



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence (Virtual Proceeding): [The Government's response to Covid-19: human rights implications of long lockdown](#), HC 1004

Wednesday 24 February 2021

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Members present: Ms Harriet Harman (Chair); Lord Brabazon of Tara; Ms Karen Buck; Joanna Cherry; Lord Dubs; Lord Henley; Baroness Ludford; Baroness Massey of Darwen; Lord Singh of Wimbledon.

Questions 32-41

Witnesses

[II](#): Owen Weatherill, Assistant Chief Constable, National Police Coordination Centre; Ben-Julian Harrington, Chief Constable, Essex Police, and Public Order and Safety Lead, National Police Chiefs' Council; John Apter, National Chair, Police Federation of England and Wales.

Examination of witnesses

Owen Weatherill, Ben-Julian Harrington and John Apter.

Q32 **Chair:** We now move on to our next panel of representatives from the National Police Coordination Centre, the Police Federation and the National Police Chiefs' Council—Owen Weatherill, John Apter and Ben-Julian Harrington.

I will start the questioning. Obviously, policing during this pandemic is very different from what could be described as policing in ordinary times. Do you believe the police have been given enough direction from government to enable you to understand and enforce what have, of necessity, been rapidly changing laws? Do you feel that you have been drawn into areas that ought not to be the domain of the criminal law and that you would rather somebody else was doing or that it was being done in some other way? Do you feel that that will have a long-term impact on the relationship between the police and the public?

I do not know whether you have heard what the previous panel raised in relation to monitoring your activity of issuing fixed penalty notices, reviewing those that are contested, and analysing any patterns. We understand that you are not required to do that, but have you been doing that in order to inform your work going forward?

Owen Weatherill: In terms of the broad challenge, which is where you started your question, the first key point to make here is that this is something we have never faced before. The scale, the duration, and the nature of it is a completely unique operating environment for us. Whether you are public or civil servants or police officers, we all have had to find a new way of working against new challenges and new demands, alongside, in our case, all the other existing demands, which of itself is a challenge.

In terms of the Covid-specific challenge, we have had an evolving picture of different regulations, changing regulations, as the nature of the virus and its prevalence changed. Understandably, in order to safeguard public health, we have needed to change and adapt at pace to make sure that we preserve the health of the nation as best we can. First and foremost, our role as police officers has been to try to do our part to make sure that we can keep the country as healthy and safe as possible and to mitigate the deaths so that they are the least amount possible, given what we can do within that environment. That is the environment we are operating in, which is very different for us. It is not our usual operating domain.

Clearly the direction from government has had to develop at pace, which presents a very different operating environment for us, too. You will be very aware that legislation normally takes months, if not years in some cases, to pull together and work through its normal process for us to then implement it in a coherent way. We have not had that time to operate here. We have had to develop things exceptionally quickly. In some cases, we are talking about legislation starting and being enacted in a space of days and us needing to get into a position where we can brief that to our staff in very short order. Is it ideal? Absolutely not. But is it driven by extreme circumstances that we need to react to? Yes, it is. We need to understand that very different operating dynamic. It is not our usual operating environment. Those would be my initial observations.

You touched on some of the fixed penalties, and I am sure we will get into this in more detail, but the thing to understand here is the scale of this and the nature of the environment in which we are operating our business. We have talked about the four Es already today, and I am sure it is something we will come back to. I would suggest that it has been a very effective model. We deliberately set up an ethics committee to support our approach in policing nationally, and that committee has endorsed that and very strongly encouraged that we maintain that at all stages, which we have done. It is a core element that underpins all the guidance that we push out to officers, and we remind them at every opportunity with every new piece of guidance that goes out. The evidence of how successful that is is not found in the number of tickets we are talking about but the number of interactions we have had.

That is not as easy to assess and to monitor nationally, because we have hundreds of thousands of interactions across the country over many months. I will just give you some headlines and an indication of what that means. One force has had over 70,000 interactions involving Covid-related matters.

Chair: Sorry, I just lost you there. Which force was it, and what was your first figure?

Owen Weatherill: I did not specify which force it was. It is a national force. It had just shy of 74,000 interactions, of which 4,800 were directions to leave, and it successfully engaged without getting to enforcement. Only 173 resulted in tickets. What you can see there clearly is the scale of the first three Es being effective.

Chair: Are you saying that you are not saying which force it was?

Owen Weatherill: I did not say which force, no.

Chair: Could you tell us which force it was?

Owen Weatherill: The only reason I am not mentioning it is because the numbers are not in the public domain at the moment, but it is helpful in the context.

Chair: They are now, and it would be helpful for us to know. Obviously, the police are a public force and the public are interested in these figures. It is not personal privacy or official secrets or commercial confidentiality if these are figures that are being collected by a force and shared with you. I do not see why they should not be shared with us. They are very interesting figures.

Owen Weatherill: They relate to the British Transport Police, so are in relation to transport networks.

Chair: Thank you, that is very interesting. Sorry, I cut you off there and you were in mid-flow.

Owen Weatherill: I was just saying that that gives you a very good indication of the scale we are talking about from front-end demand through to what results in a ticket.

Different forces collect their data in different ways, so I cannot give you a collective picture of the number of interactions, but there are some very big numbers at the front end when you start looking at call demand, online demand, as well as what officers themselves come across in day-to-day activity. The number of tickets is a very small proportion of what comes about through day-to-day interactions around Covid. It gives you a better indication of how that four-Es approach works and it is important to understand that context.

Ben-Julian Harrington: Could I just add something to Owen's response? Obviously, policing, particularly at the start, has been asked to do different things. At the very start, we were very much the only visible presence reassuring the public on the street, when many others, rightly so, were not there responding to normal crime. We have continued to be that visible leadership presence across many communities, reassuring, dealing with safety as people are locked in their homes, and all the things I am sure you have heard about involving domestic abuse and those things.

That has put us into a place where we have had to combine our policing duties with our public health duties and have had to interpret that law at speed, at pace, while doing all those other duties, as well as there being the anxiety and anxiousness of all those officers and staff who have been worried about their own

health and safety. I know that our duty as chief constables is to look after their health as well, so that is important.

To give you more data, I can speak for Essex, because that is my home force. The statistics are similar. We have had 37,000 engagements with members of the public, where people have been engaged, explained to and encouraged to comply. Only 929—2.5%—resulted in a fixed penalty notice. To reinforce Owen’s point, it is a force that has dealt with blatant and egregious breaches, but it has worked to warn and encourage and explain to people. The previous witnesses suggested telling people how to comply, and that evidences that we have done that.

Q33 Baroness Massey of Darwen: I am a Labour Peer. Thank you for those explanations and the data that you gave to us, which is very useful.

How much discretion is available to police officers to decide whether to issue an FPN, and what level of fine would be most appropriate to impose in a balanced and proportionate way? I am asking you, because it seems to me that police forces are dealing with different people, of course, such as a group of students getting together for a party possibly being issued with enormous fines. I know that this is a difficult issue for the police. It must be terribly difficult for individuals or groups of police to decide upon. How are the police trained to make such decisions, and how are they supported and monitored in these positions?

Ben-Julian Harrington: Of course, police officers are trained to use their discretion—an important part of British policing—in lots of different and complex cases, investigating crime, dealing with vulnerable people. Their training and expertise in that has allowed them to apply those skills.

We have heard about the four-Es approach, and through Owen’s lead we have given as good guidance as we can, working with the College of Policing to make it as clear as we can in briefings to officers what the regulations are at the current time, and of course at the current place, because they have been different in different places at similar times during the last year. We give them that knowledge and experience to make sure that they are properly briefed, but then we ask them to apply their discretion in the local context, because the situation will be very different as to where there is an obvious health breach or where people are putting themselves at risk, where it is in the open air or where they are close together.

We need to rely on officers to do that, and have relied on them, and we need to properly brief them, to supervise them, and to

make sure that we allow them to use that four-Es approach. You have heard some of the numbers, and certainly the experience in many forces is that, overwhelmingly, once people have had the regulations or the situation explained to them, they comply with the guidance and the encouragement of officers. We have heard lots about the issues with tickets, and of course there are issues with any new legislation and any process, but that gives evidence that officers are doing that and are using their discretion, alongside their other duties, to warn and advise people in the interests of their public health.

Q34 Lord Dubs: You have partly dealt with some of the points in my question, but here goes. We have seen stories in the press about people being given FPNs for behaviour that is not prohibited under Covid laws, contrary to the no punishment without law prohibition in Article 7. There is a case that has been much quoted, even this afternoon, of the two women going for a walk at a reservoir in Derbyshire and for which the police have since apologised.

Do you think there have been instances where the police or some police officers have been overzealous in their use of FPNs or too quick to resort to FPNs during the pandemic? Has this resulted in disproportionate or even unjust punishment? What steps can and should the police take if they become aware that the person has received an FPN in circumstances where they have done nothing contrary to the law? What is the process, if any, for the police to review FPNs to ensure that they are not punishing people unjustly?

Owen Weatherill: To unpack some of the process that we apply, when a police force issues a ticket at a local level it will go through a force-level review process before it is referred up to the body that issues the ticket formally for us, which is done at a national level called ACRO. There is a review first in the force. If it gets referred up from the force, there is then a further review, which is done at a national level within ACRO, before the formal ticket is issued. There are two in-house reviews, both of which designed to make sure that the FPN complies with the regulations and that the evidence is sufficient to meet the standard that needs to exist for that offence. Only at that point does the ticket get issued. It is at that point that the individual is asked either to pay it or to contest it. They have the option to contest it if they wish to, and obviously to take that matter up in the court, as was mentioned earlier.

There is rigour around this. The case you mentioned was obviously referred up into the public domain quite quickly before it went through that local force-led process. Every force always encourages its staff to use discretion. That is a fundamental element of policing. We encourage it actively, and we need our staff to look at

every situation on its own merits. Mistakes might be made on occasion, but when you deal with hundreds of thousands of interactions, that can occur.

In this particular case, part of the confusion was driven by some of the government guidance, which was at odds with the regulations. The regulations are quite definitive. Government guidance on occasion has not been quite as clear as it perhaps needs to be to assist with interpretation. Where that exists and where we identify it, we discuss that with the Home Office, we raise it and we seek to have that adjusted, because clearly the more alignment and understanding there is, the better it is for everybody to understand.

Joanna Cherry took the Chair.

The Chair: Harriet Harman has had to leave us temporarily. My name is Joanna Cherry. I am the Member of Parliament for Edinburgh South West and I am Harriet's deputy chair, so I will be taking over chairing for the time being until Harriet joins us again.

Q35 **Baroness Ludford:** I the Liberal Democrat Member of the House of Lords. Thank you for coming to give evidence to us.

I want to continue that theme, because when the committee raised concerns last year about the number of cases incorrectly charged under the regulations, the chair of the NPCC, in replying and explaining, referred to the unprecedented circumstances at the start of the pandemic, which one can understand. But statistics from November and December last year show an even higher rate of cases being incorrectly charged, overwhelmingly by the police rather than the CPS. I have seen reference to both one-eighth of cases and to 25%, so I am not entirely clear exactly what statistic I am using there, but it is a good number.

Why do you think that is the case? Do you think that the incorrect use of FPNs, which of course hit the public imagination and the press, may affect confidence in the police? Owen referred in his last response to two levels of review, but if these incorrect FPNs are getting through, what does that say about the two levels of review?

Owen Weatherill: We are talking about two slightly different things. There are the coronavirus regulations, which are the powers under which we issue fixed penalty notices, which are where the vast majority of our activity operates. Then there is the Coronavirus Act, which is different legislation, which is where the incorrect charges apply. Under the regulations, we do not charge anybody; we issue a fixed penalty notice. Under the Act, these are cases that are charged generally in the custody environment—the

numbers are very small—and arise from health protection issues. Kirsty unpacked a bit of this.

Why do those errors occur? They occur primarily because they are administrative errors of charging under the wrong legislation. They should be charged under the regulations when in custody, but they are actually charged under the Act, which are different offences. There are some bits in there that sound similar, which is where the confusion comes from.

Baroness Ludford: If it goes through two levels of review—I take your point; my terminology may have been incorrect—whether it is under the Act or under the regulations, if there is a lack of correctness that is getting through, that raises concern about the filtering mechanism. Maybe John will want to come in on this. I care, as we probably all do on this committee, about confidence in the police. We cannot afford in this society for confidence in the police to be undermined. It is obviously in all our interests that these issues of FPNs are accurate.

Owen Weatherill: I agree, but to go back to my point, they are different processes. Something that is charged within a custody environment does not go through the same process I have just described. The process I described at the beginning relates to tickets issued under the regulations. Something that is charged in a custody environment, within a police station, is then referred up to the CPS, which is where that review happens, which is how those cases have been captured.

Anything that is routed through a fixed penalty notice goes through the force process and then the ACRO process. We find errors there, and when we do we do not progress any further with those tickets; they never get issued in the first place. Anything that is charged in a custody environment has to go by the CPS, because they route it to court. The charge necessarily goes to court, whereas the fixed penalty notice does not unless contested. They go through very different processes, because they arise from different environments.

Baroness Ludford: Could I pass to John then, because, if I may say so, it is obviously those in the front line, of which his members and federation will largely figure, who get any flak in difficult situations of having to deal with the public who feel unfairly treated.

John Apter: That is an important point, which I wanted to make. Back to the first question, I represent 130,000 police officers across 43 forces in England and Wales. They are all forces doing

things slightly differently, and we are being asked to police in a way that we would never have dreamt of. I have been in the force for over 28 years. I would never have imagined that we would have to police in this way. The police's relationship with the public is so important. Without doubt, it has been tested in these difficult times.

One of the challenges that we faced throughout this whole pandemic is that we all want to do our absolute best to keep people as safe as possible, but the legislation constantly changes. I do not know the exact number, but I understand that the legislation has changed about 70 times in almost 12 months. Every time the legislation changes, my colleagues, those officers out there on the front line, have to interpret that legislation, often with very little time, if not no time at all, to digest it. A recent survey that we did showed that nine out of 10 officers felt that the regulations were not clear. They are the ones who are having to deal with it out on the street.

I understand why the rapid changes in legislation come along. We have talked at great length with the NPCC, the Home Office and the Home Secretary, and I understand what we are all trying to achieve, but it is difficult and it is tough. You are right: that relationship with the public is being tested. But I stand by colleagues who are doing their absolute best, and mistakes will and have been made.

I know we spoke about the thousands of encounters that we have had with members of the public. It is important that that is highlighted, but the number of times when things do not go as we would want is relatively small. That is not what we want to do. Officers are not out there intending to do a bad job. We want to do the best we can, but it is tough.

Baroness Ludford: I do not know whether BJ, as the chief constable, wanted to come in on that or whether he felt that it had been covered.

Ben-Julian Harrington: To stress the point, officers have reacted quickly to this. We have given them as clear guidance as we can in the time we have been able to. I would endorse that as we have got used to this, the notice and the time we have had to digest that has improved. We have had an influence on what are practicable and practical measures to implement because there is no point putting in place regulations that are unpoliceable. We have had some influence in relation to that and that has been useful, but these are complex situations.

The officers themselves are concerned about their health, safety and welfare, and we have a duty in that regard. They have been out there doing this when people have rightly been anxious, upset, sometimes angry, on top of all those kinds of things. The point I would make is that all the officers have seen images of the people in the hospitals in Italy. We all saw the terrible things there. We saw all the hospitals here in Essex. I have seen the pressure on our hospitals. They still come to work and they have still been out there with all the difficulty, with all the challenges. I am proud of what they do, and the public should be as well.

Harriet Harman took the chair again.

Chair: Can I just ask a further question? I do not know whether this would be for Owen Weatherill or BJ Harrington. Because we are looking at this, would it be possible for you, after this committee session, to write to us telling us for each force what have been the number of interactions, the number of fixed penalty notices issued, and the number of those that have been dropped under the force review process? This gives us a real sense of the scale and proportionality of all this. Would it be possible for you to give us that information that you have referred to in this evidence session?

Owen Weatherill: We do not capture nationally at the moment the number of interactions. Some forces do, and others do it in different ways. We have a national picture of the tickets issued, because they are managed through a single process nationally, but interactions are obviously a force-level thing. I do not have that information, because we do not capture it in that way at the moment. We can certainly see what we might be able to give to you. We can definitely give you the breakdown of fixed penalty notices by force. That is public information that we publish every month. We can give you an indication of that.

Chair: I think we have seen that. It is the number that are dropped under the force review process by force and the number of interactions so that we can look at the number of fixed penalty notices issued, which is in the public domain. If you could, that would be very helpful. Thank you. I appreciate that not all forces collect them in the same way, and I know you are busy, but for those that do it would be very helpful for us.

Q36 **Lord Singh of Wimbledon:** As we have been hearing, there have been several changes to the rules on protests during the pandemic, which reflect the need to enable peaceful protest and therefore concern freedom of expression and its association under Articles 10 and 11 of the European Convention on Human Rights. Do you think that public protests should be permitted at all during the pandemic,

given the risk to participants and the risk to life to police officers?

John Apter: That is an interesting and important question. We heard from the panel earlier that there are some very strong views about this. I believe absolutely in the fundamental right to peaceful and lawful protest in normal times, but we are not in normal times. When we have protests, certainly some of the protests—I would say the minority—turn to violence. My colleagues are doing all they can in the midst of this deadly virus, and are up close and personal with individuals, many of them weaponising this virus by spitting and coughing at them. We have seen a significant increase in that type of disgusting, vile and dangerous attack.

I believe, and this organisation, which represents officers, felt, that the protests should have been curtailed during the height of this pandemic. We raised those concerns directly with the Home Secretary. That is because, by the very nature of some of the protests, the actions of those attending, without the exemption—and there is confusion about the exemption, I appreciate—or by the nature of the activities, are unlawful. That pains me first as a police officer but also as a citizen. I do not like to say that in that way, but we are in the most unprecedented of times. In order to protect my colleagues and the public, I do feel that in the height of the pandemic there should have been more restrictions on protests, as difficult a message as that is.

Lord Singh of Wimbledon: That is an interesting answer. There must be different levels of importance of different protests. Some are really pressing, some are more for show. Is there enough discretion with the police about a protest before it is carried out?

John Apter: I think that is probably a question for one of the other two speakers from the NPCC, if I may pass that one over.

Ben-Julian Harrington: What is restricted and what is allowed is properly a matter for Parliament and for government, not for policing. We have many responsibilities—to keep people safe, to prevent crime, to discharge our duties under the Human Rights Act, and importantly for this committee Articles 10 and 11 in particular, with regard to expression and assembly, which are right in the middle of protest. But the right to life, Article 2, relates both to our officers and to members of the public.

Chief constables are operationally independent, and they have to consider how to best discharge those duties. We have well-trained and experienced public order commanders. Public order policing is complex and tricky at the best of times. They are always considering how they maintain the trust and confidence of the

public, while needing to balance the threats, the harms, and the risks, and within that legal framework. Sometimes there is no involvement at all, sometimes it is about disruption, sometimes it is about criminality, and sadly, as we see in protest, we sometimes see violence.

An additional, and different, thing is that for the first time, certainly in my 31 years and I think in anyone's policing experience, we have had to use and consider public health and the health of officers and protesters, which is a very different dynamic. Of course, the right to protest is there, particularly in Articles 9, 10 and 11, but under Articles 10 and 11 those rights are qualified. As the previous witnesses said, police commanders need to balance the threat, risk and harm using public order legislation, because that has been used, and it has been used where it is proportionate and necessary to manage some of those threats. They have also had to consider the current regulations to tackle Covid-19 within that threat assessment. They have changed, and they have been different. Where it is prescribed by law, public order commanders, or any police officer, can put those and interfere with those rights.

I think that is what they have tried to do, and the context of where and when they have done that not only relates to the threat posed but to the location, which has also changed. Within that, it has been really clear, and we have used the four Es in public order operations. That is why, in the thousands of protests that we have policed over the last year, we have made very few arrests, which very often have been for criminal offences, offences of violence, sadly, but we have issued relatively few FPNs in relation to that. We will do all that balancing of powers, trying to balance the right to life, the right to assembly and the right to expression, alongside all our powers, and locally well-trained commanders, and mostly we will get that right. That is what we have done throughout these protests.

Lord Brabazon of Tara: I think the last answers have answered the question that I was going to ask.

Chair: Thank you. We will go to Joanna Cherry then for the next question.

Q37 **Joanna Cherry:** Good afternoon, gentlemen. I am the MP for Edinburgh South West. You may have caught part of our previous session when we were speaking with lawyers and the interim director of Liberty on the question of what exactly the law is at the moment in England as to whether protesting is a reasonable excuse under the regulations that say that we should not leave our home except for a reasonable excuse. Chief Constable Harrington, as the

public order lead, what your understanding of the law at the moment as regards the right to protest?

Ben-Julian Harrington: The tier-4 regulation is about gatherings. The advice and guidance that we have given has been about gatherings and the exemptions to those gatherings, sometimes involving two or more people in a private place, and more than two people in a public place. There are set exceptions to that that are very explicit in the regulation. I think it is Regulation 11. They are not exhaustive, but one of them does not exempt protest in the way described, and nor, like previous regulations, does it talk about political groups, charitable organisations, and those kinds of things. That is what we have talked about when it comes to gatherings. They apply as much to unlicensed music events and other gatherings as they do to protest. The point there is balancing Article 10 and 11 rights with the purpose of this legislation, which is to protect the public's health.

Officers, and certainly public order officers, are balancing these two rights. That is why you will have seen in some places, where the context is right, some protests going ahead very peacefully without any police intervention. I can talk about my own area here in Essex, where there has been very little police intervention at all. Police have socially distanced, and there is no exemption, but the threat is such that the discretion, from the local commander with the information that they have, is that it would be wrong to intervene. On other occasions, as you will have seen and as has been referenced, officers have made the decision to intervene, either because the threat is such or because people have not heeded the warnings, the encouragement, and the engagement. That is my understanding. The context is so important, Ms Cherry.

Joanna Cherry: Just to be clear, if that is your understanding, can we assume that your understanding of the law is that there is no absolute prohibition on the right to protest, and that it still exists, notwithstanding the terms the regulations made under the Public Health Act?

Ben-Julian Harrington: Absolutely. In all the guidance that we have put forward, and the fundamental training of police officers on public order, and the area that I lead for the National Police Chiefs' Council, those qualified rights under the Human Rights Act are absolutely there. We teach that from our authorised professional practice in the College of Policing right the way through to the guidance that we have issued during the pandemic. The guidance I gave, supported by the College of Policing, particularly in the current set of regulations, has been about gatherings, and we have talked about gatherings and the purpose of that.

Officers need to consider the threat, the harms, the risk, which might sometimes be from crime—and sadly from violence, as I said, but that is very limited—as well as the public health risk, and importantly the risk to the officers and the public. There are health and safety duties that are applicable to me as an employer of officers and to all chief constables and the commissioners in London, and the duty to the public if there is a policing operation.

All those things have to be balanced, all those risks have to be considered, and there is discretion. That explains why you sometimes see a different style of policing operation in one place from another, because of the threats and the risk—and, importantly, the local context can be very, very different.

Joanna Cherry: It is a bit puzzling, though, because on the face of it the regulations prohibit gatherings, which they define as taking place when two or more persons are present together in the same place. So we have that on the one hand. But we also have your clear recognition that the right to protest still exists. We had the Court of Appeal saying recently that the exemption of reasonable excuse to leave the house would mean that somebody charged with leaving the house without a reasonable excuse could invoke their Article 11 rights to protest as a defence. I am just a wee bit puzzled about how the prohibition against gathering in the regulations of more than two people sits with the recognition that the right to protest is still there.

Ben-Julian Harrington: This is a common dilemma for police commanders and for police officers. If you were to take out the Covid regulations, and if you think about disruption, which to some people might be considered significant or difficult, such as obstruction of the highway, officers and police commanders are taking decisions where they might tolerate minor infringements of the law because of the balance between the rights to freedom of expression and assembly, recognising, as has been mentioned, the important and fundamental the right to protest, as it is described around there.

Officers are having to use those discretions. We do not always arrest anybody who blocks the highway in a protest. We encourage, we engage. In fact, the four Es came from what is called the five-stage appeal, which has been used in public order for a long time and is to try to engage, speak to, explain, encourage, point out the consequences of being arrested, perhaps, and then finishing off with, "If there's anything I can do or say to make you comply with my requirement ...".

That is very similar to the four Es. We engage, we explain, we encourage to comply, and then, and only then, if it is proportionate, necessary and lawful, do we enforce legislation. That dilemma in discretion has existed in policing all the time. Do we always arrest everybody for every offence? Do we always prosecute everyone for everything? No, we do not. That is the issue. The complexity here is an unseen virus that harms everybody, regardless of which side they are on, whether they are in uniform or not, and that adds to anxiety.

So I agree, but I think it is a judgment that police officers and police commanders generally made well throughout this. In over 1,000 Black Lives Matter protests and 800 other protests last year, there were comparatively few arrests. Almost 250,000 people attended some of the Black Lives Matter protests. We certainly did not make that many arrests, and we certainly did not issue that many tickets. A real balance and discretion was applied, I think.

Q38 Joanna Cherry: At the time the Black Lives Matter protest took place, the prohibition against gatherings was not in place. I want to ask you one more question about that prohibition against gatherings. The regulations implemented in the latest national lockdown in England define a gathering as taking place when two or more persons are present together in the same place in order to engage in any form of social interaction with each other or to undertake any other activity with each other. You can see how somebody might think that that would cover a protest.

My specific question is this. As you understand it, at what point does two people at the same location but a distance apart become a gathering? I am thinking about maybe 10 people in a public park who are there to protest, for example, about climate change. Do you take a view as to what distance these people have to be, or how close they have to be, for it to be a gathering?

Ben-Julian Harrington: I know, because we try to brief officers and we try to apply the law, that there is no definition of that. You have read what the regulations say. If 10 people are lining up to get their Covid vaccination, they are hopefully social distancing, but it is quite obvious that that is not what they are doing. If four or five people meet in a park, whether that is to protest or otherwise, there is a judgment as to what happens there.

This is the complexity of the issue. This is the challenge that is faced by front-line officers and commanders who are trying to make these decisions. The very nature of protests, and some would argue rightly so, is to try to frustrate and to make the point, and I make no criticism of that. Therefore, we are asking officers to make

those judgments when there is no set definition. The regulations do not define the two-metre rule. That is why the engagement, the explanation, and the encouragement has been so important. Officers have tried to do that, and I think they have largely done that.

That is why, sometimes to the point of criticism of the policing by those who have a different view, some protests have taken place that are socially distanced and with people with masks, when you could make the argument that it is quite obvious that they are there for a set purpose that would not come under any of the exemptions, or would breach the gatherings rule. Those are the balanced, risk-based decisions, taking all the threats into account.

Underpinning all this is ensuring that we maintain the legitimacy of policing and confidence in policing to do the things we need to do every day, which is to protect vulnerable people and tackle and deal with violence, and all the other things that we are trying to do as well, which in normal times are a difficult enough challenge.

Joanna Cherry: Thank you very much. Like everybody else, I am sure, I would like to acknowledge the incredible service of all police officers, particularly during the pandemic. My constituency is in Scotland, but I extend that thanks to Police Scotland and to you gentlemen and your colleagues south of the border. Thanks very much.

Ben-Julian Harrington: Thank you.

Q39 **Ms Karen Buck:** I want to ask a question specifically of John Apter. It is a difficult question about the extent to which political direction and encouragement helps or hinders the police in the operation of these duties. There have been media reports, particularly in the *Times*, that suggest that the Home Secretary was calling on police to enforce the coronavirus regulations, and in other circumstances was criticising police for not acting against the Bristol protestors when the Colston statue was being pulled down. Is that kind of political direction supportive of the police going about their role, or does it make it even more difficult to exercise the kind of judgment that is essential in these difficult circumstances?

John Apter: Yes, that is a tough one. Policing, certainly in the modern day, is probably more political than it has ever been. I do not say that in a negative way; it is just the way policing has evolved, whether that is locally elected police and crime commissioners or a more hands-on Home Office at the time. Certainly, during this crisis I have probably had more engagement

with the Home Secretary and other Ministers than any of my predecessors ever, because of the nature of policing that we are in and the crisis that we are in. The chief constable has already said that operational policing is independent, and I am a fierce protector of that. A constructive relationship does not mean that we will always agree. Sometimes we will disagree very strongly on things, but I have never felt that my conversations with the Home Secretary have been intrusive and almost instructing police officers to take a certain position.

When it comes to the enforcement, naturally as the pandemic evolved—I was out there with colleagues, I had the uniform on, I was working alongside them—I think there was a general sense that with the four-E approach, while absolutely fundamental to the model of policing that we were trying to achieve in this crisis period, we were moving to enforcement in some areas a little bit more quickly. That was just a natural progression.

At the same time, some comments were being made in the media. I will not comment on suggested conversations that the Home Secretary and other politicians may or may not have had with chief constables. That is not for me to say. In my experience, the Home Secretary has certainly not indicated to me, nor have any other Ministers, anything about putting undue pressure on my colleagues for more enforcement.

Q40 Lord Henley: I am a Conservative Peer in the House of Lords. My question is for Owen Weatherill. It is clear that people are not permitted to have gatherings in their homes under tier 4, but it is less clear what powers the police have to enter premises to check whether people are doing this, or to arrest them if they are. Entering someone's home clearly infringes their right to private and family life under Article 8. How do you understand the police's power of entry to people's homes to enforce coronavirus regulations?

Owen Weatherill: In relation to the coronavirus regulations themselves, there is no power of entry for police officers. That is a very clear position for us in England. It is slightly different in Wales, but in England that is the case, and has been the case throughout. We have on occasion been asked if we wanted that power. We have been very clear that we did not. We felt that that was not necessary, and we did not want to be engaging in that space in people's private premises. However, we have other powers, which are long-standing, and other powers to enter, perhaps to effect an arrest under a different offence, and powers to search. They are very different issues and very long-standing powers. There is no power to do that under the coronavirus regulations themselves.

Q41 **Lord Dubs:** I am a Labour Member of the Lords, and I turn to universities, although there is an overlap with the last question.

How do you understand the role of the police in enforcing Covid regulations in universities and university accommodation? For example, there are reports of police officers repeatedly entering halls of residence with the permission of the university authorities but not the students resident in those halls. Is entering a person's home in this way legal, reasonable and a proportionate interference in the right to private and family life under Article 8?

Owen Weatherill: There have been a number of situations where this will have occurred. We have a very good, established working relationship with many universities up and down the country, and they, as you might hope, as owners of establishments where you have large groups of people together, have taken their responsibilities very seriously to try to make sure that the occupants and the students are following the regulations and are not posing a greater health risk to themselves, their colleagues, and their families that they might go home to. There have been occasions when we have been invited in by the university to the common areas, and certainly our legal assessment of that is that it is perfectly within their gift to invite us in, and we have done that by invitation. We have not gone into individual rooms unless there have been very specific circumstances. In terms of general operating arrangements, it has been by invitation with universities, with their full consent and knowledge, into common areas.

Lord Dubs: I thought from the press report that police officers had entered the accommodation of students, not just the common parts. Am I wrong in thinking that?

Owen Weatherill: There may have been some individual circumstances. In general, the feedback I have is that it has largely been visibility and engagement in the common areas. There may well have been entry into private rooms in some individual circumstances. It could well have been for a number of different reasons. As you will appreciate, we normally have a footprint on universities outside of Covid. We would engage with people, and we would sometimes need to engage in normal policing activity, which might take us into the realms of individual student accommodation. I do not know the particular instances you are talking about, but that could well be necessary in the course of normal policing activity, under other powers I have talked about.

Chair: Thank you very much indeed. In concluding this evidence session, I thank our three witnesses and say that, for my own part, I completely understand that it is a time of great anxiety and fret.

There is a complexity of rapidly changing laws and very difficult decisions that have to be made by the police at all levels on the spot.

I would like to take this opportunity to thank those of you who are in police leadership and all those who are on the front line, as John Apter explained and as we have all seen, dealing with people who are not wearing masks and who are putting themselves, others and police officers at risk. As BJ Harrington underlined, this is all to keep us safe. I think it is a very important public service, and I conclude this evidence session by thanking you for your evidence and saying how much I appreciate your work. Thank you.