



Select Committee on Communications and Digital

Corrected oral evidence: Freedom of expression online

Tuesday 20 April 2021

2.45 pm

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Members present: Lord Gilbert of Panteg (The Chair); Baroness Bull; Baroness Buscombe; Viscount Colville of Culross; Baroness Featherstone; Baroness Grender; Lord Griffiths of Burry Port; Lord Lipsey; Baroness Rebuck; Lord Stevenson of Balmacara; Lord Vaizey of Didcot; The Lord Bishop of Worcester.

Evidence Session No. 23

Virtual Proceeding

Questions 189 - 193

Witness

[I](#): David Tucker, Faculty Lead for Crime and Criminal Justice, College of Policing.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witness

David Tucker.

The Chair: Our first witness today is David Tucker, faculty lead for crime and criminal justice at the College of Policing. A former Metropolitan Police officer, he started work for the Metropolitan Police in 1980 and joined the College of Policing in a policy role in 2014. David, welcome. Thank you very much indeed for joining us today.

I think you have been following our inquiry into freedom of expression online. As well as looking generally at issues around freedom of expression, the role of platforms and competition policy, we are looking at this, to some extent, through the prism of the forthcoming legislation, and thinking about harm prevention and the balance between harm prevention and protecting freedom of expression. We have had a whole range of witnesses and we have a number of quite nitty-gritty technical questions for you.

Today's session is being broadcast online and a transcript will be taken. Thank you very much indeed for joining us and for giving us your time. We have a number of questions from members of the committee.

Q189 **Lord Stevenson of Balmacara:** I add my welcome to David. Looking at your experience and background, I think you will be particularly well suited to the sorts of questions we have got lined up for you. It is nothing too serious, but I am going to start with the one you might want to duck, which is always an invitation that people have difficulty in refusing. I realise that this is a very difficult question for you to answer. Do the police currently have the skills and resources necessary to deal with the crimes committed on social media? If you do not answer this in your first response, I am going to ask you to follow up on whether that is the law as it currently stands or as it might be anticipated to change following the online harms Bill.

David Tucker: I wonder whether it is worth saying what the college does first. Quite often, people think of the college almost like a university, but we have a number of different roles. Broadly, we try to equip our skilled police officers to do their job in the most effective way. We issue guidance and design a lot of the training. Most of that training is delivered by police forces themselves. We set the curriculum and guidance, and all that is designed to assist officers to make the right proportionate decisions and focus on the best way to reduce harm.

On the skills, this is a constantly changing environment. The tech and the way in which tech is used has changed massively. We know that a huge number of young people are using technology. Our focus will always be on trying to assist in reducing the risk to the public. In that regard, policing is constantly developing skills. We have two sides to this: one is the technology side and the other is the investigative side. On the investigative side, we have 150 years of experience of investigating crime, so the skills are there but they have to evolve to meet the new challenges. On the technology side, we work really closely

with all our partners across the law enforcement agencies, and beyond that, to make sure that we do the very best we can in giving our colleagues the skills that they need.

As I know you will be fully aware, this is a very dynamic, changing situation. We work nimbly and in collaboration to try to make sure that our operational colleagues have the skills, learning and training that they need in order to do what they need to do. As an example of that, we have recently been funded by the Home Office to develop what we call tradecraft products for first responders. We have done that through a linked series of stories, with 10 episodes, each one bringing out a different aspect of the digital environment and how that could be applied to a real investigation; it runs like a story to look into a case of modern slavery.

On the resources side, I think this is where you were anticipating a bit of bobbing and weaving, perhaps. If you asked anybody in the public services whether we could do with more resources, I think they would say yes, we could—we could do far more. Government has obviously increased funding for policing—we have had the uplift. There is a challenge for policing to make sure that we are doing the very best with the resources that we have.

We would clearly welcome more resources. Certainly in particular areas, such as tackling child abuse, my operational colleagues would say we need more resourcing in that area to be most effective, because of the scale of the challenge. But it feels like a demand that could never be fully satisfied. The challenge is to work with what we have, to recognise that government has tried to support policing, and to keep making the case for more resources where we think that is necessary.

Lord Stevenson of Balmacara: That is a very reasonable response to a difficult question. I have had some experience. I did a series of visits with the Metropolitan Police a few years ago. One of them was to the child harms area and that was extraordinary. I do not know how these guys did what they did, but they were amazing.

We have had evidence from those who have been before us, prior to you, that there are some concerns. The Carnegie UK Trust said that enforcement was “patchy and uneven” and that it was a long time before some crimes that were recorded ever came forward to be heard. That is inevitable in a difficult world, and you have explained some of the problems. How would you respond to that, broadly?

David Tucker: There is a clearly an issue about prioritisation. Offences with the highest risk of harm need to be investigated first and need to command those resources. Clearly, there is an impact for those lesser-harm offences. I know, because I work really closely with operational colleagues, particularly in the child abuse investigation area, that that is a particularly well-co-ordinated, joined-up policing response, from operational colleagues in police forces, through the regional organised crime units and on to the National Crime Agency. The closeness of that relationship is very impressive to watch. They are doing

the very best and moving as quickly as possible to deal with those high-harm incidents.

Lord Stevenson of Balmacara: I understand that, but the accusation was “patchy and uneven”. Do you recognise that?

David Tucker: No, I do not. It depends what you mean by “patchy”, I suppose. What I was getting at was that there may be patchiness, in that very serious offences get investigated very well and very quickly, and less serious ones receive a lesser priority. That is inevitable when resources are finite. By “patchy”, if you mean that different types of crime get dealt with in different ways, yes, that is right, but that is the decision that policing has to make.

Lord Stevenson of Balmacara: That is the nature of the beast.

I am going to lead on to a supplementary question about evidence, which is one of the issues we are coming up against, but I will come back to that. Before I get to that, a number of people, to give you a sense of the balance of this, have said that we need much more money to enforce existing laws online. I suppose that raises the question of how much. There are obviously constrained resources, blah, blah, blah. But is this a waterfall, or is it a trickle of extra money? What is the scale?

David Tucker: That is very difficult for me to judge. There are other questions. It is not just a question of how much offending there is. It is also a question about the degree to which we want policing to be involved in open spaces such as the internet, and the extent to which this is an international issue. One country, the UK, cannot be the enforcement agency for the whole of the internet. It seems to me that the approach to this is going to be far more around better international collaboration, better working with industry and better support with all those agencies we work with locally and internationally, so that you get a much more coherent response.

The reality is that you have a facility that is open to the world. That means that the scale of the challenge is massive, and so it feels like an unending demand. We have to be really clear about the extent to which we want policing to be involved in that. What is proportionate for us—for policing—to be involved in, so that we deal only with the harm and do not infringe freedom of speech? On the other hand, how much of the world of the internet can we take on from the UK policing perspective?

Lord Stevenson of Balmacara: I take that point. I will move on to the evidence question, which is my last one. We have a situation at the moment where, effectively, the policing on social media, by and large, is done by the companies themselves—huge private companies with their own modes and methods, as we have learned, and these are changing quickly as we move forward. We have noticed that the solution that many people have, when they see a problem, is to ask for the post or posts to be deleted. Does that raise questions in your mind about evidence or how one could bring charges in that situation?

David Tucker: Of course it does. Deleting things, either from devices or from the servers themselves, does not necessarily remove that evidence.

In many cases, it can be recovered. There are ways around it, but it creates that extra problem and extra work for the technology to recover it. What might be a simple process becomes much more difficult. And of course there are people who are very adept at avoiding being traced. We know about the dark web, which was developed precisely to increase anonymity in order to make tracing more difficult.

There are areas where that is certainly a challenge and very difficult for policing to deal with. But in the majority of cases, there are other ways around this issue. The internet, and all of technology, is making policing be much more innovative and resourceful about how it investigates where the avenues of evidence might be, and a little more thoughtful about how that can be done. In my experience, the police service is doing that really well.

Q190 **Baroness Buscombe:** Thank you, David. Turning specifically to the online safety Bill, what is your view of existing communications offences and the Law Commission's proposed offence? How easily can either of these be enforced in a manner consistent with freedom of expression? For example, do you, like English PEN, have concerns that the threshold for criminality in the proposed offences might be set too low? After all, there is no requirement for anyone to actually experience harm, thus this surely allows an effective veto of controversial or offensive content by anyone willing to claim that they are seriously distressed by something that is said. The requirements cover public and private social media messages that are posted, which seem to be lumped in together in this new offence. I am interested to hear what you think, David.

David Tucker: The current offences seem to be dated. They obviously go back to a time before we had social media and the internet as we understand it now. When I read this, I thought that there was quite a good balance between the protection from harm and the protection of freedom of speech. Many of you on the committee will have been subject to some terrible abuse. I was on a radio programme a couple of years ago with Diane Abbott, where she was describing the dreadful abuse that she was having daily. Although many people will accept this sort of thing as part of the rough and tumble of public life, we should expect the same courtesies and behaviours online as we do in person.

That is not to say that we should be criminalising people who are just abusive. The starting point should be that we want the same behaviours online as we do in person. For those who are not in the public eye, who are not used to this sort of pile-on or abusive behaviour, it can be really harmful. We need to find a way that has balance and proportionality, to allow people to engage in vigorous, passionate debate about things, but that does not fringe over into causing people harm.

Getting that balance right is one thing for the policymakers and legislators, but it is also an issue for policing and prosecutors, to make sure that we are not criminalising the trivial, the passionate or those really strongly held views. The only time the criminal law intervenes should be when it is necessary to prevent harm to people. We should be really clear, or as clear as you can be, about where that boundary lies.

As I say, when I read it, I thought that the legislation we have at the moment is not up to the mark now, but this looked like a pretty good approach.

Baroness Buscombe: The issue for many around this is the word that is being introduced with the proposed offences, which is "likely", so it does not have to be "actual". Should there not also be a clear distinction between me posting a deeply unpleasant, horrendous private message to you, which I am likely to know will cause huge psychological damage, and me posting a message out there, where people can opt in and out in a very public way, in which I am not actually making a statement that will affect a particular individual?

The issue some have is that there is no clear distinction in the proposed offences with this, which I feel would then make your job, and the job of the police, incredibly difficult, and thereafter the courts as well, in deciding whether this is something you can home in on. People in the public sphere, like us, have to put up with probably a good deal more than others. Also, a lot of people, particularly young people now, are incredibly sensitive. I find that they are upset by things to which maybe you and I would say, "For goodness' sake, get over it", "Fess up" or "Just move on".

David Tucker: I am always a little guarded about the arguments that the youth have changed in any way from when we were younger and of their age. I am not sure I quite agree with the thought that they are any more sensitive now than they were when I was 18. I am always a bit cautious about those sorts of things.

For policing, I want to go back to the point about proportionality and making sure we get the balance right between freedom of speech and people being able to engage in passionate debates, in a way that does not gratuitously cause harm to individuals. It is not a decision that policing will make on its own. In many cases, the police will gather the evidence, look at what is proportionate and make decisions, very often guided by the decision-making frameworks developed by the College of Policing in our role of giving guidance and setting standards. They can also work with the CPS, and they can get independent legal advice, and of course case law will develop.

Any legislation has to make an attempt to set the boundaries. It is then a question of how you implement that and how that is enforced. Policing is very sensitive to all the requirements of the Human Rights Act. There will be very clear views about Article 10, the right to freedom of speech, and about making sure we do not interfere with people's private lives. Policing uses that sort of language all the time, so I feel more confident that it will be able to make those judgments and will seek the advice where the matters are unclear.

Baroness Buscombe: Of course, you take into account context, which is really important.

David Tucker: Yes, of course.

Q191 **Lord Griffiths of Burry Port:** I am interested that we have moved away from hate speech being something that can be prosecuted only when it has hurt someone or stirred up hatred. We look ahead to judge the likelihood of something happening. We are torn between "likely to", as Baroness Buscombe has just mentioned, and "with intent to". It is enigmatic to me as to just where one shades into the other.

In the past, at this committee, we have been asking platform people about the use of algorithms and the fact that they cannot take cognisance of subjective and nuanced material. I wonder whether the police can master the art of distinction when it comes to subjective judgments. Baroness Buscombe has clearly put forward two kinds of case that are at opposite ends of a spectrum, if you like. But much of human behaviour happens between those extremes, and a judgment needs constantly to be made about intent or it being "likely to" or whatever. The constant use of the word "policing" that I have just heard in your response takes away from the fact that policing is done by policemen and women, on the streets, with real people, making judgments all the time.

All right, so you have helped us to see the guidelines, frameworks, codes, references and so on. At the end of the day, it is the front-line people who have to make the initial judgments that will either then, referred to others, lead to some kind of modification in the way they present it, or stand up to scrutiny. These must surely be areas where policing is at its most sensitive.

David Tucker: It is. The reason I use the word "policing" is that it goes beyond police officers. PCSOs and members of police staff are making similar decisions but in different contexts, so that is why I use that general term. There are lots and lots of people in policing roles who are not police officers but are making those decisions.

You are right, but it is the strength of policing, and in some cases a weakness, that police officers, in particular, have a very large degree of discretion about the decisions they make, the powers they use and how they do that. That is the way that the policing system is designed. The challenge for parliamentarians in developing the law is to give the parameters, guidance and rules that we are going to apply. The job for the College of Policing and others involved in giving advice and guidance is to turn the language of the law into things that individuals can use. We are constantly looking at the responsibilities and decision-making for particularly first responders, the people you were referring to there. How do we make their job as clear and simple as possible?

When I came into the College of Policing, we had taken over from an organisation called the National Policing Improvement Agency. There had been very large volumes produced that we thought were giving guidance to front-line officers, but a moment of thought would have told you that they cannot possibly know all this stuff, and they cannot know it in the detail that some would expect. We try to give far more in the line of principles, outcomes and thinking. That is why I keep talking about this

balance between freedom of speech and reduction of harm. It is because our focus has to be around the reduction of harm.

Lord Griffiths of Burry Port: I am relieved to hear that my bobby on the beat has been helped in this way. It is still the application of a judgment between intending to and being likely to incur hatred. Will you turn that into a simple principle for the front-line operator for me?

David Tucker: In almost all circumstances, it will not be them who make that judgment. There are offences now of incitement to racial hatred, and those are not decisions we would expect front-line officers to make—in fact, you have to seek the view of the CPS.

These are very tricky offences and they are often experienced in very difficult circumstances. It could be public order situations, where your decisions are about not just whether an offence has been committed, or whether something is likely, but whether it makes sense to try to intervene in that moment because of the febrile nature of what you are dealing with. Those sorts of judgments are being made all the time. We will do whatever we can to help to do that.

In relation to this issue, it seems to me that, if hatred against a group of people is likely because of somebody's behaviour, policing needs to look at that. The alternative is that we wait for something to happen and for somebody to suffer actual harm before we take the opportunity to nip it in the bud or take preventive action.

You make a really excellent point about the difficulty of the decision-making, but it is not unusual for policing to have to make those decisions. Where policing is able to get support and make decisions in slower time, particularly around those very tricky areas, that is what policing does. That is the way that these sorts of things have been approached for some considerable time.

Lord Griffiths of Burry Port: I am very grateful. Thank you.

Q192 **Baroness Rebuck:** I think you know, David, that my question is going to be about anonymity online, because we were chatting about it before we started broadcasting. Before this inquiry started, I was against anonymity online. That was just an instinctive response because I felt it encouraged abusive behaviour with very few repercussions. But I have been influenced by many of our witnesses, who have said that anonymity protects groups such as whistleblowers, vulnerable individuals or people who are speaking out against repressive regimes. I was pivoting from one to the other.

However, last week, at another session, I heard of an individual who had congratulated an acquaintance online on becoming a writer in residence—so far, so innocent. However, because the writer she was congratulating was subject to abuse online, the abusers all turned on this poor woman and went as far as to threaten to rape her children and attack her. They said that they actually knew where she lived. Just like any normal individual, she went to the police and the police said, "We are terribly sorry but, because all this abuse is coming from anonymous

people, there is nothing we can do. We are terribly sorry". She had to actually move out of her house.

I am interested in what investigative methods are available to police to deal with these kinds of, as I would consider them, serious anonymous threats. As a corollary of that, I am interested in your view on anonymity and whether it ought to be mandated that people's real identity is known somewhere, probably on the platform, safely tucked away until such time as it needed to be found. As a development of that, how easy is it for the technology company to trace back IP addresses?

David Tucker: There are a few issues there. Taking the last first, about tracing people who are anonymous, there are a number of techniques that can be used to do that. I noted that there was a petition that went to government around this and the response from the Home Office said that 96% of those cases can be resolved. There are clearly ways in which anonymous people can be traced. There was a very famous case—I cannot remember who the victim was—where somebody was traced after making some terrible comments. We see it in the footballing field as well, with lots of people making comments and then being traced.

For technical reasons, the IP address issue is going to become a little more complicated because of the way that networks can be established. That is going to cause a problem for policing. As I mentioned in relation to an earlier question, policing is innovative and has some very good people looking at the ways in which we can find and exploit evidence, ethically, in the most effective way within the law. We will continue to try to meet that challenge by being innovative, working collaboratively and doing the very best we can.

In relation to the anonymity issue, of course it causes us problems. As I mentioned earlier, even if it is possible to get the information, it takes longer to do it. We did some research into the use of body-worn video, which found that people's behaviour changed; not only that of the people being stopped and searched but that of the officers. That sense of accountability changes people's behaviour.

Reflecting on an answer I gave earlier, we need to be in a position where people attend to the same sorts of behaviour online as they would do in the street. The anonymity that the internet affords allows people to behave in a way that they simply would not do face to face. Something that gives people that sense of traceability would, I think, help. Whether that is possible and how that is done practically, we would have to look at, but, in general, identifiability creates a different type of behaviour.

Baroness Rebuck: I would instinctively agree with you. Getting back to this poor woman with all her threats, would the police, in that particular situation, have thought that this is just what happens online—that they are empty threats, they do not mean anything, they do not really know where she lives, and they are not really going to go and attack her children? For her lived experience, it was real; she had to move out.

They said it was impossible to find out who these people were. I realise it takes a bit of work to search back, but we seem to be in an

uncomfortable position for a number of people who find themselves, through no fault of their own—in her particular case, she did not invite this, in any shape or form—being exposed without any kind of support whatever. I suppose it comes back to Lord Stevenson’s first question. I assume the police must get hundreds, possibly even thousands, of these kinds of requests. Is there enough time in the day to investigate all of them?

David Tucker: I do not know the particulars of this case, so I do not know the reasons the lady was given the answers that she was. It might have been that there was an assessment that the risk was not particularly high.

Baroness Rebuck: I assume that that was the case, yes.

David Tucker: Therefore, there were more pressing cases. It is not a question of “can’t”; it is a question of not having the capacity to do it.

You are right: it goes back to that question of resources, but it is then linked up to the point about proportionality and balancing how much should policing be policing the internet and decisions about that. I am not saying that we should not have been policing in that particular case—I do not know the detail of it. It feels to me like the potential here is for a limitless amount of demand, and policing UK cannot be the police officers for the world.

There is this question: if you open up to a world community, how can policing most effectively draw the lines around what it should and should not be investigating? What is reasonable? What is proportionate? What does that resourcing model look like? It is very difficult for government to try to balance all those things. As I said, policing has had a fair amount of extra resource made available. We in policing have to make sure that we are doing the very best, and keep making the case for more resource where we need it, particularly focused at that top end of harm.

Q193 **Baroness Buscombe:** Moving on to non-crime hate incidents, how do police decide whether a non-crime hate incident should be recorded? Why should they be visible on enhanced DBS checks? I am quite surprised that your website actually says that, where the incident was “motivated wholly or partially by hostility, it should be recorded and flagged”. This is even if, according to Article 10, there is no issue. Is there not a serious problem here, whereby front-line police are put in a position where they are judge and jury?

If somebody says something that somebody else does not like, that other person whom the comment is addressed to can take it up with the police and spin a yarn with the police. The police then come round, to the surprise of the person who made the comment, and spend a couple of hours giving them a hard time, even if they are entirely innocent. Nobody else need be involved at all, and the person who made the comment—which actually did not breach Article 10 and was not offensive, but these are two lots of people who just do not get on—can have that non-crime hate incident recorded. It stays there, on enhanced DBS checks, for six years, with no right of appeal. Is that not shocking?

As a barrister, I am quite shocked by it. It is the most extraordinary overextension of our law.

David Tucker: The college role is to take existing law and turn it into guidance, so that police officers can apply and make sense of what is being asked of them. The requirement to record incidents comes from the national crime recording standard, which is owned by the Home Office. It says that, where an incident is reported to police, an auditable record is made. That is where the requirement comes from.

The approach around hate crime and hate incidents comes straight out of the Stephen Lawrence case, as I am sure you are aware, and the Stephen Lawrence inquiry report. That was obviously talking about racism. You talked about police officers being judge and jury. In actual fact, it is almost the opposite. The police were acting as judge and jury and making decisions based on no experience of the matters in question, so that when somebody came to the police station to report a racist incident or a racist crime, the police officer was deciding that it was not a racist incident or racist crime, based upon no experience there at all.

That is the same across the whole range of experiences. If somebody comes in and tells me that they have suffered homophobic abuse, I am not the best person to judge whether in fact that person has suffered homophobic abuse. What I and policing colleagues would do is to investigate. It is important to recognise that there is the issue of recording and flagging, so that we know what is happening in communities. That is completely separate and different from what might then go to court, where you would have to have evidence to prove it.

We talk about hate crime. Of course, there are very few actual hate crimes. You need to have an index offence first, and then it is motivated or aggravated by hate. If you prosecute an offence that is motivated by or aggravated by hate, you have to prove both aspects: the index offence of theft, assault or whatever it might be, plus the hatred.

That takes us on to non-crime hate incidents. Very often, when those incidents are recorded or alleged, it will not be obvious whether the case is a crime. There are loads of examples of this that are not in the hate crime area: people will come into the police station and say they have lost their bicycle or had their bicycle stolen, then find it, and so on. Very often, we will have allegations of crime made that do not turn out to be a crime, but that investigation has to be recorded somewhere. Things that might be reported to the police as an incident would then be investigated and may be found to be a crime. That has to be recorded somewhere.

To go back to the national crime recording standard, that talks about an auditable record. The policing has to create an auditable record. There are very good reasons why non-crime hate incidents are recorded.

I was going to move on to the DBS aspect, unless you wanted to come back to me on this one.

Baroness Buscombe: No, it is fine. We are of course looking at this in the context of it all being a chill on the freedom of expression. People are genuinely concerned about this, hence we must talk about DBS quickly.

The reality is that, if you cannot say something to somebody who is doing something pretty unpleasant, because, for example, you can be accused of homophobia, racism or whatever, that is going to have a chilling effect on freedom of expression. For you, the innocent one, because something you have said has been used as a catalyst for creating this non-hate crime incident report, it is besmirching your character. That is how you will read it. That is my point. The person who has made the comment will feel as if they have been charged and convicted of something, in a sense. So yes, can we hear about the DBS checks?

The Chair: If we can, we need to make it quite brief, because we need to wrap up. We may actually write to you for some elaboration.

David Tucker: On DBS, these are obviously not our rules. They are run by the Disclosure and Barring Service. There are very good reasons why non-conviction information would be made available. It comes out of the Soham murders. I am not looking to create an equivalence there, but that is where the current regime comes from. That was around non-conviction information following crime allegations. If a local authority was seeking to employ somebody as a support worker for a group of disabled people, the fact that that individual had been involved in non-crime disability abuse for some time would be relevant and something that an employer would need to know. In my view, it would be quite reasonable for the police to notify the employer of that.

There are some pretty good checks and balances there. For non-crime information, the individual has to be notified that the disclosure is going to be made. There is a commissioner with DBS who can check to make sure that that disclosure is fair.

The Chair: We need to leave it there; we have a number of further witnesses this afternoon. Very sadly, we have run out of time. Thank you very much indeed for your time. We may come back to you in writing on a couple of issues that you have raised, particularly in relation to that last question. It was good of you to be with us today. Thank you, David.