

**EMERGENCY POWERS AND
CIVIL LIBERTIES REPORT**
[DEC 2020 - JAN 2021]

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.

Contact

Silkie Carlo

Director

Email: silkie.carlo@bigbrotherwatch.org.uk

Madeleine Stone

Legal and Policy Officer

Email: madeleine.stone@bigbrotherwatch.org.uk

Emergency Powers & Civil Liberties Report

Published: 4th February 2021

Acknowledgements: With thanks to Sophia Turner for contributing research to this report.

Contents

Introduction	4
Recommendations	6
Emergency Law	8
Health Protection Regulations.....	9
Tier system 2.0.....	9
Christmas.....	11
Lockdown 3.0.....	12
Ending restrictions.....	13
Role of Parliament.....	14
Ultra vires?.....	17
Accessible law.....	18
Tier system 2.0.....	18
Lockdown 3.0.....	20
Enforcement.....	21
Enforcing ‘the spirit of the law’.....	22
Stop and account.....	23
Travel.....	24
Travel between tiers.....	24
Local area.....	25
Exercise.....	26
Gatherings.....	29
Hospitality venues.....	30
Face coverings.....	33
Businesses.....	34
Fines.....	36
Prosecutions.....	37
Divergence.....	38
Wales.....	39
Scotland.....	40
Northern Ireland.....	41
Coronavirus Act.....	44
Freedom of Religion	46
NHS and Palantir	48
NHS Test and Trace	51
Health Passports	53
Commercial plans.....	56
Covid Marshals	57
Freedom of Expression	59
Free speech online.....	59
Freedom of assembly.....	61
Case studies.....	62

Introduction

This report on the UK's pandemic response covers the end of a year that saw the greatest loss of liberty in our country since World War II and a Christmas period unlike any other in our history.

Barely a day after Parliament went on recess for Christmas, the Prime Minister delivered a decree he had vowed not to and had even described as 'inhuman' just days before – making it a criminal offence for millions of people to spend time with their families over Christmas. 20 million people were put under stay at home orders at the very last moment by another last-minute Ministerial diktat delivered via a press conference. Whether one views the restriction as necessary or not, the timing of its enforcement indicated incompetence at best, a cynical evasion of the democratic process at worst, and on some accounts a combination of the two.

This is an unacceptable way to govern a democratic nation. The Prime Minister's criminalisation of the most important family celebration of the year, reversing promises he made in the House of Commons the instant parliament rose, left him with barely a shred of democratic legitimacy. This reckless manner of rule-making over the minutiae of our family lives is incompatible with any reasonable notion of a democratic social contract. It is more characteristic of social control.

Mr Johnson seems unmoved as he adopts the role of Britain's most authoritarian Prime Minister in modern history. He has acquired form for announcing the most restrictive decrees at times that undermine or simply evade parliamentary scrutiny.

The first national lockdown law in March was imposed one day after Parliament went on recess.

The second national lockdown was announced to the nation, as though it were law, two days before Parliament returned from recess.

Christmas was all but cancelled as soon as MPs left for the Christmas recess.

And the Prime Minister welcomed the New Year by declaring the third and longest national lockdown in a televised address to the nation on 4th January – yet again, as though it were law, two days before Parliament returned from recess.

The Prime Minister has now established a clear, determined pattern of abuse of urgent procedures and secondary legislation, trashing constitutional democratic norms and reducing the 'mother of parliaments' to what senior MPs have described as a mockery, a charade and a rubber-stamping exercise. Liberty, lives and livelihoods are being lost in this democratic void. Whilst MPs have had little to no meaningful impact on the management of the pandemic, there is no doubt they will share the responsibility for its dire consequences at the ballot box.

Big Brother Watch's petition for parliament to be recalled before Christmas quickly gained over 10,000 votes – but parliament was not recalled until after Christmas. As the Prime Minister's disdain for democracy brings the importance of parliamentary safeguards into sharp relief, there has emerged a clear need to review procedures for the recall of parliament. It cannot be left only to Ministers to request that the Speaker recalls parliament – in a system of *parliamentary* sovereignty, a critical mass of MPs should be afforded the same power.

We cannot make the mistake of assuming that our democracy will return to perfect form as soon as the immediate stressors are released, simply like a mechanical spring. History tells a different story. It is not the case that mass vaccinations will, as hopeful as they may be, return the country to "normal". In fact, with the emergence of frequently-denied Government-funded plans for vaccine passports there is a real risk that civil liberties will be "at further risk in some of the Government's proposals for an exit strategy" as we warned would be the case if no action was

taken in our very first Emergency Powers and Civil Liberties report in April 2020. The authoritarian reflexes the UK has acquired for lockdowns, shock and awe law-making and rule by fiat cannot be entirely unlearned. Despite 2020 being the year of taking back control and “recapturing sovereignty,” as Mr Johnson put it, Parliamentary sovereignty has crumbled under the weight of his undemocratic instincts.

This report examines the erosion of democratic norms; the exploitation of urgent procedures to enforce lockdowns and throw open a police gateway to NHS data with no scrutiny; the unjustified police ‘crackdown’ on citizens; the use of health regulations to silence protests, dissent and even suppress election leafleting; the government’s extrajudicial pressure on social media companies to censor lawful speech online; and the big tech digital coup taking over patient data and the NHS’ digital infrastructure behind closed doors.

You will read cases of police enforcement that are morally reprehensible – from the family in Scotland all curiously charged with assault of police officers after their home was aggressively entered resulting in the teenage daughter’s seizure; to the family members of the Birmingham pub bombing victims being fined for holding a planned memorial service.

These issues cannot be dismissed as anomalous excesses, mistakes, or well-intended acts for the ‘greater good’. These are the symptoms of a growing culture of authoritarianism that is too fast becoming normalised and redefining the character of our country. We cannot ignore them.

Recommendations

RECOMMENDATION 1: 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 2: The Government must publish a roadmap out the restrictions and any new restrictions must be introduced with a clear, quantifiable set of goals and a corresponding plan as to how restrictions will be eased.

RECOMMENDATION 3: Parliamentarians of all parties must demand meaningful prior scrutiny, debates and votes on Health Protection Regulations. It is unacceptable that after ten months, Parliament continues to be evaded in favour of 'emergency' law-making by Ministers.

RECOMMENDATION 4: Police should continue the 4 'Es' approach of engaging, explaining and encouraging before enforcing.

RECOMMENDATION 5: The Government and National Police Chief's Council must stress to all police forces the difference between legislation, guidance and public health advice, and must not imply legal authority where there is none.

RECOMMENDATION 6: It must be made clear to all police forces that the Health Protection Regulations do not give police the power to demand personal information from people in absence of grounds for suspicion.

RECOMMENDATION 7: If the Government returns to the tier system after the national lockdown, it must make clear to all police forces that travel between tiers is not unlawful. Any fines issued to individuals solely for leaving their tier area should be rescinded.

RECOMMENDATION 8: The suppression of political campaigning is an affront to democracy. All Fixed Penalty Notices issued to those involved in leafleting should be rescinded and the Government must immediately withdraw guidance that suggests that political leafleting is unlawful.

RECOMMENDATION 9: The National Police Chief's Council should urgently issue a clarification to police officers about the law on the requirement to wear a face covering and affirm that people who are exempt from the requirement do not have to carry proof of this exemption.

RECOMMENDATION 10: Supermarkets and other retailers must follow the EHRC guidance and ask staff and customers to respect that some people, including those with disabilities and those with experience of trauma, are exempt from wearing face coverings. Staff should not deny people without face coverings entry to shops and must not demand proof of exemptions.

RECOMMENDATION 11: Police chiefs should urgently instigate a national review of all fixed penalty notices issued under the lockdown Regulations.

RECOMMENDATION 12: The Government should introduce a means for individuals to challenge lockdown fixed penalty notices by way of administrative review or appeal, without having to risk magistrates' court proceedings.

RECOMMENDATION 13: The use of the Single Justice Procedure has led to wide variance in fines and in some cases, unlawful prosecutions. The Crown Prosecution Service should assess the use of the Single Justice Procedure in relation to charges under the Health Protection Regulations and ensure that individuals are not fined more than the cap proscribed in law.

RECOMMENDATION 14: Protests should be exempt from the requirement to seek authorisation for large gatherings. Guidance should be issued to ensure that political and democratic engagement is not curtailed.

RECOMMENDATION 15: 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 16: Schedule 22 of the Coronavirus Act contains draconian powers to prohibit gatherings that have never proven necessary. It must be repealed.

RECOMMENDATION 17: Prohibitions on communal worship are an unacceptable restriction on freedom of religion. The Scottish government must exempt places of worship from restrictions on gatherings and allow communal worship to resume.

RECOMMENDATION 18: Robust safeguards are required given the highly sensitive nature of the data processed by the NHS-Palantir Foundry. An accurate and complete Data Protection Impact Assessment for the datastore must be published.

RECOMMENDATION 19: The NHS and Government must commit to disbanding the Covid-19 Data Store/NHS Foundry and deleting all personal data at the soonest possibility.

RECOMMENDATION 20: The Department of Health should urgently publish the MoU allowing police access to NHS Test and Trace data.

RECOMMENDATION 21: The Department of Health must immediately reverse plans to allow police access to NHS Test and Trace data and reassure the public of their medical confidentiality in order to maintain trust in contact tracing and uphold privacy rights.

RECOMMENDATION 22: The UK Government and devolved administrations should not pursue any form of mandatory digital vaccine certification, which would infringe multiple human rights and perpetuate discrimination. The Vaccines Minister must urgently address the ongoing vaccine certification trials and confirm that the systems will not be implemented.

RECOMMENDATION 23: Making vaccinations mandatory in order to access work, services or travel is highly likely to cause discrimination in many circumstances. The Government should introduce legislation preventing businesses from issuing discriminatory vaccine requirements.

RECOMMENDATION 24: Registering and tracking employees who have received or refused vaccinations is excessive, intrusive and discriminatory. Businesses should respect medical confidentiality and delete any vaccination records.

RECOMMENDATION 25: It is highly questionable whether the Government exerting extrajudicial pressure on social media companies to censor lawful content is compatible with its duty to protect freedom of expression. Therefore, all such activity should be immediately stopped. The Government should publish records of the work of the Counter-Disinformation Unit with details of the content it has encouraged social media companies to remove.

RECOMMENDATION 26: The right to protest must be restored as a matter of urgency. Peaceful protests are critical to the preservation of democracy and human rights.

Emergency Law

Almost a year after the first national lockdown, the UK government's response continues to feature last minute, hastily written and constantly amended emergency legislation. 'Emergency' law that bypasses the democratic process should not be the norm when dealing with a pandemic that was first declared by the World Health Organisation a year ago.¹

The Hansard Society's Coronavirus Statutory Instrument Dashboard records a total of 360 new statutory instruments, an additional 56 since Big Brother Watch's last report.² At the time of writing, a total of 706 statutory instruments have been passed across the United Kingdom which have 'coronavirus' in the title. A total of 110 Acts of Parliament, 5 Orders and 4 EU Regulation have been used to pass coronavirus legislation. The Coronavirus Act 2020 has been used to pass only 19 pieces of secondary legislation. 4 Coronavirus-related statutory instruments have been laid using powers in the EU (Withdrawal) Act 2018.

These pieces of legislation represent serious restrictions and alterations to every element of public and private life, yet only 17 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.³

Baroness Hale, former President of the Supreme Court, said there had been a "bewildering flurry" of new coronavirus related legislation:

"The difficulty with that is partly the bewildering rapidity with which the regulations have been changed and the difficulty of studying the regulations adequately in order to debate them properly.

"The normal orderly process of scrutinising delegated legislation has not taken place."⁴

By mid-January, human rights barrister Adam Wagner calculated there had been 64 pieces of coronavirus criminal law since February, or new rules every 4.5 days.⁵ Lockdown laws have continued to change since this assessment. The Institute for Government's report into Government decision-making found 27 policy U-turns in the eight months between May 2020 and January 2021, which "have happened after ministers have committed, unnecessarily, to one particular course of action that later proved unwise."⁶ The report goes on to say that "when ministers repeatedly go back on statements they have made, the government begins to lose credibility."

RECOMMENDATION 1: 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.

¹ Coronavirus declared global health emergency by WHO – BBC News, 31st January 2020: <https://www.bbc.co.uk/news/world-51318246>

² Coronavirus Statutory Instruments Dashboard — Hansard Society (updated 29th January 2021): <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>

³ Ibid.

⁴ Corrected oral evidence: Constitutional implications of Covid-19 – Select Committee on the Constitution, 2nd December 2021: <https://committees.parliament.uk/oralevidence/1359/pdf/>

⁵ English Covid rules have changed 64 times since March, says barrister – Rajeev Syal, the Guardian, 12th January 2021: <https://www.theguardian.com/world/2021/jan/12/england-covid-lockdown-rules-have-changed-64-times-says-barrister>

⁶ Whitehall Monitor 2021 – Institute for Government, 28th January 2021, p. 26: https://www.instituteforgovernment.org.uk/sites/default/files/publications/whitehall-monitor-2021_0.pdf

Health Protection Regulations

Tier system 2.0

The Tier system was reintroduced on 2nd December via The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, after the end of a second, time-limited national lockdown. However, the tier system had been altered from its first iteration in October. The Government branded it as a “stronger and more sustainable tiers framework”, with Medium, High and Very High Alert Levels being replaced with Tiers 1, 2 and 3 and rules on gatherings and businesses tightened.⁷

The 10pm curfew for restaurants and pubs was replaced with ‘last orders’ at 10pm and an 11pm curfew.⁸ Hospitality venues serving alcohol had to close unless they served alcohol alongside “a table meal” in Tier 2, while all hospitality venues had to close in Tier 3.⁹

Government guidance stressed that people should “avoid travel into Tier 3 areas” and those in Tier 3 areas should “avoid travelling out of the area”, but this was not written into law.¹⁰

The exemption on gatherings for the purpose of “education and training” was defined more strictly than previously, with only activities organised by schools, colleges, workplaces, or educational institutes permitted.¹¹

The supposed clarity of the tier system was undermined by the fact that two different tier systems were introduced in less than three months and the rules were highly complex. Charles Holland, a public law barrister who has analysed the Health Protection Regulations, wrote:

“(…) one has to wonder whether anyone seriously thinks these provisions are going to be understood, let alone adhered to, by the people they purport to control (all 56m of them). The move away from “common sense” as announced on 23 June by the Prime Minister to this Dungeons & Dragons Rulebook style drafting is, will, I fear, devalue (or further devalue) the legislative currency.”¹²

Following pressure from the Conservative backbenches for an impact assessment of the restrictions, the Government published “The health, economic and social effects of COVID-19 and the tiered approach.”¹³ The analysis provided no meaningful alternative approach to which the tier system could be compared, other than “the alternative of allowing COVID-19 to grow exponentially”

⁷ COVID-19 Winter Plan – Cabinet Office, GOV.UK, 2nd December 2020, p. 21:
<https://www.gov.uk/government/publications/covid-19-winter-plan/covid-19-winter-plan>

⁸ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 1, para 8(1), Schedule 2, para 11(1) (as made)

⁹ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 2, para 14; Schedule 3, para 9(1) (as made)

¹⁰ COVID-19 Winter Plan – Cabinet Office, GOV.UK, 2nd December 2020, p. 23:
<https://www.gov.uk/government/publications/covid-19-winter-plan/covid-19-winter-plan>

¹¹ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 1, para 3(5), Schedule 2, para 4(5), Schedule 3, para 4(4) (as made)

¹² Return of the tiers: The All Tiers and Enforcement Powers Regulations – Charles Holland, 1st December 2020: <https://www.docdroid.net/muXNKe6/v1-all-tiers-regualtions-and-enforcement-powers-regulations-pdf>

¹³ The health, economic and social effects of COVID-19 and the tiered approach – Department of Health and Social Care, GOV.UK, 30th November 2020:
<https://www.gov.uk/government/publications/the-health-economic-and-social-effects-of-covid-19-and-the-tiered-approach>

which “is much worse for public health” – characterising opposition to using criminal law and sweeping restrictions as support for total inaction. Mark Harper, chair of the Covid Recovery Group, said “[s]oon after its publication, the Govt’s analysis seems to be collapsing under the glare of scrutiny”¹⁴ and later, “[i]n future, Govt should treat MPs & the public we serve like adults and show us the evidence.”¹⁵ This impact assessment was ultimately a meaningless gesture to backbenchers, particularly given that the tier approach was scrapped a month later, and no impact assessment has been shared for any new measures.

Many areas were placed into higher tiers than they had been before the November lockdown and many MPs expressed their frustration at the inconsistencies over which tier areas in their constituencies were placed into. Cat Smith, Labour MP for Lancaster and Fleetwood, was one of many MPs whose constituents were frustrated by the lack of clarity over the tier system:

“I have spent my weekend hearing from constituents who say that it is unfair that Lancaster and Fleetwood has been placed under tier 3 restrictions when the infection rates are far lower than those in the vast majority of London boroughs, which end up in tier 2, and lower than those in neighbouring district councils such as South Lakeland, which is in tier 2, as is the whole of Cumbria.

“When my constituents see an unfairness and a discrepancy in how these tiers are applied, the kickback tends to be, “Well, why should I follow them?”¹⁶

The tiers that areas were placed into rapidly changed throughout December. On 16th December, London and Essex were placed into Tier 3.¹⁷ On 19th December, parts of Brighton and Hove, Oxfordshire and Southampton were moved up to Tier 2, whilst Bristol City and North Somerset moved down to Tier 2. More of the South East, Medway and Slough moved to Tier 3.¹⁸

The following day, on 20th December, Tier 4 was created, with London and much of the South East and East of England immediately placed under the new restrictions.¹⁹ We examine the deeply undemocratic way in which this was done in the ‘Role of parliament’ section further on in this report. The law was enforced before it was published, on 21st December. On 26th December, another 6 million people were placed into Tier 4 – Sussex, Oxfordshire, Suffolk, Norfolk, Cambridgeshire, Hampshire, with the exception of the New Forest, and the parts of Essex and Surrey not already in Tier 4.²⁰ On 31st December, more areas across England were placed into Tier 4, resulting in around three quarters of the country entering the highest level of restrictions. North Yorkshire and Liverpool were placed under Tier 3 restrictions.²¹ None of these decisions was approved by Parliament.

¹⁴ Mark Harper, Twitter, 30th November 2020:

https://twitter.com/Mark_J_Harper/status/1333488906919174144?s=20

¹⁵ Mark Harper, Twitter, 1st December 2020:

https://twitter.com/Mark_J_Harper/status/1333806677246816257?s=20

¹⁶ HC Deb, 1st December 2020, vol. 685, col. 185: <https://hansard.parliament.uk/commons/2020-12-01/debates/27DE3E44-807A-4596-AD7C-946314AC3E2A/PublicHealth>

¹⁷ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2020

¹⁸ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 2) Regulations 2020

¹⁹ The Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020, para 2(13)

²⁰ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 3) Regulations 2020

²¹ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 4) Regulations 2020

Christmas

When first passed, the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 contained provisions for “linked Christmas households,” which allowed households to link with two other households to permit visits “during the Christmas period” (23rd December 2020 to 27th December).²² The approach was agreed on across the four nations, with Wales, Scotland and Northern Ireland making similar legal provisions.

However, there was backlash over this Christmas exemption, with Opposition Leader Sir Keir Starmer calling it a “mistake” and urging the Prime Minister to “toughen up” the restrictions.²³ The Prime Minister defended this approach, saying “it would not be right to criminalise people who made plans and simply want to spend time with their loved ones.”²⁴ Home Secretary Priti Patel similarly said “We’re not here to criminalise people around Christmas.”²⁵ However, the Government was in a well-established pattern of criminalising people for ordinary behaviours at this point, including for celebrating other important cultural and religious festivals and for seeing family members for other special occasions. The defence of Christmas gatherings was, rightly or wrongly, an act of exceptionalism. Even so, within days the decision was reversed and much of England was prohibited from mixing at all over the Christmas period.

This was on 19th December when, in a press briefing, the Prime Minister announced the creation of Tier 4, which would apply to London, the South East and East of England, and would prohibit mixing during Christmas. All other tier areas would be limited to mixing on Christmas Day only.²⁶ In Scotland, it was also announced on 19th December that the five-day mixing period was restricted to just Christmas Day, and travel in and out of Scotland for the purpose of a holiday gathering was prohibited.²⁷ On the same day, the Welsh First Minister announced that Christmas gatherings would also be limited to 25th December.²⁸ The Northern Irish Executive followed suit on 21st December, announcing that the three household bubble would be permitted on 25th December only.²⁹

Millions of people, with only several days’ notice, had their Christmas plans cancelled by executive order. In a year of serious hardship and loss for most of the population, it was wrong to promise people the chance to see family members, and then remove this with little warning.

²² The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Regulation 4 (as made)

²³ Labour leader Keir Starmer calls on Boris Johnson to ‘toughen up’ Christmas restrictions in England – Daniel O’Mahony, Evening Standard, 18th December 2020: <https://www.standard.co.uk/news/uk/christmas-covid-rules-england-keir-starmer-b374251.html>

²⁴ Boris Johnson says a ‘smaller Christmas is safer’ and urges public to think carefully about festive plans – Chloe Chaplain, Microsoft News, 16th December 2020: <https://www.msn.com/en-gb/health/familyhealth/boris-johnson-says-a-smaller-christmas-is-safer-and-urges-public-to-think-carefully-about-festive-plans/ar-BB1bYTIs6>

²⁵ Priti Patel says police should only take action against ‘egregious’ Covid breaches over Christmas – Sophie Sleigh, Evening Standard, 17th December 2020: <https://www.standard.co.uk/news/politics/priti-patel-police-action-covid-breaches-christmas-b350841.html>

²⁶ Prime Minister’s statement on coronavirus (COVID-19): 19 December 2020 – GOV.UK, 19th December 2020: <https://www.gov.uk/government/speeches/prime-ministers-statement-on-coronavirus-covid-19-19-december-2020>

²⁷ New guidance issued for the festive period – Scottish Government, 19th December 2020: <https://www.gov.scot/news/new-guidance-issued-for-the-festive-period/>

²⁸ Wales to go into lockdown from midnight as new rules announced for Christmas – John Cooper, Wales Online, 19th December 2020: <https://www.walesonline.co.uk/news/wales-news/wales-coronavirus-christmas-lockdown-covid-19490235>

²⁹ Christmas bubbles to be limited to one day in Northern Ireland – David Young, Belfast Telegraph, 21st December 2020: <https://www.belfasttelegraph.co.uk/news/northern-ireland/christmas-bubbles-to-be-limited-to-one-day-in-northern-ireland-39884953.html>

Lockdown 3.0

On 4th January, in a national address, the Prime Minister announced that the entirety of England would be placed into Tier 4 – essentially a third national lockdown, issuing ‘stay at home’ guidance and closing schools, just one day after they had returned from the Christmas break.³⁰

The Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021 prohibit the entire population from “leav[ing] or be[ing] outside of the place where they are living without a reasonable excuse.”³¹ The Amendment places all of England into a de facto ‘lockdown’, by expanding the application and increasing the severity of Tier 4 restrictions.

Read together with these preceding Regulations, the new Amendment creates a complex list of exemptions to the requirement to stay at home, including to buy goods for any business or service permitted to open, to obtain money from or deposit money to a business permitted to open, for exercise outside, to attend a place of worship, to undertake an activity related to the purchase or letting of a house, 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), 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, for prison or immigration detention visits, to vote, to take part in an outdoor sports gathering if the person has a disability, for students to move between their family homes and student accommodation and for picketing.³² This is a non-exhaustive list.

Gatherings of two or more people are prohibited unless they are 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, if the gathering takes place 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 with no more than 30 people in attendance or a marriage ceremony with no more than 6 people in attendance, to visit a dying person (indoors), for the purpose of training or competition for elite sportspeople, for children to move between households, for students to move between accommodation, for communal worship, or for picketing.³³ This is an exhaustive list, given that there is no ‘reasonable excuse’ for a gathering, but rather a list of exemptions.

All businesses are required to close, unless listed in Part 3 of Schedule 3A to the primary Regulations.

Regulation 2 of the Amendment also expands the powers of Police Community Support Officers (PCSOs) to enforce the restrictions, by expanding Regulation 12 of the coronavirus restrictions

³⁰ Prime Minister's address to the nation: 4 January 2021 – GOV.UK, 4th January 2021: <https://www.gov.uk/government/speeches/prime-ministers-address-to-the-nation-4-january-2021>

³¹ Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021, para 3(13)(b)

³² The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 3A, para 2(1)

³³ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 3A, para 6(1)

imposed on 18th July (The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020), This means that a relevant person, including a police officer, PCSO or even a council official, may “direct a person to return to the place where they are living”, and may disperse a gathering.³⁴ Police officers may remove a person from the gathering using “reasonable force.”³⁵ Furthermore, a relevant person “may 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.”³⁶

An offence under these Regulations could initially result in a Fixed Penalty Notice (FPN) of £200, rising to £6,400 for repeat offences.³⁷ An individual found to be the organiser of a gathering of more than 30 people could also face a Fixed Penalty Notice (FPN) of £10,000.³⁸ A further amendment to the Regulations, which was laid and came into force on 29th January, introduced an additional “large gathering offence.”³⁹ An individual participating in a gathering of more than 15 people in a private dwelling, education accommodation, or in an indoor rave can be issued with an £800 FPN.⁴⁰

Ending restrictions

These Regulations expire on 31st March, almost 3 months after they came into force.⁴¹ This is an extraordinary length of time for emergency laws and far longer than the seven weeks the Prime Minister suggested when announcing the third national lockdown.⁴² However, Ministers have been reluctant to commit to when restrictions might actually be lifted. When imposing the most draconian laws ever seen in peacetime Britain, the Government must provide clear, quantifiable parameters for what they are seeking to achieve with these restrictions and therefore, how and when they will be lifted.

When asked on LBC if restrictions would be eased before the end of March, Home Secretary Priti Patel said, “of course we would love to see that and say that, but that’s not for us to speculate.”⁴³ If it is not for the Government, who introduced these measures, to speculate as to when they will be lifted, then who should? The Prime Minister later said, “I think it’s too early to say when we’ll be able to lift some the restrictions,”⁴⁴ and the Health Secretary said on 24th January that the UK is “a long, long way” from being able to lift restrictions.⁴⁵

³⁴ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Regulation 9(2A), (3)(a)

³⁵ Regulation 9(4)

³⁶ Regulation 11(1)

³⁷ Regulation 12 (1)(a)(ii), (1)(b)(v)

³⁸ Regulation 12(4)

³⁹ The Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021, para 2(d)

⁴⁰ Ibid.

⁴¹ The Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021, para 3(2)

⁴² Prime Minister’s address to the nation: 4 January 2021 – GOV.UK, 4th January 2021: <https://www.gov.uk/government/speeches/prime-ministers-address-to-the-nation-4-january-2021>

⁴³ Twitter, LBC, 7th January 2021: <https://twitter.com/LBC/status/1347092979534745601?s=20>

⁴⁴ Boris Johnson: ‘Too early to say’ when UK lockdown will ease - Matt Honeycombe-Foster, Politico, 21st January 2021: <https://www.politico.eu/article/boris-johnson-too-early-to-say-when-uk-lockdown-will-ease-in-wake-of-new-data/>

⁴⁵ UK is a long, long way from the end of lockdown, warns Matt Hancock – Oliver Wright, the Times, 24th January 2021: <https://www.thetimes.co.uk/article/uk-is-a-long-long-way-from-the-end-of-lockdown-warns-matt-hancock-3xvmphtmm>

On 27th January, the Prime Minister announced that the Government would be publishing a roadmap out of the restrictions, but not until 22nd February.⁴⁶ This roadmap should have been published when England was first placed into a lockdown – not over six weeks later. It is an abuse of power to introduce draconian restrictions without providing information as to how and when they will be lifted.

RECOMMENDATION 2: The Government must publish a roadmap out the restrictions and any new restrictions must be introduced with a clear, quantifiable set of goals and a corresponding plan as to how restrictions will be eased.

Role of Parliament

The introduction of a new tier (Tier 4) via The Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020 was announced by the Prime Minister at a press conference on 19th December 2020 – two days after Parliament had gone into recess. The Regulations came into force the following morning at 7am but were not laid before Parliament until the following day, 21st December. Almost three quarters of the country was placed into Tier 4 before any debate was held in Parliament.

A petition organised by Big Brother Watch to recall Parliament to debate the introduction of Tier 4 and the criminalisation of people wanting to see family members over Christmas quickly reached over 12,000 signatures.⁴⁷ Parliament was eventually recalled for one day on 30th December, for the purpose of passing the European Union (Future Relationship) Bill. A debate on the Health Protection Regulations was held, where MPs expressed frustration over the lack of Parliamentary scrutiny. Sir Charles Walker, Conservative MP for Broxborne, said:

“The great disappointment felt by many colleagues, who appreciate that the Government are under enormous pressure, is that the House rose on the Thursday, and the decision was made pretty much the next day. It is a great shame that the House was not recalled on the Friday, or possibly even the Saturday before Xmas, to scrutinise the new regulations.”⁴⁸

Sir Desmond Swayne, Conservative MP for New Forest West, highlighted the absurdity of their voting for Regulations the effect of which had already passed:

“This House legislated explicitly for specific arrangements to govern the celebration of Christmas, and no sooner than the House had risen itself for Christmas, the Government, by ministerial fiat, changed those arrangements.

⁴⁶ Boris Johnson announces ‘phased’ route out of lockdown will be revealed from February 22 – Britta Zeltmann, 27th January 2021: <https://www.thesun.co.uk/news/13865053/boris-johnson-phased-route-lockdown-february/>

⁴⁷ Recall Parliament now to scrutinise new Christmas coronavirus restrictions – Petitions, UK Government and Parliament: <https://petition.parliament.uk/petitions/564421>

⁴⁸ HC Deb, 30th December 2020, vol 686, col. 665: <https://hansard.parliament.uk/commons/2020-12-30/debates/4E1FC0E8-ABD0-4131-90E9-FAEC53E2B279/PublicHealth>

“We are asked this evening to give retrospective legislative approval to the changes that they made. We are in the absurd position of being asked to vote for the ghost of Christmas past.”⁴⁹

Mark Harper, Conservative MP for Forest of Dean and chair of the Covid Recovery Group, said:

“at a time when the country faces incredible challenges and many workers in the public service are working incredibly hard, the House’s role in scrutinising the important decisions of Government is essential.”⁵⁰

Meg Hillier, Labour MP for Hackney South and Shoreditch, said:

“I do have concerns—very big concerns—about how the Government have handled this. We have had mixed messages. The schools announcements today and just before the recess were all over the place. Half-announcements are made, but no detailed information is available. If we press a question, we get nothing back. It is great when the House is sitting, so theoretically we can hold Ministers to account, but too often we get no answers.”⁵¹

However, despite the concerns raised in parliament, rule by decree has continued. A third national lockdown, introduced via The Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021, was announced by the Prime Minister via a televised address – not even a press conference – while parliament was still on recess, on 4th January. The Regulations came into force at 00:01 on 6th January, after being published less than seven hours before, at 5.30pm on 5th January. The Regulations were not debated until the afternoon of 6th January, when parliament resumed. The debate was somewhat undermined by the fact the Prime Minister had already announced to the nation that “the Government is once again instructing you to stay at home. You may only leave home for limited reasons permitted in law.”⁵² In fact, every major enforcement of restrictions since and including March 2020, spanning three national lockdowns and the Tier 4 Christmas prohibitions, has come into force without prior parliamentary approval.

It seems unlikely that Parliament will be afforded any meaningful role in the prior approval (or otherwise) of restrictions. Sir Graham Brady, Conservative MP and chair of the 1922 Committee, asked the Health Secretary:

“Will the Secretary of State go further and give a commitment to a further vote at the end of January and the end of February, so that the House will have control over what is happening?”⁵³

⁴⁹ HC Deb, 30th December 2020, vol 686, col. 671: <https://hansard.parliament.uk/commons/2020-12-30/debates/4E1FC0E8-ABD0-4131-90E9-FAEC53E2B279/PublicHealth>

⁵⁰ HC Deb, 30th December 2020, vol 686, col. 673: <https://hansard.parliament.uk/commons/2020-12-30/debates/4E1FC0E8-ABD0-4131-90E9-FAEC53E2B279/PublicHealth>

⁵¹ HC Deb, 30th December 2020, vol 686, col. 673: <https://hansard.parliament.uk/commons/2020-12-30/debates/4E1FC0E8-ABD0-4131-90E9-FAEC53E2B279/PublicHealth>

Prime Minister's address to the nation: 4 January 2021 – GOV.UK, 4th January 2021: <https://www.gov.uk/government/speeches/prime-ministers-address-to-the-nation-4-january-2021>

⁵³ HC Deb, 6th January 2021, vol. 686, col. 786: <https://hansard.parliament.uk/commons/2021-01-06/debates/06F079A7-0E76-4320-997D-61ABB2F5A441/PublicHealth>

"(...) We should certainly all take personal responsibility, and I share my right hon. Friend the Health Secretary's enthusiasm for an effective and rapid vaccination programme. But that does not absolve this House of its responsibility to protect the liberties of the British people or to hold the Government to account. Neither of those things would be consistent with approving regulations that would allow a full lockdown to be in place for the next three months, to 31 March. Today, both the Prime Minister and the Secretary of State have given me reassuring words that they do not want that, but the regulations give the power to decide that to the Government, not to this House."⁵⁴

Other Conservative backbenchers told the Health Secretary: "we are owed more debates and more votes long before the end of March."⁵⁵ The Health Secretary did not give a commitment to introduce votes on the continuation of restrictions, but rather said that any change in tier areas would require a vote.⁵⁶

When facing a backbench rebellion in September over the renewal of the Coronavirus Act, the Health Secretary pledged to MPs that they would be given opportunities to vote on all "significant national measures" before they came into force. Even this thin promise has been broken. As we warned at the time, the Health Secretary's promise had merely restated the default role of parliament as though it were a gentleman's agreement: it "was no concession, but a shattering reflection of how deeply power has been vested in Ministers' hands. We are not a democracy simply on the promise of parliamentary scrutiny, but the actual performance of it."⁵⁷

The actual performance of scrutiny is severely lacking. On 7th January, Lord Bethell told the House of Lords, "I emphatically reassure them [peers] that we remain committed to parliamentary scrutiny."⁵⁸ However, this 'reassurance' was issued as peers were asked to approve four sets of amendments to the Health Protection Regulations, weeks after some of them came into force. The Government's authoritarian approach during December 2020 and January 2021 deliberately evaded parliamentary democracy and undermined the rule of law, yet again, treating parliamentary process as a mere formality.

These Regulations represent a draconian response to the public health threat and deserve close and careful scrutiny. Instead, votes have been held on laws that have already come into force, rendering them ultimately meaningless.

RECOMMENDATION 3: Parliamentarians of all parties must demand meaningful prior scrutiny, debates and votes on Health Protection Regulations. It is unacceptable that after ten months, Parliament continues to be evaded in favour of 'emergency' law-making by Ministers.

⁵⁴ HC Deb, 6th January 2021, vol. 686, col. 798: <https://hansard.parliament.uk/commons/2021-01-06/debates/06F079A7-0E76-4320-997D-61ABB2F5A441/PublicHealth>

⁵⁵ HC Deb, 6th January 2021, vol. 686, col. 837: <https://hansard.parliament.uk/commons/2021-01-06/debates/06F079A7-0E76-4320-997D-61ABB2F5A441/PublicHealth>

⁵⁶ HC Deb, 6th January 2021, vol. 686, col. 786: <https://hansard.parliament.uk/commons/2021-01-06/debates/06F079A7-0E76-4320-997D-61ABB2F5A441/PublicHealth>

⁵⁷ Emergency Powers and Civil Liberties Report, Aug-Sept 2020 – Big Brother Watch, p.4: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/10/Emergency-Powers-and-Civil-Liberties-Report-AUG-SEPT-2020.pdf>

⁵⁸ HL Deb, 7th January 2021, vol. 809, col. 310: [https://hansard.parliament.uk/lords/2021-01-07/debates/A6FB3C66-F27A-43D8-9BDF-7A1B148D6074/HealthProtection\(CoronavirusRestrictions\)\(Self-IsolationAndLinkedHouseholds\)\(England\)Regulations2020#main-content](https://hansard.parliament.uk/lords/2021-01-07/debates/A6FB3C66-F27A-43D8-9BDF-7A1B148D6074/HealthProtection(CoronavirusRestrictions)(Self-IsolationAndLinkedHouseholds)(England)Regulations2020#main-content)

Ultra vires?

In previous reports, we have questioned whether the lockdown Regulations are ultra vires of the Public Health (Control of Disease) Act 1984. It is our view, and the view of many legal experts,⁵⁹ that the Secretary of State does not have the authority to impose such wide- reaching restrictions on people's liberty using the Public Health Act. The powers in question within the Act were intended for the isolation of individuals with the expressed approval of a magistrate, not to place the entire nation under house arrest.

Permission was granted by the Court of Appeal to bring a judicial review on the grounds that the Regulations were ultra vires, but found in favour of the Government. A subsequent application to the Supreme Court was unsuccessful.

David Allen Green, lawyer and legal commentator, wrote of the Court of Appeal's judgement:

"The classic model of freedom in a common law jurisdiction (such as England) is, of course, that one is free to do what one wishes – unless there is a specific prohibition.

(...)

"The court, however, seemed quite relaxed at this position being inverted under the regulations – that the starting point is that everyone is prohibited from doing what they want in respect of freedom of movement and assembly, unless there was a permission."⁶⁰

He also criticised the Court's hesitation to question the Government's position:

"Both the court of appeal and the court of first instance could not have sided more with the executive if they had wanted to do so.

"Each fundamental right was a mere tick box for the court to approve the interference by the state."⁶¹

It is vital for the rule of law that the judiciary balances the powers of the executive. It is disappointing that the courts were unwilling to interrogate more fully the vast powers the Government has awarded itself and the compatibility of those powers with rights protected by the Human Rights Act.

⁵⁹ For example: Can we be forced to stay at home? - David Anderson QC, 26th March 2020: <https://www.dagc.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, 6th 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/ultra-virus-the-constitutionality-and-legality-of-the-coronavirus-regulations/>

⁶⁰ Freedoms vs Permissions – a liberal look at the Court of Appeal judgment on the coronavirus regulations - David Allen Green, The Law and Policy Blog, 4th December 2020: <https://davidallengreen.com/2020/12/freedoms-vs-permissions-a-liberal-look-at-the-court-of-appeal-judgment-on-the-coronavirus-regulation/>

⁶¹ The myths of 'arrogant judicial power' and 'human rights gone mad' and the Dolan judgment – David Allen Green, The Law and Policy Blog, 5th December 2020: <https://davidallengreen.com/2020/12/the-myths-of-arrogant-judicial-power-and-human-rights-gone-mad-and-the-dolan-judgment/>

Accessible law

Making restrictions clear and accessible is critical for the rule of law and the protection of public health. Yet Government Ministers and police officers have made repeated errors as to the contents of Regulations, frequently blurring public health guidance and legislation, all while purporting the simplicity and clarity of restrictions.

John Apter, chair of the Police Federation told the Constitution Committee:

“No, the guidance versus legislation was not always clear, and it was certainly not always clear to police. It is understandable, but because of the speed of legislation being introduced, very often we would have situations where the legislation had been enacted but my colleagues on the ground had not had the guidance about [sic] was expected of them.

(...)

“A number of officers told me that they were learning of changes in legislation through the media.”⁶²

Lord Bethell, Health Minister, similarly admitted to the Constitution Committee there had been serious confusion around the restrictions due to poor parliamentary process:

“I am painfully aware of some of the more difficult events. Some have been laid at very short notice, some have been enforceable literally minutes after they have been published, some of them have been out of date before they have even been debated, some have had amendments and amendments and then the amendments are out of date before they are debated. It has become a very complex and overlapping series of regulations.”⁶³

Tier system 2.0

To add to confusion over the new Tier system, pubs were forced to close but those selling substantial meals were permitted to trade in Tiers 2 and 3, leading to a national debate over what counts as a ‘substantial meal’. Environment Secretary George Eustice told LBC that scotch eggs “would probably count;”⁶⁴ Boris Johnson’s spokesperson declared that “bar snacks” did not meet the new rules;⁶⁵ while cabinet minister Michael Gove contradicted himself a number of times in a

⁶² Oral evidence: Constitutional implications of Covid-19 - Select Committee on the Constitution, 9th January 2020: <https://committees.parliament.uk/oralevidence/1413/pdf/>

⁶³ Oral evidence: Constitutional implications of Covid-19 - Select Committee on the Constitution, 13th January 2021: <https://committees.parliament.uk/oralevidence/1500/pdf/>

⁶⁴ Drinkers could order scotch egg as substantial meal, minister tells LBC – LBC, 1st December 2020: <https://www.lbc.co.uk/news/environment-secretary-scotch-eggs-probably-count-as-substantial-meal/>

⁶⁵ COVID-19: Scotch egg demand surges tenfold under Tier 2 pub alcohol rules – Sky News, 12th December 2020: <https://news.sky.com/story/covid-19-scotch-egg-demand-surges-tenfold-under-tier-2-pub-alcohol-rules-12158811>

series of interviews.⁶⁶ Scotch eggs fast became a stand in for discussion of the micro-management of people's everyday lives under the ever-changing Regulations.

There was much derision of the illogical and confusing new tier system in Parliament.

Damian Green, Conservative MP for Ashford, argued during the debate on the Regulations that when rules do not make sense, people will not want or be able to follow them:

"To be as effective as possible, however, the new tiered system needs wide public consent. In the end, we are all responsible for our own actions, so I want to see a system that encourages the most people to obey the rules for the largest amount of time.

"I put to the Prime Minister last week the thoughts of a constituent who said that if the Government impose stupid rules, people will stop obeying the sensible rules as well. This was sadly dismissed. Since then, the national debate has moved on to how big a Scotch egg has to be to constitute a substantial meal. I rest my case.

"I am afraid that what we have before us today fails the test of maximising voluntary public support."⁶⁷

Adam Holloway, Conservative MP for Gravesham, agreed:

"I would have thought that encouraging personal responsibility was rather better than the nuances of how much people have to eat with their beer. As others have said, we must make sure that restrictions make sense, or we will drive down compliance."⁶⁸

Sir Ed Davey, leader of the Liberal Democrats, stressed the need for clear and fair rules:

"We need transparency and honesty in Government communications, so people understand what the rules actually are and why they must follow them, and are not just left confused and unconvinced. Conservative Members have talked about Scotch eggs and pork scratchings.

(...)

"It is not surprising that the general public are unclear about what the Government are trying to tell them."⁶⁹

Emma Lewell-Buck, Labour MP for South Shields said:

"Their mixed messaging and ever-shifting rules and regulations have caused confusion, so public health measures put in place are not being given enough time to embed properly into our everyday behaviour."⁷⁰

⁶⁶ Scotch egg is definitely a substantial meal, says Michael Gove – Archie Bland, the Guardian, 1st December 2020: <https://www.theguardian.com/world/2020/dec/01/scotch-egg-is-definitely-a-substantial-meal-says-michael-gove>

⁶⁷ HC Deb, 1st December 2020, vol. 685, col. 184: <https://hansard.parliament.uk/commons/2020-12-01/debates/27DE3E44-807A-4596-AD7C-946314AC3E2A/PublicHealth>

⁶⁸ HC Deb, 1st December 2020, vol. 685, col. 186: <https://hansard.parliament.uk/commons/2020-12-01/debates/27DE3E44-807A-4596-AD7C-946314AC3E2A/PublicHealth>

⁶⁹ HC Deb, 1st December 2020, vol. 685, col. 187: <https://hansard.parliament.uk/commons/2020-12-01/debates/27DE3E44-807A-4596-AD7C-946314AC3E2A/PublicHealth>

⁷⁰ HC Deb, 1st December 2020, vol. 685, col. 190: <https://hansard.parliament.uk/commons/2020-12-01/debates/27DE3E44-807A-4596-AD7C-946314AC3E2A/PublicHealth>

Lockdown 3.0

At a press briefing on 12th January, the Home Secretary Priti Patel repeated that the rules for the third lockdown were “simple and clear.”⁷¹ Yet when she listed the reasons a person may leave their home, she incorrectly included “outdoor recreation.” Outdoor recreation had previously been a reasonable excuse for leaving one’s home, but this was removed by The Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021 which introduced the national lockdown on 6th January. It was alarming and farcical that the Home Secretary, at a press conference she announced increased enforcement of restrictions on the basis that the rules are “simple” enough for everyone to understand, misunderstood and miscommunicated the rules.

When questioned about confusing lockdown rules as a council session, Julia Mulligan, North Yorkshire’s police, fire and crime commissioner said that “the debate and our obsession with the rules gets in the way of that overall thing that we need to do, and that is just to stay at home.”⁷² Going further to dismiss concerns, she said: “If you are in any doubt about whether your journey is essential or not, it probably isn’t.”

Metropolitan Police Deputy Assistant Commissioner Matt Twist, who leads the force’s response to the pandemic, wrote on the introduction of the third lockdown – before the new Regulations had even been published:

“After ten months of this pandemic the number of people who are genuinely not aware of the restrictions and the reasons they are in place is vanishingly small.

“The critical situation our NHS colleagues are facing and the way the new virus variant moves through communities, means we can no longer spend our time explaining or encouraging people to follow rules where they are wilfully and dangerously breaching.”⁷³

On the same day, Chair of the NPCC Martin Hewitt wrote in The Times:

“In the early days, I’m sure we made mistakes – albeit with good intentions – as we adjusted to the highly unusual situation in which we all found ourselves.

(...)

“After 10 months of dealing with the situation, and with varying national regulations and measures firmly in place again across the UK, everyone should now understand the rules in their area.”⁷⁴

⁷¹ Patel says lockdown rules are clear as UK records 1,243 more coronavirus deaths – video – The Guardian, 12th January 2021: <https://www.theguardian.com/politics/video/2021/jan/12/patel-says-lockdown-rules-are-clear-as-uk-records-1243-more-coronavirus-deaths-video>

⁷² ‘Obsession’ with debating lockdown rules not helpful, says North Yorkshire police boss – Jacob Webster, Richmondshire Today, 14th January 2021: <http://www.richmondshiretoday.co.uk/obsession-with-debating-lockdown-rules-not-helpful-says-north-yorkshire-police-boss/>

⁷³ Met announces stricter Covid enforcement approach – Metropolitan Police, 6th January 2021: <https://news.met.police.uk/news/met-announces-stricter-covid-enforcement-approach-418519>

⁷⁴ Our policing family has risen to the pandemic’s challenges – Martin Hewitt, the Times, 6th January 2021: <https://www.telegraph.co.uk/news/2021/01/06/policing-family-has-risen-pandemics-challenges/>

But as detailed in our reports – it is abundantly clear that many police officers, let alone the public, do not understand the laws in place. As such, engagement is still vital before enforcement.

RECOMMENDATION 4: Police should continue the 4 'Es' approach of engaging, explaining and encouraging before enforcing.

Enforcement

The Government has been pressuring police to increase enforcement throughout December and January. The Home Secretary Priti Patel wrote to police chiefs across England just before Christmas, telling them there was “no room for complacency” and encouraging “proactive policing.”⁷⁵ Policing Minister Kit Malthouse also confirmed that people “are much more likely to get fined by the police” than previously.⁷⁶

In a press briefing on 12th January, the Home Secretary Priti Patel and Martin Hewett, chair of the NPCC, emphasised that enforcement of the lockdown restrictions would be increased. They simultaneously claimed the rules were “very clear” while admitting “sometimes mistakes will be made” by police when enforcing.⁷⁷ If the rules were sufficiently clear, police forces across the country would not be making continuous errors. However, the same margin for error available to police forces has not been available to the public, who face growing fines.

After reports that infection rates were not dropping as quickly as hoped, Priti Patel and Martin Hewett gave another press briefing on 21st January, once again singling out an apparent “persistent minority” who continued to break coronavirus rules. The Home Secretary announced the introduction of £800 Fixed Penalty Notices for those attending a gathering of more than 15 people in a private household – a so-called ‘house party fine.’⁷⁸

Scotland Yard announced it would be challenging people who were outside of their homes as to their reason and stated they would be issuing immediate fines to those not wearing a face covering in a relevant place.⁷⁹ Cressida Dick, Commissioner of the Metropolitan Police, wrote in the Times that Londoners would see “officers moving much more quickly to enforcement action.”⁸⁰ Suffolk’s Assistant Chief Constable Rob Jones said that the force had been called to “step up” enforcement and that “patience is running out.”⁸¹

However, police have been on the receiving end of enforcement too. Amid police criticism of rule breakers and insistence that the rules are simple enough to preclude accidental breaches, there

⁷⁵ Priti Patel instructs police to clamp down on partygoers and pubs – Fiona Hamilton, the Times, 24th December 2020: <https://www.thetimes.co.uk/article/priti-patel-instructs-police-to-clamp-down-on-partygoers-and-pubs-k3b68lt7q>

⁷⁶ Priti Patel leads coronavirus press conference as police step up Covid rule enforcement – ITV News, 12th January 2021: <https://www.itv.com/news/2021-01-12/priti-patel-to-lead-coronavirus-press-conference-as-police-step-up-covid-rule-enforcement>

Stick with the rules during lockdown – Patel – BBC News, 12th January 2021: <https://www.bbc.co.uk/news/live/world-55629330>

⁷⁸ Covid: £800 house party fines to be introduced in England – BBC News, 21st January 2021: <https://www.bbc.co.uk/news/uk-55757807>

⁷⁹ Police to question people who are outside during lockdown – Charles Hymas, the Telegraph, 6th January 2021: <https://www.telegraph.co.uk/news/2021/01/06/people-face-police-checks-street-explain-third-covid-lockdown/>

⁸⁰ Police need the jab – Cressida Dick, the Times, 12th January 2021: <https://www.thetimes.co.uk/article/police-need-the-jab-x5jtkxxjm>

⁸¹ Covid-19: Police chiefs warn ‘patience running out’ with rule-breakers – BBC News, 12th January 2021: <https://www.bbc.co.uk/news/uk-england-suffolk-55632931>

have been several reports of police officers themselves being fined for breaching restrictions while on duty. Nine officers were fined for dining in a café together,⁸² while 31 officers were handed £200 FPNs for having their haircut at Bethnal Green police station.⁸³

Some officers have called for more enforcement powers. David Jamieson, the Police and Crime Commissioner for the West Midlands Police, called for powers of entry for police, in order to enforce Covid regulations.⁸⁴ In Wales and Scotland, police officers have these powers.⁸⁵

Enforcing 'the spirit of the law'

Managing a public health emergency by attempting to legislate for every element of public and private life evidently has led to confusion around rules and arbitrary policing. As has been seen throughout the pandemic, guidance and law have been conflated, often with police officers going beyond the law. As seen in examples below, police officers frequently justify excessive or unlawful enforcement by claiming they are enforcing the 'spirit' of the lockdown. By placing police at the forefront of public health, it is inevitable that some officers will interpret the law in line with their general assumptions over what is 'safe' for the public to do, instead of enforcing the law alone. Public law barrister Francis Hoar, who led Simon Dolan's challenge to the Health Protection Regulations, said:

"While the police must sometimes enforce laws that are controversial, it is highly inappropriate for them to do so while advocating the political justification behind them.

"Yet this is what senior police officers have done by promoting the idea that the regulations are necessary and virtuous – even to the extent of taking part in Downing Street press conferences. This is an abuse of their duty of neutrality. The police force was founded on the ideal that officers would be 'citizens in uniform', not servants of the government enforcing its political objectives."⁸⁶

RECOMMENDATION 5: The Government and National Police Chief's Council must stress to all police forces the difference between legislation, guidance and public health advice, and must not imply legal authority where there is none.

⁸² Nine officers fined for breaching Covid-19 legislation – Metropolitan Police, 20th January 2021: <https://news.met.police.uk/news/nine-officers-fined-for-breaching-covid-19-legislation-419163>

⁸³ Short, back inside: Dozens of police officers fined £200 each for getting haircut - Sian Elvin, Metro, 26th January 2021: <https://metro.co.uk/2021/01/26/dozens-of-police-officers-fined-after-getting-haircuts-at-station-13968165/>

⁸⁴ Police chief calls for power of entry into homes of suspected lockdown breakers – Vikram Dodd, the Guardian, 5th January 2021: <https://www.theguardian.com/world/2021/jan/05/police-chief-calls-for-power-of-entry-into-homes-of-suspected-lockdown-breakers>

⁸⁵ The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020, Regulation 34; The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, Regulation 6

⁸⁶ Why the overzealous policing of lockdown is a threat to us all - Rachel Cunliffe, New Statesman, 15th January 2021: <https://www.newstatesman.com/politics/uk/2021/01/why-overzealous-policing-lockdown-threat-us-all>

Stop and account

Under the Health Protection Regulations, police officers have no 'stop and account' powers. Individuals are not legally obliged to provide their name, address or information about where they are going to a police officer, unless they are suspected of an offence.

However, in the current environment where merely being outside of your home without a 'reasonable excuse' is an offence, cases of police arbitrarily asking citizens to account for themselves appear to have increased. Home Secretary Priti Patel, has endorsed this approach, warning "If you are out police officers may ask you for justification why you are out and about."⁸⁷

The Mail Online reported that on 7th January, a day after the lockdown came into force, groups of Metropolitan Police officers were patrolling outside tube stations, "questioning passengers as to the reason for their journey and also where they lived - after stopping drivers to establish why they were out and about."⁸⁸

In Suffolk, Assistant Chief Constable Rob Jones said officers have been "stopping drivers, cyclists and walkers to ask why they were away from their homes."⁸⁹ He said, "the vast majority were out for legitimate reasons but some, particularly on Saturday morning, had gone further out to the coast, perhaps for a walk and stopping at a café."

Lancashire Police warned on 15th January that there would be a "very visible" police presence on the streets and that residents should not be "offended" if they are stopped and asked for their reason for being outside of their homes.⁹⁰

In one incident, which was filmed, a West Midlands Police officer is seen asking a man about his reason for being out of his home.⁹¹ When the man responds that he is going to work, the officer then asks for his name and address. The man replies that he is not obliged to answer this question and asks him to turn on his body camera. The officer replies that he will "be dealing with this in a different manner now" and leaves the vehicle. The officer says: "Coronavirus legislation – you have to provide me with some details, otherwise you're going to be arrested. (...) If you fail to give me your details, you'll be arrested" and call the man an "idiot." The man repeatedly asks what offence he has committed and asks the officer to stand back. After the man tells the officer that "you need to be informed about the law", the officer pushes him into the back of the police car and says they will "sort this out in the station." Following a backlash on social media, West Midlands Police later issued an apology with a statement to say that the officer's "manner was not acceptable (...) and we will deal with the situation. (...) The man explained he was heading to work – that's clearly a justifiable reason to be out and about and there was no suspicion he had committed any offences."⁹²

⁸⁷ Good Morning Britain, Twitter, 7th January 2021: <https://twitter.com/GMB/status/1347101008372117505?s=20>

⁸⁸ How many officers does it take to find out where you are going? FOUR cops surround man outside Tube station, police patrol parks and benches are taped off in town centres as Covid crackdown continues.

⁸⁹ Covid-19: Police chiefs warn 'patience running out' with rule-breakers – BBC News, 12th January 2021: <https://www.bbc.co.uk/news/uk-england-suffolk-55632931>

⁹⁰ Lancashire Police tell people 'don't take offence if we stop you' – Sophie-May Clark, Lancashire Telegraph, 15th January 2021: <https://www.lancashiretelegraph.co.uk/news/19014034.lancashire-police-tell-people-dont-take-offence-stop-you/>

⁹¹ Twitter, 27th January 2021: <https://twitter.com/C1Haywood/status/1354417928007987205?s=20>

⁹² West Midlands Police, Twitter, 28th January 2021: <https://twitter.com/WMPolice/status/1354843211550830600?s=20>

These incidents are chilling and reflect the vast expansion of police powers since the beginning of the pandemic. It should not be the role of police to patrol the streets, questioning anyone who leaves their home.

RECOMMENDATION 6: It must be made clear to all police forces that the Health Protection Regulations do not give police the power to demand personal information from people in absence of grounds for suspicion.

Travel

Travel between tiers

Under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, there are no restrictions on travelling between tiers. However, police forces across the country have been issuing fines to individuals for leaving their tier area.

In Cornwall, the only place in mainland England in Tier 1 during December, police made ten extra double-crewed cars available to patrol “solely used for Covid-related matters” to deter visitors to the area.⁹³

In North Yorkshire, “police border patrols” were set up “to discourage people from neighbouring Tier 3 locations from travelling into the area.”⁹⁴ The force was also using ANPR to screen vehicles entering the county.⁹⁵ The force later reported that it had issued a “shocking number of fines” to those living in Tier 3 area who had entered Tier 2 areas.⁹⁶ People travelling into North Yorkshire by train were also warned they would be asked where they are from and why they are visiting.⁹⁷

Police in Merseyside were stopping vehicles entering the area, after areas surrounding Liverpool entered Tier 4.⁹⁸ Merseyside Police’s Roads Policing Unit tweeted that officers were “conducting Road Operations (...) enforcing Covid regulation breaches including those entering the area from Tier 4.” Another division of the force had “officers patrolling retail areas.”

⁹³ Cornwall police patrols will stop drinkers travelling to Tier 1 pubs – the Telegraph, 30th November 2020: <https://www.telegraph.co.uk/news/2020/11/30/cornwall-police-patrols-will-stop-drinkers-travelling-tier-1/>

⁹⁴ Police border patrols stepped-up while local authorities ensure Covid-19 alcohol with food rules are followed – North Yorkshire Police, 3rd December 2020: <https://northyorkshire.police.uk/news/police-border-patrols-stepped-up-while-local-authorities-ensure-covid-19-alcohol-with-food-rules-are-followed/>

⁹⁵ Border controls stop East Lancashire residents visiting Yorkshire – Abigail Beany, Lancashire Telegraph, 4th December 2020: <https://www.lancashiretelegraph.co.uk/news/18920958.border-controls-stop-east-lancashire-residents-visiting-north-yorkshire/>

⁹⁶ Police in York issue ‘shocking number’ of fines to visitors from tier 3 areas – Amy Walker, the Guardian, 22nd December 2020: <https://www.theguardian.com/world/2020/dec/22/police-york-issue-shocking-number-fines-visitors-tier-3-areas>

⁹⁷ Covid train travel checks by North Yorkshire police – BBC News, 4th December 2020: <https://bbc.in/2LbM0ob>

⁹⁸ Shoppers from Tier 4 stopped by police from entering Liverpool on major routes into city – Jenny Kirkham, Liverpool Echo, 1st January 2021: <https://www.liverpooecho.co.uk/news/liverpool-news/shoppers-tier-4-stopped-police-19551389>

South Wales Police's authority to carry out random vehicle checks was extended until 31st January, in line with Wales' Alert Level 4 coronavirus restrictions. 941 vehicle checks were conducted between 23rd December and 1st January as part of a roads policing operation.⁹⁹

Police routinely carried out checks in Tier 2 restaurants where they asked for everyone's address. On 13th December, Leicestershire Police fined seven diners at a business in Rutland for travelling in from a Tier 3 area.¹⁰⁰ Belle Vue restaurant in Filey, North Yorkshire, warned their customers online about police checks after a customer was fined £200.¹⁰¹

RECOMMENDATION 7: If the Government returns to the tier system after the national lockdown, it must make clear to all police forces that travel between tiers is not unlawful. Any fines issued to individuals solely for leaving their tier area should be rescinded.

Local area

On the first day of the third national lockdown, Thames Valley Police officers handed out flyers entitled 'Why are you here today?' and which read:

"Government restrictions require us to avoid ALL UNNECESSARY TRAVEL. You should exercise no more than once daily. This should be by walking, running or cycling etc. from your home address.

"You should not be driving to a location away from your home to carry this out. Please refrain from unnecessary travel until the restrictions have been lifted."¹⁰²

Some residents complained that elderly relatives were left "shaken up" and another said:

"There were two police officers stopping every single car and asking where we were going. I was handed this leaflet as shown below and told I cannot shop at the Tesco in Taplow as I live in Maidenhead."

Thames Valley Police apologised, blaming the flyers and stops on an "individual officer who was just a bit keen."

When questioned about the 'stay local' guidance, North Yorkshire Police Superintendent told North Yorkshire County Council that "There are blatant breaches left, right and centre and I am confident

⁹⁹ South Wales Police issued 430 FPNs for Covid-19 breaches in December – South Wales Police, 1st January 2021: <https://www.south-wales.police.uk/news/south-wales/news/south-wales-police-issued-430-fpns-for-covid-19-breaches-in-december/>

¹⁰⁰ Police to fine seven men who travel from Tier 3 into Tier 2 Rutland to eat and drink – Adrian Troughton, Leicestershire Live, 13th December 2020: <https://www.leicestermercury.co.uk/news/local-news/police-fine-seven-men-who-4793925>

¹⁰¹ COVID RAID Tier 2 restaurant warning as cops dish out £200 fines to Tier 4 diners after demanding customers' proof of address – Britta Zeltmann, the Sun, 29th December 2020: <https://www.thesun.co.uk/news/13594376/tier-2-restaurant-warns-diners-cops-fine-address/>

¹⁰² Police stop drivers and ask 'why are you here?' during crackdown on travel – Tom Williams, Metro, 7th January 2021: <https://metro.co.uk/2021/01/07/police-stop-drivers-and-ask-why-are-you-here-during-covid-lockdown-13862782/?ico=related-posts>

that my staff understand what local means.”¹⁰³ He added that breaches of the guidance would be dealt with on an “individual basis” and with “common sense.”

In Devon and Cornwall, police officers have been stopping people and asking where they are travelling from and “having to make a really difficult judgement about what is reasonable and what is not,” according to Deputy Chief Constable Paul Netherton.¹⁰⁴ The force has also been using ANPR to access information about vehicles, both from static cameras and from an ANPR app on officer’s devices. Police and Crime Commissioner Alison Hernandez said:

“I welcome the force’s use of ANPR to monitor vehicle movements and make sure the only journeys being made here are essential ones. Using this technology helps us see where certain vehicles have come from and allows officers to further investigate their reasons for travel.”¹⁰⁵

In Wales, Carol Richards was fined £60 for driving 10 miles to wave at her mother through the window of her mother’s care home.¹⁰⁶ Her husband was also fined. Mrs Richards said she was pulled over by a police officer when returning from the visit, who told her the visit was “non-essential” and gave her the fine. The couple complained to the Police Complaints Commissioner and later reported that they had received an apology and the fine had been withdrawn.¹⁰⁷

Exercise

One of the ‘reasonable excuses’ for leaving or being outside of one’s home is for the purpose of exercise outside.¹⁰⁸ People are no longer permitted to leave their homes for “open air recreation.”¹⁰⁹ Exercise can be alone, with one’s household or linked household, or with one other person from another household. There is no reference in the Regulations to the distance an individual may travel in order to exercise, how many times a day a person may exercise or limitations on the type of exercise that is permitted. However, Government guidance states exercise “should be limited to once per day, and you should not travel outside your local area” for exercise.¹¹⁰ Police confusion

¹⁰³ ‘Obsession’ with debating lockdown rules not helpful, says North Yorkshire police boss – Jacob Webster, Richmondshire Today, 14th January 2021: <http://www.richmondshiretoday.co.uk/obsession-with-debating-lockdown-rules-not-helpful-says-north-yorkshire-police-boss/>

¹⁰⁴ Covid-19: ‘Police need to be firm to save lives’ – BBC News, 11th January 2021: <https://www.bbc.co.uk/news/av/uk-55617093>

¹⁰⁵ Number plate reading cameras to track people who are breaking lockdown restrictions – ITV News, 12th January 2021: <https://www.itv.com/news/westcountry/2021-01-12/number-plate-reading-cameras-to-track-people-who-are-breaking-lockdown-restrictions>

¹⁰⁶ Jogger is stopped by Covid marshal for ‘breathing heavily’ on run as police say exercise rules need to be TIGHTENED – James Robinson, Mail Online, 13th January 2021: <https://www.dailymail.co.uk/news/article-9142053/Jogger-stopped-Covid-marshal-breathing-heavily-run.html>

¹⁰⁷ Police cancel fine given to couple who visited elderly mother in care home – Cathy Owen and Hannah Neary, Wales Online, 14th January 2021: <https://www.walesonline.co.uk/news/wales-news/coronavirus-police-lockdown-fine-bridgend-19621426>

¹⁰⁸ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 3A, para 2(2)(c)

¹⁰⁹ The Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021, Para 3(4)(a)

¹¹⁰ National lockdown: Stay at Home – Cabinet Office, GOV.UK, updated 28th January 2021: <https://www.gov.uk/guidance/national-lockdown-stay-at-home>

about the law versus Government guidance has led to unlawful fines and arbitrary policing, as officers seek to enforce the guidance rather than the law.

There was controversy after the Prime Minister was seen cycling in the Queen Elizabeth Olympic park in east London, 7 miles from his home.¹¹¹ Speaking on BBC Breakfast, Policing Minister Kit Malthouse said in response people must not “stretch the rules”, but whether or not 7 miles was local “depends on where you are.”¹¹²

However, police have applied rules on travel to exercise harshly, despite the absence of legal authority. Two women were surrounded by police and fined £200 each after travelling 5 miles to meet for a walk in Foremark reservoir.¹¹³ The women were told by officers from Derbyshire Police that since they had coffee their walk “classed as a picnic” and that travelling for exercise was “clearly not in the spirit of the national effort.” After widespread backlash, the force withdrew the fines and apologised to the women.¹¹⁴ The National Police Chief’s Council issued guidance following the incident, stating:

“UK Government guidance strongly requests that people do not leave their local area. However, the Covid Regulations which officers enforce and which enables them to issue FPNs for breaches, do not restrict the distance travelled for exercise.

“In situations where people are breaching the guidance not to travel out their local area but are not breaching regulations, officers will encourage people to follow the guidance.”¹¹⁵

However, Derbyshire Police also issued fines to those who visited Calke Abbey for walks, whilst they ‘patrolled’ the grounds of the stately home.¹¹⁶ The National Trust had posted earlier in the day: “The parkland at Calke Abbey remains open for local visitors to access fresh air and open space for exercise in line with government guidance.” However, Derbyshire Police posted:

“Officers from across South Derbyshire safer neighbourhood team have been conducting proactive patrols at tourist attractions today.

“Strong, effective engagement with visitors to these places has resulted in a number of fines being issued.

“Everyone is reminded to STAY HOME and follow current guidance.”

¹¹¹ Boris Johnson under pressure over bike ride seven miles from No 10 – Jessica Elgot, the Guardian, 12th January 2021: <https://www.theguardian.com/politics/2021/jan/11/pm-under-pressure-over-bike-ride-seven-miles-from-no-10-boris-johnson-covid>

¹¹² Boris Johnson's bike ride: a storm in a teacup or eroding public confidence? – Alexandra Topping, the Guardian, 12th January 2021: <https://www.theguardian.com/politics/2021/jan/12/boris-johnsons-bike-ride-a-storm-in-a-teacup-or-eroding-public-confidence>

¹¹³ Covid: Women on exercise trip ‘surrounded by police’ – Caroline Lowbridge, BBC News, 8th January 2021: <https://www.bbc.co.uk/news/uk-england-derbyshire-55560814>

¹¹⁴ Derbyshire police withdraw two women's £200 fines for lockdown walk – Jessica Murray, the Guardian, 11th January 2021: <https://www.theguardian.com/world/2021/jan/11/derbyshire-police-withdraw-two-womens-200-fines-for-lockdown-walk>

¹¹⁵ Force welcomes new guidance from NPCC about travelling during lockdown – Derbyshire Constabulary, 8th January 2021: <https://www.derbyshire.police.uk/news/derbyshire/news/news/forcewide/2021/january/force-welcomes-new-guidance-from-npcc-around-about-travelling-during-lockdown/>

¹¹⁶ Confusion over lockdown law as police fine Calke Abbey visitors – Tom Mack, Leicestershire Live, 7th January 2021: <https://www.leicestermercury.co.uk/news/local-news/confusion-over-lockdown-law-police-4866733>

When questioned by members of the public if they were allowed to travel several miles to reach the Abbey, a representative from the force replied “<https://www.gov.uk/coronavirus> is where you will find the answers. Your journey should be essential.”

On 9th January, Shropshire officers tweeted that throwing snowballs “is likely to result in a £200 Fixed Penalty Notice for breaking the lockdown rules.”¹¹⁷ After receiving dozens of complaints, they apologised:

“Well that definitely snowballed out of hand.

“It has been brought to our attention that our earlier Tweet that seemed to imply that throwing snowballs would land you with an FPN. Obviously, this isn’t the case.

“We were trying highlight that leaving your home to carry out acts of antisocial behaviour could be considered a breach of the Covid-19 regulations. On reflection we really didn’t word this very well. Sorry!”

This exemplifies the way in which police have blurred public health legislation to manage antisocial behaviour.

A family of 6 were all issued with £200 fines from the Ministry of Defence force for visiting Salisbury Plain, after calling emergency services when an adult in the group was injured.¹¹⁸ The force had previously stated that they would issue fines to “non-locals” and stated, “Andover is not considered local”, and the east of Salisbury Plain is “not considered local to Warminster.”¹¹⁹ Issuing FPNs to individuals after calling emergency services for help is also highly questionable practice and could discourage people from seeking vital health services.

On 10th January, three people were arrested and issued with Fixed Penalty Notices in Bournemouth after sitting on a bench.¹²⁰ In footage of the event, one woman can be seen saying “I was sitting on a bench” while being handcuffed and led away by officers. Another is seen in conversation with officers who tell her, “You’ve been filmed today in the town centre and around here and walking up and down,” implying that doing so would be an offence.

A division of Essex Police posted on Facebook that they had “cause to speak with” a number of people who “seemed to feel it was acceptable” to play the mobile game Pokémon Go whilst they were walking.¹²¹ Police in Warwickshire fined a man £200 after he drove to a beach to play the game.¹²²

¹¹⁷ Covid: Police threaten snowball throwers with £200 lockdown fine – Peter Stubley, the Independent, 8th January 2021: <https://www.independent.co.uk/news/uk/home-news/snowball-coronavirus-fine-lockdown-shropshire-police-b1784609.html>

¹¹⁸ Injured man who ‘tied up 999 resources for 90 minutes’ on Salisbury Plain issued fine – Daniel Jae Webb, Wiltshire 999s, 11th January 2021: <https://www.wiltshire999s.co.uk/injured-man-who-tied-up-999-resources-for-90-minutes-on-salisbury-plain-issued-fine/>

¹¹⁹ Non-locals banned from Salisbury Plain as police crack down on illegal lockdown visits – Daniel Jae Webb, Wiltshire 999s, 8th January 2021: <https://www.wiltshire999s.co.uk/non-locals-banned-from-salisbury-plain-as-police-crack-down-on-illegal-lockdown-visits/>

¹²⁰ Instagram, 9th January 2021: <https://www.instagram.com/p/CJ1c2Xhhu1/>

¹²¹ Jogger is stopped by Covid marshal for ‘breathing heavily’ on run as police say exercise rules need to be TIGHTENED – James Robinson, Mail Online, 13th January 2021: <https://www.dailymail.co.uk/news/article-9142053/Jogger-stopped-Covid-marshall-breathing-heavily-run.html>

¹²² Covid-19: Bedworth Pokemon player fined for lockdown breach – BBC News, 13th January 2021: <https://www.bbc.co.uk/news/uk-england-coventry-warwickshire-55648546>

Portsmouth City Council revealed in January that it has been using drones to monitor the numbers of people walking at the seafront.¹²³

Owen Weatherill, the NPCC's lead on coronavirus restrictions, told the Home Affairs Select Committee that "more proscriptive" rules around exercise would "help people to understand". However, the solution to confusion around restrictions is not to add more granular restrictions.

Gatherings

On 6th December, police made four arrests outside Harrods, where crowds of people had gone out Christmas shopping days after the lockdown had lifted.¹²⁴ Two of the arrests were related to breaches of the Regulations – it is not clear which.

6 people received £200 Fixed Penalty Notices after attending a memorial cavalcade for those who were killed in the 1974 Birmingham pub bombings.¹²⁵ Julie Hambleton, the sister of Maxine Hambleton who died in the attacks, worked with West Midlands Police to facilitate the event, but after the convoy had ended at West Midlands Police Headquarters, a small group of individuals who had attended were fined for gathering. Miss Hamilton also received a fine when she approached the group "to thank them for their support and ask them to disperse." Two MPs criticised the police's decision to issue FPNs as "morally wrong", and wrote to West Midlands Police Chief Sir Dave Thompson.¹²⁶

In one particularly harrowing incident, a family in Scotland was subject to aggression and apparently violence from police officers investigating an unsubstantiated allegation regarding a gathering in their home. A teenage girl, who had just been discharged from hospital, was pushed to the floor by officers after approaching them and had a seizure. In footage captured on the teenager's phone, her family members, including her 9 year old brother, can be heard screaming for help, telling officers to "get off of her, she's got epilepsy" and repeatedly begging the officers to check the girl's breathing.¹²⁷ When the teenager regained consciousness, she and the two adults were charged for assaulting police officers.¹²⁸ Remarkably, Police Scotland's Chief Constable Iain Livingstone said during Scotland's daily press briefing that he was "satisfied about the legitimacy and the proportionality of the police response".¹²⁹ Big Brother Watch is in contact with the family – we expect to report on the development of this case.

¹²³ Portsmouth Council use drones to monitor beach footfall during lockdown – Daniel Gibson, Public Sector Executive, 12th January 2021: <https://www.publicsectorexecutive.com/articles/portsmouth-council-use-drones-monitor-beach-footfall-during-lockdown>

¹²⁴ 'Chaos' as hundreds flout Covid-19 rules outside Harrods as police arrest four – Chris Kitching, the Mirror, 6th December 2020: <https://www.mirror.co.uk/news/uk-news/chaos-hundreds-flout-covid-19-23122667>

¹²⁵ Relatives of Birmingham pub bombing victims are hit with £200 fines for breaking lockdown... by attending a memorial to those killed in the 1974 terrorist horror – Claire Duffin, the Daily Mail, 7th January 2021: <https://www.dailymail.co.uk/news/article-9124019/Relatives-Birmingham-pub-bombing-victims-hit-200-fines-attending-memorial.html>

¹²⁶ MPs criticise Covid fines for Birmingham pub bombings campaigners as 'morally wrong' - Express and Star, 10th January 2021, <https://www.expressandstar.com/news/uk-news/2021/01/09/mps-criticise-fine-for-birmingham-pub-bombings-campaigners-as-morally-wrong/>

¹²⁷ Twitter, Big Brother Watch, 8th January 2021: <https://twitter.com/BigBrotherWatch/status/1347264640552759296?s=20>

¹²⁸ Three people are charged with assaulting police after officers entered family's home 'after being told too many people were inside' – Emer Scully, MailOnline, 8th January 2021: <https://www.dailymail.co.uk/news/article-9123839/Coronavirus-Scotland-Three-people-charged-assaulting-police.html>

¹²⁹ Police Scotland chief 'satisfied' with Aberdeen 'house party Covid breach' response as clip goes

A comprehensive primary school in Oldham, Yew Tree Community School, threatened to expel children who break lockdown restrictions on gatherings.¹³⁰ Head teacher Martine Buckley posted on Facebook:

"Our lovely children are open and honest and they tell us about their lives and activities," she said. A number of them are telling us that they are visiting friends, neighbours and family which is against the law. (...) I am afraid I will have to withdraw the offer of a place in school to children whose parents are putting us in danger."

One man, whose grandchildren attend Yew Tree Community School, told BBC News that the children were being "questioned" about their activities at home and that his granddaughters were "intimidated" by the tone. Under the lockdown regulations, parents are responsible for children under the age of 18 breaching rules on gatherings, and it is evident that a child is not responsible for following complex regulations on gatherings. It would be grossly wrong to remove a child from education on this basis.

In Leeds, two young men were "tracked down" by police officers at the end of January after organising a large snowball fight in a park.¹³¹ The men were both fined £10,000.

Hospitality venues

Hospitality businesses have had a large amount of complex and constantly changing regulations to adhere to in order to stay open. Hospitality venues are required (when open) to ensure "no bookings are accepted for a group of more than six persons" unless an exemption applies; to allow no groups of more than 6 to enter; and to ensure "no person joins another group or otherwise acts in a way which would contravene the Principal Regulations."¹³² They are also required to ensure that an "appropriate distance" is maintained between tables.¹³³ They are not required to check the addresses or IDs of those entering to ensure that they are from separate households. This would be overly onerous for businesses and invasive of customers' privacy. However, many venues have faced huge fines for not ensuring that guests are from the same household.

A pub in Barnstable was issued with fixed penalty notices totalling £3,000 for breaches, including not checking customers were part of the same household.¹³⁴

viral and three charged – Katy Pagan, the Scottish Sun, 8th January 2021: <https://www.thescottishsun.co.uk/news/scottish-news/6507690/aberdeen-police-house-party-video-satisfied-response-covid/>

¹³⁰ Covid: Oldham school to withdraw places for lockdown-breach pupils – BBC News, 26th January 2021: <https://www.bbc.co.uk/news/uk-england-manchester-55809975>

¹³¹ Two men fined £10,000 each for organising snowball fight – Gareth Davies, the Telegraph, 28th January 2021: <https://www.telegraph.co.uk/news/2021/01/28/two-men-fined-10000-organising-snowball-fight/>

¹³² The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020, Regulation 1A(1)

¹³³ The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020, Regulation 2(1)(d)

¹³⁴ Barnstable pub fined for breaking Covid rules – Tony Gussin, North Devon Gazette, 16th December 2020: <https://www.northdevongazette.co.uk/news/crime/brnstable-pub-rumours-fined-for-covid-breach-6852980>

One pub owner in Stockport did not know which rules had been broken after receiving a £1,000 fine for serving mince pies and mulled wine on New Year's Eve via a 'Covid-safe hatch'.¹³⁵

A £1,000 fine was given to the owners of the Lefke restaurant in Upminster after they allowed dancing to take place on the premises.¹³⁶

The owner of The Wayfarer at Instow criticised the "heavy-handed" police approach after ten officers burst into the premises – "it was almost like something off the TV, a crazy drugs raid." He received fines worth £4,000, including for not checking that tables were from the same household.¹³⁷

West Mercia Police issued a £10,000 fine to the owners of a Telford pub after two tables inside were found to be made up of people from different households.¹³⁸ Those sitting at the table were also given £200 fines each.

Campaigning

In the Regulations, a person is permitted to leave the place where they are living if it is reasonably necessary for the purpose of work or volunteering and for "activities ancillary to voting."¹³⁹ Campaigning in relation to an election would clearly fall under one or both of these exemptions.

However, in Dorset, police officers have told local councillors that they are not permitted to deliver leaflets containing information about local support services and details about the upcoming elections.¹⁴⁰ When human rights barrister and lockdown law commentator Adam Wagner commented that this was an incorrect reading of the law, Dorset Police Assistant Chief Constable Sam de Reya responded on Twitter that:

"our legal advice is political leafleting is not paid work & their [sic] is no exemption. Describing this activity as volunteering services is not at the spirit of the #COVID19 legislation or the ongoing #StayHomeSaveLives messaging"¹⁴¹

It is not the role of police forces to enforce 'the spirit' of legislation or Government messaging. Notwithstanding this, it is evident that delivering leaflets with information about local support and election information can be considered 'volunteering' under the Regulations, especially given that they were delivered by local councillors. Public law barrister Charles Holland commented that "the list of exceptions is a non-exhaustive list of what constitutes a reasonable excuse. Given that it would be lawful to pay a commercial leaflet distributor to do this, how is it unreasonable to do it

¹³⁵ A pub in Stockport was fined £1,000 for 'breaking Tier 4 rules' on NYE - the landlady says she's done nothing wrong – Sophie Halle-Richards, Manchester Evening News, 4th January 2021: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/pub-stockport-fined-1000-breaking-19559099>

¹³⁶ Fines issued to Romford and Upminster restaurants flouting coronavirus restrictions - Adriana Elgueta, Romford Recorder, 13th January 2021: <https://www.romfordrecorder.co.uk/news/business/having-businesses-fined-6902298>

¹³⁷ Instow pub owner hits back at 'heavy-handed' Covid enforcement – Tony Sussin, North Devon Gazette, 22nd December 2020: <https://www.northdevongazette.co.uk/news/instow-pub-owner-enforcement-response-6866146>

¹³⁸ Two £10,000 fines issued in Telford – West Mercia Police, 21st December 2020: <https://www.westmercia.police.uk/news/west-mercia/news/2020/december/two-10000-fines-issued-in-telford/>

¹³⁹ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020
¹⁴⁰ Twitter, 16th January 2021: <https://twitter.com/jeztmartin/status/1350488424294330373?s=20>

¹⁴¹ Assistant Chief Constable Sam de Reya, Twitter, 18th January 2021: <https://twitter.com/ACCSamdeReya/status/1351229141551620103?s=20>

yourself (assuming all safety measures adopted?)”¹⁴² A legally-questionable police ban on this basic campaigning activity has serious implications for the integrity of elections, given that parties with more resources would be able to hire people to deliver leaflets, while those relying on volunteers would be unable to campaign.

In Hampshire, police wrote to the Andover Liberal Democrat party with “appropriate advice” after leaflets were delivered in the area. A spokesperson for the force said: “We have been made aware of campaign leaflets being delivered in the Andover area, for which there is no exception for under the previous tier four regulations and now the national lockdown.”¹⁴³

In London, mayoral candidate Brian Rose and his team of six production staff were issued with FPNs whilst filming a campaign video in Southwark.¹⁴⁴ Police officers told the team that “campaigning was not a necessary reason” to be outside of their homes. Mr Rose said the fines were “an affront to democracy” and stated that he would challenge the fines.

On 22nd January, Cabinet Office minister Chloe Smith wrote to representatives of political parties, informing them that door-to-door campaigning and leafleting are not permitted under the Regulations:

“Current national lockdown restrictions in England, say: “You must not leave, or be outside of your home except where necessary”.

“The Government's view is that these restrictions do not support door-to-door campaigning or leafleting by individual political party activists.

“It is widely accepted that voters can continue to get campaigning information remotely. In order to reduce transmission of Covid-19 infections, door to door campaigning *at this point in time* is therefore not considered essential or necessary activity.”¹⁴⁵

This misrepresents the law: the Regulations do not say “You must not leave, or be outside of your home except where necessary.” This is the wording of the guidance, not the law. Instead, individuals are permitted to leave their homes for a non-exhaustive list of ‘reasonable excuses.’

It is extremely worrying that the Government has curtailed a key part of the democratic process in the name of public health. Elections have already been postponed by a year – it is essential that elections proceed, and that the work and volunteering needed to ensure that they are free and fair goes ahead safely and unimpeded.

RECOMMENDATION 8: The suppression of political campaigning is an affront to democracy. All Fixed Penalty Notices issued to those involved in leafleting should be rescinded and the Government must immediately withdraw guidance that suggests that political leafleting is unlawful.

¹⁴² Charles Holland, Twitter, 18th January 2021:

<https://twitter.com/charlescholland/status/1351239212251623424>

¹⁴³ Lib Dems defend leaflet deliveries during lockdown as form of ‘volunteering’ – Paul Waugh, the Huffington Post, 14th January 2021: https://www.huffingtonpost.co.uk/entry/liberal-democrats-leafleting-lockdown-angela-rayner-amanda-milling_uk_60008ca2c5b697df1a03f076

¹⁴⁴ London Mayor candidate fined for breaching lockdown rules – Joe Talora, East London & West Essex Guardian, 25th January 2021: <https://www.guardian-series.co.uk/news/19036529.london-mayor-candidate-fined-breaching-lockdown-rules/>

¹⁴⁵ Doorstep campaigning during the national lockdown in England – Letter from Chloe Smith MP, Minister of State for the Constitution and Devolution, 22nd January 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/955122/MCD_letter_to_members_of_the_Parliamentary_Parties_Panel.pdf

Face coverings

In our November report, we detailed several incidents of people with disabilities being removed from shops, fined and even handcuffed for not wearing face coverings. Individuals are exempt from the requirement to wear a face covering if they “cannot put on, wear or remove a face covering” due to “any physical or mental illness or impairment, or disability” or if doing so would cause “severe distress.”¹⁴⁶ Importantly, there is no legal requirement to prove this exemption, as Government guidance stresses: “you do not routinely need to show any written evidence of this; you do not need to show an exemption card.”¹⁴⁷

The Government guidance was contradicted by senior police figure Ken Marsh, the Chair of the Metropolitan Police Federation, who stated on national radio that if someone explained that they were medically exempt from wearing a face covering but lacked paperwork, police should “carry on the enforcement and it’s for them to prove. It’s very straightforward.”¹⁴⁸ Mr Marsh repeated these comments to the Daily Mail, saying ‘If you have a medical reason for not wearing a mask, you now have to print off a clarification that proves you have an exemption.’¹⁴⁹ However, no such requirement exists in law.

Big Brother Watch, Disability Rights UK, Mencap, the Royal National Institute for Deaf People and the Survivors Trust wrote to Chair of the National Police Chiefs’ Council Martin Hewitt outlining concerns about the treatment of people who are legally exempt from the requirement to wear face coverings, amid this widespread confusion among police officers.¹⁵⁰ We have asked him to clarify to police officers the law on the requirement to wear a face covering and to affirm that people who are exempt from the requirement do not have to carry proof of this exemption. At the time of writing, we have not received a response.

Meanwhile, the enforcement of the requirement to wear a face covering has increased. A couple were handcuffed and tackled to the ground by a group of police officers, some of whom were not wearing masks, after officers approached them for not wearing masks.¹⁵¹ A video of the incident also appears to show an officer pepper -praying a bystander.

In Birkenhead, a Merseyside Police officer pinned to the floor and handcuffed a man when he refused to give his details after the officer asked him to pull his mask over his nose.¹⁵² Ryan Farrell,

¹⁴⁶ The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020, Regulation 4(a); The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020, Regulation 4(a)

¹⁴⁷ Face coverings: when to wear one, exemptions, and how to make your own – GOV.UK, 4th December 2020: <https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own>

¹⁴⁸ LBC, Twitter, 6th January 2021: <https://twitter.com/LBC/status/1346883686646603776?s=20>

¹⁴⁹ How many officers does it take to find out where you are going? FOUR cops surround man outside Tube station, police patrol parks and benches are taped off in town centres as Covid crackdown continues – Martin Robinson, James Tapsfield and Vivek Chaudhary, MailOnline, 7th January 2021: <https://www.dailymail.co.uk/news/article-9121471/Priti-Patel-backs-policequizzing-people-sitting-park-benches-lockdown.html>

¹⁵⁰ Rights groups warn “disabled people will bear the brunt” of police crackdown on mask rules – Big Brother Watch, 13th January 2021: <https://bigbrotherwatch.org.uk/2021/01/rights-groups-warn-disabled-people-will-bear-the-brunt-of-police-crackdown-on-mask-rules/>

¹⁵¹ THREE police officers wrestle mask-less couple to the ground and arrest them after stopping them for not wearing face coverings in Birmingham shopping centre – Tom Pyman, Mail Online, 31st December 2020: <https://www.dailymail.co.uk/news/article-9101823/Couple-arrested-attacking-three-police-officers-stopped-not-wearing-masks.html>

¹⁵² Moment ASDA shopper is handcuffed and ‘pinned to the floor’ by police in row over wearing mask,

who was shopping with his partner and child, said he had momentarily moved his mask which was steaming up his glasses when an officer asked him to place the mask over his nose, which Mr Farrell said he did. The officer then asked for Mr Farrell's details. Mr Farrell said:

"I didn't want to give my details because I hadn't done anything wrong and when he grabbed me I tried to pull away.

"I was startled and I didn't know what to do so I tried to get him away from me.

"He then put my hands behind my back and pushed me onto the floor."

He was then surrounded by three officers and forcibly removed from the store. A spokesperson from Merseyside Police confirmed that an officer had "asked for his name in order to record the advice" and that "he was advised if he refused to give his details he would be arrested. As the officer attempted to arrest him the man resisted arrest and was eventually safely handcuffed on the floor." There is no obligation for an individual to give their details to an officer to 'record advice.'

In what was clearly a trivial breach of the rules on face coverings, Scottish First Minister Nicola Sturgeon was photographed briefly removing her face covering to speak to guests at a funeral wake.¹⁵³ Clearly, it would be disproportionate to fine an individual in this instance, yet many other people have faced enforcement action for trivial breaches of regulations. Nicola Sturgeon said:

"Last Friday, while attending a funeral wake, I had my mask off briefly. This was a stupid mistake and I'm really sorry.

"I talk every day about the importance of masks, so I'm not going to offer any excuses.

"I was in the wrong, I'm kicking myself, and I'm sorry."

When even a senior politician is unable to remember or follow regulations, it indicates that they are too complex.

RECOMMENDATION 9: The National Police Chief's Council should urgently issue a clarification to police officers about the law on the requirement to wear a face covering and affirm that people who are exempt from the requirement do not have to carry proof of this exemption.

Businesses

Supermarkets Sainsbury's and Morrisons announced they would be posting security guards at the entrance to shops, who would refuse entry for those not wearing a face covering.¹⁵⁴ Sainsbury's emailed customers stating the guards would "challenge" anyone not wearing a mask or shopping in groups. One guard told a journalist: "We've been given strict instructions about masks. If you've not got one on, you're not getting in. It's as simple as that." Spokespeople from Tesco, Asda, Aldi

¹⁵³ Jemma Carr, Mail Online, 29th January 2021: <https://www.dailymail.co.uk/news/article-9200695/Moment-ASDA-shopper-handcuffed-pinned-floor-face-masks-row.html>
Coronavirus: Nicola Sturgeon apologises for mask rule breach at wake – Vincent Wood, the Independent, 23rd December 2020: <https://www.independent.co.uk/news/uk/politics/nicola-sturgeon-face-mask-wake-b1777935.html>

¹⁵⁴ First day of supermarket crackdown fails as shoppers reveal security guards are NOT ordering them to wear masks – Vivek Chaudhary, Rory Tingle, Jack Wright, Stephen Matthews and Dan Sales, Daily Mail, 12th January 2021: <https://www.dailymail.co.uk/news/article-9137553/Sainsburys-joins-Morrisons-reinstate-bouncers-outside-supermarkets.html>

and Waitrose confirmed that they would also be requiring people to wear face coverings in their shops.¹⁵⁵

HSBC stated it will require all customers to wear face coverings and that they reserve the right to withdraw the accounts of those who fail to do so.¹⁵⁶

In statements, several companies have noted that some people are 'medically exempt' from the requirement to wear a face covering. However, exemptions are not only medical – it includes those who may suffer from extreme distress when wearing a mask. It may be particularly challenging for those individuals to explain this exemption. The Survivors Trust, which works with survivors of sexual violence, reported that a third of survivors of rape and sexual abuse reported experiencing severe distress when covering their own face or seeing the faces of others covered. For people unable to wear masks due to past trauma, explaining this may be highly distressing.

Journalist Gary Chappell reported on Twitter that he had been refused entry to a branch of Tesco as he was not wearing a face mask, despite telling staff he was exempt from the requirement.¹⁵⁷ He reported that he had shown them a Government "downloadable exempt card" (which is not legally required, rather it is available to those who wish to use it), but that staff would only accept a "lanyard" as proof.¹⁵⁸ Another shopper was denied entry to Morrisons in south London, despite providing an exemption certificate.¹⁵⁹ He was told by security guards he needed to wear it around his neck.

In the wake of these incidents, the Equality and Human Rights Commission shared their guidance reminding retailers of their legal responsibility to disabled customers.¹⁶⁰ Alan Pringle, Executive Director of the EHRC, said:

"The pandemic has had a considerable impact on disabled people and they must not be forgotten when implementing these measures.

"All staff and customers are encouraged to be respectful and aware that not everyone is able to wear a mask and should not be asked to give evidence of their exemption. We will be writing to supermarkets to remind them of our guidance in this area. By not following this guidance, retailers are at risk of disability discrimination claims."¹⁶¹

RECOMMENDATION 10: Supermarkets and other retailers must follow the EHRC guidance and ask staff and customers to respect that some people, including those with disabilities and those with experience of trauma, are exempt from wearing face coverings. Staff should not deny people without face coverings entry to shops and must not demand proof of exemptions.

¹⁵⁵ Tesco, Asda, Aldi and Waitrose announce new face mask rules – Kieran Doody, Daily Echo, 13th January 2021: <https://www.bournemouthecho.co.uk/news/19007533.tesco-asda-aldi-waitrose-announce-new-face-mask-rules/>

¹⁵⁶ HSBC says customers who refuse to wear a face mask will have their accounts withdrawn – Emma Munbodh, the Mirror, 12th January 2021: <https://www.mirror.co.uk/money/hsbc-says-customers-who-enter-23307420>

¹⁵⁷ Gary Chappell, Twitter, 12th January 2021: <https://twitter.com/GaryChappellDE/status/1349002540461993988?s=20>

¹⁵⁸ Gary Chappell, Twitter, 12th January 2021: <https://twitter.com/GaryChappellDE/status/1349134922091474949?s=20>

¹⁵⁹ So much for the mask crackdown, Priti: Commuters and shoppers are seen with NO face coverings – hours after Home Secretary vowed to get tougher on flouters – Mark Duell and Vivek Chaudhary, Mail Online, 13th January 2021: <https://www.dailymail.co.uk/news/article-9141787/Commuters-ride-London-Underground-no-face-coverings.html>

¹⁶⁰ Retailers' legal responsibility to disabled customers - Equality and Human Rights Commission, 4th September 2020:

¹⁶¹ EHRC, Twitter, 12th January 2021: <https://twitter.com/EHRC/status/1349077262302404613>

Fines

10,811 FPNs have been issued so far under The Health Protection (Coronavirus, Restrictions) (All Tiers) Regulations 2020, with around 5,700 of these issued since the start of the third national lockdown. Tellingly, the NPCC refers to “national restrictions coming into force on January 4th” – the restrictions were announced on 4th January but only came into force on 6th January.¹⁶² In total, 42,675 FPNs have been issued in England (38,452) and Wales (4,223) between 27th March 2020 and 17th January 2021.

The disparity in which FPNs have been issued to different ethnicities has continued. According to the latest data, 86% of England and Wales is white, while Asian ethnic groups make up 7.5% of the population, black ethnic groups make up 3.3% of the population and mixed ethnic groups make up 2.2% of the population.¹⁶³ However, Asian ethnic groups make up 11% of FPNs issued and black ethnic groups make up 6% of FPNs.¹⁶⁴ The disparity is particularly stark in relation to FPNs issued under face covering regulations, where only 68% of FPNs were issued to white people on public transport and 63% in relevant indoor places, such as shops. It is unacceptable that fines are being issued in a discriminatory fashion and this reiterates the serious need for a review of all FPNs issued under the Health Protection Regulations.

There is also significant variation in the rate at which FPNs are being issued across the country. Dyfed-Powys continues to have issued the highest rate of FPNs, with 356 FPNs issued per 100,000 people.¹⁶⁵ Northumbria has issued the highest rate of fines in England, with 264 FPNs issued per 100,000 people – it has issued 3,821 FPNs, more than any other force. North Yorkshire has issued the second highest rate of fines, 239 FPNs per 100,000 people, and Cumbria has issued the third highest rate of fines, with 222 FPNs per 100,000 people. By way of comparison, Humberside has issued just 19 FPNs per 100,000 people, and Kent has issued 24 FPNs per 100,000 people.

Under the tier regulations, which includes the third national lockdown, Northamptonshire, North Yorkshire and Leicestershire have issued the highest rate of FPNs, at 67, 63 and 52 per 100,000 people respectively, while Cleveland has issued 3 FPNs per 100,000 people, and Hampshire has issued 4 FPNs per 100,000 people.

Under the face covering requirements, there is also significant variation. While many forces have not issued any FPNs in relation to this requirement (Cheshire, Humberside and Leicestershire; Avon and Somerset, Bedfordshire, Gloucestershire, Norfolk and North Yorkshire have issued just 1 FPN each), presumably focusing on encouraging and explaining regulations, some forces have issued hundreds of FPNs. West Mercia has issued 214 FPNs, Northamptonshire has issued 163 FPNs and Northumbria has issued 140 FPNs – more than the British Transport Police which has issued 117 FPNs relating to face coverings. In Wales, no FPNs have been issued relating to face coverings.

¹⁶² Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales – National Police Chief’s Council, 28th January 2021: <https://cdn.prgloo.com/media/190cd54923bf414cb0205a339ffd3fe6.pdf>

¹⁶³ Population of England and Wales – GOV.UK, 7th August 2020: <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest>

¹⁶⁴ Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales – National Police Chief’s Council, 28th January 2021: <https://cdn.prgloo.com/media/190cd54923bf414cb0205a339ffd3fe6.pdf>

¹⁶⁵ *Ibid.*

Despite emphasis from the Home Secretary, police forces and much of the media on large gathering and raves, only 250 £10,000 FPNs have been issued in relation to the organising of gatherings of more than 30 people. A group of students who were each given £10,000 FPN for allegedly organising a gathering of over 30 people had the fines withdrawn or replaced with £200 FPNs, following representations from lawyers at Bindmans LLP and Doughty Street Chambers about the appropriateness and proportionality of the penalties.¹⁶⁶ Barristers Adam Wagner and Pippa Woodrow acted pro bono for the students, but this option will not be available for everyone.

In Northern Ireland, a total of 4,635 FPNs have been issued to individuals to date, with 56 of those being due to a failure to self-isolate.¹⁶⁷

In Scotland, police officers have issued over 7,000 FPNs under Health Protection Regulations.¹⁶⁸ Chief Constable Iain Livingstone said Police Scotland would “maximise visible policing” over the coming weeks.

The difference in the rate of fines being issued across different areas is stark. It is concerning that draconian rules are being enforced in measurably different ways, with people in some regions facing fines at vastly higher rates than others.

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 12% of the 42,675 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 4,300 unlawfully issued FPNs. The number is likely to be higher however, given the lack of safeguards around issuing FPNs.

RECOMMENDATION 11: Police chiefs should urgently instigate a national review of all fixed penalty notices issued under the lockdown Regulations.

RECOMMENDATION 12: The Government should introduce a means for individuals to challenge lockdown fixed penalty notices by way of administrative review or appeal, without having to risk magistrates’ court proceedings.

Prosecutions

The Crown Prosecution Service’s (CPS) review into unlawful prosecutions under the Health Protection Regulations in November identified 28 unlawful charges¹⁶⁹ and the December review identified 11 unlawful charges, which brings the total number to 127, or 12.5% of all charges.¹⁷⁰ With

¹⁶⁶ £10,000 student Coronavirus Fixed Penalty Notices withdrawn – Bindmans, 24th December 2020: <https://www.bindmans.com/news/student-coronavirus-fixed-penalty-notices-withdrawn>

¹⁶⁷ COVID-19 advice and information – Police Service Northern Ireland (accessed 31st January 2021): https://www.psnl.police.uk/advice_information/COVID-19/

¹⁶⁸ Coronavirus Scotland: Police fine 7000 lockdown rule breakers as patrols on roads to be ramped up – Robert Fairnie, Edinburgh Live, 8th January 2021: <https://www.edinburghlive.co.uk/news/edinburgh-news/coronavirus-scotland-police-fine-7000-19587614>

¹⁶⁹ November’s coronavirus review findings – Crown Prosecution Service, 22nd December 2020: <https://www.cps.gov.uk/cps/news/novembers-coronavirus-review-findings>

¹⁷⁰ December’s coronavirus review findings – Crown Prosecution Service, 21st January 2021: <https://www.cps.gov.uk/cps/news/decembers-coronavirus-review-findings>

every review, the rate of unlawful charges has increased. Clearly there are continuing significant issues with the Health Protection Regulations being misapplied by police.

More people have been fined excessive and varied amounts under the Single Justice Procedure. 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. However, under the Single Justice Procedure, many people are facing high fines for offences which should have received a £60 FPN and which have exceeded even the £960 cap proscribed in law.

In Derbyshire, a man was charged £1,100 for travelling to the area in April and refusing to leave.¹⁷¹

In Somerset, five people were fined £1,760 each for offences under the Health Protection Regulations, while on the same day, a man was fined £660 and a woman £200 for similar offences.¹⁷² £1,760 is a staggering amount, almost double the £960 cap written into the Regulations.

Lord Scriven, Liberal Democrat Peer, asked “what safeguards [the Government] have put in place to ensure equitable outcomes for prosecutions using the single justice procedure” during the pandemic, to which Baroness Scott replied, “no additional safeguards have been put in place for Single Justice Procedure cases due to the COVID-19 pandemic.”¹⁷³

RECOMMENDATION 13: The use of the Single Justice Procedure has led to wide variance in fines and in some cases, unlawful prosecutions. The Crown Prosecution Service should assess the use of the Single Justice Procedure in relation to charges under the Health Protection Regulations and ensure that individuals are not fined more than the cap proscribed in law.

Divergence

Each of the four nations of the United Kingdom has taken varied approaches to the pandemic, with Wales and Northern Ireland opting for frequent lockdowns, while England and Scotland, and now Wales, have used a level or tier system. Each legal system is complex and varied, with arbitrary differences in restrictions and exemptions.

The Institute for Government’s report into governance since March found that divergence between the four nations was often politically, rather than scientifically, motivated, and has led to confusion over restrictions:

“[I]t has been political decision making – in terms of the difficult trade-offs between public health, the economy and wider societal factors – that has driven much of the divergence between the different governments, rather than any fundamental differences in the scientific advice they have received.

¹⁷¹ London camper refused to leave Derbyshire during Covid-19 lock-down – Martin Naylor, Derbyshire Live, 5th December 2020: <https://www.derbytelegraph.co.uk/news/local-news/london-camper-refused-leave-derbyshire-4769635>

¹⁷² The seven people punished by Somerset court for flouting coronavirus rules – Emma Elgee, Somerset Live, 13th December 2020: <https://www.somersetlive.co.uk/news/somerset-news/seven-people-punished-somerset-court-4783558>

¹⁷³ Prosecutions: Coronavirus – Written Question HL11377: <https://questions-statements.parliament.uk/written-questions/detail/2020-12-10/hl11377>

“The devolved governments have also used the pandemic to score political points against Westminster. A return to the co-operation seen at the beginning of the pandemic will help avoid public confusion and secure public consent for any new measures.”¹⁷⁴

Wales

On 16th December, the Welsh First Minister Mark Drakeford announced that from 28th December, Wales would re-enter a national lockdown, with the closure of non-essential retail, leisure and fitness venues coming into force on 24th December and the closure of the hospitality industry on 26th December.

On 18th December, the corresponding Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 were made and came into force on 21st December. The Regulations introduced an ‘Alert Level’ system, ranging from Level 1 to 4. People in Tier 1 and 2 areas are only permitted to travel to other Tier 1 or Tier 2 areas in Wales, unless they have a reasonable excuse to travel to another area. Those in Tier 3 and 4 areas are not permitted to travel to other parts of Wales.

In a Level 1 area, gatherings of more than 6 either in a private dwelling, an indoor place or a regulated outdoor place are prohibited, with children under the age of 11 and carers exempt from the total.¹⁷⁵ Households are permitted to form an extended household with two other households.¹⁷⁶ Nightclubs, discos, dance halls and sexual entertainment venues are required to close.¹⁷⁷ Venues serving alcohol must close between 10pm and 6am.¹⁷⁸

In Level 2 areas, gatherings of different households are prohibited indoors in private dwellings, and no more than 4 people from different households may gather outdoors at a private dwelling.¹⁷⁹ In public places, gatherings of more than 4 are prohibited.¹⁸⁰ Households are permitted to form an extended household with one other households.¹⁸¹ The same restrictions on businesses in Level 1 apply in Level 2.

As with Level 2, in Level 3 areas gatherings of different households are prohibited indoors in private dwellings, and no more than 4 people from different households may gathering outdoors at a private dwelling.¹⁸² In public places, gatherings of more than 4 are prohibited.¹⁸³ Households are permitted to form an extended household with one other households.¹⁸⁴ In addition, nightclubs, discos, dance halls, sexual entertainment venues and in leisure attractions (such as bowling alleys, museums, and cinemas) are required to close.¹⁸⁵ Restaurants and venues serving alcohol must close between 6pm and 6am and alcohol may not be sold anywhere after 10pm.¹⁸⁶

¹⁷⁴ Whitehall Monitor 2021 – Institute for Government, 28th January 2021, p. 29: https://www.instituteforgovernment.org.uk/sites/default/files/publications/whitehall-monitor-2021_0.pdf

¹⁷⁵ Schedule 1, para 1(1), 2(1)

¹⁷⁶ Schedule 1, para 3(1)

¹⁷⁷ Schedule 1, para 9, 10

¹⁷⁸ Schedule 1, para 8(1)

¹⁷⁹ Schedule 2, para 1(),(2)

¹⁸⁰ Schedule 2, para 2(1)(b)

¹⁸¹ Schedule 2, para 3(1)

¹⁸² Schedule 3, para 1(),(2)

¹⁸³ Schedule 3, para 2(1)(b)

¹⁸⁴ Schedule 3, para 3(1)

¹⁸⁵ Schedule 3, para 11-26

¹⁸⁶ Schedule 3, para 8(1), 10

In Level 4, which now applies to all of Wales, people are not permitted to leave or be outside of their home without a reasonable excuse.¹⁸⁷ Gatherings of different households are not permitted, an extended households are only permitted for single parents or single adults to join with one other household.¹⁸⁸ All non-essential retail is required to close, along with the hospitality industry.¹⁸⁹ Supermarkets may only sell “food or drink for consumption off the premises (including food for pets and other domestic animals), products essential for the storage, preparation or consumption of food or drink, products for the essential upkeep, maintenance or functioning of the home or a workplace, pharmaceutical products, health and personal care products, baby products (including clothing), toiletries and cosmetics, newspapers and magazines, bicycles and products essential for the use and maintenance of bicycles.”¹⁹⁰

In Level 1, gatherings indoors of more than 50 people, and gatherings outdoors of more than 100 people required written authorisation from the Welsh Ministers.¹⁹¹ In Levels 2, 3 and 4 the limit is 15 people indoors and 30 people outdoors. Film screenings, theatre performances, markets, religious services and elite sporting events are exempt in Level 1 and 2, film screenings and theatre performances must be ‘drive-in’ at Level 3 and only markets, religious services and elite sporting events are exempt at Level 4.¹⁹² This is an extraordinary imposition on freedom of assembly – meaning virtually all protests and pickets must be Government authorised, while markets and sporting events may go ahead.

RECOMMENDATION 14: Protests should be exempt from the requirement to seek authorisation for large gatherings. Guidance should be issued to ensure that political and democratic engagement is not curtailed.

The decision that all of Wales would enter Level 4 was altered rapidly, with the First Minister announcing on 19th December that the lockdown would begin that day rather than on the 28th.¹⁹³ The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 were amended before they came into force, but were laid before the Senedd on 21st December, two days later.¹⁹⁴ On 30th January the Regulations were amended again, to permit individuals to exercise with one other individual from another household, in line with the English Regulations.¹⁹⁵

Scotland

In our previous report, we detailed Scotland’s own system of ‘levels’, from 0 to 4, as opposed to the English ‘tiers.’ The level system and tier system are both complex, with different rules and guidance in each country, and the Scottish level system has been amended a further 9 times since

¹⁸⁷ Schedule 4, para 1(1)

¹⁸⁸ Schedule 4, para 2(1), 3(1)

¹⁸⁹ Schedule 4, chapter 4

¹⁹⁰ Schedule 4, para 55

¹⁹¹ Schedule 1, para 5(1)

¹⁹² Schedule 1, para 4(3)(c); Schedule 2, para 4(1)(c); Schedule 3, para 4(1)(c); Schedule 4, para 4(1)(c)
¹⁹³ Wales to go into lockdown from midnight as new rules announced for Christmas – John Cooper, Wales Online, 19th December 2020: <https://www.walesonline.co.uk/news/wales-news/wales-coronavirus-christmas-lockdown-covid-19490235>

¹⁹⁴ The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020

¹⁹⁵ The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2021, para 6(a)(ii)

our previous report. Level 4 in Scotland and Tier 4 in England both use 'stay at home' messaging, but the intricacies of exemptions to this requirement and the restrictions on businesses and gatherings are markedly different.

On 19th December, it was announced that from 26th December, all of mainland Scotland would be placed into Level 4, meaning a nation-wide lockdown. The island communities, including Orkney, Shetland and the Western Isles would be placed into Level 3. Given the prohibition on travel between levels, this means that those living on Scottish islands are not permitted to travel to mainland Scotland.

On 5th January, the tenth amendment to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 altered the Level 4 restrictions once again, with Level 4 restrictions now prohibiting individuals from leaving their home without a reasonable excuse and further restricting outdoor gatherings from 6 to 2 people.¹⁹⁶

On 13th January, the First Minister Nicola Sturgeon announced alterations to Level 4 that came into force on 16th January.¹⁹⁷ The twelfth amendment to the Regulations limits 'Click and collect' services to "essential" items only, takeaway services are only permitted to provide products through a door or hatch, and work carried out in homes is limited to "maintenance, upkeep and functioning." The consumption of alcohol on public outdoor land has also been prohibited.

The purpose of a 'level system' is to ensure that restrictions are clear and foreseeable for the population. However, these frequent alterations undermine the clarity and foreseeability of the restrictions.

Northern Ireland

Northern Ireland entered December under a two-week circuit breaker lockdown, which was due to end on 11th December. The Executive confirmed that non-essential retail, close contact services, restaurants and places of worship would be able to reopen from 11th December, but that pubs not serving food would have to remain shut.¹⁹⁸

On 17th December, just 6 days after Northern Ireland left its circuit breaker lockdown, it was announced that the country would go back into lockdown on 26th December.¹⁹⁹ The Regulations that required non-essential retail and the hospitality industry to close and essential retail to close between 8pm and 6am were published on 24th December.²⁰⁰ The Regulations also prohibited gatherings of different households between 8pm and 6am.²⁰¹ New restrictions then came into force

¹⁹⁶ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 10) Regulations 2021, para 4(f), 4(c)

¹⁹⁷ Covid in Scotland: Tightening of lockdown rules announced – BBC News, 13th January 2021: <https://www.bbc.co.uk/news/uk-scotland-55646778>

Ministers give clarification on circuit breaker relaxations – ITV News, 4th December 2020: <https://www.itv.com/news/utv/2020-12-04/ministers-give-clarification-on-circuit-breaker-relaxations>

¹⁹⁹ As it happened: New Covid-19 lockdown for NI – BBC News, 17th December 2020: <https://www.bbc.co.uk/news/live/uk-northern-ireland-55351964>

²⁰⁰ The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 24) Regulations (Northern Ireland) 2020, para 9

²⁰¹ The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 24) Regulations (Northern Ireland) 2020, para 12

on 29th December, closing close contact services, such as hairdressing, tattooing and beauty treatments.²⁰²

The prohibition on leaving or remaining outside of one's home was not made law until 7th January.²⁰³ This was the 26th set of amendments to The Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020, which were first laid on 24th July 2020. This has resulted in highly complex and muddled legislation, which has often lagged behind official announcements.

On 21st January, the Northern Irish Executive announced that the lockdown measures would be extended for another 4 weeks.²⁰⁴

On 25th January 2021, 7 sets of amendments to the Health Protection Regulations were retrospectively passed in the Northern Irish Assembly, all pertaining to the Christmas period. People Before Profit's Gerry Carroll MLA denounced the legislative "charade":

"the nonsensical charade whereby we are expected retrospectively to give approval to or discuss regulations that have long been implemented and, in some cases, are out of date. There is no real semblance of oversight, transparency or accountability.

"The latest regulations are cooked up behind closed doors, often diverging from health advice, and pushed through without a pick of scrutiny. It is bad enough that Governments around the world have been able to do this much more rigorously and effectively, but, when the regulations actively allow a deadly virus to surge, allow for the criminalising of protests and put workers at risk, the lack of accountability and scrutiny is totally negligent.

"It seems clear to everyone that the current regulations will be extended to early March if not beyond, but when will we debate those decisions? In April or May, when the regulations have already been implemented?"²⁰⁵

Activist and author Jamie Bryson issued pre-action correspondence to the Northern Irish Department of Health and the Police Service of Northern Ireland on 17th January, regarding claims that police have powers of entry under the Health Protection Regulations. Justice Minister Josie Long and PSNI have previously claimed that officers have power of entry to enforce restrictions on gatherings, despite this not being explicitly contained within the Regulations.

Mr Bryson said:

"...it is a fundamental matter of principle that, regardless of circumstances, the police and government departments cannot be permitted to indicate they have powers they do not have, even if such an approach is subjectively judged to be for the 'greater good'.

"That precedent would create all sorts of dangers for fundamental freedoms and the rule of law.

²⁰² The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 25) Regulations (Northern Ireland) 2020, para 2

²⁰³ The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment) Regulations (Northern Ireland) 2021, para 19

²⁰⁴ Northern Ireland coronavirus lockdown restrictions extended to March 5 - Michael McHugh and Rebecca Black, Belfast Telegraph, 21st January 2021: <https://www.belfasttelegraph.co.uk/news/northern-ireland/northern-ireland-coronavirus-lockdown-restrictions-extended-to-march-5-39996225.html>

²⁰⁵ Official Report: Monday 25 January 2021 - Northern Irish Executive: <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/01/25&docID=323112>

“The PSNI and Executive should now commit to writing a clear outline of the purported legal basis for claiming they have powers of entry into private dwellings.”²⁰⁶

²⁰⁶ Police and Department of Health face legal challenge by Jamie Bryson over Covid rules – News Letter, 17th January 2021: <https://www.newsletter.co.uk/health/coronavirus/police-and-department-health-face-legal-challenge-jamie-bryson-over-covid-rules-3103429>

Coronavirus Act

Schedules 21 and 22 of the Coronavirus Act 2020 contain draconian powers that, after 10 months of emergency laws, have never proved useful or necessary public health interventions.

Schedule 21, which gives police, immigration officials and public health officers the power to detain 'potentially infectious' people, has primarily been used to unlawfully detain healthy and innocent people. Schedule 22, which gives the Secretary of State extraordinary powers to issue directions relating to events and gatherings, has never been activated in England. 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.

In the Department of Health and Social Care's two-monthly review of the Coronavirus Act published in December, the powers contained within Schedule 21 were described as "essential to controlling and containing the virus in the long term."²⁰⁷ Yet the same review disclosed that the "PHO [public health officer] powers have been used fewer than ten times."²⁰⁸ This is an inexplicably selective representation of how Schedule 21 has been used, since the Act has also been used for hundreds of unlawful prosecutions which have never been acknowledged in the two-monthly reviews. Big Brother Watch's Freedom of Information request gained further information on these 10 uses of Schedule 21 powers: it was used 3 times in April, twice in May, 3 times in July and twice in October. In all 10 incidences, Schedule 21 was used by public health officials, rather than by police officers or immigration officers. Given that over 3.8 million people have now tested positive for coronavirus in the UK, it is clear that these powers, even when used by public health officials are neither necessary nor proportionate.²⁰⁹

These 10 uses of Schedule 21 are vastly outnumbered by the 232 unlawful prosecutions. The CPS has been conducting monthly reviews into prosecutions under the Coronavirus Act and has found, for the seventh and eighth review in a row, not a single charge has been lawful. In November, 20 prosecutions were overturned, and in December 14 prosecutions were overturned.²¹⁰

This continues the unprecedented record of 100% unlawful prosecutions under the Coronavirus Act. There are no signs that police are learning to apply this law correctly. It is plainly unacceptable that people have been charged, exclusively wrongly, under this extreme law for nine months.

The two-monthly review of the Coronavirus Act states that the Government "has not exercised the powers conferred through [Schedule 22]" and notes that "all previous so-called "social distancing" regulations, have been made under the Public Health (Control of Disease) Act 1984 to restrict gatherings."²¹¹ It is evident from this admission that Schedule 22 is not a necessary provision.

²⁰⁷ Two Monthly Report on the Status of the Non-Devolved Provisions of the Coronavirus Act 2020: November 2020 – GOV.UK, 1st December 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940335/Fourth_Two_Month_Report_of_the_Coronavirus_Act_-_publishing.pdf

²⁰⁸ Two Monthly Report on the Status of the Non-Devolved Provisions of the Coronavirus Act 2020: November 2020 – GOV.UK, 1st December 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940335/Fourth_Two_Month_Report_of_the_Coronavirus_Act_-_publishing.pdf

²⁰⁹ Coronavirus (COVID-19) in the UK: Cases – GOV.UK (accessed 31st January 2021): <https://coronavirus.data.gov.uk/details/cases>

²¹⁰ November's coronavirus review findings – Crown Prosecution Service, 22nd December 2020: <https://www.cps.gov.uk/cps/news/novembers-coronavirus-review-findings>; December's coronavirus review findings – Crown Prosecution Service, 21st January 2021: <https://www.cps.gov.uk/cps/news/decembers-coronavirus-review-findings>

²¹¹ Two Monthly Report on the Status of the Non-Devolved Provisions of the Coronavirus Act 2020:

There is no evidence that Schedule 21 and 22 powers are necessary, yet overwhelming evidence that they endanger rights and should be repealed.

RECOMMENDATION 15: 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 16: Schedule 22 of the Coronavirus Act contains draconian powers to prohibit gatherings that have never proven necessary. It must be repealed.

Freedom of Religion

In our previous report, we detailed closures to religious venues and prohibitions on communal worship. We welcome the exemptions for communal worship in the Regulations for England, Wales and Northern Ireland, However, in Scotland, communal worship is not permitted under the restrictions.

Gordon Lindhurst, Conservative MSP for Lothian, asked Deputy First Minister John Swinney MSP about the restrictions on worship and questioned his comparison of it to visiting a bank, during a meeting of the Scottish Covid-19 Committee:

“Freedom of thought, conscience and religion, or freedom to manifest in public religion or belief in worship, teaching, practice, and observance is a fundamental human right that is referred to expressly in the European Convention on Human Rights. Your comparison between attending a place of worship and going to the bank, for example, is therefore not necessarily appropriate.”²¹²

The Deputy First Minister responded that religious freedom “has not been curtailed”, since some people could watch church services in their home:

“Every Sunday morning, we sit in our house and participate in a Catholic mass that is led by one of a number of leaders of the Catholic church. We are able to exercise that right safely within our own home. Therefore, our rights are in no way constrained by the restrictions.”

This is an unsatisfactory approach to the critical right to freedom of religion. For many, an online service is not comparable to the experience of communal physical worship. Some places of worship may not offer online services and some people may not be able to access them. It is crucial that the right to communal worship is restored.

RECOMMENDATION 17: Prohibitions on communal worship are an unacceptable restriction on freedom of religion. The Scottish government should exempt places of worship from restrictions on gatherings and allow communal worship to resume.

In Northern Ireland, police in Belfast stated that “a file will now be prepared and forwarded to the Public Prosecution Service” after a church continued to meet during the Northern Irish lockdown.²¹³

In England, Wales and Northern Ireland, as noted, religious venues are not legally obliged to close. However, amid rising infections, many have chosen to do so voluntarily. Thousands of churches across England have voluntarily closed,²¹⁴ while one in three United Synagogue communities have

²¹² 1st Meeting 2021, Session 5 – Covid-19 Committee, 8th January 2021: <https://www.parliament.scot/parliamentarybusiness/report.aspx?r=13043&mode=pdf>

²¹³ Coronavirus baptist dispute: Police draw up prosecution file after officers attend Sunday worship – Adam Kula, Lurgan Mail, 7th December 2020: <https://www.lurganmail.co.uk/news/politics/coronavirus-baptist-dispute-police-draw-prosecution-file-after-officers-attend-sunday-worship-3060079>

²¹⁴ Thousands of churches in England opt to close over Covid fears – Harriet Sherwood, the Guardian, 17th January 2021: <https://www.theguardian.com/world/2021/jan/17/thousands-of-churches-in-england-opt-to-close-over-covid-fears>

chosen to close.²¹⁵ Media spokesperson for the Muslim Council of Britain, Miqdaad Versi, noted on Twitter that “More & more mosques are suspending their services following the 3rd national lockdown despite no requirement by government to do so.”²¹⁶ He shared a list of mosques across London, Lancashire, Cambridge, Woking, Kent and Belfast which had closed due to rising infection numbers. It is clear that the vast majority of religious communities will close when they feel they congregations are unsafe. The imposition of criminal sanctions is unnecessary and heavy-handed.

²¹⁵ Faith leaders in England urge caution over Covid lockdown exemption - Harriet Sherwood, the Guardian, 5th January 2021: <https://www.theguardian.com/world/2021/jan/05/faith-leaders-in-england-urge-caution-over-covid-lockdown-exemption>

²¹⁶ Miqdaad Versi, Twitter, 8th January 2021: <https://twitter.com/miqdaad/status/1347496248983638022?s=20>

NHS and Palantir

In previous reports we have raised concerns over the Covid-19 Data Store, operated by Palantir – a vast database containing sensitive data from a range of sources, built to provide the NHS and ministers with “real-time information about health services, showing where demand is rising and where critical equipment needs to be deployed.”²¹⁷ A range of companies in addition to Palantir, including Faculty, Microsoft, Amazon and Deloitte are involved in collecting and analysing this data, which is in turn fed into dashboards informing the Government’s response to the pandemic.²¹⁸

Palantir’s previous contract to build the Data Store was awarded for just £1 – an investment on Palantir’s part which has unsurprisingly led to a renewed contract with the NHS to continue the work, this time for £23.5 million.²¹⁹ The contract runs until 11 December 2022, but given the broad scope of the project, it is likely to be renewed – the contract states that “Year 2 *onwards*” will be charged at “£10,968,750 per year.”²²⁰

Previous contracts between the NHS and the Data Store partners were published only after the threat of legal action from Foxglove Legal and openDemocracy. In correspondence, the Government assured Foxglove and openDemocracy directors Cori Crider and Mary Fitzgerald that “any extension [of the contract] would go out to public tender, in which taxpayers could see and debate the issues at stake.”²²¹ This was not the case.

The new contract is to create ‘NHS Foundry’, a version of Palantir’s data dashboard and analytics system Foundry, hosted by Amazon Web Services.²²² The platform will gather data from a range of sources, model outcomes, and perform analytics that shape NHS decision making.²²³

The scope of the original contract, awarded in March, was solely responding to the Covid-19 outbreak. The new contract has a much broader scope, despite a pledge in March from the Director of NHSX, Matthew Gould, that:

“Once the public health emergency situation has ended, data will either be destroyed or returned in line with the law and the strict contractual agreements that are in place between the NHS and partners.”²²⁴

²¹⁷ UK government using confidential patient data in coronavirus response – Paul Lewis, David Conn and David Pegg, the Guardian, 12th April 2020: <https://www.theguardian.com/world/2020/apr/12/ukgovernment-using-confidential-patientdata-in-coronavirus-response>

²¹⁸ NHS COVID-19 Data Store privacy notice – NHS England: <https://www.england.nhs.uk/contact-us/privacy-notice/how-we-use-your-information/covid-19-response/nhs-covid-19-data-store/>

²¹⁹ Palantir awarded £23m deal to continue work on NHS Covid-19 Data Store – Angela Downey, Digital Health, 21st December 2020: <https://www.digitalhealth.net/2020/12/palantir-awarded-23m-deal-to-continue-work-on-nhs-covid-19-data-store/>

²²⁰ National Health Service Commissioning Board and National Health Service Trust Development Authority: Provision of Data Management Platform Services – NHS Arden and Greater East Midlands Commissioning Support Unit, 18th December 2020, p 25: <https://www.contractsfinder.service.gov.uk/Notice/Attachment/0e1e4c85-6d57-4fca-9cc8-88adcffb88a2> (emphasis added)

²²¹ Controversial ‘spy tech’ firm Palantir lands £23m NHS data deal – Cori Crider and Mary Fitzgerald, openDemocracy, 21st December 2020: <https://www.opendemocracy.net/en/ournhs/controversial-tech-firm-palantir-23m-nhs-data-deal/>

²²² National Health Service Commissioning Board and National Health Service Trust Development Authority: Provision of Data Management Platform Services – NHS Arden and Greater East Midlands Commissioning Support Unit, 18th December 2020: <https://www.contractsfinder.service.gov.uk/Notice/Attachment/0e1e4c85-6d57-4fca-9cc8-88adcffb88a2>, p. 13

²²³ Ibid, p. 14

²²⁴ The power of data in a pandemic – Matthew Gould, Dr Indra Joshi and Ming Tang, Technology in the

There is a marked shift from the short term Covid-19 Data Store to NHS Foundry. The 'Strategic Decision-Makers Dashboard' "coordinate[s] national response to COVID-19 and EU Exit,"²²⁵ while the 'Recovery of Critical Services Tool' has "the ability for the [NHS] to transition this Tool for general business-as-usual monitoring."²²⁶ The early warning system tool "show[s] the impact of COVID-19 (or related pandemic) and EU Exit on key system metrics."²²⁷ The 'Immunisation and Vaccination Management Capability' enables the NHS to manage "the national vaccination programmes for COVID-19 and flu."²²⁸ The platform has expanded from a focus on Covid-19 to cover the implications of Brexit, other pandemics or flu outbreaks and "business-as-usual" operations.

Another tool seemingly unrelated to the pandemic is the Workforce Analytics Capability, which allows line managers to "visualise information about the individuals they manage."²²⁹ Senior line managers will be able to access data to "allow them to assess the workforce against key [NHS] metrics such as staff turnover rate, recruitment rates and staff competencies and to support [the NHS's] Equality & Diversity agenda."²³⁰

It is clear that in the rush of the pandemic response, Palantir's Foundry system has become embedded in the NHS digital architecture with little public awareness or consultation.

The datasets used to build NHS Foundry are redacted, meaning we know little about what sensitive health information is being fed into the system. The contract does reveal that parts of the system are using "NHS SitRep data, Pillar 1 & 2 testing data, 111 telephony data, and Google and Apple Mobility data" for modelling performed by Faculty AI, which has a separate contract with the NHS.²³¹ Data is being collected from a virtually unlimited pool – as well as data from those who work with or for the NHS, data for the Covid-19 related services is collected from "patients" and "members of the public."²³² Data for the workplace analytics system is collected not only from "employees, secondees, workers and agency staff of NHS England," but also "recruits and potential recruits to NHS England."²³³ A Data Protection Impact Assessment (DPIA), which evaluates how data protection law is being complied with, has not been published. However, the DPIA published for the previous contract revealed that vast amounts of personal data were being collected and processed, including racial or ethnic data, political affiliations, religious or similar beliefs, criminal offences, proceedings and sentences, physical or mental health conditions.²³⁴ Given the broader scope of this contract, it seems highly likely that similar types of personal data are being processed. Without a DPIA, however, it is hard to assess the full impact on data and rights.

RECOMMENDATION 18: Robust safeguards are required given the highly sensitive nature of the data processed by the NHS-Palantir Foundry. An accurate and complete Data Protection Impact Assessment for the datastore must be published.

225 NHS, GOV.UK, 28th March 2020: <https://healthtech.blog.gov.uk/2020/03/28/the-power-of-data-in-a-pandemic/>
226 Ibid, p. 15
227 Ibid
228 Ibid, p. 16
229 Ibid, p. 18
230 Ibid, p. 20
231 Ibid
232 Ibid, p. 16 (emphasis added)
233 Ibid, p. 58
234 Ibid, p. 60
Provision of Palantir Foundry Services, Contract between Palantir and NHS Arden & GEM CSU: https://cdn-prod.opendemocracy.net/media/documents/Palantir_Agreements.pdf, p. 38

Aside from the NHS, Palantir and its subcontractors, Government departments and local authorities have access to parts of NHS Foundry. The Civil Contingencies Secretariat division of the Cabinet Office will have access to the Strategic Decision-Makers Dashboard. The NHS, the Cabinet Office and UK Government departments, local authorities, and key local system decision makers will have access to the Recovery of Critical Services Tool. The Department of Health and Social Care and "other UK Government departments" have access to the Immunisation and Vaccination Management Capability. Given that we do not know what data is being fed into these tools, it is difficult to assess how much sensitive data this wide range of groups is permitted to access.

Palantir has won similar a similar contract in Greece, where it has also initially offered its services for free. Greece digital rights organisation Homo Digitalis has expressed concerns over the secretive nature of the contract and the wide-ranging data Palantir has access to, including collecting and processing data from both the health service and law enforcement. The 4-page contract was only published after pressure from Homo Digitalis.²³⁵ The Greek Data Protection Agency has begun an investigation into the contract.²³⁶

Palantir has also won contracts to manage the UK border flow in the wake of Brexit. Amnesty Tech researcher Matt Mahmoudi raised concerns about the amount of Government data Palantir has access to:

"The fear is, of course, across these different authorities, that there's unprecedented access to the British public's [data], not just their health data, but perhaps also other categories of data from these other authorities that we are unaware of."²³⁷

RECOMMENDATION 19: The NHS and Government must commit to disbanding the Covid-19 Data Store/NHS Foundry and deleting all personal data at the soonest possibility.

²³⁵ Petros Terzis, Twitter thread, 21st January 2021: https://twitter.com/petros_ter/status/1352291605466804225?s=20

²³⁶ Homo Digitalis, Twitter, 30th December 2020: https://twitter.com/Homo_Digitalis_/status/1344245956372529153?s=20

²³⁷ Concerns mount over Palantir's 'unprecedented access' to UK public data – Morgan Meaker, the Telegraph, 3rd December 2020: <https://www.telegraph.co.uk/technology/2020/12/03/concerns-mount-palantirs-unprecedented-access-uk-public-data/>

NHS Test and Trace

On 29th January, the Government enforced The Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021 – without prior parliamentary debate or a vote due to “urgency”. The Amendment was trailed in the media as introducing the new ‘house party’ fine for indoor gatherings of over 15 people, but it contained another significant change to prior legislation too.

Regulation 4, paragraph 4 of the Amendment expands the ‘Power to use and disclose information’ (Regulation 14) in The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, allowing information to be disclosed “for the purpose of the prevention, investigation, detection or prosecution of offences under these Regulations.” The effect of this change is to allow NHS Test and Trace to disclose the personal information of individuals who have been asked to self-isolate to police and local authorities. The information disclosed can include the individual’s name, address, telephone number, the date they were notified to self-isolate and the period for which they must self-isolate,²³⁸ though the individual’s coronavirus status should be redacted.²³⁹

To open the gateway between health data and law enforcement without parliamentary debate or even publicity is draconian, undemocratic and misguided in equal measure. Medical privacy is the bedrock of a functioning public health system. Undermining patient confidentiality during a pandemic, when it has never been more important, is not only abusive of privacy and data rights but counter-productive for public health. Blurring the lines between the NHS and police is highly likely to deter people from getting tests or giving contact tracers accurate information about themselves or their contacts, for fear of police visits, penalties or surveillance. This could have a particularly negative impact on undocumented migrants and other groups who fear police reprisals. The public reaction on Twitter showed alarm, distrust and confusion, with many people vowing to delete the NHS Covid 19 app – despite the fact that almost all of the app data is held locally on users’ phones and is not affected by this legislative change to the manual NHS Test and Trace service.

In our October 2020 report, we examined plans for a Memorandum of Understanding (MoU) between the Department of Health and Social Care and the National Police Chiefs’ Council (NPCC) to allow police to access NHS Test and Trace data, criticising the proposal as counter-productive and chilling.²⁴⁰ We reported that the British Medical Association, SAGE behavioural science advisor Professor Susan Michie, and reportedly England’s Chief Medical Officer Chris Whitty all expressed concern that the plans would erode public trust.

However, the MoU was not published leaving it unclear whether the data sharing would go ahead or not. Co-ordinator of medConfidential Phil Booth submitted a freedom of information request to obtain a copy of the MoU, but it was refused on 15th December on the basis that it is “intended for future publication”.²⁴¹ It appears that plans to share health data with police have progressed in

²³⁸ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Reg. 14, para. 2

²³⁹ The Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021
Emergency Powers and Civil Liberties Report October 2020 – Big Brother Watch, p.31:
<https://bigbrotherwatch.org.uk/wp-content/uploads/2020/11/Emergency-Powers-and-Civil-Liberties-Report-OCT-2020.pdf>

²⁴¹ MoU on sharing COVID-related information between DHSC and the police, FOI by Phil Booth – What Do They Know: https://www.whatdotheyknow.com/request/mou_on_sharing_covid_related_inf

direct contradiction to health advice, in conflict with long-standing principles on medical confidentiality, and with an unjustifiable avoidance of scrutiny.

RECOMMENDATION 20: The Department of Health should urgently publish the MoU allowing police access to NHS Test and Trace data.

RECOMMENDATION 21: The Department of Health must immediately reverse plans to allow police access to NHS Test and Trace data and reassure the public of their medical confidentiality in order to maintain trust in contact tracing and uphold privacy rights.

Health Passports

The push for the introduction of vaccine passports has continued, largely fuelled by the private sector and those advocating for digital identity systems. Vaccine passports would allow organisations and businesses to restrict individuals' access to services, travel and workplaces on the basis of their vaccination status and would be tantamount to vaccine coercion.

In our previous report, we expressed concern over the newly appointed Vaccines Minister Nadhim Zahawi's comments that the Government was "looking at" the introduction of immunity passports, which would verify that a person had been vaccinated.²⁴²

However, there was a welcome U-turn during a Westminster Hall debate on an e-petition, signed by over 300,000 people, which urged the Government to prevent any restrictions on people who refuse to be vaccinated. Steve Baker MP spoke about the serious threat to civil liberties that vaccine coercion would pose and the lack of evidence that it would be an effective public health measure:

"The harm principle in the philosophy of freedom is about constraining people's liberties so that they do not harm others. That means there is a profound practical difference between the purpose of a vaccine being to stop people getting sick and the purpose of a vaccine being to stop people shedding the virus.

"At the moment, a number of businesses that are looking at restricting their customers to those who have been vaccinated have not understood that, actually, we do not yet know whether the vaccine will stop people shedding the disease.

(...)

"we cross a Rubicon if we say that it is possible to discriminate against people on the basis of their health status."²⁴³

Vaccines Minister Nadhim Zahawi responded that he "may have mis-spoken" when he previously suggested that vaccine passports would be a good idea and said, emphatically:

"Mandating vaccinations is discriminatory and completely wrong. I, like [Steve Baker MP], urge businesses listening to this today not to even think about this. (...) We've absolutely no plans for vaccine passports."²⁴⁴

However, on 12th January, the Telegraph reported that the Government is funding a trial of vaccine passports, due to be completed in March.²⁴⁵ Biometrics firm iProov, which sells facial recognition

²⁴² Pubs and cinemas could turn away people who don't get Covid vaccine, minister says – Samuel Osborne, the Independent, 30th November 2020: <https://www.independent.co.uk/news/uk/politics/covid-vaccine-uk-pubs-cinemas-compulsoryb1764257.html>

²⁴³ Covid-19: Vaccination, WH Deb, 14th December 2020, vol. 686, col. 30-31WH: <https://hansard.parliament.uk/commons/2020-12-14/debates/782DBCA8-620D-473C-A8CB-CCB9C0F78DF5/Covid-19Vaccination>

²⁴⁴ Covid-19: Vaccination, WH Deb, 14th December 2020, vol. 686, col. 40WH: <https://hansard.parliament.uk/commons/2020-12-14/debates/782DBCA8-620D-473C-A8CB-CCB9C0F78DF5/Covid-19Vaccination>

²⁴⁵ Vaccine passports to be trialled by thousands of Britons – Michael Cogley, the Telegraph, 12th January 2021: <https://www.telegraph.co.uk/technology/2021/01/12/exclusive-vaccine-passports-trialled-thousands-britons>

technology and provides technology for Estonia's mandatory digital ID system,²⁴⁶ and cybersecurity firm Mvine, which campaigns for "digital identity for all",²⁴⁷ are carrying out the trial, which will see those who are vaccinated offered an app to certify their vaccinated status. It will be trialled in two local authority areas and will "be tested by Directors of Public Health within the National Health Service."²⁴⁸ The trial received £75,000 in funding from Innovate UK, the Government's science and research funding agency. Nadhim Zahawi responded to the story on Twitter, stating: "We have no plans to introduce vaccine passports. (...) No one has been given or will be required to have a vaccine passport."²⁴⁹ However, he has failed to explain why Government is funding trials and has failed to respond to multiple requests for further information from Big Brother Watch. It was later reported that Innovate UK had signed another 7 contracts to create vaccine or immunity passes.²⁵⁰ There has been no further clarification regarding the conflict between the trial and the Government's claim that vaccine passports will not be used.

Elizabeth Denham, the UK's Information Commissioner was questioned about the data protection implications of immunity or vaccine passports by the Digital, Culture, Media and Sport Committee. The Commissioner warned of health discrimination:

"Some of the issues are beyond data protection, they touch on human rights, they touch on whether or not we're going to create a two-tier society based on whether you have a job in the arm. And concerns over whether or not this is identity [cards] by the back door."²⁵¹

In Scotland, First Minister Nicola Sturgeon said the Scottish Government has "no plans to introduce immunity passports" after being questioned by the leader of the Scottish Liberal Democrats.²⁵² However, when asked about vaccine certificates during a meeting at the Scottish Parliament's Covid-19 Committee, National Clinical Director of the Scottish Government Professor Jason Leitch said:

"I am confident that a version of what you are talking about will come once we know about transmission. At that point, the world will take a view on vaccine certification and what that means.

"I would not be at all surprised if that started with the health and social care sector and with high-risk industries—nuclear power and oil and gas, for example—and worked its way through society."²⁵³

²⁴⁶ iProov to Provide Biometric Technology for Estonia's Digital Identity Program – iProov, 28th February 2020: <https://www.iproov.com/press/iproov-provide-biometric-technology-for-estonias-digital-identity-program>

²⁴⁷ Recent campaigns – Mvine: <https://www.mvine.com/recent-campaigns.html>

²⁴⁸ Covid-19 Passport from iProov and Mvine Moves Into Trial Phase – iProov, 13th December 2020: <https://www.iproov.com/press/uk-covid19-passport-moves-into-trial-phase>

²⁴⁹ Nadhim Zahawi, Twitter, 12th January 2021:

<https://twitter.com/nadhimzahawi/status/1349107577481809920>

²⁵⁰ Government funds eight vaccine passport schemes despite 'no plans' for rollout – Hannah Boland, the Telegraph, 24th January 2021:

<https://www.telegraph.co.uk/technology/2021/01/24/government-funds-eight-vaccine-passport-schemes-despite-no-plans/>

²⁵¹ 'Freedom passports' for vaccinated people would risk 'two-tier society', Information Commissioner warns – Rob Merrick, the Independent, 26th January 2021:

<https://www.independent.co.uk/news/uk/politics/covid-vaccine-passport-coronavirus-b1792752.html>

²⁵² Covid immunity passports have practical and ethical flaws, Nicola Sturgeon has said – Tom Gordon, The Herald, 3rd December 2020: <https://www.heraldscotland.com/news/18918831.covid-immunity-passports-practical-ethical-flaws-nicola-sturgeon-said/>

²⁵³ 1st Meeting 2021, Session 5 – Covid-19 Committee, 8th January 2021:

<https://www.parliament.scot/parliamentarybusiness/report.aspx?r=13043&mode=pdf>

At another meeting of the Scotland Covid-19 Committee, he confirmed that he thought the Tony Blair Institute's push for a "global Covid-19 travel pass" was a relatively sensible idea (...) So I'm supportive, but I'm probably perhaps a little bit slower than some."²⁵⁴

Meanwhile, the World Health Organisation is developing 'e-vaccination certificates' with Estonia.²⁵⁵ Incidentally, Estonia has the most advanced mandatory digital ID scheme in the Western world. Denmark is also planning to introduce vaccine passports and may require proof of vaccinated status for those wishing to enter the country.²⁵⁶ The European Commission said that vaccination certification is of the "utmost importance" and added "though it is premature to envisage the use of vaccine certificates for other purposes than health protection, an EU approach may facilitate other cross-border applications of such certificates in the future."²⁵⁷

Microsoft, Oracle, Salesforce and other organisations have formed the Vaccine Credential Initiative which seeks to create a pass which would enable "electronic access to vaccination, testing, and other medical records."²⁵⁸ The coalition states it will allow people to "demonstrate their health status to safely return to travel, work, school and life."²⁵⁹ The CEO of the World Travel and Tourism Council, Gloria Guevara, however said she "totally disagreed" with mandating vaccinations for travel and argued it would "discriminate" against those without vaccination.²⁶⁰

The risks associated with vaccine passports and similar proposals engage, primarily, Article 8 privacy rights, ranging from digital identifiers to bodily autonomy, and data protection rights as well as Article 14 discrimination concerns. The widespread use of vaccine passports would exclude those who do not wish to use 'smart' technologies, whether due to choice, age or income. It would also discriminate against people with less access to healthcare and people who do not receive the vaccination whether due to health reasons, pregnancy, religious or philosophical beliefs or otherwise.

RECOMMENDATION 22: The UK Government and devolved administrations should not pursue any form of mandatory digital vaccine certification, which would infringe multiple human rights and perpetuate discrimination. The Vaccines Minister must urgently address the ongoing vaccine certification trials and confirm that the systems will not be implemented.

²⁵⁴ Global Covid-19 vaccine passports 'probably' way to go, says Jason Leitch – Scott McNab, the Scotsman, 28th January 2021: <https://www.scotsman.com/news/politics/global-covid-19-vaccine-passports-probably-way-go-says-jason-leitch-3115864>

²⁵⁵ WHO looks at possible 'e-vaccination certificates' for travel - John Miller and Stephanie Nebehay, Reuters, 3rd December 2020: <https://uk.reuters.com/article/us-health-coronavirus-who-passports/who-looks-at-possible-e-vaccination-certificates-for-travel-idUKKBN28D1J4>

²⁵⁶ Denmark is developing a digital COVID-19 'vaccine passport' – Nikolaj Skydsgaard, World Economic Forum, 14th January 2021: <https://www.weforum.org/agenda/2021/01/denmark-digital-covid-19-vaccine-passport>

²⁵⁷ A united front to beat COVID-19 – European Commission, 19th January 2021: https://ec.europa.eu/info/sites/info/files/communication-united-front-beat-covid-19_en.pdf

²⁵⁸ Microsoft, Salesforce, Oracle Join Hands to Develop COVID-19 Vaccine Passports – Shivdeep Dhaliwal, Benzinga, 15th January 2021: <https://www.benzinga.com/news/21/01/19176379/microsoft-salesforce-oracle-join-hands-to-develop-covid-19-vaccine-passports>

²⁵⁹ Statement of Purpose - Vaccine Credential Initiative: <https://vaccinationcredential.org/>

²⁶⁰ Travel: Coronavirus vaccine passports slammed as 'discriminatory' ahead of new trial – Aimee Robinson, Express, 13th January 2021: <https://www.express.co.uk/travel/articles/1383711/travel-coronavirus-passport-trial-holidays-discriminatory-covid-19-latest>

Commercial plans

Private companies are also considering the introduction of their own vaccination requirements or tracking systems.

Pimlico Plumbers chairman Charlie Mullins told City AM that the company would introduce a “no vaccine, no job” policy, which was being written into contracts for all 400 employees.²⁶¹ The National Care Association has sought legal advice over whether they can mandate vaccinations for staff.²⁶² Saga Holidays has announced “the requirement that all customers must be fully vaccinated” in order to travel with them.²⁶³ Barchester Healthcare, which runs over 200 care homes, have said they will not hire anyone who has refused to have a vaccine on medical grounds.²⁶⁴ Two UK based HR companies, Workday and BrightHR, which provide HR services for businesses in the UK and around the world, have introduced vaccine monitoring software, which allows companies to track which employees have had a vaccine.²⁶⁵

This approach is highly discriminatory – many people will not receive a coronavirus vaccine, whether for health reasons, due to pregnancy, or due to religious, philosophical or other personal beliefs. It is essential that people are encouraged, not coerced, into receiving vaccinations.

RECOMMENDATION 23: Making vaccinations mandatory in order to access work, services or travel is highly likely to cause discrimination in many circumstances. The Government should introduce legislation preventing businesses from issuing discriminatory vaccine requirements.

RECOMMENDATION 24: Registering and tracking employees who have received or refused vaccinations is excessive, intrusive and discriminatory. Businesses should respect medical confidentiality and delete any vaccination records.

²⁶¹ Pimlico Plumbers plots ‘no jab, no job’ policy – Poppy Wood, City AM, 13th January 2021:

<https://www.cityam.com/exclusive-pimlico-plumbers-plots-no-jab-no-job-policy/>

²⁶² Up to a fifth of care home staff have refused offer of Covid vaccine as bosses ask lawyers if they can force carers to have the jab – Isabella Nikolic, Mail Online, 17th January 2021:

<https://www.dailymail.co.uk/news/article-9156501/Care-homes-legal-advice-force-reluctant-staff-Covid-jabs.html>

²⁶³ Saga Holidays and vaccines – Saga: <https://travel.saga.co.uk/travel-updates/holidays-coronavirus-vaccine.aspx>

²⁶⁴ UK bosses set up IT systems to track Covid vaccine status of staff – James Tapper, the Observer, 23rd January 2021: <https://www.theguardian.com/society/2021/jan/23/uk-bosses-set-up-it-systems-to-track-covid-vaccine-status-of-staff>

²⁶⁵ Ibid.

Covid Marshals

Local authorities have received large amounts of Government funding to finance Covid marshals. However, many of these marshals have overstepped their authority, intimidating and harassing people.

As previously noted, there was significant confusion and controversy over the requirement from pubs to serve a 'substantial meal' alongside alcohol. This public debate emboldened Covid marshals in Norfolk to "investigate" a pub for serving scotch eggs alongside alcoholic drinks.²⁶⁶ Tim Roberts, the owner of the pub, said the marshals were "basically bouncers", wearing "black boots, black combat trousers with cameras strung around their necks". He added: "They were obstructing the doorway and intimidating my customers." King's Lynn and West Norfolk Borough Council defended the Covid marshal visit, saying that a scotch egg was not a substantial meal. Mr Roberts responded: "Two government ministers have said a Scotch egg is a substantial meal. That's good enough for me."

Cornwall council has been awarded a £305,000 grant from the Department of Housing Communities and Local Government to fund Covid marshal patrols in towns and city centres.²⁶⁷

Bradford council used Government funding to purchase 'iWalkers' – large screens worn by employees which display public health messages and have been dubbed "Covid cyborgs" by locals.²⁶⁸ The screens displayed the Government's 'stay at home' advice and information about vaccine centres.



²⁶⁶ Angry restaurant boss claims 'bullying' COVID marshals tried to stop free Scotch egg offer with alcohol – Andy Wells, Yahoo News, 10th December 2020: <https://uk.news.yahoo.com/scotch-egg-offer-alcohol-covid-marshal-bullies-restaurant-boss-102054833.html>

²⁶⁷ Covid marshals to patrol Cornish towns – BBC News, 3rd December 2020: <https://www.bbc.co.uk/news/uk-england-cornwall-55179482>

²⁶⁸ Council defends 'Covid cyborgs' over accusations they are a waste of taxpayer money – India McTaggart, the Telegraph, 8th January 2021: <https://www.telegraph.co.uk/news/2021/01/08/council-defends-covid-cyborgs-accusations-waste-taxpayer-money/>

A Covid marshal in London wrongly told a man he was not permitted to run as he was “breathing heavily” and that “running is not allowed.”²⁶⁹

A Covid marsh in Tonbridge was dismissed after he carried out an aggressive stop and search on a man who he accused of smoking cannabis.²⁷⁰ Floyd Langridge, who was smoking a cigarette, said the marshal chased him and threatened to arrest him. Local councillor Mark Hood said the marshal was “behaving like a police officer” and called for review of the scheme. He said: “COVID marshals are not fulfilling their duties. They are meant to be advising on social distancing and making people aware of the guidance, but they seem to be overreaching their remit.” Not only are drug offences outside of the remit of a Covid marshal, but they also have no powers to search or arrest individuals.

In Newcastle, a group of six police officers and Covid marshals forced entry into students’ home after wrongly believing they were having a party. Upon leaving the property, despite not finding any coronavirus breaches, the officers took a student’s details, including her university and course. Another Newcastle student claims to have observed Covid marshals deliberately opening letterboxes in an attempt to catch those breaking the rules.²⁷¹

A survey conducted by Newcastle university newspaper *The Courier* found that more than three quarters of students who have had some kind of dealing with a Covid marshal said that they found the interaction uncomfortable.²⁷² Multiple women who responded to the survey described ‘creepy behaviour’ and ‘derogatory comments’ from Covid marshals, including being followed home.

²⁶⁹ Jogger is stopped by Covid marshal for 'breathing heavily' on run as police say exercise rules need to be TIGHTENED – James Robinson, Mail Online, 13th January 2021: <https://www.dailymail.co.uk/news/article-9142053/Jogger-stopped-Covid-marshal-breathing-heavily-run.html>

²⁷⁰ Tonbridge COVID marshal removed after 'chasing and grabbing' cleaner outside Waitrose - Ciaran Duggan and Lauren MacDougall, Kent Live, 11th January 2021: <https://www.kentlive.news/news/kent-news/tonbridge-covid-marshal-removed-after-4875080>

²⁷¹ Police demand to search student property after wrongly believing a party was taking place – Ruby Story Dartford, the Tab, 7th December 2020: <https://thetab.com/uk/newcastle/2020/12/07/police-demand-to-search-student-property-after-wrongly-believing-a-party-was-taking-place-52752>

²⁷² A third of students report uncomfortable interaction with Covid marshals in new survey – Ruby Story Dartford, The Courier, 7th December 2020: <https://www.thecourieronline.co.uk/a-third-of-students-report-uncomfortable-interaction-with-covid-marshals-in-new-survey/>

Freedom of Expression

Free speech online

Amid the climate of concern around COVID-19 "disinformation" and "misinformation", December and January saw a number of high-profile instances of censorship online by social media platforms.

An Instagram post by Labour MP Zarah Sultana about the Government's response to the pandemic was hidden and flagged as "misleading" by the platform.²⁷³ The MP for Coventry South's post had stated:

"While @nadhimzahawi calls today 'a great day', the UK's Covid-19 death toll has now surpassed 80,000. Other countries have demonstrated that this wasn't inevitable. It is a culmination of repeated government failure, and they are still unwilling to adopt a Zero Covid strategy."

According to Instagram, the post contained "false information". The platform's content moderation system also stated that "Leading health organisations say information in this post may mislead people about vaccines." Since it is unclear which element of the post was explicitly 'misleading' or even related to vaccines, it is possible this was the result of automated censorship. It is an alarming reflection of the platforms' increasing willingness to censor lawful speech that Instagram is so readily interfering in perfectly reasonable political discourse.

Social media companies have also shown their willingness to censor journalism. On 5th January, video-sharing tech giant YouTube removed national radio broadcaster TalkRadio from its platform. Despite TalkRadio being an Ofcom-regulated broadcaster, YouTube removed the radio station from its site stating that it had been "terminated for violating YouTube's community guidelines". In a further statement, the platform said "We quickly remove flagged content that violate our community guidelines, including Covid-19 content that explicitly contradict expert consensus from local health authorities or the World Health Organization."²⁷⁴ These oppressive rules leave little room for free discussion, even around the public policy response to the pandemic itself. This example demonstrates the way in which platforms' overzealous content moderation policies have begun to fundamentally stifle free expression online, with censorship even extending to journalistic and broadcast media content.

This increasing censorship paints a worrying picture ahead of the publication of the Government's proposed Online Safety Bill; a Bill which would mandate the enforcement of the platforms' terms of service. On 15th December, the Government responded in full to their Online Harms Consultation. During his comments in Parliament, the Secretary of State for Digital Culture, Media and Sport explicitly stated the Government's intention to include anti-vaccination content as a particular "harm" the legislation will seek to stamp out online.²⁷⁵ How such content could be defined and removed without eroding free expression remains to be seen.

²⁷³ Zarah Sultana, Twitter, 9th January 2021: <https://twitter.com/zarahsultana/status/1348018234285584385>

²⁷⁴ Google reinstates Talkradio's Youtube channel after being accused of 'censorship' – Charlotte Torbitt, Press Gazette, 5th January 2021, <https://pressgazette.co.uk/google-deletes-talkradio-youtube-channel-for-unspeficied-violation-of-community-guidelines/>

²⁷⁵ HC Statement on Online Harms Consultation, 15th December 2020, vol. 686, col. 151:

In our October 2020 report, we expressed concern about the possibility that Google had interfered with search results in such a way that a website proposing targeted shielding as an alternative to national lockdowns, the Great Barrington Declaration, was deranked from the top result to the third page of results, whilst the top results were negative.²⁷⁶ Concerned about allegations that the company was interfering in legitimate scientific debate, we joined with Article 19 to send a letter to Google asking a series of basic questions about whether the alleged activity had taken place, but did not receive a clear reply.²⁷⁷ In attempt to further our enquiries, Big Brother Watch then met with Google representatives online, who claimed they did not have policies in place regarding alterations for search results regarding individual websites, but who refused to confirm or deny that Google took action that caused this sudden change in search results for the Great Barrington Declaration.

In previous reports, we have expressed concern over the work of the Counter Disinformation Cell, a secretive unit which works to combat 'disinformation' online. In response to a Freedom of Information request sent by Big Brother Watch, the Department for Digital, Culture, Media and Sport said, "We do not advise social media companies on the removal of content."²⁷⁸ However, on 17th December, the Government appeared to admit recommending the removal of specific pieces of lawful content online, and large tech companies have also confirmed to us that the Government flags content to them that it deems in breach of their policies or otherwise problematic. Speaking within a wider discussion about responses to anti-vaccination material online, Sarah Connolly, Director, Security and Online Harms at Department for Digital, Culture, Media and Sport, set out the work of the DCMS Counter Disinformation Cell and the way in which they advise online platforms on content removal. She said:

"The other big function [the cell] has is talking to social media platforms and passing information over. It gets information back from them, and encourages that swift takedown—the swift dealing with the platforms. The cell has daily interactions with almost all the platforms."²⁷⁹

She was then asked by the Chair of the Committee, Julian Knight "To be clear, what happens? You see a piece of this, and then send an e-mail and then do an act on it—is that the process?"

Sarah Connolly replied:

"It depends. Each platform is a slightly different set-up. For some of them, we have what is called trusted flagger status. If somebody from the cell says, 'We are worried about this,' that goes immediately to the top of the pile. Whoever it is in whatever company then acts on it. It is the same system they have across Government for things like terrorist content."

<https://hansard.parliament.uk/Commons/2020-12-15/debates/1B8FD703-21A5-4E85-B888-FFCC5705D456/OnlineHarmsConsultation-contribution-3303C23B-BC84-43EC-8B98-6408A27A13FF>

²⁷⁶ Emergency Powers and Civil Liberties Report, October 2020 – Big Brother Watch, p.45: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/11/Emergency-Powers-and-Civil-Liberties-Report-OCT-2020.pdf>

²⁷⁷ Big Brother Watch and Article 19 ask Google about search results — Big Brother Watch, 13th October 2020: <https://bigbrotherwatch.org.uk/2020/10/big-brother-watch-and-article-19-ask-google-about-search-results/>

²⁷⁸ Freedom of Information request response from the Department for Digital, Culture, Media and Sport, 28th August 2020

²⁷⁹ Oral evidence: Anti-vaccination disinformation – Digital, Culture, Media and Sport Committee, Sub-Committee on Online Harms and Disinformation, 17th December 2020, Q 97: <https://committees.parliament.uk/oralevidence/1448/html/>

The idea that the acceptability of speech online might be policed by a relatively unknown Government unit, absent legal authority and without any degree of accountability, is deeply concerning – particularly since the cell in question is requesting the removal of lawful content.

RECOMMENDATION 25: It is highly questionable whether the Government exerting extrajudicial pressure on social media companies to censor lawful content is compatible with its duty to protect freedom of expression. Therefore, all such activity should be immediately stopped. The Government should publish records of the work of the Counter-Disinformation Unit with details of the content it has encouraged social media companies to remove.

Freedom of assembly

The right to protest is fundamental in a democracy – particularly during a time of serious expansion of state powers, unprecedented restrictions and a public health crisis. It is protected by the Human Rights Act 1998 and may only be restricted if strictly necessary and proportionate. However, after ten months of restrictions, the right to peacefully protest is severely obstructed.

Few MPs have raised alarm over the eradication of the right to protest. Exceptions include Sir Charles Walker, Conservative MP, and Alistair Carmichael, Liberal Democrat MP, who expressed his concern over anti-lockdown protesters being arrested in London:

“I am sure I was not the only Member who looked at the TV screens at the weekend and saw police officers in London enforcing the Home Secretary’s rule of two. People speak about the cost of the cure being perhaps greater than that of the disease and we tend to think of that in financial terms, but clearly the way in which we have tackled covid has a cost that goes well beyond that.

“I have little sympathy for those arrested on the streets in London at the weekend. I agree with almost nothing that they say, but it is important that in this House, of all places, we should be able to support their right to assemble, and to protest peacefully and within the law.

“We walk away from that at our peril, because these freedoms were hard-won and if we give them up, they will not be easily brought back.”²⁸⁰

In England, under Tiers 1-3, protests organised by “a business, a charitable, benevolent or philanthropic institution, a public body or a political body” which take place on a vessel or a “public outdoor place” were permitted.²⁸¹ In Tier 4, this explicit exemption does not exist and police guidance states “Protests are not an exception in a Tier 4 area.”²⁸² Metropolitan Police Events

²⁸⁰ HC Deb, 1st December 2020, vol. 685, col. 241: <https://hansard.parliament.uk/commons/2020-12-01/debates/27DE3E44-807A-4596-AD7C-946314AC3E2A/PublicHealth>

²⁸¹ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 1, para 3(20); Schedule 2, para 4(20); Schedule 3, para 4(18).

²⁸² Tier 4 National Lockdown: The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 – NPCC and College of Policing, 29 January 2021

tweeted on 6th January, "Gathering for the purpose of a protest is not an exemption to the rules. Those looking to gather today are urged to stay at home; if you do not you face enforcement action by officers."²⁸³ Whilst the right to protest is not specified as an exemption, this should not necessarily mean that the fundamental right protected in primary legislation is suspended – this would be an extraordinary consequence of secondary legislation that has barely been debated in parliament.

Similarly, in Wales, Scotland and Northern Ireland, exemptions for protesting do not exist.

This ban on protests is particularly absurd when an exemption to the restrictions on gatherings remains for picketing.²⁸⁴ There is little meaningful difference in the risk of coronavirus transmission between a picket and a protest – distinguishing between the two is merely political and casts serious doubt on the proportionality of such a prohibition.



Case studies

Protesters from a wide range of political movements have faced dispersals, fines and arrests. Black Lives Matter activists, Extinction Rebellion, those campaigning for the release of Julian Assange, anti-Brexit demonstrators and those campaigning against the Regulations themselves have all faced police intervention.

Four people were arrested at a protest against lockdown measures in Brighton on 12th December.²⁸⁵

²⁸³ Metropolitan Police Events – Twitter, 6th January 2021: <https://twitter.com/MetPoliceEvents/status/1346836961349267456>

²⁸⁴ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 3A, para 6(25)

²⁸⁵ Four people arrested at coronavirus protest in Brighton – Frank le Duc, Brighton and Hove News, 12th December 2020: <https://www.brightonandhovenews.org/2020/12/12/four-people-arrested-at->

26 people were arrested and charged under the Health Protection Regulations after a protest against lockdown measures at Parliament Square on 19th December. The organiser received a £10,000 fixed penalty notice.²⁸⁶

On 2nd January 2021, a small protest against lockdown measures took place at Speakers' Corner in London, an area of great historical importance for free expression and dissent. The protest was violently broken up a large groups of police officers wielding batons.²⁸⁷ 17 people were arrested under the Health Protection Regulations.²⁸⁸ One individual, a young black woman who was alone in Hyde Park, was randomly picked out, forcibly arrested, pinned to the ground by a group of police officers and carried into a police van. The following day, police marched in formation around Speakers' Corner, dispersing park-goers in a militaristic fashion.²⁸⁹

On 6th January, the first day of the third national lockdown, 21 people were arrested for protesting against the new measures at Parliament Square in London. One woman was forced to the ground and handcuffed on the statue of famed non-violent resistance leader Mahatma Gandhi.²⁹⁰

On the same day, a protest outside Westminster Magistrates' Court in support of Julian Assange saw 7 people arrested and fined, including a 92-year-old man and several other elderly people.²⁹¹

On 12th January, two asylum seekers were followed by four police officers and were threatened with fines for carrying a bedsheet banner in protest of conditions in Napier Barracks in Folkestone.²⁹² After the two men split up, police officers followed the man who was silently carrying the banner as he walked away, repeatedly asking whether he was protesting or exercising. The woman filming the incident was then surrounded by police officers and also threatened with a fine for "loitering", despite her telling officers that, as an employee of an organisation that works with migrants, she was working.²⁹³

On 18th January, lorry drivers and passengers were issued with FPNs after trucks with slogans such as "Brexit carnage" and "incompetent government destroying shellfish industry" protested in Whitehall about delays in transporting their produce to the EU.²⁹⁴ A spokesman for the Metropolitan Police said:

"Police are aware of a protest in Westminster relating to the UK fishing industry – an appropriate policing plan is in place. We would remind those involved that London remains in Tier 4 for Covid restrictions and anyone breaching the regulation will be reported. No

286 [coronavirus-protest-in-brighton/](https://www.mylondon.news/news/london-tier-4-organiser-anti-19514918)
London Tier 4: Organiser of anti-lockdown protest faces £10k fine as coronavirus cases surge – James Bayley, My London, 23rd December 2020: <https://www.mylondon.news/news/london-tier-4-organiser-anti-19514918>

287 Big Brother Watch, Twitter, 4th January 2021: <https://twitter.com/BigBrotherWatch/status/1346135332245397505?s=20>

288 Metropolitan Police Events, Twitter, 2nd January 2021: <https://twitter.com/MetPoliceEvents/status/1345409565249196034?s=20>

289 Squads of Police Patrol Hyde Park, Speakers Corner – 3rd January 2021: https://www.youtube.com/watch?v=Hei6WfowtNQ&feature=emb_logo

290 Coronavirus lockdown protesters arrested as new tougher measures come in – Joseph Wilkes, the Mirror, 6th January 2021: <https://www.mirror.co.uk/news/uk-news/coronavirus-lockdown-protesters-arrested-new-23272811>

291 Covid crackdown Britain: Drivers are turned away from beauty spots while police question parents with pushchairs about where they are going and FOUR cops surround man outside Tube station – Martin Robinson, James Tapsfield and Vivek Chaudhary, Mail Online, 7th January 2021:

292 Police confront asylum seekers protesting outside Kent barracks – video – The Guardian, 12th January 2021: <https://www.theguardian.com/uk-news/video/2021/jan/12/police-confront-asylum-seekers-protesting-kent-barracks-video>

293 Twitter, Netpol, 12 January 2021: <https://twitter.com/netpol/status/1348990074638233603?s=20>

294 Seafood Brexit protesters hit with fines for breaching Covid regulations – Sam Hancock, the Independent, 18th January 2021: <https://www.independent.co.uk/news/uk/home-news/seafood-brexit-protest-covid-fine-b1789009.html>

arrests occurred, but a number of lorries have been stopped and 14 people, who were either drivers or passengers in those vehicles, have been reported via FPN for Covid-related offences.”

In Bristol, 4 people were arrested outside Bristol Magistrates’ Court on 25th January following their demonstration outside the trial of activists involved in pulling down the statue of slave trader Edward Colston during a Black Lives Matter protest.²⁹⁵ Three police vans were stationed outside the court in anticipation of a protest, which had been previously organised and then cancelled.²⁹⁶

In Northern Ireland, PSNI dispersed a motorcade anti-lockdown protest on 11th January with help from Irish Garda officers. Much like the lorry protest, the public health risk of a motorcade protest is virtually non-existent. In a video, one protester said:

“We’re been up the North and we’re after having about 30 armed police surrounding us. They brought us into a car park and tried to get all our names.

“The Guards have the roads blocked off. They have a checkpoint there. They’re doing everything to break us up.”²⁹⁷

A series of protests occurred outside Cardiff Bay police station, following the death of Mohamud Hassan, a young black man who died after being taken into police custody. Police officers were filmed running towards the station in formation²⁹⁸ and dispersing protesters, telling protesters to leave or they “will get dealt with in the future, everything is on body camera.”²⁹⁹ They were also photographed filming protesters on handheld cameras.³⁰⁰ Bianca Ali, a Black Lives Matter activist, was fined £500 for allegedly organising the protest.³⁰¹ Black Lives Matter Cardiff refuted this on Twitter, stating that the protest was spontaneous and not organised by their group.³⁰² The group also noted that South Wales “police took two RIOT VANS to her house and were banging repeatedly on her door” in order to issue the fine.³⁰³ South Wales Police stated: “Enquiries into the protests are continuing and further action against other individuals for breaching Covid-19 regulations, and/or other criminal offences, is anticipated.”

²⁹⁵ Arrests made at Bristol protest – Avon and Somerset Police, 25th January 2021:

²⁹⁶ <https://www.avonandsomerset.police.uk/news/2021/01/arrests-made-at-bristol-protest/>
²⁹⁷ Twitter, 25th January 2021: https://twitter.com/Alt_Bristol_/status/1353641392719982594

²⁹⁸ PSNI and Gardai join forces to put the brakes on an anti-lockdown motorcade – Belfast Telegraph, 11th January 2021: <https://www.belfasttelegraph.co.uk/news/health/coronavirus/psni-and-gardai-join-forces-to-put-the-brakes-on-an-anti-lockdown-motorcade-39953267.html>

²⁹⁹ Cathy Owens, Twitter, 12th January 2021:

https://twitter.com/cathy_owens/status/1349022357147549702?s=20

³⁰⁰ Peter Gillibrand, Twitter, 14th January 2021:

<https://twitter.com/GillibrandPeter/status/1349766929351921669?s=20>

³⁰¹ Charanpreet Khaira, Twitter, 12th January 2021:

<https://twitter.com/ckkhaira/status/1349021580542795786?s=20>

³⁰² Covid: Woman faces fine for Mohamud Hassan’s death protest – BBC News, 15th January 2021:

<https://www.bbc.co.uk/news/uk-wales-55680595>

³⁰³ Black Lives Matter Cardiff & Vale, Twitter, 16th January 2021:

<https://twitter.com/BLMCardiff/status/135040784947444321?s=20>

Black Lives Matter Cardiff & Vale, Twitter, 16th January 2021:

<https://twitter.com/BLMCardiff/status/135040784604370883?s=20>

Several days later, five people were arrested in Parliament Square for protesting Mohamud Hassan's death.³⁰⁴ One video shows tens of police officers milling around a single protester³⁰⁵, while another shows multiple police vans arriving to disperse the small protest.³⁰⁶ A video posted of the protest saw the police telling a journalist filming the protest that they were "encouraging the gathering" and that without a press pass they were not exempt from the regulations.³⁰⁷

In many if not all of these instances, the risk to public health arising from the protest activities has been minimal, yet drastically increased by disproportionate police intervention. The rights to freedom of expression and assembly are Convention rights that should not be displaced simply by the vague interpretation of secondary legislation.

RECOMMENDATION 26: The right to protest must be restored as a matter of urgency. Peaceful protests are critical to the preservation of democracy and human rights.

³⁰⁴ Five people arrested in London for breaching Covid restrictions as protestors carrying Black Lives Matter signs demonstrate in Parliament Square following death of 24-year-old man hours after he was released from custody – Lydia Catling, Mail Online, 17th January 2021: <https://www.dailymail.co.uk/news/article-9155851/Five-people-arrested-breaching-Covid-restrictions-protestors-gather-Parliament-Square.html>

³⁰⁵ Ibid.

³⁰⁶ Black Lives Matter, Twitter, 16th January 2021: <https://twitter.com/ukblm/status/1350493768978485250?s=20>

³⁰⁷ YouTube, livestreamed 16th January 2021: <https://www.youtube.com/watch?v=FdSKOPcmBew>