BIG BROTHER WATCH

Written Evidence to the Independent Review of Public Order and Hate Crime Legislation

December 2025

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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1. Your experience of protests, public expression and hate-related incidents

From your perspective, how have recent protests, public demonstrations, campaigns, or expressions of strongly held views (online or offline) affected the people or communities you work with or represent?

- What kinds of incidents or patterns concern you most, for example intimidation, harassment, hateful or inflammatory language, restrictions on protest, or policing approaches?
- Are there particular examples that illustrate how current law and practice work on the ground?

Big Brother Watch is deeply concerned about the increasingly interventionist and restrictive ways in which successive governments have responded to political debates. The last few years have seen fierce online discussions as well as repeated waves of large-scale protest on issues ranging from climate change and immigration to the atrocities committed in the Israel-Gaza war.[1]

The open and non-violent expression of dissenting views, even when these are unpopular or shocking, is emblematic of a healthy and functioning liberal democracy. The tightening of the Public Order Act (POA) 1986, the creation of new offences under the POA 2023, and the excessive policing of non-crime hate incidents (NCHIs), on the other hand, all represent a clear shift in the state's increasingly hostile attitude to speech.

The rights to free expression and free assembly in the UK are protected by Articles 10 and 11 of the European Convention on Human Rights (ECHR) respectively. The ECHR stipulates that while these rights are not universal, they may only be infringed upon where this is 'lawful, necessary and proportionate'.[2] Unfortunately, we have found that the government's increasingly broad

[1] 'Revealed: Huge rise in protests being dealt with by police,' *Sky News,* 3 September 2025: https://news.sky.com/story/revealed-huge-rise-in-protests-being-dealt-with-by-police-13423877.
[2] European Convention on Human Rights, Article 10 (Freedom of expression), opened for signature 4 November 1950, ETS No. 5, entered into force 3 September 1953: https://www.echr.coe.int/documents/d/echr/convention_eng#article10.

interpretation of these last two elements have led to the creation of laws and police guidance that push far beyond the ECHR's limits. This has also contributed to a climate in which legitimate expressions of dissent are treated as a threat to be managed, rather than a core part of a healthy and functioning democracy.

It is the government's duty to ensure that all British citizens are able to express themselves freely within the framework of the ECHR. But we are worried that the government has shifted its role from facilitating free speech to repressing it, using increasingly more targeted and granular legislation. This pattern is particularly exemplified by the arbitrary and inconsistent way in which police forces across the UK arrest people for online speech (see question 3) and the excessively heavy-handed approach to free expression in the policing of pro-Palestine protests, particularly in the wake of the proscription of Palestine Action. Despite the Metropolitan Police issuing guidance on how these protests should be managed in accordance with the POA 1986 and the ECHR, there have been numerous cases of protestors being arrested for actions explicitly permitted by that guidance such as chanting particular slogans or displaying flags.[3] When even specific police guidance cannot resolve the uncertainty amongst officers created by vague laws, the problem lies with the legislation itself. In particular, the POA requires amending to ensure that it is precise, enforceable and consistent with Articles 10 and 11 of the ECHR (see question 5).

2. Clarity, fairness and accessibility of the law

How clear and fair do you consider the current public order and hate crime legislation to be for the people you work with and for the wider public?

- Are key concepts, such as harassment, alarm or distress, threatening or abusive behaviour, or stirring up hatred, well understood? If not, how might this understanding be improved?

[3] Siddique, H., *Protester's arrest for alleged antisemitic chanting in Nottingham ruled unlawful*, The Guardian, 1 July 2025: https://www.theguardian.com/uk-news/2025/jul/01/arrest-of-protester-over-antisemitic-chanting-in-nottingham-ruled-unconstitutional?; McEvoy, J., *Palestine Action policing guidance suggests protesters wrongly arrested*, Declassified UK, 10 Dec 2025: https://www.declassifieduk.org/palestine-action-policing-guidance-suggests-protesters-wrongly-arrested/

- From your perspective, are there aspects of the law that are too broad or too narrow, or that do not reflect how harmful conduct, including online, is experienced in practice?

Big Brother Watch believes that the parameters of current public order and hate crime legislation are too broad, both in terms of the definitions of key terms as well as in the powers it provides the police to enforce restrictions on free speech. While the ECHR stipulates that government should only restrict free speech in the most severe cases, we have found that the unclear phrasing of legislation has allowed for this threshold to be lowered in practice. This vagueness creates a framework that is ripe for abuse and furthers a chilling recharacterization of speech as something inherently threatening rather than an empowering and democratically essential element of a free society (see question 5).

'Serious disruption'

One of our biggest concerns is how the broad definition of the term 'serious disruption' in the POA 1986 and POA 2023 allows for the balance between free expression and protest restrictions to shift severely in favour of the authorities.

Changes made to sections 12 and 14 of the POA 1986 by the Police, Crime, Sentencing and Courts Act 2022 allow the police to restrict protests based on whether the noise generated by them causes 'serious disruption to the life of the community'. This effectively penalises larger, well-attended protests for popular issues, as a larger crowd will generate more noise. It is a testament to the government's hostile attitude to legitimate protest that it is prepared to tolerate small protests that are easy to ignore but eager to suppress mass expressions of dissent that pose a genuine challenge to the established order. Netpol has found that the rigid adoption of restrictions on protests under sections 12 and 14 of the POA 1986 are 'wholly disproportionate to any realistic prospect of serious public disorder, serious damage to property or "serious disruption to the life of the community".'[4]

The new offenses created by the POA 2023 also severely lowers the threshold for 'serious disruption'. Section 11 allows police to stop and search individuals

[4] **'**In Our Millions: Policing Mass Protest in England and Wales,' *Network for Police Monitoring*, May 2024: https://netpol.org/wp-content/uploads/2024/05/InOurMillions_WEB.pdf

without suspicion where they believe items may be intended to be used to ‘lock on’, despite those items being lawful to possess outside a protest context. The very existence of a protest can therefore trigger intrusive police powers and puts both protestors and non-participating passersby at risk of being stopped and searched. Police have already used these draconian powers a concerning number of times, particularly in the context of protests against the monarchy, climate change protests, and pro-Palestine demonstrations.[5] On 6 May 2023, 52 activists belonging to the anti-monarchy group Republic were arrested at the coronation of King Charles III on suspicion of carrying materials used to ‘lock on’, despite the fact that these were actually straps used to secure placards. Particularly concerning is that it appears the police made these arrests in bad faith, as the protestors had previously spent four months liaising with the Met Police to inform them of their planned activities. [6]

‘Cumulative disruption’

Big Brother Watch was therefore disappointed, though not surprised, when the government sought to expand already flexible powers by introducing an amendment to the Crime and Policing Bill which would allow the police to pre-emptively restrict protests based on their so-called ‘cumulative disruption’. Key terms in the amendment, including those related to how large an ‘area’ or how long a ‘timeframe’ might be remain undefined. This ambiguity would give the police full discretion to apply this framework inconsistently in different locations or against specific dissenting protest movements. This amendment also opens the door to a ‘first-come, first-served’ approach to free speech, where areas are effectively allotted a ‘protest allowance’ and demonstrations can be lawfully blocked once that allowance is exhausted. In practice, this could enable citizens to strategically monopolise protest space, preventing opposing groups from exercising their right to demonstrate. Causing disruption and inconvenience is inherent to effective protest, and successive governments’ efforts to restrict it on that basis therefore reveal a fundamental misunderstanding of its democratic purpose.

‘Harassment’, ‘alarm’, ‘distress’

[5] https://ohrh.law.ox.ac.uk/the-coronation-the-public-order-act-2023-and-free-speech/
[6] https://www.independent.co.uk/news/uk/home-news/arrests-coronation-gmb-republic-graham-smith-b2334749.html

Most restrictions to free expression in British law rest on the basis that the feelings of harassment, alarm, and distress caused by speech are equivalent in severity to more serious forms of crime, including physical violence or serious, realistic threats of such violence. We are concerned that the increasingly broad interpretation of key terms in sections 4, 4a, 5 and 18-22 have led to the undue restriction and consequent chilling of legal albeit sometimes challenging or unpleasant speech.

In November 2023, Aisha Jung was arrested on Trafalgar Square under section 5 of the POA 1986 for holding up a satirical placard reading 'War crimes, war crimes, war crimes, apartheid Israel, what a cuntry'. Though her sign critiqued the conduct of a country, and made no reference or threat to a particular group of people, the police held Jung for several hours and she was subjected to having her photograph, fingerprints, and DNA taken.[7] The use of section 5 is particularly chilling when applied against expressions of dissent against the British government, as was the case for Symon Hill, then campaigns lead for Peace Pledge Union, who was arrested in Oxford for shouting 'Who elected him!?' at the proclamation of King Charles III in Oxford.[8] For both these cases, it is difficult to see how legitimate critique of political institutions could make any passer-by feel 'harassment', 'distress', or 'alarm' significant enough to pose a genuine threat to safety and public order.

Section 5 of the POA does not require the suspect to have intended to cause harm, and therefore allows the police to make arrests based on what effects they think speech may have on other people. By granting the state wide discretion in the policing of speech, the government substitutes its own judgment for the public's ability to respond to it through the use of their own free speech in the form of debate, criticism, or public rejection. Treating subjective feelings of alarm or distress as inherently valid, particularly in highly nuanced political or cultural contexts, risks suppressing legitimate expression and eroding core civil liberties in the name of protecting sensibilities. Allowing police to determine what is offensive also encourages the conflation of distinct and sensitive issues, such as equating support for Palestine or opposition to

[7] Siddique, H., *Met police agree to pay £7,500 to woman arrested over Gaza protest placard*, *The Guardian*, 12 Dec 2025: https://www.theguardian.com/uk-news/2025/dec/12/met-police-agree-to-pay-7500-to-woman-arrested-over-gaza-protest-placard

[8] Mortimer, J. 'Republican Activist Wins Police Settlement After Unlawful Arrest for Shouting at King Charles' Proclamation', *The Byline Times,* 11 March 2025: https://bylinetimes.com/2025/03/11/republican-activist-wins-police-settlement-after-unlawful-arrest-for-shouting-at-king-charles-proclamation/

government's proscription of Palestine Action with antisemitism[9] or treating criticism of Islam as a belief system as inherently racist rather than theological.[10] This blurring of boundaries undermines lawful political discourse and provides incentives for the over-policing of controversial but legitimate speech.

3. Experiences of policing, prosecution and the justice system

Drawing on your experience or casework, how do the police and other authorities respond to public order and hate-related incidents?

- Are there examples of responses you would describe as sensitive, proportionate and effective?
- Are there examples where you consider the response inadequate, excessive or inconsistent, including differences between areas, communities or types of protest or speech?
- What helps or hinders people from reporting incidents, pursuing cases and obtaining support?

The ECHR stipulates that the freedom of expression is not a universal right. However, the police, government, and courts have embraced an interpretation of what can be restricted under the ECHR that is too broad.

Research from the Daily Mail has shown that some police forces make hundreds of arrests for speech-related offences across a one-month period, while others record almost none.[11] It is unlikely that this discrepancy is due to a significant difference in the types of speech expressed in different communities, and is instead likely to be a reflection of the unclear police guidance as to which expressions meet the threshold for arrest or not. In June 2023 the Home Secretary, working with the NPCC and the College of Policing, published a

[9] Keir Starmer, Jewish News; Siddique, H., *Kent police apologise to protester threatened with arrest for holding Palestine flag*, *The Guardian*, 13 Oct 2025 https://www.theguardian.com/uk-news/2025/oct/13/kent-police-apologise-palestine-protester-laura-murton

[10] See for instance the case of Ian Sleeper, who was arrested outside Southwark Cathedral in 2017 for holding a sign reading 'love Muslims, hate Islam', and charged with a 'religiously aggravated' offense under section 5 of the POA 1986. Following a legal challenge, in 2025, the High Court ruled that Sleeper's arrest and charge were both legitimate.

[11] Roy, C., *Britain's police state unmasked: Map reveals shocking numbers clapped in handcuffs over 'offensive' social media posts*, *Daily Mail*, 15 Nov 2025: https://www.dailymail.co.uk/news/article-15288091/Britains-police-state-unmasked-Map-reveals-shocking-numbers-clapped-handcuffs-offensive-social-media-posts.html

revised Code of Practise and guidance on the recording of NCHIs in June 2023 which encouraged police officers to 'consider whether the recording of a NCHI would interfere with the subject's right to freedom of expression'.[12] However, Big Brother Watch found that within this new Code's first year of operation, the number of NCHIs recorded across the UK increased. Between June 2023 and June 2024 around 10,500 NCHIs were recorded, just above the 9,900 average for the previous 3 years.[13]

As with the data on arrests, it is likely that the types of speech recorded as NCHIs range far beyond the parameters of their original intent. Big Brother Watch conducted research on the types of incidents recorded, which include a schoolgirl in South Yorkshire who disagreed with a classmate over the whether something was 'racially appropriate', a young child in Manchester shouting offensive terms, someone in Lancashire tearing down a Union Jack and 'running off with it', and numerous incidents across the country of patients in care institutions being reported for things they said while suffering mental health episodes. The existence of a policing category that allows innocent people to be recorded and investigated, particularly for incidents as innocuous as these, is profoundly dystopian and a contributing factor to why the UK is consistently ranked lower in terms of free speech than similar OECD countries.[14]

Because NCHIs can be reported based entirely on the subjective judgment of one person, they can be misused to turn the state into an arbiter of personal conflicts. A legal provision that encourages British citizens to call the police on each other for lawful expressions undermines the fundamental principles of the ECHR as well as centuries of British political culture based on liberty and civic responsibility. Because NCHIs encourage self-censorship and misapplies state power to speech that falls below the criminal threshold, Big Brother Watch agrees with the National Police Chief's Council and College of Policing that NCHIs are 'not fit for purpose'.[15]

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[12] Home Office, *Non-Crime Hate Incidents: Code of Practice*, UK Government, 13 June 2023.
[13] Beckford, M 'The petty rows police are recording as hate incidents instead of tackling serious crime', *The Daily Mail,* 1 April 2024: https://www.dailymail.co.uk/news/article-13261129/petty-rows-police-recording-instead-crime.html
[14] Forest, R., 'Influential global ranking of civic space downgrades UK to 'obstructed', 16 March 2023: https://www.bond.org.uk/news/2023/03/influential-global-ranking-of-civic-space-downgrades-uk-to-obstructed/
[15] Non-crime Hate Incidents Review Progress Report, *National Police Chief's Council* and *College of Policing,* October 2025, p. 2.

Regarding public order offences, there are of course cases that show the POA 1986 being applied appropriately.[16] However, this often reflects a judge's own sense of proportionality rather than the law itself. Police responses to speech crimes rely heavily on discretion, and while the higher threshold makes policing them more proportionate than the recording of NCHIs, many arrests still occur only for charges to be dropped later because officers had a 'flawed or limited understanding of human rights law', including the ECHR. [17] Given that free speech is a foundational right, this is deeply concerning.

A particularly large-scale example of this can be found in a document obtained by Declassified on 10 December 2025 which reveals that police have mistakenly arrested hundreds of pro-Palestine and anti-Palestine Action proscription protestors for actions which police guidance explicitly permitted.[18] This shows how when guidance is issued it remains up to the police to implement it effectively, and even an excessively granular approach to banning specific phrases and formulations may results in serious mistakes.

The proscription of Palestine Action was a decision made under terror law which is beyond the scope of this review. However, we believe it is important to situate this review within a broader political context and recognise that both the government's decision proscribe Palestine Action and its limited transparency surrounding its reasoning are highly relevant to the current climate surrounding protest and the regulation of public order. For many members of the public unfamiliar with the distinctions between protest and terror law, the Home Office's opacity regarding its decision to proscribe Palestine Action signals has contributing to a chilling effect on free expression and increasing uncertainty about at what point speech on Palestine crosses the 'line'.

4. Impacts on individuals, communities and trust

How does the current framework, and the way it is applied, affect the people and communities you work with?

[16] See for instance: R v Talland and Others, Woolwich Crown Court, 2024: https://www.cps.gov.uk/cps/news/neo-nazi-music-family-sentenced-stirring-racial-hatred
[17] https://extinctionrebellion.uk/2019/12/11/three-more-rebels-found-not-guilty-as-april-arrests-ruled-unlawful/ 11 December 2019.
[18]

- Are there groups who feel vulnerable to intimidation, hate or public disorder, inadequately protected by the system, or unfairly restricted in their ability to speak, worship, campaign or protest and how do these experiences influence trust in the police, prosecutors, government and other institutions?
- Can you see any practical ways to address these issues or improve trust and protection for those affected?

Big Brother Watch does not work with one particular community or group, and our supporters are drawn from across society.

We are concerned that Netpol research shows that legislation curtailing protests is applied more forcefully to groups who are already over-policed. This includes marginalised communities, in particular Black and Brown communities, as well as Arabic-speakers.[19] The same Netpol report also found that since the Hamas attack in Israel on October 2023, political speech critical of Israel has been policed 'almost entirely as a 'hate crime'', based on the government and College of Policing's strict adoption of the IHRA of antisemitism, which conflates the nation of Israel with Judaism as a religious and ethnic group.[20] The government's proscription of Palestine Action in July 2025 further intensified this pattern. Despite the then Home Secretary's assurances that legitimate protest for Palestinian rights would remain unaffected,[21] following Palestine Action's proscription, there has been significant confusion among police forces as well as the public as to what is and is not permitted. This has led to numerous cases of pro-Palestine protestors being mistakenly arrested for supporting Palestine Action.[22]

Incidents like this is why we believe that the interactions between public order, hate speech, and terror law should also have been included within the parameters of this review (see question 6).

[19] Network for Police Monitoring, *In Our Millions,* p. 31
[20] Network for Police Monitoring, *In Our Millions,* p. 6
[21] https://questions-statements.parliament.uk/written-statements/detail/2025-06-23/hcws729
[22] See for instance: Siddique, H., *Kent police apologise to protester threatened with arrest for holding Palestine flag*, *The Guardian*, 13 Oct 2025: https://www.theguardian.com/uk-news/2025/oct/13/kent-police-apologise-palestine-protester-laura-murton

The new offences created under the POA 2023, were specifically designed to counter direct-action methods traditionally used by climate protestors.[23] These include the offence of 'locking on' to objects and blocking roads or other infrastructure. Following the POA 2023's introduction, the BBC reported that some climate activists, who previously followed an accountability model (in which protestors waited to be arrested to maintain transparency and responsibility for their actions) now plan to disband immediately after completing an act of protest. An organiser from the climate action group Shut the System told the BBC that due to a risk of heavy penalties, 'activists are forced into a position where [they] have to go underground.' Besides causing a chilling effect on free expression, restrictions under the POA 2023 have thus eroded constructive engagement between activists and authorities. Big Brother Watch is concerned that if the government continues to impose protest restrictions other protest movements would be driven underground as well. Besides the representing a dire strike at the heart of our democracy, protest movements taking place in a framework of deep distrust against the authorities would likely operate with more disruption and less transparency and good faith than they do now.

5. Balancing freedom of expression and protest with safety and protection

In your view, does the current framework strike the right balance between:

- protecting freedom of expression, debate and protest, and
- protecting individuals and communities from intimidation, harassment, disorder and hate?

Big Brother Watch is concerned that since the Pandemic successive governments' expanding restrictions on freedom of expression, along with the

[23] Martin, R., Environmental protest, contention and the law: conceptualising the POA 2023, *Journal of Law and Society*, 52(3), 363–389 (2025).

rhetoric accompanying these legal clampdowns, have fostered a narrative that cynically re-characterises free speech from an essential and laudable feature of a liberal democracy into something inherently dangerous that must be suppressed for the sake of safety and sensibilities. Unfortunately, the very phrasing of this question, and indeed the terms of this review itself, reflect this new paradigm.

We are particularly concerned about the ways in which the government's sweeping restrictions on speech, as well as the police's heavy-handed enforcement of these laws, have been justified under the guise of 'protecting communities'.[24] One way in which this has been done is via the highly problematic premise that uncomfortable, challenging or unpleasant speech on salient cultural, political or foreign policy inherently issues constitutes a form of harassment.

Regarding pro-Palestine protests in particular, Netpol has identified a troubling pattern where legitimate criticisms of Israel's actions in Gaza have been construed as antisemitic. From then Home Secretary Suella Braverman's characterisation of pro-Palestine protests as 'hate marches',[25] to Prime Minister Keir Starmer's call for protests against the government's proscription of Palestine Action to be postponed following the Manchester synagogue attack out of 'respect for the grief of British Jews',[26] the government appears to be unable – or unwilling – to listen to protestors' own description of their cause. While unacceptable instances of antisemitism have certainly taken place at some pro-Palestine protests, it is irresponsible, both towards the protestors and the broader Jewish community, for the government to publicly misconstrue the intentions of thousands of legitimate protestors across the UK.

Far from being inherently dangerous to marginalised communities, free speech has long been a key tool for political, social, and cultural empowerment. Historically, it is not free speech but censorship and state propaganda that have led to repression and eventually physical violence against marginalised groups.

[24] UK Government, *New police powers to protect communities from disruption caused by protests*, GOV.UK, 2023: https://www.gov.uk/government/news/new-police-powers-to-protect-communities-from-disruption-caused-by-protests

[25] https://www.theguardian.com/politics/2023/oct/30/uk-ministers-cobra-meeting-terrorism-threat-israel-hamas-conflict-suella-braverman

[26] Starmer, K. https://www.jewishnews.co.uk/starmer-calls-for-pro-palestine-protestors-to-respect-the-grief-of-british-jews-this-weekend/

Even the most well-intentioned restrictions on speech can inadvertently end up hurting the very communities their supporters claim to protect . While the legal system gives the state extensive powers that operate from the top down to punish violent crime and protect property, it offers far fewer safeguards that restrain the state from the bottom up. In that context, the discomfort or offence caused by speech must be understood as a necessary element of a functioning democracy, outweighed by the far greater risk posed by granting the government the power to silence dissent or persecute vulnerable groups.

The government has recently adopted an increasingly granular approach to policing, seeking to prohibit specific chants, flags, or slogans. Yet this level of detail is unworkable in practice and leaves officers unable to reliably determine what is permitted. Even where guidance is issued (see question 3), the absence of clear ECHR principles and the lack of training on its overarching framework mean that officers are more likely to default to arrest. This approach disproportionately affects groups already marginalised within policing systems. For instance, at a Hizb ut-Tahrir protest outside the Egyptian Embassy in Mayfair, two women were arrested for holding placards written in Arabic. While the women offered a translation, Met officers claimed they could not verify it, and arrested the women on suspicion of a racially aggravated public order offence.[27] Given that the women were protesting in front of the embassy of an Arabic-speaking country, and therefore using an Arabic placard was an obvious way to protest, the officer's decision to default to arrest is especially concerning. The fact that the police treated Arabic as inherently suspicious shows how a failure to take the ECHR seriously in frontline policing exposes vulnerable communities to biased and disproportionate enforcement which further limits their ability to engage in legitimate peaceful protest.

Alongside the peaceful expression of political views, satire, unpleasant speech, and even insults that do not meet the threshold for defamation are also core markers of a functioning liberal democracy. Much of this type of speech occurs online. Figures from The Times show that officers from 37 police forces in the UK made 12,183 arrests under s127 of the Communications Act 2003 and s1 of the Malicious Communications Act 1988 in 2023, which constituted an almost 58%

[27] 'Two pro-Palestine protesters arrested in London after police could not verify translation of banner', 26 November 2023: https://www.arabnews.com/node/2415491/world

rise in arrests since 2019.[28] In November 2023, Julian Foulkes was arrested in Kent under the Malicious Communications Act 1988 for accusing a pro-Palestine user on X of being 'one step away from storming Heathrow looking for Jewish arrivals.' While a subsequent review of the case by the police concluded that the cautions was 'not appropriate in the circumstances' and should not have been issued,[29] the arrest remains a chilling example of the extent to which the police are empowered to escalate against online speech, even when it ultimately falls outside criminal liability.

Experiencing offence or discomfort at someone's political or cultural opinion is a normal part of life in a free democracy, and under the ECHR the threshold for criminalising speech should remain high. This does not mean that those who express unsavoury or offensive views should be able to do so without any consequences. On the contrary, research by the ETH Zurich and a group named Stop Hate Speech shows that free 'counter' speech is an effective way of countering hate speech in the public sphere.[30]

The UK already has some of the tightest restrictions on free speech and protest in any OECD country, and further restrictions would therefore represent serious challenges to the ECHR. In 2023, Index on Censorship ranked Britain in the third 'partially open' tier of free speech alongside Botswana and Panama.[31] Following the Police, Crime and Sentencing Act 2022 and the POA 2023, the CIVICUS monitor categorized free speech in the UK as 'obstructed', putting it in the same category as Hungary, Poland, and South Africa.[32] Big Brother Watch is concerned that when the government signals that clamping down on speech is acceptable, as it has done repeatedly by tightening public order and hate crime legislation, this further prevents a culture of tolerance and free discourse from flourishing in wider society.

[28] Parker, C. Smart, Y., Willoughby G. 'Police make 30 arrests a day for offensive online messages', *The Times,* 4 April 2025: https://www.thetimes.com/article/e4fce705-2a56-4e4a-aa04 0b55effb5bc0?shareToken=e8ccfb91a43625e44a12b7f106042012

[29] Jethwa, D. 'Retired special constable from Gillingham arrested for posting tweet warning against anti-Semitism', *Kent Online,* 11 May 2025.

[30] Hangartner, D., et al. 'Empathy-based counterspeech can reduce racist hate speech in a social media field experiment,' *PNAS*, 118 (50) e2116310118, 2021.

[31] Zancan, A., *Major new global Free Expression Index sees UK ranking stumble across academic, digital and media freedom*, *Index on Censorship*, 24 Jan 2023: https://www.indexoncensorship.org/2023/01/major-new-global-free-expression-index-sees-uk-ranking-stumble-across-academic-digital-and-media-freedom/

[32] Forest, R., 'Influential global ranking of civic space downgrades UK to 'obstructed', 16 March 2023: https://www.bond.org.uk/news/2023/03/influential-global-ranking-of-civic-space-downgrades-uk-to-obstructed/

6. Priorities for change, and any other issues the Review should consider

What changes, if any, would you like to see to improve the clarity, fairness and consistency of the law and its application in practice?

- This may include suggestions for legislative reform, improvements to guidance, training or oversight, better data and transparency, or changes in how authorities engage with communities and civil society.
- Are there specific examples, research, data or international practice that you consider particularly important for the Review to look at?
- Is there anything else you wish to bring to the Review's attention that has not been covered by the questions above?

We would encourage the Review to include the Online Safety Act (OSA) as part of the review going forward, especially considering that large sections of the population view the online world is as real as the offline one. Given how much speech occurs online it is concerning that the OSA essentially commandeers foreign technology companies to act as the British government's free speech watchdogs. While we have argued that offline speech is not protected enough, at the very least the government and the police who are implementing restrictions offline are democratically accountable. This is not the case for online platforms who, due to the threat of being fined for non-compliance with the OSA, are incentivised to over-police legal speech.

In 2013 the word 'insulting' was removed from section 5 of the POA 1986. Big Brother Watch believes that it should also be removed from sections 4 and 4a, as insult does not meet the threshold for speech restriction under the ECHR. Additionally, the POA 1986 addresses the mental element of offences but should also require consideration of whether the threatened or intended harm is realistically capable of being carried out. By helping ensure that enforcement focuses on genuine risks rather than speculative or implausible harms, this would facilitate a more proportionate application of the ECHR and prevent the systematic restriction of lawful speech surrounding contentious political or cultural issues.

We believe that the ECHR is not as present in the popular imagination as, for example, the First Amendment is in the United States. Indeed, in our experience many British people have an unclear understanding about what exactly their speech rights are. When the government prioritises restrictive approaches to controversial or dissenting speech over core ECHR principles, and the police are given broad discretion in enforcement, it is unfortunately unsurprising that the ECHR appears only a footnote in police guidance rather than a core principle underlying legislation. This is why the first step to ensuring that public order and hate crime legislation is interpreted uniformly is through more consistent reference to the ECHR, both in government communications and police guidance.

A core part of the anxieties surrounding the chilling of free speech comes from the government's messaging on protests and speech, which includes the consistent vilification of protestors, and a misrepresentation or exaggeration of their intent, actions or dangers they allegedly pose. The government should more emphatically celebrate the democratic importance of free expression, particularly when expressed through peaceful protest. Similarly, the police should work with experts to develop stronger police guidance grounded in ECHR principles to prevent situations where people are wrongfully arrested and consequently too afraid to express their views publicly again.

Given that protest restrictions apply heavily to their activities, we were concerned to hear that Palestine Solidarity Campaign was not invited to submit evidence for this review.