious and political gatherings raise serious questions as to their lawfulness.

Expansion of force

A relevant person, including a police officer, PCSO or even a council official, was able to “direct a person to return to the place where they are living”, disperse a gathering, or remove a person from the gathering using “reasonable force.”¹³ This extraordinary expansion of state power meant that individuals with little experience and no training in the use of force were empowered to use force against members of the public. This dangerous empowerment of officials risked both their safety and the safety of members of the public.

Former Chief Whip Mark Harper voted against the Regulations, the second time he had voted against his party after 15 years as an MP, partly due to this provision. He argued against giving “the power to use reasonable force to enforce [the Regulations] to officers of the state who are not trained to safely use that power”.¹⁴

Fines

Furthermore, a relevant person could “issue a fixed penalty notice to anyone that the authorised person reasonably believes— has committed an offence under these Regulations, and is aged 18 or over.”¹⁵

¹² The Health Protection (Coronavirus, Restrictions) (England) (No. 4) (Amendment) Regulations 2020, Regulation 2

¹³ Regulation 19 (3), (5), (6)

¹⁴ HC Deb (4th November 2020), vol. 683, col. 361: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

¹⁵ Regulation 21(16)

An offence under these Regulations could initially result in a Fixed Penalty Notice of £200, rising to £6,400 for repeat offences.¹⁶ An individual found to be the organiser of a gathering of more than 30 people could also face a Fixed Penalty Notice of £10,000.¹⁷ We have repeatedly stressed the excessive nature of these vast fines. Particularly given the complexity of the Regulations, the threat of a life-changing fine for non-compliance is disproportionate and unfair.

Ultra vires?

The imposition of a national lockdown via statutory instruments under the Public Health Act revived questions as to whether the “stay at home” requirement in the Regulations was ultra vires, that is, whether it exceeds the legal powers of the UK government. These are not questions of the necessity of the restrictions for the protection of public health, but of whether they are lawful.

These questions have been addressed with considerable legal scholarship¹⁸ and a legal challenge to the Regulations from businessman Simon Dolan, which has to date received over £413,000 of crowdfunding.¹⁹ Big Brother Watch applied to intervene in Mr Dolan’s case in order to support the argument that a national ‘lockdown’ imposed under the Public Health Act 1984 was ultra vires, as we believe this is critical to the protection of rights, the rule of law and the balance of power in the UK. While our application was not accepted, Mr Dolan’s legal team commented on our submission:

“The arguments raised by the Big Brother Watch team raised two important issues, namely: the approach that the court should adopt in determining the extent of powers given to Ministers affecting fundamental rights; and the fact that the reference to the International Health Regulations 2005 in the Explanatory Note to the amendments to the 1984 Act did not justify the removal of the fundamental rights of the whole population in response to a pandemic.

“While BBW were not given permission to intervene, their high quality submissions were relied upon by the Claimants’ team with gratitude.”²⁰

The lockdown Regulations were made under the Public Health (Control of Disease) Act 1984. Section 45C(1) allows a relevant Minister to introduce restrictions across England and Wales to prevent the spread of an infectious disease, and allows for “imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health.” These restrictions or requirements can require children to be kept away from school, prohibit public gatherings, and can include “a special restriction or requirement” (s.45C(4)). Requiring individuals to stay at home unless they have a “reasonable excuse” as per Regulation 5 in the second lockdown Regulations could be considered to fit the definition of a special requirement or restriction. However, this special restriction or requirement is clearly designed to be specific rather than population-

¹⁶ Regulation 21 (6)(ii)

¹⁷ Regulation 21(9)

¹⁸ Can we be forced to stay at home? – David Anderson QC, 26th March 2020: <https://www.daqc.co.uk/2020/03/26/can-we-be-forced-to-stay-at-home/>; Coronavirus and Civil Liberties in the UK – Tom Hickman QC, Emma Dixon and Rachel Jones, Blackstone Chambers, 6 April 2020: https://coronavirus.blackstonechambers.com/coronavirus-and-civil-liberties-uk/#_edn4; Lockdown: A Response to Professor King – Robert Craig, UK Human Rights Blog, 6th April 2020: <https://ukhumanrightsblog.com/2020/04/06/lockdown-a-response-to-professor-king-robert-craig/>; Ultra Virus – the constitutionality and legality of the Coronavirus Regulations – David Allen Green, the Law and Policy Blog, 8th April 2020: <https://davidallengreen.com/2020/04/08/ultra-virus-the-constitutionality-and-legality-of-the-coronavirus-regulations/>

¹⁹ Join the Legal Challenge to the UK Govt Lockdown – Simon Dolan, Crowdjustice: <https://www.crowdjustice.com/case/lockdownlegalchallenge/> [accessed 4th December 2020]

²⁰ Big Brother Watch applied for permission to intervene in legal challenge R (Dolan and others) v Secretary of State for Health and Social Care – Big Brother Watch, 18th November 2020: <https://bigbrotherwatch.org.uk/2020/11/big-brother-watch-applied-for-permission-to-intervene-in-legal-challenge-r-dolan-and-others-v-secretary-of-state-for-health-and-social-care/>

level as it can only be imposed by a magistrate (s.45C(6)(a)). In fact, 45D(3) explicitly prohibits Ministers from imposing special restrictions that pertain to the detention or isolation of an individual.

Given this limitation on ministerial power to impose physical confinement on a person, it is questionable whether the blanket nature of the Regulation 5 restrictions on movement applying to the whole population have a lawful basis in the Act. Lord Sumption, former Supreme Court judge, has made this argument persuasively:

“The result [of the Public Health Act] is that ministers can make regulations controlling people thought to be infectious. There is no specific power under the Act to confine or control the movements of healthy people. To interpret it as conferring such a power would not only be inconsistent with the principle of legality. It would also be contrary to the whole tenor of this part of the Act.”²¹

During the House of Lords debate on the imposition of the Regulations, several Peers expressed their concern that the Regulations were ultra vires. Conservative Peer Lord Lilley argued that the Civil Contingencies Act would need to be used to implement blanket lockdown measures, rather than the Public Health Act, as the risk that the Regulations may be ultra vires. Furthermore, the Civil Contingencies Act requires more frequent and meaningful parliamentary scrutiny.²² Viscount Trenchard agreed:

“I am no epidemiologist but, based on the evidence I have seen, I do not believe that the state is justified in intervening to deprive citizens of their freedoms in the way that it is doing, particularly if it is using powers granted by an Act of Parliament which was never intended to restrict the activities of healthy people, as was so convincingly argued by Lord Sumption.”²³

Lord Sandhurst QC, when giving evidence to the Constitution Committee, raised the same point:

“I cannot understand why the Civil Contingencies Act was not used, because the whole point is that it is to meet a national emergency.

“Whatever the justification at the outset, that has not been justified since mid-April or the beginning of May. I just do not understand that, other than that it is obviously jolly convenient for the Ministers, because they do not have to put things before Parliament and nobody has to look at them.”²⁴

RECOMMENDATION 2: Considerable legal scholarship supports the view that the imposition of a national lockdown via the Public Health Act was ultra vires. If a broad restriction on freedom of movement were necessary to protect public health, it should be introduced under the Civil Contingencies Act which contains the relevant safeguards including the requirement of regular, meaningful parliamentary scrutiny.

²¹ Government by decree: Covid-19 and the Constitution – Lord Sumption, Cambridge Freshfields Annual Law Lecture, 27th October 2020: https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf

²² HL Deb (4th November 2020), vol. 807, col. 760: [https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection\(Coronavirus\)\(Restrictions\)\(England\)\(No4\)Regulations2020](https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection(Coronavirus)(Restrictions)(England)(No4)Regulations2020)

²³ HL Deb (4th November 2020), vol. 807, col. 773: [https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection\(Coronavirus\)\(Restrictions\)\(England\)\(No4\)Regulations2020](https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection(Coronavirus)(Restrictions)(England)(No4)Regulations2020)

²⁴ Oral evidence: The constitutional implications of Covid-19 – Constitution Committee, 18th November 2020: <https://committees.parliament.uk/oralevidence/1264/pdf/>

Role of parliament

Unlike the first national lockdown, a prior parliamentary vote was held before the enforcement of the second national lockdown. The Health Protection (Coronavirus, Restrictions) (No. 4) (England) Regulations 2020 were published less than 24 hours before they were debated and passed after just a three hour debate and vote in Parliament on 4th November.

Sir Graham Brady, Conservative MP and chair of the 1922 Committee said:

“I thank Mr Speaker for his strenuous, successful efforts to persuade the Government that we should have three hours’ debate on this subject, and not 90 minutes, but the fact that we have three hours of debate on such a massive intervention taking away liberty shows how little we value the liberty of our constituents.

“It is not good enough: it should have been at least a day of debate before we took such extreme action.”²⁵

It is remarkable that the Government originally proposed just 90 minutes for the debate on Regulations of such magnitude, and telling of how normalised the imposition of such restrictions has become.

During the debate on the new Regulations, many MPs spoke of their concern that a national lockdown was not a proportionate response to the spread of coronavirus and warned of the damages to mental health, the economy and our rights and freedoms. In particular, Conservative MPs questioned the Government’s remit to legislate the minutiae of individuals’ private and family lives.

Conservative MP Nus Ghani said:

“MPs have been told for long enough that we have no choice but to impose severe lockdowns and restrictions on our citizens. We have already overstepped the mark and it is particularly intolerable to me that it is the Conservative Party that is legislating about how people live their lives in their private homes. In my experience, when men, institutions and governments get hold of that power, they give it up very reluctantly.”²⁶

Sir Graham Brady MP said:

“I want to ask whether the Government actually have any right to take the measures they are taking.

“What troubles me most is that the Government are reaching too far into the private and family lives of our constituents. There is an arrogance—unintended, perhaps—in assuming that the Government have the right to do so, that they have the right to tell people whether they can visit their elderly parents in a care home; that they have the right to tell parents and grandparents that they cannot see their children or grandchildren; and whether they have any right, for heaven’s sake, to tell consenting adults with whom they are allowed to sleep.”²⁷

Sir Charles Walker MP spoke passionately against the Government’s interference with liberties and rights:

²⁵ HC Deb (4th November 2020), vol. 683, col. 354: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

²⁶ We cannot continue to live in this childlike cycle of repeated, damaging lockdowns – Nus Ghani, the Times, 23rd November 2020: <https://www.telegraph.co.uk/politics/2020/11/23/cannot-continue-live-childlike-cycle-repeated-damaging-lockdowns/>

²⁷ HC Deb (4th November 2020), vol. 683, col. 354-5: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

“Our freedoms are like the air we breathe. They are fundamental to us as a nation and to who we are as its people (...) I will have no part in criminalising parents for seeing their children and children for seeing their parents—no part.”²⁸

It was not only the extraordinary intrusion of Government regulations into the family relationships of individuals, but the extraordinary inconsistencies and “nonsenses” in the rules that were the subject of debate.

Craig Mackinlay MP said there are “so many clear nonsenses in the regulations”, pointing out that people would be able to walk across a golf course, but that act would become illegal if they were holding clubs and a ball.²⁹ Tim Loughton MP agreed, arguing that “apparent contradictions” in the Regulations meant “people’s confidence is trashed.”³⁰

Criticism of the Regulations was limited from opposition parties, who broadly argued that the Regulations should have been brought in earlier. The lack of opposition and thus scrutiny of the health restrictions has disturbed the constitutional fabric of our democracy – an adversarial parliamentary system. We are concerned that rights and democracy in the UK are weaker as a result.

The Regulation passed with 516 votes to 38, with 33 Conservative, 4 Democratic Unionist Party and 1 independent MP voting against the Regulations.³¹ The second lockdown was imposed the following day.

House of Lords

In the House of Lords, where Peers debated the Regulations on the same day, Conservative Peer Lord Robathan proposed a wrecking amendment to the approval motion that would reject the Regulations:

“As a loyal Conservative, I want to believe that the Government have a strategy but my credulity has been strained somewhat.

“We were originally told, until late August, that face masks were essentially of no use. We have been told to go back to work. It is only two or three weeks since we were told that there would definitely not be a second national lockdown. I regret to say that an enormous amount of good will and trust has evaporated.”³²

30 Peers voted for the amendment, which was ultimately rejected by the House. However, many Peers voiced their concerns about the Regulations. Baroness Altmann argued that the Regulations were rushed:

“These measures have been hastily put together and I believe they are dangerous. Policy devised in panic is not good policy. Can we not take some extra time—even just a few days—to consider them more carefully, gather more evidence, and produce a proper cost-benefit analysis and impact assessments to allow a more cogent set of measures to be laid before us?”³³

²⁸ HC Deb (4th November 2020), vol. 683, col. 356-7: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

²⁹ HC Deb (4th November 2020), vol. 683, col. 363: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

³⁰ HC Deb (4th November 2020), vol. 683, col. 370: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

³¹ HC Division 160 (4th November 2020): <https://hansard.parliament.uk/Commons/2020-11-04/division/AACC940F-185C-4EC7-A751-C1D2638CF974/PublicHealth>

³² HL Deb (4th November 2020), vol. 807, col. 745: [https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection\(Coronavirus\)\(Restrictions\)\(England\)\(No4\)Regulations2020](https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection(Coronavirus)(Restrictions)(England)(No4)Regulations2020)

³³ HL Deb (4th November 2020), vol. 807, col. 769: [https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection\(Coronavirus\)\(Restrictions\)\(England\)\(No4\)Regulations2020](https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection(Coronavirus)(Restrictions)(England)(No4)Regulations2020)

Baroness Fox expressed concern that civil liberties were being disposed of with ease:

“I have been nervous about how enthusiastically and gleefully so many government Ministers have taken to drafting draconian measures, selling them to the public as though their belief in freedom could just be dispensed with. I have been disappointed by the opposition Benches in the other place, whose only regret at the illiberal measures is that they were not brought in sooner, harder, longer and scarier. A tax on freedom appeared to be fine if it is funded.”³⁴

Lord Moylon pointed out that the trying to legislate for all areas of human life leads to inevitable complexities and confusion:

“(…) when you come to micromanaging the lives of individuals and families, as Part 2 seeks to do, with 10 principal exemptions and numerous sub-paragraphs, it is simply absurd. It will be incomprehensible to families, police and enforcement authorities alike.

“Many of these exemptions are common sense, but you cannot legislate for common sense; you can only ask people to exercise it.”³⁵

RECOMMENDATION 3: The publication of Regulations, of arguably the greatest impact on the lives and livelihoods of citizens in a generation, hours before they are due to be debated and enforced obstructs scrutiny and undermines parliamentary democracy. Further, it leaves businesses, police and the public little time to understand and prepare for new restrictions. Such a legislative timescale must not be repeated again without serious justification.

Accessible law

Making restrictions clear and accessible is critical, both for the rule of law and public health.

Independent SAGE has been critical of the Government’s communication around restrictions and guidance, arguing that the “cumulative imprecision of the messaging has been accompanied by decreased integrity and trust in government and decreased legitimacy in its strategy.”³⁶ It recommended that messaging around restrictions “should be precise and thus easy to enact and adhere to.”

The C19 National Foresight Group, a cross-government and multi-agency group set up to support the UK response to Covid-19, has also emphasised the importance of clear communication:

“one of the biggest challenges to the success of the Covid-19 management has been the communication from central Government to those managing the pandemic, this has been accused of being reactive and knee-jerk, using hyperbolic or inappropriate war-context language and over-promising. It has been widely reported that the public do not trust the messaging anymore and, secondly, that it is too complex.”³⁷

Prior to the Regulations being published, Government Ministers had already spread confusion by

³⁴ HL Deb (4th November 2020), vol. 807, col. 780: [https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection\(Coronavirus\)\(Restrictions\)\(England\)\(No4\)Regulations2020](https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection(Coronavirus)(Restrictions)(England)(No4)Regulations2020)

³⁵ HL Deb (4th November 2020), vol. 807, col. 782: [https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection\(Coronavirus\)\(Restrictions\)\(England\)\(No4\)Regulations2020](https://hansard.parliament.uk/lords/2020-11-04/debates/B8276463-89EA-4CBF-9A14-0192B2FC11F0/HealthProtection(Coronavirus)(Restrictions)(England)(No4)Regulations2020)

³⁶ UK government messaging and its association with public understanding and adherence to COVID-19 mitigations: Five principles and recommendations for a COVID communication reset – Independent SAGE, 13th November 2020: <https://www.independentsage.org/wp-content/uploads/2020/11/Messaging-paper-FINAL-1-1.pdf>

³⁷ C19 National Foresight Group Second Wave Briefing: Lessons from the First Wave – Rowena Hill, Adam Potter and Rich Pickford, C19 National Foresight Group, 4th November 2020: https://www.ntu.ac.uk/_data/assets/pdf_file/0031/1214689/C19-NFG-60-Second-Summaries-041120.pdf

announcing what would be allowed under the new laws and then rapidly back-peddalling. On Facebook, Cabinet Secretary Michael Gove said that golf and singles' tennis would "probably" to be allowed under the new laws, contradicting the Prime Minister, which he later apologised for.³⁸ Housing, Communities and Local Government Secretary Robert Jenrick in turn made misleading statements about families being able to meet with friends outdoors, contradicting the Government's guidance when attempting to clarify Mr Gove's comments to BBC Breakfast.³⁹

The gap between guidance and law has led to confusion throughout the period of emergency law, with guidance often being more restrictive than the law. Initially, guidance for the second national lockdown read that a person could not be outside of the place where they were living "unless there are specific exceptions." However, the law itself permits a person to be outside of the place where they are living if there is a "reasonable excuse." This was changed two weeks after the Regulations came into force. Public law barrister Charles Holland tweeted: "The SoS could have made the restriction on leaving the house subject to specific exemptions, as with the restriction on gatherings. He didn't. So why does the Guidance then try to re-write the regs? Baffling."⁴⁰

Kirsty Brimelow QC told the Constitution Committee:

"We have had a bewildering array of restrictions, amendments to restrictions, the lifting of restrictions and then the re-imposing of restrictions. They have been introduced in a way that has caused maximum confusion—in announcements from government that have been different from the law that has then come in. The guidance has been different and more restrictive than the law, and this has continued."⁴¹

The Government appears to have learned nothing from its early cacophony of mistakes during the pandemic about the importance of providing clarity between guidance and the law – a vital distinction, to protect the integrity of the rule of law.

RECOMMENDATION 4: The Government must stop relying on complex and ever-changing criminal sanctions to enforce restrictions. Instead, clear, widely publicised and easily accessible guidance should be made available across a range of mediums.

Enforcement

Police officers have the difficult job of enforcing complex, changing and often illogical laws. However, instead of engaging, encouraging and explaining the rules to members of the public, cases of aggressive and disproportionate enforcement still abound.

Some forces have utilised concerning new tactics, in new contexts.

³⁸ Michael Gove, Twitter, 3rd November 2020: <https://twitter.com/michaelgove/status/1323527178773008384>

³⁹ Ministers add to confusion over England Covid lockdown rules – Simon Murphy and Archie Bland, the Guardian, 3rd November 2020: <https://www.theguardian.com/world/2020/nov/03/ministers-prompt-confusion-over-england-covid-coronavirus-lockdown-rules>

⁴⁰ Charles Holland, Twitter, 7th November 2020: <https://twitter.com/charlescholland/status/1325039472505982978?s=20>

⁴¹ Oral evidence: The constitutional implications of Covid-19 – Constitution Committee, 18th November 2020: <https://committees.parliament.uk/oralevidence/1264/pdf/>

Spit and bite guards have been used. In our June report, we noted that PSNI was trialling the use of spit hoods and bite guards as a response to coronavirus.⁴² Despite criticism from rights groups, PSNI has decided to issue all frontline staff with the guards “for the duration of the pandemic” and is “conducting a full Equality Impact Assessment into the general issue of Spit and Bite Guards in a non-Covid environment.”⁴³ There is also evidence that other police forces across the country are using spit hoods as part of their Covid response – one legal observer at a Black Lives Matter protest told Netpol that they “saw [police officers] use a ‘spit hood’ (...) on one young man being arrested, claiming it was for their safety despite officers not wearing any PPE.”⁴⁴

Police dogs have even been used in the covid context. A rave in Bristol was broken up with police dogs, one of which violently attacked a young women, resulting in life changing injuries.⁴⁵ The woman reported that she had been dancing and was unaware of the dog until it bit her leg and foot. She required skin grafts, muscle grafts, and reconstructive surgery. Kevin Blowe of Netpol told the Independent, “If you go back to April, there are many examples of the police, interpreting the new powers that they’ve been given in an incredibly arbitrary and disproportionate manner.” Avon and Somerset police said they are investigating the incident.

Enforcement was not only extreme but, on occasion, simply wrong, arising from persisting police confusion as to what activities were and were prohibited (see also *Freedom of assembly* section of this report).

Political commentator Michelle Dewberry reported that she had been told by a police officer to stop feeding her baby on a park bench in a park as it “did not class as exercise” and thus broke lockdown rules.”⁴⁶ The Regulations permitted a person to be outside of their home for “open air recreation”, a broad term that would clearly cover anyone present in a park.⁴⁷ It is entirely reasonable to stop to rest or for food. It is concerning that police officers, yet again, failed to understand the restrictions and wrongly attempted to prevent a mother from feeding her baby.

RECOMMENDATION 5: Police forces must enforce the Health Protection Regulations lawfully and proportionately. Use of police dogs, drones, kettling and other aggressive or invasive enforcement measures are disproportionate and counter-productive.

Face coverings

In November, with the second lockdown underway, we found multiple cases of excessive and legally questionable police enforcement. Despite the requirement to wear face coverings not changing during this period, more aggressive policing of it emerged during the month. Individuals exempt from the requirement to wear face coverings have no obligation to carry proof that they are exempt or why. This is important, to ensure that people with disabilities are not discriminated against.

⁴² See Big Brother Watch’s June Emergency Powers and Civil Liberties Report (p 25): <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/07/Emergency-Powers-and-Civil-Liberties-Report-Big-Brother-Watch-June-2020.pdf>

⁴³ All frontline officers get spitguards despite human rights objections – Adam Kula, News Letter, 23rd November 2020: <https://www.newsletter.co.uk/news/crime/all-frontline-officers-get-spitguards-despite-human-rights-objections-3044470>

⁴⁴ Britain Is Not Innocent’: A Netpol report on the policing of Black Lives Matter protests in Britain’s towns and cities in 2020 - The Network for Police Monitoring, November 2020, p 21: <https://secureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf>

⁴⁵ Police dog attack leaves woman with life-changing injuries – Will Crisp, the Independent, 21st November 2020: <https://www.independent.co.uk/news/uk/crime/police-dog-attack-bristol-rave-b1749214.html>

⁴⁶ Michelle Dewberry, Twitter, 21st November 2020: <https://twitter.com/MichelleDewbs/status/1330223334190166019>

⁴⁷ The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020, Regulation 6(2)(d)

West Midlands Police officers were filmed forcing a man to leave a supermarket on 7th November for not wearing a face covering, telling him that he needed proof that he was exempt.⁴⁸ West Midlands Police issued a statement apologising:

"(...) we got this wrong as the man told us that he was exempt.

"We stated that it was a legal requirement for an exemption card or badge to be shown. This was incorrect and the officers have misinterpreted the guidance."⁴⁹

However, several weeks later West Midlands Police fined a woman for not wearing a face covering in a supermarket, despite her showing officers a document noting her exemption.⁵⁰ West Midlands Police was less apologetic on this occasion, posting on Twitter that the "generic" document was "printed off the internet" and was not "personal to her circumstances."⁵¹ In a video posted of the incident, police officers can be seen telling the woman that it is not their role to assess whether an exemption is valid, rather that a court can decide should she decide to appeal their fixed penalty notice. This approach pre-supposes that every person with disabilities exempting them from wearing a face covering should be treated as guilty until proven innocent, and must go to court to overturn fines. This is absurd and clearly discriminatory.

It is alarming that West Midlands Police are still policing the face coverings requirement in this way. In Birmingham on 2nd October, West Midlands Police handcuffed and fined a man £200 for not wearing a face mask in a supermarket, despite the man, Jonathan O'Hagan, explaining to the officers that he had a medical condition which exempted him from wearing a mask. Mr O'Hagan said:

"After using force to grab my hand they place me in handcuffs. They also decided to search me.

"It was extremely embarrassing. A member of the public handed me a face mask, which I put on, in an attempt to satisfy officers.

"This was against my wish but I felt under a lot of threat and panic from the officers.

"I'd forgotten my phone, my wallet, my inhaler and they kept going: 'You need to prove it, you need to prove it'."⁵²

After reviewing the incident, officers withdrew the fine. Mr O'Hagan has submitted a complaint to the Independent Office for Police Conduct. However, it is clear that West Midlands Police are still penalising people who are exempt.

RECOMMENDATION 6: The NPCC must reiterate to all police forces that there is no requirement for individuals to provide evidence of an exemption to the requirement to wear a face covering. Insistence that individuals with disabilities 'prove' their exemptions to police is discriminatory and unlawful.

Businesses

Many businesses owners that complied with the direction to close during the first national lockdown in March refused to close during November, citing financial, legal or moral reasons. Police responses to open

⁴⁸ Twitter, 7th November 2020: <https://twitter.com/HappyHarryMedia/status/1325014056198172672?s=20>

⁴⁹ Apology issued over misunderstanding of face mask exemption in Sandwell store - West Midlands Police, 7th November 2020: <https://www.west-midlands.police.uk/news/apology-issued-over-misunderstanding-face-mask-exemption-sandwell-store>

⁵⁰ Twitter, 27th November 2020: <https://twitter.com/BigBrotherWatch/status/1332429838309797890?s=20>

⁵¹ West Midlands Police, Twitter, 27th November 2020: <https://twitter.com/WMPolice/status/1332398456577650703?s=20>

⁵² Lidl shopper with asthma fined £200 and claimed he was handcuffed in mask row - Kelly-Ann Mills and Jordan Coussins, the Mirror, 16th November 2020: <https://www.mirror.co.uk/news/uk-news/lidl-shopper-asthma-fined-200-23018441>

businesses were often heavy-handed, with scores of police officers and vehicles sent to enforce the closure of some businesses.

In Southsea, five vendors were fined £1,000 each for providing seating for takeaway customers, despite police admitting that each venue took “swift action” to remove the seating once informed by the police that it was not permitted.⁵³ A police spokesperson reported that the venues has previously been told to remove the seating, but one venue owner claimed that he had not been told by either the council or police that his actions were unlawful. Mark Laskey, the owner of the Best of British Food kiosk, said that he planned to appeal the fine:

“I don’t think I have been treated fairly in the respect that I think I should have been warned.

“Everyone just felt it a little bit harsh bearing in mind there are benches all the way along South Parade Pier which people are sitting on eating their fish and chips.”

A gym in Essex that remained during the second national lockdown was attended by 15 police officers.⁵⁴ The gym owner was arrested and those inside the gym were fined £200 each.⁵⁵ In north London, a gym saw police officers stationed outside as a ‘blockade’, with officers changing shifts every 2 hours after it refused to close.⁵⁶ The owner of the gym was fined £77,000 in total.

In Nottingham, Christian bookshop and café The Mustard Seed was forcibly closed by a group of police officers and fined £1,000 after remaining open and hosting a large gathering on 14th November.⁵⁷ Two men were arrested after refusing to give their details when officers attempted to issue them with a £200 Fixed Penalty Notice. After refusing to close, the fine was increased to £17,000.⁵⁸

In Oakenshaw, a salon owner received fines of £17,000 after keeping her business open during November.⁵⁹ The owner received multiple visits from police officers, with a police car being stationed outside her salon.⁶⁰

Clearly, non-exempt businesses that remained open during the lockdown were in breach of the coronavirus restrictions and the police have a duty to uphold the law. However, scenes of heavy police enforcement to close and fine financially struggling businesses are a reflection of the ineffectiveness of the punitive health measures that are unmatched by adequate financial support.

Gatherings

Cases of excessive policing of the restrictions of gatherings also emerged during the second lockdown. This was a particular issue in relation to protests (which we examine later in this report), but there were also cases of police intervening in small family and community meetings.

⁵³ Portsmouth vendors fined £1,000 for Covid breach over seating for customers – Ben Fishwick, Portsmouth News, 13th November 2020: <https://www.portsmouth.co.uk/business/consumer/portsmouth-vendors-fined-ps1000-covid-breach-over-seating-customers-3035745>

⁵⁴ Twitter, 5th November 2020: https://twitter.com/politics_24/status/1324363708550782977?s=20

⁵⁵ Essex Police Harlow, Twitter, 5th November 2020: https://twitter.com/EP_Harlow/status/1324389899890470912?s=20

⁵⁶ Closure order for Wood Green gym owner fined £77,000 – BBC News, 18th November 2020: <https://www.bbc.co.uk/news/uk-england-london-54986155>

⁵⁷ Two men are arrested at Christian bookshop and tearooms after gathering of 50 people in breach of Covid rules - as owners cite Magna Carta for reason to stay open in lockdown – Milly Vincent, Mail Online, 15th November 2020: <https://www.dailymail.co.uk/news/article-8951305/Two-men-arrested-Christian-bookshop-gathering-50-people-owners-cite-Magna-Carta.html>

⁵⁸ Tearoom hit with £17,000 fines after refusing to close during lockdown – Ben Reid, Nottinghamshire Live, 17th November 2020: <https://www.nottinghampost.com/news/local-news/tearoom-hit-17000-fines-after-4709548>

⁵⁹ Salon owner facing £17,000 fine after ignoring lockdown rules and opening again – Andrew Robinson, Yorkshire Live, 23rd November 2020: <https://www.examinerlive.co.uk/news/local-news/salon-owner-facing-17k-fine-19331401>

⁶⁰ Quinn Blakely Hairdressing, Instagram, 24th November 2020: <https://www.instagram.com/p/CH-Za0wFAXB/>

One man was fined £200 for visiting a friend's house for a cup of tea. Police in Wigan posted on Facebook that "a fixed penalty was issued to a male last night who decided he was going to see his mate and have a brew with him and to make matters worse he tried to lie about why he was there."⁶¹

Leicestershire Police were called to a house after "receiving a tip off about the gathering", which appears to have consisted of three people – one adult and two children.⁶² The adult received a £200 fine, while the children were "advised of the Covid-19 regulations." Leicestershire Police also received over 30 calls regarding a gathering of young people at a recreational area on an estate and a parent of one of the children was fined £200 for failing to prevent the child from attending the gathering.⁶³

In Brighton, Sussex Police used a Section 34 dispersal order to break up a gathering of people at a community centre.⁶⁴ Police officers said the organiser of the gathering had been identified and would be prosecuted in court for a violation of the Regulations.

In Northern Ireland, police officers dispersed beach goers and swimmers from Helen's Bay beach, threatening people with fines if they did not leave the area.⁶⁵ One swimmer said that as he came out of the sea, he was approached by 6 police officers who said he was taking part in an 'organised event' by visiting the area.

The National Police Chief's Council (NPCC) announced that forces would no longer issue 'on-the-spot' £10,000 Fixed Penalty Notices to gathering organisers, due to concerns that the vast fines could lead to legal action over "inequalities" between those who are able to pay the FPN and those who challenge the fine in court.⁶⁶ Fines issued by a court are often means tested but result in a criminal record, leaving people to choose between a £10,000 FPN or the risk of a criminal conviction. West Midlands Police had already stopped issuing these FPNs a week before the announcement and were instead issuing people with court summons. David Jamieson, the police and crime commissioner in the West Midlands, wrote to Kit Malthouse, Policing Minister seeking clarification from the Government over the legality of the £10,000 FPNs:

"The fact that the Government has failed to provide hard working police officers with workable Covid legislation, I view with utter dismay."

(...)

"I feel thoroughly embarrassed that I have been personally supporting the Government's actions, which at best, are questionable."⁶⁷

However, the following day, the NPCC reversed the guidance that had paused the on-the-spot £10,000 fines. An NPCC spokesperson said:

⁶¹ Man fined for visiting friend's house for cup of tea – Jen Mills, Metro, 9th November 2020:

<https://metro.co.uk/2020/11/09/man-fined-for-visiting-friends-house-for-cup-of-tea-13561999/>

⁶² Person fined £200 for breaching coronavirus rules at house gathering – Adrian Troughton, Leicester Mercury, 18th November 2020: <https://www.leicestermercury.co.uk/news/local-news/person-fined-200-breaching-coronavirus-4712636>

⁶³ Parent fined after group of young lockdown flouters gather on Leicestershire estate – Asha Patel, Leicester Mercury, 19th November 2020: <https://www.leicestermercury.co.uk/news/leicester-news/parent-fined-after-group-young-4714868>

⁶⁴ Police shut down Brighton gathering in breach of Covid regulations – Richard Gladstone, Brighton and Hove Independent, 14th November 2020: <https://www.brightonandhoveindependent.co.uk/news/crime/police-shut-down-brighton-gathering-breach-covid-regulations-3035878>

⁶⁵ Helen's Bay beach-goers 'baffled' over Covid-19 warnings – BBC News 2020: <https://www.bbc.co.uk/news/uk-northern-ireland-55124550>

⁶⁶ Police chiefs suspend on-the-spot £10,000 Covid fines amid fears over legal challenge – Charles Hymas and Martin Evans, the Telegraph, 17th November 2020: <https://www.telegraph.co.uk/news/2020/11/17/police-chiefs-suspend-on-the-spot-10000-covid-fines-amid-fears/>

⁶⁷ Ibid.

"Following discussions with government, the issue we flagged last Friday has been fully addressed (...) People found to be in breach of the regulations relating to gatherings of over 30 people will be made fully aware of their options when faced with a £10k FPN, to ensure fairness."⁶⁸

RECOMMENDATION 7: Life-changing £10,000 on-the-spot fines for gatherings are disproportionate and put those unable to pay at a risk of prosecution – they should be repealed.

Travel

Government guidance stated that overnight stays and visiting second homes was prohibited, however this was not written into law.⁶⁹ Given that the lists of "reasonable excuses" for leaving one's home was non-exhaustive, it was possible that an individual could lawfully stay overnight somewhere other than their home.

Further, Government guidance on travel diverged from the law. Guidance stated that people "should avoid travelling in or out of your local area" and that only "a short journey" was permitted for exercise, although neither of these restrictions were contained within the Regulations.⁷⁰ Cumbria Police were forced to apologise after tweeting that they had fined individuals driving from Cumbria to West Yorkshire.⁷¹ The force posted, in a now deleted Tweet:

"The guidance states a short distance may be travelled for exercise.

"We'd argue West Yorkshire to Cumbria isn't 'short'."

In addition to issuing fines, police told drivers to "turn around."⁷² A Cumbria Police spokesperson claimed that "the constabulary does not issue fines for failing to adhere to guidance or advice and only does so in respect of breaches of the Health Protection Regulations," stating that the occupants of the vehicle were fined for not having a reasonable excuse to leave their home, rather than for travelling a particular distance.

West Mercia Police and Worcestershire County Council "reminded" people that they should not visit local beauty spots for walks.⁷³ Local councillor Karen May said she was "concerned about those travelling out of their way to visit the Clent and Malvern Hills" and told residents to "to think local and to stay local." Dr Kathryn Cobain, local public health director, said "Worcestershire's parks and countryside walks have been open during lockdown but if visitors continue to disregard the rules that decision may have to be reviewed." However, there was no clear prohibition on travel for open-air exercise or recreation, nor a particularly clear health risk.

In Lincoln, two people were fined as "they didn't have any good exemption or reason for being in Lincolnshire", according to Chief Superintendent Paul Timmins.⁷⁴ There were no restrictions on the

⁶⁸ Covid: £10k fines for gatherings can resume, say police chiefs – BBC News, 18th November 2020: <https://www.bbc.co.uk/news/uk-54977290>

⁶⁹ New National Restrictions from 5 November: <https://www.gov.uk/guidance/new-national-restrictions-from-5-november>

⁷⁰ Ibid.

⁷¹ Cumbria Police apologises for 'misleading wording' of tweet – Joe Fletcher, North West Mail, 13th November 2020: <https://www.nwemail.co.uk/news/18869441.cumbria-police-apologises-misleading-wording-tweet/>

⁷² Driver and passenger told to turn around by police on the A590 after travelling to South Cumbria – Eleanor Ovens, North West Mail, 11th November 2020: <https://www.nwemail.co.uk/news/18863385.driver-passenger-told-turn-around-police-a590-travelling-south-cumbria/>

⁷³ Walkers reminded 'we're in lockdown' as Malvern Hills busy – Jenna Bufton, Worcester News, 24th November 2020: <https://www.worcesternews.co.uk/news/18894610.worcestershire-walkers-warned-lockdown/>

⁷⁴ People who had 'no reason' to be in Lincoln caught by police – Nicholas Fletcher, Lincolnshire Live, 10th November 2020: <https://www.lincolnshirelive.co.uk/news/local-news/coronavirus-restrictions-lincolnshire-police-breach-4686145>

distance a person may travel. Given that “outdoor recreation” was a listed reasonable excuse under the Regulations, it seems unlikely that these individuals were in breach of the law.

In Wales, police in Cardiff were granted additional powers to allow them to conduct random vehicle checks in and around Cardiff centre over the ‘Black Friday’ sales weekend, presumably to ensure that English people were not travelling to Wales for shopping, given that non-essential retail in England was closed at the time.⁷⁵ South Wales Police also deployed additional officers over the weekend. 110 cars were stopped on the first day, with 12 fines being issued.⁷⁶

Lockdown fines

Throughout the pandemic, the National Police Chief’s Council (NPCC) has emphasised its ‘4 Es’ approach (engage, explain, encourage, enforce), which it introduced in acknowledgement that the novel, complex and changing regulations were widely misunderstood by the public.⁷⁷ However, at beginning of the second national lockdown, the NPCC placed its emphasis firmly on enforcement:

“Not following the regulations and measures put in place to limit the spread of the virus is unacceptable. We won’t waste time with endless encouragement for those who knowingly or deliberately break the rules. People recklessly ignoring the regulations should expect to receive a fixed penalty notice.”⁷⁸

Martin Hewett, Chair of NPCC said: “We cannot waste time endlessly encouraging those still intent on breaking the rules after nine months of this pandemic.”⁷⁹ This was despite acknowledgement from senior officers at the NPCC that laws had become even more difficult to follow and understand in recent months.⁸⁰

Regulations have changed more rapidly and have varied widely between regions – it is important that police officers explain and encourage rules before issuing large fines.

Police did not appear to issue fines at the high rates recorded under the first national lockdown. In total, 24,933 Fixed Penalty Notices (FPNs) have been recorded as having been issued in England and Wales under Coronavirus Regulations between 27th March 2020 and 16th November 2020.⁸¹ Of these FPNs, 1,977 were issued under the first two weeks of the second national lockdown.⁸² As further data comes in following the second lockdown, these numbers are likely to rise.

Big Brother Watch’s analysis found significant variance in how the second national lockdown has been enforced across England. Several forces issued no fines in this time (Cheshire, Cleveland, Dorset and

⁷⁵ Officers given additional powers to ensure those visiting Cardiff are not breaching Covid regulations – South Wales Police, 26th November 2020: <https://www.south-wales.police.uk/news/south-wales/news/officers-given-additional-powers-to-ensure-those-visiting-cardiff-are-not-breaching-covid-regulations/>

⁷⁶ Coronavirus: Cardiff police issue 12 fines on first day of random car checks – Nick Hardinges, LBC, 28th November 2020: <https://www.lbc.co.uk/news/cardiff-south-wales-police-issue-12-fines-first-day-random-car-checks/>

⁷⁷ Engage, Explain, Encourage, Enforce – applying the four ‘E’s – National Police Chief’s Council: <https://www.college.police.uk/What-we-do/COVID-19/Documents/Engage-Explain-Encourage-Enforce-guidance.pdf>

⁷⁸ Police chiefs urge public to follow the latest regulations – National Police Chief’s Council, 5th November 2020: <https://news.npcc.police.uk/releases/police-chiefs-urge-public-to-follow-the-latest-regulations>

⁷⁹ More Fixed Penalty Notices issued since national Coronavirus restrictions were reintroduced, with crime 9 per cent lower than last year – National Police Chief’s Council, 30th November 2020: <https://news.npcc.police.uk/releases/more-fixed-penalty-notices-issued-since-national-coronavirus-restrictions-were-reintroduced-with-crime-9-per-cent-lower-than-last-year>

⁸⁰ See Big Brother Watch’s October Emergency Powers and Civil Liberties Report (p 19-20): <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/11/Emergency-Powers-and-Civil-Liberties-Report-OCT-2020.pdf>

⁸¹ More Fixed Penalty Notices issued since national Coronavirus restrictions were reintroduced, with crime 9 per cent lower than last year – National Police Chief’s Council, 30th November 2020: <https://news.npcc.police.uk/releases/more-fixed-penalty-notices-issued-since-national-coronavirus-restrictions-were-reintroduced-with-crime-9-per-cent-lower-than-last-year>

⁸² Ibid.

Humberside), and several forces issued fewer than 5 fines (City of London, Northumbria and Sussex).⁸³ Other forces however, issued many more. Greater Manchester Police issued 309 FPNs, Merseyside issued 277 FPNs and Lancashire issued 178 FPNs – these three forces issued nearly 40% of all fines in England during this period, despite covering approximately 26% of England’s population.

This disparity is in line with the postcode lottery of policing which has existed since the introduction of the Health Protection Regulations. Since March, Dyfed-Powys has issued by far the highest number of Fixed Penalty Notices, at 1,759 FPNs, or 340 FPNs issued per 100,000 people.⁸⁴ This is over twice the rate of fines as the next highest police force, Cumbria, which has issued 165 FPNs per 100,000 people and 43 times the rate of the lowest police force, Staffordshire which has issued 8 FPNs per 100,000 people. North Yorkshire Police Force has proportionately issued the third highest amount of FPNs, at 151 per 100,000. It has issued 1,235 FPNs — more than the Metropolitan Police, which has issued 1,204 and covers a population of nearly 9 million people.

133 FPNs have been issued across England in relation to gatherings of more than 30 people, which include fines for protests.⁸⁵ Again, Greater Manchester Police, Merseyside and Lancashire issued the greatest number of FPNs under these regulations.

641 FPNs were issued between 15th June and 16th November for breaches of the Face Coverings Regulations across England and Wales.⁸⁶ This is an increase of 358 since 19th October. 169 of these were issued relating to public transport and 472 relating to relevant indoor places.

223 FPNs were issued relating to the International Travel Regulations. The NPCC reported that police officers carried out an additional 7,040 ‘investigations’ into whether a person required to self-isolate under the travel Regulations was doing so and found that no further action was required.⁸⁷

In October, the NPCC did not publish figures on enforcement or fines relating to the Self-Isolation Regulations, “due to the Memorandum of Understanding between the NPCC (on behalf of all territorial forces) and DHSC only being recently implemented.”⁸⁸ In November, the NPCC once again failed to publish any data around self-isolation fines, the reason being “due to the additional processing work which is necessary between policing and relevant criminal justice partners for the fulfilment of notices issued under this regulation.”⁸⁹

FPNs do not have the safeguards of subsequent review by prosecutions lawyers and/or magistrates. Big Brother Watch, and many of the groups and lawyers we work with, have been contacted by individuals who have been wrongly issued with FPNs. Some have proceeded to pay them due to a lack of resources to legally challenge them, a loss of trust in the system and the fear of a criminal prosecution. If only 10% of the 24,933 FPNs recorded in England and Wales were unlawfully issued, a percentage which is in line with unlawful prosecutions under the Regulations, this would account for almost 2,500 unlawfully issued

⁸³ Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales - National Police Chief’s Council, 30th November 2020: <https://cdn.prgloo.com/media/c1d4c067cf244a50a6cb2cc6749b96dd.pdf>

⁸⁴ Ibid.

⁸⁵ More Fixed Penalty Notices issued since national Coronavirus restrictions were reintroduced, with crime 9 per cent lower than last year – National Police Chief’s Council, 30th November 2020: <https://news.npcc.police.uk/releases/more-fixed-penalty-notices-issued-since-national-coronavirus-restrictions-were-reintroduced-with-crime-9-per-cent-lower-than-last-year>

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Crime is lower than a year ago, and more fines given to the public under Coronavirus regulations — National Police Chief’s Council, 28th October 2020: <https://news.npcc.police.uk/releases/crime-is-lower-than-a-year-ago-and-more-fines-given-to-the-public-under-coronavirus-regulations>

⁸⁹ More Fixed Penalty Notices issued since national Coronavirus restrictions were reintroduced, with crime 9 per cent lower than last year – National Police Chief’s Council, 30th November 2020: <https://news.npcc.police.uk/releases/more-fixed-penalty-notices-issued-since-national-coronavirus-restrictions-were-reintroduced-with-crime-9-per-cent-lower-than-last-year>

FPNs. The number is likely to be higher however, given the lack of safeguards around issuing FPNs.

Big Brother Watch and Liberty have written to police forces urging them to undertake a review of all fines issued under the lockdown laws, amid these serious concerns of wrongfully issued fines and racial discrimination.⁹⁰ Across England and Wales, people of colour have received fines at a rate 1.6 times higher than white people. This is unacceptable. In certain areas, however, this disparity is far higher. We have sent letters to the chief constables of Cumbria, Derbyshire, Dyfed-Powys, Lancashire, Lincolnshire, North Wales, North Yorkshire, Suffolk, Sussex and West Mercia police forces, the ten forces with the worst statistics for discrimination in lockdown FPNs, warning that they risk breaching equality law if they do not instigate an urgent review of fines.

RECOMMENDATION 8: Police forces may be in breach of the Public Sector Equality Duty if they do not address the serious ethnic disparity in their issuing of lockdown fines. Police forces must urgently instigate a review of all fixed penalty notices issued under the lockdown Regulations.

RECOMMENDATION 9: The Government should introduce a means for individuals to challenge fixed penalty notices issued under coronavirus restrictions by way of administrative review or appeal, without having to risk magistrates' court proceedings.

Lockdown prosecutions

The Crown Prosecution Service's (CPS) review into unlawful prosecutions under the Health Protection Regulations in October identified 10 unlawful charges, which brings the total number to 88, or 10% of all charges.⁹¹ However, given the serious failings of the court system, explored below, it appears likely that many more convictions under the Regulations are unlawful or rest on extremely flimsy evidence.

An investigation into prosecutions under the Health Protection Regulations in London has raised concerns over the quality of magistrate hearings. The Evening Standard reported:

“Previously, rule breakers were dealt with in open court but London's cases are now being handled by a magistrate and legal adviser sitting in private under the Single Justice Procedure.

“The Westminster magistrates' court cases — all relating to alleged breaches between late March and May — have been hidden from the public and attempts to access information about the prosecutions have been frustrated.”⁹²

The Single Justice Procedure allows people to be convicted in their absence, with a magistrate deciding the case on the basis of the evidence provided to them. The accused can instead enter a plea in response to a 'Single Justice Procedure Notice' sent to them by post.

Arguably as a result of this lack of openness, many prosecutions have been unlawful. Reporter Tristan Kirk found two people who had been both convicted and fined under the Welsh coronavirus regulations for offences in London, a man who was charged under the Coronavirus Act for “drinking beer on the street” and ignoring a police direction to go home, as well as other unlawful prosecutions under the Coronavirus

⁹⁰ Big Brother Watch and Liberty Warn Covid Fines Must Be Urgently Reviewed – Big Brother Watch, 20th November 2020: <https://bigbrotherwatch.org.uk/2020/11/big-brother-watch-and-liberty-warn-covid-fines-must-be-urgently-reviewed/>

⁹¹ October's coronavirus review findings – Crown Prosecution Service, 27th November 2020: <https://www.cps.gov.uk/cps/news/octobers-coronavirus-review-findings>

⁹² Covid rule breakers targeted in secret London prosecutions – Tristan Kirk, the Evening Standard, 16th October 2020: <https://www.standard.co.uk/news/london/covid-rule-breakers-secret-london-prosecutions-a4571843.html>

Act.⁹³ He also found instances where people received convictions for offences they were not prosecuted for, vast fines which exceed the legal maximum and police being allowed to resubmit evidence where "paperwork is botched."⁹⁴ Another case saw a man convicted of two offences and "given two £250 fines, one for each offence, but the papers show they both related to the exact same incident."⁹⁵ The full extent of the evidence heard by the court was a note from a police officer which read: "Found in street with 4 other males, stated he was staying with a friend (not his home address) which was some distance from his home address."⁹⁶

Under the Health Protection Regulations 2020 (which the majority of these incidents are charged under), a Fixed Penalty Notice for an offence was £60 or £100. If the individual was convicted at court, the maximum fine was £960. Under the Single Justice Procedure, many people are facing high fines of offences which should have received a £60 FPN. A man who travelled from London to a Welsh beach during the first national lockdown was fined £811 under the Single Justice Procedure.⁹⁷ Many have received fines which even exceed the cap of £960. In Somerset, three people were fined £1,110 for a breach of the Regulations.⁹⁸

There are also serious inconsistencies between the rate of fines. Tristan Kirk reported that:

"On 18/4, a 23yo was out & about when he shouldn't have been. £100 fine + costs

"Same day, different part of London, 21yo committed the same offence. £1100 + costs"⁹⁹

(...)

"Most of these issues would've been ironed out by a prosecutor during an open court hearing. But there is no prosecutor in [Single Justice Procedure] & it appears magistrates couldn't/didn't have time to catch everything."

The Home Office responded to the Evening Standard's report, claiming that "police are enforcing coronavirus legislation correctly in the majority of cases."¹⁰⁰ This response is unacceptable. Every single unlawful conviction is an injustice and damages the rule of law. It is critical, especially during a period where draconian emergency laws have been rushed out and enforced haphazardly, that courts operate with transparency, fairness and ensure that every conviction is lawful.

RECOMMENDATION 10: The CPS should review whether the Single Justice Procedure is appropriate for prosecutions under coronavirus laws, given the high rates of unlawful prosecutions and the importance of accuracy, transparency and fairness in the enforcement of these laws.

Ending lockdown

Foreign Secretary Dominic Raab told LBC that the second national lockdown would not be extended beyond 2nd December and when asked to confirm this replied "put it in your diary."¹⁰¹ However, on the

⁹³ Ibid.

⁹⁴ Tristan Kirk, Twitter, 11th November 2020: <https://twitter.com/kirrkorner/status/1326470321180987392?s=20>

⁹⁵ Tristan Kirk, Twitter, 11th November 2020: <https://twitter.com/kirrkorner/status/1326470330920153088?s=20>

⁹⁶ Tristan Kirk, Twitter, 11th November 2020: <https://twitter.com/kirrkorner/status/1326470332937625603?s=20>

⁹⁷ London man travelled 250 miles to Newgale during lockdown – Bruce Sinclair, Western Telegraph, 14th November 2020: <https://www.westerntelegraph.co.uk/news/18869967.london-man-travelled-250-miles-newgale-lockdown/>

⁹⁸ The 15 people fined by Somerset court for breaking COVID-19 restrictions – Imogen McGuckin, Somerset Live, 22nd November 2020: <https://www.somersetlive.co.uk/news/local-news/15-people-fined-somerset-court-4721649>

⁹⁹ Tristan Kirk, Twitter, 11th November 2020: <https://twitter.com/kirrkorner/status/1326470348766916609?s=20>

¹⁰⁰ Covid rule breakers targeted in secret London prosecutions – Tristan Kirk, the Evening Standard, 16th October 2020: <https://www.standard.co.uk/news/london/covid-rule-breakers-secret-london-prosecutions-a4571843.html>

¹⁰¹ 'Put it in your diary': Dominic Raab tells LBC lockdown will end on Dec 2 – Asher McShane, LBC, 4th November 2020: <https://www.lbc.co.uk/news/put-it-in-your-diary-dominic-raab-tells-lbc-lockdown-will-end-on-dec-2/>

same day, the Prime Minister refused to rule out the continuation of the lockdown beyond 2nd December.¹⁰² During a daily press briefing on 16th November, Health Secretary Matt Hancock again refused to rule out the extension of the national lockdown.¹⁰³

On 23rd November, the Prime Minister made a statement to the House of Commons announcing that England would return to the tier system at the end of the national lockdown. However, confusion continued around the actual date of the lockdown ending. Initial guidance and legislation stated that the Regulations would expire after 28 days, meaning at midnight on 2nd December.¹⁰⁴ However, new guidance published on 23rd November stated that the same tier system would come into force on 2nd December.¹⁰⁵ A Twitter user queried the GOV.UK Twitter account on the correct date, which replied that the lockdown would “apply nationally up to and including Wednesday 2 December.”¹⁰⁶ One restaurant owner told the food website Eatery, “We need confirmation that we are re-opening ten days before the 3rd (assuming it is 3rd because some claim it is 2nd!) and the basis upon which we do.”¹⁰⁷ Indeed, many business owners complained that they had lost a vital day of trading, as they were unprepared to open on 2nd December, rather than the 3rd December. Kate Nicholls, chief executive of UK Hospitality, said

“Over the past nine months, the flow of information from the government has been slow and lacking in clarity.

“Businesses have had to react to announcements regarding opening, closures and changing of restrictions at short notice.

“It has been a theme of this year that businesses have not been given adequate warning about changes that impact their operation.”¹⁰⁸

Divergence

We have argued since March that the fragmented approach to restrictions leads to legal uncertainty and accusations of arbitrary restrictions. Restrictions have been lifted and re-imposed at various rates across the four nations, meaning continued uncertainty and confusing public communications.

Both Wales and Northern Ireland had opted for national ‘circuit breaker’ lockdowns in October with the aim of reducing rising infection rates. However, shortly leaving the national lockdowns, both are imposing new widespread restrictions. Wales imposed a “firebreak” lockdown from 23rd October to 9th November, but at the end of November announced sweeping new restrictions on the hospitality sector. On 30th November, the Welsh First Minister Mark Drakeford announced that Wales would be entering another form of lockdown in December. This would be the third national lockdown the Welsh population has been subject to. Similarly, Northern Ireland re-entered into a lockdown on 27th November, just one week after the “circuit breaker” lockdown had finished.¹⁰⁹

¹⁰² Johnson refuses to rule out Covid lockdown extension for England – Peter Walker and Jessica Elgot, the Guardian, 4th November 2020: <https://www.theguardian.com/world/2020/nov/04/johnson-refuses-to-rule-out-covid-lockdown-extension-for-england>

¹⁰³ Christmas in peril as pubs face staying shut and lockdown could be extended – Harrison Jones, Metro, 17th November 2020: <https://metro.co.uk/2020/11/17/christmas-lockdown-fears-grow-as-matt-hancock-refuses-to-rule-out-extension-13607482/>

¹⁰⁴ New National Restrictions from 5 November – GOV.UK, 31st October 2020: <https://www.gov.uk/guidance/new-national-restrictions-from-5-november>

¹⁰⁵ Local restriction tiers: what you need to know – GOV.UK, 23rd November 2020: <https://www.gov.uk/guidance/local-restriction-tiers-what-you-need-to-know#why-the-government-is-introducing-tiers>

¹⁰⁶ GOV.UK, Twitter, 24th November 2020: <https://twitter.com/GOVUK/status/1331260892323975169?s=20>

¹⁰⁷ Halfway Through Lockdown 2.0, London Restaurants Warily Anticipate Its End - Adam Coghlan and James Hansen, Eatery, 19th November 2020: <https://london.eater.com/21574873/coronavirus-lockdown-london-restaurants-closed-reopening-delivery>

¹⁰⁸ England lockdown end date confusion: ‘We’ve lost a day of trade’ – Alice Evans, BBC News, 2nd December 2020: <https://www.bbc.co.uk/news/uk-55147938>

¹⁰⁹ Latest local lockdown rules for Northern Ireland – The Telegraph, 8th December 2020: <https://www.telegraph.co.uk/news/0/northern-ireland-new-lockdown-rules-restrictions>

Lockdowns have serious implications for human rights, public health and the economy. Placing entire countries in and out of lockdowns is not an effective public health measure and is incredibly damaging to a free society. Lockdowns should not be a normalised, routine public health measure in a democracy.

Wales

The Welsh 'fire break' lockdown ended on 8th November, just days after England entered a national lockdown, and was replaced by the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020. The Regulations expire on 19th February 2021.

Concert halls, sexual entertainment venues, theatres and nightclubs were required to close.¹¹⁰ Premises which sell or supply alcohol were required to stop selling alcohol at 10pm and close at 10:20pm.

Gatherings in private dwellings were limited only to one household, or an extended household, which could consist of two households.¹¹¹ Gatherings in public places were limited to either four people, one household indoors, or to an extended household outdoors.¹¹² Organised events were limited to 15 people indoors and 30 people outdoors, meaning that protests were effectively prohibited.

Fines for holding an event of more than 15 indoors or 30 people outdoors increased to £200, and to £10,000 for those holding an unlicensed music event (i.e. a rave).¹¹³ Film screenings, markets, religious services and sporting events at which only elite athletes were competing were exempt.¹¹⁴

Allowing film screenings and markets to exceed limits on gatherings but not protests, which are essential for democratic participation, is an affront to the human rights of those living in Wales and throws into serious question whether the restrictions were compliant with human rights law.

The Regulations also introduced a legal requirement to self-isolate. Much like the English Regulations, the rules are complex and difficult to follow. They also create a legal basis for contact tracers to pass on personal information where it will either aid a person carrying out their functions under the Regulations, prevent the spread of coronavirus, or help to monitor the spread of coronavirus. Personal details can also be shared for "a purpose connected with, or otherwise incidental to" these three purposes.¹¹⁵ This information includes the person's contact information and date of birth, whether they have tested positive or negative for coronavirus, whether they have had close contact with a person who has tested positive for coronavirus, the period of time a person is required to isolate for, and details of any fixed penalty notices or proceeding brought against them in relation to the self-isolation requirement.¹¹⁶ This is extremely broad and could allow a person's sensitive health data to be shared with a wide range of actors.

RECOMMENDATION 11: Health officials sharing extensive, sensitive and identifiable personal data for virtually any purpose related to the control or monitoring of coronavirus undermines privacy and data protection rights. The data sharing provision under the Welsh Regulations must be significantly narrowed to what is strictly necessary and lawful.

¹¹⁰ Regulation 19(1)

¹¹¹ Regulation 4(1)

¹¹² Regulation 6(1)

¹¹³ Regulation 38(1)

¹¹⁴ Regulation 7(2)(c)

¹¹⁵ Regulation 18(1)(b)

¹¹⁶ Regulation 18

Scotland

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 were laid before Scottish Parliament on 30th October and came into force on 2nd November. The Regulations were amended 5 times in November – neither the original Regulation nor the amendments were passed with the prior approval of the Scottish Parliament.

The Regulations placed areas of Scotland into five levels, from 0 to 5. Given that there are still serious restrictions in Level 0, this system is a significant shift from emergency, short-term law towards the normalisation of restrictions on movements, gatherings and businesses.

At all levels, sexual entertainment venues, discos and nightclubs must close. At Levels 2, 3 and 4 concert halls, indoor or outdoor theatres, comedy clubs, soft play centres, sports stadiums, conference or exhibition centres, snooker or pool halls, bowling alleys, casinos, and funfair or amusement arcades must also close.¹¹⁷ An amendment on 2nd November allowed amusement arcades to open at Level 2.¹¹⁸ Close contact services such as makeup services, tattoos and piercings can only be provided in “fixed business premises” at Level 2 and 3 and all close contact services are prohibited at Level 4. At Level 3 and 4, cinemas must also close. At Level 4, skating rinks, museums, galleries, betting shops, indoor gyms, non-essential retail and libraries must close.

At Level 1, venues which serve food and drink are restricted to opening between 6am and 10:30pm and cannot admit new customers after 9:30pm.¹¹⁹ At Level 2, “drinks-only” pubs must close¹²⁰, and venues which serve food and drink indoors are restricted to opening between 6am and 8pm and cannot admit new customers after 7pm.¹²¹ Outdoor areas are permitted to serve customers until 10:30pm.¹²² At Level 4, all venues selling food or drink must close, with limited exceptions such as workplace canteens.¹²³

Social distancing must be maintained in businesses and places of worship, as well as table service for venues serving food and drink at all levels. Details for contact tracing must also be recorded and stored.

At Level 0, gatherings of more than 3 households indoors are not permitted, except for the purpose of work, childcare, education, attending a place of worship, providing care, avoiding injury, illness or escaping from harm, facilitating shared parenting arrangements, donating blood, fulfilling a legal obligation, accessing public services, for a funeral or marriage, if it takes place in student accommodation where facilities are shared or if it is an organised gathering or organised exercise. For a gathering or exercise to be ‘organised’ it must be organised by a person who is responsible for carrying on a business or providing a service, a person who is responsible for a place of worship, a charity, a club or political organisation, or the governing body of a sport or other activity. If the gathering is indoors and in a private dwelling, it must consist of no more than 3 households and a maximum of 8 people. Outdoor gatherings in public places may consist of no more than 15 people from 5 households, or no more than 15 people from any number of households provided the participants are all under 18 years old and at least one is over 12 years old, or where all persons are under 12 years old. The same exemptions apply. The upper limit on outdoor gatherings reduced from 15 to 8 on 13th November.¹²⁴

¹¹⁷ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, Schedule 3, para 1

¹¹⁸ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment Regulations 2020

¹¹⁹ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, Schedule 2, para 3(1)

¹²⁰ Schedule 3, para 4(1)

¹²¹ Schedule 3, para 5(1)

¹²² Schedule 4, para 5(2)

¹²³ Schedule 5, para 6(1)

¹²⁴ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 2) Regulations 2020, Regulation 7

At Level 1, indoor gatherings in public places of more than 2 households and 6 people are prohibited, with the same exemptions as in Level 0, except organised exercise cannot be a contact sport.¹²⁵ Gatherings at private dwellings are only permitted outdoors and can be of no more than 2 households and 6 people.¹²⁶ Prior to 18th November, public outdoor gatherings could consist of no more than 6 people from 2 households. From 19th November, public outdoor gatherings could consist of no more than 8 people from 3 households.¹²⁷

At Levels 2, indoor gatherings are subject to the same restrictions as in Level 1.¹²⁸ Outdoor gatherings must not consist of more than 2 households and 6 people.

At Levels 3 and 4, all gatherings must consist of no more than 6 people from 2 households.¹²⁹ Gatherings at private dwellings may only occur outdoors. Exemptions are the same as other levels, except in Level 4 there is no exemption for organised exercise and activities.

In Scotland, those living in areas in Levels 1 to 3 are permitted to organise gatherings which are not “processions,” meaning protests are permitted provided there is no march.¹³⁰ There is no exemption for political bodies to organise gatherings at Level 4, which effectively prohibits all protests.

A relevant person may enter a premises “for the purpose of the performance of that person’s functions under these Regulations” and if they receive consent.¹³¹ However, a relevant person does not need consent if he or she “reasonably suspects that an offence” is occurring and the situation is “urgent” – this applies only to requirements of businesses to close.¹³² A relevant person may also issue a FPN of £60 for a breach of the Regulations.¹³³

The majority of areas were placed into Level 3, while no areas were placed into Level 0.¹³⁴ On 17th November it was announced that 11 areas in Scotland would move to the highest level of restrictions, Level 4.¹³⁵ The new restrictions applied to East Dunbartonshire, East Renfrewshire, Glasgow, Renfrewshire, West Dunbartonshire, North and South Lanarkshire, East and South Ayrshire, Stirling and West Lothian until 11th December.

Guidance that those in Tier 3 and 4 areas do not leave their council area became law on 20th November.¹³⁶

As demonstrated, the Scottish Tier restrictions are excessively complex, difficult to follow and almost impossible to police.

Northern Ireland

In our previous report, we detailed the introduction of Northern Ireland’s ‘circuit breaker’ lockdown. However, this month there was confusion over when it was due to end. News Letter reported that despite many MLAs stating that the lockdown restriction would cease on midnight of 12th November, a lawyer contacted the organisation to clarify that according to the Regulations, the restrictions would in fact end on midnight 13th November.¹³⁷ There was pressure to extend the lockdown, with Ministers announcing just

¹²⁵ Schedule 2, para 7

¹²⁶ Schedule 2, para 9

¹²⁷ Schedule 2, para 8

¹²⁸ Schedule 3, para 11

¹²⁹ Schedule 4, paras 10-2; Schedule 5, para 11(1), 12(1), 13 (1)

¹³⁰ Schedule 2, para 8(1)(d)(xii); Schedule 3, para 12(1)(d)(xii); Schedule 4, para 11(1)(d)(xii)

¹³¹ Regulation 6(1)

¹³² Regulation 6(2)

¹³³ Regulation 7(2)

¹³⁴ Schedule 6, para 1(2)

¹³⁵ Covid in Scotland: Level 4 lockdown to be imposed in 11 council areas – BBC News, 17th November 2020:

<https://www.bbc.co.uk/news/uk-scotland-54974855>

¹³⁶ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 3)

Regulations 2020, para 5(3)

¹³⁷ Executive fails to clarify whether current NI covid restrictions end on Thursday or Friday amid claim of another gaffe – Sam McBride, News Letter, 11th November 2020: <https://www.newsletter.co.uk/news/politics/executive-fails-clarify-whether-current-ni-covid-restrictions-end-thursday-or-friday-amid-claim-another-gaffe-3033192>

4 days before the lockdown was due to expire that it was "not a binary choice" whether to extend and that they were "trying to come up with a strategy" to approach restrictions.¹³⁸ The proposed two week extension was ultimately vetoed by the Democratic Unionist Party (DUP).¹³⁹ Close contact services and cafes would be permitted to open on 20th November and pubs on 27th November.¹⁴⁰

Just one week after this announcement, the Northern Irish Executive announced that Northern Ireland would be placed back into an even stricter lockdown on 27th November. The announcement, made on 19th November, the day before parts of the hospitality industry were due to re-open, revealed restrictions more extensive than those rejected by the DUP in the weeks prior to the announcement.¹⁴¹ Simon Hamilton, former Economy, Finance and Health Minister and chief executive of Belfast Chamber of Commerce, tweeted that "trust in this Executive is now at rock bottom."¹⁴² This chaotic approach to national restrictions has a serious impact on people's lives, rights and livelihoods.

RECOMMENDATION 12: The four nations should seek to harmonise and clarify restrictions wherever possible to avoid confusion and enable coherent national communications.

¹³⁸ Northern Ireland Executive decision on circuit breaker pushed back to Tuesday – Shauna Corr, Belfast Live, 9th November 2020: <https://www.belfastlive.co.uk/news/health/northern-ireland-executive-decision-circuit-19249783>

¹³⁹ Coronavirus: DUP blocks 14-day NI Covid restrictions extension – BBC News, 10th November 2020: <https://www.bbc.co.uk/news/uk-northern-ireland-54882357>

¹⁴⁰ Circuit-breaker breakdown: What EXACTLY does the new NI lockdown involve? – Adam Kula, News Letter, 20th November 2020: <https://www.newsletter.co.uk/news/politics/circuit-breaker-breakdown-what-exactly-does-new-ni-lockdown-involve-3042520>

¹⁴¹ NI to face new lockdown measures from next Friday – BBC News, 19th November 2020: <https://www.bbc.co.uk/news/uk-northern-ireland-55004210>

¹⁴² Simon Hamilton, Twitter, 19th November 2020: <https://twitter.com/SimonHamilton/status/1329529005486329857?s=20>



As we drift further into an authoritarian and coercive state, the only legal mechanism left open to me is to vote against that legislation. That is all we've got left...if my constituents protest, they get arrested.”¹⁴³

— Sir Charles Walker MP

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Lockdown 2: Boris Johnson attempts to head off fierce Tory rebellion in Commons showdown – Sophia Sleigh, MSN News, 2nd November 2020: <https://www.msn.com/en-gb/news/coronavirus/lockdown-2-boris-johnson-attempts-to-head-off-fierce-tory-rebellion-in-commons-showdown/ar-BB1aCILm>

Coronavirus Act

We welcome the Coronavirus Act 2020 (Expiry of Mental Health Provisions) (England and Wales) Regulations 2020, passed in the House of Commons on 23rd November and House of Lords of 25th November. The Regulations expired the provisions in Schedule 8 of the Coronavirus Act, which reduced minimum standards in mental health care under the Mental Health Act 1983. Schedule 8 was never used, and it is right that these unnecessary powers have been repealed.

This begs the question why other unnecessary provisions within the Act have not been similarly removed.

Schedule 22, which gives the Secretary of State to issue directions relating to events and gatherings and lacks adequate safeguards, has never been activated by the Health Minister. Schedule 21, which gives police, immigration officials and public health officers the power to detain 'potentially infectious' people, has only ever been used to unlawfully detain healthy and innocent people. We have argued since before the Coronavirus Act was passed that Schedules 21 and 22 should be removed from the Act, as they contain excessive and draconian powers.

On 27th November, the CPS published its seventh monthly review of prosecutions under the Coronavirus Act.¹⁴⁴ The CPS revealed that, once again, every single charge recorded under the Act had been unlawful. As the previous review found, individuals had been charged exclusively under Schedule 21 of the Act, although there was no evidence of those charged having coronavirus. An additional 31 charges were found to be unlawful this month, bringing the total number to 198. 27 cases were withdrawn in court, with Regulation charges imposed for 4 offences.

As we have previously observed, this result is no longer surprising and represents the serious risk Schedule 21 poses to rights and justice in the UK. It continues the unprecedented record of 100% unlawful prosecutions under the Coronavirus Act. It is plainly unacceptable that people have been charged, exclusively wrongly, under this extreme law for seven months. There is no evidence that these powers are necessary, yet overwhelming evidence that they endanger rights and should be repealed.

RECOMMENDATION 13: It remains the case that every prosecution under Schedule 21 of the Coronavirus Act has been unlawful. These extraordinary detention powers must be repealed.

RECOMMENDATION 14: Schedule 22 of the Coronavirus Act contains draconian powers to prohibit gatherings that have never proven necessary. It must be repealed.

¹⁴⁴ October's coronavirus review findings – Crown Prosecution Service, 27th November 2020: <https://www.cps.gov.uk/cps/news/octobers-coronavirus-review-findings>



There is nothing wrong with harnessing technology, and the UK certainly has some catching up to do in many fields. But even the most brilliant and efficient system can't function without trust, and you can't automate that, any more than you can program hope or mechanise social solidarity. Matt Hancock and his team need to stop building databases, and start rebuilding public trust.”

—Timandra Harkness¹⁴⁵

145 Public trust? There's no app for that – Timandra Harknes, UnHerd, 26th October 2020: <https://unherd.com/2020/10/public-trust-theres-no-app-for-that/>

Contact Tracing and Self-Isolation

In our previous report, we described the various technical and legal issues facing the Test and Trace system. These issues have continued. The Guardian reported on “huge IT issues” which impacted the system in mid-October, as coronavirus cases begun to rise quickly.¹⁴⁶ The issue was reported with software provided by Sitel, a company which has been contracted by the Government to provide some of its contact tracing services. A hotline set up which would allow those without access to the internet to order a coronavirus test is not able answer nearly half of the calls it receives.¹⁴⁷ Contact tracers gave nearly 7,000 people the wrong dates for their self-isolation period, meaning that many people either isolated for too little or too much time.¹⁴⁸

There is more evidence that the punishing fines under the self-isolation regulations are deterring people from getting coronavirus tests. BBC’s Newsnight revealed that in Liverpool, where mass testing is being trialled, many people are not coming forward for tests for fear that they will be legally required to self-isolate, when they are unable to afford to forgo work. In some areas, as little as 4% of the population have been tested.¹⁴⁹ Dan Cardle, MP for Walton which has high rates of deprivation, told Newsnight “people can’t afford to self-isolate so don’t want to find out they may have the virus” and the criteria for the self-isolation grant are too tough – “80% of applications are rejected.”¹⁵⁰

Those who receive an alert from the NHS Covid-19 App telling them to self-isolate are not automatically eligible to claim financial support. Those on the lowest incomes are eligible for £500 to support them through the legally required isolation period, but only if they are informed by a contact tracer. This issue was reported at the end of October, but the problem was still not fixed by the end of the national lockdown period.¹⁵¹ A source within Test and Trace told Sky News that the delays were due to the rapid changes required to the app, with the reduced self-isolation period and new rapid testing.

A BBC investigation into the Test and Trace system “found a system performing worst in the areas where it is needed the most and still struggling with the legacy of decisions that were made at the outset.”¹⁵² It found that the Government had bypassed existing NHS labs and local structures, instead opting to contract work out to private companies, many of which vastly overpromised their capacity. Vice-chair at the Royal College of Pathologists, Dr Rachael Liebmann, who works in private and NHS labs, said: “The default was to go outside the NHS for something new and shiny. But there was not enough input from people who understood testing.”

However, instead of learning lessons from mistakes and working with trusted local public health teams, it was reported that US data analytics company Palantir has been in talks to assume control of the Test and Trace system.¹⁵³ We have previously detailed Palantir’s involvement with the NHS and Joint Biosecurity Centre to create a Covid-19 Datastore, which collates and analyses masses of personal data, including data on political and religious affiliation. Palantir has been criticised by rights groups across the UK and US for facilitating human rights abuses.¹⁵⁴ Involving a controversial company in the Test and Trace system

¹⁴⁶ England test-and-trace system hit by 'huge' IT problems last month – Josh Halliday, the Guardian, 12th November 2020: <https://www.theguardian.com/world/2020/nov/12/englands-test-and-trace-system-hit-by-huge-it-problems-last-month>

¹⁴⁷ Coronavirus Test and Trace hotline fails to answer nearly 25,000 calls a day – Ben Glaze, Mirror, 11th November 2020: <https://www.mirror.co.uk/news/politics/coronavirus-test-trace-hotline-fails-22993339>

¹⁴⁸ More than 7,000 people given wrong dates for self-isolation by Test and Trace – Rowland Manthorpe, Sky News, 3rd November 2020: <https://news.sky.com/story/coronavirus-more-than-7-000-people-given-wrong-dates-for-self-isolation-by-test-and-trace-12122748>

¹⁴⁹ Katie Razzall, Twitter, 23rd November 2020: <https://twitter.com/katierazz/status/1330999988151848961?s=20>

¹⁵⁰ Katie Razzall, Twitter, 23rd November 2020: <https://twitter.com/katierazz/status/1330999989976371202?s=20>

¹⁵¹ COVID-19 app payment loophole won't be fixed by the end of England lockdown – Rowland Manthorpe, Sky News, 24th November 2020: <https://news.sky.com/story/covid-19-app-payment-loophole-wont-be-fixed-by-the-end-of-england-lockdown-12140946>

¹⁵² Coronavirus: Inside test-and-trace – how the 'world beater' went wrong – Nick Triggle, Rachel Schraer and Phil Kemp, BBC News, 20th November 2020: <https://www.bbc.co.uk/news/health-55008133>

¹⁵³ UK in talks with Palantir over test-and-trace programme – Helen Warrell and Sarah Neville, the Financial Times, 3rd November 2020: <https://www.ft.com/content/6f6575a8-799f-42a4-b1cc-3f7452b2166f>

¹⁵⁴ USA: concerns over tech giant Palantir involvement in immigration enforcement – Amnesty International, 29th September 2020: <https://www.amnesty.org.uk/press-releases/usa-concerns-over-tech-giant-palantir-involvement-immigration-enforcement>

would only further damage its reputation, which has an impact on how willing people are to engage with its contact tracing efforts.

The Government has still not produced a Data Protection Impact Assessment for the Test and Trace system. Head of Data Protection at JMW Solicitors Toni Vitale has highly critical of this failure, stating “the government has broken its own law.”¹⁵⁵ He highlighted the many questions around the security of the system, the risk that data is not being held securely, whether staff have been properly trained, whether encryption is being used, whether those working from home will have secure devices. Without a DPIA, these questions have not been answered.

“You could argue that this is another example of one law for the government and one law for everyone else. The fact that they did not perform a DPIA suggests that they didn’t consider it properly and that they didn’t understand what their obligations were.”

“The government was obviously working at pace and trying to get things done as quickly as possible, but that does not mean that it shouldn’t comply with data protection laws, because those laws are there to protect people’s human rights.”

As we noted in our previous report, many contact tracers are poorly trained and are working with a slow and “clunky” system. Some families have reported being contacted by Test and Trace over 60 times.¹⁵⁶ One contact tracer wrote anonymously:

“I’m speaking to people who are getting ten to 15 calls in a day. Several times in the past week I’ve spoken to people who’ve had more than 30.”

“It doesn’t make any sense, but it’s more insidious than that. A lot of these people are vulnerable, they’re in a very stressful situation anyway, and we’re basically harassing them. I spent 50 minutes on the phone recently to an elderly man whose wife has Alzheimer’s, and was in hospital with COVID, but wouldn’t eat or drink unless he was there to help calm her down. The doctors had said it was OK for him to go in and see her if he drove there and put on the full PPE – gown, visor, face mask, gloves (...) He was very upset, but trying to be strong and explain this to me calmly. And I had to say, “I *have* to read you this bit, which says, ‘If you don’t self-isolate, you could be fined.’”¹⁵⁷

This is real-world impact of the vast self-isolation fines and the Government’s punitive approach to self-isolation.

It is understandable that a system as vast as the Test and Trace system will face some operational issues. But when the Government’s approach has been to threaten those required to self-isolate with potential vast fines of £10,000 and yet refuse to provide meaningful financial support, it should hold up its end of the deal. The failures of the contact tracing system to protect sensitive personal data, give people accurate advice and fulfil its purpose mean that the brunt of the self-isolation requirement is falling on individuals.

RECOMMENDATION 15: Punitive fines are being used to prop up a failing Test and Trace system. The Government should replace this harsh approach with adequate financial and social support for those required to self-isolate.

¹⁵⁵ Contact tracing and data protection in the UK – Health Europa Quarterly, 12th November 2020: <https://www.healtheuropa.eu/contact-tracing-and-data-protection-in-the-uk/103874/>

¹⁵⁶ ‘We had more than 60 calls from test-and-trace’ - Smitha Mundasad, BBC News, 20th October 2020: <https://www.bbc.co.uk/news/health-54559228>

¹⁵⁷ I Work as a Contact Tracer. We’re Harassing Vulnerable People Because of Flaws in the System. - As told to Tristan Kennedy, Vice, 10th November 2020: <https://www.vice.com/en/article/v7mev8/nhs-test-trace-harassment-ousource-flaws>

Health Passports

The development of viable vaccines against coronavirus has led to a push for the introduction of health passports or vaccine certificates from both the public and private sector, in a bid to restart the travel and hospitality industries. While there are currently no plans to introduce laws for compulsory coronavirus vaccinations in the UK, the introduction of health passports or certificates would effectively make the vaccine compulsory, as unvaccinated individuals would have restricted rights and be prevented from accessing certain venues, services or modes of transport.

Government plans

It was reported that the Government is considering a QR code system that would allow people who have had coronavirus vaccine to return to large events.¹⁵⁸ Printing company De La Rue later confirmed that it was in talks with the Government to produce immunity certificates.¹⁵⁹ Baroness Harding, head of NHS Test and Trace, said her staff were looking at ways to integrate vaccine status and test results into the NHS Covid-19 App.¹⁶⁰ It was also reported that ministers were considering the introduction 'vaccine stamps' in passports to allow international travel to resume.¹⁶¹ The Prime Minister also announced that 'freedom passes' would be used to allow those who test negative for coronavirus to gather with other who have also tested negative.¹⁶²

The newly appointed Vaccines Minister Nadhim Zahawi MP confirmed on 30th November that the Government was "looking at" the introduction of immunity passports, which would verify that a person had been vaccinated.¹⁶³ He told BBC's World at One:

"I think you'll probably find that restaurants and bars and cinemas and other venues, sports venues, will probably also use that system - as they have done with the [test and trace] app.

"I think that in many ways, the pressure will come from both ways, from service providers who'll say, 'Look, demonstrate to us that you have been vaccinated'."

Commercial plans

Private companies are also considering the introduction of their own vaccination or test-status certificates. Vaccine certification is being discussed globally, with one airline CEO already announcing that only those who had been vaccinated would be allowed to travel on their airplanes.¹⁶⁴ Ticket Master is also considering the introduction of health passports which would reveal either an individual's vaccine status or the results of a recent coronavirus test.¹⁶⁵ Billboard reported that after receiving a test,

¹⁵⁸ QR codes could allow Covid vaccine recipients into sporting and cultural events - Harry Yorke, the Telegraph, 17th November 2020: <https://www.telegraph.co.uk/politics/2020/11/17/people-have-covid-vaccine-could-get-qr-codes-allowing-access/>

¹⁵⁹ De La Rue set for vaccines role - Alex Ralph, the Times, 26th November 2020:

<https://www.thetimes.co.uk/edition/business/de-la-rue-set-for-vaccines-role-cg3g6p3zm>

¹⁶⁰ Test and Trace working on 'immunity passports' - Tom Whipple and Chris Smyth, the Times, 30th November 2020: <https://www.thetimes.co.uk/edition/news/test-and-trace-working-on-immunity-passports-dmf9p8z8b>

¹⁶¹ Britons to get 'vaccine stamps' in their passports before overseas travel - Christopher Hope and Nicola Smith, the Telegraph, 28th November 2020: <https://www.telegraph.co.uk/politics/2020/11/28/britons-get-vaccine-stamps-passports-overseas-travel/>

¹⁶² People who test negative for Covid could get 'freedom passes', Boris Johnson says - Amy Jones, the Telegraph, 23rd November 2020: <https://www.telegraph.co.uk/politics/2020/11/23/people-test-negative-covid-could-get-freedom-passes-boris-johnson/>

¹⁶³ Pubs and cinemas could turn away people who don't get Covid vaccine, minister says - Samuel Osbourne, the Independent, 30th November 2020: <https://www.independent.co.uk/news/uk/politics/covid-vaccine-uk-pubs-cinemas-compulsory-b1764257.html>

¹⁶⁴ Qantas CEO confirms COVID vaccinations will be required for international travellers - Bryan Pearce, Air Live, 23rd November 2020: <https://www.airlive.net/qantas-ceo-confirms-covid-vaccinations-will-be-required-for-international-travellers/>

¹⁶⁵ How Ticketmaster Plans to Check Your Vaccine Status for Concerts - Dave Brookes, Billboard, 11th November 2020: <https://www.billboard.com/articles/business/touring/9481166/ticketmaster-vaccine-check-concerts-plan/>

“the fan would instruct the lab to deliver the results to their health pass company, like CLEAR or IBM. If the tests were negative, or the fan was vaccinated, the health pass company would verify the attendee's COVID-19 status to Ticketmaster, which would then issue the fan the credentials needed to access the event. If a fan tested positive or didn't take a test to verify their status, they would not be granted access to the event.”

The Premier League has similar plans to require a form of digital ID which contains an individuals' Covid-19 vaccination status.¹⁶⁶ The Telegraph reported that an “app-based system has been discussed at length with the cross-sport working group, the Government and health officials.”

The introduction of health passports would come with a myriad of operational, medical, legal, ethical and human rights issues. Access to vaccines, as well as the technology required for a health certificate, will depend on age, economic status, nationality, health and disability, pregnancy, and more. The prospects for discrimination under a 'health passport' scheme are some of the most serious of any digital policy proposed in a democracy, ever.

It is important to consider what this health surveillance architecture will be repurposed for. The Health Secretary Matt Hancock told the Health and Social Care Committee that the mass testing capacity built up by the NHS would be re-purposed beyond the coronavirus pandemic:

“Having built this, we must hold on to it. And afterwards we must use it not just for coronavirus, but everything.

“In fact, I want to have a change in the British way of doing things, where if in doubt, get a test. It doesn't just refer to coronavirus, but to any illness that you might have.”¹⁶⁷

While the Health Secretary was referencing testing, it is easy to see how the same logic could apply to other elements of the pandemic response, including health passports.

RECOMMENDATION 16: Proposals for immunity passports, health certificates and mandatory vaccination certificates as a gateway to the enjoyment of rights would result in widespread discrimination and a de facto digital ID system. The Government must be clear that 'immunity passports' will neither be pursued nor supported.

¹⁶⁶ Vaccine hope for fans' return - but will season be over before it is widely available? – Tom Morgan, the Telegraph, 9th November 2020: <https://www.telegraph.co.uk/football/2020/11/09/vaccine-hope-fans-return-will-season-widely-available/amp/>

¹⁶⁷ Matt Hancock wants to use NHS testing system to fight flu after Covid – Peter Walker, the Guardian, 24th November 2020: <https://www.theguardian.com/world/2020/nov/24/matt-hancock-wants-to-use-nhs-testing-system-to-fight-flu-after-covid>

Surveillance

The UK population is already subject to some of the most intrusive surveillance powers in the world, yet the spread of coronavirus has been used to justify increased surveillance of the health and movements of the population. Under the guise of public health, public authorities and even workplaces are subjecting citizens to new, all-encompassing forms of surveillance that estimate body temperature, analyse social distancing, utilise facial recognition and even monitor how often they wash their hands.¹⁶⁸

It was revealed that the Prime Minister is receiving “up to the minute” intelligence reports from GCHQ which have been informing policy around the coronavirus response.¹⁶⁹ The reports consist of data on the population’s movements via mobile phone data and data from Google regarding searches on employment and travel. Mass monitoring of the population’s movements and internet searches in a disproportionate interference in privacy and a chilling insight into how easily mass surveillance tools can be repurposed for many different ends.

Workplace surveillance

Dr Aida Ponce Del Castillo, a senior researcher at the Foresight Unit of European Trade Union Institute, warned that the Covid pandemic is ushering in the “third phase of workplace surveillance” — the monitoring of health in addition to attendance and safety:

“The excuse for surveillance has moved from keeping you safe to keeping you healthy. It’s a social pressure that can be infused to the workplace because if you’re [not sticking to the rules], a colleague can become infected.”¹⁷⁰

One study found that nearly half of small and medium businesses were increasing workplace surveillance in response to the coronavirus pandemic.¹⁷¹ As well as enabling ‘remote management’ of staff, 50% of businesses felt that CCTV could help manage and enforce social distancing in the workplace and 48% thought CCTV ought to be usable to trace all people movements in and around the office and ensure that staff are following directional arrows around buildings and wearing face masks. Another survey found that one in five companies were considering or had already implemented software that monitors staff who are working remotely.¹⁷²

Companies continue to sell wearable contact tracing technology that tracks the movements of employees and stores them for access of employers in the name of coronavirus management. The Institute of Manufacturing, based at the University of Cambridge, has developed a Test, Tag and Trace system that requires employees to wear Bluetooth tags. The tag:

“sends a signal to the hubs they encounter, which feed information to a database. Real-time data analytics match employee locations with a set of rules assigned to their role, check that they

¹⁶⁸ See Big Brother Watch’s previous Emergency Powers and Civil Liberties reports for multiple examples: <https://bigbrotherwatch.org.uk/campaigns/emergency-powers/#monthly-report>

¹⁶⁹ GCHQ giving Boris Johnson ‘real-time’ intelligence to tackle Covid – Robert Mendick the Telegraph, 18th November 2020: <https://www.telegraph.co.uk/politics/2020/11/18/exclusive-gchq-cell-giving-boris-johnson-real-time-intelligence/>

¹⁷⁰ POLITICO AI: Decoded: COVID-1984 — Workforce monitoring – Janosch Delcker, Politico, 20th May 2020: <https://www.politico.eu/newsletter/ai-decoded/politico-ai-decoded-covid-1984-workforce-monitoring-facebooks-ai-elite-vs-elon-musk/>

¹⁷¹ CCTV “increasingly deployed to support remote management of workplaces” during COVID restrictions – Security Matters, 27th November 2020: <https://www.fsmatters.com/CCTV-used-for-remote-workplace-management>

¹⁷² One in five companies consider Big Brother software to monitor home workers – August Graham, Yahoo Finance, 25th November 2020: <https://uk.finance.yahoo.com/news/one-five-companies-consider-big-000100573.html>

are in an authorised area at an appropriate time and within the safe limit of number of people for that particular workspace.”¹⁷³

It notes “when the pandemic is over, the same infrastructure could continue to provide employees with a secure working environment.”

RECOMMENDATION 17: Many new uses of workplace surveillance, whether through physical tags or intrusive digital monitoring, are likely to breach privacy rights and data protection laws. Employers must refrain from invasive employee monitoring. The Information Commissioner should consider conducting an investigation and issuing new advice on workers’ rights and the growing phenomenon of employee surveillance.

Thermal surveillance

We are continuing to track the increased use of thermal surveillance across workplaces, schools, leisure venues, restaurants and healthcare settings.

The Boarding School Association encourages all boarding schools to conduct temperature checks on staff and pupils.¹⁷⁴ Private schools and boarding school across the country have followed this guidance typically by turning to unreliable thermal surveillance, with Malvern St James Girls School in Worcestershire¹⁷⁵ and Northwood Schools, a chain of schools across London, undertaking infrared thermal scans of pupils and staff via cameras and wrist-scanners.¹⁷⁶

Hill Hunter Partnership fruit farms are using Tempscan’s products to take infrared readings of employees and have set their system to sound an alarm at estimations of 37.0°C. Tempscan notes that “Although this is well below the 37.8°C for a Covid-19 fever it allows them to re-test anyone half-way through their shift that may be in the early stages of developing a fever.”¹⁷⁷

Swindon Football Club is also using Tempscan’s products to scan players, staff and visitors.¹⁷⁸

Across Europe, data protection agencies are severely restricting the use of thermal surveillance as a condition of access to venues or services. In Belgium, the data protection agency stated that:

“Temperature checks using sophisticated means, such as thermal cameras, digital temperature scanners or other automated measuring means that allow the reading of an individual’s temperature at a distance, constitute processing activities involving health data under the GDPR and are not allowed.

“While employers have an obligation to ensure health and safety at the workplace, according to the Belgian DPA, this obligation is not specific enough to legitimize the processing of health data for COVID-19 monitoring purposes”¹⁷⁹

¹⁷³ Test, Tag and Trace: A new way to keep the office COVID-safe – Dr Veronica Martinez and Dr Mahsa Honary, The Manufacturer, 17th November 2020: <https://www.themanufacturer.com/articles/test-tag-trace-new-way-keep-office-covid-safe/>

¹⁷⁴ COVID-SAFE Charter – Boarding School Association: <https://www.boarding.org.uk/userfiles/bsa/Covid%20documents/Covid%20Safe%20Charter.pdf>

¹⁷⁵ Updated - Keeping Everyone Safe and Well – Malvern St James Girls School, 14th August 2020: <https://www.malvernstjames.co.uk/latest-news/news/~board/news/post/updated-safe-and-well>

¹⁷⁶ Northwood Schools Coronavirus Risk Management Assessment – Northwood Schools: <https://www.northwoodschools.com/userfiles/nwsmvc/documents/Policies/2020/Coronavirus%20Risk%20Mitigation%20WS%202411.pdf>

¹⁷⁷ Case Studies – Tempscan: <https://tempscan.co.uk/pages/case-studies>

¹⁷⁸ Ibid.

¹⁷⁹ Belgian DPA Publishes Guidance on Temperature Checks for COVID-19 Monitoring – Information and Security Law Blog, 9th June 2020: <https://www.huntonprivacyblog.com/2020/06/09/belgian-dpa-publishes-guidance-on-temperature-checks-for-covid-19-monitoring/>. The original statement can be found (in French) here: <https://www.autoriteprotectiondonnees.be/prise-de-temperature-dans-le-cadre-de-la-lutte-contre-le-covid-19>

The Rhineland-Palatinate data protection agency in Germany has also stressed that 'implied consent' given by customers or employees who choose to enter a venue using thermal scanners is not sufficient under GDPR, given that the individual may suffer disadvantages if they cannot access the venue. It concludes that due to the lack of evidence that temperature screening is an effective health measure and meaningful consent is usually absent, it is not permitted under the GDPR.¹⁸⁰

The ICO's guidance in the UK on this matter has been more vague¹⁸¹ and addresses digital thermometers generally rather than infrared thermal scanners specifically, which are more commonly used by businesses. However, as discussed in our September report, the Medicines and Healthcare products Regulatory Agency (MHRA) has specifically warned against the use of thermal scanners as a coronavirus screening mechanism.¹⁸²

RECOMMENDATION 18: We urge all companies, authorities and institutions to immediately cease use of thermal cameras and observe the MHRA's advice that "using these products for temperature screening could put people's health at risk."

¹⁸⁰ Corona & Datenschutz – Datenschutz und die Informationsfreiheit Rheinland-Pfalz:

<https://www.datenschutz.rlp.de/de/themenfelder-themen/corona-datenschutz/>

¹⁸¹ Symptom Checking – Temperature – ICO [accessed 8th December 2020]: <https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/coronavirus-recovery-data-protection-advice-for-organisations/testing/>

¹⁸² Don't rely on temperature screening products for detection of coronavirus (COVID-19), says MHRA – MHRA, 3rd July 2020: <https://www.gov.uk/government/news/dont-rely-on-temperature-screening-products-for-detection-of-coronavirus-covid-19-says-mhra>

Freedom of Religion

Communal worship was effectively banned during the second national lockdown. This was a major state interference with the most fundamental of rights. Whilst high density environments such as schools, factories and construction sites remained open, it is difficult for the Government to argue that this restriction on freedom of religion was strictly necessary and proportionate and thus compatible with the Human Rights Act. The policy decision represented the devaluing of freedom of religion, particularly in comparison to economic concerns.

Many MPs expressed concern that communal worship was prohibited under the second national lockdown. Former Prime Minister Theresa May MP said during the debate on the Regulations:

“My concern is the government today making it illegal to conduct an act of public worship for the best of intentions, sets a precedent that could be misused for a government in the future with the worst of intentions. It has unintended consequences.”¹⁸³

Sir Edward Leigh MP, Conservative backbencher, said:

“It is a fundamental human right in any society—we are signatories to the convention on human rights—for people to be able to go to communal worship. We cannot just tell religious people, ‘Sometime in the future you’ll be able to go to a religious service.’”¹⁸⁴

Sir Robert Neill MP agreed that the interference with religious freedom was disproportionate:

“There is no scientific basis for stopping and, indeed, criminalising people of faith joining in collective worship when they do so in a safe fashion, forgoing the right to join in communal hymn singing or music to limit the risk of transmission. That goes beyond that which is proportional.”¹⁸⁵

Judith Cummins MP, said:

“Many of my constituents across many faiths have asked me to tell the Government and the Prime Minister that collective acts of worship are essential and should not be made illegal by any Government: they are an essential part of their faith and an essential part of their lives.”¹⁸⁶

It was particularly absurd that any religious leader who might attempt to organise communal worship could receive a £10,000 fine.

Faith leaders, including the Archbishop of Canterbury, the Chief Rabbi of the United Hebrew Congregations of the Commonwealth, the Chair of the British Board of Scholars and Imams, the Director of the Hindu Council UK and the President Sri Guru Singh Sabha Southall wrote to the Prime Minister to urge the restoration of communal worship. The faith leaders stressed how essential communal worship is for religious believers and argued that “there is no scientific rationale for suspension of Public Worship where it is compliant with the guidance that we have worked jointly with government to establish.”¹⁸⁷

¹⁸³ HC Deb (4th November 2020), vol. 683, col. 356: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

¹⁸⁴ HC Deb (4th November 2020), vol. 683, col. 365: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

¹⁸⁵ HC Deb (4th November 2020), vol. 683, col. 375: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

¹⁸⁶ HC Deb (4th November 2020), vol. 683, col. 342: <https://hansard.parliament.uk/commons/2020-11-04/debates/94B2F2F9-3876-490A-96CA-6066CBFCFB37/PublicHealth>

¹⁸⁷ Faith communities’ letter to Prime Minister – Archbishop of Westminster et al, 3rd November 2020: <https://www.churchofengland.org/media/22211>

A group of 71 churches sent a pre-action letter to the Secretary of State for Health and Social Care, informing him that they intend to challenge, by judicial review, legislation which prevents communal worship. They argue that the restriction violates Article 9 of the European Convention on Human Rights, as well as being *ultra vires* of the Public Health Act 1984.¹⁸⁸ This number increased the following week to 122 churches.¹⁸⁹

Among these 122 churches is Angel Church, in north London, which opened for communal worship on Sunday 15th November.¹⁹⁰ Four police officers stood at the door to the church, while two police vans were parked outside the building. Police prevented people from entering, but allowed 15 people to worship inside the building, while another 15 took part in a service outside.

In Milton Keynes, a church that was streaming an online service was raided by 9 police officers “to threaten court action after repeatedly refusing to believe he was operating within the lockdown rules.”¹⁹¹ Initially, two officers appeared and shut down the service, before calling for back-up of an additional 7 officers. After this, police officers visited the pastor, Daniel Mateola, at his home to remind him that if he did not pay his fine he would fine a court hearing. It took police a week to inform the pastor that no further action would be taken. Thames Valley police were forced to apologise for their “mistake” after being contacted by The Mail on Sunday, saying “there has been a misunderstanding by our officers of the legislation in place in what is an ever-changing and complex area of enforcement.” Mr Mateola said, “it was just evident that they didn’t know what the guidelines were. I didn’t think there was any need to call back-up. I found it all quite intimidating.”

RECOMMENDATION 19: Collective worship is essential to the right of freedom of religion, protected by the Human Rights Act. It is likely that the prohibition on collective worship during the second national lockdown breached the right to freedom of religion and was *ultra vires* of the Public Health Act. Such a ban must not be repeated under future coronavirus restrictions.

¹⁸⁸ Christian leaders to challenge government over church lockdown in England – Christian Concern, 3rd November 2020: <https://christianconcern.com/ccpressreleases/christian-leaders-to-challenge-government-over-church-lockdown-in-england/>

¹⁸⁹ Church leaders pursue judicial review over 'unlawful' government church closures – Christian Concern, 14th November 2020: <https://christianconcern.com/ccpressreleases/church-leaders-pursue-judicial-review-over-unlawful-government-church-closures/>

¹⁹⁰ Police stop lockdown-busting service at London church – Harriet Sherwood, the Guardian, 15th November 2020: <https://www.theguardian.com/world/2020/nov/15/north-london-church-defies-lockdown-to-hold-service>

¹⁹¹ Shocked pastor wins an apology after nine police officers stormed his church and wrongly threatened him with a fine in a raid Tory MP calls ‘the sort of thing that goes on in China’ - Max Aitchison, The Mail on Sunday, 28th November 2020: https://www.dailymail.co.uk/news/article-8997221/Shocked-pastor-wins-apology-nine-police-officers-stormed-church.html?ito=amp_twitter_share-top

Freedom of Expression

Free speech online

As concerns rise around vaccine uptake, policymakers and online platforms have turned their attention to “anti-vaccination” content and disinformation online.

Leaked documents reported in the Times revealed that the Government have deployed the defence cultural specialist unit, part of the British Army’s 77th Brigade, to intervene in vaccine-related disinformation online. The documents reportedly state that the unit is monitoring the extent to which British citizens are being targeted by disinformation online, particularly with regard to the influence of foreign state actors.¹⁹² GCHQ is also involved in countering anti-vaccine content. A Government source told the Times: “GCHQ has been told to take out antivaxers online and on social media. There are ways they have used to monitor and disrupt terrorist propaganda.”¹⁹³

The Ministry of Defence and GCHQ state that action is targeted at hostile foreign actors and deny that any action has been or will be taken against British citizens. However, targeting only definitely foreign actors online is extremely difficult and will doubtless have at least a collateral impact on British citizens’ freedom of expression. The covert deployment of a military unit to intervene in lawful content online relating to vaccinations is alarming.

“Anti-vaccination” content has also drawn the criticism of counter-terror chiefs. Metropolitan Assistant Commissioner Neil Basu, the UK’s top counter-terrorism officer, called for a debate on possible consequences for sharing anti-vax content:

“There is a debate for society to have about free speech and responsibility and people who are spreading misinformation that could cost people’s lives... whether that is the correct thing for this society to allow to happen.”¹⁹⁴

On 15th November, the Labour Party announced a policy to “stamp out” anti-vaccine opinions online.¹⁹⁵ This pressure seeks to further expand the Government’s plans for an Online Harms Bill towards ever more restrictive policies. The Labour proposal would involve penalising online platforms that allow so-called “anti-vax” content on their website, effectively making such content prohibited on major online platforms used by billions of people to communicate across the world.

The generalised category of “anti-vax” content is imprecise and unhelpful. Only a very small minority of posts in this category could be feasibly described as deliberate, malicious misinformation campaigns by people who believe covid vaccinations are safe and yet utilise false information to purposely stir fear in others. This broad category of posts easily captures a swathe of content capturing people’s genuine fears and criticisms which, although lawful, could undermine the Government’s policy goal of mass vaccinations. This cannot be an acceptable target for censorship.

Online harms legislation of this kind, targeting broad and politicised categories of lawful content, would have unintended consequences and wider implications for freedom of expression, effectively nominating

¹⁹² Army spies to take on antivax militants – Gabriel Pogrand, the Times, 29th November 2020: <https://www.thetimes.co.uk/article/army-spies-to-take-on-antivax-militants-mfzsj66w2>

¹⁹³ GCHQ in cyberwar on anti-vaccine propaganda – Lucy Fisher and Chris Smyth, the Times, 9th November 2020: <https://www.thetimes.co.uk/article/gchq-in-cyberwar-on-anti-vaccine-propaganda-mcjqihmb2>

¹⁹⁴ Metropolitan Police counter-terror chief Neil Basu calls for action on coronavirus anti-vaxxers – Martin Bentham, Evening Standard, 18th November 2020: <https://www.standard.co.uk/news/crime/met-police-terrorism-coronavirus-anti-vaxxers-b73161.html>

¹⁹⁵ Social media firms must face sanction for ‘anti-vax content’, demands Labour – Toby Helm, the Guardian, 15th November 2020: <https://www.theguardian.com/world/2020/nov/15/social-media-firms-must-face-sanction-for-anti-vax-content-demands-labour>

the Government, its regulators and big tech companies as arbiters of truth online, narrowing the space for expression and dissent. It is also likely to backfire – any perceptions of Government narrative control will only entrench distrust.

This is set to a backdrop of increased censorship online from the platforms themselves. From our April report onwards, we have reported on the rapidly changing, increasingly censorious policies of major platforms including Twitter and Facebook.

Recently, Facebook's 'fact-checking' has also inhibited discussion around public health on its site. An article examining the efficacy of masks, written by the Oxford University Professor Carl Heneghan and published in the Spectator in late November, was labelled "false information" by Facebook, having been "checked by independent fact-checkers".¹⁹⁶ It is totally inappropriate and contrary to the principles of a free and open forum for Facebook to claim the authority of determining that authoritative academic works are "false". The disputation of academics' work demonstrates how restrictive and arguably politicised Facebook's terms of use have become.

This highly reactive approach to labelling and discrediting content demonstrates the recklessness of Government proposals to hand over the policing of speech on the internet to the platforms, who cannot be trusted to protect freedom of expression.

RECOMMENDATION 20: Interference with lawful discussion online in relation to coronavirus, whether by state or corporate authorities, undermines freedom of expression. Supplanting critical literacy with censorship harms the public forum, trust in authorities, and as such can harm public health. Social media companies should carefully consider the impact of their coronavirus content restrictions and consult rights groups. Government must provide transparency in relation to the activities of the 'Rapid Response Unit' and other state agencies in interfering with lawful content online.

Freedom of assembly

The implementation of the second national lockdown has seen a wave of police action against protesters. The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020 did contain an exemption for political gatherings though it was less explicit than the protest exemptions under the Tier Regulations. It was widely reported that the Home Secretary had briefed police chiefs "to stop protests of more than two" – a bizarre and illogical instruction, but accordingly, police were intolerant of protests in November,¹⁹⁷ despite their questionable legal authority. Their approach clearly went beyond the restrictions contained in the Regulations.

Gatherings organised by "a business, a charitable, benevolent or philanthropic institution, a public body or a political body" taking place on a vessel or a "public outdoor place" were only permitted¹⁹⁸ if the organiser carried out a risk assessment and took "all reasonable measures to limit the transmission of coronavirus," which includes taking account of "any guidance issued by the government which is relevant to the gathering."¹⁹⁹ Regulation 2 of the Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020 defined a 'political body' as "a political campaigning organisation within the meaning of regulation 2 of the Health and Social Care (Financial Assistance) Regulations 2009" – which is "any

¹⁹⁶ Carl Heneghan, Twitter, 20th November 2020: <https://twitter.com/carlheneghan/status/1329861848573861888?s=20>

¹⁹⁷ Coronavirus lockdown: Priti Patel wants police to stop protests of more than two – Fiona Hamilton, the Times, 3rd November 2020: <https://www.thetimes.co.uk/edition/news/coronavirus-lockdown-priti-patel-wants-police-to-stop-protests-of-more-than-two-zdpv3xczx>

¹⁹⁸ The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020, Regulation 10(6)

¹⁹⁹ The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020, Regulation 14 (2), (3)

person carrying on, or proposing to carry on activities to promote, or oppose, changes in any law applicable in the United Kingdom or elsewhere or any policy of a governmental or public authority". This is the standard, broad definition used to define protests in comparable regulations.

Fines for unauthorised gatherings of more than 30 people still carried a £10,000 fine. This extreme and authoritarian approach to public health chills freedom of assembly and expression, as people are deterred from organising lawful protests due the vast potential fines.

The requirement to carry out risk assessments means that groups have had to submit documents to police officers for approval. Police officers are not public health officials and are not qualified to make such significant decisions. The requirement for a risk assessment also means that spontaneous protests or demonstrations are in practice prohibited.

Many protesters have faced restrictions, bans, fines and even prosecutions for attending or organising protests. Furthermore, police appear to have made arbitrary decisions about which groups are permitted to protest.

Case studies

In London, a protest against the new lockdown on 5th November saw 190 people arrested as well as aggressive, and at times violent, dispersal of protesters by police, and attempts to turn away journalists. 189 people were investigated for a £200 fine and one person is being investigated for a £10,000 fine.²⁰⁰ Journalists reported, and documented, being wrongly told by police officers that they required "authorisation" from the Metropolitan Police press office in order to attend and report on the demonstration.²⁰¹ Other journalists reported being "harassed", threatened with arrest and in one case even assaulted by Metropolitan Police officers.²⁰² Several officers were also recorded telling reporters that the press have "no exemptions" and to "leave" the demonstration.²⁰³ This is wrong, misinformed and irresponsible policing that has no basis in law. Individuals are exempt from the requirement to stay at home and the restrictions on gatherings for the purpose of work – clearly the work of a journalist falls under this exemption. We wrote to the Metropolitan Police, calling on them to acknowledge and address the seriousness of police officers wrongfully dispersing and assaulting members of the press.²⁰⁴

On the same day, in Glastonbury, a protest against the lockdown saw 8 people receive £200 fines, with Avon and Somerset police using body-worn camera footage for "retroactive enforcement."²⁰⁵ A homeless man was also charged with participating in the gathering and is awaiting trial.²⁰⁶

In Manchester, a protest against the lockdown on 8th November drew 600 people. Greater Manchester Police issued a Section 34 dispersal order and issued 24 people with £200 FPNs and noted that they were working to establish the organiser of the event, presumably to issue them with a £10,000 FPN. The organiser, Paul Boys, was eventually issued the fine which he has said he will contest.²⁰⁷ Police also noted that a coach driver and the company they work for have both been reported to the industry regulator after

²⁰⁰ UPDATE: Officers arrest 190 for breaching new regulations – Metropolitan Police Force, 6th November 2020: <https://news.met.police.uk/news/update-officers-arrest-190-for-breaching-new-regulations-414516>

²⁰¹ Jason N. Parkinson, Twitter, 5th November 2020: <https://twitter.com/JasonNParkinson/status/1324471833652006914?s=20>

²⁰² Urban Pictures, Twitter, 5th November 2020: https://twitter.com/Urban_Pictures/status/1324457327634821120?s=20

²⁰³ Jason N. Parkinson, Twitter, 5th November 2020: <https://twitter.com/JasonNParkinson/status/1324470398818406400?s=20>

²⁰⁴ Big Brother Watch letter to Metropolitan Police: Covid Regulations and Freedom of the Press, 9th November 2020: <https://bigbrotherwatch.org.uk/2020/11/big-brother-watch-letter-to-metropolitan-police-covid-regulations-and-freedom-of-the-press/>

²⁰⁵ Fines issued after protest in Glastonbury – Avon and Somerset Police, 11th November 2020: <https://www.avonandsomerset.police.uk/news/2020/11/fines-issued-after-protest-in-glastonbury/>

²⁰⁶ Extra patrols in Glastonbury planned as more fines issued over gatherings - Avon and Somerset Police, 13th November 2020: <https://www.avonandsomerset.police.uk/news/2020/11/extra-patrols-in-glastonbury-planned-as-more-fines-issued-over-gatherings/>

²⁰⁷ 'I'll be contesting it': Organiser of Piccadilly Gardens anti-lockdown protest responds after he's handed £10,000 fine – Steve Robson, Manchester Evening News, 9th November 2020: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/ill-contesting-it-organiser-piccadilly-19251731>

a group of protesters travelled from Cumbria to Manchester by coach.²⁰⁸ It is not clear what restrictions the coach driver or their company violated.

In Brighton, a woman was charged by Sussex police for organising an unlawful gathering, despite not being in attendance. Louise Creffield, founder of Save Our Rights UK, a group that campaigns against lockdown measures, tweeted that “the police turned up at my door to issue me summons for organising an event that I wasn’t even at.”²⁰⁹ Sussex Police confirmed that “a woman has been reported for summons following a protest in Brighton on 7 November, which was attended by more than 200 people.”²¹⁰

On 14th November, a protest outside Bournemouth Town Hall was called off after police pre-emptively cordoned off the area and distributed information warning potential protesters that they would be fined if they continued.²¹¹ When a spontaneous protest occurred later that day, police attended and arrested 3 people under the Health Protection Regulations.

On 18th November, Steve Bray, prominent anti-Brexit campaigner, had his sign confiscated and rolled up by officers outside Parliament. Mr Bray appeared to be protesting with just one other person, by holding up a banner. He tweeted:

“Hassle with Police again at Parliament. Despite following the rules ... they stated clearly all protests are banned. That is not the case if within guidelines. This is so wrong.”²¹²

A protest calling for the release of Julian Assange in London was broken up by a large group of police.²¹³ One protester said on Twitter that four people were arrested despite being “given permission to hold the event” and “observ[ing] all COVID regulations.”²¹⁴

8 people were arrested after two protests in Norfolk, one of which was organised by climate activists Extinction Rebellion. Norfolk Constabulary wrote that the restrictions “since Thursday 5 November no longer carry a specific exemption for participating in protests” and “urge[d] people to reconsider taking part in protests.”²¹⁵

In Bristol, 14 people were arrested and 5 were charged during a Stand Up Bristol protest, in a police operation which saw the deployment of “specially trained public order teams, the mounted unit, the dog section and the police drone,” according to Avon and Somerset Police.²¹⁶ Chief Constable Andy Marsh launched an attack on protesters, calling them “selfish idiots” and said: “These protestors are nothing short of disgrace, from the criminally misguided to the plain stupid.”

On 21st November in Bournemouth, two protesters were charged for holding or being involved in a gathering of more than 30 people.²¹⁷ They are due to appear in court in January 2021. On the same day in Liverpool, 15 people were arrested (2 were later de-arrested) and 25 people were issued with fines under the Regulations. Police also issued a Section 34 dispersal order in the city centre and “deployed

²⁰⁸ Greater Manchester Police statement regarding large gathering in Piccadilly Gardens, Manchester City Centre – Greater Manchester Police, 8th November 2020: <https://www.gmp.police.uk/news/greater-manchester/news/news/2020/november/greater-manchester-police-statement-regarding-large-gathering-in-piccadilly-gardens-manchester-city-centre/>

²⁰⁹ Save Our Rights UK, Twitter, 14th November 2020: <https://twitter.com/saveourrightskuk/status/1327656286687727618?s=20>

²¹⁰ Brighton and Hove mother faces court after coronavirus lockdown protest – Frank le Duc, Brighton and Hove News, 14th November 2020: <https://www.brightonandhovenews.org/2020/11/14/brighton-and-hove-mother-faces-court-after-coronavirus-lockdown-protest/>

²¹¹ Ongoing proactive patrols to target protests to ensure compliance with COVID-19 legislation – Dorset Police, 17th November 2020: <https://www.dorset.police.uk/news-information/article/11303>

²¹² Steve Bray, Twitter, 18th November 2020: <https://twitter.com/snb19692/status/1329024625976750080?s=20>

²¹³ Twitter, 21st November 2020: <https://twitter.com/lulinspector/status/1330225918070153218?s=20>

²¹⁴ Twitter, 13th November 2020: <https://twitter.com/taylorhudak/status/1327344421038395393>

²¹⁵ Protesters urged to follow COVID-19 rules – Norfolk Constabulary, 13th November 2020: <https://www.norfolk.police.uk/news/latest-news/protesters-urged-follow-covid-19-rules>

²¹⁶ Five charged following Bristol anti-lockdown protest – Avon and Somerset Police, 16th November 2020: <https://www.avonandsomerset.police.uk/news/2020/11/five-charged-following-bristol-anti-lockdown-protest/>

²¹⁷ Update – two charged in connection with reported protest activity in Bournemouth – Dorset Police, 23rd November 2020: <https://www.dorset.police.uk/news-information/article/11343>

significant resources into the city” to break up the protest.²¹⁸ A protester posted a video of an arrest, which saw a large group of police aggressively restraining a man, while appearing to repeatedly punch him in the head and neck.²¹⁹ Protests against the lockdown also took place in Ipswich and Basildon on 21st November, with 3 people arrested and fined in Ipswich and 9 people arrested in Basildon.²²⁰ Suffolk Constabulary said they “will continue taking enforcement action against those who deliberately come out to protest at any future planned events.”²²¹

On 28th November, Save Our Rights UK organised another anti-lockdown protest in London. Prior to the protest, the Metropolitan Police tweeted that “gathering in groups is not permitted under the current regulations”²²² and issued a statement to say “protest is not currently a permitted exemption to the prohibition on gatherings.”²²³ This is blatant misrepresentation of the law. Big Brother Watch, along with Liberty, wrote an urgent letter to Chief Superintendent Stuart Bell of the Metropolitan Police to urge him to issue an immediate correction and publicly clarify that political bodies were permitted to organise gatherings if they met the requirements.²²⁴ Instead, police in London arrested 155 people and turned away coaches of people trying to travel to London for the protest.²²⁵ By refusing to acknowledge that protests can be organised lawfully, and by failing to work with protesters to facilitate a safe and lawful protest, police disrespected both the covid Regulations and fundamental freedoms of assembly and expression, protected by the Human Rights Act 1998. Journalist Laura Dodsworth reported that while covering the protest she had been surrounded by 4 police officers who demanded she prove that she was journalist.²²⁶

Black Lives Matter protests

We previously reported Police Service Northern Ireland’s approach to Black Lives Matter protests, which was extremely heavy-handed and resulted in multiple arrests.²²⁷ A report commissioned by the Policing Board into the force’s approach was damning. Its human rights adviser John Wadham said the approach:

“sent the wrong message to protesters and damaged the reputation of the PSNI and the confidence of some members of the public”.

“Whatever the rights and wrongs of going ahead with the protests and the difficulty of social distancing given the transmission rates for the virus at the time, this approach was not lawful.”²²⁸

Despite this report, police officers are still pursuing convictions of those arrested during the protest. Solicitor Sinead Marmon, who accompanied protesters to their police interview said, “It shouldn’t have happened in the first place but the doubling down of still pursuing people doesn’t instil confidence in police.”²²⁹

²¹⁸ Fines issued and 13 arrests at gathering in Liverpool city centre – Merseyside Police, 21st November 2020: <https://www.merseyside.police.uk/news/merseyside/news/2020/november/total-of-15-arrested-at-gathering-in-liverpool-city-centre/>

²¹⁹ Twitter, 21st November 2020: https://twitter.com/Love_Nature20/status/1330185289122402305?s=20

²²⁰ Covid: Nine arrested at anti-lockdown protest in Basildon – BBC News, 21st November 2020: <https://www.bbc.co.uk/news/uk-england-essex-55034395>

²²¹ Ipswich - Arrested trio given FPNs – Suffolk Constabulary, 21st November 2020: <https://www.suffolk.police.uk/news/latest-news/ipswich-arrested-trio-given-fpns>

²²² Met Police Event, Twitter, 27th November 2020: <https://twitter.com/MetPoliceEvents/status/1332350169455742976?s=20>

²²³ Statement ahead of proposed protest in central London – Metropolitan Police, 27th November 2020: <https://news.met.police.uk/news/statement-ahead-of-proposed-protest-in-central-london-416064>

²²⁴ Big Brother Watch & Liberty Send a Letter to the Met about Today’s Demonstrations in London – Bog Brother Watch, 28th November 2020: <https://bigbrotherwatch.org.uk/2020/11/big-brother-watch-liberty-send-a-letter-to-the-met-about-todays-demonstrations-in-london/>

²²⁵ Police arrest 155 anti-lockdown protesters in London – Damien Gayle and Mattha Busby, the Guardian, 28th November 2020: <https://www.theguardian.com/world/2020/nov/28/met-police-anti-lockdown-protest-london>

²²⁶ Britain’s two-tier police state – Laura Dodsworth, Spiked, 1st December 2020: <https://www.spiked-online.com/2020/12/01/britains-two-tier-police-state/>

²²⁷ See Big Brother Watch’s June Emergency Powers and Civil Liberties Report (p 76): <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/07/Emergency-Powers-and-Civil-Liberties-Report-Big-Brother-Watch-June-2020.pdf>

²²⁸ Calls on PSNI to apologise following damning report on Black Lives Matter protest action – Bimpe Archer, The Irish News, 13th November 2020: <https://www.irishnews.com/news/northernirelandnews/2020/11/13/news/calls-on-psni-to-apologise-following-damning-report-on-blm-protest-action-2128469/>

²²⁹ Ibid.

A report by Netpol into the policing of Black Lives Matter protests in Britain found “[use of] excessive force, negation of the duty of care and racially discriminatory practices” and also noted that “[police] social distancing and Covid regulations were applied at random.”²³⁰

Student protests

Student group SAFER, at the University of Manchester, had planned a protest for the evening of 12th November over their university’s handling of coronavirus, but the protest was cancelled after students were threatened with large fines by police. The organisers said they had “received a call from the police this morning threatening arrests and fines for the students attending the protest.”²³¹ This was despite the group carrying out a risk assessment and having made plans to ensure that Government guidance was followed, meaning the protest was lawful. Greater Manchester Police said they had encouraged organisers to “do the right thing”. Instead, students decided to display banners from windows, use social media and bang pots and pans to mark the protest. However, there was still a heavy police presence on campus, with four police riot vans and university security guards, who threatened students with fines if they did not return to their buildings.²³² In a statement, SAFER said:

“At 8pm, seven members of the committee of SAFER protested on behalf of students, who were asked to stay indoors and watch from their windows during the speeches. Members of the committee all observed social distancing and remained in groups of two or one, adhering to the government guidelines. For these seven members, around 30 police were present, with more officers waiting around the campus in riot vans or police cars.”

“Students out exercising, or standing in the doorways of their residences reported being threatened with fines and arrest by the police. This created a hostile and aggressive atmosphere which we deemed excessive.”²³³

SAFER also reported that the only non-white member of their committee was “racially profiled” by police, “disrespected from the outset and singled out immediately from the other organisers.” Police officers were also recorded filming groups of students on campus, many of which were not involved in the protest.²³⁴

University and College Union General Secretary Dr Jo Grady said on Twitter:

“There was a time when VCs [Vice Chancellors] would visit student occupations, talk to the those protesting, try and understand their point of view, while also delivering them food. I cannot understand why I am seeing the Greater Manchester Police tactical aid unit attending this occupation instead.”²³⁵

RECOMMENDATION 21: Political protests should be exempt from restrictions altogether. The requirement for a protest organiser to complete a risk assessment and implement health and safety measures should

²³⁰ 'Britain Is Not Innocent': A Netpol report on the policing of Black Lives Matter protests in Britain's towns and cities in 2020 - The Network for Police Monitoring, November 2020, p 4: <https://secureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf>

²³¹ Police threaten to arrest students who attend Owens Park protest tonight – Josh Sandiford, The Mancunian, 12th November 2020: <https://mancunian.com/2020/11/12/police-threaten-to-arrest-students-who-attend-owens-park-protest-tonight/>

²³² Manchester students get creative with another halls protest – Carlo Di Giammorino, The Mancunian, 12th November 2020: <https://mancunian.com/2020/11/12/manchester-students-get-creative-with-another-halls-protest/>

²³³ Statement sent by SAFER via correspondence with Big Brother Watch

²³⁴ Green and Black Cross manchester, Twitter, 12th November 2020: <https://twitter.com/GBCMANCHESTER/status/1326983740569083932?s=20>

²³⁵ Jo Grady, Twitter, 12th November 2020: <https://twitter.com/DrJoGrady/status/1327007948447621120?s=20>

be changed to guidance, supported by online resources, rather than a legal requirement to avoid criminalising organic democratic participation and political dissent.

RECOMMENDATION 22: The Metropolitan Police's misrepresentation of the law on protest rights threatens the rule of law and human rights. This must be addressed. Police forces must make it clear that protest is permitted under the Regulations and work to facilitate safe demonstrations.

Councils and ‘Covid Oneview’

A Big Brother Watch investigation has found councils using huge amounts of highly personal data and predictive analytics to create Covid risk scores with private data firm Xantura.²³⁶ Local authorities in London, Essex, the West Midlands, Cheshire and Merseyside have paid £18,000 to access Xantura’s Covid profiling system.

Data is collected from council records and includes family debt levels, living arrangements, income, school absences and exclusions. However, data also includes “unfaithful & unsafe sex”, emotional health and wellbeing, sleep issues and dangerous pets. It is unclear how this data is sourced.

Data is fed into a profiling system called Covid OneView which creates a risk analysis for households and individuals who are believed to be vulnerable to the social and economic impacts of coronavirus. Xantura also noted that the system could be used to predict those who are likely to break self-isolation rules. It is not clear how many and what kind of interventions have been made as a result of an individual or household being flagged by the system.

Conservative MP Steve Baker expressed concern in the Daily Mail:

“Is this really how we want to live, under the gaze of machines deciding what public services we shall be entitled to? Clearly there are potential benefits in getting help to people that need it – but we need to be reassured how that help is being decided on.”

Jamie Stone MP, Liberal Democrat digital spokesman urged for greater openness:

“It’s vital that at every level of government there is absolute transparency about what data is being collected and how it is being used. This is to ensure people’s personal data is protected and their privacy is respected.”

The develop and use of this profiling system underlines the shift toward mass surveillance and data harvesting triggered by the pandemic. It is unacceptable that councils are using experimental algorithms without public consultation, or even knowledge, to make significant decisions about interventions and support. It has been demonstrated repeatedly that predictive algorithms often exacerbate discrimination, most recently in the A Level results scandal which saw an Ofqual algorithm consistently under-grade pupils from disadvantaged backgrounds, resulting in the loss of university places.²³⁷ Social, economic and health interventions are highly sensitive and should not be made on the basis of an automated decision produced with questionable data.

RECOMMENDATION 23: Local authorities should immediately cease the use of Covid OneView and provide full information to the public as to where the data is sourced, how it has been processed and to what effect.

²³⁶ The Covid data spies paid to know ALL your secrets: Town halls harvest millions of highly personal details including if you’re being unfaithful or having unsafe sex – Tom Kelly, the Daily Mail, 28th November 2020: <https://www.dailymail.co.uk/news/article-8994911/Town-halls-harvest-millions-personal-details-including-youre-unfaithful-debt.html>

²³⁷ England A-level downgrades hit pupils from disadvantaged areas hardest - Richard Adams and Niamh McIntyre, the Guardian, 13th August 2020: <https://www.theguardian.com/education/2020/aug/13/england-a-level-downgrades-hit-pupils-from-disadvantaged-areas-hardest>

Universities

Students across the United Kingdom have continued to bear the brunt of restrictions, with many universities going over and above legislation and Government guidance to police students' lives. This is amid clear evidence that students are suffering with isolation in small flats whilst being away from home: Mind reported that 73% of students said that their mental health declined during lockdown.²³⁸

Many universities' priority has not been keeping students safe, but penalising them. While spending on security has increased, eleven universities have failed to appoint new mental health staff this year and some decreased their staff numbers.²³⁹

At the University of York, self-isolating students were even told to wait an additional minute before leaving their accommodation if a fire alarm sounds "to allow non-isolating individuals to exit."²⁴⁰ North Yorkshire Fire and Rescue tweeted that they has been made aware of the guidance and had contacted the University, which then stated that the guidance was "updated."

Private security

Information obtained by the Tab through Freedom of Information requests show that eleven universities increased their security budgets or forecasts for this academic year, with some universities spending as much as £1.5million more in 2020/2021.²⁴¹

- Queen Mary University of London increased their security forecasts by over £155,000
- Sheffield Hallam increased security spending by £41,000
- Brighton University increased their security spending by nearly £60,000

Universities are relying on private security firms to police student behaviour as well as police officers. At the University of Bristol, there were reports of security staff "entering halls of residence whilst residents were sleeping, demanding to see proof that the residents lived in the flat" and one student alleged he was "hit in the head."²⁴² Students were threatened with £100 fines for smoking outside their accommodation and had security guards enter their homes to enforce social distancing. In Northumbria, police and security guards burst into first-year accommodation with no warning, to find the students watching television.²⁴³ The students were intimidated by the sudden entry, which was made possible by a security guard who has now allegedly been removed from his

²³⁸ The mental health emergency: How has the coronavirus pandemic impacted our mental health? – Mind, June 2020: https://www.mind.org.uk/media-a/5929/the-mental-health-emergency_a4_final.pdf

²³⁹ Named and shamed: Eleven unis didn't appoint any new mental health staff this year – Maddy Mussen, the Tab, 27th November 2020: <https://thetab.com/uk/2020/11/27/named-and-shamed-eleven-unis-didnt-appoint-any-new-mental-health-staff-this-year-184447>

²⁴⁰ Covid: York self-isolating students told 'wait behind in fire' – BBC News, 15th October 2020: <https://www.bbc.co.uk/news/uk-england-york-north-yorkshire-54551789>

²⁴¹ These are the universities that ramped up their security spending this academic year – Maddy Mussen, the Tab, 10th November 2020: <https://thetab.com/uk/2020/11/10/these-are-the-universities-that-ramped-up-their-security-spending-this-academic-year-181678>

²⁴² Serious misconduct by UoB security staff alleged by students in survey – Louie Bell, Epigram, 12th November 2020: <https://epigram.org.uk/2020/11/12/unofficial-survey-alleges-serious-misconduct-amongst-uob-accommodation-security-staff/>

²⁴³ Police burst in on students to break up party only to find them sat watching The Crown – Maddy Mussen, the Tab, 11th November 2020: <https://thetab.com/uk/newcastle/2020/11/11/police-burst-in-on-students-to-break-up-party-only-to-find-them-sat-watching-the-crown-52330>

position. A spokesperson for Northumbria Police said that “Police were led to a number of flats by the security staff but none of those present were found to be breaching the restrictions.”

There was nationwide outcry after students in Manchester were fenced into their accommodation by campus security on the first day the new national lockdown came into force.²⁴⁴ The University claimed it was to “signpost entrances and exits” (in a now deleted Tweet) but students reacted with understandable anger, with the fence being pulled down that evening.

Security staff at Goldsmiths University filmed and photographed students taking part in a rent strike who were drawing in chalk on the pavement.²⁴⁵

Covid marshals

Covid marshals have been deployed by local authorities to encourage social distancing and to remind individuals of the restrictions. They do not have enforcement powers, but many students have reported being targeted by Covid marshals both in public spaces and in their homes, with some marshals even sharing information with universities.

University of Newcastle students told the Tab during their isolation that seven Covid marshals “piled in” to their home because they had received a noise complaint and suspected a house party was occurring.²⁴⁶ The student told them that she had tested positive and their house was self-isolating, but she claimed they entered the house regardless. A house of all female students said that marshals has acted “creepy” towards them: “10 minutes after the marshals initially left, they returned to the house asking for our phone numbers. They then proceeded to our front garden to press their faces up against our front window, trying to look in through the blinds.” Other students have reported that marshals have threatened to report them to the police if they do not give them their phone numbers.

At Northumbria University, students were reported to their university after a Covid marshal saw them sitting in their garden as a household. The marshal did not check whether or not the students were more than one household. The students received an email from their university reminding them of the rules, despite not having broken them.²⁴⁷

Only one male student reported to the Tab that he has faced harassment from Covid marshals. He told how he was questioned whilst waiting in a queue outside Sainsbury’s with friends and was asked for personal details, despite breaching no restrictions.²⁴⁸

²⁴⁴ Furious students tear down ‘new lockdown fences’ during passionate protest against Manchester University’s decision to ‘pen them in’ – Helen Johnson, Manchester Evening News, 5th November 2020: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/furious-students-tear-down-new-19231246>

²⁴⁵ Goldsmiths Rent Strike, Twitter, 29th November 2020: <https://twitter.com/goldrentstrike/status/1333164117394382851>

²⁴⁶ Covid marshals have allegedly been harassing students despite following guidelines - Eve Brennan and Theresa Merkel, the Tab, 27th November 2020: <https://thetab.com/uk/newcastle/2020/11/27/covid-marshals-have-allegedly-been-harassing-students-despite-following-guidelines-52642>

²⁴⁷ Ibid.

²⁴⁸ Ibid.

Police

Universities have been working closely with the police to monitor student behaviour and enforce restrictions. Many have been eager to increase police presence both on campus and around areas where students live, and several have actively referred students to police forces for fines.

The University of Manchester said it was recording the details of students who breached rules, including “social distancing rules” and would not hesitate to pass details onto the police.²⁴⁹ They also threatened the imposition of a curfew across campus, which they would not have the legal authority to impose.

Coventry University said it was working with police to identify students who breached restrictions from CCTV footage and social media, and the university’s accommodation provider called the police to report its residents who were hosting a large gathering.²⁵⁰

After issuing fines to students who held a party in their accommodation in Nottingham, Chief Constable Craig Guildford threatened:

“...as we enter the final weeks of the current term, I would like to issue a very clear warning to anyone thinking of organising final ‘last hurrah’ gathering: we are only ever a phone call away, we will issue fines and both universities have been very clear publicly in terms of how seriously they treat this issue which I would encourage students and parents to reflect upon.”²⁵¹

In Wales, police broke up a party in student accommodation and fined 50 people for breaching the Regulations.²⁵² Body cam footage showed an officer telling students:

“Anyone who does not live in this flat is going to step outside one by one.

“Have your ID ready. I’m going to be taking details, course name, addresses of every individual in this flat who is currently in breach of Covid regulations.”

Fines and suspensions

As well as receiving fines and letters sent to their home addresses by police, students who have broken Covid rules have faced further disciplinary action from their universities. Students have been collectively fined over £60,000 by their universities. Students at Oxford Brookes have received a total of £18,950 in fines since the start of term, followed by Royal Holloway’s £8,200 and Manchester Metropolitan’s £7,800.²⁵³

²⁴⁹ Illegal student parties continue in Fallowfield halls despite curfew warnings - Josh Sandiford and Anja Samy, the Mancunion, 29th September 2020: <https://mancunion.com/2020/09/24/student-parties-continue-in-halls/>

²⁵⁰ Cov Uni working with police and threatening expulsion after massive halls party – Laura Williams, the Tab, 30th September 2020: <https://thetab.com/uk/coventry/2020/09/30/cov-uni-working-with-police-and-threatening-expulsion-after-massive-halls-party-8712>

²⁵¹ Police urge everyone to play their part in Covid fight after party of nearly 200 people broken up – Nottinghamshire Police, 30th November 2020: <https://www.nottinghamshire.police.uk/news-article/police-urge-everyone-play-their-part-covid-fight-after-party-nearly-200-people-broken>

²⁵² More than 50 students fined after police break up party at halls of residence – Sam Corbishley, Metro, 14th November 2020: <https://metro.co.uk/2020/11/14/more-than-50-students-fined-over-party-at-halls-of-residence-13595085/>

²⁵³ Ranked: This is how many students at your uni have been punished for Covid partying – Greg Barradale, the Tab, 9th November: <https://thetab.com/uk/2020/11/09/ranked-this-is-how-many-students-at-your-uni-have-been-punished-for-covid-partying-181597>

University of Nottingham stated after a halls party that “students will be fast-tracked to the highest levels of our process where suspension and exclusion are potential outcomes.”²⁵⁴ They have disciplined more students than any other university, 608, and have investigated students who have been fined by police and given them additional fines.²⁵⁵ Queen Mary evicted four students from their halls after breaking rules²⁵⁶, five Leicester students have been suspended²⁵⁷ and 12 students in Swansea have been suspended for ‘serious breaches’.²⁵⁸ Given the widespread confusion over the differences between legal restrictions and guidance, it is not clear whether students have actually broken any laws.

At the University of Bristol, students received an email threatening fines for “all residents of [an accommodation block] unless the individuals responsible for organising and promoting the large gathering either come forward or are identified” in response to a breach of restrictions.²⁵⁹ This approach is wholly disproportionate.

RECOMMENDATION 24: Universities should boost student support, not subject students to increased surveillance, intimidating security forces, fines, or false imprisonment.

²⁵⁴ Party of 200 students broken up by police - Chiara Giordano, the Independent, 1st December 2020: <https://www.independent.co.uk/news/uk/crime/nottingham-university-students-party-coronavirus-fines-b1763918.html>

²⁵⁵ Ranked: This is how many students at your uni have been punished for Covid partying – Greg Barradale, the Tab, 9th November: <https://thetab.com/uk/2020/11/09/ranked-this-is-how-many-students-at-your-uni-have-been-punished-for-covid-partying-181597>

²⁵⁶ Four students kicked out of their halls because they broke uni Covid rules – Greg Barradale, the Tab, 2nd November 2020: <https://thetab.com/uk/2020/11/02/four-students-kicked-out-of-their-halls-because-they-broke-uni-covid-rules-180836>

²⁵⁷ Ranked: This is how many students at your uni have been punished for Covid partying – Greg Barradale, the Tab, 9th November: <https://thetab.com/uk/2020/11/09/ranked-this-is-how-many-students-at-your-uni-have-been-punished-for-covid-partying-181597>

²⁵⁸ Swansea University suspends 15 students for Covid breaches – BBC News, 5th November 2020: <https://www.bbc.co.uk/news/uk-wales-54821684>

²⁵⁹ Rent Strike Bristol, Twitter, 24th November 2020: <https://twitter.com/RentStrikeBris/status/1331338334023643136?s=20>