

EMERGENCY POWERS AND CIVIL LIBERTIES REPORT

[MAY – JUN 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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May-June Emergency Powers & Civil Liberties Report

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Introduction

We are approaching the end of the Government's "roadmap" to unlocking in the ruins of a sustained coercion and criminalisation campaign to manage the pandemic that has caused alienation, confusion, distrust and injustice. In this, our 11th Emergency Powers and Civil Liberties report, we detail the realities of how this vast expansion of state power has affected the public in May and June: secret trials, unlawful prosecutions and fines, protest bans, censorship, and more – these issues are too often hidden from public view. Coercion is manifesting on a spectrum, from the disastrous hotel quarantine policy to the disturbing mandatory vaccination plans for certain staff.

June also saw a return to another major theme of this pandemic: hypocrisy. The harsh restrictions detailed in this report have been enforced against a backdrop of mass sporting events and political summits. A two-tier society is already here, with VIPs exempt from quarantine restrictions if they are attending the football or making money. Accusations of Government hypocrisy peaked when a video emerged of the former Health Secretary Matt Hancock in an embrace with a woman, employed at the taxpayer's expense, who was hired as a Non-Executive director of his department of government. Hancock was flagrantly breaching his own social distancing guidance that has caused workplaces and businesses across the country to entirely rearrange themselves; early relationships to expire; funerals and weddings to be cruelly separated. There were echoes of the Cummings scandal, and the Ferguson scandal before that. Do as I say, not as I do.

There are now literally hundreds of pieces of coronavirus legislation to unpick in the months ahead. The emergency laws we feel in our everyday lives are broadly punitive – not supportive. Therein lies one of the major issues we face going ahead as we attempt to prune back powers. The state loathes giving up power it has seized – this will be a challenge. So too will be restoring the vigour of parliament.

On that note, we urge parliamentarians to closely scrutinise these powers and to pursue the important recommendations in this report. There may be difficult times ahead, and without rebalancing the state's expansion now, we risk defaulting to undemocratic, authoritarian reflexes if or when we hit troubled waters in the future. Parliament must reassert itself and take responsibility – not only our safety but our liberties, democracy and justice.

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 introduction or extension of any restrictions must be announced before Parliament, rather than through press conferences, to ensure effective scrutiny and transparency.

RECOMMENDATION 3: Government Ministers must differentiate between legislation, guidance and public health advice to avoid confusion and unlawful policing. It must also be made clear to members of the public what actions will result in criminal sanctions.

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: The Crown Prosecution Service must review all prosecutions to date under the Single Justice Procedure in relation to the Health Protection Regulations and the Coronavirus Act.

RECOMMENDATION 7: The use of the Single Justice Procedure for prosecutions under the Health Protection Regulations and the Coronavirus Act must immediately be suspended.

RECOMMENDATION 8: 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 9: Exemptions for so-called 'important people' call the necessity of self-isolation requirements into question. Any self-isolation requirements must be applied equally to all.

RECOMMENDATION 10: The Government must urgently assess how unlawful prosecutions under Schedule 22 of the Coronavirus Act have been able to proceed and act to ensure that any convictions are immediately overturned.

RECOMMENDATION 11: 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 12: 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 13: It is unacceptable that the Government is attempting to introduce a radical change in approach to healthcare via secondary legislation. Members of Parliament should vote against these Regulations when they appear before Parliament.

RECOMMENDATION 14: 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 15: 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 16: 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 17: The Cabinet Office's review into the use of Covid-status certification must be published in full, alongside a Data Protection Impact Assessment, a cost-benefit analysis and an Equalities Impact Assessment before the introduction of 'Step 4' restrictions.



All governments should recognise that, however great or sudden an emergency may be, exceptional powers are lent, not granted, by the legislature to the executive, and such powers should be returned as swiftly and completely as possible, avoiding any spill over into permanence. When a government decides to fast-track legislation, it should do so for legitimate and urgent reasons only, limiting parliamentary scrutiny to the extent strictly necessary.

- Select Committee on the Constitution



Emergency Law

The Hansard Society's Coronavirus Statutory Instrument Dashboard records a total of 489 coronavirus-related Statutory Instruments (SIs) laid before the UK Parliament since the beginning of 2020.² A total of 920 pieces of legislation have been passed in the United Kingdom containing the word 'coronavirus.'³ Powers in 128 Acts of Parliament, 5 Orders and 5 EU Regulations (which are now retained law in the UK) have been used to lay coronavirus-related SIs, with 25 SIs laid using powers in the Coronavirus Act 2020.

Coronavirus-related SIs account for almost a third (31%) of all SIs laid since 6th March 2020, but only 30 (6.5%) of these are subject to the 'draft affirmative' procedure, meaning that they require approval from both Houses of Parliament before coming into force. Many of the most significant SIs, such as those which enacted lockdowns or travel quarantines, have been laid under the Public Health (Control of Disease) Act 1984 – section 45R of which allows the Secretary of State to bypass Parliament, "by reason of urgency." The result of this is a pandemic response almost entirely characterised by executive decision making – with Parliament and democracy side-lined at almost every step.

The Constitution Committee's report into COVID-19 and the use and scrutiny of emergency powers was highly critical of the Government's use of the urgency procedure:

"Relying upon [the urgency procedure] has restricted the Government's accountability to Parliament for the significant policy decisions and extraordinary restrictions on civil liberties made since March 2020. [This] has significantly constrained parliamentary scrutiny, and its use has not always been justified.

"We acknowledge the unprecedented nature of the COVID-19 pandemic. However, in many cases the Government's need to rely upon the urgency procedure has been exacerbated by poor planning, including drafting delays and a failure to adequately take account of established scrutiny processes and timeframes."⁴

Health Protection Regulations

Throughout May and June, England has been subject to the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 ('Steps Regulations'). These Regulations brought the Government's roadmap, as was announced on 22nd February, into law. They contain restrictions for the three 'steps', which the Government initially indicated would occur on 29th March, 12th April and 17th May. Aside from Step 1, which came into force with

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

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

4 3rd Report of Session 2021–22: COVID-19 and the use and scrutiny of emergency powers– Select Committee on the Constitution, HL Paper 15, 10th June 2021, p 17:

the Regulations on 29th March, there was no guarantee in the Regulations that these dates would be in line with the Government's roadmap, with no time frame contained within the Regulations, allowing the Government to extend the length of any 'step' at will.

The Steps Regulations were amended twice over the past two months – by the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) Regulations 2021 on 17th May, which brought Step 3 into law, and by the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) Regulations 2021 on 20th June which prolonged Step 3.

The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) Regulations 2021

The primary purpose of the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) Regulations 2021 was to place England in 'Step 3' restrictions, as contained within Schedule 3. Step 3 restrictions limit indoor gatherings to groups of no more than 6, or two households, and outdoor gatherings to groups of no more than 30, with exemptions for certain types of gatherings, including for work purposes, education, weddings, funerals, pickets and protests. Businesses required to remain closed under Step 3 restrictions are nightclubs (and any venues for dancing at night), sexual entertainment venues, hostess bars and shisha bars.⁵ Any venue that serves alcohol must continue to provide only table service.⁶

The Regulations also amend certain offences under the Steps Regulations. Previously, an organiser of an outdoor gathering consisting of more than 30 people and organisers of indoor raves of more than 30 people could receive a £10,000 Fixed Penalty Notice (FPN). This was amended to reflect the change in legally permitted gathering sizes, with organisers of outdoor gatherings of more than 50 people being liable for a £10,000 FPN.⁷ Organisers of indoor gatherings of more than 30 people are still liable for a £10,000 FPN, and organisers of indoor gatherings of more than 15 people are still liable for an £800 FPN.⁸

The Regulations also remove the limit on people permitted to attend a funeral, provided the organiser takes the "required precautions" – which includes carrying out a risk assessment that "would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999" and taking into account "any guidance issued by the government which is relevant to the gathering."⁹

5 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, sch 3, para 9(1)

6 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, sch 3, para 7(1)

7 The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) Regulations 2021, para 10(2)(c)

8 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, reg 14(3); reg 15(c)

9 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, reg 6(2)-(3)

The Regulations also remove Regulation 8 – which prevented those living in England from travelling internationally.¹⁰

The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) Regulations 2021

The primary purpose of the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) Regulations 2021 was to alter the expiration of the Regulations from 30th June 2021 to 18th July 2021, as well as extending the expiry dates of the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 and two sets of Regulations which give local authorities powers to cancel events, close venues and enforce social distancing requirements to 18th July.¹¹ It also removed the limit on numbers for weddings, wedding receptions and wakes, provided the organiser or manager “takes the required precautions”¹² – which includes carrying out a risk assessment that “would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999” and taking into account “any guidance issued by the government which is relevant to the gathering.”¹³

As well as extending the expiry date of the Steps Regulations, the amendment also altered the powers under Regulation 9, which allow the Secretary of State to “disapply any relevant restriction or requirement in relation to specified premises, a specified event or a specified gathering.”¹⁴ Regulation 9 allows the Government to issue a direction which waives restrictions on gatherings for certain pilot events, which have formed the Events Research Programme. The amendment loosens the purposes under which the Secretary of State is able to issue such a direction. Previously, a direction could only be issued “for the purposes of a research programme to evidence the potential transmission of coronavirus in controlled environments.” A direction may now be issued “for the purposes of a research programme concerned with the provision of an appropriate public health response to the incidence and spread of coronavirus in England.” Rather than simply collecting evidence, research events can now be permitted to test “public health response” to coronavirus. While the Government had already been trialling Covid-status certification at research events before this amendment came into force, this alteration seems to be designed to shore up the legal basis for these trials.

10 The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) Regulations 2021, para 8(1)

11 The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) Regulations 2021, reg 2(3)

12 The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) Regulations 2021, reg 2(4)(ii)

13 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, reg 6(2)-(3)

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

Step 4 delay

On 14th June, the Prime Minister announced that Step 4 would be delayed from 21st June to 19th July, meaning England would remain under Step 3 restrictions for a further four weeks. Despite pledges that the easing of restrictions would be “irreversible”, (then) Health Secretary Matt Hancock refused to rule out the suggestion of further lockdowns in winter, citing seasonal flu cases:

“I hope we don’t have to do that, and I hope that we can take the steps on the 19th of July that are pencilled in for then because the data is looking encouraging. But then for the winter, I hope that with a booster shot we get that protection against Covid very, very high.”

(...)

“We didn’t see any other communicable diseases last winter in any serious size at all, and so the clinical concern is that our immunity will be low ... Almost nobody has had flu now for 18 months in this country. Obviously that’s a good thing. But it does mean that the flu vaccination programme this autumn will be even more important... We do expect this winter to be challenging.”¹⁵

This comes as local authorities across England continued to advertise for Covid marshals, with contracts possibly extending until 2023. In Tonbridge and Malling Borough Council, a contract for Covid marshals expires at the end of September, while Hertfordshire County Council has advertised a £3 million contract which will only commence on 1st July. Thanet District Council has signed a contract with Marc One Security which runs until end of March 2022.¹⁶

The Prime Minister announced in a press conference that although “we must be clear that we cannot simply eliminate Covid – we must learn to live with it (...) to give the NHS that extra time we will hold off step 4 openings until July 19th”.¹⁷ He suggested that this may be moved to 5th July if “the risk has diminished.” The Health Secretary made a statement in the House of Commons several hours later, stating that the delay was due to:

“1.3 million people who are over 50 and 4.5 million over-40s have had a first jab but not yet a second. The pause will save thousands of lives by allowing us to get the majority of these second jabs done before restrictions are eased further.”¹⁸

Previously, when introducing or extending lockdown legislation, the Prime Minister and

15 Matt Hancock says growth rate in coronavirus cases is slowing – Andrew Sparrow, the Guardian, 22nd June 2021: https://www.theguardian.com/politics/live/2021/jun/22/uk-covid-live-hancock-coronavirus-growth-rate-slowing-scotland-sturgeon-latest-updates?CMP=share_btn_tw&page=with:-block-60d193fd8f08d468da92f18a#block-60d193fd8f08d468da92f18a

16 More Covid marshals signed up to patrol Britain’s streets beyond 21 June roadmap date – Poppy Wood, MSN News, 5th June 2021: <https://www.msn.com/en-gb/news/world/more-covid-marshals-signed-up-to-patrol-britains-streets-beyond-21-june-roadmap-date/ar-AAKJOYh>

17 PM statement at coronavirus press conference – GOV.UK, 14th June 2021: <https://www.gov.uk/government/speeches/pm-statement-at-coronavirus-press-conference-14-june-2021>

18 HC Covid-19 update (14th June 2021), vol. 697, col. 76: <https://hansard.parliament.uk/commons/2021-06-14/debates/125FF5BD-E8A1-40DD-8031-CDBAB442FC0F/Covid-19Update>

other senior Government figures stated that measures had been introduced “to place this invisible shield around the elderly and the vulnerable”¹⁹ as they wait for their vaccination and that the route to ending restrictions was by “making the most vulnerable groups safe”.²⁰ As of 17th June, 59% of the population had been fully vaccinated, with the majority of this figure being made up of the most vulnerable.²¹ Whilst it is undeniably important to consider the risk that coronavirus represents to all age groups, the proportionality of emergency legislation that governs our ability to travel, socialise, protest and open businesses is less apparent when 81% of the adult population has received at least one vaccine dose against coronavirus.²² When debating the regulations in the House of Commons, Conservative MP Chris Green summarised the ways in which the Government’s goalposts for ending restrictions have shifted over the past year:

“The original lockdown was to flatten the curve and protect the national health service. Even though the Nightingale hospitals were soon mothballed and then closed, that was not enough.

“Lockdown was then intended to enable test, track, trace and isolate to get up to speed, and it must surely be there by now, but again, that was not enough.

“Then it was to vaccinate the most vulnerable—the over-50s or the most frail in our society. This was when the narrative was that the first dose would provide the vast majority of the protection required—far better than the influenza jab—and the second jab, at that point, was only really to give longevity to the resistance to covid that would be required. The expectation, at that stage, was that this would cut the overwhelming majority of deaths and hospitalisations, and this is the case, but still that was not enough.

“Then it was to have everyone then given the second dose. That has almost been achieved, but as the Secretary of State announced a short while ago, the roll-out of vaccinations has now extended so that 21-year-olds can sign up to get them. Again, that seems not to be enough.

(...)

“The narrative seems to have shifted in recent weeks. It was initially about dealing with the Indian variant and seeing how risky and dangerous it was to the country. I think that the evidence available at the moment shows that we can cope with it, but the position now seems to have shifted from dealing with the Indian variant and trying to understand it to offering the first dose to every adult of 18 and over. As night follows day, that will still not be enough.”²³

19 HC Covid-19 update (6th January 2021), vol. 686, col. 733: <https://hansard.parliament.uk/commons/2021-01-06/debates/F28A020C-8CF9-4D5E-9C9A-CC75D540D7C8/Covid-19>

20 HC Deb (6th January 2021), vol. 686, col. 791: <https://hansard.parliament.uk/commons/2021-01-06/debates/06F079A7-0E76-4320-997D-61ABB2F5A441/PublicHealth>

21 Vaccinations in the United Kingdom (accessed 18th June 2021) – Coronavirus (Covid-19) in the UK, GOV.UK: <https://coronavirus.data.gov.uk/details/vaccinations>

22 Ibid.

23 HC Deb (16th June 2021), vol. 697, col. 365: <https://hansard.parliament.uk/commons/2021-06-16/>

The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) Regulations 2021 were published on 15th June, the day after the announcement, and voted on in the House of Commons the following day. They came into force on 20th June. The Regulations amend the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, which contain Steps 1-3 of the Government's lockdown easing. Labour once again supported the Government, while the Liberal Democrat party abstained, citing the cost of restrictions "not being coupled with the support that [the public] need to do the right thing."²⁴ 49 Conservative backbenchers, 5 DUP MPs and 6 Labour backbenchers voted against the extension.²⁵

There was considerable concern among many Conservative backbenchers that 19th July would not be "terminus day" as the Prime Minister stated. (Then) Health Secretary Matt Hancock answered "yes" to whether he would characterise 19th July as being a "terminus."²⁶ However, backbench Conservative MP and Chair of the Covid Recovery Group Mark Harper pointed out that within the Regulations, there was no statutory duty for the Secretary of State to review the need for restrictions until 19th July – not on 5th July as Ministers has promised.²⁷ He also noted that the explanatory memorandum states that the purpose of the regulations was not just to offer a second dose of vaccines to all over 40s, but to "offer a first dose to all adults (i.e. open bookings) by July." However, given that coronavirus vaccines take several weeks to provide protection, Harper stated: "that means that this delay is therefore pointless, or alternatively, that we are not going to cease these restrictions on 19 July if vaccinating all adults is the goal."²⁸

Shadow Health Secretary Jon Ashworth also questioned whether 19th July would really see restrictions lifted:

"The second issue (...) is whether these restrictions will ever end, or whether the Prime Minister has trapped us in Hotel California, where we can never leave. He has talked about 19 July as the terminus date, but the explanatory notes themselves say that the four tests will apply on 19 July, and that these four weeks will be used to gather more data."²⁹

Shadow Health Minister Justin Madders noted that explanatory memorandum to the Regulations stated that the delay in reaching Step 4 was in order to

debates/B58EB442-0F87-4C09-A314-4486B938DD43/Coronavirus

24 HC Deb (16th June 2021), vol. 697, col. 348: <https://hansard.parliament.uk/commons/2021-06-16/debates/B58EB442-0F87-4C09-A314-4486B938DD43/Coronavirus>

25 HC Division 28 (16th June 2021): <https://hansard.parliament.uk/Commons/2021-06-16/division/5F1E0E94-7BD3-4C77-9F1F-2CF56416C72E/Coronavirus?outputType=Party#party-noLabourNoes>

26 HC Deb (16th June 2021), vol. 697, col. 329: <https://hansard.parliament.uk/commons/2021-06-16/debates/B58EB442-0F87-4C09-A314-4486B938DD43/Coronavirus>

27 HC Deb (16th June 2021), vol. 697, col. 349: <https://hansard.parliament.uk/commons/2021-06-16/debates/B58EB442-0F87-4C09-A314-4486B938DD43/Coronavirus>

28 HC Deb (16th June 2021), vol. 697, col. 349: <https://hansard.parliament.uk/commons/2021-06-16/debates/B58EB442-0F87-4C09-A314-4486B938DD43/Coronavirus>

29 HC Deb (16th June 2021), vol. 697, col. 340: <https://hansard.parliament.uk/commons/2021-06-16/debates/B58EB442-0F87-4C09-A314-4486B938DD43/Coronavirus>

“to gather more evidence that the...tests can be met (...) There would be little point in gathering that data if it were not used to inform future decisions, so that rather implies that 19 July might not be the end date after all.”³⁰

Later, Cabinet Minister Michael Gove initially answered “yes” as to whether he could “promise” that Step 4 would go ahead on July 19th. When pushed he admitted that “None of us can predict the future with 100% certainty” but that it “would require an unprecedented and remarkable alteration in the progress of the disease” for any further delay.³¹

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

The Government’s disdain for parliamentary procedure and scrutiny has been highlighted by yet another parliamentary committee. The Constitution Committee’s report on the impact of COVID-19 on Parliament found that:

“The high volume of statutory instruments laid in response to the pandemic, and the use of fast-track procedures, have severely limited Parliament’s ability to scrutinise significant powers.”³²

It also found that limits on speaking times, remote participation and inadequate and delayed responses to written questions had also significantly impacted parliament’s ability to scrutinise emergency powers.

Once again, the absurdity of poor parliamentary scrutiny was highlighted when the House of Lords debated the Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021 (the Regulations which placed England into Step 2 on 12th April) on 17th May – the same day that the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) Regulations 2021 (the Regulations which placed England into Step 3) came into force. Liberal Democrat Peer Lord Scriven pointed out that debating the Regulations before they were superseded could have aided the Government’s response to the Delta variant:

“My Lords, these regulations were laid on 7 April. It is ironic that we are discussing them today, as we start moving to step 3. If they had been discussed earlier, the

30 HC Deb (16th June 2021), vol. 697, col. 386: <https://hansard.parliament.uk/commons/2021-06-16/debates/B58EB442-0F87-4C09-A314-4486B938DD43/Coronavirus>

31 Gove admits July 19 easing could be delayed if ‘unprecedented and remarkable’ Covid change happens as he fights fury – Nick Gutteridge, the Sun, 15th July 2021: <https://www.thesun.co.uk/news/15277639/lockdown-freedom-day-july-19-michael-gove/>

32 1st Report of Session 2021–22: COVID-19 and Parliament – Select Committee on the Constitution, HL Paper 4, 13th May 2021: <https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/4.pdf>

facts on 9 April might have been raised to help us keep all local areas safer.”³³

Labour Peer Lord Rooker drew attention to the Constitution Committee’s report into the parliamentary procedure under coronavirus, and was similarly critical in the delay in debating the Regulations:

“As the noble Lord, Lord Scriven, said, it was made at 10.30 am on 9 April, laid before Parliament at 1 pm on 9 April and was in law on 12 April. It was debated in the Commons on 26 April for 24 minutes. People would have been lonely in the room because, as far as I can see, only two people spoke. On 17 May, it was in the Lords.

“The preamble to this SI is essentially a two-fingered salute to Parliament. It is about time the Commons got off its knees, and the Lords should encourage it to do so.”³⁴

Conservative Peer Lord Bourne also called for more timely scrutiny:

“As we are out of the eye of the hurricane, it is about time we saw these regulations in advance of them becoming law. We are looking at these some 37 days after they became effective. Frankly, it is just not good enough. It is about time that we started to see these ahead of their becoming law rather than in the rear-view mirror, as has become the case.”³⁵

Labour Shadow Spokesperson for Health in the Lords, Baroness Thornton, criticised the Government’s repeated use of the emergency procedure:

“Nothing in the regulations or in what has been said by the Minister today justifies using the emergency procedure to introduce previously announced policy changes at the 11th hour.

“We are now well over a year into the pandemic and, while we encourage the Government to be proactive and driven by data, that does not prevent or exempt them from following parliamentary procedures. The Minister will be familiar with this repeated complaint.”³⁶

When delaying Step 4 restrictions, Parliament was again an afterthought for the Government. Prior to the Prime Minister’s press conference at 6pm on 14th June, it was widely reported in the media that Step 4 would be delayed for at least a month, due to the spread of the Delta variant (first identified in India) of coronavirus. Conservative

33 HL Grand Committee Deb (17th May 2021), vol. 812, col. 4GC: [https://hansard.parliament.uk/lords/2021-05-17/debates/ED8C9A63-62C5-484A-BA79-808DE00C4FC0/HealthProtection\(CoronavirusRestrictions\)\(StepsAndLocalAuthorityEnforcementPowers\)\(England\)\(Amendment\)Regulations2021](https://hansard.parliament.uk/lords/2021-05-17/debates/ED8C9A63-62C5-484A-BA79-808DE00C4FC0/HealthProtection(CoronavirusRestrictions)(StepsAndLocalAuthorityEnforcementPowers)(England)(Amendment)Regulations2021)

34 HL Grand Committee Deb (17th May 2021), vol. 812, col. 6GC: [https://hansard.parliament.uk/lords/2021-05-17/debates/ED8C9A63-62C5-484A-BA79-808DE00C4FC0/HealthProtection\(CoronavirusRestrictions\)\(StepsAndLocalAuthorityEnforcementPowers\)\(England\)\(Amendment\)Regulations2021](https://hansard.parliament.uk/lords/2021-05-17/debates/ED8C9A63-62C5-484A-BA79-808DE00C4FC0/HealthProtection(CoronavirusRestrictions)(StepsAndLocalAuthorityEnforcementPowers)(England)(Amendment)Regulations2021)

35 HL Grand Committee Deb (17th May 2021), vol. 812, col. 8GC: [https://hansard.parliament.uk/lords/2021-05-17/debates/ED8C9A63-62C5-484A-BA79-808DE00C4FC0/HealthProtection\(CoronavirusRestrictions\)\(StepsAndLocalAuthorityEnforcementPowers\)\(England\)\(Amendment\)Regulations2021](https://hansard.parliament.uk/lords/2021-05-17/debates/ED8C9A63-62C5-484A-BA79-808DE00C4FC0/HealthProtection(CoronavirusRestrictions)(StepsAndLocalAuthorityEnforcementPowers)(England)(Amendment)Regulations2021)

36 HL Grand Committee Deb (17th May 2021), vol. 812, col. 12GC: [https://hansard.parliament.uk/lords/2021-05-17/debates/ED8C9A63-62C5-484A-BA79-808DE00C4FC0/HealthProtection\(CoronavirusRestrictions\)\(StepsAndLocalAuthorityEnforcementPowers\)\(England\)\(Amendment\)Regulations2021](https://hansard.parliament.uk/lords/2021-05-17/debates/ED8C9A63-62C5-484A-BA79-808DE00C4FC0/HealthProtection(CoronavirusRestrictions)(StepsAndLocalAuthorityEnforcementPowers)(England)(Amendment)Regulations2021)

backbenchers made a Point of Order regarding the failure to consult Parliament on the changes to the Regulations prior to the press conference, saying the decision was "clearly very disrespectful to Parliament, and probably a contempt of Parliament."³⁷ Speaker Sir Lindsay Hoyle expressed his anger that once again, the Government had briefed the media before informing the House of Commons and that no statement was due to be made in the Commons until he personally intervened:

"This House needs to know first. I find it totally unacceptable that once again, we see Downing Street running roughshod over Members of Parliament."³⁸

(...)

"It is entirely unacceptable that the Government did not make today's announcement to the House first. It was disrespectful to the House and to our constituents. The Government clearly planned that the media would be told information today not far from this Chamber, and that this House would have to wait until tomorrow. I want to say very clearly to the Government that this is not how this House should be treated."³⁹

Former Health Secretary and Chair of the Health and Social Care Committee Jeremy Hunt MP agreed:

"May I start by saying that I totally agree with your expression of disappointment, Mr Speaker, that in a parliamentary democracy Parliament heard about this news after the media".⁴⁰

The Constitution Committee, in its report into Covid-19 and Parliament, was similarly critical of the Government's failure to consult Parliament on key changes to restrictions:

"While it is important for the Government to keep the public informed during the COVID-19 pandemic, the Government must adhere to the Ministerial Code and prioritise Parliament when making significant policy announcements, on the pandemic and more generally. Only then can Parliament's centrality in holding the Government to account be respected."⁴¹

RECOMMENDATION 2: The introduction or extension of any restrictions must be announced before Parliament, rather than through press conferences, to ensure effective scrutiny and transparency.

37 HC Point of Order (14th June 2021), vol. 697, col. 22: <https://hansard.parliament.uk/commons/2021-06-14/debates/DEEBE3E2-7787-48FF-948F-E4FC53F30211/PointsOfOrder>

38 HC Point of Order (14th June 2021), vol. 697, col. 23: <https://hansard.parliament.uk/commons/2021-06-14/debates/DEEBE3E2-7787-48FF-948F-E4FC53F30211/PointsOfOrder>

39 HC Speaker's Statement (14th June 2021), vol. 697, col. 74: <https://hansard.parliament.uk/commons/2021-06-14/debates/C3A21764-726C-468F-9B89-A0DF45C2E640/Speaker%E2%80%99SStatement>

40 HC Covid-19 update (14th June 2021), vol. 697, col. 76: <https://hansard.parliament.uk/commons/2021-06-14/debates/125FF5BD-E8A1-40DD-8031-CDBAB442FC0F/Covid-19Update>

41 1st Report of Session 2021-22: COVID-19 and Parliament – Select Committee on the Constitution, HL Paper 4, 13th May 2021, p 15-6: <https://committees.parliament.uk/publications/5799/documents/66400/default/>

Guidance v law

Over the past year, we have documented continuous confusion over the contents of restrictions, which has only been made worse by a lack of parliamentary scrutiny and a rushed approach to law-making. There has been little distinction made by the Government and police forces between legal duties and guidance, leading to a crisis of unlawful policing and the public following 'rules' which do not exist.

On example of this was the so-called 'hugging ban.' Headlines were made on 10th May, when the Prime Minister announced that the 'ban' on hugging was ending:

"From next Monday, we're updating the guidance on close contact between friends and family setting out the risks for everyone to make their own choices. This doesn't mean we can suddenly throw caution to the wind (...) we all know that close contact, such as hugging is a direct way of transmitting this disease."⁴²

While Government guidance published on 10th May stated:

"From 17 May, if you are meeting friends and family, you can make a personal choice on whether to keep your distance from them, but you should still be cautious."⁴³

The tone of the updates and press briefings stating that the "ban" on hugging friends and family was to be lifted⁴⁴ misrepresented the law. There has never been a ban on hugging at any point during the pandemic, in any part of the UK. Instead, Government guidance recommended that people maintain distance from each other, in order to reduce the possibly of the transmission of coronavirus. Legislating a ban on physical touch would have been absurd and impossible to enforce - yet the Government, by 'lifting' it, implied that such a ban existed in law. This approach to law making is extremely damaging to the rule of law and policing.

There was also confusion in the northwest of England, as guidance was, unsurprisingly, misinterpreted. The Prime Minister refused to rule out a regional lockdown in the north west of England, as cases of the Delta variant of coronavirus began to rise.⁴⁵ The Prime Minister's official spokesman similarly refused to rule out "those sort of measures" several days later.⁴⁶ However, on 24th May, the Manchester Evening News publicised Government guidance that those living in parts of north east England - Bedford, Blackburn and Darwen, Bolton, Burnley, Kirklees, Leicester, Hounslow, and North Tyneside - should "meet outside rather than inside where possible" and "avoid travelling in and out of affected areas unless it is essential, for example for work (if you cannot work from home)

42 PM statement at coronavirus press conference – GOV.UK, 10th May 2021: <https://www.gov.uk/government/speeches/pm-statement-at-coronavirus-press-conference-10-may-2021>

43 Meeting friends and family (COVID-19) – Cabinet Office, GOV.UK, 10th May 2021: <https://www.gov>.

44 Covid-19: Hugging to be allowed in England as UK alert level drops – BBC News, 10th May 2021: <https://www.bbc.co.uk/news/uk-57059196>

45 BBC North West, Twitter, 13th May 2021: <https://twitter.com/BBCNWT/status/1392806650105499651?s=20>

46 Downing Street 'not ruling out' return to local lockdowns in England – LBC, 18th May 2021: <https://www.lbc.co.uk/news/downing-street-not-ruling-out-return-to-local-lockdowns-in-england/>

or education.”⁴⁷ The guidance was posted on 21st May, but not publicised, with local MPs tweeting that they had only been made aware of this new guidance via the Manchester Evening News.⁴⁸ North Tyneside Council said were not aware of the guidance until 24th May and Blackburn with Darwen’s director of public health Dominic Harrison said the areas “were not consulted with, warned of, notified about, or alerted to this guidance”.⁴⁹ This guidance is not legally enforceable. However, given the continued confusion over the contents of restrictions and whether or not guidance has legal backing, it is likely that many assumed this new guidance was mandatory.

The Government and police forces must be explicit about the difference between legal restrictions and public health guidance. This is even more critical as the UK Government looks to ease restrictions in July.

RECOMMENDATION 3: Government Ministers must differentiate between legislation, guidance and public health advice to avoid confusion and unlawful policing. It must also be made clear to members of the public what actions will result in criminal sanctions.

Enforcement

There has been further criticism of the Government’s lockdown strategy from police leaders. The chair of the Police Federation, John Apter, told the Federation’s conference:

“[Police officers] had often received no detailed briefing because the laws had only just been passed, which meant they were often going out on patrol with no specific detail about what the change meant for policing.

“There was no discussion about how to deal with the new laws or the new guidance and let’s be honest Home Secretary, the rules were not always crystal clear.”⁵⁰

Martin Hewitt, chair of the National Police Chiefs’ Council (NPCC), told the conference:

“At the beginning it was very hard.

“I’ve expressed that frustration a number of times about the last-minute nature of us understanding what the regulations were going to be.”⁵¹

Home Secretary Priti Patel admitted: “You’re never going to get it all right in one go” and that enforcement was “never going to be perfect.”⁵² Despite these admissions, the NPCC

47 (COVID-19) Coronavirus restrictions: what you can and cannot do – GOV.UK, updated 21st May 2021: <https://www.gov.uk/guidance/covid-19-coronavirus-restrictions-what-you-can-and-cannot-do#if-youre-in-an-area-where-the-new-covid-19-variant-is-spreading>

48 Chris Green MP, Twitter, 24th May 2021: <https://twitter.com/CGreenUK/status/1396943725557862406?s=20>

49 Covid: Eight Indian variant areas should avoid indoor gatherings – George Bowden, BBC News, 25th May 2021: <https://www.bbc.co.uk/news/uk-england-57232728>

50 Government made policing pandemic harder with ‘ever-changing Covid rules’, police leaders say – Lizzie Dearden, the Independent, 9th June 2021: <https://www.independent.co.uk/news/uk/home-news/covid-lockdown-rules-police-patel-b1862517.html>

51 Ibid.

52 Ibid.

has continued to refuse a review of FPNs issued under the lockdown Regulations.

Enforcement of coronavirus restrictions has reduced in recent months, given the gradual 'unlocking' of society. However, although reduced, there remain cases of unlawful or disproportionate policing, and well as high levels of unlawful prosecutions, as charges from previous months filter through the criminal justice system.

Durham Constabulary issued Tyler James, 19, with a £10,000 FPN on 4th May for breaching Covid restrictions after arranging a memorial for a 17-year-old local who had committed suicide. Aside from inappropriateness of issuing a grieving teenager with an absurdly high fine, he had already paid a £400 fine that was issued in error.⁵³

In one particularly absurd attempt at enforcement in Manchester, a pub owner was visited by council licensing officers ahead of an England match, who told the landlord to stop customers from booing, chanting or cheering or else he'd be fined £1,000.⁵⁴

A video on Twitter shows police officers conducting "an operation for face coverings" whereby they check that every person – mostly children in school uniforms – getting on a London bus is wearing a face covering. One young person appears to be receiving an FPN, although the police cannot legally give FPNs to anyone under 18 years old. The person filming the video is warned by officers to stop "sneakily filming," and told he would be charged with for "cycling on a footpath" if he didn't.⁵⁵

Greater Manchester Police raided a house party taking place in contravention of the regulations, only to find that more than half of the guests were probationary officers on their own force.⁵⁶ All were handed FPNs.

Fines

4,416 FPNs have been issued so far under The Health Protection (Coronavirus, Restrictions) (Steps) Regulations 2021. In total, 117,213 FPNs have been issued in England (105,329) and Wales (11,884) between 27th March 2020 and 20th June 2021.⁵⁷ Disparities in figures published by the National Police Chief's Council (NPCC) suggest that a further 4,895 FPNs have been issued in England, but not processed.⁵⁸

53 Police admit £400 charge issued to teen who held a balloon release after his friend's death was a mistake - he now has to pay £10,000 – Gavin Havery, Northern Echo, 4th May 2021: <https://www.thenorthernecho.co.uk/news/19278791.tyler-james-facing-10-000-charge-jamie-mckitten-balloon-release/>

54 Pub landlord threatened with £1,000 fine if England fans cheered, chanted or booed – Amy Fenton & Ethan Davies, Manchester Evening News, 17th June 2021: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/pub-landlord-threatened-1000-fine-20837488>

55 XNeveri, Twitter, 16th June 2021: <https://twitter.com/zneveri/status/1405282871850397696?s=25>

56 Trainee GMP cops fined for Covid rule-busting illegal party – Jennifer Williams, Manchester Evening News, 11th May 2021: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/trainee-gmp-cops-fined-covid-20576067>

57 Update on Coronavirus FPNs issued by police – June 2021 – National Police Chief's Council, 28th June 2021: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-police-june-2021>

58 Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales National Police Chief's Council, 28th June 2021, p 22: <https://cdn.prgloo.com/media/fefef3f0ea8241018b9bda2d33fa95be.pdf>

The disparity with 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.⁵⁹ However, white ethnicities make up 74% of FPNs issued, while Asian ethnic groups make up 13% of FPNs issued, black ethnic groups make up 8% of FPNs and mixed ethnic groups make up 2%.⁶⁰ This disparity has steadily increased over recent months.

The disparity is particularly stark in relation to FPNs issued under face covering regulations, where only 58% of FPNs were issued to white people on public transport and 68% in relevant indoor places, such as shops.⁶¹ Big Brother Watch submitted a Freedom of Information request to the NPCC for a more detailed breakdown of this disparity. Up to 18th April 2021, 9% of face covering FPNs on public transport were issued to Asian people, 16% to black people and 3% to mixed ethnic groups. In the same period, 14% of face covering FPNs in relevant indoor places were issued to Asian people, 7% to black people and 3% to mixed ethnic groups.

This disparity is particularly high under certain forces. Although the ethnic makeup of the population varies across the country, the imbalance remains striking. 26% of FPNs issued by Bedfordshire Police in relation to face coverings in relevant indoor places were to Asian people. For Cambridge Constabulary this figure was 35%, in Cumbria Constabulary it was 32%, in Hampshire Constabulary it was 35%, and Durham Constabulary it was 60%. 22% of FPNs issued by West Midlands Police in relation to face coverings in relevant indoor places were to black people and the British Transport Police in England issued 19% of FPNs to black people. Under face covering regulations for public transport, both the British Transport Police in England and Greater Manchester Police issued 13% of FPNs to black people. It is unacceptable that fines are being issued in a discriminatory fashion and reiterates the serious need for a review of all FPNs issued under the Health Protection Regulations.

There is also significant variation in the rate at which FPNs are being issued across the country. Merseyside has issued the highest rate of FPNs, with 519 FPNs issued per 100,000 people – 7,365 FPNs, the highest of any force except the Metropolitan Police Force.⁶² North Yorkshire has issued the second highest rate of fines in England, with 488 FPNs issued per 100,000 people. Northumbria has issued the third highest rate of fines,

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

60 Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales National Police Chief's Council, 28th June 2021, p 13: <https://cdn.prgloo.com/media/fefef3f0ea8241018b9bda2d33fa95be.pdf>

61 Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales National Police Chief's Council, 28th June 2021, p 14, 16: <https://cdn.prgloo.com/media/fefef3f0ea8241018b9bda2d33fa95be.pdf>

62 Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales National Police Chief's Council, 28th June 2021, p 21: <https://cdn.prgloo.com/media/fefef3f0ea8241018b9bda2d33fa95be.pdf>

472 FPNs per 100,000 people. By way of comparison, Humberside has issued 69 FPNs per 100,000 people, and Essex Police has issued 81 FPNs per 100,000 people.

Under the Steps Regulations Nottinghamshire, North Yorkshire and Merseyside have issued the highest rate of FPNs, at 21, 19 and 18 per 100,000 people respectively, while Cleveland and Humberside have issued less than 1 FPN per 100,000 people.

Under the face covering requirements, there is also stark variation. While many forces have issued a handful of FPNs in relation to this requirement (Cheshire, Cleveland, Dorset, Durham and Humberside have all issued fewer than 10 FPNs each), presumably focusing on encouraging and explaining regulations, some forces have issued hundreds of FPNs. Merseyside has issued 747 FPNs – more than the Metropolitan Police Force – whilst Northamptonshire has issued 549 FPNs and West Mercia has issued 342 FPNs.

Despite emphasis from the Home Secretary, police forces and much of the media on large gathering and raves, only 366 £10,000 FPNs have been issued in relation to the organising of gatherings of more than 30 people. This includes those who have organised protests. As noted in this report's analysis of covid-related prosecutions below (and in previous reports), there have been multiple cases of these £10,000 fines being overturned in court. It is clear that police officers are issuing these life-changing fines without a proper understanding of the law.

841 businesses have received FPNs for offences ranging from refusing to close during the lockdown period to allowing customers to dance or for not providing table service.

In Northern Ireland, a total of 15,120 FPNs have been issued to individuals between March 2020 and 28th June 2021, with 64 of those being due to a failure to self-isolate.⁶³ 5 FPNs have been issued for failing to wear a face covering. In Scotland, police officers have issued 16,951 FPNs under Health Protection Regulations, arrested 969 people and issued 939 FPNs for breach of international travel restrictions.⁶⁴

The difference in the rate of fines being issued across different areas is stark. It is not right that these draconian rules are being enforced in wildly different ways, with people in some regions facing fines at vastly higher rates, while other forces are evidently slower to resort to enforcement action.

FPNs do not have the safeguards of subsequent review by prosecutions lawyers and/or magistrates. Big Brother Watch, and many of the groups and lawyers we work with, have been contacted by individuals who have been wrongly issued with FPNs. Some have proceeded to pay them due to a lack of resources to legally challenge them, a loss of trust in the system and the fear of a criminal prosecution. If only 20% of the 117,213 FPNs recorded in England and Wales were unlawfully issued, a percentage which is in line with unlawful prosecutions under the Regulations, this would account for almost

⁶³ COVID-19 advice and information – Police Service Northern Ireland (accessed 30th June 2021): https://www.psnl.police.uk/advice_information/COVID-19/

⁶⁴ Coronavirus Enforcement Information to 23 June 2021- Police Scotland (accessed 30th June 2021): <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>

23,442 unlawfully issued FPNs. The number is likely to be higher however, given the lack of safeguards around issuing FPNs.

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.

Prosecutions

The Crown Prosecution Service (CPS) published the data from three sets of reviews during May and June into unlawful prosecutions under the Health Protection Regulations, covering March, April and May. In total, an additional 157 charges under the Regulations were overturned, out of 490 charges reviewed – 32%. In March, 68 out of 205 charges were overturned (33%),⁶⁵ in April 46 out of 163 charges were overturned (28%)⁶⁶ and in May, 43 out of 122 were overturned (35%).⁶⁷ Since March 2020, the CPS has reviewed 1,836 charges and prosecutions under the Health Protection Regulations. 368, or 20% of all charges have been unlawful.

These statistics evidence just how poorly understood and enforced complex lockdown laws have been (and continue to be). The CPS' review has been a partial safeguard but crucially, its reviews cover only a fraction of coronavirus-related offences. An investigation by Big Brother Watch and Fair Trials revealed that the CPS review of all coronavirus-related charges does not include any cases heard under the Single Justice Procedure, as no independent prosecutor is involved.⁶⁸ Instead, the case is heard 'on paper' by a magistrate and a legal adviser, usually without the defendant having entered a plea or being in attendance. There is evidence that some people do not even receive the Single Justice Procedure notice, alerting them to their prosecution and inviting them to submit a plea.⁶⁹

Big Brother Watch, Fair Trials, Transform Justice, APPEAL, Howard League for Penal Re-

⁶⁵ CPS review findings for first year of coronavirus prosecutions – Crown Prosecution Service, 13th May 2021: <https://www.cps.gov.uk/cps/news/cps-review-findings-first-year-coronavirus-prosecutions>

⁶⁶ April's coronavirus review findings – Crown Prosecution Service, 1st June 2021: <https://www.cps.gov.uk/cps/news/aprils-coronavirus-review-findings>

⁶⁷ May's coronavirus review findings – Crown Prosecution Service, 30th June 2021: <https://www.cps.gov.uk/cps/news/mays-coronavirus-review-findings>

⁶⁸ Wrongful convictions under Covid lockdown laws may be slipping through net – Fariha Karim, the Times, 28th February 2021: <https://www.thetimes.co.uk/article/wrongful-convictions-under-covid-lockdown-laws-may-be-slipping-through-net-slvs3nb6m>

⁶⁹ Call to scrap 'plead by post' secret trials – Jonathan Ames, the Times, 18th February 2021: <https://www.thetimes.co.uk/article/call-to-scrap-plead-by-post-secret-trials-5p6w8r3fz>

form and Commons Law CIC wrote to the Secretary of State for Justice, urging him to suspend the use of the Single Justice Procedure in relation to charges under coronavirus-related emergency laws, and to ensure that all previous coronavirus-related prosecutions made under the Single Justice Procedure are reviewed by the CPS. We are yet to receive a response.

Previously we reported that 1,084 prosecutions under the Health Protection Regulations from July to September 2020 were heard under the Single Justice Procedure.⁷⁰ A written parliamentary question submitted by Shadow Minister for Courts and Sentencing Alex Cunningham MP revealed the scale of prosecutions heard under this procedure had increased significantly. Between July and December 2020, 4,242 cases were dealt with under the Single Justice Procedure.⁷¹ For 90% of these cases, no plea was entered. Applying the same rate of unlawful prosecutions as uncovered by the CPS to cases heard under the Single Justice Procedure, we can assume that over 840 of these prosecutions were unlawful. It is likely that the Single Justice Procedure has a much higher rate of unlawful prosecutions, given its lack of safeguards.

Tristan Kirk, a court reporter, has been reporting on injustices under the Single Justice Procedure throughout the pandemic. He reported on one woman, Milhan Downes, who was fined £12,000 under the procedure for organising a gathering of more than 30 people.⁷² However Ms Downes had submitted, via her lawyer, a not guilty plea, in order for the matter to go to a full trial, rather than being heard via the Single Justice Procedure. An administrative officer at the court later found Ms Downes' lawyer's email and stated, "This case was proved in absence. The below email was not put before the court and therefore should be reopened." The case was relisted, and when assessed by the CPS as part of their review, was discontinued. A similar incident saw Othniel Agyei fined £12,000 in his absence under the Single Justice Procedure for holding an illegal gathering, despite the Metropolitan Police informing Mr Agyei they had dropped the case against him.⁷³ After receiving a FPN in the post, Mr Agyei challenged the fine, leading the police force to review and subsequently drop the fine. However, due to an error, the case was still put before a magistrate under the Single Justice Procedure, who ordered Mr Agyei to pay £12,000, plus £260 in court fees. Mr Agyei "has been threatened with bailiffs, thousands of pounds more in fines, or a prison sentence if he does not settle the court bill." The case has been returned to court. Tristan Kirk said of these cases:

"All this is happening in closed-door hearings, away from open court scrutiny and - perhaps crucially - in the absence of any lawyers and particularly a prosecutor

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

71 Written answer: Chris Philip to Alex Cunningham, UIN 7818, 7th June 2021: <https://questions-statements.parliament.uk/written-questions/detail/2021-05-26/7818>

72 Twitter, Tristan Kirk, 16th June 2021: <https://twitter.com/kirkkorner/status/1405170828732473347?s=20>

73 'Case closed': Man, 21, hit with £12,000 fine after police said lockdown breach case had been dropped – Tristan Kirk, the Evening Standard, 8th June 2021: <https://www.standard.co.uk/news/crime/covid-lockdown-fine-prosecution-regulation-breach-closed-court-kingston-b939421.html>

who might spot unseen documents on the file.

(...)

“This all undermines confidence in the system, at a time when some people want to see that lockdown breakers are being effectively dealt with. Are flagrant breaches going unpunished due to admin errors? Is evidence going missing? Are the courts properly considering these cases?”⁷⁴

These charges and prosecutions are being brought without sufficient oversight, without any meaningful review process, and are resulting in guilty pleas and convictions for offences people have not committed, in a process they may also not be aware of. The current situation is unjust and the current process is unfit for purpose.

RECOMMENDATION 6: The Crown Prosecution Service must review all prosecutions to date under the Single Justice Procedure in relation to the Health Protection Regulations and the Coronavirus Act.

RECOMMENDATION 7: The use of the Single Justice Procedure for prosecutions under the Health Protection Regulations and the Coronavirus Act must immediately be suspended.

Individuals have also been fined vast amounts under the Single Justice Procedure, with wildly varied amounts given for similar offences. A teenager in south London was fined £10,000 under the Single Justice Procedure for throwing a New Year’s Eve party for 40 people while her parents were out,⁷⁵ but a man in Hackney was fined £1,902 for a throwing a similarly sized gathering on his houseboat.⁷⁶ Indeed, an analysis of lockdown cases dealt with by Merseyside magistrates’ confirmed that the sizes of fines are arbitrary; one teenager was fined three times as much as another that had been arrested with him.⁷⁷

Ben Phillip Bush was fined £1,295 for camping in Pendine in May 2020 – the case was heard under the Single Justice Procedure, meaning Mr Bush was absent during his conviction. However, in a similar case, charges were dropped after a FPN was challenged. Darren Reid was issued with a FPN for camping away in Windermere in November 2020,

74 Twitter, Tristan Kirk, 16th June 2021: <https://twitter.com/kirkkorner/status/1405170842317869058?s=20>

75 Teen fined £10k for lockdown house party while parents were away – Tristan Kirk, the Evening Standard, 14th June 2021: <https://www.standard.co.uk/news/crime/covid-house-parties-lockdown-prosecu->

76 Man fined for lockdown boat party on River Lea – Lizzie McAllister, Hackney Citizen, 10th June 2021: <https://www.hackneycitizen.co.uk/2021/06/10/man-fined-lockdown-boat-party-river-lea/>

77 Courts where lockdown fines depended on day case was heard – Christopher McKeon, Liverpool Echo, 30th April 2021: <https://www.liverpoolecho.co.uk/news/liverpool-news/courts-lockdown-fines-de-pended-day-20476997>

but after he challenged the fine in court, the CPS dropped the prosecution.⁷⁸ Mr Reid said:

“I was in the right. they were forcing me to pay something I legally didn’t have to pay. I wasn’t going to allow myself to be browbeaten into paying a fine I can’t afford.

“I’m happy they decided to drop the charge. I just feel they should have done it sooner. They should have investigated properly. It’s wasted the court’s and police time.”

Travel Restrictions

There has been considerable confusion over travel restrictions. Despite the prohibition on international travel being lifted by the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) Regulations 2021 on 17th May, significant restrictions remain, with individuals returning from the majority of countries being required to self-isolate either at home or in Government-managed quarantine ‘hotels’, else facing huge fines.

The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 came into force on 17th May, replacing the patchwork of Regulations which had formerly regulated international travel: the Health Protection (Coronavirus, Public Health Information for International Passengers) (England) Regulations 2020, the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 and the Health Protection (Coronavirus, Pre-Departure Testing and Operator Liability) (England) (Amendment) Regulations 2021. The Regulations have since been amended four times.

The Regulations contain requirements on “persons arriving in England” from a ‘Green list’ country to fill out a passenger locator form,⁷⁹ to have evidence of a negative test result⁸⁰ and to take a test on arrival to England.⁸¹ Those arriving from an ‘Amber List’ country are required to do the same, as well as self-isolate for 10 days and take a third test on day 8 of their self-isolation.⁸² Those arriving from ‘Red List’ countries are required to book a “managed self-isolate package” which involves booking a place at Government sanctioned quarantine accommodation, booking transport to this accommodation and booking testing on day 2 and 8 of their stay.⁸³ There are exemptions from these

78 Charges dropped against Barrow fisherman accused of lockdown breach – Dan Taylor, the Mail, 31st May 2021: <https://www.nwemail.co.uk/news/19337295.charges-dropped-barrow-fisherman-accused-lockdown-breach/>

79 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, reg 3(1)

80 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, reg 4(1)

81 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, reg 6(3)

82 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, reg 9(2)

83 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, sch 11, para 8

restrictions for “for individuals whose jobs are critical to maintaining the flow of critical goods, protecting essential services or facilitating Government work.”⁸⁴

Failure to accurately fill out a passenger locator form and provide evidence of a negative test on arrival could result in an FPN of £500.⁸⁵ If the individual has “intentionally or recklessly provide[d] false passenger information,” they are liable for an FPN of up to £10,000.⁸⁶ Failure to book tests on certain days of self-isolation is punishable by an FPN of £1,000.⁸⁷ Failure to comply with self-isolation requirements is punishable by an FPN of up to £10,000.

These restrictions are highly complex and convoluted, with vast fines issued for errors. They were published on the afternoon of 14th May and came into force just 3 days later, at 4am, giving travellers and businesses operators little time to understand or comply with any new requirements or restrictions. The Regulations were subject to the negative procedure, meaning that these hugely consequential restrictions came into force without parliamentary debate or approval.

Government Ministers have not helped with the confusion around complicated travel rules. On 18th May, Environment Secretary George Eustice stated that those living in England could travel to “amber list” countries to see family and friends.⁸⁸⁸⁹ Hours later, the Prime Minister corrected him and warned against holidays to amber destinations. Then Health Minister Lord Bethell said all foreign travel was “dangerous (...) Traveling is not for this year. Please stay in this country.” But a government official told Politico’s Playbook the same day: “People can go on holiday to green list countries, but shouldn’t be going to amber or red.” On the evening of 18th, Welsh Secretary Simon Hart went on Times Radio and said that while amber list destinations were for essential travel only, “some people might think a holiday is essential. I can think of a quite a lot of people who do think that.”

Huw Merriman MP, chairman of the Commons Transport Committee, said:

“I’m afraid it’s a case of confusion reigns. What’s the point in bringing in a traffic light mechanism, labelling amber countries as “moderate risk” and then, by implication, shading them red by telling passengers they shouldn’t go?”

84 Explanatory Memorandum to The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021: <https://www.legislation.gov.uk/ukxi/2021/582/memorandum/contents>

85 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, sch 14, para 2, 4

86 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, sch 14, para 3

87 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, sch 14, para 5

88 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, sch 14, para 8

89 Wish you were clear, ministers! Travel rules chaos as two ministers say holidays to ‘amber’ list countries are OK, Boris Johnson over-rules them... and then a third warns that ALL foreign trips are ‘dangerous’ – David Churchill and Jason Groves, the Daily Mail, 19th May 2021: <https://www.dailymail.co.uk/news/article-9593373/Travel-rules-chaos-ministers-overruled-Boris-Johnson.html>

While Government Ministers' confusion over whether holidays are permitted does not change the legality of visiting green or amber countries, as we have extensively documented since March 2020, when senior Government officials confuse the rules, it leads to overzealous policing and public confusion.

Quarantine hotels

A legal challenge against the Government's quarantine hotels has been initiated. Three claimants, a pensioner, an NHS worker and a gig economy worker, have applied for permission to bring a judicial review of the Health Protection (Coronavirus, International Travel) (England) Regulations 2020. Each of the claimants "had pressing reasons to travel outside of the UK but have very limited financial means" and faced a prohibitive £1,750 fee to isolate in a government operated isolation facility.⁹⁰

Tom Goodhead, managing partner of PGMBM, said that while the firm appreciated the need for restrictions, this could not be *carte blanche* for legislation that violates fundamental rights:

"This does not, however, mean that policies which constitute extraordinary violations of traditional liberties and human rights should not face careful judicial examination.

"It is time for lawyers to take a stand and ensure that the government, which has shown scant regard for parliamentary scrutiny of Covid-19 legislation and regulations, is held to account."⁹¹

However, the application for judicial review challenges the requirement for those self-isolating to pay £1,750 in order to do so. It does not challenge the existence of the requirement, or the lack of clear exemptions for those with physical or mental health issues.

Getting exemptions for those with medical needs can be extremely difficult. It took several weeks of exchanges with officials, and the involvement of a local MP, doctors, social work practitioners, barristers and finally the High Court, for a 9-year-old child with a neuro-disability arriving from Pakistan to be granted with an exemption from hotel quarantining on the basis of medical need.⁹² Solicitor Theodora Middleton, from Bindmans, LLP, believes that some of the rejections of requests for exemptions do not derive from the law but "an idea that the caseworkers have who are making the decisions."⁹³ Barrister Adam Wagner

90 Statement of Facts and Grounds of Application for Judicial Review – 27th May 2021: [https://assets.pgmbm.com/documents/HQ/20210527_\(Redacted\)_Amended_Statement_of_Facts_and_Grounds.pdf](https://assets.pgmbm.com/documents/HQ/20210527_(Redacted)_Amended_Statement_of_Facts_and_Grounds.pdf)

91 Lawyers to mount legal challenge against hotel quarantine – Kate Devlin, the Independent, 15th February 2021: <https://www.independent.co.uk/news/uk/politics/hotel-quarantine-covid-legal-challenge-b1802544.html>

92 Family gets UK quarantine exemption despite arriving from red-listed Pakistan – Murtaza Ali Shah. Geo News, 27th April 2021: <https://www.geo.tv/latest/347589-family-gets-uk-quarantine-exemption-despite-arriving-from-red-listed-pakistan>

93 Severely ill – and still made to quarantine in a hotel – Sue Mitchell & Sarah McDermott, BBC News, 21st May 2021: <https://www.bbc.co.uk/news/stories-57162187>

said that “the system of exemptions for medical need” has raised “the bar so high that it is unreachable” and has warned that the Department of Health and Social Care “will be on the end of a load of false imprisonment claims if they do not change their approach (indeed probably already are).”⁹⁴

There have been extensive complaints from those forced to quarantine in hotels, including families forced to pay more than £3,000 for cramped rooms,⁹⁵ wheelchairs users being denied accessible facilities, stroke victims being denied medical treatment after receiving a head injury⁹⁶ and that “those with a food allergy (...) at serious risk.”⁹⁷ There have also been cases where a four-month old baby with a severe leg infection was barred from going to A&E for four hours, and a diabetic man suffered a heart attack after being denied facilities for his insulin and given food that did not meet his dietary requirements.⁹⁸ One man told the Guardian, “I have various medical conditions such as atrial fibrillation and medical advice is that I need to take daily exercise. But I was only allowed to go outside for two of the 11 days”⁹⁹ Another said she couldn’t eat the food she had been provided with due to her diabetes.¹⁰⁰ Some of these families are now in debt because of the experience or will have to pay for it out of their benefit payments.

Multiple women have also reported facing sexual harassment from security guards at various quarantine hotels.¹⁰¹ The women reported guards following them around, making sexual comments, asking to come into their rooms and miming sexual acts. Several women noted that the hotel environment where they were isolated made them feel particularly vulnerable and afraid. Other women complained that guards had shouted at them, and behaved in an “intimidating” and “unnecessarily abusive” way. Harriet Wistrich from the Centre for Women’s Justice said the allegations made by the women were “really concerning”:

“Essentially these women are in detention, they don’t have freedom of movement at all, so there are particular human rights duties that go with that. The state is

94 Adam Wagner, Twitter, 10th May 2021: <https://twitter.com/AdamWagner1/status/1391683196136345600>

95 <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/cramped-hungry-trapped-tiny-room-20660282>

96 Severely ill - and still made to quarantine in a hotel – Sue Mitchell & Sarah McDermott, BBC News, 21st May 2021: <https://www.bbc.co.uk/news/stories-57162187>

97 The UK’s hotel quarantine system is not fit for purpose – John O Warner & Jill A Warner, BMJ Opinion, 4th June 2021: <https://blogs.bmj.com/bmj/2021/06/04/the-uks-hotel-quarantine-system-is-not-fit-for-purpose/>

98 Sick and disabled people denied medical treatment and facilities in hotel quarantine ‘in breach of law’ – May Bulman, BBC News, 21st June 2021: <https://www.independent.co.uk/news/uk/home-news/sick-disabled-hotel-quarantine-uk-b1864065.html>

99 UK travellers complain of ‘prison-like’ conditions in quarantine hotels – Diane Taylor, Guardian, 11th May 2021: <https://www.theguardian.com/world/2021/may/11/uk-travellers-complain-of-prison-like-conditions-in-quarantine-hotels>

100 UK travellers complain of ‘prison-like’ conditions in quarantine hotels – Diane Taylor, Guardian, 11th May 2021: <https://www.theguardian.com/world/2021/may/11/uk-travellers-complain-of-prison-like-conditions-in-quarantine-hotels>

101 Covid quarantine hotels: Women say they were sexually harassed by guards – Sue Mitchell and Sarah McDermott, BBC News, 27th June 2021: <https://www.bbc.co.uk/news/stories-57609164>

responsible for their safety. If they're at risk of being sexually abused there's potentially a human rights violation there."

Medical professors John and Jill Warner described their experience with the UK's self-isolation system in the BMJ, stating that it "is seriously flawed, to the extent that we question whether it is just a political stunt to assuage public concern."¹⁰² They noted that "some [airport] security staff clearly lacked training" and officials "were confused about the quarantine requirements." Meanwhile at the hotel, "cross infection can and has occurred" due to the way that food was delivered to guests and they noted that their food intolerances were not accommodated in the food they received. They also expressed concern that people would not take the PCR tests correctly or report the onset of symptoms because a positive result mandates an extension to the quarantine period and therefore a significant increase in cost.

A retired NHS secretary and a GP who were held in hotel quarantine told the i newspaper that they were "never scared of catching Covid while on the front line but we were absolutely petrified of catching it in the hotel" which they described as "filthy....There was no social distancing, with security guards literally on top of you and getting in the lift with you."¹⁰³ Others highlighted how staff couldn't clean the rooms and "The only cleaning product we got was baby wipes we had to clean everything with."¹⁰⁴ A DHSC-approved quarantine hotel in Reading, which was at the centre of a significant outbreak with 44 new infections, has now closed.¹⁰⁵ The DHSC described it as a "small, localised outbreak."¹⁰⁶ It seems likely that cross-infection occurred at the hotel.

Priti Patel has warned that enforcement has stepped up, with officers carrying out up to 10,000 home visits a day to check that people were isolating at home after trips to amber-listed countries.¹⁰⁷ A Home Office source confirmed to Sky News that private contractor Mitie will carry out the enforcement checks.¹⁰⁸ Beverley Hughes, Greater Manchester's deputy mayor for Policing, Crime, Criminal Justice and Fire, announced that they've "had a number of breaches of people who absconded from managed quarantine at Manchester Airport and also at managed centre in Birmingham" who have been apprehended and

102 The UK's hotel quarantine system is not fit for purpose – John O Warner & Jill A Warner, BMJ Opinion, 4th June 2021: <https://blogs.bmj.com/bmj/2021/06/04/the-uks-hotel-quarantine-system-is-not-fit-for-purpose/>

103 Hotel quarantine scheme: From 'disgusting' food and filthy rooms to 'idyllic' garden walks – Hugo Daniel, The i, 7th June 2021: <https://inews.co.uk/news/uk/hotel-quarantine-scheme-disgusting-food-filthy-rooms-idyllic-garden-walks-1034904>

104 Ibid.

105 Covid: Reading quarantine Pentahotel to shut – BBC News, 18th June 2021: <https://www.bbc.co.uk/news/uk-england-berkshire-57515332>

106 Covid: Reading quarantine Pentahotel to shut – BBC News, 18th June 2021: <https://www.bbc.co.uk/news/uk-england-berkshire-57515332>

107 COVID-19 travel: Expect 'knock on the door' when you return from amber countries, Priti Patel warns – Philip Whiteside, Sky News, 21st May 2021: <https://news.sky.com/story/covid-19-travel-expect-knock-on-the-door-when-you-return-from-amber-countries-priti-patel-warns-12311649>

108 COVID-19 travel: Expect 'knock on the door' when you return from amber countries, Priti Patel warns – Philip Whiteside, Sky News, 21st May 2021: <https://news.sky.com/story/covid-19-travel-expect-knock-on-the-door-when-you-return-from-amber-countries-priti-patel-warns-12311649>

fined £5,000 each.¹⁰⁹

RECOMMENDATION 8: 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.

Exemptions

Despite these rigid requirements for ordinary members of the public, and multiple cases of families undergoing serious harm as a consequence, thousands of UEFA and FIFA officials have been permitted to enter the country without self-isolating.¹¹⁰ It was leaked that officials, politicians, sponsors and broadcasters would be permitted to attend matches, meetings and training sessions without having to isolate either in a location of their choosing (for visitors from 'Amber List' countries) or in Government-managed quarantine hotels (for visitors from 'Red List' countries). It was reported in the Times that Ministers feared that without an exemption, the final matches of the Euros tournament would be moved to Budapest. When questioned about these plans, Policing Minister Kit Malthouse said:

"I haven't seen the detail of that particular proposal. One of the things we are trying to do though is obviously accommodate the Euros as much as we possibly can.

"And while much of the concern around coronavirus regulations has been about whether one situation is fair compared with another situation what we're generally trying to do is make difficult decisions about the path of a virus, at the same time as trying to enable the ordinary operation of very special events like the Euros".¹¹¹

The following day, the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 3) Regulations 2021 were made, which exempted "Euro 2020 invitee[s]" from normal self-isolation requirements from those arriving from amber or red list countries. The Regulations came into force on 22nd June, exempting UEFA and FIFA employees, members of international football bodies, "employees of "organisation[s] which [are] sponsor[s] or partner[s] of the 2020 UEFA" and representatives of countries competing in the tournament. Broadcasters and journalists covering the games were also exempt. These individuals would have to self-isolate "apart from when [the individual] is travelling to or from, or attending the location of any Euro

109 Rochdale woman fined £1,000 after breaking coronavirus rules when her parents tested positive – Fran Way, Manchester Evening News, 8th June 2021: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/rochdale-woman-fined-1000-after-20770107>

110 Uefa threat over Euro 2020 final at Wembley – Patrick Maguire, the Times, 18th June 2021: <https://www.thetimes.co.uk/article/uefa-threat-euro-2020-final-quarantining-hungary-budapest-0f3jhc99v>

111 VIPs 'to be let into England without quarantine to keep Euros final at Wembley' – Haroon Siddique, the Guardian, 18th June 2021: <https://www.theguardian.com/football/2021/jun/18/vips-to-be-let-into-england-without-quarantine-to-keep-euros-final-at-wembley>

2020 event, or travelling between different Euro 2020 events.”

Media Minister John Whittingdale justified this development by stating that that self-isolation requirements need not apply for “for some people who are important.”¹¹²

A week later, on 28th June, a further amendment to the International Travel and Operator Liability Regulations was made. The Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 4) Regulations 2021 exempt “Euro 2020 Final attendee[s]” from self-isolation requirements – provided that the attendee travels directly to and from the Final.¹¹³ The Regulations also exempt “senior executive[s]” from self-isolation, provided the executive has

“a reasonable belief that the activity will more likely than not lead to the creation or continuation of employment for 500 employees or more in the United Kingdom-based branch or subsidiary of the overseas-based undertaking which that executive is visiting”

and

“the executive has a reasonable belief that the activity will deliver significant economic benefit to the United Kingdom”.¹¹⁴

Conservative backbencher and chair of the Public Administration and Constitutional Affairs Committee William Wragg MP was scornful of these exemptions:

“A ridiculous situation where parents can’t watch their children’s school sports days, but 2000 VIPs can fly over to watch the football with special legal exemptions. Prolonged covid restrictions are now proving arbitrary and divisive.”¹¹⁵

These exemptions lay bare the hypocrisies and political manoeuvring behind coronavirus restrictions. While families are forced to quarantine in cramped rooms they can barely afford and those with physical and mental health conditions are refused exemptions, those with greater economic or cultural capital are given a free pass. With every exemption, the public health arguments behind these restrictions grow thinner. If state managed isolation facilities and punishing fines are critical to protecting public health, they should apply to all.

RECOMMENDATION 9: Exemptions for so-called ‘important people’ call the necessity of self-isolation requirements into question. Any self-isolation requirements must be applied equally to all.

112 Minister says travel quarantine rules do not apply to ‘important people’ – Simon Calder, the Independent, 23rd June 2021: <https://www.independent.co.uk/travel/news-and-advice/quarantine-euro-final-minister-green-list-b1871077.html>

113 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 4) Regulations 2021, para 10(4)

114 Para 10(5)

115 Twitter, William Wragg, 24th June 2021: https://twitter.com/William_Wragg/status/1408038632766717957?s=20

Self Isolation Requirements

In previous reports, we have detailed the forced isolation of asylum seekers at Napier Barracks in Folkestone. Those in the accommodation have been subject to extremely poor conditions and have been refused permission to leave the barracks, with the Health Protection Regulations used as justification. In a case brought by Liberty and six claimants resident at the barracks, the High Court found that the Home Office had “falsely imprisoned” the claimants.¹¹⁶ The ruling noted that “the Claimants are not supposed to be detained”, yet they had been kept in “squalid” accommodation.¹¹⁷ Liberty has called for the barracks to be closed, and despite Home Office refusal to do so, internal documents show that asylum seekers are no longer being transferred there after public health officials warned it could be a site of “reoccurring or enduring” Covid transmission.¹¹⁸

Unlawful detention under self isolation restrictions has been seen in other settings. Students at the University of Lancashire received an email from their accommodation provider, Cloud Student Homes, that after a case of coronavirus had been reported in their shared flat, they would be effectively locked into their flats:

“We will be up shortly to place a sign on the door and your fobs will be deactivated for this time. Please do not have any visitors over in your flat and also do not leave your flats as we will have to inform the police should you break isolation.”¹¹⁹

Under the Health Protection Regulations, which brought the self-isolation requirement into law, those who test positive for coronavirus, or their close contacts are required to stay in their homes, but may leave for a series of reasons, such as obtaining food or medical supplies and escaping the risk of injury or harm. Preventing students from leaving their flats could put them at risk and is unlawful. The University of Central Lancashire said that although the accommodation is “a private, unregistered halls and does not come under the University’s control,” they have received “verbal assurance” that students “will not have their key fobs disabled and that residents can always exit the building without the use of a fob.”¹²⁰ The university’s student union said “no one should be confined against their will by a landlord or management company” and that they would be writing to the accommodation provider.¹²¹

116 Napier Barracks Must Close After High Court Ruling – Liberty, 3rd June 2021: <https://www.libertyhumanrights.org.uk/issue/liberty-napier-barracks-must-close-after-high-court-ruling/>

117 NB & Ors v the Secretary of State for the Home Department [2021] EWHC 1489 (Admin), para 163, 81: <https://www.judiciary.uk/wp-content/uploads/2021/06/Napier-Barracks-judgment.pdf>

118 Transfers of asylum seekers to Napier barracks suspended – Diane Taylor, the Guardian, 22nd June 2021: <https://www.theguardian.com/uk-news/2021/jun/22/transfers-of-asylum-seekers-to-napier-barracks-suspended>

119 Preston uni students ‘locked in’ building after one positive Covid test – Alice Suffield, LancsLive, 7th June 2021: <https://www.lancs.live/news/lancashire-news/preston-uni-students-locked-in-20736863>

120 Ibid

121 Your Welfare Concerns – University of Central Lancashire Student’s Union: <https://www.uclansu.co.uk/news/article/6013/122/>

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 seventh review was published on 27th May. The review justifies the Government's continued use of the Coronavirus Act, stating: "there is further work to do before returning to a more familiar version of normal life, and the ability to respond flexibly and cautiously still exists."¹²² However, it reiterates the Government's alleged commitment to expiring parts of the Act which are no longer necessary:

"The ever-changing picture of the pandemic is the reason why the government has always been committed to continuously reviewing the powers introduced and has held good on the promise to only retain powers where they continue to be necessary and proportionate."¹²³

However, this commitment rings hollow given the continued presence of Schedules 21 and 22 of the Act on the statute books. Schedule 21, which gives police, immigration officials and public health officers the power to detain 'potentially infectious' people, has primarily been used to unlawfully detain healthy and innocent people. Schedule 22, which gives the Secretary of State extraordinary powers to issue directions relating to events and gatherings, has also been used to unlawfully charge people, despite the fact that it has never been activated in England. These two controversial sections of the Act are not referenced either in relation to 'the impact of the Act' or 'equalities and human rights.' There is only a fleeting, and inaccurate, assessment of their use.

Of Schedule 21, the review states:

"Public Health Officers (PHO) have used the powers a total of 10 times, but have not used them since October 2020.

"Police have not used these powers to date and are only to be used after obtaining advice from a public health officer."¹²⁴

It is incorrect to say Schedule 21 powers have not been used by police. Since March 2020, we have documented multiple, unlawful, uses of Schedule 21 to arrest and detain individuals by police forces across England.

122 Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020 – Department for Health and Social Care, GOV.UK, 27th May 2021, p 5: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990004/Seventh_Two_Month_Report_of_the_Coronavirus_Act_-_publishing.pdf

123 Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020 – Department for Health and Social Care, GOV.UK, 27th May 2021, p 6: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990004/Seventh_Two_Month_Report_of_the_Coronavirus_Act_-_publishing.pdf

124 Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020 – Department for Health and Social Care, GOV.UK, 27th May 2021, p 6: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990004/Seventh_Two_Month_Report_of_the_Coronavirus_Act_-_publishing.pdf

Of Schedule 22, the review states:

"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 done previously."¹²⁵

This justification for the continued retention of Schedule 22 is misleading at best. Previously, the Government managed local outbreaks 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. While the Health Protection Regulations are imperfect, they contain greater safeguards for restrictions on events and premises than the Coronavirus Act.

It is unacceptable that the Government's reviews are making misleading, and in places false, claims about the use of Schedules 21 and 22 of the Coronavirus Act- which have in reality been overwhelmingly disastrous and unlawful.

Unlawful prosecutions

Despite Government Ministers stating that Schedules 21 and 22 of the Coronavirus Act remain necessary, there is more evidence that both Schedules have been used to unlawfully charge and prosecute dozens of people.

The CPS reviews of all prosecutions under coronavirus-related laws has uncovered yet more unlawful charges and prosecutions under the Coronavirus Act. This has been the case for every single review since March 2020. Since our previous report, an additional 33 charges under the Coronavirus Act were overturned. In March, 17 charges were overturned,¹²⁶ in April 7 were overturned¹²⁷ and in May, 9 were overturned.¹²⁸ Since March 2020, the CPS has reviewed 286 charges and prosecutions under the Coronavirus Act. All have been unlawful.

However, these figures do not represent the full scale of prosecutions under the Coronavirus Act. As previously noted, some prosecutions under the Act are being heard under the Single Justice Procedure, meaning they are not captured by the CPS' review. The written parliamentary question submitted by Alex Cunningham MP, discussed previously in relation the prosecutions under the Health Protection Regulations, also revealed more individuals who have been prosecuted under the Act by a magistrate, without the key

125 Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020 – Department for Health and Social Care, GOV.UK, 27th May 2021, p 6: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990004/Seventh_Two_Month_Report_of_the_Coronavirus_Act_-_publishing.pdf

126 CPS review findings for first year of coronavirus prosecutions – Crown Prosecution Service, 13th May 2021: <https://www.cps.gov.uk/cps/news/cps-review-findings-first-year-coronavirus-prosecutions>

127 April's coronavirus review findings – Crown Prosecution Service, 1st June 2021: <https://www.cps.gov.uk/cps/news/aprils-coronavirus-review-findings>

128 May's coronavirus review findings – Crown Prosecution Service, 30th June 2021: <https://www.cps.gov.uk/cps/news/mays-coronavirus-review-findings>

safeguard of an independent prosecutor reviewing the charges.

8 cases were heard under the Single Justice Procedure for offences under Schedule 21.¹²⁹ 3 individuals were prosecuted in December 2020 for 'Failure to comply with screening restriction/requirement (coronavirus).' This relates to the powers under Schedule 21 "to direct or remove persons to a place suitable for screening and assessment."¹³⁰ We have previously expressed concern over the minimal safeguards contained within these powers. None of these individuals submitted a plea. It is alarming to note that the Coronavirus Act is now being used to prosecute people for, we infer, refusing to be tested for coronavirus. 5 individuals were prosecuted in November for 'offences committed by potentially infectious persons.' Again, no plea was submitted by these individuals. We do not know the outcome of these prosecutions.

37 individuals were prosecuted under Schedule 22 of Coronavirus Act, an increase of 35 from previously released figures.¹³¹ While the figures do not make direct reference to Schedule 22, referring instead to 'offences in relation to events and gatherings (coronavirus)', previous figures released (which match new figures) refer to these offences in relation to the Coronavirus Act. 1 case was heard in August, 1 case in September, 2 cases in October, 7 cases in November and 26 cases in December. Of the 37 cases, 36 entered no plea, with 1 individual entering a guilty plea. Given that Schedule 22 of the Act has never been activated in England, these prosecutions were doubtlessly unlawful.

Alex Cunningham MP raised the issue of unlawful prosecutions under Schedule 22 in the House of Commons, during Justice Questions on 29th June:

"I hope [the Minister] is aware of the controversy surrounding the use of the Single Justice Procedure in relation to the thousands of people prosecuted for coronavirus-related offences and the fact that hundreds—the bulk in their absence—may have been wrongly charged and convicted.

"Indeed, 37 people have been unlawfully prosecuted under Schedule 22 of the Coronavirus Act 2020, which has never been activated in England.

"When that problem was highlighted by Big Brother Watch and The Guardian newspaper, the Ministry of Justice said that

'defendants can...have their conviction voided and reheard if necessary.'

"Surely the Minister agrees that such incompetence adds to the burden of the courts, is more expensive, weakens justice and may well be unlawful. What is he going to do about it?"¹³²

129 Written answer: Chris Philip to Alex Cunningham, UIN 7818, 7th June 2021: <https://questions-statements.parliament.uk/written-questions/detail/2021-05-26/7818>

130 Coronavirus Act 2020, sch 21, para 6

131 Written answer: Chris Philip to Alex Cunningham, UIN 7818, 7th June 2021: <https://questions-statements.parliament.uk/written-questions/detail/2021-05-26/7818>

132 Oral questions (29th June 2021), vol. 698, col. 103: <https://hansard.parliament.uk/com-mons/2021-06-29/debates/A08EB40C-6A02-4010-A05A-970FF1A3023B/OralAnswersToQuestions>

The answer from Chris Phillips MP was woefully inadequate and expressed a lack of understanding of the Single Justice Procedure. He stated that jury trials had continued, that remote proceedings were being used and that “judges have always had the proper discretion to direct proceedings in their courtrooms.” There is neither a judge nor jury present under the Single Justice Procedure. Instead, the case is heard by a magistrate and legal advisor. Remote hearings similarly do not occur under the Single Justice Procedure. It is unacceptable that the Government is unwilling to rectify this ongoing injustice.

RECOMMENDATION 10: The Government must urgently assess how unlawful prosecutions under Schedule 22 of the Coronavirus Act have been able to proceed and act to ensure that any convictions are immediately overturned.

RECOMMENDATION 11: 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 have resulted in exclusively unlawful prosecutions and must be repealed.

‘No Jab, No Job’ Policies

Vaccinations for all staff working at homes for the elderly will be mandatory, subject to parliamentary approval, the Government announced after a consultation period.¹³³

SAGE guidance suggests that “an uptake rate of 80% in staff and 90% in residents in each individual care home setting would be needed to provide a minimum level of protection against outbreaks of COVID-19. This is for a single dose against the current dominating variant.”¹³⁴ As of 24th June, the percentage of eligible (those who have not contracted coronavirus within the last 28 days) staff of older adult care homes reported to be vaccinated with at least one dose stood at 84.1%.¹³⁵ The percentage of staff who have received their second dose was 70.2%. The percentage of eligible residents of older adult care homes reported to be vaccinated with at least one dose stands at 95.4%, and 91.3% have received their second dose. These statistics suggest that concerns around vaccination uptake in the social care sector have been somewhat overstated and that those working in the care sector are taking up vaccinations in large numbers.

Out of 149 local authority areas, only 31 local authority areas have not met SAGE’s goal of having 80% of care home staff receiving one dose of the vaccine. The vast majority of these local authority areas (as of 24th June) have between 77-79% of staff members

133 Covid vaccine to be compulsory for England care home staff – Mary O’Connor and Marie Jackson, BBC News, 16th June 2021: <https://www.bbc.co.uk/news/uk-57492264>

134 Making vaccination a condition of deployment in older adult care homes – Department of Health and Social Care, GOV.UK, 17th May 2021: <https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-older-adult-care-homes/making-vaccination-a-condition-of-deployment-in-older-adult-care-homes>

135 COVID-19 weekly announced vaccinations – NHS England, 17th June 2021: <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2021/06/COVID-19-weekly-announced-vaccinations-17-June-2021.xlsx>

vaccinated. Just 8, or 5% of, local authority areas have less than 75% of staff members vaccinated.

The (then) Secretary of State for Health and Social Care, Matt Hancock, told the House of Commons on 16th June:

"After careful consultation, we have decided to take this proposal forward, to protect residents. The vast majority of staff in care homes are already vaccinated, but not all of them are. We know that the vaccine protects not only you, but those around you. Therefore we will be taking forward the measures to ensure the 'mandation' as a condition of deployment for staff in care homes, and we will consult on the same approach in the NHS, in order to save lives and protect patients from disease."¹³⁶

When challenged on his support for wider mandatory vaccines Mr Hancock said he did not back compulsory jabs for the general public.

There was little opposition to the announcement in Parliament with Conservative MP Mark Harper saying he would prefer education and persuasion to coercion but said he would support the proposal as a last resort. Steve Baker MP was the main voice of dissent, telling the House that he did not see why the right to bodily autonomy could not be maintained and suggested workers could do daily lateral flow tests instead, an idea that Mr Hancock dismissed as he claimed that testing already happens and mandatory vaccines further reduce risk in care homes.

It was also hinted that the government were 'looking at' making flu vaccines mandatory for care home staff after Labour MP Graham Stringer asked the Health Secretary about rates of flu in care homes.¹³⁷ This is despite the fact that flu vaccines rarely have efficacy rates above 50%.¹³⁸

RECOMMENDATION 12: 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.

Regulations

On 22nd June, the Government published the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021, which if passed, would bring the Government's proposals into force 16 weeks after they are made.

This would include those providing direct care and those undertaking ancillary roles such as cleaners and kitchen staff, as well as volunteers, agency workers and those coming into care homes to do other work – such as tradespeople, health care workers, hairdressers

136 HC Deb (16th June 2021), vol. 697, col. 333: <https://hansard.parliament.uk/commons/2021-06-16/debates/B58EB442-0F87-4C09-A314-4486B938DD43/Coronavirus>

137 HC Deb (16th June 2021), vol. 697, col. 334: <https://hansard.parliament.uk/commons/2021-06-16/debates/B58EB442-0F87-4C09-A314-4486B938DD43/Coronavirus>

138 Inactivated Flu Vaccine – Vaccine Knowledge Project (accessed 18th June 2021): <http://vk.ovg.ox.ac.uk/vk/inactivated-flu-vaccine>

and beauticians, and Care Quality Commission inspectors.¹³⁹ This means that employees working in these settings also face being asked about their vaccination status by their employers, putting unvaccinated employees at a clear disadvantage.

The Regulations amend the regulation 12 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, which stipulate that in order to ensure “care and treatment must be provided in a safe way for service users”, a registered person must assess “the risk of, and preventing, detecting and controlling the spread of, infections, including those that are health care associated.”¹⁴⁰ The new Regulations require that a “registered person” in respect of a care home which provides nursing or personal care does not permit anyone to enter the premises unless they are a resident, a visitor of a resident or they have provided the registered person with “evidence” that they have completed a course of an authorised coronavirus vaccine, or that they are clinically unable to be vaccinated.¹⁴¹

There are exemptions for a person providing emergency assistance, a person providing urgent maintenance, a person attending the premises as part of their duty as an emergency service worker, a friend or relative of a resident, a person who is visiting a resident who is dying, a person who is providing comfort or support to a resident in response to the death of a resident’s friend or family member and those under the age of 18.¹⁴²

The Secretary of State is required to review whether “the extent to which those objectives are achieved, taking into account clinical advice, and availability and accessibility of authorised vaccines” and to “assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.”¹⁴³

RECOMMENDATION 13: It is unacceptable that the Government is attempting to introduce a radical change in approach to healthcare via secondary legislation. Members of Parliament should vote against these Regulations when they appear before Parliament.

Dr Susan Hopkins, strategic response director for Covid-19 at Public Health England, warned “people may vote with their feet, and not want to have the vaccine, and therefore not work in a care home, and that could lead to staff supply issues in care homes (...) I think where people are hesitant, we need to work harder to make them understand

139 The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021, Regulation 5; See also, Everyone working in care homes to be fully vaccinated under new law to protect residents – Department of health and Social Care, GOV.UK, 16th June 2021: <https://www.gov.uk/government/news/everyone-working-in-care-homes-to-be-fully-vaccinated-under-new-law-to-protect-residents>

140 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, reg 12(2)(h)

141 Regulation 5

142 Regulation 5

143 Regulation 7(2)

why the vaccines work.”¹⁴⁴ The British Medical Association said mandatory vaccination is “a blunt instrument that carries its own risks.”¹⁴⁵ Mike Padgham, chairman of the Independent Care Group, warned the sector already had a “recruitment crisis”, saying: “We’re frightened that this is going to put more people off coming into social care and that’s going to be difficult.”¹⁴⁶

Similarly, the Royal College of GPs said mandatory vaccination for family doctors was the wrong way to go, with the RCGP’s chair Prof. Martin Marshall saying: “We don’t agree with making COVID-19 vaccination mandatory as informed and educated choice about health interventions would be more beneficial long-term than enforcing them, which risks leading to resentment and mistrust.”¹⁴⁷

Caroline Abrahams, charity director at Age UK said: “Every care home resident would want to be cared for by someone who had been vaccinated, but if a compulsory approach leads to some care workers quitting it will make existing chronic staff shortages even worse.” The care sector is already seeing a staffing crisis, partially due to Brexit, with EU workers making up around a quarter of care workers in some regions.¹⁴⁸ Staff turnover is already at around 50 per cent and with up to a third of care staff in the GMB union saying they would quit if they were forced to have a vaccine the effect on the vulnerable people who need care could be severe.¹⁴⁹

Blaming care staff for not having been vaccinated and attempting to force them to undergo medical treatment is not only unethical, but also is not getting to the root of the problem. It is becoming increasingly clear that part of the problem is care staff being unable to take paid leave to vaccinate, and the lack of organisation in the care sector. GMB Yorkshire organiser Peter Davies said “[the care sector is] so fragmented and [it’s] so difficult to engage with the carers directly through the local authorities or their employers.”¹⁵⁰ The union’s national officer Rachel Harrison said that carers have endured grim working conditions during the pandemic but instead of improving them, “ministers are ploughing ahead with plans to strongarm care workers into taking the vaccine without taking seriously the massive blocks these workers still face in getting jabbed. This looks like another potential avoidable mess. We’ve told Ministers that more than a third of our members in social care would consider packing their jobs in if vaccines

144 Covid vaccine to be compulsory for England care home staff – Mary O’Connor and Marie Jackson, BBC News, 16th June 2021: <https://www.bbc.co.uk/news/uk-57492264>

145 Ibid.

146 Ibid.

147 ‘Sinister’ plans to ‘force’ NHS workers to get Covid vaccine blasted by health union – Ben Glaze, the Mirror, 3rd March 2021: <https://www.mirror.co.uk/news/politics/sinister-plans-force-nhs-workers-23599542>

148 How care home staffing crisis is being fuelled by post-Brexit immigration rules – Lesley Dodo, the Yorkshire Post, 17th June 2021: <https://www.yorkshirepost.co.uk/news/opinion/columnists/how-care-home-staffing-crisis-is-being-fuelled-by-post-brexit-immigration-rules-lesley-dodo-3275428>

149 ‘Ill thought through’ plan to mandate vaccinations could lead to care staff ‘exodus’ – GMB, 16th June 2021: <https://www.gmb.org.uk/news/ill-thought-through-plan-mandate-vaccinations-could-lead-care-staff-exodus>

150 Why 8,000 Leeds care workers are still unvaccinated – even though they work with vulnerable people – Sam Brooke, Leeds Live, 5th May 2021: <https://www.leeds-live.co.uk/news/leeds-news/8000-leeds-care-workers-still-20506064>

were mandated. They can't now say they weren't warned."

Nina Hemmings, health researcher at Nuffield Trust, has similarly pointed out that the "fragmented" care sector and the lack of a "direct channel of communication with individual workers" means it has been hard to promote the vaccine drive. She also noted that many care sector workers "are low-paid and don't have the time to travel to a vaccination centre."

Instead of exploring additional support systems needed to increase vaccine uptake, Ministers are suggesting that mandatory vaccines be rolled out for NHS staff as well as care home staff. Vaccines Minister Nadhim Zahawi told Sky News it was "absolutely the right thing" to consider mandatory vaccines for healthcare workers: "it would be incumbent on any responsible government to have the debate, to do the thinking, as to how we go about protecting the most vulnerable by making sure that those who look after them are vaccinated."¹⁵¹ Similarly to other Ministers, he incorrectly claimed that all NHS surgeons are required to be vaccinated against hepatitis B, setting a precedent for other mandatory vaccinations. In previous reports we have analysed how these claims misrepresent NHS trusts' health and safety policies.

Meanwhile, trust in the coronavirus vaccinations has continued to grow across society, without coercion being necessary. Vaccine uptake in Black British and Asian communities more than tripled between February and April, and confidence in the vaccination increased in Muslim and Christian communities by 21 and 19% respectively, and in under 45s by 17% for men and 27% for women.¹⁵²

A study on the use of vaccine passports and the impact of coercive measures on vaccine confidence by academics from the London School of Hygiene and Tropical Medicine found that some demographic groups would be less likely to get vaccinated if it felt that they were being forced or pressured.¹⁵³ Coercion via vaccine passports was found to make men and those with good qualifications less likely to be vaccinated, but the largest negative effect of coercion was on the black community and unemployed people. This suggests that coercive tactics around vaccine uptake has a strong, negative impact on marginalised groups.

151 Compulsory Covid jabs for NHS staff under consideration, says vaccines minister – Jasmine Cameron-Chileshe, Financial Times, 30th May 2021: <https://www.ft.com/content/88778a19-0bed-4b64-8d34-4ca9842cfa14>

152 Covid vaccine confidence growing as NHS plan to tackle hesitancy pays off – Paul Gallagher, iNews, 5th June 2021: <https://inews.co.uk/nhs/covid-vaccine-confidence-growing-nhs-plan-blueprint-tackle-hesitancy-pays-off-1035928>

153 The potential impact of vaccine passports on inclination to accept COVID-19 vaccinations in the United Kingdom: evidence from a large cross-sectional survey and modelling study – Alexandre de Figueiredo, Heidi J. Larson, Stephen Reicher, 1st June 2021: <https://www.medrxiv.org/content/10.1101/2021.05.31.21258122v1>

Data Collection and Surveillance

The pandemic has led to a huge surge in surveillance of the public's health, movements and contacts through overt means, such as NHS Test and Trace, and through covert means, such as using mobile phone data to track the population's movements. While some strictly time-limited, transparent and proportionate data collection may be helpful to trace contacts, the Government's approach has failed to respect privacy and damaged public trust in the process.

A report from the government's SPI-B committee revealed that data from millions of people – one in ten – had their phones tracked in February to be monitored for behavioural change after their jabs, without their knowledge.¹⁵⁴ Research by Big Brother Watch revealed that an Oxford University research group, commissioned by the SPI-B Committee had been using the "cell phone mobility data for 10 per cent of the British population" to select a group that had been vaccinated, by tracking visits to vaccine centres, in order to monitor their movements. The group had their locations checked every day through their phone and tracked for "behavioural changes" post-vaccination.

This secretive approach to health surveillance is intrusive and chilling. Any form of research into people's movements post-vaccination should be an opt-in process, with full transparency.

Contact tracing

Tested.me, a business providing QR codes for businesses for contact tracing purposes, was fined £8,000 by the ICO for sending over 80,000 marketing emails without consent.¹⁵⁵ People who scanned their QR codes were sent emails promoting their app. Natasha Longson, the ICO's group manager of investigations, said:

"People handed over their information as part of the national effort to control the Covid-19 pandemic – they did not expect that information to be used to send them unwanted marketing messages.

"The health crisis is not an excuse for mishandling people's data and Tested.me Ltd should have known better."

NHS Covid-19 app

An evaluation of the first trials of the app has been published – seven months after the trial was launched and six months after the app was launched across the country. The evaluation found "significant difference between the rates of download of white (51%)

¹⁵⁴ Millions 'unwittingly tracked' by phone after vaccination to see if movements changed – Christopher Hope, Telegraph, 22nd May 2021: <https://www.telegraph.co.uk/politics/2021/05/22/millions-unwittingly-tracked-phone-vaccination-see-movements/>

¹⁵⁵ Contact tracing QR code provider fined for sending users nuisance emails – Shropshire Star, 18th May 2021: <https://www.shropshirestar.com/news/uk-news/2021/05/18/contact-tracing-qr-code-provider-fined-for-sending-users-nuisance-emails/>

and BAME (33%) respondents.”¹⁵⁶ Amongst those who tried and failed to download the app, the biggest barrier was “phone compatibility or technical issues.”¹⁵⁷ The primary reason for not downloading the app was concerns around privacy, while some noted that without financial support to self-isolate, many would not be able to self-isolate. Some noted that “BAME communities would be disproportionately affected as a higher proportion worked outside the home and those with precarious immigration status were similarly highlighted as a group unlikely to be able to afford to lose work.”¹⁵⁸

The Apple-Google protocol means that all data stored by contact tracing apps remains on an individual’s device and cannot be uploaded to a central server. However, privacy analysts AppCensus found that Android devices store the data in the devices’ system logs.¹⁵⁹ This data can be accessed by some third party apps, meaning these apps “are now receiving users’ medical and other sensitive information as a result of Google implementation.” Google has stated that it is working to fix the error.

Freedom of Expression

Free speech online

Over the last year, concerns that so-called disinformation and misinformation could undermine public health initiatives have resulted in social media companies undertaking a huge amount of censorship of online content relating to the pandemic, even where it has related directly to matters of public policy.

This was most brazen in the case of Facebook, which announced in February of this year that it would not allow users to make the claim on their site that “COVID-19 is man-made or manufactured”¹⁶⁰ despite the origins of the virus being unknown. Such a course of action was an assault on freedom of expression and freedom of enquiry. This policy, which demonstrated big-tech censorship at its most overbearing, was an attempt by one of the largest social media companies in the world to prevent over 2.5 billion users from freely discussing an idea.

However, on 26th May, Facebook gave the following update:

“In light of ongoing investigations into the origin of COVID-19 and in consultation with public health experts, we will no longer remove the claim that COVID-19 is man-made or manufactured from our apps. We’re continuing to work with health

156 NHS COVID-19 app: early adopter evaluation report – Department of Health and Social Care, 8th April 2021, p 15: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/976862/EA_report_April_2020.pdf

157 Ibid, p 16

158 Ibid, p 17-18

159 Android ‘Exposes’ Covid-19 Contact Tracing Data – Matthew Broersma, Silicon, 5th May 2021: <https://www.silicon.co.uk/mobility/mobile-apps/android-covid-privacy-395343>

160 An Update on Our Work to Keep People Informed and Limit Misinformation About COVID-19, Facebook, 8 February 2021: <https://about.fb.com/news/2020/04/covid-19-misinfo-update/#removing-more-false-claims>

experts to keep pace with the evolving nature of the pandemic and regularly update our policies as new facts and trends emerge.”¹⁶¹

Facebook’s change of tack, which came on the same day that President Biden declared the need for further investigation into the origins of the virus,¹⁶² demonstrates that the platform’s terms of service are not only designed to guard the company’s own reputation but are also heavily influenced by political pressure. These are not appropriate bases on which to limit free expression.

Social media companies increasingly shape our worldview. This concerning episode is an example of significant censorship, where the company in question clearly intended to shut down discussion online and influence how users think.

Facebook also made headlines in May when its vice president for Northern Europe, Steve Hatch, told a BBC reporter that the platform was removing groups and pages that discourage vaccine take-up, even where the posts in question might be true.¹⁶³ Once again, this demonstrates an editorial approach rooted in policy objectives rather than free expression, leading to the removal of content under the weight of political and societal pressure even when it could be objectively accurate. This censorship by the platform sets a dangerous precedent and could further embolden the company to use their control over information to curtail expression and deliberately shape what users see in the future.

RECOMMENDATION 14: 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

Under current regulations, protests are identified as a specific exemption from restrictions on the number of people permitted to attend an outdoor gathering.¹⁶⁴ A protest can only be organised by “a business, a charitable, benevolent or philanthropic institution, a public body or a political body” and an organiser must take “the required precautions.”¹⁶⁵ These include carrying out a risk assessment that “would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999” and taking into

¹⁶¹ An Update on Our Work to Keep People Informed and Limit Misinformation About COVID-19, Facebook, 26 May 2021: <https://about.fb.com/news/2020/04/covid-19-misinfo-update/#removing-more-false-claims>

¹⁶² Facebook no longer treating ‘man-made’ Covid as a crackpot idea – Politico, 26th May 2021: <https://www.politico.com/news/2021/05/26/facebook-ban-covid-man-made-491053>

¹⁶³ Facebook to remove anti-vaxxer groups and pages – City AM, 10th May, 2021: <https://www.cityam.com/facebook-to-remove-anti-vaxxer-groups-and-pages/>

¹⁶⁴ The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, sch 3, para 3(15)

¹⁶⁵ The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, sch 3, para 3(15)(a)-(b)

account “any guidance issued by the government which is relevant to the gathering.”¹⁶⁶ As we have repeatedly argued, these restrictions significantly chill the right to protest, as organisers must meet complex requirements, or else face a £10,000 FPN. Many will feel unable to risk organising a protest as the risk of a £10,000 FPN is too prohibitive. For those that have organised or attended protests or rallies, policing has typically focused on preventing, dispersing and fining protesters, rather than facilitating protests and ensuring that they are held safely.

In Northern Ireland, PSNI hand delivered at least 14 letters in relation to gatherings and parades which took place on 15th May, asking the individuals to present themselves for interviews.¹⁶⁷ The gatherings had been in relation to football supporters and in support of Palestinians in Gaza. Meanwhile, three individuals who attended a Black Lives Matter rally in Derry in May 2020 are still awaiting a decision from the Public Prosecution Service as to whether they will face prosecutions under the Health Protection Regulations.¹⁶⁸

In response to protests in support of Palestinians, the Metropolitan Police has warned that enforcement action “will be taken where necessary against those who breach Covid regulations”.¹⁶⁹ Officers walked through the protesters, telling them to disperse as the protest may be unlawful.¹⁷⁰

Those celebrating the summer solstice at Stonehenge, many for religious and spiritual reasons, were dispersed by police officers as they gathered to watch the sunrise.¹⁷¹

A rally in Batley and Spen, organised by the Reclaim Party, was cancelled by the council as local officials said the gathering was not “Covid-secure.”¹⁷² The rally, ironically planned to discuss free speech in the constituency, had previously been approved by West Yorkshire Police. The local authority stepped in, telling organiser Laurence Fox that the outdoor event could not go ahead as it had not been assessed by the Safety Advisory Group.

At the end of May, Essex police cited “repeated breaches of the Government’s Covid-19 regulations by young people” as a reason to enforce a dispersal order, which gave them the power to exclude any person from the location for up to 48 hours.¹⁷³ Another dispersal

166 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, reg 6(2)-(3)

167 DUP MLA challenges PSNI over moves to prosecute ‘NI Protocol protestors’ – Philip Bradfield, News Letter, 17th May 2021: <https://www.newsletter.co.uk/news/politics/dup-mla-challenges-psni-over-moves-to-prosecute-ni-protocol-protestors-3239433>

168 Prosecutions still ‘hanging over heads’ of Black Lives Matter supporters from Derry – Garrett Hagan, Derry Now, 27th May 2021: <https://www.derrynow.com/news/derry-news/636629/prosecutions-still-hanging-over-heads-of-black-lives-matter-supporters-from-derry.html>

169 Thousands protest in London over Israel-Gaza violence – BBC News, 15th May 2021: <https://www.bbc.co.uk/news/uk-57127628>

170 Twitter, Red Pepper, 11th May 2021: <https://twitter.com/RedPeppermag/status/1392179228351897600>

171 Druids DEFY Covid ban at Stonehenge – Jack Wright, MailOnline, 21st June 2021: <https://www.dailymail.co.uk/news/article-9707625/Druids-DEFY-Covid-ban-Stonehenge-Guards-thousands-Neolithic-site-summer-solstice.html>

172 Batley free speech rally banned by town’s Labour council – Tony Diver, the Telegraph, 23rd June 2021: <https://www.telegraph.co.uk/politics/2021/06/23/exclusive-batley-free-speech-rally-banned-towns-labour-council>

173 Essex Police, Facebook, 28th May 2021: <https://www.facebook.com/EssexPoliceUK/>

order issued by the Metropolitan Police at the same date “in response to recent anti-social behaviour” was described by the Camden New Journal as “a precautionary measure aimed at stopping expected parties from going ahead.”¹⁷⁴

On 24th June, Metropolitan police officers drove to Brighton and attempted to arrest Louise Greffield, the founder of anti-lockdown campaign group Save Our Rights, for allegedly organising a protest held in London on 29th May.¹⁷⁵ In a video, officers can be seen “warning” her that they have seen her “posting online” about organising another gathering on 26th June, and that she could be committing further offences. This approach from the Metropolitan Police is markedly different to the one taken towards a potential investigation of former Health Secretary Matt Hancock in relation to the images of him embracing his aide. In relation to the latter, the force told reporters: “As a matter of course the Metropolitan Police Service is not investigating Covid-related issues retrospectively.”¹⁷⁶

In Bradford, Amar Sattar has been charged with organising a gathering of more than 30, in relation to a Unite the North protest against lockdown restrictions.¹⁷⁷ Mr Sattar disputes that Unite the North were ‘organisers’ of the large anti-lockdown protest.

After a legal challenge, the Metropolitan Police has dropped fines given to four legal observers from Black Protest Legal Support. The four observers were unlawfully arrested at the Kill the Bill protests for breaches of the coronavirus regulations. The Metropolitan Police accepted that legal observers “have an important role to play in providing independent scrutiny of protests and the policing of protests.”¹⁷⁸

RECOMMENDATION 15: 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

A legal challenge has been initiated against the Metropolitan Police for its decision to

posts/4020057531411450

174 Dispersal order placed across huge area as police fear ‘rising tensions’ – Camden New Journal, 21st May 2021: <http://camdennewjournal.com/article/dispersal-order-placed-across-huge-area-as-police-fear-rising-tensions>

175 Facebook, Save Our Rights, 24th June 2021: https://www.facebook.com/SaveOurRightsUK/videos/842142080050283/?extid=NS-UNK-UNK-UNK-IOS_GK0T-GK1C

176 Police won’t investigate Matt Hancock’s snog despite Covid rule breach – Sam Petherick, Metro, 26th June 2021: <https://metro.co.uk/2021/06/26/police-wont-investigate-matt-hancocks-snog-despite-covid-rule-breach-14832115/>

177 Man in court over Bradford anti-lockdown protest – David Jagger, Telegraph & Argus, 14th June 2021: <https://www.thetelegraphandargus.co.uk/news/19366607.man-court-bradford-anti-lockdown-protest/>

178 Met drops case and accepts the role of legal observers at protests – Damien Gayle, Guardian, 29th May 2021: <https://www.theguardian.com/uk-news/2021/may/29/met-drops-case-and-accepts-the-role-of-legal-observers-at-protests>

rely on the Health Protection Regulations to prohibit the Clapham Common vigil in the wake of the death of Sarah Everard. In our last report, we detailed how Reclaim These Streets organisers were told they were not permitted to hold the vigil, despite numerous safety measures and a court ruling which confirmed that protests could not be prohibited without an assessment of proportionality. One of the organisers, Jamie Klinger, said:

“If the Police cannot be held accountable for suppressing an organised, safe, peaceful vigil on the issue of violence against women and girls in the immediate aftermath of a murder where a police officer is the suspected perpetrator, then when can there be accountability? And what meaningful protest rights are there for anyone?”¹⁷⁹

When questioned about the case by the Home Affairs Committee, Metropolitan Police Commissioner Dame Cressida Dick said:

“You will remember we were policing during the pandemic wave 2, tier 4 regulations. You will be aware that those regulations had changed many, many times over the previous year and sometimes had appeared, to members of the public at least, somewhat ambiguous. My officers had been wrestling throughout the year with events, protests and public order matters in those various regulations.”¹⁸⁰

Assistant Commissioner Louisa Rolfe said:

“In terms of allowing an event to lawfully go ahead, at the time we were in tier 4 of the regulations. Tier 4 contained a general prohibition on gatherings of more than two people from separate households. Our assessment was that the vigil came within this prohibition, given its scale, timing and location. Tier 4 contained no specified exception for protest.”

(...)

“We took into account the Court of Appeal ruling in the case of Dolan, which set out that the regulations are not incompatible with human rights, given that there is the possibility of someone having a reasonable excuse to be involved in a gathering. (...) There was a powerful argument that the restrictions, which were there to protect public health, were, in themselves, proportionate.”

She went on to say that “a reasonable excuse is for individuals to use as a defence, not for police to guarantee in advance (...) it’s not our place to decide if an event will be lawful or not.”¹⁸¹ This position means that no protest organisers can be free from the possibility of a £10,000 FPN.

This position reveals a cynical attempt to weaponise coronavirus restrictions to restrict the fundamental rights to assemble and protest.

179 Defending our right to protest and reclaim these streets – Jamie Klinger, Crowdfjustice: <https://www.crowdfjustice.com/case/defending-our-right-to-protest/>

180 Oral evidence: The work of the Commissioner of the Metropolitan Police Service – Home Affairs Committee, HC 23, 11th May 2021, Q 94: <https://committees.parliament.uk/oralevidence/2152/pdf/>

181 Oral evidence: The work of the Commissioner of the Metropolitan Police Service – Home Affairs Committee, HC 23, 11th May 2021, Q 94: <https://committees.parliament.uk/oralevidence/2152/pdf/>

Patsy Stevenson, a woman who was forcibly arrested at the vigil, has also begun legal proceedings against the Metropolitan Police seeking for her £200 FPN to be rescinded. Ms Stevenson's solicitor Rachel Harger said the Metropolitan Police Force had claimed taking part in the vigil was a criminal act, which was:

"wrong in law... seriously ill-advised and entirely unnecessary."

"The decision by officers to then move to heavy-handed physical enforcement of the coronavirus regulations in order to arbitrarily arrest Patsy... showed utter contempt for her rights to privacy, freedom of expression and freedom to assemble and associate."¹⁸²

Despite these legal challenges, the Metropolitan Police has continued to misrepresent the law on protest. On 14th June, they tweeted "We remind those at the protest that we remain in a pandemic and gatherings of more than 30 people are illegal under the current Covid-19 guidelines."¹⁸³ They made no reference to the exemption for protests, or what a protest organiser would be required to do to ensure their protest was lawful.

It is unacceptable that the Metropolitan Police continues to actively curtail the public's right to protest rather than facilitating and upholding it. To enforce the policy as summarised in the above tweet would be a breach of our right to freedom of expression and shows that even today the police fail to understand the Regulations, despite being tasked with enforcing them.

Covid-Status Certificates

Across the globe, forms of Covid-status certification (CSC) are being introduced or considered for international travel. In the EU, digital COVID certificates will be introduced on 1st July, showing vaccination status, test results or prior infection (valid for 180 days).¹⁸⁴ Each country in the EU will decide on what benefit holding such certification will provide, but allow pass holder to bypass quarantine requirements is widely expected. In New York, the Excelsior Pass is being used as "a way to present digital proof of COVID-19 vaccination or negative test results," allowing entrance to businesses who can choose whether to require the pass as a condition of entry.¹⁸⁵ In Australia, similarly to Israel, vaccine passports are being suggested as way to incentivise vaccine uptake.¹⁸⁶ This approach is mainly being championed by wealthy states who have managed to vaccinate the majority

¹⁸² Sarah Everard vigil: Woman preparing legal action against Met Police over arrest – BBC News, 25th June 2021: <https://www.bbc.co.uk/news/uk-england-london-57610906>

¹⁸³ <https://web.archive.org/web/20210614172514/https://twitter.com/metpoliceevents/status/1404451046395629573?s=21>, accessed 22nd June 2021

¹⁸⁴ FAQ: How the EU's coronavirus certificates will work – Hanne Cokelaere, Politico, 21st May 2021: <https://www.politico.eu/article/how-eu-coronavirus-certificates-will-work-covid-19-faq-vaccine-passport-cert-pass/>

¹⁸⁵ Excelsior Pass: COVID-19 Vaccine – New York State (accessed 30th June 2021): <https://covid19vaccine.health.ny.gov/excelsior-pass>

¹⁸⁶ Australians have a 'vaccine passport' to avoid border closures. We're not using it. Yet – Daniel Ziffer, ABC News, 28th June 2021: <https://www.abc.net.au/news/2021-06-28/vaccine-passports-could-end-lock-downs-for-some/100242506>

of their populations, while states that are struggling to vaccinate their populations will see their citizens effectively excluded from international travel.

Israel, one of the first countries to introduce vaccine passports, scrapped its 'Green Pass' system on 1st June, just 3 months after it was introduced, as infection rates have dropped.¹⁸⁷ A group of five academics in Israel, four of whom are medical professors, wrote a warning to the UK in the Telegraph that "an atmosphere of intolerance took over" as the Green Pass was introduced:

"If there is anything the UK should learn from the Israeli experiment, it is that vaccination passes are irreconcilable with the basic principles of the medical profession. Coercion has replaced autonomy, punishment has replaced compassion, checkpoints have replaced confidentiality, segregation has replaced inclusion."¹⁸⁸

The issues outlined by these medical experts, as well as the Israeli Government's eventual abandonment of the scheme, demonstrates the serious ethical and operational issues with CSCs. Given that Cabinet Secretary Michael Gove and Deputy Chief Medical Officer Jonathan Van Tam visited Israel as part of the review into the introduction of CSCs, it is vital that the UK Government and devolved administrations note the limitations of Israel's scheme.¹⁸⁹

As well as considerable ethical and legal concerns, there is evidence that vaccine passes are not a silver bullet against coronavirus outbreaks. Royal Caribbean cruise operators, who require proof of vaccination for all guests and staff, reported two cases of coronavirus on board one of its cruise ships.¹⁹⁰

Amid these concerns, a huge data breach has highlighted the dangers of such a scheme. The NHS Digital website which allows people to book their coronavirus vaccine appointment also effectively allowed anyone to look up an individual's vaccine status, provided they had their basic biographical information.¹⁹¹ At a time when medical confidentiality could not be more important, such a data breach is serious failure to protect privacy, could be exploited by employers or scammers and could damage public confidence in the vaccine program.

Big Brother Watch has campaigned extensively against the introduction of Covid-status

187 Back to normal: Israel lifts nearly all COVID restraints as virus fades away – Times of Israel, 1st June 2021: <https://www.timesofisrael.com/back-to-normal-israel-lifts-nearly-all-covid-restraints-as-virus-fades-away/>

188 Vaccine passports backfire – the case of Israel shows that – Rivka Carmi, Asa Kasher, Eitan Friedman, Yoav Yehezkeili and Udi Qimron, the Telegraph, 27th May 2021: <https://www.telegraph.co.uk/news/2021/05/27/vaccine-passports-backfire-case-israel-shows/>

189 COVID-19: Michael Gove visits Israel to study country's 'green pass' as he mulls vaccine passport options – Jon Craig, Sky News, 20th April 2021: <https://news.sky.com/story/covid-19-michael-gove-visits-israel-to-study-countrys-green-pass-as-he-mulls-vaccine-passport-options-12280673>

190 Covid: Celebrity Millennium cruise guests test positive for virus – BBC News, 12th June 2021: <https://www.bbc.co.uk/news/world-latin-america-57446583>

191 NHS Covid jab booking site leaks people's vaccine status – Alex Hern, the Guardian, 6th May 2021: <https://www.theguardian.com/world/2021/may/06/nhs-covid-jab-booking-site-leaks-peoples-vaccine-status>

certification, in any form and for any use. Our detailed case against the introduction of Covid-status certification can be found in our report "Access Denied: the case against a two-tier Britain under Covid certification."¹⁹² We sent a copy to every parliamentarian and to date, 79 MPs have backed our pledge against CSCs.¹⁹³

RECOMMENDATION 16: 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.

NHS COVID passes

The status of CSCs remains unclear in the UK. Despite Michael Gove's "hope" to update Parliament after half-term recess (7th June), the results of the Cabinet Office's review into the introduction of CSCs are yet to materialise.¹⁹⁴ However the NHS App has undergone a series of updates, adding functions which allow individuals to display their vaccination, test and antibody status. With confirmation that a third vaccine dose will be offered to everyone over 50 by the winter, there are further questions around the practicalities of Covid passes.¹⁹⁵

At a press briefing on 10th May, when it was announced that England would be moving to 'Step 3' on 17th May, the Prime Minister did not confirm or deny the introduction of CSCs in the domestic setting:

"we'll be saying more later this month about exactly what the world will look like and what role there could be – if any – for certification and social distancing"¹⁹⁶

Little more has been announced 'on record', although Cabinet Secretary Michael Gove gave evidence to the Public Administration and Constitutional Affairs Committee's inquiry into the introduction of Covid-status certificates. He suggested that the purpose of CSCs would be to make venues "safer":

"Certification can be a tool that means we reduce the risk of transmission and make venues and activities safer (...) You can never make any venue or activity completely safe and quite rightly, as has been pointed out, even two doses of vaccination does not automatically inoculate someone completely against the

192 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>

193 MPs Launch Cross-Party Campaign Against Covid Passes – Big Brother Watch: <https://bigbrotherwatch.org.uk/campaigns/stopvaccinepassports/#crosspartycampaign>

194 Oral evidence: Covid 19 Vaccine Certification – Public Administration and Constitutional Affairs Committee, HC 42, 27th May 2021, Q 71: <https://committees.parliament.uk/oralevidence/2266/pdf/>

195 Third Covid vaccine for over-50s before winter – Tom Newton Dunn, the Times, 5th May 2021: <https://www.thetimes.co.uk/article/third-covid-vaccine-for-over-50s-before-winter-jhpj57g0d>

196 PM statement at coronavirus press conference – GOV.UK, 10th May 2021: <https://www.gov.uk/government/speeches/pm-statement-at-coronavirus-press-conference-10-may-2021>

risk of infection, transmission or indeed ill health. What it does do is dramatically reduce the risk.”

(...)

“We know that it would have a beneficial effect in those venues where it was deployed but we must be careful not to overstate the effect that it would have.”¹⁹⁷

When questioned about the rates of infection that would lead to CSCs either being introduced or withdrawn, Michael Gove refused to commit to a specific threshold, instead stating CSCs would not be needed “when we reach a level of protection and immunity in the population where we can feel confident.”¹⁹⁸ As of 30th June, 85% of adults in the United Kingdom have received one dose of a coronavirus vaccine and 63% have received two doses.¹⁹⁹ This high level of vaccine uptake and subsequent protection.

Despite no official update on the status of the Cabinet Office’s review, several journalists have reported that CSCs will not be introduced in the UK in any capacity, except for international travel.²⁰⁰ While this is welcome news, it is unacceptable that once again, significant policy and legal developments are being leaked to the press, rather than presented to Parliament or the public. It is key that the Government’s review is published promptly and in full.

RECOMMENDATION 17: The Cabinet Office’s review into the use of Covid-status certification must be published in full, alongside a Data Protection Impact Assessment, a cost-benefit analysis and an Equalities Impact Assessment before the introduction of ‘Step 4’ restrictions.

However, Covid-status certification appeared on the NHS app with little fanfare on 17th May. Health Minister Lord Bethell tweeted of the update:

“There’s an ambitious plan here, to completely change the way people relate to the medical records, and take informed steps to tailor their lifestyle and treatments to personal health challenges.”²⁰¹

Despite being introduced for international travel, Michael Gove admitted to MPs a limited

197 Oral evidence: Covid 19 Vaccine Certification – Public Administration and Constitutional Affairs Committee, HC 42, 27th May 2021, Q 72, Q 126: <https://committees.parliament.uk/oralevidence/2266/pdf/>

198 Oral evidence: Covid 19 Vaccine Certification – Public Administration and Constitutional Affairs Committee, HC 42, 27th May 2021, Q 72, Q 93: <https://committees.parliament.uk/oralevidence/2266/pdf/>

199 Vaccinations in the United Kingdom – GOV.UK, 30th June 2021: <https://coronavirus.data.gov.uk/details/vaccinations>

200 UK vaccine passport plans to be scrapped – Ben Riley-Smith, the Telegraph, 30th May 2021: <https://www.telegraph.co.uk/politics/2021/05/30/uk-vaccine-passport-plans-scrapped/>; Vaccine passports: It’s all over! Cabinet agrees it’s time to ‘live with Covid’... and you WON’T have to show proof of vaccination to attend mass gatherings – Jason Groves, the Daily Mail, 30th June 2021: <https://www.dailymail.co.uk/news/article-9738819/Vaccine-passports-over.html>

201 Twitter, Lord Bethell, 16th May 2021: <https://twitter.com/JimBethell/status/1393977885673799681?s=20>

number of countries had accepted the NHS app as proof of vaccination for entry.²⁰² The Health Secretary Matt Hancock stated on 3rd June that an agreement on how vaccine status would be shared for international travel was “some way off.”²⁰³ Indeed, Malta, put on the ‘green list’ for international travel, initially stated it would not accept the NHS COVID pass as proof of vaccination.²⁰⁴

The NHS App’s privacy notice initially stated that the certification would be used for far more than international travel. It would be used:

“to ensure that illness and death from Covid-19 can be minimised as the UK’s social and economic life is re-established. This will apply both during and after the Government “roadmap” allows citizens to emerge from the restrictions placed on the country during the COVID-19 pandemic response.”

(...)

“As the country resumes normal functions, this data will be useful for further aspects of unlocking as they arise, e.g for International travel or attendance at domestic events once these have been permitted by government policy and guidance.”²⁰⁵

The Privacy Notice also made reference to “ethnicity, vehicle registration plate, national insurance number, employer, biometric and genetic information and criminal convictions” under “Personal Data we collect and how it is used.”²⁰⁶ It appears that these data categories were entered in error and had been copied over from the Department of Health and Social Care’s Test and Trace privacy notice.²⁰⁷ Several days later these data categories were removed, although not before causing serious public alarm.²⁰⁸

Information Commissioner Elizabeth Denham said:

“The success of any Covid-status scheme will rely on people trusting them, and that means people having confidence in how the scheme would use their personal

202 Oral evidence: Covid 19 Vaccine Certification – Public Administration and Constitutional Affairs Committee, HC 42, 27th May 2021, Q 78: <https://committees.parliament.uk/oralevidence/2266/pdf/>

203 Internationally agreed vaccine passport ‘some way off’, says Hancock – Stefan Boscia, City AM, 3rd June 2021: <https://www.cityam.com/internationally-agreed-vaccine-passport-some-way-off-says-hancock/>

204 UK travel: Fresh chaos as Malta refuses to accept NHS app as proof of vaccination status – Michael Howie, the Independent, 30th June 2021: <https://www.standard.co.uk/news/uk/malta-proof-of-vaccination-nhs-app-airports-green-list-uk-travel-b943361.html>

205 COVID-19 vaccination status service privacy notice – NHS X: <https://web.archive.org/web/20210520101055/https://www.nhs.uk/covid-19-response/covid-19-vaccination-status-service-privacy-notice/>

206 NHS vaccine passports are here – but will they be used beyond international travel? – Eerke Boiten, the Conversation, 19th May 2021: <https://theconversation.com/nhs-vaccine-passports-are-here-but-will-they-be-used-beyond-international-travel-161122>

207 Test and Trace: overarching privacy notice – Department of Health and Social Care, GOV.UK, 23rd April 2020: <https://www.gov.uk/government/publications/nhs-test-and-trace-privacy-information/test-and-trace-overarching-privacy-notice>

208 Twitter, Eerke Boiten, 20th May 2021: <https://twitter.com/EerkeBoiten/status/1395380005392240643?s=20>

information.”²⁰⁹

The Department of Health and Social Care has done little to convince the public that it will prioritise data protection.

Several weeks later, the NHS App function was renamed ‘NHS COVID Pass’, giving all users access to either their vaccine status, test status or prior infection status.²¹⁰ Ostensibly “for event trials in England and travel abroad,” the app’s privacy notice states its purpose is “to ensure that UK residents in England can demonstrate their COVID-19 status in order to preserve public health” – which is a broad remit.²¹¹ It also references an “NHS COVID Pass Verifier (when available)”, which would allow a barcode generated by the App to facilitate entry to a venue when scanned by a ‘Verifier.’²¹² This function would appear to be part of the infrastructure for domestic CSCs, which could be scanned to allow entry.

These updates now form the basis of a functioning CSC system in England and Wales. Conservative MP David Jones asked Cabinet Secretary: “Given that you have not finished your review yet, why is it that the status certificate has been introduced as part of the app? Is that not putting the cart before the horse?”²¹³

Events Research Programme

The Events Research Programme, in which the NHS COVID pass has been trialled, has expanded considerably over the past few months, with CSCs playing an increasingly large role.

As part of the Events Research Programme, the Euro 2020 football matches held at Wembley Stadium on 13th, 18th and June 22nd were the first events to use the NHS app’s vaccine certification feature to regulate entrance to the event, along with lateral flow tests for those who had not been vaccinated.²¹⁴ The events, which hosted 22,500 fans, were given an exemption to the lockdown regulations through a Direction made under Regulation 9, which allows the Secretary of State to designate certain events as exempt from restrictions for the purpose of the Programme.²¹⁵ Following from this, the Department

209 Information chief: Digital Covid status certificates must be built on trust – Press Association, Wirral Globe, 5th May 2021: <https://www.wirralglobe.co.uk/news/national/19279033.information-chief-digital-covid-status-certificates-must-built-trust/>

210 ‘Covid Pass’ to open up summer of sport: New phone app will be made available TODAY in bid to unlock capacity crowds at Wimbledon and the Euros – John Stevens, the Daily Mail, 16th June 2021: <https://www.dailymail.co.uk/news/article-9690687/Covid-Pass-open-summer-sport.html>

211 NHS App privacy policy v 3.9 – NHS, updated 21st June 2021: <https://www.nhs.uk/nhs-app/nhs-app-legal-and-cookies/nhs-app-privacy-policy/privacy-policy/>

212 Twitter, Privacy Matters, 22nd June 2021: <https://twitter.com/PrivacyMatters/status/1407239237192257539?s=20>

213 Oral evidence: Covid 19 Vaccine Certification – Public Administration and Constitutional Affairs Committee, HC 42, 27th May 2021, Q 76: <https://committees.parliament.uk/oralevidence/2266/pdf/>

214 Vaccine ‘passports’ to be used for Euro 2020 matches at Wembley – Martyn Ziegler, the Times, 9th June 2021: <https://www.thetimes.co.uk/article/vaccine-passports-to-be-used-for-euro-2020-matches-at-wembley-2cmglqgbk>

215 The Events Research Programme Direction – The 2020 UEFA European Football Championships

for Digital, Culture, Media and Sport announced the third phase of the Events Research Programme, which would include the remaining Euro 2020 matches, the Wimbledon Tennis Championships,²¹⁶ the Grange Festival²¹⁷ and Lord's cricket matches.²¹⁸

Big Brother Watch has urgently questioned the legality of the Government's vaccine passport trials at Wembley Stadium for the Euro 2020 matches.²¹⁹ We have written to the Department for Digital, Culture, Media and Sport, questioning how the stadium might use fans' vaccination and test data and what the legal basis for the data collection is, given multiple apparent failures in the events' privacy policy.

The letter sent by Big Brother Watch's solicitors, AWO, warns that the controversial vaccine passport trial appears to be "occurring unlawfully and in non-compliance with the GDPR".

Fans at the England v Croatia match were required show proof they have received both Covid vaccinations on the NHS app, which may be "scanned" and "collected" by the stadium according to the privacy policy. Alternatively, fans had to evidence a negative result from a Lateral Flow Test, despite the tests being self-administered and the results self-reported. There are serious concerns over the accuracy of Innova Lateral Flow Tests (the rapid tests currently in use in the UK). Upon assessing the accuracy of the tests, the US Food and Drug Agency accused the Innova of "false or misleading" estimates of the clinical performance of the tests and said they should be disposed of, rather than used.²²⁰ There are also few safeguards to prevent an individual from faking a test result. Indeed, one Euros 2020 match attendee admitted on LBC Radio that he had not taken a lateral flow test and had inputted a non-existent negative result, which granted him entry to the match.²²¹

Data published by the Events Research Programme has similarly highlighted the problems with Lateral Flow Tests. Prof Jon Deeks, Professor of Biostatistics and head of the Biostatistics, Evidence Synthesis and Test Evaluation Research Group, University of Birmingham, said:

– Matches At Wembley on 13th And 18th June 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992119/ERP_Direction__UEFA_European_Football_Championship_Matches_on_13_and_18_June.pdf

216 Final Euros games at Wembley to host larger crowds in extension of Events Research Programme – Department for Digital, Media, Culture and Sport, GOV.UK, 14th June 2021: <https://www.gov.uk/government/news/final-euros-games-at-wembley-to-host-larger-crowds-in-extension-of-events-research-programme>

217 Grange Festival to stage full-capacity shows under pilot scheme – Matthew Hemley, the Stage, 28th June 2021: <https://www.thestage.co.uk/news/grange-festival-to-stage-full-capacity-shows-under-pilot-scheme>

218 Men's Internationals Ticket Update (21 June) – England and Wales Cricket Board: <https://www.ecb.co.uk/tickets/england>

219 Big Brother Watch questions legality of Wembley vaccine passport trial – Big Brother Watch, 11th June 2021: <https://bigbrotherwatch.org.uk/2021/06/big-brother-watch-questions-legality-of-wembley-vaccine-passport-trial/>

220 Rapid Covid tests used in mass UK programme get scathing US report – Natalie Grover and Aubrey Allegretti, the Guardian, 11th June 2021: <https://www.theguardian.com/world/2021/jun/11/us-health-agency-gives-innova-lateral-flow-covid-tests-scathing-review>

221 Twitter, LBC, 30th June 2021: <https://twitter.com/LBC/status/1410300437639663619?s=20>

"Negative lateral flow tests will not make Wembley safe. The risk will depend on the numbers who attend who are infected – which is now likely to be higher than at the Liverpool events due to the spread of the Delta variant. For the sake of Public Health safety, the government needs to pay attention to the MHRA authorisation, and the evidence that exists of the failure of these tests to detect many with infection a fair [number] of whom are likely to be infectious."²²²

Opposition

There has been continued opposition from across civil society and businesses on the subject of CSCs. In our previous report, we shared criticism from cinemas, pubs, restaurants, churches, festivals and the retail industry. Other industries have also come out in opposition to CSCs.

Sharon Heal, director of the Museums Association, said there are "lots of concerns" about the possibility of introducing CSCs:

"Making vaccine passports a condition of visiting will discriminate against those that can't have a vaccine for health reasons and those that have not yet been able to get a vaccine because they are not in a priority group. It would also put staff in a position of conflict with visitors if they have to vet documents or ask for personal information.

"Museums are ready to welcome all their visitors back and are safe spaces for all communities; we want to be more inclusive, not less."²²³

The chief executives of the Ironbridge Gorge Museum Trust and the Black Country Living Museum have warned that the introduction of vaccine passports would "put (...) staff in a difficult position where they have to turn people away" and that they are "more of a barrier to [reopening], and the opening up of the economy, than an acceptable passage to freedoms".²²⁴

In the course of its inquiry into CSCs, the Public Administration and Constitutional Affairs Committee heard evidence from representatives of businesses. Bill Bush, Director of Policy for the Premier League said he was not "happy to move to a society that requires papers before going to watch a football match" but saw CSCs as "the lesser of evils."²²⁵ Emma McClarkin, chief executive of the British Beer and Pub Association told the Committee:

"We are implacably against the introduction of vaccine certification for entry to pubs.

222 Expert reaction to announcement that 60,000 fans will be able to attend the Euro semi-finals – Science Media Centre, 23rd June 2021: https://www.sciencemediacentre.org/expert-reaction-to-announcement-that-60000-fans-will-be-able-to-attend-the-euro-semi-finals/?cli_action=1624465423.211

223 What would Covid passports mean for galleries and theatres? – Reece Goodall, the Boar, 29th April 2021: <https://theboar.org/2021/04/passport-for-galleries/>

224 Ibid.

225 Oral evidence: Covid 19 Vaccine Certification – Public Administration and Constitutional Affairs Committee, HC 42, 24th May 2021, Q 50: <https://committees.parliament.uk/oralevidence/2223/pdf/>

(...)

"You do not know when you will want to go to the pub, but you know it will be there whenever you need it. That would be a significant hurdle and barrier for people to overcome to go there. We do not need any more thinking twice among our consumers."²²⁶

The Public Administration and Constitutional Affairs Committee published its conclusion of its inquiry into the introduction of CSCs on 12th June. It strongly advised against the introduction of CSCs for domestic use, stating that the scientific case was not clear and that the ethical implications would be vast:

"the Government has not established a clear scientific case, nor a good overriding public interest case for the introduction of a Covid-status certification system. There remain a large number of uncertainties about the rationale for an operation of such a system, as well as serious ethical concerns in regards to discrimination and infringement of individual rights and significant data protection concerns.

"When we consider that the Government's own assessment that the case for introduction is "finely balanced", it is our clear recommendation that the Government abandon the idea of using a Covid-status certification system domestically."²²⁷

The Committee noted that the Government's obfuscation around CSCs at very least "demonstrates a lack of coordination and effective interworking between different departments and teams in the Government's response to Covid" and at worst "risked damaging trust in Government and in the measures put in place to tackle the pandemic."²²⁸ It also criticised the lack of cost-benefit analysis, the lack of information regarding the financial cost of the scheme and the lack of a Data Protection Impact Assessment, as well as noting that the high uptake of the vaccination appears to make CSCs unnecessary.

It noted that the Government's decision to exempt certain areas, such as public transport, from CSCs gives the impression that "decisions would be made almost arbitrarily and would not be based on scientific or public health reasons."²²⁹ However, the Committee also found that the benefits for venues which could be under the scope of CSCs were also poorly evidenced:

"It is clear that neither the hospitality nor the arts industry would institute a certification system unless it was imposed upon them as part of the transition towards a permanent end to social distancing restrictions.

226 Oral evidence: Covid 19 Vaccine Certification - Public Administration and Constitutional Affairs Committee, HC 42, 24th May 2021, Q 51: <https://committees.parliament.uk/oralevidence/2223/pdf/>

227 Covid-Status Certification: Second Report of Session 2021-22 - Public Administration and Constitutional Affairs Committee, HC 42, 10th June 2021, p 4: <https://committees.parliament.uk/publications/6264/documents/69158/default/>

228 Covid-Status Certification: Second Report of Session 2021-22 - Public Administration and Constitutional Affairs Committee, HC 42, 10th June 2021, p 6-7: <https://committees.parliament.uk/publications/6264/documents/69158/default/>

229 Covid-Status Certification: Second Report of Session 2021-22 - Public Administration and Constitutional Affairs Committee, HC 42, 10th June 2021, p 19: <https://committees.parliament.uk/publications/6264/documents/69158/default/>

(...)

"It is however clear to the Committee that the introduction of a Covid-status certification system would place new burdens and costs on those industries which have already suffered significantly."²³⁰

There have also been warnings that introducing CSCs could damage public trust. In a briefing to the Scottish Government, the Scottish Human Rights Commission warned that introducing Covid certification could marginalise vulnerable groups further and decrease trust. The Commission noted it could "undermine confidence in vaccination among those who are already less likely to accept a vaccine, and to create a false sense of immunity protection beyond that actually achieved through vaccination" and should only be introduced if it is necessary and proportionate.²³¹

Professor Stephen Reicher, a social psychologist from the University of St Andrews and SAGE member, similarly told the All-Party Parliamentary Group on Coronavirus:

"If a particular intervention, a particular form of vaccine passport creates alienation and undermines the level of vaccine take-up, then it's counterproductive, then that limits our ability to make people safe and limits our ability to reopen our society at every level."²³²

(...)

"Vaccine passports generate hate, controversy [and] division at a time when we need clarity, unity and everybody to be singing from the same hymn sheet.

"In some ways they are counter-productive, in some ways they are a distraction. They are not helping us move forward at this point in time."²³³

230 Covid-Status Certification: Second Report of Session 2021–22 – Public Administration and Constitutional Affairs Committee, HC 42, 10th June 2021, p 21: <https://committees.parliament.uk/publications/6264/documents/69158/default/>

231 Vaccine passports 'raise a number of human rights concerns', watchdog warns – Louise Wilson and Sam Trendall, Public Technology, 4th May 2021: <https://www.publictechnology.net/articles/news/vaccine-passports-%E2%80%99raise-number-human-rights-concerns%E2%80%99-watchdog-warns>

232 Strict Covid passport regime could undermine vaccination programme, experts warn – Jon Stone, the Independent, 5th May 2021: <https://www.independent.co.uk/news/uk/politics/covid-vaccine-passports-experts-b1841918.html>

233 Vaccine passports generate hate and division, COVID expert warns – James Morris, Yahoo News, 4th May 2021: <https://uk.news.yahoo.com/vaccine-passports-division-covid-expert-124605898.html>