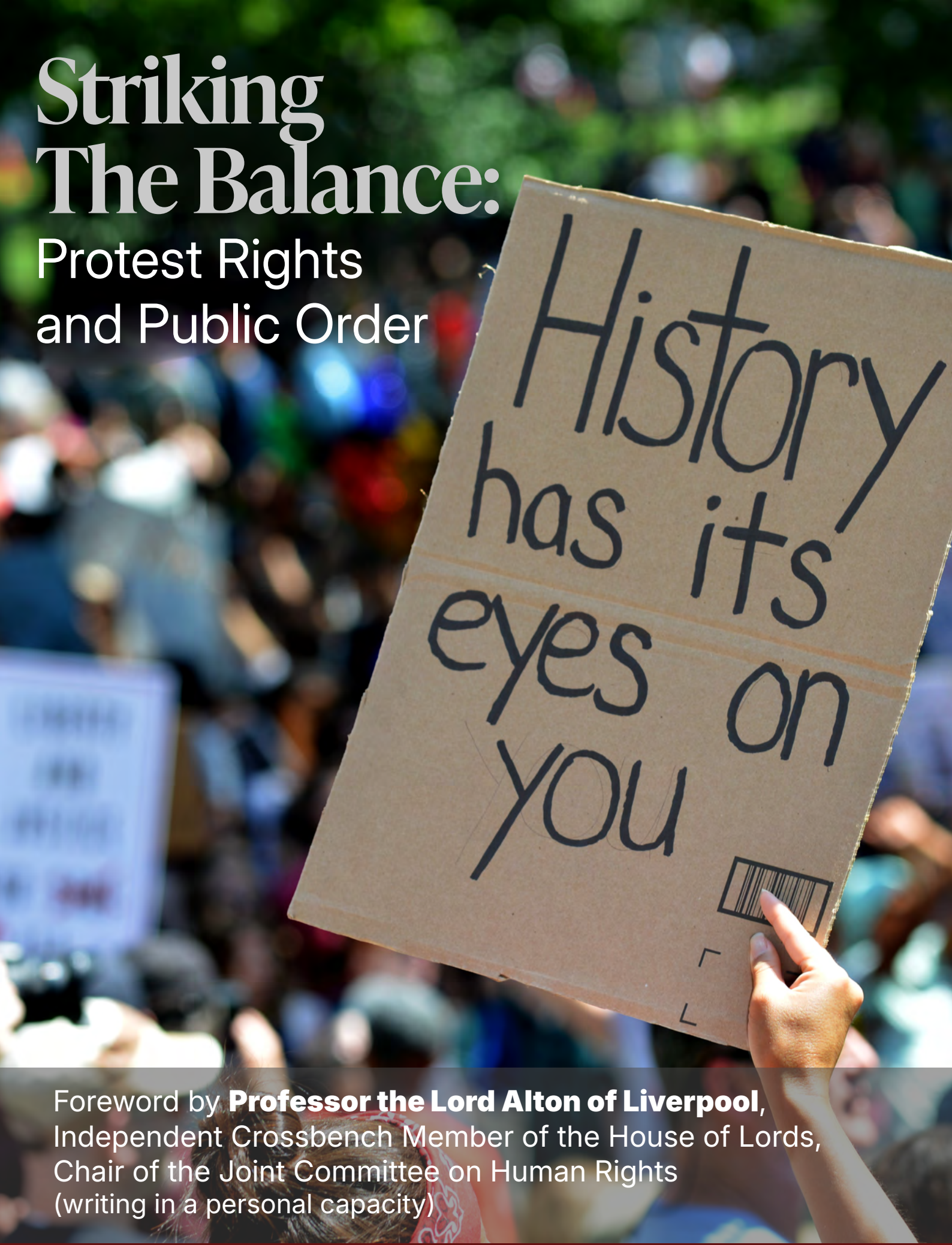
Striking The Balance:

Protest Rights and Public Order



Foreword by **Professor the Lord Alton of Liverpool**, Independent Crossbench Member of the House of Lords, Chair of the Joint Committee on Human Rights (writing in a personal capacity)

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Foreword

A healthy and vibrant democracy relies on the active participation of a nation's citizens.

Such engagement is often narrowly associated with General Elections, defining moments when the public get to choose their Parliamentary representatives and Governments.

However, without waiting until the next General Election how, during those gap years, can people express their disagreement or dissatisfaction?

The right to protest is, in part, the answer to that question. Peaceful, lawful, protests enable people to express their opposition and to demonstrate legitimate, alternative, points of view.

I have always valued that right.

As a young man I took part in anti-apartheid protests.

More recently, I joined Hong Kongers in a protest against the proposed CCP mega embassy.

And, historically, recall the suffragette movement, or, globally, the civil rights movement and Mahatma Gandhi's Salt March.

Whilst it is always important to prevent protest from being used to promote hatred or to target other citizens, especially minorities, in a flourishing democracy it is important to uphold the right to protest. It must not be so curtailed, or subjected to so many restrictions, that it no longer accommodates the peaceful expression of disagreement/dissatisfaction.

This timely report is an important wakeup call that, even here in the UK, we cannot take the right to protest for granted.

The report provides some timely and important recommendations to ensure that UK citizens can come together and peacefully express their position.

Coexistence in a respectful society – entrenched by active engagement and participation in public life – will remain central to how we shape the future of our country.

Professor the Lord Alton of Liverpool

**Independent Crossbench Member of the House of Lords,
Chair of the Joint Committee on Human Rights
(writing in a personal capacity)**

Executive Summary and Recommendations

The right to protest is foundational to the rule of law, human rights, and the ability of the public to challenge injustice and communicate their concerns to lawmakers. In England and Wales, this fundamental right faces an unprecedented crisis. This report seeks to analyse the recent legislative changes which have created a chilling effect on lawful protest and confusion among those tasked with enforcing the law, leading to inconsistent application, operational ineffectiveness and uncertainty about the limits of lawful protest.

Over the past several years, successive governments have introduced a raft of legislation which have both created and expanded overlapping public order powers. Measures implemented through legislation have fundamentally reshaped the right to protest and have shifted the law from a positive duty to facilitate peaceful protest toward a system that expands state powers and emphasises controls and restrictions. These changes have unfolded against a backdrop of entrenched racial disproportionality in public order policing, weak accountability mechanisms, as well as the misuse of stop and search powers[1] and the expansion of civil orders[2] to restrict peaceful demonstrations.

JUSTICE proposes reform of the protest and public order framework in the UK to create a clear, proportionate and rights-based framework which upholds the rule of law, international obligations and democratic legitimacy.

The Evolution of Protest Law

Protest is a vital democratic safeguard. Recent reforms risk destabilising the public order legal framework, eroding fundamental protections and the criminalisation of legitimate democratic expression. Key legislation explored in chapter 1 includes:

- **The Public Order Act 1986 (POA 1986)**: Introduced broad police powers to impose conditions on protests following civil unrest in the 1980s, where they reasonably believed, such measures were required to prevent serious public disorder, serious damage to property, or serious disruption. The Act didn't define "serious disruption", leaving wide discretion to the police in imposing conditions.
- **Police and Criminal Evidence Act 1984 (PACE 1984):** Running parallel to the POA 1986, PACE 1984 established suspicion-based stop and search powers which remain disproportionately used, particularly against Black communities. These concerns become more acute as stop and search powers expand into protest contexts.
- **Criminal Justice and Public Order Act 1994 (CJPOA 1994):** Reintroduced suspicionless stop and search (section 60), disproportionately impacting racial minorities and increasingly deployed at protests. JUSTICE therefore reiterates our recommendation that the Home Office should immediately suspend any further section 60 authorisations until it has undertaken an independent evaluation of the impact and effectiveness of these searches, supported by a public consultation. In the meantime, while section 60 authorisations continue, we recommend that the changes made under the pilot scheme be immediately reversed and be subject to the prior review of Community Scrutiny Panels. Further, JUSTICE urges the Government to meet their commitment to publish annual data from 2025/26 about areas covered by Section 60 authorisations.
- **The Terrorism Act 2000 (TA 2000):** Section 43 of the TA 2000 permits stop and search based on reasonable suspicion, with data again showing stark racial disparities in implementing these powers. Schedule 7 powers allow suspicionless detention and biometric data collection at ports and borders, and its operation also shows systemic disproportionality.
- **Human Rights Act 1998 (HRA):** The HRA 1998 incorporates rights enshrined by the European Convention on Human Rights (ECHR) into domestic law. Key rights include Article 3 (Prohibition of Torture), Article 5 (liberty and security), Article 10 (freedom of expression), Article 11 (freedom of assembly and association), and Article 14 (freedom from discrimination). These measures resulted in the burden being shifted from protesters to the police when the former challenged restrictions in court on the basis of their necessity and proportionality.
- **Police, Crime, Sentencing and Courts Act 2022 (PCSCA 2022):** Expanded offences (e.g., statutory public nuisance), lowered thresholds for imposing conditions, and introduced powers targeting 'serious disruption' and one-person protests. The PCSCA 2022 broadens criminal lia-

1 D. Gayle, 'Police abuse stop and search powers to target protesters, suggests data', (The Guardian, 2022).
2 Freedom In Everyday Life, 'The Silencing of Public Space' (2019).

bility for peaceful protesters and imposes harsher penalties, raising concerns about proportionality and compliance with ECHR obligations.

- **Public Order Act 2023 (POA 2023):** Introduced several new offences (including, locking-on, tunnelling and interference with infrastructure) and broadened stop and search powers, including suspicionless searches for protest-related offences. This law compounds the already vague and overbroad PCSCA 2022 definition of serious disruption, risking criminalising of peaceful civic participation and enabling overly discretionary enforcement. JUSTICE recommends that any definition of serious disruption focuses on measurable threats to public safety, health or essential services – not mere economic inconvenience, temporary annoyance or the inevitable disruption that accompanies civic protest.

Recent reforms have significantly lowered thresholds for criminalisation and broadened police discretion, risking arbitrary enforcement and chilling effects on democratic participation. Case law reveals uncertainty around proportionality, the narrowing of lawful excuse defences, and reliance on juries to correct over-criminalisation through conscience-based acquittals.

JUSTICE recommends a recalibration to restore the centrality of proportionality to safeguard peaceful civil disobedience, including:

- Repeal of POA 2023 sections 1–7 and 10–11, and PCSCA 2022 sections 59 and 73–80.
- Restoration of pre-PCSCA mens rea for breach of conditions.
- Establishment of an independent Public Order Monitoring Authority to review policing and legislative impacts annually.

Finally, the Crime and Policing Bill proposes sweeping new protest-related offences including: concealing identity, protesting outside officials' homes and the revival of cumulative disruption powers. JUSTICE recommends pausing new protest legislation until the establishment of a Public Order Monitoring Authority, which reports to the Joint Committee on Human Rights ('JCHR'), is established to: (a) conduct annual evidence-based reviews of public order policing and report to Parliament; (b) publish detailed reports with recommendations for reform which the government would be required to respond to.

Policing Protests

Public order policing is central to the function of democratic policing, influencing public perceptions of police legitimacy and underpinning principles of policing by consent. There is a growing legitimacy crisis facing policing in England and Wales in which public trust and confidence has fallen sharply. This legitimacy crisis has been fuelled by high profile cases such as the false arrest and murder of Sarah Everard, as well as findings of serious failings within the police including institutional racism, misogyny and a lack of transparency and accountability.

Public order policing incidents have been found to be defining moments in the public consciousness, being frequently recalled and followed by the public. Therefore effective, fair and proportionate public order policing is essential to rebuilding public trust and confidence in the legitimacy of policing in the UK. The influx of public order legislation has created an overly complex and vague legal framework, enabling broad discretion to officers which has led to inconsistent enforcement. Overly restrictive and heavy-handed approaches to protest policing further erode trust and escalates tensions.

Lawfulness, procedural justice, distributive fairness and effectiveness are fundamental to a successful police legitimacy framework. However, evidence demonstrates that the current policing of protests in the UK has weaknesses across all dimensions due to unlawful decisions, inconsistent and poor communication, findings of racial disproportionality and excessive use of force across policing.

There is a lack of transparency in protest policing. National data collection must be established to strengthen independent oversight, assess claims of disproportionality and ensure that proportionality is ensured within public order policing. There is evidence that open communication between the police and organisers and participants of protests can improve public trust, cooperation and compliance. JUSTICE recommends a facilitative model of protest policing which prioritises communication and proportionality.

Accountability frameworks for protest policing in England and Wales are inadequate. Reports of the concealing of police identification inhibits accountability mechanisms and raises concerns about staff oversight. JUSTICE recommends statutory guidance mandating visible identification at all protests. Issues in respect of a lack of accountability frameworks are particularly acute given that hundreds of protesters were convicted under regulations later declared unlawful - however, there is no mechanism for collective review or fair compensation. Further, the current rules to seek compensation for miscarriages of justice are overly burdensome requiring exonerated persons to show beyond reasonable doubt that they are factually innocent.

To address excessive use of force and inconsistent,

overly restrictive protest policing, and to restore trust while protecting democratic rights, JUSTICE calls for an independent Public Order Monitoring Authority to:

- Collect and set standards for protest policing data;
- Monitor compliance with ECHR rights;
- Recommend frameworks for quashing unlawful convictions and fair compensation.

Civil Orders

The growing use of civil orders to restrict protest in the UK has profound implications for justice, human rights and the expression of democratic freedoms. Civil orders, including Anti-Social Behaviour Injunctions (ASBIs), Public Spaces Protection Orders (PSPOs) and Serious Disruption Prevention Orders (SDPOs), are increasingly being deployed beyond their original scope and purpose. This is especially concerning as such orders can be placed on a person's freedom and liberty without proper oversight and monitoring, and without the robust procedural protections and standard of proof afforded by the criminal justice system. Further, 'persons unknown' injunctions allow broad restrictions to be placed on an unlimited number of protesters, without full and effective notice being afforded to affected parties - while the ability to challenge such injunctions is undermined by very high costs. Civil orders are particularly problematic in that such measures can bypass criminal justice safeguards. While legal aid is available for breach proceedings, it is almost impossible to access to defend the imposition of a civil order itself.

Such orders are pre-emptive in nature which is fundamentally at odds with the rule of law principle that punishment should follow proven wrongdoing. Further there are significant gaps and variations in data across enforcement bodies creating a lack of accountability mechanisms. Concerningly, there are examples of civil orders being used to target certain groups including those experiencing homelessness, travellers and racialised persons.

Through private corporation injunctions and outsourced PSPO enforcement, inequality is entrenched - enabling the creation of bespoke protest bans by well-resourced corporate actors enforced via contempt proceedings. The expansion of civil orders alongside new criminal offences widens the liability net and gaps in statutory guidance and legislation cause civil orders to be imposed inconsistently. PSPOs and dispersal powers create blanket bans on large areas and protests are treated as anti-social behaviour, misrepresenting their constitutional value.

Further, SDPOs introduced by the Public Order Act 2023 impose sweeping restrictions on movement and expression without clear evidence or transparency, and proposed Respect Orders and Youth Diversion Orders risk preventing young people from participating in protest activity.

JUSTICE calls for urgent reform recommending the following:

- Repeal of SDPOs and rejection of YDOs
- Statutory exclusion of protest from civil order regimes
- Judicial pre-authorisation for PSPOs affecting protest
- Mandatory publication of reasons and demographic data
- Expanded grounds and timeframes for challenge
- Legal aid for contesting orders
- Extended deadline for challenging PSPOs to 12 weeks
- Cost protections in injunction proceedings.

Parliamentary Scrutiny

The right to protest forms an important safeguard for the rule of law, as recognised by the ECHR, enabling citizens to stand up for a cause, voice grievances, shape public discussion and hold the government accountable. Public attitudes in the UK strongly support the United Nation Human Rights Council's view that the right to peaceful assembly is a fundamental human right, with 83% of the UK public agreeing that everyone should be able to protest on issues that they care about.

The recent public order legislation introduced has been reactive and fragmented. Parliamentary processes are increasingly rushed, with limited time for debate or pre-legislative scrutiny. This has led to Parliament introducing multiple new laws without a proper review of the operation of previous Acts, creating a vacuum in which new powers and offences accrue without a proper understanding of their effectiveness or impact on rights and the public at large.

Post-legislative scrutiny is important as it can provide an evidence base from which to identify what new powers are required and how any new powers should operate. However, post legislative scrutiny of major public order Acts such as the Police Crime Sentencing and Courts Act remains incomplete, yet new protest laws continue to be introduced. This deepens concerns that legislation is reactive rather

than evidence based. Whilst independent reviews offer valuable expertise, they cannot substitute Parliament's responsibility for systematic evaluation. JUSTICE therefore recommends that meaningful 12-week public consultations are mandated before introducing protest-related laws either by primary or secondary legislation. Such consultations should include engagement with civil society and affected groups.

Uncertainty over whether courts must assess proportionality in individual cases under Articles 10 and 11 ECHR, or whether the creation of the offence itself in public order statute means that proportionality has been satisfied, means rigorous parliamentary scrutiny of proposed offences is essential. When legislation risks criminalising the expression of fundamental rights a greater degree of scrutiny and protection is required. Parliament must strengthen its role in safeguarding rights and protest must be recognised as a vital and necessary feature of our constitutional system rather than something that threatens to supplant parliamentary democracy.

Recommendations

Chapter 1
The Evolution of Protest Law

1. We reiterate our recommendation from our 2021 report, '*Tackling Racial Injustice: Children and the Youth Justice System,' that "the Home Office should immediately suspend any further section 60 authorisations until it has undertaken an independent evaluation of the impact and effectiveness of these searches, supported by a public consultation. In the meantime, while section 60 authorisations continue, we recommend that the changes made under the pilot scheme be immediately reversed and be subject to the prior review of Community Scrutiny Panels.*" Further, JUSTICE urges the Government to meet their commitment to publish annual data from 2025/26 about areas covered by Section 60 authorisations.

2. We recommend that any interpretation of serious disruption must focus exclusively on measurable threats to public safety, health or essential services – not mere economic inconvenience or temporary annoyance. Further, when assessing whether serious disruption is present, there must be an in-built requirement for police to consider objective evidence that relates to a genuine threat to public safety, clearly distinguished from the inevitable disruption that accompanies civic protest. Such considerations would frame any assessment and require transparent and recorded decision-making processes. In this way, the legal framework could better reflect the constitutional significance of protest as a cornerstone of democratic society, rather than treating disruption as an aberration to be suppressed.

3. Given our findings that recent legislative reform has created problems for the police, judiciary and wider public in understanding its application, a return to the legal position pre-2022 would return some clarity and remove unnecessary powers. As such, we recommend the repeal of POA 2023 sections 1-7 (SDPOs, locking-on, tunnelling, obstruction, interference offences) and sections 10-11 (stop and search). JUSTICE also recommends the repeal of PCSCA 2022 sections 59 and 73-80 (Home Secretary's secondary legislation powers) and section 79 (one-person protests). Section 75 should be amended to restore pre-PCSCA "knowingly fails to comply" mens rea test. Finally, section 9 and 17 of the POA 2023 should be retained.

4. We recommend that any further legislation regarding the policing of protest is paused pending the establishment of a Public Order Monitoring Authority to carry out the following:

    a. Conduct a mandatory annual review of the operation of public order policing and legislation: An independent and evidence-led scrutiny of the operation of public order powers findings presented in a report to Parliament.

    b. Produce detailed reports that assess the application of specific powers and make recommendations for legislative reform or changes in practice which

the government would be required to respond to.

c. Report to the Joint Committee on Human Rights ("JCHR")

Chapter 2
Policing Protests: Rights, Trust and Legitimacy

5. We recommend that a National Protest Policing Database is established, to provide comprehensive, disaggregated data collection on all aspects of protest policing, including:

    a. Protest theme, date, location, and estimated attendance;

    b. Conditions imposed (Sections 12, 14, 60, dispersal orders, PSPOs) with written rationale and proportionality assessments;

    c. Officer deployments: number, originating forces, and costs;

    d. Arrests: numbers, demographics (race, gender, age), offences, and outcomes (charges, cautions, no further actions (NFA));

    e. Use of force: type, frequency, and circumstances;

    f. Injuries to officers and civilians;

    g. Complaints lodged, including anonymised unique officer references (UTRs) and originating forces and

    h. Counter-protest responses and policing approaches.

6. We recommend reform of the protest policing model in the UK to one where the police adopt a more collaborative and facilitative model to protest policing. The approach should prioritise communication, negotiation and partnership with both organisers and participants of protests, rather than relying on enforcement and restrictive tactics.

7. We recommend an independent review of the role, powers and accountability mechanisms for Police Liaison Teams ("PLTs") in the context of protest policing in the UK. This review should include:

    a. **Clarification of the scope and responsibility of PLTs:** to ensure that their role is both clearly defined and understood by both police and the public.

    b. **Assessment of operation practices:** considering how PLTs engage with both protest organisers and participants to ensure compliance with the human rights framework.

    c. **Evaluation of accountability structures:** consideration of oversight and transparency measures in relation to the role of PLTs in protests.

    d. **Issue guidance:** provide guidance for PLTs, for example in respect to communication strategies and the limitations and transparency requirements on intelligence gathering to ensure the safeguarding of the right to protest.

8. Given persistent reports of police officers concealing identification numbers during protest operations, we recommend the issuance of national statutory guidance mandating visible officer identification at all protests to enable accountability and complaint mechanisms.

9. We recommend that as well as carrying out a mandatory annual review and producing detailed reports that the Public Order Monitoring Authority which we recommend is established also carry out the following:

    a. Collect data and set standards for the National Protest database.[3]

    b. Ongoing monitoring of the public order framework in practice to ensure compliance with organisers of protests and protestors ECHR rights.

    c. Recommend a framework for quashing unlawful protest convictions since 2022 and recommend levels of compensation for protesters wrongfully convicted under the 2023 Serious Disruption Regulations or due to police conduct and/or misapplication of laws.

Chapter 3
Civil Orders and the Restriction of Protest

10. We recommend the repeal of Serious Disruption Prevention Orders ("SDPOs") and that Youth Diversion Orders ("YDOs") do not pass into law,

3 Recommended at paragraph 34 of this report.

orders which are incompatible with human rights protections.

11. We recommend that legislation should explicitly clarify that Dispersal Powers, Respect Orders and YDOs may not be used to restrict protest activity.

12. We recommend that where local authorities seek to impose Public Space Protection Orders ("PSPOs") that may affect protest rights, judicial approval should be required before such orders take effect.

13. We further recommend that authorities should publish reasons for imposing PSPOs and for using dispersal powers. Reasons should include proportionality analysis and community impact assessments.

14. We recommend that where injunctions are imposed which restrict protest, consideration should be given to restricting the claimant's ability to recover costs from defendants.

15. We recommend that all authorities imposing civil orders must collect and publish comprehensive demographic data on a regular basis in a centralised location in order to ensure that discriminatory effects are monitored.

16. In respect to the imposition of PSPOs, SDPOs, and Respect Orders we recommend that legal aid is made available to challenge such orders. We also recommend that the deadline for challenging PSPOs is extended to 12 weeks and the ground of challenge should be expanded to include a lack of consultation.

17. We recommend that all decision-makers, including constables, magistrates and local authority officers, must receive comprehensive training on human rights obligations and the structured proportionality assessments required by ECtHR case law.

Chapter 4
Parliamentary Scrutiny

18. JUSTICE recommends that meaningful 12-week public consultations are mandated before introducing protest-related laws either by primary or secondary legislation.

    Any consultation should be accessible, be done in a way that genuinely informs policy and not as a "box-tick exercise", and consider the widest range of views possible which, at the least, must include affected protest and civil groups, lay participants, representatives from local authorities/Combined Authorities, and the Independent Office for Police Conduct.

    A Government response to the consultation should be published prior to the subsequent introduction of the new law.

Chapter

1

The Evolution of Protest Law

Chapter 1 – The Evolution of Protest Law

1. Protest is a cornerstone of the rule of law, enabling individuals and communities to challenge injustice, advocate for their rights, and hold the state to account. From Pride marches and religious festivals, to vigils, community events, and even football matches, public acts of expression and assembly are vital to a healthy society. As Lord Woolf, former Lord Chief Justice of England and Wales stated, freedoms of expression, assembly, and association are "of the greatest importance" to democracy, requiring "jealous scrutiny" of any restrictions.[4]

2. The regulation of public demonstrations in England and Wales developed through a complex interplay between legislation, common law, and the UK's international human rights obligations. Today's framework is codified primarily in the Public Order Act 1986 (the "**POA 1986**"), the Criminal Justice and Public Order Act 1994 (the "**CJPOA 1994**"), the Police, Crime, Sentencing and Courts Act 2022 (the "**PCSCA 2022**") and, most recently, the Public Order Act 2023 (the "**POA 2023**"). The Human Rights Act 1998 (the "**HRA 1998**") and the Equality Act 2010 (the "**EA 2010**") provide the guardrails to ensure rights are respected when public powers - including those of the police - are exercised.

3. The PCSCA 2022 and POA 2023 marked what Professor Mead describes as a "big bang" in UK protest law,[5] which resulted in the criminalisation of large amounts of previously lawful protest activity. These two acts along with the Crime and Policing Bill (the "**CPB**"), currently going through Parliament, place a greater emphasis on pre-emptive containment of protest through the criminal law and overlook the valuable contribution protests, even disruptive ones, can make to parliamentary democracy.[6] Such an intensification in legislation directed against protest underscores the need for a comprehensive, independent reassessment of the UK's approach to protest and public order.

4. The 1990 anti-poll tax campaign stands as a vivid example of how disruptive protest can serve as a fundamental constitutional check within the UK system.[7] Public opposition was overwhelming, as evidenced by consistent opinion poll hostility and the subsequent mass campaign of civil disobedience.[8] According to Professor Ian Loveland, the measure's formal legality stood in stark contrast to the near-total absence of social or political legitimacy.[9] Indeed, 14 million people refused to pay the tax, making it one of the largest acts of collective resistance in modern British history.[10] The campaign led to the replacement of the poll tax with council tax and the repeal of the Community Charge in 1993. In the absence of a codified constitution, protests have served as a way in which people's concerns can be brought to the attention of those in power.

5. This chapter will outline the major protest events and legislative reforms of the past century, to assess the ways in which the law has changed. It will trace a trajectory from the early 20th century, where no special right to protest was recognised in the common law, through instances of transformative social unrest that catalysed legislative developments, before reflecting on the contemporary acceleration of protest restricting legislation. Through this assessment, the chapter contends that the cumulative effect of recent reforms has been to destabilise the legal framework, erode protections for peaceful assembly and risk the criminalisation of legitimate democratic expression.

A British Right to Protest?

6. In *Duncan v Jones*, a case from the 1930s in which a woman was arrested for attempting to hold a meeting in Nynehead Street, New Cross, near an unemployed training centre where a previous assembly had sparked a disturbance, Lord Hewart CJ stated "*English law does not recognise any special right of public meeting for political or other purposes*".[11]

7. Yet forty years later, in Hubbard v Pitt, Lord

4 *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2004] EWCA Civ 1639, [35].
5 Professor David Mead, consultation for this project (October 2025).
6 D. Mead, "*Bad' Disruption: Rule Changes that Threaten the Right to Protest*', (Amnesty International, 2024).
7 I. Loveland, *Constitutional Law, Administrative Law and Human Right: A critical introduction* (OUP 2021), pp. 274–275, for detailed discussion of tactics used by the All-Britain Anti-Poll Tax Federation, a broad and cross-party network, that encouraged non-payment, organised marches and national demonstrations, offered legal support to those facing court action, and employed direct-action tactics such as «scum-busting,» where protesters formed human barriers to block bailiffs from seizing the property of non-payers.
8 ibid. As Professor Loveland notes, the poll tax persisted in the face of opposition from virtually every corner of society: it lacked majority electoral backing, sparked open rebellion within the governing Conservative Party, and was fiercely resisted by the Labour Party, local government officers, and councillors—even among those compelled to enforce it.
9 ibid.
10 Public Information Law Centre, 'Couldn't Pay, Wouldn't Pay, Didn't Pay: The Battle Against the Poll Tax' (2020).
11 [1936] 1 KB 218.

Denning MR offered a markedly different perspective, finding that "*the right to demonstrate and the right to protest on matters of public concerns*"[12] are rights that it is "*in the public interest that individuals should possess; and, indeed, that they should exercise without impediment so long as no wrongful act is done*".[13] He continued that protest "*is often the only means by which grievances can be brought to the knowledge of those in authority—at any rate with such impact as to gain a remedy. Our history is full of warnings against suppression of these rights*".[14]

8. As the legal scholar and former judge, Professor David Feldman KC observes: "*At common law in England and Wales police officers historically had broad discretion as to how they balanced these demands, subject to a requirement to act reasonably in the circumstances*".[15] Yet, Feldman also identifies an "*observable pattern in the history*" where intensified protests have led to:

> *"increasingly intrusive and forceful responses from officers, with courts refusing to say that police tactics were unreasonable or otherwise unlawful in the circumstances, and increasingly restrictive legislation being passed to prevent or contain protests."* [16]

9. In response to acts of organised civil disobedience from groups ranging from the Suffragettes at the beginning of the 20th century[17] to the miners' strike of 1984–1985,[18] police powers have expanded to restrict the ability to protest. Despite these restrictions, protests have nonetheless acted as a major catalyst for legal and political reform in the UK for centuries, advancing the causes of the Chartists, trade unionists, the Suffragettes, and many more.

The Public Order Act 1986

10. The bulk of protest regulation pre-2022 was encapsulated by the POA 1986, which was drafted in response to sustained civil unrest in the first half of the 1980s. This included disturbances at Southall (1979),[19] Brixton (1981[20] and 1985),[21] Toxteth (1981)[22], Moss Side (1981)[23], Broadwater Farm (1985)[24], and the miners' strikes (1984–85). The inner-city uprisings of the 1980s were particularly influential in shaping the 1986 Act. These disturbances followed years of mounting discontent over racial disproportionality in the use of stop and search powers, as well as a rise in racist attacks on the Black community, such as the New Cross fire, which were not adequately investigated by police.[25]

11. Following the Law Commission's 1983 report on

12 [1976] QB 142.
13 Ibid.
14 Ibid.
15 Feldman, D. KC, 'The Growing Complexity of a Human Right to Assemble and Protest Peacefully in the United Kingdom' (2023) 54(1) *Victoria University of Wellington Law Review* 155.
16 ibid.
17 During the Suffragette movement, police powers were deployed with significant violence, most notoriously on 'Black Friday' (18 November 1910). The evidence documented that disabled campaigner Rosa May Billinghurst, who used a hand tricycle, was "thrown out of the machine on to the ground in a very brutal manner", leaving her bedridden for two days with severe bruising, see National Archives, 'Suffragettes on File: Black Friday Statement'.
18 During the 1984–85 miners' strike, police powers were deployed expansively, most notoriously at the Battle of Orgreave on 18 June 1984. The Independent Police Complaints Commission, *Review of Matters Relating to the Policing of Events at Orgreave on 18 June 1984* (2015) found evidence that supported allegations of excessive violence by police officers, a false narrative from police exaggerating violence by miners, perjury by officers giving evidence to prosecute the arrested men, and an apparent cover-up of that perjury by senior officers; see also *Moss v McLachlan* [1985] IRLR 76, which upheld highly restrictive and preemptive conditions on workers' movements to prevent purely hypothetical breaches of the peace, with the Divisional Court permitting police to turn back striking miners travelling to picket lines miles from any colliery based on anticipated rather than imminent disorder.
19 A demonstration was held to prevent the National Front holding a meeting in Southall, West London, a predominately Asian community; widescale unrest occurred as protesters clashed with the almost 3,000 police deployed to protect the National Front's right of assembly in one of the most racially diverse areas of London. More than 700 people were arrested, 345 of them charged and hundreds more injured. Blair Peach, a special needs teacher, was killed after he was struck on the head as police charged at him and other protesters on the evening of 23 April 1979. No one was ever charged with his death. See Chaudhary, V., 'Forty years on, Southall demands justice for killing of Blair Peach' (*The Guardian*, 2019).
20 The immediate trigger for the 1981 events in Brixton was 'Operation Swamp': a 10 day operation in which 150 plain clothes officers made 1000 stops and 150 arrests. The increased police presence and stop-and-search tactics heightened existing tensions, culminating in the major disturbances on April 10-12, 1981, after a scuffle with a plainclothes officer escalated. See Jefferson, T. and Grimshaw, R. (1984) *Controlling the Constable: Police Accountability in England and Wales*, London: Frederick Muller; and 'The Great Insurrection: Remembering the Brixton Uprising' (*Tribune Magazine*, April 2023) .
21 The 1985 uprising is widely recognised as having been catalysed by the shooting of Dorothy "Cherry" Groce by Inspector Lovelock of the Metropolitan Police Service on 28 September 1985 during the course of an armed raid on her family home in Brixton, whilst the police were searching for her son who was neither present nor resident there ; see Inquest, 'Cherry Groce Inquest Opens', and Garden Court Chambers, 'Shooting of Cherry Groce: Caused by Serious Police Failures'.
22 Unrest in Toxteth lasted roughly nine days in early July 1981, with a further flare-up later in the month, and saw sustained street battles, arson and looting concentrated around Granby Street and the wider Liverpool 8 area. The immediate spark came on 3 July 1981, when police attempted to stop and arrest 20-year-old Leroy Cooper on Selborne Street, in what police described as a routine stop, but local residents saw as a heavy-handed example of routine harassment under the old "sus" laws. ; see K. Johnson, 'The L8 Uprising at 40: Remembering Toxteth 1981', (*Tribune Magazine,* October 2021).
23 The incident in Manchester in July 1981 was a two night confrontation around Moss Side police station and nearby streets, emerging in the wake of Brixton and Toxteth and rooted in racialised "sus" policing, unemployment and broader inner-city tensions, with repeated allegations of racist abuse and harassment of Black residents by police, documented by groups such as the Moss Side Defence Committee, and met by increasingly militarised public order tactics; see Race Archive, 'Rearranging the Social Kaleidoscope: Looking Back at the 1981 Moss Side Disturbances'.
24 The Broadwater Farm uprising in Tottenham, north London, on 6 October 1985 followed the death of local resident Cynthia Jarrett during a police raid the previous day, in a context of long-standing racist policing, and saw intense clashes on the estate in which PC Keith Blakelock was killed, hundreds of residents were arrested and the area subjected to months of heavily militarised policing and public-order tactics; see R. Willis, 'The Broadwater Farm Riots: 40 Years On', (LSE, 2025); see also Lord Gifford, *The Broadwater Farm Inquiry Report*.
25 In 1981, a fire at a house party in New Cross killed 13 young Black people. Many suspected a racist attack, but nobody has ever been charged. The police began a murder investigation, but ruled out a racial motive, quoting a lack of evidence. The 1981 coroner's inquest into the cause of death returned an open verdict – meaning nobody was found to be responsible for the fire. Angry at what they saw as a police cover-up, activists organised the National Black People's Day of Action on 2 March 1981. An estimated 20,000 people from all across the country marched through central London. see London Museum, *'The New Cross Fire'* ; see also S. McQueen (dir), *Uprising: Fire* (*BBC series*, 2021) ; and A. Andrews, '*Truth, Justice, and Expertise in 1980s Britain: The Cultural Politics of the New Cross Massacre*' (2021).

Public Order Laws[26] and Lord Scarman's 1981 report[27] on the 1981 Brixton Uprising,[28] the POA 1986 empowered senior police officers both to impose whatever conditions they considered necessary on public processions,[29] and to impose conditions on the duration, location, or number of attendees at a static assembly[30] - where they reasonably believed such measures were required to prevent serious public disorder, serious damage to property, or serious disruption to the community. The POA 1986 also includes a requirement for organisers of processions to give 6 days of advanced notice, specifying the date, time, route and the name of the organiser, to the extent that it is reasonably practicable to do so.[31] The term "serious disruption" was left undefined, granting police and the courts significant interpretive discretion and raising concerns, articulated in Parliament at the time, about arbitrary or inconsistent enforcement.[32] In addition, during the pre-HRA 1998 era, public bodies were not yet under a statutory duty to embed proportionality and necessity into their assessments of any restrictions on the exercise of protest-related rights. This led to police officers' operational discretion being very wide.

12. The implementation of the POA 1986 prioritised the consolidation of police powers over Lord Scarman's additional calls for independent police oversight mechanisms, community consultation, and measures to address socio-economic discrimination, such as anti-racism training and housing reforms.[33] These recommendations were left unimplemented, leaving many of the structural factors that gave rise to the unrest unresolved.

13. This legislation, which forms the bedrock of today's framework, clarified existing police powers to regulate protests within what is termed public order policing.[34] This framework stands in stark contrast to jurisdictions such as Germany, where the starting point for protest law is of a fundamental right with strong constitutional protection[35] that can only be restricted through detailed administrative regulation at federal and state assembly levels. This constitutional or administrative public law approach represents a fundamentally different conceptual and legal framework than that of England and Wales which seeks to regulate protest primarily through the criminal law.

Stop and Search powers under Police and Criminal Evidence Act 1984

14. Running parallel to the POA 1986, a second set of police powers—those governing stop and search—would develop in ways that similarly prioritised police discretion over community safeguards, with profound long-term consequences for protest policing: the Police and Criminal Evidence Act 1984 ("**PACE**").

15. PACE represented the second part of the government's response to the unrest of the 1980s. Following recommendations from the Royal Commission on Criminal Procedure ("**RCCP**")[36] PACE was designed to regulate police powers through balancing the rights of individuals against effective law enforcement.[37] It created a general framework for police powers, including stop and search, and was not designed for protest regulation. However, stop and search powers under s.1 of PACE have gradually been applied to protest contexts, first through misapplication[38] and later through formal legislative expansion.[39] This has led to "complaints about use of stop and search as a tool for disrupting protest (resurfacing)

26 Law Commission, Offences relating to public order (1983) Law Com. No. 123.
27 L. Scarman, LJ, *The Brixton Disorders 10-12 April 1981*, (1981) Cmnd 8427.
28 The terminology of 'Uprising' over 'riots' is chosen here as it reflects the language used by the London Museum and Black Cultural Archives, both of which have explicitly eschewed the language of 'riot' in the context of these disturbances. See London Museum, *'Brixton 1981 to BLM: Reflections on Black Uprisings'*; Black Cultural Archives, *'The Brixton Uprisings'*.
29 *Public Order Act 1986*, s. 12.
30 ibid, s.14.
31 S.11 *Public Order Act 1986*.
32 HC Deb, 13 January 1986, Vol. 89, col. 798 (Mr D E Thomas challenging fundamental shift in power: 'Does he not accept that clause 14 means that the right of assembly is now to be defined in its formal context by the police? This is a major change to existing legislation'); HL Deb, 24 July 1986, Vol. 479, col. 474 (Lord Gifford on police discretion and arbitrary power: 'The police are in the position of having to decide on those criteria whether or not effectively to ban or to stop a group of people walking down a street. Do we really want to give that sort of power to the police—the power to judge whether, for instance, the procession... ought to have been notified to the police?').
33 L. Scarman, LJ, *The Brixton Disorders 10-12 April 1981*, (1981) Cmnd 8427: "the disorders in Brixton cannot be fully understood unless they are seen in the context of complex political, social and economic factors. In analysing communal disturbances such as those in Brixton and elsewhere, to ignore the existence of those factors is to put the nation in peril".
34 College of Policing, 'Public Order Public Safety (POPS)' (Authorised Professional Practice).
35 Article 8 of the Basic Law (Grundgesetz) guarantees that "all Germans shall have the right to assemble peacefully and unarmed without prior notification or permission."
36 LSE Library Archives, 'Royal Commission on Criminal Procedure, 1977–1984 (RCCP)', established in 1977–78 to address high-profile miscarriages of justice, including the Birmingham Six, Guildford Four, and Maxwell Confait cases.
37 UK Government, 'Police and Criminal Evidence Act 1984 (PACE) Codes of Practice'.
38 P. McLeish and F. Wright, 'Policing of the Kingsnorth Climate Camp: Preventing Disorder or Preventing Protest?', (2009), pp.6 – 7 ; R. Brigden, 'The right to protest and the policing of protests' (*Garden Court North Chambers*, 2017).
39 s.10 *Public Order Act 2023* expanded the grounds for s1. PACE search to include where police have reasonable grounds to suspect you are carrying something "made or adapted [or intended] for use in the course of or in connection with": the wilful obstruction of the highway, intentionally/recklessly causing public nuisance, locking-on, obstructing major transport works, interfering with the use or operation of key national infrastructure, or causing serious disruption by tunnelling or being present in a tunnel. This power could apply to a very wide range of objects, including glue, bike locks, tape, rope or various tools.

incessantly over the last decade."[40]

16. While the RCCP provided PACE's legislative foundation, the 1981 Brixton Uprising and Lord Scarman's inquiry proved crucial in shaping its final form. The Scarman report identified oppressive policing, particularly the misuse of stop and search powers under Operation Swamp 81[41] as a major cause of the 1981 Brixton Uprising[42] and a "serious mistake" that damaged the police's relationship with the public.[43] During that five-day operation, nearly 1,000 people were stopped using "sus laws" (section 4 of the Vagrancy Act 1824),[44] which allowed police to stop and search individuals based on mere suspicion of intent to commit a crime, without requiring reasonable grounds. Lord Scarman condemned this "rigid, unimaginative" model of hard policing, urging a pivot toward fairness, police accountability, and community dialogue to maintain public order.[45]

17. The Report's findings emphasised the urgent need for new, safeguarded stop and search legislation with proper recording and oversight mechanisms to replace the discriminatory powers that had caused such community harm. According to the extensive evidence marshalled by Lord Scarman, and reinforced by decades of subsequent scholarship on police legitimacy,[46] tackling disproportionality in the exercise of police powers is a necessity for any credible model of evidence-based public order policing in the UK.[47] By contrast, failure to ensure powers and discretions are exercised fairly, transparently and in a racially proportionate manner risks entrenching the very grievances that fuel future public disorder.[48] It also erodes the legitimacy of officers, undermining citizens' willingness to cooperate with police during large public order events.[49]

18. Section 1 of PACE established today's 'reasonable suspicion' stop and search powers in England and Wales. It permits a constable to stop, detain, and search any person or vehicle where the officer has reasonable grounds to suspect they will find stolen or prohibited articles, which include drugs, weapons, stolen property, prohibited fireworks, or items that could be used to commit burglary, theft, fraud, criminal damage, vehicle theft or other specified offences.[50] The statutory test for "reasonable suspicion" requires that the officer must have formed a genuine suspicion in their own mind, and that suspicion must have an objective basis in specific facts, information, or intelligence.[51] This framework was intended to prevent the kind of discriminatory policing that the Scarman report had found had disproportionately targeted Black communities, contributing to "built-up resentment" and community alienation.

19. However, recent Home Office data reveals that stop and search remains disproportionate: the rate stands at 5.9 per 1,000 for White people compared to 24.5 per 1,000 for Black people, approximately 1 search for every 40 Black individuals.[52] This ratio is roughly the same as the annual number of GP consultations for headaches per patient[53], highlighting how routine police intervention has become for Black communities. Given that 25% of cases do not record ethnicity, if unrecorded searches reflect general patterns, the actual figure would be much higher. This data is particularly concerning given that force was used in 28% of searches across 36 police forces in the year to 31 March 2024 (123,432 out of 436,635 cases).[54]

20. Enduring exposure to disproportionate policing steadily erodes vital legal safeguards and intensifies harm and mistrust in communities

40 K Blowe and S Walton, '*Restricting the Rebellion: A Netpol report on the policing of Extinction Rebellion protests in London in October 2019*' (2019), p.14.

41 Operation Swamp 81 was a heavy-handed Metropolitan Police operation in April 1981, designed to "swamp" Brixton with law enforcement. It was conceived as a targeted crackdown on street crime, particularly robbery and mugging, in the Brixton area. This tactic emerged as part of a moral panic around so-called "black muggings", a wedge issue that explicitly targeted the Black community and was used to stir up racial tensions throughout the 1970s. See Hall, S., Critcher, C., Jefferson, T., Clarke, J. and Roberts, B., *Policing the Crisis: Mugging, the State and Law and Order* (Macmillan, 1978) 333.

42 For a timeline of the Uprisings and more context for why this terminology was chosen see Brabazon, T., 'Brixton's Aflame: Television History Workshop and the Battle for Britain' (1998) *Journal of Historical and Cultural Studies* 49.

43 L. Scarman, LJ, *The Brixton Disorders 10-12 April 1981*, (1981) Cmnd 8427, p. 110.

44 *Vagrancy Act 1824* s 4, had fallen out of use but was revived in the 1970s for policing inner city youth.

45 L. Scarman, LJ, *The Brixton Disorders 10-12 April 1981*, (1981) Cmnd 8427.

46 Bradford, B. (2014). "Policing and social identity: Procedural justice, inclusion and cooperation between police and public." *Policing and Society*, 24(1), 22-43; HMICFRS, 'Race and policing: An inspection of race disparity in police criminal justice decision-making', (2023); Braga, A.A., Brunson, R.K., & Drakulich, K.M. (2019). "Race, place, and effective policing." *Annual Review of Sociology*, 45, 535-555.

47 Home Office, 'Public perceptions of policing: A review of research and literature' (2023)

48 As in the case of the 2011 London disturbances. See London Assembly Police and Crime Committee, 'Policing and the Control of Street Crime' (Report), p. 12, states that discontent with the police›s use of stop and search was a «key factor» in 2011 August riots; see also Lewis, P. and others, *Reading the Riots: Investigating England's Summer of Disorder* (London School of Economics and Political Science/The Guardian, 2011), pp 4,19 & 24.

49 Hohl, K., Stanko, B. and Newburn, T. (2013) 'The effect of the 2011 London disorder on public opinion of police and attitudes towards crime, disorder, and sentencing'. Policing: A Journal of Policy and Practice, 7(1), pp. 12 to 20 found that areas with lower confidence in the fairness of the police later saw more instances of disorder during the disturbances that followed the killing of Mark Duggan in 2011. The researchers found lack of trust and confidence undermined the perceived legitimacy of the police, and that anti-police riots, disorder and looting were seen as extreme forms of a lack of willingness to cooperate with the police.

50 Notably, s. 10 of the *Public Order Act 2023* added a list of protest related offences to the qualifying offences under s. 1(8) of PACE 1984.

51 *PACE, 1984* s.1(3).

52 UK Government, 'Ethnicity Facts and Figures: Stop and Search' (July 2024).

53 R Latinovic, M Gulliford and L Ridsdale, 'Headache and Migraine in Primary Care: Consultation, Prescription, and Referral Rates in a Large Population' (2006) 77(3) *Journal of Neurology, Neurosurgery and Psychiatry* 386, Table 1.

54 Stop Watch, 'No Suspicion, No Better Off: Stop and Search Disparities in England' (September 2024).

subject to them - any disproportionate application of these powers can have a direct impact on the ability of police to maintain safety and order during protests.[55] The cumulative effects of decades of discriminatory practice signals a profound rule of law crisis reminiscent of the conditions that fuelled unrest in the 1980s.[56] These concerns become more acute as stop and search powers expand into protest contexts.[57] For example, in 2008, Kent Police searched all individuals attending the Climate Camp at Kingsnorth power station, under section 1 of PACE. This was challenged by three protestors as being an unlawful blanket search policy. In R (Morris, E and T) v Chief Constable of Kent Police the court ruled that each stop and search of the three individuals was unlawful as the police officers had exceeded their powers under section 1 of the PACE and Article 11 of the ECHR had been violated.[58]

The Criminal Justice and Public Order Act 1994

21. Whilst PACE established the framework for suspicion-based stop and search, the 1990s would see the reintroduction of suspicionless stop and search powers—a dramatic reversal of the post-PACE settlement with significant implications for protest rights and racial disproportionality in policing.

22. Initially introduced to deal with growing public concerns around serious violence at sporting events,[59] section 60 of the CJPOA 1994 reintroduced the police power of suspicionless stop and search into English law. This power resurrected the spectre of unchecked discretion enabling discriminatory practices, and reports detail its misuse in the context of peaceful protests.[60] His Majesty's Inspectorate of Constabulary and Fire & Rescue Services ("**HMICFRS**") and civil liberties groups have highlighted particular concerns where suspicionless searches are used in peaceful protest contexts, due to their ability to create a chilling effect on public participation.[61]

23. Section 60 provides that any police officer, ranked inspector or above, may authorise suspicion-less stop and search for up to 24 hours in a designated locality, with the possibility of a further 24-hour extension, where "serious violence" has taken place or is anticipated. Unlike standard stop and search, Section 60 requires no individualised, objective grounds and anyone within the area covered by an authorisation may be stopped and searched for weapons or dangerous instruments solely based on location and timing.

24. According to evidence gathered by civil society groups, recent years have seen "an alarming pattern of police disproportionately using existing [stop and search] powers to deliberately target people exercising their right to protest.[62] with civil rights groups often considering their use during demonstrations as tools for intelligence gathering, or even harassment, rather than violence prevention.[63] Section 60 authorisations have been applied to anti-racist protests,[64] environmental actions,[65] and, most persistently, the annual Notting Hill Carnival.[66]

25. Section 60 is also inseparable from racial disproportionality. Evidence from StopWatch shows this power is routinely associated with the disproportionate targeting of Black and minoritised communities.[67] The 2024 Home Office annual report shows that of 3,100 section 60 searches, 19.6% involved Black individuals, who constitute only 4.2% of the population.[68] This means that Black people are six times more likely to be searched under these powers than their White counterparts.[69] A recent evaluation by the Metropolitan police confirms only one-third (93 out of 281) of respondents felt confident that stop and search is used fairly. [70] These statistics confirm that the dynamic of criminalisation

55 K. Murray, 'Police Legitimacy and Policing Public Protest', (2010) University of Edinburgh.
56 J. Jackson, B. Bradford and E. Taylor, Will the government solve the permacrisis of British policing? (2024) explores the current "permacrisis" of police legitimacy which they describe as creating a "tinderbox".
57 D. Gayle, '*Police abuse stop and search powers to target protesters, suggests data*', (The Guardian, 2022).
58 While the case is unreported, it is referred to in a Garden Court North guide, 'The right to protest and the policing of protests by Richard Brigden', (November 2017).
59 Equality and Human Rights Commission, '*Race Disproportionality in Stops and Searches under Section 60 of the Criminal Justice and Public Order Act 1994*' (2012) p.5.
60 NetPol, 'Misuse of stop & search powers creates 'de facto ID checks'' (2014).
61 HMICFRS, 'Getting the balance right? An inspection of how effectively the police deal with protests' (2021).
62 D. Gayle, '*Police abuse stop and search powers to target protesters, suggests data*' (The Guardian, 2022).
63 NetPol, 'Misuse of stop & search powers creates 'de facto ID checks'' (2014).; Green & Black Cross, '*Stop and Search*' guide states "Some forces have been known to abuse stop and search procedure in order to harass protesters, and we know that stop and search tactics are used for intelligence gathering purposes."
64 In May 2020 (when BLM protests peaked) there were 65 Section 60 orders imposed within London alone, far more than the 13 of the previous month, and significantly more than were used in the same month in previous years - https://netpol.org/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf
65 P. McLeish and F. Wright, 'Policing of the Kingsnorth Climate Camp: Preventing Disorder or Preventing Protest?' (2009), pp. 6-7 ;
66 Which has been subjected to a rolling Section 60 authorisation every year the event has been held since at least 2017.
67 Stop Watch, '*No reasonable grounds: the case for repealing section 60*' (2024).
68 Home Office, 'Stop and Search' (2024).
69 Although this disparity has narrowed slightly from the previous year, a significant proportion of stop-searches are recorded as 'not stated' for ethnicity, meaning the real disparity may, in fact, remain unchanged or even have increased.
70 The Metropolitan Police, 'Precision stop and search: Evaluating the impact of targeted enhancements to stop and search training' (2025).

identified by Scarman - which marks entire communities as suspect populations[71] - remains very much alive.

26. Metropolitan Police data for the year up to October 2025 confirms this trend. Of 2,863 section 60 stops included in the summary between January and October, 2,129 involved Black individuals, a 98% rise in such searches compared to the previous period, against only a 10% increase for white people.[72] The proportion of 'no further action' outcomes also rose higher for Black Londoners (106%) than white Londoners (16%) over the same time frame, with the vast majority of stops (1,828) concentrated in late August around Kensington, Chelsea and Westminster, likely linked to the Notting Hill Carnival.[73]

27. The targeting of Black children is particularly stark.[74] Of just under 2,000 Black people searched in central west London in August 2025, 724 were under 18, representing 40% of the total. [75] For this group, there was a 179% rise in 'no further action' outcomes compared to the previous period. A rapidly growing number of innocent children have been subjected to invasive, often traumatising[76] public searches at what is supposed to be a celebration of Black British culture and resistance.[77]

28. **JUSTICE reiterates its recommendation from its 2021 report, Tackling Racial Injustice: Children and the Youth Justice System, that "the Home Office should immediately suspend any further section 60 authorisations until it has undertaken an independent evaluation of the impact and effectiveness of these searches, supported by a public consultation. In the meantime, while section 60 authorisations continue, we recommend that the changes made under the pilot scheme be immediately reversed, and be subject to the prior review of Community Scrutiny Panels."**[78]

29. Concerns have also been raised that Section 60 authorisations, whilst supposed to be time-constrained, have been regularly renewed to the effect that particular areas have been "subject to stop and searches without reasonable suspicion on a virtually continuous basis."[79] However, the Home Office has acknowledged there is a lack of publicly available data about the areas subject to section 60 authorisation. This has been the subject of a Criminal Justice Alliance super-complaint, which JUSTICE supported, pursuant to section 29A of the Police Reform Act 2002.[80] In response, the Home Office has committed to consider including annual data about areas covered by Section 60 authorisations in 2025/26.[81] **JUSTICE encourages the Government to meet this commitment as soon as possible.**

The Terrorism Act 2000

30. Section 43 of the Terrorism Act 2000 (the "**TA 2000**") provides that "*a constable may stop and search a person whom he reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist*." The Home Office's quarterly report on police powers under the Terrorism Act (to June 2025) reveals disproportionate implementation. Of section 43 stops (reasonable suspicion stops) with recorded ethnicity, 64% were of ethnic minorities.[82] When mapped against population data,[83] this yields significant disparities. Those identified as "Arab or Other" made up 18% of total searches despite comprising just 2% of the general population.[84] Similarly, "Asian or Asian British" individuals accounted for 33% of all searches while representing only 9% of the

71 L. Long, *Perpetual Suspects: A Critical Race Theory of Black and Mixed-Race Experiences of Policing.* (2018) Switzerland: Palgrave Macmillan.
72 Metropolitan Police, 'MPS Stops and Search Summary: 12 Months' (2025), Accessed 27th October 2025.
73 Ibid.
74 Echoing JUSTICE's findings from JUSTICE, Tackling Racial Injustice: Children and the Youth Justice System (2021). as well as evidence given as part of the CJA super complain, see CJA 'Annex 1 – Supporting statements /comments More harm than good' (2021) pp.11-16.
75 Ibid.
76 As Sal Naseem, the IOPC's lead on discrimination, warned: "It cannot be underestimated how traumatic a stop-and-search encounter can be on an individual. If carried out insensitively, a person can be left feeling humiliated and victimised. The experience can also be the first interaction for some young adults and if it is a negative one, this can have a lasting impact on that person and the trust they put in the police." Independent Office for Police Conduct, 'IOPC calls for stop and search law change and identifies 18 opportunities for improvement', (IOPC, 2022).
77 Indeed, Notting Hill Carnival was established in 1959 by Claudia Jones as a direct response to the 1958 racist riots and the racist murder of Kelso Cochrane, which police did not adequately investigate. Since its inception, it has served as a peaceful political assertion of Black British resistance to systemic racism: both protest and celebration. The escalation of suspicionless stop and searches of Black boys echoes intergenerational memories of unfair and disproportionate policing during Carnival, which resulted in the 1976 disturbances. These events were triggered after Black community leaders flagged growing tensions around discriminatory "sus" powers to the police, and the Met responded by deploying a quasi-military presence—around 1,600 officers, up from 200 the previous year. After police responded with significant force to several alleged incidents of pickpocketing, larger clashes followed. Subsequent baton charges left around 250 injured (including roughly 120 officers). See J. White, *'Police, Press & Race in the Notting Hill Carnival 'Disturbances"*, (2020).
78 JUSTICE, *Tackling Racial Injustice: Children and the Youth Justice System* (2021).
79 Neil Parpworth, "Suspicionless Stop and Search: You're Joking, not Another one!" The Journal of Criminal Law, Vol. 89, No. 1 (February 2025), pp. 1-26.
80 Criminal Justice Alliance, '*More harm than good: A super-complaint on the harms caused by 'suspicion-less' stop and searches and inadequate scrutiny of stop and search powers*', (2021).
81 Home Office, '*Home Office Response: CJA super complaint*', (2024).
82 Home Office, 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation', (2025).
83 Office of National Statistics, 'Ethnic group, England and Wales: Census 2021', (2021).
84 Home Office, 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation', (2025).; Office of National Statistics, 'Ethnic group, England and Wales: Census 2021', (2021).

population.[85] By contrast, "White" people, who constitute 82% of the population, represented just 36% of searches. [86]

31. Further, Schedule 7 of the TA 2000 grants port and border officers (examining officers) the power to stop, question, search, and detain individuals at UK ports, airports, and international rail stations, or in the border area in Northern Ireland.[87] Schedule 7 powers do not require examining officers to have prior suspicion of a person being involved in terrorism. Schedule 7 allows for the detention of a person for up to 6 hours for questioning and allows examining officers to search a person and their property. Additionally, examining officers can take and retain biometric data including DNA and fingerprints.

32. Recent data indicates that around 80% of those examined under Schedule 7 are from ethnic minority backgrounds. [88] The largest reported grouped category on the Home Office report is "Chinese and Other". When disaggregated at a more granular level,[89] the decision to classify this group as such is misleading. Of 932 Schedule 7 examinations of people categorised in this group for the year ending June 2025, 517 were "Arab", 411 were from "Any Other Ethnic Group", and just 4 were Chinese. Similarly, in the same period, of the 557 Schedule 7 detentions of those in the 'Chinese and Other' group, 316 were Arab, 240 were "Any Other," and merely 1 detainee was Chinese.[90] This lack of transparency is compounded by the fact that ethnicity data is only available in 53% of cases.[91]

33. The Bingham Centre's *Report of the Independent Commission on UK Counter-Terrorism Law, Policy and Practice*, recommended that data should be collected and published on the number of people: (i) examined or detained under Schedule 7, who have digital data copied, the number of copies retained or deleted; and (ii) examined or detained under Schedule 7, who have biometric data taken and retained. It also recommended that "data relating to Terrorism Act 2000 Schedule 7 examination and detentions should include information on religion and belief, as this is a protected characteristic". [92] Enhanced transparency and accountability mechanisms would support public confidence while identifying resource misallocation patterns.

34. We are concerned that these powers have been used inappropriately in the context of protests.[93] For example in 2023, Ernest Moret – a French publisher – was arrested on his way to the London Book Fair when he was stopped by counter-terrorism police at St Pancras station and asked about demonstrations he attended in France. Jonathan Hall KC, the Independent Reviewer of Terrorism Legislation, was critical of these powers being used in a public order context.[94] He remarked that the "rights of free expression and protest are too important in a democracy to allow individuals to be investigated for potential terrorism merely because they may have been involved in protests that have turned violent".[95] Mr Moret sued the Metropolitan Police, following which he received a five-figure settlement.[96]

The Human Rights Act 1998

35. The HRA 1998 marked a watershed by incorporating most of the ECHR into domestic law, including Article 3 (Prohibition of Torture), Article 5 (liberty and security), Article 10 (freedom of expression), Article 11 (freedom of assembly and association), and Article 14 (freedom from discrimination).[97]

36. Section 6 of the HRA 1998 requires public authorities such as the police, to act compatibly with Convention rights. Section 3 mandates courts to interpret legislation as compatible with those rights where possible. Together, these measures resulted in the burden being shifted from protesters to the police when the former challenged restrictions in court on the basis of their necessity and proportionality.[98] This resulted in greater protection for protest rights both on the streets, and in British courtrooms.[99]

85 ibid.
86 ibid.
87 Home Office, 'Examining officers and review officers under Schedule 7 to the Terrorism Act 2000', (2025).
88 Home Office, 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation', (2025).
89 Home Office, 'Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation: Year to June 2025: Quarterly Data Tables' (2025).
90 ibid. See tab Q_S_04b.
91 Home Office, 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation', (2025).
92 Bingham Centre for the Rule of Law, Report of the Independent Commission on UK Counter-Terrorism Law, Policy and Practice (2025) Recommendations 43 and 44.
93 See also O. Greenhall & A. Mogan, 'Palestine Action granted permission to challenge proscription as terrorist organisation', (Garden Court Chambers, 2025).
94 J. Hall KC, 'Independent reviewer of terrorism legislation report on use of schedule 7 powers against Ernest Moret' (2023), pp. 8 & 9.
95 ibid.
96 BBC, 'Met Police to pay damages to French publisher over arrest', (BBC, 2024).
97 Lord Bingham in *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55, [34].: "The Human Rights Act 1998, giving domestic effect to articles 10 and 11 of the European Convention, represented what Sedley LJ..aptly called a constitutional shift."
98 R (Laporte) v Chief Constable of Gloucestershire Constabulary [2006] UKHL 55; DPP v Ziegler UKSC 23 ; R (Leigh) v Commissioner of Police of the Metropolis (No.2) EWHC 661 (Admin).
99 David Feldman KC, 'The Growing Complexity of a Human Right to Assemble and Protest Peacefully in the United Kingdom' (2023) 54(1) Victoria University of Wellington Law Review 155.

The ECHR and the Right to Protest

Police officers themselves have acknowledged a "seismic shift" in the professionalism of policing responses to protest and public order, brought about by a proper understanding of the ECHR.

Article 3 — Prohibition of torture and inhuman or degrading treatment

Article 3 is absolute. It permits no exceptions or derogations. In the protest context, this means any use of force by police must be strictly necessary and proportionate to an individual's conduct. The State has duties both to refrain from ill-treatment and to protect people from it, including by third parties. Where credible allegations arise, authorities must carry out effective investigations.

Article 5 — Right to liberty and security

Article 5 protects against arbitrary arrest or detention. Any deprivation of liberty must fall within the limited grounds set out in law, and be no longer or harsher than reasonably required for its purpose. People must be informed promptly of reasons, brought quickly before a court, and able to challenge the lawfulness of detention.

Article 9 — Freedom of thought, conscience and religion

Article 9 safeguards belief and its manifestation. It is a qualified right: limits are permitted where they are prescribed by law and necessary in a democratic society for public safety, public order, health or morals, or to protect the rights and freedoms of others. Decisions involve a careful balance between sincere belief and the impact of its expression on others.

Article 10 — Freedom of expression

Article 10 protects both what is said and how it is conveyed. It covers views that may offend, shock or disturb. The State has negative obligations (not to impose unjustified restrictions) and positive obligations (to facilitate expression in practice). Any interference must meet a three-part test: it must be prescribed by law, pursue a legitimate aim (such as public safety or protection of others' rights), and be necessary in a democratic society. Necessity requires a pressing social need and a proportionate response.

Article 11 — Freedom of peaceful assembly

Article 11 protects gathering together for a common purpose, in public or private, and choosing the time, place and form, within lawful limits. Only peaceful assembly is protected. Violent protests or violent intent fall outside the scope of Article 11, but peaceful participants do not lose protection because others sporadically act violently. Restrictions follow the same structure as Article 10: they must be lawful, pursue a legitimate aim, and be necessary and proportionate.

Article 14 — Non-discrimination

Article 14 prohibits unjustified differences in the enjoyment of Convention rights on grounds such as race, sex, religion, political opinion, social origin, birth or other status. A difference in treatment, or a failure to treat differently where situations are relevantly different, breaches Article 14 only if it lacks an objective and reasonable justification, including a proportionate relationship between the measure used and the aim pursued.

37. A further catalyst for this shift occurred following the death of Ian Tomlinson during the 2009 G20 protests.[100] Tomlinson, a newspaper vendor who was attempting to walk home, was struck by Metropolitan Police officer Simon Harwood with a baton and pushed to the ground. He died of internal bleeding shortly after. An inquest jury returned a verdict of unlawful killing, yet Harwood faced no criminal conviction.[101] This outcome sparked deep public concern about police accountability and the HM Inspectorate of Constabulary report which followed recommended the police should "demonstrate explicit consideration of the facilitation of peaceful protest throughout the planning process and the execution of the operation or operations."[102] Following this report, which the Government stated would "act as an agent for change", its 2010 White Paper Protecting the Public: Supporting the Police to Succeed stated that "the police and all public authorities must start from a position of supporting those who want to exercise their rights to peaceful protest".[103]

38. This led to the adoption of the Association of Chief Police Officers creating the Keeping the Peace manual, which explicitly recognised the starting point for policing protest is the presumption in favour of peaceful assembly.[104] The manual placed a real emphasis on the importance of communication and dialogue in managing protest, as well as the importance of a proportionate policing response that correctly applied relevant human rights principles.[105] Particularly, 'planning for minimum use of force' stands in contrast to the present approach, which has led to findings that force used during policing protest has been excessive.[106]

100 BBC, *'Timeline: Ian Tomlinson's death'* (BBC, 2013).
101 Inquest, *'Jury's verdict of unlawful killing at inquest into death of Ian Tomlinson vindicates family and public concern'* (2011).
102 HMIC, *Adapting to Protest – Nurturing the British Model of Policing* (2009).
103 Home Office, *Protecting the public: Supporting the police to Succeed* (2010).
104 National Policing Improvement Agency, *Manual Guidance on Keeping the Peace*, (2010).
105 Ibid. p. 11.
106 All Party Parliamentary Group on Democracy and the Constitution, *Police Power and the Right to Peaceful Protest: An Inquiry into police conduct at the Clapham Vigil and Bristol Protests and the implications for the Police Crime Sentencing and Courts Bill* (1 July 2021) , p.67.

Good Practices in Proportionate Protest Policing

Anti-Iraq War March (February 2003)

Between 750,000 and 2,000,000 people attended what has been estimated as the "UK's biggest ever demonstration" marching against the Iraq War.[107] The Met stated that the march "passed off almost without incident" and there were only three arrests – two for public order offences and one for possession of an offensive weapon.[108] As the number of people due to take part in the march continued to increase, organisers spoke with the police to organise that the march should start from two different locations.[109] Further, after then-Culture Secretary Tessa Jowell initially decided the protest could not take place from Hyde Park, meetings took place between police, local authorities and the Royal Parks Agency to collectively coordinate. Consequently, the protest was allowed to take place at Hyde Park.[110]

Liberal Democrat Conference Sheffield (March 2011)

The Conference took place in Sheffield, against the backdrop of the Liberal Democrats failing to uphold their manifesto pledge on scrapping tuition fees.[111]

South Yorkshire Police operated a dialogue-based approach, which involved the deployment of a 15-person police liaison team, who wore distinctive blue uniform to differentiate them from the public order units.[112] These public liaison officers met with protest organisers before the march began and conducted a joint tour of the proposed march route, allowing both protesters and police officers to build a working relationship and ensure a "no-surprises" approach to the policing of the demonstration.[113] During the protest itself, the police liaison team recognised the value of this pre-engagement as it meant that they had been accepted by the crowd and could move through it without hindrance.[114] The positive impact of the approach was also recognised by the protest organisers, who deemed the police operation "exceptionally tolerant and facilitating".[115] Only one arrest was made throughout the entire Conference.[116]

107 The Guardian, "'A beautiful outpouring of rage': did Britain's biggest ever protest change the world?", (February 2023)
108 The Telegraph, 'One million march against war' (February 2003).
109 Andrew Murray and Lindsey German, *Stop the War: The story of Britain's biggest mass movement*, (Bookmarks Publications, 2005).
110 BBC News, 'Anti-war rally gets park go-ahead' (February 2003).
111 Gorringe, H, Stott, C & Rosie, M 2012, 'Dialogue Police, Decision Making, and the Management of Public Order During Protest Crowd Events', Journal of Investigative Psychology and Offender Profiling, vol. 9, no. 2, pp. 111-125
112 WADDINGTON, David (2016). From 'iron fists' to 'bunches of fives': A critical reflection on dialogue (or liaison) approaches to policing political protest. European Police Science and Research Bulletin (1), p. 36.
113 Ibid, p.35.
114 Gorringe, H, Stott, C & Rosie, M 2012, 'Dialogue Police, Decision Making, and the Management of Public Order During Protest Crowd Events', Journal of Investigative Psychology and Offender Profiling, vol. 9, no. 2, p121-122.
115 WADDINGTON, David (2016). From 'iron fists' to 'bunches of fives': A critical reflection on dialogue (or liaison) approaches to policing political protest. European Police Science and Research Bulletin (1), 30-43.
116 Ibid, p.35.

The Police, Crime, Sentencing and Courts Act 2022

39. The PCSCA 2022 introduced substantial reforms to protest law, codifying the common law offence of public nuisance, and expanding ministerial, police, and judicial powers to regulate protests. The PCSCA 2022 broadens criminal liability for peaceful protesters, imposes harsher penalties, and lowers thresholds for the police to impose conditions, raising concerns about proportionality and compliance with European Convention on Human Rights obligations.

40. This legislative expansion took place against a set of political narratives that framed environmental activism – especially by groups like Extinction Rebellion and Insulate Britain – as existential threats to public safety and economic infrastructure.[117] This same period also saw reactive policing approaches to Black Lives Matter (BLM) protests and pandemic-era public health assemblies, blurring the boundaries between protest policing and broader public order enforcement.

Key changes under the PCSCA 2022

Codification of Public Nuisance

41. Section 78 establishes a statutory offence of intentionally or recklessly causing public nuisance and abolishes the common-law offence. The statutory formulation applies where a person causes, or creates a risk of, serious harm to the public or a section of the public. "Serious harm" includes damage to property, personal injury, disease, death, serious distress, serious annoyance, serious inconvenience, or serious loss of amenity. The offence also captures obstruction of the public, or a section of the public, in the exercise or enjoyment of a right available to all.

42. The codified offence is much broader in scope than the common law.[118] Harm no longer needs to be to the public as a whole; impact on a section of the public is sufficient. Further, creating a risk of serious harm is enough. The inclusion of categories such as serious distress and serious inconvenience marks a lower threshold than the older formulation, which focused on endangering life, health, property, morals, or comfort.

43. An example of the broadness of the offence can be seen in the policing of the coronation in May 2023. Here, three women's safety volunteers were arrested hours before the coronation on suspicion of conspiracy to commit public nuisance.[119] This was because, as part of their voluntary position, they were carrying a number of rape alarms.[120] They were then held in custody for fourteen hours.[121] These arrests exemplify the practical consequences of the offence's expanded scope, showing how the inclusion of risk-based liability and vague categories of harm enables broad discretionary enforcement.

Lowering the Threshold for "Serious Disruption"

44. Sections 73 and 74 amend sections 12 and 14 of the Public Order Act 1986, expanding police powers to impose conditions on protests where a senior officer reasonably believes that serious disruption may occur. Section 73 relates to public processions, which are non-static gatherings in a public place, while Section 74 relates to public assemblies, which involve static gatherings.

45. Conditions may be imposed where the noise generated by a protest may result in serious disruption, or where a procession or assembly may cause significant delay to time-sensitive products or prolonged disruption to essential services, including the supply of money, food, water and energy, transport, and access to health services, educational institutions and places of worship.

46. Generating noise, even when it causes disruption, is a normal and integral exercise of the right to peaceful assembly. Noise is often the very means through which protestors communicate their message – both to participants and the wider public. Using noise as a justification for imposing conditions, as sections 73 and 74 currently do, risks restricting a legitimate protest tactics, as most protests are inherently noisy and are intended to attract attention or challenge existing beliefs. Discomfort or unease among those who disagree with the message is an inevitable – and protected – feature of democratic expression.[122] In a democracy, this unease must be tolerated.

47. Restrictions on protest must be 'necessary in a democratic society' and specifically in relation to noise, the ECtHR has recognised restrictions are not justified where such noise does not involve

117 The Guardian, 'Extinction Rebellion 'criminals' threaten UK way of life, says Priti Patel' (September 2020).
118 The common law offence was outlined in *R v Rimmington* [2005] UKHL 63.
119 BBC News, 'Women's safety volunteers arrested ahead of Coronation' (May 2023).
120 Ibid.
121 HL Deb 11 May 2023, vol 829, col 1491.
122 Case 13585/88 *Observer and Guardian v The United Kingdom* (November 1991), para 59.

obscenity or incitements to violence.[123] While the court has recognised that states enjoy a margin of appreciation, it has also stressed that 'it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.[124] This includes demonstrations that 'may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote.'[125]

48. In sum, noise is not merely a by-product of protest nor an element of public disorder; it is a core mechanism through which protesters communicate, challenge prevailing ideas, and engage the public. Limiting protest noise, either through imposition of conditions, or their mere threat, undermines the democratic element of protest by restricting its capacity to engage both participants and the wider public. Collectively, these considerations demonstrate that treating noise as a threat to public order shifts the focus away from the democratic function of assembly, privileging comfort over fundamental freedoms, and thereby eroding the very essence of protest in a pluralistic society.

49. Sections 73(4) and 74(6) also grant the Home Secretary a Henry VIII power[126] to redefine "serious disruption" through regulations. In 2023, Suella Braverman introduced the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023, which defined "serious disruption" as a "more than minor" hindrance to daily activities, time-sensitive deliveries, or essential services.

50. Liberty challenged these regulations, and succeeded on the basis that they were ultra vires, arguing that defining "serious disruption" as "more than minor" lowered the threshold below the ordinary meaning of "serious".[127] The Divisional Court held that the regulations were unlawful on the basis that "serious" in the POA 1986 Act sets a high threshold for police intervention, reflecting a balance between fundamental rights to protest and public order.[128]

51. The court emphasised that the Henry VIII power was intended to clarify, not alter, the threshold.[129] This was confirmed by a ministerial statement during the PCSCA 2022 debates that stated that the power would define what "can reasonably be understood as serious disruption" without changing the threshold.[130] The phrase "more than minor" was deemed linguistically incompatible with "serious," as it denotes a low threshold, effectively reducing protections for protest rights and increasing exposure to criminal sanctions beyond those intended by Parliament. [131] The Court of Appeal upheld the Divisional Court's decision.[132]

Protest Conditions

52. The PCSCA increases the ability of the police to impose conditions on protests. However, a report from the APPG on Democracy and the Constitution noted 'in general, police forces (other than the Metropolitan Police Service) had not, themselves, considered further powers necessary.'[133] This was particularly so as 'police, particularly the MPS, have been excessive in the use of their existing powers in the recent past.'[134]

53. These powers were justified by the Home Secretary on the basis that they were responding to 'a significant change of protest tactics'.[135] Feldman described this narrative as fallacious and pointed to the suffragettes who commonly resorted to locking-on, and the longstanding practice of tunnelling and tree-climbing by environmental campaigners.[136]

54. Section 75 of the PCSCA 2022 lowers the fault element required for breaching protest conditions. Where an offence previously required a "*knowing failure to comply*" with a protest condition, the amended provision applies where a protester "knew or ought to have known" about a condition at the time that they failed to comply.

55. Removing the requirement for actual knowledge increases the risk of criminalisation for unin-

123 Case 26986/03, *Galstyan v Armenia*, (November 2007), para 116.
124 Case 74522/01, *Oya Ataman v Turkey*, (December 2006), para 42.
125 Case 37533/05, *Kudrevicius and others v Lithuania*, (October 2015), para 145.
126 With thanks to Ronan Cormacain for the explainer, "A Henry VIII power is a clause in primary legislation which grants the power to amend primary legislation by way of secondary legislation. It is a remarkable provision which goes against the normal conception of the separation of powers. Only the legislature can make primary legislation, but a Henry VIII clause allows the executive to usurp this power and make primary legislation itself." (The rise and rise of the super-enabling clause, November 2022).
127 *R (Liberty) v Secretary of State for the Home Department* [2024] EWHC 1181 (Admin), para 10.
128 Ibid, para 100.
129 Ibid, para 84.
130 Ibid.
131 Ibid, para 91.
132 [2025] EWCA Civ 571.
133 All Party Parliamentary Group on Democracy and the Constitution, 'Police Power and the Right to Peaceful Protest' (July 2021), para 57.
134 Ibid. This passage referred to Jones v Commissioner of Police for the Metropolis [2019] EWHC 2957 in which Dingmans LJ and Chamberlain J, sitting in the Divisional Court, held that the Commissioner had used her powers under s. 14 of the Public Order Act 1986 unlawfully in banning Extinction Rebellion protests throughout London.
135 HC Deb 15 March 2021, Volume 691, col 59.
136 David Feldman KC, 'The Growing Complexity of a Human Right to Assemble and Protest Peacefully in the United Kingdom' 54 (1), Victoria University of Wellington Review, p.155, 162.

tentional breaches, particularly in crowded and dynamic protest environments where effectively communicating conditions to participants can be challenging, and where non-protesting members of the public may also be present. Additionally, the communication of protest requirements can be inhibited by the legal requirements related to noise giving rise to serious disruption.

One-person protests

56. Section 79 introduced the power to impose conditions on one-person protests, where a senior police officer reasonably believes that noise created may cause "serious disruption" or "significant impact". This provision effectively allows restrictions to be placed on any expressive act, regardless of the number of participants. This provision may encompass forms of expression that pose minimal threat to public order, such as street preaching. Given that one-person protests are inherently less likely to cause meaningful disruption, the application of such powers raises serious proportionality concerns. The risk is that public order powers can be deployed to regulate expression that is merely unpopular or controversial, rather than genuinely disruptive or harmful.

Increased Penalties

57. The Act is accompanied by increased penalties relevant to protest-related offences. Breach of protest conditions by organisers is punishable by up to 51 weeks' imprisonment or a fine of up to £2,500; participants are liable to a fine up to £2,500; and those who incite another to fail to comply may receive up to 51 weeks' imprisonment or a fine up to £2,500. The penalty for highway obstruction is increased to up to 51 weeks' imprisonment, a fine of up to £2,500, or both, where previously the offence attracted a fine only.[137] For statutory public nuisance, conviction on indictment now carries up to 10 years' imprisonment, an unlimited fine, or both, and on summary conviction up to one year's imprisonment, a fine, or both. These changes sit alongside the expanded powers set out above and significantly increase the policing landscape.

58. Record sentences were imposed in relation to Just Stop Oil supporters convicted of conspiracy to commit public nuisance for planning a protest involving the potential blocking of the M25. The five convicted had spoken on a Zoom call, where they were trying to recruit volunteers.[138] A sentence of five years was imposed for Roger Hallam, while the remaining four were sentenced to four years each.[139] Michel Forst, the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, stated, that the day of sentencing was "a dark day for peaceful environmental protest."[140] He continued, in relation to one of the protestors, Daniel Shaw, "how a sentence of this magnitude can be either reasonable, proportional or serve a legitimate public purpose is beyond comprehension."[141] All sentences were subsequently reduced on appeal.[142]

The Public Order Act 2023

59. The POA 2023 builds on the PCSCA, introducing new offences and powers targeting peaceful but disruptive protest tactics, further restricting ECHR rights without clear evidence of inadequacy in existing laws. It is notable that the PCSCA had not undergone any post-legislative scrutiny before the POA 2023 was drafted.

New offences

60. The POA 2023 introduces several new offences, supplementing the public nuisance offence set out in the PCSCA 2022 and POA 1986 provisions, criminalising specific protest tactics regardless of public nuisance or condition breaches:

    Locking-on (s.1) Attaching oneself, another, or an object to a person, object, or land, causing or capable of causing serious disruption, with intent or recklessness to causing such disruption.

    Being Equipped to Lock-on (s.2): Possessing items (e.g., glue) with intent to use for locking-on.

    Serious Disruption by Tunnelling (s.3): Creating - or participating in the creation of - a tunnel, causing serious disruption, with intent or recklessness to causing such disruption.

    Being Present in a Tunnel (s.4): Being in a tunnel according to s.3, causing serious disruption, with intent or recklessness to causing such disruption.

137 Police, Crime, Sentencing and Courts Act 2022, s.75(6); s75(11).
138 The Guardian, 'Five Just Stop Oil activists receive record sentences for planning to block M25' (July 2024).
139 Ibid.
140 Michel Forst, UN Special Rapporteur on environmental defenders under the Aarhus Convention, 'Statement regarding the four-year prison sentence imposed on Mr. Daniel Shaw for his involvement in peaceful environmental protest in the United Kingdom' (July 2024).
141 ibid.
142 *R v Hallam and others* [2025] EWCA Crim 199. Roger Hallam had his sentence reduced by a year. Meanwhile. Shaw and Lancaster had their sentences reduced by a year and Gethin and Whittaker De Abreu had theirs reduced by one and a half years.

Being Equipped for Tunnelling (s.5): Possessing equipment for tunnelling according to s.3.

Obstruction of Major Transport Works (s.6): Obstructing or interfering with major transport works (e.g. HS2), either by blocking the undertaker (or their agents) in carrying out or facilitating construction and maintenance, or by moving apparatus used in the works.

Interference with Key National Infrastructure (s.7): Intentionally or recklessly interfering with energy, transport, or communications systems, with a Henry VIII power for the Secretary of State to vary the kinds of infrastructures covered.

61. A reasonable excuse defence applies explicitly to sections 1, 3, 4, 6 and 7 and in connection with sections 2 and 5. This means that proportionality tests can be carried out for any convictions.

62. The breadth of section 2 and its capacity to criminalise ordinary conduct through speculative enforcement are highlighted by the following cases. On the day of King Charles III Coronation, six people were arrested on suspicion of being equipped to lock-on as they were carrying plastic ties.[143] The Met held the protesters for sixteen hours before their release. They subsequently personally apologised to one of the protesters and expressed regret for their arrests.[144] These arrests took place despite the leader of the protesters having months of discussions with the Met in relation to their intended actions.[145] Another example relates to a woman who was attending Ascot and was arrested for carrying glue. After she was arrested under section 2, she explained that this was nail glue and she was subsequently de-arrested.[146]

63. These examples raise serious questions about legal certainty. The subsequent apologies and de-arrests underscore the weakness of the initial suspicion and highlight how section 2 enables intrusive police intervention.

Statutory definition of serious disruption

64. Section 34 POA provides a statutory definition of "serious disruption" for the purposes of the Act, adopting the same definition that was subsequently ruled ultra vires by the Court of Appeal in Liberty.[147] Section 34 identifies specific situations in which individuals or organisations may experience serious disruption, with the key test being whether they are prevented or hindered to more than a minor degree. The definition is non-exhaustive, meaning that police officers can go beyond the examples listed in the Act. The phrase "more than minor" creates problems of interpretation, as it sits uneasily alongside the statutory language of "serious disruption", an issue that was highlighted in the *Liberty* cases. Additionally, by defining seriousness through such a minimal threshold, the Act blurs the distinction between ordinary inconvenience and genuinely significant interference.

65. Protests, to be effective in drawing attention, must inherently involve some levels of disruption. As the court recognised in *Tabernacle*, demonstrations and protests are '*liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them*.'[148] However, the current law instead frames disruption as something that should attract sanction, rather than recognising its presence as an essential aspect of protest. Further, the current definition is overinclusive, catching matters of inconvenience or routine disturbance, rather than those circumstances which have a genuinely significant, extraordinary impact. This means that the law fails to protect fundamental rights and creates the risk of arbitrary enforcement. Such a danger has been recognised by Volker Turk, UN High Commissioner for Human Rights, who stated that there is uncertainty around what "serious disruption" means which "carries serious risks of arbitrary, inconsistent and ultimately, chilling enforcement"[149] with "serious consequences for the effective ability of people of all political views to join demonstrations on issues that matter."[150]

66. The provision's focus on disruption to deliveries and economic activity reveals a concept of disruption oriented towards commercial or logistical inconvenience, rather than one grounded in the democratic value of public protest. The reference to "day-to-day activities" in section 34(1)(a)(i) is especially problematic. The Act provides no definition, offering only the example of "the making of a journey". This gives no boundary to the concept and, read literally, could encompass almost any ordinary act of life - commuting, shopping, social interaction, or

143 BBC News, 'Coronation: Met expresses 'regret' over arresting six anti-monarchy protesters' May 2023).
144 Ibid.
145 Ibid.
146 The Daily Mail, 'Police arrest Royal Ascot festivalgoer thinking she was going to glue herself to a fence in protest – only to realise she was carrying glue for her false nails' (June 2023).
147 *R (Liberty) v Secretary of State for the Home Office* [2025[EWCA Crim 571.
148 [2009] EWCA Civ 23, para 43.
149 Volker Turk, UN High Commissioner for Human Rights, 'The Public Order Act will have a chilling effect on your civic freedoms – it must be repealed' (May 2023).
150 Ibid.

leisure. Such indeterminacy risks capturing nearly all forms of public demonstration, since most protests will inevitably hinder someone's "day-to-day activities" to more than a minor degree. It also contrasts with the courts' recognition that some inconvenience is an inherent and tolerable feature of protest.[151]

67. This vague definition risks lacking the clarity required by the ECHR's 'prescribed by law' principle, which includes being 'foreseeable as to its effects.'[152] The law must 'indicate with sufficient clarity the scope of any … discretion and the manner of its exercise.'[153] A predictable framework is fundamental to preventing discriminatory or arbitrary use of powers and to preventing varied enforcement.

68. The difficulty of applying the definition of "day-to-day activities" is shown by the arrest, charge and subsequent acquittal of Greta Thunberg and four others for breaching protest conditions.[154] The Judge found the protest conditions they were alleged to have breached to be "so unclear that it is unlawful".[155] As a result, "anyone failing to comply (with conditions) were actually committing no offence."[156] This finding was also despite the Superintendent who imposed the conditions stating that "I based it on the fact that the disruption to the life of the community was more than minor... the definition of the legislation had changed recently, in that year: significant disruption had been clarified to now 'more than minor disruption to the life of the community'. I took the community at that point to be the people using the hotel."[157] Despite this, the Judge found that "the main entrance was accessible (meaning) that the condition... was unnecessary when the defendants were arrested."[158] This illustrates that the absence of a clear legal definition can make reliable enforcement of protest conditions more difficult.

69. Taken together, these concerns demonstrate that the current statutory framework fails to strike the necessary balance between maintaining public order and safeguarding the fundamental right to protest. By defining "serious disruption" in vague and overbroad terms, the PCSCA 2022 and POA 2023 risk criminalising peaceful civic participation and enabling arbitrary enforcement. **Therefore, JUSTICE recommends that any definition of serious disruption focuses on measurable threats to public safety, health or essential services – not mere economic inconvenience or temporary annoyance or the inevitable disruption that accompanies civic protest.**

Increased Stop and Search Powers (s.10 and 11)

70. Section 10 of the POA 2023 expanded stop and search powers for the police under section 1 of PACE 1984, where there are reasonable grounds for suspicion. Police are now able to stop and search individuals or vehicles where they have reasonable grounds for suspecting that they will find an article that is intended to be used in, or has been made for, relevant public order offences, including: (i) wilful obstruction of a highway (Highways Act 1980, s.137); (ii) public nuisance (PCSCA 2022, s.78); or (iii) locking-on, tunnelling, or interference with key infrastructure (POA 2023, ss.1, 3, 4, 6 and 7). Prior to this amendment, the list of offences was limited to burglary, theft, fraud, vehicular theft, criminal damage; and prohibited objects were limited to stolen goods, offensive weapons and prohibited fireworks.

71. Section 11 also permits suspicionless stop and search in relation to the same offences. Where a senior officer reasonably believes that protest-related offences may occur within a specified locality, they can authorise uniformed officers to search for objects intended for use in such offences, or objects connected to offences that have already occurred. These searches can be carried out without suspicion if officers reasonably believe that such an offence may have been committed.

72. Previously, such an approach has been reserved for serious offences, such as terrorism,[159] or where serious violence may take place.[160] This expansion takes place in a context where stop and search has been found to be "*embarrassing, intrusive and frightening… for the person*

151 Case 17391/06, *Primov v Russia*, (June 2014), para 145.
152 Case 37553/05, *Kudrevicius and Others v Lithuania*, (October 2015), para 108.
153 Case 29580/12, *Navalny v Russia*, (November 2018), para 115.
154 These arrests were under the Public Order Act 1986 as it was at the time amended by the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 which were subsequently quashed. However, the definition of serious disruption in those regulations was the same as the one now contained in the POA 2023.
155 BBC News, 'Greta Thunberg cleared after unlawful protest arrest', (February 2024).
156 Ibid.
157 The Guardian, 'Greta Thunberg goes on trial over London oil industry protests' (February 2024).
158 Ibid.
159 Terrorism Act, Schedule 7.
160 CJPOA 1994, s.60

involved"[161] and '*a source of tension with police over many generations*',[162] as well as where there is a "*lack of publicly available section 60 data and inconsistencies in how forces record it*."[163] Any extension of these powers, based solely on officer discretion, risks deepening these issues, increasing arbitrariness, and amplifying the potential for disproportionate policing (as outlined above at paras 24-27). It is worth noting that 40 of the 47 instances of section 11 being used concern pro-Palestine protests. Despite these searches being conducted, they have led to zero arrests, raising questions about the necessity of such powers.[164]

73. The definition of prohibited object under section 11 can be drawn widely to include such everyday objects as a bike lock or a spool of tape. Further, as such searches can be conducted solely on the basis that persons are present in a specified locality, this means that officers possess extensive discretion regarding the exercise of the power. This means that nothing legally prevents an officer from acting arbitrarily or on the basis of an unreasonable suspicion.[165] This combination of wide object definitions, locality-based searches, and largely unchecked discretion significantly increases the risk of arbitrary or disproportionate interventions against lawful protest activity.

74. Section 14 creates an offence where a person intentionally obstructs a constable in exercising their section 11 powers. This already forms a general offence under s.89(2) of the Police Act 1996 - but under that legislation the maximum penalty is one month imprisonment, compared to a 51-week maximum penalty under section 14. Such sentence inflation is impractical and unwelcome where Government has stated the need to stabilise the prison population.[166] Further, such a provision could capture completely legitimate action, such as that of legal observers, stewards or journalists querying the legality of the search, and its very existence acts as a deterrent both for attending protests as well as on the spot accountability for police use of powers.

The Approach of the Courts

75. The introduction of multiple new pieces of legislation has had a destabilising effect on the legal landscape and on public order policing. As concepts are redefined, and as the approach of both the courts and different governments evolves, three main complexities have arisen: the way the courts assess proportionality; lawful excuse defence in relation to criminal damage; and issues of jury nullification. These complexities exemplify the problems generated by a lack of clarity in protest law. The next section of this chapter will explore these problems before outlining recommendations intended to provide a greater degree of clarity for the police, the wider public and the judiciary.

Proportionality

76. Recent domestic case law reveals a growing tension in how courts approach the relationship between protest offences and Convention rights. In *DPP v Ziegler*, the Supreme Court's reasoning brought domestic law closer to Strasbourg's rights-based approach by requiring courts to consider whether a conviction interfering with Articles 10 and 11 was proportionate on the facts of the case.[167] However, later decisions have moved away from necessarily requiring such case-specific justification in every instance.[168] This has created a state of uncertainty within the field of protest law, which makes the job of the police more difficult when deciding how to use powers. It has additionally made the job of the courts more difficult when assessing whether powers have been exercised according to the law and has prevented the public from understanding how the law may be applied to them.

77. However, an individual proportionality test is crucial to ensure the proportional application of the law at all stages and by all public authorities, as required by the Human Rights Act. Legislatures may act hastily in response to particular protest tactics, but they cannot anticipate all potential clashes of interests at the time of law-making that will emerge in practice. A robust proportionality test on the facts of the case is necessary to ensure that these conflict-

161 HM Inspectorate of Constabulary and Fire and Rescue Services, the College of Policing and the Independent Office for Police Conduct, 'Report on the Criminal Justice Alliance's super-complaint: Section 60 of the Criminal Justice and Public Order Act 1994 and independent community scrutiny of stop and search', (December 2023), p.45.
162 Ibid.
163 Ibid, p.114.
164 H. Siddique, 'Met police accused of targeting pro-Palestine protesters for stop and search', (The Guardian, 2025).
165 Neil Parpworth, 'Suspicionless Stop and Search: You're Joking, not Another one!' [2025] 89(1) Journal of Criminal Law, 3,10.
166 Ministry of Justice, HM Prison and Probation Service and the Rt Hon Shabana Mahmood MP, 'Lord Chancellor and MOJ Permanent Secretary Prison Capacity Press Conference' (May 2025).
167 *DPP v Ziegler* [2021] UKSC 23.
168 In *Director of Public Prosecutions v Cuciurean* [2022] EWHC 736 (Admin) the court held that "[I]t is impossible to read the judgments in *Ziegler* as deciding that there is a general principle in our criminal law that where a person is being tried for an offence which does engage articles 10 and 11, the prosecution, in addition to satisfying the ingredients of the offence, must also prove that a conviction would be a proportionate interference with those rights." [67] and in in *Reference by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32 the Supreme Court declined to find that courts are required to undertake a proportionality exercise when deciding whether to convict in circumstances where Articles 9, 10 and/or 11 are engaged [54-58].

ing interests are weighed and balanced in the actual application of the law at each stage of the criminal process.

78. The importance of such a test is underscored by the current disproportionate ways in which protest-related laws are applied in practice. Climate activists in the UK are charged at a much higher rate than comparable countries. Research from the University of Bristol found that international average arrest rates for environmental activists stood at 6.7%.[169] However, UK arrest rates stood at 17%, second only to Australia.[170] The impact of such high arrest and charge rates can be seen in the figures that between 2022 and 2025, 2226 climate activists were charged.[171] At a time of immense pressure on the criminal justice system,[172] such high charging rates place additional strain on courts, prosecutors, and legal resources.

Lawful excuse in criminal damage cases

79. Domestic courts have also restricted the ability of defendants to rely on lawful excuse in protest-related prosecutions of criminal damage offences. The defence applies in situations where "*the person honestly believes at the time of the damage that the owner of the property would have consented to the damage if they had known of the... damage and its circumstances*".[173] Particularly, the courts have narrowed the circumstances in which they may explain their political, ethical, or scientific motivations to a jury. This formed the basis of the judgment in *Attorney General's Reference No.1 of 2023*.[174] Here, the Court of Appeal considered whether matters relating to the motives behind an act of protest – such as the merits, urgency or importance of the matter about which the defendant is protesting, or the perceived need to draw attention to the protest cause – could form part of the 'circumstances' of the destruction or damage under section 5(2)(a) of the Criminal Damage Act 1971. The court held that "*explanation of C's views on climate change...lacked the necessary proximity to the damage*."[175] This means juries are often barred from hearing why protestors acted as they did. The narrowing of the defence leads to greater criminalisation of protest-related actions, at the expense of recognising protest as a legitimate and protected form of political expression.

80. This narrowing sits uneasily with the earlier recognition that civil disobedience can be a legitimate and even valued component of democratic culture. This was recognised by Lord Hoffman in *Jones*, who stated the "*mark of a civilised community [is] that it can accommodate protests and demonstrations that break the law*."[176] The Court of Appeal has also explained the particular approach that courts should take in relation to acts of civil disobedience, and situations in which "the protestor is engaged in a form of political action undertaken on moral grounds rather than in mere criminality".[177] Such a distinction must be recognised within any legal interventions otherwise risking the law treating violent and non-violent protest identically, in contradiction to the ECHR. Violence in this context refers to force against persons, whereas property damage - especially when symbolic and carried out as part of protected political speech- is a form of non-violent civil disobedience. Yet domestic courts increasingly treat property damage as if it were equivalent to violence by holding that significant damage removes protest from the protection of Articles 10 and 11 altogether.

Jury nullification

81. In April 2021, six Extinction Rebellion protesters were cleared of causing criminal damage by a jury, despite being told by the judge that there was no defence in law for their actions.[178] This is because 'a jury is entitled to acquit and its reasons for so doing are unknown. It is their right which cannot be questioned.'[179] Such decisions can be viewed as juries using their position to resist the criminalisation of protest actions they regard as morally justified or socially necessary.

82. This same understanding of the jury as a democratic safeguard against excessive state power underpins the decision in *Warner*. Trudi Warner was charged with contempt of court in relation to standing outside Inner London Crown Court, where a case of several Insulate Britain defendants was due to be heard. She was holding a sign that stated, "JURORS YOU HAVE AN ABSOLUTE RIGHT TO ACQUIT A DEFENDANT ACCORDING TO YOUR CONSCIENCE". The court

169 Damien Gayle, 'Britian leads the world in cracking down on climate activism, study finds' (Guardian, 2024)
170 Ibid.
171 Global Witness, 'Policing protest: UK's peaceful climate activists charged at three times the rate of far-right agitators' (November 2025)
172 See for example, Sir Brian Leveson, Independent Review of the Criminal Courts: Part 1 (June 2025) and David Gauke, Independent Sentencing Review, Final report and proposals for reform (2025)
173 Criminal Damage Act 1971, s.5(2)(a)
174 [2024] EWCA Crim 243.
175 *Ibid* [48]
176 *R v Jones* (Margaret) [2006] UKHL 16 [89]
177 *Cuadrilla Bowland Ltd and others v Persons Unknown* [2020] EWCA Civ 9, [97]
178 BBC News, 'Extinction Rebellion: Jury acquits protesters despite judge's direction' (April 2021).
179 *R v Goncalves* [2011] EWCA Crim 1703, para 38.

stated that it was '*fanciful*'[180] to suggest holding the sign amounted to contempt of court, as "*it is not unlawful to accurately communicate the bare principle of law to potential jurors in a public forum*".[181] Consequently, the court refused the Solicitor General permission to proceed. Yet this very reliance on ordinary members of the public juries to exercise conscience exposes a deeper structural concern: if juries are repeatedly placed in the position of counterbalancing the state in protest prosecutions, it suggests that they are being asked to compensate for deficiencies in the legal framework itself.

83. Taken together, these three developments - (a) the shift toward an approach that sidelines case-specific proportionality, (b) the narrowing of the lawful excuse defence for the offence of criminal damage that prevents juries from hearing protest motivations and collapses distinctions between violent and non-violent conduct, and (c) the increasing reliance on juries to correct over-criminalisation through conscience-based acquittals - demonstrate a structural problem in the current protest law framework. Each operates to widen the gap between the protection promised by Articles 10 and 11 and the reality of how protest cases are adjudicated. This is neither coherent nor sustainable. A recalibration is required to restore the centrality of proportionality, protect peaceful civil disobedience, and prevent the legal system from treating expressive disruption as equivalent to violence.

84. **JUSTICE suggests that recent legislative reform has created problems for the police, the judiciary and wider public in understanding its application. A return to the legal position pre-2022 would return some clarity and remove broad and unnecessary powers. Therefore, JUSTICE recommends the repeal of POA 2023 sections 1-7 (SDPOs, locking-on, tunnelling, obstruction, interference offences) and sections 10-11 (stop and search). JUSTICE also recommends the repeal of PCSCA 2022 sections 59 and 73-80 (Home Secretary's secondary legislation powers) and section 79 (one-person protests). Section 75 should be amended to restore the pre-PCSCA "*knowingly fails to comply*" mens rea test.**

<u>The Crime and Policing Bill</u>

85. The Crime and Policing Bill 2025 was introduced in the House of Commons on 25 February 2025 and is currently proceeding through Committee Stage in the House of Lords. The Bill proposes sweeping new offences impacting participation in protest activity. This includes an offence of concealing identity at protests and an offence of protests outside the homes of public office holders. The Bill also reintroduces the requirement for a police officer to consider whether to impose conditions on protest as a result of cumulative disruption, previously attempted in the Serious Disruption Regulations. At the time of printing this report, the Bill is proceeding through Parliament.

86. There is already a power under section 60AA of the CJPOA 1994 for the police to require a person to remove any item concealing identity, as there is under section 42 of the Criminal Justice and Police Act 2001 to stop the harassment of a person in their home. Regarding cumulative disruption, outcomes will be highly dependent on the particular exercise of police discretion, and how the police interpret cumulative. Both consequences add additional uncertainty to the law.

87. Following this piece of legislation being introduced, Dr Mary-Ann Stephenson, in one of her first public interventions as Chair of the Equality and Human Rights Commission, has written to government ministers, advising that "while there has been progress in some areas (of protecting everyone's fundamental human rights), the Government is failing to uphold basic rights in others – particularly by permitting heavy-handed responses to peaceful protests."[182]

JUSTICE recommends that any further legislation regarding the policing of protest is paused pending the establishment of a Public Order Monitoring Authority to carry out the following:

a. Conduct a mandatory annual review of the operation of public order policing and legislation: An independent and evidence-led scrutiny of the operation of public order powers findings presented in a report to Parliament.

b. Produce detailed reports that assess the application of specific powers and make recommendations for legislative reform or changes in practice which the government would be required to respond to.

c. Annually report to the Joint Committee on Human Rights ("JCHR").

180 *HM v Solicitor General v Warner* [2024] EWHC 918 (KB), para 36.
181 Ibid, para 39.
182 The Independent, 'Rights of protestors, migrant workers and disabled people being 'failed' by government, EHRC chief says' (December 2025).

Chapter

2

Policing Protests: Rights, Trust and Legitimacy

Chapter 2 - Policing Protests: Rights, Trust and Legitimacy

Introduction

1. Public order policing is a core function of democratic policing. It shapes public perceptions of fairness and legitimacy. This, in turn, determines whether policing operates by consent or by coercion. Evidence consistently shows that procedural justice, that is to say, the fair and respectful exercise of police powers, is one of the strongest predictors of legitimacy in protest contexts.[183]

2. In England and Wales, confidence in the police has declined significantly over the past decade.[184] Recent practice[185] has too often fallen short of the standards the public should expect, particularly when seen through the lens of legal, procedural and distributive fairness, alongside operational effectiveness, investigative effectiveness and overall productivity.[186]

3. The current framework for protest policing is characterised by broad discretion, inconsistent enforcement and inadequate oversight. These weaknesses have fuelled criticism of protest policing from all sides, with both accusations of "two-tier" policing,[187] and deepened concerns about bias against racialised communities, undermining legitimacy and widening social divides.[188] When communication breaks down and restrictive policing of protests becomes routine, it corrodes the social contract on which policing by consent depends. This is inefficient: it reduces voluntary compliance, increases demand for formal enforcement and places further strain on already stretched resources.[189] As a result, the status quo both damages public trust[190] and imposes significant financial and operational costs.

4. This chapter examines the legitimacy crisis facing policing in England and Wales and explains why the emphasis on public order policing is a primary driver. It assesses how recent developments, including the policing of the Clapham Common vigil in 2021[191] and inconsistent enforcement of protest laws,[192] have compounded legitimacy deficits, contributing to a "permacrisis" of confidence.[193] We set out practical recommendations to rebuild trust, strengthen accountability and ensure that protest policing upholds democratic rights while maintaining public safety.

Why is Public Order Policing Central to Legitimacy?

5. Public order policing encompasses the policing and management of gatherings, demonstrations, festivals, national events and sporting occasions. These situations generate far higher volumes of police-public interaction than routine policing. Because of this, the quality of every encounter is critical for policing legitimacy, particularly in the context of policing by consent which relies on public trust, fair treatment, and respect for rights.

6. Research consistently demonstrates that procedural justice (fair treatment by police) is a

183 Procedural justice encompasses both the quality of *decision-making* and the quality of *interpersonal treatment*. Quality of decision-making relates to whether police act honestly, provide opportunities for representation, allow for error correction, and behave impartially. Quality of treatment concerns whether police treat individuals with respect, dignity, and courtesy. See Tyler & Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts 2002*; and J. Jackson, et al. (2012) - "Why Do People Comply with the Law?. British Journal of Criminology 52(6):1051-1071

184 YouGov, How much confidence Brits have in police to deal with crime (2025) polling shows that 54% of adults in August 2025 stated they had no/not very much confidence in the police to tackle crime, compared to just 39% five years earlier. Similar polling from YouGov, Are the police doing a good job? (2025) showed that 47% of adults thought the police were doing a good job in December 2025, down from 72% in October 2019.

185 The M25 Gantry Conspiracy case illustrates these failures: five Just Stop Oil supporters were convicted of conspiracy to cause public nuisance for participation in a Zoom call discussing planned protests, receiving sentences of 4–5 years—the longest imposed on peaceful environmental protesters in modern UK history. The Court of Appeal in *Hallam* ruled these "manifestly excessive," finding that trial judges failed to give adequate attention to conscientious motivation and ECHR Articles 10 and 11 protections. UN Special Rapporteur Michel Forst condemned the sentencing as fundamentally disproportionate. (M. Forst, Statement regarding the four-year prison sentence imposed on Mr. Daniel Shaw for his involvement in peaceful environmental protest in the United Kingdom, (18 July 2024)). From an operational perspective, the prosecution consumed Crown Court resources and prison capacity for non-violent offenders during an acute overcrowding crisis. As legal practitioner Kirsty Brimelow KC testified to the London Assembly Police and Crime Committee: in relation to overzealous prosecution of protesters, such cases are "clogging up the courts and taking up time and expense". (Source: London Assembly Police and Crime Committee, Transcript of Agenda Item 5 – Public Order Policing – Panel 1, (2024) pg 9)

186 See Home Office, 'Policing Productivity Review' (April 2024) which explicitly links productivity to values such as fairness, reliability, capability, and public perceptions of trust and legitimacy.

187 The label, in the protest sphere, alleges that some protests or demonstrations are policed more harshly than others. This article explains its origins: F. Brown, UK riots: What does 'two-tier' policing mean - and does it exist?, (Sky News, 2024)

188 LSE, 'The truth about "two-tier policing" (August 2024)

189 See Home Office, 'Policing Productivity Review' (April 2024)

190 Ben Bradford and Andy Myhill, 'Triggers of change to public confidence in the police and criminal justice system: Findings from the Crime Survey for England and Wales panel experiment' (February 2014) 15 (1) Criminology and Criminal Justice.

191 K. Farrow, 'Legitimacy & Confidence in Policing' (Cumberland Lodge 2023), pp 22-23

192 Baroness Casey of Blackstock, 'An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service' (March 2023) - in particular, see pp31-34.

193 Political Quarterly, 'Policing the Permacrisis' - collection of articles, edited by Ben Bradford, Jon Jackson and Emmeline Taylor.

strong predictor of legitimacy.[194] When policing is perceived as fair, cooperation and compliance follow.[195] Conversely, coercive or heavy-handed tactics during peaceful protest, such as kettling, aggressive crowd management, mass arrests, unreasonable pre-emptive restrictions and intrusive surveillance, undermine trust and can precipitate acute legitimacy crises.[196] Over-reliance on such powers where there is no relevant risk to public safety alienates both participants and bystanders, creating cycles of mistrust and escalation rather than resolution.[197]

7. Historically, broad police discretion to restrict protest has bred inconsistent, discriminatory enforcement, falling hardest on marginalised communities. The 1980s provides stark examples: from the Brixton uprisings in London to those in Toxteth, Liverpool, excessive force during otherwise peaceful actions shattered public trust and triggered calls for reform.[198] Lord Gifford, whose inquiry, *Loosen the Shackles: The report of the Liverpool 8 Inquiry* (1989), described racial discrimination for the Black community in the city as "uniquely horrific." In the words of Maria O'Reilly, then co-ordinator of the Liverpool 8 Law Centre, "No wonder black people feel that they don't matter in the eyes of the authorities".[199]

8. The Human Rights Act 1998 marked a turning point, embedding positive obligations to facilitate peaceful assembly as recognised by the European Court of Human Rights (ECHR) into our domestic law, and making them enforceable in domestic courts.[200] This is further reflected in the College of Policing's Authorised Professional Practice guidance, which sets out the relevant rights and stipulates that "powers and duties must be used in accordance with the [ECHR]".[201] However, as explored in Chapter 1, this progress has been put at serious risk through statutory developments which have led to an overly complex legal framework with which courts, practitioners and the public struggle to grapple with.

9. Overly restrictive approaches to public order policing risks eroding public confidence among the general public, not least with respect to women, racialised communities, and LGBTQ+ groups, at a time when trust in policing is already fragile.[202] Ensuring that protest policing is lawful, proportionate and rights-compliant is therefore essential to rebuilding legitimacy and sustaining policing by consent.

The Cost of the Legitimacy Deficit – Declining Confidence

10. Persistent deficits in police legitimacy create a self-reinforcing cycle of harm. When public trust declines, crime reporting falls, cooperation with investigations diminishes, and voluntary compliance with the law erodes. These dynamics increase demand for formal enforcement, drive up costs across the criminal justice system, and make policing more difficult, more expensive and less effective. The result is a "vicious circle": reduced compliance prompts more stringent tactics, which further undermine consent and deepen mistrust.[203]

11. The link between legitimacy, efficiency and effectiveness is well recognised. Where legitimacy is low, officers "have to be persuasive just to get basic information such as statements and other evidence."[204] A lack of legitimacy also means officers on the street have to work harder and longer to get results, becoming less productive."[205]

12. The consequences extend beyond operational efficiency. Trust deficits have a profound impact on efforts to tackle violence against women and girls. Victims' willingness to engage with the police declines sharply when confidence is low. MOPAC's Youth Survey 2021-22 demonstrated that in the year following the murder of Sarah Everard the proportion of young women "very willing" to contact the police if they were a victim of crime fell by 21% in a single year, to just 38%.[206] Nationally, almost half of the public lack confidence that complaints against the police

194 Chan et al., *A systematic review and meta-analysis of procedural justice and legitimacy in policing*, 2023 a meta-analysis of 123 studies involving over 200,000 participants which found significant correlations between procedural justice and police legitimacy.
195 Home Office, 'Policing Productivity Review' (April 2024).
196 See for example the policing of the Sarah Everard vigil, which the HMICFRS noted was a 'public relations disaster' for the Metropolitan Police, with a 'materially adverse' effect on public confidence in policing, K. Farrow, 'Legitimacy & Confidence in Policing' (Cumberland Lodge 2023), pp 22-23.
197 E. Maguire and M. Oakley 'Policing Protests Lessons from the Occupy Movement, Ferguson & Beyond: A Guide for Police' (HFG, 2020), p12; Clifford Stott, Martin Schothern and Hugo Gorringe, 'Advances in Liaison Based Public Order Policing in England: Human Rights and Negotiating the Management of Protest?' (June 2013) 7(2) Policing: A Journal of Policy and Practice p212-226; H.Gorringe, C.Stott and M.Rosie, 'Dialogue Police, Decision Making, and the Management of Public Order During Protest Crowd Events' (April 2012) 9(2) Journal of Investigative Psychology and Offender Profiling, p111-125 ; Stott (2025) "The Columbus Model" in *Journal of Policing Intelligence and Counter Terrorism*.
198 Scarman, Lord Justice (1981) *The Brixton Disorders 10-12 April 1981*, (Cmnd 8427, 1981).
199 The Independent, 'Blacks still facing hard times in Liverpool's own form of apartheid' (1998)
200 See Lord Bingham's comments in R (Laporte) v Chief Constable of Gloucestershire
201 https://www.college.police.uk/app/public-order-public-safety/legal-framework-and-legislation
202 Office for National Statistics, 'Perception and experience of police and criminal justice system, England and Wales: year ending March 2025' (August 2025).
203 Home Office, 'Policing productivity review' (October 2023), p8.
204 Home Office, 'Policing Productivity Review' (April 2024)
205 Ibid.
206 Mayor's Office for Policing and Crime, 'Tackling Violence Against Women and Girls' (June 2022)

will be handled fairly.[207] These figures underscore the systemic cost of eroded legitimacy - not only in financial terms, but in the diminished ability to protect those most at risk.[208]

13. Charge rates for victim-based crimes have collapsed to historic lows in recent years, with overall rates at 6%,[209] and adult rape charges falling from 13% in 2015/16 to just 2.8% in 2025.[210] Victim satisfaction has also declined sharply,[211] and HMICFRS reports found that domestic abuse crimes remain "poorly recorded in most forces,"[212] with almost 25% of police forces failing to meet the legal requirement to share information under Clare's Law within the required timescale.[213] Many forces are struggling to "perform adequately" in investigating crime and protecting those at most risk.[214]

in police history".[215] The Metropolitan Police's subsequent heavy-handed dispersal of the Clapham Common vigil, where women mourning Everard were restrained and arrested, further eroded confidence. Images of officers pinning women to the ground circulated globally, reinforcing perceptions of disproportionate and insensitive policing.[216]

15. The Independent Office for Police Conduct reports that Everard's murder remains the most recalled police-related news story years after the event (see below graphic). Nationwide polling found that 47% of women had less trust in the police following the case, and 76% believed policing needed to change for them to feel safe.[217] Social media analysis revealed widespread fear and anxiety, with most commentary expressing distrust toward policing as a system rather than viewing the case as an isolated failure.[218]

The murder of Sarah Everard remains the most noticed news story about the police recalled by the public

Q. What news stories involving the police have you noticed recently, if at all? Please name any and all stories you can think of.

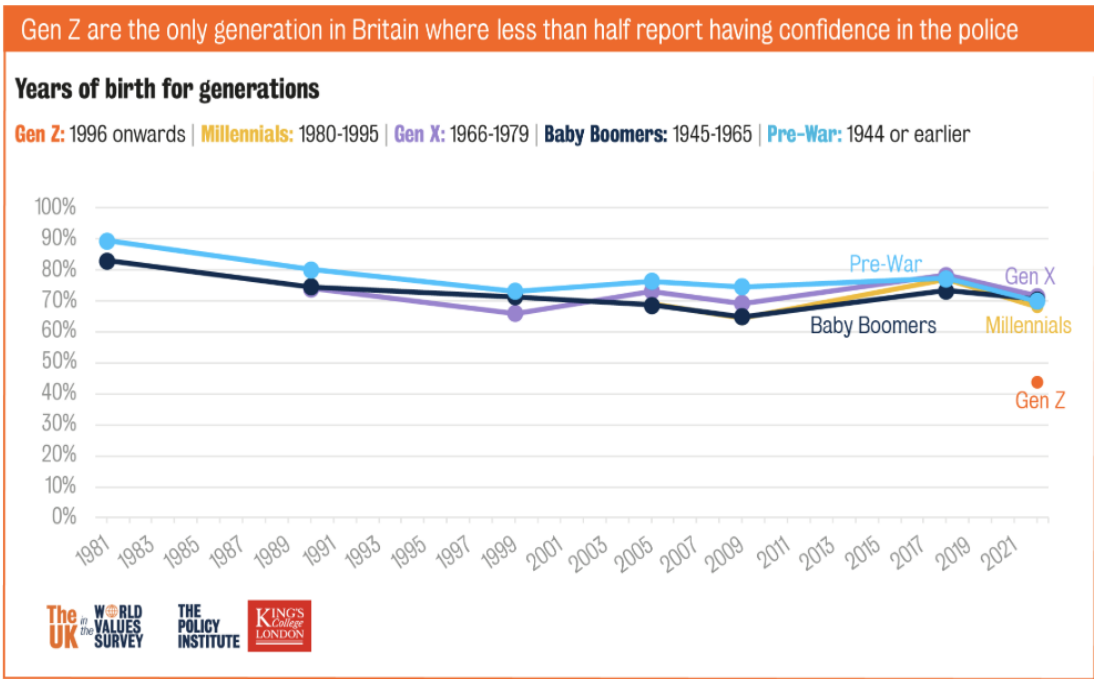
Source: IOPC[219].

14. High-profile incidents have compounded this crisis. The use of a police warrant card by a serving Metropolitan Police officer to falsely arrest and murder Sarah Everard marked a watershed moment in public trust. The National Police Chiefs' Council lead on violence against women and girls described it as one of the "darkest days

16. Several recent independent reports which identified serious failings within the police, including institutional racism, misogyny and a lack of transparency and accountability, have added to the erosion of public trust and confidence in the police in recent years.[220]

207 Ibid.
208 Independent Office for Police Conduct, 'IOPC Public Perceptions Tracker Summary Report, Financial Year 2024/25' (March 2025) p21.
209 This is down from 11.1% in 2016 see Home Office, 'Crime outcomes in England and Wales 2024 to 2025', (2025)
210 Home Office, 'Crime outcomes in England and Wales 2024 to 2025', (2025) ; See also CWJ, Super-Complaint Launched Over 'Excessively Lengthy' Police Investigations into Sexual Offences (2025).
HM Government, The end-to-end rape review report on findings and actions (2021) pg 3-4
211 The decline has been sharp: from a peak of 75% in 2013/14 to 51% in 2024/25—a 24 percentage point drop ; ONS Perception and experience of police and criminal justice system, England and Wales: year ending March 2025 ; I. Jones, **Why victim satisfaction with police is at historic low (Independent, 2025)**
https://www.independent.co.uk/news/uk/home-news/victim-satisfaction-police-officers-crime-justice-b2810360.html
212 HMICFRS, 'State of Policing: The Annual Assessment of Policing in England and Wales 2024–25', (2025)
213 ibid.
214 Refuge, 'Refuge responds to the State of Policing Annual Assessment 2025 report' (2025).
215 BBC, 'Police boss 'aghast' at missed red flags to stop Everard's killer' (2024)
216 My London, "Woman 'pinned down' in viral picture slams 'disgraceful' police actions at Sarah Everard vigil" (2021); Independent, "Woman arrested at vigil for murdered Sarah Everard win Met Police payout and apology" (2023)
217 End Violence Against Women "Almost half of women have less trust in police following Sarah Everard Murder" (2021)
218 University of Huddersfield, Summer Herbert, Maria Ioannou, Calli Tzani, Rachel Fletcher, Thomas James Vaughan Williams, "How the Sarah Everard Case has Changed Public Perceptions of Police Officers" (2025)
219 Independent Office for Police Conduct (IOPC), "IOPC Public Perceptions Tracker Summary Report, Financial Year 2023/24" (2024)
220 See for instance, Baroness Casey of Blackstock, 'Final Report: An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service' (2023); Dame Vera Baird, 'The Baird Inquiry: An independent report into the experiences of people who are arrested and taken into custody by Greater Manchester Police with a focus on women and girls' (2024); 4 Home Office, 'The Angiolini Review' (2024).

17. The failure to deliver reform and meet the public's expectations has deepened legitimacy deficits and reinforced perceptions of institutional resistance to accountability. For example, the Metropolitan Police have yet to meet Baroness Casey's recommendations within the Casey Review for cultural and structural change. This has led to the Met appointing Dr Gillian Fairfield, chair of the Disclosure and Barring Service, to lead a further review dubbed 'Casey 2' in November 2025.[221]



Source: Kings College London, The Policy Institute.[226]

18. Recent investigative reporting has amplified these concerns. A BBC Panorama documentary broadcast in 2025 focused on Charing Cross Police Station, exposing a culture of misogyny, racism and abuse among officers. The programme revealed internal messages and testimonies that highlighted systemic failures in misconduct handling and a tolerance of discriminatory behaviour.[222]

19. The Crime Survey for England and Wales data shows that confidence in the local police fell from 76% in the year ending March 2015 to 65% in March 2024, recovering only slightly to 67% in March 2025.[223] Comparative analysis from King's College London's World Values Survey indicates that the UK now ranks lower than many peer countries on measures of trust in policing.[224] Among younger generations, the picture is starker still: only around 44% of 'Gen Z' respondents (aged 15 to 28) expressed confidence in the police, the first cohort where fewer than half do so. This signals a generational legitimacy gap with profound long-term implications.[225]

20. The profound legitimacy crisis that the police are currently facing makes it even more critical to get public order policing right. This is especially relevant given the IOPC's Public Perceptions Tracker highlights that the "public most frequently recall seeing news stories relating to the policing of protests".[227] Similarly, the "policing of riots and public demonstrations are the most followed news stories surrounding the police"[228] Given the already declining public trust and confidence in the police and the evidence demonstrating that public order events are among the most widely followed and remembered categories of policing in the media, effective, fair, and proportionate public order policing is essential for restoring legitimacy.

221 The Guardian, "Met Police to face 'Casey 2' inquiry amid recent scandals" (2025)
222 BBC, "Seventh Met officer sacked after BBC Panorama film" (2025): Independent, "Revealed: The 'sickening' messages Metropolitan Police officers swapped joking about rape" (2022): This included officers "calling for immigrants to be shot, reveling in the use of force, and being dismissive of rape claims". Charing Cross was previously linked to high-profile misconduct cases, and the documentary demonstrated how cultural problems within a single station can undermine confidence in policing nationally. Its findings have intensified calls for independent oversight and reinforced the urgency of reform.
223 (ONS, 2025) Perception and experience of police and criminal justice system, England and Wales: year ending March 2025 https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/perceptionandexperienceofpoliceandcriminaljusticesystemenglandandwales/yearendingmarch2025
224 UK in the World Values Survey, 'UK has internationally low confidence in political institutions, police and press' (2023)
225 Professor B. Duffy and P. Morini, 'The police have a problem with Gen Z' (Police Foundation, 2024)
226 Kings College London, The Policy Institute, "Perceptions of the police: a generational crisis of confidence" (2025)
227 IOPC Public Perceptions Tracker Summary Report, Financial Year 2024/25 March 2025
228 ibid

Understanding Legitimacy: A Four-Dimensional Framework

Legitimacy is not a fixed attribute but a dynamic relationship between the police and the public - one that must be continuously earned. Leading scholars, including Anthony Bottoms and Justice Tankebe, identify four essential elements that underpin legitimate policing:[229]

1. Lawfulness
Police must acquire and exercise power according to established rules, operating within the rule of law without corruption, arbitrariness or rights violations. When officers act outside the law or abuse their powers, they undermine the basis of their authority.

2. Procedural Justice[230]
This concerns both the quality of decision-making, including honesty, impartiality, opportunities for representation and error correction, and the quality of interpersonal treatment, including respect, dignity and courtesy. Research consistently shows that procedural fairness is the most powerful predictor of legitimacy.

3. Distributive Fairness
Outcomes must be fair, and police resources should be allocated equitably across communities and social groups. Differential treatment based on race, class or gender, where some groups bear a disproportionate burden of enforcement while receiving less protection, erodes trust and legitimacy.

4. Effectiveness
The police must fulfil their protective function and maintain public safety. Citizens expect competence in tackling crime; when policing fails to protect the public, particularly from violence, its claim to authority is weakened.

229 A. Bottoms and J. Tankebe. "Procedural Justice and the Problem of Legitimacy." Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice. Journal of Criminal Law & Criminology, vol. 102, no. 1, 2012, pp. 119–170; J. Tankebe, "A Multidimensional Model of Police Legitimacy: A Cross-Cultural Assessment." Criminology and Criminal Justice, vol. 13, no. 1, 2013, pp. 51–68.

230 Tom R. Tyler, Why People Obey the Law (1990); Tyler & Huo, Trust in the Law (2002); Jackson et al., 'Legitimacy and Procedural Justice in Prisons', Prison Journal 92, no. 2 (2012); Sunshine & Tyler, 'The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing', Law and Society Review 37, no. 3 (2003).

In this section we analyse the legitimacy of public order policing against these four essential elements of legitimacy.

Lawfulness: Excessive Discretion and Unlawful Decisions

21. In the protest context, lawfulness concerns arise from the expansive and vague nature of recent public order legislation. Strasbourg jurisprudence is clear: the right to non-violent protest must be protected impartially, regardless of a demonstration's cause or message.[231] The role of the police is to facilitate lawful protest, not to judge its legitimacy.[232]

22. Parliamentary inquiries have also criticised the government and the way in which protests were policed during the COVID-19 pandemic, citing misapplication of regulations, inaccurate communications and breaches of fundamental rights to freedom of expression and assembly.[233] As the Joint Committee on Human Rights noted, in its report *The Government response to covid-19: freedom of assembly and the right to protest* (2021),

> *"Police officers not being clear on the content of the law they are tasked with enforcing presents a challenge to the rule of law. It creates a substantial risk of the police wrongly interpreting the law and misapplying it, thereby sanctioning individuals who have not behaved illegally, in breach of their Convention rights. This applies to protest as much as anything else, and indeed, there have been serious sanctions given out to people for engaging in protest when the illegality of their behaviour is far from certain."*[234]

23. Broad discretion under current laws, especially as amended over the past five years, places officers in an untenable position as "lawmakers",[235] opening the door to accusations of politicised decisions and legal challenges.[236] This risk is not theoretical. In *Jones v Commissioner of Police for the Metropolis*, the imposition of blanket restrictions on the Autumn Uprising Extinction Rebellion protests was ruled unlawful given it would have amounted to an effective restriction on the ability of the public to exercise their rights across the entirety of London.[237]

24. Further, in the case of Leigh v Commissioner of Police of the Metropolis,[238] the High Court found that the Metropolitan Police repeatedly violated the four organisers' of Sarah Everard's vigil rights to freedom of expression (Article 10) and freedom to assemble (Article 11) by unlawfully threatening the women with fines and prosecution if the event went ahead.[239] Lord Justice Warby described the MPS decisions variously as "legally mistaken" [Paras 4 and 96], "simplistic" [89], "misinformed" [87], and said that statements by the MPS that the vigil would be unlawful was "incorrect and misleading" [84].[240]

Case Studies

Farmers' Budget Day Protest November 2025:

Farmers planned a Budget Day protest involving tractors in central London. The Met Police had initially engaged in supportive meetings for the weeks preceding the protests signalling consent and cooperation. Additionally, previous tractor protests had taken place with no incidents. However, "only nine hours before movements to London" were due to take place, last minute restrictions were imposed leaving no time to appeal or meet the new requirements. [241]

This resulted in farmers attending the protest to accuse the police of 'two tier policing' voicing frustration and anger at the last-minute change, additionally Berkshire Farmers Group described the move as "appalling" and that it reflected a "malicious approach to preventing our right to protest."[242]

Coronation arrests

The Public Order Act 2023 came into force on 3 May

231 In *Primov and Others v. Russia, (Application no. 17391/06) ECtHR* (2014) the court stated: "The Government should not have the power to ban a demonstration because they consider that the demonstrators' "message" is wrong… Content-based restrictions on the freedom of assembly should be subjected to the most serious scrutiny by this Court".

232 This reflects the **Peelian Principles** foundational to British policing, both the fifth principle: "To seek and preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolute impartial service to law," and the eighth principle: "to recognize always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the State, and of authoritatively judging guilt and punishing the guilty". See also Home Office, 'Public Order Bill: Equality Impact Assessment', (2023), which states: "The duty of the police in relation to non-violent protests is to take a balanced and impartial approach towards all those involved in or affected by a protest that is consistent with human rights law and other domestic legislation".

233 Joint Committee on Human Rights The Government response to covid-19: freedom of assembly and the right to protest (2021)

234 Joint Committee on Human Rights The Government response to covid-19: freedom of assembly and the right to protest (2021) - p.22

235 All Party Parliamentary Group on Democracy and the Constitution, Police Power and the Right to Peaceful Protest: (An Inquiry into police conduct at the Clapham Vigil and Bristol Protests and the implications for the Police Crime Sentencing and Courts Bill (1 July 2021) paragraph 58

236 Indeed, a group of six former senior officers, chairs of police authority associations, and serving officers wrote to the Home Secretary warning that PCSCA "contains dangerously oppressive components that will increase the politicisation of the police, pile pressure on front-line officers, and risk the democratic legitimacy of British policing." – O. West, 'The Policing Bill will leave officers in an impossible position', The Times, 7 July 2021.

237 Jones v Commissioner of Police for the Metropolis [2019] EWHC 2957 (Admin)

238 [2022] EWHC 527 (Admin).

239 Leigh v Commissioner of the Metropolitan Police: Court Judgment: _ press release and summary of the judgment_1.pdf

240 Ibid.

241 Farmers Weekly, "Met Police blocks farmers' Budget day IHT protest in London - Farmers Weekly" (2025)

242 J. Thynne, Breaking News: Budget Day protest in doubt as police issue tractor ban | Farm News | Farmers Guardian (2025)

2023, days later on 6 May 2023 a few hours before King Charles III's coronation, six protesters affiliated with Republic were arrested on suspicion of "going equipped to lock on."

Police stated that the arrests were based on the possession of luggage straps for securing placards. The protesters maintained that the items which they had were intended to secure placards only and had no relation to locking on. After 16 hours in custody all six of the protesters were released without charge. The police said that they were as "unable to prove intent to use [items including plastic ties] to lock on and disrupt the event." One of those arrested was Graham Smith, chief executive of the anti-monarchy pressure group Republic, he stated that there was "never any discussion, thought, email, message, anything that suggested any intent to do anything disruptive."[243]

Procedural Justice: Heavy-Handed Responses and Poor Communication

25. Procedural justice requires fair decision-making and respectful treatment. Research shows that heavy-handed tactics, poor communication, and blanket restrictions during demonstrations significantly reduce perceived legitimacy, especially among those directly policed.[244] Often, practices such as kettling, mass arrests, and pre-emptive dispersals risk denying protesters a voice, failing to treat them with dignity, and applying force indiscriminately rather than targeting only those engaged in violence.[245] As Kiron Reid has observed, kettling "fails to discriminate between lawful protesters, bystanders caught up in a situation, and those intending to act unlawfully".[246]

26. Baroness Casey's report on the Met notes continued issues within the force and its approach to accountability. As she noted with respect to the actions of the police following the Clapham Common vigil, "*the Met continued to defend their view that they were right. This included continuing to pursue those issued with Fixed Penalty Notices at the Vigil. They continually appealed the decision of the High Court that found that it was unlawful for them to have not facilitated the original Vigil, despite a judge calling their claim 'hopeless*".[247]

27. The APPG on Democracy and the Constitution documented concerns at the "Kill the Bill" protests, including disproportionate use of force and failure to distinguish peaceful protesters from those committing violence.[248] Bristol defendants who successfully relied on defences of self-defence, or defence of another, in the face of force used by the police, reinforce the picture of officers operating with heavy-handed responses and outside of proportionate bounds.[249]

28. Further, under S.12 of the POA 1986 directions can be imposed on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption [, impact] or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions and "shall be given in writing".[250] JUSTICE heard from protest-related NGOs at a roundtable where we heard examples of organisations not being given written reasons explaining why s.12 conditions were being imposed. Providing reasons for the imposition of conditions which are likely to limit rights protected under the ECHR is central to procedural justice. Without providing organisers or participants of protests with an explanation for conditions imposed there is a lack of transparency and accountability, both limiting opportunities for scrutiny and making it difficult to ensure that decisions are both lawful and consistent.

Distributive Fairness: Addressing Perceptions of "Two-tier policing" and Racial Disproportionality

29. Distributive fairness concerns the equitable application of police powers and the fair allocation of resources across communities. Recent enforcement patterns and oversight findings raise serious questions about consistency and impartiality, with evidence of persistent disparities that undermine confidence in policing by consent.[251]

30. The Independent Scrutiny and Oversight Board's 2025 report found that Black communities continue to experience acute disparities in both stop and search, and use of force,[252] wider trends

243 Dr Joelle Grogan, UK in a changing Europe, Disorder in the balance: the coronation arrests and the Public Order Act 2023 - UK in a changing Europe (2023)
244 E. Maguire and M. Oakley 'Policing Protests Lessons from the Occupy Movement, Ferguson & Beyond: A Guide for Police' (HFG, 2020).
245 ibid.
246 University of Liverpool, "Viewpoint: Decision on kettling by European Court of Human Rights" (2012)
247 Baroness Casey of Blackstock, 'Final Report: An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service' (2023)
248 APPG, Bristol Clapham Inquiry — ICDR pp. 7, 41, 63
249 O. Greenhall, 'Protestor found not guilty of Violent Disorder in 'Kill the Bill' trial' (2022) ; BBC, Bristol Kill the Bill protest: Kadeem Yarde cleared of riot (2022) ; T. Cork, Man cleared of 'riot' in Bristol acted in self-defence against the police, (2022).
250 Public Order Act 1986
251 Global Witness, "Policing protest: UK's peaceful climate activists charged at three times the rate of far-right agitators" (2025); Police Race Action Plan: Independent Scrutiny & Oversight Board, "Annual Feedback Report" (2024-2025); NETPOL, "Britain is Not Innocent" (2020)
252 Police Race Action Plan: Independent Scrutiny & Oversight Board, "Annual Feedback Report" (2024-2025)

which reports suggest are reflected in public order policing practices.[253] Legal observers from Black or racialised groups have reported mistreatment, threats, and interference with their monitoring role.[254] The Casey Review concluded that Black communities remain "under-protected and over-policed".[255]

31. The IOPC Youth Panel in 2024 reported young people from racialised communities describing "excessive force" at Gaza solidarity and environmental protests.[256] Netpol's 2024 "*This is Repression*" report documents "numerous and alarming" instances of aggressive policing at pro-Palestine marches.[257] Further, reports on the policing of Black Lives Matter protests in 2020 found the "excessive use of force and the disproportionate targeting of black protesters." Whilst the policing at the hundreds of protests across Britain varied significantly "black-led protests disproportionality faced excessive interventions by the police."[258]

32. Inconsistent enforcement in public order policing remains a serious and enduring concern. Such practices have long undermined the trust that marginalised communities place in the police, who are duty-bound to serve and protect everyone equally. Despite recent rhetoric, including from the Shadow Justice Secretary asserting a "two-tier policing" narrative that white individuals are being unfavourably treated by the police,[259] for decades, independent reviews and contemporary data have highlighted persistent disproportionality in the policing of racialised groups, notwithstanding recent commitments made by the National Police Chiefs' Council and the College of Policing, including those set out in the Police Race Action Plan.[260]

33. Recent commitments, such as the Police Race Action Plan,[261] are welcome, however, progress has been uneven. The absence of a robust national dataset on protest policing exacerbates the problem. Without comprehensive data on conditions imposed, arrests, demographics, use of force and outcomes in relation to the policing of protests, it is difficult to accurately identify or address potential disparities in protest policing practices.

34. Transparency and consistency are essential to rebuilding trust. Establishging national data collection, strengthening independent oversight and embedding clear standards for proportionality will help ensure that public order policing is impartial, rights-compliant and aligned with policing by consent.

35. Therefore, **JUSTICE recommends that a National Protest Policing Database is established, to provide comprehensive, disaggregated data collection on all aspects of protest policing, including:**

    a. **Protest theme, date, location, and estimated attendance;**

    b. **Conditions imposed (Sections 12, 14, 60, dispersal orders, PSPOs) with written rationale and proportionality assessments explaining and justifying why such measures were considered necessary and proportionate;**

    c. **Officer deployments: number, originating forces, and costs;**

    d. **Arrests: numbers, demographics (race, gender, age), offences, and outcomes (charges, cautions, no further actions (NFA));**

    e. **Use of force: type, frequency, and circumstances;**

    f. **Injuries to officers and civilians;**

    g. **Complaints lodged, including anonymised unique officer references (UTRs) and originating forces and**

    h. **Counter-protest responses and policing approaches.**

36. Such a collection of data would enable empirical assessment of claims of differential treatment, disproportionality, and "two-tier policing" across forces and events – assessment currently made difficult due to the absence of robust national data. Such data would also allow for an understanding to be built up on how discretion is being exercised.

Effective protest policing

37. In the UK, the policing of protests is being undermined by structural problems and the influx of public order legislation introducing new and

253 https://netpol.org/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf p21-22 ; See also Chapter 1's discussion of the polciing of Notting Hill Carnival
254 Article 11 Trust, "Protecting Protest: Police Treatment of Legal Observers" (2022)
255 Baroness Casey of Blackstock, 'Final Report: An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service' (2023)
256 IOPC Youth Panel, "National Survey Report" (2024)
257 Netpol, Article 11 Trust, "This is Repression" (2024)
258 Britain is Not Innocent - Netpol
259 Jenrick: Two-tier sentencing is unfair against white men - Yahoo News UK
260 College of Policing, "Police Race Action Plan: Improving policing for Black people" (2022)
261 Ibid.

more restrictive police powers for the policing of protests. The ongoing economic costs on the policing of public order events are significant, for example, £3.4 million was spent by Sussex Police policing an eight week 'anti-fracking' protest.[262] Viewing crowds as inherently "dangerous and prone to disorder" has led to police perspectives focussing on controlling crowds through the use of force.[263] The proliferation of new legislation in this area has intensified this where additional powers are used to further restrict protest, rather than the police viewing their role as facilitating the right to peaceful protest.

38. Overly restrictive measures imposed in the context of protests can lead to a decline in both cooperation and trust from the public and, as demonstrated through the examples below, are often more resource intensive. As the Home Affairs Select Committee noted in its 2024 report on the Policing of Protests, "[t]hese are complex areas of law where the right to freedom of speech intersects with the need for all communities to feel safe as they go about their daily lives".[264]

39. The All-Party Parliamentary Group (APPG) on democracy and the constitution (An Inquiry into police conduct at the Clapham Vigil and Bristol Protests and the implications for the Police Crime Sentencing and Courts Bill)[265] show that enforcement against peaceful sit-down protests,[266] often with minimal warning, escalated tensions, whereas later protests where the police took a more facilitating approach, generally took place without violence.[267] Further, documenting how restrictive tactics can undermine trust:

> *"After the G20 protests in 2009 and the death of Ian Tomlinson, the (then) HMIC produced "Adapting to Protest – Nurturing the British Model of Policing". This set the tone for "best practice" in policing protest which prioritised dialogue between police and demonstrators and an approach built on cooperation, consent, building legitimacy, and minimising the use of force. It was noted, in particular, that it is generally safer and more practicable to facilitate rather than suppress peaceful demonstrations." [50]*
>
> *The Clapham and Bristol events represented a turn away from this best practice. They demonstrate an approach to protest in which cooperation with demonstrators is minimal or unproductive and under which police resort far more quickly to coercive powers." [51]*
>
> *"Where the law affords police too much coercive power in respect of protests, they are put in the position of both law maker and law enforcer. This is constitutionally and operationally inappropriate." [158][268]*
>
> *"It was striking that, in both the Clapham and Bristol events, the police use of coercive powers appear to have exacerbated tensions and increased the risk of violence. Indeed, in many cases, enforcement of (what the police believed to be) the prohibition on protest may have actually increased the risk to public health." [162]*

40. Importantly, better engagement with the community by police can increase perceptions of safety, reduce anti-social behaviour, and increase confidence and trust in the police.[269] International examples demonstrate that prioritising communication, trust-building, and proportionality within protest policing will allow for the consideration of local circumstances, and the empowerment of local leaders. Additionally, such an approach can improve efficacy in respect to public cooperation with the police in the protest context.

41. For example, in the USA the National Policing Institute define de-escalation as "taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary."[270]

42. The NYU Policing Project emphasise that mass arrests should be avoided as escalating tensions with protestors and depleting officer resources at the scene.[271] Through engagement with the community police forces are able to get

262 N8 Research Partnership, Dr Clifford Stott (University of Leeds) and Dr Geoff Pearson (University of Liverpool), PublicOrder_Evidence-Review.pdf
263 Ibid. : Drury, J., Stott, C., & Farsides, T. (2003). The role of police perceptions and practices in the development of 'public disorder'. *Journal of Applied Social Psychology*, 33, 1480-1500, Hoggett, J., & Stott, C. (2010). The role of crowd theory in determining the use of force in public order policing. Policing and Society, 20(2), 223-236; Stott, C., & Reicher, S. D. (1998). Crowd action as intergroup process: Introducing the police perspective. *European Journal of Social Psychology*, 28, 509-530.
264 Home Affairs Committee, 'Policing of protests' (2024) p.4
265 All Party Parliamentary Group on Democracy and the Constitution, Police Power and the Right to Peaceful Protest: (An Inquiry into police conduct at the Clapham Vigil and Bristol Protests and the implications for the Police Crime Sentencing and Courts Bill (1 July 2021)
266 APPG pp 23-24
267 All Party Parliamentary Group on Democracy and the Constitution, Police Power and the Right to Peaceful Protest: (An Inquiry into police conduct at the Clapham Vigil and Bristol Protests and the implications for the Police Crime Sentencing and Courts Bill (1 July 2021)
268 All Party Parliamentary Group on Democracy and the Constitution, Police Power and the Right to Peaceful Protest: (An Inquiry into police conduct at the Clapham Vigil and Bristol Protests and the implications for the Police Crime Sentencing and Courts Bill (1 July 2021)
269 Ibid. : College of Policing 'Engagement | College of Policing'
270 National Policing Institute' Slowing It Down: How De-Escalation Is Changing Policing - National Policing Institute' (2025)
271 The Policing Project NYU, 'Policing protests to protect constitutional rights and public safety' (2020)

feedback on their approach, for example, when forces are aware of changes in public sentiment they can take prompt action to manage tensions or prevent escalation.[272]

43. In Sweden following the 2001 Gothenburg EU Summit, aggressive policing tactics resulted in over 90 injuries and police shooting three protesters. In response, the Swedish National Police Board developed the Special Police Tactic (SPT), which emphasises pre-emptive communication through designated 'dialogue officers' who engage with protest groups in advance of events, seeking to understand their aims and maintaining open communication throughout.[273] Following SPT's introduction in 2004, Sweden has seen dramatic reductions in protest-related violence. Analysis of Stockholm police activities revealed that only one officer suffered injuries requiring three or more days off sick during major demonstrations from 2003-2005, further, "reviews after large demonstrations have emphasised that the work of the dialogue police is an important factor for success."[274] In the UK, it is reported that Home Office data reveals 1.63 million police working days were lost due to illness or injury in the year up to March 2025,[275] additionally, as of 31 March 2025, there were 6,305 FTE police officers on long-term absence (equivalent to 4.3% of all officers which is higher than the rate of 4.0% in the previous year) of these, 3,165 FTE police officers were on long-term sick leave (equivalent to 2.2% of police officers in England and Wales higher than the rate of 2.0% in the previous year).[276] Further, at the recent 'Unite the Kingdom' rally it was reported that 26 police officers were injured, including four that were seriously hurt.[277]

44. In San Francisco, during the nationwide "Hands Off!" protests in April 2025 where thousands gathered to oppose federal policy changes, the San Francisco Police Department maintained a minimal presence, allowing the demonstration to proceed without significant intervention. It is reported that the event concluded peacefully, with no reported arrests or major incidents.[278]

45. In the UK there are also examples of effective, less restrictive approaches to protest policing. For example, a national demonstration for Palestine took place in 2024 in Liverpool, which coincided with the Labour Party Conference. The organisers, the Stop the War coalition, claimed that it was not subject to any conditions, and that there were "no arrests or disorder."[279]

46. Further, during the 2011 Sheffield anti-austerity protests, in which approximately 5,000 people attended,[280] South Yorkshire Police deployed only a 15-person Police Liaison Team ("PLT") working closely with protest organisers.[281] Through immersion in crowds and open communication, the team provided accurate risk assessments to commanders, minimised unnecessary interventions, and achieved zero arrests and no property damage. Whilst deployment figures vary for different protests, given that, for example, at an anti-Trump protest in September 2025 around 5,000 protesters saw the deployment of 1,600 officers deployed[282] the policing of the Sheffield anti-austerity protests used significantly fewer resources.

47. University of Leeds research evaluated training workshops, focus groups, and field observations to assess PLTs in West Yorkshire, including deployments at football matches and the policing operation surrounding a National EDL demonstration in Batley in August 2014.[283] The findings similarly demonstrate that building relationships of trust with protestors, improving command decision-making, enhancing proportionality, constructing and maintaining police legitimacy and facilitating the 'self-regulation' of crowds appeared to result in "less confrontation, fewer arrests and less demands on resources".[284]

48. There is recognition of the benefits of greater localised policing from both the police and the government. For example, HMICFRS have stated that 'the evidence about what will work to restore public confidence is clear: neighbourhood policing.'[285] An approach that aligns with existing government priorities, for example the introduction of the Neighbourhood Policing Guarantee

272 Ibid.
273 Polisen Swedish Police, 'Dialogue Police: Experiences, observations and opportunities' (2010)
274 ibid
275 The Telegraph, Police pull record number of sick days (2025)
276 Home Office, ' Police workforce, England and Wales' (2025)
277 Yahoo! News, '25 arrested and 26 police officers hurt at 'Unite the Kingdom' rally' (2025)
278 Zencity, 'What Law Enforcement Can Learn from Recent Protest Response Tactics' (2025)
279 UK Parliament, 'Crime and Policing Bill' (7th May 2025)
280 BBC News, 'About 5,000 march in Lib Dem Sheffield conference protest ' (2011)
281 David Waddington, 'A 'kinder blue': Analysing the police management of the Sheffield anti-'Lib Dem' protest of March 2011' (2013)
282 LBC, 'He's not welcome here': Thousands of anti-Trump protesters descend on London amid Presidential visit' (2025)
283 Dr Clifford Stott (University of Leeds), Supt. Owen West, Insp. Richard Cawkwell, Supt. Dave Lunn, Chief Insp. Derek Hughes (West Yorkshire Police) and Sgt Ben Kemp (WyFi) Public Order and Public Safety (POPS) Policing, (2015)
284 Dr Clifford Stott (University of Leeds), Supt. Owen West, Insp. Richard Cawkwell, Supt. Dave Lunn, Chief Insp. Derek Hughes (West Yorkshire Police) and Sgt Ben Kemp (WyFi) Public Order and Public Safety (POPS) Policing, (2015)
285 HMICFRS, 'State of Policing: The Annual Assessment of Policing in England and Wales' (2023)

with a hope that it would improve public perception of confidence and trust in the police.[286] Louise Puddefoot, the Met's Major Operations and Public Order Commander, recognised that 'engagement is our best tactic. "If we can engage and use neighbourhood policing style that is exactly what we want to do".[287] The principles of neighbourhood policing, for example, community engagement and trust building through visibility and communication[288] can apply in a protest policing context through prioritising the proportionate facilitation of protests.

49. The function of PLTs in the UK is simultaneously as facilitators and intelligence gatherers. It is essential that a balance is struck, communication between PLTs and protesters is fundamental to ensure that the role of PLTs is effective[289]. For example, by "explaining to the demonstrators in detail why certain conditions for a demonstration have been made, and what might happen if they are broken, it might be possible for the demonstrators to accept the imposed restrictions and thereby decrease the risk of a confrontation."[290] When intelligence gathered by PLTs at protests is later used against the protesters, trust is undermined.[291]

50. For example, research from the University of Edinburgh analysing COP26 policing found that protest groups accused PLTs of intelligence-gathering and urged activists not to engage.[292] Freedom of Information requests revealed College of Policing training materials explicitly identifying social media as an "untapped source of intelligence capability" for PLTs prevent them from achieving their potential in the UK. Ensuring effective communication, trust-building, and proportionality – key values of policing by consent – is key to addressing these limitations.[293] The concerns raised by protesters in respect to PLTs prevents an approach of ensuring communication, trust-building, and proportionality and the key values of policing by consent to achieve its potential in the UK.

51. Given the evidenced benefits of open communication between the police and protesters and the lack of trust which currently underpins protest policing in the UK, **JUSTICE recommends that the police in the UK adopt a more collaborative and facilitative model to protest policing. The approach should prioritise communication, negotiation and partnership with both organisers and participants of protests, rather than relying on enforcement and restrictive tactics.**

52. Further, **JUSTICE recommends an independent review of the role, powers and accountability mechanisms for PLTs in the context of protest policing in the UK. The review should include:**

    a. **Clarification of the scope and responsibility of PLTs:** to ensure that their role is both clearly defined and understood by both police and the public.

    b. **Assessment of operation practices:** considering how PLTs engage with both protest organisers and participants to ensure compliance with the human rights framework.

    c. **Evaluation of accountability structures:** consideration of oversight and transparency measures in relation to the role of PLTs in protests.

    d. **Issue guidance:** provide guidance for PLTs, for example in respect to communication strategies and the limitations and transparency requirements on intelligence gathering to ensure the safeguarding of the right to protest.

Closing the Accountability Gap

53. Policing by consent with the communities involved provides a necessary step forward in ensuring that police resources are more properly allocated and powers more appropriately exercised.[294] However, effective accountability mechanisms are also essential to maintain public confidence and uphold policing by consent, including in the public order context. The current framework in England and Wales, however, falls short in various ways.

Police office identification

54. Displaying police officer identification numbers is not required by legislation in the UK, it is at "the discretion of the individual chief constable

286 Home Office, 'Neighbourhood Policing Guarantee performance framework' (2025)
287 London Assembly Police and Crime Committee – 06 November 2024 Transcript of Agenda Item 5 - Public Order Policing (2024)
288 College of Policing, 'Neighbourhood policing guidelines'
289 Canary, FOI response further proves why we can't trust police liaison officers (2022)
290 Ibid.
291 Ibid.
292 Hugo Gorringe, Michael Rosie, Stephen Reicher, Jennie Portice, Selin Tekin & Michael Hamilton, Policing and Society, 'Don't talk to them!' on the promise and the pitfalls of liaison policing at COP26' (2024)
293 Canary, FOI response further proves why we can't trust police liaison officers (2022)
294 Torrible, C. N. (2022). Trust in the police and policing by consent in turbulent times. Safer Communities, 21(3), 171-183.

who may provide force level guidance."[295] However, most UK forces have policies on the "wearing of individual identifiers when in uniform,"[296] for example, Merseyside Police, Police Scotland and Nottinghamshire Police. Despite this, there have been persistent reports, particularly in Greater Manchester, documenting officers concealing identification numbers during protest operations.[297] This creates evidential barriers for victims of misconduct, as identifying offending officers becomes challenging. Unlike Canada,[298] UK regulations for officer identification are non-statutory, treated as minor dress code violations with limited disciplinary consequences.[299] Whilst such incidents appear sporadic rather than systemic, weak transparency around complaints data and the discretionary, locally enforced nature of these rules make it difficult to judge the true extent of noncompliance.

55. Any lack of police identification inhibits accountability mechanisms and raises questions about the oversight of staff, particularly when the use of force is a possibility.[300] Ensuring that officers have clear identification numbers is key for both accountability and earning the trust and confidence of those they police.[301]

56. Concerns about officer privacy and safety are legitimate. Yet, even in environments where risks are elevated such as Northern Ireland, the response has not been to remove visible identifiers. Instead, forces manage risk through measures such as social media guidance and restrictions on travel in uniform, ensuring that identification remains in place as a cornerstone of accountable policing.[302] International practice reinforces this approach. In jurisdictions where name tags or identification numbers are mandatory and part of holding public office, there is no credible evidence that these requirements have led to increased reprisals against officers.[303]

57. Therefore, **JUSTICE recommends the issuance of national statutory guidance mandating visible officer identification at all protests to enable accountability and complaint mechanisms.**

Wrongful convictions

In 2025, hundreds of protesters were arrested under regulations later declared ultra vires by the High Court and upheld by the Court of Appeal.[304] These powers which were ultimately found unlawful, were in force for more than 18 months, pending the Government's appeal.[305] At present, there is no statutory or administrative mechanism to enable a collective review of those cases where defendants were convicted under these regulations.

Existing routes, such as appeals against unsafe convictions or referrals by the Criminal Cases Review Commission, require individuals to pursue complex, fact-specific processes, often without legal assistance. Liberty has highlighted that the absence of a systemic remedy leaves those affected to navigate costly and uncertain paths to redress, compounding the accountability gap and leaving the original injustice substantially unaddressed.[306]

58. Further, the current test for compensation for those who are wrongly convicted requires an exonerated person to show beyond reasonable doubt that they are factually innocent.[307] JUSTICE has continually called for changes to the miscarriage of justice compensation system given this unjust and impossible burden placed on those who are wrongly convicted. [308] Doing so would also help for closing the gap for miscarriages of justice which occur in the protest context.

295 Clifford Stott, Marcus Beale, Geoff Pearson, Jonas Rees, Jonas Havelund, Alain Brechbühl, Ed Maguire & Megan Oakley 'International Norms: Governing Police Identification & the Wearing of Masks During Protest' (2019)
296 Ibid.
297 Freedom Of Information Request Reference No: 01/FOI/24/013055/A; Netpol Missing in Action: Greater Manchester officers 'failing to wear identification numbers' (2014)
298 Clifford Stott, Marcus Beale, Geoff Pearson, Jonas Rees, Jonas Havelund, Alain Brechbühl, Ed Maguire & Megan Oakley 'International Norms: Governing Police Identification & the Wearing of Masks During Protest' (2019).
299 Though there have been (unsuccessful) efforts over the years to put these conditions on statutory footing See Clifford Stott, Marcus Beale, Geoff Pearson, Jonas Rees, Jonas Havelund, Alain Brechbühl, Ed Maguire & Megan Oakley 'International Norms: Governing Police Identification & the Wearing of Masks During Protest' (2019), p.28 for an overview on efforts to introduce a statutory requirement and the current regulatory provisions
300 HMIC, 'Adapting to Protest', (2009), p.9.
301 Ibid.
302 Clifford Stott, Marcus Beale, Geoff Pearson, Jonas Rees, Jonas Havelund, Alain Brechbühl, Ed Maguire & Megan Oakley 'International Norms: Governing Police Identification & the Wearing of Masks During Protest' (2019), p 32-33.
303 Ibid. In this cross country summary, the report notes that none of the European jurisdictions studied reported that identification (names or numbers) had led to increased harassment or similar reprisals against officers, and that "There is very little evidence of detriment to officers arising from the requirement as well as some creative techniques for managing and mitigating such threats (e.g. the use of specific code numbers with restricted capacity to link codes to officer identity)".
304 Liberty defeats Government appeal as Court rules anti-protest laws are unlawful - Liberty (2025)
305 R (Liberty) v Secretary of State for the Home Office [2025] EWCA Crim 571; Liberty, 'Liberty defeats Government appeal as Court rules anti-protest laws are unlawful' (Liberty, 2 May 2025)
306 Ibid.
307 *R (Hallam) and R (Nealon) v Secretary of State for Justice [2019] UKSC 2*, Lord Mance held (at [17]) as follows: "Section 133(1) restricts compensation to cases where a person's conviction has been reversed (or he has been pardoned...) "on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice". Convictions are not quashed in England and Wales on the ground that there has been a miscarriage of justice, but on the ground that they are unsafe... It was said in Adams, para 36, that the words "on the ground that" must, if they are to make sense, be read as "in circumstances where", and that the Secretary of State must therefore determine whether a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice. In deciding that question, the Secretary of State would have regard to the judgment of the CACD, but ultimately had to form his own opinion".
308 JUSTICE, Law Commission Criminal Appeals Consultation JUSTICE: Submission (2025)

59. To address the concerns raised in this chapter, including the excessive use of force, overly restrictive and inconsistent imposition of restrictions within protest policing and to begin to restore confidence in protest policing and to ensure that police powers uphold rather than undermine democratic rights, **JUSTICE recommends that as well as carrying out a mandatory annual review and producing detailed reports,[309] the Public Order Monitoring Authority, which we recommend is established in Chapter 1, also carry out the following:**

    a. **Collect data and set standards for the National Protest database.[310]**

    b. **Ongoing monitoring of the public order framework in practice to ensure compliance with organisers of protests and protestors ECHR rights.**

    c. **Recommend a framework for quashing unlawful protest convictions since 2022 and recommend levels of compensation for protesters wrongfully convicted under the 2023 Serious Disruption Regulations or due to police conduct and/or misapplication of laws.**

309 Chapter 1 Paragraph 87 of this report.
310 Recommended at Page 35, paragraph 35 of this report

Chapter

3

Civil Orders and the Restriction of Protest

Chapter 3: Civil Orders and the Restriction of Protest

Introduction

1. The UK is witnessing a troubling expansion in the use of civil orders to restrict protest activity. Whilst there is a history of civil orders being sought against protestors – dating back to the ASBO[311] – the increased reliance on them is stark. This expansion is twofold: existing civil orders are being deployed to regulate protest activity in ways not envisaged by the statute, whilst new orders specifically aimed at regulating protest activity are also being created.

2. Civil orders impose restrictions or requirements on a person, for the stated purpose of preventing them from engaging in conduct that is undesirable to the State e.g., is considered to be detrimental to public life or individual safety. They proceed in stages, whereby:

    a. objectionable behaviour is identified;

    b. restrictions or requirements are imposed upon a person, business or sometimes a place, either in response to a person or business engaging in that behaviour, or in anticipation that they will do so;

    c. if those conditions are breached, the person subject to the order is punished.[312]

3. Civil orders take a variety of forms and now exist in significant numbers. Broadly, they can be categorised as follows:[313]

    a. Orders granted under civil evidential rules and breach is civil contempt of court e.g., an Anti-Social Behaviour Injunction;

    b. Orders granted under civil evidential rules by a judge or magistrate and breach is a criminal offence e.g., a Serious Disruption Prevention Order and;

    c. Orders imposed by a public authority, for example a Local Authority, under civil evidential rules with little or no judicial oversight and breach is a criminal offence e.g., a Public Spaces Protection Order.

4. Regardless of their specific form, all civil orders present a challenge to justice, the rule of law and human rights protections, owing to the extensive limits that they can place on a person's freedom and liberty without proper oversight and monitoring, and without the robust procedural protections and standard of proof afforded by the criminal justice system. In this chapter, we will explore how all three forms of civil order – including Antisocial Behaviour Injunctions (**"ASBIs"**), Serious Disruption Prevention Orders (**"SDPOs"**) and Public Spaces Protection Orders (**"PSPOs"**) - are being utilised to control, pre-empt, and criminalise dissent and speech.

5. We will explain common concerns relating to the use of civil orders against protestors, before analysing specific order types and their documented use in relation to protests. In doing so, JUSTICE draws upon previous research it conducted in 2022, identifying systemic problems with the civil order framework.[314]

Overarching Concerns

The Circumvention of Criminal Justice Protections

1. Civil orders create what we might call a "double standard trap": civil procedural and evidential rules apply[315] yet breach can either constitute a criminal offence (e.g. **PSPOs** or **SDPOs**) or can attract a criminal justice response (e.g. contempt of court punishable by imprisonment for breaching an injunction). Not only does this mean that hearsay evidence is admissible,[316] but the standard of proof required to establish the

311 Statewatch, 'ASBOs used against protesters' (2010); Garden Court Chambers 'Judges quash demonstrators' Asbos' (20 September 2006)

312 JUSTICE, *The Function and Operation of Behavioural Control Orders* (JUSTICE, September 2023); JUSTICE, Lowering the Standard: a review of Behavioural Control Orders in England and Wales (2023),p. 6.

313 R. Kelly, 'Behaviour Orders: preventive and/or punitive measures?', (2019).

314 BCO report, see n.1 JUSTICE, Lowering the Standard: a review of Behavioural Control Orders in England and Wales (2023)

315 The standard of proof for Terrorism Prevention and Investigation Measures ("TPIM") has been reduced from "on the balance of probabilities" to "reasonably believes" in Order to make a TPIM easier to satisfy; see 'The Counter-Terrorism and Sentencing Bill Changes to TPIM Standard of Proof and Time Limit Fact Sheet' and Counter-Terrorism and Sentencing Act 2021, s. 34.

316 Civil Evidence Act 1995, s.1(1). Hearsay is defined by s114(1) of the Criminal Justice Act 2003, as: "a statement made in oral evidence that is evidence of any matter stated". Put more simply, hearsay is evidence that originates from someone who is not in court as a witness themselves. A prime example is when a witness, who is in court, states: "Mr. X told me he saw the accused doing Y". A discussion around the admissibility of hearsay took place in McCann [2002] UKHL 39

circumstances necessary for imposition of an order is normally the lower, civil standard (e.g., "on the balance of probabilities"). This bypasses fundamental criminal justice safeguards - including restrictions on certain types of evidence, the criminal standard of proof ("beyond reasonable doubt"), full disclosure requirements, access to legal aid for legal representation, and arguably thereby the right to a fair trial. Whilst legal aid is available for breach proceedings, it is almost impossible to access to defend the imposition of an order itself. This leads to the perverse situation where a person only benefits from the protections afforded by the criminal justice system by the time it is too late, and their liberty has already been infringed.

2. Certain types of civil order can be imposed in the absence of the person subject to it, and without notice, making civil orders easier to obtain than pursuing a conviction via a criminal investigation.[317] Indeed, certain types of civil order were specifically introduced to circumvent the criminal rules on hearsay whilst still maintaining the robust sanctions of the criminal law.[318] The result is a shadow criminal justice system operating with minimal accountability.

Pre-emptive and Anticipatory Nature of Civil Orders

3. The imposition of a civil order is normally conditional upon both: a) a 'trigger event', and b) the role that the order will play in achieving some outcome e.g., preventing some unwanted occurrence. For this reason, civil orders are often described as having both backward and forward-looking elements or being both reactive and pre-emptive.[319] For example, SDPOs can be imposed where a court is satisfied that a person has previously committed a "protest-related offence" (the reactive element) and that it is necessary to impose the SDPO to prevent them from undertaking future conduct that is "likely to result in" disruption (the pre-emptive element).[320] Meanwhile, the spatial nature of both PSPOs and Dispersal powers, e.g., they are applied in relation to specific geographic areas and impose restrictions and requirements on any person who enters that space in future, also exemplify the subjectiveness of assessing whether or not a particular form of conduct is likely to take place and / or be harmful in the future. For example, PSPOs can be imposed where a local authority considers it "likely" that activities will be carried on in a public place and that they will have a "detrimental effect on the quality of life of those in the locality"; that it is "likely" that the conduct is of a persistent or continuing nature and that it is "likely" that this would make the activities unreasonable".[321] Likewise, Dispersal Powers operate based on police suspicion that behaviour "is likely to contribute to" harassment, alarm or distress.[322] This pre-emptive approach is fundamentally at odds with the rule of law principle that punishment should follow proven wrongdoing. The ECtHR has emphasised that while preventative measures may be justified, including in a protest context,[323] they must be proportionate and necessary in a democratic society. However, the breadth of current civil order powers severely tests these limits.[324]

Structural Inequality and Discriminatory Application

4. The lack of accountability mechanism implicit within the civil order framework increases the risk that orders can be used in ways that disproportionately impact or target certain groups, including in a protest context. For example, there are significant gaps and variations in data capture across enforcement bodies and in respect of different orders. Information obtained via interviews, as well as FOI data, shows worrying variation in the types of data collected, the quality of data collected, the means of inputting the data, the location of the data, and the ability for the data to be extrapolated and shared internally, as well as with relevant agencies where appropriate to do so.[325]

5. There is no single, central, and universally accessible data system within the police, nor a central database which sets out who is subject to an order or their personal characteristics. This means that the relevant information pertaining to orders is not contained in one, distinct, central record or database and instead requires manual trawls across a number of systems and databases.

317 S Demetriou, '*Indirect criminalisation: the true limits of criminal punishment', (Hart Publishing 2024)in which the author explains the history of the ASBO*. Demetriou states that "*these measures were deliberately designed to extend the net of social control whilst prioritising expediency over due process values which are increasingly seen as an obstacle to the prevention of crime and should therefore be circumvented*". p.61

318 R (McCann) v Manchester Crown Court [2002] UKHL 39, [18]; see C. King and J.Hendry, 'Civil Recovery of Criminal Property', (2023), p.2.

319 JUSTICE, Lowering the Standard, (2023), p.25

320 Public Order Act 2023, s.20(10 - (3) and s21(1) - (4)

321 Anti-social Behaviour, Crime and Policing Act 2014, s. 59(2)-(3).

322 Anti-social Behaviour, Crime and Policing Act 2014, s. 35(2) – (3).

323 *Schwabe and M.G. v Germany* (2012) 54 EHRR 20

324 *Kudrevičius v Lithuania* (2016) 62 EHRR 34

325 JUSTICE, Lowering the Standard: a review of Behavioural Control Orders in England and Wales (2023), p 88.

6. This, in turn, makes it harder to track if civil orders are being used inappropriately and whether the Public Sector Equality duty is being complied with in enforcement decisions. Notwithstanding this, research conducted by JUSTICE and others including the Civil Justice Council repeatedly found that certain members of society are likely to be worse impacted by the enforcement of civil orders.[326] This includes individuals with poor mental health and additional support needs.

7. Moreover, there are examples of civil orders being used in a manner that specifically targets certain groups including those experiencing homelessness, travellers and racialised persons. In some cases, this disproportionate impact has been explicitly acknowledged by the government – as was the case with Knife Crime Prevention Orders and Serious Violence Reduction Orders.[327] This has led to real concerns that the way that civil orders are created and employed reflects the State's fears about 'problem people', rather than 'problem behaviour'.[328] We are concerned that these issues are likely to also play out in the protest context.

The Privatisation of Public Order

8. Private corporations have been able to utilise civil orders, specifically injunctions, to create their own protest restrictions through litigation, which leads to "*private companies and public authorities…effectively create[ing] their own, bespoke public order offences - instead of relying on the criminal justice system*."[329] Companies like HS2, National Highways, Shell, and Ineos have obtained sweeping injunctions to restrict activists and protestors which cover vast geographic areas—in some cases, the entire 170-mile HS2 route or the entire strategic roads network.[330]

9. This clearly exposes an imbalance within the civil order regime when it comes to protest – with well-resourced corporate actors who have access to specialist legal teams, being able to obtain injunctions to prevent protests, they are then able to enforce orders through civil contempt proceedings that can result in individuals being imprisoned despite having never committed a criminal offence.

10. The Court of Appeal in Canada Goose recognised this problem: "*Private law remedies are not well suited" to "permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters*."[331] Yet such remedies continue to be granted within the civil order regime.

11. Moreover, in the context of PSPOs which are imposed by local authorities, several authorities outsource the enforcement of orders to private companies, with nearly 200,000 FPNs being issued on this basis in 2021-2022.[332] Under these arrangements, private companies can be paid commissions on a target-basis, leading to concerns that orders are being issued for income-generating and commercial purposes rather than being used to tackle behaviour that is actually harmful.[333]

Widening the Net: Layering of Criminal and Civil Justice Measures

12. Over recent years, the Government appears to have established a practice of introducing new civil orders alongside new criminal offences – both of which target the same type of behaviour. This is particularly true in the protest context. For example, the Public Order Act 2023 created SDPOs,[334] new protest-related offences and powers for the Secretary of State to apply to court for an injunction (albeit that the injunction provisions are yet to be brought into force).[335] In doing so, they widened the net extensively and risk situations whereby civil orders could be used to achieve prosecution "*by the back door*", in circumstances where the police do not have evidence to pursue a criminal prosecution.[336]

13. However, the variations and overlap between civil orders (e.g., ASBIs compared to SDPOs) and crimes, can have unintended consequences for the Government and public alike. For example, gaps in the statutory guidance and legislation leave too much open to interpretation and indi-

326 Courts and Tribunals Judiciary, Civil Justice Council, Anti-social behaviour and the Civil Courts (2020).
327 The government's own consultation response acknowledged that "it may be that a disproportionate number of Black people are impacted, Black males in particular" by SVROs.
328 J. Hendry, 'The Usual Suspects': Knife Crime Prevention Orders and the 'Difficult' Regulatory Subject,' (2022).
329 https://friendsoftheearth.uk/climate/legal-challenge-against-antiprotest-injunctions-goes-human-rights-court
330 *HS2 Ltd v Persons Unknown* EWHC 3140 (KB); *National Highways Ltd v Persons Unknown* EWHC 3081 (QB); *Ineos Upstream Ltd v Persons Unknown* EWHC 2082 (Ch)
331 *Canada Goose UK Retail Ltd v Persons Unknown* EWCA Civ 303, p2804, para A
332 Freedom of Information data collated by Campaign for Freedom in Everyday Life, (January 2023); Campaign for Freedom in Everyday Life, 'The Corruption of Punishment – Report', (2022)
333 Evidence submitted by delegates to a JUSTICE Practitioner's Roundtable on ASB hosted in Spring 2025; see also Campaign for Freedom in Everyday Life, 'Campaign to End Fining for profit' (September, 2022); 'The Corruption of Punishment – Report', (2022)
334 Public Order Act 2023, ss. 20 -33
335 Public Order Act 2023, Inunctions ss. 18-19
336 In the context of civil orders used to police football crowds, see CPS, 'Football Related Offences and Football Banning Orders: Legal Guidance', (2022), (see n.11), which states that "*[i]f there is insufficient evidence to prosecute a football-related offence or if the defendant is acquitted, it may still be possible to apply for an order on complaint*"

vidual discretion, meaning that civil orders are imposed inconsistently and the number applied for differs greatly region by region creating enforcement gaps for the Government. Police and local authorities can experience confusion about when to use a civil order, which choice of order to use and when to instead pursue the investigation of a crime. From the public's point of view, civil orders have been criticised for creating "*personalised penal codes*" or leading to "ad hominem criminalisation".[337] In other words, the imposition of civil orders leads to recipients becoming subject to a system of restrictions and requirements limiting their freedom of expression and association which is set out in an order that applies only to them, and not to society as a whole. Comments made during the Parliamentary debates on SDPOs emphasise that such "machismo laws" may invoke positive headlines in the media but are often ineffective or "over the top" in their impact. [338]

Blanket Geographic Bans on Protest Areas

14. The use of certain types of civil orders to police protest risks creating blanket bans across entire town or city centre areas. This is particularly true of civil orders that are spatial in nature e.g., Dispersal Powers and PSPOs. The expansive nature of Dispersal Powers which are contained in section 35 of the 2014 Act, and which provide the police with the power to exclude a person from an area for up to 48 hours, is a major concern. Dispersal Powers can cover large geographic areas - entire neighbourhoods, town centres, or areas around protest sites. Once authorised, individual officers can issue directions to anyone in the area whose behaviour they suspect has contributed, or is likely to contribute, to members of the public being harassed, alarmed or distressed or has contributed in some way to the occurrence of crime or disorder in the area. They may do so without requiring the imposing authority to demonstrate that less restrictive means are inadequate. This creates a blanket power to clear areas of protesters based on generalised police assessment of risk, rather than individualised determinations of necessity and proportionality; the antithesis of the targeted, fact-specific approach that human rights law requires.

Anti-Social Behaviour Orders misused in protest contexts

The Conflation between Anti-Social Behaviour and Protest

15. Many of the orders discussed in this chapter arise from anti-social behaviour legislation. This includes PSPOs, ASBIs and Dispersal Powers created by the Anti-social Behaviour, Crime and Policing Act 2014 (**the 2014 Act"**). A common criticism of the anti-social behaviour regime, and civil orders within it, is that there are insufficient safeguards to prevent orders from being used to target behaviour that is not harmful and falls far below the threshold for criminal or violent activity.[339]

16. The conflation between anti-social behaviour and protest sets a dangerous precedent. According to the Campaign for Freedom in Everyday Life (previously called Manifesto Club), the use of Orders to police behaviour that is unwanted and annoying, but falls far below the criminal threshold, "*indicates a loss of perspective on the question of what is, and what is not, meriting the state's powers of coercion and criminal sanction*".[340] For others, including those that represent victims, the use of civil orders in this manner, belies the true nature of the harms experienced by victims of anti-social behaviour, and dilutes the serious nature of it. It also diverts resources away from responding to more serious allegations of harm in the community.

17. The broad-framing of the legislation has led to 'mission-creep', allowing orders to be imposed in a wider range of contexts than was initially envisioned. The broad statutory tests, and the failure of statutory guidance to set out clearly when civil orders should be used, facilitates this practice. For example, PSPOs can be imposed and/or enforced whenever an individual's actions are having "a detrimental effect…on the quality of life of those in the locality".[341]

18. The broad nature of the test necessarily entails subjective assessments of "*whose quality of life*" should be preserved and prioritised within a community and can inevitably lead to them being used to target any behaviour (and by

337 A. Green, and J. Hendry, 'Ad Hominem Criminalisation and the Rule of Law: The Egalitarian Case against Knife Crime Prevention Orders', (2021).
338 Public Order Bill Deb 18 October 2022, col 581.
339 For example, via their website, the Campaign for Freedom in Everyday Life have collected countless case studies showing the arbitrary use of CPNs and PSPOs to criminalise activities such as "closing the door too loudly", "flying model aircraft", "sitting on a pavement" and even "crying too loudly". See, Campaign for Freedom in Everyday Life 'Victims of arbitrary power: CPN Case Studies',(2023); The Campaign for Freedom in Everyday Life; 'CPNs and PSPOs: the use of 'busybody' powers', (2020); The Campaign for Freedom in Everyday Life; 'The Crime of Crying in Your Own Home', (2016).
340 The Campaign for Freedom in Everyday Life 'CPNs: The anarchy of arbitrary power,' (2017)
341 Antisocial Behaviour, Crime and Policing Act 2014, s. 59(2)(a)

extension, person) that was disagreeable to "*the virtuous majority*". [342] This stands in tension with an essential element of protest, which serves as a vital mechanism for individuals, especially those outside the majority, to make their voices heard when they are less well represented within the formal political structures of a representative democracy.

19. Policing of protest as anti-social behaviour also undermines the accepted principle that disruption can form part of the nature of protest.[343] Protestors may cause disruption, but that doesn't make protest anti-social. Protestors normally act out of conscience and a sense of duty to others, on behalf of a community and to reaffirm collective values. Seen in this way, protest is not anti-social but a social function through which communities question injustice, test whether laws and policies are fair and renew the foundations of democracy. Therefore, at its root, protest is a sign of societal health, not decay.[344]

Dispersal Powers (Sections 34-37, Anti-Social Behaviour, Crime and Policing Act 2014)

The Legal Framework

20. Sections 34 to 37 of the Anti-social Behaviour, Crime and Policing Act 2014 provide police with powers to disperse individuals from specified areas for up to 48 hours. A police officer of at least inspector rank may authorise use of these powers if satisfied on reasonable grounds that their use "may be necessary" for removing or reducing the likelihood of members of the public being harassed, alarmed or distressed, or the occurrence of crime or disorder.

21. Once authorised, a constable in uniform may direct a person to leave a locality and not return for up to 48 hours if they have reasonable grounds to suspect the person's behaviour has contributed or is likely to contribute to harassment, alarm, distress, crime, or disorder, and that the direction is necessary. Section 36(5) requires that constables must have "particular regard" to Articles 10 and 11 ECHR before issuing directions. Failure to comply is a criminal offence punishable by a fine not exceeding level 4 (£2,500) and/or three months' imprisonment. At the time of writing, the Government is attempting to extend the duration of Dispersal Powers via the Crime and Policing Bill 2025, making it possible for the police to disperse individuals from an area for up to 72 hours.[345]

Misuse in the Protest Context

22. Parliamentary debates at the time of the 2014 Act passing, demonstrate that Dispersal Powers were envisaged as being used to curb alcohol or drug-related antisocial behaviour; illegal raves and disorder associated with public events such as football matches.[346] They were not intended to control legitimate protest activity. Yet these powers have been deployed to break up protests and exclude individuals from areas where they seek to exercise their democratic rights. Based on a subjective test, the threshold for deployment is dangerously low: mere police suspicion that behaviour "is likely to contribute to" others being "harassed, alarmed or distressed" suffices. Protest, by its nature, can feasibly cause some level of alarm or offence to those who disagree with the message.

23. The use of Dispersal Powers following the Queen's death and during royal visits highlighted this. For example, a 16-year-old in Bolton was issued with a dispersal notice for holding a sign that read "Abolish the monarchy" shortly before King Charles III's visit. He was threatened with arrest if he returned within three hours.[347]

24. Whilst not directly related to protest, Dispersal Powers have also been used in ways that pose real threats to freedom of association. For example, in late 2024, Greater Manchester Police used Dispersal Powers to stop Romani Gypsy and Irish Traveller youths from entering Christmas markets, leading to accusations of discrimination, forced removal onto trains, and physical aggression, prompting a review by the Independent Office for Police Conduct.[348]

25. The broad framing of Dispersal Powers and the 48-hour exclusion period is particularly problematic for protests tied to specific locations or events. If protesters are excluded from Parliament Square during a crucial vote, the exclusion effectively nullifies their ability to protest at the time and place where their message is most relevant. As the ECtHR has held, "*the purpose of an assembly is often linked to a certain location and/*

342 J. Hendry, 'The Usual Suspects: Knife Crime Prevention Orders and the 'Difficult' Regulatory Subject', British Journal of Criminology, (2022).
343 *Director of Public Prosecutions v Ziegler and others* [2021] UKSC 23
344 D. Mead, '*Bad' Disruption: Rule Changes that Threaten the Right to Protest*', (*Amnesty International*, 2024).
345 Crime and Policing Bill, Clause 3
346 See Hansard debates at various stages of the Bill's passage here https://bills.parliament.uk/bills/1163/stages
347 S. Hill, 'Police search 16-year-old for holding anti-monarchy placard' (Symon Hill blog, 22 January 2023).
348 K. Green, 'Statement from the Deputy Mayor of Greater Manchester on the dispersal order issued by Greater Manchester Police' (2024).

or time, to allow it to take place within sight and sound of its target object."[349]

Anti-Social Behaviour Injunctions

26. Anti-Social Behaviour Injunctions ("**ASBIs**") are civil injunctions which are available under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014. The ASBI replaced the previous statutory regime of Anti-Social Behaviour Orders ("**ASBOs**").[350] ASBIs can be imposed by a court on a person aged 10 years or over and can contain both restrictions and requirements which a person must adhere to. Breach of a restriction or requirement constitutes contempt of court and can be punishable by imprisonment. For persons under the age of 18, ASBIs cannot last longer than 12 months. There is no such limit set out for those over the age of 18 although it is noted that ASBIs must specify their duration. They can also be imposed without notice and therefore in the absence of the person who is to be subject to it.[351]

27. Local authorities and police officers can seek an ASBI against a specific person(s) where they reasonably believe that the person has engaged or threatens to engage in anti-social behaviour and the court considers it "just and convenient" to grant the injunction for the purpose of preventing the respondent from engaging in antisocial behaviour.[352] Antisocial behaviour is defined as conduct that has caused, or is likely to cause, harassment, alarm or distress to any person, or conduct that is capable of causing nuisance or annoyance. An ASBI is obtained on the civil standard of proof (balance of probabilities) and breach constitutes civil contempt of court, punishable by up to two years' imprisonment.[353]

28. The predecessor to ASBIs, ASBOs, were originally intended to address behaviour such as graffiti, littering, excessive noise, public drunkenness or dealing drugs,[354] their use was subsequently extended to regulate protest activity. For example, they were imposed to prevent the protesting of the construction of a sporting facility for the Olympic games in London,[355] to block animal rights campaigners from protesting near animal testing offices,[356] and to prevent protest activity outside an arms fair.[357]

29. This "mission creep" arose because of broad statutory tests and guidance that did not clearly define when Orders should be used, gaps in training, limited opportunities for coordinated working between enforcement bodies, and infrequent monitoring which all contributed to inconsistent application.[358] Whilst we could only identify one case where ASBIs have been used to address protest action,[359] this history highlights the potential dangers that ASBIs may be extended beyond their original purpose. Any use of ASBI's to regulate protest must be subject to careful scrutiny, as these injunctions – like their predecessors – were designed to address anti-social behaviour rather than lawful protest activity.

5.5 Public Space Protection Orders

The Legal Framework

30. PSPOs were created by sections 59-75 of the 2014 Act. Like Dispersal Powers, PSPOs are spatial in nature. They are imposed by local authorities in relation to specific geographical areas – imposing restrictions and requirements on the activities that people can undertake in that area. A local authority may make a PSPO if satisfied on reasonable grounds that activities carried on (or likely to be carried on) in a public place have had (or will have) a detrimental effect on the quality of life of those in the locality, and that effect is (or is likely to be) of a persistent or continuing nature, such as to make the activities unreasonable, and justifies the restrictions imposed. Breach without reasonable excuse is a criminal offence carrying a maximum fine of £1,000, or a fixed penalty notice ("FPN") of up to £100. At the time of writing, the Government has introduced provisions within the Crime and Policing Bill 2025 to increase the penalty attached to a FPN to £500.

31. PSPOs are made by local authorities without any judicial oversight. Unlike other civil orders like SDPOs and injunctions, there is no requirement for judicial approval before an order takes effect.

349 *Lashmankin and Others v Russia* (App nos 57818/09 and 14 others) ECHR 7 February 2017, para 405; or *Primov and Others v Russia* (App no 17391/06) ECHR 12 June 2014
350 For more information on ASBO's, including the rationale for their introduction and their subsequent operation, please see Chapter II of our 2023 Report, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales.*
351 Anti-social Behaviour, Crime and Policing Act 2014, ss.6 -7
352 Antisocial Behaviour, Crime and Policing Act 20014, s.1
353 Contempt of Court Act 1981, s.14
354 https://assets.publishing.service.gov.uk/media/5a7cba8c40f0b6629523b727/asbos9.pdf Home Office, A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts (2003) p 5
355 The Guardian, 'Protester receives Olympics asbo', (April 2012).
356 The Independent, 'Animal rights activists jailed for blackmail', (January 2009).
357 BBC News, 'Judges quash demonstrators Asbos', (September 2006). The 10 Asbos were overturned at the Court of Appeal, with Lord Justice Moses stating that "the purpose of such an order is not to punish the offender but to protect persons from further anti-social acts by them".
358 JUSTICE, 'Lowering the Standard: a review of Behavioural Control Orders in England and Wales', (June 2022), p. 37.
359 *Bedfordshire Police v Golding and Another* [2015] EWHC 1875.

Research by the Campaign for Freedom in Everyday Life found that half of councils that provided data had passed PSPOs through a single, often unelected, council officer.[360] Consultation requirements are minimal and vague: authorities must consult with local police, the police and crime commissioner, and "whatever community representatives the local authority thinks it appropriate to consult" prior to imposing one.[361] However, there is no requirement for public consultation, no requirement for elected representatives to vote on orders, and no requirement to demonstrate in writing that less restrictive alternatives have been considered. This makes them particularly problematic as a protest control measure owing to their democratic deficit.

32. Very few attempts have been made to challenge PSPOs through the courts – and those that have been made have been largely unsuccessful.[362] Whilst it is theoretically possible to challenge PSPOs under section 66 of the 2014 Act, the means to do so is narrow. Cases must be brought within a six-week window, only in the High Court and only by interested persons (those who live in, work in or regularly visit the area). They can only be challenged on the grounds that: (a) the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order; or (b) that a requirement under the statute was not complied with in relation to the order. The cost barrier alone makes effective challenge impossible for most people. Per *R (Liberty) v Director of Legal Aid Casework* which attempted to challenge provisions within a PSPO that amounted to a blanket ban on rough sleeping, legal aid is not available for such challenges.[363] The Act explicitly prohibits interested persons from challenging a PSPO by any route other than the s66 procedure, but the standard judicial review jurisdiction is not ousted for those who do not have interested person status, if they have standing.

Misuse in Protest Contexts

33. PSPOs were designed to tackle anti-social behaviour and not as a mechanism for controlling protest. Yet, that is precisely how they are increasingly being deployed. For example, in Greenwich, the local authority used a sweeping PSPO to threaten protestors for using loudspeakers during a series of demonstrations and rallies. In October 2023, Greenwich Council imposed a borough-wide PSPO that covers a wide range of conduct including "anti-social use of amplification".[364] This bans the use of sound equipment in any public place "except for events or activities for which prior permission has been obtained or permitted by law". The accountability failure is stark: in response to a Freedom of Information request about the decision-making prior to the meeting by which the council agreed to enforce such provisions, Greenwich Borough Council confirmed that "there are no correspondence, emails or notes of any meetings related to the decision-making on the PSPO and possible protests."[365] PSPOs have also been used to prohibit the erection of temporary structures often associated with protest, demonstrations or campaigning including stalls or gazebos.[366]

34. Local authorities have also been criticised for using PSPOs to provide themselves with unofficial Dispersal Powers. For example, in 2017, Lewisham council used a borough-wide PSPO which included provisions allowing them to disperse a protest camp that had been established to protest the demolition of Reginald House estate.[367] A report on the PSPO from Lewisham Council acknowledged that the borough-wide PSPO was sought specifically due to its expansive nature because alternative, "*existing powers to address illegal encampments…can only be applied to a specific place, not across the borough as a whole*". This demonstrates the concerns that unfettered discretion – implicit within the PSPO procedural process – raises about both proportionality and necessity when it comes to restrictions of Article 9 and 10 rights.

35. PSPOs have also been used by Ealing council to criminalise demonstration outside of abortion clinics e.g. in the case of *Dulgheriu v London Borough of Ealing* as well as in cases concerning protests outside of Covid-19 vaccination clinics.[368] In those cases, the courts have generally held that the requirement of the public to access healthcare is a very persuasive factor in justifying the imposition of the order; with the Court of Appeal

360 Freedom in Everyday Life: PSPOs: A Busybodies' Charter (2016)
361 S.72(4)(b) Anti-social Behaviour, Crime and Policing Act 2014
362 See Summer v London Borough of Richmond [2018] EWHC 782 (Admin) which was able to remove some provisions within a PSPO relating to dog-walking but was successful in overturning the order fully, and cases such as *Dulgheriu & Orthova v LB Ealing* [2019] EWCA Civ 1490 and Tossici-Bolt & Anor v Bournemouth, Christchurch and Poole Council [2023] EWHC 3229 (Admin) which were unsucesful in removing PSPOs that provided for safe zones around abortion clinics.
363 R(Liberty) v Director of Legal Aid Casework [2019] EWHC 1532 (Admin)
364 Network for Police Monitoring, 'Protesters silenced by Greenwich Council anti-social behaviour powers' (Netpol, 26 February 2025).
365 K. Blowe, 'Freedom of Information request to Greenwich Borough Council: PSPO and protests' (2025).
366 See for example S. Kataria, 'Protesters seek protection from anti-social order' (BBC News, 14 May 2025).
367 London Borough of Lewisham, Public Space Protection Order (Lewisham Council, 2023).
368 *Dulgheriu v London Borough of Ealing*

conducting a careful proportionality analysis balancing protesters' Article 9, 10 and 11 rights against the service users' Article 8 rights. The Public Order Act 2023 has since introduced national "safe access zones" around abortion clinics in England and Wales, superseding the need for local councils to use PSPOs for this specific issue. If protest is going to be limited in this way to ensure service users Article 8 rights are protected, then doing so via the introduction of a specific, targeted measure which has undergone parliamentary scrutiny is more appropriate than relying on vague and extremely broad powers that are used for a purpose not originally intended by Parliament and applied inconsistently across the country and in relation to different groups.

36. Nonetheless, a local authority can, at a whim, impose geographic restrictions on protest activity and create criminal offences, without judicial scrutiny or public consultation upon a very loose statutory test required for the imposition of a PSPO. This is precisely the outcome that the "prescribed by law" requirement under the ECHR is meant to prevent: restrictions must be foreseeable, not arbitrary. The use of PSPOs in this way also makes it difficult for individuals to predict with certainty whether their planned activities will be deemed to breach a PSPO.

Injunctions

The Legal Framework

37. An injunction is a remedy in which a court orders a party to perform, or refrain from performing, a particular act. As an equitable remedy,[369] they can be imposed in a wide variety of situations according to the discretion of the court, wherever "it appears to the court to be just and convenient to do so."[370] Further, any order by the court "may be made either unconditionally or on such terms as the court thinks just."[371] Injunctions can be permanent, following the conclusion of proceedings or can be interim, pending a final judgment being entered.[372]

38. In relation to protest, injunctions most commonly arise from two causes of action – trespass and public or private nuisance. Vanderman has highlighted that the most common cause of action relied upon is trespass, where protesters are on someone else's land without their consent, and the claimant seeks to exclude that person from the land.[373] Claims may also be brought in public or private nuisance; however, unlike trespass, nuisance requires proof of damage or unreasonable interference with the enjoyment of land.[374] Breaching an injunction may result in a defendant being found in contempt of court, unless that defendant can show they were unaware of the injunction or that the injunction did not apply to them at the relevant time.

39. Injunctions can be used to prevent protesters entering onto someone's land without prior permission,[375]or preventing persons from blocking a public highway.[376] Generally, injunctions are granted against persons or a group of persons that can be identified and named at the time the injunction is made. However, the nature of protests, where a Claimant may not know the identity or names of those attending, has led the courts to develop what is termed a "persons unknown" injunction. In doing so, the courts have tried to find a balance between the "potentially draconian consequences of granting wide-ranging injunctions which could bite against unsuspecting members of the public"[377] and the "ability of local authorities to seek injunctions in the public interest."[378]

40. They allow courts to issue orders against individuals whose exact identity cannot be determined at the time of application. In recent years, the "persons unknown" procedure has been dramatically expanded to enable claimants, including private corporations and infrastructure developers, to obtain injunctions against undefined categories of future protesters. The Supreme Court's decision in *Wolverhampton City Council and Others*,[379] the leading case on injunctions against persons unknown, was not a protest case and explicitly stated that it should not be "taken as prescriptive in relation to... other cases, such as those directed at protesters who engage

369 The injuncitons was confirmed as equitable in origin, despite its statutory confirmation under the SEnior Courts Act 1981 in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47.
370 Section 37(1) Senior Courts Act 1981
371 Section 37(2), Senior Courts Act 1981.
372 In order to secure an interim injunction, the court will usually consider the criteria from *American Cyanamid Co v Ethicon* [1975] AC 396:
Whether there is a serious issue to be tried;
Whether damages would be an adequate remedy for the Claimant or Defendant
Whether the balance of convenience favours the grant of an interim injunction.
373 Y. Vanderman, *Manual on Protest Injunctions* (3rd edn, 2025).
374 ibid.
375 Heathrow Airport Ltd v Garman [2007] EWHC 1957 (QB).
376 City of London Corporation v Samede [2012] EWCA Civ 160.
377 Y. Vanderman, Manual on Protest Injunctions (3rd edn, 2025).
378 para 45, *Wolverhampton*
379 [2023] UKSC 47.

in direct action",[380] However, the recent case of *University of Cambridge v Persons Unknown*[381] recognised the importance of the principles outlined and applied them to the protest context. The court outlined the principles as:

a. Whether there was a compelling need for the protection of civil rights

b. Whether there was procedural protection for the rights of affected newcomers

c. Whether there was full and frank disclosure by the Claimant

d. Whether the limitation was constrained by territorial and temporal limitations

e. Whether the injunction was, in all the circumstances, just and convenient.

Issues with use in the Protest Context

41. Injunctions against persons unknown used to prevent protest-related activities create particular challenges for the rule of law and legal certainty by functioning as broad, prospective orders that, by definition, bind unidentified individuals such as future protesters or "newcomers"[382], without adequate procedural safeguards. Binding individuals who have not been served in advance raises questions about fair notice and enforceability; undefined or vast groups of affected persons may have no effective notice of an injunction yet face strict liability for its breach. This can cause troubling unpredictability and unfairness whereby people are penalised for conduct that unknowingly falls within the ambit of an injunction. Despite requirements that the terms of a persons unknown injunction should be sufficiently clear with precise geographical and temporal limits[383], frequent drafting flaws such as vague definitions of "protesters" and ambiguous terms of prohibited conduct compromise the ability of individuals to foresee which actions are compliant. Consequently, this form of injunction imposed against protest activities, threatens to imperil the fundamental rule of law principle that people must be able to know and abide by legal restrictions to avoid sanction.

42. A number of large companies including Valero Energy,[384] Shell,[385] HS2[386] and Ineos[387] have obtained injunctions against persons unknown covering large geographic areas. Groups including Friends of the Earth have documented that "fighting these injunctions can be very or even prohibitively expensive" with "huge uncertainties over the availability of any cost protection."[388] One HS2 protester was ordered to pay costs of £25,000. As discussed above, legal aid is not routinely available for defending injunction proceedings. The risk of adverse cost orders against large corporate entities - potentially tens of thousands of pounds- deters challenge even where grounds exist. This creates structural inequality: well-resourced corporate claimants face no meaningful access to justice barriers, while protesters (often from marginalised communities, and acting on matters of conscience and public interest) cannot afford to exercise their rights via the courts.

Serious Disruption Prevention Orders

The Legal Framework

43. SDPOs were introduced by Part 2 of the Public Order Act 2023 and came into force on 5 April 2024.[389] They allow courts to impose prohibitions and requirements on individuals to prevent them from causing serious disruption arising from protest-related activities. SPDOs can be imposed in two ways: either following a conviction for a protest-related offence, or on a separate application by the police to a magistrates court. To grant an SDPO, the court must be satisfied on the balance of probabilities that, in the five year period before the conviction or application, the individual has, on at least one other occasion (if the SDPO is made on conviction) or on at least two other occasions (if made on application), committed a protest-related offence or committed a protest-related breach of an injunction, for which the person was convicted or held to be in contempt of court. In addition, the court must consider the order necessary to prevent the person from committing or contributing to further protest-related offences, breach of injunctions or activities likely to result in serious disruption to the lives of two or more individuals or to an organisation.[76]

380 para 235, *Wolverhampton City Council*
381 [2025] EWHC 2330 (KB), para 75.
382 Terminology commonly used in persons unknown injunctions as seen in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303
383 *Boyd & Anor v Ineos Upstream Ltd & Ors* [2019] EWCA Civ 515, Longmore LJ at [34]
384 *Valero Energy v Persons Unknown* [2025] EWHC 207 (KB).
385 *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB)
386 *HS2 v Persons Unknown* [2022] EWHC 2360 (KB)
387 *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA
388 Friends of the Earth, 'Legal challenge against anti-protest injunctions goes to human rights court' (2024).
389 S 20 POA 2023

44. Orders can last from a minimum of one week up to a maximum of two years and may be renewed once for up to a further two years. Breach without reasonable excuse is a criminal offence carrying up to six months' imprisonment or an unlimited fine.

45. The types of prohibitions and requirements that can be imposed by SDPOs are extraordinarily broad: prohibitions on being in particular places, participating in particular activities, associating with particular persons, using the internet, or possessing specified items; requirements to notify police of personal information. These restrictions are not narrowly tailored to preventing specific, proven harms. They are broad-spectrum controls on movement, association, expression, and internet use, imposed on the basis of speculative predictions about future conduct. Additionally, the requirement to notify police of personal information creates a registration system for protesters.

46. Although there is no evidence to date of a SDPO yet being issued, the absence of comprehensive and transparent data on SDPO usage since commencement in April 2024 raises serious accountability concerns. Currently we are reliant on sporadic Freedom of Information requests, which so far have not yielded any known examples of these orders being handed down.[390] Without systematic monitoring and publication of demographic data, enforcement patterns, and grounds for orders, it is impossible to assess whether SDPOs are being applied fairly, whether they disproportionately impact particular communities, or whether they have even been applied yet at all.

5.8 Crime And Policing Bill 2025

47. The Crime and Policing Bill 2025 proposes two new behavioural control orders which could feasibly be misused in a protest context.

48. The first of which are Respect Orders - "an updated version" of Anti-Social Behaviour Orders. Respect Orders can be obtained against anyone aged 18 or older whose behaviour "*has caused, or is likely to cause, harassment, alarm, or distress*." The orders are obtained on the civil standard in the County Court, but breach is a criminal offence punishable by up to two years' imprisonment for initial breaches, with repeat breaches carrying up to five years' imprisonment. This represents the same "double standard trap" as other civil orders: civil proof threshold, criminal consequences. Given the pattern of using anti-social behaviour orders to quell protest, and the confusion that has been demonstrated by Local Authorities and the Police about the purposes for which certain civil orders should be used, it is possible that Respect Orders will become the latest type of civil order to be used in this way.

49. Another proposed addition by the Crime and Policing Bill are Youth Diversion Orders ("**YDOs**"). YDOs are civil behavioural control orders designed to be imposed on children as young as ten for the purpose of preventing extremist behaviour. They impose wide-ranging prohibitions and requirements - curfews, electronic monitoring, restrictions on movement, association, and device use - all imposed on the mere civil standard and potentially without notice. The test for imposing a YDO is alarmingly vague and is capable of being triggered for behaviour that falls far below the criminal threshold; relying on evidence that would be inadmissible in criminal proceedings. These too could be used to prevent young people from participating in protest activity, either explicitly, or by causing a chilling effect of the exercise of freedom of expression and protest rights owing to their draconian nature and the very serious consequences and stigmatisation of being subject to one.

390 See for example, Wiltshire Police, 'Freedom of Information Request: Serious Disruption Prevention Orders' (2025).

5.9 Conclusion and Recommendations

The proliferation of civil orders in the protest context represents a profound threat to democratic freedoms. These measures circumvent criminal justice protections, impose restrictions based on speculation rather than proof, operate with minimal accountability, and entrench structural inequalities. When protest activity is effectively criminalised through civil order mechanisms that lack the safeguards Parliament has mandated for the criminal justice system, we are witnessing not the protection of public order, but its weaponisation against democracy. Urgent reform is required. We call for:

1. **Repeal of SDPOs and do not pass YDOs into law:** These orders are incompatible with human rights protections and should be repealed in their entirety.
2. **Statutory exclusion of protest:** Legislation should explicitly clarify that Dispersal Powers, Respect Orders, and YDOs may not be used to restrict protest activity.
3. **Judicial pre-authorisation for PSPOs that restrict protest:** Where local authorities seek to impose PSPOs that may affect protest rights, judicial approval should be required before orders take effect.
4. **Written, clear justification:** Authorities should publish reasons for imposing PSPOs and using dispersal powers that include proportionality analysis and community impact assessments.
5. **Costs protection:** consideration should be given to restricting the claimant's ability to recover costs from defendants in cases where injunctions restrict protest.
6. **Mandatory demographic monitoring:** All authorities imposing civil orders must collect and publish comprehensive demographic data on a regular basis in a centralised place, to enable monitoring for discriminatory effects.
7. **Challenging the imposition of orders:**
    a. Legal aid should be made available for challenging the imposition of PSPOs, SDPOs, and Respect Orders
    b. The deadline for challenging a PSPO should be extended to 12 weeks and the grounds of challenge should be expanded to include a lack of consultation.

Chapter

4

Parliamentary Scrutiny and Democratic Accountability

Chapter 4 – Parliamentary Scrutiny and Democratic Accountability

1. The right to protest is a vital mechanism through which the public hold government to account, shape public debate, and participate meaningfully in the political process. It also forms an important safeguard for the rule of law. As discussed in our 2023 report, *The State We're In: Addressing Threats to the Rule of Law*, "the ability to voice grievances, stand up for a cause and demonstrate one's belief... enhance the rule of law by increasing public discussion, awareness, and state accountability."[391] The European Court of Human Rights has recognised this link between the rule of law and freedom to protest, stating that "In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly."[392]

2. As such, legislation that seeks to interfere with such a fundamental right should be subject to the most careful scrutiny, grounded in strong evidence, and challenged in robust parliamentary processes. However, recent legislative practice has not met these standards. The rapid introduction of new laws, overlapping powers, and reliance on delegated legislation have undermined Parliament's ability to assess the overall impact of public order measures, including the ability of the public to exercise their fundamental rights and liberties.

3. Consequently, successive governments have enacted laws affecting protest in a haphazard and reactive manner. This has produced flawed provisions that themselves become the basis for further legislative intervention, as can be seen through the attempted introduction of the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023, which the courts subsequently found unlawful despite the police having arrested hundreds of people under these regulations.[393] This pattern highlights the need to ensure that Parliament can uphold its role as a guardian of democratic freedoms, and to strengthen parliamentary oversight accordingly. Participation and public attitudes towards protest

4. The importance of democratic participation and parliamentary scrutiny in a liberal democracy is twofold. First, by putting legislation before Parliament, the government ensures that any legislation passed is representative. This process allows each MP, reflecting their constituency interests, to have a stake in its creation and ensure government appropriately engages with local voices and perspectives. Second, parliamentary scrutiny improves the quality of decision making – legislation is challenged, and even where it is not changed, the Government must explain in a public setting why it believes changes are not required, in a transparent process of justification.

CASE STUDY

5. An illustration of the importance of this scrutiny can be seen in the adoption of s.17 of the POA 2023, relating to the exercise of police powers in relation to journalists. In November 2022, Charlotte Lynch, a journalist for LBC Radio, was arrested on suspicion of conspiracy to commit a public nuisance whilst reporting on the Just Stop Oil protests. Despite being in possession of her press credentials, Hertfordshire police detained her for five hours before she was released.[394] This was not an isolated incident – Rich Felgate and Tom Bowles were also arrested when attempting to cover the same Just Stop Oil protest. [395, Separately, photographer Peter Macdiarmid] was also arrested at an earlier Just Stop Oil protest, despite explaining to police that he was there in his professional capacity .[396]

6. Following these events, and following JUSTICE's work with peers and Charlotte Lynch,[397] Baroness Chakrabarti introduced an amendment to the Bill, seeking to "protect journalists, legal observers, academics, and bystanders who observe or report on protests or the police's use of powers related to protests."[398] The-then Conservative Government opposed the amendment,

391 JUSTICE, *The State We're In: Addressing Threats & Challenges to the Rule of Law*, (2023).
392 Stankov and the United Macedonian Organisation Ilinden v Bulgaria, (Application Nos 29221/95 and 29225/95, October 2001).
393 Liberty, 'Liberty Defeats Government Appeal As Court Rules Anti-Protest Laws Are Unlawful', May 2025
394 BBC News, '*Just Stop Oil: Reporter speaks about her arrest at M25 protest*', (BBC, 8 November 2022).
395 J. Grierson, '*Photographer and film-maker arrested at Just Stop Oil protest*', (The Guardian, 8 November 2022).
396 B. Davis, '*Moment award-winning journalist Peter Macdiarmid arrested after police mistake him for Just Stop Oil activist*', (Evening Standard, 27 July 2022).
397 JUSTICE, *Public Order Bill: Journalist Protection Amendment*, (January 2023).
398 The amendment read: "A constable may not exercise any police power for the principal purpose of preventing a person from observing or otherwise reporting on a protest or the exercise of police powers in relation to—(a) a protest-related offence, (b) a protest-related breach of an injunction, or (c) activities related to a protest". See ibid.

though it was passed in the House of Lords with a majority of 91, including with the votes of 5 Conservative peers.[399] In the House of Commons, the Government backed down and tabled the amendment, albeit slightly revised, which was then agreed by the whole House.[400]

7. This process illustrates the value of the parliamentary process, in which different opinions can be expressed, and the Government can use its position to justify, revise and reconsider its approach in response to concerns raised by other politicians and wider civic society. As a result, the legislation that ultimately emerged reflected not only the Government's objectives but also the influence of non-government actors who were able to identify problems, press the Government for justification, and protect the freedom of expression rights of journalists.

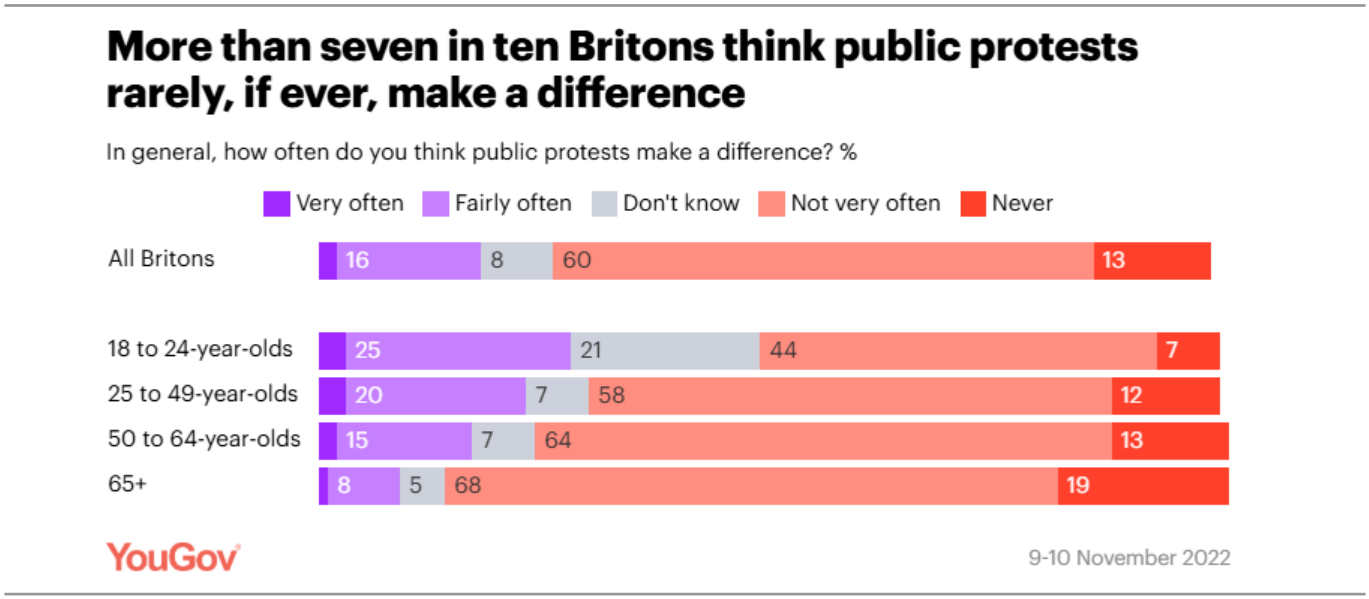
8. However, while parliamentary scrutiny is necessary for the democratic legitimacy of laws, it is not sufficient. Parliamentary deliberation can often be a rushed process, with time limits imposed on speeches, and whipping can dampen the expression of different opinions within a political party. Justification given by the government should be open to regular challenge.

9. In this context, protest functions as a vital complementary mechanism for democratic engagement. It gives a voice to those outside Parliament, enabling citizens - especially those whose perspectives are underrepresented in Parliament or overlooked - to communicate concerns, highlight injustices, and influence public debate. It complements formal political channels by ensuring that democracy remains participatory, not just procedural. It is a central communicative mechanism of democracy committed to active listening and engagement with the public. Protest is carried out to draw attention to some perceived injustice to the government and wider public. The government at least, has a responsibility to listen, as a matter of democratic respect, even where they might otherwise disagree.[401]

10. The importance of protest as a democratic tool is recognised internationally. The UN Human Rights Council states that "*the fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies… it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism*".[402]

11. Public attitudes in the UK mirror this recognition. Support for protest rights is robust, with 83% of the UK public agreeing that "everyone should be able to protest on issues they care about".[403] There is also strong agreement that "everyone has the right to voice their opinion and raise awareness on issues", with 86% of the public agreeing with this statement.[404] This approval reflects a recognition of protest as a democratic route to be heard, especially when parliamentary political channels may be seen as unresponsive or inaccessible.

12. Despite enthusiasm for protest as a democratic and expressive lever, 73% of the public believe



399 HL Deb, 7 February 2023, Vol 848, Division on Public Order Bill.
400 The Government's revision forms section 17 of the Public Order Act 2023.
401 J. Medina, '*The Duties to Protest and to Listen to Protest: Communicative Resistance, Enabler's Responsibility, and Echoing*', (2022) 9(2) Democratic Theory 101.
402 UN Human Rights Committee, *General Comment No. 37 on the right of peaceful assembly (Article 21)*, (17 September 2020).
403 Demos, *The People's Town Square on Protest: Looking Beyond the Headlines*, (September 2024).
404 ibid.

that protest "rarely, if ever, makes a difference."[405] However, 56% agree that "the state of our democracy would be improved if the Government listened to people more, including (to concerns) that people raise through protest".[406] This gap - between perceived ineffectiveness and the belief that democracy would be improved if the Government listened more - suggests that public doubt stems less from protest itself than from a perceived lack of responsiveness in political institutions.

13. However, attitudes are nuanced – when protests are said to cause serious disruption, 40% of persons surveyed favoured limitations, while 37% said that the right to protest should be prioritised.[407] Meanwhile, 19% did not agree with either statement more than the other.[408] It is important to note that contemporary public attitudes should not, in isolation, form a reason for interfering with protest rights. 74% of Americans felt in 1964 - the year after Martin Luther King's "I have a dream" speech - that mass demonstrations would hurt the cause for racial equality. This statistic demonstrates that a longer-term view of protest is required, particularly in relation to public perception.[409]

14. Having considered public attitudes and the recognised democratic importance of protest, it follows that parliamentary scrutiny of legislation affecting protest must be rigorous and evidence-based, with a view to protecting long term interests as well as short-term conveniences. High-quality scrutiny helps to ensure that laws respect citizens' rights while acknowledging protest as a legitimate and vital component of democratic participation.

Scrutiny of legislation

15. The Public Order Bill was introduced a year after the PCSCA, '"largely replicating a series of amendments to the PCSC Bill that were unsuccessfully proposed by Government at Committee Stage in the House of Lords."[410] While Parliament has a near-unlimited discretion to pass any law it wishes, introducing several laws without a proper review of the operation of previous Acts creates a vacuum in which new powers and offences accrue without a proper understanding of their effectiveness or impact on rights and the public at large. This has been highlighted by the Joint Committee on Human Rights who stated their "concern by the volume of recent change to the law on protest", especially "given the importance of free expression and free assembly to a healthy democracy."[411]

16. The full impact of numerous pieces of legislation takes time to be realised. There is a need for operational guidance to be developed, training to be designed and delivered, and for police officers to become accustomed to the proper use of their powers. This creates a lag between the establishment of new powers and their effective implementation in practice.

17. This is disrupted by legislative upheaval: just as police forces begin to understand and operationalise one set of powers, they must incorporate another. Evidence indicates "that police do not make full use of these new powers, while in other cases they may have been misapplied."[412] Contrary concerns have been highlighted by Michael O'Flaherty, the Council of Europe's Commissioner for Human Rights, who stated his worries regarding the "risk of over-policing" following the adoption of the PCSCA and the POA.[413] These opposing concerns illustrate the difficulty of understanding the true effect of legislation in this area, as well as the paucity of relevant data by which to assess either claim. Frequent legislative change not only undermines legal certainty and increases the risk of inconsistent or improper use, but also obscures the evidential picture. This makes it difficult to determine whether previous powers were effective or necessary before introducing further reforms.

18. The PCSCA will be subject to post-legislative scrutiny "between April 2025 and April 2027".[414] Meanwhile, the Government has stated that post-legislative scrutiny of the POA (which was passed after the PCSCA) commenced in May 2025.[415] Though the government has stated that this review will be expedited,[416] no timeframe has been provided. [417] Despite the fact that post-legislative scrutiny for neither Act had concluded, Labour introduced the Crime and

405 YouGov, '*The majority of the public believe protests rarely, if ever, make a difference*', (5 April 2023).
406 Demos, *The People's Town Square on Protest: Looking Beyond the Headlines*, (September 2024).
407 ibid.
408 ibid.
409 ibid.
410 Joint Committee on Human Rights, *Legislative Scrutiny: Public Order Bill: 1st Report of Session 2022–23*, HL Paper 351 / HC Paper 351, (2022).
411 Joint Committee on Human Rights, *Legislative Scrutiny: Crime and Policing Bill: 5th Report of Session 2024–25*, HC 830 / HL Paper 156 (2025), p. 34.
412 Lord Walney, *Protecting our Democracy from Coercion*, Independent Review, HC 775 (21 May 2024).
413 Council of Europe Commissioner for Human Rights, *Letter to the Secretary of State for the Home Department of the United Kingdom*, (2025).
414 Home Office, 'Police protest powers, June 2022 to March 2024' (December 2024).
415 HL Deb 2 September 2025, vol 848, col 691.
416 HC, Police: Demonstrations, Question for Home Office, tabled on 26 February 2025.
417 HL Deb, 2 September 2025, Vol. 848, col 691.

Policing Bill in 2025. This continues the "general unwillingness, by successive Governments, to engage in an ongoing process of monitoring and continually developing legislation post-enactment."[418] This means that new legislation is being introduced before there is a full understanding of how the PCSCA and POA operate in practice, including their cumulative impact and consequences for rights. Introducing additional powers without this evidence risks compounding uncertainties, and making it difficult for Parliament to determine whether further restrictions on protest or other rights are necessary or proportionate.

The Law Commission for England and Wales sets out the following as important benefits of post-legislative scrutiny:

a. Assessing whether legislation is working out in practice
b. Producing better subsequent regulations
c. Creating a focus on implementation
d. Improving the delivery of policy aims
e. Locating good practice and identifying unidentified consequences
f. Improving the quality of legislation, knowing that its impact will be formally reviewed.[419]

19. Post-legislative scrutiny can provide an evidence base from which to identify what new powers are required and how any new powers should operate. Without such an evidence base, it is unclear how government is identifying the need for new legislation. This is exacerbated where parties do not include these policies in their manifestos. The Conservative Manifesto of 2019 provided no indication that it would introduce laws in this area, instead stating it would 'champion freedom of expression and tolerance'.[420] The subsequent introduction of public order legislation occurred without clear electoral mandate.

20. Similarly, and notwithstanding comments that Labour 'will not introduce legislation for the sake of it'[421] and will 'look at the raft of unnecessary legislation'[422], the present Labour government introduced the Crime and Policing Bill, much of which was based on the previous government's Criminal Justice Bill. This again included a range of protest-related measures, with further included by way of amendment. Again, there was no mention of the intention to introduce such measures in their 2024 manifesto. This gives rise to an impression that legislation is reactive, rather than evidence-based or strategically planned. It also truncates the time in which civic society can contribute to meaningful consultation and scrutiny.

Review of legislation

21. Lord Ken Macdonald KC has recently been appointed to lead an independent review of laws on public order and hate crime.[423] While JUSTICE recognises the potential value of such a review, it is essential that this does not become a substitute for the routine, systematic post-legislative scrutiny that Parliament should regularly undertake. Independent scrutiny can and should complement Parliament's work, but it cannot replace Parliament's responsibility to evaluate how its own legislation operates in practice. This is because Parliament is better placed to make political judgments, represent a diverse range of interests and can more readily be held accountable for its decisions.

22. This can be seen in the light of the "Protecting our Democracy from Coercion" report from Lord Walney in 2024. Both this review and that forthcoming from Lord Macdonald KC examine the boundaries between legitimate protest, disruptive activity and politically motivated offending. This duplication is symptomatic of a wider pattern of churn: as governments change and priorities shift, new Ministers commission fresh reviews that revisit questions already explored elsewhere.

23. There is an important place for independent reviews. They can offer genuinely expert scrutiny, and their recommendations are often acted upon by government. However, strengthening

418 JUSTICE, *The State We're In: Addressing Threats & Challenges to the Rule of Law*, (September 2023), p.16.
419 Law Commission, *Post-Legislative Scrutiny*, Law Com No 302, (October 2006).
420 The Conservative and Unionist Party, *Get Brexit Done: Unleash Britain's Potential - The Conservative and Unionist Party Manifesto 2019*, (2019).
421 HC Deb, 12 June 2023, Vol. 734, Col. 57, Public Order debate.
422 ibid.
423 Home Office, *Review of public order and hate crime legislation*, (2025).

parliamentary procedures and ensuring parliamentary scrutiny secures two benefits. First, Parliament develops and maintains the practice of scrutinising, challenging, and refining legislation, improving its ability to assess future laws effectively. Second, by engaging closely with the impacts of law - particularly those affecting rights such as freedom of assembly - Parliament gains a deeper understanding of the role of protest as a vital democratic mechanism and a means for the public to participate meaningfully in shaping laws and policies.

A case in point – Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023

24. In Chapter 1, we considered the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 (the "**Regulations**") and the successful challenge brought by Liberty. This part of the report will focus on the procedural consequences of the approach that the Government took, and the harms of such an approach.

25. A central issue is the method the Government chose to introduce the measures – a statutory instrument. Parliament does have an opportunity to veto statutory instruments. However, they are subject to a less robust form of parliamentary scrutiny than Acts of Parliament. Only 20-25% of statutory instruments must receive active parliamentary approval.[424] This means that the vast majority of statutory instruments do not require endorsement from each House of Parliament.

26. Further, as Hickman and Tan point out "it is more difficult for the House of Lords to reject statutory instruments than amendments to Bills."[425] This means that if a party carries a majority in the House of Commons, it can push through delegated legislation with much less parliamentary resistance than when seeking to amend primary legislation. This structural imbalance is critical to understanding the Regulations.

27. The House of Lords Secondary Legislation Scrutiny Committee had several concerns with the Regulations as introduced to Parliament. First, the Home Office did not provide "any reasons for bringing the measures back in the form of secondary legislation, which is subject to less scrutiny, so soon after they were rejected in primary legislation."[426] The Committee was "not aware of any examples of this approach being taken in the past."[427] Second, the explanatory memorandum failed to mention the same changes had previously been put forward as amendments to the Public Order Act 2023 and rejected by the House of Lords[428], evidencing a lack of transparency in the government's actions.

28. Third, there was a lack of consultation in bringing forward the proposals, particularly concerning as "this is a controversial policy with a wide range of interested parties and strongly felt views."[429] The Explanatory Memorandum explained that the only bodies consulted were 'the National Police Chiefs Council, the Metropolitan Police Service, the Police and Crime Commissioners of the police forces whose areas include the M25, and National Highways.'[430] The consultation did not include any protest groups, nor members of civic society. Consequently, it was unreflective of the interests affected. In JUSTICE's "Law for Lawmakers" guide (2024), we point out that the rule of law "encompasses the need to have an effective law-making process, which includes providing the public with adequate opportunity to comment on new laws and ensuring that they are subject to proper debate and scrutiny by Parliament."[431] The regulations were subsequently quashed, demonstrating that poor law-making processes increase the risk of producing defective legislation.

29. **JUSTICE recommends that meaningful 12-week public consultations[432] are mandated before introducing protest-related laws either by primary or secondary legislation.**

30. **Any consultation should be accessible, be done in a way that genuinely informs policy and not as a "box-tick exercise", and consider the widest range of views possible which, at the least, must include affected protest and civil groups, lay participants, representatives from local authorities/Combined Authorities, and the Independent Office for Police Conduct.**

424 Hansard Society, *Delegated Legislation: Frequently Asked Questions*, (2022).
425 T. Hickman KC and G. Tan, '*Reversing parliamentary defeat by delegated legislation: the case of the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023*', (UK Constitutional Law Blog, 22 May 2023).
426 House of Lords Secondary Legislation Scrutiny Committee, '*38th Report of Session 2022–23*', HL Paper 189 (2023).
427 ibid.
428 ibid.
429 ibid.
430 Home Office, *Explanatory Memorandum to the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023*, (2023).
431 JUSTICE, *Law for Lawmakers*, (2024), p. 17.
432 This reflects the time period that the Cabinet Office's Consultation Principles (2013) held to be an appropriate period for a "new and contentious policy." These principles were revised in the Consultation Principles (2016) to remove reference to a specific time period, instead replacing this with the statement that "consultations should last for a proportionate amount of time".

31. **A Government response to the consultation should be published prior to the subsequent introduction of the new law.**

Scrutiny and proportionality

32. As explained in Chapter 1, there is some uncertainty regarding whether courts have to consider whether a conviction interfering with Articles 10 and 11 is proportionate on the facts of the individual case, or whether the creation of the offence itself in statute means that the proportionality has been satisfied. If the latter approach is taken it means that the quality of parliamentary scrutiny is even more vital. It is essential that Parliament properly debates, tests, and challenges proposed offences rigorously. Without meaningful scrutiny, the assumption that legislation has been properly scrutinised by the legislature which has found it to be proportionate rests on much weaker foundations.

33. In light of data that shows MP's spend less time debating legislation in the chamber than 20 years ago,[433] only one in 10 government bills receive pre-legislative scrutiny[434] and an increasing incidence of late government amendments[435], legislating at speed has become a new normal.

34. As a result, "MPs have lost institutional memory of what used to count as adequate scrutiny."[436] This means that the assumption that criminalisation reflects a careful and democratically robust judgment becomes tenuous. Where legislation risks criminalising the expression of fundamental rights, a greater degree of scrutiny and protection is required. Parliament should not just view its role as an administrator of public order, but also a guardian of democratic freedoms.

35. Consequently, there is a need to strengthen parliament's ability and willingness to safeguard rights. Protest is not something that threatens to supplant parliamentary democracy – it is a vital and necessary feature of our constitutional system. As we have highlighted in our forthcoming report "The Rule of Law: Building Resilience Through Culture and Practice" respect for the rule of law does not just depend on the existence of laws, but also the practice of institutions. In other words, the strength of our constitutional arrangements turns on Parliament's culture: whether it approaches rights-restricting measures with vigilance, insists on proper process, and treats protest as a democratic asset rather than a nuisance.[437]

433 Bennett Institute for Public Policy, University of Cambridge, *The Legislative Process: How to Empower Parliament*, (December 2022), p. 15.
434 ibid, p. 25.
435 M. Russell, '*Should we be worried about the decline of parliamentary scrutiny?*', (*Constitution Unit, University College London*, 17 February 2025).
436 H. White, '*Illegal Migration Bill: Highlights of how expectations of legislative scrutiny have plummeted*', (*Institute for Government*, 2023).
437 JUSTICE, 'The Rule of Law: Building Resilience Through Culture and Practice' (forthcoming),

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