



**ALL PARTY PARLIAMENTARY GROUP ON DEMOCRACY
AND THE CONSTITUTION**

**POLICE POWER AND THE RIGHT TO PEACEFUL
PROTEST**

**An Inquiry into police conduct at the Clapham Vigil
and Bristol Protests and the implications for the
Police Crime Sentencing and Courts Bill by the All-
Party Parliamentary Group on Democracy and the
Constitution. Funded by the Joseph Rowntree
Reform Trust**

1 July 2021



This is not an official publication of the House of Commons or the House of Lords. It has not been approved by either House or its committees. All-Party Parliamentary Groups are informal groups of Members of both Houses with a common interest in particular issues. The views expressed in this report are those of the group. The report was prepared with funding from the Joseph Rowntree Reform Trust and members were assisted in compiling the report by independent counsel and the Institute for Constitutional and Democratic Research.

Quis custodiet ipsos custodes
(Who will guard the guards themselves?)
- Juvenal, "Satire VI", 347-348



Funded by



FOREWORD

Peaceful protest and our police service

The right to peaceful protest is an historic, integral part of our democracy used by citizens to collectively to promote political, economic, social, and environmental change. Meanwhile, the modern police service was founded on Robert Peel's most often quoted principle "The police are the public, and the public are the police."

In March 2021 the Clapham Common vigil for Sarah Everard was dispersed by the Metropolitan Police and in Bristol protests against new powers to restrict peaceful protest were dispersed by the Avon and Somerset Constabulary.

The Police Crime Sentencing and Courts Bill (PCSC) would substantially increase the powers of police to restrict peaceful protest. Therefore, this inquiry looks at the conduct of the police at the Clapham and Bristol gatherings and at whether changes are required in the PCSC Bill to ensure public safety alongside the right to peaceful protest.

The All-Party Parliamentary Group on Democracy and the Constitution was established to protect and take forward the fundamental values of democracy, human rights, and the rule of law. This inquiry consisted of hearings and evidence from attendees, experts, and the police in relation to the Clapham and Bristol events with a view to proposing amendments to protect these values during and after the passage of the PCSC Bill.

We are greatly thankful to the inquiry's counsel, Sam Fowles of Cornerstone Barristers, the Joseph Rowntree Foundation Reform Trust for funding this inquiry, and our secretariat the ICDR.

Geraint Davies MP

Chair APPG Democracy and the Constitution



Funded by



THE APPG ON DEMOCRACY AND THE CONSTITUTION

Officers:

Geraint Davies MP, Chair

Daisy Cooper MP, Vice Chair

Lord Garnier QC, Vice Chair

John Nicolson MP, Vice Chair

Dawn Butler MP, Vice Chair

THE APPGDC INQUIRY

Panel:

Geraint Davies MP, Chair

Daisy Cooper MP

Jonathan Djanogly MP

John Nicolson MP

Lord Hendy QC

Dawn Butler MP

Contacts:

<https://www.icdr.co.uk/bristol-clapham-inquiry-home>

geraint.davies.mp@parliament.uk

sfowles@cornerstonebarristers.com

info@icdr.co.uk

evoke@cornerstonebarristers.com



Funded by



CONTENTS

TITLE	PAGE
Executive Summary	5
Introduction	10
Methodology	12
Chronology of relevant events	16
Legal Background	26
Evidence	34
Analysis	46
Conclusions	71
Recommendations	75

EXECUTIVE SUMMARY

1. On 13 March the Metropolitan Police Service (“**MPS**”) dispersed a vigil on Clapham Common in the wake of the abduction and (alleged) murder of Sarah Everard (“the Clapham event”). From 19 March a number of protests occurred in Bristol relating to the proposed Police Crime Sentencing and Courts Bill (“the **PCSC Bill**”). With Avon and Somerset Constabulary (“**A&SC**”) using force to disperse protestors (“the Bristol events”). At both the events police purported to be acting in accordance with the regulations in place at the time enforcing the third national lockdown.
2. Parliament is currently considering the PCSC Bill. This will substantially increase the powers of police to restrict peaceful protest. The lockdown regulations raise some similar issues, including that of legal ambiguity. The conduct of the police at the Clapham and Bristol events thus allows us to consider the impacts of the PCSC Bill in practice. The inquiry posed three questions:
 - (1) To what extent was the constitutional right to protest sufficiently respected at the Clapham event?
 - (2) To what extent was the constitutional right to protest sufficiently respected at the Bristol event?
 - (3) How, if at all, can the answers to the above questions inform parliaments consideration of the PCSC Bill?
3. The inquiry was advised by counsel and supported by the APPG secretariat, the Institute for Constitutional and Democratic Research. Evidence was sought from three key groups of stakeholders: (1) independent experts, (2) attendees at the Clapham and Bristol events, (3) MPS and A&SC.
4. The right to protest is enshrined in common law, the European Convention on Human Rights (given effect in domestic law through the Human Rights Act 1998), and international law. It is both a negative right (to be free from interference and/or punishment for protesting) and a positive right (for the state to facilitate peaceful protest). Peaceful protests may be restricted where to do so is in accordance with the law, necessary in a democratic society, and proportionate.

5. In respect of the Clapham event, we note that the MPS was put in a difficult position by the ambiguity of the drafting in the relevant lockdown regulations. The Clapham gathering on 13 March was essentially of women to mourn the death of Sarah Everard, who it is alleged was killed by a police officer, and to make the point that our streets should be safe for women after dark. Therefore, sensitive policing as with other UK gatherings was appropriate. However, the MPS switched from an observational presence to a more physical police intervention after 18.30 and officers reported verbal abuse.
6. The APPG has identified a number of failings in the MPS conduct:
 - (a) The MPS applied a “presumption of illegality”, treating the event as prima facie unlawful. The regulations in place at the time, when read in conjunction with the Human Rights Act 1998 and relevant common law rights, did not support this interpretation. Even if this was not an official policy, it was clearly the approach adopted in substance and practice.
 - (b) The MPS did not take proper account of the right to protest, including the obligation to facilitate peaceful and safe protest.
 - (c) The MPS did not provide clarity and transparency as to how it understood and enforce the law. In particular, as to what it considered would constitute a “reasonable excuse” under the All Tiers Regulations in the particular context of the Clapham event.
 - (d) The MPS did not engage productively with Reclaim These Streets (“**RTS**”), the proposed organisers of the Clapham event. What could have been an organised, Covid safe event was, as a result, an ad hoc gathering in an already antagonistic situation.
 - (e) The MPS decision to move to “enforcement” against attendees was problematic because (a) it was taken on the basis of a situation created by the MPS’ earlier failure to engage productively with RTS, (b) MPS appear to have taken the decision partly on the basis that the event was becoming a “protest” rather than a “vigil” (an unlawful distinction), (c) there appears to have been no consideration about

whether the MPS intervention would increase the risks of Covid-19 transmission or violence.

- (f) While officers are entitled to use reasonable force to protect themselves, on several occasions the force used by officers against attendees was not proportionate.
7. In relation to the Bristol events, we note that A&SC, like the MPS, was put in a difficult position by the ambiguity of the lockdown regulations and had to deal with real instances of violence.
8. As with the Clapham event, however, there were significant failings in A&SC's conduct. In particular:
- (a) Like the MPS, A&SC applied a "presumption of illegality". This created an atmosphere of antagonism and prevented police from liaising with organisers in accordance with best practice.
 - (b) While certain enforcement action (and, arguably, the use of force) was justified, A&SC failed to distinguish between violent and peaceful protestors, leading to the use of force in unjustified situations. Multiple witnesses described such uses of force as "revenge policing".
 - (c) A&SC officers appear to have used excessive force against peaceful protestors, including the use of dogs, beating with batons, and "blading" with riot shields protesters who were on the ground.
 - (d) The case of the A&SC officers a few days after the protest forcing access into a female teenager's home after posing as a postal worker, then handcuffing her before she was dressed, whilst other officers ridiculed her, before admitting that she was the wrong person alleged to have attended the protest raises serious questions about police behaviour, sensitivity, and accountability.¹
9. We draw the following conclusions with relevance to the PCSC Bill:

¹ <https://amp.theguardian.com/uk-news/2021/apr/03/womens-anger-at-abuse-of-power-during-bristol-police-raids>

- (a) Protest is an essential democratic and constitutional right. The police have a duty to ensure that this right is peacefully upheld by facilitating protests and only intervening proportionately and where necessary to protect people's safety, public health and to prevent violence, disorder, or property damage. It is important that this is properly understood by citizens who want to exercise the right to protest and by the police responsible for its facilitation.
- (b) Where the law affords police too much discretion in respect of protests, they are put in the position of both law maker and law enforcer. This can be a conflict of interest and there is a case for independent decision-making alongside operational advice from the police.
- (c) The exercise of coercive powers over peaceful protest do not necessarily aid public order and may, in fact, increase the risk of violence and disorder.
- (d) Citizens have insufficient means to hold police to account.
- (e) The police need clearer codes of conduct and training, alongside accountability, for during pre-planned events and to any follow up. In particular training should be focussed on facilitating peaceful expression of the democratic and human right to protest, and actively prevent targeted harassment of those participating.

10. We therefore make the following recommendations:

- (a) The PCSC Bill must be amended to include clarification of the powers and duties of both police and citizens whilst facilitating and exercising the right to peaceful protest. This should include but not be limited to guidance over cooperation with organisers to ensure peaceful protest alongside public safety.
- (b) Clauses 55-61 of the PCSC Bill unnecessarily expand police powers over peaceful protest, create excessive legal ambiguity, and are a recipe for the arbitrary use of power. They should therefore be removed.
- (c) Parliament and the Government should explore the creation of an independent Protest Commission with the power to advise on or determine the conditions placed on particular peaceful protests.

- (d) The Secretary of State must commission an independent investigation into the effectiveness of current mechanisms for ensuring citizens can seek redress for complaints arising out of police conduct in public order situations. In particular, citizens caused unjustified injury by the police during peaceful protest must have recourse to justice.
- (e) Similarly, the police must be protected as public servants in law to deter and sanction physical attack and verbal abuse.

INTRODUCTION

11. In March 2021 two significant public order events occurred: On 13 March the Metropolitan Police Service (“MPS”) took enforcement action to disperse a vigil held on Clapham Common in the wake of the abduction and (alleged) murder of Sarah Everard (“the Clapham event”). From 19 March a number of protests occurred in Bristol relating to the proposed Police Crime Sentencing and Courts Bill (“the PCSC Bill”). Between 21 and 26 March Avon and Somerset Constabulary (“A&SC”) engaged in enforcement action to disperse protestors (“the Bristol events”). At both the Clapham and Bristol events police purported to be acting in accordance with the regulations in place at the time enforcing the third national lockdown in response to the Covid-19 pandemic.
12. Parliament is currently considering the PCSC bill which will substantially increase the powers of police to impose conditions on and, in some cases, prohibit peaceful protest. The lockdown regulations gave the police substantively similar powers. As such, the conduct of the police at the Clapham and Bristol events allows us to consider the impacts of the PSCS Bill in practice. The inquiry was therefore begun on that basis. Given the purpose of this APPG, it focuses primarily on constitutional rights.
13. The inquiry initially proposed to answer an array of specific questions. As we have analysed the material before us, however, we have reached the view that our overarching purpose is best served by posing just three general questions:
 - (1) To what extent was the constitutional right to protest sufficiently respected at the Clapham event?
 - (2) To what extent was the constitutional right to protest sufficiently respected at the Bristol event?
 - (3) How, if at all, can the answers to the above questions inform Parliament’s consideration of the PCSC Bill?
14. We are grateful to all those who submitted both written and oral evidence. In particular those who recounted traumatic events. We also wish to acknowledge the cooperation of the Metropolitan Police Service (“**MPS**”) and Avon and Somerset Constabulary

(“**A&SC**”). The APPG has no power to compel evidence, so all participation was entirely voluntary. The fact that both the MPS and A&SC engaged with this inquiry shows their commitment to accountability.

15. The matters dealt with in this inquiry concern some deeply emotive subjects. It is right that they have been debated in public with passion and tenacity. At a time when criticism of those in power is often dismissed as “cancel culture”, we consider ourselves privileged to have been part of an open and forthright public debate. In such a situation, however, passion can harden into entrenchment. Any criticism of police conduct can be seen as an attack on the police as a whole, pointing out where officers got things right can be equally controversial. We consider the MPS and A&SC to be friends and partners in the protection and enhancement of democratic and constitutional rights. Friends must be honest with each other. Our police perform an incredibly challenging role. Every day individual officers put themselves on the line to keep us safe. Public confidence in police and effective policing comes from accountability and learning lessons where mistakes are made. We have conducted this inquiry in the spirit of constructive cooperation and are grateful that those involved have participated in that same spirit.

METHODOLOGY

16. This inquiry represented an opportunity to both answer the substantive questions and explore ways to enhance the effectiveness of parliamentary scrutiny. We adopted a practice common in other representative systems, such as the United States, in which the inquiry is advised by independent counsel. This approach enhanced our ability to undertake forensic analysis of factual evidence and critical analysis of the legal and constitutional issues.
17. Evidence was sought by public advertisement on the APPG website at <https://www.icdr.co.uk/bristol-clapham-inquiry>. The inquiry was also reported in the Times legal newsletter and the New Law Journal and a release was given to lobby journalists. Specific requests for information were also made after investigations by Counsel. Evidence was principally sought from three key groups: (1) independent experts, (2) attendees and organisers of the events, (3) police. After the first call for evidence closed further evidence was sought from additional specified parties who we considered would have relevant perspectives for our consideration of the PCSC Bill. A specific set of questions was tailored for each group.
18. Written evidence was received from:

INDEPENDENT EXPERTS	
Lord Paddick	Former Deputy Assistant Commissioner of the Met, expert in public order policing.
Fmr. Ch. Supt. Owen West	Former Chief Superintendent (Specialist Operations) for West Yorkshire Police, member of the Scientific Pandemic Influenza-Behaviours (SPI-B) Policing and Security Group (SAGE), expert in public order policing.
Dr Andy Aidin-Aitchison	Senior Lecturer in Criminology at the University of Edinburgh.
Pippa Woodrow	Barrister specialising in criminal justice, immigration, and human rights.

Dr Genevieve Lennon	Chancellor’s Fellow at the University of Strathclyde, expert in policing and political violence.
Network for Police Monitoring (“ NETPOL ”)	NGO monitoring police conduct.
Dr Val Aston	Dr Aston was the lead author of the NETPOL submission. She subsequently provided an addendum (in response to a specific request from Lord Hendy QC during her oral evidence).
CLAPHAM COMMON ATTENDEES	
CCA1	Attended the Clapham event.
CCA2	Freelance journalist, attended the Clapham event.
CCA3	Attended the Clapham event.
CCA4	Attended the Clapham event.
CCA5	Attended the Clapham event.
CCA6	Involved in organising Reclaim These Streets.
CCA8	Journalist present at the Clapham event.
BRISTOL ATTENDEES	
BA8	Journalist, covered Bristol events, collected a range of different individuals’ experiences of the Bristol events.
NETPOL	Compiled a dossier of testimony from attendees at the Bristol events.
POLICE	
MPS	Oral evidence only.
Avon and Somerset Constabulary	
ADDITIONAL PARTIES	
Fmr. Sgt. Paul Stephens (“ XRI ”)	Retired sergeant serving in the MPS, acts as liaison between Extinction Rebellion (“ XR ”) and various police forces.

Extinction Rebellion Legal Support Group (“ XR Legal ”)	Members of the government have indicated that the PCSC Bill is drafted, in particular, to target the activities of groups like XR. We considered it appropriate to hear their perspective.
Leo Smith (“ HS2 ”)	Researcher who provided evidence relating to the policing of protest around HS2.

19. The APPG held oral evidence sessions on 22 April and 13 May. Oral evidence was received by Geraint Davies, Jonathan Djanogly, Lord Hendy QC, Daisy Cooper, John Nicolson, and Dawn Butler from:

22 APRIL	
Lord Paddick	Former senior police officer and expert in public order policing. Has substantial experience of public order policing in London. Therefore provides a valuable law enforcement perspective.
Dr Andy Aidin-Aitchison	Has written extensively on the role of police in a democratic society. Is able to engage with the entire call for evidence and provides a macro/societal perspective.
Pippa Woodrow	Barrister, has acted in a number of Coronavirus matters, including <i>Leigh</i> . Has extensive expertise on human rights and public order matters. Will be able to assist the APPG in understanding both practical and constitutional implications of the regulations in place at the time of the relevant gatherings and the PCSC bill provisions.
CCA3	Was present at events at CC and engaged with both police and other attendees.
BA8	Present at Bristol protests reporting for the Bristol Cable.
Representative of RTS	Original organiser of CC event.
13 MAY	
Assistant Commissioner Louisa Rolfe	Provided evidence on behalf of the MPS.

Paul Stephens	Provided evidence relating to the policing of protest beyond the Clapham and Bristol events.
Dr Val Aston	Swansea University and Network for Police Monitoring. Dr Aston's research focuses on the policing of protest and she was the lead author of NETPOL's submission to the inquiry.

20. In addition, the inquiry conducted independent desk research taking into account public statements, social media, Her Majesty's Inspectorate of Constabulary Fire and Rescue Services report into the Clapham event, and statements on behalf of the government explaining the PCSC Bill.
21. The APPG seeks to model both the highest standards of transparency and respect for individual rights. For that reason, all material relied on is made public. We have only redacted information where to do so is in line with an individual's reasonable expectation of privacy.
22. This inquiry was made possible by funding from the Joseph Rowntree Reform Trust. We are grateful to the Trust both for its support on this project and its support of a huge range of projects promoting public debate, democracy, and accountability (which would otherwise likely not be possible). The JRRT has asked for nothing in return for funding other than an evaluative report of the project (and the APPG would not have accepted a donation on any other basis).

CHRONOLOGY

DATE/TIME	EVENT	REF
<u>CLAPHAM COMMON</u>		
3 March	Sarah Everard reported missing.	
9 March	Wayne Couzens, a serving MPS officer, arrested in connection with her kidnap and murder.	
10 March	Sarah Everard's remains discovered. RTS formed, announces vigil on Clapham Common, informs MPS.	
11 March	<p><i>Morning</i></p> <p>Newspapers report that IOPC investigating whether MPS officers failed to properly investigate an allegation of indecent exposure against Couzens on 28 February.</p> <p>MPS responds to RTS informing them that MPS was “developing a local policing plan [for the vigil] but would be grateful for any additional information you may be able to provide that will assist us in developing an appropriate and proportionate local response.”</p> <p><i>Afternoon</i></p> <p>RTS meets with Lambeth Council and MPS. RTS proposed socially distanced/masked vigil lasting one hour. Clapham Common chosen to facilitate social distancing, candles banned (bring a light encouraged and 1000 battery powered tealights procured). First aiders to be present. Separate press and “lost child” points identified. Free hand sanitiser ordered. 40 volunteers to act as marshals. Full risk assessment to be presented in advance.</p>	HMIC 14-15

	<p>MPS refused to sign off on basis that could not control numbers and “an organised event with a set time and location would be in breach of All Tiers Regulations”</p> <p>Lambeth Council expressed the belief that people would attend event in any case so it would be better to work together to secure an organised and safe event.</p> <p><i>Evening</i></p> <p>Lawyers acting for RTS send pre-action letter to MPS asking for policy of banning all events on the basis of the All Tiers Regulations to be withdrawn on the basis that it is unlawful because (a) the All Tiers Regulations must be read subject to the Human Rights Act 1998 (which enshrines rights to freedom of expression and assembly), (b) the list of exceptions in Tier 4 is not exclusive, and (c) the Regulations, in any case, contained a general exception where an individuals has a “reasonable excuse”.</p> <p>Judicial review proceedings were issued.</p>	
12 March	<p>MPS responded to the RTS pre-action protocol letter refusing to resile from its position. It claimed, “the inclusion of protest as an exception for Tier 3 but not Tier 4 makes it plain beyond any real debate, that it was the deliberate intention of Parliament to include all gatherings for the purposes of protest within the general prohibition on gatherings”. However, the MPS also asserted that it “does not consider all protest is prohibited”.</p> <p>Harriet Harman QC MP wrote to the Commissioner of the MPS informing her that it was not the intention of Parliament that all gatherings for protest should be</p>	<p>HMIC 17</p> <p>18</p>

	<p>prohibited in Tier 4 and that she would personally be attending the proposed vigil on 13 March.</p> <p>9:00-10:00</p> <p>The Commissioner sought ministerial support for the MPS position at a meeting with the Home Secretary’s private secretary. The MPS claims such support was promised and the Home Secretary undertook to make a public statement to that effect. The Home Secretary was subsequently advised to wait for the outcome of the judicial review proceedings.</p> <p>12:00</p> <p>Further meeting between Lambeth Council, MPS, and RTS. MPS stated that they believed 6000 people had “shown an interest in attending” [it is not clear what criteria they used to determine this]. They thought other groups might attend the vigil to promote their own causes. MPS refused to confirm that RTS would not be prosecuted as organisers (if convicted they might be liable for fines of up to £10 000).</p> <p>Lambeth Council expressed the belief that the police attitude had “hardened”. There was also an apparent difference in opinion between local police (who had a more tolerant approach) and New Scotland Yard officers (who appear to have taken a hard line).</p> <p>The meeting was paused until the High Court gave judgment in the judicial review.</p> <p>15:45</p>	<p>19-20</p> <p>20-24</p> <p>24-26</p>
--	---	--

	<p>Holgate J gave judgment declining to give the relief sought but confirming that Tier 4 did not impose an outright ban on gatherings for protest.</p> <p>19:00</p> <p>Further meeting between MPS, Lambeth Council, and RTS.</p> <p>MPS expressed the view that Holgate J's decision had confirmed their position.</p> <p>RTS challenged that and proposed a staggered vigil (with all the safeguards already proposed) to prevent social distancing and overcrowding. They undertook to organise this and asked MPS to confirm that they would not be prosecuted for organising the event on that basis.</p> <p>The Council took the view that some sort of gathering would undoubtedly take place and the opportunity to ensure it was organised and safe should be taken.</p> <p>The MPS agreed that a staggered vigil may not constitute a breach of the All Tiers Regulations. However, they still refused to assure RTS that they would not be prosecuted for organising the vigil.</p> <p>While the meeting was ongoing the MPS released a press statement (without informing the other parties) claiming that the court had affirmed the MPS position and warning people not to attend the proposed vigil.</p>	
--	--	--

	The parties subsequently ended the meeting. RTS concluded that the risk of prosecution that they faced was too great and so announced that the vigil was cancelled.	
13 March	<p>At some point between RTS cancelling the vigil and the vigil beginning, organisation of the vigil was taken over by Sisters Uncut.</p> <p>MPS adopted an existing strategy known as “Operation Pima”. Under this all gatherings for protest were considered unlawful under the All Tiers Regulations. The Gold Commander ordered officers to deal with each possible vigil “individually”. Enforcement action should be considered where necessary but must be specifically authorised by the Silver commander. The MPS initial approach would be to use the “3Es” (“Engage, Explain, Encourage [to disperse]”). Officers should initially attend on foot.</p> <p>The MPS decided to consider the Arts. 10 and 11 rights of attendees “at the time” of the vigil</p> <p>Before 17:45</p> <p>Individuals (including the Duchess of Cambridge) attended throughout the day to lay flowers at the bandstand on Clapham Common.</p> <p>Police were present but did not intervene.</p> <p>HMIC describe the event at this time as a “transient vigil”</p> <p>From 17:45</p>	<p>HMIC 26-27</p> <p>28</p> <p>31</p> <p>31-33</p>

	<p>Police claim the “look and feel” of the event “changed around this time”. A crowd developed around the bandstand and people began to make speeches.</p> <p>Only at this point were PLT officers deployed. They went to the bandstand and attempted to engage with those making speeches.</p> <p>18:00 A minute’s silence held.</p> <p>Subsequently a speaker on the bandstand told the crowd that the vigil was over, and they should “disperse peacefully”.</p> <p>18:30 Some remained around the bandstand. Police took decision to move to enforcement. Officers were ordered to move to periphery of the crowd and tell people to disperse.</p> <p>18:31 PLT officers “squeezed”/“pushed” through the crowd to reach the band stand. They asked those present in the band stand to leave but claim they were ignored. Some attendees were vocally critical. One “repeatedly” shouted “how dare you” while another shouted “this is a fucking vigil for a dead woman that you fucking killed”.</p> <p>Officers went into the crowd. They claim to have met “verbal resistance” to their attempts to encourage people to leave. They claim some people were “whipping up the crowd”. Many people in the crowd refused to comply with</p>	
--	---	--

	<p>encouragement to leave. Officers explained that enforcement action would follow. This increased hostility.</p> <p>Officers claim to have experienced abuse from some attendees, and this was captured on body worn videos.</p> <p>Four individuals at the bandstand refused to leave. They were asked for their details so they could be issued with FPN. They refused to give these. They were then arrested. One woman was pinned to the ground by officers. This was captured in a video clip that went viral.</p>	
14 March	Home Secretary refers the MPS policing of the Clapham Common event to HMICFS.	HMIC 3
15 March	<p>Kit Malthouse, the Minister for Crime and Policing, was interviewed on BBC Radio 4. In response to a question about whether gathering for protest is lawful he claimed, “large gatherings and assemblies are illegal”.</p> <p>Mayor of London refers the MPS actions to HMICFS</p>	<p>HMIC 39</p> <p>3</p>
30 March	HMICFS publishes report concluding that the MPS “acted appropriately”.	
<u>BRISTOL</u>		
9 March	PCSC Bill First Reading	
15-16 March	PCSC Bill Second Reading	

19 March	A&SC becomes aware of plans to hold protest on College Green on Sunday 21 March. Makes public statement that such gatherings are “not permitted” “under Covid-19 regulations” and states police will take “enforcement action if proportionate and necessary to protect public health”. Claims to be trying to contact the organisers.	Link
21 March	<p>Before 20:00</p> <p>Protestors gather on College Green. ITV reported that they numbered in the “thousands”.</p> <p>Evening</p> <p>A number of protestors moved from College Green to Bridewell Police Station and began a sit down protest. At some point this deteriorated into disorder.</p> <p>Public statements from protestors indicate that the sit down protest was generally peaceful, and assurances were sought from riot police present that there would be no violence. While there was an isolated incident of two individuals behaving aggressively, the majority made a deliberate statement of non-violence by retreating and sitting down. Police subsequently attacked protestors with pepper spray and beat individuals who were sitting on the ground. More than 60 attendees were subsequently injured.</p> <p>Police claim that protestors threw missiles, smashed windows at Bridewell Police Station and set several police vehicles alight. It is not clear who “struck first”. Seven people were arrested.</p>	Link

	A&SC subsequently claimed that police had deliberately not engaged with protestors and had retreated inside Bridewell Police Station.	
23 March	<p>A&SC launched “one of the biggest appeals for wanted suspects we’ve ever done” at a cost running “into millions”. This is followed up by an appearance on Crimewatch on 24 March.</p> <p>Sit down protest of around 200 people on College Green broken up by riot police.</p> <p>Gathering on College Green of “a few hundred” ordered to disperse. A number of participants subsequently congregated on Deanery Road.</p> <p>A&SC mounted a public order operation assisted by officers from British Transport police, Devon and Cornwall, Dorset, Dyfed Powys, Gloucestershire, Gwent, and Wiltshire including dog units, horses, drones, and air support. 14 people were arrested.</p> <p>There are a substantial number of allegations of excessive force from protestors. Evidence received by this inquiry includes use of shields as offensive weapons (“blading”) and several reporters being subject to violent treatment. A&SC claims that officers were injured, and paint was thrown at a police horse.</p>	Link
26 March	More than 1000 people attend protest. Broken up by A&SC. Substantial accusations of police violence on both sides including against journalists.	Link

	<p>Katie McGoran (21) arrested in her student home. Male A&SC officers pretended to be delivering a parcel to gain entry then detained her in handcuffs while she was partially undressed and having a panic attack. It subsequently became clear that officers had mistaken her identity.</p> <p>Grace Hart detained in her home. Male A&SC officers gained access by pretending to be postal workers. Threatened her with multiple tasers. Also a case of mistaken identity.</p>	<p>Link</p> <p>Link</p>
27 March	Further protests. Police claim force used after “items including glass bottles and bricks” thrown at officers.	Link
29 March	A&SC arrest Tom Courtiour claiming he set a police vehicle on fire. Subsequently released because “he did not look like the person in the photos”.	Link
30 March	A&SC change approach to protests to reflect (in their view) the changed legal position. Protests pass off without violence.	Link
3 April	Peaceful protest.	Link

LEGAL BACKGROUND

The Right to Protest

23. The right to protest, sometimes framed as the right to peaceful assembly, is enshrined in both English common law and human rights law. Some variation of the right has been extant at least since the early 19th century when, in response to the Peterloo Massacre, the London Court of Common Council recognised “the undoubted right of Englishmen to assemble together for the purpose of deliberating upon public grievances.”²
24. Lord Denning MR, in *Hubbard v Pitt* [1976] QB 142 (CA), identified the right to protest “as one aspect of the right to free speech”. He went on to expand:
- “The right to demonstrate and the right to protest on matters of public concern... are rights which it is in the public interest that individuals should possess; and, indeed, that they should exercise without impediment so long as no wrongful act is done. It is often the only means by which grievances can be brought to the knowledge of those in authority – at any rate with such impact as to gain a remedy. Our history is full of warnings against the suppression of these rights... As long as all is done peaceably and in good order, without threats or incitement to violence or obstruction to traffic, it is not prohibited.” [174]
25. Lord Denning’s construction of the right has since been repeatedly affirmed (including by the, then, House of Lords).³ As Lord Hutton put it in *DPP v Jones and Lloyd* [1999] 2 AC 240 at 286: the right to protest is “one of the fundamental rights of citizens in a democracy”.
26. Since October 2000 the Human Rights Act 1998 has provided for specific duties for public authorities to respect the rights enshrined in the European Convention on Human Rights and for citizens to have direct remedies where these are breached. The ECHR does not contain a specific right to protest or peaceful assembly. It is included, or falls within, the rights to freedom of expression (Art. 10) and peaceful assembly and

² Quoted in *Hubbard v Pitt* [1976] QB 142 (CA) at 174

³ See, for example, *R (Central Electricity Generating Board) v Chief Constable of Devon and Cornwall* [1982] QB 458 at 470; *Hirst and Agu v Chief Constable of West Yorkshire* (1987) 85 Cr App R 143; *Verrall v Great Yarmouth Borough Council* [1981] QB 2020 (CA) at 217 and 222-2; *DPP v Jones and Lloyd* [1999] 2 AC 240 (HL) at 255, 280, and 286

association (Art. 11). The right to peaceful assembly also encompasses the right to choose the time, place, and modalities of the assembly.³

27. Articles 10 and 11 are both considered rights fundamental to democracy and so cannot, according to the European Court of Human Rights, be interpreted restrictively.⁴ They are both, however, qualified rights. This means that a public authority can restrict the rights where to do so is:
- (a) Necessary in a democratic society; and
 - (b) Prescribed by law; and
 - (c) In the interests of national security, or territorial integrity or public safety, or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights of others. In the case of Article 10, the right may also be restricted for prevention of the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary, or for the protection of the reputation of others.
28. In practice this means that any restriction on the right to protest must meet the above criteria and be a proportionate means of achieving one of the listed aims.⁵ This requires public authorities to consider, inter alia, whether the restriction imposed is the least restrictive measure that can achieve the stated aim.
29. The right to protest is also recognised in other international law instruments ratified by the UK. This means that the UK has undertaken, in agreement with other states, to protect and respect the right.⁶
30. The right to protest imposes both “positive” and “negative” obligations on public authorities. The negative obligation is, as set out above, not to interfere with the right to protest unless to do so is lawful and proportionate. The positive obligation is to “facilitate” protest. While the positive limb of the right has primarily been construed as

⁴ *Handyside v UK* (5493/72) [1976] ECHR 5 at 49; *Saska v Hungary* 58050/08 – HEJUD, [2012] ECHR 1981 at 21-23

⁵ ***Sunday Times v UK (1979) 2 EHRR 245***

⁶ International Covenant on Civil and Political Rights, Art. 21, UN Human Rights Committee, General Comment 37, (129th Sess., 2020)

an obligation to protect demonstrators from violent counter protestors, there is nothing in either the treaties or the caselaw to suggest that this is where the positive duties end. Indeed, in *Kudrivicius v Lithuania* [2013] ECHR 1310 at 159-160 the positive duty was expressed as:

The authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens...

In particular, the Court has stressed the importance of taking preventive security measures such as, for example, ensuring the presence of first-aid services at the site of demonstrations, in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature.

31. This seems directly analogous to a situation in which police are asked to facilitate an event in such a way as to minimise the risk of coronavirus transmission.

The Police Crime Sentencing And Courts Bill

32. The Bill deals with a range of different subjects. The relevant parts for the purposes of this Inquiry are parts 3 and 4. These address public order powers and offences. The relevant provisions of the Bill may be loosely grouped in the following classes:
33. **Police powers to restrict protest** – The Bill provides for a substantial increase in the powers of police to restrict, condition, or outright prohibit peaceful protest. These proposed changes would:
 - (a) Lower the legal test that must be met for the police to place conditions on protests - Currently police must be satisfied that the event will cause “serious damage to property, serious disruption, or incite unlawful behaviour”. In contrast, and in addition, the Bill proposes to allow police to place conditions on protests they consider noisy enough to cause “intimidation or harassment” or “serious unease, alarm or distress” to bystanders or serious disruption to the activities of an organisation or to the life of the community [CII. 55, 56] and the Secretary of

State may, by regulation, define the meaning of any aspect of such serious disruption [**clause 55(3) and 56(6)**].

- (b) Allow police to place more conditions on static demonstrations – Currently police may only impose conditions on a static protest by specifying where it can take place, how long it can last, and how many people can be involved.⁷ The Bill would empower police to impose any condition they think is necessary to prevent “disorder, damage, disruption, impact, or intimidation”. [**Cl. 56**]
- (c) Extend police powers to one person protests – Currently public order powers only apply to gatherings of two or more people.⁸ [**Cl. 61**]
- (d) Give the Secretary of State the power to define “serious alarm or distress” – This gives the Secretary of State the discretion to include new activities within the definition.

34. New protest offences – The Bill creates new protest offences and makes it much easier for police to secure convictions:

- (a) Failure to comply with a police condition – Currently the prosecution must show that the accused knew about the condition.⁹ The Bill would allow convictions where the prosecution can prove that the accused “ought to have known”.
- (b) New statutory offence of public nuisance – The Law Commission recommended that this existing common law offence be placed on a statutory footing. The existing offence provides that a person commits such a nuisance where they (a) do an act not warranted by law or omit to discharge a legal duty” and (b) the effect is to “endanger the life, health, property, or comfort of the public or a section of the public” or obstruct the public in the exercise or enjoyment of lawful rights.¹⁰ The new offence would dilute element (b) so that it includes causing or

⁷ s14(1), Public Order Act 1986

⁸ s16, Public Order Act 1986

⁹ s12(10) and s14(10), Public Order Act 1986

¹⁰ Archbold Criminal Pleading, Evidence & Practice, 2020 edition, para 31-40; *R v Rimmington et al* [2005] UKHL 63 at 30

risking causing, *inter alia*, “serious annoyance, serious inconvenience, or serious loss of amenity”. Those guilty of the offence can be sentenced to up to ten years imprisonment and/or an unlimited fine. [CI. 60]

- (c) Increases the sentence imposed when an individual is convicted of damaging a “monument” – The term “monument” is broadly defined. The maximum sentence is ten years [CI. 46]

35. **New limits on protests around Parliament:**

The Bill proposes

- (a) Expansion of the “controlled area” around Parliament, within which the unauthorised use of loudspeakers, erecting of tents, and use of “sleeping equipment” is prohibited [CI. 58].
- (b) The addition of “obstructing the passage of a vehicle into or out of the Parliamentary Estate” to the class of prohibited activities. [CI. 58]

36. **New powers in relation to Traveller communities:**

The Bill proposes

- (a) Creates a new offence of “residing on land without consent in or with a vehicle”. [CII. 62-64]
- (b) Gives police new and expanding powers, including permitting the use of existing powers to remove “unauthorised encampments” where there are just two vehicles in situ (currently there must be six) and permitting the police to remove trespassers from land that includes part of a public highway. [CII. 62-64]

Coronavirus Legislation

37. The UK’s coronavirus lockdown legislation has been, in the words of HMICFS:

“...frequently changing national restrictions, lockdowns and definitions of tiers. There have been six phased governmental approaches to implementing restrictions on the rights and activities of citizens. The first national lockdown in England was between late March and June 2020. The Department of Health and Social Care (DHSC) established these, based on

expert advice available at the time and aligned to the Health Protection Regulations.” [6]

38. The law in place at the time of the events in question was the Health Protection (Coronavirus Restrictions) (All Tiers) (England) Regulations 2020 (“**the All Tiers Regulations**”). These imposed the following restrictions:
- (a) No person may participate in a gathering which “takes place outdoors... and consists of more than two people” [**Sch. 3A, para. 4**]
 - (b) No person may organise a gathering comprising more than 30 persons. [**Sch. 3A, para. 5**]
39. The regulations contained a non-exhaustive list of exceptions to the above rules, but “protest” was not specified on the list. [**Sch. 3A, paras. 6-7**]
40. Where a police officer believes that a number of people are gathered in contravention of the regulations, they are empowered, *inter alia*, to order them to disperse and/or remove them from the location. [**Reg. 9**]
41. A person would be guilty of an offence if they breached one of the regulations “without reasonable excuse”. [**Reg. 10**]
42. A constable is empowered to issue a fixed penalty notice where they “reasonably believe” a person is committing an offence. Alternatively, they may be charged with an offence under the Regulations. If convicted, organisers of events could be fined substantial sums. [**Reg. 11**]
43. In *R (on the application of Dolan) v Secretary of State for Health and Social Care* [2020] EWCA Civ 1605, the Court of Appeal had to consider, amongst other things, the compatibility of an earlier version of the Regulations with Article 11 of the Human Rights Act. The court held that the regulations were not inconsistent with Article 11 on the basis that the regulations provided a general defence of “reasonable excuse” [**at 101**].
44. In *R (Leigh et al) v Commissioner of the Police of the Metropolis* [2021] EWHC 661 (Admin) (the case brought by RTS) Holgate J, sitting in the High Court, was asked to make three interim declarations:

“(a) Schedule 3A to the All Tiers Regulations 2020 insofar as it prohibits outdoor gatherings, is subject to the right to protest protected by the Human Rights Act 1998;

(b) the Metropolitan Police Service’s policy prohibiting all protests irrespective of the specific circumstances is, accordingly, erroneous in law;

(c) persons who are exercising their right to protest in a reasonable manner will have a reasonable excuse for gathering under that schedule.”
[18]

45. He declined to make those declarations explicitly but nevertheless held:

(a) The HRA 1998, as primary legislation, trumps the All Tiers Regulations. The latter must therefore be interpreted consistently with the former. This means that the All Tiers Regulations must be interpreted subject to Articles 10 and 11 of the ECHR.

(b) The All Tiers Regulations cannot, therefore, be interpreted as prohibiting all gatherings for the purposes of protest. Any policy interpreting them in this way would be unlawful. It was not clear, however, that the MPS had such a policy. Whether the MPS had such a policy is a question that can’t be dealt with at the interim stage and must be subject to a full hearing.

(c) It is for police to ensure that they interpret the All Tiers Regulations lawfully. In some circumstances this may mean prohibiting a certain protest but in others it may mean facilitating such a protest.

46. The lawfulness of the proposed Clapham Common vigil was not before the court so it would be improper for the court to comment on it.

47. Holgate J closed his judgment by saying:

Given what has happened in the hearing, it may well be that there will be further communications between the claimants and the solicitors they instruct and the police to deal with the application of the Regulations and Articles 10 and 11 to this particular event, the vigil. But that is not a matter upon which the court should comment. [28]

48. Since 29 March new regulations have been in place which contain a specific exemption for peaceful protest.

EVIDENCE

Independent Experts

49. The following themes arose from the written and oral evidence gathered from independent experts:

Post 2009 Best Practice

50. After the G20 protests in 2009 and the death of Ian Tomlinson, the (then) HMIC produced “Adapting to Protest – Nurturing the British Model of Policing”. This set the tone for “best practice” in policing protest which prioritised dialogue between police and demonstrators and an approach built on cooperation, consent, building legitimacy, and minimising the use of force. It was noted, in particular, that it is generally safer and more practicable to facilitate rather than suppress peaceful demonstrations.
51. The Clapham and Bristol events represented a turn away from this best practice. They demonstrate an approach to protest in which cooperation with demonstrators is minimal or unproductive and under which police resort far more quickly to coercive powers. Evidence submitted on behalf of Extinction Rebellion indicates that this approach is not limited to the events at Clapham and Bristol but is applied in respect of other protests that either the police or the government of the day deem unacceptable. The various coronavirus regulations facilitated this coercive approach by (at least in the eyes of the MPS and A&SC) implementing a prima facie ban on peaceful protest and giving police additional coercive powers over attendees. The PCSC Bill expands the coercive powers available to police and creates, in effect, a presumption against protests that are “noisy” or a “nuisance”.

Legal uncertainty

52. There was a general consensus amongst experts that the coronavirus regulations in place at the time of the Clapham and Bristol events left the law insufficiently clear. The fact that the words “peaceful protest” were not included in the (non-exhaustive) list of “reasonable excuses” in the All Tiers Regulations created ambiguity. Several witnesses

noted that proper parliamentary scrutiny may have avoided such ambiguities in drafting. As it was, the rushed way that the regulations were implemented meant parliament was not given the opportunity to conduct effective scrutiny.

53. There was consensus amongst the independent expert witnesses that the correct approach to applying the All Tiers Regulations is to start from the presumption that peaceful protest was lawful. The Article 10 and 11 rights, and the longstanding common law right to protest provide for a presumption of legality so long as the protest is peaceful. The All Tiers Regulations provided for lawful interference with the right to protest but police should have considered, first, what intervention was necessary and proportionate. This means that police should have applied the minimum interference necessary to protect public health. Several experts noted that the Chief Medical Officer and other government advisors have stated in public that there is minimal risk of coronavirus transmission from public demonstrations and that this was demonstrated in practice by the low levels of transmission recorded at the (much larger) Black Lives Matter protests in summer 2020.
54. There was consensus amongst experts that the right to protest includes both a “negative” right (the right to protest free from punishment or interference by the state) and a “positive” right. The latter imposes an obligation on public authorities, including the police, to facilitate peaceful protests.

“Acceptable” and “Unacceptable” protests

55. Several experts noted a disinclination between the treatment of protests for causes deemed inoffensive or acceptable and those for causes deemed unacceptable. They noted that, within certain bounds, the right to protest and the police duty to facilitate protests are “cause blind”: they apply with equal force regardless of whether the subject (or subjects) of the protest or organisation organising the protest are deemed acceptable to the state. Pippa Woodrow, in particular, noted that certain media and political commentary had suggested that the police should have refrained from enforcement action at the Clapham event because it was a “vigil” rather than a “protest”. This is a false distinction. The common law and human rights which protect protest apply with equal force regardless of whether the event is called a “vigil” or a

“protest”. Indeed, given that political speech is considered particularly worthy of protection in a democracy, a “protest” is arguably the form of gathering assembly which most merits protection.

Politicisation of the police and unaccountable police powers

56. A number of experts pointed out that, when police are given expanded coercive powers in relation to protest, they become both “law maker” and “law enforcer”. The legitimacy of the police relies, in no small part, on their operational independence from the government of the day. Their role is purely to enforce the law, whatever it may be. When, however, police are given the power to place limits on protest and/or effectively (through conditioning) to determine whether a protest can or cannot go ahead (and impose penalties on those who do not comply) they are effectively empowered to determine which protests are “allowed” and which are not. The various coronavirus regulations created such a situation by giving police powers to impose fines on organisers and attendees of public gatherings. Pippa Woodrow gave evidence that coronavirus fixed penalty notices (“**FPN**”) have been issued in an excessive manner (including for breaches of mere guidance, which does not have the force of law). FPN, while often considered at the low end of sanctions available to police, can be particularly punitive. There was no mechanism of appeal for a coronavirus FPN and, where police refused to reconsider an erroneously issued FPN (as many forces did) the innocent recipient had no option but to challenge it in court. This would likely cost them substantially more than the fine imposed by the FPN.
57. The PCSC Bill expands the power of the police to, in effect, determine whether protests can take place and under what conditions. Indeed, police are already able to do this to a substantial extent through their existing powers under the Public Order Act 1986. None of our experts suggested that further powers were necessary to police peaceful protests. Indeed, Lord Paddick noted that, in general, police forces (other than the MPS) had not, themselves, considered further powers necessary. A number of former senior police officers who gave evidence said that the principle limiting factor on the police is resources, not powers. From 2011 governments have substantially reduced (in real terms) the resources available to police. None of our experts considered it appropriate to mitigate depleted resources with extended powers. It was noted by several experts

that police, particularly the MPS, have been excessive in the use of their existing powers in the recent past. An example given was the case of *Jones v Commissioner of Police for the Metropolis* [2019] EWHC 2957 in which Dingmans LJ and Chamberlain J, sitting in the Divisional Court, held that the Commissioner had used her powers under s. 14 of the Public Order Act 1986 unlawfully in banning Extinction Rebellion protests throughout London.

58. When police are put in the position of “law maker” they become politicised. This, in many cases, is involuntary. It reduces the legitimacy of the police and they become seen by protestors as an opponent rather than an impartial arbiter. There was a general consensus that, in giving the police such powers, lawmakers put them police in an unfair and highly difficult position.

Attendees: Clapham Common

59. The following themes arose from the written and oral evidence submitted by individuals who attended the Clapham Common event:

Police engaged with attendees in an antagonistic manner

60. Almost all of the attendees described antagonistic behaviour by MPS officers. Several who attempted to engage with officers before or near the beginning of the event (around 18:00) reported that officers refused to engage with them at all, generally standing in small groups and talking amongst themselves. Some were reported to comment derisively about the speakers on the bandstand. One is reported as saying “oh she’s moaning about police violence now...”¹¹ There were reports, at this early stage, of officers treading on flowers and tributes.¹²
61. At a certain point (around 18:30) attendees report that officers began to be verbally aggressive. Several attendees describe this as a simultaneous change in the behaviour of officers who “very suddenly and simultaneously started shouting, almost incoherently”¹³

¹¹ CCA3

¹² CCA1

¹³ CCA1

It appears that officers were trying to convey the message that attendees should “go home”.

62. A number of attendees commented that the, predominantly female, officers on site throughout the day were replaced by predominantly male officers in the evening. It was predominantly male officers who ordered the attendees to disperse and “go home”. This was viewed as antagonistic by many of the attendees since they had attended, in part, to protest against a narrative which suggested women should “stay home” to protect themselves from male violence. “This was an obvious catalyst for anger and outrage”¹⁴.

Use of force

63. All attendees gave evidence of either witnessing or being subject to substantial force on the part of the police. They described officers pushing through the crowd to get to the bandstand; in some cases going out of their way to shove people; and in some cases moving in tight units with individual officers momentarily bursting out of the unit to push attendees to the ground.¹⁵
64. Witnesses describe officers throwing women to the ground and holding them down. Others reported police preventing legal observers from handing cards with contact information for legal advice to those arrested and refusing to inform friends and family where individuals were being taken. Other attendees report police being “physically dominant”¹⁶ towards attendees.

Confusion about the law

65. Confusion about the state of the law was evident from both the written and oral evidence of attendees. Many appear to have made real efforts to identify their legal rights and duties, including reading guidance and informing themselves about *Leigh v Commissioner*. Ultimately, however, citizens were simply not given sufficient information

¹⁴ CCA2

¹⁵ CCA3, CCA1,

¹⁶ CCA5

to regulate their behaviour. There was no consensus about whether attendance at the event was lawful nor what would have made it so.¹⁷

Police caused escalation

66. There was a notable consensus amongst attendees that the atmosphere of the event changed when police started ordering people to disperse. All who dealt with this point gave evidence that, by around 18:30 the event was beginning to break up. Several noted that they were getting cold and couldn't hear the speakers on the bandstand. There was a consensus that the turning point occurred when male police officers forced their way to the bandstand and ordered the speakers on it to go home. At this point the attendees began to remonstrate with police, move closer to the bandstand, and demand that the women be allowed to speak.¹⁸
67. Witnesses report that the police responded by using force, officers pushed through the crowd to reinforce those at the bandstand, and the women on the bandstand were forcibly arrested.¹⁹
68. There was a general consensus amongst attendees who gave evidence that, had police not intervened, the event would have broken up shortly after 18:30. Many describe making the decision to remain once they saw police begin enforcement action, either remaining to protect those subject to police force or else to bear witness.²⁰
69. Several attendees report that the event was being conducted in a relatively "covid save" manner. Almost all attendees report that everyone was wearing masks and, while not socially distanced, were generally standing in groups rather than a crowd (except perhaps immediately next to the bandstand). These observations appear confirmed by photographs and video clips.²¹ Several witnesses report that police enforcement action

¹⁷ CCA1-7

¹⁸ CCA5, CCA1, CCA2, CCA3

¹⁹ CCA3

²⁰ CCA1-7

²¹ CCA4, Media file

made it harder for them to socially distance because they were forced together when officers pushed through the crowd.²²

Failure to work with Reclaim These Streets (“RTS”)

70. A number of witnesses noted that, had the MPS worked with RTS the event would have been both more organised and had a different tone. For example:

In terms of the vigil “host”, this changed hands from Reclaim These Streets to Sisters Uncut less than a day before the event, due to the aforementioned threat of legal action that the former group faced. The latter group, well known for being comfortable with going up against the police and state, obviously felt it important that the event go ahead regardless, and I was personally in agreement. This undoubtedly changed the overall tone of the event, from one of quiet reflection to a more agitated, overtly political nature. Arguably the police could have overseen an event with a much milder tone (plus marshals, infrastructure, ‘soft’ speakers like local politicians etc) had they worked constructively with Reclaim These Streets as they were encouraged, rather than letting it fall into the hands of those who would proceed regardless.²³

71. Several attendees referenced a man who attempted to speak from the bandstand in favour of an anti-mask/lockdown cause. They praised the police for removing him effectively. Others noted various protest groups not related to women’s rights or safety in attendance although these appear to have been relatively minor.

Attendees: Bristol

72. We received fewer witness submissions from individuals who attended the Bristol events. This was partly because those that were received were compendiums of several different people’s experiences compiled by a journalist (BA8) and NETPOL. We also note that, during our call for evidence, A&SC were pursuing “one of the biggest appeals

²² CCAI

²³ CCA3

for wanted suspects we've ever done"²⁴ in respect of one or more of the events in question. This may have deterred witnesses from coming forward for fear of being identified as someone who attended an "unlawful" protest.

73. From the evidence we received the following key points arise:

- (a) On 21, 23 and 26 March events escalated after police undertook enforcement action against peaceful sit-down protests.
- (b) On at least 23 March enforcement action was taken either warning or after giving attendees only "a few seconds" to respond.
- (c) At events later in March and in April police took a more facilitating approach to protest (more in line with the post-2009 best practice). These generally passed off without violence.
- (d) When taking enforcement action and using force, police failed to distinguish between the (small minority) engaged in violence and peaceful protestors, journalists, medics, and legal observers. At times medics were prevented from attending to injured people.
- (e) Police use of force was often considered disproportionate. It included the use of dogs, batons, and "blading" (using the edge of a riot shield as a weapon).
- (f) On several occasions police took enforcement action which endangered public safety, including forcing protestors into a dead-end alley and onto a motorway without first stopping traffic.

Police: Clapham Common

74. The MPS did not provide written evidence. Assistant Commissioner Louisa Rolfe provided oral evidence on 13 May 2021. AC Rolfe was unable to attend the hearing

²⁴ <https://www.avonandsomerset.police.uk/news/2021/03/statement-from-chief-constable-and-pcc-following-bristol-disorder/>

scheduled on 22 April (originally intended to be the only hearing). The APPG considered it particularly important to hear from the MPS in whatever form it chose to give evidence and so arranged an additional hearing on 13 May. This set back the timetable for production of the report by around a month. It was, however, considered justified so as to ensure that evidence on behalf of the MPS was heard.

75. AC Rolfe and representatives of the MPS referred the APPG to the written report of HMICFRS “The Sarah Everard vigil” published on 30 March. The APPG has, therefore, taken this report into account in reaching its conclusions (below). It has not, however, been possible to give full weight to the report. While HMICFRS obtained evidence from “police officers at various levels of seniority, the RTS organisers, politicians and officials in central and local government”, it appears not to have obtained evidence (or not to any significant extent) from any individual who attended to participate in the Clapham Common event. This is, in the APPG’s view, a significant failing. While the APPG is aware that the report was produced quickly (and makes appropriate allowance) it is impossible to give the report full weight.
76. The HMICFRS report is included in full in the appendices to this report. The below summarises the key points which arose from the oral evidence of AC Louisa Rolfe:
- (a) The role of protest in a democracy is not a question for the police to consider although police must only intervene in protest if to do so is necessary and proportionate.
 - (b) Police role is to impartially uphold the law.
 - (c) In March 2021 the MPS had a clear understanding that Tier 4 contained no exemption for peaceful protest.
 - (d) The question of whether an individual had a “reasonable excuse” for attending a protest was one for the individual to work out themselves, not for the police to answer.

- (e) The police do not determine whether a protest is lawful and MPS actions in respect of the Clapham Common event did not amount to a determination of whether it was lawful or not.
- (f) The MPS took consistency of application of the All Tiers Regulations as its starting point when considering whether the proposed vigil was lawful.
- (g) Freedom of expression and assembly are qualified rights. There is no obligation for police to facilitate protest in domestic law although police may consider action if it appears that others will disrupt a protest.
- (h) The MPS did not believe RTS was capable of organising a socially distanced vigil. The MPS “saw nothing to suggest” that RTS could organise the gathering.
- (i) People attended Clapham Common lawfully for six hours throughout the day on 13 March. The policing approach changed in the evening because “the nature of the event changed quite dramatically”. The Gold Commander determined that the MPS could not keep people safe without intervening.
- (j) The MPS considered using an all-female officer team and decided that it would be impractical and may be considered divisive.
- (k) Officers “patiently pleaded” with attendees to go home for 90 minutes or more. There is nothing to suggest they acted in a heavy-handed manner.
- (l) The “look and feel” of the event changed when the crowd gathered at the bandstand and there were chanting and speeches. Some people had placards.

Police: Bristol

77. A&SC initially declined the APPG’s invitation to submit evidence on the basis that “we are not currently in a position to answer the questions provided due to ongoing investigations”.²⁵ On investigation it appeared that A&SC had made a number of public

²⁵ Email from Assistant Chief Constable Reilly, 8 April 2021.

statements speaking to the subjects of this inquiry. These statements were collected and provided to members along with a document which matched relevant extracts to the questions originally posed. This document was shared with A&SC. A&SC subsequently indicated that it would, in fact, provide evidence. A&SC subsequently provided a letter dated 21 May 2021 which, inter alia, reassured the APPG that A&SC wanted to be as helpful as possible and claiming that the quoted public statements “change not only the meaning but also the facts of the situation”. The letter also responded to the questions originally posed by the APPG in its original invitation to submit evidence.

78. In view of this the APPG has not taken account of the document matching extracts from A&SC’s public statements to its questions. This is the only document from this inquiry that will not be published. We take the view, however, that the full public statements remain relevant to this inquiry. The APPG has, therefore, taken account of both relevant public statements made by A&SC (in full and in their original context) and the written submission provided by A&SC.
79. The key points of A&SC’s written submission are as follows:²⁶
- (a) The law was not sufficiently clear as to whether peaceful protest was lawful under the All Tiers Regulations. A&SC sought to interpret the regulations as best it could; balancing the regulations, risk to public health, and right to protest.
 - (b) Police Liaison Teams were deployed throughout the week 26 to 29 March to attempt to engage with organisers of protests but this was difficult because organisers were not always prepared to come forward for fear of a £10 000 fine.
 - (c) In the wake of the Leigh decision officers were briefed on the need to balance the right to protest against the restrictions.
 - (d) On Friday 26 March demonstrators were permitted to protest for more than 4 hours. Approximately 1000 people gathered in the area around Bridewell police

²⁶ A&SC’s submission also dealt with the vigil on 13 March 2021. While the APPG is grateful for A&SC’s views on this, it has primarily focused on A&SC’s comments on events that occurred in Bristol later in the month.

station. A sound system was set up, tents were pitched blocking the highway, alcohol was consumed, ammonia and marijuana was smelled. Some individuals threw missiles at police. At 22:00 a decision was made to disperse the crowd and, once dispersal operations commenced officers were subject to physical assaults.

- (e) A&SC had no choice but to exercise reasonable force.
- (f) Accusations of “blading” have been investigated and complaints have not been upheld.

ANALYSIS

Clapham Common

80. It is important to begin by recognising the difficulties faced by the MPS and their sincere attempts to balance their various responsibilities. We note that “hundreds if not thousands”²⁷ of people attended Clapham Common uninhibited by police throughout the day on 13 March. We also note that, in the evening of 13 March officers appear to have been subject to some instances of serious and extreme verbal abuse.

Presumption of illegality

81. The evidence suggests that the MPS took as their starting point that the Clapham Common event was unlawful. We note, in particular:

- (a) In an email to RTS on 11 March MPS officers described the proposed event as “illegal”²⁸
- (b) At a meeting between representatives of the MPS, Lambeth Council, local police and RTS on 11 March, MPS officers told RTS that their “hands were tied” by the All Tiers Regulations and that these regulations outlawed the proposed gathering.²⁹
- (c) In correspondence between lawyers for RTS and the MPS, the MPS reaffirmed the position that “there is currently a general prohibition on gatherings in Tier 4 areas” and “there is no exception for protest”.³⁰
- (d) The MPS adopted “Operation Pima” as its governing strategy for the event. Operation Pima does not provide a framework for consideration of the right to protest and asserts the position that:

²⁷ AC Rolfe (oral evidence)

²⁸ CCA6, HMICFRS 14-15

²⁹ CCA6, HMICFRS, 16

³⁰ HMICFRS, 17

Under National lockdown regulations, gatherings for the purposes of protest are not exempt, and therefore the policing response will need to respond to this, in what is a rapidly deteriorating position with a virus variant that will transmit much more easily. This means there are more risks associated with large groups, both to the groups themselves, communities and officers dealing. There is a clear need [for] enforcement action to deal with any large groups.³¹

(e) The Gold Commander's log from 13 March states:

Whilst we do need to consider peoples article 10/11 rights throughout our decision making, a good chunk of this consideration has been done by Parliament, in that, in the All Tiers/National lockdown restrictions there was no exemption for protest/larger gatherings (where COVID safe measures had been taken), this measure was clearly in place in the Tier 2/3 restrictions so the intent of Parliament seems clear.

(f) In oral evidence AC Rolfe gave the impression that the MPS considered the Clapham event unlawful. For example:

“It was our understanding that Tier 4 contained a prohibition on gatherings and the vigil came within that prohibition”

82. The MPS has stated, in correspondence with RTS, in submissions before Mr Justice Holgate, and in oral evidence to this inquiry that it had no blanket policy prohibiting demonstrations. AD Rolfe made clear in her evidence that each demonstration was considered in its own context and the MPS was aware of its duty to act proportionately.
83. In practice, however, it is clear that the MPS began with the assumption that the gathering was unlawful. This was the wrong place to start.

³¹ HMICFRS, 27, Woodrow, 26

The Metropolitan Police Service (“MPS”) failed to properly construe and facilitate the right to protest

84. It is clear that the MPS, as individuals and an institution, was aware of a duty to act “proportionately”. This was reinforced with admirable clarity by AC Rolfe in her oral evidence. It seems, however, that the MPS did not properly understand or act on that duty.
85. Articles 10 and 11 of the ECHR are not the only source of the right to protest. The human rights approach, however, provides a useful and practical framework for analysis. Public bodies, including the MPS, are required to conduct such an analysis under section 6 of the HRA 1998.
86. The MPS displayed a misunderstanding of the nature of the right to protest. In her oral evidence AC Rolfe told the APPG:

There is no obligation to facilitate protest in domestic law. It is solely in European case law

87. This statement displays a fundamental misunderstanding of the nature of human rights law. The effect of the Human Rights Act is to make the European Court of Human Rights’ case law relevant to the interpretation of human rights in domestic law. Until told otherwise by a domestic court, the MPS should, therefore, abide by the relevant European caselaw.
88. The MPS understanding of the duty to facilitate was, in the words of AC Rolfe:

[The police have] no obligation to facilitate protest. We may consider police action if it appears that others would disrupt a protest.

89. This is not correct. The duty to facilitate is to “take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, with the participants

kept safe.’³² This goes further than mere protection from counter protestors and has particular relevance in the context of the pandemic. In the APPG’s view the MPS had a duty to, at the very least, consider whether police could facilitate the Clapham event in a way that minimised the risk of transmission.

90. For the avoidance of doubt the correct approach is, in the APPG’s view, as follows:
- (a) Citizens have a right to protest and the police have a duty to facilitate protest. The correct starting point, therefore, was that RTS had a right to organise the Clapham event and others had a right to attend.
 - (b) The right is qualified and so the MPS was entitled to interfere with the right where to do so was:
 - (1) In accordance with the law;
 - (2) For one of the legitimate purposes identified in Articles 10 and 11 (in this case the protection of public health);
 - (3) The interference with the right would be no more than necessary to achieve the identified legitimate aim (proportionate).
91. The All Tiers Regulations allowed the MPS to interfere with the right in accordance with the law. The question, therefore, was whether such an intervention was necessary and proportionate for the protection of public health. We have seen no evidence that the MPS properly grappled with this question. The consideration seems to have gone no further than the assertion that “there was a public health emergency”. There appears to have been no analysis of the specific risks posed by the Clapham event (both at the proposal stage and during the event itself). We saw no evidence that the MPS took into account the Chief Medical Officer’s comments that the Black Lives Matter protests during summer 2020 had not caused a significant increase in transmission, the evidence

³² The United Macedonian Organisation Ilinden and Ivanov v Bulgaria [2011] ECHR 1250, paragraph 115; Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, Getting the balance right? An inspection of how effectively the police deal with protests’, 11 March 2021, pages 71–72

behind those comments, or considered what actions police could take to allow the event to go ahead while mitigating the risk of transmission. Indeed, it appears (from both the evidence of RTS and AC Rolfe) that the MPS considered it entirely the responsibility of RTS to work out a way to hold the event in a covid-safe manner. The MPS appear to have considered their only options to be “don’t interfere” (the approach for the first six hours) and “intervene to disperse the gathering” (the approach after 18:30). In reality there was a far greater range of options open to MPS, none of which appear to have been thought through.

MPS failed to provide clarity as to how it understood, and would enforce, the law

92. AC Rolfe gave evidence that the MPS adopted the position (both before and at the Clapham event) that:

Tier 4 contained no exemption. It may be a defence if an individual had a reasonable excuse. But it is for the individual, not the police, to work out what the reasonable excuse was.

93. In its dealings with RTS, despite maintaining that it did not have a policy that all protests were unlawful, the MPS either refused or failed to identify what it would consider to be a lawful protest under the All Tiers Regulations. It was clear from both *Leigh* and *Dolan* that the “reasonable excuse” defence provided a way for police to apply the All Tiers Regulations in a rights compliant manner. The MPS could have resolved all of the ambiguity, and avoided all of the antagonism and problems subsequently encountered, by simply telling people under what circumstances attendance at the vigil would be considered a “reasonable excuse”.
94. The MPS’ approach was unfair and inappropriate from both a principled and operational perspective.
95. First, individuals must have sufficient clarity about the law to allow them to regulate their conduct. The individual must be able (with appropriate advice if necessary) “to foresee, to a degree reasonable in the circumstances, the consequences which a given

action may entail.”³³ The MPS approach made this difficult if not impossible. RTS had no option but to, in effect, make a series of guesses about that the MPS wanted from them, only to be rejected each time.

96. The MPS approach, in practice, left the decision as to whether an individual had a reasonable excuse for attending the Clapham event to individual officers on the ground (who would be required to issue FPN to attendees they believed to be breaking the law). Individuals had no clarity as to whether a particular officer at a particular time would agree that they had a reasonable excuse. This was a recipe for inconsistent decision-making, particularly given (as set out above) that officers were not given the correct instructions from the Gold commander about how to apply the Article 10 and 11 rights.
97. Second, from an operational perspective, it seems axiomatic that individuals and groups are more likely to act safely and comply with police instructions if they are given clarity about what is expected of them.
98. MPS may have assumed that any inconsistencies or errors as to whether an individual had a reasonable excuse could be worked out in court through challenges to FPN. On the evidence of Pippa Woodrow, however, this would not have been a fair approach. Given that (a) there is no administrative appeal procedure against a coronavirus FPN, and (b) the cost to an individual of challenging a FPN is likely to be greater than the fine imposed, FPNs, in practice, punish the recipient even if they are overturned.
99. It should be noted that the MPS was put in a difficult position by the ambiguity in the drafting of the All Tiers Regulations. The inclusion of a non-exhaustive list of “reasonable excuses” made “reasonable excuse” a potentially open-ended class. This placed police, who were charged with enforcing the regulations, in the position of determining whether attendance at the Clapham common event would constitute a “reasonable excuse”. The MPS should not have been put in this position. As AC Rolfe correctly put it, the role of police is to enforce the law, not make it.

³³ *Sunday Times v UK (No. 1)* (1979) 2 EHRR 245 at 49

100. It appears, however, that the MPS failed to grapple with the reality of the situation. In oral evidence AC Rolfe maintained that Parliament had placed a complete ban on gatherings like the Clapham event and that the MPS had no role in deciding whether or not it should be permitted. Aside from the legal problems with this position, it appears AC Rolfe did not appreciate that the MPS was, in effect, taking a decision about whether the event could proceed lawfully or, at the very least, without substantial legal sanction. This lack of awareness is concerning. The MPS could, at any point, have given clarity to RTS and attendees about what it would consider a “reasonable excuse” in the context of the proposed and actual Clapham event. Whether fairly or not, Parliament had clearly delegated power to police (and, by extension, the courts) to determine what constitutes a “reasonable excuse” in any given situation. The MPS had a responsibility to give clarity about how that power would be exercised. In the case of the Clapham event, the MPS failed in this duty.
101. We are concerned that the MPS position on the effect of the All Tiers Regulations appears to have changed more than once. The MPS statements in correspondence with RTS before 12 March included both the assertion that the All Tiers Regulations did not exempt protest from the prohibition on gatherings and the assertion that not all gatherings were prohibited. A reasonable person, reading the MPS statements, would not, however, have been able to determine what gatherings were permitted under the MPS interpretation of the regulations. Before the High Court in Leigh, the MPS appear to have largely accepted the RTS interpretation of the All Tiers Regulations (i.e. not all protest was prohibited and the regulations must be applied subject to Articles 10 and 11). Before this inquiry AC Rolfe maintained the position that the MPS had no power to prohibit protest and was simply enforcing a prohibition imposed by Parliament. Even if these positions are not technically inconsistent, they give the impression of inconsistency. It would certainly not have been possible for a citizen to understand under what circumstances they would not be penalised for attending a protest. Mr Justice Holgate’s decision in Leigh clearly left the door open for the MPS to specify under what conditions they would consider a protest not prohibited/facilitate a protest. The MPS’ failure to do this is a failure both in respect of the MPS’ duty to facilitate protest and its duty to provide clarity and transparency to citizens.

The MPS fell short of best practice in failing to cooperate with RTS

I02. RTS proposed two different versions of the event to the MPS. These included:

- (a) A stewarded, socially distanced, masked vigil lasting one hour with a full risk assessment to be conducted in advance;
- (b) A staggered vigil lasting throughout the day to minimise the numbers attending at any one time.³⁴

I03. The MPS rejected both plans. In addition, the RTS organisers were issued with an “open letter” threatening them with fines of £10 000 and prosecution under ss. 44 and 45 of the Serious Crime Act 2007 if they organised the event. It is plain that this threat, though AC Rolfe sought to minimise its likely impact, might well cause the organisers to withdraw at a late stage when the vigil would be likely to go ahead without organisation. This might well have presented a greater threat to public health (and public order) than that which RTS planned. Ultimately RTS withdrew from organising the event because they feared prosecution and/or fines.³⁵ The event was not left unorganised because Sisters Uncut took over, though it is clear that they brought less resources and organisation to the event than RTS would have done.

I04. The MPS thus had the opportunity to work with RTS to ensure the event was organised and to mitigate any risk of coronavirus transmission. Lambeth Council and local officers took the view that people would attend the event regardless of whether it was sanctioned. AC Rolfe, in oral evidence, confirmed that the MPS also took this view. The MPS thus had the opportunity to work with RTS on an organised event or to police an event without any discernible organiser or liaison between police and organisers. MPS appears to have elected the latter course.

I05. AC Rolfe offered three points of explanation for this decision:

³⁴ HMICFRS 14-15 and 24-26, CCA6

³⁵ CCA6

- (a) The open letter given to RTS was “not a threat”.
- (b) The All Tiers Regulations prohibited gatherings and the MPS was simply enforcing the law.
- (c) The MPS “saw nothing to suggest the organisers could organise the event adequately”.

106. It appears that, during discussions between the MPS and RTS, the MPS also indicated that they did not believe the numbers of predicted attendees (around 6000) could be controlled.

107. We do not find these explanations to be convincing:

- (a) Regardless of whether the “open letter” was intended to be a threat, it was certainly interpreted as such by RTS.³⁶ Indeed, it should have been obvious to the MPS that giving someone a letter which said (in substance) “if you do X you could be prosecuted and fined” would almost certainly be considered threatening.
- (b) The MPS’s errors in interpreting the All Tiers Regulations are set out above.
- (c) We remain unclear about what it would have taken to convince the MPS that RTS could organise the event adequately. They provided detailed plans for the event including the number of stewards, first aid, lost children, provision of hand sanitiser, and proposals for how the event could function in a socially distanced manner. In the absence of any sort of clarity from the MPS about what would have convinced them, it appears that the MPS held RTS to an almost impossible standard.
- (d) The MPS had a duty to facilitate the protest. There appears to have been no consideration of what actions MPS could have taken to remedy the perceived

³⁶ CCA6

flaws in the RTS proposal (although such flaws were never specified by the MPS so it is not clear what they were).

- (e) The organisers of RTS had substantial event organisation and community organising experience. The MPS does not appear to have given any weight to this.
- (f) The assertion that the MPS could not police 6000 people on Clapham Common does not seem credible. The MPS regularly polices much larger crowds and was able to do so successfully even during periods of lockdown. Clapham Common is approximately 890 308 square meters in size. If the maximum number that the MPS thought might attend (6000) had attended, then each person would have enjoyed 148 square metres of space. The Common is accessible via three Underground stations, Clapham Junction and Balham mainline stations, and multiple bus routes. Thousands of people use the Common every day. While it is unlikely that each attendee would be evenly spaced, it seems clear that, with proper organisation and policing, the numbers could have been handled with relative ease.

108. Finally, the MPS decision to release a press statement branding the proposed vigil unlawful while talks with were still ongoing was unnecessarily antagonistic. It gave the impression that the MPS was more interested in scoring a victory over RTS than finding a constructive solution. The statement gave the impression that the MPS had “won” the judicial review. While technically correct, this was misleading because, during the hearing, the MPS had effectively agreed with RTS’ view of the law (this represented a change in the MPS position from its response to the RTS PAP letter). Indeed, the witness from RTS described the hearing as “almost like being gaslit in the courtroom because we had heard the opposite beforehand.”³⁷ The MPS conduct in respect of the hearing and its aftermath seems more like the approach of a gloves off litigant seeking to win at all costs than that of a responsible public authority.

109. The MPS failure to adhere to best practice increased the likelihood of disorder at the event. The result of RTS withdrawing from their organisational role meant leadership

³⁷ CCA6 (oral evidence)

of the event was taken up by various groups who appear to have taken a more antagonistic attitude to police. This led to a lack of coherent organisation, made the event more unpredictable, and meant that none of the proposed Covid measures were put in place. Similarly, the MPS was seen by many attendees as illegitimately attempting to “ban” the vigil. This meant that officers were immediately operating in an atmosphere of tension and in which the MPS was perceived to have lost legitimacy.³⁸

The decision to move to enforcement action was not fully justified

110. At approximately 18:30 the Gold Commander made the decision to authorise enforcement. The AC Rolfe gave evidence that, officers “patiently pleaded” with attendees to leave for 90 minutes before enforcement action was authorised. This statement appears to have been accepted by HMICFRS.³⁹ Evidence from some attendees, however, indicates that no officers made any effort to engage them before moving to enforcement action.⁴⁰ None of the attendees who gave evidence report being told to go home by police before 18:30.⁴¹
111. We note that HMICFRS concluded that there was insufficient communication between officers on the ground and the Silver Commander. One of the Bronze Commanders left the scene and did not return until 17:45.
112. The Silver Commander’s log records the reason for the decision to move to enforcement as:

Decision to move on to enforcement stage towards those on the bandstand as it has turned into a rally with limited or no social distancing. The initial attempts to go through the 3 E’s [sic – engaging, explaining, and encouraging] have been unsuccessful.⁴²

³⁸ CCA3

³⁹ HMICFRS, 45

⁴⁰ CCA1, CCA3,

⁴¹ CCA7

⁴² HMICFRS, 32

113. AC Rolfe told the inquiry that the Gold Commander weighed up the threat to the public.

114. There is some question as to whether people began to move closer to the bandstand before or after police intervened. There is consensus amongst the attendee witnesses that those present were initially not crowding towards the bandstand. As one witness put it:

*... there was no PA system in place, so it was hard to hear – but I didn't see anyone moving forward or gathering closer to hear the speeches, as they were amplified with a call and response from others around the bandstand.*⁴³

115. Another said:

*As the crowd could see police start to grab the young women speaking on the bandstand, social distancing broke down as they closed around it.*⁴⁴

116. If this evidence is correct, then there was no justification for intervention. Indeed, it would appear the intervention caused the reduction in social distancing rather than responded to it.

117. Assuming, however, that the MPS account is correct, there remain three problematic points:

118. First, RTS gave evidence that they had planned a socially distanced gathering and organised for a sound system to be provided to ensure that people did not crowd around the bandstand. Had the MPS worked with RTS then the necessity for “gathering closer to hear the speeches” could have been averted.

119. Second, MPS appears to have distinguished between “acceptable” and “unacceptable” protests. In evidence to HMICFRS, MPS officers noted that the event felt more like a “protest” than a “vigil”.⁴⁵ In her evidence AC Rolfe suggested that the fact people were

⁴³ CCA5

⁴⁴ CCA4

⁴⁵ HMICFRS, 36

“chanting, shouting speeches, some had placards” was a justification for intervention. To the extent that the shift from “vigil” to “protest” caused a reduction in social distancing, this may have justified intervention (subject to the point below). To the extent that the change from “vigil” to “protest” was, in and of itself, considered justification for intervention, such an intervention was unlawful and breached fundamental rights.

120. Third, regardless of whether the crowding round the bandstand triggered the intervention or vice versa, the evidence indicates that MPS action intensified crowding around the bandstand and reduced social distancing. Attendees report that, after police intervened, those present pressed closer to the bandstand to see what happening and, in some cases, to criticise police.⁴⁶ This account is corroborated by evidence provided to HMICFRS. One officer, for example, described being trapped by the bandstand with a “hostile crowd” in front and behind.⁴⁷ Attendees have also given evidence that police intervention forced them closer together, making it more difficult to maintain social distancing. Indeed, there was consensus amongst the attendees who gave evidence that the event was starting to break up before police intervened.
121. Given that the stated reason for intervention was the reduction in social distancing, there appears to have been no consideration of whether enforcement action would increase rather than reduce the problem. This should have been part of a proportionality assessment. Indeed, it appears that, once it became clear that police intervention was serving to provoke the crowd (and this further compromise social distancing), police escalated their response. As one witness put it:

A male PCSO went up onto the bandstand and asked the speakers to leave. The crowd - which had already started to filter away as it was cold and not much was happening - reacted to this by chanting "let her speak". Then, darkness fell. Suddenly the female officers disappeared and large numbers of mostly male police started making a line through the crowd to the bandstand. Again, this escalated tensions with the crowd. Chants of "arrest your own" and "shame on you" started

⁴⁶ CCA1, CCA2, CCA3, CCA5

⁴⁷ HMICFRS, 35

- *pertinent given the nature of the vigil. It felt a lot like the police were trying to shut down criticism and protest against the actions of their own. At every step, instead of de-escalating, the police responded with more aggression, more officers and more force... Members of the crowd stepped in to try and help the women being manhandled by the police, only to be met with more violence. Police ended up trampling on flowers, candles and cards that had been laid in memory of Sarah Everard.*⁴⁸

- I22. Given the above analysis we cannot conclude that the MPS have provided a satisfactory justification for the decision to intervene to disperse attendees at the vigil.

Use of force

- I23. HMICFRS record several instances of abusive language and violence towards police.⁴⁹ In these situations, officers are entitled to (proportionately) defend themselves. We make no criticism of officers for doing so. That said, given the above analysis, it is not clear that the use of force was ever justified because it is not clear that police should have intervened at all.
- I24. It appears that, on more than one occasion, force was used against peaceful protestors who had not previously been warned to disperse.⁵⁰ Reports of officers deliberately breaking formation to push young women to the ground without warning⁵¹ cannot, if true, be called anything but excessive force.
- I25. Moreover, as set out above, MPS' decisions in the run up to and during the Clapham event created an atmosphere of antagonism and made it more likely that disorder would occur, and force would become necessary. As one witness put it:

A crowd of mostly women was told to move on by mostly male officers - this was an obvious catalyst for anger and outrage. We had already raised our voices to ensure the mask less man who was making inappropriate statements was

⁴⁸ CCA4

⁴⁹ HMICFES, 35-6

⁵⁰ CCA1, CCA3,

⁵¹ CCA1

*removed so it should have been obvious that police actions that involved men telling women how to behave would not be received well.*⁵²

126. The MPS' conduct of the Clapham event as a whole thus put both individual officers and attendees at risk.

Bristol

127. The Bristol events present a simpler picture than those in Clapham. It is clear there was significant and serious violence directed at police officers. The question, therefore, is whether, in the light of both the All Tiers Regulations, and the necessity of dealing with violence aimed at them, police acted in accordance with key constitutional rights.

Presumption of illegality

128. Avon and Somerset Constabulary ("A&SC") appear to have adopted the same interpretation of the All Tiers Regulations as the MPS and thus made the same errors of law. That A&SC adopted the position that gathering for protest was unlawful under the All Tiers Regulations. This is indicated by the following statements:

Supt. Mark Runacres, interviewed on BCFM Radio (29 March):

The Covid regulations prohibit protests from taking place

Ch. Supt. Claire Armes (26 March):

*In Avon and Somerset we remain committed to facilitating peaceful protest when it's safe and lawful to do so, however gatherings remain a breach of COVID restrictions and risk increasing the spread of coronavirus. We urge you not to come.*⁵³

⁵² CCA2

⁵³ <https://www.avonandsomerset.police.uk/news/2021/03/statement-on-potential-protests-in-bath-and-bristol/>

129. It appears that, after 29 March, A&SC considered peaceful protests to be lawful on the basis that, after that date, the regulations in force contained an explicit exemption for protest:

While gatherings of more than six people or two households aren't allowed under coronavirus regulations, there is an exemption for protests to take place providing organisers take the required precautions to limit the spread of the virus.⁵⁴

Following changes to COVID regulations, there is now an exemption to allow peaceful protests. However, this exemption only applies if the organisers take the required precautions to ensure people's safety is not put at risk.⁵⁵

"Following a change to COVID regulations, there is now an exemption to allow peaceful protests providing organisers take the required precautions to ensure people's safety is not put at risk."⁵⁶

130. There is no evidence that A&SC properly considered or understood the Article 10 and 11 rights. In its submission, A&SC explained that it sought to "balance the regulations in place at the time, the significant risk to public health and the individual's right to protest." It went on to say that individual officers were briefed:

... to ensure that the messaging around use of force and personal responsibility in balancing the right to protest against the Article 2 obligations and Covid regulations was consistent. During the operational briefings, for those officers on duty in Bristol from 26-29 March 2021, it was reiterated that there was a need for each officer to balance the protestor's right to protest against the Covid legislation in relation to gatherings. However, officers were also aware of their powers under existing public order legislation if required.

131. This, in our view, reveals an organisation trying to grapple with its rights obligations but not getting it right. A&SC's error is in the use of the concept of "balance". The legal

⁵⁴ <https://www.avonandsomerset.police.uk/news/2021/04/protest-organisers-asked-to-contact-police/>

⁵⁵ Supt. Mark Runacres, BCFM Radio (29 March 2021)

⁵⁶ <https://www.avonandsomerset.police.uk/news/2021/04/statement-about-potential-protests-on-saturday-3-april/>

duty is not to balance the All Tiers Regulations against the Article 10 and 11 rights. These cannot be “balanced” because, in law, they do not have equal weight.

132. The HRA 1998 is primary legislation and the All Tiers Regulations must, therefore, be interpreted in a manner that does not conflict with that Act. Further, s. 6 of the HRA imposes an explicit statutory obligation to act in accordance with convention rights. The correct approach, therefore, was not to balance the regulations against the rights but, rather, to consider (a) whether the public health risk posed by the pandemic justified an interference with the right and (b) what was the least offensive intervention that could achieve the aim.
133. A&SC does not appear to have engaged with the “reasonable excuse” defence. A&SC do not appear to have considered in what circumstances someone attending a protest would have a “reasonable excuse” under the All Tiers Regulations. They certainly did not offer the public any clarity on this point.
134. A&SC, in its written submission, stated:

Due to the regulations in place at the time of the protests between the 26 to 29 March 2021 organisers were not always prepared to come forwards due to the risk that as an organiser they could face a £10,000 fine.

135. It appears, therefore, that A&SC’s mistaken approach to the law prevented A&SC from following best practice by engaging with those organising demonstrations. We have seen no evidence that A&SC considered the positive obligation to facilitate a safe and peaceful protest.
136. A&SC has given evidence that:

The ASC Police Liaison Team engagement was in place all week and attempts were made to engage with organisers pre- events. Those who spoke with ASC delayed their activity, in light of the Covid restrictions. Each evening the Police Liaison Team were deployed, together with Neighbourhood officers, to engage with people who were attending events.

137. It appears, from this statement, that A&SC's engagement with attendees was limited to persuading them not to protest, rather than attempting to facilitate a safe and lawful event.
138. A&SC's presumption of illegality appears to have provoked larger protests than there would otherwise have been. As one witness put it, "People wouldn't have turned out in such numbers if such a fundamental right wasn't being threatened".⁵⁷ There is evidence to suggest that A&SC's approach caused, or at least exacerbated, some of the violence. We note that, after 29 March (when A&SC considered protest to be permitted and acted accordingly) there was a marked decrease in the levels of violence.⁵⁸ While correlation is not necessarily evidence of causation, when combined with the evidence above, we conclude that the actions of A&SC increased the risk of violence.

Failure to distinguish between situations in which enforcement action and the use of force is justified and situations in which it is not

139. It is clear that police were placed in a number of high tension and complex situations throughout March 2021. In a number of instances, the decision to disperse gatherings and the use of force was clearly justified. We have seen evidence of, for example, individuals throwing bottles, bricks, and other items and substances at officers, trying to drag officers into the crowd, and damaging vehicles and property.⁵⁹ In such situations we consider A&SC to have been justified in using proportionate force to protect officers and the public and restore public order. Further, there appear to have been situations in which large numbers of people were pressed close together, dominating a public area, and with considerable shouting and some violence. In such situations action to disperse the gathering may have been justified as a proportionate interference with the right to protest in accordance with the law (the All Tiers Regulations).

140. There appear, however, also to have been instances in which:

⁵⁷ BA8

⁵⁸ BA8, <https://www.avonandsomerset.police.uk/news/2021/04/peaceful-protests-take-place-in-bath-bristol-and-taunton/>

⁵⁹ A&SC

- (a) A&SC failed to distinguish between those protesting peacefully and those engaged in acts of violence; and
- (b) A&SC failed to distinguish between gatherings in which the risk to public health justified enforcement action and those in which it did not.

141. We identify three classes of relevant circumstance:

142. First, the class described above in which it may have been impossible or near impossible to protect officers from violence and protect the public from the public health risk without taking enforcement action against all individuals in a particular location.

143. Second, there were instances in which A&SC commenced enforcement action, using force, against protestors who were seated, with a degree of social distancing, and were not acting violently. Such instances include:

- (a) On 23 March, police (including a police dog unit) used force to clear a peaceful sit-down demonstration on College Green (a public park).⁶⁰ There were either no warnings or insufficient warnings given and there is evidence that police either did not progress through the “3 Es” or did not give attendees sufficient time to comply.⁶¹ Indeed, one witness gave evidence that police liaison officers *in situ* did not appear to have been aware that enforcement action was about to be taken.⁶²
- (b) On 26 March police used force to disperse a crowd outside Bridewell Police Station:

*legal observers present at the scene reported that the demonstrators were seated on the floor chanting and singing when riot police charged the crowd just after 10pm, only seconds after ordering the crowd to disperse. Contemporaneous notes record “riot police...pushing and shoving activists with their hands up- batons out” and “TSG using shields as weapons- lifting them and hitting people”.*⁶³

⁶⁰ NETPOL, BA8

⁶¹ NETPOL, BA8

⁶² BA8

⁶³ NETPOL

144. One witness said, “it felt like revenge policing or a show of force”.⁶⁴ Another stated:

*...police officers appeared to unleash a real [and personal] anger onto protestors, irrespective of who they were or whether they had taken part in the first demonstration on 21 March.*⁶⁵

145. We have found evidence that A&SC did consider the public health risks of the protest on College Green to the extent that they noted “concern around the public health risks of bringing an encampment together in a relatively confined space”⁶⁶. They do not appear to have taken into account the available evidence relating to the risk of transmission during outdoor protests or to have considered how enforcement action may increase the risk of transmission. In any case, there appears to have been a degree of social distancing in place on College Green.⁶⁷

146. “Revenge policing” was mentioned by both compendious sets of evidence dealing with the Bristol events.⁶⁸ We find this particularly troubling. It was suggested that A&SC took a more aggressive approach to gatherings on 23 and 26 March in retaliation for the damage inflicted on Bridewell Police Station and the injuries to officers on 21 March. This would, if true, be an unlawful abuse of power. The impression of “revenge policing” is compounded by the excessive measures used by A&SC in their investigations of offences allegedly committed during the events of 19-26 March. In particular, we are concerned that police tactics in relation to the wrongful detention of Katie McGoran and Grace Hart. The actions of officers in those situations appear calculated to coerce and intimidate.

147. We do not have sufficient evidence to make findings on A&SC’s collective state of mind on 23 and 26 March or thereafter. We are concerned, however, that multiple attendees at the Bristol events appear to have independently formed this impression of A&SC’s motivation.⁶⁹ Regardless of the A&SC’s true state of mind, the fact that this was the impression conveyed is problematic. Public bodies must earn legitimacy from those they

⁶⁴ BA8

⁶⁵ NETPOL

⁶⁶ Supt. Mark Runacres, BCFM Radio (29 March 2021)

⁶⁷ Booth 1404, 1411

⁶⁸ NETPOL, BA8

⁶⁹ NETPOL, BA8

serve. In this case, the actions of A&SC or the way those actions were presented to attendees, or both appear to have damaged A&SC's legitimacy.

148. Third, situations in which a minority of protestors were behaving violently but enforcement action was taken (and substantial force used) against all those present. This appears to have occurred on 21, 23, and 26 March. Such instances included:

...several legal observers and volunteer first aiders in clearly-marked hi vis bibs medics suffered violent attacks by police officers. Press were also caught up in the violence, and a journalist from the Daily Mirror shared a video of themselves being pushed and hit with a baton by a police officer while identifying himself.

First-aiders reported being prevented from giving support to those who were injured and in one instance, police refused to allow a volunteer medic supporting a semi-conscious protester who had received a significant head injury to move through the police line to the roadside where they were attempting to reach an ambulance and paramedics.

149. We recognised that mixed situations are often complex. We expect, however, police to be properly trained and to have sufficient command and operational structures in place to handle complex situations appropriately. We are concerned by the attitude evidenced by Supt. Runacres' comments to the effect that, where legal observers, medics, and journalists, are present in an area that is being cleared, they can be legitimate targets for this use of force.⁷⁰ This statement evidences a failure to distinguish between different classes of attendee and an approach in which what is proportionate in respect of the most violent protestors is considered proportionate in respect of attendees as a whole.

Excessive force

150. We have received evidence that at least 62 people were injured as a result of police actions. 22 of those injured received head wounds and 7 required hospitalisation.⁷¹

⁷⁰ Supt. Mark Runacres, BCFM Radio (29 March 2021)

⁷¹ NETPOL

While, as set out above, there were a number of instances during the Bristol events in which the use of force was both justified and proportionate, we are satisfied that there were also instances in which the force used was excessive. In particular:

- (a) The use of force against identified journalists, legal observers, and medics was in the course of unjustified enforcement action and therefore excessive. We note that at least one journalist was seriously injured.⁷²
- (b) The use of dogs and baton strikes against protestors who were not engaging in violence.⁷³ Given that protestors not engaging in violence do not present a threat to police officers and there appears to have been no assessment of the public health impacts of this use of force, it cannot be considered proportionate and is therefore excessive.
- (c) We note at least one instance of baton strikes to the head of an individual who appears to be injured.⁷⁴
- (d) The use of strikes with the thin edge of square riot shields (“blading”) against seated or prone individuals.⁷⁵ (This is dealt with below).
- (e) Forcing demonstrators into unsafe areas including a two lane highway (which was not closed in advance). An action cannot, in our view, be proportionate if it creates a similar risk to public safety. We have seen no evidence that a risk assessment was carried out in advance of this action or that any actions were taken to mitigate the risk.

151. The use of “blading” is particularly troubling. We note that there appear to have been admissions on the part of A&SC that blading took place. Supt Runacres told BCFM:

I've been in policing for over 25 years now, and it's an unfortunate reality that in public order policing, the tactics that are used – the shield strikes that you're

⁷² Media file

⁷³ NETPOL, BA8

⁷⁴ <https://www.thelondoneconomic.com/news/watch-shocking-footage-from-bristol-shows-police-aggression-towards-protestors-261152/>

⁷⁵ NETPOL, BA8

referring to – that’s an absolutely legitimate and trained tactic that officers are coached on in their public order training...

It’s approved by the College of Policing, and if they can justify that act, as a proportionate response, they are entitled to do it, and it’s for each officer to justify their individual uses of force, that’s a matter for them to justify, and if there are any complaints, they will be investigated and they need to justify what they have done...

In terms of that tactic, it may look unsightly and shocking to some, but in terms of the reality of public order policing, and policing disorder, it’s a legitimate tactic that an officer can use, if it’s necessary to move someone away from an area, if they are a threat, or to keep themselves safe...

That might be unpleasant for some, but it’s difficult for me because I can’t sit here and criticise officers for doing something that they’ve been trained to do. It is scary. I feel uncomfortable saying this, but that’s how it’s supposed to be, when we are dealing with public order policing, part of the way you want to operate is when you are in that mode.

152. In its submission to this inquiry A&SC said:

The accusations relating to “blading” have been investigated and the complaints have not been upheld.⁷⁶

153. No information was provided as to why these complaints were not upheld. Having seen contemporaneous video footage which corroborates the witness evidence received we are confident that at least one instance of blading occurred.⁷⁷ We note that blading involves (a) using a rectangular shield as an offensive weapon (when it is primarily designed to be defensive), (b) in using the narrow edge of the shield, it concentrates the force applied and heightens the risk of serious injury, (c) said risk is further heightened

⁷⁶ A&SC

⁷⁷ <https://www.thelondoneconomic.com/news/watch-shocking-footage-from-bristol-shows-police-aggression-towards-protestors-261152/>

when blading is performed against people who are seated or prone, (d) the balance of evidence suggests that those seated or prone did not present any threat to officers (indeed, it is difficult to see how an unarmed, seated individual could ever present sufficient threat to justify such a level of force).

154. We have not been able to find the College of Policing guidance relating to blading (although this merely means it is not publicly available and was not disclosed to us, not that it does not exist). If such guidance exists and endorses blading in the way suggested by Supt. Runacres then it must be retracted, redrafted, and clarified. In our view there are instances in which the use of blading during the Bristol events was unjustified, entirely excessive, and may amount to criminal offences against the person.

Further Evidence

155. In the course of the inquiry, we received evidence which relates to the policing of protests and demonstrations beyond those at Clapham and Bristol. While this evidence fell outside the terms of our inquiry, we take the view that it (a) is relevant to the consideration of the PCSC Bill and, (b) indicates that many of the problematic evidence of police conduct at Clapham and Bristol are replicated in the policing of protest nationwide. Given this (and the matters examined above) we consider it appropriate to call for a public inquiry into the policing of protest with a particular focus on whether the right to protest is realised in accordance with the standards set by domestic and international law.

156. Some of the particularly problematic points arising from the additional evidence are:
- (a) Those seeking to hold police to account find it difficult to obtain data around arrests, charges, convictions, and public order interventions. Either because it is not recorded, or access is refused. This makes it difficult for citizens to hold the police to account.⁷⁸
 - (b) Despite the public outcry and subsequent public inquiry around the use of covert human intelligence sources to infiltrate peaceful protest groups, it appears this practice is ongoing. One witness, a member of Extinction Rebellion, gave evidence

⁷⁸ Aston Addendum

that police officers had attempted to recruit him as a covert human intelligence source to pass on information about Extinction Rebellion’s activities.⁷⁹ The use of covert human intelligence sources is a controversial exercise of coercive power.

- (c) There is a clear risk that excessive restriction of protest could force dissent “underground”, increasing the risk of crime and to public safety.
- (d) Given the new broad powers for ministers and public authorities to authorise covert human intelligence sources to commit criminal offences (and provide immunity for such)⁸⁰, there is nothing to prevent agents provocateur from encouraging the commission of offences.
- (e) Herts police used social media to “doxx” those involved in peaceful direct action at the Broxbourne Press Action protest in September 2020 by posting their names and addresses on Facebook. In some cases this led to the individuals being harassed.⁸¹ It is difficult to see what law enforcement purpose was served by this.
- (f) Policing preventing an ambulance from crossing a bridge then publicly blaming protestors.⁸²
- (g) Police declining to intervene while private security personnel assault protestors (including, in one instance, choking to the point of losing consciousness).⁸³
- (h) Officers giving dishonest answers to requests for their badge numbers.⁸⁴
- (i) Supporting eviction of protestors from private land (which they had permission to occupy) without a possession order.⁸⁵
- (j) Use of police powers to frustrate peaceful direct-action protests (such as delaying or confiscating vehicles).⁸⁶

⁷⁹ XRI (oral evidence)

⁸⁰ Covert Human Intelligence Sources (Criminal Conduct) Act 2021

⁸¹ XRI (a)

⁸² XRI (oral evidence)

⁸³ HS2(a)

⁸⁴ HS2(a)

⁸⁵ HS2(a)

⁸⁶ XRI (oral evidence)

- (k) Application of the presumption of illegality under the All Tiers Regulations by constabularies other than the MPS and A&SC.⁸⁷

CONCLUSIONS

Protest is an essential democratic and constitutional right, but it is not properly understood

157. In both the Clapham and Bristol events, both MPS and A&SC failed to understand the nature of the right to protest and how it must be applied in practice. In particular:

- (a) Both construed the right as a secondary consideration, at most something to be “weighed in the balance” while enforcing the All Tiers Regulations “prohibition” on protest.
- (b) Both failed to properly grapple with the obligation to facilitate safe and peaceful protest or act on it in practice.

158. Most people’s experience of the right to protest and ability to exercise that right will be conditioned by how it is interpreted by police. We conclude that, if the right to protest is to be both protected and realised in practice in a manner appropriate to its status as a fundamental constitutional and human right, then we must provide greater clarity about what the right means for both police and citizens.

Where the law affords police too much coercive power in respect of protests, they are put in the position of both law maker and law enforcer. This is constitutionally and operationally inappropriate.

159. The All Tiers Regulations effectively gave police the power to determine whether a protest was allowed or not allowed. The failure to identify protest as a specific exclusion in Schedule 3A, while leaving the class of “reasonable excuse” open ended, left the question of whether an individual could lawfully attend a protest ambiguous. In practice, this meant that police could determine whether an individual would be punished (by the

⁸⁷ XR Legal

imposition of a FPN) for attending or organising a protest. Police thus had the power, in practice, to determine whether a protest would be “allowed”. Neither the MPS nor A&SC appears to have grappled with this reality and, in evidence to this inquiry, AC Rolfe expressly rejected it. AC Rolfe’s refusal to acknowledge the practical impacts of the All Tiers Regulations does not, however, change their impact on the lives of individuals.

160. Perhaps as a result of their refusal to acknowledge the impact of the regulations, police failed to provide clarity for what they would regard as a “reasonable excuse” in the context of a protest or how a protest could be organised such as to ensure that individuals had a reasonable excuse for attending. This meant that, to all intents and purposes, police were seen as arbitrarily banning various protests. While the MPS appears to have aimed for consistency, the image of young women being manhandled at a protest which was (at least in part) critical of the MPS contrasts sharply with that, just a week before, of police escorting (facilitating) a parade of football fans from Ibrox to George Square in Glasgow.⁸⁸ While Police Scotland and the MPS are different entities, the MPS must have been aware that the appearance of consistency simply was not present.
161. Given this we consider the broad drafting of police powers under Part 3 of the PCSC Bill to be problematic. In particular we are concerned that Cl. 54, 55, and 59 turn on the police interpretation of phrases like “serious annoyance” and disturbing the “comfort” of a member of the public. First, this language is ambiguous. Second, these clauses leave the interpretation of the language to the subjective discretion of individual police officers (in much the same way as the All Tiers Regulations). This is a recipe for the (apparently) arbitrary use of power with the effect of suppressing fundamental constitutional rights.

⁸⁸<https://www.independent.co.uk/news/uk/home-news/rangers-george-square-glasgow-covid-b1848212.html?r=41463>

Coercive powers over protest do not necessarily aid public order and may be counterproductive

162. It was striking that, in both the Clapham and Bristol events, the police use of coercive powers appear to have exacerbated tensions and increased the risk of violence. Indeed, in many cases, enforcement of (what the police believed to be) the prohibition on protest may have actually increased the risk to public health.
163. This supports the consensus amongst the independent experts who gave evidence that attempting to suppress protest is not only undemocratic but operationally counterproductive. Since 2009 it has been established that the best way to ensure individuals exercise their rights in a safe and peaceful manner is for police to engage with protest organisers and facilitate a peaceful demonstration.
164. We took particular note of Lord Paddick's evidence that the majority of constabularies, when consulted by HMICFRS, did not indicate that additional powers were required. We also noted Fmr. Ch. Supt. West's evidence that the primary limiting factor on public order policing is not the powers available but the resources that police are able to draw on. Fmr. Ch. Supt West also gave evidence that police are still struggling to recover from funding cuts imposed in the early years of the last decade and that replacing resources with coercive powers is unlikely to be effective.
165. Given this we must question the necessity of much of Part 3 of the PCSC Bill. Indeed, the events at Clapham and Bristol indicate that use of the public order powers proposed in the bill will be equally likely to increase the risk of disorder and violence as reduce it.

Citizens have insufficient means to hold police to account

166. Even with the best intentions police can sometimes cross the line into abuse of power. The PCSC Bill, by substantially broadening the powers available to police, correspondingly increases the potential for abuse. Witnesses told this inquiry that they felt that they had no way to hold the police to account for their actions:

I am horrified that no officers have been held accountable for their actions at Clapham Common, especially after reports emerged that a woman was not taken seriously by a male officer when she attempted to report an allegation of indecent exposure as she left the vigil.⁸⁹

My instinct is to say there isn't very much [opportunity to hold police accountable] at all. The main accountability comes through the courts when people prosecuted for individual offences. Opportunity to challenge police through JR is very limited. Beyond grasp of many protest groups. In absence of that it is hard to see what accountability actually exists beyond bodies like this APPG. At heart is a difficulty of transparency. Extraordinarily difficult to get data from police relating to protest actions. Trying to find out even basic data about police strategy or actions is enormously difficult. Police do not keep good data about how protests policed so very difficult to evaluate.⁹⁰

167. It was noted that the primary avenue of accountability recommended to those aggrieved by their treatment by the police is to make a complaint to the police themselves. The evidence before us suggests that victims of police misconduct are often reluctant to do this because they do not trust the police to provide justice.⁹¹ From an objective perspective, it is easy to see how this appears to allow the police to “mark their own homework”. Indeed, while we have not seen details of the A&SC investigation into complaints of blading, it is difficult to see how this could have been satisfactory given its outcome.

168. We note that there are substantial state bodies dedicated to holding the police to account (primarily HMICFRS and the Independent office of Police Conduct). These, however, fulfil a slightly different function. Where police powers are ambiguous their ability to intervene is inevitably limited. Further, as state bodies, they do nothing to empower citizens themselves to hold the police account.

⁸⁹ CCA2

⁹⁰ Dr Val Aston (oral evidence)

⁹¹ Dr Val Aston (oral evidence)

169. Power must be matched by accountability. It is our view that there are insufficient avenues of accountability in respect of police public order powers as they currently stand. The PCSC Bill proposes to expand those powers further without an equivalent expansion of accountability. This is inevitably problematic.

RECOMMENDATIONS

A new statutory code for the right to protest

170. The rights and duties of both protestors and police should be clarified in a new statutory code. We therefore suggest the following new clause to the PCSC Bill:

“Code for policing of protest

(1) The Secretary of State shall produce a Code for the Policing of Protest (“the Code”);

(2) The Code shall set out the how relevant police powers must be used and relevant police duties discharged in accordance with both the domestic law and international law obligations imposed under the right to protest. Including:

(a) The duty to facilitate peaceful protest unless not to do so is in accordance with the relevant law.

(b) The duty to refrain from interfering with peaceful protest except where to do so is in accordance with the relevant law.

(3) In this section:

(a) the “right to protest” includes all domestic and international law rights which provide for the right to protest.

(b) references to “domestic and international law” include but are not limited to the European Convention of Human Rights and associated jurisprudence.

(4) Any person or organisation exercising a power or duty which relates to protest or public order must act in accordance with the Code.”

Clauses which unnecessarily expand police powers in relation to peaceful protest should be removed

171. All witnesses who gave oral evidence (including former police officers) were asked what amendments they would recommend to the PCSC Bill. The majority responded that they did not think any particular amendment could remedy the problems inherent in the Bill. The flaws could not be cured by merely amending the relevant clauses. In addition, there was a general consensus amongst those witnesses who experienced the exercise of existing public order powers, that they would not trust the police with expanded powers. It seems likely that those drafting the bill did not have events like Clapham and Bristol in their minds when doing so. These events nevertheless demonstrate the dangers of broad and ambiguous coercive powers in relation to peaceful protest. We therefore see no option but to recommend the wholesale removal of the clauses in the bill which give the police or government coercive powers over peaceful protest. We accordingly recommend the following amendment:

“Delete clauses 55-61”

Independent protest commission

172. So long as police exercise any sort of public order power, there will always be a tension between the roles of imposing restrictions and enforcing those restrictions. A similar (although not exactly equivalent) tension was resolved in Northern Ireland through the creation of the Independent Parades Commission. Several independent experts recommended this model in their evidence. While we do not believe that the Northern Ireland model should be replicated wholesale in the UK, the principle of an independent

and accountable body making (or at least advising on) decisions as to how a protest will be facilitated could address this problem.

173. We therefore propose that the Secretary of State hold a consultation on the creation of a statutory Independent Protest Commission with the power to determine or advise on what restrictions can be placed on protests and what actions police must take to facilitate them. The consultation must include:

- (a) What powers the Commission should exercise;
- (b) How the commission will be accountable to citizens through both the courts and Parliament;
- (c) How membership of the Commission should be determined;
- (d) The relationship between the Commission and the police;
- (e) How the powers, duties, and constitution of the Commission will protect and facilitate the right to protest in accordance with domestic and international law.
- (f) Whether the Commission should act in relation to the whole of the UK or be limited to England or England and Wales.
- (g) Whether other approaches are preferable to the commission

Police accountability

174. We recommend that the Secretary of State for Justice commission an independent investigation into the effectiveness of current mechanisms for ensuring citizens can seek redress for complaints arising out of police conduct in public order situations.