HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, HC 1324

Wednesday 28 April 2021

Watch the meeting

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

Questions 1-8

Witnesses

I: Kevin Blowe, Co-ordinator, Network for Police Monitoring; Jules Carey, Head of Actions against Police and State Team, Bindmans LLP; Zehrah Hasan, Director, Black Protest Legal Support.

Examination of witnesses

Kevin Blowe, Jules Carey and Zehrah Hasan.

Q1 **The Chair:** Good afternoon and welcome to this session of the Joint Committee on Human Rights. We are, as our name would suggest, a parliamentary Select Committee. Half its members are from the House of Lords and half are from the House of Commons, and we are concerned with human rights. We also have a responsibility to scrutinise legislation and Bills that come before the House of Commons and to advise the House of Commons on whether any human rights issues are raised in such a Bill, and to give our view on them.

This afternoon, we are conducting a legislative scrutiny session looking at the Police, Crime, Sentencing and Courts Bill, which has already had one debate in the House of Commons, is about to go into its Committee stage and will proceed to the House of Lords. We are looking in particular at the issue of the change in the law that would apply to demonstrations, assemblies and processions. Fundamental human rights include the right freedom of association, freedom of expression and the right to have your voice heard, but there are also issues of public order and the protection of public safety.

We have two panels to give evidence to us this afternoon and I am very grateful to our witnesses. The first panel includes Jules Carey, a partner at Bindmans, a very well-known firm of solicitors. He is head of the department that deals with actions against police and state, and has a lot of experience, including representing Extinction Rebellion in some judicial review cases. Kevin Blowe is the co-ordinator of Netpol, which is a network for police monitoring. Thank you for coming to give evidence to us, Kevin. Zehrah Hasan is a director at BPLS, a group of lawyers and volunteers who provide legal advice and support to protesters, in particular Black Lives Matter protesters. Zehrah is also a barrister. That is our first panel. I will introduce the second to you after we have heard from the first. The second panel consists of those with specialist knowledge of the police situation.

Could I start by asking our panel a quite general question? We hear a lot about people organising and getting together online and, after all, we are getting together online here as we speak. In this age of Twitter and Facebook, is there a need for people to gather on the streets physically, in person? If so, why? Do you think the law adequately protects that right for people to express their views?

We will be asking you some more detailed questions about the restrictions being proposed for demonstrations, including imposing

conditions if there is serious unease, alarm or distress—creating an offence whereby a member of the public causes serious distress, serious annoyance, serious inconvenience or serious loss of amenity, carrying a sentence of up to 10 years.

That is the context. The House of Commons and the House of Lords are considering this new legislation, which contains measures that will affect the right to demonstrate and the policing of demonstrations, and we will produce a report saying whether we think these proposals are a good idea or, if not, why not.

With that introduction, start by asking Jules Carey, do the police not already have enough powers? Do they have enough powers? Should they be changed and if so, why?

Jules Carey: I would say categorically that the police do have enough powers, and it is not just me who says that. I would say that the police say that as well. As you said, I represented Extinction Rebellion in the High Court in October of 2019, where I represented a number of claimants whose make-up was not that dissimilar from this committee, with a Baroness, several MPs, an MEP, a journalist, and an activist. In that hearing, the representatives of the Commissioner of the Metropolitan police stated that she was satisfied that there were powers in the Public Order Act that would be able to legally deal with protests that, even in design, were attempting to stretch policing to the limits. That is set out at paragraph 76 of that judgment, which is clearly an acknowledgment, recorded by the court, that both the claimants and the police are satisfied that the provisions of the Public Order Act 1976 are sufficient for dealing with all the protests that we have seen in recent years.

Therefore, why is this Bill here? It is rather hard to fathom. The script that comes with it—the factsheet—I am afraid to say, tends to suggest, certainly to me, that this Bill is about managing protest and not facilitating it. It is about cutting democracy to achieve cost savings, and it is very literally about muting the voices of dissent. It is very concerning.

Zehrah Hasan: With regard to current police powers, I want to question the legitimacy of automatic and routine policing or criminal justice responses to protesting. Going back to first and fundamental principles, the entire point of a protest is to dissent in a visible and audible way and Articles 10 and 11 allow this right to be qualified only where necessary and proportionate. The stark reality that we have seen on the ground at Black Protest Legal Support is that the policing of protests at the moment, even under the current law, is often neither necessary nor proportionate.

I want to quickly reference a few examples of this. Jules has obviously mentioned Extinction Rebellion. Importantly, in 2019 the Met banned XR protests in London under Section 14 of the Public Order Act. This was subsequently found to be unlawful by the High Court. With regard to Black Lives Matter protests last summer, there was a notably heavy policing response, including the Met regularly deploying riot gear and physically and verbally intimidating protesters, there was a horse charge on Whitehall, and there was kettling.

With regard to the kettling, the police confined multiple people on two consecutive nights in June and they said every single person would have to provide their name, address and date of birth and be filmed from head to toe to be released. Those who refused to provide that information were sent back into the kettle. The police relied on Section 50 of the Police Reform Act 2002 to demand these details as a price for leaving the kettle, but we know that Section 50 cannot and must not be used as a blanket power. Neither can personal information be a bargaining chip for your liberty, which was made clear in the case of Mengesha in 2013.

Again, at Clapham Common, we saw large numbers of officers, under the guise of public health concerns, push their way into a small, enclosed space in the bandstand and violently arrest three young women, four to five officers pinning them to the ground, as well as assaulting others in close proximity, purportedly under the Covid regulations. Then, at the Kill the Bill protest on 3 April, we saw the police use PAVA spray against protesters and legal observers, which is particularly concerning in a pandemic as the spray attacks—[*Inaudible*]. We saw kettling again and multiple people were arrested, some for alleged breach of the peace. Of the 107 people arrested that day, 72 were released with no further action, nine were reported for Covid fines and 19 others were bailed or released under investigation. Of 107 people arrested, six were charged.

Also, egregiously, Black Protest Legal Support has seen, over March and April this year, five of our legal observers arrested under Covid regulations for simply being present at protests to monitor police conduct on the ground.

From all the examples I have identified, the police are already using and abusing their powers to stifle the right to protest, and in my view have been emboldened to do so by the Covid regulations. This committee has already identified the problems with the Covid fines and called for a review of them. The perception that the police are using any of these powers in a fair and effective way is illusory,

historically and now, and we are concerned that this Bill will widen the scope for police to significantly thwart the right to protest.

Q2 **The Chair:** Thank you. Next, we will go to Kevin. Can you deal with the point that we are in the internet age now? Why is it still important for people to demonstrate on the street, in public, in person, when they could be having a Twitter pile-on?

Kevin Blowe: The simple answer to that is because they have a legal right to do so, protected by Article 11 of the European Convention on Human Rights. The circumstances in which somebody needs to make sure that their voice is heard because they do not have access to the kind of influence others have are the reasons people decide to go out and protest in the first place. People's participation in protests is relatively rare within the broader activities of their lives.

The point I want to raise, which is slightly different from the others, is that although your question was about statutory rights, the issue is really how statutory powers are operationally implemented. When people need to go out on the streets to express their voice because there is no other way of being able to get that across, our concern is that if the response is to rapidly impose restrictions on protests and treat the kinds of human rights protections that are a legal obligation as some kind of nuisance, that is fundamentally a problem in an element of the functioning of democratic society.

Something that I think is missing, because these are quite often operational decisions, is some kind of statutory obligation, particularly on the National Police Chiefs' Council and the College of Policing, to give clear human rights guidelines to individual forces on how they conduct operations that are human rights compliant. The College of Policing's authorised policing practice on this is, in our view, too general and lacks sufficient detail.

We have spent considerable time talking to various public order leads for the National Police Chiefs' Council over a number of years, originally because of the need for clarity around the protests against fracking, which was obviously a big issue from 2014 onwards. For some reason we were not able to get anywhere at all until September 2019, when the NPCC finally produced some guidance that was an interesting interpretation of some of the law in relation to balancing rights and, I think, was so wrong-headed that even the recent HMICFRS report on the effectiveness of policing protests did raise questions about the law within it. That is the reason for the need for greater clarity.

We produced a charter for freedom of assembly rights, based on discussions with national and local campaign groups all the way back in September last year. It is based on existing obligations that Britain has signed up to. We managed to get 200,000 signatures in support in the aftermath of the Sarah Everard vigil.

The crucial point in answer to your question is that there needs to be an ability to not just protest but to protest effectively if there is no other way to get your voice out there. There also needs to be clarity about how one's legal rights are protected.

The Chair: Kevin, picking up on something you said there—that there needs to be clarity about the right to demonstrate—and Zehrah's point that currently the position is that you can do something unless there is a law against it, do you think a legal right to demonstrate ought to be put in the Bill, or are you saying that you think the guidance is good enough, along with the general principle that you can do something unless it is illegal?

Kevin Blowe: There already is a legal right to protest. Obviously, it is qualified, but it is there under the European Convention on Human Rights. It is in Article 11.

The Chair: Yes, I am talking about a statutory right. Perhaps Jules and Sarah could answer that. Do you think that the Police, Crime, Sentencing and Courts Bill is an opportunity to have a statutory right to demonstrate?

Zehrah Hasan: I can speak to this briefly. The point from my perspective is that Black Protesters Legal Support is firmly opposed to this Bill. As for making our rights a reality, of course, as Kevin has identified, we have protections under Articles 10 and 11, which are codified into domestic law through the Human Rights Act. Having a statutory right to protest within this Bill alongside all the other very problematic provisions in it, which I am sure we will discuss later in this session, would be rendered meaningless. Ultimately, the right to protest means something only if you do not have conflicting legislation that undermines that right, which is what this Bill very much does.

Jules Carey: Following up on that, one of the things that is noticeably absent from this Bill is the sort of language that was present, for instance, in the White Papers in 1985 leading up to the initial Public Order Bill. The White Papers in that Bill recognised, in terms and very categorically, the right to peaceful protest and assembly as fundamental freedoms numbered among the touchstones that distinguish a free society from a totalitarian one. The language of the initial Public Order Bill recognises and lifts up

the importance of protest in a democratic society. That kind of language is dramatically absent from this Bill. Again, when you look at the factsheet that accompanies this Bill, it is all about managing protest and muting voices of dissent. The sort of language that you would expect in a democratic society such as ours, which holds these fundamental values as central to our democracy, is completely absent.

The Chair: I am surprised then, bearing in mind that we have in statute the right not to be discriminated against and we have put that into statute, even though there is a convention article that protects you on that so that they work side by side, none of you is in favour of having in law a statutory right to demonstrate—a statutory right to protest. You do not have to be in favour of it but I am pressing to see why you are not. The fact that the Bill has lots of things in it that you do not agree with, Zehrah, for reasons that you set out—is that a reason not to want to put into law something that protects something you regard as important?

Zehrah Hasan: The point is that there are protections in law that are not applied. In relation to Articles 10 and 11, and Article 14, there is a host of case law on the right to protest, some of which I might mention later, which makes very clear what our fundamental rights are. The concern is that those rights are already not being respected and are being undermined, particularly for black and brown people. That is the concern.

Q3 **Baroness Ludford:** I am Sarah Ludford, a Liberal Democrat Member of the House of Lords, and my questions are probably directed towards Zehrah and Kevin. Articles 10 and 11 of the European convention require that any interference with the right to protest is "in accordance with the law", meaning the law must be accessible and foreseeable as to its effects. The question is: can organisers and protesters adequately predict whether a protest will constitute a "serious disruption to the life of the community"? How can you assess that in advance?

Kevin Blowe: May I go first? The situation at the moment is that the "serious disruption to the life of community" currently in the Public Order Act is already hugely open to interpretation by the police. That is why I wanted to emphasise that much of this is about operational decision- making. The current Bill is likely to expand the level of interpretation.

Taking two obvious examples—the ones that you have mentioned—we did a report on the policing of Black Lives Matter and, in particular for the protests in May and June in London, highlighted that there tended to be quite a light-touch approach to policing at

the beginning and then later, when people refused to leave, conditions were applied based on the idea that there was serious disruption to the life of the community, at a time, it has to be said, when the streets were largely deserted because of the lockdown. That was particularly so with protests that were black-led.

Going back a year, to the Extinction Rebellion protests in October 2019, one of the things the court said was that protesters were entitled to some form of certainty about the imposition of restrictions, including the suggestion that they were a serious disruption to the life of the community and how their actions would be affected by that.

At the time, I remember saying to a journalist that we were concerned about what was going on with the policing approach to that demonstration. If we had gone down to Scotland Yard and held up a banner saying, "Protect our rights to protest", in all likelihood, nothing would have happened to us, but if individuals from Extinction Rebellion had turned up to that demonstration with any form of name or branding associated with that organisation, there is an increased chance that they would have been arrested because they would have been in breach of the London-wide Section 14 order. How would it be possible for one group of people standing next to another to be causing serious disruption to the life of the community, and not the other? The reason that ridiculous situation would have come about is because—let us be honest—decisions about what constitutes serious disruption are often vague and often, therefore, very political.

To give one final example, I am a resident of Newham in east London and every two years an arms fair takes place, which is opposed by pretty much everybody locally, certainly by the local council, the locally elected mayor, community groups and even schools, and which causes enormous disruption and inconvenience—road closures, increased stop and search—yet those people, particularly local people opposing the arms fair, are the ones the legislation paints as causing serious disruption to the life of the community.

I want to highlight the fact that there are problems with the term "serious disruption" because it is wide open to interpretation. It is surprising that the new Bill simply wants to extend that, because if the intention is to try to give even more powers that are loosely worded, and that that will somehow encourage people not to protest or not to take part, I do not think it will work.

Zehrah Hasan: I would echo much of what Kevin has already said. I have two points on this.

First, as Kevin said, we know that the police interpretation of serious disruption will be imbued with subjective perspectives. This provision enables a senior police officer to impose conditions and, as Kevin said, we saw how that played out at Black Lives Matter last summer. Also, there is a concern that protests about police violence and brutality against black people in the UK are exactly the types of protest that the state might want to stifle. We have seen this reflected also in the comments of the Home Secretary, who branded last year's Black Lives Matter protests "dreadful" and then commissioned the HMICFRS report, which whistleblowers claimed submitted conclusions before the evidence was even compiled.

Secondly, the issue of serious disruption goes to the very heart of what it means to protest. Many protests will be disruptive, particularly when people take to the streets to express themselves on issues of significant public importance. Indeed, the more support and collective shared sentiment on a particular issue, the more space a protest is likely to occupy. That is a fundamental part of protest's democratic function. In our view, this is a tool of mass resistance that has often been necessary to bringing about widespread systemic change.

Lord Denning notably said in the 1976 case of Hubbard v Pitt 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." Clearly it is very much embodied in the case law that protest movements are important and effective. They will, by their very nature, sometimes cause disruption. Affording power to the police as to what constitutes serious disruption and enabling them to limit and restrict protest will be imbued with political and structural issues. That is why we are concerned about how this already operates and then the Bill's attempt to widen the operation of police powers.

Baroness Ludford: Thank you. Jules, maybe I should give you an opportunity, as a lawyer rather than a protest organiser, to comment.

Jules Carey: On the issue of serious disruption, I do not know if this will be touched on later in this meeting but one of my concerns about this Bill is the fact that the Home Secretary has preserved for herself the definition of "serious disruption" by, essentially, secondary legislation going forward. There are obviously a number of inherent problems with that.

The first is the obvious lack of parliamentary scrutiny.

The second is the issue of the blanket approach. If you do impose a definition of what "serious disruption" is in a blanket way, that means there is a failure to assess any particular disruptions related to any particular assemblies or processions on the ground. That is likely to be disproportionate and disproportionately applied.

The third point about allowing the Home Secretary to retain this power is that the Home Secretary is obviously responsible for the policing budget. It would be essentially a conflict of interest to allow the Home Secretary to be responsible for defining what "serious disruption" is when, ultimately, it is her budget that will be affected by policing protests.

Q4 **Baroness Massey of Darwen:** I have a couple more questions on the terminology and interpretation. The Police, Crime, Sentencing and Courts Bill widens the circumstances under which police can impose conditions on a procession or assembly—for example, if a procession or assembly will have significant impact on persons in the vicinity, which includes causing serious unease, alarm or distress. Do you think that these terms, "serious unease, alarm and distress", are sufficiently clear for protest organisers and protesters to predict when conditions may be imposed on processions or assemblies? If you do not think they are clear, how do you think the law could be made clearer?

Jules Carey: I start by observing that these terms form part of the new test, which is a new trigger for a condition to be imposed on a procession or assembly. I think all the witnesses, Zehrah and Kevin, would agree that this new trigger, which is noise, is an absolute affront to the right to protest. This noise trigger should not exist for the purposes of imposing any conditions on assemblies and processions. It is essentially an existential threat to the right to protest. Protests should be heard and they should be seen. They lack value and are pointless if they cannot be heard and seen.

To answer your question more specifically, these terms are vague. They are too vague in law to have any meaningful impact or sensible interpretation. They also create a threshold that is too low. To consider imposing a ban on a protest because it causes unease or discomfort is inherently contradictory to the entire purpose of a protest. A protest is, by design, intended to cause some unease or discomfort. Most of the significant changes that have been brought about in society through protest, through causing people to rethink what they are doing and how they are doing it, have caused some level of unease or discomfort that has created that change.

The third thing I would say about these terms is that they are likely to be ultra vires. Article 11(2) of the European Convention on

Human Rights sets out clearly the sorts of permitted limitations that may be imposed on this right to protest and it would be impossible, I would say, to consider that "unease" would fall within those permitted restrictions on a protest or an assembly.

Baroness Massey of Darwen: Do you think the terms should be made clearer or should they just be scrapped in some way?

Jules Carey: The terms are there to assess whether a protest or assembly is too loud. Where I am going with this is that there should not be a test at all. The right to protest should not be limited and conditions should not be imposed on the basis of noise. There are a number of proper conditions within the Public Order Act—triggers to impose conditions on protests and assemblies—and noise should not be one of them.

Zehrah Hasan: I would echo what Jules has said about the noise trigger being entirely inappropriate and incompatible with the right to protest. I would also add that these provisions have to be read with the fact that the Bill is trying to lower the threshold for when a protester would be found to breach a condition. Currently, under the law, a protester breaches a condition if it occurred knowingly, but the Bill wants to lower this threshold to a breach occurring where a protester failed to comply with a condition that they ought to have known had been enforced. Again, all this further uncertainty and precarity for protesters allows the police to act with impunity on the ground.

As Jules has identified, the entire point of a protest is to cause impact and to dissent. Creating noise at a protest is quite literally a part of people making their voices heard. By trying to curtail every aspect of civil disobedience and criminalise centuries-old protest tactics, the Bill is essentially eroding our right to protest.

Jules touched on what "serious unease" even means. How would that be interpreted by an officer on the ground? Black Protest Legal Support is concerned by the treatment we have seen of black, brown and racialised protesters under the Covid regulations for merely attending protests, despite the case law being very clear that there cannot be a blanket ban on protests. By extension, when we have protests that shine a spotlight on racism in the UK, chants which might highlight the plight of black communities may inevitably cause some white people to feel uneasy, but is it not important that protests, by their very nature, cause the state and the public to pause for thought and to be challenged for practices and views that harm racialised and marginalised people, and draw attention to human rights abuses occurring every day on our doorsteps?

In my view, it is not about whether protesters can sufficiently predict when conditions may be imposed, but about the fact that imposing such conditions is inherently incompatible with the obligation on the state to facilitate the right to protest.

Baroness Massey of Darwen: This could make problems for the police as well in interpretation, I assume. How do you interpret "unease"? How do you interpret the others? How do you do it?

Zehrah Hasan: Absolutely.

Kevin Blowe: That is absolutely correct. If you look at what is actually in the Bill, the Government have had a fairly tortuous process in trying to describe this. It talks about the relevant impacts on people in the vicinity of a procession. That could mean literally anything. Certainly, the likely consequence of this, if it is passed, is that there will be a lot more situations where protests lead to arrests and those arrests are likely to happen more often. Our experience has been that when you give the police new powers, they tend to go away and use them. Already we have the situation we described, where there are concerns about the current powers being used.

I want to give a couple of examples. People who may be concerned about noise may not just be concerned about a big demonstration marching through London. You may well have a trade union picket on anything other than an official strike outside a business, or an ethical boycott of a particular company. Someone in our steering group is involved in the Free Tibet campaign, and certainly we would imagine there will be considerable pressure from embassies for the police to use this new power, if it existed, to try to stop protest outside their embassies, particularly if they are the kind of repressive Governments that do not want human rights protests. The police will then be placed in a situation of having to make decisions about that.

It has been said already but every effective protest over the last two decades, particularly the environmental protests that are the focus of the thinking behind this Bill, whether over fracking, opencast mining or airport expansion, have caused some form of disruption to the kinds of corporate interests likely to go back and say to the police, "We want you to deal with this". If the police have the sort of powers that make it very easy to do that, they are likely to use them. That is why there is a very broad range of people who should be genuinely worried about the consequences of this change if it goes through.

Q5 **Joanna Cherry:** Good afternoon, I am Joanna Cherry, the Member

of Parliament for Edinburgh South West. We have already talked quite a bit about the positive obligation imposed on the state by Articles 10 and 11 to facilitate the right to peaceful assembly and protest. I was going to ask you if you think the Bill accords with that obligation, but I think it is fairly obvious that all three of you think it does not and you have already given a number of examples as to how it does not. Could I ask all three of you whether you want to add anything to the examples you have already given of in what respects the Bill does not accord with that positive obligation?

Can I also ask you what a rights-based approach or a rights-based Bill would look like? Kevin, I was quite interested in the evidence your organisation gave to the All-Party Parliamentary Group on Democracy and the Constitution when you talked about what a rights-based approach might look like. What I want to do with this question is just explore a bit more to what extent the Bill does accord with the positive obligation in Articles 10 and 11, and find out from you what a Bill that did would look like.

Kevin Blowe: You mentioned the submission that we made to the APPG on Democracy and the Constitution. The starting point is that the reason that a positive obligation exists at all, arguably, is because there is a need for it. There is a recognition that people do not have access to power, they do not have access to influence and they need to be able to get their voices heard. Historically, there is the prospect that, in the course of doing so, people may well end up being arrested for taking part in protests that are non-violent. There are, historically, dozens of examples, from the suffragists to the mass trespass at Kinder Scout in the Peak District, the anniversary of which we celebrated this weekend.

You are right that we are very clear that we do not think that the Bill is interested in those obligations; it is interested in finding ways of imposing restrictions. I touched on this before. The way that any law is interpreted is quite often an operational decision because the human rights obligation does not just apply to the framers of the law; it obviously particularly applies to those people who go away and implement it. The policy of obligation involves exercising a degree of tolerance and understanding of the need to intervene only when it is absolutely necessary and proportionate. It is not because it is too expensive. Certainly, the issue of the cost of policing for Extinction Rebellion has come up before.

That is part of the reason we took the approach of trying to write something that was based on existing human rights obligations. There is nothing in the Charter for Freedom of Assembly Rights that we have written that is ground-breaking. It is all already there within the obligations that Britain has signed up to through its

membership of the OSCE, from the Venice Commission guidelines and from the United Nations General Comment 37 from last year. What that would do is provide protesters with some degree of certainty about what it is that they may expect if they take part in protests, which currently neither the Bill nor, I would say, the Public Order Act does.

One final point on this—I want to let the others come in—is that the point that Zehrah raised is really important. The Bill talks about this idea that it should be an offence if people know or ought to know that a condition has been imposed. The idea that people ought to know is pushing back the state's obligation to say when and if it will restrict people's rights. It is not down to the individual to try to know. As a citizen, there is an obligation that exists for the state to facilitate protest and ensure that they are protected. The European Court of Human Rights has been very clear that the law needs to be "formulated with sufficient precision to enable citizens to regulate their conduct". That is a direct quote from a judgment all the way back in 1979. Our emphasis in relation to the positive obligations is that they are not just about what is in a piece of legislation; they are also fundamentally about how that legislation is implemented by the police.

Zehrah Hasan: Of course I do not think the Bill complies with the positive obligations; it is entirely in opposition to that. Three main things within this Bill are problematic. The first is the broad language of the legislation, which leaves wide scope for interpretation by the police and the courts, in which there is obviously evidence of discriminatory outcomes for black, brown and racialised people already. The second is how much power it affords to the police to restrict protest—all of the things we have already discussed. The third part is the harsh carceral punishments which are meted out for its proposed offences: the 10-year sentence that we might come to in a bit.

Ultimately, in terms of the broad language, I think we can use the Covid regulations as a blueprint for what the police do on the ground at protests when they have legislation that is widely and vaguely drafted, how they interpret that and the impact that that then has on those communities. From our perspective in particular, we see that that does have a racialised impact. We have seen, under the Covid regulations, black, brown and racialised people are 54% more likely to be fined. If we then have these broad provisions, "serious unease", "serious annoyance", the public nuisance stuff—all of that—who is that going to target the most? Who is going to be more sharply impacted by the increased policing, criminalisation and punishment of protesters? In our view,

it is going to be black and brown protesters and that is what we are already seeing.

The only thing I would add is that we cannot forget that this pervasive threat to the right to protest goes beyond this Bill. The HMICFRS report that was commissioned by the Home Secretary and published in March this year also outlined a need to develop covert intelligence-gathering methods, the increased use of facial recognition technology at protests and expanding stop and search to prevent serious disruption caused by protests. We again know that such measures will disproportionately harm black protesters. We know that facial recognition is discriminatory by design. The Court of Appeal found just last year in the case of Bridges that facial recognition breaches privacy rights and equality law. We also know that black people are 40 times more likely to be searched under suspicionless Section 60 stop and search powers. Again, the Government's attempt to roll out these approaches to protests, which come part and parcel with this very authoritarian Bill, is going to further embed systemic racism into the policing of protests and will sharply impact our communities.

In my view, none of the Government's actions fulfils the positive obligation to facilitate protest. What we have seen already on the ground is an active attempt to suppress demonstrations, which the Bill basically seeks to place on a firmer legislative footing.

Jules Carey: If I could be allowed a brief comment on this question as well, this Bill not only fails to honour the positive obligation of facilitating protest; the Bill, of itself, negatively impacts protest. When you take together the provisions in the Bill—which include the ability to put conditions on protests if they are noisy, the opening up of the type of conditions that can be imposed rather than the restricted conditions at the moment, the creation of new offences, the massively disproportionate new penalties that the Bill provides for, the Home Secretary taking the power to herself to define "serious disruption" without proper parliamentary oversight, the introduction of vague legal concepts and terms, and the redefining of an "assembly" to include the presence of just one person—they, I would say, clearly violate international human rights standards and constitute a savage attack on the right to peaceful assembly.

What needs to be put in the balance is that this represents a clamping down on protest and this clamping down on protest is not just muting the voices of dissent; it is also the Government deliberately closing its ears to the warnings and alarms that are raised by citizens on the street. It is a foolish landlord who removes

the fire alarms from his property because he does not like the noise.

Q6 **Lord Dubs:** My name is Alf Dubs, I am a Labour Member of the Lords and my question follows very neatly, I think, from some of the comments that have just been made. Do you think that the provisions of the Bill may dissuade individuals from attending protests, either because of uncertainty or unpredictability of some of the requirements, or because they do not want to place themselves at risk of arrest? Could it, in fact, have a chilling effect on the right to protest?

Kevin Blowe: This idea about the chilling effect has been around for a while. The starting point for that is to recognise that a lot of it is about perception. We have spent a lot of our time working with campaigners who are first-time campaigners. Their sense of wanting to join a protest is quite often about an obligation, that idea that you need to take a stand, and what happens subsequent to that is that people begin to hear stories about arbitrary arrests or they experience some situations themselves and that sense of obligation begins to waver. That certainly was true for the many years when I was working with first-time campaigners in opposition to fracking, who genuinely did not expect the type of policing operation that they were facing, particularly in Lancashire.

It may be better to give a recent example. We have done some work very recently with a Black Lives Matter group in Cardiff and they have talked about some particular concerns over the death of Mohamud Hassan back in January. The first demonstrations around Mohamud Hassan's death brought out large parts of the black community. There were people out from families, people brought their children, and that was entirely understandable. This was a death in the heart of the community. Despite the coronavirus regulations being in place, this was the kind of exceptional event where people felt that they need to get out on the streets and make sure their voice is heard. It was not enough to talk about this stuff on social media.

Yet what followed was local campaigners talking to us about young members of the Somali community in Cardiff being targeted for arrest, often violent arrest, subsequent protest, police barricading the Cardiff Bay police station and dragging an elderly, disabled woman from her car, and what happened was the composition of the protests that followed began to change because fewer people from racialised communities—who already have, let us be clear, a negative experience of the police—made a judgment that it was not worth the risk to attend. Certainly that was not improved by the decision of South Wales Police to arrest somebody for allegedly

assaulting an emergency service worker by shining a torch at them.

The point that I want to make here is that it is difficult to argue that that was deliberate—I cannot prove that there was a policy to try to scare people away—but creating the impression that protests involving black communities were likely to involve violence and demonstrating very little consideration for the human rights obligations on the South Wales Police created the same thing. That is how that chilling effect works. That is how people begin to perceive that there is a danger to them, a risk to them, in just taking part. It is one of the reasons why we have tried to emphasise the idea that the police need to give additional protections to the rights of those who are the most vulnerable, because that vulnerability—I am thinking in particular of things like people's disabilities and the targeting of women at other protests—has a direct knock-on effect not just on them but everybody they know, the wider society in which they live.

Zehrah Hasan: Following on from what Kevin has said, I would say that absolutely it will have a chilling effect but also it will have a racist effect. The first point is that we can already see this playing out. Last month, a number of black-led groups released a statement outlining that the level of police harassment they were experiencing prevented them from attending Kill the Bill protests. That is extremely significant. Indeed, we have already seen at a number of protests in recent months the aggressive arrests of black people under the Covid regulations. As I mentioned earlier, five of our legal observers were arrested and three of them were people of colour. If the way the people have used Covid powers is anything to go by, we know that broad and uncertain provisions will only furnish the police with the power to arrest more people at protests, particularly black and brown people.

Secondly, more police powers also create a heightened risk of harm. In widening the ways the police can regulate and restrict protests, it also enables them to jump to enforcement action if they consider conditions or restrictions are not being adhered to. We are concerned that this will increase police brutality on the ground. We have already seen this at protests, from Clapham Common to the Bristol Kill the Bill protests, and we already know that black and brown people are more likely to face police violence. We know, for example, that the police are five times more likely to use force against black people, that nearly one in three incidents involving the use of force are against black, brown and racialised people, and that a black person is twice as likely to die in police custody than a person from any other racial group in the UK. Given the

institutional racism that has historically existed and currently still exists, we are concerned that giving the police more power will embolden them to act with impunity on the ground.

I just want to mention that the punitive measures will create a heightened risk of criminalisation. Vague provisions and weighty penalties will criminalise those who are already more heavily penalised by the state. We only have to look at the Lammy review to know that this is a harsh reality. More than half of children in prisons are from black, brown and racialised groups. Yes, it will make it less safe for everyone to attend protests but particularly for racialised and marginalised groups, who are already more heavily policed, criminalised and punished by the state.

We have also seen the wider reach of this recently. There were students who were protesting against racist and Islamophobic policies at Pimlico Academy and they were threatened with expulsion by their school. We are pleased to see that the school has confirmed this week that no such action would be taken, but this followed a huge amount of public, political and legal pressure. The chilling and racist effect of this Bill will not just be confined to the policing of protests; it could have an impact on any protest that seeks to hold power to account, whether through strike actions, protests at schools or university, or indeed when challenging arms of the state. I think the effects will be extremely wide for all of us, but particularly for our communities.

Q7 **Lord Dubs:** The Bill introduces a statutory offence of intentionally or recklessly causing public nuisance, which carries a maximum sentence of 10 years. A person can be convicted of an offence if they cause a member of the public serious distress, serious annoyance, serious inconvenience or serious loss of amenity. Do you think the offence is a proportionate response, given the wide range of conduct that constitutes serious harm?

Kevin Blowe: Obviously, the issue of changing the law around public nuisance has been on the cards, the Law Commission have talked about this for a number of years and there are advantages in moving from common law offences to statutory ones. However, it has to be said that the reason why people are talking about this, particularly within the campaigns that are opposing the Bill and are worried about it, is because the Government chose to include it within the section of the Bill that they have actively sold as tackling the nuisance of non-violent protests.

The Chair: Could you focus on the issue of the sentencing?

Kevin Blowe: Yes. One of the points about the use of this power is that, as a common law offence, it has been used very rarely in relation to protests. The most recent example was some anti-fracking campaigners in Lancashire in 2018. That was overturned by the Court of Appeal as being manifestly excessive to send them to prison for 12 and 18 months. Before that, we have to go back another 89 years to the Kinder Scout trespass that I mentioned earlier on, for when people were actually sent to prison.

However, if the power is introduced as a statutory offence, it does not mean that just because it has not been used before, it will not be in the future. Back in February of last year, the Metropolitan Police Commissioner told the London Assembly that this power was needed to provide greater clarity for officers seeking to prosecute protesters. I have made the point before that, even though it may well be the case that people are not subsequently charged and do not get convicted, this is still likely to be a power that is used massively.

The Chair: Zehrah, could you mention what you think about the maximum sentence of 10 years?

Zehrah Hasan: The main point is that it is clearly egregiously excessive. Obviously, the concern is that, where you have very heavy maximum sentences, that then has a knock-on effect where someone who would otherwise be dealt with in a non-carceral way may end up getting a 12-month sentence for something. It is extremely wide. As to the fact that this offence even exists in the Bill, we just have to look at what Lord Justice Laws said in the Court of Appeal in 2009, that, "Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them." Again, it goes back to this point that the fundamental principle of protest is that they are there to cause disruption, to dissent loudly and visibly, and by necessity protests will cause serious annoyance or serious inconvenience to some. Heavily criminalising people with up to 10 years' imprisonment for exercising these rights is plainly draconian, disproportionate, and inconsistent with Articles 10 and 11.

This is all about the creation of "serious harm". I would say that the serious harm that needs to be examined is the serious harm that protest movements are seeking to expose, from environmental degradation to racial and gendered violence. That is what is important here. These types of offences are egregious and disproportionate.

Jules Carey: The sentence of up to 10 years is clearly disproportionate and it relates not just to this new statutory offence of public nuisance but also to criminal damage done to statues. In this Bill, there is an alarming increase in penalties that are wholly disproportionate, but when you add to that the breadth of the new public nuisance offence, which includes serious annoyance, and you include the lowering of the fault requirement in relation to penalties that can be imposed due to breaches of conditions, you have significantly more draconian powers relating to criminal justice. Taken together, they will provide a chilling effect and discourage people from engaging in lawful assemblies.

I would like to comment on whether or not these powers will be used. Obviously, there is a hope that the police and the courts would perhaps steer away from using these sorts of powers if they are in the statute, but I would refer to a client who I am representing at the moment, Karen Reissman, a mental health nurse of 36 years, who last month was issued with a £10,000 fine by the Greater Manchester Police for organising a small Covid-safe demonstration where number of nurses from her union were intending to protest about the 1% pay rise, after the torrid year that they have had, working to help and protect us all from the ravages of Covid. As soon as she was told that she was not permitted to protest, despite the fact that as a Covid adviser she worked in her community telling people how to avoid Covid, she immediately stopped the protest, called it off and asked people to disperse—

The Chair: Jules, could I cut in there? We have to be careful we do not tread on the toes of the courts.

Jules Carey: It is not sub judice, Chair. I am representing her myself. It is at the early stages.

The Chair: Is it going to come before the courts?

Jules Carey: I sincerely hope not. The courts will be well aware of the dispute between the parties anyway. It is not issued in court and there is no application pending. At the moment, it is just a vociferous dispute between us and the Greater Manchester Police. I feel free to highlight the fact that this very Covid-sensitive, Covid-aware nurse, intending to protest, has been issued with a £10,000 fine, and when the Greater Manchester Police were queried about imposing this fine, they wrote back to me to say that they had considered it but, in their view, it was proportionate, legal, accountable, and necessary in the circumstances. When we look at the sorts of measures proposed in this Bill, we should not think to ourselves, "Well, we can trust the police to be sensible about how

they apply the law, and we can trust that the courts will necessarily ensure that the maximum penalties are not imposed". Where the mischiefs are in this Bill, it is important that we face up to them and we tackle them now to ensure that we preserve the fundamental right that we enjoy in this country and this democracy, which is the right to protest.

Q8 **Lord Singh of Wimbledon:** I am Lord Singh of Wimbledon, a Cross-Bench Member of the House of Lords. Do you think that the creation of a new offence is necessary given the range of offences already in the Public Order Act 1986, such as causing harassment, alarm or distress, and the Protection from Harassment Act 1997?

Zehrah Hasan: This underscores the main message we have all been trying to get across, which is that these offences are not necessary and the way that the police already use the powers they have is disproportionate and unfair. In terms of the knock-on impact of these offences—the 10-year penalties—as I have indicated, this is going to have a discriminatory impact as well. We know that there are disproportionate sentencing decisions and disproportionate charging decisions within the criminal justice system against black, brown and racialised people. I have seen it first hand as a barrister who used to do criminal defence work and, as I mentioned, the Lammy review makes that very clear.

Fundamentally, all these new provisions and the new offences will unjustly criminalise people for exercising the fundamental right to protest, and it is also then going to have a knock-on impact on black and brown protesters in particular when they are then within the criminal justice system, given the discrimination and inequality they already face. That is why it is so concerning to us that this Bill has been mooted in this way, that is why it is so important that this scrutiny is happening and all of these provisions are reflected on, and that is why so many people are opposing it in its entirety.

The Chair: Kevin and Jules, do you agree with Zehrah that not only is the new offence not necessary but the definitions are unclear, it will have a chilling effect and the sentences will be disproportionate and also discriminatory? Is that what both of you agree?

Kevin Blowe: Certainly, yes.

Jules Carey: Short answer, absolutely.

The Chair: Thank you very much indeed. You have brought to this committee, the three of you, a very wide range of experience of the practicalities of people who do want to demonstrate, why they want to demonstrate and the importance that their voices should

be heard. You have given us a very good scene setting for the House of Commons and House of Lords to discuss the Bill. Thank you very much indeed for your evidence.