

Getting the balance right?

An inspection of how effectively the
police deal with protests

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Foreword

On 21 September 2020, the Home Secretary commissioned us to conduct an inspection into how effectively the police manage protests. This followed several protests, by groups including Extinction Rebellion, Black Lives Matter and many others. Some of them had caused disruption in various parts of the country, including London and other cities. She required us to assess the extent to which the police have been using their existing powers effectively, and what steps the Government could take to ensure that the police have the right powers to respond to protests.

In recent years, increasing amounts of police time and resources have been spent dealing with protests. In April and October 2019, Extinction Rebellion brought some of London's busiest areas to a standstill for several days. The policing operation for the two extended protests cost £37m, more than twice the annual budget of London's violent crime taskforce.

There have also been long-running demonstrations against the badger cull, against companies involved in certain techniques used in onshore oil and gas production (namely the extraction process commonly known as 'fracking'), and against the construction of the high-speed rail line HS2.

Protests are an important part of our vibrant and tolerant democracy. Under human rights law, we all have the right to gather and express our views. But these rights are not absolute rights. That fact raises important questions for the police and wider society to consider about how much disruption is tolerable, and how to deal with protesters who break the law. A fair balance should be struck between individual rights and the general interests of the community.

We inspected ten police forces with recent experience of policing protests and consulted a wide range of other bodies, including protest groups and – through a survey of over 2,000 people – the general public.

In our public survey, for every person who thought it acceptable for the police to ignore protesters committing minor offences, twice as many thought it was unacceptable. And the majority of respondents felt it was unacceptable for protests to involve violence or serious disruption to residents and business.

Among the police officers, protesters, business leaders and others we interviewed, we heard strong and often polarised views. This amply illustrated just how much of a balancing act the police face when dealing with protests, particularly those which are designed to be peaceful and non-violent, and yet can be highly disruptive.

Having reviewed the evidence, our conclusion is that the police do not strike the right balance on every occasion. The balance may tip too readily in favour of protesters when – as is often the case – the police do not accurately assess the level of disruption caused, or likely to be caused, by a protest.

These and other observations led us to conclude that a modest reset of the scales is needed. To help achieve it, our report includes four areas for improvement and 12 recommendations.

Some of our commentary is about the law concerning protests. While emphasising that legislative reform will not be a panacea for the problem of disruptive protest, we offer our qualified support for five Home Office proposals for changes in the law. And we make two recommendations for further changes in the law. These are set out in Chapter 6.

Our other recommendations and areas for improvement are designed to help the police get the balance right by:

- equipping police commanders with up to date, accessible guidance and a greater understanding of human rights law;
- ensuring that they consider the levels of disruption or disorder above which enforcement action will be considered;
- improving the way that police assess the impact of protests, to help them understand fully the impact on local residents, visitors to an area, businesses, and the critical infrastructure;
- improving the quality of police intelligence on protests, particularly intelligence about those who seek to bring about political or social change in a way that involves unlawful behaviour or criminality;
- addressing a wide variation in the number of specialist officers available for protest policing throughout England and Wales;
- supporting forces to use live facial recognition technology in a way that improves police efficiency and effectiveness, while addressing public concerns about the use of such technology;
- prompting better exchange of legal advice and other information between officers, using an established system provided by the College of Policing;
- securing more consistent, effective debrief processes;
- reconsidering police and local authority powers and practices concerning road closures during protests; and
- stimulating research into the use of fixed penalty notices for breaches of public health regulations in the course of protests; and using it to inform a decision on whether to extend the scheme to include further offences commonly committed during protests.

Looking ahead, there is every reason to expect that protest will continue to be a feature of modern life. There will remain a considerable public interest in ensuring that a fair balance is struck; the police and other bodies to which our recommendations are directed should act on them.

A handwritten signature in black ink, appearing to read 'M Parr', with a long horizontal stroke extending to the right.

Matt Parr CB

Her Majesty's Inspector of Constabulary

March 2021

Summary of findings

How well do the police manage intelligence about protests?

Police use the term ‘aggravated activism’ to describe the behaviour of those who seek to bring about political or social change in a way that involves unlawful behaviour or criminality. In this report, we refer to those who behave in this way as ‘aggravated activists’.

In some respects, the police’s management of protest-related intelligence needs to improve, particularly in relation to aggravated activists.

National arrangements for managing protest-related intelligence

Until April 2020, Counter Terrorism Policing (CTP) was responsible for managing protest-related intelligence at a national level. Then the National Police Coordination Centre’s Strategic Intelligence and Briefing team (NPoCC SIB) was created to take national responsibility for protest-related intelligence. This included giving intelligence assessments to forces to help them plan and prepare for policing protests.

The transfer of responsibility coincided with the first COVID-19 national lockdown, which presented serious logistical problems for the new team. Despite this, the NPoCC SIB has worked hard to improve the quality of its assessments. Its effectiveness, however, is limited by the quality of intelligence it receives from forces.

Area for improvement

Forces should improve the quality of the protest-related intelligence they provide to the National Police Coordination Centre’s Strategic Intelligence and Briefing team. And this team should ensure that its intelligence collection process is fit for purpose.

The police rely on intelligence to assess protest-related risks. They record this using ‘public order strategic threat and risk assessments’ (POSTRAs) at force, regional and national levels.

We reviewed POSTRAs from the forces we inspected and found that only three contained intelligence relevant to protests forces had experienced during 2020. The police are making major changes to ensure that the assessment process reflects the most up-to-date intelligence.

There is a lack of national co-ordination of how the police gather intelligence on protest-related aggravated activists. This means that forces cannot be fully effective in responding to protests. The police are planning to improve in this area and, on a trial basis, are creating a new team for this purpose.

Recommendation

By 30 June 2022, the National Police Chiefs' Council (NPCC), through its National Public Order Public Safety Group and National Protest Working Group, should analyse the results from the national development team trial. In the light of this analysis, the NPCC should secure an appropriate longer-term arrangement for managing the risks presented by aggravated activists.

Managing protest-related intelligence at a force level

Forces' intelligence units deal with many issues besides protest, including serious organised crime, modern slavery and child sexual exploitation. Recent protests have stretched resources in most forces, and it can be a struggle for intelligence departments to balance competing priorities.

There are strong links between the protest-related intelligence teams in forces and operational planning teams. Intelligence about protests is usually shared quickly, so that commanders can make effective decisions about how to respond.

Some forces do not make regular use of 'forward intelligence team' (FIT) officers because they fear that this might increase confrontation with protesters. A consequence of this can be that 'police liaison team' (PLT) officers, who are meant to help communication between the police and protesters, are asked to gather intelligence as well. This blurs the boundaries of the role and can erode protest groups' trust in PLTs.

Use of covert sensitive intelligence-gathering methods

The police can use covert sensitive intelligence-gathering methods to prevent protest-related crime and disorder, if they meet stringent legal requirements. The police use most of these methods, such as directed surveillance, in a limited way.

The need to develop these methods is highlighted within the latest police 'public order public safety' (POPS) strategic risk assessment. We agree with this assessment. It is particularly relevant if the police are to improve their focus on aggravated activists, as we have recommended.

Until September 2020, CTP was responsible for managing protest-related covert human intelligence sources (CHIS). The term CHIS refers to people who provide intelligence to the police (mostly members of the public and more commonly known as 'police informants').

Since September 2020, the responsibility has been devolved to forces, which operate a different model. The integration of protest-related CHIS management with the force model is still in its early stages. We have concerns about how well it will work and whether it will meet the demand.

Recommendation

With immediate effect, the National Police Chiefs' Council (NPCC), through its National Public Order Public Safety Group and National Protest Working Group, should closely monitor progress on integrating the management of protest-related covert human intelligence sources with the devolved force model. And, by 30 June 2022, the NPCC should ensure that a post-implementation review is conducted.

How well do the police plan and prepare their response to protests?

Police planning teams are usually skilled, experienced and effective at preparing and planning for the response to protest. Unsurprisingly, we found that the forces that regularly deal with protest tended to have the best planning practices.

Working with organisers and others

Forces work with the companies and organisations affected by protest to help plan the policing. Forces also work with protest organisers, most of whom collaborate with the police to make sure that protests are safe. This is not always the case, however.

When organisers fail to notify the police about a protest, or notify the police at a late stage, they can jeopardise the safety of those involved and reduce or remove the police's ability to plan ahead. They also miss an opportunity to come to an agreement with the police about an acceptable level of disruption. (Courts have repeatedly emphasised that a degree of temporary interference with the rights of others is acceptable in order to uphold freedoms of expression and assembly.)

Forces and protest groups told us that PLTs play an important role in helping communication at the planning stage.

Specialist training

The police have developed a range of specialist roles in relation to protest. For example, protester removal teams (PRTs) are trained to remove protesters from lock-on devices. But we found that forces do not have a consistent way of determining the number of trained officers they need. As a result, the number of specialists available varies widely throughout England and Wales.

Area for improvement

On a national, regional and local basis, the police should develop a stronger rationale for determining the number of commanders, specialist officers and staff needed to police protests.

Very few officers have been trained to police protests at sea. Although this type of protest is relatively rare, it is important that the police have the capacity to deal with protesters who target oil installations or seek to impede ships at sea, from fishing vessels to ocean liners and nuclear submarines.

Officers are not coming forward in sufficient numbers for training in specialist protest policing roles. Reasons for this include frequent weekend working, exposure to risky operations, and the relentless insults and abuse that they often face when dealing with protests. Interviewees told us about the additional stress caused by footage or photographs being posted on social media. Some officers fear that this might put their families at risk.

Police support unit training currently prepares officers to deal with a worst-case scenario: hostile and violent crowds. It does not equip them fully to deal with modern protests, many of which are non-violent. We were pleased to see that new refresher training was being introduced to address this.

Guidance and advice

The College of Policing's 'authorised professional practice' (APP) contains 30 tactical options to deal with public disorder and protests. It is out of date: it does not include recent relevant case law, or information on certain new and emerging tactical options. The College is planning a review.

We were pleased to see that the NPCC and the College of Policing have produced a comprehensive and detailed document giving operational advice for protest policing. However, we found problems with some of its legal explanations, particularly how it sets out the police's obligations under human rights law. We are also concerned about some aspects of the document's commentary that we felt were open to misinterpretation, particularly by members of the public who may read the document after it is published.

We raised these points with the NPCC. As our inspection ended, the NPCC and the College of Policing were revising the document in the light of our concerns. We intend to review the revised version when it becomes available.

The NPCC used to produce a protest aide memoire for officers and we understand that its Tactics, Training and Equipment Working Group is considering whether to replace this with a digital version. This seems a good idea and there is an opportunity to co-ordinate this work with both the College of Policing's review of the APP and the revisions to the NPCC's operational advice document. It would be beneficial for the police to make contemporary guidance, policy and advice accessible in one place.

Recommendation

By 30 June 2022, the College of Policing, through its planned review, should bring the public order authorised professional practice (APP) up to date and make arrangements to keep it current, with more regular revisions as they become necessary. It would also be beneficial to consolidate the APP, protest operational advice and aide memoire into a single source (or a linked series of documents).

Using equipment and technology

The police make good use of equipment and technology in relation to protest. Drones have significantly improved police commanders' ability to monitor protesters

and deploy officers accordingly. We were impressed by the work of PRTs in dealing with some very complex lock-on devices used by some protest groups.

The police's use of facial recognition technology divides opinion: opponents point to its potential to violate human rights, while supporters believe it could help the police to identify those intent on committing crime or causing significant disruption and disorder. A recent Court of Appeal judgment has helped to clarify matters, but further policy-development work is needed.

Area for improvement

The police's use of live facial recognition technology is an area for improvement. The National Police Chiefs' Council should continue to work with the Government and other interested parties. These bodies should develop a robust framework that supports forces, allowing the use of live facial recognition in a way that improves police efficiency and effectiveness while addressing public concerns about the use of such technology. The framework should be designed to help the police satisfy the requirements explained in the Court of Appeal judgment: [2020] EWCA Civ 1058.

How well do the police collaborate in relation to protests?

The police generally collaborate well in relation to protests. However, we found some problems both with the debriefing process and the processes forces use to learn from experience, and then to share that knowledge with other forces.

Mutual aid and collaboration between forces

Mutual aid arrangements usually work well, with resources and specialists moving across force boundaries on a regular basis to deal with protest. The police regularly test the national mobilisation of resources and determine opportunities for improvement. Forces are confident that they can meet their national obligation to supply resources and will receive help from other forces when they themselves need it.

Larger forces tend to have their own trained and equipped specialist resources. For reasons of economy, smaller forces tend to work to a collaborative agreement with neighbours or have arrangements to buy in resources from larger forces.

Forces that deal with more protests often allow commanders from other areas to visit and review protest operations or gain experience by shadowing their commanders. Some forces also allow visiting commanders to command the policing of a protest in the host force area.

The College of Policing runs a website called Knowledge Hub. This has themed groups in which practitioners from all areas of policing can ask questions and share information. Knowledge Hub isn't used by forces in connection with protest policing as much as it is used for other types of policing. We found that forces do not do enough to share legal opinion or case law on protest policing. And officers and staff

rarely use Knowledge Hub's 'Specialist Operational Support – Public Order Public Safety' group.

Recommendations

- By 31 December 2021, chief constables should make sure that their legal services teams subscribe to the College of Policing Knowledge Hub's Association of Police Lawyers group.
- By 31 December 2021, the College of Policing should ensure that all Public Order Public Safety commander and adviser students attending its licensed training are enrolled in the College of Policing Knowledge Hub's Specialist Operational Support – Public Order Public Safety group, before they leave the training event.

Debriefing and learning from experience

Forces are not always sharing information from protest-related debriefs as effectively as they should. They are generally good at conducting internal debriefs of controversial or high-profile protests, but often do not debrief after smaller or lower-profile protests. There are also weaknesses in the way that forces use less-urgent information from debriefs or share such information nationally.

The College of Policing and the NPoCC have set up what should be an effective process for submitting and sharing information from debrief forms. But forces often do not comply properly with this process.

Recommendation

By 31 December 2021, chief constables should ensure that their forces have sufficiently robust governance arrangements in place to secure consistent, effective debrief processes for protest policing. Such arrangements should ensure that:

- forces give adequate consideration to debriefing all protest-related policing operations;
- the extent of any debrief is proportionate to the scale of the operation;
- a national post-event learning review form is prepared after every debrief; and
- the form is signed off by a gold commander prior to submission to the National Police Coordination Centre.

Working with other organisations

Forces usually work well with other organisations to police protest. These include local authorities, fire and rescue services, and ambulance services, as well as councillors, other public services, other police forces and community representatives.

Forces involve these parties right at the early stages of protest planning and continue working with them throughout the event. They also encourage representatives from

these organisations to work alongside police gold or silver commanders during events. Local authorities often provide facilities during protest, such as road closures, barriers, water and toilets for protesters, lighting, advice and information, and access to their CCTV network.

Any concerns between the police and these other organisations are usually quickly resolved. However, there can be differences of opinion between the police and the local authority relating to their powers to close roads during protests. There is also a question about whether the legislation the police use when closing roads, which was enacted in Victorian times, meets the standards required by modern-day human rights law.

Recommendation

By 30 June 2022, on behalf of HM Government, the Home Office should lead a joint review of police and local authority powers and practices concerning road closures during protests. This should be done with the support of, and in consultation with, the Department for Transport, the Ministry of Housing, Communities & Local Government, Westminster City Council, the Metropolitan Police, Transport for London and other interested parties. The review should include a comparison of the arrangements in London with those in other parts of England and Wales. Its findings should lead to decisions on whether to:

- retain, modify or repeal section 52 of the Metropolitan Police Act 1839 and section 21 of the Town Police Clauses Act 1847; and
- establish new multi-agency arrangements for implementing road closures in London during protests.

How effective are decision-making processes and how do they affect the police response to protests?

The police's approach to protests needs to strike a delicate balance between the rights of protesters and the rights of local residents, businesses, and those who hold opposing views. This is no easy task, and the police inevitably attract criticism both from those who believe they are 'too soft' on protesters and from those who believe they are 'too hard' on protesters by unacceptably restricting the right to protest.

Our evidence suggests that, when forces do not accurately assess the level of disruption caused, or likely to be caused, by a protest, the balance may tip too readily in favour of protesters. We conclude that a modest reset of the scales is needed.

Human rights legislation and case law

In making decisions about how to respond to a protest, public order commanders need to consider domestic human rights legislation. And they must also consider a patchwork of European case law. These have established precedents on issues such as how long protests can reasonably go on for, and the level of disruption that protests can reasonably cause.

Examining the gold strategies and silver plans submitted as part of our document review, we found that commanders generally showed a grasp of human rights legislation. However, we did not see evidence that they consistently considered the wider legal picture.

For example, the European Court of Human Rights has ruled that, when protesters deliberately set out to cause disruption, the police have a “wider margin of appreciation”. This means that the police can – and in our view should – take protesters’ intentions into account when deciding whether it is proportionate to restrict a protest.

Recommendation

By 30 June 2022, the National Police Chiefs’ Council, working with the College of Policing, should provide additional support to gold commanders to improve the quality of gold strategies for protest policing. This support should include:

- the creation and operation of a quality assurance process; and/or
- the provision of more focused continuous professional development.

The additional support should ensure that gold commanders for protest operations include an appropriate level of detail within their gold strategies. This may include the levels of disruption or disorder above which enforcement action will be considered.

Our public survey

YouGov conducted a survey on our behalf to gauge the public’s perception of the policing of protests. Between 27 and 29 November 2020, it surveyed 2,033 adults in England and Wales (on a sample of this size, random sampling error is up to 2 percent).

The majority of respondents felt it was unacceptable for protests to involve violence or serious disruption to residents and businesses. But their views were more divided when protest caused only minor inconvenience to people locally. The survey showed less support for police use of force when protesters were not violent.

Briefing and communicating

Forces usually have good protest-related briefing processes and commanders’ decisions generally reach the front line effectively. However, gold strategies often do not set out the limits of acceptable behaviour from the protesters. Better explanations of these limits would help officers to understand what is expected of them and empower them to take appropriate action.

Non-specialist officers receive limited training in protest policing. As a result, they often lack confidence in using police powers. Some officers are anxious about attracting complaints and being filmed in protest situations. It is important that forces provide good-quality training and briefing before deploying officers into these situations.

Assessing the impact of protests

Forces should make better use of community impact assessments to evaluate the impact of protests on those who live in, work in or visit an area. The process should include regular reviews and updates, so the police can respond to changing circumstances. Only seven of the ten forces we inspected submitted any community impact assessments for examination, and some of those we examined were of a poor standard.

None of the debrief documentation we reviewed showed that forces had considered the degree of disruption experienced by people not involved in a protest. Some interviewees from businesses also told us that the police did not take enough account of the financial impact of protest. Our conclusion is that forces are not doing enough to assess and document the impact of protests.

Area for improvement

The police's protest-related community impact assessments are an area for improvement, particularly those that need to be completed after the event. These assessments should assist the police to understand fully the impact of protests on communities. They should include assessments of the impact of protest on local residents, visitors to an area, businesses, and the critical infrastructure including transport networks and hospitals.

Recommendation

By 30 June 2022, the National Police Coordination Centre should revise the national post-event learning review form so that it contains a section to report on the policing operation's impact on the community.

Public transport providers can help a force to make more informed decisions about how to police a protest. But, in some forces, we did not see appreciable evidence of continuing work with them during the protest. The Metropolitan Police routinely includes Transport for London in its strategic planning group, and they maintain communication throughout protests. In forces where similar co-operation doesn't routinely occur, we would encourage them to work more closely with public transport providers.

We have seen many examples of forces responding effectively to the challenge of policing protests, but some notable concerns remain. Although not evident in every force, generally the main ones to be addressed are:

- a limited appreciation of the full impact of protest on other people's daily lives;
- an insufficiently wide knowledge of human rights law and relevant case law;
- a need for commanders to better explain exactly where their 'line in the sand' is drawn; and
- a lack of knowledge and confidence among many frontline officers to use their powers effectively.

In the light of these concerns, our conclusion is that the police do not strike the right balance on every occasion.

Does the current legislation give the police the powers they need to deal effectively with protests?

We found a wide range of views within the police as to whether the current legislation is adequate to deal effectively with protests. Forces that had experienced peaceful, non-disruptive protests had generally not had to resort to enforcement, and some interviewees told us they didn't see the need for additional powers. Forces that had experienced significant disruption, confrontation and civil disobedience, on the other hand, considered the current legislation inadequate.

The data on protest-related arrests, prosecutions and convictions

The majority of large-scale protests take place in London, and therefore the Metropolitan Police used its enforcement powers more often than other forces. This was reflected in prosecution and conviction outcomes and was the trend in every protest-related offence we reviewed. The Metropolitan Police made most use of the current protest-related legislation, made most arrests, sought most prosecutions and secured most convictions.

There was very little recent arrest, conviction or prosecution data available to show the police actively using their powers under the following sections of the Public Order Act 1986:

- section 11 (the law that requires the organisers of public processions to notify the police in advance);
- section 12 (the law whereby the police can impose conditions on a public procession); or
- section 13 (the law whereby the police can apply to 'prohibit', or ban, a public procession).

There was more data, almost exclusively in relation to the Metropolitan Police, of the use of powers under section 14 (the law whereby the police can impose conditions on a public assembly).

The effectiveness of the criminal justice system in dealing with protest

Many police officers told us that they felt the criminal justice system was ineffective in dealing with the problems presented by protests. Some were severely critical of delays in the system, as well as defence lawyers' tactics.

Some interviewees felt that the current sentencing, sanctions and penalties were ineffective, with little or no deterrent value. The majority of convictions for protest-related offences incur penalties of low-level fines or – in very many cases – conditional discharges. The police felt that this did not act as a deterrent and could encourage unlawful behaviour at protests.

However, we also found that there was significant evidence of the Crown Prosecution Service bringing protest-related cases to court. These included fracking cases (mainly

in Lancashire and Greater Manchester) and, more recently, Extinction Rebellion, Black Lives Matter and public health protests in London and elsewhere.

Five proposals for new legislation

Protest-related legislation has attracted considerable scrutiny and debate in Parliament, the Home Office and throughout the police service in recent years. In 2019, the Metropolitan Police, in consultation with and on behalf of the NPCC, provided the Home Office with “an overview of the challenges currently facing policing in light of the changing nature of protest”. They put forward 19 potential proposals that could “singly or in combination, address those challenges”. These potential proposals formed part of a wider collaborative debate throughout the police service, the NPCC and the Home Office. This resulted in the Home Office proposing five areas for legislative change.

The proposals were to:

- widen the range of conditions that the police can impose on assemblies (static protests), to match existing police powers to impose conditions on processions;
- lower the fault element for offences relating to the breaching of conditions placed on a protest of either kind;
- widen the range of circumstances in which the police can impose conditions on protests (again, of either kind);
- replace the existing common law offence of public nuisance with a new statutory offence as recommended by the Law Commission in 2015; and
- create new stop, search and seizure powers to prevent serious disruption caused by protests.

We were asked to review and offer opinion on these five proposals as part of our inspection. We looked closely at whether they would be compatible with human rights law, and their potential impact in Scotland and Northern Ireland. We concluded that, with some qualifications, all five proposals would improve police effectiveness without eroding the right to protest.

Two recommendations to align legislation so that the police have the same powers to deal with processions and assemblies

Our terms of reference enjoined us not to confine our review to the five proposed Home Office legislative changes. It isn't just sections 12 and 14 of the Public Order Act 1986 (which form the basis of proposal 1 above) that treat assemblies and processions differently. The law, police powers and offences contained within sections 11 and 13 of the Act also apply only to processions and not to assemblies.

Our view is that organisers of assemblies should also have to notify the police in advance about their plans. We consider that this change would comply with human rights legislation and would not hamper the right to protest. Early notification by an organiser of their protest, whatever the type, would give the police and other public bodies with statutory obligations a better opportunity to plan.

The scale and type of public assembly (or procession) can and does vary. A common-sense approach could be taken in the drafting and application of any new legislation to take these factors into account.

Recommendation

By 30 June 2021, the Home Office should consider laying before Parliament draft legislation (similar to section 11 of the Public Order Act 1986) that makes provision for an obligation on organisers of public assemblies to give the police written notice in advance of such assemblies.

We also think that the law should be changed to allow for the banning of an assembly, as it already does for a procession (only if the imposition of conditions will not be sufficient to prevent serious public disorder, and only with the consent of the Home Secretary). We consider that this would comply with human rights legislation if there were a framework of safeguards, thresholds and authorisation at the highest level. Extending the existing law in this way would have the potential to improve police effectiveness in keeping the public safe.

In conclusion, we see no good reason to continue treating assemblies differently from processions. It should be noted that Article 11 of the European Convention on Human Rights (ECHR) does not distinguish between them, referring only to a right of “peaceful assembly”.

In forming our views, we have taken account of governmental advice, published in July 2020, which reported that “increased polarisation of political discourse makes conflict and protest more likely and this may mutate into new and more violent forms” (see Chapter 6).

Recommendation

By 30 June 2021, the Home Office should consider laying before Parliament draft legislation (similar to section 13 of the Public Order Act 1986) that makes provision for the prohibition of public assemblies.

While offering qualified support for the five Home Office legislative proposals listed above, and making two proposals of our own, we emphasise that legislative reform will not be a panacea for the problem of disruptive protest. The police are constrained by resources as well as the law, and protest groups’ tactics will inevitably evolve.

Our views on additional police potential proposals for legislative change

We also offer a detailed review and opinion on three more of the 19 police potential proposals for legislative change that do not currently form part of the five Home Office-adopted legislative proposals.

These are:

1. Protest 'zones' or 'schemes' for London

We consider that a scheme to authorise protest buffer zones around locations such as Parliament could be framed in a manner that is compatible with human rights legislation. Widening such a scheme to cover other parts of London or sites of critical national infrastructure faces an increased risk of successful legal challenge.

2. Protest banning orders

We agree with the police and Home Office that such orders would neither be compatible with human rights legislation nor create an effective deterrent. All things considered, legislation creating protest banning orders would be legally very problematic because, however many safeguards might be put in place, a banning order would completely remove an individual's right to attend a protest. It is difficult to envisage a case where less intrusive measures could not be taken to address the risk that an individual poses, and where a court would therefore accept that it was proportionate to impose a banning order.

3. Penalty notices for disorder for protest offences

We consider that the proportionate issue of penalty notices for disorder (PNDs) in appropriate cases is likely to be compatible with the ECHR. But, on balance, we consider that further research is needed before PNDs are used to enforce protest-related offences.

Given the current public health emergency, the police experience of using fixed penalty notices for protest-related breaches of public health regulations may present an opportunity for such research.

Recommendation

By 30 June 2022, the Home Office, working with the National Police Chiefs' Council and other interested parties, should carry out research into the use of fixed penalty notices for breaches of public health regulations in the course of protests. The research should explore the extent to which recipients complied with the scheme, and any consequential demand on the criminal justice system. The outcome of this research should inform a decision on whether to extend either the penalty notices for disorder scheme or the fixed penalty notice scheme to include further offences commonly committed during protests.

1. About the inspection

About us

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services independently assesses the effectiveness and efficiency of police forces and fire and rescue services, in the public interest. In preparing our reports, we ask the questions that citizens would ask, and publish the answers in accessible form. We use our expertise to interpret the evidence and make recommendations for improvement.

Our commission

On 21 September 2020, the Home Secretary commissioned us to conduct an inspection into how effectively the police manage protests. Following various incidents that had caused disruption – including protests by [Extinction Rebellion](#) and [Black Lives Matter](#) – she required us to assess the extent to which the police have been using their existing powers effectively, and what steps the Government could take to ensure that the police have the right powers to respond to protests.

Recent protests

In April and October 2019, Extinction Rebellion brought some of London's busiest areas to a standstill for several days. [The policing operation for the two extended protests cost £37m](#), more than twice the annual budget of London's [violent crime taskforce](#). Police officers were extracted from other duties, including neighbourhood policing and investigations, in order to police the protest.

Nearly 8,000 Metropolitan Police officers were deployed during the October 2019 protest, and the Metropolitan Police had to draft in considerable support from other police forces. In April 2019, 1,148 activists were arrested, of whom more than 900 were charged, mostly receiving a [conditional discharge](#). A total of 1,828 protesters were arrested in October 2019.

In September 2020, another co-ordinated action by Extinction Rebellion blocked the delivery of newspapers. This drew criticism from across the political spectrum.

In contrast to previous campaigns by other pressure groups, the tactic used by a significant proportion of Extinction Rebellion protesters was actively to seek arrest, in an attempt to overwhelm the police and justice system.

In recent years, increasing amounts of police time and resources have been spent dealing with protests. In addition to Extinction Rebellion, there have been long-running demonstrations against the badger cull, against companies involved in onshore oil and gas operations, and against the construction of the high-speed rail line, [HS2](#).

Following the killing of George Floyd in the US, Black Lives Matter protesters took to the streets in British cities – and in some cases met counter-demonstrations by right-wing groups. The debate in respect of Britain’s relationship with the European Union has seen sustained pro- and anti-Brexit demonstrations in London and elsewhere, and there have been anti-lockdown protests in response to the COVID-19 restrictions.

Protest groups’ increased use of social media and online platforms have allowed protesters to keep up a constant flow of communication and to mobilise in a fluid way. In turn, police forces have changed the way they respond to protest, and they will continue to do so as these technologies evolve.

Police officers are often threatened, verbally abused, assaulted and injured – some seriously – when policing protests. For example, data held by the Metropolitan Police shows that, between 31 May and 11 December 2020, 280 police officers were assaulted at protests in London organised by Black Lives Matter, far-right protesters, the anti-lockdown group Stand Up X, and others.

The United Kingdom can reasonably expect more large-scale and sustained protests as the UK Government hosts the G7 summit in Cornwall in June 2021, and the United Nations climate conference (COP 26) in Glasgow in November 2021.

Protests are an important part of our vibrant and tolerant democracy. We all have the right to gather and lawfully express our views. But there are important questions for the police and wider society to consider in relation to how much disruption is tolerable and how to deal with unlawful behaviour at protests.

The human right to protest

The legal starting point in our democracy is that every person has the right to protest peacefully. There is no simple universal answer to the question: ‘When does a protest become unlawful?’ or ‘What restrictions can the police lawfully impose on protest activities?’

The domestic laws governing police powers to deal with protests are complicated to interpret and apply, having evolved in a patchwork manner over a long period of time. Importantly, as well as having a basis for action under domestic law, the police must also comply with the [Human Rights Act 1998](#), which requires all public authorities – including the police – to act in a way that is compatible with the ECHR.

The fact that the UK has now left the EU does not affect the right to protest. The UK is still a signatory to the ECHR, which was signed in 1950 and pre-dates the EU.

The ECHR rights that are most relevant to the policing of peaceful protest are Article 10, which protects the right to freedom of expression, and Article 11, which protects the right to freedom of assembly. Both these rights are engaged when people protest. Article 9, the right to freedom of thought, conscience and religion may be engaged by a protest. Article 8, the right to privacy, is also relevant in the context of police intelligence gathering against protesters. We have listed these four Convention rights in full in Annex A.

The police have a duty in certain circumstances to take active steps to safeguard the right to protest. If protests are peaceful, even if they cause a level of obstruction or disruption, the police are required to show a certain degree of tolerance. The degree of tolerance that should be extended is often the subject of extensive public and political debate.

None of the rights protected by Articles 8, 9, 10 and 11 is an 'absolute' right in the sense that it can never be restricted. In each case any interference with these rights must be prescribed by law and must be a proportionate means of achieving one of the legitimate aims listed in the relevant Article. This reflects the general principle inherent in the ECHR that seeks to strike a fair balance between individual rights and the general interests of the community.

Domestic law provides the police with powers to impose conditions on protests and to arrest protesters who commit offences. Whenever the police intervene in this way, they interfere with protesters' human rights. The challenge for the police is always to do so in a proportionate, justifiable and lawful way.

This inspection has assessed whether the police are getting the balance right.

Terms of reference

This report considers five questions.

1. How well do the police manage intelligence about protests?
2. How well do the police plan and prepare their response to protests?
This includes the training, APP and other guidance, equipment and technology provided to officers.
3. How well do the police collaborate in relation to protests?
This includes mutual aid and other forms of collaboration between forces and other organisations.
4. How effective are the decision-making processes and how do they affect the police response to protests?
This includes how well the police use their powers to police protests, enforce the law and minimise disruption to communities. It also includes how well the police balance the rights of protesters with the rights of other people, and the impact on communities, including minority groups.
5. Does the current legislation give the police the powers they need to deal effectively with protests?
This includes an assessment of whether additional legislation would allow more effective policing of protests.

Methodology

We gathered a wide range of views and perspectives from the police, the public, protest groups and businesses affected by protests (listed in Annex B).

We inspected a sample of ten police forces in England and Wales. We interviewed POPS personnel and reviewed documents that show how they dealt with protests.

We interviewed force solicitors. Most of the interviews were not carried out in person because of COVID-19 restrictions.

We also obtained evidence from some other forces with relevant protest experience. We observed police training courses. We saw a demonstration of police specialist cutting equipment.

We interviewed representatives from protest groups and reviewed documents that they provided. We also interviewed representatives from businesses affected by protest. We analysed data from the [NPCC](#), police forces, the Ministry of Justice and the Police National Database.

We commissioned YouGov to conduct an online public survey to assess views on protest, disruption and the police response to protest. The survey took place between 27 and 29 November 2020, and included a sample of 2,033 respondents, representative of England and Wales (on a sample of this size, random sampling error is up to 2 percent). For more information on YouGov survey methodology, see [YouGov's website](#).

Definitions and interpretation of terms used in this report appears at Annex C.

Proposed changes to legislation

As part of the fifth question in our terms of reference, we were asked to comment on five proposed changes to legislation. If enacted, these changes may also affect Scotland and, to a lesser extent, Northern Ireland. Our commentary on the proposals appears in Chapter 6. We have included Police Scotland's views and our explanations of some of the wider legal considerations for devolved administrations.

COVID-19

This inspection took place during the COVID-19 pandemic. Government restrictions on freedom of movement and limits on public gatherings changed the way the police approach protests for the duration of the pandemic.

We comment on the extra problems that policing protest under COVID-19 regulations has brought. COVID-19 policing is the subject of a separate inspection report.

2. Police intelligence about protests

This chapter contains our assessment of how effectively the police use intelligence to help them manage their response to protests.

The College of Policing's [Authorised Professional Practice \(APP\) on intelligence management](#) describes intelligence as:

collected information that has been developed for action. It may also be classified as confidential or sensitive. Intelligence collection is a continuous process and there may be specific requirements for its recording and use.

In other words, intelligence is information that has been evaluated to assess its relevance and reliability. Intelligence and information gathering is so important that it is the first stage in a police decision-making process called the [National Decision Model](#).

When dealing with the dynamic and complex nature of protest, police often have to make decisions based on publicly available information as opposed to assessed and graded intelligence.

In relation to the majority of protests, police intelligence gathering will only involve collecting sufficient information to help the protest pass safely.

However, a small minority of protesters are intent on arranging or carrying out more disruptive, violent or disorderly actions, which may involve varying degrees of criminality. For these protests, the information and intelligence needed by the police will be considerably increased.

The NPCC uses the following definitions in relation to unlawful activity associated with activism.

Aggravated activism is:

activity that seeks to bring about political or social change but does so in a way that involves unlawful behaviour or criminality, has a negative impact upon community tensions, or causes an adverse economic impact to businesses.

There are two levels of aggravated activism: low and high.

Low-level aggravated activism is:

activism which involves unlawful behaviour or criminality. This criminality is local or cross regional and potentially impacts on local community tensions.

High-level aggravated activism is:

activity using tactics to bring about social or political change involving criminality that has a significant impact on UK communities, or where the ideology driving the activity would result in harm to a significant proportion of the population.

For the purposes of our report, we use the term ‘aggravated activists’ to describe those who commit protest-related crime or unlawful behaviour. The most frequent level of aggravated activism associated with protests is low.

Activism comes in many forms, both lawful and unlawful. At the upper end of the scale are extremist, fundamentalist and terrorist activity, all of which fall beyond the remit of this report. In order to ensure that the UK is adequately protected against emerging terrorist threats, when intelligence relates to high-level aggravated activism, it is also shared with CTP for assessment. This is to identify escalating activity by groups or individuals that may indicate a path towards terrorism.

However, in this report, we only consider intelligence relating to largely peaceful protests, which may nevertheless involve an element of criminality and disruption.

The importance of gathering intelligence on aggravated activists

It is important that forces understand as fully as possible the risks that aggravated activists present to public safety, and their potential for disruption and criminality. For example, one protest group may pose a higher risk than another. Some protests predictably involve more disruption, economic loss, confrontation or disorder than others.

The police are better prepared to deal with this if they understand aggravated activists’ intentions. This means deploying officers with the right skills, in the right numbers, to collect intelligence, liaise with protesters, keep people safe and minimise disruption. The police need accurate, comprehensive intelligence on aggravated activists from a range of sources. This may sometimes involve covert sensitive intelligence-gathering methods, which include surveillance and the use of CHISs.

Aggravated activists often operate in more than one force area, so the police need good arrangements to co-ordinate intelligence gathering and disseminate it both within and between forces.

Case study: Newsprinters

This example highlights the difference that intelligence can make to the police approach. In this case, the police did not have intelligence about when and where a series of protests would take place. As a result, they were unable to intervene early. They had to mount a reactive rather than proactive response, which presented substantial problems.

Newsprinters is a printing company that operates from several sites throughout the UK. It is an affiliate of News UK and provides printing services for them, independent publishers and major newspaper groups. It prints some of the UK’s most-read newspapers.

In the months before the protest, Newsprinters liaised with the police about the possibility of protest at their sites. The protests did not materialise.

Representatives from Newsprinters told us, in relation to one of the forces involved: “Throughout the planning the police advised us of all the things they couldn’t do, the rights of the protesters and their limited powers against a legal protest.”

The police from that force told us they had worked with Newsprinters in the run-up to the planned protests. At meetings with the company, the police stressed their need to balance the rights of protesters and those going about their lawful business.

Just before 10.00pm on 4 September 2020, Extinction Rebellion protesters blocked the entrances and exits to Newsprinters at three sites using vans and a boat. Some protesters locked themselves to these vehicles. Others climbed temporary structures they had built from bamboo to make it more difficult for police to reach them.

The protest was targeted at national newspapers, which protesters accused of failing to report on climate change. The aim was apparently to maintain a blockade throughout the night, preventing newspapers from reaching shops and readers the following morning.

Police responded to the protests and used specially trained officers with cutting equipment to remove some of the protesters who had locked themselves to vehicles. Others unlocked themselves following negotiation with police. The protests lasted about 14 hours.

Newsprinters were far from satisfied with the police response from one force. They described a lack of regular updates during the protest at, what was for the company, a time-critical period.

Newsprinters told us there appeared to be a “lack of ability [by police] to tackle the situation and a greater concern on their part [the police] on the consequences of directly dealing with the protesters”.

The force concerned rejected the criticism and they told us they worked hard to remove many determined protesters from complex lock-on devices as quickly and safely as possible. Such was the challenge, officers were deployed from surrounding forces to assist with the lengthy removal operation.

In total, 79 protesters were arrested, and their cases are still progressing through the criminal justice system. News UK estimates that it incurred losses in excess of £1m as a result of the protests.

How effective are national arrangements for managing protest-related intelligence?

Since the late 1990s, the police have made various arrangements for managing protest-related intelligence nationally. In recent years, this has fallen under the remit of [Counter Terrorism Policing](#) (CTP).

In January 2020, the NPCC decided to reallocate responsibilities. Low-level aggravated activism intelligence was transferred to the [National Police Coordination Centre](#) (NPoCC).

A promising start in difficult circumstances

The NPoCC's strategic intelligence and briefing team (NPoCC SIB) was created in April 2020. Its remit is to manage intelligence related to low-level aggravated activists and protests that have the potential to cause disorder or significant disruption on a national or cross-regional scale. It is also responsible for giving intelligence and assessments to police forces. The transfer broadly coincided with the first national lockdown, which presented serious logistical problems for the new team.

Nevertheless, intelligence managers from the forces we inspected gave some positive feedback on the NPoCC SIB's work so far. We heard from several officers that it had provided good-quality and useful intelligence in relation to protest activity, including from Black Lives Matter and Extinction Rebellion. One intelligence manager told us that, during the Black Lives Matter protests that took place throughout the country in summer 2020, the NPoCC SIB held national telephone conferences with forces to report on events and share information.

The NPoCC SIB produces and disseminates a weekly update to forces, containing an overview of relevant protests in their regions. Many officers we interviewed said that these updates had been effective, and that they had used them to help plan their approaches to protests and for briefings.

Officers told us that they would like more updates from the NPoCC SIB about tactics used by protest groups and the activities of known aggravated activists. This is a theme we explore in more detail later in this chapter.

The flow of intelligence to the National Police Coordination Centre's strategic intelligence and briefing team

We did, however, find that the effectiveness of the NPoCC SIB is limited by the quality of intelligence it receives from forces. We found that the NPoCC SIB's process for weekly intelligence collection is deficient in three respects:

- forces don't always send the NPoCC SIB the intelligence debrief form that they should prepare and submit after each protest policing operation;
- even when they do submit the form, it often lacks detail; and
- the template that the NPoCC SIB sends to forces doesn't explain clearly enough what information they need to provide.

We were encouraged to learn that the NPoCC SIB plans to redesign this template.

Forces do not always play their part in sharing intelligence with the NPoCC SIB. For example, on one occasion, the team asked forces that had experienced Extinction Rebellion protests to send them intelligence. Despite repeated requests, only three of the 12 relevant forces complied. The matter was eventually resolved when representatives of all 12 forces attended an NPoCC SIB-led debrief, where the team could gather the required intelligence. Clearly, the team can't always do this, so it's important that forces comply with requests for intelligence.

Area for improvement

Forces should improve the quality of the protest-related intelligence they provide to the National Police Coordination Centre's Strategic Intelligence and Briefing team. And this team should ensure that its intelligence collection process is fit for purpose.

How effectively do police assess protest-related risks using intelligence?

The police rely on intelligence to assess risks to public order, including protest-related risks. This assessment is recorded in a [Public Order Strategic Threat and Risk Assessment](#) (POSTRA). The police produce POSTRAs at force, regional and national levels.

Forces complete their assessments on a national template. Force-level POSTRAs are used to produce a regional assessment, which then feeds in to a national POSTRA. Some forces don't produce their own POSTRA: they contribute instead to a regional assessment.

Changes to the way forces assess protest-related risks

Until April 2020, the national POSTRA was produced jointly each year by CTP and Essex Police, whose Chief Constable is the NPCC lead for POPS. They used the information from the regional assessments to produce the national assessment. The NPoCC SIB took over responsibility for producing the national POSTRA. It reviewed the POSTRA process and found problems with the quality of some of the force- and regional-level assessments. It has introduced a new process to resolve this.

We reviewed seven force and four regional POSTRAs. We found that they were generally not comprehensive or authoritative enough. Only two force and one regional POSTRA contained intelligence relevant to the protests forces had experienced during 2020. This was surprising, considering how much protest activity had increased during that year, with Black Lives Matter, Extinction Rebellion and anti-lockdown protests.

We asked forces to send us documentary evidence – such as agendas, papers and minutes of meetings – to show how they produce their POSTRAs. This showed that most forces discuss their POSTRA at certain meetings. However, we found little evidence that there was a detailed discussion of current intelligence relating to protest, or how this might affect areas such as training and the allocation of resources.

In interviews, some officers acknowledged that this area needed improvement. They compared the POSTRA with a similar risk assessment process concerning armed policing, which they found to be more thorough. They told us they would be improving their processes for public order by reviewing and updating their POSTRA documents more frequently. This should help to support the new process introduced by NPoCC SIB.

National intelligence gaps

During 2020, NPoCC SIB made major changes to the process for creating a national POSTRA, introducing a new document called the POPS Strategic Risk Assessment (POPSSRA). The term 'threat' has been removed to reflect its focus on legal areas and public safety. It places greater emphasis on intelligence held by police forces. NPoCC SIB expects this new national process to be fully operational by April 2021.

To cover the period until then, in December 2020, the team produced an interim POPSSRA. This was a more limited document, the team's intention being to publish a more comprehensive version that would include more detail, such as forces' protest-related resource levels.

The interim POPSSRA contains commentary on the protest areas of:

- cultural nationalism;
- anti-fascism;
- animal rights;
- environmental concerns;
- anti-racism;
- European Union exit; and
- anti-government.

NPoCC SIB has established that there are intelligence gaps in various protest areas and therefore a need for police to improve sensitive intelligence gathering. This is reflected in the interim POPSSRA that was updated in February 2021.

Later in this chapter, we report on our findings regarding sensitive intelligence gathering.

How effectively do police manage intelligence on aggravated activists?

Intelligence gathering is not well co-ordinated across forces and regions. This is important because some protests are arranged on national (and international) lines spanning multiple force areas. A range of senior officers told us that, on a national level, there is a need to improve arrangements relating to the identification and targeting of the most prominent aggravated activists. Many such activists don't just operate within single force boundaries.

For example, in September 2020, anti-lockdown protests took place throughout England and Wales. NPoCC SIB centrally co-ordinated the intelligence and disseminated it to forces for their information and action.

The unit identified a small number of aggravated activists who were encouraging conspiracy supporters to attend anti-lockdown demonstrations throughout the country.

Despite the work of NPoCC SIB, those aggravated activists identified to police forces repeatedly attended and spoke at demonstrations, travelling significant distances to do so across several force areas in breach of COVID-19 emergency legislation. NPoCC SIB established that a majority of forces dealt with them on their own.

Better co-ordination of police operations to target them, through disruption of travel, arrest, and co-ordination of bail conditions, would likely have reduced their criminality.

Plans to fill the gap

We found evidence that this lack of co-ordination existed before the creation of NPoCC SIB.

Between August 2011 and October 2020, 1,198 arrests were made across 17 forces in relation to protests about fracking. In total, 125 protesters were arrested at two or more separate locations, with 30 protesters arrested a total of 248 times between them.

Although these 30 protesters appeared willing to engage in repeated acts of criminality in connection with protests on a national level, they were not proactively targeted for intelligence gathering. Had this happened, forces might have disrupted their activities and prevented crime and disorder.

When the responsibility for managing protest-related intelligence transferred from CTP to NPoCC SIB, the new model did not include any intelligence co-ordination capability for aggravated activists. A senior NPoCC SIB officer told us that they recognised this shortcoming.

In January 2021, NPCC approved a modest increase in resources for NPoCC SIB to create a new 'national development team' on a 12-month trial basis. This team has the responsibilities to:

- provide co-ordinated intelligence capability to deal with aggravated activists; and
- explore the actual level of demand for this function.

We suspect that meeting the demand will require more resources, but it should help NPoCC SIB to perform a valuable function in managing the risks posed by aggravated activists.

Recommendation

By 30 June 2022, the National Police Chiefs' Council (NPCC), through its National Public Order Public Safety Group and National Protest Working Group, should analyse the results from the national development team trial. In the light of this analysis, the NPCC should secure an appropriate longer-term arrangement for managing the risks presented by aggravated activists.

How effective are intelligence arrangements at force level?

Forces allocate and prioritise intelligence resources differently. Protest is just one of the areas that forces' intelligence units deal with. There are many others, including serious organised crime, modern slavery and child sexual exploitation.

Recent protests have stretched resources in most forces, and it can be a struggle for intelligence departments to balance competing priorities. This is the case even in the Metropolitan Police, which has significant resources allocated to protest intelligence.

We found some forces have officers and staff specifically allocated to dealing with protest intelligence; others don't. Officers from some forces that have experienced significant protest activity told us that they have had to develop new protest intelligence capacity to meet the challenges.

Reliance on open-source research

The NPCC's definition of open-source research is as follows:

The collection, evaluation and analysis of materials from sources available to the public, whether on payment or otherwise to use as intelligence or evidence within investigations.

In most of the forces we inspected, interviewees were positive about open-source research. They use it to provide information that helps them to produce their plans and relevant briefing material.

We do not underestimate the value of open-source research. But the police should draw on a wider range of sources to make sure that the information is accurate and to improve the intelligence picture. Officers told us that open-source research is the main source of intelligence about protests. They generally felt that it gave them enough information to respond. However, forces recognised that information gathered in this way may be inaccurate or purposely misleading.

The links between intelligence and planning

Interviewees in all forces told us that there were strong links between the protest intelligence processes and operational planning. Intelligence about protests is usually shared quickly, so that [POPS commanders](#) can make effective assessments about police response.

There is a mix of protest-related skills, knowledge and experience in intelligence units. Some POPS commanders told us, for example, that intelligence personnel do not always understand public order and the intelligence requirement for protests. They told us that this can affect the quality of intelligence products.

Echoing the views of other interviewees, an officer from one force told us that intelligence staff who don't often deal with protests can be "out of their comfort zone" and need extra direction from commanders. In one force, we were told about plans to site intelligence officers in the planning team to improve their understanding.

Intelligence gathering takes place before, during and after an event. In addition to overt intelligence-gathering methods, like open-source research or asking for

information from the protest organiser or the community, there are more intrusive options available to the police. Most protests are peaceful and conducted lawfully. In these circumstances, the use of such options cannot be justified.

We learned that all the forces we inspected have processes to gather information from their communities in which protests are planned to take place. Officers told us that community intelligence is an important piece of the intelligence picture. We found that neighbourhood/local policing teams play a major role in this.

Most interviewees told us that they were provided with valuable intelligence reports. These tended to include information that intelligence officers had collected from open-source research about planned protests and protesters' intentions. Commanders told us that, in addition to these reports, from time to time they also received useful intelligence updates during events from dedicated intelligence teams.

The use of forward intelligence team officers

We found there is a reluctance by POPS commanders in some forces to deploy forward intelligence team (FIT) officers. FIT is one of the tactical options available to commanders when responding to protests. The College of Policing's APP outlines [the role of a FIT officer](#), which is to:

- undertake overt information and intelligence gathering;
- identify and engage with individuals/groups who may become involved in or encourage disorder, violence, or may increase levels of tension;
- provide commanders with fast-time updates so that resources can be deployed efficiently and effectively; and
- provide information to assist in early resolution of events, e.g., arrests, release of contained persons.

It also gives guidance on how FIT officers should be deployed, advising commanders that their use may have a "significant impact on the public's perception of police and their legitimacy". It also states that commanders must ensure that the deployment of FIT officers is in accordance with the [policing style](#) of the operation.

Nine of the ten forces we inspected retained their own FIT capability. However, only three regularly deployed FIT officers to protests. Those we spoke to concluded that opportunities to gather intelligence were missed when FIT officers were not deployed.

In turn, however, commanders raised concerns that in deploying FIT officers they would run the risk of increasing confrontation with protesters. The commanders' preferred policing style often places a strong emphasis on effective communication, negotiation and co-operation between police and protesters. The police refer to this as 'engagement'.

A FIT officer's job is not to co-operate or negotiate with protesters, but rather to gather intelligence. This may involve, for example, taking pictures of people and their clothing to establish the identity of individuals.

The role of police liaison teams

Police liaison teams (PLTs) are another tactical option available to POPS commanders when dealing with protests. The College of Policing's APP outlines [the role of a PLT officer](#):

- to provide a link through dialogue between the police and groups;
- is deployed before, during and after events to establish and maintain dialogue with groups, adopting a community policing style;
- reduces potential tension and the risk of disorder and conflict (e.g., avoiding misunderstandings, rumour control) and promotes trust and confidence in the police; and
- PLTs are not deployed to gather intelligence.

We examine the role of PLTs in support of police planners more in Chapter 3.

Due in part to commanders' reluctance to use FITs, PLT officers are sometimes asked to gather intelligence. This blurs the boundaries of the role and may erode the trust that PLTs try to build up with protest groups. While being deployed in the role of PLT does not preclude an officer being involved in other policing activity, the role of a FIT officer is, and should, remain distinct from that of a PLT officer.

A range of officers, including a national role holder, a force public order strategic lead, and gold, silver and bronze commanders told us that confusion exists among some commanders about the different roles of FIT and PLT officers.

The image below, taken at a Reclaim the Power protest in Essex in July 2019, highlights some protesters' distrust of PLTs. Officers carrying out this role wear blue bibs.



(Credit: Essex Police)

The development in a facilitative approach over recent years has meant that the use of the FIT as a tactic does not always complement that approach. While the primary

focus of PLTs is not to gather intelligence as part of their engagement with groups, opportunities to do so should not be overlooked. We understand it can be a difficult balancing act for POPS commanders.

The police use of covert sensitive intelligence-gathering methods

The police can use covert sensitive intelligence-gathering methods to prevent protest-related crime and disorder, if these meet stringent legal requirements. The more intrusive the method, the higher the legal threshold it has to reach in order to be lawfully authorised, and the greater the safeguards against unlawful use and [collateral intrusion](#).

The relevant legislation was not enacted to be used against protesters who engage in lawful activism: its use must be for the prevention and detection of crime and disorder. Therefore, dependent on the seriousness of the crime or disorder, it can apply to protesters who engage in aggravated activism.

There are several different methods. They range from less intrusive forms, such as [directed surveillance](#), to more intrusive activity, such as [intrusive surveillance](#) and [property interference](#).

We found limited use of these covert sensitive intelligence-gathering methods for protests in the forces we inspected.

Officers told us that most protest-related crime and disorder fails to meet the high legal threshold required before authority may be granted for the use of more intrusive options. In other words, the anticipated severity of crime or disorder associated with protests does not ordinarily justify the intrusion of covert methods.

The NPCC recognises that, to help understand the risk more clearly, there is a need to improve the collection and use of sensitive intelligence. We agree. It is especially relevant if the police are going to improve their focus on protest-related aggravated activists in line with our recommendation.

Police use of covert human intelligence sources in relation to protest

The deployment of CHIS to gather intelligence is a sensitive and intrusive activity. During our inspection, we learned that the management arrangements for CHIS in respect of protest-related crime and disorder had changed. Some interviewees told us that they had concerns about the new arrangements. This prompted us to look closely at them.

In a written response to questions we posed to one of its working groups, the NPCC helpfully provided us with its view on the use of CHIS in relation to protests:

CHIS deployments are made lawful by an authorisation under Section 29 of RIPA [[The Regulation of Investigatory Powers Act 2000](#)]. CT authorisations utilise the broad lens of “national security”, while policing must use the narrower gateway of “prevention and detection of crime and disorder”. This is classed as an intrusive tactic and as such the bar is set quite high in relation to the level of criminality. Crime is quite easily defined, but ‘disorder’ is less easily defined. There is no overarching definition of what constitutes disorder. The current jurisprudence does

provide significant assistance in that disorder should mean criminal disorder that is activity that constitutes a crime, and a serious enough crime to warrant the deployment of a CHIS.

RIPA is clear that CHIS-related activity in relation to lawful protest alone, will never be legal, necessary or proportionate.

A senior officer told us that the use of CHIS in relation to protests is not a “broad brush go-to tactic” and is done so proportionately against the criminality it is operating against.

Until September 2020, CTP retained primary responsibility for obtaining protest-related intelligence from CHIS. Responsibilities for co-ordination, funding and tasking have now been transferred to individual police forces.

There are arguments in favour of this, and we do not criticise the decision. The devolved force model is an established one through which forces manage CHIS. But the integration of protest-related CHIS management with the devolved force model is still in its early stages.

One interviewee described the effectiveness of the current arrangements as a “sticking plaster situation”, and another that the transfer of responsibilities “wasn’t thought through in any depth”. Based on these and other comments – and with the benefit of hindsight – we concluded that the transfer had been implemented without sufficient consultation with the NPCC and forces.

We were left with questions about the effectiveness of the current arrangements. This is for the following reasons:

- Until the transfer, forces had not held this responsibility since the 1990s. Therefore, intelligence specialists in forces are beginning with much less experience of dealing with protest-related CHIS than their colleagues in CTP. This lack of experience could have an impact on recruitment and retention of CHIS in this area.
- An unintended consequence of the transfer was a reduction in the number of CHIS immediately available to provide intelligence on protests. The police may need to re-engage with those CHIS who previously reported on protest-related criminality prior to the transfer. There are arrangements in place for this but the speed of access is unlikely to be as timely as it was prior to transfer.
- The “narrower gateway” that the NPCC referred to may in practice result in fewer CHIS being recruited. In addition, forces will be under pressure to manage the increase in workload against competing crime-related priorities.

We inspected data relating to forces’ demand for the centrally provided service from 1 January 2019 until the transfer of responsibility to forces (approximately September 2020).

We found that, since the transfer, the police don’t fully understand the current protest demand for CHIS. We understand that the [National Source Working Group](#) is now exploring this area to help meet the intelligence requirements established in the POPSSRA.

Given the points above, it is unclear to us exactly what the new system will entail and how effective it will be at managing the demand when it is known.

We have concluded that the situation needs close monitoring while the new system is being developed and that, in due course, a post-implementation review would be worthwhile.

Recommendation

With immediate effect, the National Police Chiefs' Council (NPCC), through its National Public Order Public Safety Group and National Protest Working Group, should closely monitor progress on integrating the management of protest-related covert human intelligence sources with the devolved force model. And, by 30 June 2022, the NPCC should ensure that a post-implementation review is conducted.

3. The police's planning and preparation for their response to protests

This chapter contains our assessment of how well the police plan and prepare their response to protests. This includes the training, APP and other guidance, equipment and technology provided to officers.

How effective are the planning and preparation processes at local, force, regional and national levels?

Police planning teams

We found that forces' planning teams were generally skilled, experienced and effective in the preparation and planning for protest. Unsurprisingly, we found the best planning practices in forces that regularly dealt with protest.

Planning teams need to decide on the scale of the police response. Many use an assessment matrix, such as the NPCC's events assessment matrix. Other forces rely on an accredited POPS commander to assess the threat and risk associated with a protest. We found that both methods led to accurate initial assessments.

In addition to using the information provided by protest organisers, police planning teams undertake open-source research and get information from neighbourhood policing teams. They also examine information from private and public organisations. In most cases, forces get information from their own intelligence teams.

We found that forces had established working practices between intelligence and planning teams. This generally meant that planners had the intelligence they needed. In a few forces, where relationships were less strong, planners occasionally had to gather the information and intelligence they needed themselves. This was especially common when planners had to make rapid assessments outside office hours.

Some interviewees told us that intelligence team managers had worked with planners to improve their understanding of how to access a range of intelligence. This led to more productive relationships and better working practices.

The Metropolitan Police was the only force we inspected with a round-the-clock planning capability. The other metropolitan forces' planning teams work longer weekday hours and at weekends, and the remaining forces have office-hours planning capability. Intelligence officers in 24/7 contact centres can give forces information, mostly from open-source research. We believe this is a sensible and proportionate approach.

Once a planning team has assessed the scale of the police response, its decision is reviewed by a senior police officer, usually a silver or bronze POPS commander. When the police have had time to plan and prepare for a protest, this initial plan is also reviewed in weekly tasking and co-ordinating meetings.

These meetings give senior officers a broad view of all policing demands on the force and allow them to make decisions about resources. They also provide an opportunity for commanders to ask for more officers from their regions or nationally.

Engaging with businesses in the planning process

We conducted interviews with personnel from several businesses in order to understand how well the police were engaging with them in planning their response to protests. We found that several forces had established effective lines of communication with businesses subjected to protests.

We received some positive comments from companies including HS2, Barclays and the Canary Wharf Group, which had formal procedures to give information to the police about potential protests. In return, the police planners worked closely with businesses and had developed information-sharing protocols. We found that these processes, when they existed, generally worked well and we would encourage all forces to have similar arrangements with those sites regularly subject to protest.

Barclays has been repeatedly targeted by environmental activists over its links to fossil fuel companies. In a mass protest co-ordinated by Greenpeace in March 2020, Barclays lost trading in a large number of branches because activists had glued themselves to buildings. Its head office in Canary Wharf has been repeatedly targeted by protesters.

Interviewees from Barclays told us that the protests had a significant impact on its local branches and customers. They also felt that protesters' hostility towards staff was increasing. They reported that the police approach to the protests had varied widely between forces, and that there had been a lack of co-ordinated planning. Barclays works closely with the Metropolitan Police to plan its response to protests at London premises, and interviewees told us that police in London were effective at dealing with protest.

Another company that has been the target of sustained protests is HS2, which is overseeing the planned railway running from London to the Midlands and the North. Interviewees from HS2 told us that the project has averaged nearly one protest a day since construction began four years ago. The company estimates the total additional direct costs from protest to HS2 and its supply chain to be £32m.

HS2 intelligence staff and British Transport Police (BTP) intelligence analysts form a unit to provide intelligence for security and police planning. The unit works closely with the NPoCC's intelligence team.

HS2 security personnel told us that most police forces along the route were experienced in planning for protests. They singled out Thames Valley Police's planning team for praise, saying that the force had adapted quickly to the unique planning requirements.

Engaging with protest groups in the planning process

We spoke to representatives from protest groups to find out how they had experienced working with the police to plan their protests.

Under section 11 of the Public Order Act 1986, the organisers of processions must tell the police about their plans in writing at least six clear days before the event takes place (the Act refers to marches as ‘processions’, and we will do the same in this report).

If a procession is arranged at short notice, the organisers must still inform the police unless it is not reasonably practicable to give any advance notice. The organisers must tell the police their names and addresses, the date and time of the procession, and its proposed route.

The law does not impose the same obligation on protest organisers to notify the police about static protests, which it calls ‘assemblies’. We believe there is a strong argument in favour of aligning the law for processions and assemblies. We discuss this in Chapter 6.

The forces we inspected all have public websites that give information on processions and assemblies. Some give detailed explanations on the law relating to protest, and the police’s and organisers’ responsibilities. They invite organisers to tell the police if they intend to hold a procession or assembly.

Police planners told us, however, that protest organisers often notified them late about planned protests. In some cases that we looked at, organisers had told the police about a procession the day before, or not at all. One police planner told us:

Protests used to be run by event organisers who knew what they were doing. More people are now organising protests and it is increasingly challenging to keep a grip on it.

An organiser who fails to notify the police about a procession when it is reasonably practicable to do so commits an offence under section 11 of the Public Order Act 1986. In practical terms, failing to notify the police means that they might not be as effective in policing the event. In some cases, forces have deployed too few or too many officers to protests and have been unfairly accused of compromising public safety as a result.

Extinction Rebellion’s police liaison representatives told us they worked with the police to plan for safe protests. However, they said that their experience of working with the Metropolitan Police was less straightforward. The Metropolitan Police, on the other hand, were generally satisfied with their work with protest organisers, particularly during the large-scale protests seen in London over the past two years. We examined some of their debrief reports, in which PLT officers stated that some protest groups sought to provide only partial information, or even disinformation, which was unhelpful to the police.

Police liaison teams

PLTs (see Chapter 2) are responsible for working with organisers to ensure that protests are safe, peaceful and lawful. If organisers have not already given the police information, such as the date and time of a protest and how many people they are expecting, then PLTs will try to find out.

All the PLT officers we spoke to understood their role. Most of them were highly experienced in protest policing.

In the cases we looked at, we found that PLTs had been deployed promptly to meet organisers, and that they had generally developed good relationships throughout a network of protest groups. We found that forces often relied on information from PLTs to help develop plans.

Extinction Rebellion police liaison representatives emphasised the importance of PLTs in developing and maintaining relationships that are mutually beneficial to protesters and police. They said:

the greatest improvement the police can make is to build on their capacity to engage and connect with people more to understand their points of view. Mutual trust is needed to overcome militancy on both sides.

We also spoke to representatives from badger protection groups that protest against the national badger cull. They have good lines of communication with police countryside officers and PLTs. Representatives told us that PLTs understood all aspects of the police's planning, and that they trusted them and their ability to solve problems.

Gold strategies

The College of Policing's APP describes a [gold strategy](#) as "the foundation on which all subsequent planning and deployment rely".

We examined 32 gold strategies and found that most were written in a way that would help planners. Several exemplary strategies included [gold commanders'](#) detailed descriptions of the policing style, tone and professional standards expected of all officers engaged in the protest.

One example of an exemplary gold strategy was developed by the Metropolitan Police for Operation Minorca, the policing of the Black Lives Matter protests in London during the summer of 2020. The detailed strategy was updated daily and gave clear direction to the silver commander. It set out the requirements and expectations of all officers, and how successive commanders should transfer responsibility.

However, not all gold commanders considered whether conditions should be imposed on a protest, as a [chief officer](#) is able to under sections 12 and 14 of the Public Order Act 1986 (if the legal test under those provisions is satisfied).

Commanders should consider asking for conditions to be applied to processions or assemblies during the planning stage. It would avoid surprising organisers and protesters with unexpected restrictions later (when the event has started, conditions

may be imposed by the senior officer present at the scene, not necessarily a chief officer).

We would have expected to find more strategies that set out the intelligence commanders would need in order to make their plans. Only a few considered this or explained how intelligence was to be gathered during the operation. The Devon and Cornwall Police and Metropolitan Police gold commanders consistently made this a strategic objective. See Chapter 2 for a more detailed discussion of intelligence.

Silver plans

The silver commander is responsible for drawing up the [tactical plan](#) for a protest. It must link to the objectives outlined in the gold commander's strategy and help the bronze commanders to deploy their resources effectively.

We looked at 26 silver tactical plans. The standard varied considerably. Seventeen plans were clear and concise, and set out the tactical options available for the protest. In some cases, they included a section on the relevant legislation.

However, we found that too many plans simply repeated large sections of the gold commander's strategy. Some contained information copied from previous plans that were out of date.

Case study: Operation Cobb

Operation Cobb represents a good example of effective national police planning across 16 police forces. It was established in 2014 to co-ordinate the police approach to protests about the national badger cull.

The gold strategy set the tone and direction for all forces that would take part in policing the cull. The silver plan included a hierarchy of control measures and tactical options. There was a clear distinction between the use of FITs and the role of PLTs. A lawyer gave advice to the national team and produced an information booklet for all officers involved in Operation Cobb.

Operation Cobb's success was based on an inclusive approach involving a wide range of groups: local communities, farmers, protesters and other organisations such as the Department for Environment, Food & Rural Affairs (England) (DEFRA) and the National Farmers' Union (NFU). In our view, Operation Cobb represents a good example of effective nationally co-ordinated police planning.

While the cull remains controversial, we found that people on all sides understood each other's positions. This was brought about by effective working relationships between the national team, local forces and other organisations. This has been built up over a long period through effective debriefing and learning from experience.

A farmer and member of the NFU told us:

The police made it clear that they were there to uphold the law, and not to take sides. The police's early and regular involvement with farmers reassured them that they too would be protected.

Bronze plans

Silver commanders do not always deploy bronze commanders as part of protest policing operations. They will do so when they decide that the threat and scale of the protest requires commanders on the ground.

Bronze commanders usually lead officers in a geographical area, such as a town centre or part of a city. They can also lead an aspect of the operation, such as intelligence, community liaison or logistics management.

We looked at 48 bronze plans, which set out how officers were to be deployed on the ground, and generally found that they were clear and concise. The plans often included maps and imagery, and officers told us that this helped them to understand what was being asked of them.

Plans for specific locations or events

In some forces, we found good examples of planning for protests at specific locations or in circumstances that follow a predictable pattern.

We analysed standing plans from the ten forces we inspected and found a high standard of strategic objectives, tactical plans and, when appropriate, bronze commanders' plans.

Avon and Somerset Police's plan for working with the Civil Nuclear Constabulary to deal with protests at the Hinkley Point nuclear power station is one of many good examples we found. It is well-structured and detailed.

We found Essex Police's standing plan for protests against the deportation of people through Stansted Airport to be comprehensive. It explained in detail the roles and responsibilities of other public services during an operation.

How well do local, force, regional and national capacities and capabilities allow an effective response to protests?

In this section, we wanted to understand how well the police develop the skills they need to manage protests. In particular, we were interested in whether there are enough specialist officers who command protest policing operations or are routinely deployed to protests.

Protest policing resources

We didn't find a clear and consistent approach to help a police force determine the number of trained officers it needs to police protests. Although there are national requirements for the number of [police support units](#) (discussed in Chapter 4), they don't include specific requirements for POPS commanders or specialist protest resources, such as police liaison officers and protester removal officers.

We found significant variations in the numbers of specialist protest officers throughout England and Wales. To better understand why the police have trained these numbers of specialists, we examined the force management statements for each of the ten forces we visited.

All forces listed the types of current demand they face from public disorder, including protest. Five forces analysed future demands such as HS2, the construction of a new nuclear reactor and an increased reliance by other forces on their PRTs. Only one force considered where increases in capability and capacity might be needed.

We examined public order strategic threat and risk assessments (POSTRAs) from each of the forces we inspected to try and understand whether there was a rationale for the numbers of officers given specialist training. None of them explained it.

Area for improvement

On a national, regional and local basis, the police should develop a stronger rationale for determining the number of commanders, specialist officers and staff needed to police protests.

Reviewing protest resources

We wanted to understand how the police review the availability of specialist resources for protest policing. We were encouraged to find that the service can systematically monitor the capability and capacity of regions and forces to respond effectively to protest.

The Mercury database, which lists the number of POPS and protest specialists as well as other police roles, is operated by the NPoCC. It allows forces to understand the spread of protest-trained officers and specialists throughout the UK. The [mutual aid](#) arrangements between forces allow the police to use commanders and specialists from other forces. We examine these in more detail in Chapter 4.

The NPCC's [Tactics, Training and Equipment Working Group](#) is chaired by a chief officer and meets quarterly. We interviewed some of its members and found that this group works with NPoCC to maintain an overview of national and regional protest capability. It draws on information from the strategic POPS meetings in regions that routinely assess capability and capacity in individual forces and in regions.

Seven of the ten forces we inspected reviewed their capability and capacity quarterly at meetings chaired by an assistant chief constable. The other forces reviewed protest resources at the regional strategic POPS meetings.

Dealing with protests at sea

We didn't find any gaps in the police's skills when it comes to policing protests on land. However, we found a gap in the ability to police protests that happen at sea or on waterways such as canals and rivers.

Protests at sea range from demonstrations on offshore installations such as oil installations to attempts by protesters to impede the passage of vessels at sea, including ocean liners and nuclear submarines. Although events like these are relatively few, some forces had experienced them in recent years.

Few PRT officers have been trained to operate at sea. We were encouraged, however, to find that forces are learning from each other about how to respond. These include the Ministry of Defence Police, which regularly faces protests at sea.

Maintaining capability and capacity: a lack of volunteers

Many senior officers drew our attention to a lack of volunteers coming forward to train as POPS commanders. They mentioned several factors that may deter officers from volunteering, including excessive weekend working and exposure to risky operations that might undermine an individual's career.

We were pleased to find that some forces are tackling these problems. To increase command resilience, some forces plan to use POPS commanders from other forces to assist with larger, protracted protests (discussed in Chapter 4). One force reintroduced the rank of chief inspector to improve command resilience whereas others have made operational command experience a prerequisite for promotion. Another force paid an annual bonus to commanders to recognise the workload and to attract new applicants.

The problem of attracting volunteers is not limited to POPS commanders. Forces were struggling to attract officers to other POPS roles as constables and sergeants. Officers who regularly police protests told us that their rest days were frequently cancelled, particularly over weekends.

Many had become weary of the protracted nature of protests where officers were exposed to relentless insults and abuse, and the risk of injury, for many hours at a time. Others told us about the strain of extended time spent in the social media spotlight with their every action open to a variety of interpretations. Some of the officers we spoke to feared putting their families at risk from social media footage taken at continuing protests, should officers be identified and harassed.

How well does local, force, regional and national training (including authorised professional practice and other guidance) allow an effective response to protests?

In this section, we wanted to find out how well the police train for protest. This includes how well individual forces adhere to national standards, and whether forces draw effectively on lessons learned throughout England, Wales and beyond.

Commanders' training

The police service has a consistent approach to training gold, silver and bronze commanders. The training includes use of the National Decision Model in protest and examines the basic tenets of the Human Rights Act 1998. There is also a consistent process to support and accredit newly qualified commanders.

We were pleased to see that gold, silver and bronze commanders and [POPS advisers](#) from more than one force attend annual reaccreditation events together. This helps to develop understanding between the different roles.

We attended a briefing of regional trainers who will train commanders on the 2021 national POPS command refresher course. The scenario for the 2021 course is

centred on protest. The refresher training makes some useful references to recent case law, albeit sparse. This has implications for commanders' understanding of the law.

Frontline officers

Large protests are normally policed by officers accredited in POPS roles. The backbone of this structure is the [police support unit](#) (PSU). We attended PSU training, which focuses largely on the worst-case scenario of responding to hostile and violent crowds. In the context of protest though, violence is not a common result and most protest groups explicitly seek to undertake non-violent protest.

We did see some evidence that annual two-day refresher training is in development to better prepare officers for responding to non-violent protest. However, the annual training time afforded to PSU training limits the range of topics that are covered.

As we described earlier, officers performing these roles do so almost exclusively on a part-time basis, and normally have neighbourhood or emergency response roles day to day. Interviewees told us that officers are not always confident in their powers in relation to protest.

However, we did see some good practice in forces where officers were given legislation handouts as part of the briefing for specific protest operations. This was not consistent throughout all forces, but it is recommended in APP, and we would encourage all forces to do it.

Protester removal team capabilities

We found that the capability of PRTs varies widely between forces. The [College of Policing](#) provides training and initial accreditation. However, continuous professional development of these officers varies because some forces will have very few protests to deal with.

We observed the Metropolitan Police PRT training and found they have a highly developed capability that includes staff dedicated full-time to the role. They were unequivocal that the high standard of their approach was due to the experience they had dealing with protest lock-ons in London and elsewhere. We agree. In observing this training, we were struck by the complexity and risk to protesters and officers. This is a highly specialised role that requires both training and regular experience.

Authorised professional practice

The College of Policing produces [APP for public order](#), which includes protest. This is guidance for officers – in particular, senior officers and commanders.

The APP contains 30 tactical options for the police to consider, ranging from the use of community mediators and PLTs to containment and police dogs. This section does not, however, cover all current tactics. For example, there is no reference to the use of drones, which police interviewees told us they used regularly at protests.

We found the APP to be out of date in other respects too, ranging from some of the terminology it used to the omission of important case law. We understand that the

College of Policing plans to review it in 2021. Significant revisions will be necessary if the APP is to remain useful to officers policing protests.

The current APP also raised a question for us as to where officers could turn to get accessible advice on legislation and relevant guidance. It became clear to us that the case law relating to protest develops quickly. There is currently no system for keeping officers up to date.

The National Police Chiefs' Council's operational advice for protest policing

The NPCC and College of Policing have produced a comprehensive and detailed document giving operational advice for protest policing. The document has not yet been published, but the College of Policing has used it to teach POPS commanders and POPS advisers (POPSAs). The NPCC has sent the document to police forces in England and Wales.

Generally, we are pleased to see this document's creation. We did, however, find some problems with the document, particularly concerning some of its legal explanations. This could pose a material risk of commanders failing to fulfil their obligations under human rights law.

We are also concerned about some aspects of the document's commentary that we felt were open to misinterpretation, particularly by members of the public who may read the document after it is published. We raised these points with the NPCC. As our inspection ended, the NPCC and College of Policing were revising the document in the light of our concerns. We intend to review the revised version when it becomes available.

Protest aide memoire

The NPCC used to produce a protest aide memoire for officers and we understand that the Tactics, Training and Equipment Working Group is considering whether to replace this with a digital version. This seems a good idea and there is an opportunity to co-ordinate this work with the College of Policing's review of the APP. It would be beneficial for the police to make contemporary guidance, policy and advice accessible in one place.

Recommendation

By 30 June 2022, the College of Policing, through its planned review, should bring the public order authorised professional practice (APP) up to date and make arrangements to keep it current, with more regular revisions as they become necessary. It would also be beneficial to consolidate the APP, protest operational advice and aide memoire into a single source (or a linked series of documents).

How well do equipment and technology allow an effective response to protests at a local, force, regional and national level?

Governance of equipment and technology development

We found well-established governance arrangements. The NPCC's Tactics, Training and Equipment Working Group co-ordinates research and works with government departments such as the Defence Science and Technology Laboratory and relevant industries to develop the equipment the police need.

We were encouraged by the levels of understanding and consideration given to the equipment and tactics used in other countries by police forces dealing with public disorder and protests. The equipment most commonly used elsewhere, but not in England or Wales, includes water cannon and tear gas. The group also studies emerging technology such as sound and heat devices that have been used by police in other countries to disperse violent protesters.

It was beyond the scope of this inspection to make a detailed study of these devices. We concentrated our efforts on examining the equipment and technology that police in England and Wales use to deal with largely non-violent but disruptive protests.

Facial recognition technology

The police use of facial recognition technology divides opinion. Those who oppose its use point to significant infringement of human rights, particularly in the context of protests. Supporters believe that the technology could help the police to identify those intent on committing crime or causing significant disruption and disorder.

We recognise that facial recognition technology has the potential to help the police. However, we found that more work is needed to ensure that the police's use of this emerging technology is appropriate and lawful.

Police forces in England and Wales currently use two systems. The less controversial is retrospective facial recognition, which uses images caught by a camera, later comparing them against a large database of facial images held by the police to try to identify them. This system is used by six police forces in England and Wales.

The more controversial is called 'live facial recognition'. This compares live facial images caught by a camera against a predetermined watchlist of people the police want to locate, such as those suspected of a criminal offence or who are vulnerable. Once an image has been compared and an operator confirms a possible match, the police may engage and speak to the person where necessary.

We focused our attention on live facial recognition. We spoke to the NPCC lead for facial recognition and examined the Court of Appeal judgment on the use of live facial recognition technology by South Wales Police.

Only five forces in England and Wales had used live facial recognition. We were surprised that more had not done so, particularly as the NPCC lead observed that live facial recognition is a "game changer". A further 25 forces were interested in the technology but had been awaiting the judgment and the production of national guidance.

Court of Appeal judgment

In August 2020, the Court of Appeal issued its [first judgment on the police use of facial recognition technology](#). The claimant, supported by Liberty, challenged the use of live facial recognition in public by South Wales Police. Although it is unknown whether his image was caught by the system, the claimant was in Cardiff city centre in December 2017, and then at a protest at an arms fair in Cardiff in 2018 when the system was deployed. The claimant did not appear on any watchlist compiled by the police.

The court ruled that South Wales Police's use of the live facial recognition system breached the claimant's right to privacy under Article 8 of the Human Rights Act 1998. In its judgment, the court found two critical deficiencies that meant the interference with the right to privacy was not in accordance with the law.

First, there was too much discretion in the police's policies for determining the location where video cameras might be sited to record people's images, and, second, there was too much discretion in the policies that governed who was placed on the police's watchlist. The court also found that, in order to fulfil its legal duty under section 149 of the Equality Act 2010 to have regard to the need to eliminate discrimination, the police needed to do more work to ensure that the algorithms on which the police facial recognition system is based are free from racial and gender bias.

The NPCC lead continues to review and refine policies governing the compilation of watchlists and the criteria for deploying live facial recognition equipment. More broadly, the police continue to work with other interested parties including the information commissioner and surveillance camera commissioner to ensure that disproportionate bias against black, Asian and minority ethnic communities is minimised, and to develop national standards for this emerging technology.

Facial recognition technology and protest policing

Opinions among our interviewees were divided on the question of whether facial recognition technology has a place in policing protests. Some believed that the system would be useful in identifying protesters who persistently commit crimes or cause significant disruption. Others believed that it breached protesters' human rights, had no place in a democratic society and should be banned.

On balance, we believe that this technology has a role to play in many facets of policing, including tackling those protesters who persistently behave unlawfully. We expect to see more forces begin to use facial recognition as the technology develops.

Area for improvement

The police's use of live facial recognition technology is an area for improvement. The National Police Chiefs' Council should continue to work with the Government and other interested parties. These bodies should develop a robust framework that supports forces, allowing the use of live facial recognition in a way that improves police efficiency and effectiveness while addressing public concerns about the use of such technology. The framework should be designed to help the police satisfy the requirements explained in the Court of Appeal judgment: [2020] EWCA Civ 1058.

Drones

Drones are routinely deployed to help commanders police protests. Nine of the ten forces we spoke to were able to stream imagery from drones and a wide range of other sources into control rooms and direct to telephones and laptops used by commanders on the ground.

Commanders told us that drones significantly improved their ability to monitor the movement of protesters and to deploy officers. Access to such imagery is particularly important at protests that cover a large area, such as the Extinction Rebellion protest at Bristol Airport in August 2020. In that instance, the bronze commander could monitor protesters' movement around the perimeter of the airfield.

Specialist transport and licensed drivers

The police use specially adapted commercial vehicles, known as 'protected personnel carriers', to transport POPS officers and their equipment to incidents of disorder.

PRTs also need specially adapted vehicles to transport equipment such as disc cutters, drills and cutting blades. Otherwise, this equipment may slide around in the back of an open van. Some forces do not have adapted vans for their PRTs, but they told us they had ordered the vehicles.

Forces also need drivers for these vehicles. Three forces mentioned that officers, who had passed their test after 1 January 1997, no longer have the C1/D1 categories on their driving licences that would allow them to drive these vehicles. We were pleased to find that this is being addressed by the NPCC and forces have been encouraged to train officers through their driving schools so that they have enough drivers.

Protester removal

Protesters locking themselves to objects has become an integral part of non-violent civil disobedience. The main principle behind a lock-on is to create an obstruction that cannot be removed without specialist equipment. Lock-ons attract media interest and can provide an additional platform, literally and metaphorically, from which protesters can draw attention to their cause.

We were impressed by forces for the work they have done to make sure that PRTs are able to deal safely with lock-ons.

In more basic lock-ons, protesters fix themselves to either street furniture, such as railings or the pavement, using locks or glue. In more complex cases, protesters use lock-on devices that have been specially constructed for the purpose, sometimes with adapted everyday items. The two images that follow are from the Newsprinters protest at Broxbourne, Hertfordshire, in September 2020. The first shows protesters locked onto a purpose-built lock-on device with multiple welded steel tubes. The second shows protesters attached at height to trapezium structures.



(Credit: Metropolitan Police)



(Credit: Metropolitan Police)

Some lock-on devices incorporate a laminate of different materials deliberately constructed to make it more difficult for the police to cut protesters free. We observed a Metropolitan Police training session that recreated the problems these devices present, and we saw at first hand the police's commitment to safety.

We saw the inherent dangers of tackling lock-ons in which protesters are exposed to chemical debonding agents, cutting and drilling equipment. It is vital that PRTs remain up to date with the rapidly evolving problems presented by lock-on devices.

As lock-ons become more sophisticated and protests more protracted, the police have had to train more officers to tackle these devices safely. PRTs are made up of officers who have been specially trained to national standards. Each team comprises a sergeant and four officers or police staff. Some have been trained to remove protesters from heights, such as roof tops, lorries or trains, and from specially designed trapezium structures.

This image is of the device seized at the Broxbourne protest.



(Credit: Metropolitan Police)

The PRT officers we spoke to were generally satisfied with the levels of equipment forces provide. We were impressed by the commitment to continuous research and development of equipment and tactics. The police use seized lock-on devices such as the one pictured above. They construct new devices to test their response and to evaluate new equipment. Recent innovations include the increased use of battery-powered tools, reducing the reliance on costly, cumbersome and polluting generators.

4. Collaboration and learning between forces and with other organisations

This chapter includes our assessment of the police's mutual aid arrangements and other forms of collaboration between forces and other organisations. We also examine how forces learn from their own and others' experience.

How effectively do the mutual aid arrangements work?

These arrangements are effective.

Examples of recent mutual aid deployments included the 2019 Extinction Rebellion protests throughout London. That autumn, more than 1,280 officers from 34 forces were mobilised in 38 police support units.

Forces including Essex and the Metropolitan Police provided support, including a silver commander, at the September 2020 Newsprinters protests in Hertfordshire.

Other examples come from South Wales Police, which sends specialists to forces on mutual aid on a regular basis. During our fieldwork, the force deployed silver commanders to support the Dyfed Powys Police operation at an asylum seeker camp in Penally, which has seen regular protests. The force has also deployed resources to the Metropolitan Police on several occasions.

Strategic oversight

The NPCC maintains strategic oversight of public order and public safety through its National Public Order Public Safety (NPOPS) Group. For the policing of protest aspects of POPS, the National Protest Working Group directs and influences the development of tactics and capabilities, and how effectively forces collaborate.

The NPCC monitors the changes in the tactics used by protest groups so that training requirements and overall capacity can be adapted. It recognises that the use of PRTs needs to be considered on a national and regional, rather than a local, basis. This is because of the constraints in budgets, requirements to use the skill, and force commanders' levels of understanding.

Over the past 12 months, NPOPS's recommendations have resulted in changes to the College of Policing's role profile of PRTs and PRT training. These now include 'working at height' modules, along with increased tactical knowledge and training in de-bonding techniques.

Over that same period, there has been a national capacity increase of 8 percent in trained PRT officers and 39 percent in PRT officers trained at height. The complex

lock-on techniques used in autumn 2020 show the importance of sharing information and adapting the training to meet demand.

Mobilisation plan

The [Police National Public Order Mobilisation Plan](#) specifies the numbers and types of mutual aid resources that should be available. Chief constables throughout England and Wales agreed the plan in 2012 to meet the Government's [Strategic Policing Requirement](#).

The NPCC decided that the police service needed to have 297 police support units to respond adequately to the threat of public disorder. It considered that this was enough to deal with three separate areas of significant disorder happening simultaneously in England and Wales for a period of seven days.

Each of the nine police regions is required to contribute. Each region's contribution is calculated using a formula based on the size of each force in the region.

How forces request mutual aid

The NPoCC co-ordinates mutual aid requests, with the support of nine [regional information and co-ordination centres](#) (RICCs). The RICCs respond to force requests. Depending on the size of the event and the number of officers required, a request will be addressed nationally or regionally.

Public order aid comes in the form of two types of unit

POPS-trained staff are mobilised in defined groups of numbers and rank as follows:

- [Police support units](#), with officers trained to [Level 2](#) (basic crowd management tactics, plus training in public order tactics with personal protective equipment such as fireproof overalls, shields and helmets to deal with violent crowds).
- [Basic deployment units](#), with officers trained to [Level 3](#) (basic crowd management tactics in normal uniform).

In July 2020, the NPCC agreed to include basic deployment units in the mutual aid commitment. The mobilisation plan was updated to reflect this. This was a sensible move.

A current, main tactic of some major protest groups is to use passive resistance or non-compliance to cause disruption. Actions such as locking-on or sitting or lying down to block the highway draw heavily on police numbers and increase the time the police spend removing protesters. Large numbers of protesters require large numbers of police officers to manage them.



(Credit Lola Perrin, composer pianist)

This image shows the April 2019 Extinction Rebellion protest at Oxford Circus in London. Many protesters locked-on to the pink boat, the centrepiece of their demonstration. Others lay on the floor when officers came to arrest them.

This style of passive resistance protest can usually be dealt with by Level 3 officers who are trained in basic crowd management tactics, wearing normal uniform. There will be occasions though when the behaviour of protesters changes, and commanders have to deploy Level 2 officers who are trained and equipped to deal with serious disorder and violence, with flame-retardant clothing, shields and protective headgear if needed.

Exercises and testing for spontaneous deployment

The NPoCC co-ordinates mobilisation testing exercises for both pre-planned and spontaneous deployments. Exercises take place nationally, regionally and at force level. The NPoCC tests how many support units are available and the time it takes to deploy them.

There were two spontaneous deployment tests in 2020. The first, in August, was to see if forces from the nine regional areas (in England and Wales) could mobilise 10 percent of the required resources within one hour.

The results were unimpressive. Only one region met the one-hour target. A third of all regions took more than three hours. The NPoCC established areas for improvement linked to administration at force and national level.

The following month (September 2020), the test was repeated. There were much better results. All regions reduced their mobilisation times and no regions or forces exceeded three hours.

These tests were randomly timed, with no prior notification. In reality, many protests are planned rather than spontaneous and so forces often have a better opportunity to prepare themselves.

Exercises and testing for planned deployment

In February 2020, the NPoCC tested the mobilisation of police resources for a planned deployment. The two-day exercise assessed the arrangements for a three-week-long policing operation at a Commonwealth leaders' conference. The scenario involved an environmental protest at the conference.

The exercise was split into two phases. In the scenario:

- week one involved police search and security activity while the event was being set up; and
- weeks two and three were the event.

The forces involved met all the Level 3 officer requirements in week one. However, there was a 15 percent shortfall in weeks two and three. Nevertheless, the NPoCC told us that it was satisfied with the results and that, if such a shortfall arose in a real incident, it would contact the RICCs directly to address it.

How effectively do forces collaborate to share resources, such as commanders and specialist capabilities?

In addition to the mutual aid arrangements, there are also many other collaborative arrangements to share resources between neighbouring forces or those within a particular region. Larger forces tend to have their own trained and equipped specialist resources, whereas – for reasons of economy – smaller forces tend to work to a collaborative agreement with neighbours or buy in the resource from larger forces. All the forces we inspected had these arrangements in place.

We found that the most common specialist resource shared between forces is PRTs. Many forces don't have this specialist capability and rely on other forces to help in protest situations. PRTs can work in any force because, although they have a complex role to perform, it doesn't require much local knowledge or understanding of the host force.

The 43 Home Office police forces in England and Wales work together. They also work with national non-Home Office forces: BTP; Civil Nuclear Constabulary; and the Ministry of Defence Police (MDP). We consulted the national non-Home Office forces to see what support they provided to their Home Office force colleagues. This revealed a very positive picture.

BTP is part of the London region for mutual aid commitments for POPS and other specialist deployments organised through the NPoCC. It supports Home Office forces during protest on a regular basis throughout the country. Examples include a BTP PRT working on the pink boat protest in London in April 2019, and the Benbow multi-force arrangement in London mentioned below. BTP can supply both specialist resources and PSU officers. As HS2's construction work progresses, it is likely that BTP officers and Home Office forces will be working together more often to police protest at the building sites.



(Credit: BTP)

This image shows officers from BTP, the Metropolitan Police and the City of London Police working together in London in October 2019 to free locked-on protesters.

The MDP also regularly supports Home Office forces with specialist capabilities in relation to protest, particularly by providing PRTs (including at height) to operations away from Ministry of Defence sites. Recent deployments include at protests about former US President Trump's state visit in June 2019; at the Defence and Security Equipment International arms fair at the ExCel Centre, London, in September 2019; and at London City Airport in October 2019.

And, as described in Chapter 3, the MDP also provides Home Office forces with marine transport.

Our interviewees were very positive about the support provided by non-Home Office forces.

Sharing other resources and information in relation to protest, such as legal advice

We saw some excellent examples of regional or neighbouring forces sharing their legal advice. But we also found examples in which forces acted on their own and may have unnecessarily duplicated legal research and advice. When forces are able and prepared to share, it would make sense for them to take the legal research and advice that has been written for them and to store it in an easily accessible database somewhere for lawyers, POPSAs and commanders to access.

Some forces have made efforts to do this, but the situation seems to be fragmented. A force solicitor told us that there used to be a meeting in his region at which legal best practice and advice were shared, but it stopped two to three years ago. Reflecting the view of others, he said that the regional legal teams are “missing a trick” in not meeting to share and learn from each other.

There is a national organisation called the [Association of Police Lawyers](#). This is a network of solicitors who work for the police. We spoke to a member of its operations sub-committee who explained that experience and best practice are currently shared between the lawyers, but the group wants to develop so that it can provide a guidance service for lawyers involved in policing operations.

It has a group section on the police service’s online [Knowledge Hub](#) central library of learning, provided by the College of Policing. We mention Knowledge Hub in several places in this report.

When we looked at this section of Knowledge Hub, we found that it was underused. Among the 43 Home Office forces in England and Wales, only 13 people are members. There were no entries from practitioners in the discussion forum, or relevant documents in the library to share learning with others. At the time of our inspection, the section had not been used for five months.

We believe that the police would benefit from using this national facility more. Force solicitors and commanders from throughout the country could learn more from the experience of others who have been involved in policing protests.

There are potential cost savings in this approach because there would be a ready bank of case law and advice (accepting of course that some forces may not want to share some of their legal advice because of concerns about legal privilege). It would save time and promote consistency in legal advice throughout the country. Forces are still likely to want their own legal advice in certain circumstances but having access to existing legal advice and relevant case law would help forces to concentrate only on the advice they need.

Recommendation

By 31 December 2021, chief constables should make sure that their legal services teams subscribe to the College of Policing Knowledge Hub’s Association of Police Lawyers group.

Sharing commanders

We found that forces have developed strong, collaborative and effective working relationships among commanders. This is often linked to having joint training facilities in the region, which ensures that commanders train together.

Strong collaborations were particularly evident between neighbouring forces when there were formal arrangements in place – such as the Bedfordshire, Cambridgeshire and Hertfordshire collaboration that readily shares commanders. We also found evidence of informal collaborations forming over time, but such arrangements can be fragile.

The forces that operate in London also share commanders and other resources. They have developed a protocol called 'Benbow'. This sets out the mutual aid agreement between BTP, MDP, City of London Police and the Metropolitan Police. If any of the four forces has an event that it can't manage alone without it significantly affecting its other policing functions, it can call on the other forces for help.

When a protest crosses two force areas, it can be more effective for there to be one team commanding the operation. We were pleased to hear that many forces with more protests allowed commanders from other forces to gain experience by:

- shadowing a host force commander;
- running an event in the host force area while being mentored by a host force commander; or
- running an event in the host force area without a mentor.

This encourages the sharing of ideas and helps commanders from forces where there are fewer protests to develop their skills. It is of particular benefit to them because opportunities to gain this experience may be limited in their own force.

It also has an advantage for the forces with more protests. If a force has a demanding protest that takes place over several days, it can very quickly run out of commanders because they must be rotated to prevent fatigue. So, sharing staff between forces widens the local pool of competent, trusted commanders who can be deployed.

How effectively do forces collaborate to learn from experience?

Debriefing

We found many examples where debriefs weren't being done when they should have been. This applies particularly to smaller events or those with no reported problems. It was apparent throughout almost all forces. Forces may benefit from debriefing these events too, even if only on a modest scale, because there is likely to be information that shows what worked well.

The College of Policing's APP for public order explains the importance of debriefs in establishing good practice and areas for improvement. It also defines one of the responsibilities of a silver commander as being to ensure, when appropriate, that all staff involved in the respective policing operation are briefed and debriefed.

Forces use a variety of methods for debriefing that depend on the scale and complexity of the event, or the potential learning points to be recorded. Methods include 'hot' debriefs immediately after events, more formal structured debriefs using trained debriefers, and peer reviews (organised through the NPoCC).

Only eight of the ten forces we inspected submitted any in-force debrief documents for examination, a total of 17 documents: 4 structured debriefs and 13 hot debriefs. Based on the document request we sent to forces, we would have expected to see almost twice as many.

Officers in all POPS roles told us that debriefs were inconsistent and often didn't take place. This is despite our comments in previous reports about the need for forces to learn lessons, and the inclusion of debriefing in the APP.

Debriefing large-scale protests

We found that most large-scale protests were subject to a formal structured debrief. Some included staff from legal departments and other organisations. The debriefs established areas of good practice, as well as areas for improvement and learning.

For example, there was a structured debrief in Hertfordshire following a NATO summit in London and associated protests. The purpose of the debrief, supported by the College of Policing, was to explore and establish learning during the planning stages and the policing of the event, including the role of other organisations. The final report highlighted areas for improvement and areas that worked well.

Learning and debriefing arrangements for a long-term operation

A good example of one force collaborating with another to learn from experience comes from the policing of the fracking protests that occurred in Lancashire between 2017 and 2019. The policing operation cost £11m.

We were told that:

- Lancashire Constabulary learned from Greater Manchester Police's experience of another fracking protest;
- Lancashire Constabulary conducted daily hot debriefs and held daily discussions between commanders; the information gained was used to inform the operation for the next day;
- the force held fortnightly meetings with some local residents (including those who were protesters) to understand how the operation was affecting them; and
- Greater Manchester Police peer-reviewed the operation twice, after 6 and 12 months from its inception.

Evidence showed that the force varied some of its tactics and policing decisions over the course of the operation to reflect the new information gathered during these processes.

At the end of the two-year operation, the force arranged for trained debriefers to conduct a formal debrief. However, this was cancelled in March 2020 because of the COVID-19 pandemic.

We encourage the force to reschedule the debrief as soon as it is safe to do so, or to consider debriefing via video link or paper submission. This will bring together any valuable learning for the whole country.

Debriefing with protest groups

We were pleased to see that some forces had included protest groups as part of the debrief process (when appropriate). For example, Avon and Somerset Police held a debrief with representatives of Extinction Rebellion after a protest in Bristol. We learned from our interview with the protest group that the debrief had highlighted the shortcomings of their stewarding arrangements, which they accepted.

The group was able to make the force aware that some of its officers may not understand that protesters are entitled to record officers' identification numbers. Obtaining information such as this allows forces to adjust their briefings to officers to clarify issues such as this.

Using other information from those affected by protest

The [Independent Office for Police Conduct](#) (IOPC) is the organisation that oversees the police complaints system in England and Wales. It publishes the [Statutory Guidance for the Police Service](#). Section 22(7) of the Police Reform Act 2002 requires police forces to have regard to this guidance when exercising or performing the powers and duties to which the guidance relates. If forces don't follow the guidance, they must have a sound rationale and justification for departing from it, or risk legal challenge.

The [latest version of the statutory guidance](#) lists a range of places that provide a valuable source of evidence to help chief officers and local policing bodies make improvements in policing. These include complaints, investigations, civil proceedings brought against forces and external research or reviews. The IOPC expects police forces and local policing bodies to routinely consider whether any learning can be taken from each complaint, investigation or review.

Plan B

We spoke to representatives of protest groups, and groups that aim to support their causes, to understand their experiences of protest policing. A representative of a group called [Plan B](#) explained that, prior to a planned Extinction Rebellion protest in 2019, officers from the Metropolitan Police entered warehouses used by the organisers. They seized items including portable toilets, wheelie bins, shelters, cooking equipment and food. The interviewee stated that this equipment had been for the safety of protesters and alleged that the force seized the items to stop protesters from being able to "prolong their stay".

The interviewee wrote a letter of complaint to the force as the representative of an interested group. His complaint was not recorded because the force – correctly – determined that he was not eligible to be a complainant (under [the police complaints legislation](#)). He was informed of his right of appeal against this non-recording decision to the IOPC but chose not to appeal. He also wrote to the force's legal department to explore a civil claim against the force but, again, didn't engage any further.

As it was beyond the scope of our inspection to look in any more detail, we haven't examined the facts surrounding his allegations and have no comment to make about the police's alleged action at the scene. The force was not required to record the allegations as complaints. But it appeared to us that the letter written to the force's complaints department was not recognised and treated as feedback from an organisation claiming to represent protest groups. The letter was dealt with from a legal aspect and was assessed from a complaint point of view only. [The IOPC statutory guidance at the time](#) said that "complaints can provide valuable feedback about the service provided by the police and are an important source of learning to help forces improve the service they offer". The guidance also said (in paragraph 5.7):

It is important that [appropriate authorities](#) [normally chief constables, or commissioners of MPS and of City of London] demonstrate to complainants and communities their willingness to learn from the complaints made against them and demonstrate that the complaints process does lead to improved police practice.

Netpol report

An example of when a force has used feedback or complaints for learning comes from [Netpol](#). Netpol says it is an organisation funded by donations that "seeks to monitor public order, protest and street policing". And that its purpose is to "challenge and resist" policing that is "excessive, discriminatory or threatens civil rights".

The Netpol interviewee showed us a [report that the group had published about the policing of the Extinction Rebellion protests](#) in London in 2019. The report claims that Netpol has obtained 185 statements containing 521 allegations against the Metropolitan Police. It includes 29 detailed accounts from protesters alleging mistreatment.

It is important to clarify the status of these allegations. Netpol collected them but has not investigated them. Neither have we. Therefore, we have no comment to make about the conduct of officers against whom the allegations are made. Because they are collections of allegations that have not been investigated, they offer only the complainants' accounts of events.

The interviewee told us that he had sent printed copies of the report to the Commissioner's office in the Metropolitan Police and to the London Mayor's Office for Policing and Crime (MOPAC).

The Metropolitan Police has reviewed the report and determined that, under [the complaints legislation](#), it is not required to record any of the allegations made in the report as complaints. We agree with the force in this respect. However, the force told us that it did record 43 allegations relating to the protest that complainants had reported themselves. The majority related to the seizure of property and the Metropolitan Police's use of conditions on protest. The force has sought to address the protesters' concerns about their property by setting up a specific property mailbox.

The Metropolitan Police has considered the learning in the Netpol report and has acted to address concerns that were raised over the way disabled protesters were treated during the Extinction Rebellion protest. [Progress was reported at the MOPAC online question and answer session in March 2020](#).

A London Assembly member asked when the police would be publishing a response to the Netpol report. The Mayor's office responded:

I have been informed by the MPS [Metropolitan Police Service] that it will not be providing a full response to NetPol's report. The MPS is aware of the concerns raised over how disabled protesters were treated during the October Extinction Rebellion protests and have provided assurance that they have worked with its Disability Independent Advisory Group (DIAG) to fully understand these issues. The MPS will continue to work closely with the DIAG to ensure better mutual understanding of the issues that relate to disabled protest groups or individuals. Furthermore, disabled protesters have been encouraged to work with the Police Liaison Team (PLT) on the ground to talk about issues or concerns.

Our view

Based on what we saw of the force's handling of the Plan B letter, we weren't satisfied that the Metropolitan Police had given enough consideration as to whether looking into the allegations it contained could provide any opportunities to establish learning. Both the old and new versions of the IOPC statutory guidance highlight the importance of learning from complaints and using them to improve practice.

However, the force did use learning contained in the Netpol report and from the Disability Independent Advisory Group to understand better the issues that relate to disabled protesters and to meet the needs of those whose property had been seized.

Second Netpol report

In late December 2020, [Netpol published a second report](#). This relates to the policing of the Black Lives Matter protests that summer. Netpol claims to have obtained 12 witness accounts containing negative allegations about the policing of these protests throughout the country. Because the second report was published as our fieldwork drew to a close, we didn't examine how the police had handled it.

Sharing learning from debriefs within the force

Forces are not sharing learning from debriefs as effectively as they should.

Officers from many forces told us that they were not aware of having received any learning as a result of debriefs. We spoke to a silver commander from one force who could not remember when the last structured debrief was held for protest. That force did not submit any debrief documentation with its document submission for this inspection.

Although officers were clear in their views, we recognise that there may be occasions when learning has been shared but the interviewee hasn't made the connection between debrief processes and subsequent changes: for example, changes to training. On balance, the evidence strongly suggests that the process for sharing learning is not working as it should. We make a recommendation about this later.

Collection and sharing of learning from protest nationally

During the major protests that occurred throughout the country in the spring and summer of 2020, forces completed national post-event reporting forms (NPERFs) to record learning from the way they policed operations. They sent these forms to the NPoCC, which reviewed the urgent learning points they contained and circulated them to all forces weekly via the RICCs. Two of the issues reviewed were the use of PLTs during protests (covered in Chapter 2), and whether officers should 'take the knee' (covered in Chapter 5).

In early October 2020, the NPoCC and the College of Policing revised and tightened up the process for recording and disseminating learning. They introduced a new national post-event learning review form (NPELR) to replace the NPERF. They also produced a process map that shows how learning is collated, assessed, shared and considered for future training:

- Within 48 hours of each protest event, forces should complete a national post-event learning review form (explained later);
- The NPoCC receives the form and reviews the information;
- The NPoCC shares any non-urgent learning points with the NPCC portfolio leads for discussion at its working groups;
- The NPoCC shares any urgent learning points directly with forces nationally via the RICCs or force control rooms; and
- The NPoCC also shares learning points with the College of Policing for uploading to Knowledge Hub, and for the College to consider in relation to training.

The NPoCC provided us with all the national post-event reporting and learning forms that forces throughout the country had submitted during the 2020 calendar year. The ten forces we inspected submitted 62 forms in that period. When we looked at them, we found that 27 had not been completed fully and that many were of poor quality. In 21 of the submissions, the force had either failed to hold a debrief or it was unclear whether it had.

Most submissions contained a description of the protest, but only 41 of the 62 recorded formal learning. When we looked at them in detail, we assessed that only 24 of the 62 contained learning that would have helped others. In addition to that, we questioned the accuracy and relevance of the comments recorded in some.

It is clear that quality assurance and fact-checking are needed before these forms are submitted. The person in charge of the operation should sign these off. The NPELR forms should be used in conjunction, when appropriate, with national structured debriefs run by trained College of Policing debriefers.

Recommendation

By 31 December 2021, chief constables should ensure that their forces have sufficiently robust governance arrangements in place to secure consistent, effective debrief processes for protest policing. Such arrangements should ensure that:

- forces give adequate consideration to debriefing all protest-related policing operations;
- the extent of any debrief is proportionate to the scale of the operation;
- a national post-event learning review form is prepared after every debrief; and
- the form is signed off by a gold commander prior to submission to the National Police Coordination Centre.

Knowledge Hub

Users can set up groups for individual areas of policing within Knowledge Hub. Some groups are open to all users, and others are secure (that is, they require the user to ask permission to join). The POPS community has its own secure group on the site known as ‘Specialist Operational Support – Public Order Public Safety’.

We were given access to inspect the site. Despite there being 1,339 officers accredited to command or provide advice to commanders in England and Wales, there were only 335 members of the POPS group at the time we looked.

The main members posting onto the site were staff from the College of Policing and force trainers. The topics that had been posted tended to be about training events or the training programme, with very few learning issues. There was little or no interaction from or between POPS practitioners. On the day we recorded our evidence, there had been no activity on the site for over three weeks.

Our observations at the gold commanders’ course told us that Knowledge Hub is mentioned but that students are not actively encouraged to join. We recommend that the College enrol students before they finish their courses, to encourage better use of the facility.

One force suggested that Knowledge Hub is cumbersome to use, and so we looked at the way some other groups operate on the site. We found groups where the facility is used daily by practitioners who post questions, exchange ideas and share documents. The facility appears to work well for them. If the College enrolled students before they finished their courses, the tutors would be able to see if users found it cumbersome and, if so, to arrange for improvements to the system to be made.

During our fieldwork, we were told that some specialist officers had set up their own network to share learning on the public social media platform, [WhatsApp](#). We have concerns about this because the police service is unable to access or monitor the group. Additionally, the material on it cannot be accessed by the wider POPS community. The service’s official Knowledge Hub should be used.

Recommendation

By 31 December 2021, the College of Policing should ensure that all Public Order Public Safety commander and adviser students attending its licensed training are enrolled in the College of Policing Knowledge Hub's Specialist Operational Support – Public Order Public Safety group, before they leave the training event.

Knowledge Hub and national post-event learning review forms

The NPELR form covers a list of nine event types, including protests and demonstrations. The template and attached process clearly state its aims and objectives: to ensure that learning, which can “assist colleagues in planning and commanding future operations”, is shared.

There is a national post-event learning review folder on Knowledge Hub containing:

- a template (blank form), which was downloaded nine times in a month;
- a process map, which was downloaded five times in a month; and
- a policy document, which was downloaded three times in a month.

We expected to see many more downloads. We were unable to find any completed NPELR forms, or any of the older national post-event reporting forms on the site.

The site also contains an organisational learning folder with a sub-folder for protests. That folder did not contain any documents.

Regional and national learning opportunities

The regional network appears to be working well in some respects. Forces have set up regional POPS working groups where attendees share debriefs and learning from events that they have policed. These meetings also provide updates on any national learning so that regional command and support unit training provided under the licence of the College of Policing can be quickly adjusted as required. Table-top exercises can be designed around the experiences of recent protests throughout the country.

We were unclear though about how this lower-level regional learning is collated centrally and saved for future commanders to benefit from. We encourage good networking, but this is not the same as having a robust process to ensure that the learning gets into the organisational memory for the long term.

An example of urgent national learning that was discussed was from [a judicial review in October 2019](#). The review ruled against the Metropolitan Police that section 14(1) of the Public Order Act 1986 could not be used to impose common conditions on multiple protests. The ruling showed that forces must treat each individual location and time as a separate assembly if they are to consider the use of section 14(1) conditions on assembly, and that the senior officer imposing the conditions should be present at the scene.

A second example came from a reprimand given to the Metropolitan Police by the Information Commissioner's Office (ICO) following a complaint.

On 15 May 2019, between 5,000 and 10,000 protesters, many of whom were under 18 years old, attended a Youth Strike 4 Climate protest held in central London. The police used video equipment to record the protesters' behaviour. A complaint was made to the ICO about this use of video-recording equipment.

The ICO investigated the matter and made four recommendations to the Metropolitan Police on 25 June 2020. While these recommendations were not mandatory, the ICO stated that it would consider them if a similar complaint was made in the future.

In response, the Metropolitan Police advised POPS commanders and POPS trainers throughout England and Wales about the recommendations and the action they should take. On behalf of the College of Policing, it also rewrote the command refresher training package that is now largely based on the Youth Strike 4 Climate protest. Each force throughout England and Wales is completing its training as its schedule allows.

How effectively do forces collaborate with other organisations such as local authorities, emergency services and other public services?

Collaboration with other organisations and local authorities

Forces usually work well with other organisations when responding to protests. The forces we inspected told us they had healthy relationships with other organisations and, specifically, other emergency services and local authorities. There was clear involvement of other organisations in all aspects of protest policing – from the planning stages through to implementation and post-event reviews. Some forces also use their own staff such as the [National Black Police Association](#) to provide advice.

Many forces, including Avon and Somerset, Merseyside, Lancashire and the Metropolitan Police, have effective information-sharing protocols in place with other organisations. We were pleased to see that some forces, including South Wales and Avon and Somerset, had a memorandum of understanding with their local authorities to give them clarity on their respective roles and responsibilities.

We found that it was normal practice for local authorities, fire and rescue services, and ambulance services to take an active part in protest planning meetings, known as 'gold groups'. These meetings are generally chaired by the police gold commander. The relevant bodies are expected to lead on areas appropriate to their function.

This co-operation continues as protests are taking place. We found that it was routine for the police to command protests from a command centre, with the ambulance and fire service and other organisations including the local authority present. This encourages timely and effective communication, intelligence sharing, and decision making. For example, the ambulance service gets access to live-time information about road closures or disruption, so that it can decide how to respond to unrelated incidents in the same area.

[National inter-agency liaison officers](#) (NIOs) are senior managers from the fire service, police or ambulance service, with specific training to command and liaise

between organisations involved at an incident. Most forces we inspected provided evidence that they worked well with their respective NIOs in protest operations.

Many forces reported using [safety advisory groups](#) to help plan the approach to protests. These groups can provide a good link with other organisations responsible for public event planning and keeping the public safe.

Some forces reported that multi-agency training took place throughout their areas, which helped participants to understand roles and responsibilities in policing protests. This involved the police, local authorities and other emergency services, and was aimed at improving the way they work together. This training tended to follow the [Joint Emergency Services Interoperability Principles](#) (JESIP).

Traffic management

We found a lot of evidence to show that local authorities throughout all forces had taken appropriate responsibility to deal with local traffic management-related matters. These included road closures, diversions and the provision of barriers to keep people safe. We did find one example, in the City of Westminster, where this has not worked so well, and we comment on this later.

Fire and rescue services and ambulance services

Forces reported generally positive relationships with fire and rescue services and ambulance services. Multi-agency working was commonplace throughout the forces we inspected. The support both these services provide helped forces to effectively police protests.

Sometimes, police forces asked for more than fire and rescue services can offer. There is currently much discussion about the role of fire and rescue services in England. In our 2020 report, [State of Fire and Rescue: The Annual Assessment of Fire and Rescue Services in England 2019](#), we recommended that the Home Office should review and determine the roles of fire and rescue services and those who work for them. Thorough local planning to agree roles will ensure that police forces know what support can – and can't – be provided by others should an incident occur.

Within the Metropolitan Police, PRTs work closely with the London Ambulance Service and the London Fire Brigade. We were told that some lock-on removals can take 4–5 hours, in which time hypothermia can set in and protesters can experience problems with their blood pressure and circulation. The police PRTs appreciated the presence and advice of the ambulance and fire service personnel.

Working with other national organisations

Forces usually work well with other national organisations when responding to protests. Good examples include the badger cull Operation Cobb and the police's work with HS2.

Independent advisory groups

All forces we inspected collaborated with [independent advisory groups](#) (IAGs) to some extent when planning their approaches to protests.

In South Yorkshire, the police also involve a representative from the Advisory Panel on Policing Protests. The police and crime commissioner established this panel to offer independent oversight. The police value its feedback and act on it. These observations are accessible to the public through the police and crime commissioner's website.

In Chapter 5, we comment on the way forces use IAGs to help them understand how well they have balanced the rights of the protesters, local communities and others when policing protests.

Problems with collaboration – road closures in the City of Westminster

Despite the extensive evidence of healthy working relationships between the police and local authorities, we found some examples where there were differences of opinion between the organisations.

Most differences are resolved quickly, but some take longer. One such example relates to road closures during protests. Around the country, the police and the local authorities can use various powers to implement road closures. Some of these are relatively modern and others are from the Victorian era. The police's powers may be more suitable in some circumstances, and the local authority's in others. The difference of opinion centres on which power from which organisation is the most appropriate to use for road closures during a protest. The various pieces of legislation are not clear on this.

To illustrate this point, we refer to a case that could have significant implications. It relates to road closures in the City of Westminster.

A Metropolitan Police interviewee told us that 70 percent of the protests that take place in its area happen within the City of Westminster. The Metropolitan Police and Westminster City Council (WCC) both have limited powers to close roads depending on the circumstances. These powers are written into various pieces of legislation such as:

- section 52 of the Metropolitan Police Act 1839 – power to make regulations for two purposes: (i) determining the route of “public processions, public rejoicings, or illuminations”; (ii) preventing obstruction of the relevant streets and thoroughfares. This indicates that specific roads can be subject to temporary closure and parking restrictions to allow a procession to take place along a defined route. This power does not appear to apply to static demonstrations or assemblies, which fall outside the statutory language used.
- section 52 of the Metropolitan Police Act 1839 – power to give directions to officers for two purposes: (i) keeping order and preventing obstruction in the neighbourhood of various public buildings, Parliament, palaces and “other places of public resort”; (ii) keeping order and preventing obstruction when any street may be “thronged” or may be liable to be obstructed. This is a wider power that is not limited to processions, public rejoicings or illuminations. It could in principle be used to give a direction aimed at keeping order or preventing obstruction in the case of a static demonstration or assembly;

- section 130 of the Highways Act 1980 – duty on a highway authority to protect the rights of the public to use the highway and duty on a council, which is a highway authority, to prevent obstruction;
- section 287 of the Highways Act 1980 – power for a “competent authority” (highway or local authority) to put barriers across a street either in an emergency or where a street is likely to be obstructed by reason of a special attraction, in order to secure public order or public safety, or prevent congestion of traffic;
- section 6 of the Road Traffic Regulation Act 1984 – power for traffic authority in Greater London to make traffic regulation orders (including vehicle and pedestrian traffic) for a variety of purposes, including to avoid danger to road users or damage to buildings, and to keep the roads clear; and
- section 14 of the Road Traffic Regulation Act 1984 – allows a traffic authority to make temporary traffic orders, including when there is the likelihood of danger to the public.

We were told about a long-running difference of opinion between WCC and the Metropolitan Police. This appears to have started with a paper that the force produced in 2009: this questioned which organisation should have primary responsibility for closing roads during public protests, and which should enforce the road closures.

In 2015, in an effort to resolve the difference, both parties sought independent legal advice. At our request, they allowed us to review their advice. Because it is legally privileged, we make no comment on its content other than to say that the legal teams differed in their views on the use of parts of the legislation.

Some Metropolitan Police interviewees said that they had to use the power under the Metropolitan Police Act 1839 to close roads. They suggested that, according to their legal advice, the regularity with which they had to use this power made it unsuitable for this purpose. We established that, during the period 2015 to 2018, the force used this power between 11 and 16 times each year. In 2019, it used the power 84 times.

We consulted WCC, which explained that it was concerned about the increase in the frequency, scale and nature of protests within the WCC area. In addition, protest groups were often supported by legal advisers who were challenging the legitimacy of the council’s authority to close the roads. The council’s view is that it wants to support the police but may not always have the legal powers to do so in relation to road closures and protests.

We also consulted MOPAC, which was already aware of the matter. In 2015, the Mayor’s office had convened a working group with the Metropolitan Police and WCC in an attempt to resolve the differences. However, we learned that the working group was unable to resolve them to everyone’s satisfaction.

During our discussions, interviewees made various suggestions about how to resolve the matters. These included a review of the relevant legislation and the establishment of new multi-agency arrangements to manage road closures. In relation to the first suggestion, part of the difference in legal opinion centres on the use of legislation created in Victorian times. The Metropolitan Police Act 1839 contains terms such as “carts”, “carriages”, “horses”, “public rejoicings”, “illuminations” and “thronged”. Police

forces outside London can use the Town Police Clauses Act 1847, which contains the same terms.

There are many examples of legislation in use today that have stood the test of time. Therefore, 'old' legislation isn't necessarily 'bad' legislation, and it can be as suitable for modern-day use as it was on the day it was enacted. But when the legislation becomes the subject of disagreement, that tends to suggest its suitability may be in question. Questions may also arise as to whether 'old' legislation conferring powers on the police meets the standards required by human rights law in terms of whether there are sufficient safeguards on the exercise of the powers. And there is the question of whether the language used is sufficiently accessible for people to understand it and also foreseeable in its effects.

Our view

Managers from both organisations have clearly made sincere attempts to resolve the difference of legal opinion to the mutual satisfaction of both parties. Those attempts don't appear to have been wholly successful. We are aware of continuing high-level discussions between the two organisations aiming to work together to prepare a report for the Department for Transport that sets out the restrictions of current legislation in London and seeks a change.

Interviewees emphasised that, despite a difference of opinion underpinned by very different legal advice, in every other respect, the Metropolitan Police and WCC work well together. We were provided with many examples to show the very positive working relationship between them. Importantly, we were not told of any examples where roads that should have been closed were left open, so we have no other concerns.

However, all the time this difference of legal opinion remains unresolved, it will demand managers' attention from time to time to sort out logistics and finance. And there is the risk that, if neither party acts, a road closure may not be implemented when it should be. That could bring adverse consequences for public safety.

Therefore, we concluded that further action to resolve this problem, both within the Westminster area and any other areas around the country facing similar issues, would be in the public interest.

Recommendation

By 30 June 2022, on behalf of HM Government, the Home Office should lead a joint review of police and local authority powers and practices concerning road closures during protests. This should be done with the support of, and in consultation with, the Department for Transport, the Ministry of Housing, Communities & Local Government, Westminster City Council, the Metropolitan Police, Transport for London and other interested parties. The review should include a comparison of the arrangements in London with those in other parts of England and Wales. Its findings should lead to decisions on whether to:

- retain, modify or repeal section 52 of the Metropolitan Police Act 1839 and section 21 of the Town Police Clauses Act 1847; and
- establish new multi-agency arrangements for implementing road closures in London during protests.

Despite collaboration, it doesn't always go as expected – the Colston statue

In early June 2020, Avon and Somerset Police became aware of posters around the city of Bristol advertising Black Lives Matter protests over the weekend of 6–7 June. The police were informed that the intended route of the procession would take the protesters past the statue of Edward Colston, a seventeenth-century Atlantic slave trader and philanthropist who generated a great deal of money for the city. According to [Historic England](#), the statue is grade II listed.

The statue and other reminders of Edward Colston divide opinion in Bristol and beyond. Some see them as a historical record of past events and a celebration of Colston's charity work, while for others they are an offensive celebration of the slave trade. There had been a long-running and increasingly heated debate about this, and the statue had been the subject of graffiti attacks. In 2017, the process began to rename the former Colston Hall building in Bristol. Members of Parliament and others called to have the statue of Edward Colston removed, and an online petition attracted thousands of signatures.

The plaque attached to the statue's plinth says it was "Erected by the citizens of Bristol as a memorial of one of the most virtuous and wise sons of their city". In 2018, the city council proposed to put a second plaque on the statue recognising and acknowledging the role that Colston had played in the slave trade.

Email warning

In the week leading up to the protest, community tension in Bristol had increased. This followed the arrest of a black man in the St. Pauls area. Mobile phone footage had been circulated on social media showing the man being restrained on the ground for a short period, and comparisons were made with the arrest of George Floyd in the US.

The police had no specific intelligence to suggest that the statue of Edward Colston would be targeted by the Black Lives Matter protesters. However, due to the nature of the planned protest, the proposed route of the procession, the previous criminal

damage and the obvious strong feelings about the statue, the local policing area commander was concerned that it might be targeted.

On 5 June 2020, he sent an email to senior leaders in Bristol City Council to alert them to the potential threat to the statue. He said:

One significant location that will be passed is the statue of Edward Colston and you may want to give some consideration to measures that can be taken to protect it from being targeted.

He received a courtesy email in reply, but nothing more from the council.

The council's response

We contacted Bristol City Council to ask why it had decided not to protect the statue before the procession took place. Representatives told us that the decision had been taken at an online strategic co-ordinating group meeting the day before the procession. This involved two members from the police, two from the council, one from the local ambulance service, and one from the local fire and rescue service.

The minutes of the meeting lack detail about the decision regarding the Colston statue. They record that there was no specific intelligence to show that it would be directly targeted. We made further enquiries and were told that the attendees at the meeting recognised that there was a risk of minor damage to the statue such as graffiti but decided that, in the absence of any specific intelligence to suggest anything more serious, it wasn't necessary to protect it. In fact, they felt that covering it up might provoke the protesters and even incite an unplanned attack.

The gold commander said that the attendees at the meeting were aware that the protesters might deface the statue with graffiti. However, preventing low-level graffiti was a lower priority than protecting life, minimising risk to public safety and reducing community tension, all of which may have resulted if serious disorder had been provoked.

He made it clear that the procession would not have been allowed to take this route if there had been specific intelligence to suggest that protesters would topple the statue. The memorandum of understanding signed by the gold commander and a protest organiser says that the police reserved the right to use their powers to impose and enforce conditions deemed proportionate and necessary, including under section 12 and section 14 of the Public Order Act 1986.

Avon and Somerset Police's incident log shows that early on 7 June, the day of the procession, graffiti had again been found on the Colston statue. Bristol City Council removed the graffiti before the protest.

Later that day, protesters pulled the statue down and rolled it into Bristol harbour. At the multi-agency debrief held after the protest, attendees noted that this was not a spontaneous act: protesters had brought ropes to the location and journalists were present to witness it.

Our view

The police received a lot of criticism on social media and in the press following the damage to the statue. Having examined the facts, we don't believe this criticism was fully justified.

It is clear that, even in the absence of any intelligence to indicate that the Colston statue was going to be attacked, the multi-agency strategic group did consider the possibility of graffiti. Police attendees at the meeting told us that they weighed up the risks of what they thought may be minor damage to the statue against the risk of provoking major disorder by covering it up.

Without intelligence to suggest the protesters' intentions, it would have been difficult to predict that the statue would be pulled down. In the UK, this is a very rare occurrence. However, when we considered the history behind the statue, the nature of the protest and the rising community tension in Bristol in the week leading up to the event, we would have expected the police to have anticipated that the statue might be damaged in something other than a minor way.

In the absence of reasonable belief that allowing the procession to pass the Colston statue may have resulted in serious damage to it, the police could not use their powers under section 12 of the Public Order Act 1986 to put conditions on the route of the procession. Nevertheless, they could have made stronger representations to Bristol City Council to protect the statue by, for example, boarding it up.

Once the police saw what was happening to the statue, it was too late to take any action to prevent the damage without inflaming an already difficult situation and potentially causing serious disorder and injury. Any criticism of the police's actions from that point on is, we believe, misjudged.

In the media afterwards, the chief constable of Avon and Somerset Constabulary offered a measured and sensible explanation for the lack of police intervention once the damage had started. He said:

We had deployed officers to respond to take appropriate action but the commanders on the ground made the decision that to intervene to arrest suspects would likely lead to injuries to suspects, injuries to officers. People who were not involved in damaging property being drawn into a very violent confrontation with the police that could have had serious ramifications for the city of Bristol and beyond.

Can you imagine scenes of police in Bristol fighting with protesters who were damaging the image, the statue, of a man, who is reputed to have gathered much of his fortune through the slave trade?

I think there would have been very serious implications.

Ten suspects were subsequently identified. Of those, six accepted conditional cautions and four were charged. The four charged suspects are due to face trial at Bristol Crown Court.

At the time of writing this report, the Government has stated its intention to introduce additional legislation to protect statues.

5. Police decisions and their effect on the public

This chapter assesses how well the police use their powers to police protests, enforce the law and minimise disruption. It also considers how well the police balance the rights of protesters with the rights of other groups in society. The police's success in this respect is likely to be of most concern to the public.

How effectively do the police's decision-making processes balance the competing rights and interests of protesters with those of other people?

Policing protests involves striking a delicate balance between the rights of the protesters and the rights of other groups, such as local residents, businesses and those who hold opposing views. Often the rights of these different groups can come into conflict, and commanders will need to judge where that balance lies. This needs to be a continuous process, in which commanders keep the situation under review and judge how to strike the balance accordingly, as circumstances change.

It is important to understand that the legislative framework governing protest is different from the one for policing other large-scale public events. Comparing how forces respond to protests with their approach to other public gatherings – such as music festivals or football games – is inappropriate and unfair to forces.

In making their decisions, POPS commanders need to consider not only human rights legislation but also a patchwork of statutes and case law that has established precedents on matters such as how long protests can reasonably go on for, and the level of disruption that protests can reasonably cause.

Examining the gold strategies and silver plans submitted as part of our document review, we found that commanders generally showed a good grasp of human rights legislation. However, we did not see evidence that they consistently consider the wider legal picture. Because of this and other reasons, which we outline below, we concluded that the police do not strike the right balance on every occasion.

Human rights legislation

The police have powers in domestic law to place conditions on protests (processions and assemblies) and, in extreme cases, apply to prohibit (ban) processions. We explore these in considerable detail in Chapter 6.

International and domestic human rights legislation imposes a duty on the state to make sure that demonstrations are conducted as peacefully as possible, protecting

the safety of all citizens. The police must, for example, consider how people can access first aid services and try to maintain channels of communication with protest organisers. These positive obligations are often described as the police's obligation to 'facilitate peaceful protest'.

But, under Articles 10 and 11 of the European Convention on Human Rights (ECHR), which take effect in UK law through the Human Rights Act 1998, the police can also lawfully restrict freedom of expression and freedom of assembly. Under Article 11(2), the legal test is whether any interferences by the police are "prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". Article 10(2) makes similar provision.

One of the problems for the police in deciding whether or how they may lawfully restrict protest activities is that the relevant "rights and freedoms of others" are not expressly set out in the ECHR. The case law suggests that people have the right to go about their everyday lives engaging in lawful activity. This means that police commanders need to consider the degree of disruption being caused by a protest, and to what extent it limits the rights of others to engage uninhibited in lawful activity.

The overarching question in every case is how to strike a fair balance between the conflicting rights and interests of the protesters on the one hand and the general community on the other. This is at the centre of defining the reach and content of the Articles 10 and 11 rights.

European case law

Cases decided by the European Court of Human Rights influence how legislation should be interpreted and applied by the police forces throughout Europe. These cases often come from countries outside the UK, which have different domestic laws. However, the judgments still have a bearing on how the law and police powers should be interpreted and applied in this country.

For example, both the domestic courts and the European Court have repeatedly emphasised that a degree of temporary interference with the rights of others is acceptable in order to uphold freedoms of expression and assembly. The Court has held that any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption to traffic. The Court has also stated that authorities must show a certain degree of tolerance towards peaceful gatherings ([Kuznetsov v Russia – Application no. 10877/04](#)).

The Court has also ruled that protesters should be allowed to express their views for a sufficient amount of time ([Frumkin v Russia – Application no. 74568/12](#)). In some cases, the Court has criticised the police for acting too promptly – for example, in dispersing a demonstration ([Oya Ataman v Turkey – Application no. 74532/01](#)) and ([Akgöl and Göl v Turkey – Application nos. 28495/06 and 28516/06](#)).

In others, the Court accepted that the authorities had shown the required degree of tolerance ([Budaházy v Hungary – Application no. 41479/10](#)).

The principle that police should show a degree of tolerance, even when there is some element of unlawfulness in protest activities, is also a strong theme in the European

case law ([Chernega v Ukraine – Application no. 74768/10](#)). Although police commanders will never have as much time as the Court does to deliberate over their decisions, these cases are useful points of reference.

The Court has also ruled that the police have a '[wider margin of appreciation](#)' when protesters have deliberately set out to cause disruption, and that it is not merely an inevitable consequence of the protesters exercising their right to peaceful assembly. This means that the police can take protesters' intentions into account when deciding whether it is proportionate to restrict the disruption caused by a protest ([Kudrevičius and Others v Lithuania – Application no. 37553/05](#)).

The importance of impartiality

[Police officers in England and Wales take an oath](#) to serve with “fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people”. This commitment should underpin all the decisions forces make about policing protests.

Some protests attract widespread public support, while others do not. But the right to protest does not depend on the level of public support. In fact, freedom of expression and assembly are enshrined in law to allow minority views to be expressed safely in a democratic society ([Alexseyev v Russia – Application nos. 4916/07,25924/08 and 14599/09](#)).

This is the case even if the content is distasteful to some, or the cause itself attracts condemnation ([Gerger v Turkey – Application no.24919/94](#)). It remains the case even if the protest is directed towards the state itself, or – as seen in recent protests – at the police ([Primov and others v Russia – Application no. 17391/06](#)).

Forces are sometimes caught between two opposing viewpoints. This widely held view was summed up by an officer in one force who told us:

Black Lives Matter was a challenge for the force. Similar challenges were faced last year when the Muslim community protested outside schools about what they saw as inappropriate sexual health lessons. The LGBT community opposed this. There were no easy answers. If there was an easy position there wouldn't be a protest. All we can do is uphold the values and police impartially. This is who we are and what we do and why. We are not chosen for our views but to protect others. There is no perfect solution, [if] they understand what we are doing and why – that's the best we can hope for.

Taking the knee

During the Black Lives Matter protests in the summer of 2020, protesters sometimes put pressure on officers to 'take the knee'. The NPCC issued guidance that forces should take this decision based on circumstances and security issues. Most forces followed this guidance, but others issued instructions that taking the knee at protests would not be appropriate.

In some of those forces that adopted the national guidance, we heard of officers making different decisions even within the same protest. We heard of one case in which some officers chose to take the knee at a protest while another chose not to.

This officer was then subjected to sustained abuse by the protesters until he followed suit.

Forces have adopted different stances towards this issue. Some of our interviewees suggested that it is no more than officers demonstrating support for equality and, on this basis, they said that officers who choose to take the knee should not be discouraged. Of course, the police like all public sector organisations, have a duty to promote equality under [section 149 of the Equality Act 2010](#). We understand why police leaders may wish to demonstrate to their officers and staff from minority groups, and to the wider public, that they support principles of equality. However, they should be cautious about how they do this; the act of taking the knee has become synonymous with the Black Lives Matter movement, and this is particularly so when it occurs at a Black Lives Matter protest.

On balance, we believe that police leaders should think very carefully before they take any actions which may be interpreted as showing support for, or aversion towards, any protest or its stated aims; it will rarely be appropriate. All of that said, it would be unfair to criticise officers who take actions on the spur of the moment with the aim of, for instance, diffusing tension at a protest.

Police demonstrations of support are likely to be uncontroversial at other events such as Pride parades, Holocaust Memorial Day and Stephen Lawrence Day. But such examples should be contrasted with incidents in 2019 when police officers were filmed dancing with Extinction Rebellion protesters and using skateboards on a cordoned-off bridge.

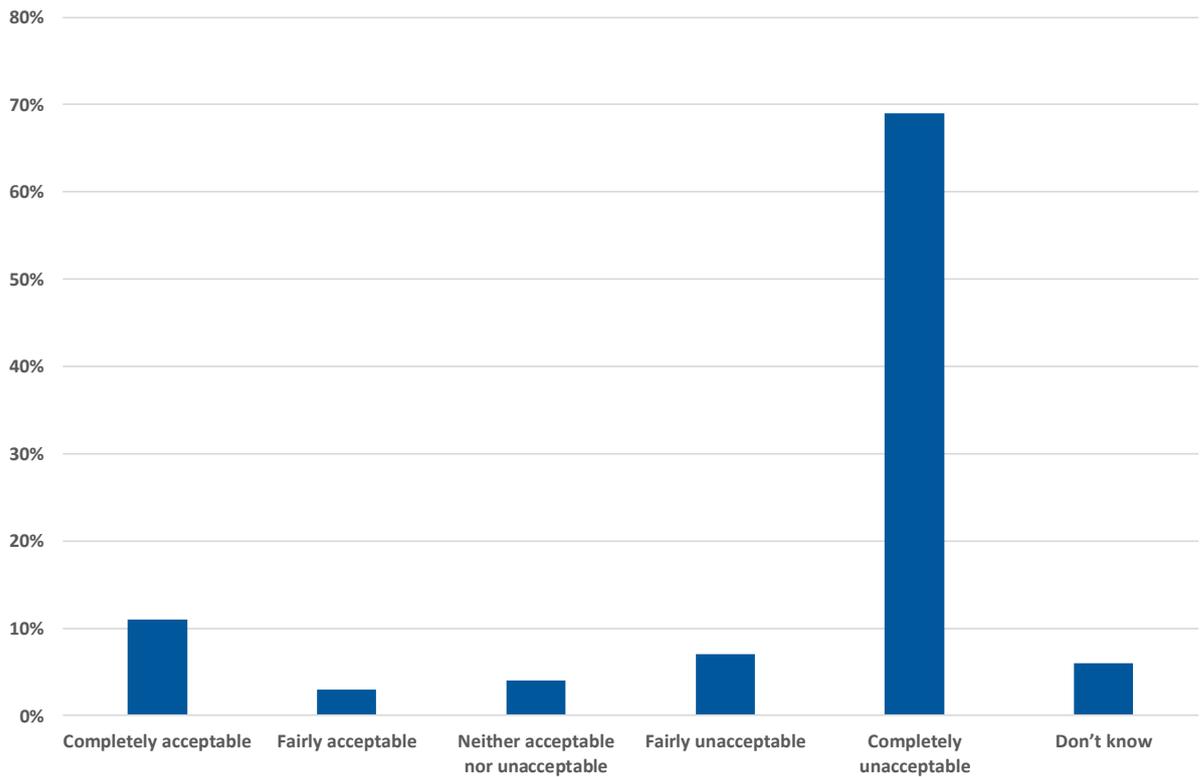
Our public survey

Although public opinion should not decide how individual protests are policed, particularly when the rights of an (unpopular) minority are engaged, it is important that the public broadly support the police's approach. The British policing model is based on consent, and therefore we needed to assess to what extent the public think the police are doing a good job in this area.

YouGov conducted a survey on our behalf to gauge the public's perception of the policing of protests. Between 27 and 29 November 2020, it surveyed 2,033 adults in England and Wales (on a sample of this size, random sampling error is up to 2 percent). For more information on YouGov survey methodology, see [YouGov's website](#).

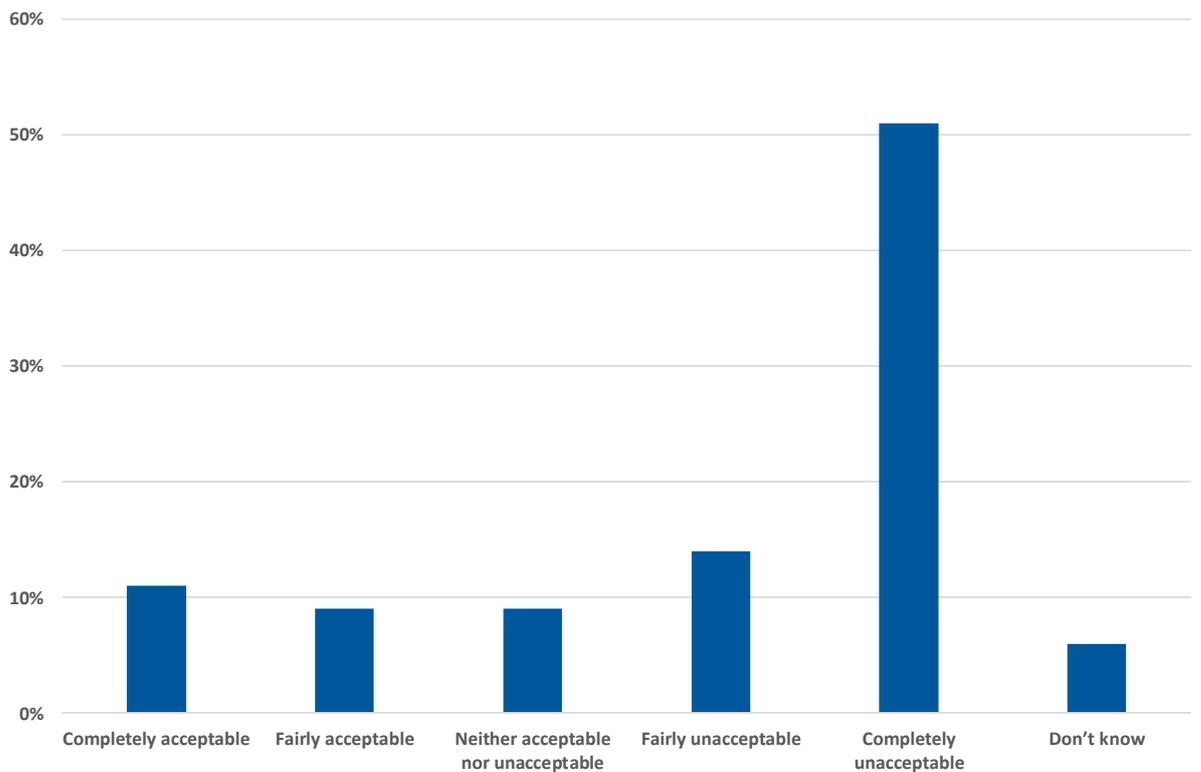
The survey asked respondents: 'Thinking about protests in the UK, to what extent, if at all, do you think each of the following are acceptable or unacceptable?' The public survey results in Figures 1, 2 and 3 below showed that the majority of respondents felt it was unacceptable for protests to involve violence or serious disruption to residents and business.

Figure 1: Protesters using violence



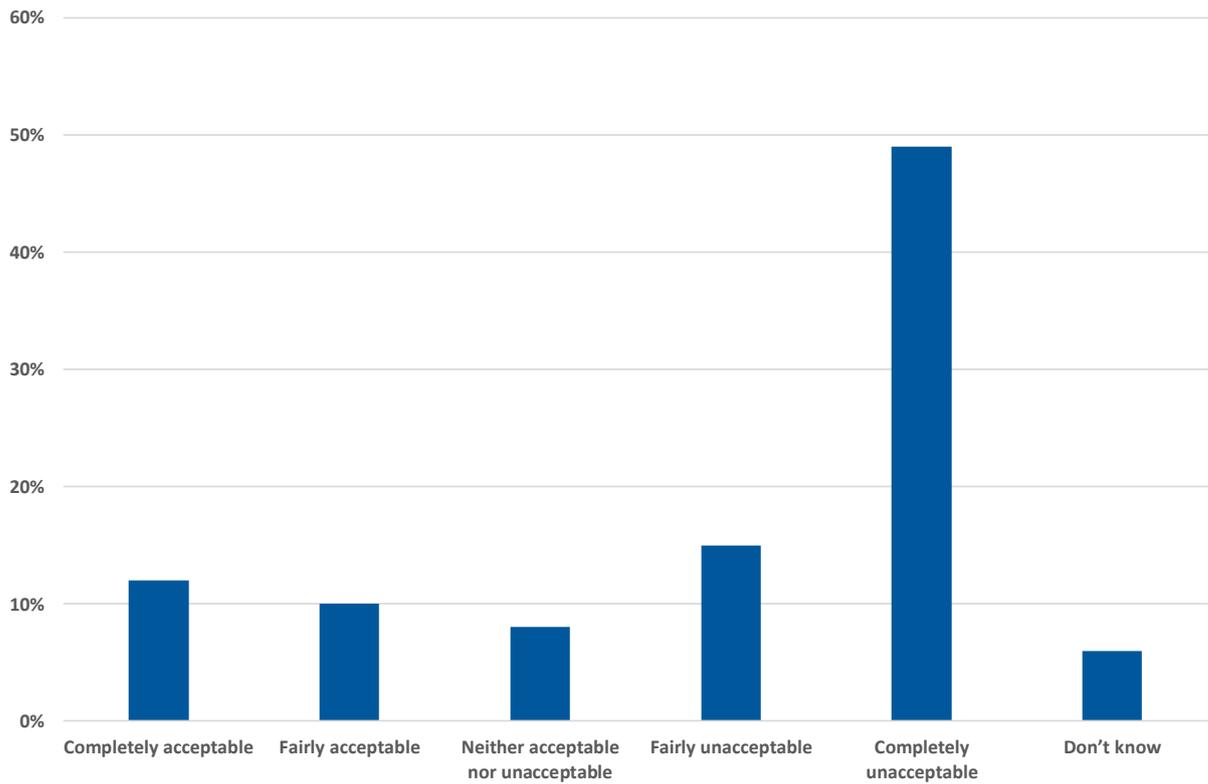
Source: HMICFRS public survey, December 2020

Figure 2: Protesters causing serious disruption to residents



Source: HMICFRS public survey, December 2020

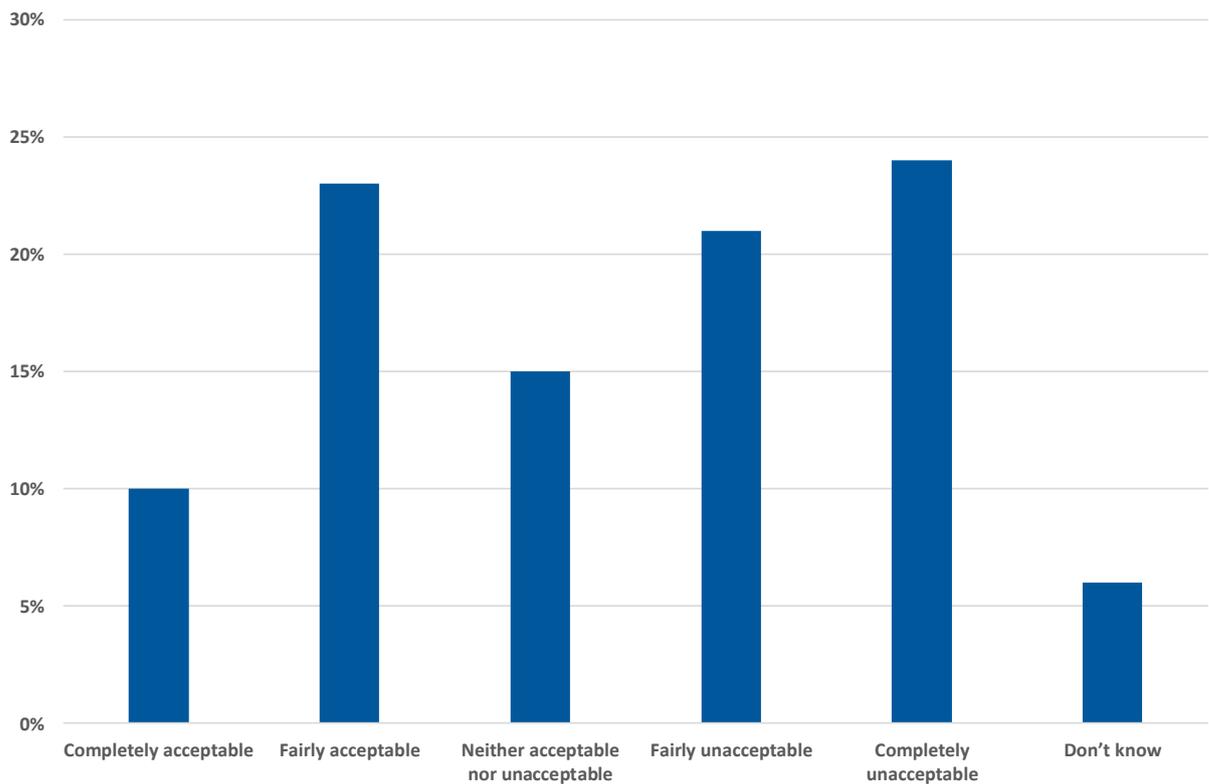
Figure 3: Protesters causing serious disruption to business



Source: HMICFRS public survey, December 2020

However, as can be seen in Figure 4 below, these views were more divided when protest caused only minor inconvenience.

Figure 4: Protesters causing a minor inconvenience to people locally



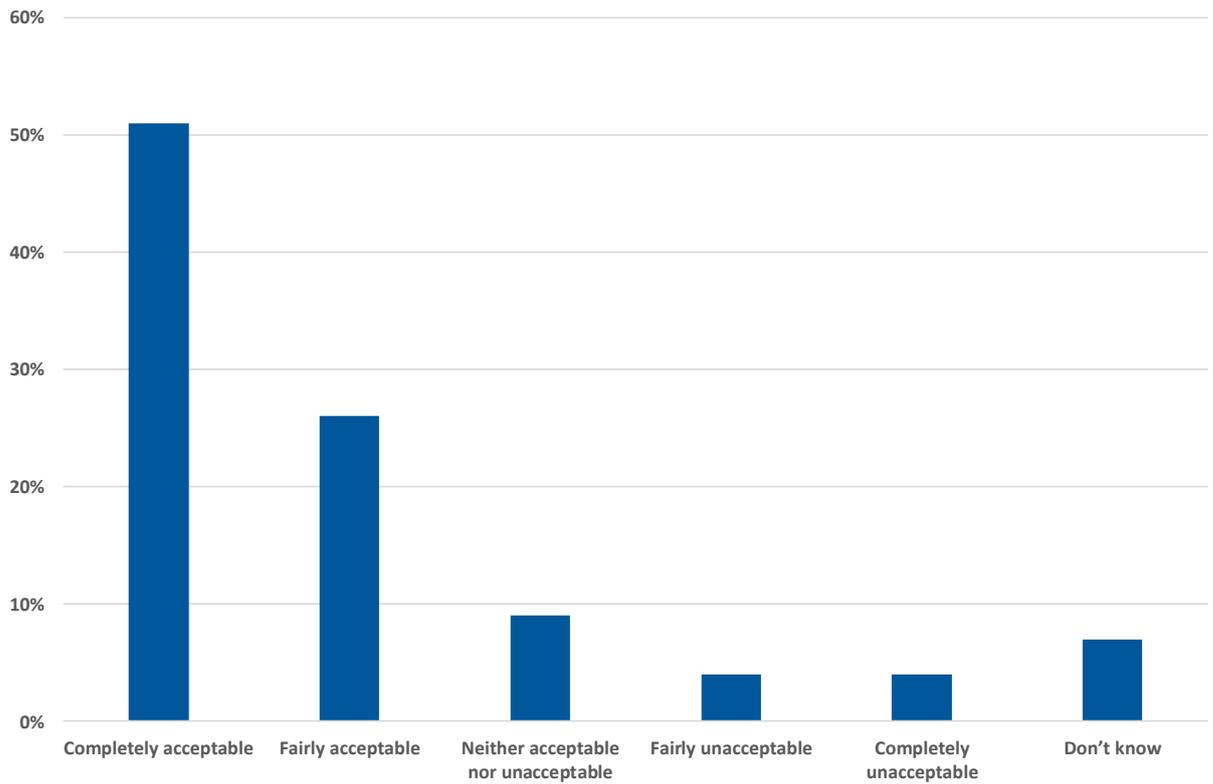
Source: HMICFRS public survey, December 2020

Criticisms of the police

In policing protest, forces are often criticised by some for dealing too harshly with protesters and by others for being too soft. This illustrates how difficult it is for commanders to strike the right balance.

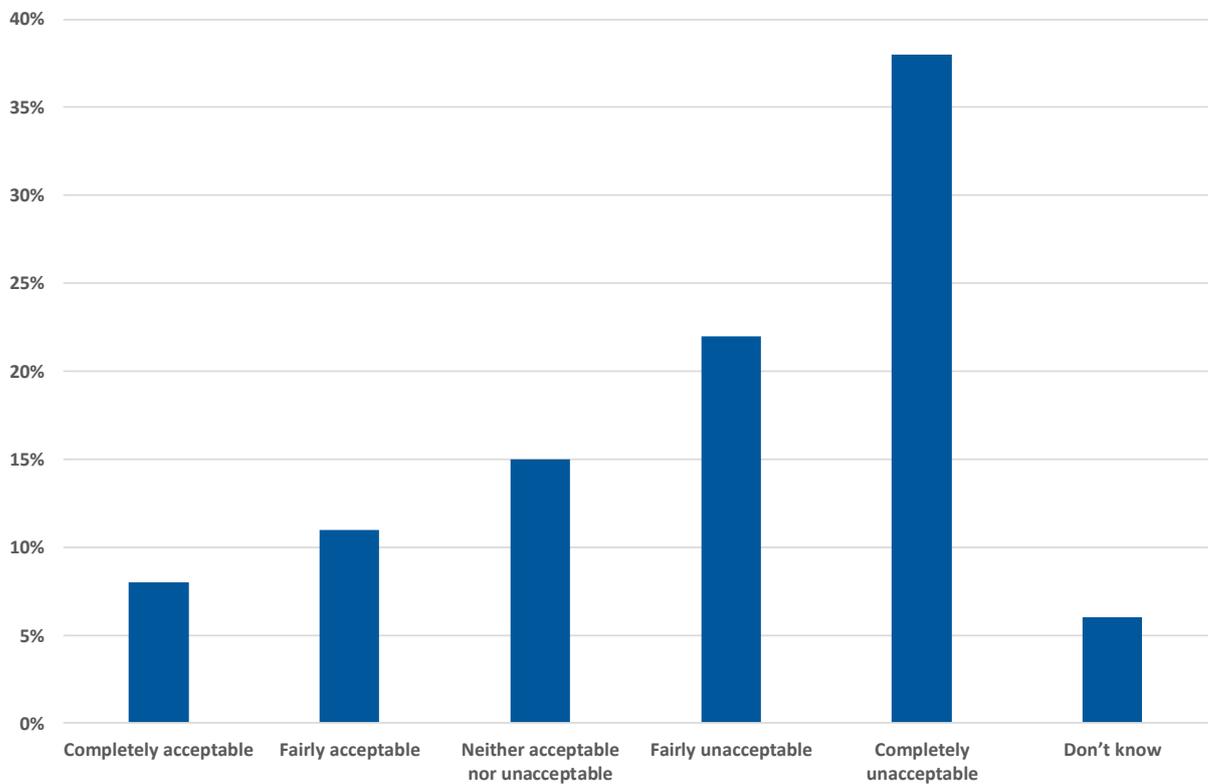
Some protesters take the view that any action taken by the police to interfere with any peaceful protest is by definition a violation of their Articles 10 and 11 rights (notwithstanding the provisions of Articles 10(2) and 11(2) referred to above). This was also reflected in our public survey, which showed lower levels of support for police use of force when protesters were not violent – see Figures 5 and 6 below.

Figure 5: The police using force to stop protests that become violent



Source: HMICFRS public survey, December 2020

Figure 6: The police using force to deal with non-violent protesters



Source: HMICFRS public survey, December 2020

Reflecting this view about police action interfering with rights, one protester told us:

if protests turn into disorder, then the legislation is clear, and the police are entitled to enforce but our protests do not turn to disorder or intimidation, so the powers are not used appropriately.

We disagree. The views of this protester do not acknowledge that in certain circumstances the police can legitimately restrict even peaceful protest when it causes disruption to ordinary life, in order to protect the rights and freedoms of others and strike a fair balance between the conflicting rights and interests at play.

We extracted and analysed data from forces' public complaint recording systems. We found that some complainants expressed similar views:

The complainant alleges that the section 14 order is illegal and that they should be allowed to protest in Trafalgar Square (complaint recorded by the Metropolitan Police).

Doesn't believe that the Extinction Rebellion protesters that were protesting peacefully in Trafalgar Square should have been arrested (complaint recorded by the Metropolitan Police).

It is not only the protesters who take this view but some politicians too. For example, in Parliament, Lloyd Russell-Moyle MP expressed the following opinion about climate protesters:

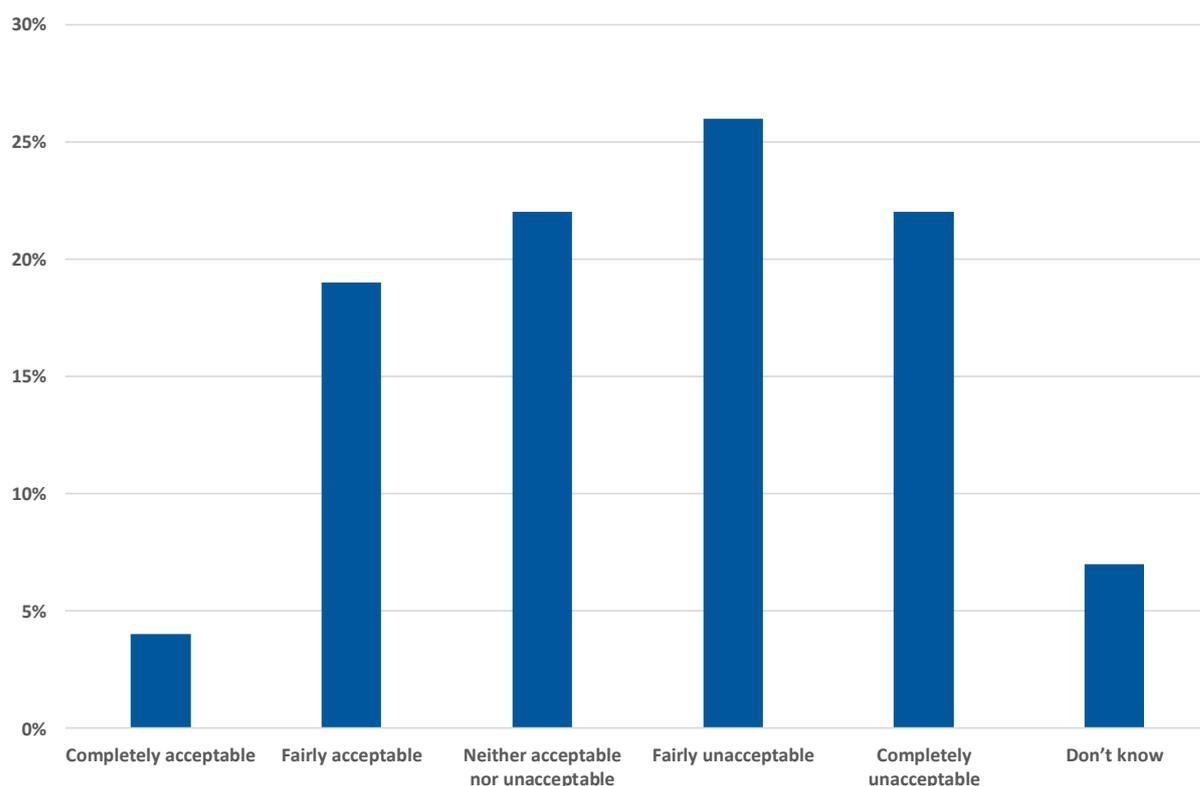
A thousand people have been arrested on the street in order to raise this issue in the House and in the country. Does the Minister agree that it is not in the public interest to prosecute those people? They should be getting awards, not prosecutions.

Commentators suggest that the police have taken 'too soft' a line with protesters, often when the protest involves criminal offences or considerable disruption. For instance, Anthony Browne MP made the following comment in Parliament:

There is widespread public anger about the events in Cambridge and deep concern among many of my fellow MPs. We have reached a situation in the UK where the police sometimes no longer believe that they have a right to stop blatant criminality during political protests. The public are rightly angry that we have got ourselves into a position where the police believe that they cannot uphold criminal law. Why has this come about and what can be done about it? I believe the police fundamentally want to uphold the law, but are beset by uncertainty.

Mr Browne's comments appear to reflect the balance of public opinion, based on our survey results.

Figure 7: The police ignoring protesters who commit minor offences



Source: HMICFRS public survey, December 2020

For every person who thought it acceptable for the police to ignore protesters committing minor offences (23 percent), twice as many (48 percent) thought it was unacceptable.

Mr Browne’s comments would also strike a chord with some of our police interviewees. Many told us that on occasions the balance had tipped in favour of protesters. In seven of the forces we inspected, some officers told us that they believed that this imbalance was to the detriment of the community as a whole. In four forces, interviewees suggested that protests had been allowed to have an adverse financial impact on businesses.

This is also reflected in some of the complaint cases we examined. For some members of the public, it is difficult to understand why the police might not intervene in situations where protesters appear to be breaking the law. However, as discussed in the above section on human rights case law, the police are required to show a degree of tolerance towards protest, even when there is an element of unlawfulness.

These are examples of some of the complaints against the police.

Complainant alleges officer failed to properly manage the policing of the Extinction Rebellion protest; “protesters given special treatment above the people of Bristol” and allowed officers to “facilitate, aid and abet the blocking of a public highway” (complaint recorded by Avon & Somerset Police).

Complainant is unhappy that the police have allowed the roads to be blocked due to a climate change protest (complaint recorded by West Yorkshire Police).

Complainant is unhappy that officers took no steps to remove protesters from the roads at the Extinction Rebellion protests, instead standing and watching (complaint recorded by the Metropolitan Police).

Complainant wants Lambeth Bridge re-opened and tear gas to be used on the protesters so that officers can clear the bridges and allow people to go about their everyday life (complaint recorded by the Metropolitan Police).

To better understand the public's perception of how well forces respond to protest, we included a question about this in our public survey and – perhaps unsurprisingly – found opinion to be divided.

At times, forces feel they cannot win. For example, as we heard in one force:

Police commanders are between a rock and a hard place trying to ensure peaceful protest and ECHR are considered but taking all the criticism.

Protests in London

London has seen a rapid increase in protest activity during the past few years. The scale of that activity puts strain on the relationship between the protesters and the police. This is largely because of the impact of protest on the functioning of the capital city and it creates a major gap between the objectives of the protesters versus those of the police. In summary, the police cannot be as accommodating as some protesters think they ought to be.

We found mixed evidence about how well the Metropolitan Police engages with protesters. In contrast with the adverse comments from Extinction Rebellion we reported earlier, we heard examples of a positive relationship with some protesters. For example, the force engaged with them and distributed advice leaflets at events. We also heard of good relationships between PRTs and regular protesters, some of whom the same officers have 'unlocked' on many occasions.

However, some protesters felt that Metropolitan Police officers too readily restrict their rights of expression and assembly.

We examined the complaints data. Forces varied in their method of recording whether individual complaints were protest-related. This made it difficult for us to collect accurate and reliable data. Also, because forces were not able to provide accurate data for the numbers of protests, it was not possible to compare forces in terms of volume of complaints per protest.

It is also of note that London experiences far more protests than anywhere else in England and Wales. In each force, from the total number of complaints recorded, we established the proportion that appeared to be protest-related to see if the Metropolitan Police had a disproportionately high number. It didn't.

The complaint data indicated that, in the two years up to October 2020, protest-related complaints accounted for less than 0.5 percent of all recorded complaints throughout all forces. Specifically, for the Metropolitan Police, only 100 of the 14,877 cases that

were recorded during this period related to protests. This amounted to just 0.67 percent. Of those 100 complaints, 54 related to individual officers' behaviour. The remaining 46 cases concerned the force's overall approach to protest, of which 10 suggested the force had been too tolerant of protesters' behaviour.

Resources

In some forces, we heard that resources can be a factor in commanders' decision making. This tended to be when multiple arrests were made at a protest and when there were limited places available in custody suites. Illustrating this situation, one silver commander told us:

When responding to large-scale protest, the use of some powers come with a consequence which the police must be capable of delivering. For example, if protesters refuse to comply with a direction under section 12 or 14 of the Public Order Act, they risk being arrested. The capacity of the police to make mass arrests though is very limited. In one local example [when] 16 protesters were arrested at one incident, a commander involved described that this broke our custody.

However, we also found examples of forces making multiple arrests when necessary and managing the additional demand on custody processes satisfactorily.

Political influence

Some protesters told us that they believed police decisions about how to respond to a protest can be unduly influenced by politicians. Some police interviewees expressed a similar view. During this inspection, we observed a national public order command training course and noted that this issue was covered within the training.

A gold commander in one force told us:

With any protester removal, safety is the paramount consideration and political pressure to speed up removals and arrests was unhelpful and could have become unsafe due to the removal being at height, with sophisticated protest lock-on tactics.

In another force, we heard from a silver commander who told us:

politicians were trying to put pressure on the force as they felt it was being 'too soft' on the protesters and should have been taking a harder line.

We heard about one case in which local councillors criticised a force for allowing a contentious protest to go ahead. The force solicitor explained to the councillors that the police could not legally ban the protest just because it was an unpopular cause.

It is entirely legitimate for local and national politicians to take an interest in how the police respond to protest, and to scrutinise police decisions. Police and crime commissioners have an explicit obligation to hold the police to account. And the public are entitled have their voices heard through their other elected representatives too, such as members of Parliament and local councillors.

But forces and politicians alike should be highly vigilant to the risk of any improper political interference, including the risk of actual interference or perceived interference – whether that perception is accurate or not.

Gold commanders' human rights considerations

We found that gold commanders in all ten forces consistently included human rights considerations within their gold strategies. However, we would have expected a greater emphasis on the 'wider margin of appreciation' that forces have when assessing how to deal with peaceful protests that deliberately exceed the degree of disruption that is inevitable in any protest. For protests of this nature, in striking the appropriate balance, forces can more readily restrict the disruptive activities in question.

We assess that forces may be overlooking this aspect of human rights law when determining where to strike a balance between competing rights. This means that opportunities to lawfully restrict protests that cause deliberate disruption at the expense of the rights of others may be being missed.

Different levels of disruption

We found that protests can result in very different levels of disruption to the lives of others, to traffic flow and to businesses. The following case studies illustrate this.

In each case, we do not make a judgment about whether the police acted correctly. This would properly be a decision for a court, after long and careful evaluation of the evidence.

Case study 1

Black Lives Matter planned a series of protests against a backdrop of community tensions between the police and minority communities. This included some allegations of inappropriate use of force by local police officers, and there had recently been spontaneous protests at police buildings. There were repeated local community protests for social justice. The protests took place during the pandemic, when gatherings of more than six people were not permitted. The force told us that their approach to these protests sought to obtain the right balance between enforcement and getting local communities involved. For example, the force took no action when the protesters gathered outside police headquarters on several occasions, on the basis that they caused minimal disruption.

During one of these protests, a group of 400 people processed around a city causing little more than minor traffic disruption. At 4.30pm, a group of approximately 200 protesters, some carrying Congolese flags, walked on the public highway and gained access to a nearby motorway. The force noted that this group were chanting their support for Black Lives Matter and, as such, they were exercising their right to protest. The motorway traffic was held up but, due to the time of day and the COVID-19 restrictions, traffic was lighter than it would normally have been.

Nevertheless, a three-mile stretch of the motorway was closed for approximately an hour. After exiting the motorway, the protesters walked back to the city centre and then dispersed. They caused disruption to the motorway network and the main road

into the city. No incidents of disorder or damage took place and the force made no arrests.

Case study 2

The police expected Extinction Rebellion protesters to gather at 3.00pm for a two-hour bicycle ride through a city. The organisers did not advise the force of their route, expected numbers or proposed actions of protesters. The gold commander's strategic intentions included the need to balance the rights of protesters with the rights of others. The force appointed a bronze commander to oversee engagement with individuals and businesses. The force imposed conditions, but these only applied to a small specific area.

Throughout the day, protesters took part in various activities, including sit-down protests, blocking roads with people and vehicles, gluing themselves to the ground and using 'lock-ons'. The force made approximately 70 arrests during the day, before the bike ride began.

At 4.00pm, the protesters stopped on a busy road bridge and chained bicycles together. There were six concrete structures, to which protesters 'locked-on'. This prevented ambulances from crossing the bridge, delaying access to hospitals. Other simultaneous protests were taking place at various locations so there was general traffic disruption. It took four hours for police to clear the bridge by arresting 230 people and seizing approximately a hundred bicycles.

Some protesters claimed that the arrests were unlawful and that police had not warned them to move from the bridge. Some also claimed that police had obstructed both ends of the bridge, preventing protesters from leaving.

Case study 3

Police had prior notice of a week-long Extinction Rebellion protest. The force believed this would include disruption in and around a city centre and important transport routes, and that it would involve 200–500 protesters. They also believed that some protesters would deliberately set out to be arrested.

The force engaged well with protest organisers prior to and during the protest. They agreed on a memorandum of understanding. The commander's strategic aims included facilitating peaceful protest but also minimising disruption to those living in, working in and visiting the affected area, and to businesses. We saw documents showing that the force's emphasis was on "protester engagement, facilitation of peaceful protest and where possible negotiation balancing the reasonable needs and expectations of the entire community". We found no evidence of the force imposing or considering conditions or completing a [community impact assessment](#).

The protest caused significant disruption when protesters used 'swarming' tactics to block roads for brief periods. This lasted over six hours, blocking access to a motorway during the evening rush hour and resulting in severe disruption to motorists, businesses and local communities. Despite the degree of disruption, the police did not make any arrests.

The following morning, a group of protesters placed a bath in the middle of a motorway and locked themselves to it. The police decided to intervene immediately but, by the time they removed the protesters, a main route into the city had been blocked for almost ten hours, with queues over five miles long. Police made 40 arrests, and 16 people were prosecuted and later convicted of obstructing the highway. The protesters each received a conditional discharge and were ordered to pay a fine.

There was some local support for Extinction Rebellion's intentions, but media coverage criticised the police and the council for a lack of action. However, it praised the force's intervention on the motorway.

Reflecting on these case studies, we formed the view that such deliberately high levels of disruption to everyday life may push the balance of public opinion towards the police taking a less tolerant approach. While public opinion is not determinative of whether the police are acting appropriately or lawfully, it is nevertheless an important factor to consider because the British policing model is based on consent.

Policing style and use of force

Gold commanders consistently provided clear directions on [policing style and tone](#) in their strategies. Using a variety of different descriptive terms, they all advocated a firm but friendly, engaging style.

Although this style was a consistent theme, many strategies also referred to the different tactics available should officers need to interfere with protesters' rights. These included imposing conditions on the protest, arresting for relevant offences, issuing [penalty notices for disorder](#), and containment and dispersal tactics.

Many gold commanders included detailed entries about the use of force in their strategies. In most cases, they stressed the importance of both necessity and proportionality. In a small number of cases, we found reference to the use of police dogs and horses to control crowds if necessary.

Engaging with protesters

The police are obliged to try and open channels of communication with protesters. All forces try to engage with protesters, but with varying degrees of success. In their gold strategies, all forces recognised the benefit of negotiating with protest groups before protests began. This helps to make sure that protests go ahead peacefully and safely.

Before a protest, forces can make an agreement with protesters on issues such as methods and frequency of communication between them during the event. Forces can also advise protesters about the type of action and the degree of disruption that will and will not be tolerated, and how this will be enforced. This type of discussion is often referred to as a 'no surprises' approach. Most force websites have online reporting forms for protesters to give early notification of planned protests.

We found several examples of this approach working very well. For instance, in South Wales, the force negotiated sensitively with anti-abortion protesters to adjust how and where they protested.

When police liaison teams are used effectively, they help to keep channels of communication between police and protesters open. For example, West Midlands Police PLTs used [community mediators](#) to help them communicate more effectively with protesters during Black Lives Matter protests. Similarly, Merseyside Police told us of their work with faith leaders in connection with a protest relating to Palestine.

However, some interviewees told us that some protesters did not trust PLTs (as described in Chapter 2).

How effectively are commanders' decisions communicated and understood?

In this section, we assessed how well the gold, silver and bronze commanders worked together. We also considered how well information about command decisions was communicated to officers on the front line.

In order for the gold, silver and bronze command structure to function effectively, there must be a clear and uninterrupted flow of information between each level. In particular, the gold commander's strategic intentions, policing style and [tactical parameters](#) must be reflected at every level of the operation.

Briefing

Forces generally have good briefing processes. Briefing sessions prior to a protest ensure that officers on the front line have information including intelligence, command decisions and the proposed [policing style](#).

Many forces have introduced remote briefings in response to COVID-19 restrictions. A few interviewees told us that remote briefings with large numbers of officers were less effective than face-to-face briefings. Two forces had addressed this problem by introducing smaller remote or face-to-face briefings with supervisors only.

Communicating aims and decisions

In every force, interviewees told us that commanders' decisions generally reached the front line effectively. Gold strategies varied in their level of detail, but only some set out the limits of acceptable behaviour from the protesters. We assess that setting out these limits in more detail would help officers to better understand what is expected of them – when to take appropriate action and when to exercise greater tolerance.

Our document review also found a largely clear flow of information from gold strategy through to the silver tactical and bronze deployment plans.

We heard some good examples of communication flowing back up the ranks, too. In the West Midlands, for example, officers picked up on a contradiction in a gold strategy, which set a tactical parameter not to use a high degree of force, but also required them to prevent protesters from causing damage to an iconic statue. They queried whether the two aims were compatible.

In some cases, we found a difference in emphasis between gold strategies and silver plans. For example, in one force, the gold strategy for a Black Lives Matter protest referred to "acting without fear or favour", while the silver tactical plan referred

to “standing in solidarity with the public against racism and hate”. Although both approaches are well intentioned, the silver plan lacked impartiality and might have confused officers about their role on the ground.

In a few forces, interviewees told us that specialist officers in evidence-gathering teams and forward intelligence teams did not always receive sufficient direction.

Although this was not a consistent practice, in some forces we heard from individual supervisors who conducted checks with their own teams to ensure that they had understood the command decisions.

Reviewing long-running operations

When forces are engaged in long-running operations, it is good to regularly review and refresh the gold strategy. A good example of this was the Metropolitan Police’s approach to a series of Black Lives Matter protests in London. The force reviewed its gold strategy in light of experience and a changing intelligence picture, and the amended strategic aims then flowed effectively through the silver and bronze plans.

We found other cases in which forces had not reviewed their gold strategies regularly enough. In one force area, a protest lasted more than two years. During this time, the protesters’ tactics changed, causing a significant escalation in levels of disruption to local businesses and the community. We did not find evidence that the strategy had been updated adequately to respond to the escalation.

How effectively do officers understand and use their existing powers to police protests?

We found a wide gap between specialist POPS officers and non-specialists when it comes to understanding and using existing police powers. Non-specialist officers receive limited training in protest policing, and lack confidence as a result. On the other hand, officers who have been trained to perform specialist roles within POPS policing have a better knowledge of protest-related legislation, police powers and the relevant tactics. These specialist officers are also deployed more frequently on protests, so they gain confidence through experience.

In every force we inspected, interviewees told us that some of these non-specialist officers do not have a good enough understanding of protest legislation. One police liaison team officer summed up the problem:

Inexperienced officers need a special input around their powers. They have low confidence in using their powers. If they have low confidence, they are less likely to engage with protesters. Officers need good briefings, so they are confident. A lot of them are borough-based and deal with shoplifters, damage etc. and have little experience of protest.

We heard about cases in which forces had missed opportunities to deal effectively with protest. For example, non-specialist officers responded to a spontaneous protest at an HS2 site, and then stood by and watched the protesters go onto private land and lock themselves on. An interviewee told us that the officers reported the actions of the protesters to their control room: they didn’t appear to know what they could do to stop them.

The knowledge gap

Non-specialist officers sometimes find themselves confronted by protesters who seem to have a better legal knowledge than they do. Protest groups often have their own legal advisers present and challenge officers to explain their use of police powers. We saw video footage of a protester asking an officer to comment on some recent case law arising from COVID-19 legislation and on a United Nations Bill of Rights, before telling him that she was a law lecturer.

Obviously, a non-specialist officer shouldn't be expected to have the same level of knowledge as a specialist academic, but nevertheless these encounters can be demoralising for officers and can erode police authority, especially when footage is circulated on social media.

It was encouraging to hear from some forces that they were improving the legal knowledge of non-specialist officers using better briefings, aide memoires and improved training. We also heard that officers are gaining in confidence as they acquire more experience in protest policing.

Social media: an added pressure

Several interviewees told us that officers are anxious about being filmed in protest situations. They are concerned about attracting complaints and being exposed on social media, particularly if they don't feel confident about their understanding of police powers. For example, one POPS commander described:

a palpable nervousness to use powers and force in protest situations by younger officers drawn from frontline and other non-specialist duties. ... Officers, deployed in pressure situations and under intense real-time scrutiny through mobile devices, fear doing the wrong thing and getting into trouble.

And an operational planning lead told us:

There is also a definite fear of getting complaints if officers put 'hands on'. It is a very difficult time to be a police officer with all the current issues. The quantity and frequency of video recording also affects decision making about whether to take action; nobody wants to be that officer so it's easier to do nothing even when you perhaps should have done something.

We know that video footage has a valuable role in securing evidence in criminal cases, holding the police to account and promoting legitimacy. This includes both the police body-worn cameras and the use of video by protesters and other members of the public. However, there is no doubt that it adds to the pressure on protest policing, and can deter officers from taking decisive action, even when it is necessary. This makes it all the more important that forces provide officers with good-quality training and briefing before sending them into protest situations.

How effectively do the police assess the impact of the protest and the impact of the police response on communities?

Police forces can get feedback on their approach to protest by engaging with the community. If forces are aware of changes in public sentiment, they can take prompt action to manage tension or prevent further escalation. Protests can be highly emotive and the way in which the police respond to them can have an impact on social tensions and influence community cohesion.

In order to balance the rights of protesters with the rights of others, we assessed how well the police engage with different groups, including other public services, transport providers, businesses and communities. We looked at how forces use community impact assessments to understand the impact of protests on the wider community. We also considered how well forces are using debriefing processes to inform future operations.

The policing of protests requires forces to consult and engage, as far as possible, with protesters. But we found that forces often do not do enough to consider how protests affect other sections of society, including those who live or work in the protest area, transport providers and businesses.

We believe that forces need to widen their lens and analyse the bigger picture surrounding the protest. There are several ways in which they can do this, which we will consider in this section.

Those who live or work in the protest area

In deciding how to police a protest, forces need to consider how it might affect those who live in, work in or visit an area in which the protest is taking place. There are several ways in which forces could try to assess this. These include using neighbourhood policing teams, IAGs and ethics committees, and community impact assessments. While we did see some evidence that forces are using these methods, they are not doing so in a sufficiently systematic way.

Neighbourhood policing and key individual networks

All forces throughout England and Wales have local neighbourhood policing teams. Although these teams have slightly different names and responsibilities, they provide a broadly similar service. Neighbourhood teams act as points of contact for local residents, and they are responsible for determining and dealing with local problems.

Neighbourhood teams develop a network of local contacts to help them gauge the views of different groups. These are often known as [key individual networks](#), and might include members of neighbourhood watch schemes, local support groups and faith leaders.

All forces told us that they knew it was important to engage with local residents likely to be affected by protests. For larger protests, a bronze commander is usually responsible for gaining a clear understanding of the level of community tension and briefing the silver commander. All forces confirmed that, whenever possible, this role is given to a commander with knowledge of the local area.

A few forces told us that, for larger events, they also deploy a silver commander in a community or neighbourhood role. This person is in charge of co-ordinating engagement with different groups by relevant bronze commanders.

All forces told us that they engage with members of their key individual networks and community leaders before a protest. Whenever possible, they use neighbourhood teams to do this. Like the College of Policing, we recognise this as good practice.

Some forces told us that they also use their neighbourhood teams to provide updates on tensions between different groups during the protest. The Metropolitan Police has established a Community Advisory Centre to engage with more vulnerable communities during protests.

Independent advisory groups

All forces told us that they consult IAGs in the policing of larger protests to help them understand any underlying community tensions. Three forces told us that IAG members accompanied officers on patrol during protests to improve real-time assessment and communication (although this was only recorded in two of the community impact assessments we saw).

During the summer of 2020, when there were many protests in London, the Metropolitan Police developed a strategic partner group in addition to its IAG. The force tested its planned approach with the group, asking for advice and feedback.

Essex Police has recruited representatives of protest groups onto its IAG. This is something other forces should consider.

Ethics groups

Ethics groups consisting of police and independent members could be of great value in planning and reviewing how protests are policed. Most forces now have their own ethics groups that link into four regional groups and a National Police Ethical Dilemmas Guidance Group. Forces can refer potential ethical dilemmas to the local or national groups for their views on the matter. Some forces told us that they were using their committees in this way, either to review operations or to consider specific ethical issues such as taking the knee and enforcement of COVID-19 regulations.

In 2015, South Yorkshire's police and crime commissioner established an advisory panel on policing protests. This panel includes members of the independent ethics committee and the independent advisory panel for minority communities, and it is commissioned to review major protests and demonstrations. It provides independent advice at the planning stage, as well as taking part in site visits during the event itself. The panel is also involved in the debrief process, making recommendations for how protest policing could be improved. It publishes regular reports on its findings on the police and crime commissioner's website. We encourage other forces to adopt a similar approach.

Staff associations

We heard in the West Midlands that, for some protests, the force involved its own staff associations within the policing response. We heard that the involvement of staff associations enhanced the force's understanding of the impact of the protest and the police response, including the potential long-term impact on community cohesion.

Community impact assessments

The police service has used [community impact assessments](#) (CIAs) for several years. These documents assess changes in community feeling before, during and after an incident or event. They are mainly used when a serious crime or incident takes place that has, or is likely to have, a significant impact on the community. They are particularly helpful if the community is vulnerable or the incident itself is highly sensitive.

The College of Policing's APP suggests that forces should use community impact assessments to evaluate the impact of protests on those who live in, work in or visit an area. The process should include regular reviews and updates, so the police can respond to changing circumstances. The assessments are useful tools in helping police commanders to balance the rights of protesters with the rights of others.

As part of our document review, we asked each force to submit a selection of community impact assessments from protests for examination. Only seven of the ten forces submitted any: a total of nine full CIA documents and two update reports. We expected a higher return.

One force told us that, rather than completing individual community impact assessments for each protest, they do a weekly community tension assessment covering a wide range of factors, such as hate crime, gang-related matters and terrorism. In our view, a weekly community tension assessment is unlikely to be timely or specific enough to inform police commanders' decisions in individual protests.

Some of the community impact assessments we saw were of a poor standard: sections remained incomplete, details were missing, or they included irrelevant information. The better assessments had been signed off by a supervisor, while those of poor quality did not appear to have been checked. In some cases, it was unclear who had written them.

Most forces used a scoring system to help assess the impact on the community, but only three gave any justification for the score. It is important to record this accurately, because it provides evidence and an audit trail for decision making. It also gives information to commanders taking over responsibility in more protracted protests.

Responding to fast-moving events

In addition to assessing the likely impact on communities before a protest, operational commanders should regularly review how the situation is developing.

Interviewees described several 'real-time' methods by which they can monitor how a protest is developing. These included the community bronze role, neighbourhood

patrols, police liaison officers, evidence-gathering teams and the use of drones and CCTV.

All forces told us that they monitored social media sites during larger protests. This was usually the responsibility of a designated bronze commander. West Midlands Police has used a social media app to link members of key individual networks with the relevant bronze commander during a protest to help the force understand the impact of police decisions. That said, we found only limited evidence of technology being used proactively to seek community feedback. We encourage forces to make more effort to exploit available technology to help assess levels of community tension and disruption.

We heard other examples of methods forces use to keep in touch with local residents and businesses during protests.

- During a nearly three-year-long fracking protest in Lancashire, the force assigned the bronze commander community role to the operation for three-month secondments. This gave the community a consistent contact and helped the force understand any concerns.
- At a protest aimed at a NATO summit in Hertfordshire, the force cordoned an extended area around the site. Local officers visited each resident and business within the cordoned area to reassure them and check whether they were vulnerable.
- During a six-month-long fracking protest in Greater Manchester, the force used the same neighbourhood officer to contact local residents each day. During the operation debrief, the force established this as good practice because it both reassured residents and gave the force an insight into local opinion.

Post-event debriefing documents

Fewer than half the force debrief documents we reviewed explored the level of community tension during a protest. There was little evidence of any learning in relation to the impact the protest had on the community. In fact, only one force document referred to this. None of the debrief documents considered the degree of disruption experienced by people not involved in the protest.

The NPoCC's national post-event learning review form (described in Chapter 4) has a section for the author to describe the level of community tension at the protest. Three-quarters of those examined indicated there had been no community tension experienced during or after the protest. This was surprising, given that most protests related to high-profile, emotive issues.

Even in those learning review forms that did mention community tensions, many had only limited commentary about the level of tension – either prior to, during or following the protest. We heard from the West Midlands Police that their approach to some protests was influenced less by the risk of short-term disruption and more by the risk to long-term community cohesion. This force submitted forms with the most informative content about community tension. They included references to raised community tensions – for example, due to some anti-police feeling.

When forces are deciding how to police protests that mainly involve local people, it is appropriate that they consider the long-term effects of their actions on community relations. But in seeking to strike the right balance, they should not underestimate the impact of the protest and the police response on the everyday lives of others.

Our conclusion is that forces are not doing enough, either in their community impact assessments or debriefing, to assess and document the impact of protests on the community.

Partner organisations

As outlined earlier in this report, forces work with a range of other organisations to plan protest operations, including [local resilience forums](#), community safety partnerships and [safety advisory groups](#).

Forces told us that this helped them to understand the wider impact of protests, but we didn't find much evidence to support that in the documentation. We did find evidence of extensive engagement with partner organisations and businesses in one force, during a long-running protest. But, even in that case, it was not clear how this had informed the force's decisions.

Public transport providers

Many protests take place in city centres or large towns, and public transport providers will ordinarily be involved in the logistics of the policing operation. Regular communication with a public transport provider can help a force to make more informed decisions about how to police a protest. This is particularly important when weighing up the proportionality of interfering with protesters' rights. The police need to be able to show that they have considered what the extent of the disruption is likely to be.

Forces told us that they routinely engaged with the highways department of the local authority and local public transport providers when planning for protests. Two forces had done transport impact assessments in preparation for protests on large road bridges. We saw several gold strategies and silver plans that discussed the need to minimise disruption to the transport network. However, that was not always supported by evidence of continuing work with public transport providers during the protest.

We found an example of very good engagement with a public transport provider. The Metropolitan Police routinely includes Transport for London (TfL) in its strategic planning group, and the two organisations maintain communication throughout protests. In one instance, evidence from TfL helped the force to accurately understand the level of disruption being caused to the transport network. In forces where similar engagement doesn't routinely occur, we would encourage them to work more closely with public transport providers.

Businesses and the private sector

Forces do not consistently assess the impact protests have on businesses or use this to inform their approach. All forces should reflect on whether they are doing enough to fully understand the impact of protest on businesses.

Businesses are sometimes the direct target of a protest, while others may be affected indirectly – when a road is blocked, for example. The police need to consider both the direct and indirect impact on businesses when deciding how to balance protesters' rights with the rights of others.

We spoke to a small number of businesses that had been directly affected by protest. They had experienced severe disruption, including damage to premises, harassment of employees, and significant trading losses and costs associated with increased security requirements.

Some told us that the police had been supportive; others were more critical and felt that the police had offered only limited help. Some interviewees felt that their rights had been overlooked in favour of protesters' rights, and that the police did not take enough account of the disruption to their business, including the financial impact.

Forces do sometimes try to engage with businesses likely to be indirectly affected by protest. For instance, they visit city centre shopping malls or businesses located near to protest sites and contact established business groups. However, in most cases, we did not find any evidence that they had asked for feedback from businesses about the level of disruption or likely financial impact.

For instance, one force told us about operations to police potential protests at an international airport. The documents the force supplied included entries to record the initial contact with businesses in and around the airport. However, there was little to show that there had been any further contact, or any feedback from those businesses.

At a national level, there is a police officer attached to the NPoCC who is responsible for liaising with businesses. He sends a regular newsletter, which we found contains valuable information on forthcoming protests. He also gives advice and updates on protests on various national security forums. However, this officer told us that he received very little information that might help forces in assessing the impact of protest on the business community.

Representatives of several businesses directly affected by protest told us that they have not been involved in debriefing processes with forces to discuss the impact of protest. These include the policing of the Newsprinters sites targeted by protesters in September 2020.

A strategic lead told us that he had seen some forces, particularly those not routinely dealing with protest, struggle to 'get up to speed' or learn from each other's experience. During a long-term fracking operation, for example, protesters often targeted sub-contractors to the main fracking contractor. These were often cash-reliant businesses sited in other police areas with little experience of well-organised, disruptive protests. The interviewee felt that forces were not well prepared to prevent disruption to those businesses and appeared not to appreciate the significant impact it had on them.

Conclusion

We have seen many examples of forces responding effectively to the challenge of policing protests, but some notable concerns remain. Although not evident in every force, generally the main ones to be addressed are:

- a limited appreciation of the full impact of protest on other people's daily lives;
- an insufficiently wide knowledge of human rights law and relevant case law;
- a need for commanders to better explain exactly where their 'line in the sand' is drawn; and
- a lack of knowledge and confidence among many frontline officers to use their powers effectively.

In the light of these concerns, our conclusion is that the police do not strike the right balance on every occasion. Police commanders often have to make difficult decisions with limited time and information available. These decisions are made all the more difficult when protesters fail to co-operate with the police and behave in such a way that the degree of disruption becomes intolerable (in law).

It is not for us to decide whether forces have struck the right balance in any given case – this would be for a court to determine. However, our evidence suggests that, when forces do not accurately assess the level of disruption, the balance may tip too readily in favour of protesters. We conclude that a modest re-set of the scales is needed.

Recommendations

By 30 June 2022, the National Police Chiefs' Council, working with the College of Policing, should provide additional support to gold commanders to improve the quality of gold strategies for protest policing. This support should include:

- the creation and operation of a quality assurance process; and/or
- the provision of more focused continuous professional development.

The additional support should ensure that gold commanders for protest operations include an appropriate level of detail within their gold strategies. This may include the levels of disruption or disorder above which enforcement action will be considered.

By 30 June 2022, the National Police Coordination Centre should revise the national post-event learning review form so that it contains a section to report on the policing operation's impact on the community.

Area for improvement

The police's protest-related community impact assessments are an area for improvement, particularly those that need to be completed after the event. These assessments should assist the police to understand fully the impact of protests on communities. They should include assessments of the impact of protest on local residents, visitors to an area, businesses, and the critical infrastructure including transport networks and hospitals.

6. Protest-related legislation

This chapter includes our assessments of:

- the adequacy of the current legislation; and
- whether additional legislation would allow more effective policing of protests.

Does the current legislation give the police the powers they need to deal effectively with protests?

Views from the police

Police interviewees were fairly evenly split on the question of whether current legislation governing protest is adequate or effective. Their opinions were largely based on experience.

Forces that experience generally peaceful and lawful community-led protests adopt a facilitative approach before, during and after such events. Officers from such forces told us that they don't often resort to enforcement. They tended to believe that the law was adequate. By contrast, forces that experience higher levels of protest disruption, more confrontational behaviour, larger-scale civil disobedience and lock-on tactics considered the current legislation inadequate.

However, there was also a commonly held view that the forces most affected by protest might need more legislative powers.

Interviewees consistently told us that the police don't always have adequate resources for protest policing. One officer said that "if there are insufficient resources, it impacts on what legislation can be used and enforced".

Some officers felt that forces rarely use the existing power to restrict numbers attending a protest. One said that it isn't often possible to monitor the numbers of people gathering, nor "practical or possible" to enforce a restriction because "the police do not have the capacity to make mass arrests in this scenario".

Another commented that "the powers are sufficient; it is the ability to implement them that is the challenge due to lack of resources".

By contrast, many believe that the police do not have enough powers and that the legislation does not help them. One officer commented that the:

police can only impose restrictions; the powers are limited and there is little appetite to do it. The fact that the police can't stop a protest is a constant source of frustration to the public.

The law requiring organisers to give the police due notice of a public procession was described as a “toothless tiger” – that is, not fit for purpose. Another said that legislation to place conditions on processions (moving protests) and assemblies (static protests) was “designed for a different time”.

Others explained how difficult it is to deal with lock-on tactics. One officer told us that protest tactics have “moved on” since the Public Order Act 1986 and that professional protesters “know what they can do to exploit the law”.

Many told us that they use an eclectic mix of common law and statutory powers to deal with protests because not all the relevant legislation has been consolidated. They felt that protest-related legislation was complicated and unconnected.

Other officers called to simplify the law, reflecting that “the understanding and application of current laws make national policing look inept and inconsistent”. One officer commented, “public perception is that the police service is inconsistent in the style of policing protests and the powers that are used”.

The legislation that police can use to deal with protests

The Public Order Act 1986 offers the widest range of offences and powers to help the police to deal with peaceful protest including:

- section 5, which creates an offence for threatening, abusive or disorderly behaviour likely to cause harassment, alarm or distress;
- section 11, which requires advance notice of public processions to be given to the police;
- section 12, which gives senior police officers a power to impose conditions on public processions in certain circumstances;
- section 13, which gives a chief police officer the power to apply to the local council to prohibit public processions with the consent of the Secretary of State in certain exceptional circumstances;
- section 14, which gives senior police officers a power to impose conditions on public assemblies in certain circumstances;
- section 14A, which gives a chief police officer the power to apply to the local council to prohibit a trespassory assembly in certain exceptional circumstances;
- section 14B, which creates offences in connection with prohibited trespassory assemblies; and
- section 14C, which confers a power on the police to stop a person who is reasonably believed to be going to a prohibited trespassory assembly and makes it an offence for that person to fail to comply with the police’s direction not to proceed to the prohibited trespassory assembly.

However, many other Acts include powers and offences that the police also use to deal with protest, including:

- Highways Act 1980: section 137 creates an offence of wilful obstruction of the highway without lawful excuse.

- Trades Union and Labour Relations (Consolidation) Act 1992: section 241 creates an offence where a person, through intimidation, violence or annoyance, intends to compel another person from going about his lawful business.
- Criminal Damage Act 1971: sections 1 and 3 create offences of destroying or damaging property without lawful excuse or possessing anything which he intends without lawful excuse to use to destroy or damage property.
- Criminal Justice and Public Order Act 1994: section 68 creates an offence of aggravated trespass, where a person trespasses on land to intimidate, obstruct or disrupt the lawful activity of others.
- Metropolitan Police Act 1839 (only applies in London): section 52 provides a power for police commissioners to make regulations for the route to be followed by “carts, carriages, horses, and persons” and for preventing obstruction in the streets during public processions; and power to give directions to officers for keeping order and preventing obstruction of thoroughfares in certain specified areas and/or when any street may be “thronged” or liable to be obstructed.
- Town Police Clauses Act 1847 (applies elsewhere in England): section 21 provides a similar power to section 52 of the Metropolitan Police Act 1839.
- Common law: the offences of public nuisance and conspiracy to cause public nuisance; and the power (indeed duty) of the police to prevent an anticipated breach of the peace, or to bring one that is happening to an end.

Not all these laws specifically refer to protest. One officer told us that the police must “be imaginative” and use non protest-related legislation, such as criminal damage, to deal with lock-ons. He said that non protest-related legislation must be legitimately “pushed to the limits”.

Another officer commented that “the powers are there” and that “the police are brilliant at making obscure legislation fit”. The officer provided an example of this whereby the police used section 241 of the Trades Union and Labour Relations (Consolidation) Act 1992 to remove protesters who were blocking roads and entrances to commercial premises.

An overview of the Ministry of Justice prosecution and conviction data

The Ministry of Justice provided data on prosecutions for some of the offences listed above. For offences specific to protest, such as certain public order offences, the data helps us to understand how police use the legislation available to them. But we were unable to draw concrete conclusions relating to offences that aren’t specific to protest.

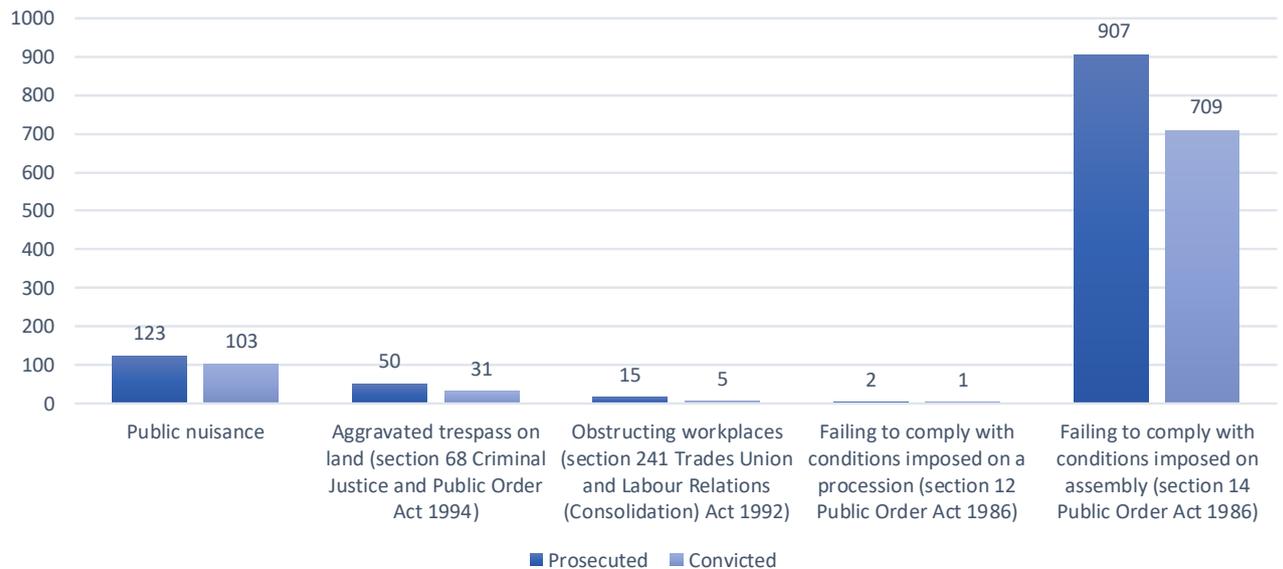
For example, police widely use the common law offence of breach of the peace and the associated power of arrest. The data didn’t allow us to differentiate between arrests in protest- and non-protest-related circumstances. We encountered similar difficulties with data related to wilful obstruction of the highway, discussed later.

Figure 8 provides an overview of Ministry of Justice data from 2019. It shows that the police use their powers to impose conditions on an assembly under section 14 of the Public Order Act 1986. Offences relate to the breach of conditions. When we explored the data further, it revealed that the Metropolitan Police uses this legislation (to impose conditions on public assemblies) more than any other force, a fact mirrored

in the prosecution and conviction statistics. We report on this in more detail later in the report.

The data available to us shows that there were few prosecutions and convictions under section 12 of the Public Order Act 1986, which allows the police to impose conditions on a procession.

Figure 8: Ministry of Justice overview of prosecutions and convictions in 2019: common protest-related offences



Source: Ministry of Justice

There was very little data available in relation to two protest-related sections of the Public Order Act 1986:

- Section 11 is the law that requires the organisers of public processions (but not assemblies) to notify the police in advance.
- Section 13 is the law whereby the police can apply to their local authority, which in turn applies to the Home Secretary, to ‘prohibit’ (ban) a procession.

Wilful obstruction of the highway: a frequently used protest-related offence

Section 137 of the Highways Act 1980 provides one of the most commonly used offences related to protests. The offence is “wilfully obstruct[ing] the free passage along a highway” without “lawful authority or excuse”. This is when protesters block roads, gates or entrances in order to cause disruption.

Police officers told us that they sometimes struggle to secure prosecutions if they have already had to cordon off a road.

In a House of Lords case,¹ Lord Irvine of Lairg considered this law in the context of the rights of peaceful assembly on the public highway. In his judgment he stated:

This appeal raises an issue of fundamental constitutional importance: what are the limits of the public's rights of access to the public highway? Are these rights so restricted that they preclude in all circumstances any right of peaceful assembly on the public highway?

In this case, it was held that a minor obstruction of the highway cannot usually be considered an obstruction of free passage. This therefore may allow protesters to lawfully obstruct part of a highway as part of their demonstration, but only if traffic can continue to move along the road.

Other cases since² have established that protesters who exercise the right to peaceful protest will not always be considered to have a lawful excuse for obstructing a highway: it will depend upon the particular facts, including how long they have protested for and how much disruption they are causing. Police enforcement of this offence may therefore be viewed by the courts as a justifiable interference with protesters' human rights under Articles 10 and 11 of the European Convention on Human Rights.³

The data relating to the wilful obstruction of a highway can be seen in Figures 9 and 10 that show the:

- police arrest data from 2018 to 2020; and
- criminal justice prosecution and conviction statistics for 2013–2019.

The available data does not differentiate between protest- and non-protest-related offences. But we can make inferences when reviewing it against a timeline of recent protest activity. For example, the data spikes in Figure 9 relate to the Extinction Rebellion and anti-lockdown protests in London.

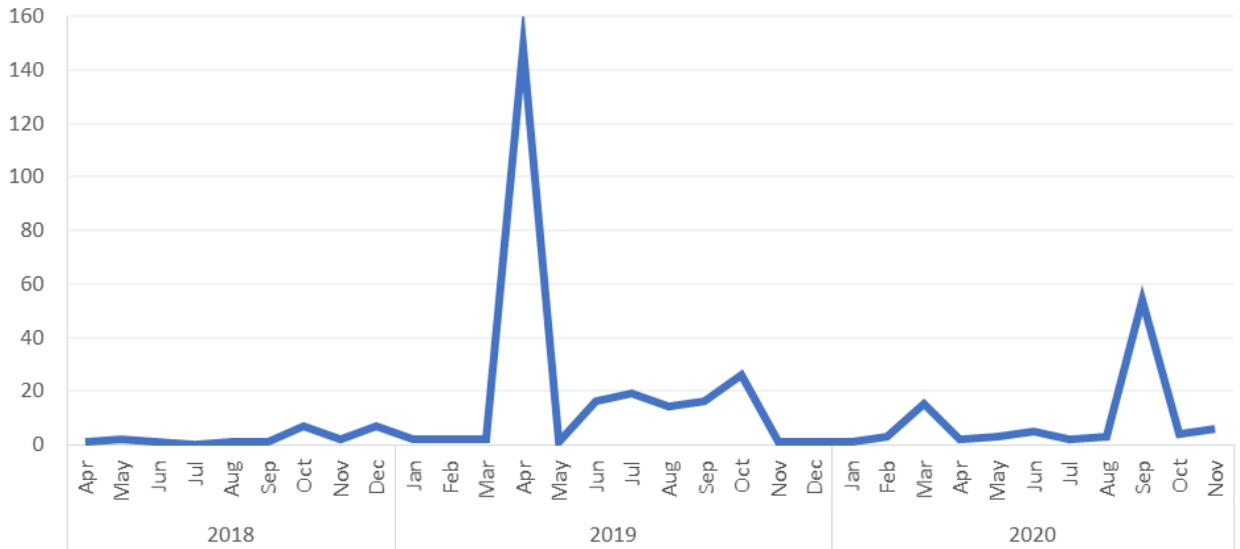
Figure 9 indicates that the police made very few arrests for wilful obstruction of the highway in 2018. But they made 248 arrests in 2019, and 98 in 2020. The Metropolitan Police made the majority of arrests in both years.

¹ [Director of Public Prosecutions v Jones \[1999\] 2 AC 240.](#)

² [Buchanan v Crown Prosecution Service \[2018\] EWHC 1773 \(Admin\); DPP v Ziegler \[2019\] EWHC 71 \(Admin\), \[2020\] QB 253.](#)

³ [DPP v Ziegler \[2019\] EWHC 71 \(Admin\), \[2020\] QB 253.](#)

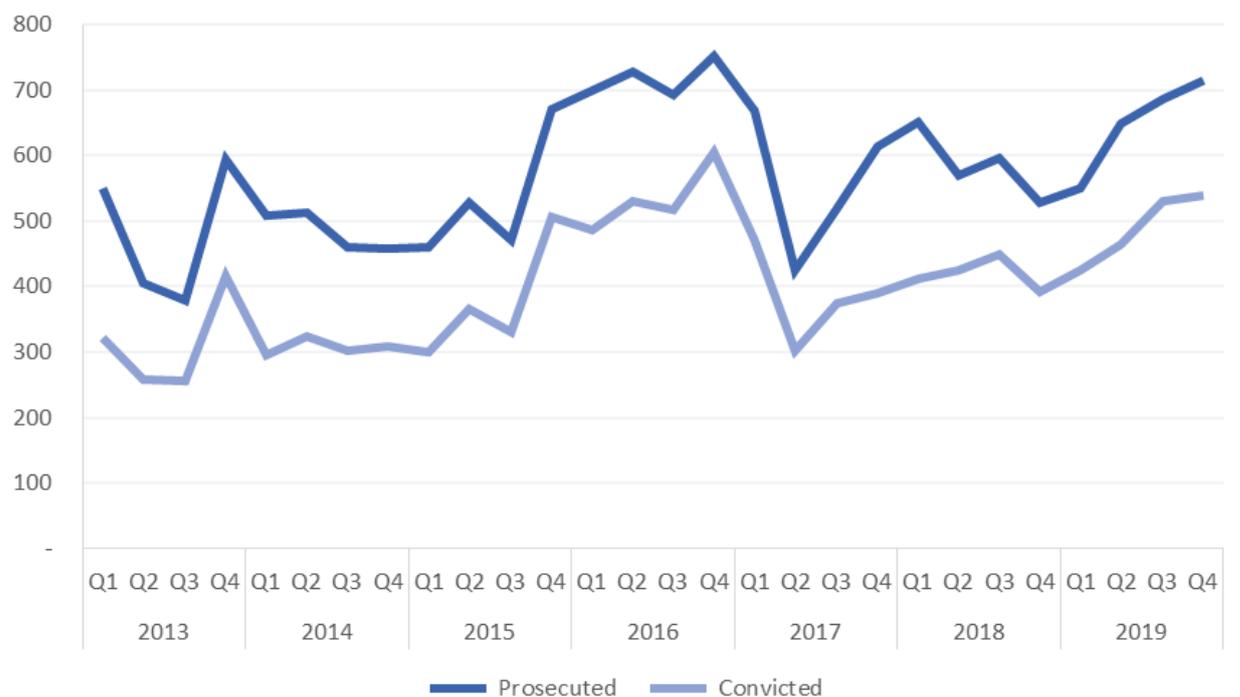
Figure 9: Arrests for obstruction of the highway between April 2018 and November 2020



Source: Police National Database

Figure 10 shows prosecutions and convictions for this offence type over time. In analysing this data further, we found that there was a conviction rate of 72 percent in 2018 and 75 percent in 2019. The conviction rates are based on the composite of protest- and non-protest-related offences. About a quarter of the cases (approximately 600 each year) resulted in no conviction.

Figure 10: Prosecutions and convictions for obstruction of the highway between 2013 and 2019



Source: Ministry of Justice

It is difficult to assess whether convictions, and associated penalties for this offence, are an effective deterrent or sanction. In law, the maximum fine is £1,000. In 2019, the average fine was £173. There was no data available to us on levels of repeat offending or payment of fines.

The police told us that prosecution was sometimes difficult. This was for the following reasons:

- the definition and status of a highway compared with private land;
- the transient movement of protest activity across land; and
- the defence of “lawful authority or excuse”.

Protesters have successfully argued in court that they have lawful authority or excuse because their right to protest is enshrined in human rights law. However, a relatively recent High Court judgment has helped to clarify matters.⁴ In that case, the Court overturned prior acquittals of some protesters. They were convicted of wilful obstruction of the highway, having blocked access to the Defence and Security International Fair in London in 2017.

The Court stated that Convention rights do not give defendants a ‘trump card’ protecting them from any possibility of a conviction, but that interferences with Convention rights (including by way of arrest or prosecution) must be shown to be proportionate. The Court noted in that particular case that the highway had been completely obstructed and some members of the public were completely prevented from doing what they had the lawful right to do – namely, use the highway to get to the Excel Centre – and that this occurred for a significant period of time.

The Court therefore concluded that the physical conduct of the protesters did not strike a fair balance with the right of other members of the public to go about their lawful business.

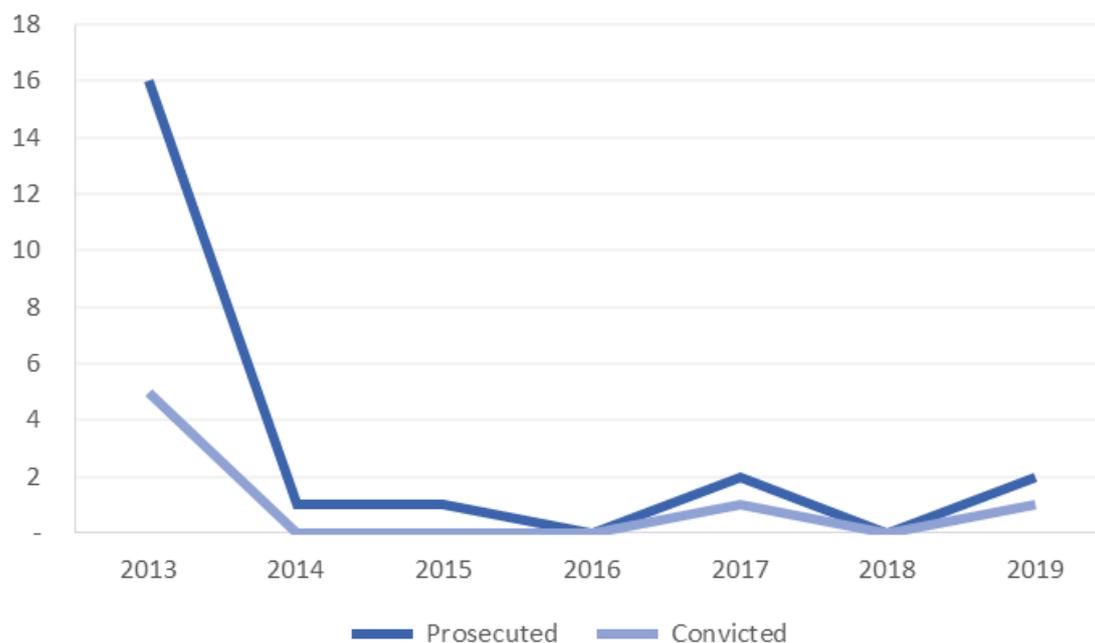
Breaches of conditions on public processions

Under section 12 of the Public Order Act 1986, a senior police officer can impose any conditions on public processions when they reasonably believe that a public procession may result in serious public disorder, serious damage to property, serious disruption to community life, or where the organisers’ purpose is to intimidate others from going about their lawful business, and that the conditions appear to be necessary to prevent this. For example, the police can specify the route a procession may take or prohibit it from entering a particular public place.

Figure 11 shows that, between 2013 and 2019, there were very few prosecutions and convictions for breaches of conditions imposed on a procession. There were no prosecutions in 2018, and only two prosecutions and one conviction in 2019. That single conviction resulted in a conditional discharge.

⁴ [DPP v Ziegler and Others \[2019\] EWHC 71 \(Admin\)](#).

Figure 11: Prosecutions and convictions for breach of conditions imposed on a procession between 2013 and 2019



Source: Ministry of Justice

The available data shows that there are few recent prosecuted or convicted cases for this offence. It is difficult to draw accurate inferences on why this is the case.

Prosecution, conviction and arrest data: public assemblies

Unlike in relation to processions, the police can only impose a limited range of conditions on public assemblies. Under section 14 of the Public Order Act 1986, the police may impose conditions as to the place, maximum duration, and number of persons who may attend an assembly.

Again, such conditions may only be imposed when a senior police officer reasonably believes that the public assembly may lead to serious public disorder, serious damage to property, serious disruption to community life, or where the organisers' purpose is to intimidate others from going about their lawful business, and that the conditions appear necessary to prevent this from happening.

Figures 12 and 13 show the:

- police arrests for breaches of conditions imposed on a public assembly; and
- the criminal justice prosecutions and convictions.

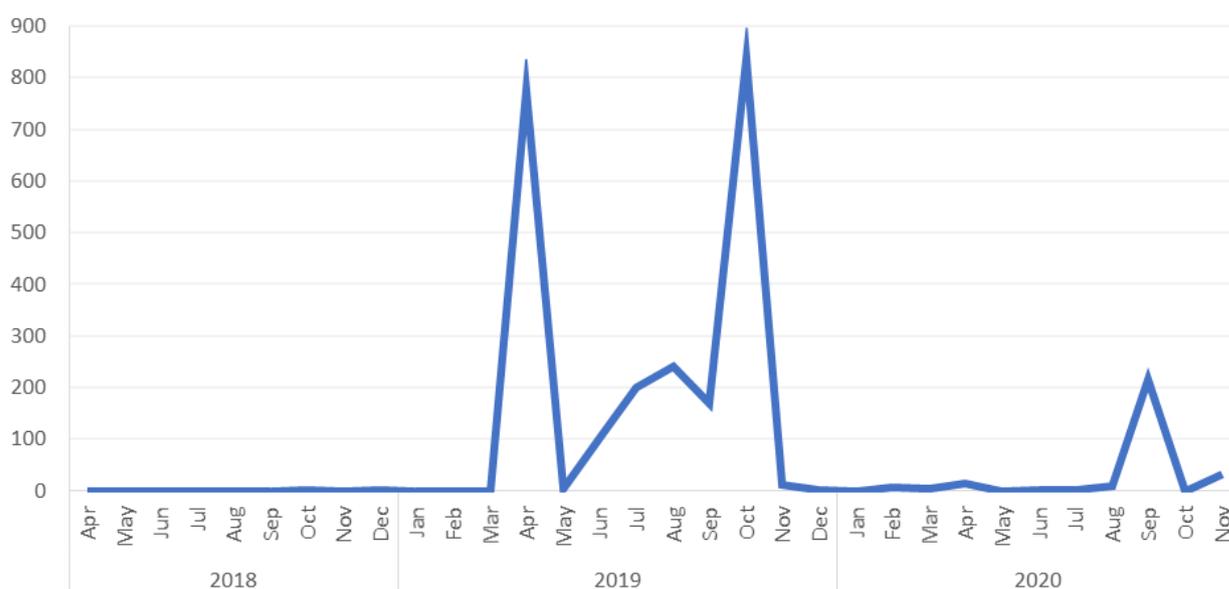
Much like the data on processions, we found that most of the statistics related to the police enforcement of protest activity in London. The Metropolitan Police use the powers conferred under section 14 of the Public Order Act 1986 far more than any other force. They have told us that this is because of the size and frequency of protest activity in London stating that:

conditions were imposed on a number of occasions where there was mass failure to comply, hence a large number of arrest/prosecutions for breaches of the same set of conditions.

The Metropolitan Police helpfully provided us with its data. This shows that the force imposed conditions on public assemblies 15 times in 2019 and 6 times in 2020. These figures were in relation to three different ‘types or causes’ relating to protest activity.

Note: We don’t know how many times the other police forces have imposed conditions on public assemblies, only the numbers and outcomes of prosecuted cases.

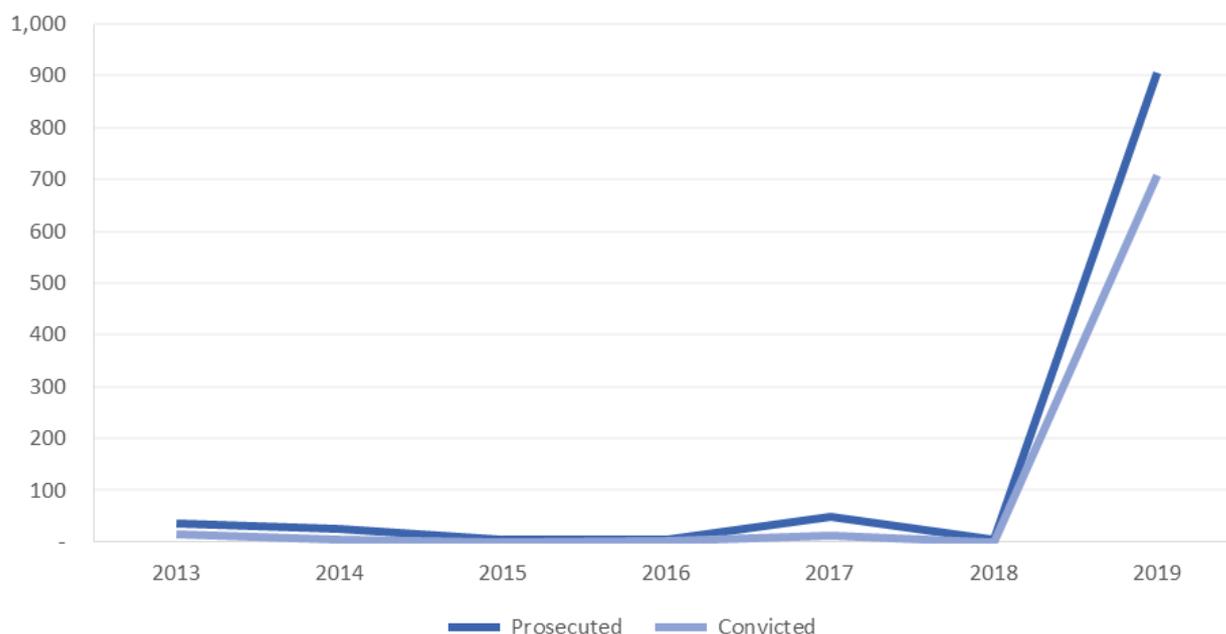
Figure 12: Arrests for breach of conditions imposed on a public assembly between April 2018 and November 2020



Source: Police National Database

There was a sharp increase in 2019, when the police made 2,340 arrests for breaches of conditions imposed on a public assembly. The arrests were almost exclusively in London: the Metropolitan Police made 2,303 out of the total number of arrests. It was a similar story in 2020 – this force made all bar one of the 283 arrests that year.

Figure 13: Prosecutions and convictions for breach of conditions imposed on a public assembly between 2013 and 2019



Source: Ministry of Justice

Figure 13 shows the available prosecution and conviction data for offences relating to breaches of conditions imposed on public assemblies from 2013 to 2019.

In 2019, 907 prosecutions were brought for this offence – 709 resulted in a conviction, making the conviction rate 78 percent. The majority of these cases (893 of the 907) relate to offences committed in London, accounting for 98 percent of all national prosecutions for this offence.

The courts used conditional discharge as their primary sanction in 93 percent of the cases in 2019. Only one resulted in imprisonment. We were unable to obtain data about any breaches or sentencing in relation to these specific conditional discharges.

Many officers felt that a conditional discharge has little deterrent value and could embolden further unlawful protester activity. The lack of data makes it difficult for us to judge.

Prohibited trespassory assemblies

Sections 14A to 14C of the Public Order Act 1986 create offences and police powers in relation to the prohibition of trespassory assemblies.

Trespassory assemblies are typically static protests on private land, or around buildings, where the powers under section 14(1) of the Public Order Act 1986 to impose conditions on public assemblies would not apply. An assembly only becomes trespassory if it involves more than 20 people and it is held on private land without the owner's permission. (By contrast, an assembly of two or more people in a public place which is wholly or partly open to the air constitutes a public assembly for the purposes of section 14.)

The law states that a trespassory assembly can only be prohibited if the chief of police reasonably believes that such an event may result in:

- serious disruption to the life of the community; or
- significant damage to the land, building or monument (with historical, architectural, archaeological or scientific importance).

When this is the case, the police apply to their local authority, which must obtain consent from the Home Secretary before making an order for prohibition. The rules are slightly different for London and Scotland.

When a trespassory assembly is prohibited, there are four possible offences:

- organising an assembly that is known to be prohibited;
- taking part in an assembly that is known to be prohibited;
- inciting another person to take part in an assembly that is known to be prohibited; and
- failing to stop proceeding to a trespassory assembly when so directed by a police officer.

The offences of “organising” or “inciting people to take part” carry a maximum fine of £2,500 and imprisonment for up to three months. The offences of “taking part” and “failing to stop proceeding” carry a maximum fine of £1,000.

There was no data available to establish how often the police make an application to prohibit trespassory assemblies. There was some arrest data available. However, we established that, due to inputting errors, it was inaccurate.

The effectiveness of the criminal justice system in dealing with protest

Many police officers felt that the criminal justice system was ineffective in dealing with the problems presented by protests. Some interviewees were severely critical of delays in the system, as well as defence lawyers’ tactics. Others felt that current sentencing, sanctions and penalties were ineffective, with little or no deterrent value.

Other interviewees, including a chief police officer, expressed intense frustration with the system. There was evidence of the police challenging the [Crown Prosecution Service](#) (CPS) over decisions to discontinue protest cases but failing to overturn the decisions. The many reasons that protest cases were stopped included:

- [substantial backlogs in court, partly due to the COVID-19 public health emergency](#);
- so much time passing since the alleged offence that the CPS deemed prosecution to be no longer in the public interest;
- the risk that the defendant/protester presented was negligible; and
- the sanction or penalty options were so low that the case shouldn’t be continued.

However, there was evidence of protest cases being brought to court by the CPS, some on a large scale. These included fracking cases and, more recently, cases at Extinction Rebellion, Black Lives Matter and public health protests.

The focal point for protest-related prosecutions is London. This is especially evident after the prolific protest activity in 2019. An example of this was the series of Extinction Rebellion protests between 15 and 25 April 2019. We were told by the police that they made 1,148 arrests, mainly for breaches of conditions that they placed on the protest under section 14 of the Public Order Act 1986.

The CPS (London) explained to us how it worked closely with the police in prosecuting 919 cases of these cases. They told us that:

As a result of the advice and the close links built with the police, the high-quality file provided, and the specialist input from CPS lawyers, only 37% of cases were adjourned for trial. Of the cases which went to trial there is a 79% conviction rate.

The CPS also highlighted some of the problems that they faced during the public health emergency and that they were making a “huge effort” to clear the resulting backlog of work.

The evolution of proposals for new legislation

In April 2019, the Home Secretary (then the Rt Hon Sajid Javid MP) wrote to the commissioner of the Metropolitan Police raising concerns about significant disruption caused by protest and the large number of protesters actively seeking arrest.

This prompted further correspondence and collaboration between the Home Office, the Metropolitan Police and the NPCC, to evaluate the adequacy of protest-related legislation and to determine any gaps. We note that the effectiveness of such legislation has also attracted considerable scrutiny and debate in Parliament in recent years.

We observed that the NPCC co-ordinated the work through two established working groups, whose members included experienced senior police officers and public order public safety subject matter experts. These were the National Public Order Public Safety Group and the National Protest Working Group. These two national police governance groups co-ordinated, debated and established the view of the police service on the proposals for new protest-related legislation.

This activity culminated in the NPCC hosting a ‘round table’ meeting (on 6 June 2019) to explore the most practical legislative options that would assist in policing protests more effectively. A wide range of representation from the NPCC, police forces, police lawyers, College of Policing, Home Office and HS2 Ltd were in attendance.

This meeting led to the Metropolitan Police (on 22 July 2019) raising 19 potential proposals for legislative change on behalf of the NPCC. (We evaluate these later in our report.) The NPCC and Metropolitan Police continued to engage with the Home Office in discussions over the viability and practical effectiveness of these proposals. We found that there was a consensus between the police service and the Home Office in discounting some of the police’s 19 potential proposals.

On 9 September 2020, the Home Office asked for our view on five legislative proposals that reflected the above scrutiny and debate. Some of the proposals were similar to those the Metropolitan Police had made on behalf of the NPCC on 22 July 2019.

The five proposals were to:

1. widen the range of conditions that the police can impose on assemblies (static protests), to match existing police powers to impose conditions on processions;
2. lower the fault element for offences relating to the breaching of conditions placed on a protest of either kind;
3. widen the range of circumstances in which the police can impose conditions on protests (again, of either kind);
4. replace the existing common law offence of public nuisance with a new statutory offence as recommended by the Law Commission in 2015; and
5. create new stop, search and seizure powers to prevent serious disruption caused by protests.

On 20 November 2020, we wrote to the Home Secretary to express our initial views on the five proposals and emerging themes from the inspection, which was still underway at the time.

Views on the five proposals

Forces have different desires for additional powers

Throughout the ten forces we inspected, we found that police views on proposed additional powers relating to protest were strikingly different.

At one end of the spectrum, an officer we interviewed described the current legislation as providing “an arsenal” of weapons for the police to use, including many appropriate for use in the context of disruptive protests. Consequently, that interviewee, and many others, saw no need for change. Arguing against the proposal for a new stop and search power (Home Office proposal 5) another officer stated that “a little inconvenience is more acceptable than a police state”. We agree with this sentiment.

However, at the other end of the spectrum, there were officers who saw the current legislation as inadequate or ineffective. Some suggested that the Public Order Act 1986 was hopelessly outdated, and that fundamental reform was needed to make it easier to police protests.

Protest groups are opposed

Representatives from protest groups and individual protesters were – unsurprisingly – largely opposed to giving the police additional powers.

Some felt that the police’s existing powers to deal with breaches of the peace were sufficient to deal with protests. Others commented that the police sometimes abused their present powers. Several cited the October 2019 judicial review, in which the police’s decision to impose conditions on Extinction Rebellion protests throughout London was overturned by the High Court.⁵

⁵ [Jones and Others v Commissioner of the Police for the Metropolis \[2019\] EWHC 2957 \(Admin\)](#).

Some raised concerns that additional powers – particularly the proposed stop and search power – would be open to abuse, or that new powers may end up being used in ways that the legislators would not have intended.

Generally, these interviewees saw the prospect of additional legislation as threatening the right to protest. Some felt that additional legislation would erode trust between protesters and the police, inviting conflict, heightened tension and even the risk of radicalisation.

Developing our view

We developed our view against this backdrop of mixed views from the police and opposition from protest groups. This involved reflecting on other aspects of the inspection and looking closely at whether the proposals would be compatible with human rights law.

Our detailed review of the police service's 19 potential proposals helped to consolidate our view. We have included them later in this report with a commentary on how they relate to the Home Office's proposals, as well as our conclusions and recommendations.

We concluded that, with some qualifications, all five of the Home Office proposals would improve police effectiveness and that the legislation giving effect to the proposals could be framed in a way that is compatible with human rights. Measured legislative reform would also clarify the limits of the right to protest for protesters and police forces. It is important to emphasise that, in any given case, the exercise by the police of the powers conferred by the proposed legislation would need to be justified and proportionate in order to avoid violating human rights.

We have made two significant legislative recommendations (below) that would further clarify the limits and rights associated with protest.

However, we concluded that legislative reform would not be a panacea for the problems associated with disruptive protests. The police are also constrained by resources, and protest groups' tactics will inevitably evolve.

The impact of legislative change in Scotland and Northern Ireland

Our inspection centred on the policing of protests in England and Wales, but legislative changes will also to some extent affect Scotland and Northern Ireland.

Police Scotland are currently planning their policing approach to the United Nations Framework Convention on Climate Change 26th Conference of the Parties (COP26). This is scheduled to be held in Glasgow in November 2021. Given the significant global political, media and public interest in COP26, there may be large-scale protest activity that the police will have to deal with.

In consultation with Her Majesty's Inspectorate of Constabulary (Scotland), we asked Police Scotland to assess the new legislative proposals. We also sought to understand the implications of the proposed legislation on the Police Service of Northern Ireland and the Northern Ireland legislature. We comment on this further below.

In the next section of this chapter, we have included extracts from a written submission we received from Police Scotland. It highlights that the Public Order Act 1986 does not operate uniformly throughout the UK. For example, section 12 (imposing conditions on public processions) only applies in Scotland in relation to a procession that is already taking place or a situation where the participants have already assembled with a view to forming the procession: see section 12(11). This is because Part V of the Civic Government (Scotland) Act 1982 already made provision in Scotland for the advance notification of public processions and for the conditions that may be imposed.

For the same reason, section 11 (notification of processions) and section 13 (prohibition of processions) of the Public Order Act 1986 do not apply at all in Scotland. By contrast, section 14 (imposing conditions on public assemblies) applies in Scotland without modification because, unlike for processions, there was no existing statutory scheme in Scotland dealing with assemblies. Sections 14A–14C (trespassory assemblies) also apply in Scotland with some minor differences.

It is open to the Westminster Parliament to amend the Public Order Act 1986 in relation to Scotland, but it would be expected to seek the consent of the Scottish Parliament before doing so (under the Sewel Convention, now reflected in section 28(8) of the Scotland Act 1998). Further, it would also be open to the Scottish Parliament itself to amend the Public Order Act 1986 as it applies to Scotland. Any new protest-related legislation should therefore be considered by the Scottish Parliament.

The Public Order Act 1986 has an even more limited application to Northern Ireland, where none of Part II (sections 11–16) applies. There is separate legislation in Northern Ireland concerning police powers in relation to protests: the Public Processions (Northern Ireland) Act 1998.

The relevant provisions of that Act remain a reserved matter under the Northern Ireland devolution legislation, such that the Westminster Parliament may choose to make amendments to it, and the Northern Ireland Assembly requires the consent of the Secretary of State if it wishes to legislate in this area.

Our view on the first proposal: treating processions and assemblies differently is an unjustified inconsistency in the current law

The first proposal on which we were asked to comment is to:

widen the range of conditions that the police can impose on assemblies (static protests), to match existing police powers to impose conditions on processions.

This proposal reflects the fact that, while the threshold that must be satisfied under the Public Order Act 1986 before conditions may be imposed is the same for processions and assemblies (serious public disorder, serious damage to property, serious disruption to the life of the community, intimidatory purpose), the nature of the conditions that can be imposed currently differs.

The reason for this difference lies in the historical development of the legislation. Prior to the 1930s, the police had no powers to impose conditions on any kind of protest. The power to impose conditions on processions was first enacted under the

Public Order Act 1936, with no equivalent provision for assemblies. This was unchanged until 1986.

A White Paper in 1985 led to the enactment of the Public Order Act 1986.⁶ It expressed the view that “it is no longer acceptable that [static demonstrations] should be completely exempt from the Public Order Act framework of controls”. One reason for this was that “some of the most serious public order problems” since 1980 had been “associated with static demonstrations”.

However, the Government expressed its desire “not to extend statutory controls over static demonstrations any further than is strictly necessary”. It proposed a power to impose limited conditions on open-air static demonstrations (but not those in closed premises):

In order to prevent the imposition of conditions whose effect would be tantamount to a ban, the conditions which the police will be able to impose will be limited to the location, numbers and duration of a static demonstration. The police will not be able to prevent a demonstration from going ahead on the date and at the time planned by the organisers, but they will be able to impose conditions about its size, location and duration.

As the examples in this report show, there have been some conspicuously disruptive protests in recent years, both static (assemblies) and moving (processions). Protests are fluid, and it is not always possible to make this distinction. Some begin as assemblies and become processions, and vice versa. The practical challenges of safely policing a protest are not necessarily greater in the case of processions than in the case of assemblies, so this would not justify making a wider range of conditions available for processions than for assemblies.

There seems no good reason to continue treating assemblies differently from processions. Article 11 of the European Convention on Human Rights does not distinguish between them, referring only to a right of “peaceful assembly”. The European Court has adopted a broad approach to the applicability of Article 11, which covers both private meetings and meetings in public places, whether static or moving.

The proposal to widen the range of available conditions on assemblies would allow the police to impose conditions relating to:

- start and finish times;
- acceptable noise levels e.g. “not to use drums”; and
- the content of placards and banners.

The imposition of any of these conditions in relation to any specific assembly would need to strike a justified and proportionate balance between the rights of protesters to express themselves and peacefully assemble, and the rights of other members of the public to go about their lawful business.

We would also stress that the last type of condition could only lawfully be applied in the most extreme circumstances. The police would need to satisfy a particularly high

⁶ Review of Public Order Law, Cmnd 9510.

threshold of justification for conditions that restrict the content of protesters' messages (as opposed to the means by which they convey them).

We found wide support for this proposal from a range of interviewees, from police officers (of all ranks and position) to the NPCC and senior police leaders. Aligning this aspect of the law for processions and assemblies was simply seen as a common-sense approach. However, police views differed on how practical it would be to enforce new conditions on assemblies.

Some police interviewees told us that allowing the police to impose all types of conditions on assemblies would not necessarily help. This was because powers to impose conditions on processions appear to be rarely used (outside London) and would be, in one officer's view, "harder to police as it may challenge the legitimacy of the police". This raises questions about how often the police would make use of such new powers in practice.

There was no data on how often the police use their existing powers. However, Ministry of Justice prosecution data (see Figures 11 and 13 above) shows that between 2013 and the start of 2019 there were very few prosecutions for breaches of conditions imposed on processions or assemblies. By the middle of 2019, there was a very substantial increase in prosecutions for conditions imposed on assemblies. Almost all the prosecutions were in London.

Forces outside London have used their existing powers less, either because they haven't had protests, or because they felt confident enough in their voluntary agreements with protesters.

There is a place for this 'softer' approach. But, if the improvements in police effectiveness on offer with proposal 1 are to be fully realised following a change in the law, forces outside London may need to become more willing to use their powers from time to time.

On balance, we see no good reason to continue treating assemblies differently from processions.

The first proposal in relation to Scotland and Northern Ireland

The first proposal would result in an amended section 14(1) of the Public Order Act 1986. We consider that this would extend to Scotland, but not Northern Ireland.

As we stated earlier, we have included extracts (below) from a detailed written submission we received from Police Scotland on all five legislative proposals. We have not included the whole of their response. The quotes that we have attributed from their response seek to contextualise their position. They should not be seen as making conclusions but part of a wider explanation of the impact and views of the proposed legislation on policing protests in Scotland.

Police Scotland commented:

Operationally, this proposal might in some circumstances be useful however there is some doubt from experienced PO [public order] Commanders that there is a need for additional powers within Scotland. There have been no instances

identified when dealing with a static protest where this proposal would have made any positive material difference.

and:

We remain of the view set out above that the full range of conditions should in principle be available in relation to assemblies, as it is in relation to processions, and that cases may arise where the new conditions can appropriately be imposed.

Our view on the second proposal: a loophole that should be closed

The second proposal is to:

lower the fault element for offences relating to the breaching of conditions placed on a protest of either kind.

This means that, instead of having to prove a protester knew they were failing to comply with a condition imposed on a procession or assembly, the fault requirement in the offences for breaching conditions under sections 12(4) and (5) and sections 14(4) and (5) of the Public Order Act 1986 would be lowered to a negligence standard. In other words, the prosecution would only have to prove that the person failed to comply with a condition that they ought to have known was in place. In our view, this addresses a loophole in the law that should be closed.

We heard how some protest groups are training protesters to put their fingers, headphones or earplugs in their ears when the police impose conditions. Some protesters try to drown them out by chanting or singing. Others simply walk away when the police try to speak to them.

Defendants who deliberately frustrate police attempts to communicate conditions to them are likely to escape conviction if they go on to breach them. This is because, under the current law, the prosecution must prove that the person “knowingly fails to comply with a condition imposed”. In a [high-profile case related to a protest against fracking](#), five defendants were acquitted of breaching the conditions of an assembly imposed on them by the police when they argued successfully that they weren’t aware of them.

There are, of course, exceptions. In one case, a defendant unsuccessfully argued that they couldn’t hear what the conditions were, partly because the megaphone through which an officer communicated the conditions distorted the sound.

Nevertheless, one police interviewee described the current fault element for the offence as “absurdly high”. Based on the wording of the present law, court transcripts we read and comments we heard from police interviewees, we agree.

The courts would need to apply the ‘ought to have known’ test on a case-by-case basis to assess whether the facts support a conclusion that the accused ought to have known that the relevant condition was in place. The courts might require proof that the police took steps individually and directly to inform protesters of the conditions they then breached. Preferably in each case, the police should make a high-quality, thorough and complete recording of the event for later judicial scrutiny, should it become necessary.

There was wide police support for this proposal. It is important to note that there was no call from police interviewees to reverse the burden of proof. The police accept that it is their role and responsibility to provide evidence to support and prove their cases at court. The onus on police would change from having to show that an individual was fully aware of conditions to showing that the police took all reasonable steps to notify them.

There is other existing legislation that is similar to this proposal. Section 63 of the Criminal Justice and Public Order Act 1994 deals with police powers to remove people attending a rave. (Police now refer to raves as 'unauthorised music events' or 'unlicensed music events'.) The law gives the police powers under section 63(2) to direct people to leave a rave. The law states that "persons shall be treated as having had a direction under subsection (2) above communicated to them if reasonable steps have been taken to bring it to their attention". A person commits an offence if they "fail to leave land as soon as reasonably practicable" or, having left, returns within seven days.

Our view is that the fault element in sections 12(4) and (5) and sections 14(4) and (5) of the Public Order Act 1986 is currently set too high. The loophole in the current law could be closed with a slight shift in the legal test that is applied to whether protesters should have known about the conditions imposed on them. On balance, we see no good reason not to close this loophole.

The second proposal in relation to Scotland and Northern Ireland

As explained above, the second proposal would result in amendments to the offences under sections 12(4) and (5) and sections 14(4) and (5) of the Public Order Act 1986.

The amendment to section 14 would extend to Scotland.

The amendment to section 12 would extend to Scotland insofar as it applies to processions in Scotland, as set out in section 12(11). The second proposal would not affect the separate statutory scheme for imposing conditions on processions under the Civic Government (Scotland) Act 1982. The offences for breaching conditions under that Act have different fault requirements to the Public Order Act 1986. They differ as currently framed and as envisaged by the second proposal.

If the second proposal proceeds, the Scottish Parliament may wish to consider whether to amend section 65 of the Civic Government (Scotland) Act 1982 to bring the offences in line with the Public Order Act 1986.

In its current form, the second proposal would not extend to Northern Ireland.

Police Scotland commented:

It is requested that this proposal would benefit from a good deal more explanation and consideration.

Operationally, this proposal could be seen as a positive change and enable those who ignore conditions to be held to account. However as highlighted these benefits are probably outweighed by the fact that proving 'ought to have known' beyond reasonable doubt in a Scottish Court would be challenging.

We recognise the difficulty of proving ‘ought to have known’ to the criminal law standard of proof. However, we remain of the view that it will be possible to secure convictions under the ‘ought to have known’ test in certain cases where the accused may have been acquitted under the current law.

Our view on the third proposal: the test for imposing conditions is set too high

The third proposal is to:

widen the range of circumstances in which the police can impose conditions on protests.

Under section 12(1) and section 14(1) of the Public Order Act 1986, the current threshold for imposing conditions is that the police reasonably believe that a protest may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or that the organisers’ purpose is to intimidate others with a view to compelling them not to do an act they have a right to do or to do an act they have a right not to do.

The third proposal would add a clause to these provisions to allow the police to impose conditions where they reasonably believe that a protest may have ‘a significant impact on the community’. A court may view ‘significant impact’ as presenting a lower threshold than ‘serious disruption’.

The current law sets a particularly high test for the police. What constitutes ‘serious’ in this context is not defined within the legislation. The senior police officer making the decision to impose conditions must have a reasonable belief in any of the four circumstances set out above, and on that basis may impose conditions that appear necessary to prevent the relevant disorder, damage, disruption or intimidation. The court will assess whether the officer had a reasonable belief that the threshold of ‘seriousness’ was met, taking into account all the circumstances of the case.

Evidence from our inspection has shown that it may be appropriate to impose conditions in circumstances where protesters’ activities are likely to cause significant, rather than serious, disruption.

Even when the police believe the current high test has been met, they can face practical difficulties in securing all the evidence they need to justify an assessment of ‘serious disruption’. This is particularly acute when that evidence needs to come from other bodies, some of which may be unable or unwilling to provide it.

We reviewed an impact statement that Transport for London gave to the Metropolitan Police in advance of Extinction Rebellion protests in September 2020. Although the statement set out the considerable impact the protests were expected to have on bus and underground services, motorists, cyclists and pedestrians, its description was principally of ‘significant’ rather than ‘serious’ disruption.

A Home Office draft ‘policy instructions’ document that we saw defines ‘a significant impact on the community’ as including “any procession or assembly that has a significant psychological impact on the life of the community and/or significantly impacts the rights of others”. The document envisages circumstances where the police could place conditions on:

a single or cumulative protest that subjects a community to either continual noise, offensive/graphic banners or continual unpleasant messaging that maybe doesn't meet the threshold of 'offensive' but can be very damaging to residents when continually exposed to it.

The instructions also state that:

this would help the police manage protests such as those outside abortion clinics and schools, fracking protests and protests that impact on the local businesses/community. These types of protests do not currently meet existing thresholds under section 12(1) and 14(1) for imposing conditions, but the psychological effect of such action can be just as harmful.

The Home Office's proposal differs from the proposal originally made by the Metropolitan Police. The force advocated "lowering the threshold from serious before conditions can be utilised" and suggested that the threshold was redefined in terms of "proportionality of disruption". In its view, this would allow the police to act more quickly and prevent "disproportionate disruption to the life of the community".

The Home Office response to the Metropolitan Police's proposals commented:

It is unclear whether any benefit would be realised from such a change. National policing leads raised concerns that the word 'disproportionate' is more subjective and would be difficult to interpret, so would need defining. However, defining it within legislation would present the police with unintended consequences.

Whatever threshold is enacted, we acknowledge that it will be open to interpretation and will require an evaluative judgment on the particular facts of any given case. If the third proposal is enacted, it will remain the case that all police conditions must be proportionate to the particular risk the police have assessed the protest as creating. They should impose less restrictive conditions on protests that they do not consider likely to result in serious (as opposed to significant) disruption or impact on the community. For example, a protest giving rise to significant impact but not serious disruption can be expected to be permitted to continue for a longer period of time because, by definition, the impact on the rights of others is less serious. Indeed, it is likely to be the long-running nature of the protest that gives rise to an impact that can properly be characterised as 'significant'.

We would expect the courts to carefully scrutinise any police action taken on the basis of 'significant impact on the community' and to require the police to gather compelling evidence, proving the significance and impact on those affected. In practice, that may not be easy.

However, on balance, our view is that changing the threshold for conditions for both assemblies and processions to include 'significant impact on the community' would be a welcome development. We found that this proposal is strongly supported by the police at all levels. We consider that it could have the potential to improve police effectiveness in preventing disruption, in making the public safe and in appropriately protecting their ability to go about their lawful business.

The third proposal in relation to Scotland and Northern Ireland

The third proposal would result in amendments to both sections 12(1) and 14(1) of the Public Order Act 1986.

The amendment to section 14 would extend to Scotland.

The amendment to section 12 would extend to Scotland insofar as this section applies to processions in Scotland, as set out in section 12(11). However, the third proposal would not affect the separate statutory scheme for imposing conditions on processions under the Civic Government (Scotland) Act 1982, which provides for a different and broader range of considerations to be taken into account when imposing conditions on processions.

Again, the Scottish Parliament may wish to decide whether to amend the Civic Government (Scotland) Act 1982 to achieve consistency with the thresholds within the Public Order Act 1986.

In its current form, the third proposal would not extend to Northern Ireland.

Police Scotland commented:

Without a good deal more explanation and clarification it is difficult to see (at least from a purely technically legal standpoint) that this is a proposal which ought to command the support of PS [Police Scotland].

In the first place, the proposed new test is lacking in clarity and potentially has very far-reaching applications which are unlikely to clear the ECHR 'hurdles' of necessity or proportionality. 'Significant impact on the community' is, in our respectful submission, dramatically different from "...serious disruption to the life of the community...".

PS [Police Scotland] suggests that it seems likely to become a provision which turns the police into the principal arbiters of what should or should not be the topics which are apt for public protest.

From a PS [Police Scotland] perspective this proposal could have a significant adverse impact in terms of the community perception of the police. It is not one which immediately seems to sit entirely comfortably with the Chief Constable's repeated recognition of 'police legitimacy' deriving from public consent.

The above proposal would from a legal footing require to be reconciled with the 'Policing Principles' in section 32 of the Police and Fire Reform Act 2012, which enjoin PS [Police Scotland] to have regard to 'engaging with local communities'.

We understand that Police Scotland had not seen the more detailed proposal summarised above when making these comments. It is our view that, with careful consideration in re-drafting the legislation in this area, there should be no particular difficulty in reconciling the new 'significant impact' threshold with the 'Policing Principles'.

Our view on the fourth proposal: protesters deserve to know where they stand

The fourth proposal is to:

replace the existing common law offence of public nuisance with a new statutory offence as recommended by the Law Commission.

The [Law Commission report](#) made arguments in favour of the fourth proposal in 2015. Without repeating them here, we believe that the law should be as clearly defined as possible, particularly because many police officers find the laws that apply to protest unclear and overly complex.

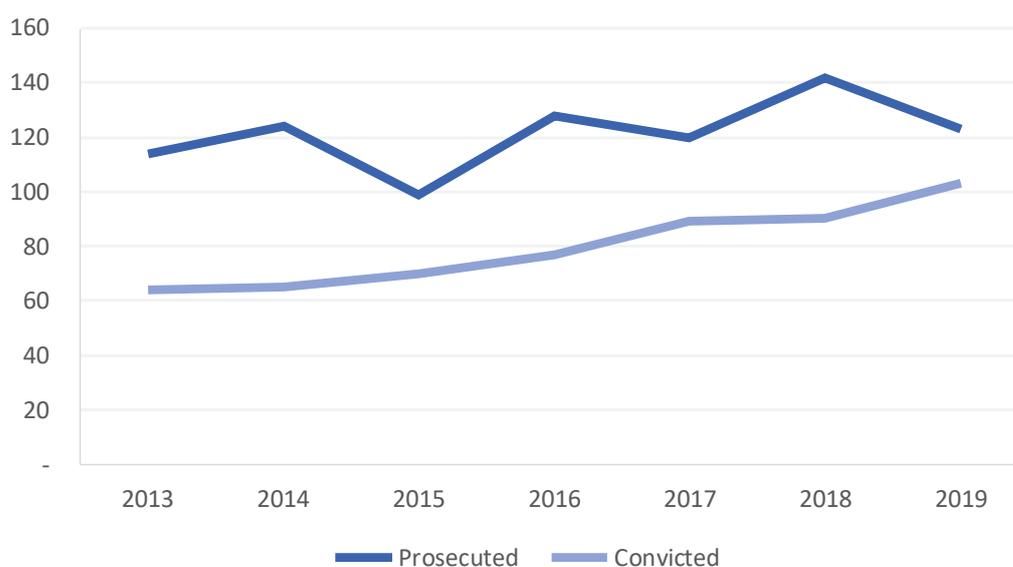
During this inspection, we learned that the police are investigating some of the most prominent organisers of disruptive protest for conspiracy to cause a public nuisance. Police officers told us that they resorted to such powers in attempts to tackle incidents of mass civil disobedience.

The police also acknowledged that the common law offence was largely developed in old case law and that it is difficult to prove or meet the required CPS charging standards. Police officers also told us that they felt there was a “reluctance by the CPS to support prosecutions”. We were unable to gain a national picture of the issue from the CPS, so we referred to the Ministry of Justice prosecution and conviction data to help interpret the position.

However, unpicking the judicial outcomes and prosecution data proved difficult. The data shows all public nuisance offences, not just protest-related ones.

Figure 14 shows that the police pursued public nuisance offences consistently between 2013 and 2019. The prosecution data for these years shows that there are, on average, about 120 cases a year. There is a convergence between prosecutions and convictions over time, with convictions for public nuisance cases increasing. There was a 63 percent conviction rate in 2018. This rose to 84 percent in 2019.

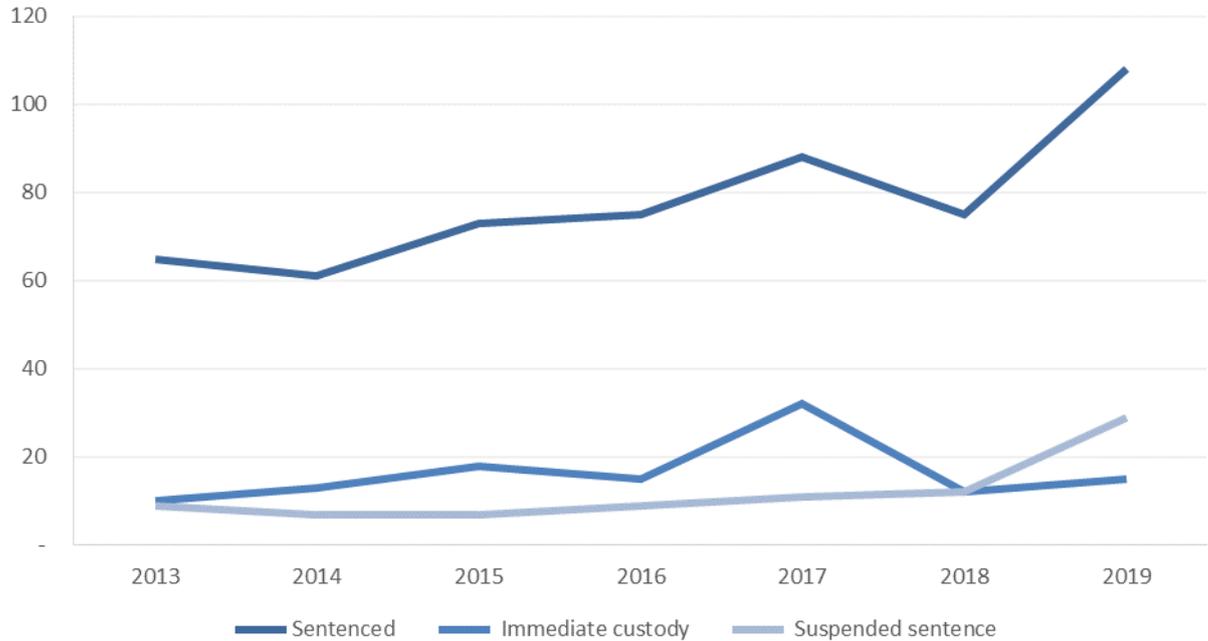
Figure 14: Prosecutions vs. convictions between 2013 and 2019



Source: Ministry of Justice

Figure 15 reinforces this fact. Based on a small number of convicted cases each year, it shows the low level of custodial or suspended sentences imposed by the courts.

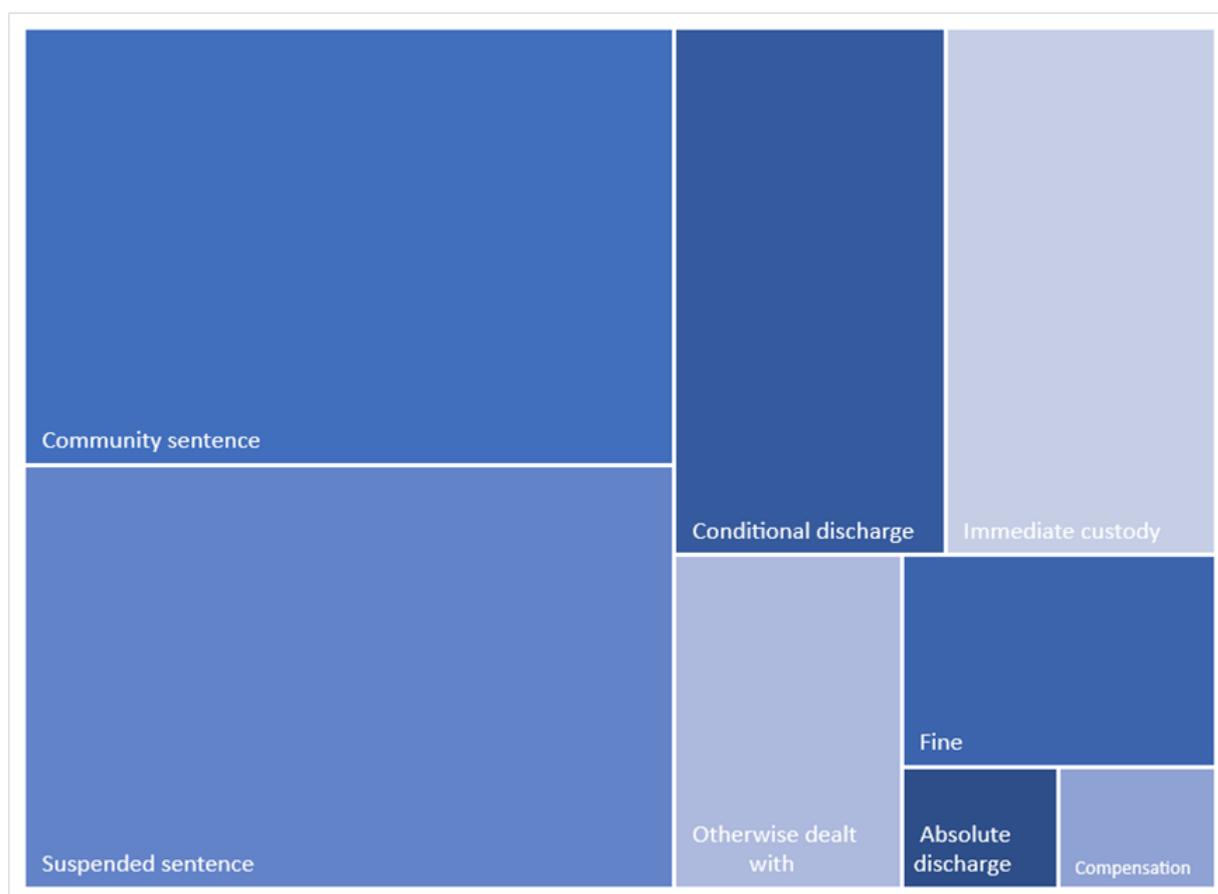
Figure 15: All sentencing, immediate sentences and suspended sentences between 2013 and 2019



Source: Ministry of Justice

Figure 16 (below) is a representation of the proportions of different penalties for public nuisance applied by the courts. For 2019, the data shows that 55 percent of sentences were either community or suspended sentences. Offenders also received conditional discharges. Custodial sentences of varying duration made up only 14 percent of cases.

Figure 16: Proportion of sentences used in 2019



Source: Ministry of Justice

The Law Commission reported extensively about the offences that could be charged under the common law umbrella offence of public nuisance. They recommended that:

the CPS may wish to consider drawing up prosecution guidelines to clarify the proper scope of the offence. Among other things, this offence should not be used when a more specific offence is available except for good reasons.

They further highlighted the wide range of judicial sanctions and penalties that are currently available for public nuisance offences. They range from low-level fines to life imprisonment.

Protest groups told us that they consider the police’s use of offences of ‘causing’ and ‘conspiracy to commit’ public nuisance inappropriate. (Note that the offence of conspiracy to commit public nuisance is not a common law offence but is enshrined in statute in section 8 of the Accessories and Abettors Act 1861.) They consider the common law offence to be “arcane” and “outdated” and felt a sense of injustice that the police can use the offence “against lawful, non-violent protesters”. Many expressed similar views about the use of section 241 of the Trades Union and Labour Relations (Consolidation) Act 1992.

We consider that those who wish to carry out disruptive (though still peaceful) protests deserve to know the boundaries of what constitutes acceptable and unacceptable.

The Law Commission expressed some doubt about how often the public nuisance offence may be relied on in relation to the conduct of protesters who are alleged to have crossed a line.

We agree that it is open to question how often the new statutory offence may be relied on in relation to the conduct of protesters, particularly given the various thresholds for committing the offence. Nevertheless, we consider that putting the offence on a statutory footing will bring greater clarity to the law, and that introducing a new fault element of intention or recklessness is a welcome development that more appropriately reflects the seriousness of the offence.

We understand that Home Office officials were asked to consider extending the fourth proposal by introducing the concepts of ‘contribution or presence’ to the substantive offence. The effect of this would be to criminalise the conduct of those who are merely present at, or make a limited contribution to, the protesters’ wider endeavour. We think this proposed extension is highly problematic and poses a significant risk of successful challenge on human rights grounds.

It may be preferable to consider whether the established criminal law concept of assisting and encouraging an offence – “aiding, abetting, counselling or procuring”⁷ – would cover conduct by those not directly involved in committing the substantive criminal offence.

Our view, based on the Law Commission’s report recommendations and all the other material that we have reviewed, is that the proposal is sound. Creating a statutory public nuisance offence would helpfully clarify matters for both police and protesters.

The fourth proposal in relation to Scotland and Northern Ireland

The Westminster Parliament has the power to create new criminal offences that extend to Scotland and Northern Ireland. However, it would, as a matter of convention, seek the consent of the Scottish Parliament and the Northern Ireland Assembly before doing so.

We also note that the proposed statutory offence draws heavily on the existing English common law offence of public nuisance, which does not exist or apply in Scotland (though it does in Northern Ireland). The interrelationship between the new statutory offence and its origins in English common law – particularly the potential relevance of previous English case law when interpreting the new statutory offence – would need to be considered in the event that this proposal was extended to Scotland.

Police Scotland commented:

This appears to be a proposal which would principally affect England & Wales. The common law offence of public nuisance is not recognised in Scotland.

It is unclear from the proposal whether the intention is to create a statutory offence of public nuisance both in England & Wales and Scotland, or whether that provision might apply to England & Wales alone. If the intention is to create a

⁷ [Section 8 of the Accessories and Abettors Act 1861.](#)

statutory offence across the entire UK, consideration will require to be given to how this new offence might interact with, or indeed confuse, existing Scottish offences.

We agree that, as with any proposal to create new offences, it is appropriate to consider how the new offence would fit in with the existing offences in each jurisdiction. However, the fact that offences criminalising some nuisance activities already exist does not necessarily render the fourth proposal redundant.

Our view on the fifth proposal: new police stop, search and seizure powers could prevent disruption and keep people safe

The fifth proposal is to:

create new stop, search and seizure powers to prevent serious disruption caused by protests.

The fifth proposal concerns powers to tackle the disruption that arises when protesters use lock-on tactics predominantly as part of peaceful, non-violent protests. These are discussed in detail in Chapter 3. The proposal has the following main features:

- Authorisation: an officer of or above the rank of inspector would be able to give an authorisation when they reasonably believe:
 1. that 'serious disruption' may take place during a public assembly or public procession in any place in their police area and giving an authorisation is necessary to prevent its occurrence, or;
 2. that persons are carrying or otherwise in control of instruments, articles or other things which may reasonably be used to cause 'serious disruption' in any place in their police area with the intention of causing 'serious disruption'.
- An authorisation would make the stop and search powers exercisable at any place within the relevant place for a specified period not exceeding 24 hours and could be extended for a further 24 hours by an officer of the rank of superintendent or above if they consider that it is necessary to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any activity falling within the authorisation.
- Power to stop, search and seize: an authorisation would authorise a constable to stop any person or vehicle and search for instruments, articles or other things which may reasonably be used to cause serious disruption, whether or not he has any grounds for suspecting that the person or vehicle is carrying such items. The constable would have a power to seize any item which he has reasonable grounds to believe the person intends to use to cause serious disruption. A written statement that the search occurred under this power would have to be provided to the person searched if he or she applies for one within 12 months.

Lock-ons can be extremely time-consuming for the police to deal with: removal can involve considerable risk to both police and protesters. There is also the wider impact to consider, concerning the local community and commercial businesses significantly affected by the extended disruption that can be caused by lock-ons.

The fifth proposal would allow the police to stop people, search for and seize lock-on devices before they are used. Because of its preventative nature, the proposed new power has the clear potential to improve police efficiency and effectiveness.

The availability of a suspicion-less search power such as this, for the police to use only when circumstances justify it, would also act as a deterrent.

However, such powers are controversial. They must be subject to strong and effective safeguards if they are to comply with human rights as a matter of primary legislation, and their use in individual cases must be justified and proportionate. While recognising the benefits the fifth proposal offers, we must register the following concerns:

- Current suspicion-less stop and search powers for weapons (section 60 of the Criminal Justice and Public Order Act 1994, on which the proposed new power is modelled), are intended to be used by the police to combat serious violence and the carriage of “dangerous instruments or offensive weapons”. Using a similar suspicion-less power to target peaceful protesters, who may cause serious (but non-violent) disruption, is a significantly different proposition. Given the potential ‘chilling effect’ on freedom of assembly and expression in terms of discouraging people from attending protests where they may be stopped and searched, we would expect any new suspicion-less powers to be subject to very careful scrutiny by the courts.
- Such powers could have a disproportionate impact on people from black, Asian and other minority ethnic groups. We have repeatedly raised concerns about the police’s disproportionate use of stop and search in previous inspection reports, [most recently in February 2021](#). If and when contemplating the use of such powers in future, forces will need to carefully consider the demographic composition of the protest groups concerned. The importance of this issue should not be underestimated.
- We would wish to see appropriate legal thresholds and authority levels set for authorising the use of the power, and the use of such powers monitored in a similar way to existing stop and search powers. This would mean, for instance, that an officer of the required rank must have a reasonable belief that serious disruption may occur, and an authorisation for stop and search is necessary to prevent that occurring; any such authorisation must be time-limited and relate to a specific geographic area. When a person is stopped and searched, they may make an application for a written statement that they were searched. We would also wish to see high standards of training, vigilance and caution in the use of such a power.

If the new suspicion-less power were introduced, the government might consider it appropriate to also amend section 1 of the Police and Criminal Evidence Act 1984 (suspicion-based stop and search powers). This would cater for occasions when, in the absence of the suspicion-less power having been authorised, officers form a reasonable suspicion that someone is carrying an item intended to be used in the course of committing an offence involving the causing of serious disruption (but without causing criminal damage and hence not covered by the existing section 1 power). These powers could be aligned to the fourth proposal and the statutory offence of public nuisance.

We found broad support for this proposal from the NPCC and many senior officers. Many interviewees had carefully considered the safeguards and implications. There was acknowledgement that, although contentious, it would ‘send a message’ to more radical protest groups. Stop and search powers were viewed as a positive preventative measure and deterrent to lock-on protest tactics.

Many police officers said that such powers would need to be governed by strict rules. The (existing) statutory codes of practice for the police use of stop and search could be adapted to include them. Some officers had considered the proportionality of using the power. Other officers felt that the new power should be similar to that contained in section 60 of the Criminal Justice and Public Order Act 1994, which provides that, where a senior officer so authorises, officers may stop and search for offensive weapons or dangerous instruments.

However, many other interviewees from both inside and outside the police service expressed dissenting and cautionary views. Some police officers highlighted operational difficulties in the targeted use of the power. Others were also concerned over the proportionality of any search as well as the potentially intrusive nature when looking for small items.

One officer reflected that the proposal had “complications” – for instance, whether an otherwise innocuous item was really intended to be used to lock-on. He said that having a tube of superglue in your pocket, or chain and padlock that you intend to use to lock your bike, “doesn’t prove intent and presents difficulties”.

The fifth proposal is not to create an offence of locking-on during a protest, merely powers of stop, search and seizure. This power could complement the potential application of the statutory public nuisance offence to deal with lock-ons.

Junior officers widely supported the stop and search proposal. Some went further, supporting the creation of an offence of ‘going equipped to lock-on’. However, most interviewees did not wish to criminalise protest actions through the creation of a specific offence concerning locking-on. In some circumstances, protesters who lock-on may commit a public nuisance.

It was clear that officers felt that something more needed to be done to reduce the high levels of disruption associated with some protests. Many considered that the proposed stop, search and seizure powers would redress the balance.

Protest groups and academics considered that increased stop and search powers would be “contentious” and “very concerning”. There was strong feeling that the police already use stop and search powers disproportionately. One interviewee did not think that the police should have stop and search powers, because locking-on was not a criminal offence. Another commented that the proposal was “a treacherous path to go down” that would have consequences:

People will be treated like criminals, it will be abused and applied disproportionately. It will erode trust between the police and protesters even further.

On balance, our view is that, with appropriate guidance and robust and effective safeguards, the proposed stop and search powers would have the potential to improve police efficiency and effectiveness in preventing disruption and making the public safe.

The fifth proposal in relation to Scotland and Northern Ireland

The Westminster Parliament has the power to provide that the proposed stop and search power extends to Scotland and Northern Ireland. It would, as a matter of convention, seek the consent of the Scottish Parliament and the Northern Ireland Assembly before doing so.

Police Scotland commented:

It [is] difficult to provide comments without further specification. It is suggested that this proposal requires careful consideration with reference to the [earlier] remarks about necessity and proportionality and to the Policing Principles.

It is considered reasonable to speculate that there is an almost infinitely diverse range of (superficially unremarkable) items which are possessed lawfully but which could be used to cause serious public disorder or disruption to the life of the community. To that end, the issue of forming a reasonable belief that the person carrying or otherwise having control of the item(s) in question intends for it to be used to cause serious disruption seems fraught with difficulty without a very great deal more detail in the proposed legislation.

We understand that Police Scotland had not seen the more detailed proposal summarised above when making these comments.

This concludes our views on the five proposals. We will now go on to review other specific aspects of the current and newly proposed protest-related legislation.

Two recommendations to align legislation so that police have the same powers to deal with processions and assemblies

1. Amend section 11 of the Public Order Act 1986 so that organisers have legal responsibility to notify the police about public assemblies

In relation to the first Home Office proposal, we supported the proposals to align police powers to impose conditions on processions and assemblies. Our view was that treating processions and assemblies differently was no longer justified. Our view on the organisation and notification process is consistent with our earlier conclusion. We consider that the law should treat the organisation of both types of protest the same.

The Government in the 1985 White Paper sought “not to extend statutory controls over static demonstrations any further than is strictly necessary”. A deliberate distinction was made between processions and assemblies. Section 11 of the Public Order Act 1986 sets out the rules for the organisers of processions only.

Procession organisers have a legal responsibility under section 11 of the Public Order Act 1986 to notify the police in writing, six clear days in advance of the event unless it is not ‘reasonably practicable’ to do so. The notice must:

- specify the date, time and route of the proposed procession; and
- provide details of those who are organising it.

It is an offence to organise a procession without notifying the police. It is also an offence for the organiser to change the route, date or time of such procession once the police have been notified and without the agreement of a police officer. The offences have a maximum fine of £1,000.

There is no legal requirement on an organiser to notify the police of plans to conduct an assembly or static protest. We think there should be, subject to the important caveat that advance notice will not be required when it is not 'reasonably practicable' to give it. This means that spontaneous public assemblies will remain lawful, ensuring that the requirement for advance notice would not violate protesters' human rights.

We gained useful insight into the views of several protest groups on the current laws about 'notification' and the responsibilities placed on protest organisers. In particular, Extinction Rebellion interviewees helpfully provided us with their perspective and opinions on:

- how the police enforce the law;
- how their protest group(s) plan to operate within the law; and
- the engagement with the police during the pre-protest phase.

We heard from some Extinction Rebellion protest organisers, who were well-versed in the law relating to protest. But this was not always the police experience with other protest organisers. One police planning officer told us that many protest groups:

don't always have a clear event organiser to communicate with and event organisers don't always know what they need to do to comply with the law. It is different with Extinction Rebellion who are more professional and know the law and will engage just as much as they must in order to comply with the law.

There was some evidence of Extinction Rebellion protest organisers engaging with the police before processions to discharge their legal duties of advance notification. We noted that the level of engagement differed from area to area, depending on the protest organiser and the police force. Some forces have developed 'memoranda of understanding' with protest organisers to assist in notification, planning and operational phases of a procession.

We note that aligning the law on notifications for assemblies is not considered within the Home Office's five proposed changes to the legislation. This change was not explicitly proposed by the police service either. However, it was implicit in the police service's 19 potential proposals.

Police potential proposals 10 and 11 consider all types of protest activity and suggest a wide range of lawful responsibilities that should be placed on protest organisers including:

- "tighten the law on protest organisers' responsibilities, as has been done for event management"; and
- "mandate organisers to provide a protest plan, as an event organiser would have to do which is approved by the police (or higher)".

We found support from police for requiring advance notice for both processions and assemblies alike, especially the requirement for an organiser to be identifiable

and more responsible for the public safety implications of their protest activities. One interviewee felt that “any protest should have a nominated organiser” who should have “similar responsibilities to the named organiser in a public safety event”. They said that this would help “ensure the safety of all” and that there should be “COVID-like penalties for organisers”.

The NPCC considered that, with social media platforms often used to co-ordinate protests, it has become increasingly difficult to identify organisers (under the provisions within sections 11 to 14 of the Public Order Act 1986).

As we have said above, however, the current procession notification requirement was described by one officer as “a toothless tiger”. We were also told that, as the existing offence carried “such a low sanction”, it wasn’t considered a deterrent. Based on the data available to us, we identified only one prosecution under section 11 in the past two years. It related to an organiser failing to notify the Northumbria police of a procession in January 2019. The organiser was convicted of an offence under section 11 of the Public Order Act 1986 and was fined by the court. There was no police data available (over time), relating to the numbers of formal notifications that they received from organisers of processions.

During the course of our inspection, we also examined advice on policing protests during the pandemic, published by the Government’s [Scientific Advisory Group for Emergencies](#) (SAGE).

SAGE established the Scientific Pandemic Influenza Group on Behaviours (SPI-B) as a sub-group to advise on behavioural issues relating to the pandemic. SPI-B comprises behavioural scientists and academic specialists in health psychology, social psychology, anthropology and history.

On 2 July 2020, SPI-B produced a report titled [Public disorder and public health – contemporary threats and risks](#). This report explains the current and future context, impact and challenges of policing increased levels of protests through the pandemic. The report commented that:

In the last two weeks [June 2020], the UK has experienced a series of protests framed by political issues relating to ethnic inequality and national identity.

SPI-B also advised the Government on the emerging problems that the police faced relating to ‘engagement’ with protest organisers, particularly when there was a refusal to engage, or worse.

The same report commented on the problems presented to policing when protest organisers fail to engage with the police:

There are several examples of effective engagement where ‘organisers’ with lawful intentions have engaged and assisted in the achievement of safe and peaceful events but there are also examples where ‘harder’ elements have refused engagement and where unlawful agendas exist.

We have observed a similar position. And, on balance, our view is that bringing assemblies within the current notification requirement for processions would helpfully address the inconsistency in the current law that we described earlier.

Early notification by an organiser of their protest, whatever the type, could give the police and other public bodies with statutory obligations a better opportunity to plan. Everyone would know where they stand.

The scale and type of public assembly (or procession) can and does vary. To take this into account, a common-sense approach could be taken in the drafting and application of any new legislation. It might also need to take into account any other legislation that protects the rights of those who seek to assemble for a particular purpose, such as labour disputes.

Some organisers will deliberately flout the law, but others will comply with it. This might improve the relationships between police, protest organisers and others affected by the protest.

Recommendation

By 30 June 2021, the Home Office should consider laying before Parliament draft legislation (similar to section 11 of the Public Order Act 1986) that makes provision for an obligation on organisers of public assemblies to give the police written notice in advance of such assemblies.

2. Amend section 13 of the Public Order Act 1986 so that there are powers to prohibit public assemblies

In section 13 of the Public Order Act 1986, the police can request that the relevant local authority prohibit a planned public procession. However, there is no power to prohibit a public assembly (other than a trespassory assembly).

The police can apply to their local authority to prohibit a procession if they have a serious concern about their ability to safely police the proposed event. The relevant local authority must then seek the consent of the Home Secretary before prohibiting a procession. In London, the Metropolitan Police and City of London Police must apply directly to the Home Secretary for a procession to be prohibited.

Prohibiting a public procession is justified only in extreme circumstances, where there is a real threat of serious public disorder that cannot be prevented by other less stringent measures (for example, the imposition of conditions under section 12). The legal thresholds and human rights implications for such a course of action are high.

The prohibition order can be made to ban all public processions in a district or area (or part of) and does not necessarily relate to one event in one place and time. The prohibition can remain in place for a period “not exceeding 3 months”. The Metropolitan Police told us that it was “for these reasons why it is such a serious step to take and why the police apply for and seek to enforce them so infrequently”.

The Metropolitan Police told us that its experience was that a section 13 Public Order Act 1986 prohibition on public processions “is avoided by organisers translating plans to a static assembly”.

If a public procession is prohibited, then potential offences of organising, taking part in and inciting the commission of an offence may be committed. There is a sliding scale of penalties on conviction with a maximum of three months' imprisonment (for incitement) and fines ranging from £1,000 to £2,500.

Given the significant interference with protesters' rights that would be inherent in prohibiting a procession, it was unsurprising that we found little evidence of any applications to do so. We also note that this topic was not among the five Home Office proposals on which we were asked to comment. And it was not among the 19 police service proposals.

We learned that, between 2005 and 2012, Home Secretaries signed 12 prohibition (banning) orders on processions. Ten of these were associated with far-right political groups. The other two were associated with anti-capitalist and anti-globalisation groups. In a high-profile case in 2011, the then Home Secretary (Rt Hon Theresa May MP) agreed to ban a planned procession of the English Defence League in Tower Hamlets. The Home Office has not received a request to ban a procession since that order application in 2011.⁸

The fact that these powers have not been used since 2011 may explain why the alignment of legislation in this respect did not feature in the five Home Office proposals on which we were asked to comment.

On balance, our view is that treating assemblies and processions differently is part of the wider inconsistency within the current law. The law, powers and processes to apply to prohibit a public procession or an assembly should be similar. We consider that this would comply with human rights legislation if there were a framework of safeguards, thresholds and authorisation at the highest level. The power (to apply) to prohibit an assembly would have the potential to improve police effectiveness in preventing disruption and keeping the public safe.

We recognise that such a power is likely to be used very infrequently. Nevertheless, our view is that it would be preferable to place it on the statute book so that it is there if and when it is needed. The alternative scenario – which we believe to be reasonably conceivable – is that, sooner or later, a force will be faced with having to police a highly problematic public assembly that cannot be prohibited.

Our view is consistent with the governmental advice presented within the SAGE SPI-B report (above). The report highlights the emerging and future problems in policing protests, stating:

At the same time, XRW [extreme right wing] groups are coalescing and mobilising at a scale not witnessed since the early EDL [English Defence League] protests around 2010.

Increased polarisation of political discourse makes conflict and protest more likely and this may mutate into new and more violent forms. There are clear and evident racist undertones to the emerging tensions.

⁸ [Police powers: policing protests](#), House of Commons briefing paper number CBP5013, Jennifer Brown, 17 June 2020.

The report further highlights that “the main drivers of social unrest are likely to persist and grow stronger in some cases”. It concludes that there are (ten) potential “downstream problems” that “may be complicated by” the:

- “escalation of programmes of protest paused during the lockdown (e.g. Extinction Rebellion, anti-HS2)”;
- “beginning of protests planned during the lockdown (e.g. anarchist/anti-capitalist groups seeking to frustrate a ‘return to normality’; some are planned for July [2020])”; and
- “resumption of right-wing protests planned on issues such as child sexual exploitation or ‘blaming’ BAME [Black, Asian and Minority Ethnic] communities for local lockdown measures”.

It was beyond the remit of our inspection to look closely at the 12 procession banning orders from the early 2000s, or the reaction of the relevant protest groups. However, it would be surprising if, at the time, those groups didn’t at least consider holding public assemblies rather than processions, as a means of circumventing the orders.

Recommendation

By 30 June 2021, the Home Office should consider laying before Parliament draft legislation (similar to section 13 of the Public Order Act 1986) that makes provision for the prohibition of public assemblies.

The police service’s 19 potential proposals

We examined the 19 potential proposals for legislative change that the Metropolitan Police made on behalf of the NPCC (on 22 July 2019) to the Minister of State for Policing and the Fire Service (at the time, the Rt Hon Nick Hurd). The Metropolitan Police letter provided an:

overview of the challenges currently facing policing in light of the changing nature of protest and to offer a menu of options that may, singly or in combination, address those challenges.

The Home Office subsequently reviewed the proposals with the NPCC. Our terms of reference enjoined us to consider protest-related legislation in general (not just the five Home Office proposals). Because of this, we have reviewed and commented on each of the police’s 19 potential proposals.

For most of them, we have reached a similar conclusion to the Home Office and the police: that they should not be further pursued. In our view, either relevant domestic legislation already exists, or the proposal is already addressed in one of the five Home Office proposals on which we were asked to comment, or the proposals were unlikely to be compatible with the UK’s obligations to protect human rights.

We have already covered some of these proposals in detail, earlier in the report. We will add further commentary below on each of the other 19 proposals.

Police potential proposal 1: “a review of [sections 12 and 14] of the Public Order Act 1986 to ensure consistency in conditions available”

We covered this earlier, in our assessment of Home Office proposal 1.

Police potential proposal 2: “consideration of the lowering of the threshold from serious before conditions can be utilised”

We covered this earlier, in our assessment of Home Office proposal 3.

Police potential proposal 3: “to replace the existing common law offence of public nuisance with a new statutory offence as recommended by the Law Commission”

We covered this earlier, in our assessment of Home Office proposal 4.

Police potential proposal 4: “create an offence of deploying lock-ons”

We covered this earlier, in our assessment of Home Office proposal 5.

Police potential proposal 5: “better recognise the cumulative impact of repeated small scale protests which take place over a long period of time”

There are several ways in which the existing law already recognises the cumulative impact of protests. For example, an injunction may be granted to restrain protesters from carrying out actions constituting harassment under the Protection from Harassment Act 1997. Such an injunction was granted in respect of an organisation whose employees’ rights to respect for their private life, protected under Article 8 of the European Convention of Human Rights, were disproportionately affected by sustained protests.⁹

A further example lies in the use of [Public Spaces Protection Orders](#) (PSPOs), which we consider in more detail below in relation to protests.

Public Spaces Protection Orders

Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 provides that a local authority may make a PSPO when it is satisfied that activities carried on in a public place have had a detrimental effect on the quality of life in the area, or it is likely that those activities will have that effect, and that, among other things, the effect is, or is likely to be, of a continuing nature. This legislation was enacted to give local authorities a tool to tackle persistent anti-social behaviour affecting the community. Local authorities can use them within defined public areas to:

- prohibit specified activities; and/or
- require certain things to be done by people engaged in particular activities.

⁹ [Novartis Pharmaceuticals UK Ltd v Stop Huntingdon Animal Cruelty \[2009\] EWHC 2716 \(QB\)](#).

PSPOs are not implemented by the police. They are local authority-led. They focus on the identified problem behaviour in a specific location, rather than targeting specific individuals. A PSPO imposes restrictions on behaviour in a particular location or “restricted area”. Prohibitions or requirements must be reasonable to impose in order to prevent or reduce the relevant detrimental effect. The local authority must have “particular regard” to the legal rights of freedom of assembly and expression. Before granting an order, they must also consult with the police, community representatives, and the owner of land within the restricted area.

Breach of a PSPO without a reasonable excuse can result in a court fine of up to £1,000, but the offence is more usually dealt with by way of a fixed penalty notice of £100. A PSPO can last for up to three years, after which it must be reviewed. There is no limit on the number of times an order may be reviewed and renewed.

We are aware of two cases that illustrate the types of circumstances in which a PSPO may be appropriate in the context of protest activities. The first was a legal challenge to a PSPO, and the second was an application by a local authority for a Court Order that had a similar effect to a PSPO.

In the first case,¹⁰ a PSPO prohibiting abortion-related protest activities in a ‘safe zone’ surrounding a clinic was unsuccessfully challenged. The Court of Appeal held that the PSPO was proportionate in striking a balance between the rights of women visiting the abortion clinic and the rights of anti-abortion protesters to express themselves at the location identified in the PSPO. A ‘designated area’ for protest had been created 100 metres away from the clinic’s entrance, so allowing for a safe zone for clinic patients. Importantly, there was evidence of the long-term psychological impact of the protest on women visiting the clinic. This went beyond causing irritation, annoyance, offence, shock or disturbance.

The Court explained that, although the rights of those attending the clinic and the rights of protesters are all of equal importance, in this particular case the rights of the service users outweighed the rights of the protesters, and that the terms of the PSPO were proportionate.

In the second case,¹¹ the local authority applied for injunctions under sections 1–5 of the Anti-social Behaviour, Crime and Policing Act 2014 to restrict disruptive street protests about a school’s sex education curriculum. The Court found that the local authority had not sought restrictions on the content of protesters’ expression, only on the way they expressed themselves. There was ample evidence that the protests had had a significant adverse impact on teachers, pupils and local residents. The protesters had engaged in a course of conduct lasting many months, amounting to harassment, alarm or distress. They had also committed offences of public nuisance and obstruction of the highway.

The Court decided that the injunctions were necessary to protect the rights of teachers, pupils and local residents, and were proportionate to that aim. The Judge commented that:

¹⁰ [Dulgheriu v Ealing LBC \[2019\] EWCA Civ 1490, \[2020\] 1 WLR 609.](#)

¹¹ [Birmingham City Council v Afsar \[2019\] EWHC 3217 \(QB\).](#)

The individual defendants' freedom to protest in the street in ways that are anti-social, cause a public nuisance, or obstruct the highway, will continue to be curtailed to an extent that I consider is convincingly shown to be necessary in a democratic society in the pursuit of the legitimate aims I have spelled out.

The Court's Order created an exclusion zone around the school which protesters were prohibited from entering, except for school purposes or to attend a nearby mosque.

These two cases help to illustrate how difficult it is for the police and local authorities to define what amounts to an unacceptable level of disruption to the lives of others during protest, and the importance of evidence to show the effects of protests in order to assess how to strike a fair balance between protesters' rights and the rights of others.

In conclusion, in the light of the case law described above, we consider that, in limited and specific circumstances, the implementation of a PSPO could be both legally justified and effective, providing a useful mechanism to take account of the cumulative impact of protest activities on a particular place or area.

Police potential proposal 6: “to give stewards civil powers to remove people causing obstructions”

By 'stewards', we take the police potential proposal to mean private security staff employed by a particular venue. Such powers might conceivably be created by new legislation. However, the European Court of Human Rights has noted the concern expressed internationally about the appropriateness of the use of private security agents to disperse individuals exercising the right to freedom of peaceful assembly, and that in general it is preferable that coercive powers should be reserved for the police rather than being conferred on private security agents.¹²

At the very least, in order to secure compatibility with Article 11, there would need to be a mechanism by which a court can consider and strike a fair balance between the legitimate aims pursued by any action taken by private stewards towards protesters, and the protesters' rights to freedom of expression and peaceful assembly.

Police potential proposal 7: “create a bespoke protest scheme in certain locations e.g. immediately in front of Parliament, Buckingham Palace or Downing Street or other designated areas or buildings such as court buildings and sites of national critical infrastructure”

Our review of police potential proposals 7 and 9 – proposals for creating protest 'zones' or 'schemes' for London

Proposals 7 and 9 recommended the introduction of “a bespoke protest scheme” in certain locations, e.g. immediately in front of Parliament, Buckingham Palace or Downing Street or other designated areas or buildings such as court buildings and sites of critical national infrastructure, and/or to 'zone London' so that different conditions have to be met depending on the location of the protest.

¹² [Chernega v Ukraine \(2020\) 70 EHRR 9.](#)

Members of the NPCC and the Metropolitan Police debated these proposals at the protest round table (referred to earlier). The first appears simple: to introduce buffer zones around Parliament and specific areas of London, where protests are either banned or can only be conducted with prior permission. These areas experience frequent, repeated protests and the cumulative effect causes considerable disruption and/or distress to the public. The interpretation, application and legality of such a concept is more difficult.

As we have previously reported, most of the powers to police protest can only be used to prevent serious disorder, damage, disruption to the life of the community or the intimidation of others. Most protests that affect or disrupt access to Parliament neither meet these thresholds nor amount to public order offences.

The Metropolitan Police already has the following powers:

- There is section 52 of the Metropolitan Police Act 1839, which we described earlier (Chapter 4). This could potentially be used to police protest specifically outside Parliament. However, the law states that the powers inferred by the section should only be used by the police “from time to time”. The police take the view that because section 52 states that the powers can only be used “from time to time”, they do not provide a general power in relation to access to Parliament. We do not read those words as imposing any maximum number of uses of the power, which can be used whenever appropriate cases arise (this is reinforced by the full section 52 wording: “from time to time, and as occasion shall require”). However, the confusion this wording gives rise to reflects concerns about the appropriateness of this power’s use today. We would add that the absence of safeguards on use of the section 52 power may make it vulnerable to challenge on human rights grounds.
- The police also have powers under Part 3 (sections 141–149) of the Police Reform and Social Responsibility Act 2011. This Act contains provisions for the policing of Parliament Square. It empowers police to direct the cessation of “prohibited activities” – essentially camping or using amplified noise equipment – and to seize prohibited items.
- There are powers associated with the offence of wilful obstruction of the highway, subject to the defence of “lawful authority or excuse”.

However, the police (and particularly the Metropolitan Police) may not consider that these provisions offer a complete answer to ensuring that access to Parliament, courts or other important sites is maintained.

A statutory scheme authorising protest buffer zones that amount to a blanket ban on protest around a site is unlikely to be compatible with human rights. A scheme that requires protesters to get authorisation to protest in a particular area may be compatible with human rights, provided it applies to a very targeted set of locations, and only those that have the highest political or constitutional status.

As well as narrowly drawing the affected area, the scheme would need to ensure that the time limits for authorisation allow for protest at short notice and that the imposing of conditions will meet the requirements of necessity and proportionality. Widening such a scheme to cover sites of critical national infrastructure faces an increased risk of successful legal challenge.

The proposal of zoning wider London to reflect different levels of freedom of assembly would face similar difficulties but on a much larger scale. It is unlikely that it would be feasible, given the sheer complexity of:

- creating such zones;
- deciding who authorises and regulates them;
- assessing them against justifiable criteria; and
- ensuring proportionate police responses.

We consider that any general ban on protest activity in particular areas is unlikely to be compatible with human rights unless there is very compelling evidence that the rights of others would be disproportionately affected.

Police potential proposal 8: “make protest an offence where permission is required and either has not been sought or has been refused”

We covered aspects of this broad proposal earlier, in our assessment of section 11 of the Public Order Act 1986. We further note that police potential proposal 8 suggests that there should be a ‘permission’ to protest. Section 11 differs because it is not, strictly speaking, a mechanism by which ‘permission’ to protest is granted – it is a notice provision. In the context of a specific statutory scheme where authorisation for a protest is required (such as legislation under the Serious Organised Crime and Police Act 2005), we conclude that this type of offence may be compatible with human rights law.

Police potential proposal 9: “‘Zone’ London so that different conditions have to be met dependent on the location of the protest – the more vulnerable the location, the more stringent the conditions

We cover this earlier when considering police potential proposals 7 and 9 in our combined assessment of the proposals for protest ‘zones’ and ‘schemes’ for London.

Police potential proposal 10: “tighten the law on organisers’ responsibilities as has been done for event management”

We covered police potential proposals 10 and 11 earlier, in our assessment of section 11 of the Public Order Act 1986. Holding protest organisers legally responsible under health and safety law and/or requiring costly pre-protest planning is likely to be a disproportionate interference with the Articles 10 and 11 rights of organisers and would-be participants. Therefore, we consider that these proposals would be unlikely to be compatible with human rights if implemented in their present form.

Police potential proposal 11: “mandate organisers to provide a protest plan, as an event organiser would have to do which is approved by the police (or wider)”

We covered this earlier, in our assessment of section 11 of the Public Order Act 1986 and our assessment of police potential proposal 10.

Police potential proposal 12: “create a class of civil action where affected business, transport and other such parties can take action against protest groups to recoup losses”

We consider that this proposal faces a series of fundamental difficulties that include:

- the difficulty of defining a protest group as a legal entity against which any new civil action could be brought;
- the likely incompatibility with human rights of requiring protest groups to take a particular legal form;
- the further likely incompatibility of imposing civil liability on organisers for the actions of other participants over whom they have no control;
- the inappropriateness in principle of using the civil jurisdiction of the courts as a means of addressing protest activity; and
- the likelihood that imposing civil liability on organisers could be counter-productive because it would deter them from identifying themselves to the police and thereby reduce the police’s ability to plan for the safe and orderly conduct of the protest.

Police potential proposal 13: “create protest banning orders (similar to football banning orders) where evidence of persistent disobedience and disruption is provided; this would need to be carefully considered against HRA [Human Rights Act 1998] rights”

No further detail of this police potential proposal is available to us. However, it appears to be based on football banning orders and/or criminal behaviour orders, which both exist in current domestic legislation. Both these orders are issued by a court, usually to individuals who are repeatedly convicted of criminal offences. We envisage this could be the same for a protest banning order. The normal evidential burdens and standards of proof in the criminal law could apply. Any breach of an order could potentially result in a harsher penalty than that given for their original protest-related offence(s).

Protest banning orders could potentially be based on evidence of persistent disobedience and disruption. This might include persistent low-level criminal behaviour or convictions over a relatively short period. Offences could include criminal damage, public nuisance, wilful obstruction of the highway and aggravated trespass.

The police and Home Office recognise that the compatibility of any such banning orders with human rights would need to be ‘carefully considered’. The police debated the issue at the NPCC protest round table meeting (referred to earlier). Their views were split. A protest banning order was seen by many police officers as a potentially effective new power to target protesters who are intent on repeated unlawful (but non-violent) activity.

However, others regarded such banning orders as a disproportionate infringement of the right to freedom of expression and peaceful assembly. One senior police officer believed that banning orders would “unnecessarily curtail people’s democratic right to protest”. Another commented that a protest banning order is “a massive civil liberty infringement”. We also heard a view that “the proposal is a severe restriction on a person’s rights to protest and in reality, is unworkable”.

One operational officer could not see the value in the proposal, stating that “this is a very different context to football”. In relation to football banning orders, the Court of Appeal has explained that such orders were a response to the “shame and menace of football hooliganism”.¹³ They were Parliament’s response to organised and extreme violence, disorder and racial hatred within football. The context and balance of rights is quite different here.

There was a common view that the potential proposal had significant human rights implications. One senior police officer concluded: “I think this is the hardest of all the asks and would prioritise the others.” Another reflected that the police would need to improve their public order intelligence capabilities to allow the proposal to work in practice.

The Home Office Response to the police potential proposal discounted it for the following reasons:

The police have identified circa thirty environmental activists who travel the country orchestrating protests and taking direct action which often involves the influencing of others to commit crimes. These individuals are undeterred by the threat of arrest and the relatively small fines they are likely to receive if convicted at court for types of offences committed during peaceful protests.

This proposal essentially takes away a person’s right to protest and we believe banning people from attending peaceful protests would very likely to lead to a legal challenge. Furthermore, regardless of the maximum sentence set down for breaching an order, the court imposing the sentence would still need to consider the person’s rights to freedom of expression and assembly and impose a sentence that is proportionate. It therefore appears unlikely that a court would issue a high penalty to someone who is peacefully protesting. Consequently, we believe it unlikely the measure would work as hoped.

We agree with this view and that shared by many senior police officers quoted above. All things considered, legislation creating protest banning orders would be legally very problematic because, however many safeguards might be put in place, a banning order would completely remove an individual’s right to attend a protest. It is difficult to envisage a case where less intrusive measures could not be taken to address the risk that an individual poses, and where a court would therefore accept that it was proportionate to impose a banning order.

We also agree with the Home Office’s view about the related issue of the penalties imposed upon protesters who are convicted of offences. Our view is supported by a recent Court of Appeal decision in a fracking protest case.¹⁴ This judgment shows how reluctant the courts are to send peaceful protesters to prison, even for repeated breaches of court orders.

We were shown a case study about an aggravated activist, referred to as ‘Subject A’. Subject A has been arrested by the police very many times since 2017. All the cases have gone to court or are in the process of so doing. Subject A often pleads not guilty

¹³ [Gough v Chief Constable of Derbyshire Constabulary \[2002\] EWCA Civ 351, \[2002\] QB 1213.](#)

¹⁴ [Cuadrilla Bowland Ltd v Persons Unknown \[2020\] EWCA Civ 9, \[2020\] 4 WLR 29.](#)

and often argues, sometimes successfully, that they have a lawful excuse to carry out their actions within their human right to protest.

We heard from the police senior investigating officer. He said that:

- every case ends up in a court trial;
- most trials are listed and heard by the courts separately;
- he perceived a lack of recognition of the totality of Subject A's offending;
- there were severe delays to each trial;
- due to the low-level nature of each offence, Subject A always receives bail; and
- this allows further and persistent pre-trial offending.

We were informed that the subject was found guilty in all but one of the cases that went to court. Most cases resulted in conditional discharge with a low-level fine. The police consider that the sentences available to the court act as no deterrent because there is no custodial sanction. Based on the facts of this case, we agree.

Even in a case like this, we believe that an attempt to ban or restrict this type of protest activity would potentially breach human rights legislation. Protest banning orders would very likely be subject to legal challenge, both in individual cases and as a matter of primary legislation. There is a significant risk that the power would be successfully challenged in court, as intrinsically incompatible with Article 11 of the European Convention on Human Rights.

We therefore agree with the stated Home Office view. We remain unconvinced that such orders would either be compatible with human rights legislation or create an effective deterrent.

Police potential proposal 14: “create a Penalty Notice for Disorder or on-the-spot fines for breaches of the above [banning orders] together with a dispersal order not to re-enter an area”

Police potential proposal 14 recommended the introduction of protest-related PNDs. The proposal describes on-the-spot fines that could be used in tandem with banning or dispersal orders.

PNDs were introduced into law by the Criminal Justice and Police Act 2001 and are defined in section 132 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and Schedule 23 of that Act. Recipients of PNDs have a right to contest the case at court.

They may be issued to a person over 18 years. Offences that can be dealt with by way of PNDs currently include offences of drunk and disorderly behaviour, possession of cannabis, petty retail theft and causing criminal damage (under £300). Other potentially relevant protest-related offences to consider here are those in section 5 of the Public Order Act 1986, criminal damage, breach of community protection notice, and breach of PSPO.

The stated aims of the PND scheme are to:

- offer the police a quick and effective alternative disposal option for dealing with low-level offences;
- help the police to focus on serious crime;
- provide a swift and simple method of deterrence; and
- reduce police bureaucracy and demands on the court.

We didn't find any use of PNDs to deal with criminal damage caused by protesters.

If a new statutory offence of public nuisance is created, this could be considered as a PND offence. Consideration could also be given to including other protest-related offences within the PND 'basket', such as 'wilful obstruction of the highway'.

However, this could play into the hands of those protest groups whose tactics are to overwhelm the criminal justice system. The concept of PNDs is to provide swift, simple and unbureaucratic justice. The system only works efficiently if the penalty is paid within the stipulated 21-day period. Any extension of PNDs for protest enforcement could be open to both deliberate non-payment and/or election to proceed to court trial. The unintended consequence could be to add or fail to relieve the pressure on an already creaking system.

We consider that the proportionate issue of PNDs in appropriate cases is likely to be compatible with the Convention. But, on balance, we consider that further research should be considered before PNDs are used to enforce protest-related offences.

Given the current public health emergency, the police experience of using fixed penalty notices for protest-related breaches of public health regulations may present an opportunity for such research.

Recommendation

By 30 June 2022, the Home Office, working with the National Police Chiefs' Council and other interested parties, should carry out research into the use of fixed penalty notices for breaches of public health regulations in the course of protests. The research should explore the extent to which recipients complied with the scheme, and any consequential demand on the criminal justice system. The outcome of this research should inform a decision on whether to extend either the penalty notices for disorder scheme or the fixed penalty notice scheme, to include further offences commonly committed during protests.

Police potential proposal 15: "sentences that act as a deterrent to those who would otherwise remain law abiding"

We covered this earlier in our assessment of the effectiveness of the criminal justice system in dealing with protest. Imposing harsher sentences for non-violent offences committed during protests is likely to be difficult to justify without reference to the individual facts of any particular case. This is because of the importance of any such sanction being proportionate in order to avoid violating the protester's Articles 10 and 11 ECHR rights.

Police potential proposal 16: “review the mental element for offences under [sections 12 and 14 of the Public Order Act 1986] (i.e. the ‘knowingly fails to comply’ aspect which is hardest to prove)”

We covered this earlier in our assessment of the Home Office’s second proposal.

Police potential proposal 17: “outcomes and law to deal with those using social media to mobilise large crowds and intentionally cause mass disruption as this is now a common tactic”

An offence of using social media platforms to cause intentional mass disruption could conceivably be framed in such a way as to comply with human rights legislation. However, it would have to be carefully defined and tailored to target conduct that can properly be criminalised. It is not clear to us that conduct that could properly be criminalised is not already covered by existing offences, such as inciting others to breach conditions on a public procession or assembly under sections 12(5) and 14(5) of the Public Order Act 1986.

Police potential proposal 18: “review of the Bail Act to remove the use of ‘Released Under Investigation’”

On 14 January 2021, following a Home Office review of the use of pre-charge bail, the Government announced its intention to create legislation that should reduce the number of suspects released under investigation (RUI).

This Government’s response to public consultation exercise states that:

The Government acknowledges the strong agreement expressed about non-bail investigations which related to the lack of rationale for the existence of RUI and the lack of a statutory framework for non-bail investigations. The government agrees that RUI is an unsatisfactory process which does not provide the necessary level of accountability around decision-making, communication with the suspect, victims and witnesses, and timescales for completing the investigation. On top of this, there are no conditions attached to RUI cases which can lead to victims being inadequately protected by the regime.

Given the Government’s intention to remove the presumption against bail, we expect the use of RUI to drop significantly following these reforms. Decision-makers will be able to set bail, with reference to the necessary and proportionate criteria and the risk factors set out in guidance, either with or without conditions. If individuals do not meet these criteria, it is likely that no further action is the most appropriate course to take. As we expect the use of RUI to decline, we will not be introducing timescales into the RUI process and instead will work with the sector to limit the use of RUI going forward.

The response further clarifies that:

The Government will seek to bring the legislative changes outlined above in a Bill before Parliament at the earliest opportunity in 2021. New guidance will be issued to assist with the implementation of these changes in due course.¹⁵

It therefore appears that the concern underpinning police potential proposal 18 is already in the process of being addressed.

Police potential proposal 19: “offences of conspiracy to be incorporated more easily into public order situations”

We covered this earlier, in our assessment of the offence of conspiracy to commit a public nuisance under the Home Office’s fourth proposal. Existing legislation (Criminal Law Act 1977 section 1) already makes provision for the offence of conspiracy to be used in relation to public order offences, and indeed it has been used to secure convictions for conspiracies to commit public nuisance. Moreover, the proposed new public nuisance offence will make it easier to apply to public order situations. This is largely because the elements of the new statutory offence will be clearer, which in turn means the offence can be relied on with greater confidence.

¹⁵ [Police powers: Pre-charge bail – government response](#), Home Office, 14 January 2020.

Annex A – Relevant articles in the European Convention on Human Rights

Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10: Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11: Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Annex B – List of forces and other organisations

Principal forces we inspected

- Avon and Somerset Police
- Devon and Cornwall Police
- Essex Police
- Hertfordshire Constabulary
- Lancashire Constabulary
- Merseyside Police
- Metropolitan Police
- South Wales Police
- West Midlands Police
- West Yorkshire Police

Additional forces that contributed to the inspection

- BTP
- Cambridgeshire Constabulary
- Civil Nuclear Constabulary
- Cumbria Constabulary
- Dorset Police
- Greater Manchester Police
- Ministry of Defence Police
- Northumbria Police
- Police Scotland
- Police Service of Northern Ireland
- South Yorkshire Police
- Sussex Police

Other organisations

- Association of Police and Crime Commissioners
- Association of Police Lawyers

- Barclays Bank plc
- Bedfordshire Police and Crime Commissioner
- Bristol City Council
- Canary Wharf Group
- College of Policing
- Counter Terrorism Policing
- Crown Prosecution Service
- Department for Environment, Food & Rural Affairs (England)
- Envigo
- Extinction Rebellion
- Her Majesty's Inspectorate of Constabulary in Scotland
- Home Office Police Powers Group
- HS2
- Independent Office for Police Conduct
- Information Commissioner's Office
- Keele University
- Liberty
- Liverpool John Moores University
- Mayor's Office for Policing and Crime
- National Black Police Association
- National Crime Agency
- National Farmers' Union
- National Police Chiefs' Council (NPCC)
- National Police Ethical Dilemmas Guidance Group
- Netpol
- Newsprinters
- NPCC National Police Coordination Centre
- NPCC National Source Working Group
- NPCC National Undercover Working Group
- NPCC Protest Working Group
- NPCC Public Order Public Safety Group
- NPCC Tactics, Training and Equipment Working Group
- Plan B
- Police Federation
- Police Superintendents' Association
- Parades Commission for Northern Ireland
- Scientific Pandemic Influenza Group on Behaviours

- University of Suffolk
- West Midlands and Staffordshire Federation of Small Businesses
- Westminster City Council

Annex C – Definitions and interpretation

In this report, the following words, phrases and expressions in the left-hand column have the meanings assigned to them in the right-hand column. Sometimes, the definition will be followed by a fuller explanation of the matter in question, with references to sources and other material which may be of assistance to the reader.

Term	Definition
aggravated activism	activity that seeks to bring about political or social change but does so in a way that involves unlawful behaviour or criminality, has a negative impact upon community tensions, or causes an adverse economic impact to businesses; (definition provided by Counter Terrorism Policing)
aggravated activist	person suspected by the police of carrying out aggravated activism
APP	authorised professional practice
<u>authorised professional practice</u>	official source of professional practice on policing, developed and approved by the College of Policing, to which police officers and staff are expected to have regard in the discharge of their duties
<u>basic deployment unit</u>	group of police officers who work together; comprised of 1 inspector, 3 sergeants and 18 constables; trained to College of Policing Public Order level three standard
BDU	basic deployment unit
<u>Black Lives Matter</u>	organisation which campaigns against racism
BLM	Black Lives Matter
Brexit	withdrawal of the United Kingdom from the European Union
<u>bronze commander</u>	junior police commander; reports to a silver commander; usually takes command of policing of a geographical area or provision of a specific policing function e.g. intelligence gathering, community liaison, logistics; forms part of the gold, silver, bronze command structure

Term	Definition
BTP	British Transport Police
CHIS	covert human intelligence source
CIA	community impact assessment
<u>collateral intrusion</u>	the risk of obtaining private information about persons who are not subjects of surveillance or property interference activity
<u>College of Policing</u>	the professional body for policing in England and Wales, established in 2014 to set standards of professional practice; it accredits training providers, promotes good practice based on evidence, provides support to police forces and others on protecting the public and preventing crime, and promotes ethics, values and standards of integrity in policing
<u>commanders</u>	those who command police operations
<u>community impact assessment</u>	an assessment of the impact of policing and related matters on a community; often carried out by the police in response to a specific event
<u>conditional discharge</u>	sentence imposed by a court, whereby an offender is released and the offence registered on their criminal record; no further action is taken unless they commit a further offence within a time decided by the court (no more than three years)
CoP	College of Policing
<u>Counter Terrorism Policing</u>	a collaboration of UK police forces working with the UK intelligence community to help protect the public and national security by preventing, deterring and investigating terrorist activity
<u>covert human intelligence source</u>	a person who covertly provides intelligence to assist investigations; authorised and governed by the Regulation of Investigatory Powers Act 2000
CPS	Crown Prosecution Service
<u>Crown Prosecution Service</u>	a public body; prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales; makes its decisions independently of the police and Government

Term	Definition
CTP	Counter Terrorism Policing
DEFRA	Department for Environment, Food and Rural Affairs (England)
<u>directed surveillance</u>	covert surveillance carried out by police and other law enforcement bodies; not carried out in a residence or private vehicle; includes covert monitoring of a person/people of interest's movements, conversations and other activities; defined fully in the Regulation of Investigatory Powers Act 2000 Part II
ECHR	European Convention on Human Rights
EDL	English Defence League
English Defence League	far-right political organisation
<u>European Convention on Human Rights</u>	convention that protects the human rights of people in countries that belong to the Council of Europe
<u>evidence gathering team</u>	team of uniformed police officers who gather evidence; typically consists of two trained and equipped officers to secure video/still camera evidence in order to support the investigation and prosecution of offenders
<u>Extinction Rebellion (XR)</u>	organisation that campaigns for environmental protection
FIT	forward intelligence team
<u>forward intelligence team</u>	team of police officers who gather intelligence; typically consists of two trained officers working to bronze intelligence; identify, observe and communicate with individuals/groups who may become involved in, or encourage, disorder or violence
<u>gold commander</u>	officer in charge of an operation; usually a senior officer; silver commander reports to the gold commander
<u>gold strategy</u>	a document; describes gold commander's plan for a police operation; usually contains aims and objectives

Term	Definition
high-level aggravated activism	activity using tactics to bring about social or political change involving criminality that has a significant impact on UK communities, or where the ideology driving the activity would result in harm to a significant proportion of the population
HRA	Human Rights Act 1998
HS2	the planned high-speed railway currently under construction linking London with Birmingham, Manchester and Leeds
IAG	independent advisory group
independent advisory group	group of people or organisations brought together with senior police officers to discuss policing-related concerns, often in communities with low trust in the police
Independent Office for Police Conduct	independent body responsible for scrutinising police conduct; investigates the most serious and sensitive incidents and allegations involving the police; formerly called the Independent Police Complaints Commission (IPCC)
intelligence	information that has been evaluated to assess its relevance and reliability
intrusive surveillance	covert surveillance carried out by police and other law enforcement bodies in relation to anything taking place on any residential premises or in any private vehicle; involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device; governed by the Regulation of Investigatory Powers Act 2000, Part II
IOPC	Independent Office for Police Conduct
JESIP	joint emergency services interoperability principles
joint emergency services interoperability principles	programme seeking to improve the way police forces, fire and rescue services and ambulance trusts work together when responding to major multi-agency incidents

Term	Definition
<u>key individual network</u>	a network of people who are able to represent identified groups or communities, either through group or self-nomination; membership is voluntary and individuals must have an interest in the safety and wellbeing of the group or community that they represent; people may identify as belonging to a specific 'protected characteristic' group, as defined in the Equality Act 2010
<u>Knowledge Hub</u>	web-based platform; hosted by the College of Policing; helps the police to share information, discuss ideas and opportunities and encourage greater collaboration
LGBT	lesbian, gay, bisexual and transgender
<u>local resilience forum</u>	multi-agency partnership made up of representatives from local public services; responsible for planning and preparing for localised incidents and catastrophic emergencies
lock-on	technique used by protesters to make it difficult to remove them from their place of protest; usually involves attachment of a person to a device, vehicle, building or other object
low-level aggravated activism	activism which involves unlawful behaviour or criminality; this criminality is local or cross-regional and potentially has an adverse impact on local community tensions (adapted from definition provided by Counter Terrorism Policing)
MDP	Ministry of Defence Police
MOPAC	Mayor's Office for Policing and Crime (London)
MPS	Metropolitan Police Service
<u>mutual aid</u>	provision of policing assistance from one force to another; usually in response to, or in anticipation of, a major incident or event
<u>National Decision Model</u>	decision-making tool used by the police; prompts decision-maker to consider the information available and options, including the use of police powers
national development team	a team within NPoCC SIB; created on a trial basis to develop intelligence related to protest
<u>national inter-agency liaison officer</u>	senior manager or officer from an emergency service; liaises between services at an incident

Term	Definition
<u>National Police Chiefs' Council</u>	organisation which brings together the 43 chief constables in England and Wales to co-ordinate national operational policing; works closely with the College of Policing to develop national approaches on issues such as finance, technology and human resources; replaced the Association of Chief Police Officers on 1 April 2015
<u>National Police Coordination Centre</u>	co-ordinates the deployment of officers and staff from across UK policing to support forces during large scale events, operations and in times of national crisis
National Police Coordination Centre Strategic Intelligence and Briefing Team	collects and assesses intelligence for police and law enforcement organisations; a team within the National Police Coordination Centre
<u>national post-event learning review form</u>	a form; completed by a force after an event to record lessons learned from managing the event; submitted to the College of Policing; stored on the Knowledge Hub
national post-event reporting form	a form; completed by a force after an event to record lessons learned from managing the event; replaced by the national post-event learning review form
National Public Order Public Safety Group	NPCC group that maintains strategic oversight of public order and public safety
<u>National Source Working Group</u>	NPCC group that works to raise standards and develop consistent methods for the use and deployment of covert human intelligence sources
<u>National Undercover Working Group</u>	NPCC group that works with the College of Policing to set national standards in the area of undercover policing; it helps chief constables and heads of law enforcement agencies to provide strategic leadership and direction in this sensitive area of police work
NATO	North Atlantic Treaty Organisation
<u>Netpol</u>	an organisation funded by donations; seeks to monitor public order, protest and street policing, challenge and resist policing which is excessive, discriminatory or threatens civil rights
NILO	national inter-agency liaison officer

Term	Definition
NPCC	National Police Chiefs' Council
NPELR	national post-event learning review form
NPERF	national post-event reporting form
NPoCC	National Police Coordination Centre
NPoCC SIB	National Police Coordination Centre Strategic Intelligence and Briefing Team
NPOPS	National Public Order Public Safety Group
NSWG	National Source Working Group
NUWG	National Undercover Working Group
open source research	the collection, evaluation and analysis of materials from sources available to the public, whether on payment or otherwise; for use as intelligence or evidence
penalty notice for disorder	a notice issued to a person aged 18 or over to deal with low level, anti-social and nuisance offending; quick and simple justice that carries a deterrent effect; person can pay a fine, request a court hearing or do nothing (in which case the penalty is registered as an unpaid fine with an increase of 50 percent)
PLT	police liaison team
PND	penalty notice for disorder
police liaison team	team of uniformed police officers whose primary function is to liaise with event or protest organisers and groups; adopt a community style of policing; seek to facilitate communication and reduce tension and disorder; deployed before, during and after events
police national public order mobilisation plan	a plan agreed by chief constables; documents the capacity and capability of the police service to provide public order trained officers
police support unit	a unit used in public order and public safety operations; made up of 1 inspector, 3 sergeants, 18 constables and 3 drivers with protected personnel carriers; trained to College of Policing Public Order level two standard

Term	Definition
<u>policing style</u>	the approach directed by the gold commander in terms of factors that may influence public perceptions, for example dress code of officers, level of officer visibility
POPSSRA	public order public safety strategic risk assessment
POPS	public order public safety
POPSA	public order and public safety advisor
POSTRA	public order strategic threat and risk assessment
<u>property interference</u>	the entry onto or interference with property or wireless telegraphy by law enforcement bodies; authorised under Part III of the Police Act 1997; governed by Part II of the Regulation of Investigatory Powers Act 2000
protected personnel carrier	specialised adapted commercial vehicle used to transport police support units; adaptations may include metal mesh grilles over windscreens and acrylic rather than glass windows
<u>protester removal team</u>	a team of officers deployed to release locked-on protesters; usually made up of one supervisor and four operators; equipped with drilling, cutting and de-bonding equipment
PRT	protester removal team
PSPO	Public Spaces Protection Order
PSU	police support unit
<u>public order public safety advisor</u>	a trained and accredited officer who provides tactical advice to a commander; previously known as a public order tactical advisor
public order public safety strategic risk assessment	an assessment that identifies intelligence held by forces, local, regional and national risks and public safety; used to support tasking and co-ordination processes to ensure public order operations are not conducted in isolation
<u>public order strategic threat and risk assessment</u>	a document; contains an assessment of local, regional and/or national threats and risks; used to support tasking and co-ordination processes

Term	Definition
<u>Public Spaces Protection Order</u>	a tool used by local authorities to prohibit specified activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area
<u>regional information and co-ordination centre</u>	a regional unit that works with the National Police Coordination Centre to facilitate the mobilisation of police resources on mutual aid
<u>Regulation of Investigatory Powers Act 2000</u>	governs the use of covert techniques by public bodies, including communications interception and the use of covert human intelligence sources
RICC	regional information and co-ordination centre
RIPA	Regulation of Investigatory Powers Act 2000
<u>safety advisory group</u>	a forum for discussing and advising on public safety at an event; usually co-ordinated by a local authority; made up of representatives from the local authority, emergency services, other relevant bodies and the event organiser
SAG	safety advisory group
<u>silver commander</u>	officer who commands and co-ordinates the tactical response; in charge of bronze commanders; reports to the gold commander
SPR	Strategic Policing Requirement
SRA	strategic risk assessment – another name for strategic threat and risk assessment (see POSTRA)
<u>Strategic Policing Requirement</u>	document issued by the Home Secretary pursuant to section 37A of the Police Act 1996; describes national threats and the policing response that is required to counter them
<u>tactical parameter</u>	boundary, limit or constraint on a police operation; set by a commander
<u>tactical plan</u>	document that provides a description of the tactical options chosen to meet the gold commander's objectives

Term	Definition
<u>Tactics, Training and Equipment working group</u>	national group that provides governance and a framework for current and future requirements for tactics, training and equipment related to public order and public safety
TfL	Transport for London
TTEWG	Tactics, Training and Equipment Working Group
XR	Extinction Rebellion

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