



Joint Committee on Human Rights

Oral evidence: [Democracy, free speech and freedom of association](#), HC 1890

Wednesday 8 May 2019

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Baroness Hamwee; Baroness Lawrence of Clarendon; Lord Trimble; Lord Woolf.

Questions 32–46

Witnesses

[I](#): Max Hill QC, Director of Public Prosecutions, Crown Prosecution Service.

[II](#): Cressida Dick CBE QPM, Commissioner, Metropolitan Police; Commander Neil Basu QPM, Assistant Commissioner, Specialist Operations, Metropolitan Police; Commander Jane Connors, Commander Major Operations, Metropolitan Police.

Examination of Witness

Max Hill QC.

Q32 **Chair:** Thank you very much, Max, as the new Director of Public Prosecutions. You have come before this Committee before and given us extremely helpful evidence as Independent Reviewer of Terrorism Legislation, and we are very pleased to see you in your new role as Director of Public Prosecutions to help us with this inquiry.

As you know, we are the Joint Committee on Human Rights, which means we are half Members of the House of Lords and half Members of the House of Commons. In this inquiry, we are looking at a number of issues that concern Members of Parliament. We know that there is a strong commitment in Parliament to freedom of speech, the right to demonstrate and the right to challenge and question institutions.

We also want to know that Members of Parliament, and indeed those who work in the House of Commons, are safe. None of us will forget the terrible murders of Jo Cox MP and PC Keith Palmer. This inquiry is really looking at the balance between protection of free speech, freedom of



assembly, the right to protest but also the safety of MPs and those who work in our Parliament.

Q33 Fiona Bruce: Good afternoon, Mr Hill. I will ask you this question first to give you some time to think and then set it in context.

How does the Crown Prosecution Service distinguish between robust political debate, which has to be protected, and behaviour that is criminal? We are considering this in and around Parliament. In your letter to the Committee, you said that in your view, "Democracy is strengthened, not threatened, by free speech and freedom of association"; "True free speech means speech that may be rude and shocking. True freedom of association may be boisterous and loud"; "However, there are unquestionably persons who purport to exercise these freedoms but who are, in fact, committing criminal offences".

Max Hill: First, thank you for inviting me here this afternoon. I start by saying what this Committee of all Committees hardly needs me to say, which is that freedom of speech is protected by law. That said, it is not an absolute right and, where it is necessary to interfere with freedom of speech, that must be done in a proportionate manner, and the law must be reasonable in that regard.

What I meant in my letter is that we have long had a number of criminal offences that apply in this arena and apply to online activity just as much as offline activity. You are right, of course, that we need to make a distinction in relation to what is nothing more than political robust debate just as much as everyday debate on the streets or wherever. The Court of Appeal, more than a decade ago and on more than one occasion, looked at what the law requires, which, depending on the offence that we are considering, is something that is elevated to the grossly offensive or, in other statutes, something that is menacing.

That means considering what is in the mind of the maker of the remark or the conduct: in other words, whether they have it in their mind, or we can conclude that they must have had it in their mind, that they were setting about to create fear and an atmosphere of intimidation. If so, that is a strong pointer towards the conduct going too far and coming within the sort of protection that the law can afford.

Equally, there is a difference between something that is rude and something that is grossly offensive. The Court of Appeal in the cases of Collins in 2006 and Connolly in 2007 told us that the words "grossly" and "offensive" are ordinary English language words, so we abide by that. In other words, their Lordships were saying that it is perfectly possible for a jury, who generally will sit in judgment in these cases, to decide what has crossed the line between the merely offensive and the grossly offensive or between the rude and insulting and something that is menacing.

Our prosecutors, who spend all their time in court presenting these cases, will approach the conduct by looking at and applying the same test that we apply in all areas of crime. There is no special test here. They will



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apply the code for prosecutors and determine whether the evidential stage test is met, which means that a jury or the fact-finder will more likely than not conclude that the conduct is either menacing or grossly offensive.

That is how we look at it. I cannot, of course, claim that everybody will agree with every decision made by every prosecutor, but I can assure you that in the arena we are talking about today—namely, intimidating behaviour towards parliamentarians—we, as the Crown Prosecution Service, were sufficiently concerned by what has been happening in recent months and years to take the very unusual step of issuing guidance in March 2019.

I am grateful for support from Ministers, government and elsewhere for ensuring that every parliamentarian is given a copy of that guidance. That means that we are firmly in the territory, we believe, where conduct has become so bad that it frequently crosses the lines that I have tried to identify.

Fiona Bruce: To clarify, when it comes to analysing that conduct you presumably would not expect parliamentarians to be placed in any more privileged position than any member of the public, or the area around Parliament to be in a more privileged position than any local council premises.

Max Hill: No. Plainly, there is one law for all, which is important, as you recognise in your question.

Having said that, we are entitled to, and we do, look at the context in which offending behaviour takes place, particularly when we move to the second of the two tests that we apply under our code for prosecutors: namely, being satisfied at the evidential stage, we then move on to consider the public interest factors that may weigh either against prosecution or in favour of prosecution.

The fact that the conduct in question has been targeted at somebody who is serving the public, which parliamentarians all do, will be a public interest factor in favour of, rather than away from, prosecution. Context can be very important.

Fiona Bruce: The test of whether the behaviour is grossly offensive or menacing is subjective in terms of the context, but there are some people for whom certain behaviour would be offensive. Where is the thin line, the dividing line?

Max Hill: It is part subjective and part objective, because asking ourselves whether there is a reasonable prospect of conviction means that we as prosecutors are asking ourselves what the decision-maker, judge or jury, magistrate or jury, is going to make of the conduct. Therefore, that in part is our objective assessment.



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I recognise that in this area, as in all areas of crime, the test which the decision-maker in court applies is different from the one we apply. We are looking at reasonable prospects, whereas a jury, judge or magistrate is looking at whether the offence is proven, to use the old-fashioned phrase, "beyond a reasonable doubt" or, to use the more modern phrase, "so that they are sure".

We are entitled to look in the round at the offending behaviour, applying public interest factors, and at the context of the activity, such as whether things said are backed up or supported by things done and physical acts.

I do not want to be overly prescriptive about this. There are offences that can be committed by words alone and offences that are unlikely to be committed in isolation by one word or one expression, but they might be, depending upon the precise context in which we find the activity or the expression was uttered.

Fiona Bruce: I have one last question. If there were no words uttered—a peaceable assembly—what would be your view then?

Max Hill: Then we are moving into a slightly different arena, because while I have already recognised that freedom of expression is protected by law, freedom of association is protected in a different way in European convention terms: Article 11 as opposed to Article 10. Again, that is not an absolute right and, at least since 1986 through our Public Order Act, you as Parliament have determined that there are circumstances in which assembly, and indeed procession, can be interfered with, to the extent that it is necessary, under the relevant sections of the Public Order Act—Sections 12, 13 and 14.

Recent events around Parliament and in central London may cause you to ask further questions about that, but there are a range of measures already existing within the law that can be applied. However, they must always be applied where necessary and only where necessary, and in a proportionate way.

Chair: Can I pursue the point you have made, just so that we can understand where we are on this?

Obviously, MPs are a distinct group of people. Is a potential offence against an MP more serious, in the context that we are elected and charged with carrying out public responsibilities with and for members of the public in our constituency, because it is against somebody doing their public duty? Or should we, because we have put ourselves forward as MPs and put ourselves into the public domain, therefore be a bit more resilient, have a bit of a thick skin and put up with things that other members of the public, who have not put themselves into the public domain, would not have to put up with? Which of those two is it?

Can I just give you an example? Do not, because of this example, answer my in-principle question. The door of an MP's office, where the MP does their work with their members of staff, is daubed from top to bottom with



paint saying "Scum". On the one hand, that is criminal damage. Is that criminal damage worse because it is characterising an MP, it is trying to intimidate the MP and their staff, and it will be intimidatory for other people who are visiting the MP's office, or is that part of the rough and tumble of politics—it is only a bit of paint and they should put up with it? How do you see it?

Max Hill: Plainly, robustness is part of the territory for anybody serving in public life. Can I put it this way? Whatever sort of parliamentarian you are, you are still human and you are entitled to be treated with respect just as much as anybody who is not in public service. The context in which you act as an MP or a Member of the House of Lords is relevant to our consideration in at least two ways. First, to slightly echo what I said earlier, it makes it more likely at the public interest stage that we will place weight on the circumstances in which the offending behaviour has happened, whether that is daubing something on a constituency door or speaking to someone online or offline.

Chair: It goes to the intent, does it not? It is about the intent to intimidate.

Max Hill: Yes, that it is a factor. It certainly goes, though, to the seriousness of the offence and the likelihood at the public interest stage that we will prosecute. I said that there are at least two ways in which it is important. The second is that it may be very important at the sentencing phase of criminal proceedings as an aggravating factor that will elevate or increase the sentence when the judge comes to pass his or her sentence.

As to the nature of the conduct, it is very difficult to react to specific factual scenarios. It is right to say that there can be a cumulative effect of conduct—I repeat, online or offline—that will make it more likely that the law has been transgressed and proceedings will follow. In our reissued social media guidance in 2016 we referred to public interest factors, including whether the target of activity was serving the public and whether it was a co-ordinated attack, and we coined the phrase "virtual mobbing", which you will find in our 2016 guidance.

When we see that and the building up over time of a wall in a co-ordinated fashion against somebody who is serving the public, all those things make it more likely that there will be criminal proceedings and that on conviction an aggravating factor will come to play in determining sentence.

Q34 **Lord Trimble:** Thank you very much for what you have said so far. It has been very interesting. You have twice referred to online and offline, as if the two were the same, but as you know a lot of really nasty stuff goes on online. One feels that going online has the consequence that people feel they have greater opportunity, or indeed greater liberty, to abuse people and so on. Is it simply the same whether it is online or offline, or are there some differences between the two?



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Max Hill: There are some differences, which I will come to in a moment, but the first thing to say is that we apply the same two-stage test, whether the activity is online or off. The code for prosecutors applies. We look at the evidential stage test and then the public interest stage. There is no difference if it is online.

Having said that, different offences may come into play. We have two communications Acts, 1988 and 2003, which, although they were drafted some years ago, are still very much fit for purpose and are particularly useful when we are looking at electronic communications, in the language of the statutes.

It may make a difference to which charges we select, but I need to add that it may not, because if we are talking about an online communication and it is the content of the communication that is the offence, that may tend towards one or other of the communications Acts. If we are looking at the use of online as a means of facilitating an offence the end object of which is not the communication but something else—the threat to kill, to take an easy example—we will not be constrained, merely by the fact that the threat is issued online, from charging the much more serious criminal offence of threat to kill.

Finally, as the Chair alluded to, my background is in counterterrorism. I have prosecuted terrorism cases for many years in which online communications very often form the backbone and the chronology of the criminal offending, or I have found very serious charges to be placed on a criminal indictment and placed before judge and jury.

In those various ways, we do not regard the crime as in any way lesser because it is online. Those who use their keyboard, either in their own identity or through setting up false identities, should be careful before believing that they have the benefit of anonymity by virtue of keyboard or some false identity.

This was found by a convicted defendant by the name of Jarod Kirkman last month, who, by setting up what he thought were anonymous identities, issued malicious communications against seven Members of Parliament. At the end of last month he was sentenced to 10 months' imprisonment as a result of the charges that we brought. Anonymity does not protect you.

Lord Trimble: There is another thing I noticed in what you said. You used the term "menacing" a couple of times in relation to a situation where there is no direct physical assault but we are being threatened. I will give you what might be an example of it and see what your reaction is.

There is a situation where a number of protestors or whatever, instead of going along to the green or wherever it might be, become aware of the Member's dwelling and go in a group of people to the Member's house. They are standing on the pavement. They do not try to break in but they



are there, and “menacing” is the right term to use. What is your response to that?

Max Hill: I need to repeat that we must all be careful, whether we are prosecutors, investigating police officers or anybody else involved in the criminal justice system, to ensure that we are not stepping too far and criminalising the mere act of walking from one place to another or saying one thing or another.

With that important warning, Section 127 of the Communications Act 2003 creates the menacing communications offence, which directs us all to look at what is in the mind of the person or, in your example, the persons who have gathered. If they intend to create a sense of apprehension or fear—in the recipient of their conduct, who may be an MP or a member of staff working in a constituency office—that is one of the key elements of the offence and it becomes more likely that prosecution will follow.

It needs to be used sensitively, but we certainly have the tools in our legislation to determine when something has moved from disturbing or rude behaviour into grossly offensive, or from a communication that is unpleasant into one that is creating a menace because of the intention in the mind of the perpetrators. We will look for those sorts of factors.

Q35 **Ms Karen Buck:** Pursuant to that, we touched upon the issue of cumulative impact, and this is as true online as it is offline. If people joined a mob, they would be aware that it is part of a collective that, if not attempting to intimidate, is likely to have the consequence of intimidating.

The concept of the pile-on on social media has some of the same characteristics, and there are people who will receive thousands—in one case, 10,000 or more—messages and retweets of an aggressive message. Is there a way of dealing with that in law at all, as far as you can see?

Max Hill: Again, we have to be very careful. One can imagine a situation in which the pile-on, to use your phrase, may involve nothing more than a retweet of a single word or a single phrase, where it will be difficult to say that it amounts to what I termed virtual mobbing.

Where there is co-ordinated activity, however, it may amount to virtual mobbing. It is unusual—I will not say impossible—for a single word or phrase to constitute the evidence for the commission of an offence. But context is important, and context here, to follow your question, involves the extent to which others are encouraged to follow suit and whether it amounts, to use the phrase a third time because it is in our guidance, to virtual mobbing. We will always look very carefully at that, abiding by what the law requires—namely, protecting freedom of speech save where necessary to intervene—and only intervening in a proportionate way.



As to how we cope with it, though, that gives me the opportunity to say that we at the Crown Prosecution Service and colleagues at the Metropolitan Police Service or elsewhere around the country are not alone here. There are others—we tend to use the word “stakeholders”—who can also play a part, and I would include social media companies and the providers of online platforms in this. They are not lawyers and they are not prosecutors or investigators, but there is a role for all, including social media companies, to bring activity online, just as much as offline, that may be offending against the criminal law to the attention of those who will investigate. My answer is that we all have a role to play.

Q36 Chair: You mentioned the guidance that you have issued for Crown prosecutors. There are Crown prosecutors looking at threats to MPs all around the country. How much is it a matter of consistency, so that what is menacing in West Yorkshire is menacing in London and vice versa, and how much is it context-specific? If there is a mounting threat in a particular area, that would indicate that there should be a prosecution, whereas in another area with lower heat, although the same elements of the offence are there, it is not regarded as necessary in the public interest? That is one question.

Secondly, how do you know about this? You have issued the guidance, but how do you monitor what your prosecutors are doing in respect of criminal offences against MPs? Do you have a working group? Do they report into you? Do they discuss difficult cases with you? Do you have a sense? We in this Committee have a sense, because we are doing confidential interviews with MPs and hearing what they say about prosecutors in different parts of the country. How are you trying to monitor that?

Max Hill: To take the first question, we have to leave space for regional variations because, as you rightly say, that is part of context. I leave some room for the possibility that the temperature might be different in one regional context from another regional context. I leave some room for that.

However, we are a national prosecution service. The purpose of issuing legal guidance, which we do on all manner of offences—I have simply selected our social media guidance because it is relevant today—is to drive towards consistency. We seek consistency in applying the same tests, and in applying and adhering to the guidance that we give.

As you know, the Crown Prosecution Service is divided into 13 regional areas, but I can assure you—you know this already—that we have extremely experienced and dedicated prosecutors who are experienced in this field of criminal law and almost every other field of criminal law in any geographical area you care to name. That is a robust system that involves oversight at local level by senior prosecutors and by the chief crown prosecutor, and where necessary that oversight can escalate even further.



That brings me to your second question. As you have seen, in our guidance to parliamentarians we have done two things. First, at the back of the guidance we have sought to provide regional contacts for any Member of either House of Parliament who is concerned so that he or she can make direct contact with our prosecution area office wherever they may be in the country. Secondly, because of the rise in the incidence of grossly offensive conduct towards parliamentarians, we are now centrally capturing more information on the cases that we bring.

I have already provided to the Committee an index of cases that we have brought in recent years. That is all within our central knowledge and our database. It is possible to compare and contrast the prosecutions that we are bringing in one area or another, and I can assure you that my very senior prosecutors are looking at that information on a month-by-month basis in order to scrutinise the way in which decisions are made and to look at the outcomes from our cases.

That is a long way of saying that I believe we capture the effort of the Crown Prosecution Service nationwide. That is the whole purpose of having a national service rather than a series of independent regional services.

Chair: I have one final question, if I may. To what extent are you aware, and do you believe your prosecutors are aware, of the context and the impact that this particular sort of activity, whether it crosses the evidential threshold, which it does in some cases and does not in others, is having? For example, are you aware that this sort of activity is changing the way MPs go about their work and engage with their constituents?

Max Hill: I have personally had meetings with MPs. I accept that it is difficult to place yourself in their position, and I can only imagine at some levels what it is like to be on the receiving end of this sort of conduct, but I have tried to do that. That is where the guidance is derived from and is why, either late this month or, I hope, on a date early next month, we will convene a round table here in Parliament to which all MPs are welcome to come and explain it to us, if we are still lacking any understanding of the true context. We are gaining that understanding.

As for treating offending seriously, looking at the index of cases that we have sent—I mentioned the Kirkman case, because it happens to be the most recent—we are talking about a high number of prosecutions, with different outcomes and different sentences, involving particularly a large number of MPs who have been on the receiving end of this conduct. We are not shy of prosecuting when it is necessary to do so.

I will just reflect with one statistic with regard to online offences. I referred earlier to the Communications Act 2003. We prosecuted over 6,000 cases under that Act in 2017-18. This is not a rare phenomenon; it was more than 6,000 cases. Of those, because we also keep data on this, some were additionally flagged or marked as hate crimes. In fact, the



statistic is that over 7% were marked as hate crimes. That is an increase of 12.7% on the previous year. Those statistics are not specific to MPs and parliamentarians, but they show us in a wider context that this sort of criminality is rising, not falling. I am in no doubt whatever that it is rising in the context of parliamentarians.

Chair: One of the things that we all value about our democratic system here is that, unlike most other countries in the world, we are very accessible to and open with our electorates. We walk about in the high street. We go on trains and buses on our own. We have drop-in surgeries where people can turn up without an appointment. Many of us will have a leaflet drop around an estate with a request: "If you want to see your MP, put this leaflet in the window and the MP will come and knock on your door".

Are you and your prosecutors aware that, as a result of events over the last couple of years, the way MPs work and mingle with the public has really changed? MPs now are being advised not to do advice surgeries in remote locations, in little community halls on estates or in little church halls in villages that cannot be adequately protected. They are driving long distances backwards and forwards from their constituencies rather than going on a train late at night. The practice of putting a leaflet through the letterbox and asking somebody to put it in their window is dying out as the threat mounts.

A lot of this is to do with the volume and aggressive nature of the threats that are happening online. How do you put that together? How do you, in your public-interest decision-making, which you do as the second part of your test for Crown prosecutors, look at the general effect on our democracy of the threat where somebody might be one of 15,000 but the cumulative effect is making our parliamentarians retreat from the public, which is a big loss for our public and for our democracy?

Max Hill: The practicalities of being a parliamentarian are, of course, not for me; they are for you, which you have explained. As the prosecutor, we are in no doubt at all about the changing nature of trying to operate within a constituency wherever it may be.

On the one hand we need to be careful that in making robust and appropriate charging decisions we do not elevate activity by one individual that is actually minor to something that is major merely because it is repeated and has happened before. That is why, in answer to an earlier question, I said that, both at the evidential stage and at the public interest stage, we look for and look at co-ordinated activity. We look for mobbing, whether actual offline or virtual online, and everyone would expect us to be sensitive to that.

In terms of the scale of the problem and the nature of the activity, I know from published figures the sort of proportions in which expenditure for MPs' individual security, for example, has increased. I asked for some figures on that in preparation for this session this afternoon and was told



that it has gone up by an almost unimaginable factor since 2010. The figure I was given was that security assistance offered to MPs in the Session 2010-11 was £37,000, but by 2017-18 it had risen to £4.2 million. That makes a powerful point.

Chair: It does, thank you.

Q37 **Lord Woolf:** The things that one takes into account in deciding whether to prosecute are very helpfully identified in what you have said so far, but the context is of the greatest importance, is it not? Do you think it useful to use the word “prevalence” in relation to MPs? If something is prevalent, it makes it much more desirable that action is taken. It is also much more desirable that the person who has the responsibility of sentencing is kept informed of information that would be available to you but not to a judge.

How closely do you see yourself working with the other major players so that the worrying situation with regard to MPs, for example—anybody would say it is worrying—is brought home to those who might not otherwise realise the significance of what you are saying in evidence?

Max Hill: As all judges are familiar with now, the context of the impact of a crime is a part of the material that is provided to a judge, particularly at the sentencing phase. We have become very familiar with impact statements. We first saw them in crimes of very serious violence, including homicide, but now we see them, as we should, in any sort of crime. That would include, to take one example that is topical, the context of the seriousness of the disruption to businesses and people going about their ordinary business by the Extinction Rebellion protests. Another example is the context of the impact on a constituency office and members of staff in that office, and their ability to go about their working lives. A court at the sentencing phase is always interested to know the impact, and it is relevant that it be told. That is also assisted by some information on prevalence where we have it.

As the prosecutor, sometimes we will look to the investigators to gather that evidence and it will be the police who investigate the offence who should have an eye, for example, to prevalence and impact, to make sure that that information is available to judges.

Your question, coming from a former Lord Chief Justice, prompts me to mention what was also included in the cases in this century that have looked at our legislation on what is grossly offensive and what is menacing—you will remember the case of Karsten in 2014, in which the Court of Appeal issued a warning that we should not criminalise speech. Of course, that is not what is intended by the offences that were created, which are targeted at occasions where, even where the activity may be limited to speech, it has gone so far, it is so prevalent and it has such an impact that, notwithstanding Article 10 ordinary freedoms, it is necessary to interfere in a proportionate way: namely, by prosecuting under the Act.



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Lord Woolf: There is always a danger with someone like me, who is very much out of date, but I associate the impact statements to which you refer with the impact on the individual. Is it not also part of the practice to put before a judge the impact in the wider context?

Max Hill: Impact can be broader than merely on an individual.

Lord Woolf: I would have thought it is particularly important in relation to Members of Parliament, because it has an impact not only on the victim Member of Parliament, who may be one, but on other Members of Parliament who hear about what happens to one and that is taken into account in their behaviour.

You then have the sort of thing that the Chair talked about, where the general conduct of Members of Parliament means that their ability to perform their role is being limited by the conduct as a whole of what is occurring.

Max Hill: Yes. As long as we abide by the principle that anybody brought before the court is sentenced only for the offence that they have committed, for the crime that has occurred, wider information to place that offence in context is always appropriate.

Our experienced judges are very well versed in working out how much application that has to an individual offender's case. Our social media guidance looks at this issue, in the sense that one of the public interest-stage factors in looking at offending on social media is "whether the communication was or was not intended to a wide audience". It is not very much of a move from your question to say that if an individual or individuals target one MP, depending on how they do it it may be possible to say that they are sending a message not just to the individual MP who is the recipient but to all those who, like that MP, espouse a particular cause, are members of the same party or are joined on a particular issue. We can see how that plays in and has a relevance, provided it is dealt with on a proportionate basis by a sentencing judge.

Chair: To be fair, most MPs are not responding to what they hear has happened to other MPs; they are responding to what is happening to them, in large numbers.

Thank you for your evidence, Max. Thank you also for your letter of 15 March, which you sent to us prior to coming to give evidence to us and which we have put up on our website, and for the attached schedule of information that you volunteered to us. It was a really good example of helpful transparency, which not everybody has followed.

That takes us right into the next session. So far, we are really appreciative of your help to the Committee. Thank you for your work.

Max Hill: Thank you very much. Good afternoon.



Examination of Witnesses

Cressida Dick CBE QPM, Commander Neil Basu and Commander Jane Connors.

Q38 Chair: Thank you very much indeed for coming to give evidence to us. As you know, we are the Joint Committee on Human Rights, which means we are half Members of the House of Commons and half Members of the House of Lords.

Being the Human Rights Committee, we are concerned, as we believe everybody in Parliament is, with the freedom of speech and the freedom of expression, but also the right to life and the freedom of people to go about their work in our democracy. Of course, none of us will forget the murder of our colleague Jo Cox, and indeed the murder of PC Keith Palmer. We are thinking in this inquiry about how you balance the right to freedom of expression, the right to protest and the right to challenge with the protection of those who are in our democracy.

Perhaps I should first ask you to introduce yourselves.

Cressida Dick: I am the Commissioner of Police for the Metropolis at the Metropolitan Police.

Neil Basu: I am the assistant commissioner of specialist operations and the national lead for counterterrorism.

Jane Connors: I am the commander for the public order branch.

Q39 Fiona Bruce: Commissioner, you have overall responsibility for the parliamentary liaison and investigation team, which deals with some of the threats to MPs. Commander Basu, you are responsible, as you said, for counterterrorism.

Our first question to you is about the scale of the problem of threats to MPs. Do you sense an increase? What is its nature and scale at present? Are particular sorts of MPs more likely to be threatened, or are there problems, perhaps, in particular areas?

Cressida Dick: Perhaps I should start with an overview and then Neil, who leads for parliamentary security—and in his national role leads on what we call Operation Bridger, which you may have heard of already, in relation to security of MPs beyond London—will fill in with more facts, figures and detail.

It is fair to say that we believe that the current context, in our policing time at least, is unprecedented. Some of the recent events, including the ghastly murder of Jo Cox, which you referred to, and of course the attack on Westminster Bridge and Parliament, and other attacks in Parliament Square, add up to an extraordinary set of circumstances. We are also seeing, and will no doubt come on to later, is polarised opinions having a big impact on the scale and nature of protest activity, not just in the environment of Parliament but beyond, and other behaviours.



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We have very considerable experience of this, and although our data does not go back comprehensively perhaps as long as we would like, Neil can talk about the specific rise in threats to MPs as they have been reported to us. We have seen a very considerable rise in the last year.

We have looked at some of the transcripts of your previous hearings and we agree with other witnesses that those threats seem to target certain people more than others, and that the background nastiness does not reach a criminal level but is by necessity very unpleasant. In particular, off the top of my head, it is fair to say that people from minority communities and women, not just among MPs but in public life generally, seem to be being targeted disproportionately. We are clear about that. Neil, do you want to talk about the numbers?

Neil Basu: Sure. Operation Bridger was set up in response to Jo Cox's awful murder. It is a joint responsibility between us and the parliamentary authorities. Commander Adrian Usher, who appeared here, runs that unit for me and works very closely with Eric Hepburn, the parliamentary security director.

PLAIT, since January this year, has been collecting information and statistics on MP reporting. It is quite right to say that this has been an underreported crime in the past, largely because people in public life have an expectation, a higher threshold and a higher tolerance. There has definitely been an increase in reporting as we have put more communications out, but that does not undermine the fact that there is clearly increased volume here.

I say that, because in 2017 151 crimes were reported by Members of Parliament across the country, and in 2018 there was an increase of 126% to 342 crimes. Just in the first four months of this year, January to April, we had a 90% increase to 152 crimes compared to the same period in 2018. Were that to continue, we would be looking at somewhere in the region of over 450 crimes this year.

The Commissioner has already stated that a very clear pattern has emerged involving misogyny and people of race. Also, a relatively small number of MPs account for a large number of those crime reports: 10 MPs have in effect accounted for 29% of those crime reports.

I do not want to complicate matters, because a crime is a crime, but we have asked MPs and their staff to record all incidents, not just what they think may or may not be a crime, so that we can get a better geographical pattern of what has been happening. They have done that. More than 600 incidents have been reported this year. While there have been 152 crimes, there have been 600 incidents.

There is a clear pattern geographically: London, the south-east and the north-west are particularly affected. In London, you cannot discount the fact that PLAIT acts as a safety net for MPs whose constituencies are outside London and who can also report here. The responsibility for



investigation lies with the chief constable in their constituency area, but PLAIT provides them with advice and guidance and can intervene with other forces and negotiate with local chief constables.

Fiona Bruce: Can you explain why it might be particularly prevalent in the north-west?

Neil Basu: We have theories from our crime analysts. It is either a large concentration of MPs who are female or black and minority ethnic or MPs who live in areas where there is a certain political driver.

Brexit has been a huge driver of some of this, post referendum. We see a relatively even split between people who have been targeted because they are pro-Brexit and people who have been targeted because they are pro-remain. At the moment, those being targeted for being pro-remain make up 47% of the reporting, and pro-Brexit 43%, depending on where your constituency is and what your constituency looks like.

Unfortunately, there is no very clear pattern, because it crosses parties and crosses the difference between a local MP's views and their constituency majority, but we are beginning to see those kinds of trends, which is why we started to collate this information centrally: so that we could get a better pattern going forward.

Fiona Bruce: I am interested, being a north-west MP myself. Obviously there are remain and Brexit-supporting MPs all over the country. Perhaps you have a bit more work to do on trying to understand this.

Neil Basu: We do. It is only three months' worth of data, so it is a bit early to make conclusive comments to the Committee.

Fiona Bruce: Thank you, but you have obviously been able to collate quite a bit of data yourself. When our Committee put in freedom of information requests to all police forces in the UK in preparation for this inquiry, we asked for some generic information on the number of incidents reported and the number of prosecutions recorded in 2018 relating to threats to MPs and their personal safety. I want to give you the results. We made FOI requests to 43 police forces. Six have given us information, 20 have refused on various grounds, and 17 have now replied, including the Met, although we have passed the deadline.

The reasons for not giving this information were, as I say, various. Some said they could not confirm or deny whether the information was held. Some said that it might prejudice law enforcement and the investigative process.

The Committee's question is this: can you understand why our Committee was refused this information? Should such information not be routinely collected by the police as well as the CPS?

Neil Basu: You are right; the information will be collected. The information exists and is there. Most forces will have a crime recording



system, which will record the fact that a crime has been alleged and then investigated, and the outcome. Forty-three independent chief constables with 43 independent legal advisers will give different advice on the FOI. Getting consistency is difficult, so I do not feel I can answer for them. I could for the Metropolitan Police.

I would suggest that for some of them the numbers will be so low that there will be a fear of revealing information that could identify the individual, which would not be right and would be a GDPR breach. That might be one reason: if they have very low numbers. None of the ones concentrated in geographical areas will have high numbers, so it will become very obvious very quickly perhaps where they are. That might be one of the reasons why they are not sharing.

We would not ordinarily give public information where we are in the middle of a prosecution, so if somebody had been charged we would not give information, although if you asked for numbers of charges we might have given those. But you then have that circular argument back to whether you can identify the individual.

Fiona Bruce: Would you agree that consistency of approach regarding this whole issue should be striven for across the different forces?

Neil Basu: Absolutely, yes, which is why we have mandated that PLAIT will be the central recording agency. We have a weekly return. Every force is expected to give those figures back to PLAIT on a weekly basis, but as I said that is three months' worth of data at the moment, so it is a bit early to give any broad definitive conclusions.

Q40 Chair: Can I ask you about the issue of demonstrations and protests in and around Parliament, Commissioner? Many people will have seen TV footage of Anna Soubry MP walking across the road from College Green to come back into the House of Commons with people shouting abuse into her face, right close by her, and her having difficulty getting through, to get into her place of work, the Palace of Westminster, but your police officers stood by and did not intervene.

When I saw that footage on television, I wondered why the police officer did not step forward and say, "Move along, please, and let her through". I felt very uncomfortable seeing the police officer just standing there while a woman who was doing her job was having abuse, threats and menace shouted into her face.

What did you think when you saw that footage? Did you think, "Get in there and intervene", or, "That's good. He's getting his chance to protest"?

Cressida Dick: First, we at the Met—and I, because the buck stops with me—take our role in protecting MPs and Parliament very seriously. We absolutely do not think that it is acceptable for parliamentarians, MPs and beyond who work in the estate to feel either harassed or intimidated.



They should not feel that they cannot go about their proper business and their lawful duty. That is a given.

We also recognise that there has been increasing concern, partly for the reasons we have talked about before—actual threats and the degree of protest that there has been outside Parliament. We have a particular job in relation to people who wish to express their opinions. We have to prevent crime and disorder. We have to protect lives and property, of course. We have to uphold the law. We also have to ensure that people's rights, which are at the heart of the Committee's inquiry, are balanced so people can lawfully express their opinions. That right is not an unfettered right, as you know; it is balanced with other people's rights to go about their business safely and peacefully.

My officers are probably, in my view—we might argue about this—the most scrutinised professionals in the world. Not only are they on video all the time, on their body, but they are always having phones put in their faces as they are doing their work. That sometimes includes television cameras and others. I am always careful when I see footage to stop, pause, think and ask myself, "How much am I actually seeing of what has gone on? What happened before? What happened afterwards?" I am careful, as somebody sitting on top of an organisation of 40,000 people, not to second-guess the operational decisions of my officers.

I should probably not say too much more about the incident you mentioned, because, as you know, we have investigations, and indeed prosecutions, going through in relation to this kind of thing. So I will not go into specifics, but subsequent to that incident Neil and I very clearly told the authorities in Parliament, verbally and in a follow-up letter, that we believe that our posture generally at the time you are talking about—just before Christmas and just after—was too passive overall. Since then, you will have seen a very big step-up in the resourcing of the policing of the protests around Parliament.

On an average day, we have about 60 officers engaged in nothing but thinking about the protests in the immediate environment of Parliament. That is on top of all the parliamentary police you see every day. Jane can talk you through this. They have very clear leadership, very clear tasking and very clear briefing, and they are told that, just as in other policing environments, it is important that they use their discretion to calm things down—in the phrase you used, to be there to say, "Watch out. You may be going a bit far here"—and to intervene immediately if a crime is apparently committed.

As you are aware—I know you have just been talking to the director—the bar for a criminal offence is both quite high in the public order context and always case-specific. That is why there is such a lot of case law about the subject always developing. We try to give officers really clear instructions and we try to leave them to be a traditional police officer using their discretion to keep the peace, as well as on occasion arresting people.



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Jane can talk you through how that works, but I suppose the key thing to say is that we acknowledge that the general posture at that time, just before Christmas and into the new year, was too passive overall and we believe that we are now much more present and more active, and the officers are, if you like, more interventionist.

- Q41 **Chair:** In respect of keeping the peace and public order, I would like to explore how far you think MPs should change their behaviour in response to threats or how far the threat should be pushed back. You might, for example, have seen in evidence this Committee took last week that Joanna Cherry, who is a member of the Committee, said that she could not walk across Westminster Bridge after a vote without people blocking her way and shouting in her face. She was then advised, "You can take a taxi. That's how you get out of Parliament to your home. Don't walk across Westminster Bridge. Take a taxi at public expense".

How do you feel about that? I feel that an MP should be able to walk across Westminster Bridge at 8 pm, like any other person, and the public purse should not have to pay for MPs to take taxis. Is that not about the level of public order that is obtaining? How far should we be retreating in front of this threat and buying our way out of it, or how much should it be down to the police to make sure there is order and safety on the streets around Parliament?

Cressida Dick: Different people will respond differently. Different people will have different feelings about their own ability, their own sense of safety, what they want to do and be, and it would be wrong for me—

Chair: Can I just stop you here and say something about Joanna Cherry and about people's feelings? You said something like, "MPs should not feel harassed". It is not about MPs feeling harassed; it is about MPs being harassed. Joanna Cherry is not a snowflake who requires extra protection. She is probably one of the most robust Members of this House. We are talking about an actual thing. You are not feeling that somebody is shouting in your face and blocking your way; somebody is shouting in your face and blocking your way. How much is it your responsibility to get a taxi to avoid that situation, or how much is it the police's responsibility to make sure that sort of thing does not happen?

Cressida Dick: I was not for one second suggesting anything at all about Ms Cherry. I have no idea, and I completely accept what you say, but I think you would agree with me. I walk about London any time, day or night. I do not mind; I will do. Other people, who might be 25 years older than I am, might be disabled or might have a particular reason for feeling fearful would not do that. I am just saying that different people have a different tolerance of risk. That is why it is inappropriate for me to say what people all ought to do or all ought not to do, because people vary, whether they are MPs or not.

I absolutely agree with you that anybody should be able to walk from their place of work, Parliament, and feel that they are not going to be harassed or obstructed as they go down a couple of hundred yards from



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Parliament. That is the way we would want society to be. That is the way people should be able to act. I am absolutely, completely with you.

I noticed that at the last session the parliamentary authorities, Lindsay Hoyle and others, said that, for a whole variety of reasons no doubt, not just because you might be harassed, people should on occasion take taxis, and I am sure many people do. I am not going to say, "You should not take a taxi. You have to walk". It is a matter of how you feel, what is going on and other circumstances. People should be free to walk across Westminster Bridge and not be obstructed. That is why, among other things, our nearly 60 officers regard the edges of that operation as going across Westminster Bridge.

I know you are not suggesting this, but you see the logical conclusion. We cannot get to a situation where every single parliamentarian has a full-time police officer standing next to them. That is not good for democracy, it is not good for policing and it is not good for anybody. There is a balance to be achieved, as with everything.

Chair: Nobody has yet suggested that every single Member of Parliament should have a full-time police officer allocated to them, so we do not need to worry about that right now.

You will have seen discussion about College Green, which is where a lot of the media set up their marquees and interview Members of Parliament. This is about the general state and level of public order. There has been a suggestion that in order for Members of Parliament and indeed journalists who are carrying out these interviews to be safe they should not do it on College Green, which is a public space, but instead that facilities should be made inside the Palace of Westminster in order to make them safe.

My response to that is a bit like with walking over the bridge. If MPs cannot be interviewed on College Green and have to retreat inside, something has gone wrong with law and order, has it not? Is it not bad for our democracy if the state of law and order is such that MPs cannot go out and do an interview, as they have always done, but have to retreat inside?

Cressida Dick: Throughout the last four or five months, there has been a constant large number of parliamentarians, MPs in particular, going back and forth to College Green giving interviews. Nobody will have heard the Commissioner of the Metropolitan Police say either, "The safest place is to be interviewed inside Parliament", or, "You must be interviewed inside Parliament". That is not for us to say. We have not said that and I would not, but I would say that ensuring the proper safety of people going back and forth across the road, as we have done, has required the active involvement of the police, the parliamentary authorities and the broadcasters.

Jane can talk to you about how we have achieved that, but there is nothing suggesting that parliamentarians should not be interviewed on



College Green. It has carried on. There has been an awful lot of it over the last few months. I am sure it will carry on again in the future—and, as you say, quite right too. That is what people should be able to do and they are doing that safely with, on occasion, a considerable police presence, but also with the support of parliamentary authorities and the support of the broadcasters in a sensible manner.

Q42 Chair: Can I turn to the issue of demonstrations, specifically two recent demonstrations? This question is probably for Commander Connors.

For the Brexit Leave Means Leave protest on 29 March, no conditions were imposed as to where they should go and not go in the immediate vicinity of Parliament. Indeed, they were all around Parliament, to such an extent that the House authorities advised all members and staff, in order that they should not potentially be a target, to remove their passes and leave through certain exits. Indeed, right outside my office we could see St Stephen's Tavern fights breaking out and lots of drinking associated with it. No conditions were imposed on where those demonstrators should go, such that people were instructed to leave this building early from their work.

Yet Extinction Rebellion, which led a cheerful and benign march with lots of young people, had quite stringent conditions imposed on it and its protest on 23 April, such that it was confined under the Public Order Act to this particular area. We all noticed that they were penned in during their protest, whereas those on the Brexit demonstration were not penned in at all and we all had to flee the building.

I was a bit baffled by that. Can you explain the difference in those two protests?

Jane Connors: For any event, the preconditions or conditions on the day are dependent on a threshold being reached for serious disruption, serious disorder or serious damage. In relation to the different protests, each set of circumstances needs to be looked at. In relation to the Brexit protest that you are talking about, there were a significant number of people, but there was no intelligence that that march would not move smoothly through, that it would create disorder or that it would create damage, so serious disruption would happen for a time but then could be relieved as the march moved through.

In relation to Extinction Rebellion, we had seen ongoing serious disruption to the lives of Londoners and those trying to go about their business. On that particular day, there was a large amount of negotiation with Extinction Rebellion, and there was an agreement, while we put conditions on it, that they would go into the centre of the square. They were not contained at that point. The cordons were put into place as they came into the square and they went on to the grass area. Then the cordons were taken down and there were only a few officers around the central square area as the protest progressed.

Chair: Can you see from our point of view, being on the spot and



observing this, how odd it seemed that the Brexit demonstration was literally obstructing all the streets everywhere, and indeed causing sufficient menace in the view of the House authorities that people were instructed to leave by particular exits, yet the Extinction Rebellion one was so different?

Jane Connors: I can understand that when you have a large march coming through and with the volume of people who were on that march. It was a peaceful march. Yes, it caused disruption and there were elements of disorder, I understand that, but on the whole it was very peaceful. When you have a large march, there is an element of disruption, and the legislation and the thresholds talk about a level of reasonableness when it comes to disruption and thresholds at which you will expect a certain amount of disruption that goes with a protest.

Chair: Can I ask you specifically about Parliament Square, the Police Reform and Social Responsibility Act 2011 and the GLA rules in relation to Parliament Square?

The rules, which the police have some responsibility to enforce, include not having amplified noise equipment, but we saw on the Brexit demonstrations lots of megaphones and people shouting through megaphones. Banners should not be attached to trees, railing or fences, but they routinely are. You must not interfere with the rights and freedoms of others to use the square, including those just passing through the square and tourists. I have seen, as no doubt your officers will have seen, tourists pushed out into the street in Parliament Square, because the pavement is full of demonstrators shouting at MPs as we drive in.

I am curious as to whether there has been some decision not to enforce rules any more such as not tying placards to railings or shouting through megaphones on Parliament Square.

Jane Connors: The land itself is under the GLA in relation to the protests that go through there. While the guidelines are there and the offences exist, depending on the protest they will allow some activity in relation to that. For us to be able to enforce that the landowner needs to say that they are not going to have it, so while I understand that the legislation is there it is not the case that it is not applicable. With different marches, the GLA will look at the authorities and what it will allow in those processes.

Baroness Lawrence of Clarendon: I wanted to follow up on Joanna Cherry and what the commissioner said. My understanding of how she probably felt is not that she expected a police officer to be walking at her side but that they should have some understanding of what was happening to her at that time. Given that she put in a complaint about that, she probably wanted officers to look at and understand where she was coming from at that particular time, not that she is expecting a police officer to be walking by her side as she crosses over, or to be told,



"Perhaps you should just take a taxi". That is not her freedom. Her freedom is this: "I can take a taxi if I so choose, but if I want to walk across the bridge nothing should stop me from doing that". It is the lack of understanding in the feedback she got when she presented that, from what I understand of what she was saying, rather than expecting a police officer to escort her.

Cressida Dick: Maybe I replied in the way I did because of the Chair's question, but I would be absolutely delighted to meet Ms Cherry and hear about the experience, who it was who said, "Just get in a taxi" and what we could do better, because I absolutely understand what you are saying, Baroness Lawrence.

Q43 Ms Karen Buck: Can I ask Commissioner Basu a couple of questions about social media in particular and the threats that have been made?

There are two kinds of threats. There are the absolutely specific threats to harm, to kill and to rape that sometimes get made on social media. Then, going back to what you wrote about extremist propaganda, you talked about the torrent of hate and abuse below a criminal threshold that can follow any act of terror, which is probably applicable in this case too. Those are two separate categories.

What do you feel about the work you have been doing and the relationships you have with the social media companies, the extent to which they are able to assist in the identification and removal of material in both those categories, and whether that meets your requirements?

Neil Basu: It does not yet meet my requirements, because I have this Utopian vision that we should be able to stop anybody uploading anything that is grossly offensive, threatening or crosses a criminal threshold. I am law enforcement, so I have to talk crime. If it crosses a criminal threshold, we should be able to stop that going up before it gets posted.

Ms Karen Buck: May I interrupt you, just to help the Committee, by developing that argument? Is that because they do not have the same understanding that you have of the criminal threshold?

Neil Basu: That is a really complicated question, but they are making judgments based on their own corporate policy and their own understanding of the criminal threshold, which is not a great place to be.

There should be very clear regulation and law that says, "This is against the law. This is not". There is no major company that we deal with that does not want to remove criminal material from its website. It is a reputation and a revenue issue for them, but those two things are inextricably linked. They want to do it, but they need clearer guidance. I know that the HASC has had them here very recently. They are looking for better guidance from government and the legislators about what they need to do.

Ms Karen Buck: Help me to understand that, then. As the police, you have to make decisions with the Crown Prosecution Service about



prosecuting criminal acts. You have that law. It is pretty clear. Why cannot social media companies operate on the same understanding of a criminal offence that you have?

Neil Basu: Some of them employ lots of lawyers, former national security experts and former police officers. Some of them are able to make that distinction where the law is very clear, but we are not really talking about criminal thresholds. Where the material is obviously terrorist material or obviously grossly threatening, that is one thing. They are starting to look at hate speech that we or the DPP would probably not prosecute.

Ms Karen Buck: Sorry to interrupt you again. On the first category of something that you would understand to be a criminal offence, they are responding immediately and clearly and taking down that material. There is no question of ambiguity or of definition there.

Neil Basu: No. I have read their evidence to the Home Affairs Select Committee, and for some companies there is still a question of ambiguity, but they are not police officers or prosecutors, so they would rely on that. In an ideal world, I want them to be able to do that themselves. There is no way this country could afford a police service that could police the internet. It just will not happen. It is not even worth debating it. It is vast and it is so difficult, even for trillion-dollar capitalised companies, to have the technological might to do this routinely.

I have seen a massive change in their attitude, and I have been doing this for four years throughout the rise and fall of Daesh. Over the last two years there has been a sea change in their behaviour, so they are starting to do it. You put it very clearly, but it is not that clear yet, largely because, as my technical experts tell me, we overestimate their technical capability. Their ability to spot everything and take everything down is really limited. Their artificial intelligence and machine learning has to keep learning all the time, and the minute things change, even by a fraction, it becomes very difficult to detect, which is why my Utopian ideal is that it never gets uploaded in the first place.

The new online harms Bill, which gives them an hour, is not good enough for me, because in an hour it can be replicated and changed and its DNA footprint changed so many times, and it can go to so many different channels, some of which will never deal with law enforcement or Governments, that it will be impossible to detect.

It is really difficult, but we are on the verge of a partnership with these people where they want to take more responsibility and to do more. I am pleased that they have finally come to the table and are doing something about it.

Ms Karen Buck: There may be a clear explanation for this, but on the one hand you say that you have, in 2019, the beginning—a word you have used a couple of times—of the recognition of the need to take



greater action. We also know that there has been an upsurge in the number of cases. Partly the expansion of social media, but partly trigger events such as the referendum, have led to that. Would it be true to say that, in your view, they are running to catch up?

Cressida Dick: I know that Neil and I agree on this. In the last two years, we have seen a huge change. The beginning of the beginning, if you like, was certainly at least 2017. When it comes to online abuse, terrorist material, child sexual exploitation, the work on harms caused by serious violence and gangs—the sort of things that you and I have discussed before—we are seeing a massive increase in companies' investment in their technical and financial ability to do this and to get better and better at it. They are working closely with us. We have seen a big change in two years, but yes, by definition, as the whole thing is exploding so fast, and given the risks that come with the exponential rise in the use of data and social media, they are running to catch up.

Ms Karen Buck: I appreciate that, but our inquiry, unlike Home Affairs, is targeted specifically at the issue of threats and abuse to politicians and how that interacts with the democratic process. You and the DPP have said that there has been a dramatic increase in the incidence of these kinds of threats and abuse on social media over the last couple of years. However good they have got at dealing with other issues of criminality, gangs and sexual abuse, have they not yet become aware of the need to tackle this?

Neil Basu: Yes, they have. The online harms White Paper is much wider than terrorism, for instance. Terrorism in 2017, this country's worst year for two decades, has largely been their wake-up call, which is why I say that it is about reputation and revenue. They are recognising a social responsibility that will affect their bottom line. Unilever is a famous example of wanting to pull out of advertising. They know that that is unacceptable on their platforms, and I do not find anyone senior in those companies who would ever say anything different. What they find really difficult to explain, which I am not going to find any easier here, is how to fix this problem.

Ms Karen Buck: They make a fairly healthy profit, it is fair to say.

Neil Basu: They do.

Ms Karen Buck: On the point about machine learning and artificial intelligence, we cannot necessarily control that, but should they be required to up the capacity and labour time that they put into this or should they be required to support the police, given the time you now have to spend in dealing with some of the consequences of this?

Neil Basu: The short answer to that, for me, is yes, which is why I would support the online harms work.

Ms Karen Buck: Which would you prefer? Should it be about a contribution to law enforcement, or are they failing to meet a proper



threshold of investment themselves?

Neil Basu: Even with their wealth, they could not contribute enough to law enforcement to make this happen. What law enforcement wants to be is the enforcer. It does not want to be the moderator. There is too much material on the internet to look at. We are going to need artificial intelligence and machine learning to do this. There are all kinds of ethical problems with that as well, which is why it needs to be a partnership between government, law enforcement and these companies to get this absolutely right.

I do not need them to just give us more money. I need their co-operation to want to do that. The online consultation is out at the moment. It could take years to set up an independent regulator, but we will need them to co-operate voluntarily before that happens, and I detect that that is what they want to do.

Chair: Are you saying you detect that they want to pay some money to the police to help you deal with the offending?

Neil Basu: No, that is not what I said.

Cressida Dick: No.

Chair: I was going to say that that is news to us. They did not mention that when they were last here, but there is a serious point here. If they are making, as Karen said, a profit out of a business that is providing an opportunity for a scale of offending in an area that has not hitherto been the case, because this is new technology, should they not be paying for the downstream consequences to the police of this?

It is not a perfect analogy, but sometimes football clubs pay for extra policing. Why should these multibillion social media companies leave it to the taxpayer to pick up the bill, and you with your overstretched resources to try to deal with this exponential increase in offending, including tens of thousands of threats and menacing going on against MPs, which is affecting and undermining our democracy? Should they not stump up the cash, so you can tool up and have the resources you need?

Cressida Dick: This question, as with so many that the Committee is wrestling with, is very properly a highly complex and highly contentious policy question. We are the police. We are here to uphold and enforce the law. We also understand that there is a very critical balance between, for example, free speech and association, which is something for Parliament, the public and policymakers to decide on. It is not for us. We work with the law and the case law that we have to do our best to balance people's rights in the way that we have been instructed.

Again, this is an interesting policy point, and you have given the parallel example of football, but at the moment the way in which we can charge for special services is extremely limited. It has to be work that we would not otherwise be doing.



Chair: I was not asking whether you should be charging. I was asking whether we should have that put into the system. We all appreciate that it is not in the system now, but do you think it would make sense? I am sure the answer has to be yes. Why do you not just say yes?

Cressida Dick: I am not going to just say yes, because it is not for us to say. We always want more money and we are very stretched. We would take more money that is legitimately given to support us in a variety of ways, but at the moment the law that covers where we can charge is very limited, and there must be a good reason for that.

Chair: There might not be.

Cressida Dick: The good reason is that we are a public service and we only provide special police services, as the ones we charge for are called, when it is over and above our normal duty. It would be a fundamental change in the law that governs how the police are funded and our constitutional position.

Chair: We are in fundamentally changed circumstances because of the internet. That is the point, is it not? I picked up on what Commissioner Basu said: that no police force can afford to police the internet. We are talking about a new situation and you are trying to work out the partnership. You should not assume, although it is very flattering that you do, that because public policy is in a certain position there must be good reasons behind it. Sometimes it is because something has not occurred to people yet and this is a new thought that we are exploring.

Cressida Dick: We would be delighted that this Committee explores that and the other issues that you are also exploring, but it is not right for us to say yes or no because there are a lot of complicated things to think through, not least the practicality.

We are focusing here on the social media companies, on abuse and particularly on abuse against parliamentarians, but you know better than I that the internet is a massively complicated world with all sorts of contributors. That enables us to prevent and stop crimes in many respects, but it has also opened up a whole sphere, as we have touched on already, of different types of crime and the enablement of crime, such as cybercrime.

If you were to make this policy change and say that the police should charge the social media companies, why not the other providers? Where would it end? There would be lots of things to think about. We are more than agnostic; we would be very content for people to look at this. All I am saying is that there is a reason why at the moment we can only charge when it is over and above our normal duty.

Although the internet has changed circumstances, most people would say it is our duty to police the internet at the moment. Neil's point is that it is such a high volume, just as with fraud, that we cannot possibly enforce



our way out of the problem. Therefore, prevention is the important thing. Preventing things going up that are abusive would be our Utopia.

Q44 **Baroness Hamwee:** This question is rather linked to that. Commissioner Basu, you said, when we were talking about the companies assessing whether something was over the threshold of criminality, that they were looking for more help from Parliament. Can you expand on that? What help do they think we can give? Is it a change in the law, lowering the threshold or what?

Neil Basu: That is not for me to say; it is for government to say whether there is a change in law, but I think that is it. They are looking for clarity in the law, because there is none. British law is not just case law. We have just had that conversation about public order. It is a lot of common law. It is a lot of stated cases. It is not just what is on the statute books. They are global companies. They operate in multiple jurisdictions and they are trying to decide what a crime is in one jurisdiction. Is it a crime, is it an incident or is it something against their policy in another? They are saying to us, "We would like clarity on that decision. Once you give that decision, we can upload our machine learning and our AI to hit that particular threshold".

This is a complex argument. We have talked a lot about crime, but a lot of that explosion does not reach a criminal threshold, even here in the UK. That is a really difficult judgment, and it is not for police officers to judge whether people should be allowed to behave like that online where it does not hit a current law.

Baroness Hamwee: I was not asking you to make the judgment. I was just trying to understand what you were transmitting.

Neil Basu: At the moment, they are being asked to take all that material down and they are not sure where to draw the line, so they are drawing the line where they see fit and being criticised for it. At some point, we are all going to have to step forward and tell them where the line is, but that is not within law enforcement's gift.

Cressida Dick: There is another element here: they are all in competition. If they have what they would understand to be a level playing field of regulation or restriction, they can all play with it, but when they have to make these decisions, and they know the person next door is making very different decisions, presumably that brings other things into their minds. That is why I suspect they are saying partly, "We just want to know what we have to do, and then we will do it".

Baroness Hamwee: So it is international regulation as well. I will not pursue that.

Chair: It could even be Europe-wide.

Baroness Hamwee: I did not want to say that.



- Q45** **Baroness Lawrence of Clarendon:** We talk about the media and social media, but that is always changing, and the intelligence of young people especially is quite high when it comes to putting things online.

Are you always ramping up your intelligence so that you can see what is online and what you need to do in order to have a better understanding of whether you should take a criminality stance? As we move on, things are getting more and more complex. What is your officers' training, so they can constantly keep on top of what is coming in?

Cressida Dick: We are constantly trying to ensure that our officers who deal every day with online crime have the right skills to do that, and the right understanding of what is going on and changing. It is difficult, and we would absolutely admit that our capability at the moment is not as strong overall as it should be.

There is much more to do to allow people to keep on keeping up, if you like. Some people have more facility with this than others. You mentioned that young people are changing really quickly, and a lot of our newer officers find it much easier than some of the much older officers, by definition. We have to act within the law, such as the Regulation of Investigatory Powers Act and its forerunner legislation, but we absolutely try to build our intelligence to understand our open source, work out what is going on, who is saying what to whom and how that is going.

Baroness Lawrence of Clarendon: You are catching up all the time.

Cressida Dick: We are catching up, but we are also properly and remarkably restricted in where we can intrude into people's privacy in order to work out what is going on. We are investing in that and in the technical capabilities and the skills all the time.

- Q46** **Lord Woolf:** I was very interested to hear you say that your impression is that those who are responsible for what goes on online, and in fact place matters online in a sensitive area, at least wish to co-operate. Do you see that as a positive or a very important way of improving the position?

Neil Basu: Yes, it is fundamental. We could not do this if they had not wanted to co-operate. We would be in a more difficult place if we had not experienced what we had to experience in 2017 to get them to this point.

Lord Woolf: Is there room for further improvement?

Neil Basu: Yes, very much so. We have been talking about how to improve the technology to spot what is going up and to speed up our ability to take it down if it manages to get uploaded and published. Those conversations are happening all the time now. I am lucky, because I work in a very niche area of policing and my great partners are the UK intelligence community. We are all working very closely on techniques to make this more likely to happen more quickly in the future. The difficulty, as the commissioner has just said, is that I work in terrorism and you cannot apply the same kind of covert, intrusive techniques that we use to



capture terrorists against some of the other things we are discussing here.

Lord Woolf: Part of the difficulty is that you do not have a line that you can draw, because the way the law works in this situation is a balancing act and a judgment, which really has to be made in respect of individual cases.

With the assistance of their own lawyers and the legal advice they can employ, they can be just as good as you are at identifying the non-existent line that is the point you must not go beyond. With experience, they should be achieving this. You cannot and they cannot make it simpler than it is.

Neil Basu: Yes, that is absolutely right. We have seen recent actions by Facebook and Twitter in which they have made independent decisions and have decided, "We don't think that's a crime, but it's against our corporate policy". The commissioner made a really important point that they are all in competition. These are commercial companies. They want to be able to operate on a level playing field, and they are nervous about putting in steps that will mean that their competition does not have to do any of that.

The steps they are putting in are expensive, while I appreciate that they earn a lot of money. Nevertheless, they are commercial companies with shareholders, owners and other people, and they are nervous about that, so they want a level playing field. They just do not know who is going to develop that level playing field. Is it going to be Facebook that does it, or is it the Government in the jurisdiction they are working in?

Lord Woolf: Is it going to be Parliament and the legislation it passes?

Neil Basu: Precisely, yes, in whatever country they are operating in.

Lord Woolf: We are in a situation where human rights are based on a convention and some of the rights are absolute, but most of the ones you are talking about are a question of balance. We must appreciate that to understand.

From the point of view of achieving what we want to achieve, is it better that we work with them than force something on them?

Neil Basu: Yes, it is. It is much better that we work with them, not least because their technological capability and their ability to put their revenue into something that will help us is huge, so we want to capitalise on that. Forcing or legislating them into that position could cause them to withdraw from what they are doing.

Lord Woolf: I say this only as a highly different example. Defamation is a rather similar situation, and the courts have been dealing with defamation for years. The borderline is equally difficult to identify, but with newspapers—it certainly happened in my day—young barristers



spend their evenings reading what is going to go in the paper the next day and advising the newspaper on whether it is safe to put in. Some newspapers will have a higher threshold for what they think is possible and others will have a lower one, but they do things of that sort.

Do you think the media companies are getting the equivalent of that in sufficient quantities to make it an easier task for them and to give them less excuse?

Neil Basu: This will answer the Chair's point. No, they are not doing enough. There is not enough resource in there yet, but there is an awful lot more. The last two years has seen a huge rise. They regularly quote that 30,000 are people looking at this, but worldwide that is not enough. If I was asking for it, I would ask for them to do more, but I would not ask them to give me more resource for me to do more because of the time it would take me to develop, skill, train up, recruit and set up the systems to do that.

I already have some small niche capability. I will not give you numbers and money, because our capabilities would be at a higher classification, but it is incredibly expensive and there are a relatively small number of people. Compared to what they would be able to bring to the table in partnership, it would take me years to develop a higher capability if the taxpayer was to give me the money.

Lord Woolf: I would like to get your views on this, if I could, but maybe suggestions too. You have to help persuade them that it is in their commercial interests to do more than they are doing now.

Neil Basu: I agree.

Cressida Dick: Neil and I, along with the chair of the National Police Chiefs Council and other police chiefs, meet the big companies regularly, which is precisely where we have been and continue to come from.

Lord Woolf: Do I follow from earlier answers you have given that by doing that you feel that you are making progress?

Cressida Dick: Yes, huge progress is being made, for all sorts of reasons, I am sure, but partly, I hope, it is because of some of the work we have been doing. We can see a lot of collaborative and co-operative change. I know you have heard from some of them recently. We have welcomed the White Paper on online harms, albeit, as Neil says, that it will take some time to get there. I understand that the big companies have too. If you were to go back just two or three years, you would see a massive difference of opinion and now a real coming together of a lot of different parties about what might need to happen.

Yes, we want them to do more and we are working with them behind the scenes, and sometimes semi-publically like this, to try to help them do more.



Lord Woolf: We have to be careful not to make it more difficult for you to do what you are seeking to do.

Neil Basu: I can give you a very clear example of why this is so important. We set up the world's first counterterrorism internet referral unit here in London, SO15. It is a national responsibility; it covers the UK. Its purpose was to find vile terrorist material on the internet and then go to companies and persuade them to take the stuff down. In 12 years, we managed to take 350,000 pieces of terrorist material off the internet. Last year, Twitter managed something like 1.4 million pieces over a three-month period. Over the last nine months, it is something in the region of 9 million to 10 million. That is how important it is to leverage their capability when they work in co-operation with us.

In every European country, Europol has adopted the internet referral unit model, which is about finding it and flagging it to a company. I do not want to have to do that. I want my expensive niche capability to be enforcing the law, not flagging it and asking someone to remove it. I want that unit to be investigating and prosecuting the people who have put it up. I need them to co-operate in two ways: take it down, and when they have done so to tell me who was trying to put it up or who put it up so that I can investigate that person. If you look at the scale of what they are capable of doing and what we are capable of doing, there is no comparison.

Chair: On that very clear note, can I thank you, commissioner, for your evidence, and Commissioner Basu and Commander Connors, and bring this session to a close? Thank you very much indeed for coming here to give evidence to us today.

Lord Trimble: Can I just put a personal note in? Maybe I should have said this earlier. As you probably know, I was for many years in receipt of close protection, and I can remember one particular occasion where I, my wife, one of my office staff and my close protection officer were all assaulted, on numerous occasions, by being kicked and thumped, but there we are. The BBC had camera crews there and it was broadcast again and again and again. I liked that broadcast, because my assailants were all members or friends of members of the Democratic Unionist Party.

Chair: On that note, thank you very much for your evidence.