



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill](#), HC 1324

Wednesday 28 April 2021

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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 9-15

Witnesses

[II](#): Chief Constable Ben-Julian Harrington, Public Order Lead, National Police Chiefs' Council; Matt Parr, HM Inspector of Constabulary and HM Inspector of Fire & Rescue Services.

Examination of witnesses

Chief Constable Ben-Julian Harrington and Matt Parr.

Q9 **The Chair:** We have Chief Constable Ben-Julian Harrington, who is the public order lead for the National Police Chiefs' Council. Thank you very much for joining us. We also have Matt Parr, whose report has already been referred to, in relation to an inspection of how effectively the police deal with protests, in his role as HM Inspector of Constabulary.

For the first question, could I ask you to reflect on what the previous witnesses have said, which is that these powers are not necessary, they will have a chilling effect on a fundamental right, protests by their very nature are supposed to inconvenience people so that people take notice of them and sometimes the truth is inconvenient, that the powers are disproportionate, unclear and will be discriminatory in practice, and that you have plenty of powers already to police demonstrations and therefore you do not actually need them? That is summarising what they had said. I know that you have been able to hear some of their evidence. Could we start with you, Chief Constable?

Chief Constable Ben-Julian Harrington: Of course we always reflect on and try to engage with and understand those who have concerns about our powers. All of what we do is informed by the Human Rights Act, of course, including Articles 10 and 11, which have been discussed. That is one of the key considerations for policing, in our training, our authorised professional practice, our continuous professional development and the decisions that we make and the police reflect upon it all the time, trying to get the balance right between those positive and negative duties. Whatever powers we use, getting that balance right is important.

Article 11 is about the protection of the rights of others. Policing is always in the position of having to balance competing rights, and does so very often, and officers very often finds themselves in the middle of different opinions.

In relation to the powers themselves and those that are proposed in the Bill, the Human Rights Act is clear. It necessarily requires us to apply judgment and discretion, which I think policing largely gets right, although, as has been highlighted, there are cases where we do not, we have been challenged in the courts and we have had to change our approach.

It is necessary to make sure that our powers are consistent, that they are clear and that there is clarity and currency around them. Take for example, Sections 12 and 14 of the Public Order Act 1986 on the difference between procession and assembly. One of the practical applications is: when does an assembly start and when does a procession finish? It would seem difficult for us to balance those rights and to impose conditions, which, incidentally, we do reasonably infrequently. We can impose conditions that are proportionate, legal and necessary on a procession where the serious disruption element is met. In the case of an an assembly, we are restricted very much to matters of duration, numbers and location. We think that is not suitable for what we have seen and experienced, but of course we use these powers infrequently.

Regarding something that all three of the previous panellists discussed, we do make a lot of effort to inform people, whether that is through social media, when we become aware of protests or people wishing to come together, or through engagement in the planning process. You will have seen what we have presented in the courts where we tried to make it clear to those who are breaking the law, or we would allege are breaking the law. Through the Covid pandemic there have been the "Four Es" and I will not repeat them because I am sure you have heard them many times, but even in public order, we have what we call a five-step appeal where we go through, explaining, trying to make a personal appeal and a professional appeal and then, finally only, dealing with enforcement. We have videoed and presented the evidence of where we have given leaflets to people who we think are breaking the law, we have spoken to them, we have advised and guided them, and of course they have simply said that they do not understand. That is why we think that, when we have gone through that process, it is absolutely reasonable that people ought to know, and we try to do that.

Over the last year, we have seen the dynamic nature of protests and the need around public nuisance. We think the public nuisance provision provides the public with clarity about policing's common law powers that allow us to do the right thing within the framework of human rights.

We think that the threshold of serious disruption is high, as the other panel said. It does not take into account some of the things that we have seen, for example single-person protests where there has not necessarily been any serious disruption but which have had significant impact. We have asked for those things to be

considered. The Human Rights Act provides a very clear framework and one that officers work within. We do not always get it right, but I think we largely do. We have powers that we would argue we use sparingly and responsibly, but we think it is necessary to modernise those powers, to make sure they are clear, current and allow us to balance the rights of those who wish to assemble and express themselves, and those who are impacted as a result.

Matt Parr: Good afternoon. I agreed with rather a lot of what panel one said. I would not go as far as agreeing with everything they said and, frankly, the reports I have authored, both on protest policing more widely and the Clapham Common vigil, are making the point that it is all about balance and it is a very difficult balance to strike.

Let me make a couple of observations before we get going. We make the point in one of those reports that protest is becoming increasingly demanding for the police. It is a growth area and, in many people's view, likely to increase, and how you strike the balance needs to be looked at very carefully.

It is worth recording that it cost the Met £37 million to police two days of Extinction Rebellion in 2019, which, as we say in the report, is twice the annual budget of the Violent Crime Taskforce. There is an issue with resource right there.

The Chair: Can I cut in there, Matt? I put it to you that, if we heard Putin in Russia complaining that the Navalny protests were costing a lot of money for the police, we would all instinctively say, "But that is not a consideration because it is a fundamental right"? Should we be counting the costs of protests like that and deciding that they are too expensive?

Matt Parr: I do not think anybody disputes that. BJ has just said it and, when we did our report, we did not hear a single police interviewee who did not absolutely recognise the fundamental right to protest. Those rights in the CHR are at the forefront of every decision the police make. And they genuinely are. We can see that, in all the Gold strategies for protests we have looked at, they are right at the forefront of their thinking.

People are not counting the cost. My point is that those rights are not unfettered rights. They have to be exercised in balance with the rights of people who are not involved in the protest. That is a very tricky balance that the police have to strike.

The Chair: I want to press you on this, because this is a bit of a new one on me. Are you saying that one of the things to be taken into account in balancing—of course there is always a balance to be struck in relation to these rights—is the amount of cost to the public purse, and that if something is becoming more expensive, that is a consideration that is taken into account?

Matt Parr: I am absolutely not saying that. I do not think that should happen and there is no evidence of that. What I am saying is that it is a big issue for the police and you can see why it is deserving of detailed scrutiny. It is not a small subject area for policing; it is a big area of policing and getting bigger.

The Chair: Might that be because people think there are things to protest about?

Matt Parr: Oh quite, yes; I agree. As we have said in the reports, and as BJ has said, that is a perfectly valid starting point. We also say in the report that the law is not the panacea. If there are various developments in the way the police approach protest policing, the law is not the way to solve some of the problems. We made a dozen or so recommendations in the protest policing report, and most of them had very little to do with changes in the law; they were about learning, debriefing, better Gold strategies for police, the impact of fixed penalties, and getting the authorised professional practice up to date—I completely agree with Jules that it is outdated and not really fit for purpose. There were much wider recommendations on the way the police approach protest—to get us to a comfortable place—than just changes in the law

The Chair: Do you think that the statutory powers available to the police are already adequate or do you think they should be boosted?

Matt Parr: We found divided opinions.

The Chair: I am not asking you what you found in others' opinions; I am asking for your opinion. Do you think that the police have adequate powers or do they need more powers?

Matt Parr: Forgive me, but that is not really a question for me as Her Majesty's Inspector of Constabulary. We did an inspection of the police and the police gave us a range of views.

The Chair: I know, but I am asking you the question, as somebody who looks at the police and thinks about these things, and as somebody who has been asked to produce a report called *Getting*

the Balance Right; that is your report, not the police's report. If you do not want to answer the question, that is down to you, but I think that you would have a view and I would like for you to share it. Do you think the powers that the police have are adequate?

Perhaps I should ask it a different way. Have you ever suggested to the Government that the police's powers are inadequate for them to do their job properly and therefore they should have some more?

Matt Parr: We were asked a very specific question in the Home Secretary's commissioning of the protest report. We were specifically asked to give our view on whether five proposals would enhance the efficiency and effectiveness of the way protests are policed. Our view was that, with certain caveats, all five would enhance the efficiency and effectiveness of the police. We had reservations about all of them, to a greater or lesser degree. On the fifth one, which was about use of stop and search in the margins on the way to a protest, we had some very serious reservations, for many of the reasons that Zehrah Hasan articulated. We completely agree with her, and the work we have done reinforces the standpoint that it has the potential to be discriminatory.

With some very strong caveats, we were broadly of the opinion that all five proposals would enhance effectiveness and efficiency. Whether or not they are necessary is really not a matter for us. That is a matter for the Government.

Q10 **Joanna Cherry:** My questions are for Chief Constable Harrington. I want to ask you about policing protests under the existing law, the Public Order Act of 1986. It was very clear from the evidence of the last panel that the way in which the police apply the law operationally is very important from the point of view of preserving rights.

Under the 1986 Act, a senior police officer can impose conditions on a public procession or assembly if they reasonably believe that it may result in serious public disorder, serious damage to property or serious disruption to the life of the community. Can I ask you to explain for us how a senior police officer decides whether an assembly or protest constitutes a serious disruption to the life of the community? Can you also tell us how, prior to a protest commencing, the police seek to engage the organisers in their decision-making process around whether there will be a risk of serious disruption to the life of the community?

Chief Constable Ben-Julian Harrington: The first point is that, in considering that, senior police officers are always considering it with the need for balance in the background, looking at the positive and negative duties and thinking about the other people who are affected. They will look at the nature of the group concerned, and the evidence of the history of when the group has come together before, if indeed it has. They will ask to meet and engage with the protest group, if there is an organiser, to make an assessment of what its intentions are.

One of the key elements we see is an attempt to negotiate, to understand how the police can best balance those important rights. As Matt said, and as the previous panel said, we recognise these fundamental rights and we think they are important rights. Officers will try to make an assessment and will of course think about the consequences, sometimes engaging with other groups if the protest is against a specific company or organisation, or indeed if there are counterprotest groups with different and opposing views, as we sometimes see. They try to take that into consideration. They will then look at the various elements, and say, "How do we best discharge those rights? What powers, if any, do we need in order to do that?"

Let me give you some numbers. The National Police Chiefs' Council assessed that there were over 2,500 protests between 21 January to 21 April. Some are not reported to us, but, where we have records, we have imposed conditions no more than a dozen times. It is important that we use those powers sparingly.

To the second part of your question, on how we engage with and speak to the organisers, I would hope that we would already be in that dialogue. For many protests, we are, and so we have already agreed what they seek to achieve and what we would seek to achieve to discharge our duties, and to make sure that we think about other people's rights. To work with them where we do not have that engagement, you will have seen us use social media posts and videos from senior officers trying to explain and engage. We will issue leaflets and speak to people, and then of course we will brief officers on the ground. That is how we engage.

The decision by senior officers to impose conditions is a serious one. Those decisions are made in advance, at chief constable level. That shows the seriousness and the gravity with which we consider them. When decisions are made in response to a protest, assembly or procession that is already in place, they are made by the senior

officer available, very often under clear guidelines or tactical parameters that are set by the senior officer in charge, to make sure that we use the powers sparingly and proportionately, that they are legal, and, importantly, that they are necessary, which is a clear caveat within the Human Rights Act.

Joanna Cherry: If the existing powers under the Public Order Act are being used sparingly, does that not suggest that the existing powers are sufficient?

Chief Constable Ben-Julian Harrington: We would say no. My point is that, with a procession, we can apply reasonable conditions and meet the threshold, and we will often re-route it to avoid a particularly sensitive area or to make sure that it starts and finishes at agreed places. That allows us to balance the impact on other people and prevent or mitigate serious disruption. With an assembly, we cannot do that. We are limited. And we think that that is not clear for those involved.

It is difficult for police commanders to decide whether something is an assembly or a procession—at which point does it become one or the other? We think the proposals provide greater clarity to achieve both sides: to allow protesters to understand what is allowed and where we put conditions in place, and to allow us to protect other people and their rights. At the moment, we cannot do that because of the limitations in the powers.

Joanna Cherry: I still do not quite understand. I can understand your rationale for why you need to have similar powers in relation to static assemblies, but I do not understand why there is a perceived need for more powers in relation to processions, if the existing powers are being used sparingly. I would perhaps expect you to say that you are using your existing powers up to the hilt but they are not enough; instead, you tell us you are using them sparingly.

Chief Constable Ben-Julian Harrington: Apologies, perhaps I have been unclear. We think the powers for processions are reasonable. We have the ability, where we meet the threshold, to impose conditions that are proportionate, legal and necessary. In regard to assemblies, we are restricted to considering the location, the duration and the number of people—and there may of course be other elements, such as noise, which has been mentioned.

We think that, for assemblies, there needs to be greater currency and consistency with Section 12 of the current Public Order Act.

That is what we are asking for. We think the powers for processions are proper and give us the ability, within all the safeguards, to balance and discharge our duties.

The Chair: You mentioned, Chief Constable, seeking to engage organisers prior to a march. In relation to serious disruption to the life of a community, you talked about balancing the needs of the community. Do you consult the community or do you make an assumption about how much disruption a community is prepared to put up with and what constitutes “serious”? Or do you just assume that there is a community norm of intolerance of disruption, which you are then protecting in discussion with the protesters?

Chief Constable Ben-Julian Harrington: No assumptions are made. We are always able to identify which communities are affected, although it is sometimes difficult. Take the example of central London, where there would have to be a discussion with Transport for London about how many bus routes would need to be diverted, and what would happen to the train network and to certain businesses. Where we have time, because we have been notified, and where we can identify a particular community—

The Chair: But they are not really a community, are they? They are organisations. I am thinking of the Sarah Everard vigil. I reckon that if you knocked on the doors and spoke to the community around Clapham Common, they would have been absolutely wholeheartedly in support of whatever disruption was likely to be caused in remembrance of what had happened to Sarah Everard—if they were not joining themselves, which many of them wanted to. Were you aware that there was any consultation with the local community about that protest in that location?

Chief Constable Ben-Julian Harrington: It is difficult for me to speak specifically because I was not involved in the operation. I know from reading the reports and speaking to colleagues that local policing and local police commanders were engaging with local communities during the day in order to inform how they approached the process.

The Chair: But they were all in favour of it, were they not?

Chief Constable Ben-Julian Harrington: I do not know; I cannot answer. I can go and find out and write to you.

The Chair: I think Matt is going to enlighten us on this. Were people at the time saying, “No, we do not want a vigil for Sarah

Everard and we do not want there to be a protest”?

Matt Parr: No, absolutely not, Chair. I think you are spot on there. There was widespread support in the community. All the evidence the police had beforehand was that it was an activity which, whatever disruption there was—and, frankly, I am not sure there was any meaningful disruption to the local community—would have been tolerated.

The Chair: So is it your view that an agreement should have been reached between the police and the organisers to let the vigil go ahead?

Matt Parr: That is a different question. The justification for not letting it go ahead was not about disruption; it was about Covid regulations. The report actually quoted a comment you made about how the law was a mess and how difficult it was. It was not a question of balancing disruption in that case; it was a question of balancing Article 10 and Article 11 rights against Covid regulations.

Chief Constable Ben-Julian Harrington: Chair, if I could come back on that point, as far as I am aware, no restrictions were put in place around serious disruption under the Public Order Act. I know there was some negotiation and discussion, as has been reported and as Matt has discussed, and of course the actions that were taken were, as Matt has said, around Covid regulations.

You heard this the last time I spoke to you: the important elements are around Article 10 and Article 11, and, for the first time this year, we have had to consider the public health duty, which sits under the Human Rights Act. I think we discussed at length the complexity and sensitivity of that for policing over the period in question.

The Chair: I think what we have here is the notional man—it is the notional community which is being protected. Anyway, perhaps we should move on to the next question, from Baroness Massey.

Q11 **Baroness Massey of Darwen:** Good afternoon to you. I am Doreen Massey and I am a Labour Peer. I want to ask Chief Constable Harrington a question, but Matt Parr may want to come in on it.

You talked about rights being important and you talked about getting the balance right. I want to ask how you effectively do this, and you have had a question on this already.

How does a senior police officer decide whether to impose a condition during a protest—I want to emphasise “during” a protest? I think this must be a terribly difficult thing to do during a protest. The Chair has asked about prior consultation, which is also very important, but to have to make that decision during a protest seems to me to be extremely problematic, because you have to try to ensure the safety of the protest and the Article 10 and Article 11 rights of the protesters. How do you communicate to protesters, and enforce conditions, while the protest is going on around you?

I want to use the example of a student protest, which may involve young people under 18. How do you consider all the nuances and subtleties of who is in the protest, how you communicate with them, and what the likely result of not being able to communicate with them would be? It seems likely to me that, in the case of young people or black and brown people, there is a possibility of alienation if you do not get that right. How do you get it right?

Chief Constable Ben-Julian Harrington: Thank you for the question. You have hit upon the difficulty for public order commanders and police officers. I know Cressida Dick, the Metropolitan Police Commissioner, has described it as being as difficult as brain surgery, because of all these different factors.

I will start with your last point, on children and young people. The protection of vulnerable people is ingrained in policing, and of course we have specific duties under the Children Act to look after children. Certainly that is a key consideration where young people or other vulnerable groups are involved. I know that police officers are specifically briefed about young people and have engagement with schools, and there are dedicated officers with specific abilities, and arrangements with local authorities in order for children to engage with the police. Those things take place. You will have seen where other tactics are perhaps likely to be used; for example, the provision of water and toilets. I hope that deals with that point, Baroness Massey.

On the difficulty of making decisions during a protest and how we do that, the first thing I would stress is that we use these powers infrequently. That does not mean to say that we do not use them at all. I cited the numbers: in 2,500 protests, we have imposed conditions no more than 10 times.

How do we do that? There is an assessment of what the protest is about, where it is and who is being affected. Officers will then try to engage; you will have seen many references to police liaison

officers, which is a specific tactic of using officers specially trained and identified with blue tabards to open up lines of communication. That is not always effective, because there may be concerns from protest groups and those taking part about what the liaison role is—they are police officers. That information is then fed back to senior commanders to make a balanced decision based on the intelligence presented and—to go back to the Chair’s question—on the community impact that we perceive, such as whether it concerns a specific business or a specific junction in a town or a city.

The officers make the difficult judgment about how to balance the clear rights of freedom of expression and assembly and the other rights, which policing recognises as important, of those who are impacted, by assessing how serious the impact is. Where the impact meets a certain threshold, officers may choose to impose conditions and then, and only then, where they are proportionate, legal and necessary, and of course achieve the aim. We have to have conditions that achieve what we need to do.

Safety for officers and protesters is also a consideration, particularly concerning roads. In my experience, when we have had protests on roads with fast-moving traffic, the safety of everyone concerned is a consideration.

Baroness Massey of Darwen: Thank you. I wonder if Matt Parr wants to add anything.

Matt Parr: Yes, very briefly, if I may. One of the things we found, and one of our recommendations, is that we do not think the police are very good at doing after-action reviews. At the end of a protest, whether they imposed conditions on those rare occasions or whether they did not, it was rare to see high-quality impact assessments. Was there serious disruption? Was there an adverse impact on the community or any businesses? That tended not to be included as part of the learning.

Whereas we saw a very good grasp of human rights law among decision-makers, chief constables and public order commanders, we did not see evidence of considering the wider legal picture in quite the same way. One reason for that is that police officers were not as confident.

I draw a distinction here. BJ and I first met when he was a public order commander in the Met a few years ago. There is quite a strong difference in frequency, expertise and familiarity, depending

on whether you are part of a force that deals with regular protests or one that tends to see fewer. That makes it all the more important that learning is shared and that there is access for all decision-makers, so that they can understand the wider implications of the law to enable them to get the balance right.

Baroness Massey of Darwen: Thank you.

Q12 **The Chair:** Do police forces, the NPCC, or any other body, keep a record or collect data on conditions imposed on protests?

Chief Constable Ben-Julian Harrington: Chair, I will take that question.

The National Police Coordination Centre, which is run by the NPCC, helps us to co-ordinate police responses. Where protests are notified to us, as required, we try to record and understand where they take place. Many protests take place locally and are not recorded, and we do not have records. We do not record every single protest that takes place; for instance, a protest by a single person outside a school. Although there is a requirement for processions to be notified to us, there is no requirement to notify us of an assembly.

The Chair: What I was trying to get is this: when you impose conditions, is there a reporting mechanism or requirement, so that the conditions are noted and data gathered? Obviously, if it is just one person protesting and there is no disruption, there are no conditions. But when the police are exercising their powers to impose conditions, what overview can be taken by the gathering of data?

Chief Constable Ben-Julian Harrington: We do not formally ask for details of every protest to be notified.

The Chair: No, my question is not about being notified about protests; it is about conditions. I am asking about conditions.

Chief Constable Ben-Julian Harrington: Sorry, Chair. I was unclear. No, we do not ask, nationally, for feedback on that. I have done some scoping today and perhaps, as we move forward, we will learn from the recommendations from Matt's report that are applicable to policing, and take on the feedback from today. I have some data here, which I have quoted. We do it infrequently. But in always wishing to improve and move on, perhaps it is something that we need to do.

Each force conducts its own scrutiny, and I know the Metropolitan Police will be very clear about what they do, but very few forces have used conditions. The data I have in front of me, which I am happy to share with you, indicates that very few forces feel the need to use conditions.

The Chair: This is about accountability. If there are only a few occasions, it is interesting to know that there are only a few and interesting to know the nature of the conditions imposed. Thank you for your answer.

Matt, do you want mention something about the gathering of data on the imposition of conditions on this important right?

Matt Parr: No, Chair. I rather thought this question was going to be about how any decision to impose conditions is reviewed. Having done some thinking about that with colleagues—it is something we might have addressed in our report, and should have done—I know that there is no easy and ready mechanism. I am guilty of drifting off topic here, but when conditions are imposed, organisers do not have recourse to an immediate appeal. Their only appeal mechanism is to go all the way to judicial review. We think that there is probably room for a way to check—maybe for another decision-maker to review the decision.

The Chair: Would it help you, as Inspector of Constabulary, if there was a record of conditions that were imposed?

Matt Parr: I think it would help, yes.

The Chair: Thank you. You have led us neatly on, Matt, to Lord Brabazon's next question.

Q13 **Lord Brabazon of Tara:** Continuing on the subject of conditions and the review, what mechanisms are there for seeking a review of the conditions imposed either before or during a protest?

Chief Constable Ben-Julian Harrington: I will take that question.

I have talked about the willingness to engage and dialogue, which starts "before", when we know a protest is going to take place, and continues "during", when a protest is taking place. Throughout that, we would seek to impose conditions only to balance those rights. If a protest group, or its representatives, come forward and make representations, they will be listened to and a balance will be

struck, whether that is before or during the protest. And just because conditions are in place, we do not always enforce them.

Formally, there is an opportunity for a judicial review. Forces have received letters from protest groups asking for reviews. In recent cases, we have seen judicial reviews in the High Court on a Friday relating to a protest on a Saturday. That is the formal process for review.

Finally, there is always the test in the courts afterwards, whether that is about prosecution or civil measures. We have seen those. Those are the key methods of review.

Lord Brabazon of Tara: Thank you. What do you think is the impact of such conditions on the right to protest?

Chief Constable Ben-Julian Harrington: Undoubtedly, conditions limit rights under Articles 10 and 11, but of course they are qualified rights.

As I have said before, and as the report that Matt authored found, we generally get the balance right. To quote the report, a modest reset is required. We do not impose conditions very often, but when we do, we consider carefully the reasons: to prevent and detect crime; to protect the rights of others affected; and, most recently, over the past year, to protect public health, which has been a new reason that we have not had to use before in policing. We do carefully consider our reasons.

We would always try to make sure that conditions are proportionate and necessary for the legitimate aim that we seek to achieve, for both our positive and negative duties under the Human Rights Act.

Q14 **Baroness Ludford:** We are still on conditions. The Police Crime, Sentencing and Courts Bill widens the circumstances under which the police can impose conditions on a procession or assembly. For instance, a condition can be imposed if that procession or assembly would have a significant impact on persons in the vicinity, which includes causing "serious unease, alarm or distress". Can you think of any conduct that would be covered by the new noise trigger that could not already be covered by "serious disruption to the life of the community"? What is the added value from the point of view of protecting the community, if that is what it is supposed to be about?

Chief Constable Ben-Julian Harrington: The threshold for

serious disruption is very high and, as you have said, it is open to interpretation. It is about significant impact; that is the phraseology we used in discussions with the Home Office. Sometimes it is not about disruption to a particular community; it may be disruption to a particular organisation or a particular place. A good recent example would be the ongoing protest in Dean's Yard in Westminster, which would not meet the threshold for serious disruption but did significantly impact on a particular place and on particular people. We think that there is a need for a lower, broader threshold that is clearly understandable by policing and, most importantly, by those impacted and affected by it. We think it is necessary.

Of course, sometimes noise could meet the threshold for serious disruption. But the example I just gave you, and perhaps the example of single protesters or small groups in residential streets protesting against specific issues, would not meet the serious disruption threshold but would have an impact on the rights of other people. That is why, certainly in policing, we asked for it to be reconsidered.

Baroness Ludford: Can I press you on the word "unease"? Alarm or distress perhaps are of one order, but what about a protest creating serious "unease"? That could be interpreted in a whole load of ways—a bystander might not like the cause that is being championed by the protesters. How long is a piece of string?

Chief Constable Ben-Julian Harrington: Policing did ask for a different threshold, for the reasons I have explained, but the wording and the phraseology used is a matter for Parliament and lawmakers. We will of course interpret it within the guidance that is given to us and the legislation, should it become law, in terms of any legal precedent and legal definition.

Coming back to the point, we will consider all the legislation with regard to balance. Police officers, let us be honest, set out to try to find balance—a difficult job—often between opposing people with very different and emotive views, and seek always to protect and balance both rights. Police officers would have to interpret the wording with the clarity that any Act might provide and with legal advice.

Baroness Ludford: Thank you very much. Mr Parr, would you like to come in on that?

Matt Parr: This was the third of the five specific proposals that we were asked to look at, and we support it. "Significant impact" lowers the bar somewhat. There were already four reasons for imposing conditions: serious disorder, serious damage to property, serious disruption, or if the protest was being used for the purpose of intimidation. Those were the four. This adds replaces "serious disruption" with "significant impact". On balance, we thought that was okay.

Like BJ—we are both trying to be diplomatic here—we did not advocate the use of the word "unease", nor did we look specifically at whether noise should be included and whether it was covered elsewhere anyway. If you were being charitable, you might say that the advantage is that it at least offers clarity. In reality, of course, any case would have to be taken on its merits. The facts and circumstances of every protest, and any conditions, must be analysed on their merits. I would have thought that "unease"—or even "serious unease"—would make it challenging to reach the threshold of being proportionate, justified and necessary. But as BJ said, that is a matter for parliamentarians, not us.

The Chair: I felt the Brexit demonstrations caused me serious unease but I would not have regarded it as right to ban them.

Q15 **Lord Singh of Wimbledon:** My question is to both of you. Do you think the creation of the new statutory public nuisance 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? Perhaps you would like to begin, Chief Constable.

Chief Constable Ben-Julian Harrington: First, we welcome this becoming an Act of Parliament. It provides clarity for us and for those who would be impacted. At the moment, it is common law, informed by precedents, decisions and case law. It will provide clarity, currency and consistency around how we do this, which is important to us.

There are things in the proposals that would assist us in policing more generally. Specifically in relation to protests, on occasion, we see organisations, individuals and groups setting out to cause public nuisance as it has been defined in common law and as is set out here. Making it a statutory offence gives policing the ability—proportionately, and where it is the right thing to do—to take preventive action, including against conspiracy to commit offences.

What is in the proposals goes beyond the issues of inconvenience and loss of amenity and talks about serious damage to property, allowing us to take preventive action against those who would conspire to cause serious damage. Usually in protests, we find those individuals to be a very small minority.

It also allows us to protect public safety. As we have seen in a number of protests, there are issues of public safety for those who are legitimately and rightfully exercising their rights under the Human Rights Act, the officers involved, and the wider public. We have seen injuries, including to officers, particularly in relation to counterprotests.

We think the proposals provide clarity and consistency, and, importantly, give policing the ability to take preventive measures, not to limit the right to protest but to try to deal with those who would have an adverse impact and cause public nuisance within the terms set out here.

Lord Singh of Wimbledon: Thank you, Chief Constable. Matt Parr, would you like to comment?

Matt Parr: I echo what the chief constable has said. That was the fourth proposal we looked at and again we supported it.

The Law Commission laid out the reasons it was a good idea in 2015, and we broadly agree. The Law Commission said that the law should be as clearly defined as possible. In our report, we said that protesters deserve to know where they stand. I think this makes it clearer.

I do not think it would have a chilling effect. I do not think the proposed offence represents an attack on the right to protest; far from it. The common law is often difficult to prove; it is rare that it meets CPS charging standards and charges are relatively rarely brought, with roughly 120 cases a year. In those cases that do attract any sort of sanction, they are usually suspended sentences or community sentences.

On your last point, the Law Commission said, and we strongly agree, that this should not be used where a more specific offence is available. That is absolutely right. I do not see the offence as likely to give rise to a huge outbreak of prosecutions, but it does provide clarity for both the police and protesters.

Lord Singh of Wimbledon: Thank you. That is very helpful.

The Chair: Thank you very much indeed, both of you, for giving your evidence. I think serious annoyance, serious inconvenience, serious loss of amenity, and serious unease, alarm or distress are very subjective terms, and therefore it is absolutely right that you should seek clarity. But I fear that you will have many subjective judgments to make along the lines of these definitions, if this law passes as the Government have proposed it.

We are very grateful indeed for the work that you do, and for treading a difficult line. You have the responsibility—especially you, Chief Constable—of enforcing on the ground the laws that we in Parliament pass. It is therefore difficult for you to come here and comment on what we do. But bringing your experience to us, as you operate in practice, is very helpful indeed. Thank you, once again, for coming to give evidence to us. Thank you, Matt Parr, as well. That concludes this evidence session.