

BIG BROTHER WATCH

**Written evidence to the Joint
Committee on Human Rights'
Inquiry: The Government's
response to covid-19: human
rights implications of long
lockdown**

January 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 technological 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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We welcome the opportunity to submit written evidence to this important inquiry.

Since the onset of the pandemic, we have been scrutinising emergency powers, providing policy analysis and emphasising the importance of close parliamentary scrutiny. We have been producing monthly reports on the Government's response to Covid-19, emergency powers and their impact on human rights and civil liberties and have circulated these reports to parliamentarians.¹

In this briefing, we aim to provide the Committee with responses to inquiry questions 1, 5 and 6.

The impact of lockdown on university students. Have interferences with students' right to liberty and right to private and family life been proportionate? Have the fixed penalty notices issued to students been proportionate?

Students across the United Kingdom have borne the brunt of lockdowns, with many universities going over and above legislation and Government guidance to police students' lives. This is amid clear evidence that students are suffering with isolation in small flats whilst being away from home: Mind reported that 73% of students said that their mental health declined during lockdown.² Many universities' priority has not been keeping students safe but business protection, which has manifested in heightened controls and penalisation. While spending on security has increased,³ eleven universities have failed to appoint new mental health staff this year and some decreased their staff numbers.⁴

Students' right to liberty has been constrained in ways that have gone beyond any Government guidance or Regulations. In our monthly reports in the use of emergency powers⁵, Big Brother Watch has documented:

- Student accommodation in Leeds being patrolled with guard dogs.⁶
- False imprisonment of students, with entire blocks being forbidden from leaving their flats for any reason (including to take Covid tests and to buy food, which are

¹Emergency Powers and Civil Liberties Reports (April - November) – Big Brother Watch: <https://bigbrotherwatch.org.uk/campaigns/emergency-powers/>

² The mental health emergency: How has the coronavirus pandemic impacted our mental health? – Mind, June 2020: https://www.mind.org.uk/media-a/5929/the-mental-health-emergency_a4_final.pdf

³ These are the universities that ramped up their security spending this academic year – Maddy Mussen, the Tab, 10th November 2020: <https://thetab.com/uk/2020/11/10/these-are-the-universities-that-ramped-up-their-securityspending-this-academic-year-181678>

⁴ Named and shamed: Eleven unis didn't appoint any new mental health staff this year – Maddy Mussen, the Tab, 27th November 2020: <https://thetab.com/uk/2020/11/27/named-and-shamed-eleven-unis-didnt-appoint-any-newmental-health-staff-this-year-184447>

⁵ Emergency Powers and Civil Liberties Reports (August-November 2020), Big Brother Watch: <https://bigbrotherwatch.org.uk/campaigns/emergency-powers/#monthly-report>

⁶ Leeds Uni security are breaking up flat parties with dog squads – Danny Shaw, The Leeds Tab, 23rd September 2020: <https://thetab.com/uk/leeds/2020/09/22/leeds-uni-security-are-breaking-up-flat-parties-with-dog-squads-52193>

permitted under the Regulations), and a “van load” of police officers preventing students from leaving.⁷

- Students across the country having their flats forcibly entered by security guards and police officers, after incorrect suspicions that house parties had been occurring.⁸
- Covid marshals allegedly threatening to report female students to the police for not giving their phone numbers.⁹
- Students facing fines and other sanctions from their universities for failing to follow social distancing requirements.¹⁰
- In Bristol, all students in an accommodation block being threatened with fines from their university unless they revealed which individuals had organised and attended a house party.¹¹
- Student accommodation in Manchester being surrounded with metal fencing to limit entrance and exits on the day the second national lockdown was introduced in November.¹²

These heavy-handed attempts at enforcing restrictions are disproportionate, far exceed the requirements of the Health Protection Regulations and could imperil students' health.

The Government, police forces and universities must focus on supporting students' mental health and ensuring that they are able to live and learn safely, not subject them to increased surveillance, intimidating security forces, fines, or false imprisonment.

⁷ Coronavirus: Students 'scared and confused' as university halls locked down 'without warning' – Peter Stuble, the Independent, 27th September 2020: <https://www.independent.co.uk/news/uk/home-news/manchester-universitylockdown-students-police-coronavirus-b632513.html>

⁸ Serious misconduct by UoB security staff alleged by students in survey – Louie Bell, Epigram, 12th November 2020: <https://epigram.org.uk/2020/11/12/unofficial-survey-alleges-serious-misconduct-amongst-uob-accommodationsecurity-staff/>; Police burst in on students to break up party only to find them sat watching The Crown – Maddy Mussen, the Tab, 11th November 2020: <https://thetab.com/uk/newcastle/2020/11/11/police-burst-in-on-students-to-break-up-partyonly-to-find-them-sat-watching-the-crown-52330>

⁹ Covid marshals have allegedly been harassing students despite following guidelines – Eve Brennan and Theresa Merkel, the Tab, 27th November 2020: <https://thetab.com/uk/newcastle/2020/11/27/covid-marshals-haveallegedly-been-harassing-students-despite-following-guidelines-52642>

¹⁰ See Big Brother Watch's August-September Emergency Powers and Civil Liberties Report, p. 73-6: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/10/Emergency-Powers-and-Civil-Liberties-Report-AUG-SEPT-2020.pdf>

¹¹ Rent Strike Bristol, Twitter, 24th November 2020: <https://twitter.com/RentStrikeBris/status/1331338334023643136?s=20>

¹² Furious students tear down 'new lockdown fences' during passionate protest against Manchester University's decision to 'pen them in' – Helen Johnson, Manchester Evening News, 5th November 2020: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/furious-students-tear-down-new-19231246>

Policing of Lockdown. Is the use of Fixed Penalty Notices (FPNs) for lockdown offences proportionate, fair and non-discriminatory? Is it clear why FPNs have been issued and are there adequate ways to seek a review or appeal of an FPN? Are the amounts of FPN fines proportionate? Has there been a disproportionate impact on certain groups?

Throughout the pandemic, the National Police Chief's Council (NPCC) has emphasised its '4 Es' approach (engage, explain, encourage, enforce), which it introduced in acknowledgement that the novel, complex and changing regulations were widely misunderstood by the public.¹³ However, increasing emphasis has been placed on enforcement and the issuing of FPNs since the autumn, with senior police officers stating forces would not "waste time" explaining regulations.¹⁴ This approach, which has led to an increase in FPNs being issued, has only exacerbated confusion between law and guidance from the public and police officers. The perceived need to "crack down" on non-compliance has led to many instances of police enforcing guidance rather than the law. The Committee has previously acknowledged this is a serious problem.¹⁵

FPNs under the Health Protection Regulations start at £200 and can increase to £6,400 for repeat offences. Breaches of the Self-Isolation Regulations and organising a gathering of more than 30 people can result in an instant £10,000 FPN – a fine of this magnitude would be life-changing for most individuals. Fines issued by a court are often means tested but result in a criminal record, leaving people to choose between a £10,000 FPN or the risk of a criminal conviction. Given the justifiable confusion around the legal restrictions, a fine of this amount is disproportionate.

FPNs do not have the safeguards of subsequent review by prosecutions lawyers 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. The Crown Prosecution Service's review of prosecutions under the Health Protection Regulations has found that 12% were unlawful. Applied to FPNs, this suggests that around 3,900 FPNs issued under the Regulations could have been issued unlawfully. In reality, it is likely to be far more, given the lack of safeguards around the issuing of FPNs. We have repeatedly called for an urgent review of FPNs issued under Health Protection Regulations, given the

¹³ Engage, Explain, Encourage, Enforce – applying the four 'E's – National Police Chief's Council: <https://www.college.police.uk/What-we-do/COVID-19/Documents/Engage-Explain-Encourage-Enforce-guidance.pdf>

¹⁴ More Fixed Penalty Notices issued since national Coronavirus restrictions were reintroduced, with crime 9 per cent lower than last year – National Police Chief's Council, 30th November 2020: <https://news.npcc.police.uk/releases/more-fixedpenalty-notices-issued-since-national-coronavirus-restrictions-were-reintroduced-with-crime-9-per-cent-lower-than-lastyear>; Met announces stricter Covid enforcement approach – Metropolitan Police, 6th January 2021: <https://news.met.police.uk/news/met-announces-stricter-covid-enforcement-approach-418519>

¹⁵ The Government's response to COVID-19: human rights implications, Seventh Report of Session 2019–21, HC 265 – Joint Committee on Human Rights, 14th September 2020: <https://committees.parliament.uk/publications/2649/documents/26914/default/>

likelihood that many have been issued unlawfully, though unfortunately this has not been heeded.

Evidence shows that FPNs have been disproportionately issued to BAME individuals. Analysis by the NPCC found that BAME people were 1.6 times more likely to receive a FPN under Health Protection Regulations than white people.¹⁶ The disparity increases even more for young men, with BAME 18–34-year-olds twice as likely to be fined than young white men. In some areas this disparity increases dramatically. In Cumbria, Asian people were 5.6 times more likely to be fined than white people, and black people were 3.8 times more likely.¹⁷ In Gloucester, black people were 9.8 times more likely to be fined, with BAME people overall 3.7 times more likely to be fined than white people. In North Yorkshire, Asian people were 9.1 times more likely to be fined and BAME people were 5.6 times more likely to be fined overall. In Derbyshire, black people were 8.3 times more likely to be fined, while Asian people were 5.6 times more likely to be fined. This data demonstrates significant disproportionality in the issuing of FPNs and points to serious policing discrimination. We have written to the Chairman of the NPCC and individual police forces urging an acknowledgement and remedy of this unacceptable situation – principally a review of the FPNs – but regrettably this has been met with a denial that there is any problem to be remedied.

With new guidance issued to officers that they should be issuing FPNs more frequently and more quickly, it is likely that unlawful and discriminatory fining will become even more prevalent.

The right to protest and lockdown. How have lockdown restrictions affected the right to protest? Has the correct balance been struck?

The right to protest has been consistently eroded under Covid Regulations.

There have been continued and confusing changes to the restrictions on protesting. Under the first set of Health Protection Regulations, protests were not explicitly prohibited in law, although they were not a listed reasonable excuse for leaving one's house. It was not until 28th August that 'political bodies' were permitted to organise gatherings, and protests were only explicitly permitted under the fourth amendment to the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, from 14th September. This exemption was removed under the Health Protection (Coronavirus, Restrictions) (No. 4) (England) Regulations 2020, on 4th November, then re-inserted to the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, on 2nd December. However, the newly created Tier 4 saw the protest

¹⁶ Appendix Tables for Policing the Pandemic Report - National Police Chief's Council, 27th July 2020: <https://cdn.prgloo.com/media/download/9e6084e976684f9babfa53e671c81d63>

¹⁷ Ibid.

exemption removed again on 20th December and applied to the entire nation as the third lockdown started, on 6th January 2021.

Even when protesting has ostensibly been permitted under the Regulations, organisers of protests have faced significant barriers, and in some instances, been misled about their rights by police officers. Groups have been required to carry out a risk assessment and to take “all reasonable measures to limit the risk of transmission of the coronavirus”, which includes taking account of “any guidance issued by the government which is relevant to the gathering.” The requirement to carry out risk assessments means that groups have had to submit documents to police officers for approval. Police officers are not public health officials and are not qualified to make such significant decisions. The requirement for a risk assessment also means that spontaneous protests or demonstrations are prohibited.

We have been contacted by groups ranging from anti-lockdown protesters, to students organising rent strikes, to climate change activists, all of whom have struggled to understand and follow the onerous requirements for organising protests.

Case studies

- Trans Rights Collective UK was forced to cancel their planned protest, after the Metropolitan Police “informed [them] that there is a likelihood that [they], any participants, stewards and even BSL interpreters of the Trans Rights Protest will be arrested on 5th September.” The group had previously received assurances from police that they would not face enforcement action and the reason for the sudden reversal was not explained. The group is now challenging this action.¹⁸
- A protest outside the Polish Embassy against the new restrictions on abortion in the country was cancelled after the Metropolitan Police refused permission for the protest to go ahead.¹⁹ Activists from Polish Migrants Organise for Change had previously safely organised a protest on 24th October, but plans to host further protests were leant on heavily by police officers. Organisers told us that police officers contacted them over the phone regarding a protest planned on 30th October and warned that “exemptions were granted to formal political organisations such as political parties only.”²⁰ They were also told they would have to create “a track and trace system of how people are travelling to and from the protest.” These requirements had no basis in law.
- A protest against the Coronavirus Act and the lockdown measures led to the arrest and £10,000 fine of its organiser Piers Corbyn on 29th August.²¹ Mr Corbyn

¹⁸ Liberty challenges police on cancelled trans rights protest – Liberty, 11th November 2020: <https://www.libertyhumanrights.org.uk/issue/liberty-challenges-police-on-cancelled-trans-rights-protest/>

¹⁹ Twitter, Netpol, 26th October 2020: <https://twitter.com/netpol/status/1320825354097991682?s=20>

²⁰ Comment from Polish Migrants Organise for Change, via correspondence to Big Brother Watch

²¹ Piers Corbyn, 73, arrested and handed £10k fine over Trafalgar Square 'anti-lockdown protests' – Harriet Brewis, the Evening Standard, 30th August 2020: <https://www.standard.co.uk/news/london/trafalgar-square-antilockdown-man-73-handed-10-000-fine-a4536441.html>

told the Guardian that he and the other organisers had carried out the appropriate risk assessment and plans to challenge the fine in court.

- On 2nd January 2021, a small protest against lockdown measures took place at Speakers' Corner in London, an area of great historical importance for free expression and dissent. The protest was violently broken up by large groups of police officers wielding batons.²² 17 people were arrested under the Health Protection Regulations. One individual, a young black woman who was alone in Hyde Park, was randomly picked out, forcibly arrested, pinned to the ground by a group of police officers and carried into a police van.²³ On Sunday 3rd January 2021, police marched in formation around Speakers' Corner, dispersing park-goers in a militaristic fashion.²⁴ These scenes are a stark reminder of how our right to protest has been eroded over the course of the pandemic.

The Government evidently accepts that gatherings can be organised in a safe way, with exceptions for Remembrance Sunday and Armistice Day included in November's second national lockdown and picketing being explicitly permitted under the latest lockdown restrictions. There is little meaningful difference in the risk of coronavirus transmission between a picket and a protest – distinguishing between the two is merely political and casts serious doubt on the proportionality of such a prohibition.

²² Big Brother Watch, Twitter, 4th January 2021: <https://twitter.com/BigBrotherWatch/status/1346135332245397505?s=20>

²³ Metropolitan Police Events, Twitter, 2nd January 2021: <https://twitter.com/MetPoliceEvents/status/1345409565249196034?s=20>

²⁴ Squads of Police Patrol Hyde Park, Speakers Corner - 3rd January 2021: https://www.youtube.com/watch?v=Hei6WfowtNQ&feature=emb_logo