

**EMERGENCY POWERS AND
CIVIL LIBERTIES REPORT
[FEB 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.

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Introduction

This month, the Prime Minister announced a roadmap to recovery, claiming that the end of lockdown this time would be irreversible. The roadmap is cautious, slow, and despite setting out staged dates before which restrictions *cannot* be lifted, claims to be driven by data rather than dates.

One key piece of data should put the UK firmly on the track to recovery – over 20 million vaccinations have been delivered, including the vast majority of those most vulnerable to Covid-19. It is a remarkable feat.

However, there is one major, disturbing U-turn in the roadmap – vaccine passports, or as they are now termed, Covid Status Certificates. Ministers had delivered contradictory statements about vaccine passports for months, but the Prime Minister's inclusion of a review into Covid Status Certificates in his roadmap speaks volumes. The extraordinary desire for control, absent a rational scientific basis – at the cost of division, discrimination, socio-economic exclusion, and the most basic principles that underpin British liberal democracy – is tearing through government. We are now on the precipice of the UK becoming a papers-carrying, checkpoint society, segregated according to vaccine or test status. A lot has changed in our country over the past year, but this could signal perhaps the most seismic and enduring shift of all. Stopping Covid Status Certificates will be one of the most important civil liberties battles of the year.

The road to justice is usually long, but we are proud to report on one of our first successes. A Big Brother Watch supporter, Keith Neale, recently won his challenge against a conviction under the lockdown restrictions for refusing to provide his name and details. Mr Neale contacted us after having been arrested and held in a police cell by for being outside allegedly without a reasonable excuse and refusing to provide his contact details. However, Mr Neale was homeless at the time, had no home to go to, and therefore was exempt. When approached by the police he was alone, outside, as he was legally entitled to be, posing a risk to no one. Mr Neale was resourceful and determined to right this wrong – in Big Brother Watch spirit, he obtained body worn camera footage of the incident and his cell CCTV, documenting appalling and unlawful treatment by the police. Criminal defence solicitor Patrick Ormerod of Bindmans took on the case and skilfully helped Mr Neale achieve the justice he deserves.

The judgment in *Neale v DPP* provides important clarification on the right to silence during the lockdown that could help thousands of other people wrongly harassed by police during these difficult months. We are incredibly grateful to Mr Neale for standing his ground, despite difficult personal circumstances, and achieving this important judgment for himself and others. We hope his courage inspires readers of this report to stand up for our rights and justice too.

Recommendations

RECOMMENDATION 1: All amendments to restrictions must be debated and voted on by both Houses of Parliament and the 'urgency procedure' must no longer be used to bypass scrutiny.

RECOMMENDATION 2: Police should continue the 4 'Es' approach of engaging, explaining and encouraging before enforcing restrictions.

RECOMMENDATION 3: The Government and National Police Chief's Council must explain to all police forces the difference between legislation, guidance and public health advice. Before enacting new restrictions, the Government should consult with the NPCC to ensure that timely and accurate guidance is issued to all police forces.

RECOMMENDATION 4: It is unacceptable that mourners are facing intrusive and disproportionate policing. Police officers should approach funeral and memorial events with sensitivity and respect, rather than heavy-handed surveillance and dispersals.

RECOMMENDATION 5: Children should be encouraged to play outdoors, not policed. As in Scotland, children across the UK should be exempt from restrictions on outdoor gatherings, to promote their physical and mental wellbeing.

RECOMMENDATION 6: Travelling for outdoor exercise is lawful. Guidance should be amended to reflect the law and any fines issued to individuals solely for travelling to exercise should be rescinded.

RECOMMENDATION 7: Supermarkets and other retailers must follow the EHRC guidance and not discriminate against people who are legally exempt from wearing face coverings. Staff should not deny people without face coverings entry to shops and must not demand proof of exemptions.

RECOMMENDATION 8: The Minister for the Constitution must clarify that leafleting is permitted under the Health Protection Regulations. Any fines issued to those leafleting must be rescinded.

RECOMMENDATION 9: A national review of all fixed penalty notices issued under the lockdown Regulations should be instigated.

RECOMMENDATION 10: 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 11: Hundreds of unlawful prosecutions could be occurring under the secretive Single Justice Procedure with little oversight. The Crown Prosecution Service must expand its review of coronavirus prosecutions to include charges heard under the Single Justice Procedure.

RECOMMENDATION 12: The devolved administrations must provide clear routes out of restrictions, ideally aligned as closely as possible to avoid confusion and arbitrary restrictions.

RECOMMENDATION 13: Unlawful prosecutions under Schedule 22 of the Coronavirus Act must be immediately overturned. The Crown Prosecution Service must commit to reviewing all charges under emergency legislation.

RECOMMENDATION 14: It remains the case that every prosecution under the Coronavirus Act has been unlawful. The extraordinary detention and dispersal powers in Schedules 21 and 22 has resulted in exclusively unlawful prosecutions and must be repealed.

RECOMMENDATION 15: The Memorandum of Understanding between the Department of Health and Social Care and the National Police Chief's Council allowing police access to NHS Test and Trace data must be published to enable meaningful scrutiny of sensitive data sharing.

RECOMMENDATION 16: The hotel quarantine requirements for travellers must be overturned, absent the publication of a full, scientifically-informed analysis explaining why this would be a strictly necessary measure and that no more proportionate options are available to pursue the same legitimate aim.

RECOMMENDATION 17: For some people with physical or mental disabilities, mandatory hotel quarantine could cause extreme distress or harm. The Government must exempt these people from the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021.

RECOMMENDATION 18: Health passports would infringe on our privacy, risk discriminating against those unable to receive a vaccination and pave the way to an authoritarian two-tier checkpoint society. The UK Government and devolved administrations should reject vaccine passports in their entirety.

RECOMMENDATION 19: We urge parliamentarians to call on Michael Gove to reject plans for Covid Status Certificates, which would be divisive, discriminatory, unnecessary and wrong.

RECOMMENDATION 20: General businesses should not introduce discriminatory 'no jab, no job' policies. The Department of Work and Pensions should take steps to ensure that no workers are forced to reveal their medical information in order to receive or retain employment.

RECOMMENDATION 21: 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 22: Online expression should not be constrained or censored by an unaccountable Whitehall unit. The lack of transparency around the role and influence of the Counter-Disinformation Unit is unacceptable – the Department of Culture, Media and Sport must publish data regarding content it has requested be removed by social media platforms.

RECOMMENDATION 23: The right to protest must be restored as a matter of urgency. Peaceful protests are critical to the preservation of democracy and human rights.

RECOMMENDATION 24: Drones are an extreme, militaristic form of surveillance and should not be deployed to surveil protesters.

Emergency Law

The Hansard Society's Coronavirus Statutory Instrument Dashboard records a total of 379 Coronavirus-related Statutory Instruments (SIs) laid before the UK Parliament since the beginning of 2020.¹ A total of 742 pieces of legislation have been passed in the United Kingdom containing the word 'coronavirus.'² Powers in 114 Acts of Parliament, 5 Orders and 5 EU Regulations (which are now retained law in the UK) have been used to lay Coronavirus-related SIs, with 19 SIs laid using powers in the Coronavirus Act 2020.

Coronavirus-related SIs account for almost a third (32%) of all SIs laid since 6th March 2020, but only 5% (20) of these have been subject to the 'draft affirmative' procedure, meaning that they required approval from both Houses of Parliament before coming into force. Many of the most significant SIs, such as those which enacted lockdowns or travel quarantines, have been laid under the Public Health (Control of Disease) Act 1984 – section 45R of which allows the Secretary of State to bypass Parliament, "by reason of urgency." The result of this is a pandemic response almost entirely characterised by executive decision making – with Parliament side-lined at every step.

Amid this ministerial power grab, it has been reported that the Government is considering a review of the emergency powers contained within the Civil Contingencies Act 2004. The Independent reported that one area under consideration is the CCA's requirement to return restrictions made under the Act to parliament for regular votes.³ The Government has received sustained criticism from constitutional lawyers and parliamentarians over its refusal to use the CCA during the coronavirus pandemic, which would have enabled greater scrutiny of lockdown measures. That the Government is considering watering down safeguards in the CCA for potential future uses is symptomatic of a Government that has grown too comfortable ruling by diktat. Alistair Carmichael MP, Home Affairs Spokesperson for the Liberal Democrats, said:

"We need to curb the use of emergency powers, not make them the default response. We need to learn lessons from the pandemic so that sweeping illiberal measures are a thing of the past, not the 'new normal.'"

Unfortunately, the UK Government and devolved administrations have become far too comfortable using emergency laws and procedures to enact legislation of vast national significance.

¹ Coronavirus Statutory Instruments Dashboard — Hansard Society (updated 27th February 2021): <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>

² Primary and Secondary Legislation search (accessed 1st March 2021): <https://www.legislation.gov.uk/primary+secondary?title=coronavirus>

³ Government's review of emergency powers may lead to MPs losing say over restrictions on citizen's liberty – David Parsley, iNews, 19th February 2021: <https://inews.co.uk/news/politics/governments-review-emergency-powers-parliament-citizens-liberties-880465>



When important legal text is hard to find or is available only at the last minute, this leads to uncertainty or confusion about what the law actually says. It creates inconsistency between the letter of the law and guidance, and different approaches to enforcement being adopted by different police forces.

“None of that promotes confidence in the law or the way it is produced. It also doesn’t help people understand what the law says or comply with it – this is particularly key during the pandemic when compliance with certain rules is potentially a matter of life and death. (...)

“The government’s approach to legislating in response to Covid-19, although it may be justifiable for the most pressing of emergencies, should not become a template for future policies or law-making, more generally. That would lead to worse policy and worse law, and undermine political and public respect for both.”⁴

— Sir Jonathan Jones QC, former Treasury solicitor and permanent secretary of the government legal department

4 The government's hasty Covid law-making cannot become a template for the future – Jonathan Jones, the Guardian, 18th February 2021: <https://www.theguardian.com/commentisfree/2021/feb/18/governments-hasty-covid-law-making-template-future>

Health Protection Regulations

In December and January, a series of SIs were made under the Public Health (Control of Disease) Act 1984 to enforce lockdown restrictions in England, Wales, Scotland and Northern Ireland.

In all four nations, a prohibition remains on leaving or remaining outside of the place where one is living, with various exemptions. Gatherings are prohibited and the retail and hospitality industries are not permitted to open. A full analysis of the four national lockdowns can be found in our December-January Emergency Powers and Civil Liberties Report.⁵

Ending restrictions

When debating the introduction of the national lockdown on 6th January, the Prime Minister told MPs:

“the legislation this House will vote on later today runs until 31 March, not because we expect the full national lockdown to continue until then, but to allow a steady, controlled and evidence-led move down through the tiers on a regional basis.”⁶

Similarly, when announcing the lockdown to the nation on 4th January, Mr Johnson told the public, “I hope we can steadily move out of lockdown, reopening schools after the February half term and starting, cautiously, to move regions down the tiers.”⁷

However, there were soon suggestions that when coming out of lockdown, the tier system would not be used after all. The Prime Minister told reporters on 1st February: “It may be that a national approach, going down the tiers in a national way, might be better this time round.”⁸ This was confirmed when the roadmap out of lockdown was announced on 22nd February. As well as abandoning the tier system, the dates for removing restrictions are much further away than was promised by the Prime Minister in January. Around mid-February there was still no information from the Government as to how restrictions would ease, let alone moves to “move down through the tiers.”

It wasn't until 22nd February, over 6 weeks after the national lockdown was announced, that the public and Parliament had any sight of how restrictions would be removed. The UK Government's roadmap to “guide us cautiously but irreversibly towards reclaiming our freedoms” was published on 22nd February and announced in Parliament the same day.⁹ The Prime Minister repeatedly stressed that the end of lockdown would be irreversible, as “we cannot persist indefinitely with restrictions that debilitate our economy, our physical and mental wellbeing, and the life chances of

⁵ December-January Emergency Powers and Civil Liberties Report – Big Brother Watch: <https://bigbrotherwatch.org.uk/wp-content/uploads/2021/02/Emergency-Powers-and-Civil-Liberties-Report-DEC-2020-JAN-2021.pdf>

⁶ HC Deb (6th January 2021), vol. 686, col. 735: <https://hansard.parliament.uk/commons/2021-01-06/debates/F28A020C-8CF9-4D5E-9C9A-CG75D540D7C8/Covid-19>

⁷ Prime Minister's address to the nation – GOV.UK, 4th January 2021: <https://www.gov.uk/government/speeches/prime-ministers-address-to-the-nation-4-january-2021>

⁸ No more tiers? Boris Johnson hints at revamp of national lockdown – Barney Davis, the Evening Standard, 1st February 2021: <https://www.standard.co.uk/news/uk/boris-johnson-national-lockdown-ends-rules-tiers-b918205.html>

⁹ HC Deb (22nd February 2021), vol. 689, col. 625: <https://hansard.parliament.uk/commons/2021-02-22/debates/7F26D493-AF6A-46A4-A1C3-61A39DD527CE/Covid-19RoadMap>

our children.”¹⁰ However, given the Government’s staggering number of U-turns over its approach to emergency restrictions, this pledge is no guarantee.

The roadmap consists of four stages:

Stage 1: on 8th March, schools will reopen, and “outdoor recreation” will once again be allowed outdoors with one other person from another household. On 29th March, the ‘rule of six’ will return for outdoor gatherings, with two households or groups no larger than 6 people from multiple households permitted to gather socially. The ‘stay at home’ requirement will be lifted.

Stage 2: “no earlier” than 12th April, non-essential retail and close contact services such as hairdressers will be permitted to open. Outdoor attractions such as zoos will reopen and hospitality venues will be permitted to open outdoors, with no restrictions on alcohol, food or curfews.

Stage 3: “no earlier” than 17th May, outdoor gatherings of up to 30 will be permitted and indoor gatherings of two households or 6 people from multiple households can resume. Hospitality venues will be permitted to open indoors and indoor entertainment, such as cinemas and theatres, will be permitted to reopen.

Stage 4: “no earlier” than 21st June, the Government will “aim” to remove “all legal limits on social contact.” Nightclubs will be permitted to reopen.

However, these stages are contingent on the outcome of four reviews. The reviews will assess social distancing and mask wearing, international travel, “Covid Status Certification” (health passports) and large-scale events. It is not clear how these reviews will be conducted or who will be consulted.

Conservative backbenchers have criticised the roadmap, with the Covid Recovery Group calling for an end to all restrictions by May when all vulnerable adults (who account for 99.9% of all deaths from coronavirus) are due to have received their first vaccination. MPs Mark Harper and Steve Baker, the chair and vice-chair of the Covid Recovery Group, wrote to the Prime Minister with the backing of 63 MPs, urging him to lift restrictions in line with the vaccination of the most vulnerable groups: “The vaccine gives us immunity from Covid but it must also give us permanent immunity from Covid-related lockdowns and restrictions.”¹¹ Indeed, the vaccine roll-out has exceeded expectation, with over 20 million adults receiving a Covid-19 vaccine in February.¹² With increasing numbers of vulnerable people protected from the threat of coronavirus, restrictions on liberty are harder to justify.

While there was a debate after the announcement of the roadmap, there was no chance for Parliament to vote on the plans. Instead, they were announced to the public and to Parliament as if they were already fixed in law, with no indication as to whether or when the amendments to the regulations will be voted on.

¹⁰ Ibid.

¹¹ Conservative MPs urge Boris Johnson to commit to lifting lockdown by end of April - Jaymi McCann, iNews, 13th February 2021: <https://inews.co.uk/news/uk/conservative-mps-boris-johnson-commit-lifting-lockdown-end-april-871294>

¹² 20 million people in UK have had first dose of coronavirus vaccine – Linda Geddes, the Guardian, 1st March 2021: <https://www.theguardian.com/society/2021/feb/28/20-million-britons-have-had-first-dose-of-coronavirus-vaccine>

Role of Parliament

Throughout the pandemic, Parliament has been evaded while critical decisions have been made by ministers with minimal opportunities for scrutiny or dissent.

While there were several general 'Covid-19 debates' scheduled in the Commons during February, which provided MPs a chance to respond to new announcements, MPs were not given the chance to vote on the continued lockdown, no regulations were debated in the Chamber in the House of Commons and no review of the restrictions was published.

When announcing the third national lockdown in early January, the Prime Minister said:

"By the middle of February, if things go well and with a fair wind in our sails, we expect to have offered the first vaccine dose to everyone in the four top priority groups (...) If we succeed in vaccinating all those groups, we will have removed huge numbers of people from the path of the virus. And of course, that will eventually enable us to lift many of the restrictions we have endured for so long."¹³

In response, many Conservative backbenchers argued that they should be given the chance to vote on restrictions in February, once the four most vulnerable groups had been offered a vaccine. Sir Graham Brady MP, chair of the 1922 Committee, asked for Parliamentary votes on restrictions at the end of January and February, to which the Prime Minister responded: "I cannot believe that it will be until the end of March that the House has to wait before having a new vote."¹⁴ The Government reached its goal of vaccinating the top four vulnerable groups on 12th February, but there was no suggestion of loosening restrictions as was promised in January, or even of a vote on the continuation of the current lockdown measures.¹⁵

RECOMMENDATION 1: All amendments to restrictions must be debated and voted on by both Houses of Parliament and the 'urgency procedure' must no longer be used to bypass scrutiny.

The single debate on regulations occurred not in the Chamber, but in the Second Delegated Legislation Committee, 9 days after the regulations came into force. The debate was on the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2021 and the Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021, held on 8th February. The second set of regulations was not debated in the House of Lords during February but a debate has been scheduled for early March, a month after they came into force.

Speaking in the Second Delegated Legislation Committee, Justin Madders MP, Shadow Health Minister, criticised the Government's approach to scrutiny:

"As I have said many times, we are once again retrospectively approving legislation, particularly regulations that have a dramatic impact on individuals' liberty, as well as an economic impact. We have discussed these issues many times.

¹³ Prime Minister's address to the nation – GOV.UK, 4th January 2021: <https://www.gov.uk/government/speeches/prime-ministers-address-to-the-nation-4-january-2021>

¹⁴ HC Deb (6th January 2021), vol. 686, col. 747: <https://hansard.parliament.uk/commons/2021-01-06/debates/F28A020C-8CF9-4D5E-9C9A-CC75D540D7C8/Covid-19>

¹⁵ England and Wales hit target to vaccinate top four priority groups – Dan Sabbagh, the Guardian, 12th February 2021: <https://www.theguardian.com/world/2021/feb/12/people-aged-65-69-england-can-be-invited-covid-vaccine>

(...)

"Although it could be argued that the first set of regulations, which primarily make corrections, is not within the ambit of that promise, the second set of regulations certainly is, so will the Minister set out why that commitment has not been honoured on this occasion?"¹⁶

Mark Harper MP, chair of the Covid Recovery Group, agreed:

"In the present case, I do not understand what the urgency was when the need for the regulations was identified. Why was it not possible, a few days later, simply to have them debated by the House?"¹⁷

Justin Madders MP was also critical of the need for the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2021, which were introduced to correct drafting errors in previous amendments:

"The first set of regulations deals with errors and oversights from earlier regulations. This is not the first time that we have had to address this. Of course, we are in a rapidly evolving situation, but we are on the third lockdown, so one would expect enough experience to have been gathered for there not to be a need to come back and make such corrections.

(...)

What is the legal position of people who were fined for attending the premises concerned before the regulations came into force? Does the Minister know whether anyone has been erroneously fined as a result of the drafting error? And what about the businesses that have been affected? Have any indicated that they have lost profit or income for that period when they were erroneously told they could not operate?

"Mistakes have consequences, and there have been too many. A proper explanation ought to be forthcoming about why we are having to deal with these things after the event. They should not be dealt with in this way when people's lives and livelihoods are involved."¹⁸

Meaningful parliamentary scrutiny, instead of rushed laws that are published only hours before they come into force, would go some way towards preventing drafting errors and contradictory restrictions.

¹⁶ HC Second Delegated Legislation Committee Deb, 8th February 2021, col. 7:
[https://hansard.parliament.uk/commons/2021-02-08/debates/b33ca431-dcfa-4f1a-bdf2-cbba05d373df/HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERS\)\(ENGLAND\)\(AMENDMENT\)REGULATIONS2021HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERSANDSELF-ISOLAT](https://hansard.parliament.uk/commons/2021-02-08/debates/b33ca431-dcfa-4f1a-bdf2-cbba05d373df/HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERS)(ENGLAND)(AMENDMENT)REGULATIONS2021HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERSANDSELF-ISOLAT)

¹⁷ HC Second Delegated Legislation Committee Deb, 8th February 2021, col. 13:
[https://hansard.parliament.uk/commons/2021-02-08/debates/b33ca431-dcfa-4f1a-bdf2-cbba05d373df/HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERS\)\(ENGLAND\)\(AMENDMENT\)REGULATIONS2021HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERSANDSELF-ISOLAT](https://hansard.parliament.uk/commons/2021-02-08/debates/b33ca431-dcfa-4f1a-bdf2-cbba05d373df/HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERS)(ENGLAND)(AMENDMENT)REGULATIONS2021HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERSANDSELF-ISOLAT)

¹⁸ HC Second Delegated Legislation Committee Deb, 8th February 2021, col. 7:
[https://hansard.parliament.uk/commons/2021-02-08/debates/d617dd44-e939-4d62-9fcc-f2f4d3654bb9/HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERS\)\(ENGLAND\)\(AMENDMENT\)REGULATIONS2021HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERSANDSELF-ISOLAT](https://hansard.parliament.uk/commons/2021-02-08/debates/d617dd44-e939-4d62-9fcc-f2f4d3654bb9/HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERS)(ENGLAND)(AMENDMENT)REGULATIONS2021HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERSANDSELF-ISOLAT)

Reviews of restrictions

The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 contain the requirement for two types of reviews – every 14 days the Health Secretary must review “whether each area that is part of (...) the Tier 4 area should continue to be part of that area” and “the need for each of the (...) Tier 4 restrictions at least once every 28 days.”¹⁹ The Health Secretary must assess the necessity of these measures for “the purposes of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection in England with coronavirus.”²⁰

These reviews are particularly critical when the nation is under a strict lockdown, given the immense cost to rights, freedoms and to the economy incurred by the restrictions. Yet the Government has not published a single meaningful review of the need for emergency restrictions throughout the pandemic. It is not clear what these reviews have found or if they are even taking place, meaning the public and Parliament are unable to assess the merits of the broad range of restrictions enacted. Many restrictions, such as the requirement to order a table meal with alcohol, or the 10pm curfew, have been widely criticised as arbitrary and ineffective. If the Government has evidence that indicates these measures are or have been necessary, the public and Parliament are entitled to see it. It is indefensible in a democracy that lockdown measures, which came into force before they were approved by either House of Parliament, can remain in place with little analysis of their efficacy.

Enforcement

Enforcement of the Regulations should be the last step – the NPCC has committed officers to the ‘4 Es’ approach of engaging, explaining, encouraging and lastly enforcing, in acknowledgement of the expansive new powers police have been granted in relation to ordinary activities. However, as we have noted previously, police forces, while publicly committing to the ‘4 Es’ approach, are moving to enforcement increasingly quickly. The number of FPNs issued has dramatically increased, which Martin Hewitt, Chair of the NPPC, explained:

“While we are still following our 4 E model of engage, explain, encourage and only using enforcement as a last resort, officers are not getting into a debate or discussion with these people about what the rules are or whether they are necessary. We all know we must wear a face covering in a shop or on a bus and we all know we can’t meet up in groups.”²¹

“Not getting into a debate or discussion (...) about what the rules are” is entirely at odds with the 4 Es approach of explaining complex rules to individuals.

Gracie Bradley, Interim Director of Liberty told the Joint Committee on Human Rights that the ‘4 Es model’ is “very good in principle [but] it has not worked hugely well in practice. It has not been applied consistently across forces.”²² Kirsty Brimelow QC agreed:

¹⁹ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, reg. 14(1)
²⁰ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, reg. 14(2),(3)
²¹ Update on Coronavirus FPNs issued by police – National Police Chief’s Council, 25th February 2021: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-police>
²² Oral evidence (Virtual Proceeding): The Government’s response to Covid-19: human rights implications of long lockdown, Joint Committee on Human Rights, HC 1004, 24th February 2021, Q 22: <https://committees.parliament.uk/oralevidence/1757/pdf/>

“What we are seeing quite often is the police still considering a fixed penalty notice not to be enforcement because they have decided “We won’t prosecute you or report you to the CPS for prosecution.” (...) Now, the 4 Es have perhaps been lost in that they should have also applied to Fixed Penalty Notices.”

Lochlinn Parker, Head of Civil Liberties at ITN Solicitors, pointed out that the 4 Es approach is only effective if police officers understand the law:

“It’s the fundamental problems in the 4 Es, if you don’t know what the regulations really are, how can you go through the 4 Es and provide that diversionary approach in a consistent manner?”

RECOMMENDATION 2: Police should continue the 4 'Es' approach of engaging, explaining and encouraging before enforcing restrictions.

When announcing the latest number of Fixed Penalty Notices (FPNs) issued, the National Police Chief’s Council (NPCC) tweeted: “The rules are really clear and it is frustrating that a small number of people are still disregarding them and endangering others.”²³ In a statement, Martin Hewitt, Chair of the NPCC, similarly said:

“Eleven months on and back into a national lockdown, the rules are really clear and so it is frustrating that we still have a small number of completely defiant and irresponsible people who have no regard for the safety of themselves or others.”²⁴

Yet, however often senior police officers insist that the restrictions are clear, it is evident that this is not the case. A survey of around 12,500 frontline officers for the Police Federation found that 9 out of 10 officers did not believe that lockdown regulations were clear.²⁵ Just 1 in 8 officers believed their role in policing the restrictions had been clear throughout the pandemic and less than a quarter (24%) felt that the 4 Es (engage, explain, encourage, enforce) had been helpful. John Apter, chair of the Police Federation, said:

“Given the fact that there have been more than 60 rule changes introduced during the pandemic, it comes as no surprise whatsoever that only 10 per cent of police officers who responded to our survey said they found the Covid-19 rule changes to be clear.

“We’ve been saying from the beginning, clear guidance on what people can and can’t do is needed; otherwise people will inadvertently fall foul of the law or may take advantage of the mixed messages.”

Mr Apter later told the Joint Committee on Human Rights:

“The constant legislative changes (...) every time the legislation changes, my colleagues, those officers out on the front lines, have to interpret the legislation, often with very little or no time at all to digest it.

²³ National Police Chief’s Council (NPCC), Twitter, 25th February 2021: <https://twitter.com/PoliceChiefs/status/1364915551072567296?s=20>

²⁴ Update on Coronavirus FPNs issued by police – National Police Chief’s Council, 25th February 2021: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-police>

²⁵ Nine in ten police officers question the clarity of Covid rules – Charles Hymas, the Telegraph, 22nd February 2021: <https://www.telegraph.co.uk/news/2021/02/22/nine-ten-police-officers-question-clarity-covid-rules/>

"Mistakes will and have been made."²⁶

Ken Marsh, the chairman of the Metropolitan Police Federation, said "Police don't want to police this. We have had enough of this. It is not policeable. It is not manageable."²⁷

RECOMMENDATION 3: The Government and National Police Chief's Council must explain to all police forces the difference between legislation, guidance and public health advice. Before enacting new restrictions, the Government should consult with the NPCC to ensure that timely and accurate guidance is issued to all police forces.

While the complex and constantly changing legislation is responsible for much of the confusion around legislation, often police officers have acted outside of the law, either through excessive use of force, mistaking guidance for legislation, or attempting to enforce 'the spirit' of the law.

In Birmingham, a man sitting in his car was challenged by PCSOs who told him: "sitting in your car is not a lawful reason to come out in lockdown."²⁸ Zia Khan is currently living in small emergency accommodation with his wife and two young children and was sitting in his car outside the house for a brief break and a cigarette.

"I am in small emergency accommodation with my wife and two young children due to my circumstances caused by the pandemic. (...) I couldn't believe it when the police car approached me and told me it wasn't lawful to sit in my car and to go back inside. I really think they need to use common sense in situations like this. I was sitting in my car on my own."

The Regulations allow for a person to be outside of the place where they are living if they have a "reasonable excuse."²⁹ Mr Khan clearly had a 'reasonable excuse' to briefly be outside of his home, isolated in his car, posing a risk to no one. Questioning someone sitting by themselves in a vehicle is unnecessary and disproportionate – clearly Mr Khan did not pose any threat to public health. Yet instead of apologising, West Midlands Police assistant chief constable Mark Payne stated:

"I support the actions of our PCSO.

"We are policing a pandemic which has cost thousands of lives, with hundreds of people still dying on a daily basis. Our officers have been tasked with enforcing rules designed to keep people safe, which means we will be asking people why they are outside during a national lockdown."

²⁶ Oral evidence (Virtual Proceeding): The Government's response to Covid-19: human rights implications of long lockdown, Joint Committee on Human Rights, HC 1004, 24th February 2021, Q 35: <https://committees.parliament.uk/oralevidence/1756/pdf/>

²⁷ Covid rules on groups gathering outdoors 'not policeable' ahead of lockdown easing – Robert Mendick, the Telegraph, 28th February 2021: <https://www.telegraph.co.uk/news/2021/02/28/covid-rules-groups-gathering-outdoors-not-policeable-ahead-lockdown>

²⁸ Dad smoking in car 'as breather from his kids' challenged by police in lockdown bust-up – Andy Richardson and Joseph Wilkes, the Mirror, 8th February 2021: <https://www.mirror.co.uk/news/uk-news/dad-smoking-car-as-breather-23463718>

²⁹ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, sch 3A, para 1(1)

Right to silence

A Big Brother Watch supporter who contacted us about his arrest and subsequent FPN had his conviction overturned by the High Court sitting in Cardiff.³⁰ Keith Neale, a 60-year-old man who was homeless at the time of his arrest, was charged for failing to provide his name and contact details to police as he was sitting on a bench. The judges found that there was no obligation under the regulations or common law to provide one's name or address to police officers. Patrick Ormerod, the solicitor at Bindmans who advised Big Brother Watch and represented Mr Neale, said:

"As the High Court stated, the courts should be wary of expanding police powers by implication – where parliament has chosen to compel speech it has done so expressly. The absence of an express obligation to give a name and address in the Coronavirus Regulations powerfully demonstrates that it does not exist."³¹

Excessive force

Officers have been recorded using excessive force to enforce lockdown Regulations. These restrictions are in place to protect public health, yet too often members of the public are being made less safe through aggressive enforcement tactics.

In Glasgow, Cameron Meechan and Danielle McHugh were watching television in bed when approximately 10 police officers broke their door off its hinges, threw their small dog out of the way, wrestled Mr Meechan to the ground, arrested both individuals and confiscated Ms McHugh's phone.³² Both were kept in police cells overnight and have been charged by Police Scotland for "following a disturbance." It is understood that this was the result of report of a lockdown party in the area. Mr Meechan said:

"Danielle and I were in bed (...) and the next thing about 10 officers had burst through the bedroom door.

"The whole thing was terrifying, half of them weren't even wearing masks and at one point, an officer without a mask had me against the wall and was yelling in my face. Alfredo [the couple's dog] got picked up by the collar and hurled right down the hall into the living room.

"Danielle's mobile phone was confiscated and has still not been returned, after she began filming. I wasn't wearing a top or shoes and it was sub-zero temperatures when they took me away. Danielle managed to give me some shoes.

"Now I have been charged with assault and breach of the peace and I have no idea why – I was the one pinned down and handcuffed for no reason."

Aamer Anwar, the couple's defence lawyer who is also part of Police Scotland's independent advisory group set up to monitor policing and coronavirus, wrote to Police Scotland:

³⁰ Covid regulations accused had right of silence – Catherine Baksi, Law Gazette, 24th February 2021: <https://www.lawgazette.co.uk/news/covid-regulations-accused-had-right-of-silence/5107550.article>

³¹ *Ibid.*

³² Scots cops in Glasgow raid blunder row after bursting into bedroom of couple watching Netflix – John Ferguson, Daily Record, 7th February 2021: <https://www.dailyrecord.co.uk/news/scottish-news/scots-cops-glasgow-raid-blunder-23455915>

“the alleged abuses of power raise a significant concern as to how many other members of the public have been dealt with in a similar manner by these officers, when responding to alleged breaches of Covid-19 regulations (...) This sadly has been the worst incident I have seen to date alleging the abuse of police powers in relation to Covid-19.”

In CCTV footage shared on social media, a gym owner was met with excessive force by Merseyside Police and can be seen handcuffed, surrounded and pinned to the ground by 8 officers, maced, kneed and kicked. Officers also used batons and police dogs in the raid. Observers noted that officers were not wearing masks, and one described how someone “standing there not provoking anyone with his hands down was also attacked by two officers.” Merseyside Police has defended its actions and described the use of force as “necessary”.³³

A video also emerged of a Greater Manchester police officer appearing to punch a man who was being arrested at a café on suspicion of breaching regulations. Greater Manchester Police have stated they are investigating the incident.³⁴

In Folkestone, asylum seekers and refugees are being held in Napier Barracks, in conditions that rights groups have denounced as unsafe, with large groups being forced to share rooms and inadequate measures to prevent the transmission of coronavirus.³⁵ Troubling video footage shows a man attempting to climb over the fence of Napier Barracks before being carried back into the facility by two police officers, in what the force referred to as a ‘Covid breach.’³⁶ Residents of Napier Barracks are normally permitted to leave the facility, but the all 400 residents have been prohibited from leaving after a coronavirus outbreak. However, lawyers have questioned the legality of the blanket requirement and the use of force to return the man to the barracks. Human rights barrister Adam Wagner said:

“These are not detainees. I am dubious that there is a legal basis for the police using force.

“There is a power under the self-isolation regulations to use reasonable force to return somebody to the place they are supposed to be isolating, but as far as I know, people at barracks weren’t given formal notifications to self isolate and therefore there was no power of enforcement.

“In any case, I can’t see how the police can have known who was legally required to self isolate and who was not. We do not know the full facts but it is plausible the police have unlawfully assaulted this man.”

³³ Stoke-on-Trent fitness coach condemns 'excessive police force' as footage emerges of raid on lockdown-flouting gym – Jamie Smith and Hayley Parker, Stoke on Trent Live, 17th February 2021: <https://www.stokesentinel.co.uk/news/stoke-on-trent-news/stoke-trent-fitness-coach-condemns-5007640>

³⁴ GMP investigating video involving man who 'appears to be struck by officer' after police were called to Covid breach – Sophie Halle-Richards, Manchester Evening News: 8th February 2021: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/gmp-investigating-video-involving-man-19790288>

³⁵ Covid-19: Outbreak 'shows Napier Barracks not Covid-safe' – BBC News, 24th February 2021: <https://www.bbc.co.uk/news/uk-england-kent-56183137>

³⁶ Asylum seeker forcibly returned to Covid-hit army barracks after scaling fence in escape attempt – May Bulman, Independent, 3rd February 2021: <https://www.independent.co.uk/news/uk/home-news/asylum-seeker-napier-barracks-kent-police-b1796980.html>

Gatherings

Research suggests that outdoor gatherings present a very low risk of transmission of coronavirus: SAGE advisor Professor Mark Woolhouse told the Commons Science and Technology Committee there was “very little evidence of outdoor transmission.”³⁷ He noted specifically that there have been “no outbreaks linked to crowded beaches,” and that there has “never been a Covid-19 outbreak linked to a beach ever anywhere in the world to the best of my knowledge.” However, gatherings of two or more people remain prohibited across the UK (with some exceptions of extended households or bubbles). Police enforcement of these restrictions has seen protesters, funeral attendees, volunteer groups and families dispersed or handed fines.

The organiser of a regular street church in Bulwell – which feeds the homeless and offers a service for people in their cars – has been given a summons for a £10,000 fine.³⁸ Two police cars and a van were called after the ‘Church on the Streets’ meeting, with people in their cars and a stall set up to feed homeless people. An organiser, Nicola O’Connor, said that the police initially “didn’t know if it was right or wrong and they told us we could carry on with it, because the guidance online wasn’t very clear and it said places of worship can take place.” However, Nottinghamshire Police changed its advice and told the group the service was not permitted:

“Over the last week in particular, we have absolutely clarified that these events are not allowed (...) Whilst the rules state you can attend places of worship, this car park is evidently not a place of worship and, despite the warnings given over the last week in particular, this event continued to go ahead and that is why today we have implemented our last resort of enforcement.”³⁹

The group believes it has not breached the restrictions and plans to contest the fine.

Funerals and memorial events

On 5th February, police in Belfast broke up “a small, safe and socially distanced wreath-laying” attended by survivors and relatives of people killed in the Sean Graham Bookmakers shooting. Relatives 4 Justice alleged that officers assaulted those in attendance.⁴⁰ The PSNI also arrested Mark Sykes, a survivor of the attack, as he was laying flowers at the scene. Chief Constable Simon Byrne responded to the outcry by tweeting: ‘We are acutely aware that this is the latest incident to raise concerns about the enforcement of Coronavirus Regulations and illustrates that there are no easy answers.’⁴¹ He later issued a public apology, admitting that “policing is at times struggling to

³⁷ Oral evidence: Global Disease Outbreaks, Science and Technology Committee (Commons), HC 136, 17th February 2021, Q1996: <https://committees.parliament.uk/oralevidence/1721/pdf/>

³⁸ Organiser of street church in Bulwell pub car park handed £10,000 Covid fine by police – Gemma Toulson, Nottinghamshire Live, 20th February 2021: <https://www.nottinghampost.com/news/nottingham-news/live-updates-police-scene-street-5027004>

³⁹ Pastor vows to fight £10,000 fine for hosting street church event in Bulwell pub car park – Andrew Topping, Nottinghamshire Live, 20th February 2021: <https://www.nottinghampost.com/news/local-news/street-church-pastor-vows-fight-5027459>

⁴⁰ Relatives 4 Justice, Twitter, 5th February 2021: <https://twitter.com/RelsForJustice/status/1357713091950235649>

⁴¹ Simon Byrne, Twitter, 5th February 2021: <https://twitter.com/ChiefConPSNI/status/1357766167998431239/photo/1>

deal with the restrictions of coronavirus regulations.”⁴² The Police Ombudsman is investigating the incident, while one officer is suspended and another repositioned.⁴³

Another incident at a Belfast funeral saw police stationed outside a wake for what the PSNI called an “overt evidence gathering operation.”⁴⁴ Patrick McKernan, whose mother had died, said he was “disgusted” by the police presence outside the wake, church and cemetery during the funeral. Chief Inspector Peter Brannigan said images taken would be “used for the purposes of prosecution, where the Health Protection Regulations have been breached,” but did not indicate that restrictions on funerals had been breached in any way. He instead referred to one incident of “erratic driving” which police officers addressed at the time.

An outdoor memorial event was broken up at Southsea bandstand, where around 30 adults and children were blowing up balloons to commemorate the life of a friend. Hampshire police officers dispersed the group, saying “Officers attended and dispersed the group, who were breaching the current Health Protection Regulations.”⁴⁵ Under Tier 4 restrictions, gatherings of up to 6 people are permitted to attend a “commemorative event following a person’s death,” provided the gathering does not take place at a private dwelling and the organiser takes “necessary precautions.”⁴⁶

In one disproportionate display of police force and misuse of resources, over 100 officers, dozens of motorcycles and six riot vans arrived at a funeral service in North Watford, despite funerals of up to 30 people being permitted under Regulations.⁴⁷ Before the funeral, senior officers held meetings with the deceased’s family, funeral directors, the church, and Watford Borough Council, as well as sending warning letters to local residents telling them to expect traffic disruption. The Daily Mail also reported that officers had been placed as “look-outs” for miles around the church from the early morning on the day of the funeral. The Sun reported that Hertfordshire Police spent £10,000 on security arrangements, including roadblocks.⁴⁸ However, only a few people over the permitted 30 arrived at the funeral, with onlookers estimating that police outnumbered mourners three to one. Mourners not permitted to attend were kept away from the church by a ring of police officers. It appears that this extreme use of police powers was motivated by the fact that the deceased woman was from a large traveller family, with Supt Nick Caveney attempting to justify the response: “The deceased person has a large family and it is likely that well over the permitted 30-people will attempt to attend the funeral.” Many people across the UK have large families but have not experienced this level of invasive policing during their loved one’s funeral. This discriminatory policing is unacceptable, highly disproportionate and shows little compassionate during a sensitive event.

RECOMMENDATION 4: It is unacceptable that mourners are facing intrusive and disproportionate policing. Police officers should approach funeral and memorial events with sensitivity and respect, rather than heavy-handed surveillance and dispersals.

⁴² Q Radio News, Twitter, 6th February 2021: <https://twitter.com/qnewsdesk/status/1358144136667422723>
⁴³ PSNI officer suspended after Sean Graham bookmakers memorial incident - Sheena McStravick, Belfast Live, 7th February 2021: <https://www.belfastlive.co.uk/news/belfast-news/psni-officer-suspended-amid-sean-19786951>
⁴⁴ West Belfast family left 'disgusted' at PSNI's 'overt evidence gathering operation' at mother's funeral – the Irish News, 6th February 2021: <https://www.irishnews.com/news/northernirelandnews/2021/02/06/news/west-belfast-family-left-disgusted-at-psni-s-overt-evidence-gathering-operation-at-mother-s-funeral-2212207/>
⁴⁵ Portsmouth police disperse crowd gathered for memorial at the Bandstand in Southsea – David George, the Portsmouth News, 21st February 2021: <https://www.portsmouth.co.uk/health/coronavirus/portsmouth-police-disperse-crowd-gathered-for-memorial-at-the-bandstand-in-southsea-3141314>
⁴⁶ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, sch 3A, para 6(16)
⁴⁷ Ring of steel around traveller funeral: More than 100 police close off roads to enforce Covid rules among mourners during bagpipe-led street procession – Rory Tingle & Gary O’Shea, Daily Mail, 23rd February 2021: <https://www.dailymail.co.uk/news/article-9291205/Police-form-ring-steel-North-Watford-traveller-funeral.html>
⁴⁸ Traveller gran with 95 grandkids laid to rest in huge 100-strong funeral protected by £10k police ring of steel - Rob Pattinson and Niamh Cavanagh, the Sun, 24th February 2021: <https://www.the-sun.com/news/2394763/police-traveller-funeral-mourners-procession-covid-breaches/>

Children

There has not been explicit government guidance clarifying that play constitutes exercise in England and Northern Ireland, although the law permits exercise with one other person from another household. In Scotland, children under 12 are not subject to restrictions on gatherings and in Wales, children are permitted to play “in the street in their neighbourhoods if they do not have access to other outdoor space.” Nevertheless, it is plainly evident that for children, play is a form of exercise and would be a “reasonable excuse” for being outside of their homes.

However, police officers have been preventing children from playing, stating that play does not constitute exercise and is therefore unlawful. Two children were sent home by police for playing out in the snow near their South London flat with their father, who told the BBC that the family was “really made to feel that we were doing something wrong by being there” and were told they should be playing in their garden, which they do not have.⁴⁹ A BBC investigation sought clarity, but responses only stated that exercise was permitted, which did not resolve the issue. A Government spokesperson said:

“We recognise the importance of exercise to the physical, mental and emotional wellbeing of children, which is why playgrounds have remained open during the national lockdown and outdoor exercise is permitted.

“Playgrounds are primarily for use by children who do not have access to private outdoor space, and while parents, guardians or carers are allowed to take children to a playground for exercise, they must not socialise with other people while there.”

The NPCC said:

“In the current circumstances, individuals should stay home unless an exemption applies to them, of which exercise is included. Parents and guardians are responsible for those under the age of 18, who should also be following the rules and staying safe.”

Experts have highlighted the impact of the lockdown on children’s learning and well-being, citing reports of behavioural changes, poor physical fitness and increased mental health difficulties.⁵⁰ Ingrid Skeels, Co-Director of national organisation Playing Out, said, “Whilst Wales and Scotland have both clearly stated in their guidance that outdoor play is not just allowed but important for children’s wellbeing, the UK government’s rules for England do not mention play.”⁵¹ The Government was criticised by its own MPs, with former Health Secretary Jeremy Hunt MP tweeting that it was “overzealous,” and Steve Baker MP telling Sky News:

“This unabashed vehemence in the expression of state power beyond the limits of the law would be comical if it were not for real. As the government succeeds in vaccinating the

⁴⁹ Lockdown: Have you been asked to stop playing outside? – BBC Newsround, 8th February 2021: <https://www.bbc.co.uk/newsround/55812556>

⁵⁰ Call for ‘summer of play’ to help English pupils recover from Covid-19 stress – Sally Weale, Guardian, 13th February 2021: <https://www.theguardian.com/society/2021/feb/13/call-for-summer-of-play-to-help-english-pupils-recover-from-covid-stress>

⁵¹ Lockdown: Have you been asked to stop playing outside? – BBC Newsround, 8th February 2021: <https://www.bbc.co.uk/newsround/55812556>

vulnerable, incidents like this only underscore the need to reclaim our lives once and for all.”⁵²

Downing Street issued a statement, saying that “Going to the park with the kids is not only allowed but perfectly reasonable” and that playgrounds could be used by children with or without their own gardens.⁵³ This statement goes some way to clarifying the state of play, but does not explicitly clarify that play is exercise and can be done in any outdoor space.

Parents have also been handed fines for failing to prevent their children from playing in groups.

Sheffield Police threatened parents with fines if their children are caught breaking lockdown regulations. They tweeted: “Some are engaging in anti-social behaviour such as throwing snowballs at passing traffic (...) This will not be tolerated and we will pursue these individuals and deal with the perpetrators accordingly.”⁵⁴

Derbyshire Police also threatened parents with fines after they caught a group of children playing football at a leisure centre.⁵⁵ They said they knew the names of some of the children and would be following up with parents.

RECOMMENDATION 5: Children should be encouraged to play outdoors, not policed. As in Scotland, children across the UK should be exempt from restrictions on outdoor gatherings, to promote their physical and mental wellbeing.

Exercise

One of the ‘reasonable excuses’ for leaving or being outside of one’s home is for the purpose of exercise outside.⁵⁶ 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.⁵⁷ Although the NPCC has confirmed that “the Covid Regulations which officers enforce and which enable them to issue FPNs for breaches do not restrict the distance travelled for exercise,”⁵⁸ police confusion between the law and guidance has persisted, with many people being issued with FPNs for travelling for exercise.

⁵² No 10 says all children can use playgrounds to exercise – Jessica, Elgot, Guardian, 11th February 2021: <https://www.theguardian.com/world/2021/feb/11/ministers-backtrack-on-advice-only-children-without-gardens-can-play-outside>

⁵³ Ibid.

⁵⁴ Police threaten Sheffield parents with Covid fines if their kids break lockdown rules – Claire Lewis, The Star, 4th February 2021: <https://www.thestar.co.uk/news/crime/police-threaten-sheffield-parents-covid-fines-if-their-kids-break-lockdown-rules-3123435>

⁵⁵ COVID-19: Police warn parents they will be fined after 20 youths caught playing football - Manpreet Kaur Sachdeva, Sky News, 23rd February 2021: <https://news.sky.com/story/covid-19-police-warn-parents-they-will-be-fined-after-20-youths-caught-playing-football-12226589>

⁵⁶ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 3A, para 2(2)(c)

⁵⁷ National lockdown: Stay at Home – Cabinet Office, GOV.UK, updated 28th January 2021: <https://www.gov.uk/guidance/national-lockdown-stay-at-home>

⁵⁸ 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/>

At Crosby beach, a police officer was filmed by the BBC issuing a fine to a woman for driving to the coast for a walk with her young daughter. Police noted that the woman had travelled from “about seven miles away” – the same distance the Prime Minister travelled to exercise in January.⁵⁹ After public backlash, the force released a statement, claiming that the officer “reconsidered the issue when he returned to the police station. On reflection he decided not to proceed with [the FPN].”⁶⁰ We welcome the withdrawal of the FPN, but it was incorrect for the force to advise her against “non-essential journeys” when her journey was entirely within the law.⁶¹

Derbyshire Police is “warning would-be walkers to seriously reconsider heading into the Peaks,” listing FPNs the force has issued and absurdly claiming that “even those sticking to the regulations around exercise are putting themselves, and others, at serious risk.”⁶²

In North Yorkshire, a couple was fined for travelling from Hull to Grosmont, part of North York Moors National Park, for a walk. Three people were also charged for travelling from Leeds to Selby for walking and “urban exploring.”⁶³

RECOMMENDATION 6: Travelling for outdoor exercise is lawful. Guidance should be amended to reflect the law and any fines issued to individuals solely for travelling to exercise should be rescinded.

Face coverings

In previous reports, we have detailed concerns that disabled people are being refused entry to shops or fined for not wearing a face covering. 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.”⁶⁴ 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.”⁶⁵ During the debate on the roadmap out of lockdown, Bambos Charalambous, MP for Enfield, raised the issue:

“Many people with hidden disabilities are unable to wear face masks, yet many of them face abuse when they go out in public and people do not realise that they are exempt from

⁵⁹ Coronavirus: Boris Johnson criticised over bike ride seven miles from home – BBC News, 11th January 2021: <https://www.bbc.co.uk/news/uk-politics-55620138>

⁶⁰ Merseyside Police, Twitter, 11th February 2021: <https://twitter.com/MerseyPolice/status/1359910806977196036?s=20>

⁶¹ Ibid.

⁶² Warning to walkers as very cold weather continues, Derbyshire Constabulary, 12th February 2021: <https://www.derbyshire.police.uk/news/derbyshire/news/news/forcewide/2021/february/warning-to-walkers-as-very-cold-weather-continues/>

⁶³ Police chief slams ‘reckless’ Covid rule-breakers as numbers fined continue to rise – Alexa Fox, the Northern Echo, 18th February 2021: <https://www.thenorthernecho.co.uk/news/19100938.police-chief-slams-reckless-covid-rule-breakers-numbers-fined-continue-rise/>

⁶⁴ 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)

⁶⁵ 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>

wearing face coverings. Will the Prime Minister commit to a public awareness campaign for people with hidden disabilities so that they do not face abuse in public?”⁶⁶

The Prime Minister responded that the Government would “do even more to get that point over to people, so that people who cannot wear face masks because of their disabilities do not face that kind of abuse.”

A video emerged of staff in a Morrison’s supermarket claiming that those who are exempt from wearing a face covering are required to wear a yellow sticker in the store “to let other people know why [they] are not wearing a mask.”⁶⁷ When a man with a medical exemption tells staff he is not comfortable with wearing the sticker, they record him, demand that he leaves, and call the police.

RECOMMENDATION 7: Supermarkets and other retailers must follow the EHRC guidance and not discriminate against people who are legally exempt from wearing face coverings. Staff should not deny people without face coverings entry to shops and must not demand proof of exemptions.

A video posted to Twitter appears to show a police officer threatening a shopkeeper with a £10,000 FPN for serving customers without a mask saying, “I don’t know how long it will take you to earn that and pay it (...) if you don’t pay it, you’ll end up in prison.”⁶⁸ Witnesses accused the officer of attempting to “intimidate” the shop owner.

Transport for London has stepped up its enforcement of face coverings and increased its number of enforcement officers to 500.⁶⁹ Between 4th July 2020 and 3rd February 2021, 135,934 people have been stopped by enforcement officers for not wearing face coverings and 2,061 FPNs have been issued. By way of comparison, the total number of FPNs issued on public transport by police forces across England and Wales is 456.⁷⁰

Campaigning

In our previous report, we expressed concern over an apparent leafleting and campaigning ‘ban’, which police forces across the UK had begun to enforce. Guidance from Minister for the Constitution stated that under the regulations, “leafleting by individual political party activists (...) is not considered essential or necessary activity” and therefore was illegal.⁷¹ This guidance is not supported in law – in fact, leafleting may fall under work, volunteering and “activities ancillary to voting,” which are all reasonable excuses to leave or remain outside of one’s home.⁷²

⁶⁶ HC Deb (22nd February 2021), vol. 689, col. 646: <https://hansard.parliament.uk/commons/2021-02-22/debates/7F26D493-AF6A-46A4-A1C3-61A39DD527CE/Covid-19RoadMap>

⁶⁷ Big Brother Watch, Twitter, 17 February 2021: <https://twitter.com/BigBrotherWatch/status/1361933401318690816>

⁶⁸ Twitter, 8th February 2021: <https://twitter.com/markmaycot/status/1358709315608207364>

⁶⁹ Face coverings enforcement, TfL, 5th February 2021: <https://madeby.tfl.gov.uk/2021/02/05/face-coverings/>

⁷⁰ Update on Coronavirus FPNs issued by police – National Police Chief’s Council, 25th February 2021: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-police>

⁷¹ 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

⁷² The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020

On 5th February, Gloucestershire police confirmed that two councillors were reported to police for allegedly breaching lockdown rules by delivering political leaflets.⁷³ Gloucestershire Constabulary said the Government "has stated there is no exemption for this activity in law" and said that individuals were liable to fixed penalty notices if they persisted. However, when Liberal Democrat Jeremy Hilton was reported for the same allegations of breaches earlier that week, the same police force had said that "the activity of delivering leaflets does not contravene Covid Legislation" before changing its position.⁷⁴

In Ashfield, two councillors were fined £200 each for distributing leaflets in their local area.⁷⁵ Ashfield Independents councillors Tom Hollis and David Martin were issued with FPNs after delivering leaflets containing information about local support services available to residents. Mr Hollis said:

"I'm just baffled. I wasn't delivering anything political, I was delivering a calendar that had all the information people need, if they need any medication, all the councils' numbers."

Insp. Mark Dickson said that the police had "checked" the leaflets and found "political canvassing material" and as a result, had issued the men with FPNs. It is a chilling reminder of how the Covid regulations have altered policing, when officers are checking leaflets for political material. Big Brother Watch has been in contact with the two councillors and ensured they have legal support.

In Wales, the Government has published guidance stating that leafleting is not permitted under the Regulations:

"In the current circumstances, distributing election leaflets door-to-door is not a reasonable excuse to leave home.

"Leaflets can of course be distributed safely by post, as mail delivery services continue to operate during the pandemic."⁷⁶

However, Level 4 restrictions in Wales provide that "working or providing voluntary or charitable services" is a reasonable excuse to leave or remain outside of one's home, which leafleting in advance of an election would clearly fall under. However, Senedd Member Neil McEvoy was cautioned by police officers after South Wales Police received complaints that he had been delivering leaflets relating to his election campaign.⁷⁷ He said:

"If the law is there then the law has to apply equally to everybody. Mark Drakeford is having his leaflets delivered, paying a private company to do so, yet the chief constable is seeking to stop my leaflets being delivered by volunteers who are taking Covid precautions. (...)

⁷³ Police confirm two more councillors reported about 'breaching' lockdown rules – Leigh Boobyer, Gloucestershire Live, 5th February 2021: <https://www.gloucestershirelive.co.uk/news/cheltenham-news/police-confirm-two-more-councillors-4972054>

⁷⁴ Gloucester politician Jeremy Hilton warned by police for 'breach' of lockdown rules – Kim Horton, Gloucestershire Live, 2nd February 2021: <https://www.gloucestershirelive.co.uk/news/gloucester-news/gloucester-politician-warned-police-breach-4958054>

⁷⁵ Covid-19: Ashfield councillors fined for 'canvassing' breach – BBC News, 2nd February 2021: <https://www.bbc.co.uk/news/uk-england-nottinghamshire-55909981>

⁷⁶ Alert level 4: frequently asked questions – GOV.WALES, updated 13th February 2021: <https://gov.wales/alert-level-4-frequently-asked-questions#section-61335>

⁷⁷ Senedd Member Neil McEvoy 'cautioned' by police after 2021 election leaflets delivered door-to-door in Cardiff – Ffion Lewis, Wales Online, 16th February 2021: <https://www.walesonline.co.uk/news/wales-news/senedd-member-neil-mcevoy-cautioned-19849897>

“We can’t live in a situation where politicians are hassled by the police to stop doing politics. If we’re able to have pizza menus delivered which is supposedly legal, it’s outrageous that informing people on the type of government we should have is illegal.”

South Wales Police confirmed that the force had reported Mr McEvoy for consideration of prosecution under the Health Protection Regulations.

On 18th February, Big Brother Watch, along with Article 19, Fair Vote UK, Index on Censorship, Liberty, Unlock Democracy and the Local Government Association Independent Group wrote to Chloe Smith, Minister for the Cabinet Office, urging her to affirm that political leafleting is lawful and to withdraw the guidance stating that leafleting was not permitted under the Regulations.⁷⁸ We warned that the suggestion of a prohibition on political leafleting would contradict the continuation of other postal and delivery services, lack a public health justification, lack legal authority, engage the right to freedom of expression protected by Article 10 of the European Convention on Human Rights, and threaten the functioning of democracy. Tom Brake, Director of Unlock Democracy, said:

“Seeking to ban leafleting by volunteers which smaller parties rely on during election campaigns, whilst giving a green light to delivery by commercial companies defies logic. But when this ban is combined with an increase in election spending limits, then the logic emerges.

“The level playing field for political parties is suddenly heavily tipped in the government’s favour.”

Kyle Taylor, Director of Fair Vote UK, said:

“With the ability for candidates and parties to campaign already reduced by the Covid-19 crisis, it is unnecessarily stifling of democratic debate to restrict volunteer human delivery of campaigning literature if they practice social distancing and follow all government guidance (...)

“Larger parties, with fuller coffers, gain a serious advantage simply by their ability to pay for paid delivery. Success at the polls shouldn’t be determined by money but by open and robust debate.”

We requested a response within 7 days, given the urgent need for clarity in relation to the upcoming May elections. To date, we have not received a reply.

On 22nd February, the Government’s spring roadmap indicated that the guidance on political campaigning may be revised:

“The Government will amend the regulations to enable a broader range of campaign-related activity from 8 March, but it is essential that this still takes place in a COVID-Secure way, in line with guidance and the law.

“The Government will be publishing further guidance for candidates, their agents and political parties on campaigning in the elections in due course, and will be engaging with

⁷⁸ Rights and democracy groups challenge political leafleting “ban” – Big Brother Watch, 19th February 2021: <https://bigbrotherwatch.org.uk/2021/02/rights-and-democracy-groups-challenge-political-leafleting-ban/>

the Parliamentary Parties Panel on this guidance shortly to ensure the views of political parties are taken into account.”⁷⁹

While we welcome new guidance, which would make it explicit that leafleting is permitted, it would not be necessary to amend the Health Protection Regulations to enable leafleting from 8 March - the Regulations already permit leafleting, and we remain alarmed that the Government has attempted to communicate otherwise.

RECOMMENDATION 8: The Minister for the Constitution must clarify that leafleting is permitted under the Health Protection Regulations. Any fines issued to those leafleting must be rescinded.

Fines

The latest figures released by the NPCC show that 68,952 FPNs have been issued since March 2020, with 26,277 fines processed between 17th January and 14th February, which accounts for 38% of all FPNs.⁸⁰ 15,947 FPNs were issued under the first set of lockdown restrictions, which were in force for just over 3 months in 2020 (from the end of March to early July), while 27,517 FPNs have been issued from 6th January to 14th February 2021, when the national lockdown (Tier 4) came into force.⁸¹ This means police forces are issuing fines at approximately 3.5 times the rate as in the first lockdown – an alarming jump that demonstrates that police officers are resorting to enforcement action far quicker than at other times during the pandemic.

Despite police accusations of “completely defiant and irresponsible people who have no regard for the safety of themselves or others,” only a small fraction of FPNs have been in relation to large gatherings, the offences which could pose the most significant risk to public health.⁸² 272 FPNs have been issued in England and Wales in relation to gatherings of more than 30 people and 485 FPNs have been issued in relation to gatherings of more than 15 people since the respective laws came into place.

2,344 FPNs have been issued between 15th June and 14th February for breaches of the face coverings Regulations in England – 456 on public transport and 1,888 in relevant indoor places.⁸³

582 businesses have been issued with FPNs, relation to offences from failing to provide table service to opening later than the legal curfew.

402 FPNs have been issued in relation to people failing to self-isolate after travelling from a listed country, compared to 13,706 investigation which found that people were self-isolating. There are no numbers provided for FPNs issued under the self-isolation regulations.

The disparity between FPNs issued to people of 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

⁷⁹ COVID-19 Response – Spring 2021 – HM Government, 22nd February 2021, p. 40: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/963491/COVID-19_Response_-_Spring_2021.pdf

⁸⁰ Update on Coronavirus FPNs issued by police – National Police Chief’s Council, 25th February 2021: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-police>

⁸¹ Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales – National Police Chief’s Council, 25th February 2021: <https://cdn.prgloo.com/media/c1cd9d23512643b28d36a2b5f0eabc3e.pdf>

⁸² Update on Coronavirus FPNs issued by police – National Police Chief’s Council, 25th February 2021: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-police>

⁸³ Update on Coronavirus FPNs issued by police – National Police Chief’s Council, 25th February 2021: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-police>

population, black ethnic groups make up 3.3% of the population and mixed ethnic groups make up 2.2% of the population.⁸⁴ However, Asian ethnic groups make up 12% of FPNs issued, black ethnic groups make up 7% of FPNs and mixed ethnic groups make up 3% of all FPNs issued, an increase in disparity from the previous fines data (where 11% and 6% of FPNs were issued to Asian and black ethnic groups respectively). The disparity is particularly stark in relation to FPNs issued under face covering regulations, where only 62% of FPNs were issued to white people on public transport and 64% 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.

72% of FPNs were issued to men. 45% of FPNs were issued to 18–24-year-olds and nearly three-quarters (74%) of all FPNs were issued to those under the age of 34.

There is also significant variation in the rate at which FPNs are being issued across the country. Our analysis found that Dyfed-Powys continues to have issued the highest rate of FPNs, with 380 FPNs issued per 100,000 people.⁸⁵ Northumbria has issued the highest rate of fines in England, with 314 FPNs issued per 100,000 people. North Yorkshire has issued the second highest rate of fines, with 305 FPNs per 100,000 people, and Merseyside has issued the third highest rate of fines, with 277 FPNs per 100,000 people. By way of comparison, Humberside has issued just 21 FPNs per 100,000 people, and Hertfordshire has issued 52 FPNs per 100,000 people.

Under the nationwide Tier 4 regulations, Merseyside, Northamptonshire and North Yorkshire have issued the highest rate of FPNs, at 161, 136 and 128 per 100,000 people respectively, while Humberside has issued just 14 FPNs in total, fewer than 2 FPNs per 100,000 people, and Cleveland has issued 14 FPNs per 100,000 people.

Some forces have increased enforcement dramatically over the past month. The Metropolitan Police issued 7,221 FPNs since 17th January – up until 17th January the force had issued 3,136 FPNs since March 2020. Kent Police issued near to or more than double the number of FPNs (846) than it had issued in total since March (443). Cheshire issued almost the same amount of FPNs in the past month as it had in total since March 2020, as did Hampshire and Merseyside.

Under the face covering requirements, there is also significant variation. Some forces have not issued any FPNs in relation to this requirement (Cleveland and Humberside) and others have issued a small number (19 forces issued fewer than 10), presumably focusing on encouraging and explaining regulations, whilst some forces have issued hundreds of FPNs. West Mercia and West Midlands have both issued 259 FPNs, Northamptonshire has issued 294 FPNs and the Metropolitan Police has issued 368 FPNs – more than the British Transport Police which has issued 243 FPNs relating to face coverings. In Wales, no FPNs have been issued relating to face coverings.

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 14% of the 68,952 FPNs recorded in England and Wales were unlawfully issued, a percentage which is in line with unlawful prosecutions under the Regulations,

⁸⁴ Population of England and Wales – GOV.UK, 7th August 2020: <https://www.ethnicity-factsfigures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/populationof-england-and-wales/latest>

⁸⁵ Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales – National Police Chief's Council, 25th February 2021: <https://cdn.prgloo.com/media/c1cd9d23512643b28d36a2b5f0eabc3e.pdf>

this would account for almost 9,700 unlawfully issued FPNs. This could amount to around £2,000,000 of revenue in unlawful FPNs. The number is likely to be higher however, given the lack of safeguards around issuing FPNs.

RECOMMENDATION 9: A national review of all fixed penalty notices issued under the lockdown Regulations should be instigated.

RECOMMENDATION 10: 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 January identified an additional 39 unlawful charges, 25% of all charges reviewed in January.⁸⁶ This brings the total number of unlawful charges to 166, or 14% of all charges.

Despite the CPS' ongoing review, there is evidence to suggest that unlawful prosecutions are persisting. A man who travelled from Surrey to Bournemouth was prosecuted under the Health Protection Regulations, along with other offences. Chief Inspector Ashley Adams, of Dorset Police, said: "Jonathan Parrott knowingly travelled from a Tier 4 area in Surrey to Dorset, which was in Tier 2 COVID-19 restrictions at the time of the incident. This was a clear and blatant breach of the restrictions that will not be tolerated." However, as we have stressed in previous reports, travelling between tier areas has never been an offence in England, and as such it is likely that this prosecution was unlawful.⁸⁷ It is worrying that even in court, Covid regulations are being misapplied.

In previous reports, we have detailed the use of the Single Justice Procedure (SJP) to convict people under the Health Protection Regulations. Groups campaigning on criminal justice issues have criticised the SJP as a "cheap but ineffective system" used to "convict people for minor crimes they may not have done."⁸⁸ Beverley Higgs, the chairwoman of the Magistrates' Association, urged the Government to consider how the SJP "can be opened up to public scrutiny and how openness and transparency can be achieved."

On average, 70% of people do not respond to the SJP notices and enter no plea, meaning cases are decided by a magistrate in their absence and without their input. However, the average is considerably higher in relation to charges under the Health Protection Regulations. In response to a written parliamentary question, the Ministry of Justice revealed that on average 88% of people did not enter a plea, out of 1,084 cases from July to September 2020.⁸⁹ Information regarding charges from September 2020 are not yet available, but a rapid increase from 23 cases in July to 929 cases in September suggests that thousands more cases under the SJP have been heard, presumably the majority of which have no entered plea from the defendant. After an investigation by Big Brother Watch and Fair Trials, it was revealed that the CPS review does not include any

⁸⁶ January's coronavirus review findings – Crown Prosecution Service, 22nd February 2021: <https://www.cps.gov.uk/cps/news/januarys-coronavirus-review-findings>

⁸⁷ Covid: Surrey man broke Tier 4 rules by being in Bournemouth – Jason Lewis, the Daily Echo, 24th February 2021: <https://www.bournemouthecho.co.uk/news/19112438.covid-surrey-man-broke-tier-4-rules-bournemouth/>

⁸⁸ Call to scrap 'plead by post' secret trials – Jonathan Ames, the Times, 18th February 2021: <https://www.thetimes.co.uk/article/call-to-scrap-plead-by-post-secret-trials-5p6w8r3fz>

⁸⁹ Written answer: Chris Philip to Alex Cunningham, UIN 143756, 1st February 2021: <https://questions-statements.parliament.uk/written-questions/detail/2021-01-26/143756>

charges under the SJP. Given that the SJP is subject to even less scrutiny than a magistrate's hearing, we believe it is highly likely that hundreds more unlawful prosecutions have occurred under the SJP, with no intervention from the CPS.

RECOMMENDATION 11: Hundreds of unlawful prosecutions could be occurring under the secretive Single Justice Procedure with little oversight. The Crown Prosecution Service must expand its review of coronavirus prosecutions to include charges heard under the Single Justice Procedure.

Divergence

Whilst the four nations all remain in lockdowns, the state of lockdown restrictions are different in seeming arbitrary and illogical ways. Four different lockdowns across the UK have led to confusion and questions over the necessity of certain differing restrictions. In Scotland, for example, groups of children under the age of 12 are exempt from restrictions on gatherings, while in Wales, two households are permitted to form an extended household and mix freely. In England, there are no restrictions in law about travelling to exercise, while Welsh regulations state exercise must start and finish at home. In Wales and Scotland, police have powers of entry to enforce Covid restrictions, whereas in England and Northern Ireland they do not.

The approach to easing restrictions has been markedly different between the devolved administrations as well. While the UK Government has published a more detailed roadmap, the devolved administrations have given less clarity.

In Scotland, the First Minister explained a route to easing restrictions on 23rd February. In contrast to England, Scotland will continue with its system of levels – meaning restrictions will ease unevenly across Scotland. The announcement contained few specifics, but Nicola Sturgeon said the 'stay at home' requirement would remain in place until at least 5th April and that non-essential retail and outdoor hospitality may be permitted to reopen at the end of April. Ruth Davidson, leader of the Scottish Conservatives, criticised the lack of detail: "There is nothing on what would happen after 26 April. This isn't a route map out of Covid; it's a holding document for the next eight weeks."⁹⁰

In Wales, no roadmap has been published. First Minister Mark Drakeford announced that restrictions would remain in place for another 3 weeks on 19th February, although rules on exercise would be loosened to allow 4 people to exercise outdoors together.⁹¹ The Welsh Government will "consider" reopening non-essential retail in mid-March but said that hospitality venues were unlikely to reopen for at least 6 weeks. There has been little further information as to when people will be able to gather, travel and resume normal life. Businesses have called for more certainty from the Welsh Government as to when they will be able to open. Ben Francis, Federation for Small Businesses Wales Policy Chair, said:

"On top of the repeated closures and restrictions that have made it incredibly difficult to run a small business and sustain jobs and investment, tourism firms are in the dark about what the coming months could hold for them.

⁹⁰ Nicola Sturgeon unveils plans for easing Scotland's Covid restrictions – Severin Carrell, the Guardian, 23rd February 2021: <https://www.theguardian.com/uk-news/2021/feb/23/sturgeon-unveils-plans-for-easing-scotland-covid-restrictions>

⁹¹ Lockdown restrictions in Wales to stay but four people can meet for exercise – ITV News, 19th February 2021: <https://www.itv.com/news/wales/2021-02-18/covid-lockdown-restrictions-in-wales-to-stay-in-place-for-another-three-weeks>

“These businesses need to be able to plan ahead if they are to take advantage of the spring and summer season.”⁹²

In Northern Ireland, the Executive has not announced its plans to ease lockdown.

RECOMMENDATION 12: The devolved administrations must provide clear routes out of restrictions, ideally aligned as closely as possible to avoid confusion and arbitrary restrictions.

⁹² 'We can't carry on like this': The plea from tourism businesses for a spring reopening date – ITV News, 18th February 2021: <https://www.itv.com/news/wales/2021-02-18/we-cant-carry-on-like-this-the-plea-from-tourism-businesses-for-a-spring-reopening-date>



There may have been justification in March for using emergency procedures to bypass Parliament but there has not been since. The most severe legal restrictions on liberty require the gold standard of democratic accountability, not a rushed procedure which side-lines Parliament.”

— Adam Wagner, human rights barrister⁹³

Coronavirus Act

Schedules 21 and 22 of the Coronavirus Act 2020 contain draconian powers that, after almost a year of emergency laws, have never proved useful or necessary to protect public health.

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 also been used to unlawfully charge people, despite the fact that it has never been activated in England.

We have consistently argued throughout the pandemic, and before the Coronavirus Act became law, that Schedules 21 and 22 should be removed from the Act, as they contain excessive and draconian powers.

The Coronavirus Act requires ministers to report every 2 months on which powers are currently active. The most recent two-monthly review was published on 28th January 2021.⁹⁴ Yet again, the review made no mention at all of the 100% unlawful prosecution rate under the Act; and yet again, the review made the unproved claim that the powers primarily responsible in Schedule 21 to the Act, "are important for controlling and containing the virus". This dishonest manner of reviewing makes a mockery of the very purpose and claimed benefits of the review, which appears to be a political exercise rather than a genuine analysis.

Unlawful prosecutions under Schedule 22 have also been revealed. Schedule 22 allows the Health Secretary to issue directions in relation to events, gatherings or premises in England, after he has made and published a declaration of a "public health response period."⁹⁵ A person commits an offence if the person fails without reasonable excuse to comply with a prohibition, requirement or restriction imposed on the person by a direction issued by the Health Secretary. However, there has never been a declaration of a "public health response period" in England or Wales to invoke Schedule 22 powers. Consequently, no directions have been issued, meaning it would be impossible to commit an offence under this Schedule. However, data from the Ministry of Justice, released in response to a Parliamentary Question from Alex Cunningham MP, showed that two people had been convicted in England and Wales under Schedule 22.⁹⁶ These convictions are undoubtedly unlawful. It is extremely concerning that the Ministry of Justice has uncritically published this information and has not indicated that these cases have been investigated. These prosecutions were not overturned by the CPS review as they occurred under the Single Justice Procedure.

The CPS has been conducting monthly reviews of all prosecutions under the Coronavirus Act and found in February, for the ninth review in a row, that every single charge under the Act has been unlawful. In January, another 14 charges were overturned by the CPS, totalling 246 unlawful charges since March 2020.⁹⁷

⁹⁴ Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020 – Department of Health and Social Care, 28th January 2021: <https://www.gov.uk/government/publications/coronavirus-act-report-january-2021/two-monthly-report-on-the-status-on-the-non-devolved-provisions-of-the-coronavirus-act-2020>

⁹⁵ Coronavirus Act 2020, sch 22, para 4

⁹⁶ Written answer: Chris Philip to Alex Cunningham, UIN 143756, 1st February 2021: <https://questions-statements.parliament.uk/written-questions/detail/2021-01-26/143756>

⁹⁷ January's coronavirus review findings – Crown Prosecution Service, 22nd February 2021: <https://www.cps.gov.uk/cps/news/januarys-coronavirus-review-findings>

RECOMMENDATION 13: Unlawful prosecutions under Schedule 22 of the Coronavirus Act must be immediately overturned. The Crown Prosecution Service must commit to reviewing all charges under emergency legislation.

When referring to the incorrect charges under the Coronavirus Act, Owen Weatherill, the NPCC's lead of the coronavirus response said there were "very small numbers and arise from health protection issues."

"They occur primarily because they are administrative errors, charging under the wrong regulation. They should be charged under the regulations when in custody, they are actually charged under the Act, which are different offences. But there are some bits of them which sound similar, which is where the confusion comes from."⁹⁸

"Confusion" does not justify the unprecedented record of 100% unlawful prosecutions under the Coronavirus Act, almost a year after it came into force. 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 almost a year.

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

RECOMMENDATION 14: It remains the case that every prosecution under the Coronavirus Act has been unlawful. The extraordinary detention and dispersal powers in Schedules 21 and 22 has resulted in exclusively unlawful prosecutions and must be repealed.

⁹⁸ Oral evidence (Virtual Proceeding): The Government's response to Covid-19: human rights implications of long lockdown, Joint Committee on Human Rights, HC 1004, 24th February 2021, Q 35: <https://committees.parliament.uk/oralevidence/1756/pdf/>

Self-Isolation Requirement

Police access to Test and Trace data

In our January report, we analysed an “urgent” amendment to the Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021 which, without prior parliamentary debate, allows NHS Test and Trace to disclose personal information of individuals who have been asked to self-isolate to police and local authorities.

We also pointed to the fact that in October 2020, we had 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 – but that this MoU had not been published. We recommended that the Department of Health urgently publish the MoU allowing police access to NHS Test and Trace data (Recommendation 20, January 2021).

Following our recommendation, Liberal Democrat peer Lord Scriven submitted a written parliamentary question to Health Minister Lord Bethell as to when the MoU would be published. On 17th February, Lord Bethell stated that the MoU is “currently being updated to reflect amendments to the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 on 29 January and feedback from the Information Commissioner’s Office,” adding “the MoU will be published as soon as practically possible.”⁹⁹ This is plainly unsatisfactory and is obstructing scrutiny. Given that the same response has been given since October, it is not clear when the MoU will be published.

When questioned by MPs in the Second Delegated Legislation Committee, Health Minister Nadine Dorries could not provide clarification as to when the MoU will be published.

RECOMMENDATION 15: The Memorandum of Understanding between the Department of Health and Social Care and the National Police Chief’s Council allowing police access to NHS Test and Trace data must be published to enable meaningful scrutiny of sensitive data sharing.

The Regulations were not debated in the Chamber of the House of Commons – rather they were debated by the Second Delegated Legislation Committee on 8th February, 9 days after they came into force.

Justin Madders MP, Shadow Health Minister, said:

“I draw attention to that because health data is highly sensitive and therefore falls under a special category of data under the General Data Protection Regulation rules. Concerns have been raised about that. Given that medical privacy is the bedrock of a functioning public health system, its disclosure should be subject to full parliamentary scrutiny before it is enacted.”¹⁰⁰

Mark Harper MP, Conservative backbencher and chair of the Covid Recovery Group, agreed:

⁹⁹ <https://questions-statements.parliament.uk/written-questions/detail/2021-02-09/hl13205>
¹⁰⁰ HC Second Delegated Legislation Committee Deb, 8th February 2021, col. 9:
[https://hansard.parliament.uk/commons/2021-02-08/debates/d617dd44-e939-4d62-9fcc-f2f4d3654bb9/HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERS\)\(ENGLAND\)\(AMENDMENT\)REGULATIONS2021HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERSANDSELF-ISOLAT](https://hansard.parliament.uk/commons/2021-02-08/debates/d617dd44-e939-4d62-9fcc-f2f4d3654bb9/HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERS)(ENGLAND)(AMENDMENT)REGULATIONS2021HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERSANDSELF-ISOLAT)

“In the present case, I do not understand what the urgency was when the need for the regulations was identified. Why was it not possible, a few days later, simply to have them debated by the House?”¹⁰¹

Hotel quarantine

In February, the Government announced the introduction of ‘quarantine hotels’. Travellers arriving from 33 “red list” countries must fulfil self-isolation obligations, isolating for ten days in government-designated accommodation or facing a £10,000 FPN. The Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021 were made on 12th February and came into force the following Monday at 4am on 15th February.¹⁰² True to form, this left no working days for the law to be scrutinised by Parliament and only a weekend’s notice for travellers, hotels and travel companies. These restrictions represent a significant change to the operation of UK borders. It is unacceptable that there was no prior vote on these Regulations.

The Regulations impose a requirement for international travellers to book and undertake coronavirus tests on day 2 and day 8 after their arrival. Those travelling from ‘red list’ countries are required to book a euphemistically named “managed self-isolation package,” which includes accommodation, transport and a testing kit designated by the Secretary of State.¹⁰³ An individual is currently required to pay £1,750 for this package, but this price is not capped or fixed in law.¹⁰⁴ Those self-isolating in Government accommodation are only permitted to leave the place (their room) where they are self-isolating for the purpose of travel directly to a port, to fulfil a legal obligation, to seek medical assistance, to access critical public services, to avoid injury, illness or to escape the risk or harm. Individuals are also permitted to exercise, to visit a member of their household or close family member if they reasonably believe they are dying, or to attend the funeral of a member of their household or a close family member – but for this they must receive “prior permission by a person authorised by the Secretary of State.” Government guidance notes that exercise is permitted “only with special permission from security” and “is not guaranteed.”¹⁰⁵

It is unprecedented for the UK Government to enforce the detention of healthy, innocent people – regardless of a lack of symptoms and one or more negative Covid-19 tests – and at their own cost. This policy is a clear interference with Article 8 privacy rights, as well as the Article 5 right to liberty. It also departs from Article 40 of the International Health Regulations, which prohibits WHO Member States from charging travellers for quarantine requirements. The quarantine requirements are now being challenged by Brazilian lawyer Felipe Hotta,¹⁰⁶ instructing PGMBM and lead counsel Tom

¹⁰¹ HC Second Delegated Legislation Committee Deb, 8th February 2021, col. 13: [https://hansard.parliament.uk/commons/2021-02-08/debates/d617dd44-e939-4d62-9fcc-f2f4d3654bb9/HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERS\)\(ENGLAND\)\(AMENDMENT\)REGULATIONS2021HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(ALLTIERSANDSELF-ISOLAT](https://hansard.parliament.uk/commons/2021-02-08/debates/d617dd44-e939-4d62-9fcc-f2f4d3654bb9/HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERS)(ENGLAND)(AMENDMENT)REGULATIONS2021HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(ALLTIERSANDSELF-ISOLAT)

¹⁰² Covid: Hotel quarantine legislation published just days before policy comes into effect – Aine Fox, Independent, 12th February 2021: <https://www.independent.co.uk/news/uk/politics/covid-hotel-quarantine-law-airport-uk-border-b1801730.html>

¹⁰³ The Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021, para 15

¹⁰⁴ Hotel quarantine details confirmed with £1,750 cost - and 10 years' prison for lawbreakers – Dan Bloom, the Mirror, 9th February 2021: <https://www.mirror.co.uk/news/politics/breaking-hotel-quarantine-details-confirmed-23468842>

¹⁰⁵ Booking and staying in a quarantine hotel when you arrive in England – GOV.UK, 15th February 2021: <https://www.gov.uk/guidance/booking-and-staying-in-a-quarantine-hotel-when-you-arrive-in-england#quarantining-in-a-managed-quarantine-hotel>

¹⁰⁶ Join the Legal Challenge of the UK Government’s Hotel Quarantine – CrowdJustice: <https://www.crowdjustice.com/case/legal-challenge-to-the-hotel-quarantine-policy/>

Hickman QC. Mr Hickman criticised the policy, commenting “preventative detention feels like something out of Minority Report”.¹⁰⁷

Furthermore, there is no exemption for children or people with disabilities. It is unlikely that hotels providing accommodation will be fully accessible or will be able to provide the necessary care or support for those with physical disabilities, learning difficulties or mental health problems.

The Regulations also grant power of entry to police officers in order to search for a person they suspect is breaching their requirement to isolate in accommodation or to remove a person to their designated self-isolation accommodation.¹⁰⁸ In exercising this power, an officer may use “reasonable force” and may be accompanied by a PCSO.¹⁰⁹

An offence under the Regulations, for failing to comply with the requirement to secure a “managed self-isolation package” could result in a FPN from £5,000 up to £10,000.

However, the most disproportionate element of the Government hotel quarantine policy is the threat that those who fail to disclose a visit to a ‘red list’ country could face up to 10 years in prison – which the Telegraph pointed out is “longer than the maximum sentence for sex offences with children or violent firearms crimes.”¹¹⁰ A Downing Street spokesperson said that those who do not disclose their travel would be prosecuted under the Forgery and Counterfeiting Act 1981.¹¹¹ Sir Charles Walker, the vice chairman of the 1922 Committee of Conservative MPs, told the Prime Minister to rein in his Cabinet ministers “very, very quickly”:

“Utterly ridiculous thing for the Secretary of State of Health to say. Are we really going to lock people up for 10 years for being dishonest about the fact that they’ve been to Portugal?

“What a stupid thing to say, I mean a really stupid thing to say, that demeans his office and his position around the Cabinet table.”¹¹²

Former Attorney General Dominic Grieve MP said the threat of 10-year jail terms was a “mistake” and that no court would ever issue such a sentence. Former Supreme Court judge Lord Sumption said that the disproportionate sentence was “savage”:

“Penal policy seeks to match the sentence to the gravity of the crime. When policy-makers impose savage and disproportionate sentences, it is usually because the rule in question is not widely respected and breaches are hard to detect.

“They reckon that if they can only catch ten per cent of offenders, they need to impose spectacular penalties on them so as to deter the other ninety per cent. This technique is arbitrary and unfair. It also tends to discredit the law.”¹¹³

¹⁰⁷ PGMBM Launch Challenge To Government’s Hotel Quarantine Policy – PGMBM, 16th February 2021: <https://pgmbm.com/pgmbm-launch-challenge-to-governments-hotel-quarantine-policy/>

¹⁰⁸ The Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021, para 10

¹⁰⁹ The Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021, para 10

¹¹⁰ Ten years in jail for holidaymakers who lie about going to Portugal – Charles Hyman and Ben Riley-Smith, the Telegraph, 9th February 2021: <https://www.telegraph.co.uk/news/2021/02/09/passengers-face-jail-terms-10-years-concealing-red-list-travel/>

¹¹¹ Covid: Top Tory accuses Hancock of ‘demeaning office’ with 10-year prison plans – Sam Blewett and Emma Bowden, the Belfast Telegraph, 10th February 2021: <https://www.belfasttelegraph.co.uk/news/uk/covid-top-tory-accuses-hancock-of-demeaning-office-with-10-year-prison-plans-40076412.html>

¹¹² Ibid.

¹¹³ Does Mr Hancock really think a non-disclosed Portugal visit is worse than a sexual offence? – Jonathan Sumption, the Telegraph, 9th February 2021: <https://www.telegraph.co.uk/politics/2021/02/09/does-mr-hancock-really-think-non-disclosed-portugal-visit-worse/>

There have already been reports of individuals facing these enormous fines for failing to self-isolate. Four passengers were stopped by border officials at Midlands Airport and fined £10,000 for failing to declare that they had travelled from a 'red list' country.¹¹⁴ In Scotland, a father and his young daughter were wrongly ordered to self-isolate in a quarantine hotel after airport staff misunderstood the restrictions.¹¹⁵ In Lancaster, a man given wrong advice from his airline found he had to quarantine after a flight transfer in Dubai.¹¹⁶ He said the Government website was unclear about whether flight transferred qualified.

Security guards at Heathrow's Radisson Blu hotel called the police after those staying in the hotel refused to return to their rooms after their designated 15 minutes fresh air break.¹¹⁷ Others were barred from taking cigarettes breaks after they were seen hugging and sharing cigarettes and drinks, with the hotel suggesting individuals "order nicotine patches."¹¹⁸ It was reported that all fresh air breaks would only be permitted under escort after this incident.

RECOMMENDATION 16: The hotel quarantine requirements for travellers must be overturned, absent the publication of a full, scientifically-informed analysis explaining why this would be a strictly necessary measure and that no more proportionate options are available to pursue the same legitimate aim.

RECOMMENDATION 17: For some people with physical or mental disabilities, mandatory hotel quarantine could cause extreme distress or harm. The Government must exempt these people from the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021.

¹¹⁴ Covid: Four fined in Birmingham over red-list travel, BBC News, 16th February 2021: <https://www.bbc.co.uk/news/uk-england-56086248>

¹¹⁵ Covid: Family reunited after hotel quarantine 'error' – BBC News, 16th February 2021: <https://www.bbc.co.uk/news/uk-scotland-56078511>

¹¹⁶ Lancashire man forced to pay £1,750 for quarantine hotel – Sophie-May Clarke, Lancashire Telegraph, 24th February 2021: <https://www.lancashiretelegraph.co.uk/news/19113840.lancashire-man-forced-pay-1-750-quarantine-hotel/>

¹¹⁷ Police called to quarantine hotel after travellers stage 'peaceful protest' – Jessica Carpani, Telegraph, 22nd February 2021: <https://www.msn.com/en-gb/travel/news/police-called-to-quarantine-hotel-after-travellers-stage-peaceful-protest/ar-BB1dUEci>

¹¹⁸ Quarantine hotel 'inmates' are told to stop smoking and buy nicotine patches after party in car park – RT, 28th February 2021: <https://www.rt.com/uk/516818-quarantine-hotel-inmates-are-told/>



We are creating a long-term, powerful digital infrastructure, for a time-bounded crisis. We've seen the proliferation of security infrastructure post 9/11, and the once-limited, now essentially mandatory, Aadhaar identity systems in India. Once individualised risk scoring permeates society, it may not easily be stripped back.”¹¹⁹

—Imogen Parker, Head of Policy, Ada Lovelace Institute

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A shot in the arm, not a shot in the dark – Imogen Parker, Ada Lovelace Institute, 17th February 2021: <https://www.adalovelaceinstitute.org/blog/shot-in-the-arm/>

Vaccine Passports

After weeks of contradictory statements from Ministers, the Prime Minister announced that a review into 'Covid Status Certification' would be undertaken, to assess the role vaccine passports could play in reopening hospitality and large events – despite the roadmap planning to open much of society before the review is finalised in late June. Covid passports would allow organisations and businesses to restrict individuals' access to services, travel and workplaces on the basis of their vaccination or test status and would be tantamount to vaccine coercion.

Throughout February, the Ada Lovelace Institute has been collecting evidence on the benefits and risks of vaccine passports. Their Head of Policy, Imogen Parker wrote:

"The headline is that at present, any use of vaccine passports or health status apps is not justifiable given the lack of evidence on transmission.

"The vaccine passport relies on the assumption that my vaccine status tells you something about the risk I pose to you, not simply the risk I face from Covid-19. That's not something we can currently know – we need more time to pass, and more evidence to accumulate. Add in different vaccine regimes combined with emerging mutations that may impact upon vaccine effectiveness, and it all makes for a complicated picture."¹²⁰

As well questions around transmissibility, Imogen Parker also raised broader questions about the risks of discrimination, whether vaccine passports would "exacerbate distrust" and "increase vaccine hesitancy" in marginalised communities, the potential for increased vaccine protectionism from wealthy nations and the risk that sensitive data may be repurposed for other uses.¹²¹

International travel

The World Health Organisation published guidance on 5th February in relation to Covid-19 vaccination passes being required for international travel, advising against their introduction:

"At the present time, it is WHO's position that national authorities and conveyance operators should not introduce requirements of proof of COVID-19 vaccination for international travel as a condition for departure or entry, given that there are still critical unknowns regarding the efficacy of vaccination in reducing transmission.

"In addition, considering that there is limited availability of vaccines, preferential vaccination of travellers could result in inadequate supplies of vaccines for priority populations considered at high risk of severe COVID-19 disease.

"WHO also recommends that people who are vaccinated should not be exempt from complying with other travel risk-reduction measures."¹²²

¹²⁰ A shot in the arm, not a shot in the dark – Imogen Parker, Ada Lovelace Institute, 17th February 2021: <https://www.adalovelaceinstitute.org/blog/shot-in-the-arm/>

¹²¹ Ibid.

¹²² Interim position paper: considerations regarding proof of COVID-19 vaccination for international travellers – World Health organisation, 5th February 2021: <https://www.who.int/news-room/articles-detail/interim-position-paper-considerations-regarding-proof-of-covid-19-vaccination-for-international-travellers>

It goes on to say that:

“In the context of unequal vaccine distribution, individuals who do not have access to an authorized COVID-19 vaccine would be unfairly impeded in their freedom of movement if proof of vaccination status became a condition for entry to or exit from a country.

“National authorities should choose public health interventions that least infringe on individual freedom of movement.”¹²³

In the UK, there have been reports that vaccine passports for those travelling abroad are being developed by the Foreign Office, the Department for Transport and the Department of Health and Social Care.¹²⁴ However, Vaccine Minister Nadhim Zahawi told the BBC that vaccine passports for international travel would be “discriminatory” and that GPs would be responsible for providing evidence of vaccinations for those who required it to travel abroad.¹²⁵ The next day, further reports suggested that vaccine passports being developed in Government-funded trials could be used for travel¹²⁶, with Transport Secretary Grant Shapps telling the BBC that he was in talks with his counterparts in the US and Singapore regarding the introduction of an international vaccine accreditation system, although he ruled out their use in the domestic setting.¹²⁷

The UK has taken the lead internationally on vaccine production and deployment – we should also take the lead in a rights-respecting reopening of our country and borders. Despite the international pressure for vaccine passports, there remains no evidence base that these are the silver bullet solution some tech vendors, travel industry bodies and international governance organisations would like to depict them as. Vaccine passports would be divisive, discriminatory and exclusionary in the extreme – parliamentarians must oppose them.

Domestic use

Government Ministers have spent February contradicting each other over the introduction of vaccine passports for domestic use. This constant rowing forward and back about vaccine passports has created alarm and confusion.

The Telegraph reported that ministers were considering ‘targeted’ vaccine passports, issued to those carrying out “daily tasks.”¹²⁸ Instead of issuing vaccine passports as standard, this proposal would see them issued to individuals wishing to travel or undertake other, unspecified, activities.

On 5th February, Health Secretary Matt Hancock said, “At the moment we have no plans for vaccine passports.”¹²⁹ However, Foreign Minister Dominic Raab later told LBC radio that the requirement of

¹²³ Ibid, “emphasis added)

¹²⁴ Government plans Covid vaccine passports to allow foreign holidays – Francis Elliot, Anthee Carassava, Ben Clatworthy and Kay Lay, the Times, 5th February 2021: <https://www.thetimes.co.uk/article/government-plans-covid-vaccine-passports-to-allow-foreign-holidays-3mc9vd0xk>

¹²⁵ Covid: Minister rules out vaccine passports in UK – BBC News, 7th February 2021: <https://www.bbc.co.uk/news/55970801>

¹²⁶ Britons vaccinated against Covid could get QR codes to travel – Ben Riley-Smith and Lucy Fisher, the Telegraph, 8th February 2021: <https://www.telegraph.co.uk/politics/2021/02/08/britons-vaccinated-against-covid-could-get-qr-codes-travel/>

¹²⁷ Ministers in talks with US and Singapore over international vaccine certificate – Poppy Wood, City AM, 10th February 2021: <https://www.cityam.com/ministers-in-talks-with-us-and-singapore-over-international-vaccine-certificate/>

¹²⁸ Ministers consider ‘targeted vaccine passport scheme’ to help return the UK to normal – Christopher Hope, the Telegraph, 6th February 2021: <https://www.telegraph.co.uk/news/2021/02/06/ministers-consider-targeted-vaccine-passport-scheme-help-return/>

¹²⁹ UK Covid: ‘too early’ to decide to ease measures in March, says Hancock; Oxford jab ‘protects against UK variant’ – Andrew Sparrow, the Guardian, 5th February 2021: <https://www.theguardian.com/world/live/2021/feb/05/uk->

a vaccine passport to enter a supermarket was “under consideration” and “hasn’t been ruled out.”¹³⁰ The next day, the Health Secretary repeated that the Government “do not have plans” to introduce domestic vaccine passports which would allow entry to venues like pubs.¹³¹ The following day, Vaccines Minister Nadhim Zahawi said the Government was “not looking at a vaccine passport for our domestic economy.”¹³²

On 16th February, it was reported that cinema and theatre companies were in talks with companies to introduce their own form of vaccine passports.¹³³ Verifiable Credentials, a company which has received funding from the UK government to develop vaccine passports, is producing electronic certificates which would be linked to tickets and verified by the NHS vaccination program.

Representatives from the hospitality industry, the industry that vaccine passports are often proposed in the name of protecting, have rejected the proposals as unhelpful. Michael Kill, chief executive of the Night Time Industries Association, said:

“Because people are not going to be vaccinated in age groups that we attract, the idea of vaccine passports won’t be helpful.”¹³⁴

Kate Nicholls, the chief executive of UK Hospitality, said: “If you consider where we are going to be in terms of vaccination in the working population, particularly young people won’t be vaccinated until the autumn. It’s just not workable in a hospitality setting.” Music venue owner Anselm Chatwin said: “I think it’ll be a real wild west of people coming up with their own ideas of what a vaccine passport is and it leaves us potentially wide open to legal issues”.¹³⁵ Another spokesperson for UK Hospitality said:

“We do not think that [a vaccine passport] is going to be appropriate for day-to-day hospitality businesses, though. Businesses have already put measures in place to ensure that venues are safe. (...)

“In many cases, businesses have spent huge sums of money, changing layouts, overhauling staff training and ramping up cleaning regimes. This should be enough to ensure guests and staff are kept safe. We need to remember that hospitality is only linked to a tiny number of cases.

“Mandatory use of a vaccine passport will likely lead to headaches, place an extra burden on staff and cut revenue needlessly at a time when businesses cannot afford it.”¹³⁶

[covid-live-hotel-quarantine-delay-coronavirus-vaccine-cases-variant-boris-johnson-latest-updates?page=with:block-601d6fd88f0898d76fa10cc3#block-601d6fd88f0898d76fa10cc3](https://twitter.com/BigBrotherWatch/status/1360910794410590211?s=20)
Twitter, Big Brother Watch, 14th February 2021:

¹³⁰ <https://twitter.com/BigBrotherWatch/status/1360910794410590211?s=20>

¹³¹ Matt Hancock Rules Out Domestic Vaccine Passports A Day After Dominic Raab Said They Were Being Considered – Alain Tolhurst, Politics Home, 15th February 2021: <https://www.politicshome.com/news/article/coronavirus-passport-uk-domestic-pubs-shops-matt-hancock-denial>

¹³² Vaccines Minister Nadhim Zahawi rules out vaccine passports ‘for our domestic economy’ – ITV News, 16th February 2021: <https://www.itv.com/goodmorningbritain/articles/vaccine-passports-pubs-rules-nadhim-zahawi-rule-out-domestic-economy-international-travel>

¹³³ Cinemas turn to vaccine passports in push to reopen their doors – Hannah Boland, the Telegraph, 15th February 2021: <https://www.telegraph.co.uk/technology/2021/02/15/cinemas-turn-vaccine-passports-push-reopen-doors/>

¹³⁴ Vaccine passports mean no nightclubs until autumn, warn industry figures – Poppy Wood, City AM, 17th February 2021: <https://www.cityam.com/vaccine-passports-mean-no-nightclubs-until-autumn-warn-industry-figures/>

¹³⁵ Hospitality industry concerns over ‘covid vaccine passports’ – Nick Smith, ITV News, 26th February 2021:

¹³⁶ <https://www.itv.com/news/meridian/2021-02-26/hospitality-industry-concerns-over-covid-vaccine-passports>
UKHospitality: vaccine passports ‘not appropriate’ for high street hospitality – Sophie Witts, the Caterer, 24th February 2021: <https://www.thecaterer.com/news/hospitality-vaccine-passports-not-appropriate>

There are also plans for other forms of health passports, based on coronavirus test results. You Check, in partnership with the Music Venues Trust, is piloting a health pass which contains information on an individual's name, age, event ticket and test result, as a condition of allowing some people to attend live music shows.¹³⁷ The scheme is being trialled in venues in London and Bristol and has the backing of the Department of Culture, Media and Sport. Users of the app verify their identity through a "governmental ID", and facial recognition matches the ID to the user.¹³⁸ The app's privacy policy states that it collects information "analysing user behaviour, location, audience, demographic and interest data" to improve the app.¹³⁹

In Scotland, there has also been suggestions that vaccine passports are being considered. We noted in our previous Emergency Powers and Civil Liberties report that the Scottish First Minister had ruled out vaccine passports. However, similarly to England, there have repeated mixed messages. During First Minister's Questions, in response to a backbencher's comment on vaccine passports Nicola Sturgeon Covid told the Scottish Parliament: "I do believe there's an opportunity to lead on this discussion. (...) In the fullness of time, I think certification may well have a role to play."¹⁴⁰ Several days later, Health Secretary Jeane Freeman said the Scottish Government was "not opposed to vaccine passports or the interoperability of such kinds of certificates" but more information was needed on the impact the vaccine has on the transmissibility of the virus.¹⁴¹

As we have stated in previous reports, vaccine passports must never be introduced in the UK, regardless of international or corporate pressure. The risks associated with vaccine passports and similar proposals engage privacy rights, as well raise concerns about data protection and discrimination. 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 18: Health passports would infringe on our privacy, risk discriminating against those unable to receive a vaccination and pave the way to an authoritarian two-tier checkpoint society. The UK Government and devolved administrations should reject vaccine passports in their entirety.

COVID status certification review

Despite repeated promises from Vaccine Minister Nadhim Zahawi that the Government would not be introducing vaccine passports, on 22nd February the Prime Minister announced a review of "the role of COVID status certification in helping venues to open safely."¹⁴² The Government's 'COVID-19 RESPONSE: Spring 2021' roadmap states Covid status verification "involves using testing or

¹³⁷ Venues set to trial You Check health passport – Adam Parry, Event Industry News, 4th February 2021: <https://www.eventindustrynews.com/news/venues-set-to-trial-you-check-health-passport>

¹³⁸ You Check website, accessed 9th February 2021: <https://www.youcheckgroup.com/>

¹³⁹ You Check website, accessed 9th February 2021: <https://www.youcheckgroup.com/privacy-policy>

¹⁴⁰ Nicola Sturgeon says UK could lead on global 'Covid passport' proposal – Scott Macnab, the Scotsman, 3rd February 2021: <https://www.scotsman.com/news/politics/nicola-sturgeon-says-uk-could-lead-global-covid-passport-proposal-3122961>

¹⁴¹ SNP 'not opposed' to Covid vaccine passports despite transmission concerns – David Bol, the Herald, 11th February 2021: <https://www.heraldscotland.com/news/19083688.snp-not-opposed-covid-vaccine-passports-despite-transmission-concerns/>

¹⁴² HC Deb (22nd February 2021), vol. 689, col. 625: <https://hansard.parliament.uk/commons/2021-02-22/debates/7F26D493-AF6A-46A4-A1C3-61A39DD527CE/Covid-19RoadMap>

vaccination data to confirm in different settings that people have a lower risk of transmitting COVID-19 to others.”¹⁴³

The review will consider “whether COVID-status certification could play a role in reopening our economy, reducing restrictions on social contact and improving safety.” The Government will:

“consider the ethical, equalities, privacy, legal and operational aspects of this approach and what limits, if any, should be placed on organisations using certification. It will draw on external advice to develop recommendations that take into account any social and economic impacts, and implications for disproportionately impacted groups and individuals’ privacy and security.

“The Government will set out its conclusions in advance of Step 4 [of the roadmap] in order to inform the safe reopening of society and the economy.”

It was announced the following day that Cabinet Secretary Michael Gove would be leading the review into Covid status certification¹⁴⁴ – the same minister who said on 1st December 2020 that it was “not the plan” for the UK Government to introduce vaccine passports.¹⁴⁵ It is not clear that the review is accepting public views and no calls for evidence have been published.

Big Brother Watch will publish more resources on Covid Status Certificates in due course.

RECOMMENDATION 19: We urge parliamentarians to call on Michael Gove to reject plans for Covid Status Certificates, which would be divisive, discriminatory, unnecessary and wrong.

No jab, no job policies

We have noted in previous reports that some employers have indicated that they will not hire unvaccinated individuals and may go as far as to re-write existing contracts to require vaccination.

The Prime Minister’s spokesperson said ‘no jab, no job’ policies were discriminatory: “Taking a vaccine is not mandatory and it would be discriminatory to force somebody to take one.”¹⁴⁶ However, the Government has not made steps to prevent private companies from introducing these policies. Dominic Raab told LBC that the “precise relations and communications between employers and employees are a matter that we would want to leave to responsible employers.”¹⁴⁷

As well as being coercive, there are serious questions as to whether this approach is lawful, under both employment and equality law, considering many people are unable to be vaccinated due to health conditions and young people will not be eligible to receive both vaccine doses until late 2021. Justice Secretary Robert Buckland told ITV that “generally speaking” he would “be surprised

¹⁴³ COVID-19 Response – Spring 2021 – HM Government, 22nd February 2021, p. 40: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/963491/COVID-19_Response_-_Spring_2021.pdf

¹⁴⁴ NHS app to be converted for vaccine passports – Chris Smith and Henry Zeffman, the Times, 24th February 2021: <https://www.thetimes.co.uk/article/nhs-app-to-be-converted-for-vaccine-passports-r0xx0mflp>

¹⁴⁵ Covid-19: No plans for ‘vaccine passport’ – Michael Gove – BBC News, 1st December 2020: <https://www.bbc.co.uk/news/uk-55143484>

¹⁴⁶ No jab, no job policies ‘discriminatory’, says Downing Street – Poppy Wood, City AM, 8th February 2021: <https://www.cityam.com/no-jab-no-job-policies-discriminatory-says-downing-street/>

¹⁴⁷ Reject ‘no Covid jab, no job’, trade unions urge government – Andrew Ellson, Jonathan Ames and Henry Zeffman, the Times, 18th February 2021: <https://www.thetimes.co.uk/article/reject-no-covid-jab-no-job-trade-unions-urge-government-qk2ntmt7j>

if there were contracts of employment existing now that did make that approach lawful.”¹⁴⁸ Employment law experts have also cautioned that a ‘no job, no job’ policy could be discriminatory.¹⁴⁹ Trade unions have also come out in opposition to ‘no job, no job’ policies.¹⁵⁰ The General Secretary of the TUC, Francis O’Grady, said:

“The government should make clear that making vaccination a condition of employment is the wrong approach. It may be discriminatory and open up employers to legal challenge. Ministers must remind employers to make sure their workplaces meet Covid-secure guidelines.”

The Assistant General Secretary of Unite, Howard Beckett, said:

“The ‘no job, no job’ narrative is a disgraceful attempt to create a divisive narrative around workers and the vaccine. It ignores the reality that it is workers who have been demanding safe working conditions, engagement with our safety reps, an effective workplace testing regime, proper pay for those who have to self-isolate and now the vaccine.”

RECOMMENDATION 20: General businesses should not introduce discriminatory ‘no job, no job’ policies. The Department of Work and Pensions should take steps to ensure that no workers are forced to reveal their medical information in order to receive or retain employment.

¹⁴⁸ Ibid.

¹⁴⁹ ‘No job, no job’: Employers spark legal debate – Solicitors Journal, 19th February 2021: <https://www.solicitorsjournal.com/home/sjarticle/%E2%80%98No%20job,%20no%20job%E2%80%99:%20Employers%20spark%20legal%20debate>

¹⁵⁰ Reject ‘no Covid job, no job’, trade unions urge government – Andrew Ellson, Jonathan Ames and Henry Zeffman, the Times, 18th February 2021: <https://www.thetimes.co.uk/article/reject-no-covid-job-no-job-trade-unions-urge-government-qk2ntmt7j>

Universities

University students have been hounded for breaches of coronavirus rules for the last ten months of restrictions, with police officers and security guards patrolling their campuses and raiding households that they suspect are breaking rules. This term, those students that have returned to their student accommodation continue to be disproportionately surveilled, fined and threatened with disciplinary action.

Cambridge University has removed accommodation from rule-breakers, potentially making them homeless– something that the rest of the population do not risk whatever their infringement.¹⁵¹

Students from the University of Manchester describe feeling “like we’re constantly being watched” and “genuinely terrified” because of “heavy-handed” and “scary” policing.¹⁵² Alarmingly, police have reportedly been “doing random searches of flats,”¹⁵³ going “through blocks at random checking on people”¹⁵⁴ and may “storm in at once and scare everyone to death.” One household that was adhering the regulations was reportedly searched twice while they played Monopoly.¹⁵⁵ Another student claimed that the police knocked on her bedroom door at 2am while asleep, looking for details from an unrelated incident.¹⁵⁶

Other students from the University of Manchester were left highly distressed after being issued with £800 FPNs by police as there were more than 15 people in their common room.¹⁵⁷ Student halls are considered to be single households and common rooms should clearly be considered a shared space. Some have reported that the FPN wouldn’t have been elevated to £800 had the police not brought people into the common room from other floors and rooms. The University had previously outlined a policy whereby “If you are living in halls that are corridor based then we have identified rooms (maximum of 15) that will be designated as a household” - so it appears that students were following this guidance.

Although police do not have power of entry under coronavirus laws in England (except in hotel quarantine regulations), universities have argued that they can authorise police entry due to terms in the accommodation contracts. Greater Manchester Police said that the “pro-active” patrols were agreed with the university in advance.¹⁵⁸ This is the latest in a string of security-related incidents that have increased tensions between the university and its students and highlights how

¹⁵¹ ‘Threatening homelessness’ and other awful ways Cambridge colleges have handled Covid discipline – Charissa Cheong, The Tab, 17th February 2021: <https://thetab.com/uk/cambridge/2021/02/17/threatening-homelessness-and-other-awful-ways-cambridge-colleges-have-handled-covid-discipline-147143>

¹⁵² Students complain of ‘heavy-handed’ policing as officers patrol campus – Zoe Tidman, Independent, 9th February 2021: <https://www.independent.co.uk/news/education/education-news/university-manchester-police-campus-covid-b1799727.html>

¹⁵³ Izzy Smitheman, Twitter, 6th February 2021: <https://twitter.com/ISmitheman/status/1357880293412208642>
<https://twitter.com/ISmitheman/status/1357880293412208642>

¹⁵⁴ Students complain of ‘heavy-handed’ policing as officers patrol campus – Zoe Tidman, Independent, 9th February 2021: <https://www.independent.co.uk/news/education/education-news/university-manchester-police-campus-covid-b1799727.html>

¹⁵⁵ Izzy Smitheman, Twitter, 6th February 2021: <https://twitter.com/ISmitheman/status/1357880293412208642>

¹⁵⁶ ‘People were weeping’: Police raid Manchester student common room at 2am and fine students £800 each for ‘large gathering’ – Steve Robson, Manchester Evening News, 8th February 2021: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/people-were-weeping-police-raid-19788987>

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

closely universities have been working with local forces to police their students. The Manchester Student Union has initiated a vote of no confidence against the vice-chancellor.¹⁵⁹

Students at Cardiff University describe a similar experience – feeling “like prisoners” as “heavy-handed” security staff carry out unannounced spot checks in their shared flats and monitor their activities.¹⁶⁰ One student described how university staff “burst into our flat each morning checking our kitchen, trying to catch us out for fines, new security cameras are installed every week and they take logs/check times we leave/enter the flat with our keycards and question us what we are doing.” The university recently emailed students telling those living in halls to socially distance inside their own flats, allowing only four people to cook at a time in communal kitchens that are shared between eight. The university warned students that it was part of their “community commitment” to “challenge incidents of Covid 19 breaches.” Students who “fail to report a breach of the rules (...) will be deemed collectively responsible with those who host parties.” These restrictions have doubtlessly created an oppressive living situation and are utterly excessive. Cardiff student James Wallace said:

“It seems utterly unfair to say eight people sharing the same flat, touching the same door handles and living in the same space cannot use the kitchen or meet together.

“Cardiff University is overstepping the mark. Their approach through Covid has completely broken down and no one is holding them to account. The vast majority of students are following the rules - these new policies just seek to sew mistrust and suspicion.”

Over 400 students have signed a petition demanding the university reverse its “unjust Covid restrictions” in university accommodation.

10 students in Hatfield were fined £200 each after police attended a small gathering of different households. Police officers took the students’ details and passed them onto their university, the University of Hertfordshire, where it was reported the “University Policing Team will follow up with disciplinary meetings.”¹⁶¹

Amid this pressure from police and universities, it is feared that sexual assaults and other crimes that occur while students are breaking lockdown rules are not being reported for fear of being penalised for the rule breaking.¹⁶² Mental health problems amongst students are also rising as a result of the pandemic, with one recent study by the Recovery Clinic finding nearly 80 percent of students feel stressed or anxious.¹⁶³ Instead of obsessively trying to catch out students, universities should be prioritising support and assistance to young people experiencing lockdowns away from home.

¹⁵⁹ Manchester University students launch vote of no confidence against their vice-chancellor – Sidney Pycroft, the Boar, 17th February 2021: <https://theboar.org/2021/02/manchester-university-students-launch-vote-of-no-confidence-against-their-vice-chancellor/>

¹⁶⁰ Students angry after being told they can’t cook in groups of more than four in new Covid rules at uni halls – Abbie Wightwick, Wales Online, 16th February 2021: <https://www.walesonline.co.uk/news/education/cardiff-coronavirus-university-covid-latest-19851452>

¹⁶¹ Fines issued after parties in Hatfield – Charlotte McLaughlin, Welwyn Hatfield Times, 16th February 2021: <https://www.whtimes.co.uk/news/crime/hatfield-parties-given-coronavirus-fines-7326928>

¹⁶² It’s harder than ever to report sexual assault at uni right now – Maddy Mussen, The Tab, 10th February 2021: <https://thetab.com/uk/2021/02/10/its-harder-than-ever-to-report-sexual-assault-at-uni-right-now-194429>

¹⁶³ Covid has intensified the student mental health crisis - universities must step up – Robert Batt, Telegraph, 25th January 2020: <https://www.telegraph.co.uk/education-and-careers/2021/01/25/covid-has-intensified-student-mental-health-crisis-universities/>

NHS and Palantir

In previous reports, we have charted NHS contracts with Big Tech companies, detailing the vast amounts of data about our health, movements, employment, criminal records and religious and political beliefs being processed by controversial businesses. These contracts, initially introduced to create the COVID-19 Data Store have been expanded to cover Brexit, flu and other potential pandemics, with references to converting parts of the system to manage everyday operations.

Although the rushed-out contracts between Palantir and the NHS were sold as an emergency pandemic response, the Bureau of Investigative Journalism revealed emails that show that Palantir had been courting NHS executives from as early as July 2019.¹⁶⁴ Heavily redacted emails show Palantir executives discussing their Foundry system (which the NHS is now currently using) with David Prior (head of NHS England), Matthew Gould (head of NHSX) and officials at the Department for International Trade. Sam Smith, of MedConfidential, said, "These communications indicate the beginnings of what would be a strategic relationship. NHS England was already talking to Palantir about its long-term data plans significantly before the beginning of the pandemic." Records show a series of meetings from this point between NHS and Palantir executives, up until the pandemic began and Palantir's Foundry system was parachuted into the NHS without public scrutiny. Dr Natalie Banner, who leads the Understanding Patient Data initiative, said:

"New processes, infrastructures and partnerships have been set up to analyse data during the pandemic – but speed has often come at the expense of oversight and transparency.

"There's now an opportunity to radically rethink how to build trustworthy systems for managing data, if decisions about how to move forward are made in the open. Otherwise the government risks damaging public trust, which is already fragile."

Foxglove, a legal organisation that campaigns on technology and data rights, has brought a legal challenge against the contracts on behalf of openDemocracy, arguing that the failure to produce a Data Protection Impact Assessment violates data protection law.¹⁶⁵ They wrote:

"The government has a legal duty to consult us, citizens and NHS users, before they strike massive deals which affect that future. In doing so, they need to take important steps (like conducting 'data protection impact assessments') to ensure our health information and our rights are protected. They haven't done this for the Palantir datastore: that's why we're bringing this case."¹⁶⁶

John McDonnell, Labour MP for Hayes and Harlington and former Shadow Chancellor, asked Health Minister Edward Argar about the contracts during a debate in the Commons on 24th February:

"I am concerned about the data contract with the US data company Palantir, which is notorious for its links with Trump and the white supremacist far right.

¹⁶⁴ Revealed: Data giant given 'emergency' Covid contract had been wooing NHS for months – Crofton Black, the Bureau of Investigative Journalism, 24th February 2021: <https://www.thebureauinvestigates.com/stories/2021-02-24/revealed-data-giant-given-emergency-covid-contract-had-been-wooing-nhs-for-months>

¹⁶⁵ NHS facing legal challenge over data deal with controversial Silicon Valley firm Palantir – Rowland Manthorpe, Sky News, 24th February 2021: <https://news.sky.com/story/nhs-facing-legal-challenge-over-data-deal-with-controversial-silicon-valley-firm-palantir-12227634>

¹⁶⁶ Why we're suing over the £23m NHS data deal with Palantir – Mary Fitzgerald and Cori Crider, openDemocracy, 24th February 2021: <https://www.opendemocracy.net/en/our-nhs/why-were-suing-over-the-23m-nhs-data-deal-with-palantir/>

“Will the Minister confirm whether that contract has been the subject of a data protection impact assessment, including a public consultation, and whether Palantir will be able to sell on NHS data at a later stage, even, for example, to the Conservative party for electoral purposes?”¹⁶⁷

The Minister gave a cursory response: “I will not stray near the wilder accusations made by the right hon. Gentleman. What I will say to him is that the data of NHS service users is always protected by this Government.”

RECOMMENDATION 21: 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.

¹⁶⁷ HC Urgent Questions: Covid Contracts: Judicial Review (24th January 2021), col. 928: <https://hansard.parliament.uk/commons/2021-02-24/debates/65A9EE30-1AF3-427F-9FA2-BDCB1DD840A0/CovidContractsJudicialReview>



It is clear that over the coming year or two the question of how far we can express our discontent, and seek a better, or at least alternative, future is going to move up the political agenda. Having lain in the hinterlands for several decades, the pandemic has tipped it over the edge.”¹⁶⁸

—Prof. David Mead, professor of public order and protest law at UAE Law School

168 Policing Protest in a Pandemic – David Mead, King's Law Journal, 18th February 2021: <https://doi.org/10.1080/09615768.2021.1885323>

Freedom of Expression

Free speech online

What constitutes acceptable speech around the coronavirus pandemic was further limited on Facebook earlier this month after the platform introduced new rules which prohibit users from making “false claims” regarding the crisis.

On 8th February, the platform stated that it had expanded the “list of false claims we will remove to include additional debunked claims about the coronavirus and vaccines.”¹⁶⁹ The list of prohibited claims includes those regarding the origin of the virus such as the claim that “COVID-19 is man-made or manufactured”¹⁷⁰, despite the fact that the origin of the virus is not yet known.

The boundaries of permissible speech should not be limited to the consensus of authorities. Rules of this kind from big tech companies not only inhibit freedom of expression but also erode public trust at a time when it is more important than ever.

Facebook’s willingness to censor content around the pandemic strayed into the field of journalistic material when the platform labelled an article by award winning journalist Ian Birrell as containing “false information”. The article, which was critical of the WHO’s investigation into the origin of COVID-19, was said by Facebook to repeat “information about COVID-19 that independent fact-checkers say is false”¹⁷¹. Whether through algorithmic or human content moderation systems, it is clear that the narrow permissibility of speech around the pandemic on Facebook is now beginning to hamper legitimate discussion around public policy and the work of international bodies. Facebook’s actions are beginning to seriously threaten the freedom of the press and undermine journalistic credibility.

DCMS Counter Disinformation Unit

On 8th December, the Home Secretary, Priti Patel, gave further details in Parliament regarding the work of the DCMS Counter Disinformation Cell and the impact this opaque unit is having on online discourse regarding the pandemic. She stated that “The counter-disinformation unit is responding to the misleading online content and working with social media platforms to ensure that all action is taken to remove harmful disinformation so that authoritative sources of information are promoted.”¹⁷²

The Counter Disinformation Cell was stood up in March 2020 to “combat false and misleading narratives about coronavirus”¹⁷³. However, tasking a Government unit with recommending the removal of online content which is merely “misleading” is likely to undermine its duty to protect freedom of expression.

¹⁶⁹ Removing More False Claims About COVID-19 and Vaccines – Facebook Blog, 8th February 2021, <https://about.fb.com/news/2020/04/covid-19-misinfo-update/#removing-more-false-claims>

¹⁷⁰ Ibid.

¹⁷¹ Facebook censors award-winning journalist for criticising the WHO – Freddie Sayers, UnHerd, 11th February 2021: <https://unherd.com/thepost/facebook-censors-award-winning-journalist-for-criticising-the-who/>

¹⁷² HC Questions (8th February 2021), vol. 689, col. 6: <https://hansard.parliament.uk/commons/2021-02-08/debates/5F2F0112-3889-4D9A-85E5-019CA14CBD38/Anti-VaccinationExtremism#contribution-ACE7F753-40C9-4995-81AB-946F30F15DFE>

¹⁷³ Government cracks down on spread of false coronavirus information online – GOV.UK, 30th March 2020: <https://www.gov.uk/government/news/government-cracks-down-on-spread-of-false-coronavirus-information-online>

Accountability and transparency around the work of the cell still remain extremely limited. The limitations on speech should be decided by parliament and should not be at the discretion of anonymous civil servants in a secretive Whitehall unit.

RECOMMENDATION 22: Online expression should not be constrained or censored by an unaccountable Whitehall unit. The lack of transparency around the role and influence of the Counter-Disinformation Unit is unacceptable – the Department of Culture, Media and Sport must publish data regarding content it has requested be removed by social media platforms.

Freedom of assembly

The Health Protection Regulations have increasingly been used to restrict the right to protest during the past year. Since England was moved into Tier 4 on 6th January, police forces have been treating protests as illegal, and threatening to fine anyone engaging in one.

Whether or not protests are legally prohibited remains unclear. In the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Tiers 1-3 contain a specific exemption on gathering restrictions for protests. In Tier 4, this exemption has been removed. However, Lochlinn Parker, Head of Civil Liberties at ITN Solicitors told the Joint Committee on Human Rights that:

“protest has never been banned. Silent protest is still allowed as a common law right enhanced by the Human Rights Act. The police have a duty to facilitate protest in these circumstances, regardless of what the regulations say. (...)

“There always remains the common-law right to protest unless it has been specifically banned by the Government. They have never specifically banned it, so it still exists, and the police’s duty to facilitate it still exists.”¹⁷⁴

Gracie Bradley, Interim Director of Liberty, told the Committee: “this lack of clarity in the law has left it to police forces to interpret whether protests can go ahead (...) It simply can’t be left to a force by force approach.”

Instead of facilitating the right to protest, police have cracked down on protests and even lobbied for their ban. John Apter, chair of the Police Federation, told Parliament’s Joint Committee on Human Rights that they expressly asked the Home Secretary to ban protests during the pandemic.¹⁷⁵ In the same session, nearly two months into a blanket ban on protests, the Committee asked police chiefs whether the right to peaceful protest was being adequately protected – Ben-Julian Harrington, Chief Constable of Essex Police, said that the police “mostly will get that right.”

Big Brother Watch made Freedom of Information requests to police forces across the country to clarify the police responses to protest organising at the pandemic’s different stages. These have revealed ways in which, even before organising and participating in protests was effectively made illegal, police forces made the regulations so hard to comply with as to essentially become unworkable. Every police force that responded to the FOI request reported protests that had been

¹⁷⁴ Oral evidence (Virtual Proceeding): The Government’s response to Covid-19: human rights implications of long lockdown, Joint Committee on Human Rights, HC 1004, 24th February 2021, Q 29-30: <https://committees.parliament.uk/oralevidence/1757/pdf/>

¹⁷⁵ Oral evidence (Virtual Proceeding): The Government’s response to Covid-19: human rights implications of long lockdown, Joint Committee on Human Rights, HC 1004, 24th February 2021, Q 36: <https://committees.parliament.uk/oralevidence/1756/pdf/>

cancelled or postponed by organisers, even when protest was exempted from the ban on gatherings. According to Gloucestershire Constabulary and West Midlands Police, this was as high as 60 per cent and 57 percent respectively of all planned protests between 23rd March and 15th December last year. Kent Police said that 43 percent did not go ahead in the same period. It is difficult to imagine that these forces even tried to adequately fulfil their duty to facilitate the public right to protest.

It is also not clear why the Regulations required risk assessments to be submitted to the police in advance since they were not charged with deciding whether or not they are satisfactory – nor was any specific body. Failure to produce one nonetheless could lead to fines and prosecution. Freedom of Information responses revealed that there did not appear to be a standard procedure for reviewing risk assessments within each force across the country and at different times. They were generally passed onto local Safety Advisory Groups (SAGs) although some, including Surrey Police, South Yorkshire Police, Avon and Somerset Constabulary were assessed by Specialist Support and Planning Unit or Silver or Bronze Public Order Commanders. Some police forces, like Avon and Somerset Constabulary, Warwickshire Police, Cleveland Police and the Metropolitan Police, would make comments or seek clarifications on the “content, quality, suitability and sufficiency” of risk assessments. Bedfordshire Police say they “not [to] look at them”, and Leicestershire Constabulary and Cheshire Constabulary say that risk assessments are “not a police role or function.”

Given the changes in Regulations in January, police forces began to immediately raise the prospect of arrests and £10,000 fines to anyone notifying them of protest plans. It appears these are addressed on a case-by-case basis, although Leicestershire and Cheshire Police send generalised questionnaires to prospective organisers, asking, “Are you aware that participation in [a gathering over 6 persons] is an offence under the current COVID restrictions? Are you aware that holding or being involved in holding one is also an offence?” Greater Manchester Police warned “you will be making yourself liable for a fixed penalty notice for organising or facilitating the gathering” and “those participating in a gathering could render themselves liable for a fixed penalty notice.”

Case studies

Protesters face immediate dispersals, fines and arrests, regardless of their size and risk to public health. About 20 police officers dispersed a small group of protesters outside a hostel for homeless households on the Central Hill Estate in Lambeth, earmarked for redevelopment.”¹⁷⁶ Some protests have gone ahead, including a march in Newport on 18th February following the death of Moyied Bashir, the second person of colour to die following police use of force in Wales this year.¹⁷⁷

The perceived ‘ban’ on protests appears to be divorced from the assessments of risks to public health. When a man walked through Walthamstow this month displaying signs on his person, the police intervened to remove them, citing the ban on protests.¹⁷⁸ One resident who protested alone in Central Hill Estate in Lambeth was reportedly arrested for breaching regulations earlier this month.¹⁷⁹ These protests clearly posed no risk to public health.

¹⁷⁶ Campaigners protest demolition on Central Hill estate – Grainne Cuff, Wandsworth Times, 10th February 2021: <https://www.wandsworthguardian.co.uk/news/19079846.campaigners-protest-demolition-central-hill-estate/>

¹⁷⁷ Newport protest following the death of Moyied Bashir – Leah Powell, South Wales Argus, 18th February 2021: <https://www.southwalesargus.co.uk/news/19101086.newport-protest-following-death-moyied-bashir/>

¹⁷⁸ UK police deal with a 1-man protest, Actual Interview, 18th February 2021: <https://www.youtube.com/watch?v=oBxLsViTTQ>

¹⁷⁹ GraceL, Twitter, 24th February 2020: <https://twitter.com/GraceL32138483/status/1364616989877170178>

Counterproductively, the risk to public health of protests has been shown to dramatically increase when the police intervene to shut them down. On 13th February, a protest went ahead in Manor House calling on the British government to put pressure on the Turkish state to release Kurdish Nationalist Abdullah Öcalan. Organisers had notified the Metropolitan Police ahead of the protest and took precautions to limit the risk of Coronavirus transmission but were immediately met with a section 35 dispersal order under the Antisocial Behaviour, Crime and Policing Act 2014. Some protesters were fined.¹⁸⁰ The protest began socially distanced but crowding occurred when officers moved in to detain and disperse protesters.

Worryingly, journalists continue to be obstructed by the police from serious public interest reporting, even though the nature of their work legally exempts them from certain restrictions. NUJ-accredited photojournalist Andy Aitchison was arrested by Kent Police for covering a protest at Napier Barracks, where hundreds of asylum seekers are being held in poor conditions. Five police officers arrested him at his home, charged him with criminal damage and confiscated his mobile phone and camera card, despite it being against the law to take journalistic material without the permission of a judge as required by the Police and Criminal Evidence Act.¹⁸¹ On 5th February, charges were dropped but, a week later, he was issued with an unlawful FPN for attending the same protest.¹⁸² This is indicative of a hostile approach towards journalists, rather than an isolated mistake. Kent Police has since rescinded the fine and admitted it was “clear” it had been issued “erroneously.”

RECOMMENDATION 23: The right to protest must be restored as a matter of urgency. Peaceful protests are critical to the preservation of democracy and human rights.

Use of drones

Freedom of Information requests undertaken by UK Drone Watch has found widespread use of drones to monitor political protests across England between January and October 2020.¹⁸³ Avon and Somerset Police have deployed drones at protests more frequently than any other force, at 15 ‘public order events.’ While it would not specify the events, it noted that this included “protests, civil disorder and crowded events.” Five forces (Cleveland, Gloucestershire, Staffordshire, Surrey and West Midlands) deployed drones at Black Lives Matter protests, with a total of 11 Black Lives Matter protests being filmed by drones, more than any other category of protest. Other protests subject to drone surveillance included an anti-lockdown protest in Gloucestershire, an animal rights protest in Wiltshire, a far-right demonstration in Nottinghamshire and 2 HS2/Extinction Rebellion marches in Warwickshire.

Jonathan Cole, who undertook the investigation, said:

¹⁸⁰ Real Media GB, Twitter, 14th February 2021: <https://twitter.com/RISEUP4R0JAVA/status/1361097421586132992>
¹⁸¹ Charges dropped against Kent protest photographer as Culture Sec grilled on press freedom – Charlotte Tobitt, Press Gazette, 5th February 2021: <https://www.pressgazette.co.uk/culture-secretary-dodges-questions-as-concerns-grow-over-arrest-of-photographer-and-ministers-attack-on-huffpost-reporter/>
¹⁸² Journalist fined for Covid breach after photographing protest outside army barracks housing asylum seekers – Mary Bulman, Independent, 19th February 2021: <https://www.independent.co.uk/news/uk/home-news/journalist-fine-asylum-camp-napier-barracks-andy-aitchison-b1804070.html>
¹⁸³ Police use of drones to monitor political protests revealed – Chris Cole, UK Drone Watch, 12th February 2021: <https://ukdronewatchorg.wordpress.com/2021/02/12/police-use-of-drones-to-monitor-political-protests-revealed/>

“It’s extremely worrying that a number of police forces feel that it is now legitimate to use drones to monitor and film perfectly legal public protests. But what is more shocking is the disproportionate use of this technology against Black Lives Matters protestors.”

While surveillance of protests is not new to the current period of restrictions, it is clear that police forces are increasingly emboldened to prevent, surveil and interrupt peaceful protests.

RECOMMENDATION 24: Drones are an extreme, militaristic form of surveillance and should not be deployed to surveil protesters.