

EMERGENCY POWERS AND CIVIL LIBERTIES REPORT

[MAR – APR 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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March - April 2021 Emergency Powers & Civil Liberties Report

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Introduction

This is our tenth Emergency Powers and Civil Liberties report. The report marks one year since we began scrutinising the impact of the Government's pandemic response on civil liberties, with the publication of our first monthly report on 28th April 2020. Each month, we have documented and analysed complex Regulations, erratic policing, criminal justice failures and growing surveillance systems for the benefit of parliamentarians, making a series of recommendations to protect rights and liberties as well as public health.

We are pleased to report that over the past year:

- Our concerns about a lack of parliamentary scrutiny were raised repeatedly in parliament by the Shadow Health team and the Covid Recovery Group, leading to an assurance of prior parliamentary votes before lockdowns;
- Over 60 MPs and peers signed our joint letter to the Home Secretary calling for an explicit exemption for the right to protest in the coronavirus regulations;
- Lockdown exemptions for protest (albeit limited), mental health, and domestic violence reasons were added to lockdown Regulations, following our recommendations;
- The Joint Committee on Human Rights, 13 rights groups, over 40 parliamentarians, human rights lawyers and Reverend Martin Poole backed our call for a review of every lockdown fine issued;
- The CPS initiated monthly reviews of every charge and prosecution under the Health Protection Regulations and Coronavirus Act, in line with our recommendations;
- The Government's centralised contact tracing app was dropped in favour of a more privacy-preserving alternative;
- The Department of Health launched public awareness campaigns explaining exemptions to Regulations which require the wearing of face coverings, in line with our recommendations;
- The Government's professed ban on political leafleting was lifted following our letter to the Cabinet Office;
- 79 MPs have backed our pledge against COVID-status certification;

among numerous other successes.

However, our fears that Britain would enter a prolonged state of exceptionalism after passing a wave of extreme laws with little scrutiny have been realised. Exactly a year after coming into force, the draconian Coronavirus Act was renewed for a further six months on 25th March 2021, despite its historic rate of 100% unlawful prosecutions under the Act. What began as twelve weeks to "turn the tide" has expanded and morphed, with new restrictions becoming enmeshed in our public and private lives.

The remarkable vaccination programme, seeing over half of the adult population rapidly vaccinated, appears not to be deterring the Government from its plotted course towards authoritarianism. Rather, proposals for COVID-status certification signal a new era of intrusion, checkpoints and segregation, despite no public health benefit.

There is no justification for the ongoing, systemic erosion of civil liberties, which far exceeds what is necessary to contain the virus. Extreme laws are now well-positioned to become normalised and permanent. We urge parliamentarians to be vigilant to ensure this does not happen, and to pursue the important recommendations in this report to preserve rights and liberties at this pivotal moment for our future.

Recommendations

RECOMMENDATION 1: The Government must stop relying on complex and ever-changing criminal sanctions to enforce restrictions. Instead, clear, widely publicised and easily accessible guidance should be made available across a range of mediums.

RECOMMENDATION 2: The Government and National Police Chiefs' Council must explain to all police forces the difference between legislation, guidance and public health advice. It must also be made clear to members of the public what actions will result in criminal sanctions.

RECOMMENDATION 3: It is unacceptable that mourners are facing intrusive and disproportionate policing. Police officers should approach memorial events with sensitivity and respect, rather than heavy-handed dispersals and fines.

RECOMMENDATION 4: It is likely that thousands of Fixed Penalty Notices have been issued unlawfully under confusing lockdown restrictions. Police chiefs should urgently instigate a national review of all FPNs issued under the lockdown Regulations.

RECOMMENDATION 5: 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 6: ACRO Criminal Records Office and/or police forces should immediately instigate a review of all £10,000 Fixed Penalty Notices issued under the health Protection Regulations, given their magnitude and the risk that many have been issued unlawfully.

RECOMMENDATION 7: £10,000 Fixed Penalty Notices are disproportionate, chill freedom of assembly and are being issued unlawfully. They should be removed from the Health Protection Regulations.

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

RECOMMENDATION 9: The use of the Single Justice Procedure has led to wide variance in fines and in some cases, unlawful prosecutions. The Crown Prosecution Service should suspend the use of the Single Justice Procedure in relation to charges under the Health Protection Regulations.

RECOMMENDATION 10: All offences dealt with under the Single Justice Procedure under the Health Protection Regulations and Coronavirus Act should be urgently reviewed to ensure the lawfulness of any convictions and fines.

RECOMMENDATION 11: The UK Government must publish its criteria for designating 'red list' countries, to ensure that decisions are fair and transparent.

RECOMMENDATION 12: 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 13: 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 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: Sending private security officers to people's homes to check their location is intimidating and heavy-handed. Self-isolating individuals should only have visits to their home if there are grounds to suspect a serious breach of the requirements. In this case, visits should be conducted by police officers or representatives from local authorities.

RECOMMENDATION 16: Mandating vaccination is unethical, counterproductive and authoritarian. The Government should not pursue mandatory vaccinations and should urgently legislate to prevent employers from implementing mandatory vaccine policies.

RECOMMENDATION 17: Unfettered access to information and debate is critical, particularly during a global public health crisis in which public policy and scientific knowledge is constantly changing and updating. It is inappropriate for social media companies to seek to censor lawful content and restrict debate around coronavirus and restrictions.

RECOMMENDATION 18: Protests should be exempt from restrictions altogether. The requirement for a protest organiser to complete a risk assessment and implement health and safety measures should be changed to guidance, supported by online resources, rather than a legal requirement to avoid criminalising organic democratic participation and political dissent.

RECOMMENDATION 19: Legal observers and journalists play a vital role in observing protests. Attempts to prevent them from performing their role through intimidation, aggression, arrests or fines is unacceptable and unlawful. Police forces must allow

journalists and legal observers to work unimpeded.

RECOMMENDATION 20: Domestic Covid passports would infringe on our privacy, risk discrimination, and pave the way to an authoritarian two-tier checkpoint society with no benefit to public health. The UK Government and devolved administrations should reject Covid-status certification.

RECOMMENDATION 21: Lateral flow tests should not be used as the basis for a 'test to release' system or as part of Covid-status certification.

Emergency Law

Health Protection Regulations

A year ago, we expressed our concern over the contents and enforcement of the Health Protection (“lockdown”) Regulations. In our April 2020 report, we warned:

“These are the most restrictive rules placed on our liberty in a generation. The Regulations effectively put the public under house arrest, leaving limited reasons for which a person can lawfully leave their place of residence.”

(...)

“Despite the high-level of public co-operation in observing the restrictions, some police forces have approached the pandemic as a public order challenge rather than a public health crisis. We have seen police misinterpret the Regulations and enforce them unnecessarily harshly. This punitive approach has alienated and alarmed members of the public, eroded trust in authorities, sown confusion and undermined the rule of law.”¹

Despite widespread public concern and repeated documentation of policing excesses, little has changed in a year – rather, our initial concerns have proved justified time and time again. Regulations have been amended, errors corrected and exemptions added, but confusion, mistrust and unlawful fines and prosecutions have continued.

Fixed Penalty Notices (FPNs) under the Health Protection Regulations which began at £60 for all offences have climbed to an eye-watering maximum of £10,000 for some offences. The rate of unlawful prosecutions under the Regulations has also climbed – in 2020, 12% of charges under the Regulation were overturned, whilst in 2021, 26% have been overturned so far.

As of the beginning of March 2021, England was still under a set of lockdown restrictions that had been introduced without prior parliamentary approval. 424 statutory instruments relating to coronavirus have been passed by the UK Government since the beginning of 2020, and 850 pieces of legislation make provisions related to coronavirus across the 4 nations. Of the pieces of secondary legislation passed by Parliament, only 25 are subject to the draft affirmative procedure, meaning they must be voted on before coming into law, while 298 are subject to the made negative procedure, meaning they need no parliamentary approval.²

The Hansard Society has warned that “the marginalisation of the House of Commons under Covid has been shocking” and that “Parliament’s role must urgently be restored”:

1 April Emergency Powers and Civil Liberties Report – Big Brother Watch, 28th April 2020: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/04/Emergency-Powers-and-Civil-Liberties-Report-april-2020.pdf>

2 Coronavirus Statutory Instruments Dashboard — Hansard Society (updated 28th April 2021): <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>

“There are real dangers that, over the last year, the government has become too comfortable with decision-making that evades parliamentary scrutiny. The excessive use of emergency procedures must end.”³

Sir Jonathan Jones QC, former Head of the Government Legal Service, gave a similar warning when giving evidence to the Justice Committee in April:

“I think the risk is that the Government have got into some bad habits, for reasons I understand — we started in an emergency and we needed to act quickly; but that those have become ingrained and become the default is undesirable.

(...)

“the direction of travel (...) of all of these proposals is to reduce scrutiny and accountability, whether it is to Parliament or, in this case, to the courts, rather than increase it.”⁴

England began March 2021 in ‘Tier 4’ and has ended April in ‘Step 2’. The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, which came into force on 2nd December 2020 and were amended 11 times, were expired by a new set of restrictions on 24th March, which refers to ‘steps’ rather than ‘tiers’. Instead of “moving down the tiers” as ministers promised when the Tier Regulations were introduced and amended, an entirely new set of restrictions were made.⁵ This makes the Steps Regulations the latest in a long series of changing restrictions – England alone has moved from a national lockdown, to reduced restrictions, to local lockdowns, to a tier system, to another national lockdown, to another tier system, to a third national lockdown, to the steps system. As documented in the report, this haphazard approach to law making, criminalisation and regulation of everyday life has led to serious confusion and injustice.

‘Steps’ Regulations

The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 brought the Government’s roadmap out of lockdown,⁶ as was announced on 22nd February,

3 The marginalisation of the House of Commons under Covid has been shocking; a year on, Parliament’s role must urgently be restored – Dr Ruth Fox, Professor Meg Russell, Dr Ronan Cormacain and Dr Joe Tomlinson, Hansard Society, 21st April 2021: <https://www.hansardsociety.org.uk/publications/briefings/the-marginalisation-of-the-house-of-commons-under-covid-has-been-shocking-a>

4 Oral evidence: Covid-19 and the criminal law – Justice Committee, HC1316, 20th April 2021: <https://committees.parliament.uk/oralevidence/2049/html/>

5 HC Deb (1st December 2020), vol 685, col. 165: <https://hansard.parliament.uk/Commons/2020-12-01/debates/27DE3E44-807A-4596-AD7C-946314AC3E2A/PublicHealth?55FE7449-11B7-452D-8690-8C2C06BF856F>; HC Deb (6th January 2021), vol. 686, col. 787: <https://hansard.parliament.uk/Commons/2021-01-06/debates/06F079A7-0E76-4320-997D-61ABB2F5A441/PublicHealth-03D674E1-45E6-465E-9AF8-FDCF7C88F268>

6 COVID-19 Response - Spring 2021 (Summary) – Cabinet Office, 22nd February 2021: <https://www.gov.uk/government/publications/covid-19-response-spring-2021/covid-19-response-spring->

into law. It contains restrictions for the three 'steps', which the Government indicated would occur no sooner than 29th March, 12th April and 17th May respectively. Aside from Step 1, which came into force with the Regulations on 29th March, there is no guarantee in the Regulations that the steps will be progressed on these dates. Step 2 did come into force on 12th April as was enforced via the Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021, but only at the discretion of the Prime Minister and without consultation with Parliament.

The Regulations see limits of social interactions gradually reduced and the reopening of businesses which have been required to close. Step 4, which the Prime Minister announced would see the lifting of "all legal limits on social contact" is not contained within the Regulations – it is thought that no such regulations will then be required. Instead, the Regulations expire on 30th June 2021 – though this is a week later than the date the Prime Minister announced restrictions would be lifted.⁷

The Regulations are broadly similar to restrictions that have been introduced at different periods over the past year, with Step 1 allowing for gatherings of 6 people outdoors and prohibiting gatherings indoors, Step 2 allowing retail, gyms, personal care services and outdoor hospitality to re-open and Step 3 allowing outdoor gatherings of up to 30 people and indoor gatherings of 6 people. Each step contains detailed definitions of ordinary activities, complex exemptions and attempts to legislate for every area of human life with the threat of vast fines for those who do not comply. An offence under these Regulations could initially result in a Fixed Penalty Notice of £200, rising to £6,400 for repeat offences. An individual found to be the organiser of a gathering of more than 30 people could also face a Fixed Penalty Notice of £10,000.

The Regulations also contain new restrictions on travel, creating two new offences – "leav[ing] England to travel to a destination outside the United Kingdom" and "travel[ing] to, or be[ing] present at, an embarkation point for the purpose of travelling from there to a destination outside the United Kingdom" without a "reasonable excuse."⁸ These restrictions are analysed further in the report under 'Travel Restrictions'.

The Secretary of State must review the need for the restrictions imposed by the Regulations every 35 days.⁹ The period during which restrictions must be reviewed has gradually increased – when the first set of Health Protection Regulations were made in March 2020, a review was required every 21 days.¹⁰ This was increased to 28 days in July 2020.¹¹ The requirement, present in previous iterations of the Health Protection Regulations, for the Secretary of State to "publish a direction terminating that restriction or requirement" that he no longer deems necessary for the prevention or control of coronavirus, is absent from these Regulations. The obligation for the Secretary of State to review restrictions regularly

2021-summary

7 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, reg. 21(1)

8 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, reg. 8

9 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, reg. 20(1)

10 The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, reg. 3 (2)

11 The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, reg. 3(2)

is a thin safeguard, given that the contents of these reviews have never been published. However, the gradual weakening of even this safeguard is concerning, indicating the Government's reluctance to commit to full accountability and transparency over its use of emergency restrictions.

RECOMMENDATION 1: The Government must stop relying on complex and ever-changing criminal sanctions to enforce restrictions. Instead, clear, widely publicised and easily accessible guidance should be made available across a range of mediums.

Role of Parliament

Yet again, the Government presented the new restrictions to the public as a fact of law, rather than presenting Regulations for the scrutiny and consideration of Parliament. This is despite the significant delay of over a month between the Prime Minister's public address and the appearance of the Regulations, which were published just a week before they were due to come into force. This could be considered an improvement from previous Regulations, where they have been published just hours before they came into force, or even after they had come into force, but it still gives the public and police forces little time to prepare for and understand new restrictions. Further, this approach to law-making is corrosive to parliamentary democracy.

The debate on the Regulations, on 25th March, lasted several hours. The Regulations were debated alongside several other motions relating to the renewal of the Coronavirus Act 2020 and to House of Commons procedure, meaning that each of these critical motions were not given the full attention of MPs. Karen Bradley, MP for Staffordshire Moorlands and Chair of the Procedure Committee, criticised the lack of time allotted and the lack of opportunity to amend the Regulations:

"Three-and-a-half hours for a debate on these topics is simply not enough. The length of the call list makes it easy to see just how many Members wish to take part. I say to the Minister for Health (...) that the Government should not be frightened of amendments, because if an amendment is proposed that has the support of the majority of the House and the Government cannot find a good reason to say no to it, it is probably a good amendment.

"I suggest that the Government think about providing more time for debate and more opportunities to amend."¹²

In the debate on the Regulations, many Conservative backbench MPs criticised the slow pace of the easing of restrictions, arguing that this did not "show enough belief in

12 HC Deb (25th March 2021) vol. 691, col. 1128: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

vaccines”¹³ and that an “entirely precautionary approach is simply not feasible”¹⁴ given the likelihood that coronavirus will continue to circulate for months, if not years to come. Big Brother Watch does not seek to comment of the public health risks and benefits of lockdowns, but it is critical that an approach which has such a profound impact of human rights and basic freedoms is assessed continuously and rigorously in relation to its proportionality and necessity. In the context of a successful vaccination roll-out which appears to have dramatically reduced the number of Covid-related hospitalisations, the justification for these heavy-handed laws and criminal sanctions becomes increasingly difficult.¹⁵

Accessible law

After a year of weak parliamentary scrutiny, rushed laws and confusing and complicated restrictions, the toll on democracy and the rule of law cannot be understated.

In April 2020, we recommended that “the Government’s communications of the ‘rules’ must be harmonised with the Regulations to avoid enduring confusion among the public and the police as to precisely what the restrictions, and individuals’ legal rights, are.”¹⁶ We have continued to urge the Government to clarify the differences between law and guidance and to ensure the contents of regulations are clear to both the public and police. The alternative is the position the country finds itself in at present, with hundreds of unlawful prosecutions and possibly thousands of people fined who have not broken any laws.

A report from HM Inspectorate of Constabulary and Fire & Rescue was highly critical of the Government’s approach to law-making and the impact it had on policing. It noted that some officers only became aware about changes to restrictions “at the 5pm daily televised government briefings” although “at times what was announced was only guidance and wasn’t followed up with legislation and associated advice. This caused some operational difficulties and created confusion among officers and staff.”¹⁷ It noted that “short notice” updates to restrictions “inevitably led to some errors or inconsistencies in approach.”¹⁸

13 HC Deb (25th March 2021) vol. 691, col. 1136: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

14 HC Deb (25th March 2021) vol. 691, col. 1132: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

15 Only 32 people hospitalised with Covid after having vaccination – Laura Donnelly and Alex Clark, the Telegraph, 21st April 2021: <https://www.telegraph.co.uk/news/2021/04/20/exclusive-just-32-people-hospital-covid-vaccination/>

16 April Emergency Powers and Civil Liberties Report – Big Brother Watch, 28th April 2020: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/04/Emergency-Powers-and-Civil-Liberties-Report-april-2020.pdf>

17 Policing in the pandemic: The police response to the coronavirus pandemic during 2020 HM Inspectorate of Constabulary and Fire & Rescue Services, 20th April 2021: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/the-police-response-to-the-coronavirus-pandemic-during-2020>

18 Ibid.

Senior figures in policing were also scathing regarding the lack of communication between the Government and police forces and the confusion relating to restrictions. Brian Booth, Chair of the Police Federation's West Yorkshire branch, said that the Government's continued floating of easing or introducing restrictions in the press had made it difficult to enforce restrictions:

"It's been very difficult managing this taking away of civil liberties, and it's not been helped by wishy-washy releasing of laws.

"I think a lot of ministers didn't understand the laws – they would go into a briefing and make a gaffe, and then officers on the front line would have to pick up the pieces."¹⁹

Neil Mennie, Chair of the Kent Police Federation, said the "language and expectations of politicians of what police can do was disproportionate," and Ken Marsh, Chair of the Metropolitan Police Federation, said:

"[Government Ministers] would do a briefing at Downing Street and a minister would say 'the police will be enforcing that' and we would be sitting here thinking, really? How are we going to do that then?"²⁰

Paul Griffiths, President of the Police Superintendents' Association, said that the rate at which new laws were introduced was "shocking":

"Early on the confusion was exacerbated because we had 43 forces applying it locally under slightly different interpretations, strategies and approaches.

"Never before have we had the public and police working through their understanding of new laws at the same time."²¹

Sir Jonathan Jones QC made similar points when giving evidence to the Justice Committee:

"Persistently throughout the pandemic, we have seen regulations being drafted and published sometimes immediately before they are due to come into force, sometimes a matter of hours and sometimes a couple of days (...) This of course makes life very difficult for those who want to know what the law is going to be [and] those whose job it is to enforce the law."²²

Trust in the rule of law, policing and the criminal justice system has undoubtably been greatly damaged by a year of confused and sometimes unlawful enforcement.

19 Fears of police exodus after officers spend year 'picking up pieces' of rushed Covid laws – Liz-zie Dearden, the Independent, 23rd March 2021: <https://www.independent.co.uk/news/uk/home-news/covid-laws-police-lockdown-government-b1819850.html>

20 Ibid.

21 Ibid.

22 Oral evidence: Covid-19 and the criminal law – Justice Committee, HC1316, 20th April 2021: <https://committees.parliament.uk/oralevidence/2049/html/>

Enforcement

As we have reiterated over the past year, this obvious and sustained confusion over the contents of legislation has had a significant impact on enforcement. While the Government's chaotic and authoritarian approach to law-making must hold a considerable portion of blame, this does not absolve police forces of their responsibility to ensure that they are policing legislation, not guidance. Officers have too often responded disproportionately to minor breaches of restrictions, instead of engaging and explaining, or issued FPNs on spurious grounds for breaches of guidance.

One woman had a distressing encounter with police where she was issued with an FPN while waiting for a coffee in Borough Market. Officers informed her that she had to leave because she had "come too far" and "breached the Covid rules," despite living only two miles away. After she challenged them, she was surrounded by four police officers and her arm was held "in a vicious, vice-like grip, twisted behind [her] back."²³

Radek Kotlarek was arrested while visiting Talacre beach with his family for a walk. In a video clip, two North Wales Police officers can be seen telling him: "You're under arrest for refusing to provide details."²⁴ Mr Kotlarek said he was not charged or issued with a fine yet was strip-searched and "treated like a criminal" while in custody. North Wales Police later claimed Mr Kotlarek was arrested for failing to give his details in relation to the issuing of a FPN for the offence of travelling to the beach, despite him not being issued with an FPN at the station.

During one operation in London, officers were filmed threatening arrests and fines to two people who had been sitting on a park bench, even after being told that one was a London Assembly Member who was there as part of official work observing police conduct.²⁵

On the Isle of Wight, six men were fined by police officers for painting a community football building.²⁶ The men were volunteering, which has been an exemption under the Health Protection Regulations throughout the past year. Police officers were forced to withdraw the FPNs after the local community raised over £700 to pay the fines.

On 15th March, four people were fined in Leeds for "for being outside their place of

23 I was cuffed by the Covid stasi... queueing for a coffee: This 51-year-old mother strolled two miles to get some refreshment – but fell foul of the long arm of the law – Floss Knight, Daily Mail, 2nd March 2021: <https://www.dailymail.co.uk/news/article-9318457/Mother-51-strolled-two-miles-coffee-fell-foul-long-arm-law.html>

24 Police defend arrest of man who travelled 22 miles with family to have ice cream at beach – Ross McGuinness, Yahoo News, 2nd March 2021: <https://uk.news.yahoo.com/police-arrest-man-covid-travelled-miles-ice-cream-beach-171130595.html>

25 David Kurten, Twitter, 6th March 2021: <https://twitter.com/davidkurten/status/1368312020920066052>

26 Police drop Covid fines against Isle of Wight volunteers – Liam Chorley, Isle of Wight County Press, 1st March 2021: <https://www.countypress.co.uk/news/19127414.police-drop-covid-fines-isle-wight-volunteers/>

residence.” The group had been driving to a location to watch the sunrise, which certainly would fall under the reasonable excuse of “outdoor recreation”, which came into law on 8th March.

Pianist Alistair Stewart was fined by North Yorkshire Police for busking in York on 27th March. Although the requirement to stay at home unless you had a reasonable excuse was still in law on this date, “outdoor recreation” was permitted and it is important to note that the reasonable excuses listed in the Regulations are non-exhaustive. In any case, Mr Stewart was told that the FPN was issued for “causing a crowd” – which is not an offence under the Regulations.²⁷ The Musicians Union has called for busking to be explicitly permitted under restrictions, as current Government guidance indicates that busking will not be legal until 17th May.²⁸ Given that the requirement to stay at home no longer exists in law, it seems likely that this guidance is not upheld by the law.

On 26th March, a carer was fined for eating her sandwich in her car at a local beauty spot.²⁹ Andrea Johnson had driven to Dead Woman’s Ditch to eat her lunch whilst on a break from work, when police officers issued her with a £200 fine for “not having a reasonable excuse” to travel to the area. There have never been restrictions on where you can travel at any point during the pandemic and by 26th March, people were permitted to leave their homes for “outdoor recreation.” In any case, Ms Johnson clearly had a ‘reasonable excuse’ in eating her lunch during a work break. Issuing her with a fine was unnecessary and unlawful. She told ITV News she planned to challenge the fine.

A man in Basingstoke who was exempt from wearing a mask filmed his encounter with a police officer who told him that his lanyard was “not an appropriate exemption” and told him to leave the shop.³⁰

RECOMMENDATION 2: The Government and National Police Chiefs’ Council must explain to all police forces the difference between legislation, guidance and public health advice. It must also be made clear to members of the public what actions will result in criminal sanctions.

Gatherings

In Northern Ireland, police attempted to disperse an impromptu procession through

27 York busker fined for breaching Covid rules – by ‘creating a crowd’ – YorkMix, 27th March 2021: <https://yorkmix.com/york-busker-fined-for-breaching-covid-rules-by-creating-a-crowd/>

28 MU Calls for Busking to Be Permitted – Musician’s Union, 28th April 2021: <https://musiciansunion.org.uk/news/mu-calls-for-busking-to-be-permitted>

29 Somerset carer in tears after being fined for Covid lockdown rule breach at a beauty spot – ITV News, 26th March 2021: <https://www.itv.com/news/westcountry/2021-03-26/somerset-carer-in-tears-after-being-fined-for-covid-lockdown-rule-breach-at-a-beauty-spot>

30 One way of dealing with the COVID-19 gestapo – Brand New Tube, 14th March 2021: https://brand-newtube.com/watch/one-way-of-dealing-with-the-covid-19-gestapo_sN4TbZv39w3pnAc.html

Belfast.³¹ Fiona Donohoe walked through Belfast, tracing the steps of her 14-year-old son who died in unexplained circumstances last summer, as part of her campaign for answers in relation to his death. Unprompted large crowds joined her walk, while police officers announced over a tannoy: "Any person taking part in the procession is liable to arrest." PSNI later confirmed that it was investigating "potential offences under the Public Processions Legislation and Health Protection Regulations."³²

In Great Yarmouth, 11 people were issued with FPNs for attending a vigil for a teenager killed in a motorbike crash, and another individual was arrested and released under investigation on suspicion of organising a gathering of more than 30 people.³³ Another two men were charged and are due to appear in court in relation to their attendance at the vigil. Police used "rave legislation" to block the roads and disperse the gathering, which those in attendance described as "confusing" and "upsetting":

"It was so far from a rave. It was a socially distanced vigil where we let off lanterns, balloons and played a few of Domas's favourite songs. I don't understand where this has come from."³⁴

RECOMMENDATION 3: It is unacceptable that mourners are facing intrusive and disproportionate policing. Police officers should approach memorial events with sensitivity and respect, rather than heavy-handed dispersals and fines.

Fines

Police forces across England and Wales have issued 110,322 Fixed Penalty Notices (FPNs) since March 2020 – a significant addition of 41,370 since our last report.

We remain concerned about the use of FPNs to manage Covid offences in the context of significant confusion from police forces and the public as to the contents of restrictions. FPNs do not have the safeguards that charges have 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.

31 Noah's Army 'stand shoulder to shoulder' with his mum despite police warnings about arrests following unplanned 'pilgrimage' – Shauna Corr, Belfast Live, 28th March 2021: <https://www.belfastlive.co.uk/news/belfast-news/noahs-army-stand-shoulder-shoulder-20273202>

32 Noah Donohoe: Police probing potential breaches of parading and Covid laws following impromptu walk – Claire Simpson, the Irish News, 30th March 2021: <https://www.irishnews.com/news/northernirelandnews/2021/03/30/news/noah-donohoe-police-probing-potential-breaches-of-parading-and-covid-laws-following-impromptu-walk-2272027/>

33 Two charged after vigil for teen who died in motorbike crash – Reece Hanson, Great Yarmouth Mercury, 26th March 2021: <https://www.greatyarmouthmercury.co.uk/news/crime/two-charged-after-domas-vigil-in-great-yarmouth-7852730>

34 Four arrests and 11 fines for teen's vigil - but friends slam 'rave' label – Sarah Burgess, Eastern Daily Press, 8th March 2021: <https://www.edp24.co.uk/news/four-arrests-over-great-yarmouth-teen-vigil-7812490>

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. In April, the Joint Committee on Human Rights concluded that going to court being the only route to contest a FPN is an unsatisfactory safeguard:

“Given all that we know about the flaws in the system of enforcement of the coronavirus Regulations, it is woefully inadequate simply to assert that such FPN fines can be contested in the course of a criminal prosecution for those willing to run the risk of having a criminal record.”³⁵

Barrister Pippa Woodrow, who has been involved in challenging numerous unlawfully issued FPNs under coronavirus laws, told the Justice Committee:

“That a person should be required to undergo a criminal prosecution...with all the anxiety, distress, potential reputational risk and potential consequences (...) simply in order to avoid paying something that should never have been given to them in the first place is, I would suggest, problematic.”³⁶

If only 16% of the 110,322 FPNs recorded in England and Wales were unlawfully issued, a percentage which is in line with unlawful prosecutions under the Regulations, this would account for over 17,650 unlawfully issued FPNs. This could amount to around £4,000,000 of revenue in unlawful FPNs. The number is likely to be far higher however, given the lack of safeguards around issuing FPNs.

We have called repeatedly for a review of all FPNs issued under Health Protection Regulations. The Joint Committee on Human Rights recently echoed our call for the second time in a year:³⁷

“There must be a comprehensive review of all FPNs issued under the coronavirus Regulations as soon as is feasible. We have significant concerns about the validity of the FPNs issued, the inadequacies of the review and appeal process, the size of the penalties, and the criminalisation of those who cannot afford to pay. It is also difficult to see why a breach of the coronavirus Regulations would be relevant to someone’s future employment prospects or ability to travel to certain countries. We recommend that consideration be given to removing convictions under the coronavirus Regulations from criminal records.”³⁸

35 Fourteenth Report: The Government response to covid-19: fixed penalty notices – Joint Committee on Human Rights, HC 1364, 21st April 2021, p 32: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1328/1328.pdf>

36 Oral evidence: Covid-19 and the criminal law – Justice Committee, HC1316, 20th April 2021: <https://committees.parliament.uk/oralevidence/2049/html/>

37 All Covid-19 fines in England should be reviewed, MPs say – Haroon Siddique, the Guardian, 27th April 2021: <https://www.theguardian.com/uk-news/2021/apr/27/all-covid-fines-in-england-should-be-reviewed-mps-say>

38 Fourteenth Report: The Government response to covid-19: fixed penalty notices – Joint Committee on Human Rights, HC 1364, 21st April 2021, Recommendation 16, p 35: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1328/1328.pdf>

RECOMMENDATION 4: It is likely that thousands of Fixed Penalty Notices have been issued unlawfully under confusing lockdown restrictions. Police chiefs should urgently instigate a national review of all FPNs issued under the lockdown Regulations.

RECOMMENDATION 5: 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.

£10,000 fines

The police have been using emergency powers that allow them to issue £10,000 on-the-spot FPNs for gatherings of more than thirty people. These eye-watering fines have been issued 320 times in England and Wales since their introduction at the end of August last year.³⁹ Unaffordable for most, they put people at risk of being unfairly criminalised. They are also ineffective – only six have been paid so far.⁴⁰ Conservative MP Bob Blackman said that “people are being set up to fail by the issuing of these notices.”

Given that FPNs can be issued to anyone whom officers “reasonably believe” to have breached the regulations, there is considerable room for their misapplication. While there is no formal route of appeal under the legislation, there have been some cases where the police have withdrawn them – more in fact than they have received full payment for.⁴¹ This indicates either that they were issued in error or the police did not find enough evidence to sustain them. It is unacceptable that such serious fines have been handed out consistently in error, and with so few safeguards.

District Judge Joanna Dickens, who overturned a teenager’s £10,000 FPN for throwing a party on the basis that the fine did not cite the correct offences, has criticised their use by police:

“Never before have I dismissed a charge. A £10,000 fine, if they’re going to be issued, they should at the very least contain the correct and relevant sections [of law] to allow people to work out what their rights to appeal are.”⁴²

39 Update on Coronavirus FPNs issued by police – April 2021 – National Police Chief’s Council, 29th April 2021: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-police-april-2021->

40 Police hand out hundreds of £10k Covid fines – but only six paid – Max Stephens, Dominic Penna and Martin Evans, Telegraph, 20th March 2021: <https://www.telegraph.co.uk/news/2021/03/20/police->

41 Police hand out hundreds of £10k Covid fines – but only six paid – Max Stephens, Dominic Penna and Martin Evans, the Telegraph, 20th March 2021: <https://www.telegraph.co.uk/news/2021/03/20/police-hand-hundreds-10k-covid-fines-six-paid/>

42 Judge criticises police and CPS as she overturns teenager’s £10,000 Covid fine – Greg Wilford, Times, 16th March 2021: <https://www.thetimes.co.uk/article/judge-criticises-police-and-cps-as-she-overturns-teenagers-10-000-covid-fine-kb8ljxnh>

Wiltshire Police is seeking a review of the case.

The Joint Committee on Human Rights has urged the Government to “explain and justify why it considers that a £10,000 fine is proportionate (i) for anyone, and (ii) for an individual with limited financial means.”⁴³

RECOMMENDATION 6: ACRO Criminal Records Office and/or police forces should immediately instigate a review of all £10,000 Fixed Penalty Notices issued under the health Protection Regulations, given their magnitude and the risk that many have been issued unlawfully.

RECOMMENDATION 7: £10,000 Fixed Penalty Notices are disproportionate, chill freedom of assembly and are often being issued unlawfully. They should be removed from the Health Protection Regulations.

Postcode lottery

Of the 110,322 FPNs processed between 27th March 2020 and 18th April 2021, 41,370 fines were processed between 14th February and 18th April, which accounts for 38% of all FPNs.⁴⁴ 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 61,524 FPNs were issued under the third national lockdown (Tier 4) came into force, which also lasted 3 months (January to early April).⁴⁵ This means police forces were issuing fines at approximately 4 times the rate as in the first lockdown, an alarming increase that demonstrates the growing ‘crack down’ approach to enforcement. It is also of concern, though unsurprising, that this increased emphasis on enforcement has been coupled with an increased rate of unlawful prosecutions.

Despite constant references to “selfish and unsafe events,” only a small fraction of FPNs have been in relation to large gatherings, the offences that could pose the most risk to public health.⁴⁶ Just 320 FPNs have been issued in England and Wales in relation to gatherings of more than 30 people.

3,592 FPNs have been issued between 15th June and 18th April for breaches of the face

⁴³ Fourteenth Report: The Government response to covid-19: fixed penalty notices – Joint Committee on Human Rights, HC 1364, 21st April 2021, p 32: <https://publications.parliament.uk/pa/jt5801/jtselect/>

⁴⁴ Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales – National Police Chief’s Council, 29th April 2021: <https://cdn.prgloo.com/media/a572e4e7c45f4d7db8d895706037f8f0.pdf>

⁴⁵ Ibid.

⁴⁶ Update on Coronavirus FPNs issued by police – April 2021 – National Police Chief’s Council, 29th

coverings Regulations in England – 612 on public transport, 2,980 in relevant indoor places.⁴⁷ 760 businesses have been issued with FPNs, in relation to offences from failing to provide table service to opening later than the legal curfew. 639 FPNs have been issued in relation to people failing to self-isolate after travelling from a listed country. 89 FPNs have been issued in relation to the failure to self-isolate after testing positive for coronavirus or after being told to self-isolate by NHS Test and Trace.

The disparity in which FPNs have been issued to different ethnicities has continued. According to the latest data, 86% of England and Wales is white, while Asian ethnic groups make up 7.5% of the population, black ethnic groups make up 3.3% of the population and mixed ethnic groups make up 2.2% of the population.⁴⁸ However, throughout the pandemic up to 18th April 2021, Asian ethnic groups made up 12% of FPNs issued, black ethnic groups made up 7% of FPNs and mixed ethnic groups made up 3% of all FPNs issued in England and Wales.⁴⁹

The disparity is particularly significant in relation to FPNs issued under face covering regulations and international travel regulations. Of FPNs relating to face coverings on public transport, 58% were issued to white people; of FPNs relating to face coverings in a relevant place (shops, etc.), 69% were issued to white people. This limited data suggests fines for face coverings have been disproportionately issued to racialised groups, though no figures are provided in relation to the FPNs issued to other ethnic groups. The NPCC appears to have pursued no investigation of this concerning data, surmising only that the disparity in public transport FPNs "may reflect public transport being more prevalent in metropolitan areas."⁵⁰ However, the NPCC has not attempted to test this hypothesis and nor can the reader as too little data is provided (we have requested more detailed data by FOI).

Further, 23% of FPNs in relation to self-isolation after travel were issued to Asian ethnic groups and 8% to black ethnic groups. It is unacceptable that fines are being issued in a discriminatory way and this reiterates the serious need for a review of all FPNs issued under the Health Protection Regulations.

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

47 Ibid.

48 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/population-of-england-and-wales/latest>

49 Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales – National Police Chief's Council, 29th April 2021, p.13: <https://cdn.prgloo.com/media/a572e4e7c45f4d7db8d895706037f8f0.pdf>

50 Ibid., p.14

71% of FPNs were issued to men. 47% of FPNs were issued to 18–24-year-olds and over three-quarters (76%) 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 Merseyside has now issued the highest rate of FPNs, with 513 FPNs issued per 100,000 people.⁵¹ Dyfed-Powys has issued the highest rate of FPNs in Wales, with 415 FPNs issued per 100,000 people. North Yorkshire has issued the second highest rate of fines, 475 FPNs per 100,000 people, and Northumbria has issued the third highest rate of fines, with 442 FPNs per 100,000 people. By way of comparison, Humberside has issued just 44 FPNs per 100,000 people, and Essex has issued 78 FPNs per 100,000 people. Those living in Merseyside are 12 times more likely to be fined than those living in Humberside.

Research conducted in Scotland showed that people living in the 10% most deprived Scottish neighbourhoods were 11.2 times more likely to receive an FPN than those living in the 10% least deprived Scottish neighbourhoods.⁵²

Prosecutions

The latest figures from the Crown Prosecution Service's monthly review have been published, unsurprisingly revealing more unlawful prosecutions under the Health Protection Regulations in February and March. In February, 47 out of 171 charges were overturned – a staggering 28% of all charges and the highest rate revealed by CPS' reviews. The rate of unlawful prosecutions has gradually increased since the CPS began its reviews in May 2020, demonstrating that the serious problems with enforcement are not being resolved.

As well as unlawful prosecutions, people who have been prosecuted under the Regulations have been handed widely varying fines. In Cumbria, Max Douglas was fined £200 for being outside of his home without a reasonable excuse, while David Patton was fined £1,760 for the same offence and Gary David Small was fined £1,199 for being in a taxi without a reasonable excuse.⁵³ It is not clear why similar offences have merited such a range of penalties. Although nationwide data on the rate of fines does not exist, it is likely that such broad disparity is represented across the country.

In previous reports, we have been critical of the use of the Single Justice Procedure (SJP) in relation to charges under the Regulations. The Justice Committee has begun an enquiry into criminal law and coronavirus with one element of the enquiry focusing

51 Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales – National Police Chief's Council, 29th April 2021: <https://cdn.prgloo.com/media/a572e4e7c45f4d7db8d895706037f8f0.pdf>

52 Understanding Inequalities: Second data report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland – Professor Susan McVie, 24th February 2021

53 More Covid-19 rule breakers appear before courts in Cumbria – Phil Coleman, The Mail, 3rd April 2021: <https://www.nwemail.co.uk/news/19207701.covid-19-rule-breakers-appear-courts-cumbria/>

on the appropriateness of using the SJP in this context. Witnesses to date have shared our concerns in relation to the transparency and scrutiny of this process. Court reporter Tristan Kirk told the Committee:

"It should be a matter of public concern that there are (...) potentially thousands of cases of people being accused of these offences going through a system where they do not get the kind of scrutiny that you would expect from a full court hearing. (...) By the time they reach a court, that message [to the public to follow the rules] will no longer be any use."⁵⁴

Joshua Rozenburg QC, legal commentator and solicitor, agreed that the SJP was not suitable for charges under Regulations:

"It is not suitable for an entirely new area of law where there is doubt as to whether an offence has been committed at all."⁵⁵

The Joint Committee on Human Rights has also voiced criticism of the use of the SJP in relation to coronavirus offences:

"There are real concerns about the fairness of these hearings for an area of law whose enforcement has been riddled with errors, and where there often needs to be careful consideration of whether the accused had a "reasonable excuse" in order for an offence to have been committed."⁵⁶

RECOMMENDATION 9: The use of the Single Justice Procedure has led to wide variance in fines and in some cases, unlawful prosecutions. The Crown Prosecution Service should suspend the use of the Single Justice Procedure in relation to charges under the Health Protection Regulations.

RECOMMENDATION 10: All offences dealt with under the Single Justice Procedure under the Health Protection Regulations and Coronavirus Act should be urgently reviewed to ensure the lawfulness of any convictions and fines.

54 Oral evidence: Covid-19 and the criminal law – Justice Committee, HC1316, 20th April 2021: <https://committees.parliament.uk/oralevidence/2049/html/>

55 Ibid.

56 Fourteenth Report: The Government response to covid-19: fixed penalty notices – Joint Committee on Human Rights, HC 1364, 21st April 2021, p 29: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1328/1328.pdf>

Travel Restrictions

Regulation 8 of the Steps Regulations introduced two new offences - "leav[ing] England to travel to a destination outside the United Kingdom" and "travel[ing] to, or be[ing] present at, an embarkation point for the purpose of travelling from there to a destination outside the United Kingdom" without a "reasonable excuse." An individual leaving the United Kingdom must complete a "travel declaration form" which contains their full name, date of birth, passport number, home address, destination, their reason for leaving the country, a statement that the information provided is true and the date that the form was completed.⁵⁷ Leaving the UK or travelling to an embarkation point without a reasonable excuse will result in a £5,000 fine. Failing to correctly fill out the travel declaration form will result in a £200 fine.⁵⁸

A reasonable excuse includes for work or volunteering where it cannot be done from a location inside the United Kingdom; where a person is enrolled in a course at an institution; where the person is an elite sportsperson (or their coach or parent) and they need to travel for training or competition; where it is necessary to fulfil a legal obligation or to participate in legal proceedings; to undertake activities in connection with the purchase, sale, letting or rental of a residential property (including visiting an estate agent); to seek medical assistance or to attend a clinical appointment; to avoid illness, injury or to escape a risk of harm; to attend an expectant mother giving birth; to visit a person receiving treatment in hospital; to provide care or assistance; to visit a person who is dying; to get married or attend the wedding of a close family member; to vote in an election; for childcare; or where a person is only in the United Kingdom on a temporary basis, and is not resident in the United Kingdom.⁵⁹

The right to leave a country is protected under international law. Article 12(2) of the International Covenant on Civil and Political Rights states that "everyone shall be free to leave any country, including his own" and Article 2(2) of the Protocol n°4 of the European Convention on Human Rights states that "everyone shall be free to leave any country, including his own." This is a qualified right that can be restricted on the grounds of public health. However, interferences with rights must be strictly necessary and proportionate. Exemptions for those wishing to visit a travel agent or visit potential properties suggest that this highly restrictive new prohibition of leaving the country is not strictly necessary.

Human rights barrister Adam Wagner pointed out the uneven nature of the restrictions:

"you can travel for work, to volunteer, or for a family wedding, but not for a holiday. A parent or sibling can reunite with a child (a person under 18) if they do not live together, but an adult who lives separately from their spouse cannot travel to see them – unless they are dying."

57 Regulation 8(5)(a)

58 Regulation 15(1)

59 Schedule 5

(...)

"But as with the lockdown laws, these new rules suggest a strange disregard for people who do not live with their partners, or adults who have not seen their families for a year."⁶⁰

Munira Wilson MP, the Liberal Democrat spokesperson for health, was highly critical of the travel restrictions.

"I am appalled that Ministers wish to criminalise people for visiting loved ones overseas, yet the Prime Minister's father and friends get a free pass to go and take care of their second homes abroad—because of course second home owners cannot possibly bring the virus back into this country, can they?

(...)

"Criminalising international travel with a £5,000 fine and an exemption for second home owners exemplifies the Government's approach to so many aspects of the pandemic: half-baked, authoritarian, and one rule for them and one rule for us."⁶¹

The Regulations do not specify who will assess the travel declaration form, but Government guidance notes that an individual should "Keep this form with you – police may ask to see it but will not collect it from you."⁶² The Regulations do not require an individual to carry evidence or prove their reasonable excuse for travel, but Government guidance contains lists of "recommended evidence" for each reasonable excuse – such as a professional card for work, or proof of membership of an academic institution for education.⁶³ For medical or compassionate grounds, the requirement for evidence is far more onerous and intrusive. It suggests individuals obtain:

"medical evidence describing the situation of the member of your household or close family member or a friend who is receiving treatment in hospital or whose condition is life-threatening, proof of scheduled treatment, letter from social services, proof of hospital admission, proof of family relationship (...)"

For many people this personal information will not be possible to obtain, particularly given likely time pressures.

The penalty of a £10,000 FPN and a potential prison sentence of up to 10 years for lying on a quarantine form – public health emergency or not – is blatantly disproportionate,

60 The travel ban means spouses are kept apart but friends can visit an estate agent in Florida – Adam Wagner, the Telegraph, 23rd March 2021: <https://www.telegraph.co.uk/travel/comment/travel-ban-means-spouses-kept-apart-friends-can-visit-estate/>

61 HC Deb (25th March 2021) vol. 691, col. 1144: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

62 Coronavirus (COVID-19): declaration form for international travel from England from 29 March 2021 – GOV.UK: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/971445/declaration-form-for-international-travel-from-29-march-2021.pdf

63 Coronavirus (COVID-19): declaration form for international travel – GOV.UK: <https://www.gov.uk/guidance/coronavirus-covid-19-declaration-form-for-international-travel#permitted-reasons-for-international-travel>

intended to scare the public into submission rather than keep them safe.

British and Irish nationals and those with residence rights in the UK returning to England from a 'red list' of countries (40 at the time of writing)⁶⁴ are required by law to quarantine in Government designated hotels. Non-British or Irish nationals, or those without residence rights will be refused entry to the country. SAGE has concluded that the "time lag between variants developing and being recognised" reduces the effectiveness of a reactive travelban,⁶⁵ while the Institute for Government has suggested that a partial quarantine policy is "likely to prove a costly failure little more than expensive window dressing."⁶⁶

It's not clear why countries across Africa, such as Zambia and Mozambique which have very low rates of infection, were added to England's "red list" and France, with 274 infections per 100,000 people, was not.⁶⁷ The US, Canada and European countries have all experienced a third wave over the past two months, yet have never been placed on England's 'red list.' Dr Zubaida Haque of Independent SAGE tweeted:

"For months now @IndependentSage have been raising concerns about our porous/ad hoc border restrictions – which appear to be less about public health and resemble more immigration decisions. Astonishing that India, US, Canada & Europe (where there's a 3rd wave) are not on red list"⁶⁸

RECOMMENDATION 11: The UK Government must publish its criteria for designating 'red list' countries, to ensure that decisions are fair and transparent.

Enforcement

Those returning from red list countries are required to pay £1,750 to quarantine in a government managed hotel or face a £10,000 FPN. However, safeguards for vulnerable people, children or those facing exceptional circumstances are threadbare.

A vulnerable 18-year-old with serious mental health issues spent five days mandatorily quarantined at a hotel near Heathrow after returning from a rehab facility where she was being treated for complex issues.⁶⁹ Despite interventions from her psychiatrists and

64 Coronavirus (COVID-19): red list travel ban countries – GOV.UK, accessed 30th April 2021: <https://www.gov.uk/guidance/transport-measures-to-protect-the-uk-from-variant-strains-of-covid-19>

65 Coronavirus hotel quarantine: Key questions for the government – Sarah Nickson, Institute for Government (February 2021), p 2: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/hotel-quarantine.pdf>,

66 Coronavirus hotel quarantine: Key questions for the government – Sarah Nickson, Institute for Government (February 2021), p 2: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/hotel-quarantine.pdf>

67 Covid-19 Global Tracker – Reuters, accessed 30th April 2021: <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/france/>

68 Dr Zubaida Haque, Twitter, 14th April 2021: <https://twitter.com/Zubhaque/status/1382338106037305347?s=20>

69 Mother tells of desperate battle to get vulnerable teenage daughter out of hotel quarantine – So-

parents, the Department of Health and Social Care refused her application for exemption. Following media coverage, she was allowed to return home to finish self-isolating. Her mother told the Evening Standard:

“The impact of spending ten days in hotel isolation is not just about the risk for the time she is there, it is in the days and weeks that follow. I am worried, the Government clearly doesn’t care about individuals. I don’t understand why non-clinical people are overriding clinical advice from clinicians that know her case.”

It is entirely inappropriate that she was not granted an exemption – it should be obvious that quarantining alone in a hotel room for ten days could have caused her extreme distress and put her at severe risk, especially as her psychiatrists had told authorities that “with her history it is possible she could end up attempting to take her life and possibly even completing it.” Another similar incident occurred when a family from Bradford returned from Pakistan.⁷⁰ Their 17-year-old daughter, who has a history of severe anxiety which can trigger asthma, was hospitalised twice during their stay in the hotel and placed into intensive care. Despite this clear risk to the health of their daughter, the family’s request to quarantine at home was refused, even with a letter from a doctor. The family only received a welfare check on their final day of isolation. Uzma Khan, the girl’s mother, said:

“It was really, really scary. I felt as though this was really, really serious but they didn’t let her out.

“We just lost trust. I’m just lost for words, really shocked and surprised. It was just a case of, ride it through and hope and pray that her health stayed ok. It’s really hard to put into words how I feel about the whole situation. I think they should have sent her home.”

Exemptions are rarely granted and there are currently no exemptions for people with medical conditions.

25 engineers were forced to pay £2,700 to check into quarantine hotels in Scotland when returning from Angola, while their colleagues who arrived in England were free to isolate in their homes.⁷¹ Their occupational exemption did not come into force in Scotland until 4am on 20th March, despite coming into force in England at midnight. Inconsistent rules across the four nations have left the policy open to being side-stepped. As one of the workers pointed out, “The worst of it is I know of people who have been flying into London then driving to Scotland.”⁷² They have described feeling “like prisoners,” and in “solitary confinement,” with one describing how he had to wait up to four hours to be escorted

phie Ridge, Evening Standard, 25th March 2021: <https://www.standard.co.uk/news/uk/mother-fight-vulnerable-teen-out-hotel-quarantine-mental-health-covid-lockdown-b926285.html>

70 Bradford mum hits out over family’s quarantine experience – Felicity Macnamara, Telegraph & Argus, 27th April 2021: <https://www.thetelegraphandargus.co.uk/news/19260352.bradford-mum-hits-family-quarantine-experience/>

71 Scots workers stranded in quarantine hotel ‘feel like prisoners’ due to ‘ridiculous’ lockdown loop-hole – John Jeffay, Daily Record, 22nd March 2021: <https://www.dailyrecord.co.uk/news/scottish-news/scots-workers-stranded-quarantine-hotel-23772935>

72 Scots workers stranded in quarantine hotel ‘feel like prisoners’ due to ‘ridiculous’ lockdown loop-hole – John Jeffay, Daily Record, 22nd March 2021: <https://www.dailyrecord.co.uk/news/scottish-news/scots-workers-stranded-quarantine-hotel-23772935>

downstairs for a 15-minute cigarette break.⁷³

There have been multiple reports of people returning home to the UK from overseas to visit dying relatives, only to be forced to pay for quarantine hotels and missing their opportunity to say goodbye to loved ones, despite having taken several coronavirus tests. Billie Gray flew home from Sweden to see her sister, but despite two negative coronavirus tests, was unable to visit her or leave the quarantine hotel.⁷⁴ Ms Gray said she was told on arrival she would have to pay for her stay in the hotel:

"I was handed over to another man who basically made me phone the government and agree to pay for the hotel, which I can't afford, in instalments. I wasn't allowed to leave unless I did that.

"I was brought to the hotel and I've been trying to go outside to call my family but every time I leave the hotel for fresh air, I've got yellow hi-viz jackets following me.

"I feel like I'm a terrorist who is being kept in a cell. I've been told that if I leave I'll be arrested and detained (...)

"No matter who I phone, not one person has given me any advice or information except that I've got to stay in the hotel room.

"I don't feel mentally stable enough to be sat alone. I've just lost my sister."

Rachel Maskell MP highlighted a similar situation that one of her constituents faced. The woman had travelled home to the UK to visit her dying mother, but despite having received two vaccinations and a negative test result, was unable to leave the hotel:

"My constituent had to go to a quarantine hotel, whereas many of the people she had been mingling with just hours before were free to travel wherever they wanted. When she arrived—obviously, she paid an extortionate amount for it—she was put in a poorly ventilated room and allowed out for only 20 minutes a day. She was in deep grief. She wanted to be at home with her father—isolating, absolutely—but that was denied.

(...)

"... she felt imprisoned, with no support. When I raised the issue of support, all I was told was that she could be assessed for suicide. She was in deep grief. She needed to be with family, isolating as she was. The only concession I was given was that her father, who was also mourning, could travel to Birmingham from York and, at the full cost of £1,750, stay at the hotel for the full quarantine period."⁷⁵

She concluded by criticising the illogicality and the cruelty of the restrictions:

73 'We are not sure when we will get home': the stranded seafarers who kept world trade afloat during Covid – Dean Kirby, iNews, 2nd April 2021: <https://inews.co.uk/news/long-reads/stranded-seafarers-who-kept-world-trade-afloat-during-covid-facing-crisis-keyworkers-941391>

74 Tearful Scot forced to enter quarantine hotel as sister's tragic death isn't grounds for 'compassionate' exemption – Sarah Vesty, the Daily Record, 27th February 2021: <https://www.dailyrecord.co.uk/news/scottish-news/tearful-scot-forced-enter-quarantine-23573965>

75 HC Deb (26th April 2021), vol. 693, col. 189-90: <https://hansard.parliament.uk/commons/2021-04-26/debates/F7066873-8F58-488E-85F6-CB355D96F818/PublicHealth#main-content>

“It is time to understand humanity and infection control. Both can be achieved, but that is not found in these regulations.”⁷⁶

Concerns have also been raised over the impact of hotel quarantine on children’s rights,⁷⁷ as stories emerged of children unable to see parents who lived in different countries and quarantining alone in hotel rooms. Article 10 of the United Nations Convention on the Rights of the Child (UNCRC) reads, “If a child’s parents live apart in different countries, the child has the right to visit and keep in contact with both of them.”⁷⁸ Following pressure, the Scottish government amended its legislation so that children entering the country unaccompanied may be allowed to self-isolate at home. A teenager whose GCSE studies have been disrupted is seeking a judicial review on the basis that the hotel quarantine policy is unlawful and discriminates against children.⁷⁹

RECOMMENDATION 12: 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 13: 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.

⁷⁶ HC Deb (26th April 2021), vol. 693, col. 190: <https://hansard.parliament.uk/commons/2021-04-26/debates/F7066873-8F58-488E-85F6-CB355D96F818/PublicHealth#main-content>

⁷⁷ Children’s human rights concerns over hotel quarantine – Debbie Jackson, BBC News, 18th March 2021: <https://www.bbc.co.uk/news/uk-scotland-56298416>

⁷⁸ The UN Convention on the Rights of the Child (1989) (United Nations), available at: https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_PRESS200910web.pdf?_ga=2.78590034.795419542.1582474737-1972578648.1582474737

⁷⁹ Teenager mounts first legal challenge to hotel quarantine for denying her the right to study for her GCSEs in UK – Charles Hymas, <https://www.telegraph.co.uk/news/2021/03/08/teenager-mounts-first-legal-challenge-hotel-quarantine-denying/>

Coronavirus Act

Two-monthly reviews

Section 97 of the Act requires the Health Secretary to report to Parliament on key provisions in the Coronavirus Act every two months. The latest review was published on 22nd March but was amended on 19th April to correct an error relating to Section 24 of the Act.⁸⁰ The report had previously stated that Section 24, which provides for extension of the ordinary statutory time limits for the retention of fingerprints and DNA profiles, had expired. In fact, the Section remains in force until 24th September 2021.

We welcome the Government's decision to expire provisions within the Act, such as powers relating to food supply chains, which have never been proved necessary. However, parts of the Act which are not necessary, and which have proven a threat to rights and justice, have not been removed. The Government's review asserts that the extreme powers under Schedules 21 and 22 are still necessary, but does not acknowledge that Schedule 21 has led to an unprecedented 100% unlawful prosecution rate and has never been used for a lawful charge. Furthermore, Schedule 22 has never been activated by Ministers. Justifying the continued use of Schedule 21, the report states the extraordinary detention powers:

"are part of a suite of powers to support a range of strategic responses throughout the lifecycle of the pandemic and, ensures the risk of onward transmission is immediately minimised, until longer term pandemic control is achieved sustainably both in the UK and internationally."

It is concerning that the Government intends to retain these powers until pandemic control is achieved "internationally" – given that some scientific experts have warned coronavirus could be in circulation for "decades."⁸¹ There is no evidence that police forces are learning to use this Schedule correctly – unlawful prosecutions have continued month on month.

The Department of Health and Social Care's justification for the continued use of Schedule 22 is misleading at best:

"[Schedule 22] streamlines existing legislation in England and Wales, to ensure that powers to prevent events or gatherings can be deployed as quickly as possible in the event this is justified by the evidence. It also extends the power to Scotland and Northern Ireland too, where there is no equivalent legislation.

"The government has not exercised the powers conferred through this provision in England. However, as we move through the roadmap, this provision may be used in order to control local outbreaks, rather than a national approach as previously."⁸²

80 One-year report on the status on the non-devolved provisions of the Coronavirus Act 2020 – Department of Health and Social Care, 22nd March 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978844/coronavirus-act-one-year-status-report-amended.pdf

81 Coronavirus: 'Infection here for many years to come' – BBC News, 21st July 2020: <https://www.bbc.co.uk/news/uk-53488142>

82 One-year report on the status on the non-devolved provisions of the Coronavirus Act 2020 – De-

Regulations have also been made under the Public Health Act 1984 to restrict gatherings and allow Ministers to specifically prohibit or exempt certain types of gatherings, rendering Schedule 22 unnecessary. There are also powers under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 for the Health Secretary and local authorities to issue specific directions in relation to premises, events and outdoor public space. This contains more comprehensive safeguards than Schedule 22, such as a 7-day review of directions, the right to appeal and a specified end date to directions issued. Schedule 22 does not 'streamline' existing legislation, rather, it allows for exceptional powers with little accountability and has never been needed, even during two peaks of the pandemic. The reference to "local outbreaks" is also not in line with current legislation. The Government has managed local outbreaks in the past through regulations under the Public Health Act, and the current Health Protection Regulations allow for different parts of England to be subject to different 'step' levels of restrictions.

Six-month renewal

The Coronavirus Act is due to expire 2 years after it was passed, which is a considerable time period. Since the introduction of the Coronavirus Bill, we have argued that emergency powers should have emergency time limits, and we successfully campaigned for 6-month reviews of the Act.

On 25th March, MPs voted on the 6-month renewal motion: "the provisions of this Act should not expire," requiring that MPs either accept or reject the Act in its entirety. As we argued when the Coronavirus Bill and this concession was passed, it is extremely unsatisfactory that the motion to renew the Act is an 'all-or-nothing' motion. It has proven to be incredibly limiting, obstructing parliament improving or curtailing powers in the Act. Although MPs of all parties attempted to lay amendments to this renewal motion in March, including an amendment by Steve Baker MP to exclude Schedules 21 and 22 from the renewal, none was selected.

In the debate on the renewal motion, many MPs spoke out against the Government's continued use of Schedules 21 and 22 and urged the Health Minister to expire the provisions. Jonathan Ashworth MP, Shadow Health Secretary, said:

"Sadly, we have seen such abuses [of the powers within the Act]. Schedule 21, which gives the power to detain potentially infectious persons, has been used for a number of prosecutions, every one of which was found to be unlawful when reviewed by the Crown Prosecution Service. (...)

"Schedule 22 is another schedule that is open to abuse, and I hope the Government will review it and come forward with alternatives; given recent events, the power

partment of Health and Social Care, 22nd March 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978844/coronavirus-act-one-year-status-report-amended.pdf

it contains on gatherings has caused understandable concern.”⁸³

The SNP also called for the repeal of Schedule 21. Martyn Day MP said:

“the SNP supports repeal of Schedule 21, which contains very broad police detention powers. Those have clearly proven problematic, with Schedule 21 having been used for 246 prosecutions, every single one of which was found unlawful by the Crown Prosecution Service.

“That is as unprecedented as it is unacceptable.”⁸⁴

Sir Ed Davey MP, leader of the Liberal Democrats, was highly critical of the impact of the Coronavirus Act on civil liberties:

“The experience of the past year shows that many of the powers that the Government still want to keep have proved totally unnecessary, including the extraordinary powers for police and immigration officers to detain innocent people potentially indefinitely. The Government themselves say that such powers have not been used once in the whole pandemic, yet they are still asking MPs to renew them for another six months.”⁸⁵

Steve Baker MP, deputy chair of the Covid Recovery Group, pressed the Health Secretary on the failures of the Act:

“Schedule 21 of the Coronavirus Act has the 100% record of failure that has been well articulated. I regret that my amendment could not be selected. I would hope that everyone who has spoken against Schedule 21 would have voted for it, and I think it would have gone through. I will, unfortunately, have to vote against the Government tonight in order to protest Schedule 21, and also Schedule 22, which has never been used and is therefore redundant. Those schedules should certainly be removed.

“The Act is extreme, unnecessary and disproportionate (...) and for that reason I shall vote against it.”⁸⁶

Chris Green MP, Conservative backbencher, was also critical of the Government’s refusal to expire the unnecessary and draconian powers in the Act:

“I am concerned that the Government are seeking to retain Schedule 21, the provision for controlling people, given that there has been a 100% failure rate for prosecutions.

“I am also concerned that Schedule 22, for controlling gatherings, is also being

83 HC Deb (25th March 2021), vol. 691, col. 1120-1: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

84 HC Deb (25th March 2021), vol. 691, col. 1125: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

85 HC Deb (25th March 2021), vol. 691, col. 1130: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

86 HC Deb (25th March 2021), vol. 691, col. 1141: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

retained. That has not even been used over the past year, and we have been through the worst parts of the lockdown. It has not been as bad as some of the projections have suggested, but it has been a pretty bad time for a great many people, so why are we seeking to retain Schedule 22, which was never needed during the worst of times?”⁸⁷

All opposition parties and Conservative backbenchers were united in their opposition to Schedules 21 and 22. Yet Health Minister Edward Argar was not able to justify the continued use of Schedule 22:

“The reality is that, while the 1984 Act gives a considerable number of powers, some elements of critical infrastructure would not be able to be closed, even in the event of an outbreak with a dangerous new variant, under that Act.”⁸⁸

It is unthinkable that Ministers would need to shut down “critical infrastructure”, given that the country has passed two peaks of infections without ever needing to do so. This is an extremely thin excuse for the retention of these powers.

Dawn Butler MP, Labour backbencher, presented a new Coronavirus Bill to the House of Commons. The Bill, written with Liberty and other rights groups, seeks to remove the unnecessary and excessive parts of the Act, while putting in place protections for the most vulnerable in society. She urged the Government not to continue the use of outdated and unnecessary legislation, pointing out the only 5% of coronavirus rules have been made using the Act:

“One year ago, the Government’s Coronavirus Act was passed to address an unfolding emergency in the UK. It was an unknown situation and we understandably rushed through the extraordinary provisions without line-by-line scrutiny. But that was a year ago. Look at how much we have all now learned about viruses, mutations and vaccinations—so why are we still voting through an old bit of legislation?

“The Act is a blanket of draconian powers that the Government have wrapped themselves in.

(...)

“That is why we need the Coronavirus (No. 2) Bill. It would protect disabled people and ensure proper sick pay so that people would not have to choose between spreading the virus and staying at home.”⁸⁹

Other MPs attacked the Government’s extension of the ‘state of emergency’. Sir Desmond Swayne MP, Conservative backbencher, said “tyranny is a habit” that MPs “have not quite

87 HC Deb (25th March 2021), vol. 691, col. 1150: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

88 HC Deb (25th March 2021), vol. 691, col. 1165: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

89 HC Deb (25th March 2021), vol. 691, col. 1132-3: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

kicked”:

“The powers that touched our personal choices and came at such a huge cost remain. We were told that they were there purely temporarily to deal with the emergency. Well, by any measure the emergency is over and the hugely successful vaccination campaign is the guarantee against its return. Yet on the Order Paper tonight the Government seek to retain those powers to control aspects of our lives, together with the punishment regime for those who disobey.”⁹⁰

Liberal Democrat Tim Farron MP warned that authoritarian powers tend multiply:

“My great concern is that the Government’s default, knee-jerk attempt to seek these draconian powers for a lengthier period is beginning to fit into a pattern.

(...)

“All this seems to indicate that we have a Conservative party in government that loves talking about liberty until it has to do something about it in practice, and when it comes to dealing with these issues in practice, its instincts are authoritarian.”⁹¹

However, despite vocal oppositions from across parties, the Coronavirus Act was renewed by Parliament. 484 MPs voted in favour of renewal, while 76 MPs voted against. MPs from almost every party – Conservative, Labour, Liberal Democrat, Green, DUP and Independents – voted against the Act, and three times as many MPs voted against the renewal of the Act as did in September 2020.

It is disappointing that once again MPs voted through an Act which contains some of the most draconian powers ever awarded to a Government in peacetime. It is clear that the pandemic risks leading to a constant expansion and extension of vast executive power.

Unlawful prosecutions

As has been the case for every review of charges under the Coronavirus Act, once again 100% of charges and prosecutions under the Act have been found to be unlawful by the Crown Prosecution Service. February’s review found another 6 unlawful charges under the Act.⁹² At the time of writing, March’s review is yet to be published.

The Joint Committee on Human Rights has pointedly criticised the continued use of extreme detention powers under the Coronavirus Act:

“[The CPS review] raises serious questions about the efficacy and utility of the legislation. Individuals have suffered the stress of a prosecution that was wrongly brought, and the costs of legal representation. Each case is an administrative

90 HC Deb (25th March 2021), vol. 691, col. 1133: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

91 HC Deb (25th March 2021), vol. 691, col. 1148: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

92 February’s coronavirus review findings – Crown Prosecution Service, 22nd March 2021: <https://www.cps.gov.uk/cps/news/februarys-coronavirus-review-findings>

burden and cost for the CPS and the courts in trying to untangle these incorrect charges.

“It is astonishing that the Coronavirus Act is still being misunderstood and wrongly applied by police to such an extent that every single criminal charge brought under the Act has been brought incorrectly. While the coronavirus Regulations have changed frequently, the Act has not, and there is no reason for such mistakes to continue.”⁹³

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.

93 Fourteenth Report: The Government response to covid-19: fixed penalty notices – Joint Committee on Human Rights, HC 1364, 21st April 2021, p 22: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1328/1328.pdf>

Contact Tracing Requirements

With the reopening of outdoor hospitality on 12th April came the renewed enforcement of contact tracing requirements. The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 were amended on 29th March, as part of the 'Steps' Regulations. Previously, only one member of a group of six was required to provide their contact details to a venue for contact tracing purposes. The amended regulations now require every individual to give either written contact details or check in with the NHS Covid-19 app.⁹⁴ New guidance has also been issued in relation to contact tracing, encouraging venues to "satisfy yourselves that individuals who are checking in using the official NHS QR code have done so" by asking "to view the person's screen to show the venue check-in screen."⁹⁵

Yet again, intrusiveness outstrips competence in the pandemic response. The test and trace program is an essential part of pandemic management, yet has been mired in failures. A report by Parliament's Public Accounts Committee highlighted its failure:

"The Department of Health & Social Care justified the scale of [£37 billion over two years] investment, in part, on the basis that an effective test and trace system would help avoid a second national lockdown; but since its creation we have had two more lockdowns. There is still no clear evidence to judge NHS T&T's overall effectiveness".⁹⁶

The report also stated that the Test and Trace system needs to "wean itself off" reliance on "expensive" consultants and that the Government needed to justify the "staggering investment of taxpayers' money." Meanwhile, this expensive outsourcing has proved a risk to data protection obligations. Sitel, which runs a large part of the NHS's contact tracing program, told staff members to use their personal email accounts to handle individuals' health data.⁹⁷ Former staff member Helen Wilkie told Politico that she had reported the company to the ICO for a potential breach of GDPR. When working for the company, she raised her concerns with a senior staff member, saying she was "pretty horrified that we are using personal emails for work and discussing cases," but her concerns were ignored. Pascale Robinson from We Own It, which campaigns against privatisation of public services, said:

"Contact tracing is delicate, sensitive work, and it requires the utmost commitment

94 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, sch. 8, para 4(3)

95 Maintaining records of staff, customers and visitors to support NHS Test and Trace – Department of Health and Social, GOV.UK, updated 12th April 2021: <https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace#information-to-collect>

96 COVID-19: Test, track and trace – Public Accounts Committee, 10th March 2021: <https://publications.parliament.uk/pa/cm5801/cmselect/cmpubacc/932/93203.htm>

97 Outsourcing Firm Sitel Told Contact Tracers to Use Their Personal Email Accounts to Share People's Case Details – John Johnston, Politico, 10th March 2021: <https://www.politicshome.com/news/article/outsourcing-firm-sitel-told-contact-tracers-to-use-their-personal-email-accounts-to-share-peoples-case-details>

to best practice of data protection.

"It's disappointing to see that this appears not to have been followed by one of the companies directly involved in the management of the system."

NHS Covid-19 App

A planned update to the NHS Covid-19 App was blocked by Apple and Google, as it would have involved increased data collection in relation to venue check-ins.⁹⁸ Currently, if a venue is identified as a potential site of an outbreak, every app user is sent this information, and their app will cross reference this information with the venues the user has logged as a check in. The update would reverse this, asking users who test positive to upload their venue history to the central system, so other users who have checked into the venue can be alerted more quickly. The Department of Health and Social Care has said this would be done in a "privacy protecting" way but provided no further information. However, the update was blocked by Apple and Google, as it goes against the requirement that the contact tracings app does "not share location data from the user's device with the Public Health Authority, Apple, or Google."

A Chatham House research paper found that Apple and Google, which control 99.75% of the global market for mobile phone operating systems, "withheld access to essential technologies until the UK agreed to align its data storage model with that advocated by the tech companies."⁹⁹ Although in this instance, we welcome Apple and Google's system which has greater privacy and data protection than the UK government's proposals, it is important to acknowledge the considerable power these unaccountable big tech companies can wield over national contact tracing efforts.

Despite Government guidance which states "Venues must not make the specific use of the NHS QR code a precondition of entry (as the individual has the right to choose to provide their contact details if they prefer)", some venues have refused entry to those not using the NHS Covid-19 app.¹⁰⁰ David Walters, 78, was refused entry to The Angel pub at Corbridge after he was unable to check-in to the venue on the app. Mr Walters told the Telegraph:

"This was going to be the first time I could get out.

"I just thought it was terrible. Older people like me don't have this computer knowledge because we weren't brought up with computers.

98 NHS Covid-19 app update blocked for breaking Apple and Google's rules – Jessica Carpani, the Telegraph, 12th April 2021: <https://www.telegraph.co.uk/global-health/science-and-disease/coronavirus-news-lockdown-rules-12-april-easing-covid-vaccine/>

99 The COVID-19 pandemic and trends in technology: Transformations in governance and society – Joyce Hakmeh, Emily Taylor, Allison Peters and Sophia Ignatido, Chatham House, p 7: <https://www.chatham-house.org/2021/02/covid-19-pandemic-and-trends-technology>

100 Maintaining records of staff, customers and visitors to support NHS Test and Trace – Department of Health and Social, GOV.UK, updated 12th April 2021: <https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace#information-to-collect>

"I thought it was really ageist, because they should know that people of my age can't use this sophisticated equipment."¹⁰¹

Age UK has warned that the hospitality industry's increasing reliance on apps and smartphones risks discriminating against older generations, by "widening the digital divide and reducing the opportunities for some older people to enjoy socialising once again."¹⁰² 50% of 65 to 74-year-olds and 70% of over 75-year-olds do not have a smart phone, meaning they cannot check-in to venues and cannot order via smart devices. These figures are also relevant to considerations around Covid-status certification, given that current plans indicate that a QR code will be used to verify an individual's vaccine or test status in order to enter certain venues.

101 Older drinkers risk discrimination says charity, after pub refuses to serve man without smartphone – Tony Diver, the Telegraph, 13th April 2021: <https://www.telegraph.co.uk/news/2021/04/13/older-drinkers-risk-discrimination-says-charity-pub-refuses>

102 Ibid.

Self-Isolation Requirement

The Home Office has contracted outsourcing company Mitie for "Self Isolation Services", paying the company up to £90 million to carry out up to 10,000 home checks a day on those arriving from travel overseas.¹⁰³ A Government source told the Daily Mail that Mitie operatives may visit homes more than once, if they have reason to believe the individual may be breaching self-isolation laws.¹⁰⁴ It is unclear how these private enforcement officers will be deployed, what their relationship with local police forces is or what training they have received. Previously, enforcement of self-isolation requirements had been managed by police officers.

RECOMMENDATION 15: Sending private security officers to people's homes to check their location is intimidating and heavy-handed. Self-isolating individuals should only have visits to their home if there are grounds to suspect a serious breach of the requirements. In this case, visits should be conducted by police officers or representatives from local authorities.

Meanwhile, police officers have not been following self-isolation restrictions. A report by the HM Inspectorate of Constabulary and Fire & Rescue Services found that some police forces devised alternatives to the self-isolation requirement:

"Forces sometimes saw self-isolation as unnecessary and possibly resulting in relatively large numbers of staff being told to isolate within some teams. Some forces therefore created their own systems to reduce self-isolation for staff not displaying symptoms, contrary to national guidance.

"We also heard about force policies where senior officers did risk assessments to circumvent the need to self-isolate."¹⁰⁵

During a pandemic, the requirement to self-isolate if infectious or if you come into contact with an infectious person is critical. It is highly irresponsible for police forces and senior officers to attempt to bypass this requirement.

103 COVID 19 - Home Office Self Isolation Checks, 19th April 2021: <https://www.contractsfinder.service.gov.uk/notice/67b01647-ef89-4073-ab03-71011943e4c4?origin=SearchResults&p=1>

104 The £90m snoopers army: Government hires private contractor Mitie to carry out 10,000 home visits every day to check if passengers are in quarantine after flying back to UK from overseas – Jack Elsom, MailOnline, 15th April 2021: <https://www.dailymail.co.uk/news/article-9473863/Government-hires-Mitie-10-000-home-visits-day-check-passengers-quarantine.html>

105 Policing in the pandemic: The police response to the coronavirus pandemic during 2020 HM Inspectorate of Constabulary and Fire & Rescue Services, 20th April 2021: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/the-police-response-to-the-coronavirus-pandemic-during-2020>

'No Jab, No Job' Policies

There has been further suggestion that vaccinations could be made mandatory for health and social care staff, after vaccine uptake remained lower than the national average among health workers. It is vital that vulnerable people are protected from the virus, but there are serious workers' rights issues around mandating vaccinations, as well as evidence which suggests that coercion may backfire and lead to increased vaccine hesitancy.

On 15th April, the Department of Health announced it was launching a consultation on mandatory vaccines for care staff working in homes with elderly residents.¹⁰⁶ SAGE has recommended that 90% of residents and 80% of care workers would need to be vaccinated in order to provide "a minimum level of protection against outbreaks of COVID-19." At the time of the consultation launch, just over half of care homes met this threshold. Those unable to receive the vaccination due to medical reasons would be exempt from the proposed requirement. Health Secretary Matt Hancock has suggested that a precedent exists for mandatory vaccines. In response to Shadow Health Secretary Jon Ashworth's warning that "every attempt throughout history to force mandatory vaccination has proved counterproductive," the Health Secretary said:

"I gently point him to the fact that surgeons need to have a vaccine against hepatitis B. Vaccination that is tied to work in fact has a longstanding precedent in this country."¹⁰⁷

A hepatitis B vaccination is not legally mandated – rather, it is a health and safety policy in some NHS trusts. Isra Black, a law lecturer at the University of York specialising in healthcare law, told the BMJ:

"It has been suggested that 'jab for job' hep B vaccination under the health and safety policies of some health authorities creates a precedent for mandatory covid-19 vaccination. These policies exist, but to my knowledge they have not been tested legally.

"In any event, the lawfulness of these kinds of measures is highly fact specific. The human rights and equality dimensions of mandatory vaccination cannot be avoided by the use of health and safety law."¹⁰⁸

A health and safety policy in some workplaces does not constitute "longstanding precedent" for mandatory vaccinations.

A letter written by the chief executive of the Chelsea and Westminster Hospital Foundation Trust which states "We will be making Covid vaccination mandatory for all our employees

106 Consultation launched on staff COVID-19 vaccines in care homes with older adult residents - Department of Health and Social Care, GOV.UK, 14th April 2021: <https://www.gov.uk/government/news/consultation-launched-on-staff-covid-19-vaccines-in-care-homes-with-older-adult-residents>

107 HC Covid-19 update, vol. 692. col. 660: <https://hansard.parliament.uk/commons/2021-04-19/debates/29C5F76D-1AA5-408F-A2D2-824ECB3A65FB/Covid-19Update>

108 Covid-19: Is the UK heading towards mandatory vaccination of healthcare workers? – Jacqui Wise, the BMJ, 21st April 2021: <https://www.bmj.com/content/373/bmj.n1056>

and it will form part of the employment contract” was leaked to the Independent before it was sent to staff members.¹⁰⁹ The draft of the letter was sent to senior officials in other NHS trusts across London, with the suggestion that they “adapt and use in your trusts.” The trust’s chief executive later stated that “There is no intention to mandate vaccination of our staff, and no such communication has been sent to our staff,” without explaining why the letter had been drafted and shared with other NHS trusts.

UNISON has denounced plans to mandate vaccinations for care staff as “counterproductive” and “authoritarian”:¹¹⁰

“Encouragement and persuasion rather than threats and bullying are key to a successful programme, as ministers themselves have repeatedly indicated.

“Mandatory jabs are counterproductive and likely to make those who are hesitant even more so. This will do nothing to help health and care sectors that are already chronically understaffed.”¹¹¹

The union has pointed out that the “fragmented nature” of the care sector is partly to blame, as well as a lack of information and a lack of paid leave for staff to receive the vaccination. Indeed, only around 45% of companies offer staff time off with pay to receive vaccinations and recover from side effects.¹¹² It has emphasised that nervous staff members need more time and the opportunity to talk to colleagues who have received the vaccination.

Employers pressuring staff or mandating vaccinations has also been seen across other sectors. For many workers, “back to work” means the monitoring of their health by employers, and around 1 in 7 firms have introduced a policy of ‘no jab, no job’ for new or existing employees, according to the TUC.¹¹³ A survey conducted by Employment Hero found that “37% of UK employers suggested they will be mandating vaccinations within their workplace” and 24% of respondents felt “forced to take a jab by their employers”, with people in London 42% more likely to feel pressured and people in Scotland 74% more likely to feel pressured.¹¹⁴

RECOMMENDATION 16: Mandating vaccination is unethical, counterproductive and authoritarian. The Government should not pursue mandatory vaccinations and should urgently legislate to prevent employers from implementing mandatory vaccine policies.

109 NHS trusts in London preparing to make Covid vaccinations compulsory for workers, leaked email reveals – Shaun Lintern, the Independent, 15th April 2021: <https://www.independent.co.uk/news/health/covid-vaccine-nhs-trusts-compulsory-b1831484.html>

110 Government must try harder on vaccines before leaping to the law, says UNISON – UNISON, 23rd March 2021: <https://www.unison.org.uk/news/press-release/2021/03/government-must-try-harder-vaccines-leaping-law-says-unison/>

111 Forced jabs are counterproductive, says UNISON – UNISON, 3rd March 2021: <https://www.unison.org.uk/news/2021/03/forced-jabs-counterproductive-says-unison/>

112 Less than half of companies giving staff paid time-off to get vaccinated – TUC, 22nd March 2021: <https://www.tuc.org.uk/news/less-half-companies-giving-staff-paid-time-get-vaccinated-tuc-poll>

113 Ibid.

114 Londoners more likely to feel pressured to get jab by employers – London Loves Business, 20th April 2021: <https://londonlovesbusiness.com/londoners-more-likely-to-feel-pressured-to-get-jab-by-employers/>

Freedom of Religion

Scottish worshippers returned to churches after a Court of Session on 24th March ruled that the closure of churches and the criminalisation of communal worship under emergency legislation was unlawful and disproportionate.¹¹⁵ The judge found that the Scottish government “had not discharged the burden, on them, of showing that less restrictive measures had not been available” and that “the blanket ban on opening public churches for public worship constitutes interference” of Article 9. The judgment examined the overarching question of this interference, namely whether a fair balance had been struck between largely unquantifiable risks on the one hand and rights protected by the Human Rights Act on the other. The court found that “the petitioners have no other means of manifesting their religion.” Arguably, a similar analysis could be applied to the de facto ban on protests.

Police in Balham interrupted a Good Friday service at a Polish Catholic parish, informing worshippers that the gathering was “unlawful” under coronavirus restrictions.¹¹⁶ In troubling footage, officers walk up to the pulpit and order worshippers to go home or face a fine or arrest.¹¹⁷ A statement on the parish’s website said they believed the police were “misinformed regarding the current guidelines for places of worship” and had “grossly exceeded their powers by issuing their order without adequate reason, as all government requirements were met.”¹¹⁸ In one of the few legal exemptions under the regulations, unlimited numbers are in fact permitted at church services in England with a risk assessment. It is highly unlikely that such an interference was proportionate and unclear whether police had attempted to find other means of minimising the risk to public health, especially considering the importance of Good Friday for Christians. Det. Supt. Andy Wadey of the Metropolitan Police later said that the force “deeply regret” interrupting the service and that there had been “significant reflection and learning” by both officers and senior representatives.¹¹⁹

115 Success of churches in Court of Session action – Judiciary of Scotland, 24th March 2021: <https://www.judiciary.scot/home/sentences-judgments/judgments/2021/03/24/success-of-churches-in-court-of-session-action>

116 Polish RC Church raided in Balham by Met, Andrzej Fryzicki, YouTube, 2nd April 2021: <https://www.youtube.com/watch?v=aqOKm4k2Wcc>

117 Ibid.

118 Polish Catholic parish in London: Police ‘grossly exceeded powers’ in halting Good Friday service – Catholic Herald, 3rd April 2021: <https://catholicherald.co.uk/polish-catholic-parish-in-london-police-grossly-exceeded-powers-in-halting-good-friday-service/>

119 Covid: Police ‘regret’ over halting church Good Friday service – BBC News, 11th April 2021: <https://www.bbc.co.uk/news/uk-england-london-56708973>

Freedom of Expression

Free speech online

Despite high levels of vaccine uptake, policymakers and online platforms have continued to express concern that anti-vaccination content and so-called disinformation have undermined public health initiatives or even driven vaccine hesitancy amongst certain groups and demographics. Consequentially, many social media companies have remained quick to censor online content relating to the pandemic, even where it relates to matters of public policy.

In March 2021, YouTube removed a video of a roundtable event, held by Florida Governor Ron DeSantis for containing “COVID-19 misinformation”¹²⁰. The event, which featured a panel of scientists and public health professionals, explored public health policy relating to Covid-19 and included a discussion about mask wearing in schools. A spokesperson for YouTube said, “We removed AIER’s video because it included content that contradicts the consensus of local and global health authorities regarding the efficacy of masks to prevent the spread of Covid-19.”¹²¹

Regardless of the nature of the discussion, YouTube’s decision to remove a discussion set up by a democratically elected politician, featuring scientists and medical professionals from universities such as Oxford and Stanford, should cause concern amongst British politicians and policymakers. Freedom of speech has never been a right reserved for the consensus of authorities. Further, YouTube’s credentials as a supreme arbiter on matters relating to public health have often been brought into question over the last year.

This was a point raised by members of the House of Lords Communications and Digital Committee during a session of the Committee’s inquiry into freedom of expression online with executives from Facebook and Twitter. During the session, Chair of the Committee, Lord Gilbert, asked a representative from Twitter about the platform’s decision to mark a tweet by a Professor of Medicine at Harvard Medical School about vaccines as misleading.

Lord Gilbert asked:

“You marked a tweet by a Professor of Medicine at Harvard Medical School as misleading and you limited the user’s ability to share that tweet...who in your organisation ...would have been qualified and would have decided that a Professor of Medicine was wrong?”¹²²

The platform insisted that it was “not Twitter saying he’s wrong or misleading, it’s the CDC and health authorities around the world” and that the site just wants to direct users

120 YouTube pulls Florida governor’s video, says his panel spread Covid-19 misinformation, NBC, 9th April 2021: <https://www.nbcnews.com/news/us-news/youtube-pulls-florida-governor-s-video-says-his->

121 Ibid.

122 House of Lords Communications and Digital Committee, 27th April 2021, Parliament TV: <https://par->

to “authoritative sources of information.”¹²³ However, Lord Gilbert said that by labelling certain views as misleading this approach causes Twitter to “stifle debate amongst experts”¹²⁴.

Lord Gilbert also asked a representative from Facebook about the company’s decision to label an article, written by a Professor of Evidence Based Medicine at Oxford, regarding public health policy and the use of face masks, as “false information”. Lord Gilbert asked:

“how qualified an expert the fact-checker would have been to analyse all of this other information and the view of other experts, in order to come to a view that what Carl Heneghan, Professor of Evidence-based medicine at Oxford, had said was false?”¹²⁵

He also asked if the ‘fact checkers’ would have had any medical or scientific qualifications. Lord Gilbert said that fact checkers themselves profess their role to “provide context for people to make up their own minds” and disputed whether Facebook’s “false information” label actually did this in practice.¹²⁶

As the modern-day public squares for free discussion, debate and enquiry, it is concerning that platforms like Facebook and Twitter choose to shield their billions of users across the world from lawful and legitimate content.

RECOMMENDATION 17: Unfettered access to information and debate is critical, particularly during a global public health crisis in which public policy and scientific knowledge is constantly changing and updating. It is inappropriate for social media companies to seek to censor lawful content and restrict debate around coronavirus and restrictions.

Freedom of assembly

In the past two months, awareness of the clampdown on protests and freedom of assembly has come to the fore as images of police violently dispersing the Clapham vigil in memory of Sarah Everard drew national outrage.

Chief Scientific Officer Sir Patrick Vallance told the Joint Committee on Human Rights on 17th March that the risk of a spike in infections in relation to protests is low:

“Nothing is completely risk-free. It is the case that it is difficult to see how things like large beach gatherings and so on can cause a spike. The same was the case in a protest march in New York. They did not really see any spikes after that.”¹²⁷

Despite this low risk, police have strictly enforced a de facto ban on protests using

123 Ibid.

124 Ibid.

125 House of Lords Communications and Digital Committee, 27th April 2021, Parliament TV: <https://parliamentlive.tv/event/index/cdcfadb9-6594-4e3a-99d5-37645b55c935>

126 Ibid.

127 The Government response to covid-19: freedom of assembly and the right to protest – Joint Committee on Human Rights, House of Commons and the House of Lords, 17th March 2021: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1328/1328.pdf>

sometimes militarised policing tactics.

We welcome the re-introduction of the explicit exemption for protests in the Steps Regulations but note that freedom of assembly has always been protected under the Human Rights Act 1998, meaning that a blanket ban of protests has never been lawful. This was affirmed in the recent judgment from the High Court, which found that:

“a policy which imposes a blanket prohibition on protest irrespective of the specific circumstances and irrespective of the application of Articles 10 and 11 (...) would be unlawful.”¹²⁸

However, conditions imposed by these Regulations are onerous enough to significantly chill freedom of assembly.

In Steps 1-3, protests may only be organised by “a business, a charitable, benevolent or philanthropic institution, a public body or a political body.”¹²⁹ We have previously received reports from protest organisers who have been told by police forces that they do not qualify as a ‘political body’¹³⁰ – despite the Regulations defining a political body as “any person carrying on, or proposing to carry on activities to promote, or oppose, changes in any law applicable in the United Kingdom or elsewhere or any policy of a governmental or public authority.” Police officers are either unaware of this definition or are deliberately misleading would-be protesters.

Protests are also required to take the “required precautions” which include the “gathering organiser or manager” undertaking a risk assessment “that would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999” and taking “all reasonable measures to limit the risk of transmission of coronavirus” including “any guidance issued by the government which is relevant to the gathering.”¹³¹ These requirements mean that spontaneous protests or demonstrations are, in effect, prohibited. The introduction in these Regulations of a protest ‘manager’ risks the criminalisation of anyone who appears to play a role in facilitating the protest.

Shadow Health Secretary Jon Ashworth MP said of the protest exemption:

“That is welcome but, to be frank, it should have been there all along. I have some concerns that, to comply, organisers must take into account, in the words of the regulations, “any guidance issued by the government relevant to the gathering”, which means that the Government, through guidance, which could be general or specific to a particular protest, can determine what is allowed by way of protest.”¹³²

128 Leigh & Ors v The Commissioner of the Police of the Metropolis [2021] EWHC 661 (Admin): <https://www.judiciary.uk/judgments/leigh-and-others-v-commissioner-of-the-met-police/>

129 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, Schedule 1, para 4(27)(a); Schedule 2, para 4(27)(a); Schedule 3, para 3(15)(a)

130 See Big Brother Watch’s October Emergency powers and Civil Liberties Report, p. 45-6: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/11/Emergency-Powers-and-Civil-Liberties-Report-OCT-2020.pdf>

131 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, reg. 6

132 HC Deb (25th March 2021), vol. 691, col. 1121: <https://hansard.parliament.uk/commons/2021-03-25/debates/9701394F-FF53-4364-85E1-F017B13CE921/Coronavirus#main-content>

RECOMMENDATION 18: Protests should be exempt from restrictions altogether. The requirement for a protest organiser to complete a risk assessment and implement health and safety measures should be changed to guidance, supported by online resources, rather than a legal requirement to avoid criminalising organic democratic participation and political dissent.

Clapham Common vigil

On 13th March, images of police officers violently dispersing and arresting young women were met with widespread shock and condemnation from the public, the media and politicians. The women had gathered at Clapham Common in response to the death of Sarah Everard, a young woman who was allegedly abducted and murdered after she had walked home in Clapham one evening. A police officer has been charged in connection with her alleged murder and the revelation that the same officer had previously been reported for indecent exposure several days before Sarah's disappearance led to widespread anger and condemnation of the police's poor handling of sexual violence towards women.¹³³ Amid the context of widespread grief and a broad public conversation about women's safety, a group of women organised a vigil in memory of Sarah Everard under the banner of 'Reclaim These Streets'. The organisers contacted Lambeth Council and the Metropolitan Police to ensure that the vigil could go ahead safely.¹³⁴ After initially responding positively, organisers reported that police reversed their position, telling them "the vigil would be unlawful, and as organisers [Reclaim These Streets] could face tens of thousands of pounds in fines and criminal prosecution under the Serious Crimes Act."¹³⁵ This is despite the organisers planning to use social distancing, face coverings, contact tracing and staggered arrival times. Reclaim These Streets received legal support from Bindmans LLP and Doughty Street Chambers and challenged the Metropolitan Police's apparent assertion that the gathering restrictions contained within the Health Protection Regulations had primacy over the right to freedom of assembly, as protected by the Human Rights Act 1998.¹³⁶ Harriet Harman MP, Chair of the Joint Committee on Human Rights, also wrote to the Metropolitan Police in support of Reclaim These Streets, stating that "Parliament has not specifically acted to constrain the right to demonstrate, so as long as social distancing is observed the vigil will be perfectly lawful."¹³⁷

¹³³ Sarah Everard: Met faces investigation over indecent exposure report – Jane Dalton and Samuel Osborne, the Independent, 12th March 2021: <https://www.independent.co.uk/news/uk/crime/sarah-everard-met-police-indecent-exposure-b1816054.html>

¹³⁴ Reclaim These Streets, Twitter, 11th March 2021: <https://twitter.com/ReclaimTS/status/1370123638406545408/photo/1>

¹³⁵ Ibid.

¹³⁶ Sarah Everard: 'Reclaim These Streets' vigil organisers seek legal action after 'police reverse position on allowing event' – Sean Morrison, Evening Standard, 12th March 2021: <https://www.standard.co.uk/news/london/sarah-everard-reclaim-these-streets-vigil-organisers-legal-action-police-clapham-common-b923668.html>

¹³⁷ Reclaim These Streets, Twitter, 11th March 2021: <https://twitter.com/ReclaimTS/status/1370123638406545408/photo/1>

Big Brother Watch, along with other rights organisations and lawyers, has argued that freedom of assembly and expression cannot be absolutely curtailed under the Health Protection Regulations. However, throughout the pandemic, police have repeatedly claimed that protests are not permitted under lockdown restrictions. Protest has never been specifically prohibited in any regulations, although some have previously identified protest as an exception to the restrictions on gatherings. It is wrong for police to interpret the absence of a protest exemption as an outright ban. This was also the opinion of the High Court in the case of *Reclaim These Streets v the Metropolitan Police*. While the Court was unable to rule on whether or not the vigil itself was lawful, its judgment affirmed that protests cannot be treated as automatically unlawful, and that the Health Protection Regulations must be read consistently with Articles 10 and 11 of the Human Rights Act:

“it is inappropriate to treat the 2020 Regulations as if they give rise to a blanket prohibition on gatherings for protest, because that would fail to give effect to the law as laid down by the Court of Appeal in *Dolan* on the way in which the Regulations are to be read and applied compatibly with Articles 10 and 11.”¹³⁸

It appears that the Metropolitan Police conceded this point at the last minute:

“Mr Thomas, who appeared at very short notice, candidly and rightly accepted that if a police force has a policy which imposes a blanket prohibition on protest irrespective of the specific circumstances and irrespective of the application of Articles 10 and 11, then that would be unlawful.

“His contention is that the Metropolitan Police does not have such a policy.”¹³⁹

While Justice Holgate declined to comment on the accuracy of this contention, it clearly did not match the reality of Tier 4 policing. Given the MPS’ earlier statements that the Regulations did not permit protests, it is evident that the force had been operating under a policy that no protest could be lawful. An email sent to Reclaim These Streets from the Metropolitan Police before the High Court case makes this plain – it stated organisers “need to bear in mind that organising an event is still illegal.”¹⁴⁰ Indeed, Reclaim These Streets stated that MPS was once again claiming that protests were not permitted during a meeting several days later:

“[MPS] made clear to us in that meeting that the interpretation of the law and the ruling of Mr Justice Holgate remains a “fundamental point on which we disagree” and reiterated that there was no exemption for protest in any form.”¹⁴¹

Despite acknowledging in court that freedom of assembly was not absolutely suspended under the Health Protection Regulations, following the judgment the Metropolitan Police

138 Leigh & Ors v The Commissioner of the Police of the Metropolis [2021] EWHC 661 (Admin), para 16: <https://www.judiciary.uk/judgments/leigh-and-others-v-commissioner-of-the-met-police/>

139 Ibid, para 24

140 Written evidence submitted by #ReclaimTheseStreets, Policing and organisation of vigils relating to the safety of women in public places, Home Affairs Committee, 24th March 2021: <https://committees.parliament.uk/writtenevidence/24957/pdf/>

141 Ibid.

maintained that the vigil could not go ahead. In a statement the force said, "the High Court has confirmed that the Metropolitan Police may conclude that attendance at a large gathering could be unlawful" and therefore women should "stay at home or find a lawful and safer way to express your views."¹⁴² The group was forced to cancel the vigil, or risk significant fines, stating that their "many suggestions to make the event safe, such as "staggering start times, splitting the event into time slots (...) as well as asking the police for their own suggestions" were not accepted.¹⁴³ The group also said that officers from Scotland Yard "refused to engage and were, on occasion, hostile and rude."¹⁴⁴

However, such was the strength of public feeling, many women gathered at Clapham Common regardless. The event was initially peaceful, with onlookers noting that many women had come to lay flowers, light candles and listen to speeches. However, officers began to arrive in large numbers, trying to prevent women from making speeches and telling attendees to leave or face fines. The night culminated in aggressive arrests and dispersals, with young women being pinned to ground, handcuffed and marched away.¹⁴⁵ There were reports of gratuitous aggression from police officers. One attendee tweeted, "I saw an officer elbow a girl in the face for trying to help another girl off the floor."¹⁴⁶ One video showed police officers repeatedly pushing an elderly woman in the back as she tried to retrieve her glasses from the ground.¹⁴⁷ Black Protest Legal Support wrote in their evidence to the Home Affairs Committee that:

"police officers gathered around the entrance to the bandstand began pushing and shoving people in the crowd for no clear reason - apparently unprovoked - which forced people much closer together.

(...)

"police inspector [redacted] assaulted one of our legal observers in the bandstand at the time, [Name], aggressively pushing [them] several times. He also threatened our legal observers with arrest.

(...)

"At around 7.23pm police officers suddenly started grabbed three of the women in the bandstand, many from behind, and violently threw them to the floor, face down.

142 Met statement following court judgement, Metropolitan Police, 12th March 2021: <https://www.my-newsdesk.com/uk/metpoliceuk/news/met-statement-following-court-judgement-423201>

143 Reclaim These Streets, Twitter, 13th March 2021: <https://twitter.com/ReclaimTS/status/1370635152863399937?s=20>

144 Written evidence submitted by #ReclaimTheseStreets, Policing and organisation of vigils relating to the safety of women in public places, Home Affairs Committee, 24th March 2021: <https://committees.parliament.uk/writtenevidence/24957/pdf/>

145 Police clash with mourners at Sarah Everard vigil in London - Emma Graham-Harrison, the Guardian, 13th March 2021: <https://www.theguardian.com/uk-news/2021/mar/13/as-the-sun-set-they-came-in-solidarity-and-to-pay-tribute-to-sarah-everard>

146 Jack Witek, Twitter, 13th March 2021: https://twitter.com/jack_witek/status/1370835391562022913

147 Two officers shove woman in the back after storming Sarah Everard vigil - Harrison Jones, Metro, 14th March 2021: <https://metro.co.uk/2021/03/14/two-officers-shove-woman-in-the-back-after-storming-sarah-everard-vigil-14241046/>

There were 2 to 3 police officers per person, and they were sitting and kneeling on the legs and lower back of the women, as they handcuffed them face-down.”¹⁴⁸

Patsy Stevenson, whose photographed arrest was circulated widely in the media the following morning, told Counterfire:

“Several police were on my back, trying to arrest me; they arrested me in cuffs, dragged me away, surrounded by like 10 police officers, and when I got into the van, they told me ‘We just need your name and address then we’ll let you go with a fine.’

“So I don’t see the point of the arrest, I don’t know what that was for.”¹⁴⁹

There was widespread condemnation of the policing response to the vigil. The Prime Minister said he was “deeply concerned”¹⁵⁰ by what he had seen of the vigil and Labour leader Sir Keir Starmer MP called the scenes “deeply disturbing,” saying it “was not the way to police this protest.”¹⁵¹ London Mayor Sadiq Khan said the scenes were “unacceptable”¹⁵² and that he was not satisfied by the explanations of Dame Cressida Dick, Commissioner of the Metropolitan Police, while leader of the Liberal Democrats Sir Ed Davey MP called for the resignation of Dame Cressida after the “utterly disgraceful” policing.¹⁵³ Few politicians acknowledged the link between the series of restrictions they had passed and the scenes at Clapham Common. Former MP and Policing Minister Tony McNulty tweeted:

“As a former Police Minister and notwithstanding the lockdown and pandemic, this has got to be the most absurd, stupid and often brutal police response to a peaceful vigil. Hobnail booted, thick response when smart, risk assessed, intelligence-led policing was demanded.”¹⁵⁴

Former police superintendent and public order specialist Owen West tweeted:

“I’ve commanded quite a few large scale national protests & counter protests. I’ve no doubt whatsoever this could & should have been facilitated by the Met. An opportunity for engagement, reassurance & learning has therefore been lost despite protest NOT being banned during Covid”¹⁵⁵

148 Written evidence submitted by Black Protest Legal Support, Policing and organisation of vigils relating to the safety of women in public places, Home Affairs Committee, 24th March 2021: <https://committees.parliament.uk/writtenevidence/24952/pdf/>

149 Twitter, <https://twitter.com/counterfireorg/status/1370899755786702849?s=20>

150 Sarah Everard vigil: Boris Johnson ‘deeply concerned’ by footage – BBC News, 15th March 2021: <https://www.bbc.co.uk/news/uk-56396960?nb=1>

151 Keir Starmer, Twitter, 13th March 2021: https://mobile.twitter.com/Keir_Starmer/status/1370843855428419584

152 Sarah Everard vigil: Boris Johnson ‘deeply concerned’ by footage – BBC News, 15th March 2021: <https://www.bbc.co.uk/news/uk-56396960?nb=1>

153 Ed Davey, Twitter, 13th March 2021: <https://twitter.com/EdwardJDavey/status/1370862273544224770?s=20>

154 Tony McNulty, Twitter, 13th March 2021: https://twitter.com/Tony_McNulty/status/1370841964975898630?s=20

155 Owen West, Twitter, 13th March 2021: <https://twitter.com/PolicingCrowds/status/1370757188793335808?s=20>

The Government attempted to distance itself from the policing, ordering a review of the policing of the evening. Perhaps unsurprisingly, the HMICFRS report found that the police violence was justified and necessary.¹⁵⁶ Evidence also emerged that the Home Office was directly involved in preventing Reclaim These Streets' original vigil. A memo, seen by the Guardian, was sent to all police chiefs on the morning of 12th March, before the Court's ruling. Entitled "Vigils following the murder investigation of Sarah Everard", it advised police chiefs:

"We understand the strength of feeling. Covid regulations do not permit large gatherings. This issue has been discussed with the policing minister this morning who is supportive of our position. In support of this, the home secretary will also be issuing a message to the public later today that will discourage people gathering in person."

(...)

"People should conduct their vigil using alternative means and in accordance with the law. Police must take a consistent approach and cannot waive the regulations for any one type of gathering."¹⁵⁷

The catalogue of failures here can be attributed in large part to the Regulations. The removal of the protest exemption for Tier 4 areas (which applied across all of England at the time), created unacceptable ambiguity around freedom of assembly and the right to protest. Government Ministers, notably the Home Secretary, have repeatedly called for more stringent enforcement surrounding lockdowns, particularly in relation to protests.¹⁵⁸ The Metropolitan Police unquestionably acted with aggressive tactics, using brute force to silence women who had gathered peacefully to mark the killing of a young woman and to protest violence and harassment against all women. Sir Stephen House, deputy commissioner of the Metropolitan Police, told the London Assembly's Police and Crime Committee:

"I'm sorry, of course, that people are so upset at seeing officers enforcing legislation. But the officers were doing their duty as they saw it, and I will not second-guess that at this moment in time."¹⁵⁹

Dame Cressida Dick similarly defended the actions of her officers, saying that she herself

156 The Sarah Everard vigil – An inspection of the Metropolitan Police Service's policing of a vigil held in commemoration of Sarah Everard on Clapham Common on Saturday 13 March 2021 – Her Majesty's Inspect-

157 Priti Patel wanted police to stop people gathering at Sarah Everard vigil – Vikram Dodd and Jamie Grierson, the Guardian, 19th March 2021: <https://www.theguardian.com/uk-news/2021/mar/19/priti-pa->

158 Priti Patel 'plans to ban protests of more than two people' in second coronavirus lockdown – Ross McGuinness, Yahoo News, 3rd November 2020: <https://www.yahoo.com/entertainment/priti-patel-pro-tests-two-people-second-coronavirus-lockdown-114136293.html>

159 Met deputy says he 'can't apologise' for officers over Sarah Everard vigil – Tobi Thomas, the Guardian, 17th March 2021: <https://www.theguardian.com/uk-news/2021/mar/17/met-deputy-says-he-cant-apologise-for-officers-over-sarah-everard-vigil>

would have attended the vigil if the gathering had not been “unlawful.”¹⁶⁰ The absurdity of her position was made even more apparent when she refused to condemn the Duchess of Cambridge for attending the vigil earlier in the day, as the Duchess was, according to Dame Cressida, “working” and was therefore exempt from the restrictions.

In the wake of the Clapham Common vigil, the Joint Committee on Human Rights published a report on the right to protest under the coronavirus restrictions. It concluded that while protest was not unlawful under the Regulations, the Government had not sufficiently clarified the position of protests throughout the lockdown periods:

“This position is legally complex and hard for both the police and the public to follow, something that has not been helped by unclear communications from Government.”¹⁶¹

In response to the events at the vigil and our sustained concern over the policing of protests Big Brother Watch, with Liberty and over 60 cross-party parliamentarians called for the Government to “expressly exempt protests from restrictions on gatherings in all Tier areas under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 [...] immediately.”¹⁶² While the All Tier Regulations were not amended, as noted, the Steps Regulations did contain a protest exemption to the restrictions on gatherings.

Other vigils

The Anti-Harassment Club, who had been organising a Reclaim These Streets vigil in Brighton was also forced to cancel its event:

“We have been told that Sussex Police will be heavily focusing on the enforcement part of their COVID policy and will be present at Valley Gardens at 6pm to shut down any form of peaceful protest or vigil and actively issuing fines.

“There will be no COVID safety measures in place at any gathering tonight as this would make anyone identified as an organiser or in attendance liable for a £10,000 fine.

“It is important that we emphasise that it is Sussex Police, and only Sussex Police, who have stopped us from going forward.”¹⁶³

160 Cressida Dick insists Kate Middleton did not break the law at Sarah Everard vigil because ‘she was working’ despite saying gathering was illegal – Martin Robinson and Rebecca Camber, the Daily Mail, 31st March 2021: <https://www.dailymail.co.uk/news/article-9421773/Cressida-Dick-insists-Kate-Middleton-did-not-break-law-going-Sarah-Everard-vigil.html>

161 The Government response to covid-19: freedom of assembly and the right to protest: Thirteenth Report of Session 2019–21, HC 1328, Joint Committee on Human Rights, 17th March 2021, p. 3: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1328/1328.pdf>

162 MPs call for protest exemption to lockdown law – Big Brother Watch, 20th March 2021: <https://big-brotherwatch.org.uk/2021/03/mps-call-for-protest-exemption-to-lockdown-law/>

163 Sarah Everard: Brighton vigil organisers call off event after warning from police over coronavirus rules – Luke Donnelly, Sussex Live, 13th March 2021: <https://www.sussexlive.co.uk/news/sussex-news/sarah-everard-brighton-vigil-organisers-5162384>

Sussex Police, in direct contradiction of the High Court judgment, said “Covid-19 regulations continue to disallow large gatherings because of the continued, and very real, risks of the spread of the virus.”¹⁶⁴ However, as was seen in London, many people gathered regardless. Sussex Police responded in a heavy-handed manner, with videos showing officers holding down and handcuffing a woman and threatening to arrest another as she lit a candle in memory of Sarah Everard.¹⁶⁵ Sussex Police chief constable Jo Shiner said the officers’ actions were justified as the event was “animated” and “exceptionally offensive chants” were aimed at officers.¹⁶⁶ It is not unsurprising that those in attendance expressed anger that police officers were attempting to shut down an event that was organised in memory of a woman who had allegedly been murdered by a police officer. ‘Offensive chants’ do not justify physically aggressive policing.

Reclaim These Streets reported in their evidence to the Home Affairs Committee that organisers across the country had faced police intimidation in relation to vigils.

“One organiser was issued with a cease and desist letter to her home – despite having already cancelled the in-person event and having communicated that to officers. Another was threatened with weekly phone calls to enable the police to check in. Another was phoned on a number the police only had access to because she had been a victim of a crime previously and they used her data from that case to contact her. Elsewhere, being threatened with a £10,000 fine seemed to be a common approach.”¹⁶⁷

Several days later in Northern Ireland, five people were fined by PSNI at a socially distanced protest in Belfast.¹⁶⁸ The organisers said they were “taking a stand to defend the right to protest, to oppose the repression against those attending Saturday’s vigil, and to demand an end to gender-based violence.”

#KillTheBill protests

On 9th March, the Government’s Police, Crime, Sentencing and Courts Bill was introduced to Parliament and the Bill’s Second Reading was heard on 15th March. The Bill would give the police greater powers to impede protests and would also make it easier for them to place restrictions on both assemblies and processions. There has been strong public backlash, under the #KilltheBill campaign, in relation to its impact on protest rights.

164 Ibid.

165 Sarah Everard Brighton vigil: ‘Police were aggressive’ – Jody Doherty-Cove, the Argus, 17th March 2021: <https://www.theargus.co.uk/news/19165664.sarah-everard-brighton-vigil-police-aggressive/>

166 Brighton vigil: Chief constable defends handling of Everard event – BBC News, 19th March 2021: <https://www.bbc.co.uk/news/uk-england-sussex-56462650>

167 Written evidence submitted by #ReclaimTheseStreets, Policing and organisation of vigils relating to the safety of women in public places, Home Affairs Committee, 24th March 2021: <https://committees.parliament.uk/writtenevidence/24957/pdf/>

168 Five fines issued during demonstration against gender violence held in Belfast city centre – Christopher Leeboddy, the Belfast Telegraph, 16th March 2021: <https://www.belfasttelegraph.co.uk/news/northern-ireland/five-fines-issued-during-demonstration-against-gender-violence-held-in-belfast-city-centre-40205012.html>

The Bill sparked protests across the UK, drawing attendees in large numbers. Despite the court ruling which deemed that protest was not explicitly prohibited by the lockdown restrictions, police across the country cited the regulations and public health grounds for the repression of many of the demonstrations. Protests have been met by a heavy-handed and even on occasion, violent police response.

A wave of #KilltheBill protests in London has seen scores of people arrested, some for public order offences but many for breaches of the Health Protection Regulations.¹⁶⁹ At one protest in London, an officer was filmed kneeling on the neck of a protester and others were kettled.¹⁷⁰ Black activists have also reported police targeting and harassment, including intimidating phone calls before the #KilltheBill protests were due to occur, urging them not to attend.¹⁷¹

In Manchester, 18 people were arrested at a #KilltheBill protest, with one student telling The Manchester Tab they were “grabbed from behind” before being put in “a painful armlock” despite not resisting arrest.¹⁷² A group of friends were on their way home from the protest when they were threatened by Tactical Aid Unit officers; one member of the group was throttled and another wrestled to the ground.¹⁷³ It was also alleged that the officers in question refused to disclose their badge numbers.¹⁷⁴

Police used horses, dogs, batons and pepper spray against protesters in Bristol. On 21st March, police made seven arrests on a night where 20 officers were reportedly assaulted or injured.¹⁷⁵ However, the Chief Superintendent misled the public about the injuries of officers, an act which harmed the legitimacy of and support for the protests. His initial statement about two broken bone injuries and a collapsed lung¹⁷⁶ was later retracted.¹⁷⁷ It was also reported that police officers had used “anti-terror style tactics”, by disguising themselves as postal workers in order to raid the houses of young protesters.¹⁷⁸ The Chair

169 More than 100 people arrested in central London after protests sweep across country – Luke O'Reilly, the Independent, 5th April 2021: <https://www.standard.co.uk/news/uk/kill-the-bill-protests-arrests-extinction-rebellion-b927831.html>

170 Damien Gayle, Twitter, 3rd April 2021: <https://twitter.com/damiengayle/status/1378424767850635279>

171 BLM activists demonstrating against anti-protest bill 'targeted by police' – Damien Gayle, Guardian, 16th March 2021: <https://www.theguardian.com/world/2021/mar/16/blm-activists-demonstrating-against-anti-protest-bill-targeted-by-police>

172 'I was grabbed from behind': 18 arrested by police at Manchester Kill The Bill protest – Ben McGowan, the Manchester Tab, 30th March 2021: <https://thetab.com/uk/manchester/2021/03/30/i-was-grabbed-from-behind-18-arrested-by-police-at-manchester-kill-the-bill-protest-51018>

173 Twitter, 20th March 2021: https://twitter.com/grace1975_/status/1373352783030714373

174 Twitter, 20th March 2021: https://twitter.com/grace1975_/status/1373363444343267334/photo/1

175 Statement from Chief Constable and PCC following Bristol disorder, Avon & Somerset Police, 22nd March 2021: <https://www.avonandsomerset.police.uk/news/2021/03/statement-from-chief-constable-and-pcc-following-bristol-disorder/>

176 Statement from Chief Constable and PCC following Bristol disorder – Avon & Somerset Police, 22nd March 2021: <https://www.avonandsomerset.police.uk/news/2021/03/statement-from-chief-constable-and-pcc-following-bristol-disorder/>

177 Statement about ongoing disorder in Bristol – Avon & Somerset Police, 22nd March 2021: <https://www.avonandsomerset.police.uk/news/2021/03/statement-about-ongoing-disorder-in-bristol/>

178 Women's anger at 'abuse of power' during Bristol police raids – Tom Wall, the Guardian, 3rd April

of Gloucestershire Police Federation took to Twitter to defend their enforcement of “the current prohibition on public gatherings”, adding “technically we’re crown servants not public servants.”¹⁷⁹ Avon and Somerset Police was forced to apologise and pay damages to protesters arrested earlier in the year, admitting there had been “a misunderstanding of the legal effect of the regulations” when they said that all protests were prohibited under the Regulations, and that all four protesters “were unlawfully arrested.”¹⁸⁰ Gus Silverman, lawyer for the group, said:

“Recent demonstrations have seen force used against protesters by police, whether at the vigil for Sarah Everard or at the more recent protests in Bristol. If officers at those demonstrations believed that all protests were banned under coronavirus regulations then it is now clear that they were wrong.”

On 16th March, four legal observers from Black Protest Legal Support wearing clearly marked high-vis jackets were arrested in London.¹⁸¹ The voluntary function of legal observers is of important value in a democratic society, providing basic legal guidance and acting as independent witnesses of police activity at protests. Legal observers are not active participants in the protests that they monitor. Instead, they objectively observe, document, and report back on incidents that may occur which infringe on the freedom of association and assembly. Last year, the UN Human Rights Committee said legal observers “must not face reprisals or other harassment... If an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor”¹⁸². Police targeting legal observers at protests is a violation of fundamental human rights. Legal observers are also exempt from restrictions on gatherings as they are performing a voluntary service, which is an explicit exemption to restrictions under the Health Protection Regulations.¹⁸³

Big Brother Watch wrote a letter in support of the legal action being taken by affected legal observers, who are represented by fellow civil liberties group Liberty.¹⁸⁴ However, the legal action has not stopped the Metropolitan Police from arresting more legal observers at subsequent protests.¹⁸⁵

Independent journalists have also been harassed by police for reporting at #KilltheBill

2021: <https://www.theguardian.com/uk-news/2021/apr/03/womens-anger-at-abuse-of-power-during-bristol-police-raids>

179 Chair of Gloucestershire Police Federation, Twitter, 27th March 2021: <https://twitter.com/FedGlos/status/1375610964314296321>

180 Bristol police admit protest ban under Covid powers was unlawful – Damien Gayle, the Guardian, 22nd April 2021: <https://www.theguardian.com/world/2021/apr/22/bristol-police-to-pay-damages-for-arrest-of-activists-using-covid-powers>

181 Black Protest Legal Support UK, Twitter, 18th March 2021: <https://twitter.com/blkprotestlegal/status/1372524323701919745>

182 General comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Human Rights Committee, 17th September 2020: file:///C:/Users/User/Downloads/CCPR_C_GC_37-EN.pdf

183 The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 3A, para 2(5)(a), para 6(4)(a)

184 LIBERTY FILES LEGAL ACTION OVER PROTEST ARRESTS, Liberty, 29th March 2021: <https://www.libertyhumanrights.org.uk/issue/liberty-files-legal-action-over-protest-arrests/>

185 Damien Gayle, Twitter, 3rd April 2021: <https://twitter.com/damiengayle/status/1378413376364285959>

protests. Some were told that government-issued press cards are a requirement for working under Covid restrictions, told their card “isn’t legal”, or have even been fined and arrested. During the protests in Bristol, police were filmed harassing journalist Adam Cantwell-Corn, who had his NUJ “press card fully on show”, disbelieving that he was there as a journalist and threatening him with violence.¹⁸⁶ More stories have emerged since of journalists being targeted, assaulted and arrested by police despite explaining they are from the press.¹⁸⁷

RECOMMENDATION 19: Legal observers and journalists play a vital role in observing protests. Attempts to prevent them from performing their role through intimidation, aggression, arrests or fines is unacceptable and unlawful. Police forces must allow journalists and legal observers to work unimpeded.

These troubling episodes have all occurred in the context of police being afforded unprecedented discretion over the viability of demonstrations, under lockdown regulations. The right to protest is vital to any functioning democracy and can only be restricted where it is absolutely necessary and done so proportionately. Examples of needless restrictions on protest and excessive and heavy-handed policing during this period demonstrate some of the fundamental issues with giving police even greater powers to impede protests in the future. The Police, Crime, Sentencing and Courts Bill would put the right to protest permanently on lockdown.

Other protests

A small, socially-distanced rally against the government’s 1% pay rise plan for NHS staff was shut down by Greater Manchester Police on 7th March and the organiser, NHS nurse Karen Reissmann, was issued with a £10,000 FPN.¹⁸⁸ The organiser asked the everyone to leave but the police issued FPNs anyway and made one arrest, claiming that they had been met with “a degree of non-compliance.”¹⁸⁹ Ms Reissman is now challenging the fine after Greater Manchester Police refused to withdraw it, despite representations from lawyers who argued that the fine was issued unlawfully.¹⁹⁰ The police force has failed to

186 Adam Canterll-Cron, Twitter, 23rd March 2021: https://twitter.com/AdamC_Corn/status/1374496804436279303

187 Matthew Dresch, Twitter, 27th March 2021: <https://twitter.com/MatthewDresch/status/1375606889740898305>; ‘I calmly told police I was a journalist, but they said they didn’t believe me’ – Martin Booth, Bristol 24/7, 24th March 2021: <https://www.bristol247.com/opinion/your-say/i-calmly-told-police-i-was-a-journalist-but-they-said-they-didnt-believe-me/>

188 NHS pay-rise demo organiser fined £10,000 in Manchester – BBC News, 7th March 2021: <https://www.bbc.co.uk/news/uk-england-manchester-56312817>

189 Fury as police dish out £10,000 fine to NHS worker for peaceful protest over the government’s 1 per cent pay offer – John Scheerhout, Manchester Evening News, 8th March 2021: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/fury-police-dish-out-10000-19985696>

190 Law firm takes up case of nurse fined £10,000 for 1% pay protest – Mark Townsend, the Guardian, 24th April 2021: https://www.theguardian.com/uk-news/2021/apr/24/law-firm-takes-up-case-of-nurse-fined-10000-for-1-pay-protest?CMP=Share_iOSApp_Other

acknowledge the High Court's ruling in both the Dolan and Leigh cases, that Regulations must be read in line with human rights obligations, stating in an email dated 22nd March:

"Consciously, the legislation during both the recent lockdowns did not allow for protests to be exempt, effectively making protests of more than one person unlawful within the period of the lockdown."

It is seriously damaging to the rule of law for police forces to ignore court rulings and continue to unlawfully enforce a blanket ban on protests. Ms Reismann said the fine was "punitive" and feared it was:

"(...) clearly designed to stop others. I know people who stepped back from protesting because they were afraid of the £10,000 fine."

If the force fails to respond, they will face a judicial review of their decision.

In Hanley, anti-racism campaigners were forced to cancel their socially distanced day of action after being threatened with £10,000 fines.¹⁹¹ A spokesperson for the group said:

"One of our community partners contacted the police for clarification about holding this gathering during lockdown and was subsequently sent a letter from Stoke-on-Trent City Council, stating that if any such event took place anywhere within the city boundary and at any point within the 24 hours of March 20, they would be liable for a £10,000 fine under the Health Protection (Coronavirus, Restrictions) Regulations 2020."

A spokesperson from Staffordshire Police said:

"A letter, not a direction of notice, was sent last week which emphasised that current Covid-19 regulations do not permit large gatherings because of the risk of spreading the virus."

As has been stressed by campaigners, lawyers and the High Court, the Regulations did not prevent all large gatherings.

Police in South Wales made three arrests as part of a "post-incident operation" following the protests in January after Mohamud Hassan's death.¹⁹² One described being "dragged out of bed" by six plain-clothes officers, taken to the police station in handcuffs and charged with assaulting an emergency worker "because I shined my torch in a police officer's eyes."¹⁹³

In Kenton, in North West London, Metropolitan police officers used batons to break up a

191 £10k Covid fine threat if anti-racism campaigners 'take the knee' outside Hanley Town Hall – Hayley Parker, Stoke Sentinel, 18th March 2021: <https://www.stokesentinel.co.uk/news/stoke-on-trent-news/10k-covid-fine-threat-anti-5192812>

192 Post-incident investigation following protests outside Cardiff Bay Police Station – South Wales Police, 10th March 2021: <https://www.south-wales.police.uk/news/south-wales/post-incident-investiga->

193 South Wales Police Accused of Intimidation Against Mohamud Hassan Protesters – Voice.Wales, 22nd February 2021: <https://www.voice.wales/south-wales-police-accused-of-intimidation-against-moha->

peaceful protest in support of a British Tamil woman currently on hunger strike, making one arrest.¹⁹⁴

In Northern Ireland, two individuals were prosecuted after a protest against lockdown measures.¹⁹⁵ Rhonda McFarland pleaded guilty to the charge of being in a gathering of more than 15 people and Stephen Baker pleaded guilty for being outside of his home without a reasonable excuse. The pair were charged with multiple additional offences under the Health Protection Regulations but these were later withdrawn by the Public Prosecution Service.

194 Tamil Guardian, Twitter, 14th March 2021: <https://twitter.com/TamilGuardian/status/1371140493963313156>

195 Belfast anti-lockdown activists charged over illegal gathering – John Toner, Belfast Telegraph, 18th April 2021: <https://www.belfasttelegraph.co.uk/sunday-life/news/belfast-anti-lockdown-activists-charged-over-illegal-gathering-40324917.html>

“

It is critical that we consider vaccine passports in this broader context of accelerating digital identity adoption, with the risk that digital identity infrastructure built and deployed in response to COVID-19 becomes permanent. To assuage to these concerns, some governments promise the solutions are temporary. (...) But history tells us that the infrastructure and tools deployed as “temporary measures” are unlikely to disappear, especially when they are already being built as “extensible” solutions that will be applied in so many other contexts, including workplaces, schools, the hospitality sector, entertainment venues and more.

As a result, rather than asking how a given digital vaccination passport scheme protects individual privacy and security, we must examine how the introduction of these schemes would shift power and normalise ubiquitous identification across many aspects of our lives.

”

- Elizabeth M. Renieris, Founding Director of the Notre Dame-IBM Technology Ethics Lab and Tech and Human Rights Fellow at the Harvard Carr Centre

Covid-Status-Certification

March and April have seen the rapid acceleration of the Government's plans to introduce 'Covid-status certificates' ('CSCs'). Despite initial promises that vaccine passports would never be introduced in the UK, and then promises that the legal and ethical implications of their use would be carefully considered, it appears that the Government has decided to pursue the plans, despite significant public backlash.

The UK Government's change of direction on vaccine passports is as staggering as it is hypocritical. For months, Ministers promised they would not be introduced, yet more details have emerged of secretive funding given to companies to develop the same technology that Ministers were calling "divisive and wrong" in public. Big Brother Watch revealed that Netcompany, the company behind Denmark's domestic vaccine passport, received a £3 million contract with "NHS Test & Trace Covid-19 [Redacted] App Programme" on 26th November 2020. The majority of the contract is redacted, but it does state that "the immediate engagements are related to Covid-19 certification and existing Tracing application."¹⁹⁷ A promotional video suggests children's test status could be stored on an app, that workers could present the app to be permitted into their offices and that grandparents could scan guests' phones before allowing them entrance to birthday parties in their own homes.

Other companies that have received Government funding to develop vaccine passports are devising ways to make health checks even more pervasive. iProov and Mvine, tech companies given a £75,000 grant by Innovate UK, are developing an app which uses facial recognition to verify an individual's identity, linking it to their 'covid status.' However, iProov's chief executive Andrew Bud has suggested that showing an app to door staff would be overly complex and impractical. Instead, he suggested that facial recognition cameras are used, whereby an individual's face "would be checked against a cloud-based database of vaccinations and tests."¹⁹⁸ Pairing facial recognition technology with sensitive health data in this fashion poses a serious risk to privacy – neither of these technologies has a place in a democratic society.

The implications of CSCs are particularly serious – they would usher in a new era of the surveillance state, cause social division and penalise already marginalised communities. The Equality and Human Rights Commission has told the Cabinet Office the Government risks creating a "two-tier society" by introducing CSCs, warning that they could amount to unlawful discrimination.¹⁹⁹ Not only have human rights and civil liberties campaigners

197 Grandparents could use Covid passport app to screen birthday party guests – Christopher Hope, the Telegraph, 3rd April 2021: <https://www.telegraph.co.uk/news/2021/04/03/grandparents-could-use-covid-passport-app-screen-birthday-party/>

198 Face-scanning at pubs could offer key to vaccine passports – Henry Zeffman, the Times, 27th March 2021: <https://www.thetimes.co.uk/article/face-scanning-tech-covid-vaccine-certificates-mcppsddfp>

199 Covid-status certificate scheme could be unlawful discrimination, says EHRC – Aubrey Allegretti and Robert Booth, the Guardian, 14th March 2021: <https://www.theguardian.com/world/2021/apr/14/covid-status-certificates-may-cause-unlawful-discrimination-warns-ehrc>

spoken out, but the very industries CSCs are apparently meant to revive have raised serious concerns about their use. Issues range from the ethical (businesses do not want to discriminate), to the legal (such as whether employees would be forced to also carry CSCs), to the practical (such as how will business enforce these requirements).

On 2nd April, Big Brother Watch published a report, "Access Denied: the case against a two-tier Britain under Covid certification" and sent a copy to every parliamentarian. To date, 79 MPs have backed our pledge against CSCs.²⁰⁰

Hospitality and nightclubs

A coalition of more than 60 hospitality venue owners and operators wrote to the Prime Minister in early April to reject proposals for CSCs – stating that they would “not be forcing [their] patrons to show us any documentation referring to health status to gain entry.”²⁰¹ Signatories include the CEO of REKOM UK, which operates 42 nightclubs; Tokyo Industries, which runs clubs, festivals and bars; the Hippodrome Casino; Electric Star Pubs; Bocca de Lupo; Proud Cabaret; Brindisa and Burger&Lobster. The letter goes on to say:

“We are UK licensed premises and event promoters that have struggled at this difficult time for everyone. We have no axe to grind politically and many of us think the vaccine roll out has been tremendous. We also know that, for many reasons, some will not have a vaccine.

“Further, we do not believe it is right that we as premises and promoters should demand to see proof of medical records or health status. The majority of people in the UK have chosen to be vaccinated.

“There are many practical and logistical issues for us, alongside civil liberty and discrimination considerations more broadly for society, if venues or events insist on seeing health documents.”

Since the letter was sent, more hospitality businesses, owners and workers have signed up to the #OpenForAll hospitality charter.²⁰²

The Nighttime Industries Association 's CEO, Michael Kill, said:

“The additional barriers around mandatory vaccination certificates to gain access to businesses within the sector are unworkable, and would cause further anxiety for operators, creating more barriers to businesses, and potential conflict between staff and customers, as well as being discriminatory, given that the core of our market will not have been given the opportunity to have the vaccine by the time the roadmap engages the sector.”²⁰³

200 MPS LAUNCH CROSS-PARTY CAMPAIGN AGAINST COVID PASSES – Big Brother Watch: <https://bigbrotherwatch.org.uk/campaigns/stopvaccinepassports/#crosspartycampaign>

201 We won't make customers show Covid passports, hospitality firms warn Boris Johnson – Ben Riley-Smith, the Telegraph, 13th April 2021: <https://www.telegraph.co.uk/politics/2021/04/13/exclusive-wont-make-customers-show-covid-passports-hospitality/>

202 Open For All, accessed 20th April 2021 – <https://www.openforall.co.uk/>

203 Vaccine Passports “Unworkable” For UK Clubs, Says NTIA – Christian Eede, the Quietus, 31st March

A survey of over 700 businesses conducted by the NTIA found that 70% felt that vaccine certificates, negative testing or immunity proof were not necessary to reopen and 69% felt they would have a negative impact on business.²⁰⁴

Kate Nicholls, chief executive of UK Hospitality, said the hospitality industry was being presented with a "Hobson's choice":

"We have very significant concerns. Many businesses cannot operate profitably with the social-distancing rules in place but if they have to police Covid status passports as well then the cost of compliance will be significant and the responsibility to police it will fall on staff."²⁰⁵

Cinemas

The chief executive of the UK Cinema Association, which represents most cinema owners in the UK including Cineworld, Curzon and Vue Entertainment, said there was "widespread opposition" across the industry to the requirement for customers to show proof of vaccination or a negative test result and such a scheme would make economic recovery harder.

"Even when the current vaccine rollout is complete, there will still be significant numbers of people who will not have been vaccinated. These include pregnant women, people with certain disabilities or underlying conditions and young people aged 18 and under. Making 'proof' of vaccination a condition of entry to a cinema will potentially introduce significant issues of discrimination under the Equalities Act 2010."²⁰⁶

On 1st April, amid continued press coverage of vaccine passports being required for cinemas, the UK Cinema Association reiterated its opposition to the plans:

"The Association does not believe that it appropriate to ask someone to prove they have undertaken a medical procedure or to undergo a medical test to access what is supposed to be a place of entertainment and enjoyment."²⁰⁷

Theatres

Olivier Award-winning theatrical producer Patrick Gracey wrote in *The Stage*:

2021: <https://thequietus.com/articles/29796-vaccine-passports-unworkable-for-uk-clubs-says-ntia>

204 Covid passports: Entertainment venues air concerns over plans – Emma Saunders, BBC News, 6th April 2021: <https://www.bbc.co.uk/news/entertainment-arts-56647673>

205 Hospitality industry slams vaccine passports as 'Hobson's choice' – Poppy Wood, City AM, 6th April 2021: <https://www.msn.com/en-gb/money/other/hospitality-industry-slams-vaccine-passports-as-hobson-s-choice/ar-BB1ffflA>

206 Curzon cinema looks into vaccine-only and no-jab-only screenings – Mark Sweney, the Guardian, 25th March 2021: <https://www.theguardian.com/film/2021/mar/25/curzon-cinema-looks-into-vaccine-only-and-no-jab-only-screenings>

207 UK Cinema Association reiterates opposition to use of COVID-status certificates – UK Cinema Association, 1st April 2021: <https://www.cinema.uk.org.uk/2021/04/uk-cinema-association-reiterates-opposition-to-use-of-covid-status-certificates/>

"Until the vaccination programme has been rolled out to every eligible person, the practical use of vaccine passports will be limited. But the problem remains that their implementation threatens to create a two-tiered society, especially for those who cannot or are reluctant to be vaccinated.

(...)

"The desire to grasp at prospective solutions that might enable a swifter recovery is understandable. But British theatre should not rush to embrace potentially coercive measures such as health passports for audiences without a full understanding of the risks and consequences."²⁰⁸

Stephanie Sirr, chief executive of the Nottingham Playhouse and vice president of UK Theatre, said:

"Vaccination passports will be much more complicated to deliver, and potentially quite unfair - probably about 30% of our audience is under 26 and they're not being vaccinated until the autumn.

"There are a lot of people who cannot be vaccinated for medical reasons and there's no way on Earth that we're going to have a Nottingham Playhouse where we can't welcome all people. You cannot exclude a whole tranche of people."²⁰⁹

Retail

The chief executive of the British Retail Consortium, Helen Dickinson, said:

"(...) our members are clear that it would not be appropriate or useful in a retail setting.

"High streets and other shopping destinations rely on impulse and ad hoc purchases from customers who visit; this would be badly affected by the additional barriers to trade."²¹⁰

Festivals

Paul Reed, chief executive of the Association of Independent Festivals, said:

"If Covid certification was just about vaccine status, it would not be enabling for summer festivals given the timeframe of the vaccination programme for all adults. We would also be wary of discrimination against customers who may not have had vaccines for various reasons."²¹¹

208 Health passports may not be the fairest way to help theatres reopen safely – Patrick Gracey, the Stage, 24th February 2021: <https://www.thestage.co.uk/opinion/health-passports-may-not-be-the-fairest-way-to-help-theatres-reopen-safely>

209 Covid passports: Entertainment venues air concerns over plans – Emma Saunders, BBC News, 6th April 2021: <https://www.bbc.co.uk/news/entertainment-arts-56647673>

210 Covid vaccine passports could be needed in high street shops – Elias Jahshan, Retail Gazette, 7th April 2021: <https://www.retailgazette.co.uk/blog/2021/04/covid-vaccine-passports-could-be-needed-in-high-street-shops/>

211 Covid passports: Entertainment venues air concerns over plans – Emma Saunders, BBC News, 6th

Churches

It was suggested by Vaccines Minister Nadhim Zahawi that CSCs could even be used in places of worship.²¹² In response, more than 1,200 church leaders of all denominations have written to the Prime Minister to express their concerns about the introduction of CSCs, calling them “one of the most dangerous policy proposals ever to be made in the history of British politics.”²¹³ They denounced the proposal as an “unethical form of coercion and violation of the principle of informed consent” and called on the Government to “assert strongly and clearly that it will not contemplate this illiberal and dangerous plan, not now and not ever.”

Role of parliament

Parliamentarians from across parties have voiced their opposition to CSCs. Over 70 MPs have backed our pledge against CSCs, including the former Conservative Party leader Iain Duncan-Smith MP, former Labour Party leader Jeremy Corbyn MP, Liberal Democrat leader Sir Ed Davey MP. The pledge reads:

“We oppose the divisive and discriminatory use of COVID status certification to deny individuals access to general services, businesses or jobs.”²¹⁴

Our pledge has also been endorsed have been joined by a range of rights groups including Liberty, the Joint Council for the Welfare of Immigrants (JCWI), Runnymede, medConfidential, and Privacy International among others.

Baroness Chakrabarti, former Shadow Attorney General and former director of Liberty said:

“(...) participating in your own community is a fundamental right. So internal Covid passports are an authoritarian step too far. We don’t defeat the virus with discrimination and oppression but with education, vaccination and mutual support.”

Leader of the Liberal Democrats, Sir Ed Davey MP said:

“As we start to get this virus properly under control we should start getting our freedoms back, vaccine passports – essentially Covid ID cards – take us in the other direction.

“Liberal Democrats have always been the party for civil liberties, we were against ID cards when Blair tried to introduce them and we are against them now.

“I’m pleased Big Brother Watch is helping drive forward a growing consensus against Covid ID cards in our politics. Now I hope we can start to turn the tide on the creeping authoritarianism we are seeing from Number 10 across a broad range

April 2021: <https://www.bbc.co.uk/news/entertainment-arts-56647673>

212 Vaccines minister hints at possibility of vaccine passport for churches – Tola Mbakwe, Christian News, 27th March 2021: <https://premierchristian.news/en/news/article/vaccines-minister-hints-at-possibility-of-vaccine-passport-for-churches>

213 Open Letter from Christian Leaders to the Prime Minister Concerning Vaccine Passport Proposals – Accessed 1st May 2021: <https://vaccinepassportletter.wordpress.com/>

214 70+ MPs launch cross-party campaign against COVID passes – Big Brother Watch, 2nd April 2021: <https://bigbrotherwatch.org.uk/2021/04/70-mps-launch-cross-party-campaign-against-covid-passes/>

of issues.”

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

“Covid-Status Certification would be divisive and discriminatory. With high levels of vaccination protecting the vulnerable and making transmission less likely, we should aim to return to normal life, not to put permanent restrictions in place.”

In a Westminster Hall debate on a petition opposing the introduction of vaccine passports, which has to date reached 348,833 signatures,²¹⁵ other MPs also spoke out. Steve Baker MP shared our briefing which argued that vaccine passports would be unnecessary, counter-productive, discriminatory, divisive and would certainly become permanent:

“It would implement, of course, a checkpoint society. It would mean passes for the pub—if you want your pint, Sir David, you will have to show your papers. I did not think that is the society that we wished to live in. A surveillance state would be instituted. There would be mission creep. Passes would be irreversible and divisive, and of course they would infringe on the autonomy of the individual.”²¹⁶

Chris Green MP raised issues of data protection and control that would necessarily emerge from a global vaccination passport scheme:

“Who in the world would run that database? What data would go into it and who would determine that? Would it be an international body such as the United Nations, the EU or some other organisation? If we could not get an international organisation to take the lead, would a big corporate organisation do so? Would big tech in California have control over the database?”²¹⁷

Liberal Democrat Health Spokesperson Munira Wilson MP argued that many people would be shut out from society if CSCs were to be instituted:

“The groups least likely to take up the vaccine are among the most marginalised, and they would become yet more marginalised by vaccine passports. Such passports would be, essentially, a way to make vaccines mandatory, but coercion is never a good way to build trust or to persuade people to do something.”

Liberal Democrat Alistair Carmichael MP outlined the serious and long-lasting implications of the introduction of a CSC system:

“The concept of a vaccine passport is not just a matter of administrative convenience; it is a first step in a major redefinition of the relationship between the citizen and the state, which we should not take so lightly. When freedom given up, the state rarely rushes to return them.”²¹⁸

The Public Administration and Constitutional Affairs Committee has launched an enquiry

215 Do not roll out Covid-19 vaccine passports – Petition: <https://petition.parliament.uk/petitions/569957>

216 HC Deb (15th March 2021), vol. 691, col. 4WH: <https://hansard.parliament.uk/commons/2021-03-15/debates/8D4B8782-7BA5-475B-A48A-370859B78209/VaccinePassports>

217 HC Deb (15th March 2021), vol. 691, col. 6WH: <https://hansard.parliament.uk/commons/2021-03-15/debates/8D4B8782-7BA5-475B-A48A-370859B78209/VaccinePassports>

218 HC Deb (15th March 2021), vol. 691, col. 13WH: <https://hansard.parliament.uk/commons/2021-03-15/debates/8D4B8782-7BA5-475B-A48A-370859B78209/VaccinePassports>

into Covid vaccine certification, to which Big Brother Watch director Silkie Carlo gave oral evidence, along with David Davis MP and Professor of Values and Public Policy Alfred Landecker. The Committee has urged Michael Gove to also give evidence, emphasising that any vote on the introduction of CSCs would only “be meaningful if Parliament has had the full opportunity to consider all the evidence and not just the Government review.”²¹⁹

Covid-status certificate review

It was announced in February that Cabinet Secretary Michael Gove would lead a review into the use of Covid-status certification. Despite an initial announcement that the review would “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 has become clear that the Government has already committed to the use of CSCs.²²⁰

A consultation was opened, allowing organisations and individuals to submit their views on the introduction of CSCs. The consultation received over 52,000 responses.²²¹ Big Brother Watch submitted a detailed analysis of the practical, ethical and legal implication of CSCs, which we adapted into a publicly available report titled ‘Access Denied: the case against a two-tier Britain under covid certification.’²²²

On 25th March, William Wragg, Conservative MP and chair of the Public Administration and Constitutional Affairs Committee, asked the Minister in the Commons: “Does (Mr Gove) still agree with himself in his opposition to Covid vaccine certification to attend the pub, as he expressed on Sky News recently?”

Michael Gove replied:

“Consistency is often the hobgoblin of small minds. But my view on this issue is consistent – that a system that relied purely on vaccination would not be appropriate.

“But what would be right was a system that ensured that we could open up our economy to the maximum extent that takes account both of vaccine status, but also of recent test status and indeed potentially also antibody status as well.

“But the best thing to do is to be guided by scientific and clinical advice and then to subject that advice to proper, rigorous, ethical questioning rather than taking an instant, off-the-shelf, instinctive approach.”²²³

219 Letter to Michael Gove – Public Administration and Constitutional Affairs Committee, 8th April 2021: <https://t.co/IYs37v4O4b?amp=1>

220 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

221 Written statement: Covid-19 update (29th April 2021), UIN HLWS941: <https://questions-statements.parliament.uk/written-statements/detail/2021-04-29/hlws941>

222 Access Denied: the case against a two-tier Britain under covid certification – Big Brother Watch, 2nd April 2021: <https://bigbrotherwatch.org.uk/wp-content/uploads/2021/04/Access-Denied-Big-Brother-Watch.pdf>

223 HC Topical Questions (25th March 2021), vol 691, col. 1051: <https://hansard.parliament.uk/Commons/2021-03-25/debates/9AD15788-CF16-433C-8565-E7AE8F1C495C/TopicalQuestions9EF6F050-A6CF-45B6-8DC2-9BFA976F3F6C>

On the same date, the Prime Minister announced the CSC review would publish an update on 5th or 12th April, potentially just 3 working days after the consultation closed on 30th March. On 3rd April, the days before the Prime Minister made his 'roadmap review' press conference, Michael Gove wrote in the Telegraph that the Government would be trialling CSCs at range of events, on the basis that "anything which might help businesses re-open sooner must be worth considering."²²⁴

"If we do accept that Covid certification is going to be required to travel abroad, the question then follows can these certificates help in other ways? If Israel can accelerate its citizens' returns to nightclubs, football stadia and theatres with these certificates, might we?"

On 5th April, an update on the review was published. It was made plain the Government would not act to prevent businesses using CSCs as "introducing a ban on this would in most cases be an unjustified intrusion on how businesses choose to make their premises safe."²²⁵ Indeed, the Government characterised the introduction of CSCs as inevitable, saying they could have "an important role to play both domestically and internationally." It was leaked that NHSX would be working on a CSC app at the end of March,²²⁶ and it later emerged that NHSX was recruiting for roles "developing both digital and non-digital options to enable UK residents to assert their Covid status, including both vaccination history and test results."²²⁷ Ministers have also announced that CSCs will be used for international travel, without any debate or scrutiny of this decision in Parliament.²²⁸

It is evident that the consultation and review are a farce, paying lip service to a meaningful review of the legal and ethical implications of CSCs. Instead of examining if CSCs should be introduced, it is apparent that the review is analysing how CSCs should be introduced.

An update on 29th April failed to provide any further clarity, instead noting that trials of CSCs would be going ahead "at large events."²²⁹ Yet it was revealed on the same day that secret trials of CSCs had taken place at Kettering Hospital and at Heathrow Airport.²³⁰

Like many of the restrictions over the past year, information about the reviews has been leaked, with updates being trailed in the press. There has been little meaningful

224 It's time to explore the need for Covid certification – Michael Gove, the Telegraph, 3rd April 2021: <https://www.telegraph.co.uk/news/2021/04/03/time-discussion-covid-certification/>

225 Roadmap Reviews: Update - GOV.UK: <https://www.gov.uk/government/publications/covid-19-response-spring-2021-reviews-terms-of-reference/roadmap-reviews-update?fbclid=IwAR39sRLdaMaHPeX-mqrrmvpVG-j6YbFwQRVUuKaGC1nN3A0K7McmcpexE8zI>

226 Covid contact app team NHSX now creating vaccine passports – Henry Zeffman, the Times, 30th March 2021: <https://www.thetimes.co.uk/article/covid-contact-app-team-nhsx-now-creating-vaccine-passports-wdrfb0wrx>

227 Job Ad Confirms Digital and Non-Digital Covid Passports in Development – Guido Fawkes, 20th April 2021: <https://order-order.com/2021/04/20/exclusive-job-ad-confirms-digital-and-non-digital-covid-passports-in-development/>

228 NHS app to be used as coronavirus passport for international travel, Grant Shapps confirms – Greg Heffer, Sky News, 28th April 2021: <https://news.sky.com/story/covid-19-nhs-app-to-be-used-as-coronavirus-passport-for-international-travel-grant-shapps-confirms-12289071>

229 Written statement: Covid-19 update (29th April 2021), UIN HLWS941: <https://questions-statements.parliament.uk/written-statements/detail/2021-04-29/hlws941>

230 Government's Secret Covid Passport Trials – Guido Fawkes, 29th April 2021

accountability, transparency or scrutiny of CSCs – one of the most profound interferences with rights and freedoms ever proposed by the British state.

Events research programme

It was reported on 4th April that nine events would be used to trial CSCs throughout April and May:²³¹

16 April - Hot Water Comedy Club, Liverpool

18 April - FA Cup Semi-Final - Wembley

17 April - 3 May - Snooker World Championships - Sheffield Crucible Theatre

23-25 April - Luna Outdoor Cinema, Liverpool

24-25 April - Three 10k runs - Hatfield Park

25 April - Carabao Cup Final, Wembley

28 April - Business Event, Liverpool

30 April - Circus Nightclub, Liverpool

15 May - FA Cup Final, Wembley, London

However, Hot Water Comedy Club rapidly pulled out of the trial, after stating that it has not been informed that the trial would involve covid passports. The venue had signed up to be part of an 'Event Research Programme', looking into how venues could reopen without social distancing, not a trial of CSCs:

"As a consequence of misleading press releases/media articles and the confusing messaging on the official government website we have made the decision not to be a part of any programme at all. We have still not managed to speak to anybody in the government about this."²³²

Other venues were also forced clarify that they were not trialling covid passports²³³ and it became clear that the 'Events Research Programme' was not related to CSCs, despite being announced as a range of venue and activities "that will "explore different approaches to social distancing, ventilation, test-on-entry protocols and COVID-status certification."²³⁴ Instead, the trials would be one-off research events, with those attending being required to take several tests before and after the event, and having to show a text message confirmed they had taken a test. A spokesman for Liverpool City Council was forced to

231 Vaccine passports trial: Full list of mass events to go ahead as part of pilot scheme – Benjamin Russell, iNews, 4th April 2021: <https://inews.co.uk/news/uk/vaccine-passports-trial-full-list-sites-set-test-covid-certification-941801>

232 Hot Water Comedy Club pulls out of crucial Covid rapid testing trial after 'confusing' government messaging – ITV News, 7th April 2021: <https://www.itv.com/news/granada/2021-04-06/hot-water-comedy-club-pulls-out-of-crucial-covid-rapid-testing-trial-after-confusing-government-messaging>

233 The Luna Cinema, Twitter, 8th April 2021: <https://twitter.com/TheLunaCinema/status/1380209251717615622?s=20>

234 Roadmap Reviews: Update – GOV.UK: <https://www.gov.uk/government/publications/covid-19-response-spring-2021-reviews-terms-of-reference/roadmap-reviews-update?fbclid=IwAR39sRLdaMaHPeX-mqrrmvVG-j6YbFwQRVUuKaGC1nN3A0K7McmcpexE8zI>

confirm that no venue in the city would trial covid passports: "The line which was briefed out yesterday by the government about Liverpool's events being included in the vaccine passports trials is incorrect – none of our events in Liverpool will involve them."²³⁵

National divergence

Currently, there are no uniform plans across the four nations for CSCs. It is likely that similar to other restrictions or contact tracing apps, each nation will develop its own system. The leaders of each of the devolved nations have been reluctant to commit to their introduction, yet have not ruled out their use.

The Welsh First Minister Mark Drakeford appears to have deferred to whatever UK Government scheme emerges, saying talk of a Welsh covid passport was "unnecessary" as there was "a review ongoing at a UK level".²³⁶ Opposition parties have been more critical, with Welsh Liberal Democrats leader Jane Dodds saying they would be "divisive and discriminatory, as well as unworkable and illiberal" and a Plaid Cymru spokesperson saying their introduction "could risk marginalising those groups and further entrenching divides in our society."²³⁷

Scottish First Minister Nicola Sturgeon has not ruled out the use of covid passports, saying Scotland "should not close our minds" to the idea:

"We all want to get back to normal, so anything that can play a part in getting us back to normal is something we should think about very carefully. "But nor should we gloss over the practical and ethical issues."²³⁸

However, it appears that a similar approach has been taken in Scotland as in England – where Ministers publicly promise to consider the ethical implications whilst simultaneously developing a "digital solution" which would display an individual's vaccine or test status.²³⁹

In Northern Ireland, Health Minister Robin Swann expressed support for the use of vaccine passports, limited to international travel and large events:

"We would be keen to see if that's [CSC trials] something that could work in Northern Ireland.

235 Trials on running Covid-safe venues in Liverpool 'will not require vaccine passports' – Helen Carter, Manchester Evening News, 4th April 2021: <https://www.manchestereveningnews.co.uk/news/uk-news/trials-running-covid-safe-venues-20319491>

236 Covid: Vaccine passport talks ongoing, Mark Drakeford says – BBC News, 8th April 2021: <https://www.bbc.co.uk/news/av/uk-wales-56683472>

237 Covid vaccine passports: Wales Millennium Centre says decision 'can't come soon enough' – BBC News, 8th April 2021: <https://www.bbc.co.uk/news/uk-wales-56682156>

238 FM says we 'must not close our minds' to vaccine passports – BBC News, 6th April 2021: https://www.bbc.co.uk/news/live/uk-scotland-56605128?ns_mchannel=social&ns_source=twitter&ns_campaign=bbc_live&ns_linkname=606c480d0b5e0102e3fc4bc7%26FM%20says%20we%20%27must%20not%20close%20our%20minds%27%20to%20vaccine%20passports%262021-04-06T11%3A42%3A06.829Z&ns_fee=0&pinned_post_locator=urn:asset:7057d59c-ce02-4a1d-b3c3-b458364c460a&pinned_post_asset_id=606c480d0b5e0102e3fc4bc7&pinned_post_type=share

239 Covid passport may let Scots travel abroad this summer, Jason Leitch suggests – Lucinda Cameron, the Times, 24th April 2021: <https://www.thetimes.co.uk/article/covid-passport-may-let-scots-travel-abroad-this-summer-jason-leitch-suggests-778wmdmkl>

"But the utilisation of Covid vaccine passports to access hospitality or close-contact services is not something that sits comfortably with me.

"But there's a necessity, or a possibility, for the utilisation for international travel, but not for accessing domestic services and support."²⁴⁰

RECOMMENDATION 20: Domestic Covid passports would infringe on our privacy, risk discrimination, and pave the way to an authoritarian two-tier checkpoint society with no benefit to public health. The UK Government and devolved administrations should reject Covid-status certification.

Operation Moonshot

Operation Moonshot, the UK Government's plan to offer regular rapid antigen tests for Covid-19 to all adults in the UK was first announced by the Prime Minister on 9th September, suggesting that mass testing could be used to reopen theatres, sports venues and workplaces.²⁴¹ We reported at the time that the BMJ had seen leaked documents that confirmed that digital immunity passports would be used in conjunction with the mass testing "to allow people who test negative to return to workplaces, travel, and participate in other activities."²⁴² Chief Medical Officer Chris Whitty warned that "We do have to be absolutely sure that these tests work and that they work at scale."²⁴³ A SAGE paper calculated that even with 99% accuracy, lateral flow tests (LFTs) could result in so many false positives that within 6 months 42% of the population would have had to needlessly self-isolate.²⁴⁴ The Royal Statistical Society's Covid-19 task force wrote that the plan "does not seem to take account of fundamental statistical issues" and would require LFTs to be "more accurate than diagnostic tests for any other disease."²⁴⁵ Concerns were also raised about the cost of mass testing at such a scale – initial estimates suggested it would cost approximately £100 billion a year, which would almost match the Government's yearly spend on NHS England.²⁴⁶

240 Vaccine passports in Northern Ireland should be limited to large events – Swann – Shropshire Star, 21st April 2021: <https://www.shropshirestar.com/news/uk-news/2021/04/21/vaccine-passports-in-northern-ireland-should-be-limited-to-large-events--swann/>

241 Prime Minister's statement on coronavirus (COVID-19): 9 September 2020 – GOV.UK: <https://www.gov.uk/government/speeches/pm-press-conference-statement-9-september-2020>

242 Covid-19: Government plans to spend £100bn on expanding testing to 10 million a day – Gareth Iacobucci and Rebecca Coombes, BMJ, 9th September 2020: <https://www.bmj.com/content/370/bmj.m3520>

243 'Completely wrong': Boris Johnson's plans for mass coronavirus testing may not work, government's top scientific adviser warns – Andrew Woodcock, the Independent, 10th September 2021: <https://www.independent.co.uk/news/uk/politics/coronavirus-testing-boris-johnson-covid-rapid-government-advice-b421150.html>

244 Moonshot testing plan 'could send 28 million into needless self-isolation' – Robert Mendick and Laura Donnelly, the Telegraph, 10th September 2020: <https://www.telegraph.co.uk/news/2020/09/10/moonshot-testing-plan-could-send-28-million-needless-self-isolation/>

245 Coronavirus: Experts criticise Johnson over 'dangerous' moonshot mass testing plan – Chris Smyth and Becky McCall, the Times, 11th September 2020: <https://www.thetimes.co.uk/article/mass-coronavirus-screening-to-save-christmas-is-not-pie-in-sky-expert-insists-vzqz3f55b>

246 Covid-19: Government plans to spend £100bn on expanding testing to 10 million a day – Gareth

Despite these reservations, Operation Moonshot was launched on 9th April, with all adults in England able to collect or order batches of LFTs for twice weekly tests, with testing also available in schools and some workplaces.²⁴⁷ However, concerns about accuracy and costs remain. Leaked emails seen by the Guardian show that senior health officials are concerned by the rate of false positives, which become particularly problematic as the rate of coronavirus infections, and therefore the rate of true positives, falls. Ben Dyson, an executive director of strategy at the Department of Health and one of Matt Hancock's advisers, wrote in one email to colleagues of the "fairly urgent need for decisions" on "the point at which we stop offering asymptomatic testing."²⁴⁸ On 9th April, the launch date for mass testing of all adults in England, he wrote:

"As of today, someone who gets a positive LFD result in (say) London has at best a 25% chance of it being a true positive, but if it is a self-reported test potentially as low as 10% (on an optimistic assumption about specificity) or as low as 2% (on a more pessimistic assumption)."

John Simpson, head of PHE's public health advice, guidance and expertise pillar, wrote to Department of Health officials with similar concerns about accuracy:

"We are a little concerned that this proposal does not provide the evidence needed to justify the extension of testing in the way proposed, does not consider alternative approaches to achieving the over-arching aim (of reducing community transmission) and does not provide a framework for evaluation that would make it possible to determine if the approach actually achieves what it intends."

Jon Deeks, Professor of Biostatistics at the University of Birmingham and one of the authors of a meta-analysis of Covid-19 tests (the Cochrane review), said:

"When disease is this rare, this is a real waste of resources which could be better used by improving our test, trace and isolate programme (...) If these tests cost £10 each that's £160,000 to find one person. It shows that this is a complete waste of money at this point."

Professor Deeks said these tests could be used on a "test to detect" basis but should not be used for "test to release" or "test to enable."²⁴⁹ Another author of the study, Dr Ann Van den Bruel, said:

"The risk of the false positives in the screening setting is very high and you may end up having the opposite effect of what you want to achieve, and you may have to close more workplaces, more classes than what you're currently doing without

Iacobucci and Rebecca Coombes, BMJ, 9th September 2020: <https://www.bmj.com/content/370/bmj.m3520>

²⁴⁷ English to be universally offered twice-weekly rapid COVID-19 tests – Annabelle Dickson, Politico, 5th April 2021: <https://www.politico.eu/article/england-twice-weekly-rapid-coronavirus-tests/>

²⁴⁸ Rapid Covid testing in England may be scaled back over false positives – Josh Halliday, the Guardian, 15th April 2021: <https://www.theguardian.com/world/2021/apr/15/rapid-covid-testing-in-england-may-be-scaled-back-over-false-positives>

²⁴⁹ Lateral flow Covid testing too inaccurate to be used in mass screening, review finds – Sarah Knapton, the Telegraph, 24th March 2021: <https://www.telegraph.co.uk/news/2021/03/24/lateral-flow-covid-testing-inaccurate-used-mass-screening-review/>

a clear effect on the epidemic.”²⁵⁰

A study by the universities of Liverpool, Nottingham and Imperial College London into the use of regular lateral flow tests in care homes has found no difference in rates of outbreaks between homes that implemented a twice-weekly lateral flow tests for staff and visitors and those that did not.²⁵¹ The study noted that a “disconnect exists between the prescribed testing regime and the ‘real-life’ context of use. Requirements for staff to get tested multiple times a week were not compatible with the realities of the working schedule of care home employees or employers.”²⁵²

The tests being used by the NHS are Innova tests, which according to the Cochrane review are amongst the least accurate lateral flow tests available. The Medicines and Healthcare products Regulatory Agency (MHRA) is currently investigating the tests after they were sent to schools containing guidance that they should only be used by symptomatic individuals.²⁵³ It has been revealed that the MHRA has also expressed wider concerns about the use of lateral flow tests for mass testing, calling it “a stretch” of the authorised use of rapid tests.²⁵⁴ The MHRA has authorised the use of lateral flow tests for identifying cases of coronavirus, but not as part of a ‘test to release’ policy, which is how they would be used for Covid-status certification.

Professor Allyson Pollock, Director of the Institute of Health and Society, said:

“The whole mass testing programme is confusing, chaotic and the antithesis of good public health practice.

(...)

“Lateral flow testing should have gone through the UK National Screening Committee for proper evaluation. Mass testing is a complex public health intervention and is no different from medicines and vaccines – there is real potential for harm.”²⁵⁵

Indeed, the Government’s own information relating to the Events Research Program acknowledges the shortcomings of lateral flow tests, warning those who participate in the scheme:

250 Flawed lateral flow tests may do more harm than good – Henry Bodkin, the Telegraph, 5th April 2021: <https://www.telegraph.co.uk/news/2021/04/04/schools-care-homes-relying-lateral-flow-tests-scientists-warning/>

251 Care homes ‘failed’ by lateral flow test rollout, study finds – Vincent Wood, the Independent, 16th April 2021: <https://www.independent.co.uk/news/uk/home-news/care-home-lateral-flow-test-study-b1832343.html>

252 Enhanced lateral flow testing strategies in care homes are associated with poor adherence and were insufficient to prevent COVID-19 outbreaks: results from a mixed methods implementation study – John SP Tulloch et al, 8th April 2021: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3822257

253 Rapid Covid tests used by schoolchildren investigated for containing wrong instructions – Henry Bodkin, the Telegraph, 18th April 2021: <https://www.telegraph.co.uk/news/2021/04/18/rapid-covid-tests-used-schoolchildren-investigated-containing/>

254 UK health regulator concerned over use of rapid coronavirus tests – Josh Halliday, the Guardian, 25th April 2021: <https://www.theguardian.com/world/2021/apr/25/uk-health-regulator-concerned-over-use-of-coronavirus-rapid-tests>

255 Rapid Covid tests used by schoolchildren investigated for containing wrong instructions – Henry Bodkin, the Telegraph, 18th April 2021: <https://www.telegraph.co.uk/news/2021/04/18/rapid-covid-tests-used-schoolchildren-investigated-containing/>

"A negative Lateral Flow Device result means the test did not find signs of coronavirus but does not guarantee that you or other participants do not have coronavirus, so you must keep following all social distancing advice

(...)

"A positive result from a Lateral Flow Device means it's likely you had coronavirus when the test was done. You and anyone you live with must not attend the event and self-isolate immediately. You are then advised to get a PCR test (a test that is sent to a lab) to confirm your result"²⁵⁶

Despite these warnings from scientific experts, the Government has continued with Operation Moonshot. Given that lateral flow tests are likely to form the basis of CSCs (alongside vaccine status and antibody levels), the accuracy and practicality of lateral flow tests is critical. Results of tests will have a significant impact on people's access to society and workplaces, with incorrect results leading to false imprisonment, lost earnings and unwarranted exclusion from events and other social activities. Given current concerns, it is irresponsible for the Government to encourage mass testing of asymptomatic people using lateral flow tests, and unthinkable that these tests should be used to build a health passport scheme.

RECOMMENDATION 21: Lateral flow tests should not be used as the basis for a 'test to release' system or as part of Covid-status certification.

²⁵⁶ Carabao Cup Final: Consent form & Privacy Notice – Department for Culture, Media and Sport, Tottenham Hotspur: <https://www.tottenhamhotspur.com/carabao-cup-final-consent-form-privacy-notice/>, emphasis added