



# HOUSES OF PARLIAMENT

## Joint Committee on Human Rights

### Uncorrected oral evidence: Crime and Policing Bill, HC 830

Wednesday 11 June 2025

2.35 pm

Watch the meeting

Members present: Lord Alton of Liverpool (The Chair); Lord Dholakia; Tom Gordon; Afzal Khan; Baroness Lawrence of Clarendon; Lord Murray of Blidworth; Lord Sewell of Sanderstead; Alex Sobel; Peter Swallow; Sir Desmond Swayne.

Questions 1 - 22

#### Witnesses

I: Dr Alex Black, Lecturer, Sheffield Hallam University; Tyrone Steele, Deputy Legal Director, JUSTICE.

II: Mark Hobrough, Chief Constable, Gwent Police and NPCC; Rebecca Bryant OBE, Chief Executive, Resolve.

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## Examination of witnesses

Dr Alex Black and Tyrone Steele.

**Q1 The Chair:** Welcome to the 21st meeting of the Joint Committee on Human Rights. As our name implies, we are a committee comprising members of both Houses of Parliament, six from the House of Commons and six from the House of Lords. We focus on the human rights of United Kingdom citizens and residents and spend about half of our time on legislative scrutiny and half of our time on thematic inquiries. We recently published our findings and recommendations following our inquiry into the role of British nationals in the genocide of Yazidis and other minorities. We have also published our scrutiny of the new Mental Health Bill. They can both be read on our website.

Today, we are holding a legislative scrutiny session to probe aspects of the substantial Crime and Policing Bill, which the Government introduced into the House of Commons on 25 February and which will, next week, complete its remaining stages there before proceeding to the Lords. Those who have followed our recent ministerial sessions with the Lord Chancellor, the right honourable Shabana Mahmood, Member of Parliament, and the Attorney-General, Lord Hermer, will know that the JCHR is interested in violence against women, knife crime, anti-social behaviour, respect orders, retail crime, offences against children, and the wider criminal justice system. This Bill makes numerous amendments to the law affecting many of those issues and across a broad range of policy areas.

Today, however, we will focus primarily on anti-social behaviour and public order. To help us understand these issues better, we have invited four witnesses. We have Dr Alex Black, Tyrone Steele, Chief Constable Mark Hobrough, and Rebecca Bryant OBE. In our first session, we will hear from Dr Black and Mr Steele. Dr Black is from Sheffield Hallam University and a senior lecturer in criminology. She is also engaged in academic research, primarily in relation to policing and victimisation, and the management of public space. She is currently undertaking research into the tools and powers used to regulate anti-social behaviour and their impact on communities. She will be joined by Tyrone Steele, deputy legal director of JUSTICE. Its work spans administrative, civil, family, and criminal justice, and seeks to promote access to justice, human rights and the rule of law through research, education and interventions in the courts.

In panel 2, we will hear from our other two witnesses, and I will introduce them when the time comes. I would like, if I may, to start the ball rolling to get the proceedings under way before turning to Sir Desmond Swayne, Member of Parliament. The Bill will introduce new measures for dealing with anti-social behaviour. How does the law define anti-social behaviour? Perhaps you could both outline the changes that this Bill will make. Dr Black, let us start with you.

**Dr Alex Black:** Thanks for having us along today. There is not necessarily one key definition of anti-social behaviour. The most well-known definition is behaviour that causes or is likely to cause harassment, alarm or distress. This was introduced alongside anti-social behaviour orders in the Crime and Disorder Act 1998. Within the Anti-social Behaviour, Crime and Policing Act 2014, there is a range of powers that practitioners can use to respond to anti-social behaviour, but there are slightly different variations in terms of how the powers are defined and how they can be implemented. There is the behaviour that causes harassment, alarm or distress, but then for things like community protection notices and public spaces protection orders, there is the slightly lower definition of behaviour that is having a detrimental effect, is persistent, and having an effect on those in the locality. So, there are slightly different variations of how it has been defined.

In some big debates around anti-social behaviour, there has been slippage around how it is used and its consistency when applied to people engaging in different types of behaviours. Importantly, it is relational, so it is about how that behaviour is perceived by somebody else and, of course, that can be context-dependent—for example, dependent on people's levels of tolerance and how people relate to one another, but it is behaviour that does not meet the criminal threshold. It is behaviour that is often referred to as sub-criminal and sometimes referred to as low level, although of course we know it can be quite serious, but it is not a criminal behaviour in and of itself.

**The Chair:** Does the Bill affect that definition? Does it give it greater clarity?

**Dr Alex Black:** No, it does not seem to. The respect orders use the harassment, alarm or distress definition, so it seems to keep with that higher level of the definition. In the new Bill, there is no great discussion about whether that would change or any kind of greater clarity on what that threshold should look like and when it should be applied.

**The Chair:** Thank you, that is very helpful. Mr Steele, let us turn to you now.

**Tyrone Steele:** Thank you for the invitation to give evidence today. I agree with all that Dr Black has set out in terms of the various definitions. The only thing I would add, based on the research that we at JUSTICE have done, is with respect to the consequence of broad, vague, and open definitions and interpretation of what anti-social behaviour can constitute. Our research, which includes engagement with police, local authorities and victims themselves, shows that the difficulty in defining ASB has led to inconsistent enforcement across the country and, effectively, a postcode lottery for victims which, of course, undermines public confidence.

Just to give a few concrete examples as to how this lack of understanding or lack of clarity in the definition has had a real-world impact: we have seen orders issued every day for what we would all agree are non-

harmful behaviours, including a woman wearing a bikini in her garden, an elderly man advertising a charity bake sale, and buskers and street artists performing in public. More concerningly, we have also seen ASB powers being used against people who are vulnerable or, indeed, victims. For example, we have seen ASB powers used against a domestic abuse survivor sanctioned for crying too loudly while being assaulted, a family of an autistic child accused of closing a door too loudly, a homeless veteran penalised for sitting on the pavement, and a woman with bipolar disorder who was issued a community protection notice which then triggered a mental health crisis.

In the round, the lack of a clear and proportionate definition of ASB distracts from the serious harm that genuine anti-social behaviour can cause. It diverts resources from those types of behaviours, it undermines enforcement, and there is a great risk of criminalising and discriminating against the very people who we all agree the system should protect.

**The Chair:** You have set the scene extremely well; thank you both. Let me turn to Sir Desmond. After we have heard from Sir Desmond, we will hear from my House of Lords colleague Baroness Lawrence.

Q2 **Sir Desmond Swayne:** Dr Black, may I begin with a supplementary question on the evidence you have just given us? I am a Bible-believing Christian. If you were to whip out a copy of Gideons New Testament from under your jacket and set a match to it, I would undoubtedly experience alarm and distress. Might you have committed an act of anti-social behaviour?

**Dr Alex Black:** I guess it would depend on who was enforcing it if that behaviour continued.

**Sir Desmond Swayne:** Is it a possibility?

**Dr Alex Black:** In terms of that subjectivity, you might feel that you have been a victim of anti-social behaviour. Whoever the practitioner would be that came along would then have to decide whether or not the powers could be used to sanction that individual. I would imagine most practitioners would perhaps work to mediate that situation.

**Sir Desmond Swayne:** Mr Steele, what do you think?

**Tyrone Steele:** Sir Desmond's point echoes the point I made earlier which is: where you have inconsistent definitions, you are going to get variance in terms of how those definitions are used. That is one of the reasons why, when we are talking about these issues and about powers which could potentially have quite severe or criminal consequences, we want to get it absolutely right in terms of what we are criminalising and what we are looking at. I gave all those examples before. One of the main mischiefs in this area is discretion; that is what we need to be really clear about.

**Sir Desmond Swayne:** So we might have a blasphemy Act. We have had ASBOs, ASBIs, PSPOs, and now we have the respect orders. How do

the respect orders deal with the limitations for which ASBOs were removed in, I think, 2014?

**Dr Alex Black:** Some of the biggest challenges of the ASBOs and some of the main reasons why they were considered to be not overly effective was the breach rate. ASBOs were breached at a very high standard; I think at least two-thirds were breached and often those were breached multiple times: the average was about five times. Often, there was significant overrepresentation within anti-social behaviour orders of people who were experiencing different levels of vulnerabilities, mental health, learning disabilities, et cetera. There is not a great difference with a respect order.

On the face of it, there is nothing to suggest that respect orders would not be breached at the same rate. The only major difference with respect orders is more of this focus on positive requirements. Although anti-social behavioural orders were supposed to have support requirements as well, they were not used often. We know from injunctions that positive requirements are not often included and we also know that, in the current climate, if you are trying to put a positive requirement within a respect order, you need to have the services that would allow that support. It could be for drug addictions or behavioural change programmes, but unless there is the provision to allow that to take place then those programmes are not going to be able to run, and the behavioural change will not take place.

There is not a great deal of difference and, on the face of it, there is no obvious information that would suggest that the respect orders would have a different outcome to the anti-social behaviour orders, unless that additional service provision was there to support people.

**Sir Desmond Swayne:** It would appear that a respect order can be applied for by Uncle Tom Cobbleigh and all: a local authority, a police force, Transport for London, Transport for Greater Manchester, the Environment Agency, a housing provider. Is that legitimate, and does it differ from ASBOs in any way?

**Dr Alex Black:** Many of the powers have a range of practitioners who can apply for and use them, including accredited persons. A key issue is there is such a range of practitioners that you get inconsistency in practice. You get people applying them at different definitional thresholds, and a lack of joint working. In our research, there have been instances where people have been given multiple warnings for breach from different practitioners who do not necessarily know that those warnings are in place. Without really good joint working, that is difficult to enforce, particularly with something like respect orders where there is arrest on breach because that requires the police to make the arrest. If somebody else has brought the respect order in, then they will need to do that joined-up working to ensure that that takes place. So if a local authority has applied for it, it is then going to require the police to respond to it, and we need to ensure that that resource is there and

those joined-up practices are working together. Currently, we know that there are challenges with that.

**Sir Desmond Swayne:** Mr Steele, I do not want to put words in your mouth, but you appear to have expressed some reservations or concern about the breadth of the definition of what constitutes anti-social behaviour. Is there an alarm bell ringing in your mind about the fact that anyone engaged or threatening to engage in anti-social behaviour can be subject to a respect order? There is no time limit placed on those orders and they will be decided on the basis of probability rather than the higher test of beyond reasonable doubt, yet the penalty for breaching an order will be the criminal one. Does that give rise to any concerns?

**Tyrone Steele:** Absolutely. Just to take a few points out of that really helpful question: the current ASB landscape is incredibly complicated, and I am sure Dr Black can speak to this as well. There is a myriad of different orders. I think JUSTICE in its 2023 report identified over 30 different types of order. There is a lot of inconsistency and a lack of understanding of how they are used. The respect order itself, as Dr Black says, has just reheated or revived the now infamous ASBO in terms of some of its criteria. Also, if you look at the concerns which led to the abolition of the ASBO, we saw targeting of individuals with learning disabilities and those who were neurodivergent. There is well-recorded evidence in terms of the breach rates as well as discriminatory application. I see no reason why a lot of the issues which led up to the abolition of the ASBO will not be replicated in the respect order, and that is a real concern.

Turning to your point with respect to the standard that can be used to impose these orders; as you say, it is on the balance of probabilities and not the criminal standard, and this raises really serious concerns. We are in a situation where a respect order can require a person to do anything described in the order; there is no limit on the number or type of conditions. The orders can last indefinitely. Importantly, breach is a criminal offence punishable by up to two years in prison. These are not minor civil penalties; these are serious punitive measures and require serious legal safeguards. That is not just our view. If you look at the requirements of Article 6 of the European Convention on Human Rights, where you have that high level of consequence you need higher legal safeguards which is why, as a bare minimum, those kinds of safeguards should be introduced in the context of respect orders if they are to go forward. This was pointed out by Lord Steyn in the McCann case in 2003 with respect to ASBOs.

**The Chair:** For the purposes of those joining us online as well, compliance with Article 6 of the ECHR is the right to a fair trial. Are you saying that it is endangered as a result of lack of clarity in the respect orders?

**Tyrone Steele:** Absolutely.

Q3 **Baroness Lawrence of Clarendon:** My question is centred around what

Sir Desmond Swayne was talking about. What restriction or requirements can be imposed on the recipient of a respect order, and does this throw any human rights issues? What ensures these restrictions or requirements can be disproportionate?

**Dr Alex Black:** Similar to a lot of the other anti-social behaviour orders, restrictions can be imposed on an individual. That can be the types of restrictions that you might see across the different measures. We have seen lots of different restrictions but, generally, it will be around where you can go, so restrictions on locations that you can attend, and restrictions on people who you can associate with. These are the types of restrictions that very often are breached under the ASBO because certainly for young people they are going to associate with their friends and the like. But we have also seen restrictions on not feeding local cats or birds, to things that we have seen under community protection notice—for example, not engaging with your neighbours or looking in your neighbour's windows. There has been a whole range of things that we have seen on some of these behavioural orders. Of course, the same kinds of things can be applied in the respect orders. Obviously, there are questions around proportionality. Is that proportionate to the behaviour that gave rise to the order in question? There are questions of necessity. Often, there are examples of people being banned from certain places where they need to go for services, access to doctors, medication, all these kinds of things that will limit their freedom and access.

There are also questions around proportionality, particularly for people experiencing street homelessness. We know that a lot of these orders are used against people experiencing street homelessness for behaviours associated with their living conditions, often around begging, street drinking, urination, defecation and things like that. Of course, there are questions of necessity and survival; people are often engaging in these behaviours because they are in those particular conditions. There is a question of whether these are proportionate to certain people depending on their lifestyles, particularly access to places. You see a lot with public spaces protection orders where people experiencing street homelessness will be told they cannot be in the city centre, but often they use the city centre because they themselves experience ASB. They might be quite vulnerable. A lot of the participants we spoke to like to be in a place where there is lots of CCTV. They feel protected from harm that they might experience themselves. Banning people from those spaces can often move them into more risky situations.

Of course, there are also the other things we have already raised around duration. Having a proportionate end date on respect orders is something that should be included in there. We know that people who have open-ended community protection notices often feel they are just subject to these restrictions without any end date; there is nothing they can do. In the orders we often see catch-all generic restrictions. It will be related to behaviour, but then something that also says not doing any behaviour that causes harassment, alarm or distress. Ultimately, they could then be

breached for doing something totally unrelated to the original behaviour. Often, the restrictions in the order can be quite varied.

We would definitely recommend statutory guidance around what would be in those respect orders, but from the research that we have already done, we know that compliance with statutory guidance is often quite poor. Potentially, some oversight mechanism would be necessary. Tyrone, do you have anything else to add?

**Tyrone Steele:** I would just briefly build on the point with respect to the scope of these powers. As Dr Black set out, they are very broad. We do not need to think hypothetically in terms of how these powers could be used or misused. If you look to the existing regime and all the complexities of the current powers that exist, we see plenty of examples. We are going to talk through a lot of examples today because there are so many of these powers being misused in ways which are problematic from a convention perspective. Taking discrimination, Article 14, for example, our 2023 report found that people with intellectual disabilities and mental health conditions and neurodivergent individuals were disproportionately affected by the types of order which were used. It is important to note that these individuals are more likely to be misunderstood, to breach conditions unintentionally, and therefore are more likely to be criminalised.

I want to give the committee one really tragic example of Floyd Carruthers, a man with schizophrenia who breached an ASB injunction for banging on a neighbour's door. He was jailed for 66 days and died in prison of sepsis after not eating for four days. There are quite severe consequences which can flow from these powers and that speaks to the fact that we need to be really clear about what we are doing when we introduce them. One of the broad and really pivotal recommendations that we are making is, prior to the introduction of new orders like the respect order, we need to see the Home Office undertake a holistic review of all the powers that exist at the moment, look at the data, look at what works, and then design systems that will deliver against outcomes and actually deliver for victims. At the moment, the issue is that we are flying blind in the ASB space. The evidence does not show what works effectively. Rather, a lot of the evidence shows the harmful impacts when some of these powers are not used properly, or when they are not properly resourced.

**Baroness Lawrence of Clarendon:** ASBOs are something that most people know about and understand, but when the respect orders come in, do they understand the difference between them? How much has that been publicised so that individuals and communities understand the difference between them?

**Tyrone Steele:** There are issues with respect to understanding among practitioners, let alone the public. We did a survey and round table in March this year on respect orders in particular, asking the questions: do you think these are useful, should they be introduced, et cetera? There was almost unanimous agreement that they were not needed. The focus

was very much on having a proper holistic understanding of the powers that existed, and providing the proper investment to provide the support to make the existing regimes work. We all want to see an ASB regime which is actually going to deliver for victims and make their lives better. At the moment, the evidence shows that that is not the case with respect to the current regime and we are really concerned that the risks will be replicated going forward.

**Q4 Lord Sewell of Sanderstead:** Children are exempt from respect orders, which is strange given a lot of people would say that in many cases on their estates or in their communities they have been terrorised by children. Just on that level, are you surprised that children are not in there? The part that makes it work might just be a respect order in another name, for example, youth injunctions. I do not know what evidence we have about the amount of anti-social behaviour committed by children; I suspect it is high. What do we do if respect orders are not for them?

**Dr Alex Black:** That is a really good question. I have not looked specifically at young people in the research I have done, but if you speak to practitioners, most anti-social behaviour is committed by adults. Young people were a big focus of the ASBO era, and they seem to take the focus in the media. There were similar issues in terms of young people breaching ASBOs, and we know that that happened quite considerably. It is good that the respect orders are not being used for children as young as 10. As you mentioned, there is the youth injunction, which will do very similar things. The difference will be how quickly you can criminalise on breach.

There is still the provision for young people to get things like criminal behaviour orders. All those measures are still there. They still exist, just in a different name or a different format. Most people's suggestion would be that to deal with young people there needs to be something where you are perhaps working more upstream to think about why those behaviours are being engaged in in the first place. The criminalising element does not necessarily seem to be having a good effect on actually stopping the behaviours. Perhaps there should be something more restorative addressing why young people might be engaging in this.

**Lord Sewell of Sanderstead:** It would be helpful to know if you have any ideas of what that could be. What do you suggest we do with them?

**Dr Alex Black:** We talked about this a little earlier outside. I suppose the social provisions that we have now are very different to what we had back in the 1998 crime and disorder era where you had Sure Start and things like that. Very recently there was a report about the effects of something like Sure Start and how beneficial it had been. Obviously, we do not have anything like that now. There are things that worked that we could look at reintroducing, but definitely a non-criminalising approach would be the way forward. Again, as Tyrone was saying, we need a holistic review of what works for young people, what stops the behaviour in question, and what we know about that.

**Tyrone Steele:** Just briefly, the challenge you make is exactly right and that echoes why we need this review because the data does not exist, the analysis of the impact with respect to children does not exist, and diverting children away from committing the offences that we are all concerned about should be a key part of any review which is taken on ASB. Also, more broadly, one of the great success stories of the last 15 years with respect to children in the criminal justice system is that we have seen a decline in the number of children in custody. The number of children in prison has gone down dramatically. That is obviously a welcome success story. A lot of the reason for that is because there has been a doubling down by various organisations, including Young Advocates by the Youth Justice Board and others, and a greater use of diversionary mechanisms to divert children away from the formal justice system towards support which is going to address those underlying drivers of behaviour. That is one of the areas where we would expect to see greatest reward if we turn the focus more towards that and less towards potentially criminalising non-criminal behaviour.

**The Chair:** It would be very helpful to the committee to follow up those helpful suggestions, not least about Sure Start. Dr Black, perhaps you could write to the committee afterwards reminding us what the benefits were and what we can learn from past best practice so we can include that in our report? I am going to turn now to Mr Sobel, and after that we will hear from Lord Murray.

Q5 **Alex Sobel:** Thank you. In my constituency we have a very broad PSPO because of the Otley Run pub crawl, which includes unauthorised events in a public space, obstruction of the pavement by groups of people, drinking alcohol in public places, verbal insults including sexualised comments, urinating in public places, and littering. My constituents view this PSPO and the fines that arise from it as particularly protecting their Article 8 human rights. I know the Bill would increase fines imposed for breaches of PSPO. Does it raise any human rights concerns or, as my constituents would view it, does it protect human rights concerns?

**Dr Alex Black:** That is a great question, and that is the issue; it is that balance between perceived perpetrators and people who are on the other end of that. Again, my take on this would be that until we know whether the fines as they stand are having any effect, the proposition to raise them seems irrelevant, particularly in the current climate where people are perhaps struggling to pay things like that. In the evidence we gathered, particularly around PSPOs, we primarily looked at people experiencing street homelessness. They were getting fines and they were just not being paid because they did not have any money to pay them. Increasing fines in that context is going to do little to change that situation.

Looking at evidence on other offences—things like drink driving—increasing fines did not deter people more. It did not increase the deterrent effect. Until we know what the threshold is for there to be a deterrent effect, increasing it is just going to penalise people who do not have the money to pay. What you do not want is people coming to court

for non-payment of fines and criminalising off the back of that. There is definitely work to be done around how PSPOs work and what impact they are having, but the fine is not necessarily what is deterring people. It certainly was not with the participants that we spoke to.

**Q6 Lord Murray of Blidworth:** What necessary changes to some of the anti-social behaviour elements of the Bill would you suggest this committee should recommend to improve protections on human rights. What would you suggest we say?

**Dr Alex Black:** We are probably coming from the same point. Our first recommendation would be a full review of the powers that currently exist before we add new ones or amend the ones we have to see what is actually working and what could be taken forward. This is a really good opportunity to do that work. Nothing has really been done since the 2014 Act came in, so this would be a great time to do that analysis to see what actually works.

If some of these elements were to be put forward, we would say that respect orders are not needed. We already have the provisions in place that do roughly the same. If they were put in place, some things that we could think about are definitely moving towards a criminal standard of evidence rather than a civil standard given the consequence on breach. There is certainly removal of the potential to put respect orders in place without a person present to advocate for themselves to have their due process rights. There are other recommendations around not increasing the fine because until we know if it has any benefit, it is irrelevant to do that. There are also propositions to extend the dispersal time from 48 hours to 72 hours.

**Lord Murray of Blidworth:** In terms of the statute itself, would you recommend any changes we can make to the actual provisions of these orders which would make them more human rights compliant?

**Dr Alex Black:** Changing the standard by moving from the civil to the criminal standard of proof in terms of putting in respect orders would be one. Also, putting a limit on the duration of respect orders. We would say no more than two years, rather than indefinite. There are other recommendations that we have around increased compliance with the statutory guidance. One of the provisions is to improve the statutory guidance and we need to ensure there is some sort of oversight body to make sure that people are complying with the statutory guidance as it currently exists because we know that that does not necessarily always happen.

There is a recommendation to have risk assessments for anyone getting a respect order and we need to make sure that that covers issues around things like neurodivergence so that people fully understand the order if they are subject to one. Those risk assessments should then be extended across things like CPNs and PSPOs because the same issues arise there for people who are subject to things like community protection notices.

There are others that we submitted in the written evidence; I do not know if you want me to read through those.

**Lord Murray of Blidworth:** No, that is very good. Mr Steele, do you have any particular suggestions?

**Tyrone Steele:** Absolutely. Thank you, Lord Murray. I have three structural ones, and three which could be amendments to the Bill. I will take them in reverse order, since you are interested in what could be changed within the Bill itself, and then I will speak to the structural ones. I agree with Dr Black that raising the standard of proof for respect orders to criminal standard, and amending that legal test, is a priority. Orders should only be imposed where a court is satisfied that it is necessary and proportionate, and not just for convenience. That is quite a low threshold. This also aligns with the legal precedent set out in the McCann case from 2003 and is, therefore, an essential safeguard with respect to Article 6, fair trial rights, both of which we discussed earlier. In our view, there is no rational basis for an amendment which removes the provision allowing respect orders to be applied for without notice or through interim orders. It is a clear breach of Article 6. If a case is so urgent as to require immediate action, then the criminal justice intervention is likely to be more appropriate in that context. Finally, removing the proposal to increase the fixed FPN fine from £100 to £500 for breaches of CPNs and PSPOs increases unnecessary disproportionate risks which further penalise marginalised groups.

I will go through the three structural elements very quickly. The review, as discussed before, is vital. Mr Sobel, you particularly mentioned the concerns of your constituents. The concerns of your constituents are only really going to be met if we understand what works and what is actually going to deliver for them. If we are flying blind in terms of what ASB powers work or do not work, then that is not good for anyone and certainly not good for victims.

Our other recommendation is that the Secretary of State should appoint an independent reviewer of anti-social behaviour legislation. This would be a really valuable position that could consult a wide range of stakeholders including police forces, local authorities, housing providers, victims, et cetera, to keep track of what is going on in the ASB space. Again, we need as much scrutiny and evidence as possible to make sure we are really getting this right.

The final structural recommendation would be to establish a national oversight mechanism for anti-social behaviour. This is a body which should and could monitor how orders are used in line with human rights and public sector equality duty standards. It could collect evidence and publish data on the impact of ASB powers on marginalised communities and communities more broadly. It could promote consistency and share best practice, and ensure the powers are being used efficiently and fairly. Going back to the round table that we did earlier this year with practitioners, 75% of those in the survey we ran supported the creation of such a mechanism and we think it would help identify regional trends

to make sure that we are really getting this right with respect to ASB powers.

**Q7 Peter Swallow:** In both your answers today, you really focused on the rights of the perpetrators of anti-social behaviour. I want to take it back to a point raised by my colleague Mr Sobel, and focus on the rights of victims. In my constituency, we have seen a rise in graffiti, in the number of people driving anti-socially on all forms of vehicles, and in casual drug use. The effect that is having on my community in terms of people's sense of safety is profound. I hear the points that you are raising here, but I want to really press you on changes that we can make to protect the rights of the victims of anti-social behaviour because, if I can be blunt, the suggestion that we just take time to look at what may or may not be working, my constituents would find that very cold comfort when they are being affected so negatively by this pernicious form of behaviour.

**Tyrone Steele:** The priority and the group that I have at the forefront of my mind when thinking about anti-social behaviour is victims. We need to make sure we are serving victims well by ensuring that the powers we have work, are targeting the right people, are the proper interventions, and that we do not end up with broad powers which are actually counterproductive. There are a few examples here of victims themselves being targeted by these powers; that is not something any of us want to see. Our number one priority is to definitely make sure victims are served and their interests upheld. However, we cannot do that if we do not understand how these powers are working in the first place. The lack of evidence and data which shows there is discriminatory or inefficient use of these powers—maybe that is a good way to put it—means that you have overly broad powers and overly broad discretion which end up not allowing for the targeted interventions which you and your constituents would like to see. One of the main motivations for having this review is to make sure that when we are designing powers they are as impactful and effective as they possibly can be.

**Dr Alex Black:** Mainly I would agree. It is about what is working, and whether we know what is working. The proposed amendments do not really give anything that cannot already be done. Practitioners can already respond to anti-social behaviour with the existing powers—things like community protection notices, injunctions, and closure orders. The powers are all there to be used; there is a whole suite of them in the ASB, Crime and Policing Act. The new powers do not really do much different in that sense. The behaviour can still be addressed, but we are asking if it is working because we know of lots of examples of people being issued with some of these powers and it not necessarily working. Sometimes they are issued in ineffective ways or in ways which, say, there is a neighbour dispute where both parties get a CPN rather than some sort of mediation work where they could perhaps come together to find a resolution.

There is lots of good practice out there. It is drawing that together—I am sure the second panel will talk about that—and making sure that it is

being applied consistently. At the minute, we do not have that overview and oversight of what is actually happening in different places, how different practitioners are using these tools, and whether the powers are being used consistently in the right way at the right time. If you speak to practitioners they will have lots of good ideas, but I do not think there is that oversight where you can perhaps draw on all that good practice. That is what is missing from the ASB world, and has been missing for quite a while.

**The Chair:** Thank you, Dr Black. We would be interested in seeing more on good practice, so please share that with us as well. We are going to go back to Mr Sobel, and after that we will hear from Mr Afzal Khan Member of Parliament.

Q8 **Alex Sobel:** Tyrone, this Bill is the third piece of legislation to make changes to law and public order in the last few years. Before we look at the detail of this Bill, do you think the correct balance is being struck in the legislation that we have now between the right to protest and the rights of others to go about their daily lives?

**Tyrone Steele:** Of course we fully recognise, support and are fully behind the importance of ensuring that the public, everyone, can go about their daily lives without disruption where possible, but the context of this Bill and the legislative changes over the last couple of years have tipped the balance in a worrying direction. There has been an insufficient weight on the rights of individuals to express their grievances publicly, which is a vital part of how this country works: how we are able to hold power to account, as well as ensure that the Government are aware of grievances where they arise. To give a few examples of this Bill in particular, the concealing identity offence—we might come to this in more detail—risks being quite problematic and creates a chilling effect on peaceful protest.

The defence that we see in Clause 108(2) is too narrow and fails to protect people who cover their face for entirely legitimate reasons. For example, a young woman wearing a scarf and sunglasses at a winter march; someone who is covering their face for safety; or they might simply be shielding themselves from the weather. These are not threats to public order; they are ordinary people exercising their rights responsibly. Under this Bill, they could potentially be criminalised for what they wear and not for what they are doing. For other people, anonymity is essential: survivors of domestic abuse, refugees or individuals protesting at suppressive regimes. I know the committee has done work on transnational repression, which is a real issue that can happen in certain sensitive locations in London or elsewhere. These people rely on the ability to protest without fear of being identified or targeted. There are real risks, and this goes to a broad issue in the public order regime over the last couple of years.

When the laws get too vague or overly broad, they risk being applied arbitrarily. That undermines public confidence, not just in protest rights but also the legal system as a whole. We want to make sure that that

balance is being struck by ensuring we are not punishing people for peaceful expression and lawful assembly. That should be protected and the convention provides that, but we need to ensure that that appropriate balance is being struck. The level of discretion that has been applied recently means that that is at risk, and that is something the committee should look at carefully.

**Alex Sobel:** There is a lot of interest in my questions. I want to come back to that point about concealing identity. Under this Bill, as you said, if the police think a protest is likely to involve the commission of any offences, the police can designate an area where concealing identity is an offence. Do you think it is clear what is or is not a protest for this purpose? You seem to infer that it would be difficult to work out what is or is not a protest. Does the threshold for designating raise any concerns regarding the right to protest?

**Tyrone Steele:** I think the threshold for designating an area is under Clause 109, and it is very low. Clause 109(1)(b) allows designation where the constable has reasonable grounds to believe that the protest is likely to involve the commission of offences. But what constitutes reasonable grounds and what kind of offences are we talking about? There is no threshold in the Bill regarding the type or severity of the anticipated offences. That means that designation could be imposed even where only the anticipated offences are relatively minor. That is an obvious concern from that perspective.

It then relates to potential concerns under Articles 10 and 11 of the convention, which protect freedom of expression and assembly. A designation that restricts protest rights must inherently be necessary and proportionate, and it is difficult to see how that test can be met where the anticipated offence could be minor or symbolic in nature. The position might be different if serious violence were genuinely anticipated; that is obviously true. Even then, the provision that we see in the Bill would be superfluous given that Section 60AA of the Criminal Justice and Public Order Act 1994 already gives the police the power to require the removal of items concealing identity in those circumstances. Again, in short, the Bill risks granting broad and unclear powers to restrict protest rights without adequate safeguards or justification. We have real concerns that is not consistent with the rule of law which requires that such legal powers be clear and necessary and, indeed, proportionate.

**The Chair:** Thank you very much. Dr Black, do you want to add anything to that, or do you want to combine it with an answer to a subsequent question?

**Dr Alex Black:** My area is more around the ASB. Our written evidence obviously echoes the same kinds of issues around people wearing face coverings for a wide variety of reasons, not just for criminal intent. That would be our position.

Q9 **Afzal Khan:** The new offence would apply to anyone, "Wearing or otherwise using an item that conceals their identity or another person's

identity”, but it would be a defence to prove that the item was being used as a purpose relating to health, religious observance or a person’s work. Does this do enough to ensure that innocent people are not criminalised and can exercise their right to protest?

**Tyrone Steele:** Thank you for that question. No, in our view it does not. As you rightly note, the Bill includes defences for religious observance, health and certain other circumstances. In our view, these are narrow and do not go far enough to protect individuals engaging in non-blameworthy conduct. There are many legitimate reasons as to why someone will conceal their identity at a protest which will fall outside those lists of defences: for privacy in the context of domestic violence survivors, as I mentioned before; personal safety, particularly for LGBT individuals or survivors of abuse; those fleeing transnational oppression; or simply to protect themselves from the weather. Those are all innocuous reasons, but, under the Bill, they could be criminalised. These are real and common scenarios, and the drafting does not provide sufficient protection.

There is also a case study that would be good to bring to your attention with respect to how this might pan out in real life. Take the group Police Spies Out of Lives. These are women who were deceived into intimate relationships with undercover officers. Last September, they wore masks while delivering a letter to the Home Secretary calling for an end to the current public inquiry into undercover policing to be lifted. That was obviously an important way to both protect their privacy because they do this work with anonymity, but also make a really powerful statement about state abuse.

Under this offence, people at peaceful protests like theirs could be criminalised, not because of what is being said or what conduct has been done but because of how it is being expressed because of their choice of facial wear. You have to put yourself in the shoes of this survivor of abuse who finally finds the strength to speak out, going to the Home Office only to be told the way that they are protesting is a crime, an offence. I do not think that is how we protect public order; that is how we silence individuals whose voices we really need to hear.

To echo previous points, there is a real risk that innocent people will be criminalised for engaging in what would otherwise be ordinary peaceful behaviour without the broader and clearer safeguards we are asking for. That is why we are calling for greater scrutiny of those provisions: to make sure that individuals or groups like Police Spies Out of Lives in those circumstances are not going to fall foul of this offence.

- Q10 **Tom Gordon:** Thank you, Chair. The Bill would introduce a new ground on which police could impose restrictions on processions and assemblies where they are “in the vicinity of a place of worship and may intimidate persons” away from using such a place. Is this a change that is needed to prevent such intimidation, and how do we adequately balance the right to freedom of belief with the right to protest?

**Tyrone Steele:** There are some concerns about this clause with respect to, again, its breadth and lack of clarity. A common theme in this space is that when we are looking to invoke the criminal law, we want to be really clear about what we are targeting. We do not want there to be a large amount of discretion. We do not want that to open up the potential for arbitrary use. We want to be super-targeted on what it is that we are actually looking to target. In many parts of the country, it is difficult to imagine protest routes that are not or could not be said to be in the vicinity of a place of worship. That makes the provision extremely wide in scope and risks capturing peaceful protests that are not disruptive or otherwise problematic.

There is also a concern in respect of the definition of the term intimidation. It is not clearly defined, and in the Bill it is notable that it uses this term rather than more specific legal language such as the phrase “cause a person of reasonable firmness present at the scene to fear his personal safety”, which is used in defence of affray under Section 3 of the Public Order Act 1986. This suggests that intimidation in this clause may fall short of fear for personal safety and potentially include behaviour that merely causes discomfort or offence. Sir Desmond, this goes to your point earlier in terms of offence.

It is obviously right that the law protects individuals against threatening conduct which causes an individual to fear for their safety or feel harassment, alarm or distress—we discussed that in the ASB section—particularly on the basis of religion or their racial identity. However, that is already covered in a range of different statutes. Looking at the Public Order Act 1986 in particular, we see Section 2, “Violent disorder”; Section 3, “Affray”; Section 4, “Fear or provocation of violence”; Section 4A, “Intentional harassment, alarm or distress”; as well as offences of racially or religiously aggravated common assault, and racially or religiously aggravated criminal damage.

There are already a plethora of offences from the statute book which would cover the mischief we are trying to identify here. There is obviously risk in terms of broadening it out in the way that the Bill anticipates; there are also legitimate reasons. For some, while protecting freedom of religion is obviously essential, we have to be mindful of the overreach this clause potentially represents and the imbalance of the rights that may particularly lead to where we look at what existing offences exist on the statute book. There might be a question of inviting the Home Office to be a bit clearer about why it thinks the existing regime is not sufficient and why it needs these new powers.

**Peter Swallow:** I want to pick you up on part of your response because you suggested—forgive me if I do not quite put it in the terms that you did—that it was not clear what this measure was being introduced to respond to. I would put it to you that it is very clear what this measure is being introduced to respond to. In recent months, we have seen protests targeting places of worship, particularly mosques and synagogues, where protesters have acted in a way that is directly designed to target religious

communities and deter them from practising worship in their places of worship. Is that not quite clearly what these new powers are being introduced to target or to stop?

**Tyrone Steele:** Of course, that is absolutely horrific and we would all condemn that. My invitation to the Home Office is more about why the existing powers are not sufficient. Maybe that is an operational question to ask of the police. Obviously, we have a police colleague coming on after this session, but that is the root of my concern. I would really like to understand and get that clarity from the Home Office as to why the existing powers are not being used appropriately, and that is my challenge.

**The Chair:** I think you have put a curtain-raiser in for the second panel, and a question Dr Swallow can pursue then. I am going to come to Lord Dholakia for the last question to our two witnesses.

Q11 **Lord Dholakia:** Do any of the other public order measures in the Bill raise human rights concerns?

**Tyrone Steele:** Most people in the country would not see themselves as protesters, but it is important to recognise that protest is not just for loud or radical causes. This is why it is in the convention. It is for the general public at large to raise grievances when they feel ignored, overlooked or powerless, and that cuts across the spectrum. It is a way for people to raise concerns and grievances when other routes fail. Also, importantly, from the Government's perspective, it is a way for them to hear about issues that they otherwise might miss. One of my concerns about this Bill and the measures in the Bill is it further risks turning peaceful protest into something to be feared or punished, and it would give further sweeping powers to the police to decide who can protest, where, how, and even what they can wear. We see that through the provisions which would criminalise people for covering their face and the lack of defences which anticipate the issues I raised earlier, even if it is just a scarf or sunglasses.

But, importantly, in our view, protest is not a threat to the rule of law; it is a vital part of it. Lord Denning, who Margaret Thatcher called probably one of the greatest English judges of modern times, puts it really well when he says that protest "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 suppression of these rights". That is the tradition I would invite the committee to think about honouring in this context. The Government should not be fearing protest. They should value it because lawful protest demonstrates that people still think their voices matter. It is how injustices can be exposed, it is how policy can be improved, it is how trust in institutions can be built and not eroded.

Also, the concerns I have about the provisions within this Bill are around protecting the rights of everyone: nurses striking for fair pay, parents campaigning for safer schools, veterans marching for justice. When we go

down the route of criminalising peaceful protests, we do not just silence the loudest voices, we silence everyone's. I would urge the committee to really ensure that those provisions within the Bill are going to protect the convention compliance with respect to public order and not undermine those safeguards which we so cherish. That would be my final message and urge for the committee going forward.

**Lord Dholakia:** Dr Black, do you want to add anything?

**Dr Alex Black:** I think Tyrone probably said that better than me but, yes, I would absolutely echo those sentiments.

**The Chair:** Thank you, Lord Dholakia. Dr Black and Mr Steele, you have been exemplary witnesses. You have shared your knowledge and your expertise with us, generously giving of your time, and it will help inform the scrutiny we are conducting on this piece of legislation. We will look forward to being in correspondence with you if you wish to follow up on some points that have been raised during our hearing. With those words, I will suspend the committee for a few moments while we change seats and witnesses, and then we will take our second panel. Thank you again for your attendance.

## Examination of witnesses

Chief Constable Mark Hobrough and Rebecca Bryant.

**Q12 The Chair:** It is a great pleasure to welcome our two further witnesses to our scrutiny session today. We have with us Chief Constable Mark Hobrough from Gwent Police. With more than 28 years of experience, Chief Constable Hobrough's policing career has included planning and implementing high-profile events and operations, leading organisational reform programmes, along with community and partnership roles. We also have with us Rebecca Bryant OBE, who is the chief executive of Resolve. Rebecca became chief executive of Resolve in 2018, after previously working as Manchester City Council's head of crime and disorder. Resolve has worked with the Government and the Civil Service for over 27 years, with the aim of developing best practice around anti-social behaviour and other community safety issues.

It is a pleasure to welcome you both this afternoon. I will kick off by first asking Rebecca Bryant a question. The Bill contains measures designed to tackle anti-social behaviour; what are the main forms of anti-social behaviour that you have identified as needing a different and a new legal response?

**Rebecca Bryant:** It is fair to say that anti-social behaviour is a very broad definition of types of behaviour. It is subjective, so it is dependent on the individual and their experiences. I suggest that anti-social behaviour that causes higher harm or that is more persistent would benefit from perhaps a tougher regime that has been proposed. However, we need to be really clear here that anti-social behaviour causes significant harm in communities. Victims often feel that they are not being supported and that they do not have recourse to justice. It is incumbent on agencies to recognise the impact of the anti-social behaviour and how far-reaching that can be. We obviously always need to strike that balance.

**The Chair:** Chief Constable, do you want to add anything to that or keep your powder dry for later questions?

**Chief Constable Mark Hobrough:** Lord Alton, I agree totally with Rebecca's observations. It comes in a variety of forms, and there can be very different circumstances in urban and rural areas as to what that can look like. That can include things like off-road bikes and Sur-Ron bikes, which we have seen a huge escalation of in recent months. It is a very prevalent concern, and probably on my own force tours around community councils—one that is among the very top concerns of the public.

**Q13 Lord Murray of Blidworth:** Chief Constable, the law currently contains a lot of different measures designed to tackle anti-social behaviour. To what extent are the present array of powers effective and, related to

that, is a change in the law in fact needed?

**Chief Constable Mark Hobrough:** The NPCC lead on anti-social behaviour is Chief Constable Andy Prophet. I have had engagement with him prior to attending here. He is fully behind and supportive of the proposals in the Bill. He feels that it will give an ability for partners to also be involved in addressing anti-social behaviour issues, because enforcement on its own is not the way to tackle anti-social behaviour. In answer to your question, I would say that the pathway to tackling any form of the existing legislation or any amendments to it would be to follow the approach of engage and explain, encourage, educate, and all those things, before enforcement. I would advocate that that was the pathway still.

**Lord Murray of Blidworth:** Do you think the changes in the Bill, including the introduction of respect orders, will be an improvement on the current system?

**Chief Constable Mark Hobrough:** It would be an opportunity to look at things differently, maybe to fill in some existing potential gaps, and work with partners with an ability to address issues and root causes. I am aware that there will be potential knock-on effects for policing as well because, obviously, should there be breaches of those respect orders, that will fall upon policing. Obviously, we would have to address those matters in course.

**Lord Murray of Blidworth:** When you are addressing anti-social behaviour—let us say fly-tipping, for example—would it be in your policing golf bag to select an anti-social behaviour remedy in order to resolve the problem, rather than trying people for the underlying offence of fly-tipping?

**Chief Constable Mark Hobrough:** Yes. I often use this in my public order portfolio: an additional power is something that is additional to the police services toolkit, and it gives an ability to deal with things in an alternative way. When you look at some pressures that are in other areas of the criminal justice system—within prisons and the like at the moment and CPS backlogs—then having an alternative to undertake tackling these issues, which are a blight on the community that still need positive action, gives an additional ability for police forces to be able to do things, as it does for other services too.

**Lord Murray of Blidworth:** Ms Bryant, do you agree with that?

**Rebecca Bryant:** I do. We need to look at two aspects of anti-social behaviour. There is challenging the behaviour, which might be through early intervention and prevention. The vast majority of cases and complaints of anti-social behaviour are resolved at first intervention. They do not require legal action at all. On average, about 75% of cases are resolved in that way. That could be through mediation, youth engagement, restorative justice or simply raising the impact of the behaviour that someone is perpetrating on the community. We are

talking about only a small percentage of cases that actually reach the legal system.

When we are talking about the other side of anti-social behaviour, we are talking about that longer-term change of behaviour. Some things that have been brought in around the respect orders—for example, the positive requirements—are there to actually look at why someone is acting anti-socially in the first place, recognising that that could be from mental health issues, drug and alcohol issues, adverse childhood experiences, or some traumatic incidents or circumstances within their lives.

The whole aim of the positive requirement element, which is already there in the current legislation and will be brought forward into the respect order, is to start really unpicking that and looking at ways in which we can support people not to become anti-social in the first place or not to continue being anti-social. Using a respect order will lever and persuade somebody to perhaps engage with services that they have been offered in the past, but there has not been that necessity to do that.

We should not be looking at this as just an enforcement approach, because there will have been a lot of activity that has happened before we have reached the point where we are looking at taking legal action. There will have been lots of opportunities for the individual who is the perpetrator to amend or change their behaviour moving forward.

**Peter Swallow:** Before I ask my question, can I just very quickly ask you to expand on that point? In the previous panel we heard that respect orders will not be—in their view—very different from existing or previous options, but in that answer, you were suggesting that they would be. Could you just tease that apart, perhaps?

**Rebecca Bryant:** Sure. First, I just wanted to clarify a couple of points that were raised in the earlier session. Respect orders are available only for 18-plus; they are for adults. The vast majority of anti-social behaviour that is perpetrated in this country is by adults, not young people. That is a real myth. The youth injunction in the legislation already exists now; there are very few changes. Risk assessments will be introduced as part of the new legislation, and it is very important that we do that. Although practitioners up and down the country already use various different proportionality assessments and various different checks and balances—of course, the courts are our ultimate check and balance when we are talking about using legal powers—the difference is that it has a stronger enforcement element.

When we use legal action against an individual, that is not necessarily enforcement as such; it is just asking somebody to behave in a way that most of us in society would expect someone to behave. The enforcement element is when there is a breach, and that is when someone will be arrested, or under the current regime, you would apply for the committal to prison because of breach of an injunction. There is that element there. The difference would be that, if you breach a respect order, the Probation

Service would become involved around those positive requirements. The Probation Service has access to a plethora of different interventions and prevention measures, which perhaps other partners do not have. The courts can coerce or persuade the individual to comply with those positive requirements in a way that perhaps the civil justice system cannot do at the moment.

- Q14 **Peter Swallow:** I wanted to challenge you with the same challenge that I put to the first panel. Of course, we are the Human Rights Committee, and we are looking at the human rights of all those involved including, importantly, the victims. How will the rights of my constituents who are facing challenges with anti-social behaviour be protected, or will their rights be further protected by these proposed changes as victims of anti-social behaviour?

**Rebecca Bryant:** Our approach in tackling anti-social behaviour always puts the victim at the centre of what we are trying to do. Our role as partners—the police, local authorities, housing providers, third sector organisations—is to protect victims and the community. There is always a balance to be struck. Often, we can find that some people who are involved in committing anti-social behaviour perhaps are vulnerable themselves; they could have already been a victim themselves. We have to balance that and make sure that the action we are taking is proportionate to ensure that we are protecting the victim and the community. We cannot ignore either.

As I have just described, often people who perpetrate anti-social behaviour are given many different opportunities to change before we take legal action, but we must not forget that suffering anti-social behaviours has significant harmful impacts. There are already many balances in place for those people who are perpetrating anti-social behaviour. Some support from the Victims' Commissioner—who I am not sure you whether are going to be hearing from—would be very much talking about the rights of the victim here: where do they go for recourse? We strongly believe at Resolve that everybody has a right to feel safe in their home and in their community. That is equal to the balance of freedom, when you are looking at the kind of restrictions that perhaps one of these orders could put in place.

- Q15 **Alex Sobel:** I am sure you know from your own experience, and we heard in the previous panel, about issues around anti-social behaviour with powers and orders being used inappropriately against vulnerable individuals—for instance, people sleeping rough. From your perspective, does the current framework provide sufficient protection against those powers being used inappropriately against vulnerable individuals? Would the introduction of the respect orders, youth injunctions and other changes in the Bill affect the balance of those powers?

**Rebecca Bryant:** There are already significant checks and balances in place when we are talking about tackling anti-social behaviour. Yes, there is perhaps a very small minority of people where there has been some poor practice, but I suggest that that is a very, very small minority. There

are obviously proportionality assessments that practitioners have to undertake, where they have to recognise that they have considered the action they are going to be taking and whether it is proportionate in comparison to the behaviour that is being perpetrated. There is this public sector equality duty, which is already built into the Equality Act 2010, in relation to taking legal action. Of course, when we get to court—if we get to court—then there has to be that demonstration to the judge that it is a reasonable action that we are going to be taking. Then there is the judge, who will have to decide whether it is reasonable to actually grant that order.

So there have already been several different reviews, balances and checks put in place before we get to that point. Even when an order has been granted, there will be certain terms of that order. For example, we heard in the panel before about an order in which you are not allowed to go to a certain area. The only way you can restrict somebody with an order from a certain area is if they have perpetrated significant anti-social behaviour within that area and it has impacted on the community and victims. There is a balance there.

It would be incumbent on the practitioner—I speak for practitioners all over the country—that if somebody legitimately had a reason to be going into that area, an appointment with the Probation Service, for example, there would be consideration for that before the restriction was put in place. There would be the ability to move that appointment, because we work in partnership together, so it could take place outside that restricted area.

The vast majority of cases that are dealt with already have those checks and balances but, fundamentally, the real check and balance is, as I said, the judiciary.

**Q16** **Baroness Lawrence of Clarendon:** This Bill would increase the upper limit of the fixed penalty notice for breaches of a public spaces protection order or a community protection notice from £100 to £500. Is this an appropriate response? Would it help to address the anti-social behaviour in practice? We should go to the chief.

**Chief Constable Mark Hobrough:** In truth, it is a deterrent. In line with many things, having a meaningful sanction makes someone consider whether they want to take that risk in relation to having that potential imposition put upon them. In line with many things, the reviews of appropriate sanctions for appropriate actions are very much something that need to be live and dynamic. Right now, we are seeing some reductions in certain crime types in large areas of the country and, pretty much across the whole of the country, we are seeing increases in anti-social behaviour, which suggests to me that the deterrent is not what it should be at the moment.

**Baroness Lawrence of Clarendon:** Would you increase it from £500 to more, if the deterrent is not working?

**Chief Constable Mark Hobrough:** It is a difficult one to answer. In a world where we have so much austerity, where we have a lot of areas that have deprived communities with considerable other pressures, being cognisant of the difficulties of people's lives in general is important. Any sanction, though it has to be a deterrent, has to be proportionate too. That would need to be constantly reviewed.

**Rebecca Bryant:** Fines act as a deterrent. We should probably say that often warnings are put in place first. Before we get to a community protection notice, there will have been a community protection warning. At that point, it would have been made very clear to the individual, "If you continue, then we will be applying for a community protection notice". The third stage is, "If you then breach that, it could result in prosecution and a fine". The difference between £100 and £500 is quite significant, and there is always a risk that some people may not be able to afford to pay that. On the balance of us trying to protect communities and victims, the deterrent and the threat of saying, "Well, if you continue to behave in this way it could result in a fine of up to £500", would, in most cases, act as a deterrent.

One of the things that we talked about in the previous panel that is missing is around the data and whether things work. You will notice that in the Bill there is going to be mandated data collection from the Home Office. We are yet to work on what that list might be, but as an organisation that works with the Home Office on these things, it is likely to be the number of injunctions, the number of community protection notices and the number of breaches. You will be able to see whether it is actually a meaningful deterrent in the future.

**Baroness Lawrence of Clarendon:** What would happen for those individuals who have difficulty in paying the fine? What would happen to them if they could not afford to pay, whether £100 or £500?

**Rebecca Bryant:** There is a difference between difficulty in paying and refusing to pay. We need to make that distinction quite clear. Some people just do not pay their fines, whether they can afford to or not. Those people who cannot afford to pay can enter into arrangements, so it is not as clear cut. In fact, if you were a reasonable authority, you perhaps would be looking for an alternative to looking for a fine.

Q17 **The Chair:** Chief Constable, I have a couple of questions for you about operational issues, if I may, which will help us as we scrutinise whether the Bill is needed in the first place. It is the third piece of primary legislation to make changes to the law on public order in the last few years. Are the further changes in the Bill needed in an operational context?

**Chief Constable Mark Hobrough:** I understand the question. To have three changes in such close proximity is, in some ways, unprecedented in this particular area, but we live in unprecedented times. Many of the things that are addressed within the recent proposals in the Bill are based on the requirements for speed. I do not want to go too much into other

areas of the Bill, but if we look at the requirements to have immediacy of executing entries to buildings for electronic devices without the need for warrants, it is because we have a very changing dynamic in relation to criminality.

In a similar vein, we have a very changing dynamic in relation to protest and what subsequently, on a number of occasions, has spilt into public order. Therefore, in spite of the fact that developments such as serious disruption, tunnelling and lock-ons have all been welcomed by policing, some gaps still in existence in the current legislation are clearly allowing those people intent on causing disruption and serious disorder opportunities to do so.

Apologies for going on with it, but my heartfelt thoughts go out to my Police Service of Northern Ireland colleagues over what they faced over the last 48 hours in Ballymena. We had 15 officers injured on the first night and 17 on the second night, where significant disorder has happened very quickly and been organised at a rapid pace, and colleagues have had to deal with extreme circumstances in that area.

**Q18 The Chair:** Some new provisions are needed because of changing circumstances. Can I probe a bit further though on new offences? Concealing identity, for instance, and carrying pyrotechnics apply only—as I understand it—in the context of protests. Can the police always be clear what amounts to a protest and what does not?

**Chief Constable Mark Hobrough:** It is a good question because there is no actual definition of a protest as such, and there needs to be an element of flexibility in relation to what a protest can be. A protest can vary from one person through to a very large crowd, but it is basically a culmination of someone showing their dissatisfaction for a particular cause.

Just to touch on your question in relation to concealment, although there are some existing legislative things in the Criminal Justice and Public Order Act—Section 60AA for the removal of masks—there are things that people are currently doing in a public order scenario that avoid that legislation. That piece of legislation is also reliant on there already being serious violence in place, whereas this addresses intelligence information that that might occur.

In relation to your pyrotechnics question, though the pyrotechnic aspects have existed for many years for sporting events and concerts, they do not currently exist for what is more commonplace, which is an increasing number of different types of protests in all areas.

**Lord Murray of Blidworth:** Chief Constable, I just have a quick test on what amounts to a protest. As I understand the way the Bill is drafted, a lot of discretion is given to the senior officer as to whether something amounts to a protest, thus engaging the powers. By way of an example, let us take anti-hunting protesters wearing balaclavas at a meet of trail hunting. To your mind, would that trigger the power under this Act?

Would that be a protest for these purposes, enabling officers to require people to remove masks?

**Chief Constable Mark Hobrough:** It could be, Lord Murray, because it basically is a protest. I go back to saying that this is an option. This is an option should the senior officer who is in command of the particular protest feel that there is a potential for escalation into disorder. I am a huge advocate of protest and of someone having the absolute rights to be able to express themselves. That is a British principle that we should long honour and respect. I am also someone who does not believe that the state should have excessive powers. It should have proportionate powers to deal with risks and to keep the community safe. That is my fundamental cause in policing really: people have an absolute right to safety.

**Lord Murray of Blidworth:** No doubt you would agree that, for many people, masked protesters are more frightening, alarming and causing of distress than unmasked ones.

**Chief Constable Mark Hobrough:** Potentially they are, if their actions are starting to escalate into something where a commander and officers on the ground are starting to sense that there are heightened tensions within areas.

**Peter Swallow:** Just to really drill down into what you were just saying there: you would not expect these powers to be used against a protest where there is no expectation that it would be anything more than peaceful. It would be used only in the case where there was a calculated risk that it could lead to public disorder.

**Chief Constable Mark Hobrough:** Yes. Basically, I am sure you are all aware that our public order command protocols are in place, where there is a strategic gold commander, a tactical leader at silver and operational bronzes. There would be a clear strategy set by the senior officer who was in charge of that protest. It would have policing protocols written into it, a look, feel, style and tone of expectation. It would have on it acceptable, proportionate and unacceptable outcomes. They would be clearly outlined for the silver tactical commander to follow a plan in place. We would almost be in a position where we are expecting certain ways and, when things start deviating away from some of those expectations with actions that start spilling into other people's human rights, having a toolkit of different options to address those issues is very helpful.

There may be gaps in certain places. I will use the particular example that Lord Murray talked about, where people are concealing their identity by wearing placards very near their faces or by holding masks in front of their faces, but not actually putting them on. Those give us gaps in the existing legislation where officers do not have the rights to actually reveal identities. Identity reveal is very important for us to be able to keep on top of potential criminality, because what we have had is a number of people removing headwear, then rejoining a protest and putting that headwear back on again, in the existing legislation.

We are ever more reliant on technology and automatic facial recognition potential retrospectively for offences that are caused. It gives us that opportunity to address criminality when it happens, so that we do not have future issues with the same individuals with no penance.

- Q19 **Lord Dholakia:** Chief Constable, the Bill will create a new offence of hiding and concealing identity in a designated area. Is this necessary or do you think we have succumbed to political pressure over not seeing individuals with their faces hidden?

**Chief Constable Mark Hobrough:** I apologise, because some examples that I was just referring to show that there are some gaps with the existing legislation. People are utilising those different tactics by not actually wearing headwear but still concealing their identity, which means that we have risks. At the extreme end, when we look at some of the extreme disorder that we saw last summer following the tragic incident in Southport, had we been able to get the identity of such individuals, we could have prevented some of those racist criminals from travelling the country and actually committing further offences down the line. There is a suggestion that some of those people had been involved in previous serious disorder that was unable to be detected.

- Q20 **Lord Sewell of Sanderstead:** We have covered a lot on concealed identity. Related to that, you have seen the publicity or the press around the police not being even-handed in terms of protests. I just wanted to ask you, first, if you think that is true? You are going to say no, are you not?

**Chief Constable Mark Hobrough:** You would expect me to say no. What I would say is—as was mentioned in the previous session—there are, of course, extreme examples where things are not done how you would want them to be. I work in an organisation that I want to advocate as a learning organisation, and one that makes some mistakes, but has to reflect and address them accordingly. I would not sit in front of you and say that mistakes have not been made in the past by policing, but I would like to think that we take action positively by engaging in true and honest reflection in relation to those.

A huge thing that policing and the College of Policing, in line with the National Police Chiefs' Council, is really driving is making sure that our training of our officers—from command right through to operative—is very clear and consistent, and really dwells on aspects of human rights, proportionality, command and clarity of communication. That is improving all the time. As I am sure you are very aware, our officers follow the national decision-making model. That is very much in their considerations when they move from existing information and intelligence through to threat assessment. When it comes to their powers and policies that we are talking about today, that is their toolkit that gives them that range of options before they go into that tactical option phase.

I suppose the heart of your question is that policing is made up of the public. We are all members of the public at heart, and mistakes can be

made. However, the training is very robust and rigorous. Continuous professional development and annual accreditation are mandatory things that have to be undertaken by all officers involved in public order. We do not just do that annually; we do it on a regular basis, based on changes in legislation or lessons learned from recent operational incidents. It is an ongoing process.

**Lord Sewell of Sanderstead:** Just following that—again, it is not necessarily all around concealment—would you probably not have made some of decisions that were made around the protest at Southport? Would you personally have handled that differently, do you think?

**Chief Constable Mark Hobrough:** It is very difficult for me to comment on another commander in another force and how they dealt with a particular incident, Lord Sewell. I am not privy to the actual info and intel that they had at that particular time, because obviously that was for the force and their gold commander to have ownership on. I can very much assure you that there would have been hot debriefs not just as that incident was unfolding but continuously. That would be fed into training for the rest of the forces and the organisations moving forward.

**The Chair:** I know that Mr Afzal Khan wants to return to a question that was put to our earlier witnesses about protection of people at places of worship.

Q21 **Afzal Khan:** Are new powers needed to restrict protests that may intimidate people from using places of worship? Why are the current powers of the police to control assemblies and processions not enough?

**Chief Constable Mark Hobrough:** It is a really good question. Ultimately, as you know, there are existing powers and policies within Sections 12 and 14 that allow us to make those considerations for religious premises. It is fair to say that, within the last 15 months there, has been an incredible rise in the use of those powers. I know I have referred to it a number of times as a toolkit, but giving a real clarity in a toolkit for commanders to use this as an ability to deviate away from extreme public order in areas where there could be vulnerability is huge for me.

In the last 15 months, we have seen that many members of faith communities actually avoid coming into their town centres, their city centres or around their own religious premises, when they know there are days of protest. That cannot be right. There is a fundamental right for people to have that ability to attend their religious premises. What is likely to happen with this is it would give us the ability to talk about turn-up times, locations and access routes. It would give a real clarity for us to put in those provisions around allowing a protest to happen, but not at the expense of another group of individuals who have a right to access their own religious buildings and faith communities. It would be a very useful addition for us.

**Afzal Khan:** Let me ask you a supplementary now and reverse the

argument the other way around. How will the police deal with a group claiming that they feel intimidated by an entirely peaceful protest? How would you ensure that the right to protest is protected in such a scenario?

**Chief Constable Mark Hobrough:** My colleagues across the country are very well versed in relation to proportionality, and they would interpret what they are seeing, feeling and hearing on the ground. The audit trails and the reflective learning that happen after dealing with protests and public order scenarios are rigorous. We are on a continuous learning cycle. I do not want to say that people are reticent about using their powers, but they definitely think carefully about them so that they are not seen as overzealous. They think much more about not just dealing with the protest on the day, but the long-term community cohesion consequences.

Striking the balance is very important. Making sure that we are constantly engaging with our community representatives, stakeholders and independent advisory group members to ensure that there is a real understanding of what police can and should do in a certain set of circumstances is an ongoing thing that we have to continue doing.

**Afzal Khan:** Earlier on, you talked about how—if I understood it correctly—police have known certain individuals who may have had a history or track record causing difficulties or violence in different places. Are you suggesting that we should maybe operate in a way similar to the way that we do with football hooligans, where you have a track record and therefore prevent them, or is this something different?

**Chief Constable Mark Hobrough:** If there was evidence to be able to arrest individuals for offences, then that positive action would have been taken. It is intelligence, as opposed to evidence, that such individuals were involved in disorder in other parts of the country and then went on to travel to cause similar disorder.

You raise a really important point, Mr Khan, that we are in a world now where technology is incredibly rapid. In previous eras, it would take some organisation to get a protest, let alone public disorder, yet we are now seeing that it is incredibly fast to do that. You can generate like-minded souls into agreeing with a principle, then taking positive action for what they strongly believe in and doing it rapidly. Working with our colleagues and with partner agencies, including our transport colleagues, our intelligence has to be better than ever.

**The Chair:** Intelligence and evidence are very different things and, as you say, we have to strike the right balance between them. I am very struck that we have been asking you operational questions in this last part of the meeting. Ms Bryant, is there anything you would like to add to the evidence that you have given us today—if not now, then perhaps subsequently? My colleague, Baroness Lawrence, would like to ask a supplementary too.

**Baroness Lawrence of Clarendon:** I wanted to ask something while the chief is talking about IT and intelligence. Something similar happened in Southport, did it not? They were able to communicate and bring people into Southport to continue the protest and cause so much harm.

**Chief Constable Mark Hobrough:** Yes, there were—rapidly. That escalation was really evident within the following days. I know personally that the majority of people involved in the disorder in Plymouth, for example, were not from Plymouth. They were travelling into that area with the intent of causing a similar type of disorder. As we know, that rapid step-up on actual, visual criminal justice outcomes somewhat quelled what might have turned into continued disorder.

Regarding your question on the IT, it is ever-increasing. We are seeing it on many different fronts now, and we need to be able to react dynamically to get ahead of those sorts of aspects, so we can plan for them.

Q22 **The Chair:** Ms Bryant, do you have anything else you want to say to us?

**Rebecca Bryant:** No. We are going to provide some written evidence with some more data-driven points. I recognise that this is about human rights, and we are looking at those checks and balances. Practitioners up and down the country recognise that they have a duty to make sure that they are taking the right sort of action, commensurate with the behaviour that is being perpetrated.

There are many steps that officers go through—whether investigation, working in partnership or gathering intelligence from the police—to work together to come up with the right solution for the individual case. The first panel session spoke a lot about where it goes wrong, but that is because, in the vast majority of cases it goes well and it goes right. We really need to recognise that.

**The Chair:** Thank you very much indeed. We are very conscious that rights have to be balanced, that some people wantonly abuse other people's rights and that we have a duty to ensure that the right balance in law is struck, but also that duties balance rights. We have obligations to one another. You have very eloquently explored some of those arguments with us this afternoon.

Ms Bryant and Chief Constable Hobrough, thank you very much indeed for giving so generously of your time today. If there are any follow-up points that you want to make to us, do not hesitate to put those in writing to the committee as we continue with our work on the Crime and Policing Bill. We will produce our report and recommendations in due course, and I hope you will find that that is a fair reflection of some points that you have made to us today. In thanking you with those words, I now conclude our proceedings.