



House of Lords
House of Commons
Joint Committee on Human
Rights

Demonstrating respect for rights? A human rights approach to policing protest

Seventh Report of Session 2008-09

Volume II

Oral and Written Evidence

*Ordered by the House of Commons
to be printed 3 March 2009
Ordered by the House of Lords
to be printed 3 March 2009*

HL Paper 47-II
HC 320-II
Published on 23 March 2009
by authority of the House of Commons
London: The Stationery Office Limited
£20.50

Joint Committee on Human Rights

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Taken before the Joint Committee on Human Rights on Tuesday 24 June 2008

Members present:

Mr Andrew Dismore, in the Chair

Lord Bowness
Lord Dubs
Lord Lester of Herne Hill
Lord Morris of Handsworth
Baroness Stern

Dr Evan Harris
Mr Virendra Sharma

Witnesses: **Dr Eric Metcalfe**, Human Rights Policy Director, JUSTICE, and **Mr James Welch**, Legal Director, Liberty, gave evidence.

Q1 Chairman: Good afternoon, everybody. This is the first witness session on our new inquiry on Policing and Protest, and we are joined by Eric Metcalfe, the human rights policy director of JUSTICE, and James Welch, the legal director at Liberty, so welcome to you both, old friends, I think. Do either of you want to say anything by way of an opening statement before we start?

Dr Metcalfe: No, thank you.

Q2 Chairman: Perhaps I could start with James. Do you think that the right to protest is valued and protected now as much as it was when the NCCL, as it then was, was first set up? If not, what has changed?

Mr Welch: Unfortunately or luckily perhaps even I do not have that long a memory. Members may well be aware that the National Council for Civil Liberties was set up in 1934 in response to concern about the way that the police were treating demonstrators, hunger marchers from various parts of the country when they arrived in London, so protest has been or was then the focus of our work and has remained the focus of our work ever since. Whether it is still as valued or is as valued now as it was then, I do not know, I do not have that long a memory, but certainly, I think it is completely right that protest is a very important democratic right, and one which should be cherished and looked after.

Dr Metcalfe: In our view, I think the situation is both better and worse. It is arguably much better protected than it was, historically speaking, but in substantive terms, the right to protest, the right to free assembly is also much smaller than it was. On the plus side, for the first time in the last ten years, we have constitutional protection given to freedom of assembly under the Human Rights Act, but at the same time in the last 30 years, for example, we have seen sweeping public order powers introduced and handed to the police, and that is a trend that has only really accelerated under the Human Rights Act. When I say the right to freedom of assembly is smaller than it was, I mean there is now a much larger range of statutory powers that exist that engage or interfere with legitimate peaceful protest.

I am hesitant to say there was any golden age of the right of peaceful assembly, we were founded in 1957 and I am not sure things were that great then, but it is certainly true to say that now, in 2008, there are far more legal powers that infringe upon peaceful assembly than were the case in, say, 1957. I think part of this is a problem under the Human Rights Act to assume that powers will be exercised consistently with Convention rights, and that therefore, to an extent, Parliamentarians have not always given due attention to the need for specific safeguards in relation to particular powers.

Q3 Chairman: To what extent do you think that the current security scenario should make any difference?

Dr Metcalfe: Well, I certainly think that it has made things worse. National security, as is so often the case with any human rights issue, is used as a trump card. I am not suggesting for a moment that there are not serious security concerns, there is a serious terrorist threat in the country, but we have found particularly since 9/11 that the security concerns have tended to operate in a way to override normal freedom of assembly concerns, and I think the *Gillan* case, about section 44, stop and search, is the perfect illustration of that, where the Metropolitan Police justified their blanket authorisations and rolling authorisations of stop and search powers within Greater Metropolitan London on the basis that pretty much any large scale gathering is a potential source of terrorist activity, and therefore, that justifies them using stop and search without reasonable suspicion because it is simply not possible, as far as the police are concerned, to distinguish between those areas which are more at risk and those areas which are less at risk.

Q4 Chairman: Do you want to add anything to that?

Mr Welch: All I would say is although obviously we appreciate there is a very serious terrorist threat, we are not aware of any suggestion that protest demonstrations, marches or whatever, have been targeted by terrorists or sought to be targeted by terrorists or that anybody has actually used such

large events involving lots of people in order to get access to areas they would not have previously got access to. The reports that we hear of plots there have been tend to suggest that it is other types of occasions involving large numbers of people that have tended to be targeted, so discotheques, nightclubs, shopping streets, things like that. I do not think there is any suggestion, or has been certainly in this country any suggestion that there is particular targeting of protest events. Just to build on what Eric said about use of section 44 against demonstrators and the case of *Gillan*, which was a case that Liberty took through the courts, our concern is very clear, that whatever the police's motivation, the powers are being used in such a way as is likely to discourage people from participating in lawful, peaceful protest. We hear about people who say that they went on a protest, were stopped by the police, their bag was gone through, their diary was gone through, people find that very intrusive, whatever the House of Lords in their judicial capacity may have said about it not engaging Article 8, or indeed any of the other articles of the Convention, but people do find it very intrusive when they are stopped by the police, and that is likely to have a considerable chilling effect on people's right to protest. So while we accept that there may well be occasions when the police should use these powers, and the Committee are probably aware that Liberty does have concerns about section 44 generally, but assuming that there are occasions when they can legitimately be used, then we would call on the police to use them very sparingly in the demonstration context.

Q5 Lord Dubs: Do you think there should be a legal distinction between peaceful and violent protests, given that some violent protests are used to intimidate people that the protesters do not like, or organisations?

Dr Metcalfe: We have certainly never been an organisation that suggests that violence is a legitimate part of the right to freedom of assembly, I think it is very clear that a protest that involves violence, whether directed at individuals or property, such activity is plainly unlawful. I think you do have to be careful to distinguish between peaceful assembly in general and the possibility that a peaceful assembly may nonetheless contain individuals who are prepared to breach the rules. I think this is one of the perennial problems that we grapple with in the right to free assembly in general. It is very important to protect the right to peaceful protest. The right of 1,000 people to march peacefully should not be prohibited or disproportionately infringed simply because one or two people on that march break the law. So I think that really what you need, and what is in fact required by the case law of the European Court, is for there to be an assessment of the risk of disorder in any peaceful assembly and for policing to be based upon a sensible assessment of the risk in any particular case, but the mere risk that violence may occur in a protest is not, in our view, certainly

sufficient grounds to abridge the right of protest completely. It is certainly sensible grounds for regulating it in certain cases.

Mr Welch: I have very little to add to what Eric has already said. Clearly we support the right to peaceful protest, we do not support people's right to engage in acts of violence or acts of intimidation, but as Eric says, there is a problem where perhaps people organising demonstrations set out with peaceful intentions, their intentions may be peaceful, but other people may attend the march who do not have those intentions and end up causing trouble, but as Eric said, I do not think that is any reason to seek to curtail the right to protest peacefully just because there is a possibility in some cases, albeit thankfully fairly rare, when people do hijack demonstrations for their own purposes.

Q6 Lord Dubs: If I could ask a supplementary to that one, do you think that the police are good at making judgments as to whether an ostensibly peaceful protest is liable to turn violent when the organisers say it is not and the police think it is, do you find that happens?

Mr Welch: Well, I think in a way, the police can only judge what is happening on the day, and by and large, that should be their approach; where there have been problems, certainly problems that end up going through the courts, these have tended to arise because the police have acted pre-emptively. I am thinking of the case which is now going to the House of Lords, *Austin & Saxby v Metropolitan Police Commissioner*, where the police corralled people into Oxford Circus. I am also thinking of the *Laporte* case, the one about people going to protest outside an RAF base in Gloucestershire. Those cases were very much clearly cases where the police anticipated trouble, and certainly, it has now become clear, I think, as a result of the House of Lords judgment in the *Laporte* case, in that case, they acted precipitately and wrongly in doing what they did. The *Austin & Saxby* case, as I say, has yet to go to the House of Lords. But I think there are problems where the police anticipate violence and act pre-emptively; far fewer, I would suggest, where the police perhaps see what happens on the day, although I appreciate that there may be circumstances where the threat is so great that the police do feel they have to go further than just reacting on the day.

Dr Metcalfe: I was just going to mention, I am looking at the guidelines on freedom of peaceful assembly which were developed by the Organisation for Security and Co-operation in Europe, these were released last year, but it notes that although assemblies can change from being non-violent to violent, "the making of unlawful statements by participants in an assembly (whether verbal or written) does not of itself turn an otherwise peaceful assembly into a non-peaceful assembly, and any intervention should again arrest the particular individuals involved rather than dispersing the entire event." Really that is a statement of the principle that sometimes, for example, you can have a protest where people say unlawful things, say, for

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example, incitement to violence, but the reaction of police to that illegality should not be to disperse the entire event or 1,000 people for the sake of one person saying an illegal thing. Also bear in mind, of course, the risk that the action may itself be disproportionate. We saw very recently the Scientology protest in which I believe it was a student was cited for holding a placard referring to Scientology as a cult. Given the risk in the exercise of any discretionary power that the decision of a police officer may itself turn out to be disproportionate, it would have been even more disproportionate if the entire gathering had been quelled simply because that one policeman had made an error of judgment.

Q7 Lord Dubs: How should we resolve conflicts between the right to free speech and the right to protest against what is being said?

Mr Welch: I do not think there is necessarily a conflict between the two of them. If one person says something that another person does not like, surely they have a right to say that. There may be disagreement as to the terms in which that disagreement is expressed, and I think that tends to be where the problems have arisen, but clearly in a democratic society, debate involves people expressing disagreement with other people's views, and sometimes very strongly, and I think we have to be not too squeamish in our approach to this and accept that there may well be circumstances where people express themselves in opposition to the views of others, in rather extreme terms.

Q8 Lord Lester of Herne Hill: Can I just ask a supplementary? Presumably if speech eventually degenerates into a clear and imminent threat of violence, then that is a different matter.

Mr Welch: Absolutely. Obviously, you may cross a point where clearly, there has to be interference with the right to freedom of expression or freedom of protest against other people's views, but the starting position should be that both sides should be accommodated, both sides should have their right to say their piece.

Q9 Lord Lester of Herne Hill: You know better than I do the cases, for example, about anti-Semitic speech in Trafalgar Square and then Jews protesting and the police deciding to ban the speakers on the ground that they would be an imminent threat to breach of the peace, saying you take your audience as you find it and so on and so forth, that is all very difficult stuff, is it not? Because it is so hard to protect the peace while at the same time protecting other fundamental rights.

Dr Metcalfe: Just to add, I agree completely with James, the right to peaceful assembly requires not only facilitation of certain points of view but also views opposing that. As to the particular problems relating to the risk of violence arising from protests and counter-protests, it may be appropriate in the most exceptional circumstances for facilitation of the counter-protests to make clear arrangements, say, for example, holding the protest on opposite sides of the square or even on alternate days if

necessary. You only have to look at the work of the Parades Commission in Northern Ireland to see this taken to the most extreme form, where you have an entire commission set up to ensure that peaceful expression of views does not degenerate into violence, and that involves very clear mapping out of boundaries and so on.

Q10 Dr Harris: Are you saying that would be a better way forward to put restrictions on where one can protest in order that both sides could have their say?

Dr Metcalfe: I am not advocating that as a general principle, I think I should probably have to be quite clear on this point, I am saying that if your assessment of risk in a particular case is such -- say, for example, it is a Northern Ireland type situation, and it is July 12th, your factual assessment may require those exceptional measures to be taken. I am not suggesting that those exceptional measures should be in any way the norm, and I am saying that the default position should be that protests and counter-protests should be able to exist lawfully side by side.

Q11 Dr Harris: I just want to take one example, which is policies of no platform, where people protest specifically to try and prevent a speech taking place, and sometimes, when the speech is likely to be unpleasant, let us say it is a BNP speaker, in my experience, the police side with the protesters. They did in Oxford at a debate I was involved in on curiously the rights of extremists to free speech, where the police allowed the demonstration to prevent the speech taking place, and they thought that was fine, because it was inside a private venue and it was not their duty to allow people inside a private venue to hold a debate.

Dr Metcalfe: I do recall the case that you refer to, and I would share your criticism, if I understand it to be that, of the police's decision in that case. It seems to me that that was a disproportionate infringement of people's ability to freely attend an event, however much we would condemn some of the views being expressed during that event.

Q12 Dr Harris: On Anthony's point finally, let us say you have someone who might say something racist and therefore unlawful, because it incites racial hatred, one could argue that it is best to record what is said and prosecute it, rather than prevent it being said in case it might say something; do you think that that is the best approach, unless there is imminent risk of violence, of course, and if you do, do you think the police or the authorities get that balance right, or are they too willing to reject an application by, for example, the BNP to have a platform in case they say something?

Dr Metcalfe: As a policy organisation, we are not quite in such a good position to make general statements as to whether the police are always striking the balance right. I would say, however, that we are concerned that there is a tendency towards prior restraint. I agree with you that the proper approach should be if someone says something

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unlawful, for the action to follow subsequently, rather than to prevent the speech being made in the first place. I think the big catch-all is obviously however the police's assessment that there is a risk of violence, and unfortunately, we are dealing with speech that may incite violence in front of a crowd. Unfortunately, the police are always going to be mindful of the potential, and one can perhaps be sympathetic to their aim that they would prefer to avoid people being injured in a resulting stampede, and they may see that the lesser evil is to restrain the speech in that particular case.

Q13 Dr Harris: But cannot the police say, "Look, we cannot afford to put 100 officers here to prevent the stampede, to separate the crowd, so the easiest thing for us to do is say you cannot have your controversial meeting"?

Dr Metcalfe: That is exactly the evil that results, which is that the police end up restraining all kinds of speech that are liable to be controversial.

Q14 Dr Harris: So what I am putting to you, if we could be specific, is should not the police just do their job and keep separation and manage the situation, and be extremely loathe to impose prior restraint on budgetary grounds, because I am not sure what we have the police for, I would say, if they say, "We are not prepared to police this free speech so we will ban it".

Dr Metcalfe: Absolutely, I agree completely.

Mr Welch: I would just like to say, I have no doubt the police face very difficult jobs trying to ensure that two sides of a conflicting argument can both get to have their say, but I come back to what I said earlier on, the starting principle should be that people should be able to have their say, should be able to hold their protest, and only under very extreme circumstances should steps be taken to interfere with that. Again I would agree with Eric that by and large we do not approve of prior restraint, it is much better that action is taken afterwards rather than running the risk of stifling speech which is not itself criminal by banning a march from the outset. I think sometimes there are problems, however, as I think Dr Harris has indicated, where the police tend perhaps to side with one side rather than the other. They do do a very difficult job, and I appreciate that they are doing a very difficult job, but it may well be that sometimes, one side of the argument rather than the other puts more pressure on them behind the scenes in advance or whatever, and that this results in the police perhaps being more heavy-handed on one side than they are on the other.

Q15 Lord Lester of Herne Hill: Can I just follow up? When Lord Scarman looked at this in the light of the Red Lion Square disorders, which are really the kind of questions Lord Dubs is asking about, you remember his solution was to widen the crime of race hate speech, which we did, perhaps too much, but we did, so his solution partly was the separate demonstration solution, but partly it was to criminalise race hate speech more in order to try to prevent what the National Front were doing. Are

you saying that such is your commitment to free speech and freedom of assembly that you think that was a misjudgment, and there should be more opportunity for provocative speech and demonstrations, or are you saying that kind of restriction is justifiable?

Mr Welch: Unfortunately, I do not remember as far back as the Red Lion Square disturbances, but what I am saying is that one should be loath to prevent a demonstration completely on the basis that something may be said there which might be criminal. I mean, clearly there may be circumstances where the intent is so clearly criminal that it can be justified to ban the protest from the outset, but what I am trying to get across is that there may be people who are going to say stuff which is unpleasant and unlawful, there may just be people who are going to say stuff with which you disagree, but they still have the right to say it. Banning the protest from the outset means there is no chance for any type of speech, and that should be very much the remedy of last resort.

Q16 Lord Dubs: May I just ask a supplementary to that? You mention Northern Ireland; in fact, it was either total restraint or no restraint in terms of whether a march goes down the Garvaghy Road or not, and the only value to the Northern Ireland system was it was an independent body that decided rather than the police or the Secretary of State, so it took that pressure off. But if we apply that to the UK, surely we have for a long time had the practice that a BNP/National Front type march should not be allowed to go through areas where large numbers of black people live, and is that not dealing with the point rather differently from the way you suggested?

Dr Metcalfe: I think a march through a neighbourhood is somewhat different from a march in what we might call a pure public space, such as a square, which is not immediately adjacent to people's homes. There is an argument, which I think has to be taken very seriously, that your right to a private life and your right to peaceful enjoyment of your home provides additional protection in that kind of situation to make it -- if it is open to you to protest in the town square, the argument goes, you should not need to march in front of someone's house in order to make your point. I am not saying that marches in front of houses should always be banned, but I do think that provides additional grounds for regulation in relation to the kind of situation we are looking at, such as the BNP march, or an Orange march or a nationalist march.

Q17 Lord Dubs: That leads me very nicely to my next question: how do we ensure that there is space for all to exercise the right to protest, and how should competing protests within the same physical space be reconciled? You have dealt with it partly in terms of Red Lion Square but of course, there are other examples.

Dr Metcalfe: I think the key point we would make is any regulation should be kept to a minimum. I am not saying there should be no regulation, obviously there should be regulation to facilitate where there

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are competing demands, but I do think that the arguments that certain public spaces such as Parliament Square require prior authorisation, simply because of the sheer demand for public protest, is often overstated. If it is truly necessary to regulate protests at Parliament Square, first show the need, first show that there have been multiple demands for protests on the same day at the same time, and that these have led to significant problems. I myself am deeply sceptical that Parliament Square is in demand 365 days a year, and I do not know that even Trafalgar Square, which is probably even more popular, is in demand to the same extent. If the evidence shows that on most days, for example, there are no requests for protests, or no protests being held, but there are only multiple protests on weekends, then it would be in my view unreasonable to require a system of authorisation every single day of the week. It may be proportionate in that situation to only require authorisations on Saturdays and Sundays. I am simply giving these as hypothetical examples of how the trend towards regulation should always be kept at the minimum possible. I am not saying there is not a need for regulation in certain circumstances to prevent public order difficulties. There was a very interesting article in the New York Times yesterday about how they regulate protests at City Hall in New York City. Until 2001, they had no regulation whatsoever, they referred to the City steps as prime real estate, and after 9/11, Mayor Giuliani imposed a situation where you needed a police permit in order to hold a demonstration on the City steps, and Mayor Bloomberg scrapped that, and now the situation is you have an appointment, and so you make an appointment and you book 15 minutes and you get 15 minutes on the City Hall steps, and the title of the article was, "To make a stir at City Hall, make an appointment". I am not saying you need a system of appointments or a system of bookings, I am saying that is one way of managing prime protest real estate, if you like, but certainly the trend should be towards keeping regulation to a minimum.

Mr Welch: I would agree with what Eric said, I do not think there is much evidence that this was a problem before the Serious Organised Crime and Police Act came into force and proposed those restrictions. Now possibly even if they were taken away, there might be a problem for a while because Parliament Square has now become such a focus of demonstration as a result of having been elevated, if you like, through special provisions being applied to it. But I am sure that in time, things would revert to where they were before. Certainly the conversations I have with people who organise demonstrations is that until it was actually required by the Serious Organised Crime and Police Act, people would tend to notify the police anyway as a matter of course. They were not required to, but they did it voluntarily, because obviously they could see that there was merit in the police knowing that people were going to be there and what they were doing and how long they were going to be there for. The trouble is, once you made it compulsory, people objected to

that, because they saw it as unnecessary, and that is how we have got ourselves into the position where we find ourselves.

Q18 Lord Dubs: My last question is this: there are of course some long-term or permanent protests, I think some of the Parliament Square protesters are there 365 days a year, at least I have not seen the Square without them for a long time, but what protection can and should be given to long-term or permanent protests of that sort?

Mr Welch: I think if people want to protest and it is not causing a major problem for others, people should be allowed to do that. I do not think there are many people that would have the commitment that, say, Brian Haw has. I admire him for what he has done. I do not think the fact that he possibly forms a bit of an eyesore is any good reason to take his protest away.

Q19 Chairman: What happens if he queers the pitch for somebody else? I will give you an example. Last year, I was helping with a demonstration for Chinese people protesting against immigration laws, and basically, he has taken over the whole of the pitch, and gets rather sniffy if anyone else tries to muscle in, and gets shoved up at one end in a corner. Effectively, this is following up on Alf's question, if somebody dominates the whole of one side of Parliament Square, it means nobody else gets a look in. How do you balance that out?

Mr Welch: I can see that there may be reasons why he should not be entitled to take up the whole of the Square, but I would have thought that might well be better dealt with by way of discussion between him and other people who wish to protest.

Q20 Chairman: He is not really amenable to discussion, in my experience, on that occasion anyway.

Mr Welch: That is very much a one-off case. Our concern, when the bill was brought forward that became the Serious Organised Crime and Police Act, was that this was a measure that was being introduced solely to regulate his protest, I think we accept that there were other factors that then got thrown into the legislation as well, and that was not the sole reason, but I prefer to regard what he does as a great example of British bloody-mindedness, good on him.

Q21 Lord Lester of Herne Hill: I am all in favour of that kind of statement in general, but surely, time, manner and place regulation of a proportional kind is needed when someone seeks to occupy a public forum like that permanently to the exclusion of others. Surely if he is bloody-minded in the way that you regard as characteristically British, at that point, we have to say, okay, but others have rights to free speech as well.

Dr Metcalfe: I agree, but I do not think that necessarily contradicts James' essential point that he has a right to be there, he has a right to protest there, to maintain his protest. I also agree that he should be asked to move down to one corner and not take up

the entire side of Parliament Square if other protests are being held, as much as Mr Haw no doubt will protest when he is asked to move to one corner, so long as he is allowed to maintain his protest on Parliament Square. If at some point in the future, we have 100 people camping out in Parliament Square and they are all demanding equal time and equal space, then it would be appropriate to review the situation, but this goes back to my basic point which is: do not impose the regulation until you can show a need for the regulation. I think the fact that Brian Haw is maintaining a permanent protest on Parliament Square shows a need for arguably some regulation to make Brian Haw move down to one corner on occasion, but it does not necessarily show that Brian Haw cannot maintain his protest full stop. I do not think Brian Haw being allowed to maintain his protest but on a smaller pitch than normal on certain days when other people are protesting is in conflict with that.

Mr Welch: Just to clarify my position, I think what I am trying to say, it is a case of—I think the expression is hard cases make bad law. He is very much a one-off, and I do not think we ought to construct a whole system regulating the way that people demonstrate in Parliament around one man. I think I would be in agreement with what Eric just said; it may well turn out that if there are so many calls on Parliament Square that all cannot be accommodated, some form of curtailment of rights has to become necessary, but leaving aside the example of Brian Haw, I do not think that is the case.

Q22 Lord Dubs: Would you think there should be any constraints in a situation like that of the use of loudspeakers at whatever volume there is? Do you think that is part of the right to protest, or is an excessive use of loudspeakers at a high volume such that (a) it stops other protesters, because they are drowned out, and secondly, in general terms, should that be constrained?

Mr Welch: Again, it is a matter of being persuaded that there is genuinely a problem. Obviously, if there are large crowds of people, people making speeches, loudspeakers are necessary in order for people to be able to hear them, and I would be reluctant to have a blanket ban as there is currently in Parliament Square for that reason. Obviously, it is also a means by which you can hopefully reach the people that you are addressing, and given that it is Parliamentarians that are no doubt the audience at which these demonstrations are aimed, then I can see why people want to be able to use loudspeakers, but I accept that there may be circumstances, if it were the case that it was seriously obstructing the work of Parliament, then it may be necessary, but again I am not persuaded of that fact.

Dr Metcalfe: There is a hypothetical case, of course, for public health constraints; if a protester were to deafen passers-by by playing music through an amplifier so loud that it was causing permanent hearing damage, then of course it would be right to regulate that. More seriously, you can of course have the situation where a person is maintaining a very loud protest for 20 hours a day, that similarly I think

would fall to be regulated on grounds of simply public nuisance. You know, it is right for people to be able to use loudspeakers during protests in general, but there is nothing wrong with manner and place and time restrictions on disproportionate use of a loudspeaker. I do not really see that as being an issue that is real at the moment. I do not think Brian Haw's use of a loudspeaker in Parliament Square seems to me to cause so many problems, and if it is a standing problem in terms of Parliament, caused by noise from outside, it seems to me a much better use of public money to soundproof the building than to impose restrictions on free assembly in Parliament Square.

Q23 Mr Sharma: How strong is the positive obligation on the state to facilitate free speech by regulating or policing protest?

Mr Welch: I would say it should be a very strong obligation on the state, given what we have already said about the importance of protest. I would say it is a fundamental democratic right. It is one of the ways by which people express their views on matters of importance to them. I would say that given its importance, there should be an obligation on the state to facilitate protest, and that, as I think we have already covered, can include the police allowing counter-protests to take place, but I think possibly more importantly, certainly on the basis of what we at Liberty have been hearing about the way the protest is being approached at the moment, I think there is an obligation on public authorities generally to facilitate protests and not to put obstructions in the way of people who are seeking to exercise their right to peacefully protest. I am thinking of things we have heard about at Liberty in the last few months, people being threatened with being charged for road closure orders; people being told that in order to protest at a particular location, they have to take out public liability insurance; I am aware of a group in Lancaster who have been told that if they played music on demonstrations, that would breach the Licensing Act. There seems to be a lot at present suggesting that some local authorities are throwing up other obstacles in the way of people protesting, and we would say that that is fundamentally wrong. Local authorities or public authorities should view their responsibility as being to facilitate protest rather than to throw up bureaucratic obstacles.

Dr Metcalfe: The European Court of Human Rights in a recent case against Turkey set out in general terms the positive obligations that fall upon states. One is to take appropriate measures with regard to lawful demonstrations in order to ensure the peaceful conduct and the safety of all citizens, but they said in addition that States must not only safeguard the freedom of peaceful assembly, but also refrain from applying indirect unreasonable restrictions upon that right, and even to an extent undertake positive obligations to ensure effective enjoyment. So if, for example, there needs to be first aid facilities at a large protest, it would be proper for the police to make arrangements so that an ambulance can get through at short notice. In one judgement in a recent case, it was even noted that

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forcible intervention by police, where a protest which was peaceful had turned violent in small parts, may be disproportionate, even if the notification requirements had not been complied with, which is to say that the police reaction should not be disproportionate, even in the situation where you have authorisation or notification requirements, and to a certain extent, there has to be some toleration of disruption to the public caused by the right to lawful assembly.

Q24 Mr Sharma: Thank you, you partially answered my next question, but still I will put it: what steps, if any, would you expect the state to take to facilitate peaceful protest?

Mr Welch: I will just start perhaps with a rather specific issue: one thing that we have been contacted about by members of the public in recent months and over the last year or so has been the issue of the right to march on roads, so people who wish to conduct a moving demonstration comply with their obligations under the Public Order Act, notified the police, but as I already suggested, in one case, although the police were notified, the local authority then contacted the three school students who were actually organising the demonstration to say that if this march went ahead, the local authority wished to charge them for closing the road, and I think a sum in the region of £2,000 was mentioned. This slightly got kicked into the long grass, the march went ahead and the local authority now does not seem to be trying to bill anybody for this, but we would say that that was completely inappropriate. We both think it is actually unlawful, because the statute under which they were seeking to charge we would say does not allow them to charge for public demonstrations, as opposed to other sort of social events that take place on the street, but we would also say it is wrong in principle, that this is the type of thing which public authorities should be undertaking in order to allow protests to go ahead. Where somebody wishes to hold a march, we would very much hope that the relevant public authorities, the police, local authorities, should accept that it is their responsibility, if it is necessary to close a road or parts of a road in order to let that march pass, they should take the necessary steps to allow that to happen, and that that, it would seem to me, is an appropriate level of facilitation which we should expect from public authorities. I think we would also, to broaden this out slightly, say that public authorities should not put obstructions in the way of people using their space. An example of this which Liberty itself experienced in recent weeks was an attempt by us to organise a protest in Parliament Square, and we were told by the GLA, which is responsible for that bit of Parliament Square, that if we were to hold an event there, we would need to get public liability insurance. It may well be highly desirable that an organisation like Liberty should have public liability insurance when we organise a demonstration, and no doubt we will take steps to make sure we do, if we do not already have it, but I do not think it is part of the role of the local authority to be telling us to do that. The right to

protest is so important, we would say that bureaucratic obstacles should not be put in the way of people exercising that right.

Q25 Lord Lester of Herne Hill: I should declare an interest because I am on the council of JUSTICE and a member of Liberty as a supporter. I would like to ask you about how you draw the line in terms of private space. I have read the evidence of both organisations. Liberty does not really deal with it in any way; JUSTICE, in your evidence, seems not to like either the notion of harassing someone in his home, under section 126 of SOCPA, or criminal trespass, and neither organisation seems to me to be weighing up in its evidence respect for private life, home and the rights of others in the context of private space. Now for the purpose of my question, let us forget about YL and cases where private space is really not private space because it is being managed by a private body exercising public power, let us just deal with, as it were, the Harriet Harman home type problem, the two Fathers For Justice people on the roof and so on. Are you not willing to contemplate, to take the easiest example, that people's homes are a private space and that invading that private space is something that one should toll against unless there were overwhelming reasons to the contrary?

Dr Metcalfe: I think my earlier answer in relation to marching through residential areas helped to set out what I think are the important considerations, I think we recognise that there is the right to respect for one's home under Article 8, and that is an important right and it sets limits on the right of peaceful assembly. A protest outside someone's house may be legitimate, but it would also be legitimate to regulate that in a far more intrusive or intensive manner than we would, say, allow regulation of a protest in the town square. I think accordingly, it would be proper, if someone wants to protest on Harriet Harman's private dwelling, for example, you might require regulation for them, hypothetically speaking, that they can only protest across the street, they cannot make more than 30 decibels of noise, it has to be a silent protest, you know, they can only hold placards, etcetera, across the other side of the street. I am not referring to any law here, I am simply giving an example of why, when balancing public and private interests in this way, it is appropriate to allow more weight to be given to the fact that that is Harriet Harman's home, or a private individual's home. I think this is a special case, because Harriet Harman is an elected official. There would be different considerations if that was a purely private individual.

Q26 Lord Lester of Herne Hill: I should declare an interest, because I live round the corner from the house in question. The consequence, for example, of what was done there was that a very large number of police officers were deployed for the entire day and night closing off the entire street for all the residents, that she had to get out of her house, in order to do so, that they invaded her property, used a ladder and so on, and surely that would be an example of an

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entirely disproportionate invasion which, for example, the Protection from Harassment Act, which you do not like in this context, is designed to deal with. It is the harassing of somebody in their private property, whether they are a public official or anybody else.

Dr Metcalfe: I have to confess some uncertainty about the facts of the case. If they were on her property at all, it seems to me a straightforward matter of trespass. I think we could have a debate about the merits of the Protection from Harassment Act, and also the difficulties that it applies in relation to public protests, say, for example, the Sikh play in Birmingham, but if you are on a person's property and you have no lawful reason to be there and it is a private property, you are guilty of trespass.

Q27 Lord Lester of Herne Hill: But is your position that you would give greater protection to private space than to public space?

Dr Metcalfe: Yes.

Q28 Chairman: Is there not a distinction really between somebody's private residence -- this goes back a long way, I think it was the Conspiracy and Protection of Property Act 1875 which said you could not picket outside somebody's house, whereas you can picket outside the factory. So it is a long-standing tradition of English law that you cannot actually go and get somebody in their home in that way. You think you should be able to picket somebody's house?

Dr Metcalfe: I am saying that the blanket prohibition on picketing anywhere near a person's residence is arguably disproportionate, but I am not saying you should not give much greater weight to the fact that it is a person's private residence.

Q29 Chairman: Should there not be a distinction between somebody's personal and private family life, under Article 8 perhaps, and their professional life? If you want to come and picket outside the Ministry or Parliament, that is one thing, that is where I work, that is my job, that is what I do, as opposed to being at home with my family, in the garden or watching TV or something; you think it is perfectly okay, within reason, to picket outside somebody's house as well?

Dr Metcalfe: I think it is not a black or white issue. I am saying that it is very clear that your right to respect for private life means that you are protected to a far, far greater degree when you are in your private home from peaceful assembly, from protest than you are at your place of work. What I am suggesting is that the argument that you can never, ever, ever in any circumstances tolerate any kind of protest outside of the front of a person's house, in any circumstance whatsoever, seems to be an equally disproportionate argument.

Mr Welch: I would agree broadly with Eric on that point. Dealing first of all with the protest on Harriet Harman's roof, I have not come with my statute book with me, but it strikes me that it may be aggravated trespass anyway, so a criminal offence under the Criminal Justice and Public Order Act,

but I may be wrong on that. Protests outside people's houses: clearly the existing law, section 14 of the Public Order Act, would allow for restrictions to be put on that if it was seriously disruptive, and that, one would have hoped, should be sufficient, and where it is not, then this may be one of the cases where the Protection from Harassment Act does have a role and a court in making the assessment of whether there is harassment would have regard to the fact that this was happening outside a person's home and would have regard to the fact that the object of the demonstration's Article 8 rights were engaged and hopefully, that would, in extreme cases, allow for a proper balance to be struck between the interests of the homeowner and the people seeking to demonstrate outside. But if I can broaden this out, I think there is a much wider problem with demonstrations on private property, and that is because now quite a lot of what most people might regard as our public space is privately owned, and that would seem to allow the owner of the private property to place restrictions on people's right to demonstrate. Two cases come to mind; firstly, Liberty was involved several years ago in a case brought by a community group in Washington New Town, Tyne and Wear, who wished to gather signatures on a petition. Their town centre and the surrounding area was effectively a large shopping mall, and when they put up a trestle table in the shopping mall and started to collect signatures, the owner of this private mall told them they could not do that there. This had been publicly owned land, it had been a new town set up with public money, but it was sold off, and the private owners were not prepared to accept this. We took the case to Strasbourg, the European Court of Human Rights. Unfortunately, I think in a bad decision, the court decided against us. It accepted that there could be positive obligations to promote freedom of expression, freedom of association, but in this case, the interference was not so grave that it was an interference with this group's Article 10 and 11 rights. The court said they could have sought support for their campaign in other ways, by going round knocking on people's doors. I think the principle is right, there are positive obligations, as we have already discussed, but the court was unrealistic about what other avenues were open to these people.

Q30 Chairman: Do you draw a distinction in those cases between land that was formerly public and has been developed into a privately run centre -- for example, in my patch, I have Brent Cross Shopping Centre, it has always been private land, if you want to go out and give out leaflets or get people to sign petitions in Brent Cross, is this an area that you put forward?

Mr Welch: I do not live near Brent Cross so I do not know how much a focal point of the local community it is, but I do not think actually the proper distinction is whether this was formerly publicly owned and now become private or not, I think the distinction to be made is whether this is perceived as community space, if you like, the space

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that people view as the centre of their community. Just to go to what I was saying, the other example that I have of sort of restrictions brought by private landowners on demonstrations is Canary Wharf. We were involved a few years ago in an attempt by people who wished to protest against low rates of pay for cleaners working in Canary Wharf, the union wished to organise a demonstration, it was made very clear to them that if they sought to demonstrate on land that was owned by Canary Wharf, they would injunct them to stop them doing that. As it was, there was a small area of land by Canary Wharf tube station which is owned by Transport for London, so they were able to demonstrate there. But that seemed to be another example of problems where vast areas of space that people perceive of as public, perhaps obviously wrongly, if it is privately owned, but if people perceive a space as public and people are being restrained from exercising their rights to demonstrate there.

Q31 Lord Lester of Herne Hill: I understand that free speech does not depend upon whether the censor is public or private, in other words, the BBC and a private television regulator, it does not make any difference if they unreasonably censor, I understand that, but is not the Chairman right that in the kind of situation of a shopping mall, the real problem is that our notion of what is a public body or a public authority is too narrow, so that if the body is concerned with providing the public with services or facilities, and that is its business, I think what you are saying is that it should be treated as public for the purpose of its obligation to facilitate free speech or assembly and so on, and that the real problem is the narrow approach to public authority, like the *YL* example.

Mr Welch: I think you are right, but it is a sort of application of that problem in a very specific sphere. The trouble is, in terms of Convention jurisprudence, the case I am referring to, the *Appleby* case, the one about Washington New Town, probably would go against us on that, but what I am trying to suggest is that applying those principles in this context of demonstrations in private spaces, I would hope we should be able to develop some notion of quasi public space, I think was the term we tried to suggest in the Strasbourg case. There are places that may well be publicly owned but they are of such significance for the community that lives round them, the community of which they are the centre, that they should nonetheless be viewed as public spaces for the purposes of demonstration and indeed for other purposes as well.

Dr Metcalfe: There was in fact a line of US Supreme Court authority supporting the view that if you had made your private property available to all comers, such as in the shopping mall, then it should be treated as being public for the purposes of the First Amendment. Unfortunately, that line of authority was reversed subsequently by the Supreme Court and so no longer holds, but I think in our view certainly the principle is sound and we agree with what James is saying.

Q32 Chairman: To give you one more example before we go on from this, which is a hybrid between the home and the shopping mall, a gated housing estate, and you want to go and collect signatures on a petition or you want to go and leaflet in there with your protest leaflet, should the freeholders of the gated estate allow you even to do that or should they have the right to refuse you access?

Dr Metcalfe: It depends upon the terms on which they give access. If the gate is always open, then arguably it should be treated more as a public space. If the gate is normally shut and people are only allowed in with an access code, then arguably they should not be required to give you space. If you like, there is an analogy with rights of way; if I have always allowed people access on to the housing estate, there are normally no restrictions, but it is technically private property, then it should not be for me to prevent people going on to the property, simply to prevent protests. On the other hand, if the gated community always has its doors shut, then clearly that is an attempt to maintain the area as private, so I am not creating a right of way, and I am not creating an expectation that the area is in normal terms public. I agree, and I would make this clear, that a private dwelling, a person's home is entitled to superior protection, in that any right of lawful assembly nearby has to be very much attenuated to respect a person's private dwelling place, but I think the points in our written evidence, the concerns we express about the Protection from Harassment Act and so on, are directed very much about the reliance upon what James has identified as quasi-public spaces, areas in Canary Wharf which although are privately owned are in very many respects public spaces.

Q33 Lord Bowness: Chairman, can I just follow up? Just following your argument through about gated communities, that would be true surely of a lot of shopping centres where rights of way are either specifically excluded by notice under the Highways Act, or in fact, when the thing is closed, you cannot walk through it.

Dr Metcalfe: Yes, but that would then permit you to go in during the day. If I wanted to go to Brent Cross Shopping Centre and distribute leaflets during the day, should I be required to leave simply because the area is privately owned?

Q34 Lord Bowness: Yes, I did not really want to get into that, Chairman, I think it is just that the analogy being drawn was a bit flawed, because there are lots of roads that are maintained as private and public access is not acquired because they are closed the requisite number of times of the day in the year or regularly, but when they are not actually closed, you can walk through as if it is a public highway, so it is a distinction which I think would be very difficult to draw.

Dr Metcalfe: It is a very crude analogy with rights of way and I am obviously keen not to press it too far. Certainly if the shopping centre is not open, you are not entitled to break in to distribute leaflets. I am suggesting that insofar as the shopping centre is

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being treated as a public space during the day when people are free to come and go and visit shops, in the open areas between the shops, it seems to me that there must be a presumption that that is a public space. It is not to say that it cannot be displaced in certain circumstances. As you say, most private rights of way have a sign somewhere which indicates that no public right of way is being created.

Chairman: I think we need to move on.

Baroness Stern: Am I allowed to ask a supplementary on this, or do you feel we have gone far enough on this?

Chairman: We have a lot of ground to cover, a lot to get through.

Lord Lester of Herne Hill: Could I just ask whether the two organisations could give us a supplementary paper, just telling us how you deal with the private space issue that you have been asked questions about, with the kind of criteria that are reasonably certain, so we can consider them, because having heard you, I am not really clear, it is probably my fault. If we could get a further paper from both of you, that, I think, would be a helpful thing to do.

Q35 Baroness Stern: Can we move on, to my regret, as it happens, to talk about the current law and what you might feel was not appropriate in it. I have two questions, and I am going to put them both together, because they are part of a package. The first question is that you both suggest in the very helpful papers you submitted that the existing law has a deterrent effect on the right to protest or on free speech. Could you tell us which powers you think are the most disuasive on people wishing to exercise these rights? You have indeed given us some examples, but it would be good if we could answer this question as one. The second question is: you, as well as we, at the time of the passage of the Serious Organised Crime and Police Act, expressed concerns about human rights compatibility, and your evidence suggests that since then, these concerns have been borne out in practice, so it would be helpful to have some specific examples of where the Serious Organised Crime and Police Act has failed to safeguard protest and free speech rights. I think we might be needing to be a little bit more constrained.

Mr Welch: Can I just say, on what the most disuasive aspect is? I think, taking a broadbrush approach, it is the imposition of criminal sanctions if you get it wrong. That applies under the motion for designated area around Parliament, it applies in relation to public demonstrations, public processions under the Public Order Act. I think we would accept that there should be a requirement or there can be justification for asking people, certainly in relation to moving processions, to give notice in advance of your intention to do so, because obviously that is more potentially disruptive of the lives of others than static demonstrations, but I think when you throw in a criminal sanction as a penalty for getting it wrong, that is the thing that is likely to have the most disuasive effect, the most chilling effect on people's right to protest. So if you asked one thing, that would be what I would say. In relation to the restriction on protests around Parliament in the

Serious Organised Crime and Police Act, I think it is an example, if you like, of a measure that has been brought in to control protest that simply was not accepted by the people it was aimed at, and it has therefore caused a lot of trouble, because people have sought to challenge it, people have sought to mock it, obviously Mark Steel organising all sorts of protests in Parliament Square. I think it is an example of how dangerous it is, if you like, to interfere with protest, because protest is a matter which to work properly depends to a very large degree on consensus. It has to be accepted, I think, by a very large proportion of the population what the rules are, and I think by and large, subject to what I have already said about the imposition of criminal sanctions under the 1986 Act, that the 1986 Act did however set out a framework that everybody understood, and the problem with the restrictions on demonstrations around Parliament was that it interfered with that consensus, it changed the balance, it imposed restrictions and requirements on people that people felt were unjustified, and people have balked against it. As a result, there have been prosecutions which I would say, and I acted for Milan Rai in his prosecution, it just simply was not necessary. He was somebody that was prepared, and always had given notice to the police when he intended to demonstrate, but he balked at being required to do so, so he stood up, he took a stand, he ended up being convicted. It is simply disproportionate in these circumstances to impose those penalties. I think it would be much better if we reverted to the situation as it was before SOCPA was passed, dealt with Parliament in the same way as any other part of the country, I think people would accept and understand that, and the consensus that we need to have for demonstrations to operate properly would be restored.

Q36 Baroness Stern: Could you just say what happens if you get it wrong?

Mr Welch: Well, both in relation to a failure to give notice of a moving demonstration under section 11 of the Public Order Act, and in relation to a failure to comply with all the requirements required for a demonstration in the designated area around Parliament, if you get it wrong, you can be prosecuted, and fined, I am not too sure I can remember exactly what the level of the fine is, but a fine and possibly imprisoned as well.

Q37 Dr Harris: You spoke to the Public Order Act 1986; there was some Parliamentary debate I was involved in recently where it was asserted by a number of Parliamentarians that it was being overused by the police and suppressing free speech. This was in the context of incitement to homophobic hatred, but the examples used were not of those provisions, which had not been formed, but of other provisions, interviewing Iqbal Sacranie and stuff like that. I wanted to ask you to what extent do you think this impacts on protest, whereby otherwise legitimate protest might be found to be outside the

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law because the police arrest someone or stop them under the Public Order Act on the basis they are causing distress and alarm to other people?

Mr Welch: Presumably you are talking about section 5 of the Public Order Act?

Q38 Dr Harris: Yes.

Mr Welch: I think Eric touched earlier on on the recent case of a young man who was protesting outside the headquarters of the Scientology group in London, and he held up a poster calling them a cult, and was threatened, although the prosecution backed down, but he was threatened with prosecution under section 5, for saying something presumably thought to be insulting. I think this goes back to what I said earlier --

Q39 Dr Harris: Insulting? That is not the terms of the statute, is it?

Mr Welch: "Threatening, abusive or insulting words or behaviour". Insulting is, if you like, the least mischief that it seeks to address.

Lord Lester of Herne Hill: Insulting, but likely to stir up a breach of the peace.

Q40 Dr Harris: Let me give you another example. I was on a demonstration in Trafalgar Square in support of free speech at the time of the Danish cartoons, so it was defending the people who were doing cartoons. It was all approved, it was in Trafalgar Square, it was not in Brick Lane. A couple of people there were wearing T-shirts with some of the cartoons on, on a demonstration for free speech and free expression, and the police arrested one of them because they presumably had had a complaint or felt they had had a complaint that it was causing distress and alarm, in a big demonstration about free speech. I mean, so that was a real problem, because that meant in the future, people might not feel they are able to protest in favour of free expression, when it is threatened by people saying they are insulted. It is a vicious circle, in a sense.

Dr Metcalfe: It bleeds over into the pure freedom of expression issues, when you are talking about wearing T-shirts, it is not harm caused by the assembly as such, it is simply the harm caused by the public making of the statement by wearing a T-shirt. You have similar issues around the significant overpolicing of the Chinese Premier's visit a couple of years ago, when placards protesting against Chinese policy in Tibet and so on were taken down by police. There were significant efforts taken to prevent that protest being visible to the passing car.

Q41 Dr Harris: But that is separate, is it not? Because the case I am talking about, someone may have said, "I am upset by this, I have a right not to see someone wearing a representation of the Prophet, arrest that person"; that is one case. In the other case, there was not even that basis, presumably, was there?

Dr Metcalfe: I am still unclear, several years afterwards, as to what exactly the police basis --

Q42 Dr Harris: What did the police say their basis was for removing placards that took one view in a global political issue?

Mr Welch: I do not know what the basis was in relation to the Chinese demonstration, but I think probably section 5. The definition is "threatening, abusive or insulting words or behaviour [likely to cause] harassment, alarm or distress". What is insulting? We would say that insulting should be given a very restricted meaning, if not to the point almost of restricting it out of existence in this context, because otherwise it is going to restrict people's right to express their views in as forceful a manner as they think appropriate, but the problem is the police, when faced with a demonstration, have to make their own decision as to whether something is insulting. What I suspect happens in these types of situations is that people will be bending the ear of the police, saying, "Look, you cannot allow him to say that, you cannot allow him to say that, because we find it insulting". There undoubtedly is a role for section 5 of the Public Order Act, but it should be given a very, very restrictive interpretation.

Q43 Dr Harris: There is a rumour the police have guidelines on this. They cannot have been reading them in Oxford, because at that Oxford Union debate, there was a placard saying, "Kill Tryl", the name of the Oxford Union President, and that could be considered both insulting and threatening, and that was left alone because it was with an anti-fascist. Are there guidelines?

Mr Welch: I have put in a Freedom of Information Act request asking for the police's guidelines in relation to the policing of Scientology protests. I will let you know if I find something out.

Dr Metcalfe: We have certainly had meetings with ACPO in relation to the guidelines in relation to section 44 powers, so they are or have been working on guidelines for stop and search. I would be very surprised if they do not have similar guidelines in relation to these public order powers.

Chairman: We will have to ask ACPO and find out if they have some guidelines. Lord Bowness?

Q44 Lord Bowness: Thank you, Chairman. I think much of the area of the question I was going to ask you about, specific concerns about Parliament, has been dealt with, and I do not think we want to dwell on our own concerns too much. The only question I would ask you, which arises out of this particular question, is: how do you deal with the problem of access? Personally, I am not so concerned about noise and whether you sell tickets from a pavement office to accommodate half a dozen instead of one, that is almost by the by, but access, I think, is actually a real problem, in that malevolent demonstrators, it is perhaps a bit far-fetched, but not impossible, could have an interest in certain circumstances at certain times in preventing the access to Parliament by Members if they were going to vote. That is, after all, what the sessional orders

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are all about. How would you deal with the question of keeping access to Parliament free, bearing in mind you were saying you did not really see any need for anything different from the existing legislation, or do you think that the existing legislation is sufficient to allow both the protest and the access?

Dr Metcalfe: I think it would be perfectly appropriate, in times of very vigorous protest, for example, to establish a cordon to ensure that the driveways around Parliament and the public access, the footpath on the Parliamentary side of Parliament Square, remains open.

Q45 Lord Bowness: But with due respect, forgive me interrupting, I agree with that, but it is actually not quite as simple as that, is it? It is no good putting a cordon around the gates, if you cannot come over Lambeth Bridge or whatever, whether you are on foot or in a vehicle, it is not just keeping the gates open, is it? It is people actually getting to the gates.

Dr Metcalfe: Right. I think it is difficult to discuss outside the context of a particular case. You could, in any large scale protest, always require at least one viable route or more than one viable route, that seems to me the kind of manner and form restriction that you would impose on any large scale gathering, simply in order to manage a large scale protest successfully. It certainly does not seem to me a basis for the kind of blanket restrictions that always seem to be bandied about.

Mr Welch: I am not sure that the provisions of the Serious Organised Crime and Police Act add anything to the powers which would exist under section 14 of the Public Order Act anyway. The power to impose restrictions under the two provisions are very similar, slightly wider in relation to under the Serious Organised Crime and Police Act, but if there were a large gathering of people outside the Houses of Parliament, and they were blocking access to Peers and Members of Parliament, access to the building, then the police could impose a restriction at that time under section 14 of the Public Order Act to allow access. The practicality is whether the crowd would actually obey, but I am not too sure that you need the whole edifice of SOCPA in order to ensure that that will not happen.

Lord Bowness: You are saying that the present arrangement is satisfactory, that was really just the answer, thank you.

Q46 Lord Morris of Handsworth: As you know, there are certain fixed structures, installations, which provide for our way of life ongoing, such as electricity pylons taking supplies to hospitals or masts which support the emergency services, such as that. Should certain geographical areas, areas like around nuclear and military facilities, or indeed even Parliament, be treated differently from the rest of the country, and if so why; and if not, why not, if you do not support that?

Mr Welch: I presume you are talking about the provisions, again, under the Serious Organised Crime and Police Act that allows certain sites to be designated? We had very considerable concerns

about those measures, because we were not convinced that they were necessary, or at least that they were necessary as regards areas other than nuclear power stations, I think nuclear power stations may be a particular case, but our understanding is that these measures have been used largely to restrict demonstrations around various military bases. Indeed, looking at the law this morning, I noticed that an amendment seemed to have been added into the statute to make it clear that a military base includes the area where the gates would close. It does seem to be aimed at a particular type of demonstration which, while no doubt for the people working in these bases it is rather vexatious and annoying to have people demonstrating outside, looked at from the other side, I think demonstrations against bases, a lot of people have very strong views opposing various types of military action, and they should be entitled to exercise the right to protest. I think criminalising somebody for putting a foot across a line is a bit absurd. If people break into bases by using wire cutters to get into the bases, then they are committing an offence of criminal damage and can be prosecuted for that. I do not see what these particular measures added to the existing criminal law.

Q47 Lord Morris of Handsworth: Well, some of the installations preceded the legislation to which you have actually referred. What I am seeking to establish is whether you think that there should be any sort of protection whatsoever given to some of these installations that I have talked about; radio masts, which support our communications service for the emergency services, or indeed support some of our institutions like hospitals. In your view, should they be just treated like normal, with no designated protection at all?

Mr Welch: As I say, I do not see why it is necessary, because assuming these places are surrounded by fences and—

Q48 Lord Morris of Handsworth: Hospitals are not.

Mr Welch: Hospitals are not, but is there any evidence that people are actually seeking to go into hospitals in order to protest and cause damage? Protest, I think, in a hospital, I do not really see what the problem is, unless it is obstructing the provision of medical services, but I have not really heard that that is a problem.

Q49 Lord Morris of Handsworth: Nobody is saying it is a problem, what we are doing is seeking your organisations' views as to whether these areas should be treated just like any other areas, or whether they should have some measure—

Mr Welch: I think existing criminal law is apt to deal with any problems that arise.

Q50 Lord Lester of Herne Hill: Again, I am always searching for a bright line or a criterion. You accepted before that a private home should be treated differently from a public space. Why should

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not similarly a bright line be drawn between a nuclear installation and others or military facilities and others? I do not understand --

Mr Welch: I accept essentially that particular protection may well be necessary for nuclear installations.

Q51 Lord Lester of Herne Hill: What is the difference between nuclear and others?

Mr Welch: I think if something goes wrong—

Dr Metcalfe: A nuclear power station does not have any personal feelings to protect if you hold a public protest outside it. The reason the law gives special weight to my home is because the law recognises that I have a fundamental right of respect to privacy. No intrinsic harm comes to a nuclear facility if a peaceful protest is held outside it. I agree completely with James that the criminal law already provides more than sufficient protection; as you know, it is an offence to cause criminal damage of any kind. Presumably, these nuclear power stations have fences and security guards and all the rest. There has never been any suggestion that the criminal law is inadequate to deal with it. We are talking about a measure that is aimed primarily at people gathering outside protesting. The Article 8 private life considerations that arise in relation to a person's home simply do not seem to me to arise, particularly the presence of a military base, for example, or nuclear power, issues about which people have strong feelings and a legitimate point of public discussion. So unlike a private home, it seems to me perfectly legitimate that people should be entitled to hold peaceful protests outside them, and if they go beyond peaceful protests, the criminal law is fully capable of punishing such activity. I think the particular problem with section 128 of the Serious Organised Crime and Police Act is it is open to the Secretary of State to designate any site in the interests of national security. There is limited protection, in that the Attorney General's consent is required to bring a prosecution, but it is a perfect example of what we have indicated post the Human Rights Act of legislation not containing any specific safeguards in relation to necessity. The common argument of Parliamentary draftsmen is of course any powers have to be exercised consistently with Convention rights and interpreted consistently with Convention rights, but there is nothing in section 128 which requires the Secretary of State to consider whether it is necessary to designate a site. She only has to consider whether it is appropriate to do so.

Q52 Lord Lester of Herne Hill: Why should the state not have an exclusion zone around a nuclear power station on the basis that it is too late when you have people close to it demonstrating who suddenly start getting through the wire, and therefore, there will be a tight exclusion zone, that will be an area where you are not allowed to demonstrate?

Dr Metcalfe: There is certainly nothing wrong with the Secretary of State taking a decision that it is necessary to do so on those grounds, because they think the risk of a protest turning violent and thence entering and compromising national security, but

the point is that no judgment is reflected in the statute about that necessity. It is simply open to the Secretary of State to designate an area as he or she deems appropriate. Without any kind of assessment, it seems difficult to justify, but that is the terms of the law as it stands.

Q53 Lord Morris of Handsworth: Some witnesses have suggested that the designated area provision should be repealed, and that is the section you have talked about in the Serious Organised Crime and Police Act. Do you agree that it should be repealed, and would the Public Order Act be sufficient to provide the safeguards that are necessary?

Dr Metcalfe: We believe so, yes.

Mr Welch: Likewise.

Q54 Lord Morris of Handsworth: You both support repeal?

Dr Metcalfe: Yes.

Q55 Lord Morris of Handsworth: And you both believe that the Public Order Act would suffice?

Mr Welch: The Public Order Acts and other aspects of the criminal law.

Dr Metcalfe: The Terrorism Act 2006 similarly contained a certain number of provisions enhancing security at certain key sites, power sites and so on, so I think section 128 adds nothing.

Q56 Baroness Stern: Could we go on to have a quick look at this question of the legislation being overbroad, which we have already touched on? You have both expressed concerns about the overbreadth, which leads to broad discretion being given to police officers, and JUSTICE suggested that clear guidance was needed. I think our question is: would guidance alone solve the problem of overbreadth or is more than that required?

Mr Welch: I think our position is that if you are going to ensure Convention compliance, it is the legislators that should do that at the outset. You should avoid passing legislation which is so broad that it could be applied in a non-Convention compliant manner. It is much better that narrow legislation is passed in the first place, rather than the police and other public bodies, who need to make a decision very quickly, having to decide themselves at the time whether they are acting in a Convention compliant manner or not.

Dr Metcalfe: Yes, I would agree with James. In some ways, we refer to guidance, but we also referred to actually legislative guarantees. Say, for example, where you are legislating in an area that affects the right to freedom of assembly, it is appropriate to make clear that this does not, for example, impinge upon the right to peaceful protest. I think a very good example of this is the definition of terrorism in other common law countries such as Australia, Canada and New Zealand, which makes clear that terrorism is deemed not to include peaceful protests or industrial action. Another example of a legislative measure that can be adopted is confirmation that peaceful protest in and of itself cannot constitute

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anti-social behaviour or harassment, that would be a very good safeguard. Also directing police when they are exercising stop and search powers, dispersal directions and so on, not to restrain peaceful protest. These are examples of legislative safeguards which we would like to see.

Baroness Stern: That is very helpful, thank you.

Q57 Dr Harris: I wanted to ask briefly this point, the Government says that everything is okay in ECHR terms because the public authority, including the police, cannot act incompatibly. Is that an adequate provision?

Dr Metcalfe: Unfortunately, it is not, and I think it goes to a combined problem under the Human Rights Act, which we wholly support, under the terms of the European Convention, which allows considerable latitude to public authorities to act for legitimate purpose, which includes, for example, public order and national security and prevention of crime, and so you end up with a situation such as in section 44, which was considered by the House of Lords in the *Gillan* case, where the House of Lords essentially says that so long as a policeman is not acting arbitrarily, then the exercise of his discretion will be lawful.

Q58 Dr Harris: Which case was that? I did not catch.

Dr Metcalfe: This was about the use of stop and search powers, *Gillan*. This was considered in relation to the arms fair. What you end up with is a situation in which *ex post facto* judicial review of the police's decision is more or less deemed to be compatible, unless you have some clear evidence that the policeman was acting with some illegal purpose in mind, say for example racial prejudice. Given the evidential challenge of showing that any stop and search was motivated by -- unless the policeman happens to admit openly to the person that they are stopping that the reason that they are stopping them is because of their ethnicity, then you are never really going to be in an effective situation to challenge the police suspicion in the first place, when you have a legislative provision that sets the bar so low. I think it is quite interesting to compare the judgment of the Divisional Court in the *Gillan* case, in which they relied upon Lord Carlisle's 2001 report into the operation of the Terrorism Act, in which he said, "No difficulties have been drawn to my attention in relation to the exercise of section 44, I am satisfied that the use works well and it is used to protect the public interest." By 2006, Lord Carlisle said, "Difficult problems arise in connection with the use of section 44. It should never be used where there is an acceptable alternative under other powers, and while there was continuing work to improve the way in which it is being used, it is still used too much." So in many ways, what we find is the courts finding no difficulty with the operation of section 44, on the basis of Lord Carlisle's findings in 2001, when by 2006, his own position had changed considerably.

Q59 Dr Harris: Yes, and his 2008 report which we have just got says much the same, I see. While we are on section 44, in both your written submissions, you have identified a number of pieces of legislation which are being used not for the original purpose, but to police protests. Section 44 is one, I think, it was not the original point of it. Can you think of others and can you set out a little bit the implications of that?

Dr Metcalfe: Well, the anti-social behaviour legislation, you have the example of the protests over the Sikh play in Birmingham, in which the protests were in some cases stepping beyond their bounds, intruding into the lobby of the theatre. In that situation, there was reliance upon, as I understand it, and James will correct me if I am wrong, the anti-social behaviour legislation, to prevent alarm and distress and so on. It seems to us that this was an improper use of the legislation; it is perfectly right for the police to have taken steps to prevent the protest from overstepping its bounds, in situations where people were prevented from going to see the play, but we question whether anti-social behaviour legislation was ever intended to address the right to protest in this way.

Mr Welch: We have already touched on section 5 of the Public Order Act, which I think can be used in a way which we would say illegitimately stifles protest. The other provision I think I would like to add to the ones that Eric has already mentioned is the Protection from Harassment Act, although earlier on I conceded that it may well be appropriate for that to be used in the context of demonstrations outside people's homes. There have been instances that we have been aware of, and cases that have gone through the courts, where large corporations have been using the Protection from Harassment Act in order to try and stifle protests against activities of theirs that people object to. Perhaps it is not so much a problem with the legislation but the way it is applied through the court processes that is the problem, because it is possible, there have been cases where companies have gone out and got *ex parte* injunctions, so injunctions without notice being given to the respective respondents, granted in a way that binds not just the named defendants but loads of others besides, people who are aware of the injunction -- there was one in your constituency or very near your constituency.

Q60 Dr Harris: Radley Lakes.

Mr Welch: Indeed, and these are obtained on an *ex parte* basis.

Q61 Dr Harris: The application was to ban any encampment, any tent erected anywhere in Abingdon essentially.

Mr Welch: An overbroad injunction was granted, binding on anybody who had notice of it, and the trouble was nothing could be done about that until at least the return date on the injunction, by which time the company, if you like, had bought itself space to do the things that it wanted to do. There was not any immediate redress that the protesters could seek, we had difficulty getting legal aid in order to

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take any action, in order to try and get the injunction overturned very quickly, so it was being used in a very heavy-handed, disproportionate manner with the undoubted aim of inhibiting what should have been lawful protest.

Chairman: Thank you very much. We have come to the end of the questions we were going to ask you, there may be one or two things we think of afterwards which we might write to you about, and you have promised a memorandum for Lord Lester. Thank you for your evidence.

Tuesday 21 October 2008

Members present:

Mr Andrew Dismore, in the Chair

Bowness, L
Lester of Herne Hill, L
Morris of Handsworth, L
Onslow, E
Stern, B

Dr Evan Harris
Mr Virendra Sharma
Mr Edward Timpson

Witnesses: **Mr Jeremy Dear**, General Secretary, National Union of Journalists; **Mr Andrew Gay**, Marketing Director, Huntingdon Life Sciences; and **Mr Richard D North**, Fellow of the Social Affairs Unit, gave evidence.

Q62 Chairman: Good afternoon everybody. This is the second evidence session in the Joint Committee on Human Rights' inquiry into policing and protest. We are having two sessions this afternoon. The first group of witnesses includes Jeremy Dear, who is the General Secretary of the National Union of Journalists; Andrew Gay, who is the Marketing Director of Huntingdon Life Sciences; and Richard D North, who is a Fellow of the Social Affairs Unit. Do any of you want to say anything by way of preliminary remarks or shall we go straight into questioning? Okay, perhaps we could start with a question to Andrew, but the question is a general one to which the others may want to contribute. I think that you all recognise, to a greater or lesser extent, the value of protest. How do you think protest can fit into democratic society and what limits or restrictions should be placed on the right to protest?

Mr Gay: Good afternoon everybody. I think the restriction on the right to protest is any illegal act should restrict that right to protest and the right to protest should also take into account the targets of that protest. There should be few absolute restrictions. I entirely support the right of legal protest and continue to support it and have protested myself, but when that protest becomes aggressive, potentially violent and certainly intimidatory, then a line should be drawn and that should be stopped.

Mr North: Obviously all the ordinary free speech lobbying and so on is fine and mass demonstrations are fine. I suspect that the core remark might be that almost all serious protest needs to be licensed on the street. I do not say that licences should be extremely easy to get but, oddly enough, I do not think there are many things that would be called protest which it would be perfectly possible to say would not be allowed for an ordinary citizen, and I am not sure why we should allow protesters what we would not allow the ordinary citizen. Then I go a bit further and think about licensing. I imagine that lots of protesters would say that in effect that is what they have to do now but I think it is worth saying it quite brutally like that because most protests will involve at least loitering, quite a lot of nuisance, quite a lot of inconvenience to one's fellow citizens, things that one would not be allowed as an individual, so when

30 people turn up and do it for a cause it does not wipe away the fact that they are still being a nuisance, they are still being an inconvenience, they are still loitering, they are still doing things that ordinary people would not be allowed to do, and I do not really see why they should not go through the process of asking for a licence for that bit of behaviour. The ease of getting that is another matter.

Q63 Chairman: When you say in your memo "much protest attempts to trump representative democracy", what do you mean by that?

Mr North: Almost all the protests that I imagine we are interested in here are protests about something that Parliament has decided and to that extent it is people who have failed to persuade Parliament, to put it brutally, finding another way—

Q64 Earl of Onslow: Or has not decided. You want to persuade Parliament to do something or to undo something?

Mr North: Animal experimentation, hunting—you can run down the list of things about which people are routinely protesting and which are up for discussion and they are things that Parliament has actually decided after a lot of very careful discussion. If people were protesting about being excluded from Parliament on a franchise thing, historically there are all kinds of things that make a difference, but in our society we can say the kind of protests that we are interested in in a meeting like this would be protests about matters that, frankly, have been decided in Parliament. Almost always it seems to me the direct action or the protest takes the form of upstaging Parliament. That is kind of what it is about. It is saying ordinary democracy has failed; we will reach for this other thing. That is especially true of anything that you might call direct action or non-violent direct action.

Mr Dear: I wonder how that relates to Brian Haw sat opposite here because Parliament did make some decisions about that that were challenged and I think the right to protest and the right to dissent should be protected as much as is possible in a democratic society. For any restrictions that are put on the right to peaceful protest the bar should be set incredibly high for those restrictions to be put, and even where

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restrictions are put there should be able to be a public interest argument just as there is in so many other cases about why those restrictions are wrong.

Q65 Chairman: Building on what you said, one of the ways that people can bring to the attention of Parliament an issue is through protest. As the Earl of Onslow says, it may be because Parliament has not done something and they are trying to persuade Parliament to do something. It is a way of bringing it to our attention, surely?

Mr North: That might be true in theory but in practice the issues which are being discussed are hugely well-aired. You might argue that protest does two things habitually: it shows a degree of passion which Parliament might not have noticed lies behind some wing of this argument; and in mass protest it can show a quantity of people when it is one million people on the street. We have got to be rather careful with passion. It is an overdone commodity and overstated in our world and not in any case ignored by Parliament when read in a letter to an MP. You do not have to shout it through a megaphone.

Q66 Lord Lester of Herne Hill: I am just trying to understand exactly your evidence, Mr North. To take a practical example, where Parliament in three days and nights passed the Commonwealth Immigrants Act of 1968 which took away the right of 200,000 British Asians of East African origin to enter and live in their only country of citizenship. The debates were full, the law was passed with a commanding majority in both Houses, so the legislator had done its work. Are you saying then that because of that those who demonstrated saying that this was a gross act of racist oppression against a vulnerable minority should have fewer rights of protest because executive-controlled Parliament had spoken and decided the issue? Is that your evidence?

Mr North: I do not remember the case and I do not remember the protest that it produced.

Q67 Lord Lester of Herne Hill: The protest—if I can help you—Enoch Powell and Duncan Sands were on one side and the dockers were with them making strong protests against black and brown people being here at all, and on the other side there were people like me who were protesting that this was an unconscionable and arbitrary piece of legislation which should be resisted. You could take a more recent example and I only give that one because I remember it so clearly. What is your position then when you have got strong passions on both sides and the executive-controlled legislature does what the Government wants but what the Government wants happens to be in gross violation of fundamental rights, as held by the European Commission on Human Rights subsequently?

Mr North: In my world out of the two chunks of things I have said today, you would have written a note to Westminster or whatever and got a licence to have your extremely noisy protest, and that is fine. I agree that me saying that you can get a ticket to go and do your protest might sound at odds with me having taken the position that most protest most of

the time is trying to trump Parliament. If you felt strongly that Parliament's three days was not enough that would be fine but it would hardly equate with any of the situations we are dealing with here when discussing climate change or any of the other things about which protesters are currently banging on about almost as vigorously as the politicians are. None of the cases which are in current play are, "Oh dear, Parliament did a quick thing in three days and three nights." Even if they had, you can get a ticket and do your protest.

Q68 Lord Lester of Herne Hill: What I am putting to you is something rather different. What I am putting to you is in John Stuart Mill terms a case where there was tyranny by the majority on a minority and where of course Parliament has done its job but what its job has amounted to is a tyranny in the name of the majority. Is that not then an important example where standing up for unpopular minority rights through protest is one of the keys to any democracy worthy of that name?

Mr North: Yes I get it exactly and I take and share and have spouted plenty of times in my youth the kind of thing that you have said and it is a fair thing to say. I say that in the modern world in which we happen to live with the protest that happens to be going on, I would be a little more severe on quite a lot of the protest I see in front of me. I do not at all resist—in fact I rather approve—of the idea of people having to get permission to do it.

Q69 Virendra Sharma: Given your own experiences of protests, do you think that an acceptable balance can be achieved between the rights of all those involved in protests (ie protesters' targets/victims, police, journalists) and the affected public?

Mr Gay: I think you can entirely if the protest is legal. I think if protests are legal and are peaceful then you start at a very different basis. Many of the protests that have been targeted against myself and the company I have worked for for the last five years have been associated with illegal acts, with harassment, and violence, so that is slightly different. My experience is not the norm, if I can put it like that. Most protests in the UK thankfully might be exciting, they might be noisy and they might be all sorts of things but seldom do they get violent. The protests that have been focused on me have been violent and so my experience is extreme, but I believe that the right of protest can be absolutely upheld and the rights of the protestor and the protestee, if you want to put it like that, can be upheld—as long as the protests, as I say, are peaceful and legal and as long as the rights of the protestee are held up. Sadly, in the past ten years, certainly where I have been looking at this area, the rights of the protestor tend to have subjugated the rights of the protestee at times. I think this has changed as police forces have got used to the European Court of Human Rights and the Act that came in in 1998. In my experience the police were initially far more concerned with the rights of the protestor and not damaging those than actually supporting the protestee.

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Mr Dear: I think those who were arrested in Whitehall for reading out the names of the Iraqi War dead might have a different opinion of that and I am slightly worried by the disdain that there is for the radical tradition of protest and in some cases civil disobedience amongst the right to protest. Certainly the poll tax was passed by Parliament and there were some very large demonstrations, there was civil disobedience, there were people taken through the courts but there was a means of protest that was generally recognised. Of course within that protest there were some people who stepped over legal lines and they were dealt with properly by the law. In terms of that balance, I obviously come from a slightly different position, as to whether you can balance the right of a protester and protestee. Representing the journalists who cover those protests, there is a third party if you like, in a lot of these situations whose rights are being infringed to a large extent, increasingly so, and that balance that is needed is not being achieved. We have an ever-growing dossier of complaints from journalists and photographers, ranging from physical attacks to intimidating surveillance, confiscation of equipment or data cards, denial of access, restrictions placed on photography in public places. If dissent is criminalised and even covering dissent is criminalised, just because a demonstration may be unlawful it does not mean that it is unlawful for a journalist to cover it, and what we are finding is that we are being caught up in the debate about whether this or that protest is legal. That is a matter for other people. The right of the journalist to cover that protest is enshrined in lots of different pieces of legislation but that is being infringed and I think it is important that we remember that when we talk about rights around protest.

Q70 Chairman: You mentioned civil disobedience as being part of a long tradition but the long tradition I recall, certainly when I was a student, was if you got involved in civil disobedience, you got arrested, you were prosecuted and you paid your fine and that was it, that was the penalty for getting involved in civil disobedience and you knew what the consequences would be. Do you think that position has changed?

Mr Dear: My view of it has not. My view is that it is still legitimate civil disobedience and you pay the penalty for it. There are cases where you argue a public interest defence. For example, those who have broken into somewhere and then go to a court and argue a public interest defence. Some they win, some they lose, but they accept the consequences of their actions, and it seems to me the democratic part is drawing up what the consequences of those actions are. People then make informed decisions themselves about whether or not they believe something is so tyrannical that they have to act on their conscience and then pay the consequences for it.

Q71 Earl of Onslow: Is it not interesting that we have had three really major demonstrations in the last ten years, the poll tax one, which in effect did cause I would suggest the downfall of Mrs Thatcher and it

caused a change in the law even though the poll tax had been the key element of the 1987 Manifesto on which the Conservatives were elected, so that did change Parliament's mind; there were one million people who demonstrated against the Iraq War and Parliament paid not a blind bit of notice; and there was quite a lot of people, myself included, who demonstrated not once but twice to say, "Please, Parliament, do not pass such a silly Act of Parliament as the Hunting Act," and Parliament did. It seems very interesting the different effects that different demonstrations have upon Parliament and the legislative procedure.

Mr Dear: Having spoken at two of those three demonstrations—and I will leave you to guess which one I was not at—

Q72 Dr Harris: Tally ho!

Mr Dear: --- I was delighted at the outcome of the poll tax one and disturbed that one million people could march against the war and effectively be ignored by Parliament. However, that is an individual belief. I had a right to go out and protest there. I had a right, just as you did, and that is a right that I think we have to do everything possible to protect.

Q73 Chairman: I think Richard wanted to come in there.

Mr North: Only to say that those three protests were all perfectly legitimate so far as I have understood it, with the poll tax protest having a violent fringe. There is a fourth case you might say which was more peculiar where in the May Day riots, or whatever one calls them, it took a while for the police to get it across that there was a huge, perfectly legitimate, union-led anti-capitalism thing going on which anybody was entirely welcome to join, and it was big, and the other one that got the attention was illegal because the organisers refused to do any ordinary public order co-ordination with the police. It seems to me that mass demonstrations are the least of our problems. There is a long tradition of managing them perfectly well. They vary a bit according to the degree to which violent elements attach themselves to them but 90% of them are uncontroversial. I would just say about the reading of the roll call and Mr Haw, the reading of the roll call of the dead in Whitehall, if that is what it was, I forget the details, is problematic, like the Fairford Coach incident is problematic, because whilst my position is that you might well need the powers to stop such things happening as the state you have got to be incredibly careful when you deploy them because their capacity to produce myths for the dissidents, as it were, is enormous, so the state has an interest in being careful in the use of what I think probably have to be in the background quite draconian powers.

Q74 Virendra Sharma: What level of disruption do you consider to be acceptable in order that people can peacefully protest?

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Mr Gay: I think the level of disruption again depends entirely on the target of the protest. If the protest is legal and peaceful then there is disruption which is just blocking roads and things like that for a large protest. When it gets down to small protests and individualised protests and things like that, that level of disruption, again if it is focused on small organisations or single people, it can be harassment, it can be intimidation, it can be whatever, but I think at large protests there is bound to be disruption and that should be facilitated, absolutely, so not necessarily facilitating the protest but facilitating the route of the protest for example. I have no problems with that whatsoever and I would support that entirely. When the focus of the protest is not against a piece of legislation or is not against Parliament and the focus of protests gets much smaller and much more specific, such as the protests that have been directed at me, then certainly the rights of the protestee should be held much above the protestor.

Mr North: My experience is nothing like as fierce as Andrew's but for a while I was interested in the harassing protest which was directed at a fur shop and I took it upon myself to put myself on the inside of that fur shop for several weeks. The police had the difficulty that the protest might have seemed rather low-scale, not many people doing not very much, but the fear that was induced was tremendous in the people on the receiving end of it, not least because they had no idea who might follow them home. That to some extent has been dealt with. The situation we are discussing now is much better from the protestee's point of view than it was about six or seven years ago, by which I mean that it is harder to bring vicious pressure to bear with the level of intimidation on people now than it was.

Q75 Dr Harris: There is an interesting question about this threshold. I just wanted to ask a couple of questions, Richard. Firstly, you have made this distinction between protest and non-violent direct action and I was just wondering how your hierarchy worked because you like the idea of a hierarchy of violence, with threats of violence against people, harassment, and then damage to property as being perhaps on one side of a threshold but mere trespass, padlocking yourself or gluing yourself to a railing (which is more likely to damage you than the railing) on the other side, but you have not in your written evidence defined what you think is the direct action that you think would fall on the other side of this rights balance. Can I invite you to also address the point that you say that non-violent direct action aims to force change rather than to win arguments but actually would you not say, particularly if it is non-violent, that it is to gain publicity to win arguments. Often the Government has no problem getting things in the press and there is a power mismatch on publicity so non-violent direct action to get publicity is not trying to force change, is it, in the way you suggest?

Mr North: The morphology of protest, which if I were an academic I would have worked up in a nice sophisticated way, is tricky because for instance what protesters have done in the way of damage to

genetically modified trial crops is ordinary trespass and a bit of light damage and, ostensibly, it is not much damaging a crop. If it happens to be a research crop and you do two or three of them, you begin to make it arguable that that research operation has to stop. I use that example because it comes to mind to show why doing these morphologies is so difficult. Property damage is not a problem compared to damage to people, et cetera. These things tend to break down in the face of cases.

Q76 Dr Harris: I am agreeing with you.

Mr North: That is why I am not beautifully systematic about these things.

Q77 Dr Harris: I am asking you if you would make a distinction between damage to property (and I would include crops and buildings as well) on the one hand, as one form of direct action, and trespass, padlocking or gluing yourself to things as another form of action as lower.

Mr North: Lower/higher—padlocking yourself such that a motorway cannot get built strikes me as a really useless and irritating thing to do which costs the state a huge amount of money, there having been an inordinate amount of democratic agonising about whether the motorway should happen. It is all cost there. It looks jolly pretty. Elderly ladies remember their youth and go out with cups of tea and everybody feels good about it, except it costs hundreds of thousands of pounds and nothing is achieved. I think, frankly, there are better things to do with £100,000 than indulge these Leveller fantasies in people and I would be a little tougher with them because I care about the £100,000 and the waste of effort. I am extremely keen on protest and I am really rather down on direct action. I am almost as down on it when it has got the words “non-violent” written in front of it. It might be worth trying to say briefly why. Direct action is action and it is direct action and it is designed to force change. That is kind of in the meaning of the words and there are theatrics there because these people know they cannot force change and yet they are in a game of play-acting at the very least and sometimes more as though they could.

Q78 Dr Harris: To get publicity.

Mr North: It is not direct speaking, it is not clever speaking, it is not lovely argumentation; the words are direct action and what they play with is the charmingness they know they will be met with as they pretend to go out and force things.

Q79 Dr Harris: Would you respond to my point that the theatrical, non-violent direct action I am talking about is that which is designed to get publicity where there is a mismatch in power with regard to publicity and it can serve a social good in a democracy because otherwise the powerful just steamroller through, so the motive is not to force change but to get publicity.

Mr North: The getting of publicity for causes is great and there are lots of ways of doing but in none of the cases we are thinking about is there a great steamrolling state and these brave scruffily-clad

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peasants standing in front of the behemoth. Climate change, hunting, animal research—go through the list and they are controversies but there is not a state behemoth crushing the peasant.

Q80 Lord Lester of Herne Hill: Some years ago I did a case for the Chief Constable of Sussex where animal welfare protesters were protesting about the export of live animals to the Continent and the Chief Constable had to balance the right of the protesters, who sometimes would themselves board lorries in order to stop the lorry or cut the brakes or do things of that kind, on the one hand, and the right of the exporters to export their goods alive and in circumstances where animal welfare people regarded the whole trade as perfectly deplorable. The Chief Constable had to balance these conflicting rights and interests using the principle of proportionality and the principles in the European Human Rights Convention, and the House of Lords basically upheld that approach. Is your approach different from that? Would you say because they are using direct action in running beside the lorries and trying to stop the lorries getting into the docks at Shoreham and so on that they should have been forbad altogether from doing it? Are you saying that the Chief Constable was right in allowing it to happen in a controlled way provided the principle of proportionality was observed?

Mr North: I do not see that the Chief Constable had much choice but to balance the realities in front of him.

Q81 Lord Lester of Herne Hill: He could have banned it altogether.

Mr North: Now you will hear documentaries on the radio which are a little more worried than anything one heard at the time about the treatment of the people who were running the trade at the hands of the protesters. That is a narrative, if you like, which is emerging much more than it used to about what happens if you are on the receiving end of this passionate protest. I am not sure that politically anything very good came out of that protest.

Q82 Lord Lester of Herne Hill: I am not asking that question; I am asking you a different question, which is so far as the law is concerned do you think that the balance which I have indicated to you, as approved by our Law Lords, between the rights of the protesters on the one hand and the rights of the exporters on the other, using the test of what is proportionate, was the correct approach or do you quarrel with the law as it stands?

Mr North: I am very loath to quarrel with their Lordships when they get going, they are far too clever and experienced and wise, but I am inclined to think that that protest was allowed to go too far and I think that the liberal attitudes that assumed that that kind of protest really must be accommodated at all cost is not nearly as sound as people suppose, and I would not mind if we adjusted it. I can easily imagine that that cultural change, which I think we ought to have, could result in a legal change which

would mean that that chief constable could have stopped that, yes, so I suppose I am on the illiberal side.

Earl of Onslow: As I understand what happened the chief constable was given the discretion as to whether to act or not because he was balancing one of two protests. I thought I heard you say you agreed with that. As I am listening to what you are saying, and it is a view with which I have considerable sympathy, the chief constable actually took the wrong decision which is rather different from him having the right to take the decision. In other words, those people should have been stopped because what they were doing was extra-legal in that they were really harassing somebody else.

Lord Lester of Herne Hill: Let me just explain because it was a case I was in.

Q83 Earl of Onslow: This was the veal exporters. Was it not?

Mr North: Yes, Shoreham.

Q84 Lord Lester of Herne Hill: Let me be absolutely clear. What the case was actually about was whether EU law and European Convention law led to a conclusion that there could be no interference with the lorries of any kind because they had a right of property involving carrying on their business, or whether the right answer was to impose restrictions on the protesters that would allow the exports to take place but also allow the right to protest as well, and that is what they meant by the principle of proportionality. I am not sure whether you are saying you regard that as some kind of liberal attitude which should be changed or whether you say that is actually the right approach.

Mr North: I was responding to you that on those two remarks I would say, yes, I think there is a strong case that that protest should have been bannable.

Q85 Chairman: Andrew, you wanted to make a comment and then we will move on.

Mr Gay: I will make a comment that there was the right to protest there and the protesters did protest, and the hauliers—whether you agreed with it or not—did manage to conduct their business. But I do think there is the context of that and one of the things that is important—Richard did make mention of this—is the context of that. Those hauliers were being targeted in their premises and at their homes at the same time and having to go through noisy, on occasions energetic picketing, when also those people who were energetically picketing were outside your house the night before and writing disgusting letters to you as well, puts a different context on it. It was not just a protest at the port; right or wrong, whether you like it or not, it is the context of the whole thing. These things do not occur in isolation and actually people should take a much broader context of how these things are being acted out and the real rationale that is being acted out. If it is for publicity, I have no problems with publicity, that is great, but if there is something else behind that publicity that is the real reason for things going on then it is a different matter entirely.

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Q86 Lord Bowness: Very quickly, on the latter part of the last question, we have heard a lot about the rights of protesters and a lot of the rights and considerations of the people who are being protested against; I would just be interested in actually having some comments on the record as to what your views are about how much the convenience of fellow citizens should be taken into account when policing protests, the ordinary members of the public who are not necessarily the target, they are not the protesters but they are stopped going about their lawful business.

Mr Gay: When there are protests in Cambridgeshire, not necessarily at Huntingdon Life Sciences—they could be in Huntingdon, could be in Cambridge, could be in Peterborough—certainly the local shop owners are up in arms when it happens because shoppers keep away from the town centre that day. So there is huge disruption to the running of the town, there is huge disruption to people's business, there is huge disruption to all sorts of things. We accommodate that absolutely for a two-hour walk around the town centre; is that proportionate or not? I would suggest that if you were a trader in Peterborough then you might suggest that that was not proportionate and you were losing business.

Q87 Lord Bowness: I am sure I would. I do not want to interrupt you, but how much of this should be a factor when you come to police the demonstration?

Mr Gay: It should certainly be taken into account and the routes of protests should be limited to have as little effect on the public as possible.

Mr North: The ordinary bystander convenience is not to be under-rated and should be taken into account very strongly. I think so the more because I do not think this class of protest that we are worrying about is as glamorous a feature of our lives as people suppose and going about one's shopping is.

Q88 Baroness Stern: I would like to move on if we may to some more practical questions which will not be eliciting what you think so much as what you know about policing in practice. A question which is to all of you, although you do not all have to answer it of course, is there any difference between the way that police forces deal with protests across the country and in your experience are there some forces which demonstrate good practice?

Mr Gay: Yes and yes. Do you want me to expand?

Q89 Baroness Stern: Tell us a bit more.

Mr Gay: Again, just in the context that I have experienced, when the animal rights protests kicked off in late 1999 at Huntingdon Life Sciences the local police force, the Cambridgeshire police force, had very few ideas about public disorder and how to manage these—which were intimidating, abusive, violent protests at the time, and that was occurring outside the company.

Q90 Earl of Onslow: May I interrupt there? I was on the select committee that looked into vivisection about five or six years ago and heard some of the

really unpleasant things that happened to you and it could be for the benefit of the Committee if some of those experiences were laid out. Before we went—this was before 9/11—the chief of police who came to advise us on our own security said “These people are more dangerous than any terrorist we know”—this was post-IRA and pre-Islamic stuff. It would be useful for the Committee if you could tell us some of that.

Mr Gay: I can wax lyrical or I can send you some information in the post on this because otherwise it will take a lot of time but I can certainly send you information on the experiences of our organisation. At that stage the police did not know how to handle the protesters whatsoever even though there was learning in other police forces around the country because there had been similar protests in Oxfordshire before that with animal rights activists. But the police at that stage did not seem to learn from other police forces and they acted singly and in silos. What has happened in the last five or six years is that there is much better cross-boundary co-operation between police forces, there is the set-up of an organisation called NDET and NETCU who promote best practice within police forces; that is across boundaries and things and that is working very well to improve the coverage of protests. That is for the benefit of protesters as well as those people being protested against and so there is, if you want, best practice. There is still a way to go, it is by no means a level playing field, even within Cambridgeshire for instance which has had a lot of experience of this. Certainly, there are best practice ideas out there which are being communicated and so in general it is improving, but there is a long way to go.

Mr Dear: In relation to the issues our members face there should be no difference because the guidelines on police and media are the same across the whole of the UK, whether it is ACPO or others they have adopted the guidelines. I have letters here from 48 different forces, all saying something slightly different about how they would facilitate the media, how they would place arbitrary restrictions on different levels of covering protests, but I have examples of physical attacks on journalists coming from Brighton, Nottingham, Birmingham, Milton Keynes and obviously many in London because the vast majority of the big protests take place in London. There are examples of good practice in terms of policing of demonstrations and they come about where the police in advance engage with the media, talk about the guidelines, use the guidelines as part of the training and pre-briefing of police officers so that they understand what is expected of them on the day of a major protest. Unfortunately, that happens in a very few circumstances and it needs to happen in a lot more.

Q91 Chairman: When you say physical attacks on journalists, do you mean by the police or the protesters?

Mr Dear: I mean by both. There are a number of physical attacks which I have documented, some of which have resulted in court cases where journalists

have taken the police to court, whether it is being charged by police horses or something else. Here is one from last week—this is a police officer having kicked a photographer and this is the damage that was done to that photographer’s leg. I have got a DVD of which I will supply copies to every member here that has pictures of physical assaults by police officers on journalists—pushing them over, one of them being hospitalised as a result of being pushed off the pavement in Parliament Square outside. Also, because the police try to access the pictures and information that journalists have, that makes them more likely to become targets of the protesters as well who fear that journalists and photographers may well become part of the state machinery in terms of providing information about protesters. To be honest, when I say a third party here I mean a third party, we are trying to strike a balance between the police and protesters in order to ensure coverage, whether it is veal crates at Shoreham, whether it is the Olympic torch procession, whether it is protests at the NATO defence ministers. It is not for us to decide about the protest but we have a legitimate right to cover it on behalf of citizens and that is the right that is being infringed all too often now as these clashes between police and protesters become worse. The Serious and Organised Crime and Police Act has made that worse; that is the reality of the situation.

Q92 Baroness Stern: This question is just to Mr Dear because it is about the NUJ. I understand you recently wrote to the Home Secretary complaining about surveillance of journalists covering protests by the Metropolitan Police Forward Intelligence Team. Please could you give us some specific examples of where and when this has happened.

Mr Dear: There is a whole number of examples and, again, some of them are contained on this DVD.

Q93 Baroness Stern: Can we get them on the record?

Mr Dear: The police say that they do not routinely take photographs of legitimate journalists—how the police decide who is a legitimate journalist or not I do not know because they are all carrying press cards recognised by the Association of Chief Police Officers—but they say if journalists are photographed it is “collateral damage”; that was the rather unfortunate phrase that they used.

Q94 Baroness Stern: When did they use that?

Mr Dear: This is the police saying if they do accidentally take pictures of journalists who are caught up in a public order situation it is collateral damage.

Q95 Baroness Stern: This is when you negotiate with them.

Mr Dear: Yes, we frequently have meetings with them to try to resolve these issues. It is not collateral damage when the police follow a car full of photographers, when they have already checked all their details, to a local McDonald’s several miles away from a protest site; as they are filing their stories on their laptops from there the police are

standing outside the window filming them on video. It is not collateral damage at City Hall in London where they are standing on their own chatting, an hour before a protest starts, and they are being filmed continually by the Forward Intelligence Team. There are examples of this that we have serious concerns about; we wrote to Jacqui Smith about it and we asked four very simple questions of her—who is collecting the information, what use is it being put to, who has access to it and are they deliberately targeting journalists. We got an unsatisfactory answer and were told that we would get a meeting with Tony McNulty which was due to happen this week, but of course he has been moved and we are due to meet Vernon Coaker next week to talk about the issue.

Q96 Earl of Onslow: Do you think you will be locked up? Can we have a copy of the answer you got?

Mr Dear: Yes, we have a copy of it here, I can make that available to you.

Q97 Chairman: The full exchange of correspondence would be helpful.

Mr Dear: I will make that available to the Committee. What we are seeing is a group of journalists who regularly cover protests being stopped and searched, way away from the protest, being photographed, having information recorded about what they are wearing, where they are going, who they are working for and so on, and it is creating an intimidatory atmosphere that means people are less likely to go out and cover protests. If we are all saying that publicity is one of the reasons for protest, actually what the police are doing here is undermining that freedom of the media and the ability of protesters to be able to get their message across via the media. So there are lots of different examples of it and it has become an increasing part of what the Forward Intelligence Team are doing. We are putting in some Data Protection Act requests around a number of journalists who regularly cover these kind of events, whom we know have been filmed and we know that photographs and video exists of them, in order to try to find out some of the answers to the questions that are not being answered. One person has already done this, a *Sky News* journalist, and they got back a file that says at the top of it “Investigative journalists”. If it is collateral damage and these are deleted and it is accidental, why are files being held on investigative journalists? We do not know the answer to that but we would like to know because it is acting as an intimidation of those who investigate a whole range of different issues and who cover protests.

Q98 Chairman: These are files held by the police?

Mr Dear: This one actually came via the Ministry of Defence and Metropolitan Police so this is somebody who has covered protests that were happening at the DCSI, at the arms fairs and so on who are then having files kept on them despite the fact that they have committed no crime; they are carrying out their lawful business as a journalist. The

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reasons for this are not clear and nobody is answering that question, despite the fact that we have been asking it for a long time.

Q99 Mr Timpson: Conversely, looking at it from the journalists' perspective, where there may have been an uneventful protest and where you have had a dialogue with the police, you have managed to come to an agreement beforehand which has meant that the thing has passed peacefully from the journalists' point of view, is that the exception rather than the rule or is that something that is becoming more likely or less likely?

Mr Dear: It is becoming less likely to be the case, but that does not mean that the demonstration has to be peaceful for it to go all right with the journalist. Demonstrations can turn violent but journalists are still able to do their job in covering that. What is increasingly becoming the norm is the kind of low-level intensity of it, the hand over the lens, the pushing you away, the moving you away so you cannot take a photograph of what is going on. A lot of these are things that individual photographers have sent into me and they literally say it is an almost weekly occurrence now when I am out photographing on the street. It is also the restrictions put on what you can and cannot photograph. I noted some down while I was sat outside: the London Eye—someone has been arrested for photographing the London Eye—if we arrested everybody who photographed the London Eye we would have to build an awful lot more prisons—traffic police, Brighton railway station, a traffic accident, an incident on Tyne Bridge and the switching-on of the Christmas lights in Ipswich. It has become so arbitrary and so commonplace now that actually these guidelines that we all agreed to—and we sat down for ages with the police to negotiate them—are useless because the police on the street do not know anything about them. In fact, I think the clerk of your Committee tried to access these guidelines on the ACPO website; they do not exist and she had to go to the NUJ website in order to be able to get hold of a copy of the guidelines.

Q100 Chairman: Perhaps you could let us have a copy as well.

Mr Dear: We certainly will do.

Q101 Lord Lester of Herne Hill: Mr Dear, what you have just been saying I take extremely seriously and if factually it can be demonstrated I am sure you understand that the police service is in blatant breach of the European Human Rights Convention and the Human Rights Act because what they are doing is a gross interference with free speech and, plainly, has a chilling effect on investigative journalists who are the eyes and ears of the public. If that is right, what is the NUJ doing about that because you have a perfect right to take steps to protect the interests of journalists and, if necessary, to go to court. What are you doing about it?

Mr Dear: Again, in this file is a letter from our union solicitors that says the first thing you should do is meet with the Home Office and find out what

guidelines they are issuing to the police, meet with the police and put in the Data Protection Act requests in order to find out what information is being held—and this is part of a process we feel we are forced to go through now to try and protect that ability of journalists to cover protests because, you are right, it is having a chilling effect on people being prepared to go out and cover these protests. The big problem is an awful lot of legislation relies on individuals taking cases. These are individuals who already feel they are being targeted and some of them do not want to stick their head further above the parapet because when they go to Kingsnorth or when they go out on the street in Parliament Square they are out there on their own. Whilst the NUJ will take a case for them afterwards it does not stop the kind of thing that I have shown you a picture of happening on the day, and not many people want to have to go through that just to do their day's work.

Q102 Lord Lester of Herne Hill: What I am putting to you is that the NUJ itself has standing to be able to deal with this if necessary. Are you taking steps to do so as a union?

Mr Dear: Yes, we are, but what we would rather is that the Home Office were making sure that the police were abiding by the guidelines.

Chairman: We will see what you have to say about that later on as well. The Earl of Onslow.

Q103 Earl of Onslow: You suggested insufficient regard was given to using counter-terrorist powers against protesters targeting Huntingdon Life Sciences; can you explain what you mean by this? I was slightly alluding to that earlier on.

Mr Gay: That really refers to a point at one stage, again at the excessive end of protest, direct action, whatever you want to call it. Certainly, the activities of the extremists could have been defined as terrorist in nature and certainly I think their aims were to terrorise and therefore to coerce people into changing what they were doing. Therefore, if that is what they were doing, could not stronger legislation be used against them and I think it limited the police's actions and activities, certainly before SOCPA became available, in that it limited their ways of investigating the extremists and what they were doing. In that situation, therefore, the police were limited in what they could do and what resources they could put against these people.

Q104 Earl of Onslow: From what I can remember of it, it seemed to me that all the things that were described to us by your company in my previous existence were way outside the law and could have been pursued very happily had the cases been brought, even without any need for terrorism law at all. I also accept that the policeman did say to us "These people are the worst terrorists"—this was before 9/11.

Mr Gay: I take your point entirely and truthfully that was exactly our argument, should we not be able to throw extra police and law enforcement support against that, but at that stage, early in 2000, 2001, 2002, these were still seen as separate acts,

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intimidatory acts, not seen as a campaign of action, with the occasional very serious act there. If that is not then intimidatory for anybody who could be a target, they were still seen as separate acts and not seen as a campaign of activism. Our proposal at the time and our legal advice was to try and adopt some of the terrorism legislation; it was certainly not allowed by either the CPS or the police at the time.

Q105 Lord Lester of Herne Hill: A broad question to you all and then I will come to one about Huntingdon and the injunction afterwards. We know from Lord Scarman—the Red Lion Square disorders, the Brixton disorders—his analysis of the problems and the law reforms that took place as a result, and we know that there is a great wealth of criminal and civil law of all kinds available. To what extent does each of you consider that we need yet more law and if so what kind, or a change in police practice or what? A brief answer from each of you would be helpful because you all come from different points of view—perhaps we could start with Mr Dear.

Mr Dear: I am not sure that a change in the law is necessary—there are laws there that protect the rights of journalists—but what we do need is a change in the enforcement of that law and the operation of the law, particularly by the police. There should be better training of the police, so in pre-event briefing and in their actual training they should be going through the guidelines and relations with media. Better enforcement of the guidelines—I do not know whether that is possible legally but certainly contractually it is quite possible, lots of other professions have guidelines and codes of conduct that are contractually enforceable. Also there has to be a clarification of the law on the issue of restrictions on photography because at the moment Jacqui Smith's answer says in local circumstances restrictions can be imposed by the local chief constable and 48 letters to 48 forces elicit 48 different responses as to in quite which circumstances those restrictions can be imposed. That is unsatisfactory for a professional journalist, knowing as they move around the country that different restrictions are being imposed on them arbitrarily by a chief constable in a particular area, so there needs to be a clarification of the law in that respect as well.

Mr Gay: Current legislation does not need to be changed. We need to look at why and how the protests, then leading on into activism, are taking place and to see it in a broader context of what is happening. Within the current legislation of SOCPA and things like that we have the right legislation in place. We have already mentioned consistency across police forces and I think that is enormously important as well. The legislation in and around terrorism was looking at excesses that were occurring four or five years ago which have now been caught up with; I think at the time the activists and the extremists were getting away with things and doing more and more and that needed to be caught

up. We are in a different period of time now and the current legislation is fine, as long as those caveats are taken into account.

Mr North: Firstly I do think it is absolutely absurd that people can do damage to a power station or a crop and claim a lawful excuse; it seems to me completely absurd to claim that you need to damage a chimney and your defence is the damage of global warming for something which was designed to allow you to kick down your neighbour's door when his house was on fire. It is just a complete mismatch and quite absurd. I am worried that young people, protesters, people of protest mind, think they are living in a police state because they know of laws which as it were came in for counter-terrorism and such which are catching them. Therefore, in a rather illiberal way I would beg you to consider in what ways you could in fact tidy up the law in such a way as to make people feel very strongly that while simultaneously they had to get permission to do quite a lot of stuff and they had to behave themselves, and they would get into quite severe trouble if they did not behave themselves but the degree was understood, we did not think they were terrorists because they wanted to read out a list of names in Whitehall. I am no lawyer, I could not begin to do that, but I hope I have framed the task that I think is in front of you.

Q106 Lord Lester of Herne Hill: I should have asked Mr Gay a specific question before coming to the injunction which is do you think any changes in the law are needed to deal with abuses via the internet?

Mr Gay: Yes.

Q107 Lord Lester of Herne Hill: What would you say?

Mr Gay: The internet, as we all know, is a wonderful device but it also can be used to abuse, intimidate and terrorise people, especially when it gets down again to personal targeting. The difference is in the protests and the extremism that took place against myself and my organisation where these were not general protests against a piece of legislation or against Parliament or a large body, these became very specific, and why the protests I suppose became so successful in some ways was that they became personal. When things get personal it is very difficult to cope with, even at what people might consider to be a low level of activity, when it is continuous, it is insidious, it is enormously difficult to deal with. The internet just facilitates that enormously; it facilitates sending round details of the person, details of what to do, details of how to harass them, details of how to intimidate them, details of how to coerce them out of doing what they are doing. It is an incredibly powerful tool if used in the wrong hands and it is out there.

Mr Dear: Can I just give you an example of that from our own experience, and that is Redwatch, which is an extreme right wing website run by the Blood and Honour Organisation and Combat 18 that specifically targets journalists in order to try and intimidate them. It uses the internet—it publishes home addresses, photos, ways of intimidating them.

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I had a visit at my house, we have got photographers who have had their windows put in and so on—those who photograph demonstrations of the BNP or Right-wing organisations. It is an incredibly powerful tool for intimidating people and having that chilling effect you talked about earlier.

Mr North: I would like to add one thing which is, I think, absolutely core and for all kinds of reasons I think we should make it infinitely easier for anybody who wants to, to hide their home address. Publicising the name and address as a person's identity is, in the modern world, quite dangerous and completely unnecessary. It is just a thing we have got into and it exposes lots of people to a great deal of unpleasantness and worse.

Q108 Chairman: On the internet point if you believe something must be done the question is what because it is really difficult to try and decide how you can control the internet and how to police it.

Mr Gay: At certain times we have chased down websites through different ISPs and things like that and you end up in censorship-free websites in South East Asia and Russia, over which you have absolutely no control whatsoever. So it is enormously difficult but it is to get potentially an international consensus on what to do with websites because it is not national, it is immediately international and if you chase them out of jurisdiction they will go into censorship-free areas. To get a level of understanding across globally is enormously difficult, I agree.

Mr Dear: The point about it is that most of the people engaged certainly in the Redwatch website are engaging in criminal activity in other ways. Actually, in our discussions with the Home Office about tackling this it is looking at the criminality, the fund-raising, the race hate and all the other issues so that actually the people behind the website can be targeted in that way and you reduce its impact like that, rather than trying to find a national mechanism to control websites like that because, as has been said, they will simply move to another country and another domain name. So it is targeting some of the functions behind the public face of the website.

Q109 Lord Lester of Herne Hill: Can I ask you finally about the injunction? You brilliantly successfully used the weapon of the injunction to deal with the appalling behaviour that you were being subjected to. The injunction is an extremely powerful weapon because it is civil so you do not need a criminal standard of proof and because, if it is breached, there can be a contempt of court and you will go to prison and because it can cover third parties—a kind of *Spycatcher* injunction, very broad indeed. You have demonstrated that the law is capable of being very effective at using the injunction; all of that I understand. The only problem which we would like your help on is that looking at the terms of the injunction the first part one understands because it is all about stopping people from harassing in various ways, but then the injunction goes on, much more broadly, or appears to. I do not know if you have a copy of it here, if you

have not I can just remind you of it. If you look at paragraph 3 on the second or third page—do you see that paragraph?

Mr Gay: Yes.

Q110 Lord Lester of Herne Hill: When it comes to that it says “The protesters be restrained from coming into or remaining in the exclusion zone identified on the plan for the purposes of or for conducting any demonstration or protest, such zone comprising . . .” and then it lists it and then it says various things about how many people are on the exception: once every seven days, for how long and so on. That is dealing with what would normally be regarded as a lawful demonstration or protest so some might say that the injunction was over-broad in that respect and was catching behaviour that it ought not to catch whereas the rest of it was perfectly proper. How would you respond to a critic who said that—you might agree with it?

Mr Gay: Very specifically the timeliness, the numbers and the duration—which are the specifics you are talking about here—were drawn together by what had occurred in the 12 months before the injunction was agreed on, so when there was no injunction what was the level of protest so that could be continued? The example of what had been occurring before, that is what would set it up for the future and so if people do want to turn up—they used to turn up weekly, they can now turn up weekly, so we are not limiting that. You could say if they wanted to turn up twice-weekly they cannot do that; you are absolutely right to say we could be restricting it, but what it was set at was what was their activity previous to that and how then that would continue into the future. That is what it was set at.

Q111 Lord Lester of Herne Hill: Would it then be right that the safeguard—not for you but for the protesters—would again be the Human Rights Act effectively because if this was really used in a draconian way they would be able to go back to the judge and say will you vary the injunction, it is disproportionate the way it is operating in practice and the fair balance test is not operating properly.

Mr Gay: They can appeal straightaway to the judge, as we can appeal to the judge if they do not live by the injunction, so either party can appeal to the judge and I do not think either party has appealed to the judge since the injunction was made a court order.

Q112 Dr Harris: My understanding is that it is extremely expensive and risky for individuals named in the injunction to do that because of the risk of the awarding of costs, but that was not my last question. My last question was to Richard North: your original argument was that Parliament has decided, rule of law, we should recognise that and protest is a right of course, but bearing in mind that we have a democracy and a rule of law one should not go too far, but does that argument not fall down when you are not protesting against a lawful action and you are not protesting against a policy that has gone

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through Parliament; for example the visit of the Chinese premier, why should people not be allowed to protest in that area or indeed protest against other people's opinions'. Would you say it is logical from your argument to treat that with a higher threshold before you restrict their freedoms and require them to meet conditions before they are licensed? No one elected the Chinese premier.

Mr North: True. We invited him, he is a guest of the State so to that extent we might think that we want to behave in a certain way. The protesters against that visit I do not recall raising any tensions. I do not remember there being a problem with the police.

Q113 Earl of Onslow: The police reacted incredibly heavy-handed. There were people who were holding a small banner and they were really thumped.

Mr North: Throughout this afternoon so far we have heard cases of alleged and actual police heavy-handedness. In my world the police need to be

extraordinarily clever and sensitive and if they overdo things then they will get clobbered by journalists.

Q114 Dr Harris: Can you just answer my question which is do you think there ought to be a more subtle and different threshold when you are not protesting against something that has been decided by our Parliament but protesting against alleged human rights abuses in other countries?

Mr North: I wish I had a ready answer. My principle breaks down if you want to press that, yes; on the other hand he is a guest of the State so he is welcome here so far as I am concerned in that kind of way and protests towards him should be moderate, well-behaved, the ordinary protests that we automatically allow without question. People who do these ordinary protests should not be thumped by policemen, it is a bad idea for all kinds of reasons to have policemen hitting people.

Chairman: We have exhausted our questions; do any of you want to add anything to what you have said before we end the first session. Thank you all very much, perhaps we could just adjourn for a couple of minutes while we change our witness panel.

Witnesses: Mr Phil McLeish, Climate Camp, Ms Lindis Percy, Campaign for the Accountability of American Bases, and Mr Milan Rai, Justice Not Vengeance, gave evidence.

Q115 Chairman: We come to our second panel of the afternoon session, and we are joined by Phil McLeish, who is from the legal support team for Climate Camp, Lindis Percy who is from the Campaign for the Accountability of American Bases, and Milan Rai, Justice Not Vengeance; thank you all for joining us this afternoon. Perhaps we could start with a general question and start with Phil and work along. Do you agree that it is appropriate for the law to distinguish between peaceful and violent protest? Should civil disobedience or direct action be categorised or understood in some sort of different way?

Mr McLeish: The law does obviously distinguish between peaceful and violent protest and there are plenty of tools within criminal law to distinguish between peaceful and non-violent protests; the law already distinguishes quite well. What is important is that when decisions are taken about essentially what policing priorities should be, where the police should invest their time and energy, police should be concerned about violence but obviously non-violent protest should not attract police interest in the same way and should be more or less left to get on with itself.

Ms Percy: I would not condone in any way any violence, whether that is protesting or whatever. I am grounded in non-violence—I am Quaker and so that is the philosophy that I would follow. Therefore I think that there should be a distinction actually because violence is usually assault and there are mechanisms to deal with somebody who has assaulted somebody. Over the years since I have been involved, certainly, police powers and laws that

are maybe not meant to be directed at peaceful protesters—for example, sections 68 and 69 of the Criminal Justice and Public Order Act which was never meant for legal protest—have been used extensively, so I am concerned that the law is used and people are caught up in laws that were never meant for a particular group of people.

Mr Rai: Can I make a couple of general remarks before I turn to the question? The first general remark I would like to make is that I was here for the earlier session and I heard Richard North's opinion. I think that one of the problems that I had with some of the things that he said was his distinction between protest and protesters and other activities of ordinary people. My view is that protest—and obviously there is a spectrum—is an activity which ordinary people do and it is like sport or engagement in music and other entertainments, or a variety of things that people do which on occasion in certain forms causes a disruption or inconvenience to other people. So unless we are going to have licensing to go to a football match or to go to a major pop concert or things like that I do not understand the logic of requiring licensing for doing protesting as a category. I do not see that it is such a separate category, it is something that people do, and in my view protest is not coming out of a human need for entertainment or sporting activity, it comes out of a human need to take responsibility for your society and therefore you engage in a variety of activities, some of which we call protest, which are extra-Parliamentary. Another general point I would like to make is that I have a little bit of a difficulty coming to discuss this topic with you—I indicated it in my

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paper—which is that as Richard North said there is this problem of the failure of our institutions to regulate state and other powerful entities' activity. A lot of what we call protest would disappear if people—and I have not spoken to the others about this so I cannot speak for the panel as a whole or even many activists—if there was a sense that Parliament and the judiciary and the police were implementing many laws which are not being implemented or were able to incorporate into the law concerns which are very widely felt but which are not captured in our present law—for example, the concern for future generations which lies behind a lot of the issues around climate change. The most obvious example of that recently has been the decision of the British Government, with a vote in Parliament to approve of their decision, to in my view break international law by launching a war of aggression against Iraq.

Q116 Chairman: We are not going to debate the individual issues today.

Mr Rai: I am not going to debate that; what I am trying to indicate is that there is a problem in coming to you to talk about the laws around protest when for very many of the people who are engaged in protest what they see is not a problem of the disruption that protest causes but disruption for future generations, to society as a whole, to other societies caused by the activities of the Government, corporations and so on, which they are trying to remedy inadequately, generally timidly, and in a minor way, causing minor disruptions to the body of society when there are major disturbances and disruptions being caused by corporations and governments who are allowed to proceed unhindered by Parliament and the judiciary and the police. I will move on to your question unless you want to come back on that.

Q117 Chairman: I will come back on that because in your memorandum you refer to conventional channels failing to defend basic principles. What are those basic principles if they are different to what you have just said?

Mr Rai: What are the basic principles? I have referred to one in relation to concern for future generations. We do not have, as far as I understand it—and I am not an expert—a legal framework either domestically or internationally to protect the rights of future generations from the damage that we are doing to the planet. There is a whole bunch of things like that.

Q118 Chairman: Yes, that is one particular thing that you have raised; what are the other basic principles that you think would relate to our society and democracy for example?

Mr Rai: The other main example I pointed to was the waging of aggressive war.

Q119 Chairman: That is an example; that is not a principle.

Mr Rai: Which violates principles incorporated into the UN charter but not incorporated into domestic law here.

Q120 Chairman: So representative democracy is not a principle.

Mr Rai: Democracy is a principle; I think democracy is a fundamental principle.

Q121 Chairman: The other thing you refer to is failing to reflect the wishes of the majority.

Mr Rai: Yes.

Q122 Chairman: How are the wishes of the majority expressed other than through representative democracy?

Mr Rai: Representative democracy has many benefits but representative democracy also has some flaws, and the system that we have in this country is that representative democracy is restricted to the civil sphere, there is no representative democracy in the economic and financial sphere, so in that part of our lives we have no representative democracy and we only have an indirect means of influencing it via Parliament, law and so on. There is a breach of democracy in that area.

Q123 Chairman: You talk about the wishes of the majority; how are the wishes of the majority expressed, for example on the war in Iraq, other than through representative democracy? If you hold a demonstration of a million people, fine, a million people turn out on the streets but that means 50 odd million did not.

Mr Rai: If I can distinguish between two things, one of them is what mechanisms currently exist for the majority to express their view and what instruments could one imagine or exist in other countries on major issues such as climate change and making war. There are other mechanisms like referendums; there is a variety of different mechanisms that one could imagine for expressing the wish of the majority, which does not happen in our system where we simply elect an individual representative who then comes under a variety of influences to represent a particular body of people.

Q124 Earl of Onslow: Are you saying that the whole body politic is unconstitutional?

Mr Rai: I hesitate to say—

Q125 Earl of Onslow: Because that is what you have just said, or at least that is what I understand you to have said: because I do not agree with the decision that is made the body politic is by its nature unconstitutional.

Mr Rai: What I was trying to indicate is I think an argument can be made in certain cases—I am not saying universally “if I disagree with something therefore democracy has fallen down” and therefore the argument has to be made—but I think the argument can be made in a number of cases, including the Iraq war, including climate change and various others, that currently Parliament, the judiciary and the police are not performing the

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function of stopping great harm being done—I think in the case of the war without international law. Obviously there was a great debate at the time by international lawyers and I am not an international lawyer, so I am not in a very good position to give an authoritative view. But that is my view, an argument has to be made and if it can be made then there are very serious failings and I think there are very serious failings. Shall I turn to your original question?

Q126 Chairman: Yes, please.

Mr Rai: I think one can distinguish on the one hand between one axis which is about legality and the other axis which is to do with violence and there is a difference between violence to property and violence to persons—maybe there are three axes. There is a particular political space, therefore, and different kinds of protests occupy different places in that. I think what lies behind your question—and perhaps I am misunderstanding—is in what ways should the law on protest be framed to deal differently with protests occupying different positions within that space. My view is that I am not convinced that there should be any law specifically about protest. I am not a great expert on public order law and law and protests and so on—my memory of it starts with the 1986 Public Order Act—but I have yet to see a protest law which does not cover activities which are already covered by criminal law which forbids harming people, harming property or intimidating people and so on. I do not understand the rationale for laws on protest.

Q127 Chairman: Do you think the State has got any role to facilitate protest?

Mr Rai: I did raise the point of this word that was used in the remit of the discussion. I think there is a flavour to the word “facilitate” which I found a little bit difficult and the position that I come from is that protest is another human activity which occurs in society and people who engage in it should be regulated by agreed law in the same way that people who engage in sport or whatever are regulated. The use of the word “facilitate” to me tended to lean towards a somewhat paternalistic approach to policing which tended to give the flavour that protest is a privilege which is bestowed upon groups, and if that was the flavour of it I found that difficult—if there is no flavour of that then I have no problems with the word but that sense of the police as gatekeepers who grant privileges to people to carry out what in my view are just ordinary human activities which everyone should be able to engage in, subject to the controls that are political—

Q128 Chairman: What about holding the ring when there is a counter-protest?

Mr Rai: Absolutely, the police do have a role, as was discussed earlier, in balancing the interests of different parties in a particular situation—that is what happens and I think that protests and counter-protests both have a right to exist which should be protected in so far as possible.

Mr McLeish: Can I say something about facilitating protest? In my case this is something which has become more and more common—the police will come to people on a protest and say “Hello, we are here to facilitate the protest” and very often it is not necessarily helpful, and facilitating a protest will often mean trying to micromanage it, so if you are standing on the side of the road the police will want to put you behind a pen so that passers-by can look at you in a contained—

Q129 Earl of Onslow: What is unreasonable from the police’s point of view about asking you to stand back off the pavement so that somebody can walk down the pavement on their daily business?

Mr McLeish: I was not suggesting that they stand back, but obviously if you are conducting a protest on the street you want to engage with and interact with members of the public. The visual aesthetic effect of being placed behind a cordoned-off steel cage is that members of the public walk past and they think either these people are obviously dangerous like animals in a zoo, they need to be caged, or they think they are obviously some kind of odd bunch, I will just carry on. It does not enable that kind of interaction. For example, if you want to organise a march in my experience no one nowadays actually believes, no one understands, that there is a basic right to organise a march and that your duty under the public order legislation is to notify the police. I noticed this at a meeting recently to organise a march at Climate Camp—everyone thinks that you have to ask for permission to march and when I explained that actually the law is framed so that all you have to do is notify the police, no one really accepts that or believes that and invariably conditions will be imposed on the march which are impossible to challenge because the way the law is framed is that if a police officer reasonably believes that there may be a serious disruption to the life of the community a condition can be imposed. Frequently these are more for the convenience of the police in managing their time or their work schedule, I believe, or in any case in my impression are designed to simply enable the police to manage things as best they can. When you have a march at least nowadays—this was not the case ten years ago—the police will want to overload the march with police officers so a typical ratio now between police and protesters could easily be one to one which, again, ten to fifteen years ago was never the case. The other striking difference is that it used to be a rule of thumb that protesters would slightly exaggerate how many people go on an event and the police would slightly downplay it, and you always assumed the truth was in the middle. Now we have an odd state of affairs where police and protesters are essentially colluding in over-egging the figures because the police are obviously trying to justify their budget. For example, at Climate Camp freedom of information request figures now suggest that £5.9 million was spent on that protest, which is something like £4,000 per head—a lot of these people were just going to attend workshops in a field. You have got a situation where the police, having

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committed resources like that, have got to pretend that there is something to police. It is very different to the 1980s where you had armed battles on the streets and public order policing meant that you were actually there to ensure public order. Ten to fifteen years ago demonstrations would have a couple of bobbies on the side walking along the demonstration and the riot vans would be parked around the corner; nowadays the police will swamp the protest, not necessarily carrying shields but sometimes with helmets and certainly with their jumpsuits—they swamp the protest with riot police. Again at Climate Camp there was a striking example where there were 23 people stood at a fence, lots of them looking like hippies basically, playing guitar and singing; you looked across and there were two or three rows of police armed with truncheons, shields, helmets, ready as if to have a riot. Initially I was shocked, saying, “How can you believe there is a threat there?” Then, of course, you realise it is nothing to do with that. It is either psychology, just trying to intimidate people, or it is simply they have got the stuff, they have to pretend to use it, otherwise the budget is going to get cut and they will not have this part of the police force functioning any more. In any event, this kind of micro-management and total overcontrol of protests is a death of a thousand cuts.

Q130 Chairman: We have a lot of ground to cover, so if you try and keep your comments as brief as you can.

Ms Percy: Yes, I would like to add to what has been said in that I would like to state straightaway that protest is always going to upset somebody, that is the nature of protest. It is one of the ways to show Government or whoever you are protesting against or at what you are concerned about. It is also, why do people not protest? You talked about the majority of people who did not go onto the streets of London. I think it is a complex issue as to why people do not, perhaps the culture of this country is we just do not unless we are moved or personally affected. For example, the demonstrations at Brightlingsea, people got onto the street who had never been involved with protest and, indeed, the Iraq War. With regard to facilitating protests, it is actually the duty of the police, it is based in law to enable protests. I am involved specifically with bringing public scrutiny and awareness to the whole question of the American visiting forces in this country, their roles, functions and what they are doing. We have found out something of what they are doing which is deeply concerning. Richard North said earlier that it is the will of Parliament, people should accept that if Parliament debate something and they have come to a majority decision, then that should hold. The trouble is more and more that some of these issues are not even debated in Parliament, certainly not even voted on in Parliament and I am thinking specifically about the American Missile Defence System. It was just announced in Parliament that permission was going to be given to the American Government to use two specific bases in this country, Menwith Hill and Fylingdales. Phil talked about the amount of police

that are used; I think there is a difference in my experience between policing at American bases where the American authorities are behind the policing of these demonstrations. Some of these demonstrations that we have are very small.

Q131 Chairman: What do you mean by “behind”?

Ms Percy: I suppose you can never quite prove these things, but the American authorities are in control and occupation of at least ten bases in this country and we would argue that the British Government is actually out of control of what goes on in these bases. Also I would like to bring in the special relationship that frankly is so special that the Americans—

Q132 Chairman: That is not for today, I am afraid.

Ms Percy: No, but it is also there in the centre. There is this overemphasis and overpolicing of demonstrations. In our experience the surveillance, the videoing, yes, the waiting in vans for just a few demonstrators is quite absurd and over the top and it is increasing. It is very concerning that increasingly civil liberties are being eroded in a very sort of insidious way actually and I could provide the Committee with specific examples of this.

Q133 Chairman: A slightly different question. To what extent should the state be involved in policing or dealing with the question of protest on private land or what you might call semi-private or semi-public land, like a private shopping centre or something like that? Phil?

Mr McLeish: Obviously the police should intervene if there are criminal offences likely to be caused.

Q134 Chairman: Should we permit protest on private land?

Mr McLeish: If people are breaking the law, then the police have a power and a duty to intervene. If people are not breaking the law, then basically no. I think civil matters should be dealt with through civil processes. What we have seen, and my experience is focused on the experience of Climate Camp over three years, is that on each case the overriding strategic objective of the police—and this is an impression based on what the police are doing and what it seems to be trying to achieve—was to prevent any breaches of the private property of, in turn, the Drax power station in Yorkshire, BAA’s office in London and Kingsnorth power station. Essentially, the police are functioning as private security guards to the companies concerned.

Q135 Chairman: If private security guards had been there to stop you getting into the BAA office and there had been a confrontation, what then?

Mr McLeish: It is difficult. You do not want to be a conspiracy theorist about this, but from the point of view of direct action being effective, if people had got into Kingsnorth power station and private security guards had been pulling them out, there would have been media coverage of those people who are trying to stop a new coal fired power station being built being manhandled and pulled out of a power station

by those people who are trying to increase our carbon emissions and that would have had a powerful symbolic significance. Eon, the company behind this, would have been well in the middle of the frame. By keeping Eon out of the picture and having media coverage of protesters scurrying around fields being followed by helicopters and armed police, it conveys a very different message.

Q136 Chairman: Do you think you have the right to protest inside Kingsnorth or BAA's offices? Do they have the right to stop you doing that?

Mr McLeish: Obviously anyone who breaks the law, myself or anyone, can expect that they can be prosecuted and there are crimes connected with, for example, disrupting work on private land, there is a crime of aggravated trespass. If the nature of the way you are behaving inside the site was to cause fear or concern to people who are working there, there would be public order offences you could be charged with.

Q137 Chairman: That is not the question I asked you. Do you think you have a right to protest inside these places?

Mr McLeish: In a legal or a moral sense?

Q138 Chairman: In a legal sense or a moral sense.

Mr McLeish: In a moral sense then certainly 50 years down the line, if it comes to that, the people who are building Kingsnorth power station or the civil servants who are making an expansion of fossil fuel burning go ahead at the moment will be regarded by history the way that we look at the civil servants who carried out the Holocaust.

Q139 Earl of Onslow: How sure are you that you are right on that?

Mr McLeish: If you look at the science—

Earl of Onslow: I have looked. The world temperature has not increased for ten years and there is more ice on the Arctic ice cap this year than there was last year. Are they signs of global warning?

Lord Bowness: It is not the issue.

Chairman: We are not debating global warning.

Earl of Onslow: I agree.

Q140 Chairman: Global warming is off the agenda. We are trying to get to the issue of debating the right to protest. Do you think you should have a legal right to protest at BAA offices?

Mr McLeish: I was talking about a moral right, obviously the law—

Q141 Chairman: Do you think you should have a legal right if there is not one?

Mr McLeish: What I think should happen, what I would be happy with, would be that pre-emptive action by the police basically to function as private security guards of corporations would not happen. What would happen would be that the police would arrest people who break the law, charge them and bring them to trial as they do when they are policing crime in the cities, when they are policing any other form of crime basically rather than think of protest

as a special kind of activity—I completely agree with what Milan said—that has to be dealt with as a pathological form of behaviour. It should simply be treated as a normal activity.

Q142 Chairman: That is not the question I asked you. Do you think you should have the legal right to protest inside those private property premises?

Mr McLeish: There is the legal right as in a right which is not prohibited by criminal law. There is a right to walk over a fence provided you do not cause any criminal damage and trespass on someone's land, they can then sue you for trespass and use force to evict you. That is a tortious act, it is not a right in a criminal sense. It is an activity which can happen.

Q143 Chairman: I am sorry, let me take it one stage further, then we will move on. Supposing you have got the BAA offices at Heathrow Airport, you want to get inside, you say it is okay for private security guards to prevent you getting access?

Mr McLeish: Yes.

Q144 Chairman: That ends up in a confrontation, a punch-up. Would it not be better for the police to do that to stop that happening?

Mr McLeish: The police can do that. If the police take a view that the situation on the ground suggests there may be a breach of the peace, they already have the power to act to stop that. The problem is at the moment the police just take a default attitude relying, were they ever to be challenged in the courts on this, on their powers to prevent a breach of the peace. They take a default attitude no trespass can happen. I have heard police officers say when I asked them at Heathrow why they are hitting people, why they stop people, why they cordon people into a group and did not let anyone go in or out of the crowd for several hours, they said, "Well, people were attacking the building. I said, "What do you mean?" "The building was attacked", and I said, "What do you mean?" "People were trying to get in". From the police point of view clearly any kind of trespass in their kind of functioning would amount to a breach of the peace. This is totally different from the way it was, as Lord Lester was talking about, in the 1990s with the veal exports or anti-roads protests. In that period the police were happy to show up and keep an eye on what was going on. If there was a suggestion that the peace might be breached or if people were committing crimes, they would arrest people, that was their duty. They did not see their duty as squashing protest before it got off the ground, making sure that any form of direct action was completely ineffective and stopping the issue getting effective media coverage. That was not their role.

Q145 Lord Bowness: Chairman, one very brief question to follow up on your question, which with respect has still not been answered. Mr McLeish, you are making totally heavy weather of this. It does not really matter what the police think or you think in answer to the Chairman's question. The question is, should you be able to protest on private land?

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Mr McLeish: Yes.

Q146 Lord Bowness: A very simple example would be in the past you could march down the high street, that would have been on public property being policed in the normal way. If, however, the centre of the town is in fact a privately owned shopping centre where people have various interests, do you think you should be able to protest in that shopping centre or not, notwithstanding that it is private land? It is really just a very simple question.

Mr McLeish: Essentially I do, I think the right to protest should be protected whether it is on private land or public land.

Q147 Earl of Onslow: You reckon that it is reasonable to disrupt others following their lawful business?

Mr McLeish: That would lay you open to a potential charge for aggravated trespass, so it would not be lawful.

Q148 Earl of Onslow: Yes, but demonstration on private property in private property by its very nature disrupts people going about their lawful business.

Mr McLeish: Yes, and there are laws—

Mr Rai: Could I please come in since I referred to quasi-public space in my submission?

Q149 Chairman: Briefly, because we have got a lot of ground to cover.

Mr Rai: I think there are two questions. One is about quasi-public space and my feeling is that there is an analogy here with the footpaths. Footpaths were laid down, common land was privatised and the people of this country defended their right to use footpaths as a public space. There are spaces which became privatised which have been used for communal purposes and there should be legal recognition. Liberty have set out a number of criteria for recognising quasi-public spaces which have a public quality to them that should be recognised within which people should be free to undertake a range of activities such as protesting. I think that is perfectly straightforward. Liberty have made a very good case on that. It is not saying on any private property whatsoever that, we are talking about quasi-public property and that is a different thing. On the question you asked first of all about should you have a right, this is why I opened with my general remarks because we come into a difficulty. What should happen is that the police should be arresting climate criminals, that is what should be happening. Now we are not in that situation. I have one sentence to say.

Chairman: I am sorry, we are not going down debating the issues. We are debating the issue of the right to protest.

Q150 Dr Harris: I have got a slightly different question.

Ms Percy: Could I not just—

Q151 Dr Harris: You will probably have a chance, but we have got to get through some of the questions.

Ms Percy: We were all asked, though.

Q152 Dr Harris: There are a lot of questions and I have got some for you as well. You will lose the chance to answer those because we are over time. I want to ask something that was dealt with in the earlier panel, which is that there is clearly a distinction between violence to people and damage to property. Do you see a distinction between civil disobedience that does not involve damage to property and damage to property actions, Lindis?

Ms Percy: There is a distinction. We would not participate in any action that was potentially going to harm somebody, but I have to say also as an example that when you have a law, the Military Lands Act, many of these acts are invalid and we cannot get them to court because the police will not arrest so we can bring them to court. I think taking down a by-laws notice, which is potentially criminal damage, is quite justified.

Q153 Dr Harris: I am talking about damage that wrecks someone's livelihood. Would you be loath to see that excused even on the basis of lawful excuse?

Ms Percy: Yes, I would.

Q154 Dr Harris: I have read—I am sure we have all read—the evidence from the Climate Camp that you provided and indeed your evidence, Ms Percy, about CAAB and so forth. I have had a number of constituents complain to me—it is Oxford after all—about what they describe as overpolicing of the Climate Camp. You have identified these problems of overpolicing, searching, filming, pretending to require names and addresses to be provided and sudden changes to previously agreed conditions and routes. Do you see any way that this can be overcome without change in the law? In other words, do you think there is good practice out there, it is just individual police officers, or do you think we do really need to change it from the top down or through law, briefly, any of you?

Mr Rai: Could I say something briefly which is that I think one of the things which any criminal lawyer and protestor knows is there is a boundary to what the law says and there is what the police actually do, which is beyond that. I think what we have is a vast body of law which is basically telling police protest is bad, it is a problem, and I see no justification for that protest law. We have laws to control unacceptable behaviour, whether violent or whatever, and personally I think we should roll back laws to control protests.

Q155 Dr Harris: You have said that already. I am asking, is there anything that we can do about this? In other words, have you been able, Mr McLeish, to take cases and I think you are in the process of

taking cases? Are you hopeful that if the police have to apologise enough, provide enough compensation and lose cases they will learn your point of view?

Mr McLeish: The way I see it is it is very difficult. This is not like Southall in the 1970s where you have got a small group of police becoming very ill-disciplined and beating someone up on a street or killing someone, it is not like that. What you have got is hundreds of really petty incidents which cumulatively make going to a protest extremely unpleasant, potentially frightening or worrying and then the only way to challenge it would be hundreds of really petty complaints about different issues. It is very hard for them to be aggregated so, for example, say the police have seized lots and lots of people's property and there are lots of situations where you could have a good claim to go to a local county court and say, "I am going to sue you for trespass of goods. You had no lawful basis for seizing my property", but in most cases—

Q156 Dr Harris: It is not practical?

Mr McLeish: --- it is not practical.

Q157 Dr Harris: Is there any complaints procedure, IPCC, anything like that, which is of any use to you after these situations? I know it is after the fact.

Mr McLeish: We are frustrated by the ineffectiveness of it. The remedy which does work quite well is if you have been assaulted by the police, you can make a civil claim. If you have been assaulted by the police, you can make a civil claim and you get a jury trial. I am not sure how it helps the police to change the way they behave, but it is an individual remedy that works. Beyond that, it is very difficult.

Q158 Dr Harris: It was suggested that Camp police just were not used to this, although there were police from everywhere else, it was one of the places they were in charge. Is it your experience or experience of people you know that there are some police forces with someone at the top who is quite good at doing a deal, sticking to it and preventing "ad hoc-eries" stepping in from the helicopter, loud speaker announcements as you are giving your evidence? Lindis?

Ms Percy: Yes, I think there are. I have to say there are some very good police around and very reasonable and who will almost go overboard in trying to do their duty to enable a demonstration to go ahead without problems, but over the years the police have agreed to various things and then on the day it has totally changed. We talk to the police, we are very careful about talking to the police and trying to compromise or trying to foresee problems that might happen, but it does depend very much on attitudes of the police and also whether they agree with the demonstration, what you are concerned about. I do think it is about training of the police. Also they are all dressed up in these very aggressive uniforms.

Q159 Dr Harris: You are saying that they change their policy on the basis of whether they agree with you.

Ms Percy: I do not know. It seems like that, it comes across like that. There are perfectly reasonable discussions and quite aggressive attitudes come over. I think there is a lot of fear around from the police point of view too.

Q160 Dr Harris: I am going to assume you all agree that the fact there may be sympathy with your protest should be immaterial. I think you put that in your written evidence, Mr Rai.

Mr Rai: I can give an example of this, which is I was once being held by the police inside the perimeter of the nuclear weapons factory at Aldermaston. They let me out of a very confining small cell that I was being held in because it was very hot and so on, they let me sit outside. They said, "If you were a roads protestor, we would be treating you harshly rather than letting you out", so the different groups and causes are treated in different ways by the police. You build up a self-reinforcing dynamic where bad behaviour by protestors causes prejudice on the part of the police. You get into a dynamic where you get to a very poisoned situation and, unfortunately, the police really should be the ones who should try to break that cycle.

Q161 Dr Harris: I have one final question because I know Lord Morris wants to pursue some of these things. Do you think there is any protest, even that is non-violent, that is unacceptable, for example where people protest to shut down other people's free speech such as No Platform protests? Do you think those are as legitimate as your protests?

Ms Percy: I think we should be very vigilant and careful about civil liberties which have been struggled for over centuries and I have a concern about that.

Q162 Dr Harris: You would campaign, if you were asked to, to let fascists march?

Ms Percy: Yes.

Mr Rai: Absolutely. The discussion earlier about Red Watch and the different websites, personally I hope I never get onto the Red Watch website but if I did, I think that the route for dealing with speech, which is what is happening on the internet there, is by tackling the criminality people engage in and not what is said.

Ms Percy: Could I say, we were on the Combat 18 list and it is not a pleasant place to be.

Q163 Mr Timpson: Could I ask all of you about the position with designated areas and the different law that now applies, for instance with civil trespass on a nuclear facility wherever that may be. Do you think certain geographical areas should be treated differently from the rest of the country or should it be one law that fits all geographical areas?

Ms Percy: It is another law. You are talking about SOCPA law?

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Q164 Mr Timpson: Yes.

Ms Percy: There are two, 128 to 132, one about Parliament which I think is quite unacceptable that there are these restrictions and you have to get permission at the moment.

Q165 Mr Timpson: Would you want to repeal that?

Ms Percy: Absolutely. It is essential at the seat of government and Downing Street just up the road to be able to protest. I totally disagree with Richard North's evidence, I really do, of having to have permission and restrictions. With regard to the designated bases, there again peaceful protestors are caught up in this legislation which marks them out as terrorists. I think in the climate today where the mechanisms of bringing a concern as to what is going on in society, whatever it may be, are diminished, then it is essential to bring the issue to the heart of the matter. I have been on many American bases peacefully, non-violently, walking in daylight, to find out what is going on and I found out quite a lot of what is going on by walking around because it is so secretive and these bases are not accountable. I think it is absolutely right that peaceful protest is regarded as acceptable. It is a totally different matter if there are people around who are determined to bring mischief, there are laws to deal with that.

Mr Rai: If I could say something. In relation to the area around Parliament, I am little bit biased because I have been convicted and fined and sent to prison for not paying a fine for the restrictions around Parliament. I cannot see a justification for those restrictions on protest. In relation to the other designated areas, I fail to understand the value of criminalising peaceful trespass on these lands. It has nothing to do with security because any real security threat is going to be caught by other laws and this is what I mean by not understanding the justification for the bulk of the laws on protest. If I am going to carry out a terrorist attack on a base—I have been inside US bases in this country without permission—I am not going to be charged on trespass laws, it is completely irrelevant. The only purpose of that kind of law is to try and squash dissent of a peaceful variety and I just do not see a justification for making peaceful protest of that nature a crime.

Q166 Mr Timpson: You go beyond the issue of proportionality, it is simply no justification?

Mr Rai: I cannot see why we should be making walking around peacefully a criminal activity, wherever it is taking place. If someone is taking implements to blow something up or whatever, we will capture that under other laws. Simply walking around peacefully, which is what that law is about, I do not see why we should have a law banning that.

Mr McLeish: I would like to second everything the other two have said. I am particularly concerned about the situation around Parliament, though. It makes me embarrassed to be British really that we live in a society where protest at the heart of the state is regarded as something that has to be specially controlled.

Q167 Chairman: Do you draw a distinction in Parliament between one side of the gates and the other, or the whole of the building?

Mr McLeish: It is Parliament Square as I understand it.

Q168 Chairman: Yes, but SOCPA also applies within the gates.

Mr McLeish: People should be able to lobby their MPs, they should be able to get to Parliament. I think if there were circumstances where there were particular problems, people being obstructed, it might need to be reconsidered, but I do not really see why there should be any kind of restriction on accessing Parliament.

Mr Rai: Could I say something which is I have been arrested on the grounds of the Houses of Parliament as well and from that I know that the Houses of Parliament have their own laws about this, they do not have to obey PACE and so on. That is what I was told by the security staff who detained me. They could have just detained me indefinitely because they have a different regime there. I think that SOCPA is of relevance to outside Parliament because within Parliament a different regime has been instituted but, again, we are coming into the area of quasi-public spaces. There are private rooms, which are one thing, and then there are quasi-public spaces within the grounds of Parliament and I do not see why protesting there is that different from just outside Parliament. It is not the same thing as saying you should be able to go into someone's private space and harass them, it is a slightly different thing I think. In terms of the quasi public spaces outside the gates and quasi public spaces inside, I do not see a distinguishing criterion.

Ms Percy: Could I just say that if there is something going on in a house, for instance, that is totally unlawful there is a case to go to that house. I am thinking perhaps of an example of child protection issues.

Q169 Chairman: But is that not a matter for the authorities to deal with, not private people? If there is a child protection issue it will be for Social Services.

Ms Percy: If nobody knows about it, if I, as a private citizen, know about it then there is a case to go in and say—

Q170 Chairman: Is it not your duty to tell Social Services?

Ms Percy: Absolutely. It is comparable to what we are all involved with, that increasingly the systems and structures that are available to the citizen to use if you have a concern are not working and the Executive is increasingly not brought to account.

Q171 Lord Bowness: One brief question to all three witnesses, if I may, on this question of Parliament. I have some sympathy about legislation on protest in Parliament Square, but would the witnesses not accept that there is a case for some control over protests around Parliament from the point of view of getting members in and out the place? It is

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particularly relevant so far as the House of Commons is concerned when there might be a smaller majority than there is at this time and a protest preventing members getting there could affect the outcome of a vote. That would not be very democratic.

Ms Percy: No.

Mr Rai: Can I ask a factual question? It is my understanding that there is a private, secure tunnel from the tube station into the grounds of Parliament.

Q172 Lord Bowness: Well, Mr Rai, not everybody comes on the Underground, with great respect.

Mr Rai: I understand that entirely, but if somebody—

Q173 Chairman: No is the short answer, it does not work like that.

Ms Percy: I think there are mechanisms to deal with that. If somebody is obstructing then there is a law.

Lord Bowness: It is very difficult to deal with it when you have got however many thousands of people already there if you have not got some control in advance.

Q174 Chairman: Lord Bowness has an important point here, and Ms Percy was the one who was fingered for this question, I think. Supposing a government has a majority of two or three and you have a huge crowd of people outside stopping MPs getting in and that has the consequence of a vote in Parliament coming out the opposite to what it would otherwise be.

Ms Percy: Then that is a case maybe for the police to be brought in to deal with that situation so that there is not confrontation. It is really important that

Members of Parliament do go about their business, as indeed do other people, but it is about proportionality too.

Mr Rai: As a matter of practicality, whether or not there is such a law is going to make no difference to the people who show up and blockade. If those people who are there are of such a passion and mind that they are there blockading the place, it is not going to make any difference whether there is such a law or not. All that you are doing is creating another offence which I think is really going to capture the organisers and perhaps will deter some people from organising protests. The kind of people who would organise protests which would blockade Parliament probably are not going to be affected by such laws. If I could make one point in relation to advance authorisation and so on. Currently the system under SOCPA is that you have to seek the authorisation of the police in advance in a specified format and then they are required to give permission but they may impose conditions, they may move you to a different place, may give you a different time, may restrict the number of people and so on. I think that system has now been discredited. There is talk, however, of moving to a system of advance notification. If that was voluntary we would be returning to the status quo ante and there would be no civil liberties problems arising. However, if it is compulsory advance notification I see no real distinction between that and compulsory advance authorisation because if you have not notified in advance in the form required you have not been given permission to do it, it is still unlawful. Compulsory advance notification is the equivalent of compulsory advance authorisation and I would suggest that it bears the same defects as the current system.

Chairman: I am afraid we have run way beyond our time. Thank you for coming.

Tuesday 25 November 2008

Members present:

Mr Andrew Dismore, in the Chair

Bowness, L
Dubs, L
Lester of Herne Hill, L
Morris of Handsworth, L
Onslow, E

John Austin
Dr Evan Harris
Mr Virendra Sharma
Mr Edward Timpson

Witnesses: **Deputy Chief Constable Sue Sim**, Northumbria Police and ACPO Public Order lead, **Acting Assistant Commissioner Chris Allison MBE**, Metropolitan Police Service and **PC Neil Hickey**, Police Federation of England and Wales, gave evidence.

Q175 Chairman: Good afternoon everybody. This is another of our formal evidence sessions of the Committee's inquiry into policing and protest. We are joined this afternoon by Deputy Chief Constable Sue Sim of the Northumbria Police, who is the ACPO lead on public order, by Acting Assistant Commissioner Chris Allison of the Metropolitan Police and by PC Neil Hickey of the Police Federation, London representative. Thank you all for coming. Does anybody want to make any opening remarks or shall we go straight into questions?

Acting Assistant Commissioner Allison: Straight into questions, sir, thank you.

Q176 Chairman: I will ask Sue first. We have a lot of protests all the time up and down the country; what is your best estimate of the proportion of the protests, either static assemblies or demonstrations and processions, which require the involvement of the police in a year?

Deputy Chief Constable Sim: My best estimate—

Q177 Chairman: It will be a bit of a guesstimate.

Deputy Chief Constable Sim: Yes, it is a bit of a guesstimate. It is a very, very small proportion. Protests take place regularly across the country. There are very, very few that require conditions to be made against them. That is why it is actually very, very difficult to judge how many are taking place because they literally take place in every police force across the country, but very, very few of them actually do have formal stipulations on them.

Q178 Chairman: So putting it the other way around can you estimate how many require active police intervention in terms of making decisions about routes or conditions or otherwise on these occasions?

Deputy Chief Constable Sim: What I will try and do is to get a figure for you from the 43 forces across England and Wales and I will provide that to you in a written submission.

Q179 Chairman: That would be very helpful. I do not know if you would like to comment on the London scenario?

Acting Assistant Commissioner Allison: Yes, sir. I suppose the London scenario is slightly different—and obviously no doubt the Committee will get to it later—with the specific issues around SOCPA and protests around Parliament. I suppose it is about what you mean by intervention. There are certain requirements on those who wish to protest within this area to inform us and notify us; we have to give them an authority. A significant number of them do not require any policing whatsoever. Whilst within the SOCPA area a significant number have had some conditions put on them predominantly they are the ones around Downing Street—the ones specifically going into Downing Street. For the wider London area I can only think of two events in the last 12 to 14 years where we have actually had to put a formal condition on it. One of them was the fuel protest going back to 1999 where we actually had to put a formal condition. Most of it—and I notice from some of the questions you have asked in other sessions—is about effective dialogue with the event organisers. Event organisers will come to us as a service and say they want to put on a public order march or demonstration and we work with them and there is no conflict and they get what they want and we manage to facilitate it through London.

Q180 Chairman: You have said that you have looked at the evidence. A few of the witnesses have suggested to us that the police attitude towards protesters has changed, has got worse over recent years. The police, they say, turn up at protests to which they would not usually have gone or turn up in greater numbers or become a bit more heavy-handed. How do you respond to that? You have seen the evidence obviously.

Acting Assistant Commissioner Allison: I would say entirely the opposite, sir. If you think about what we have been doing the last few years—and certainly I can talk about London and Sue will talk about nationally—we have been focusing our efforts to try and reduce the amount of police resources that we put on to these events. Clearly we have to be intelligence-led. It depends on what that intelligence is saying to us is likely to occur and as a result we put in the proportionate amount of policing to it. But I know in terms of general public order events in London in the last couple of years that two years ago

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we saw a 21% reduction in the officers we put what is called public order rate, and that was because we were focusing event commanders to try and reduce wherever possible the number of officers on events. That is not just protests—clear to say that—it is wider, other events that take place which are looked after by the public order branch. But certainly I would not say that there has been an increase in our policing staff or any increases in the number of police officers we deploy—quite the opposite.

Deputy Chief Constable Sim: Our approach over the years I think has actually become much more communicative and I think if that is what protesters and protesting groups are talking about then I think that is quite right. In the past what happened was that police officers took one stance in relation to protest and the protesters took their own stance and in reality never the twain shall meet. Now with the various legislation that we have and with the various work that has been done by committees like yourselves and others we get together and there is much more of an open dialogue and that is what we expect and that is what we train now in our IPOC and our APOC, the public order clauses. That is what we are actually training; that is what the staff across the country are doing. So I think it is quite right if people are saying, “The police are communicating with us far more, asking us more questions”—I think they are right. But it is with a view to being able to aid protests to take place so that not only are the protesters allowed to protest but also the third party, the public in general are able to go about their business without being either intimidated by protesters or feeling that there is an overly heavy police presence, because that is the situation that we are trying to maintain so that Britain can carry on its work, its protests and its every day life. So there are far more people communicating.

Q181 Earl of Onslow: I only ask this question because I did see some of it, but the Countryside Alliance demonstration in Parliament Square, where quite a few heads got bashed in, quite a few police were criticised, is that correct?

Acting Assistant Commissioner Allison: Yes. As you will be aware there was an IPCC investigation into that particular incident. A number of recommendations have been made and we have acted on and we have learnt from those recommendations. In every public order event that we do we de-brief it, we look at the lessons that need to be learnt from it and then we take them in to further events. That is not just within London, we try to ensure that that happens nationally. So there was some criticism.

Q182 Earl of Onslow: The reason I ask that question is that it seemed to me that they went beyond the normal level of policing, which is the question that the Chairman was asking just now.

Acting Assistant Commissioner Allison: No, sir. I think there were individual acts for which officers were held to account and a number of them were

taken to court and found not guilty. What there was on that particular day, in effect, a police line was put in place to allow the proper operation of the House and that is one of the discussion points I am sure we will get into later about understanding the clear need—and this is where we are challenged at the moment with sessional orders, there is not a clear understanding out there of what is acceptable and what is not acceptable by way of allowing access to the House. Sessional orders, as you are aware, were enshrined many, many years ago before the Human Rights Act. We have been subject to a number of challenges around that and in our submission Managing Protests around Parliament, the consultation document; we raised the issue of sessional order. For us it would be great if government could say, “This is what is allowed in the way of protest; this is what is expected in the way of access to this particular House to allow democracy to work” so that everybody has a clear understanding what is acceptable and not—that is the police service, that is those people within these buildings here and also the protesters. Part of our challenge at the moment is that there is not clear clarity around that.

Chairman: We will probably come back to that later on. Lord Morris.

Q183 Lord Morris of Handsworth: My question is pretty broad. It’s about the Human Rights Act and how it impacts on policing protests. Do you think that police officers see the Human Rights Act as something that helps or hinders them when policing protests?

Deputy Chief Constable Sim: If I could start, Lord Morris. It helps but the reason I hesitate is that policing now is about considering the Human Rights Act for every aspect of policing, it is not just about protests. I think that is the thing that everybody needs to really understand. From our very basic probationary training officers are taught the Human Rights Act, they are taught about proportionality, they are taught about necessity, they are taught about being able to justify their decisions. In relation to that aspect that is writ large throughout protest, of course. The commanders’ courses that we have introduced recently, the IPOC and the APOC again have human rights writ large throughout them and all the courses that we do in relation to public order training all have that as well. But it actually aids because it allows officers to understand the way that policing and the general country is meant to be run.

Q184 Lord Morris of Handsworth: Do you see the Act as hindering the way protests are policed at all, policing of the particular protests?

Deputy Chief Constable Sim: No, I do not believe it does.

Q185 Lord Morris of Handsworth: No hindrance at all?

Deputy Chief Constable Sim: No.

Acting Assistant Commissioner Allison: Lord Morris, if I can just follow on from Sue. As she says, the Human Rights Act has run through the core of policing now and has done since it first came in. I have in front of me the foundation course for our probationer constables which talks about the importance of ensuring that human rights is at the core of everything that you do. Certainly in terms of what Sue talks about nationally in terms of the training, we do exactly the same in the Metropolitan Police; our cadre at the core of the command cadre is the training about human rights and being able to document. The mnemonic we use is PLAN—proportionate, legal, accountable and necessary; being able at all stages to account against those various bits for the decisions that we make. Actually that gives us a very good framework upon which we then hang all the rest of our decisions around the Public Order Act.

Q186 Lord Morris of Handsworth: Could I ask PC Neil Hickey to respond to that on behalf of Federation because usually the real feel feeds up from the ranks, so does the Federation have any examples where human rights hinder officers on the ground floor policing a protest?

PC Hickey: None at all sir. To the officers that we represent it is part of their daily job; it is ingrained in them. And rightly said by Sue and Chris, it is there, it is a part of the law and they understand that it is for them to put it into practice.

Q187 Lord Morris of Handsworth: So when you do your debriefing after a protest does the Human Rights Act emerge in the debriefing conversation?

PC Hickey: Not that I am aware, no. It would emerge in the evidence; you would expect to see it in the sense of if they were to present the case at court it is expected to be there in their evidence, that they had accounted for it, they were accountable and it was proportionate and legal.

Q188 Lord Morris of Handsworth: On a practical level has the Act changed the way that the police would make their plans in preparing for policing at particular protests and, if so, how?

Acting Assistant Commissioner Allison: Significantly, so. If you think about what is at the heart—we call it the conflict management model, which talks about us understanding what it is we are about to deal with. So it is the information and the intelligence and the intelligence is at the core of deciding the policing response. Clearly a demonstration by 50 to 100 pensioners who are concerned about a particular aspect of government policy is going to be policed in a very different way to that of a group of anarchists who are against a bit of legislation going through Parliament. The intelligence is at the core and if you run round the model the next part is that we look at our policies and procedures and policies and procedures are all about what we can and what we cannot do according to law. So what are our laws, what is our

accountability, and the Human Rights Act is right at the heart of that. So every decision that we make has to be: is it proportionate, is it legal, is it accountable and is it necessary? It has to go through all of those tests. Now you have officers who are in the command of these events documenting far more than they ever did before to be able to show this is the sort of considerations they made at the time. As you can see there is a case going through the House of Lords at the moment, where that actually is going to be talked about.

Q189 Chairman: We cannot talk about that as it is *sub judice*.

Acting Assistant Commissioner Allison: I realise that, sir, but it is going through.

Q190 John Austin: You have in fact answered my first question because I was going to ask how you ensure that those human rights standards are followed by police officers when they police protests and you have said that human rights compliance is embedded in public order training in the training of police officers. I will go on and ask about what is the situation for an individual police officer who wants on a day to day basis to receive advice about human rights. If an officer has some questions to raise about conditions that he or she might be considering imposing on a protest who would they go to for that advice?

Deputy Chief Constable Sim: From the national position we have an expectation that all forces have a number of IPOC commanders who fully understand the policing of protests, who fully understand the public order commanders, and they are the people that if advice is sought I have an expectation that there are IPOC commanders available on each division basic command unit area—and there are various names for the operational departments across the country—I would expect the IPOC commanders to be people that if there is concern from officers that they are the people who have the greater understanding and knowledge around protests and around public order policing in general. But there are also the trainers, the trainers in all areas, because as Chris and I have said human rights and its application is writ large throughout all policing. So there are always people within the commands that can be spoken to for advice and guidance and that is what we are actively encouraging. And from the debriefs we are encouraging the NPIA to actually undertake debriefs on our behalf and then feed the lessons out for us all to learn from.

Q191 Chairman: IPOC is an acronym for?

Deputy Chief Constable Sim: Intermediate Public Order Command Course.

Q192 John Austin: I was also going to ask what the background and qualifications of that person were. When the Committee looked at Northern Ireland there is a dedicated human rights lawyer who is

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available to police officers making those decisions. That is not the case, I presume, throughout the force in England?

Deputy Chief Constable Sim: No, there is not a requirement as there is in Northern Ireland around the dedicated human rights lawyer; but our intermediate public order commanders have all been trained and part of the syllabus is the Human Rights Act. And the same with the advanced public order commanders, there is training and there is understanding. All forces do have legal departments anyway and the lawyers would be able to provide advice in relation to human rights legislation if that was required.

Q193 John Austin: So the police officer making the decision or imposing the conditions consults the IPOC and if there was another police officer who felt that the conditions which were being imposed were a contravention of human rights legislation who would they go to?

Deputy Chief Constable Sim: If I could just clarify, if you are talking about a protest that required conditions being imposed on it I would not expect a police constable to be undertaking the development and the work on that; I would expect that to be an IPOC commander to be doing that. If you are talking about not having conditions imposed—and, as I have said, there are numerous protests that take place all around the country—then I would not expect it to be an IPOC commander necessarily. But if you are talking about something which requires conditions to be imposed I would expect at the very least it to be an IPOC commander and that is what we are actually training and that is what my public order working group works with within ACPO and within the Chief Constables to make sure that is occurring, and we are developing that all the time.

Acting Assistant Commissioner Allison: Can I just answer on behalf of London, sir, because it is slightly different just because we are the most heavily protested bit of real estate in the country. Clearly we have a command cadre in the same way, trained to the same standards as Sue, so we fit the national model because it is all part of a national mobilisation, and exactly the same way if we ever got to the stage where we were thinking about imposing conditions on an event it would be one of our command cadre and there are about 120 of them of various ranks from Chief Inspector up to my rank as a Deputy Assistant Commissioner in the Met. Wherever we got to the stage where we were contemplating such a thing we would have access to legal advice—in fact, the lawyer who would probably be there is sitting behind me at the moment. We do have access because we have a duty solicitors' scheme and 24 hours a day we have access to get legal advice if it is required. But as I say, I think I would go back to what we said right at the start. We have something in the region of 4,500 to 5,000 public order events in London in an average year and, as I say, in the last 12 to 14 years I can only think of two events where before the event occurred we ever contemplated putting any conditions on them

whatsoever. Most of the time it has been resolved through dialogue with the organisers to the satisfaction of the organisers and then the satisfaction of others.

Q194 John Austin: Can I ask what steps you would take if you felt that officers were failing to meet their human rights obligations?

Acting Assistant Commissioner Allison: Clearly that would come up in the debrief and we are challengeable in the courts, as we regularly see. We have talked about a case currently going through and there are a number of cases that have been taken against the service and that is entirely right and appropriate, and that is how the judicial should be there in its various guises. I think our line is quite simple: Parliament makes a set of laws, it is important that we uphold those laws and we work with people to make sure we do. As Sue says, it is a difficult line for us on a number of occasions because we quite rightly have to balance competing demands. There is the right of protesters who wish to assemble and protest against the rights of others—those are the people who may want to come into this House or go about their lawful business without interruption.

Q195 John Austin: I think we will come on to that.

Acting Assistant Commissioner Allison: So it is balancing those. The courts are the places where we are then challenged; there are some cases that we have won, there are also cases that we have lost and we have learned from that.

Deputy Chief Constable Sim: Could I just respond to that as well? The other thing is that if our commanders, the sergeants, the inspectors see acts being undertaken that fall within the misconduct regulations then we would expect our commanders to act in accordance with that and I do not think the Federation would have an opposing view. If that happens and it is seen and there is a direct standing outside what the situation and circumstances require then we would expect our officers to act in accordance with that, and we have the misconduct regulations with which we can deal with anything that occurs.

Q196 John Austin: Would you like to comment there, PC Hickey?

PC Hickey: I totally concur with that. There is an expectation on every police officer to report any wrongdoing or any matter that is deliberately against the law conducted by a police officer, and that would go from the constable rank all the way through.

Q197 Mr Timpson: Just on the back of that and looking at balancing various rights, are there any concerns within the police force that human rights can make officers risk averse in the line of their duty, particularly in the area of protest?

Deputy Chief Constable Sim: It is an issue that is currently an ongoing question at the moment around risk averse in all aspects. I do not think the

human rights aspect is any different from the health and safety aspect, if I am being perfectly blunt. I think they are all things that, if we are not careful, can lead to officers being risk averse but that is why we have the commanders in place to make sure that they are actually undertaking the duties we require them to.

Acting Assistant Commissioner Allison: The fact that we have invested a considerable amount of time in the training of these officers to give them confidence—and it is not just the training it is the fact that they do a number of events. The requirements in London to keep your accreditation are that not only have you undergone two levels of training but also you undertake so many events a year, you attend a weekend's worth of workshops where we put them through their paces and give them various challenges; and we also require them to attend certain seminars just to keep them up to date. That gives confidence that they know what they are doing and therefore that confidence, I think, allows people to act with the appropriate level of risk—but it is the appropriate level of risk. So I would not say it actually prevents us doing that, no.

PC Hickey: Just to add, the complexity of what we are dealing with here I do not think can be underestimated, and there will be genuine mistakes made and I think the important thing is that officers who make genuine mistakes are not blamed, that they are learnt from and that officers and everyone can move on from that. What is important is that that does not then become an embedded culture of risk aversion because officers doing their duty fear that they are going to be blamed when they do that.

Q198 Lord Lester of Herne Hill: Going back to Mr Timpson's question, is the Human Rights Act from this point of view not a bit of a red or blue herring in the sense that long before we had the Human Rights Act we had the famous Scarman Inquiry, the Red Lion Square disorders, where Lord Scarman used the balancing act in the European Human Rights Convention to give advice about how to deal with demonstrations and the police service long before the Human Rights Act were aware of the need to balance conflicting rights and freedoms. The difference is, is it not, that in those days the case would be decided by a European court in Strasburg, whereas these days it is decided closer to home by British courts who hopefully understand our legal, political and policing culture better.

Acting Assistant Commissioner Allison: I think you are entirely right. I might look it but I was not around during Red Lion Square! Certainly I know that over the years our approach to protest has always been one of people have that right to do it and that did not suddenly change in 2000. We have always allowed people to protest and we have sought to balance the various rights of various individuals. So all this has done, I think, has given us a very good mechanism by which to do a self-check to make sure that we are doing it right. So the mnemonic plan I keep talking about is one that is at the heart of everything that our commanders do.

Q199 Earl of Onslow: Before I ask my question something arose out of what you have all been saying. How different is the Human Rights Act in the position of your duties a proper balance of policing a protest under the old common law rights? Is it not in effect just a codification of those common law rights and possibly allows you to go to a piece of paper to look it up rather than three or four different pieces of paper?

Acting Assistant Commissioner Allison: I think that is a fair reflection sir, yes.

Q200 Earl of Onslow: In other words if it is something which you should have been doing and were or were not, as the case may be, all along.

Acting Assistant Commissioner Allison: I think so. But what we have now has been codified, as you say, and now that it has been codified it probably makes it a lot easier because whereas you are relying on bits of common law—where do you go to get the background for what you are doing—it is giving it one framework that we all operate to and that assists us and assists Sue in her role in ensuring that we have, in effect, consistency nationally in the way in which we do it—if there is one law that covers it, it makes it a lot easier for us to operate.

Q201 Earl of Onslow: That is what I hoped you would say because it is what I instinctively believe. You say that you have very little need to impose conditions. Could you tell us a little about those conditions that you did impose in those two cases and what makes you think you have to impose conditions and when?

Acting Assistant Commissioner Allison: The one case I can talk about in detail sir was the fuel protest, and I think it was 1999 when we had seen a wave of them across the country. It was the one occasion where we did it where there were concerns about a blockade of central London with all the lorries coming into central London coming from a range of different points in the country. We did have dialogue with some of the organisers and we served conditions on them which basically gave them the entry routes into London, where we were going to allow them to protest and then we facilitated marches from those points. As I recall, what we did is that one of the points is that they would get themselves so that they could come down the Westway from the A40 coming from the west and park up on the Westway and from there we would facilitate their protest. Interestingly, during the last set of fuel protests we did not actually have to impose any conditions at all; we worked with the organisers to allow and facilitate their protest and you may have seen them going round us.

Q202 Earl of Onslow: This is a case where you talked to them and they said no and you said, "Yes, you are", is that right?

Acting Assistant Commissioner Allison: This was a case where it was felt that we were not getting the necessary level of cooperation and we felt that we had no other option on that occasion. As I say, during the recent ones, which were earlier on this

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year, there was very extensive dialogue with the organisers of those protests in London—I cannot talk about elsewhere in the country—which saw us facilitating a protest which did allow a number of representative trucks to make their way through central London, but we managed their protest and they actually went over Lambeth Bridge and came back over Westminster Bridge.

Q203 Earl of Onslow: The Committee visited Northern Ireland to discuss the PSNI's experiences of policing parades and protests and were impressed by their knowledge and application of human rights standards. Have you had discussions with the Northern Ireland police or learned anything from them in their experience?

Deputy Chief Constable Sim: I go over as the ACPO lead and have a look at the Northern Ireland policing, certain in the parade season, the marching season, and I look at from the public order and the consistency perspective. I think one of the things that we have discussed with them is around the Parades Commission and it was very, very clear—and I am not from Northern Ireland—that there is a very, very different and very difficult political situation over there that has not and does not affect mainland Britain. That is one of the reasons that the Parades Commission came into place, to assist them because one side of the political divide believed that the police were not supporting them. I genuinely do not believe that that is the case on the mainland. I would have no absolute opposition to a Parades Commission being in place—in some ways, as a Chief Police Officer, it would make my life a lot easier because the Parades Commission would be making the decision and I would not. But what I would ask is that there is consideration to what it would give us in addition to what we already have, which is senior police officers who are trained, who sit down with organisers and discuss protests; and, as Chris has quite rightly said, the numbers are reducing specifically because there is an understanding that that is the way on the mainland we police parades, we police protests. It is about people coming together and sitting down and actually coming to an agreement about how to facilitate protests, because we do not want to stop protests. It is a lawful right to protest and we would not want to stop it; we want to facilitate it. But we also “police by consent” and a considerable number of the public want to be able to go about their normal every day business and we have to be able to facilitate that as well.

Q204 Earl of Onslow: What I am slightly gathering is that in some ways you are quite satisfied with the arrangements there are. When one hears that one always has to remind people of the Roman consuls of triumphs—“Remember you are only human,” said the Lictor. If that is the case I hope that we will find that we will be agreeing with you two.

Acting Assistant Commissioner Allison: I like to think, sir, that none of this we take as being read. We recognise that every event we need to de-brief and

learn from and as a result we are never going to say that we have everything perfectly right because things develop. One of the questions the Chairman asked me earlier on was in relation to the numbers. One of the significant changes we have done in the last few years is work with the organisers to try and get them to take on more responsibility for their protests. So you will see more and more at protests there are stewards provided by the event organisers themselves who in effect self-police, which helps us reduce the level of policing investment in it. I suppose I am with Sue, I come from the school of it if it is not broken why try and fix it? We are in a very different situation, thankfully, than our colleagues in Northern Ireland. I have also been privileged to go over there—I have some friends within the PSNI. We clearly do learn lessons from each other. There are some things that are applicable from over in Northern Ireland that we use here and vice versa, the number of the public order tactics that they have taken from the mainland over there as a result of the new way of policing under the current Chief Constable, Sir Hugh Orde. So for me we have a system that works very well, we think, with protesters and 99.9% of protests pass off perfectly well, perfectly peacefully to the satisfaction of all concerned. And putting something else in place or on top of this is likely to create a bureaucracy and at a time when we are constantly trying to reduce it wherever we can, certainly I am one for reducing bureaucracy.

Q205 Earl of Onslow: To turn the question completely on its head, if you were sitting here what would be the wrong thing you would want to find in your method of policing? Can you think of anything that you are not happy with?

Acting Assistant Commissioner Allison: I can think of a number of things. I think the challenge for us—and it is in my written evidence—if you characterise those protests where we have the biggest challenge, which ends up with the biggest problem for all, they usually are as a result of us not having dialogue with the organisers because they refuse to have dialogue with us; or they come from a set of organisers who have a singular view—and that is entirely appropriate provided they accept that other people have a right to a view as well—and on occasions we have to deal with those protesters who believe that their rights are their rights, nobody else has any rights, they must be able to do exactly what they are required to do. One of our submissions as the Metropolitan Police in relation to managing protests around Parliament was this notification. This is not authorisation, I fully understand the concerns, but the notification to the police service within a limited area—this is not nationally but within this protested bit of real estate—that people want to have a protest. That way we can work with them and by requiring them to notify us it helps all sides. I suppose that is one of the things that I would want to reiterate.

Chairman: We will come back to talking in a bit more detail about the dialogue.

Q206 Earl of Onslow: What effect do you expect the new human rights monitoring responsibility of police authorities will have?

Deputy Chief Constable Sim: Nationally?

Q207 Earl of Onslow: Yes, that is what we are getting at.

Deputy Chief Constable Sim: Nationally I think that is something that is being slowly taken up and I think it is something that we need to develop within the police authorities so that they do take that responsibility on board. It is a new thing and it is something that we do need to develop further. There is an HMIC inspection of all 43 police authorities next year and I would expect that to be part of the review of the HMIC—Her Majesty’s Inspectorate of Constabulary—process.

Q208 Earl of Onslow: How will you ensure that the monitoring of human rights compliance is meaningful? For example, will you invite police authority monitors in your areas to attend decision making before and during protests?

Deputy Chief Constable Sim: Most police authorities would take that role and do that.

Q209 Earl of Onslow: They do it automatically?

Deputy Chief Constable Sim: Yes.

PC Hickey: Sir, if I may, just two matters to agree with what has been said with regard to the Parades Commission and how that would work in this country. It is certainly something that we would be happy as a Police Federation for our members to see explored, if that is to be the case. But perhaps a key point that was made there by Mr Allison was the importance of dialogue between the police and the protesters and I wonder if a Commission would take that dialogue away from the police and whether or not that in itself would cause difficulties then between the police and the protesters, without that dialogue and that understanding directly between the police and the protesters. The second thing is, obviously I cannot speak for what happens in Northern Ireland, I have no experience of that; but I would just urge the Committee that if they are able to take evidence from the Police Federation in Northern Ireland I am sure that they would assist you in any matter they can with regard to that and perhaps be able to give you a better idea of day to day policing there in regards to that.

Q210 Earl of Onslow: You said that everything is going swimmingly, then how does somebody get arrested for reading out the names of war dead, which made Parliament look silly, it made the police look silly and it made people look brutal. Surely that could have been done without carting somebody off to court?

Acting Assistant Commissioner Allison: I can answer that, sir, on the grounds I think it is something that I said earlier. The laws of the land are passed by Parliament; it is our job to uphold them and in that particular case—and it has been through the various court mechanisms and we were found to have acted

appropriately—an individual should have given notification and they chose deliberately not to give notification and then go and undertake a protest.

Q211 Chairman: We will come in some detail to SOCPA later on. There is one question I think we ought to raise from what Lord Onslow said—before we go on to dialogue, which is the next issue we want to explore—when you are looking at the question of imposing conditions—and you say that it has only happened once that you can talk about, although a couple of times—what are the factors that you really take into account? Is it looking at the inconvenience to the public, the disruption of businesses? What is it?

Acting Assistant Commissioner Allison: It is exactly as laid out in the Acts. In the Public Order Act there are a number of conditions upon which we can apply. So severe disruption to the life of the community, serious criminal damage, serious disorder or intimidation, if any of those issues are met then we can start to impose conditions that are proportionate. I will reiterate because when I have said about one or two conditions—and the SOCPA thing I am sure when we get on to that later is slightly different, and in that we have had to impose on occasions slightly more conditions than under the wider Public Order Act—what we would look at—and I am sure it is exactly the same nationally—this is the importance of having those trained public order commanders who can look at the situation and they can look at the intelligence. Let us go back to May Day 2000 where we saw something called guerrilla gardening—and I think we have provided a statement from Michael Messenger who was a ground commander on that day—that was a group of activists who were coming into Parliament Square and the issue for us as a service was: was there anything that we felt that we needed to do before by way of imposing conditions on the basis of the intelligence that we had, and the answer at that particular time was no, we did not. As the event went further on—and certainly this was the case more in 2002 and 2003 with the May Day events—at the end of the event we ended up with a small group of individuals who we knew were intent on doing nothing but committing acts of major or serious public disorder, so we used our powers to impose conditions on the small group of people who were left. So it is on the basis of what do we think the training is; what does the law allow us to do—it is back to the conflict management model—what are our powers, policy and procedures and then what is the appropriate action for us to take.

Q212 Chairman: So the conditions you imposed on that occasion, the small group, they were decided on there and then?

Acting Assistant Commissioner Allison: Yes. The ground commander, the senior police officer at the scene can then impose conditions and when it is on a static protest you are limited in what they can be, so it can be the number of people, the time and the location. I can think of one occasion—I think it was

2002—where the rump of the protesters ended up around Old Compton Street and we ended up corralling them, holding them there and putting some conditions on that enough is enough, and we had severe concerns about the serious disruption they were creating to that area and the potential for public disorder and as a result we gave them a time limit by which their demonstration had to finish.

Q213 Chairman: That is another occasion where you used conditions.

Acting Assistant Commissioner Allison: Post—that is not pre, sir. But again I can probably think of—and I have been privileged to be on the command cadre since 1996 and I have done public order throughout my service, and that is 25 years—on less than two hands in that period where we have actually imposed conditions. The other one you mentioned, sir, where we did imposed conditions was going back a long, long time ago, which was Welling, which was 1991, 1992, something like that, which was the right wing bookshop where a significant number of other opposition parties came out to try and march past and we served conditions that a route would not allow them to go past, and you will recall the disorder that took place on that particular day.

Q214 Chairman: To get this absolutely clear, there have been a couple of occasions when you have imposed conditions in advance of a protest and about ten—

Acting Assistant Commissioner Allison: No, less than that, sir. I can think of less than ten where during an event enough is enough, we are going to impose some conditions on a small group of people.

Q215 Chairman: So less than ten but of that sort of order?

Acting Assistant Commissioner Allison: Yes, out of over that period of time many, many thousands of protests.

Q216 Mr Timpson: The strong impression that all three of you are giving, both in your oral evidence and also the submissions you have given to this Committee, is that the process of dialogue is absolutely key to ensuring that there is a peaceful and uneventful protest. So cooperation, communication, collaboration, and we can all understand that that is going to be significant in that taking place peacefully. Before asking you about whether that should be compulsory or whether it is appropriate for it to be compulsory, can I ask each of you to explain in general terms how the process of dialogue comes about and how in most cases that process is played out?

Deputy Chief Constable Sim: From a general perspective there is a knowledge actually. That is why I said to one of your previous questions that there is more policing activity, or a perception that there is more policing activity around protests. People who want to undertake protests now on the whole will come to police stations and basically say, “I would like to speak to somebody about the fact

that X group wants to protest, want to have a parade, want to do whatever,” and the police officers then will undertake and start that dialogue with them around, “Where do you want to go, what time do you want to do it?” And I can think of my own force when we have had a number of BNP marches and more often than not when we sit down—and people want to go right through the centre of Newcastle which would cause major disruption—and more often than not because everybody wants to achieve the same thing, the BNP wants to protest, we want to allow to protest and allow them to protest as safely as possible—people will have a coming together of minds and will perhaps not march at 12 o’clock on a Saturday but at 4 o’clock on a Saturday if that is more convenient to everybody. It is about being able to negotiate and there is a real understanding that that is what we all want to do.

Q217 Mr Timpson: So they do not go into the police station and they are provided with an application form and told, “Fill it in and then we will talk about it when you have filled it in.” Is it very much just an open discussion?

Deputy Chief Constable Sim: There is an application form to fill in but in saying that it is not, “Fill this in, and go away.” If people want to sit down and to say, “I want to fill it in with you,” that is fine. It is about trying to facilitate that discussion and that is what we are encouraging right across the public order spectrum. It is about making sure that there is negotiation, there is dialogue between the two parties—that is what we want to actively encourage.

Acting Assistant Commissioner Allison: Obviously in London, sir, SOCPA makes a slight difference for the bit that is currently designated and there is a definite requirement on anybody to undertake any protests or any static demonstration to come forward. In effect they are forced to do it. But as Sue says, most of the cases people recognise that if they want to have a protest it is far better coming forward to the police service. Clearly if you are going to do a procession you certainly do need to come and speak to the police service because we will provide you with the necessary infrastructure and protection to allow you to get down the roads without the traffic taking you out. So they themselves understand the importance of coming. There is a requirement clearly within the law but people understand the importance of it. But within the Met we have a two-tier system. The Met is policed by 32 boroughs and for local events, local protests, the boroughs will deal with them, deal with the local protest, should they have any, up to a certain level. When it gets beyond the certain level then the public order branch, CO11 at New Scotland Yard, takes responsibility for it, and that is in effect where our experts are and they advise the 32 boroughs on all the other events. An individual who says, “I want to run a march”—there is one coming up in a couple of weeks’ time, the climate change march, they always have a march about this particular time of year and they know that they will come in, sit down with our planning team at CO11; they know roughly where

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they want to go and we work with them about an appropriate route that suits their needs but also takes into account the other things that are going on in London. On that particular day when they are marching Oxford Street has a complete closure for an event that is being put on by the local business improvement district, supported by all the businesses. Therefore, we sit with the organisers and talk to them about, “You need to recognise that other people have rights, they have that event, so how can we work with you?” and as a result we have a negotiated route. That is how these things go.

Q218 Chairman: Can I come back on this point because I get the impression from talking to some of the people we have had giving evidence before that they feel that as far as dialogue is concerned it is a good idea but they feel sometimes that it is not a meeting of minds on an equal level and they feel that somehow in the back pocket the police have these powers and if they do not do what the police want then ultimately you will make them do it anyway.

Acting Assistant Commissioner Allison: Clearly I would say to you, sir, that the police service does need to have that ability to have conditions and to put them on protests. Why? Otherwise we end up with what I would describe as the situation of anarchy on the street where people can go and do exactly what they want. Clearly—as Sue and I have both said—our role is to balance that difficult mix of competing rights that different individuals have in our society. We do not sit there with a book of conditions in front of us and say, “Unless you—we are going to” because I have to say that for most of the time those event organisers, the people who wish to march and protest will come in and will be open-minded. They want to get their point across, they want to get to a particular location in a particular way and we will do whatever we can to facilitate it. It is about explaining to them that if they cannot go down a particular route at a particular time the reason why. It does not always work. There are those occasions—and we have seen a number outside here—where there are those protest groups who have said, “No, we are going to do what we want to do and nobody can stop us,” and that is where the challenges come potentially and that is where we end up with the conflict.

Q219 Chairman: So people say to us that the police have imposed conditions A, B, C and D in practice they would perceive what you have said to them as the police imposing conditions and you would see it as them agreeing to do the things that you think are appropriate.

Acting Assistant Commissioner Allison: We have not imposed conditions. To formally impose conditions they would have a serving it upon them.

Q220 Chairman: I get that but from their point of view they would see it in terms of the police requiring them to do X, Y and Z?

Acting Assistant Commissioner Allison: I would like to think, sir, that because we have this dialogue we explain our position, they explain their position and as a result we come to a mutual understanding about what is going to be effective on that particular day to allow those individuals to do their bit of protest while balancing the rights of others to go about their lawful business. I go back to the fact that we have a massive number of these events that take place across the country every year and very, very, very few of them are in any conflict whatsoever.

Q221 Chairman: I appreciate that, I am just trying to get to the bottom of this story where the impression that we were given by the protesting side of the debate is that “The police are giving us all these conditions requiring A, B and C” and you are saying, “No, we are not, we just agree these things.”

Acting Assistant Commissioner Allison: It may be that people who have given evidence to you, sir, come from a particular standpoint and they may be singularly focused, which is entirely appropriate for them to be, but they believe that that right to protest is paramount and therefore they must do it in the way that they want to do it. I am sure we could present a large number of other people who could give you evidence here who we have dealt with, who would not say that whatsoever; they would say, “Yes, we went to the police; the police said, ‘Yes, fine’, we had the protest, we got to the Palace of Westminster, we went into the lobby queue and we were quite happy with it.” There is a big spectrum out there of people who have a different view about how to protest.

Deputy Chief Constable Sim: We do accept that people’s perception has to be our reality and we would turn round and say, “We are not imposing conditions.” The view may be that people feel as though they are forced into doing things. We would dispute that because people can turn round and say no, they are not. But one of the things that we are trying to do—and I am involved with the conflict management conference that we held for all police officers from the ACPO ranks down to the practitioners—we have people like Greenpeace and we are hoping to get some of the other groups talking to us at the conference year on year so that we can actually try and get a meeting of minds and an understanding of everybody’s position because we clearly have one position—we have to defend the rights of, as Chris has said, everybody—and others have a viewpoint that they have a right to protest at whatever cost. Somehow we need to have a meeting of minds and one of the things that we are trying to do is to encourage the big organisations to actually get involved with that conflict management conference, to sit and talk to us and say, “Actually, this is the perception,” and then if we are told what the perception is we can address it, because we do not want to appear as though we are just imposing on individuals; we do genuinely want to work and to negotiate a settlement. So those are the things we are trying to do.

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PC Hickey: From a practical point of view of a police officer there policing a demonstration—all the police officers policing a demonstration—if there has been dialogue and there has been agreement that is then filtered down to those officers through their briefings and those officers understand exactly what has been agreed and what is expected. The next line and most important line of communication is often those officers talking to demonstrators and explaining to them what is expected and what is going to be permitted, because more often than not—certainly in large demonstrations—a lot of the time, even though the organisers may have communicated very well and what have you—it will not have filtered down to all the demonstrators. So they are a key communicator and if you have dialogue and if there is agreement between those wishing to protest and the police and everyone understands that, then the police officers give, if you like, the message across the board that is even. When you lose that or do not have that, I would suggest that police officers are going to be left very confused and what you may find happening then—not through any fault of the police officer—that each might have a different idea of what may or may not be permitted, and that is when you can cause problems, I would suggest, when that communication has fallen down right at the very top.

Acting Assistant Commissioner Allison: That is a very good point from Neil and if you think about where we are in London, with the event planning team and, say, there is a major march coming through London the event planning team will sit and work with the organisers and the police command team over this event. On the day itself the key planner will usually be alongside either the head steward or the event organiser and will stay with them all day. So any issues on either side can be communicated with each other that we can resolve them and if there are any tensions that can be done, and it is about that level of working together and understanding.

Q222 Lord Lester of Herne Hill: First of all, I advised ACPO in the Saunders and Tucker case and secondly I acted for Sussex Police in the exports of livestock through Shoreham case. I think a practical example is always useful and taking the Shoreham case you had a clash between exporters of livestock on the one hand and passionate animal rights demonstrators on the other hand, and the Chief Constable of Sussex Police had to balance those conflicting rights and freedoms—the freedom to get the lorries out and the freedom to try and block the lorries through demonstration. The Law Lords in that case made it quite clear, pre-Human Rights Act, that there was a question of proportionality and fair balance. Would I be right in thinking that that is what this is all about? You cannot possibly deal with a problem of passionate demonstrators on the one hand and lorry movements with livestock on the

other without negotiation and discussion and reasonable conditions being laid down with proportionality being built in on both sides?

Acting Assistant Commissioner Allison: I would say, sir, that you do not necessarily have to get to the conditions always being imposed, but it is about getting that understanding that everybody has rights. In that particular case those who were transporting the livestock had the right—that was their living—to do it. Those people who were protesting against it because they did not think it was right had that equal right. What I do not think they had the right to do was to sit in the road and block the traffic because that is unlawful. We regularly hear—and it is romanticised quite a bit, is it not—about direct action. Direct action to me is people acting unlawfully; they are going beyond what is lawful protest. Our job as the police service is to try and tie that line between those two groups of people who want to go about their lawful business, some of whom want to protest, others who want to go about their business. A good example is what we had for many, many years—and we still do on occasion—the issue of the fur shops in the West End. There are those people who passionately disagree with them being able to sell, but people there who are making a living and our job is to try and ensure that both parties are allowed to go about their business without interfering too much on the other person.

Q223 Mr Timpson: It is apparent from what you were saying earlier that the problems arise when the protesters refuse to enter into any form of dialogue before going on their march or whatever. Bearing that in mind, is it either realistic or appropriate for there to be compulsory dialogue prior to any protest taking place?

Deputy Chief Constable Sim: I would like there to be compulsory dialogue because I think that is what it is about. I do think you need to sit down and to discuss it reasonably, but I do totally accept the point that if people do not want to talk to us forcing them to sit in a room and not talking to us is not going to achieve anything either, because you cannot actually make people talk.

Acting Assistant Commissioner Allison: Again, if we take an example, most people will come forward and although we say the times that we have seen the worst disorder as a result of protests have predominantly been where we have had no dialogue there are occasions when we have had dialogue with organisers and that has worked quite well, but within the midst of the demonstration there is a group who decide that they are going to commit acts of disorder because that particular protest is particular to that small subset and within it that small group of people are the ones who create a challenge for us. I think it is a great difficulty. I do not know how we would actually legislate and say, “You must go and speak to the police.” If we go to the May Day protests, for a number of the May Day protests there was no event organiser. Event organisers understand that if they do actually put their head above the parapet all of a sudden the

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Public Order Act applies to them, they can then be held legally accountable and nobody wants that legal accountable and as a result nobody puts their head above the parapet. But we still have to deal with the protests because they are able to mobilise, as we saw on a number of occasions, many thousands of people on to the street. Certainly we would like a scheme within the SOCPA area of notification because that deals with 99.9% of the protests. Those are the people who will come and have dialogue, who will speak to us and we can then work together. Then we just have this small group at the side who, clearly, whatever we say they are required to do they are not going to do it because they believe that they do not have to do that or that is a requirement that should not be put on them and they are going to turn out anyway, and then we just have to deal with that on the day.

PC Hickey: I agree.

Q224 Mr Timpson: If we work on the basis that dialogue and/or prior notification is necessary we still have the, albeit limited, prospect of a spontaneous demonstration of protest. How would you deal with it in those circumstances?

Acting Assistant Commissioner Allison: Again, I will defer to Sue on the national picture here. Because of SOCPA—and we have been through a number of periods where it was challenging and at the moment it is fairly routine and people understand and accept the law, although there always a few individuals who are still a challenge to us—spontaneous protest when it occurs, lucky being part of a big city force and having 31,000 police officers, we are able to mobilise some officers from somewhere to come and assist us. It is not the same for my colleagues up and down the country who have fewer resources and are sometimes more challenged around the resource plates. But that said, despite the public view that we have lots of officers sitting in police stations doing nothing and just waiting to come out we do not, so we have to draw them off other duties. That is the challenge for us about spontaneous protest. We are aware that if anything happens anywhere in the world there is a chance that there will be a protest in or around Parliament—that is part and parcel of policing the capital and the Metropolitan Police certainly accepts that. But certainly for us we would prefer the notification because it does allow us to model asset and resource, make sure that we put the appropriate infrastructure in place to deal with the size of the demonstration and it then allows the demonstrators to have their demonstration without impacting too much on other people. The challenge with the spontaneous demonstrations—and we have seen one, we saw one a few years ago when a large number of people suddenly turned up in Whitehall and you ended up with 3000 people in Whitehall, with no infrastructure and they blocked the whole road at significant disruption to the life of the community and it took us quite a long time to get it back, it takes time to manage afterwards—our view

is that it is better to have the dialogue before the protest. We can respond with spontaneous but we prefer not to.

Deputy Chief Constable Sim: From the national position the glib answer is to say that that is what you have the police service for because we are called on to respond to spontaneous incidents of all natures whenever they happen. I totally agree with Chris that it is far better that we do have people who prepared to undertake dialogue with us, but if you have a very large incident happening then we can mobilise; we have the police national mobilisation plan where we can call on colleagues from all around the country and we would expect a swift response to be able to deal with anything. Local forces have their own mobilisation plans so that they can mobilise their own resources. We always have police officers on duty; it means that we call them from one part of the force to another part of the force to deal with the situation as it occurs, but we are required to maintain the laws of the land and we are required to deal with spontaneous incidents as they happen, and we do. But it is far easier and far better for everybody if there is that dialogue beforehand.

Q225 Chairman: On the SOCPA issue, notification is now compulsory and the Earl of Onslow asked you about the situation of reading out the names. The suggestion that we have had from some protesters is that because it is now compulsory they refuse to do it when in the past they would have done. In effect they are saying that it is counter productive. Do you think that is the case? Has it made life more difficult for you?

Acting Assistant Commissioner Allison: In the initial stages what SOCPA did is it mobilised a group of people who I think came to believe that SOCPA restricted their right of free speech and their right to protest. In fact that is not the case at all; as the Committee will be aware we are duty bound to authorise any protest. Any person who says, “I want a static protest”, under the conditions of SOCPA within that area, we have to give them authority. We can impose conditions but we have to give them authority. Unfortunately I think within certain protest groups the word got out that this was the police service stopping people protesting, which was not the case, and there are those groups of individuals who then chose to come forward and constantly challenge it, and I am sure that many people have heard of Mark Thomas and his single lone protests and the significant administrative burden that he tried to put us under during periods where he applied for something in the region of 2,500 applications to protest in and around the parliamentary area. I would say that apart from that small group of individuals the reality for most other people, now that they understand what the law is, they have come forward and spoken to us and they work with us around it; and for those that do not, when we identify the people on the scene who are breaching SOCPA, then we give them the warning, we point out what the law is and people, again 99% of the time, will accept that law and will walk away

and then reapply. It is just on those odd occasions there are that group of people who themselves think passionately that the law is wrong and as a result to try and prove that the law is wrong they deliberately breach it, and the case that the Earl of Onslow was talking about is one such case.

Q226 Earl of Onslow: Can I ask a supplementary—I still want to go back to this. If I am caught speaking, which, let us assume I might have been, I have been warned even though I have been committing a breach of the Act—and I suspect that could have been happening to practically everybody in this room—surely on that occasion you could have warned the people personally without dragging them into court. We have heard reference to the veal protests at Shoreham—people lying in the road and stopping going around their lawful business are committing offences, and I would suggest a much more serious offence than reading out ten names before being jumped on by a policeman. It seemed to me that this was really a fairly gross piece of insensitivity on the part of the police. It would be perfectly possible to have handled it in a different way.

Acting Assistant Commissioner Allison: You will forgive me, sir, if I do not agree.

Q227 Earl of Onslow: I did not think so!

Acting Assistant Commissioner Allison: There are a number of cases where people come down within the SOCPA area and say, “I am not aware of the law” and we will go to them and we will point out the law; we will give them the sheet that explains what they are required to do and we will give them a period of time in which to cease doing it and most people do that. So in effect we give them a warning and that is something that we have had in place ever since SOCPA came in. But there are those individuals who deliberately come down with the purpose of breaking the law; so they know what the law is, they have to apply for permission and they have said, “I think the law is wrong, I am not going to apply for permission; I am just going to go and do the protest.” Our view in those circumstances is the only place that it is right to take those individuals is before a court and the court make the decision; otherwise it becomes very difficult for us as a police service about what is acceptable unlawful activity and what is unacceptable?

Q228 Earl of Onslow: Every police force makes that decision every day of the week several hundred times.

Acting Assistant Commissioner Allison: And as I said, sir, we do that at the moment in relation to people who are coming down there and are breaking the law but not necessarily being fully aware of it. In that particular case an individual knew what the law was and chose to break the law deliberately.

Q229 Chairman: So effectively it is impossible to have a spontaneous demonstration outside Parliament.

Acting Assistant Commissioner Allison: Under the way the law is currently framed, sir, no, you need to give us at least six days or, in exceptional circumstances, 24 hours’ notice before you come. That is what the law currently is and as the police service we follow the law.

Q230 Chairman: So we cannot have a spontaneous demonstration in Parliament Square. What are the exceptional circumstances?

Acting Assistant Commissioner Allison: To move from the six days to the 24 hours, sir? Let us imagine something suddenly happened in a foreign country where there was a coup, clearly nobody knew about the coup so somebody wants to protest and they want to protest very, very quickly—and we have seen a number of those—then the service would be saying, “Clearly we cannot expect you to wait for six days, but we do need a day’s notice” and the rationale behind that, I believe why Parliament passed it in that way, was to ensure that the police service could have that negotiation, that dialogue with the organisers and make sure that we put in place sufficient resources or infrastructure to deal with that protest.

Q231 Chairman: If you get a deal with the protestors obviously it is important that the deal is stuck to. We have had evidence in relation to the Kingsnorth one, for example, that they believed that the police changed the goalposts half way through the demonstration and tried to disperse it without any reason for them having to do so. I do not know if you know specifically about the Kingsnorth case, but it was quite strong evidence we had that they were sticking to the rules that had been agreed and the police were not—they said they suddenly changed half way through. If you do not know about the specifics, fine, but—

Acting Assistant Commissioner Allison: Forgive me, sir, I cannot talk about the specifics. I am aware that we had a number of Metropolitan Police Officers down there as part of the serials but I was not part of the command and I am afraid it would be inappropriate to me to comment on a specific case.

Q232 Chairman: On a more general point, if there is a deal is it important that the police stick to the deal just as the demonstrators, unless of course something specific changes?

Acting Assistant Commissioner Allison: Exactly, sir, and certainly that is what I know Metropolitan Police colleagues and the command team would do that, and I am sure nationally exactly the same. There are occasions when you might have got an agreed route and then something happens on that agreed route as you are going down the route, and that is one of the things you consider in the contingency planning and the “what ifs”, and with a good organiser where you talk through these things beforehand you make sure you discuss these things, and that is the importance—as I talked about earlier—of us making sure that we are in constant contact during one of these events with the event

organiser, and that is why we will embed one of our planning team alongside them. So if they are coming down Piccadilly as part of the march going from Hyde Park to Trafalgar Square, which is a regular route, and all of a sudden there is some form of accident or there is a building collapsed or a gas leak or even a suspect package—which has happened on a number of occasions in the many years we have been dealing with security and protest—then we have an alternative route to take them down and we have a way of explaining that to the event organiser and through the stewards to the crowd so that they understand why we have done it. Provided you get that message across then there is not a problem, so that is the importance of the dialogue.

Deputy Chief Constable Sim: From my perspective I have just been reminded by my staff officer that actually it was a tactical error—that; that it should not have happened, it was a communication mistake, which is why we actually do now try and make sure—

Q233 Chairman: The Kingsnorth one was an error by the police?

Deputy Chief Constable Sim: Yes, there was a misunderstanding. For our part I would say that nobody is perfect and we have to learn from these issues and that is why I am very, very keen to make sure—and the NPIA are providing me with great assistance on this—that they actually do review all of the big protests that we have; they do make sure that we get fed back through my committee—the Public Order Working Group—the actual learning from the various protests that are around. And I have set up, with the assistance of my ACPO colleagues, regional groups that actually we are going to be feeding back so that we make sure that we learn because part of what we want to be is a learning organisation; we need to learn from mistakes that have occurred because, as I have said, nobody is perfect. We do make mistakes around the policing of protests and our aim has to be not to stick our head in the sand—our aim has to be that we have to learn from what has gone on and try and make sure that it does not happen again.

Q234 Dr Harris: I will start with Kingsnorth. Were there any other lessons that you think need to be learned from that because there were a large number of protests from the protesters about the way it was policed? Does ACPO have a view as to whether there was not enough knowledge locally to do the right thing? For example, as I understand it, police arrived in riot gear. We were told very clearly in Northern Ireland, of all places, that they would never do that—they would have them in reserve out of sight—because it is escalatory to do that, even when dealing merely with environmental protesters—I will not use the term “hippies”.

Deputy Chief Constable Sim: I do not have off the top of my head all the issues with Kingsnorth but what we will do is provide a written submission on the learning points that we have.

Q235 Dr Harris: In the general case do you have a view on that about the escalatory impact of what the police bring, in terms of clothing and equipment, to a protest that is peaceful.

Deputy Chief Constable Sim: A peaceful protest I would expect that the whole notion is that we police by consent and the British bobby in a British bobby’s uniform is the image that we want to have for all protests. If we have intelligence which suggests that our officers are going to be in danger, the public are going to be in danger, then I would expect them to be kitted out differently; but if we are talking about an understanding where there is no intelligence to suggest that there is going to be any trouble at all then I would expect it to be policed in normal British police uniform.

Q236 Dr Harris: You will have read the evidence have from people complaining that tent pegs and tent poles were confiscated at a climate camp, which seems a little unfortunate if you are seeking to camp and you have your tent pegs confiscated—if you are an old lady you want some shelter. Or that there was a particular drive to issue cautions for cannabis possession, which is not necessarily the normal practice for a first offence, but frisking everyone at a climate camp for cannabis might make the protesters think they are being targeted when all they are trying to do is protest.

Deputy Chief Constable Sim: As I say, I do not have on me now the entire issues around that climate camp but I will be back into the de-briefing material.

Q237 Dr Harris: I would have thought you might think it would come up because we had people from the climate camp give evidence to us here on a previous session. Your letter says you have read it.

Deputy Chief Constable Sim: Yes, I have; but, as I say, I cannot remember off the top of my head. I would expect the police officers to police appropriately based on the intelligence that they have, and whatever the ground commanders had at the time is what I would expect the police officers to react to.

Q238 Chairman: You will send us a full note about the policing in Kingsnorth?

Deputy Chief Constable Sim: Yes.

Q239 Dr Harris: What are the key sections, as far as you are concerned, of the Human Rights Act that are relevant to your role as the lead on protests?

Deputy Chief Constable Sim: We have to take into account all aspects.

Q240 Dr Harris: I understand that and I am not suggesting that you ignore any, but which are the key rights in there that you think are critical and most commonly turn up?

Deputy Chief Constable Sim: I totally agree with Chris that we have to be proportionate, we have to be legal, we have to make sure that we can action, and then we have to talk to people all the way through.

Q241 Dr Harris: I meant which Articles in 1, 2, 3, 4,5, etc.

Deputy Chief Constable Sim: I think Article 2 is outstanding above all others.

Q242 Dr Harris: I want to ask you about Article 10, which is freedom of expression and I want to ask you about the freedom of people who are being protested against because you mention an example from Derby, which is most interesting. I want to ask you about a scenario similar to that. Let us say the BNP are having a meeting and people want to protest, as they might, against that and they want to stop people going, would you say it is good policing to make sure that there is, for example, a cordon, so that people are able to get in without being physically prevented from doing so, whilst still allowing a protest outside that cordon?

Deputy Chief Constable Sim: I think it is important that the circumstances on the day and the things that have to judge whatever a commander is doing; they have to be able to justify their actions. We have to be able to facilitate peaceful protests, without a shadow of a doubt; we also have to allow people—

Q243 Dr Harris: And a lawful assembly. Peaceful protest on the one hand, and BNP are a lawful party, are they not—

Deputy Chief Constable Sim: Yes.

Q244 Dr Harris: . . . so as long as they are not breaking the law they are entitled to pitch up at their meetings.

Deputy Chief Constable Sim: Yes.

Acting Assistant Commissioner Allison: I can give you some practical example of that. In the late 1990s early 2000 we had a number of right wing marches where they wanted to march through parts of Southwark. Those individuals clearly had that right to march through parts of Southwark but there were those other people who did not want them to march through bits of Southwark and the role of the service was to try and ensure that we allowed both groups to demonstrate and go about their business, and that is what I see. Again, it is back to what we were talking about earlier, the difficult role of the service is balancing those competing rights between different groups because there will be those—certainly in the left wing/right view—the left wing have a view that the right wing should not be allowed to do it and our view is that we have to try and facilitate both groups. We need to facilitate the right wing, provided they are acting lawfully and they want to have a march, and provided that it does not hit any of the things which require us to put conditions on it.

Q245 Dr Harris: Let us say that that BNP meeting was not able to go ahead because people could not get through to it because either they just could not get through or they were worried, do you see that as a failure or is your measure of failure whether there were any arrests?

Acting Assistant Commissioner Allison: There are occasions when you have to take the pragmatic solution, if suddenly you had 10,000 people who suddenly arrive out of nowhere to stop people getting into a room. But what would I see as a measure? I would not want somebody to be stopped going about their lawful business if we could have prevented it in some way but, again, we have to be proportionate about the way in which we do it. We have to ensure that we do the best we possibly can in those sorts of scenarios.

Q246 Dr Harris: I want to change subject now and ask you about preventive action because, Mr Allison, earlier you said that if there were not conditions available to you to impose people could just do what they want—those were the words you used. People can actually in this country, when I last looked, do what they want as long as they do not break the law, and if they break the law then they can be arrested for breaking the law. But preventing them from doing what they want in case they break the law is a restriction, I would say, on their freedoms because it is your judgment that they might break the law and therefore you are going to stop them from doing what they were going to do. Do you recognise at least the dilemma there?

Acting Assistant Commissioner Allison: There is a dilemma, sir, but I suppose—and we cannot talk about the case—that is what is just being discussed very close to here at the moment. There are occasions, on the basis of intelligence, that we know a particular group of individuals is intending to do something. One of the eight star reports I learnt when I first joined the organisation was the primary object of an efficient police is the prevention of crime; so that should not be let the crime take place and then take action against the individuals concerned, it is if you know that a crime is about to take place and you can do something about preventing it, then you should do it. It is very rare, I would say, that we take preventative action prior to a protest, but we do. We go back to the May Day protests; there were a number of occasions where we took pre-emptive action to prevent widespread disorder.

Q247 Dr Harris: I am not talking about those sorts of scenarios; I am talking about overuse of the Public Order Act. So I presume there are not any ACPO guidelines that suggest you arrest someone for calling a horse gay, for example, although we know that happened. I was at the demonstration on free speech in Trafalgar Square, which had been cleared, and someone was wearing a t-shirt with the Prophet on it, at a free speech rally in Trafalgar Square.

Acting Assistant Commissioner Allison: I am sorry, wearing—I did not hear?

Q248 Dr Harris: The Prophet Mohamed t-shirt, which had one of these cartoons on. And they were not marching down Brick Lane, it was a free speech demonstration in Trafalgar Square and that person

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was arrested for behaviour likely to cause distress and alarm at a free speech rally for wearing a t-shirt. I am just wondering since that was in the Metropolitan Police area maybe that was preventive because there might have been trouble, but should one not wait until an offence has taken place?

Acting Assistant Commissioner Allison: Sir, I was fully aware of that event because I was around and happened to be in the command suite at Scotland Yard. I was not in command of that particular event but I recall it. But if I have it right that was during a very tense period of time—and again the right to protest was being talked about in many quarters—and as I recall it our policy at that time was where people came forward to say that they felt a particular thing that was being one, so an independent witness came forward and said, “I consider that to be . . .” and that is when we moved in and took action. So I am pretty sure that is what we were operating on at that particular time. So it was not the police service making a decision there; in that particular case, because you will all be aware of the concern in all quarters about those particular cases, we chose to wait until somebody came forward to us and said, “I fear that that will cause a breach of the peace; I am offended by that,” and then we took action against the individuals.

Dr Harris: But there is no right not to be offended, is there?

Q249 Earl of Onslow: That is the whole point of free speech.

Acting Assistant Commissioner Allison: I fully accept that, sir.

Q250 Dr Harris: If somebody is of particular background and is sensitive to offence—which I accept it could be offensive—that causes you to use the Public Order Act to arrest somebody and I just wonder whether you think your powers may be too wide there or too widely used.

Acting Assistant Commissioner Allison: I do not think so, sir; I do not think we use them too widely and of course we are accountable for what we do. In those cases the individuals concerned I am sure would have taken towards the court; it would have been heard at court and people have a right to take action against us. If they felt that we were acting inappropriately or making excessive use of our powers then they had the right to challenge us about it.

Q251 Dr Harris: I just want to make the point that I understand that if you have specific evidence that a crime or damage to property or violence to someone else or there is incitement to violence you have to prevent that, but if it is a speech offence, which is not incitement, then there is an argument that you should listen to it, which you can do, record it, and then prosecute it, otherwise no BNP person would be allowed to speak anywhere in case what they said might break the law. It would be better to record it all.

Acting Assistant Commissioner Allison: I think you will find, sir, that is what happens at just about all the protests. It is very rare that we step in and stop people speaking, and if there is evidence subsequently, which is why we deploy evidence gatherers, then we will submit a file to the Crown Prosecution Service.

Q252 Dr Harris: My last question in this section is about the evidence that we received from the National Union of Journalists. I think you said that you had read the transcript, which is helpful. They gave in their written evidence, which was also available, many examples of police demanding the hand over of photographic equipment—and there is no basis as far as I know, for a journalist to give up a memory card or erase photographs—and I have seen that myself. I wondered whether you think that that has not really got through to police officers that journalists are allowed to take pictures during a protest, just like police are allowed to take pictures of the protests.

Acting Assistant Commissioner Allison: Let me reassure you in terms of the briefing of the cadre and all the events that I do in the Metropolitan Police position; it is in all of our operation orders that journalists have a right to operate and we would not seek to stop it. I have read the example of some of the cases and the representative from our public order branch was actually at the meeting subsequent to your hearing with the journalist at the Home Office. In the past we have had journalists come to the training of our cadre officers, and again to restart that we have offered that to ensure that there is the dialogue between both sides, because it is about a dialogue. There is a challenge; there are occasions journalists will come out for those events where traditionally they think that something is going to happen and sometimes they are the ones that are more likely to tend to disorder. Clearly they want to take their photographs; they want to get the pictures right from the frontline and sometimes that is where the challenge is greatest. We are trying to manage that frontline and protesters are trying to come through us and there are large numbers of journalists there, and it is about us all understanding how we have to work together. Central London, where we manage most of these protests, as well as the most protested it is also the most CCTV'd bit of real estate. We fully accept that we are accountable and we can be photographed and they have a right to operate and we try to ensure that that message gets to all of our officers all of the time, and whenever issues or when incidents where we have not handled it properly are brought to our attention, then we take action against them.

Q253 Chairman: Neil, you were going to say something?

PC Hickey: I just want to go back slightly. I cannot deal with Kingsnorth; I do not have the information at the moment to give a reply on that. But from our perspective and our officers' perspective you might have a better understanding just how difficult a

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senior manager's position is when they are considering human rights and everything that goes with it, because police officers have human rights, in our view. They have the right to go to work and expect to come home safely in the same condition in which they went to work. If there is intelligence or information to suggest that there is likely to be violence or during the course of that demonstration there is likely to be violence then we would expect our officers to be properly kitted to deal with that violence so that they can protect themselves properly and go home safely; that is their right and we would emphasise that. If intelligence during the course of an operation suggested that there was likely to be violence we would also expect preventative action to be available to those officers and if that includes removing articles that are likely to cause danger or harm to people then we would totally support that action. Nothing, for us, can compromise the safety of officers at demonstrations.

Q254 Chairman: Presumably that is based on the risk assessment at each time.
PC Hickey: Absolutely.

Q255 Chairman: I think the questions that have already been put to you are designed to flesh out that question of risk assessment and whether if the risk assessment is low why was the response potentially more heavy handed than the risk assessment justified.

PC Hickey: Risk assessment is a live document; it is not just three months in advance of a demonstration and left on the shelf—it should always be live. It should always take account it was alive at the time of the demonstration and it should always be reassessed and that is an absolute must. If information has come to light, from whatever source or intelligence, that there is likely to be violence and that there is available to people who would wish to use that violence articles that can cause harm then we would expect those to be dealt with.

Q256 Chairman: I do not think anybody would disagree with that, but the real issue—or the issue that came out earlier on from the protesters—was that as far as they can see the risk assessment for a particular demonstration—and we will take a hypothetical one—was low, the police then turn up kitted out in riot gear and that then raises the tension and it becomes a self-fulfilling prophecy.

Acting Assistant Commissioner Allison: I can answer that one, sir, because I would say that we do not put the officers out in protective equipment where the risk assessment is low. There are very, very few occasions on public order events, certainly within the capital, where we deploy in protective equipment. Let us just remind ourselves what it is—it is protective equipment; it is not offensive equipment, it is protective equipment. It protects officers and I have a duty of care to people who are employed by the Commissioner to make sure that they are not injured on these events.

Q257 Dr Harris: Sir Hugh Orde and Duncan McCausland were very clear that at the events they policed there is always intelligence and there is often a risk assessment that is probably somewhat higher than a climate camp in England, but they still take the decision, which they think has been proven in practice, to dress in normal clothes initially in an attempt to de-escalate. So that is even when there is this sort of risk assessment. Is your policy different because you do not agree with that policy—and I can assure you it is what we were told? Obviously they have the officers in protective gear nearby, out of sight in case a problem happens; but do you think that that things have not matured—and I do not mean that in a disparaging way—but the experience is not mature in England and Wales to trust that policy, as they appear to over there?

Acting Assistant Commissioner Allison: I will give you an example of where it is about understanding. A crowd at a football match now, many people going to football matches fully expect to see officers in protective equipment. It has become the norm and as a result there are no issues with it. There are very few events where we put on protective equipment. Part of the issues for us—and I am not going to undermine anything that they do in Northern Ireland because my colleagues Duncan and Sir Hugh Orde have a very challenging role and do some fantastic work over there, but we work in a slightly different environment—if you are going to have two sets of officers, so one set is going to be on the front line and one set is going to be on reserve and you come in and deploy, that is a massive investment in terms of your officers who have been taken away from other bits of policing. If the intelligence is there that says people within this particular group are such that they are likely to attack us, therefore we need protective equipment, our view is that we should not wait to get one or two officers injured as a result, but what we should do is right at the front put officers out in protective equipment. It does not necessarily mean that they have their NATO helmets on; in most cases it means they have what we describe as the flame proofs and the leg protectors and the arm protectors and they will be wearing their body armour as well. Again, this is about negotiation with the event organiser. Quite often these events are characterised by the fact that you do not really get the negotiation. You have a group of people who there is intelligence that they intend to commit acts of disorder. We cannot negotiate with them and as a result we have to prepare ourselves and have our officers prepared to be able to deal with it immediately.

Q258 Lord Lester of Herne Hill: The most difficult job you have when you are dealing with free speech is in the kind of situation that arose in the Behzti play in Birmingham when you remember that some local hooligan hotheads closed down the theatre and the play, using violence and the minister, I am sorry to say, condemned the theatre and the playwright, the women, whose play was about rape in a Sikh temple, rather than the demonstrators. That was a classic

example where the police had to discharge policy obligations on both sides. Another example is the recent very controversial novel—I will be careful how I put this because I do not want to raise the issue in any way that causes difficulty. But suppose a novel of a very controversial kind that has caused offence to a minority group is to be published, an attack is made on the publisher, and then when the publisher still wants to publish the police say to the publisher, “You will not get a printer because no printer is going to be able to be insured against violence; therefore you had better not publish.” How do you see, in that hypothetical example just now, and in the earlier one, the police’s positive obligation to act in a way that allows free speech whilst balancing it against obviously public order and other people’s rights to demonstrate? I realise that this is highly resource intensive, but faced with these dilemmas, like the Rushdie affair, how do you go about striking the balance? On the other hand you have creative literary work and on the other hand you have people who probably have not read it, who feel very strongly and say that they are offended, and you are in the middle of it. What do you do about that?

Deputy Chief Constable Sim: We have actually had an example of that at the Baltic, the art gallery in Gateshead, and we have had two recent examples of that where people have been offended by what has been on display. In one case we sought legal discussion with the director of the Baltic, with all representatives of the people who were offended by it.

Q259 Lord Lester of Herne Hill: Is this the sculpture of Jesus Christ which offended—

Deputy Chief Constable Sim: No, I am talking about a photograph that actually belonged to Elton John and was put on display and people were offended by that. We actually looked at the fact that it had been published in books; we spent a lot of time with the people who were making complaints; we spent a lot of time with the Baltic itself, and it is about making sure that there is plenty of discussion. In relation to the statue, that one was progressed much further because that was the legal advice that we had. We do not act independently like that; we uphold the law as it stands, as Chris has said before. In some instances I am absolutely sure that police officers do not like what they are being requested to uphold, but that is the position. When we take the oath we take the oath seriously and we uphold the law of the land and that is what we are required to do.

Q260 Dr Harris: Could you not just advise the people not to go to the exhibition if they would be offended by it? It seems obvious.

Deputy Chief Constable Sim: That is exactly what the Baltic did.

Q261 Dr Harris: You should say it as well—“If you do not like it, do not go.”

Acting Assistant Commissioner Allison: I do not think that is a matter for the police service, that is a matter for individuals. If I may just say on that,

obviously the hypothetical case I cannot talk about but we have had cases of a similar ilk in relation to—let us call it about animal rights extremism—where this has not just been resolved through use of the police service alone because it is a wider issue. Those who have been going about their lawful business but others have been trying to prevent them from doing so have used other avenues in the law and have been given other protections in the law, which we think is entirely valid. So I do not think this can be just solved by policing alone.

Q262 Lord Bowness: Can I go on to the question of private and public land. We have had evidence from some witnesses who suggest that there should be a legal right to protest in what is in effect a public space is actually privately owned—things like shopping areas, and I believe there are some instances like privately owned parks. Some of the witnesses we have had are not all in agreement on this. Do you have a view as to what your role is in relation to protests on private land and the sort of quasi-public spaces to which I have referred?

Acting Assistant Commissioner Allison: I have a fairly clear view that private places are private places. Our job is to police the public space and that is what we are resourced to do; therefore, I am not quite sure what would be gained by giving people a right to protest in, in effect, what is seen as a private area. It would create another area in which we would have to deploy police resources. The current rules under any deployment of the police service on private land to deal with something come under the Section 25 agreement, whereby the private owner of that land pays for the policing service. So a football match, if we deploy police officers inside the ground, then they pay for the policing. It would be a big challenge to our thinking if all of a sudden protest was allowed inside private property, people had a right to do it. Protest comes within our statutory duty as a service to deliver policing, therefore we would not charge for that, but clearly there is a tension with the people who actually own the private premises. I am not quite sure who it was who was asking for the right to protest in those areas but I think my take is that there is more than enough public space out there to enable people to protest in and that they do not need to go into the private areas.

Q263 Lord Bowness: Just for the record, if you have a protest taking place in what was in effect a privately owned shopping centre, for example, and trouble broke out, would you have the right to go in and put the situation right, or would you leave the owners to advise you?

Acting Assistant Commissioner Allison: If you have a law being broken in that area we would have the right to go in and do it and in fact in all of these cases the owners would say, “Can you please come in and help us and can you deal with the situation?” The sorts of protests we regularly see have been things like Fathers4Justice who did go through a period of time of climbing up cranes inside private building

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sites. Our attitude to that has been we will just let them get on with it, it is a matter for them; we will stand by to prevent a breach of the peace if that is required. Provided they are not doing anything there and then that require our intervention we are certainly not going to climb up the crane and get them down and we will deal with them when they come from the crane because they will ultimately, and we will take action against them and put them before the courts.

Q264 Chairman: What for?

Acting Assistant Commissioner Allison: It depends what offences they have committed; sometimes they have committed criminal damage, sometimes they have committed offences because they have prevented people going about their lawful duty. Forgive me, I cannot remember exactly—I think it is Section 42—but there are occasions when we do have criminal offences. There are occasions when there are not and it is a mere civil matter and then it is a matter for the people who own that property to take injunctions out against those responsible.

Q265 Chairman: I will give you a scenario. We get these giant shopping malls built all over the place. Supposing one has a fur shop in it—going back to your earlier example—and some anti fur protesters suddenly turn up outside and unfurl a banner and start protesting about the fur shop. Is that something to do with you?

Acting Assistant Commissioner Allison: In all of these places now—and I am talking of the ones in London and I am sure it is the same elsewhere, Sue—the owners of the premises have a significant investment in security infrastructure, so that is their first line of defence, their first line of stewarding, and they will be the people who will deal with it; and as it is private property they have the right to say to anybody, “You cannot come in here.”

Q266 Chairman: What happens if they refuse to go?

Acting Assistant Commissioner Allison: At which point we will generally end up being called to stand by to prevent a breach of the peace, whilst the people who are responsible for those premises eject them, and they are allowed to use no more force than is reasonable to do so. Then if a disorder broke out we would step in.

Q267 Chairman: So you would observe the security guard using reasonable force to evict the protesters.

Acting Assistant Commissioner Allison: Yes.

Q268 Chairman: And if the security guards used unreasonable force you would arrest the security guards.

Acting Assistant Commissioner Allison: We would ensure that they did not because they would understand quite freely. In most cases when presented with that situation, when a protester is faced with the fact that not only are there a number of security guards but a significant number of police officers and we are going to grab hold of you and

move you unless you move yourself, in 90% of the cases the people say, “Okay, I will make my way out; begrudgingly I will leave.”

Q269 Chairman: A couple of areas to explore briefly. One is the use of counter terrorism powers against protestors, I would like to get your view about that because obviously that has been one of the controversies that has arisen relatively recently and the broad scope of the counter terrorism powers have been used perhaps beyond what they were originally intended for. The Labour Party conference is a good one.

Acting Assistant Commissioner Allison: I can talk from the London perspective and again there is significant learning out of a number of cases and this is the importance of us being challenged through the courts. There are occasions when we do need to use our counter terrorism powers; I would say that that is why we have them. There are occasions when we have to accept there may be those who wish to use the cover of lawful protest to undertake other activity and some of that may be counter terrorism. We do not use powers to prevent people undertaking lawful protest; we do not use counter terrorism powers for that. But there have been occasions where we may have not articulated properly to the individuals that we have been using the powers why we have used them; so a person emerging from a set of bushes doing certain things at a certain time is not necessarily seen as the normal process where you have a group of 15 or 20 people standing there with placards shouting and screaming. The lesson that we have learnt is about briefing of our officers to make sure that when they do use the powers they use the right powers and they explain to all concerned, including recording it, why they used those particular powers.

Q270 Chairman: So counter terrorism powers should only be used in a counter terrorism context?

Acting Assistant Commissioner Allison: Clearly that is why they have been given to us and therefore if an officer is faced with a situation where they think, “Hang on, there is something I am not happy with,” with a counter terrorism mindset on, then they should use those powers. If they have a view that there is another search power, that they have reasonable grounds to believe an individual has a weapon on them, then clearly they should use Section 1 search powers in relation to that. Or on some occasions where for some marches or demonstrations it has got to the stage that the intelligence is such that the ground commanders have authorised a Section 60, which means we do not need the reasonable grounds but we have that ability to search people then they will use those powers. But it is about effective briefing from those in command, close supervision from the supervisors—the sergeants and inspectors—and about officers making sure that they have documented quite rightly what they are doing and why they are doing it.

Q271 Chairman: Why is the Public Order Act not sufficient for policing everywhere?

Acting Assistant Commissioner Allison: I am sure that the Committee has seen the response that I gave on behalf of the Metropolitan Police in relation to protests around Parliament. A number of things there. Since SOCPA has come along I think we have agreed with the view of repealing SOCPA, but our take is that the powers that currently exist within the Public Order Act could not cater for the environment around here, and it is fully documented there. But I think one of the main ones we need to consider is the issue of the Public Order Act first came in in 1986. Significant things have changed in our society since then; the threat of terrorism is significant and, as everybody is aware, we are currently against a civilian threat. The current powers under the Public Order Act do not give us the ability to impose conditions in relation to security matters and we take the view that it should. There are also other issues around this particular space here about ensuring that Members and Peers have access to this particular building, and therefore there needs to be some clear definition, as I said earlier, about what is required access. So what does that actually mean? What must people be allowed to do to be able to get in here and what protesters can and cannot do on the outside? That is not by way of what banner they can necessarily carry, but are there any particular areas where protests should not be allowed? I take the view—and it is firmly in our response—that that should not be a matter for the police service because the reality is that Parliament says, “We do not mind; protest can take place anywhere outside there” then there will be occasions when I am confronted with somebody saying, “I want to protest there” and I am going to go, “Okay, that is fine, you can protest there.” And as a result of that there may be some hindrance caused to members coming into this particular building.

Q272 Chairman: So you want to go back to the sessional orders type of directive?

Acting Assistant Commissioner Allison: Sessional orders is ancient legislation, sir, done way before the Human Rights Act and it needs to be brought up to the Human Rights Act. But I think that Parliament in deciding in the Constitutional Reform Bill is going to put some recommendations, and certainly I appeared in front of that Committee, and proposals are now being worked out by the Home Office. I think there needs to be some clear, unequivocal directions about what access to this building means so that everybody understands. So whether it is two vehicle access and two pedestrian access or one and one, whatever, and whether one lane has to be kept clear outside or not, so that everybody understand—that people in this building understand, protesters understand that actually that small bit of real estate, for entirely viable reasons, cannot be protested on but you can go 20 yards away. In my response I have talked about the specifics of Downing Street. Parliament may take the view. I do not think it is a matter for us as a police service to make that

decision, it is a matter for Parliament and once Parliament takes that view and passes a law then we will act upon it.

Q273 Chairman: Basically what you are saying is that you want certainty—it does not have to be SOCPA but you want certainty.

Acting Assistant Commissioner Allison: For everybody.

Q274 Chairman: And does that certainty include the notification right of SOCPA or can you cope without that?

Acting Assistant Commissioner Allison: We have asked in our submission that we think that there should be notification just within a very small area around the heart of government and the reason for that is that this is the most heavily protested bit of real estate. We have competing demands of different people; it enables us to manage it and it also enables us to manage. The Committee that I went in front of for that hearing I do not think in their report were necessarily convinced at the time. We still as the Met formed the view that we would like notification because it makes it possible for us to facilitate protests far better.

Q275 Chairman: And the question for Sue on the same lines. Are you particularly focused on the issue of Parliament?

Deputy Chief Constable Sim: Yes.

Q276 Chairman: Do we need SOCPA powers elsewhere in the country and, if so, what, for and where or can we use the public order powers alone?

Deputy Chief Constable Sim: My personal view is that we can use the public order powers. I think the issues around this part of London are very different but I do totally agree with Chris that it should not be for the police to make those decisions—it should be up to the chambers here to make the decision on behalf of the people.

Chairman: I think that is it from us. Do any of you want to add anything to what you have said to us? Have we missed anything that you wanted to mention?

Q277 Earl of Onslow: Can I try and probe a little bit more about the use of the Terrorism Act in demonstrations. You said that there might be this chap coming out from under a bush and so might be arrested under the Terrorism Act, but can you elaborate a little bit more and what did you do before the Terrorism Act?

Acting Assistant Commissioner Allison: It depends on the circumstances, is what I am trying to say, sir. If you have an individual who is demonstrating as part of a wider group of demonstrators and you take a view about what that group is trying to do, in most cases we will not need to take any action at all. In some cases at certain sites we will see people doing

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things that are very, very unusual and do not accord with normal practice, and as a result there may be occasions—

Chairman: I think we have run out of time. Thank you all for coming; it has been very helpful. We have one more evidence session to come with the Minister and then we will produce our report early in the New Year.

Tuesday 9 December 2008

Members present:

Mr Andrew Dismore, in the Chair

Lester of Herne Hill, L
Morris of Handsworth, L
Onslow, E

John Austin
Dr Evan Harris

Witnesses: **Mr Vernon Coaker MP**, Minister for Policing, Crime and Security, and **Mr Christian Papaleontiou**, Public Order Unit, Home Office, gave evidence.

Q278 Chairman: Good afternoon. We are about to enter into our last evidence session on our inquiry on policing and protest and we are joined by the Home Office Minister of State for Policing, Crime and Security, Vernon Coaker, and by Christian Papaleontiou, who is from the Public Order Unit at the Home Office. Welcome to you both. It is good to see you again, Vernon. I hope we can reach the same sort of agreement as we did when we were doing people trafficking.

Mr Coaker: I hope so. We made a lot of progress there together so let us hope we can make some progress with this as well.

Q279 Chairman: Would you like to make an opening statement?

Mr Coaker: I welcome the opportunity to come here this afternoon. I have read much of the deliberation of the Committee. You were kind enough to intimate at the beginning that we worked on human trafficking. I see us working together and will look very carefully at the recommendations and the issues that come out of the Committee's report to help them inform the work that we do, to pass better law and look at how we balance all of these various issues together. I see it as a very constructive thing.

Q280 Chairman: Do you think the police should be principally concerned with facilitating protest or controlling it?

Mr Coaker: I do not think it is a choice between the two. I think it is essential that the police facilitate protest and enable that to happen. As in any democratic society, protest is the life blood of that society. The rights of people to demonstrate, to protest, to say that they do not agree with something or they do agree with something are absolutely essential and facilitating people to be able to do that, whether it is through negotiation, liaison enabling roads to be closed or enabling things to take place is absolutely essential. Alongside that, there are the other issues of protecting the public. In facilitating protest, the police also have to have regard to other objectives, one of which is to ensure that other people can go about their lawful business and not be interfered with in an undue way. Also alongside that, we have to make sure that the police have regard to crime, to the reduction of harm and those sorts of issues. It is a balance between the two. In facilitating

protest, that is an essential part of the police's work and that of course will be done taking those other objectives into account.

Q281 Chairman: Why do you think demonstrators have such a negative view of the police when it comes to the way protests are managed?

Mr Coaker: I do not think the majority of protestors do have a negative view of the police. If you look at a lot of protest that takes place, a considerable number of people are able to protest. They join demonstrations; they join marches. They protest outside of different institutions and the majority of those people, I think, think that they work closely with the police and they facilitate that protest. However, we all know—and many of us here will have been on demonstrations—that sometimes things go wrong and sometimes there are things that have happened which are mistakes, things that have not worked as well as they should do. Sometimes therefore people will have a negative view. Some of the protesters in some of those well documented cases that we have seen sometimes will have that negative view. Also alongside it, what we have to do is to make sure that we get that dialogue between people so that we have that trust between the police and those who would protest.

Q282 Chairman: Do you think that changes in policing style—for example, turning up in riot gear—get people annoyed and make them feel intimidated and that has contributed to part of the problem?

Mr Coaker: The police certainly have to be aware of the impact of not only their style of dress but also the kit that they wear and the way they treat people, the way they deal with people. All of those things are essential if we are going to have harmonious and good relationships between those who are protesting and indeed the police. If it is inappropriate for the police to turn up dressed in riot gear and it is not that type of situation, that may well not help, fairly obviously. Similarly, if the police do not treat others with respect, hard as that is at times, of course that will impact on the situation. The guidance that the police put out would normally be that the way they are dressed and the way they deal with people should be appropriate to the situation that they are dealing with.

Q283 Chairman: In that context, can I ask you about Kingsnorth, which was a peaceful protest? If you have read the evidence, you will have seen that we heard quite a lot of accounts from those involved. They thought the police were heavy handed, that they had changed their tactics from what had been agreed in advance, things had been seized when there was no real reason to seize them. They were taking people's names and addresses. People there felt they were being intimidated as a result of over-policing. Do you think the police went over the top?

Mr Coaker: First of all, I think it is important to say that the police believed, because the demonstrators had said it, that they were intent on closing down the power station at Kingsnorth. Therefore, in that sense, the police were rightly concerned about what people were intent on doing. The risk assessment and the intelligence they had showed to them that there was a clear threat to the power station, which was an important part of the infrastructure of the country. Having said that, I know you had the ACPO lead Sue Sim here and I think she has written to you to say that the NPIA are conducting a "lessons learned" from Kingsnorth. The NPIA have not yet concluded that particular piece of work. In respect of that, I want to see what that report says with respect to Kingsnorth and, if this is helpful to the Committee, I will go to meet with Sue Sim, meet with ACPO, look at the lessons that can be learned from Kingsnorth, get a proper assessment of what did take place there and, if necessary, we can look at the guidance that people put out to the various police forces across the country.

Q284 Chairman: That would be helpful. We may come back later on to some of the issues about inconsistent approach. From what you have said, part of the issue is you may have a very tiny number of people bent on causing trouble in a huge demonstration. That has often been the case. Why should you police a demonstration in a way that affects the vast majority of perfectly peaceful protestors, in a way that treats them all as though they are anarchists bent on causing havoc?

Mr Coaker: The guidance would say you should not do that. What you should do is to try to police the demonstration and the protesting in an appropriate and reasonable way. I would expect and hope that the police in dealing with protests will not go to the lowest common denominator but will look at the way in which demonstrations can take place. We have massive marches sometimes in London, massive demonstrations. The vast majority of those go off peacefully and work well. There may be some people on the fringe of it who may cause a problem but often the police will not allow that to affect the general way in which that particular demonstration is policed. However, they will make a risk assessment and clearly if they believe, even though they are small in number, that those people may have a disproportionate effect and impact on public safety, they may well come to a different view. From my own personal experience—I am sure many others in this room have been on demonstrations—the demonstrators themselves are often sick and tired of

those who would seek to piggy-back on their demonstrations for their own particular good and sometimes have concerns about that as well.

Q285 Chairman: When you do this review, when you get the report from Sue Sim, would you meet with some people who organised the Climate Camp at Kingsnorth to hear their point of view like we did?

Mr Coaker: Certainly I will meet with people to discuss any particular issues that arise out of demonstrations. I am perfectly happy to do that. Let me give you an example of what I am prepared to do. You had the journalist, Jeremy Dear, who came and spoke to you and he raised certain issues that he was having with respect to the NUJ and the photographers being asked by the police to stop photographing, cameras allegedly being taken away and those sorts of things. I asked Jeremy to come and see me and we met with one of the superintendents in the Public Order Unit. We sat down and had a discussion. We came to some different conclusions. They shared their various experiences and, as a consequence of that, some of the guidance to police officers dealing with photographers has been changed. People have been reminded that photographs can be taken and Jeremy and others have been invited to come and meet with the police and see it from the other side, to talk to them about the way that they are policing demonstrations. I think that is the sort of confidence and trust that you can build up if people speak to each other and are reasonable. It may also be helpful if I share the letter that I wrote to Jeremy following the meeting that we had together, subject to Jeremy's agreement and the police's agreement, which lays out some of the things that we have done and some of the clarifications we have made in order to try to ensure that people's right to protest in a reasonable and proper way is maintained.

Q286 Earl of Onslow: One used to be told as a child that fair words butter no parsnips. Most of what you have said I have found very satisfactory but there are niggling worries in the back of my mind. You said you think the police are reasonably well looked at by the public. I am not totally sure that that is right. I know this may be anecdote or hunch but I seem to hear people complaining more about rude policemen. I was laughed at by my fellow Committee Members before you came in because I think they look extremely scruffy. I do not see why policemen should look like road members. It takes away respect from them. Everybody wears a yellow jacket now. Police should look like police and they should be respected as such. On the other side, sometimes you have seen them go over the top on political correctness. The perfect example was when those two police assistants walked away from somebody who was drowning because of health and safety. It should not have crossed anybody's mind. I accept this is only hunch but it is a hunch which I think is quite widely spread. On the one hand, they are getting more oafish and, on the other hand, they are getting more politically correct. If you take those two things, that is extremely dangerous from, if I

may say so, the extraordinarily sensible and accurate thing that you were saying about how these problems should be solved. It is admittedly hunch but how would you react to what I have just said? I hope it is not just an old man.

Mr Coaker: It does not matter whether you are young, middle aged or old. It depends whether it is sensible or not. I do not think they are just the words of an old man. It is somebody who is concerned about this and wants to try to contribute to how we deal with it. It is important that the police dress appropriately. If police turn up in riot gear, if you exaggerate it often makes the point really well, but you would not want the police turning up in riot gear automatically to an old people's home or to a demonstration. It is the appropriateness of the dress that is important, I think. Sometimes when the police go to different raids they dress in an inappropriate way. Similarly, if they are at a civic function. For example, the police came to Remembrance Sunday a few weeks ago in really smart dress uniform. I think it is the appropriateness of the dress that is important. With respect to the kit they wear, of course the police are protecting themselves as well from the small number and minority of protestors who may wish to cause them harm.

Q287 Chairman: Is there not a risk that that becomes a self-fulfilling prophecy?

Mr Coaker: Yes. I appreciate that. That is fair comment. If you are not careful, it does become a self-fulfilling prophecy. That is where the control, command and importance of those who are in charge of what is happening are extremely important. Frankly, sometimes reviewing what has happened—as is currently taking place with respect to Kingsnorth—should not be seen as something that is a bad thing. It should be seen as: “Did we get this right? Is this something that we can learn from?” One of the areas that we are looking at—maybe we will come on to this later on—is about what causes some of the angst amongst people. It is things like the SOCPA regulations within the vicinity of Parliament. Sometimes people make a generalised remark because there are one or two particular things that they are concerned with, that they do not like or they think are troublesome. There are some people who think that the police do not get it right with respect to protests and sometimes there are a lot of people who think they got it particularly wrong with one or two examples that we could quote. Generally, I think the police facilitate protest in this country. Sometimes it does go wrong but I think the majority of people respect them for the way in which they try and get that balance.

Earl of Onslow: All the demonstrations I have been on have been beautifully policed.

Q288 Dr Harris: On this question of what you do in a Kingsnorth situation where there is a minority hell bent on, as the teacher says, spoiling it for everyone else, you say that it is reasonable to try and ensure that you police the extremists, as it were, without taking it out on everyone else. I think that was the

principle. To what extent is cost a factor? For example, if it would have cost more for them to have policed the perimeter more strongly at Kingsnorth than it cost them to search everyone and confiscate every tent peg from everyone who came into the Climate Camp—which rather undermines the general approach of camping, I think—do you think it is reasonable that they should bear a higher cost in order to preserve the right of peaceful protest without over-policing of everyone in that situation? Old ladies had their umbrellas taken.

Mr Coaker: Some of the individual things that you mention would no doubt come in this NPJA review if it is specifically related to Kingsnorth. The proper policing of a demonstration or a march or a protest should be based on the risk assessment and the intelligence that the police receive. They should make the operational decision according to that. They should not—and I do not believe that they do—make it on the basis of cost.

Q289 Chairman: Can I put the point to you that they raised with us on the question of costs from the reverse position? One suggestion that was put to us was that the police turn up with all this riot gear and expensive equipment to justify the budget of having the stuff in the first place when it was not needed, the suggestion being they put in this application for all this money to have all this expensive kit and they have to be seen to be making use of it.

Mr Coaker: I have not seen any evidence of that. We kit the police out to do the job that we would all want them to do. It is an important point that Dr Harris made and policing a demonstration should be on a risk assessment basis, rather than a cost basis.

Q290 Lord Morris of Handsworth: We can all agree that constructive dialogue is essential for good relationships. How would you encourage greater dialogue between the police and protestors?

Mr Coaker: I used the example I was going to use earlier on with respect to Jeremy Dear and the NUJ. A lot of the time there is good dialogue which takes place. I know one of the suggestions is to make it compulsory but I would not make the dialogue compulsory. I think what we have to do is encourage that trust, that confidence, so that people will negotiate and discuss with each other. If you are going to have a march, you have to give prior notice to the police anyway, so the negotiation will take place anyway because of the prior notice around the march. Clearly, there is not prior notice with respect to assembly but most of the time assembly will result in a discussion taking place. Given the fact that, if you have a march, you have to give notice and therefore dialogue takes place, the importance is to make sure that that dialogue is of good quality and that there is trust and people listen to each other and take action appropriately.

Q291 Lord Morris of Handsworth: The Jeremy Dear dialogue was specific to the issues about cameras and you have shared with us how you responded to that. We are thinking not just about exercising the requirement to give notice but, on the day when the

protest may be taking place for example, what are the steps that can be taken to improve the dialogue between the police and the protestors?

Mr Coaker: One of the things you would expect to happen is, where a demonstration or a march or whatever is taking place—I have seen this myself and I am sure you have as well—the best examples are when the police commanders are talking to and discussing with those who are leading the demonstration or the march and there is cooperation that takes place between the two. That is what you would expect to see as part of that notification to key people whom you could liaise with in order to ensure that everything passes off peacefully. On a broader point, of course, one of the things that the Association of Chief Police Officers is doing at the present time is also inviting protestors to come to their conferences, to come to police training, to talk to them at those conferences to get a more general sort of dialogue going on with respect to all of this. Certainly I think those sorts of initiatives are very welcome and very important. That sharing of each other's experience is essential to build and encourage that trust.

Q292 Lord Lester of Herne Hill: Obviously the media are the eyes and ears of the public and it is very important that they are able fairly to report the way in which demonstrations are handled by the police and others. You will know, because they met you in October, that the National Union of Journalists who also wrote to the Home Secretary earlier are very concerned in particular about the Forward Intelligence Team which they say targets journalists who are legitimately covering protests. Their evidence to us was quite worrying because they give chapter and verse. They say—and they have probably said it to you—that they are concerned about surveillance of journalists by that team, about denying reasonable access to protests, about ordering photographers or camera crews away from marchers, moving photographers into marches, preventing journalists from leaving demonstrations, not recognising press cards, assaulting journalists, using stop and search on journalists, seizing journalistic material etc., and arresting journalists unnecessarily. Those are obviously serious and specific. You have met them and you told us you had a letter which we can see, but what concrete measures can you put in place, including perhaps public guidance, to address what looks like a rather serious problem?

Mr Coaker: The fact that that has been said is extremely serious and something that is of concern which is why I wanted to meet Mr Dear together with the police in order to try to overcome that. You ask about guidance. We have revised the guidance, making it clear. With your permission, Chairman, perhaps I may quote from the letter because it may help the Committee. “We have addressed this directly in the revised guidance making it clear that the Terrorism Act 2000 does not prohibit people from taking photographs or digital images. The guidance also makes it clear that former memory cards may be seized as part of a search but officers

do not have a legal power to delete images or destroy film.” There are also some changes with respect to the Forward Intelligence Units to try to reassure journalists and photographers of their rights to report and photograph what is going on. It is absolutely fundamental and I agree absolutely with the point that you are making. Notwithstanding sometimes the need for police officers to take action, even against an individual journalist or an individual photographer, we must not under any circumstances unwittingly put ourselves in a situation where photographers, journalists or others may feel that they do not have the right and do not believe that they can pursue their professional job and the public interest. That is why I thought it was so important to meet with Jeremy Dear and hopefully, as a consequence of that, we will be able to reassure. I know you sent much of this out to journalists and photographers within the NUJ to try and reassure them about that. Mr Dear has been invited to ACPO to go and talk to them but also to be with the police during some of the demonstrations while they are taking place to see what is happening and to advise the police on some of the procedures that they may change.

Q293 Lord Lester of Herne Hill: In terms of concrete measures, first of all, will the revised guidance be made public and, secondly, how will you monitor to make sure that the guidance is implemented in practice?

Mr Coaker: What I did say to Mr Dear was that I would meet him again in a few months or whatever to ask him what his actual impression was of the changes that had come as a consequence of the changes that we have made.

Q294 Lord Lester of Herne Hill: Will we see the changes?

Mr Coaker: The letter will help. The changes I think will be reflected in whether Mr Dear and his colleagues actually say that, as a consequence of that meeting and the changes to the guidance, changes to the actions of the Forward Intelligence Units, there is greater confidence amongst photographers and journalists to pursue their proper trade. On the guidance, it is not my guidance but let me talk to the police and see what the issues are about. I do not want to mislead the Committee and say yes when it is not my guidance, but certainly I think it would be a good thing.

Q295 Earl of Onslow: We touched briefly on Lord Lester's point about preventing journalists from being journalists at demonstrations, sometimes using the Terrorism Act. Is it not rather hard sometimes for the police not to follow the example of the arrest of the gentleman in the Labour Party for doing what one should do to all ministers, which is to shout at them because it is good for their souls if nothing else, and for instance the confiscation of the Icelandic Bank assets using terrorism legislation? The government itself has misused, I would suggest,

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terrorism legislation on more than one occasion and it is that that is worrying. How do you expect the police not to follow the example?

Mr Coaker: Counter terrorism should be used exactly—

Earl of Onslow: It should be used for terrorism, not for a general catch all.

Chairman: We are talking about journalists here.

Q296 Earl of Onslow: That was a supplementary question to the journalist point. How can we expect the police not to follow an example led to them by their elders and betters?

Mr Coaker: The government's view is that counter terrorism legislation should be used with respect to counter terrorism. That is our position and that would be appropriate whatever the circumstances and wherever it took place.

Q297 Dr Harris: Can I ask whether you think there is a general right not to be offended?

Mr Coaker: Sometimes that depends on the context. It is a very difficult question to say yes or no to. Should somebody be offended if they are racially abused?

Q298 Dr Harris: That is already a crime. I will rephrase the question because obviously I accept your point. Outside of explicit, unlawful acts—for example in the public order area—specifically around incitement to racial hatred or incitement generally, is there a free standing right, if you like, not to be offended? If so, should the police be seeking to protect people against infringement of that right?

Mr Coaker: We define in law certain things that are against the law. You have very clearly laid them out. I think it is difficult to say that there is an absolute right not to be offended by anything that currently is not against the law. If you went back a few years, there are things that are against the law now that were not against the law. I think it is extremely difficult. Having said that, I think we do have to accept that different people have different standards as to what is offensive or not. Therefore, to sometimes have absolutes is quite difficult. For example, some people would be offended by somebody swearing in their company. It would not offend me, generally speaking, depending on where it was. If it was a dinner party it might do but if it was on a football pitch it would not. It depends on the context.

Q299 Dr Harris: Swearing at someone can fall into an abusive situation. I was not talking about that. Let me get to a specific because it came up in the earlier evidence. There was a protest in Trafalgar Square that was cleared by the police about free speech. It was in the wake of the Danish cartoon situation and people argued that it was wrong that journalists and people who were cartoonists were being intimidated because of a religious cartoon. That is, cartoons of the Prophet Mohammed. Therefore, there were all these speakers saying, "No. We should have the right to publish this." It was not Brick Lane. It was Trafalgar Square and there was

a small group of people clapping the speakers. I will declare an interest. I was one. Peter Tatchell was another. The Freedom Association were another. The police arrested someone for wearing a t-shirt with one of the cartoons on, on the basis that someone had said they were offended by it. In the evidence session we had, which I believe you have read through, the Met person said he was in the control room and was aware of this and said he thought it was legitimate to arrest someone for wearing that t-shirt if it offended someone. I question whether that is the job of the police.

Mr Coaker: That is why I said I do not think it is an absolute right in the sense of not being offended. I think some of it depends on the context. Section five may well be something that we will come to later in the Public Order Act, but that does have within it a clear power for the police to take action if somebody complains to them about something which they find offensive. It is a matter then for the police to decide whether that is something that is appropriate to act against. It is very difficult to sit here and say in every circumstance that something somebody has complained about is something that the police should not take action against because why should they be offended about it.

Q300 Dr Harris: Because there are direct consequences of that. Clearly people who are easily offended will therefore through the police inhibit the speech and actions, non-violent, non-inciting actions of other people, simply on the basis that they happen to be more easily offended. It is quite hard, I imagine, to offend you and I but there are some groups of people who are easily offended. Why should they be protected at the expense of other people's right to speak short of specific offences?

Mr Coaker: It is not something that somebody would automatically be arrested for, but it would be something that the police officer in that circumstance would make a judgment about, if somebody has complained to him or her about it. This is something that you raised, again, I know because I saw it. Somebody may be arrested for something similar but the Crown Prosecution Service may then decide that it is silly, inappropriate and not something that they want to pursue.

Q301 Dr Harris: That is the gay horse example. That is another section five example. I do not know who was caused distress and alarm by one of my constituents asking if the police horse was gay. It is no help to that person who has been arrested, finger printed and DNA'd, albeit it hopefully not now having their DNA retained, if the CPS somewhere down the line says it is okay. There is still an infringement and a chilling effect of that law. Do you accept that, if the police are just allowed to interpret that section five of the Public Order Act as widely as they like, there is a real threat that protest and free speech could be limited unacceptably?

Mr Coaker: I do not think section five should be used arbitrarily. It is an important power that the police have. There have been instances. Dr Harris, you have raised some of them. I have read one or two

examples in the evidence that has been given. Again, in the spirit of trying to be helpful with respect to this and working with you as I have done before, my intention is to meet with ACPO. I will take some of the examples that have been used from the Committee and see what sort of guidance and better support could be given to police officers with respect to the use of section five. I am quite prepared and happy to do that.

Q302 Lord Lester of Herne Hill: ACPO have produced in the past very useful guidance for Metropolitan Police staff for dealing with media reporters, press photographers and television crews. That is I think being revised or has been. From the Home Office point of view, you would have no objection, would you, if ACPO were willing to have that guidance made public?

Mr Coaker: No.

Q303 Dr Harris: To what extent should the concerns of businesses and bystanders about a peaceful protest affect the policing of a protest? In other words, if a protest is otherwise lawful and has been agreed, should the complaints of businesses and bystanders affect the way the police police it in terms of restricting it?

Mr Coaker: Part of what the police have to do is to balance up the right to protest and the rights of people as well however to go about their lawful business and not to be impacted to too great an extent. That is quite a difficult balance to strike. Of course people should be able to protest. Of course people should be able to demonstrate, but people are also free under the law to go about their lawful business. It may well be for example that people around object to the protest. They have human rights. They have a legitimate view about a protest. Should it be a bar to it? No, but certainly again it goes back to the point Lord Morris made. Part of it is negotiating, discussing and trying to come to a reasonable balance.

Q304 Dr Harris: What is the human right engaged by someone objecting to someone else's protest?

Mr Coaker: The right of them to go about their business without being impacted on by something happening outside.

Q305 Dr Harris: Which article is that?

Mr Coaker: The right to pursue your own life without interference from others. Is it five?

Q306 Lord Lester of Herne Hill: It is the rights of others you are talking about. You are saying you have to balance the rights of protestors against the rights of others.

Mr Coaker: Yes, that is right, but it should not mean that you then automatically stop a protest from taking place. There are all sorts of examples we could use where people have protests and they might stop me going somewhere on a train or a plane. If you are trying to balance that out, what right does

somebody have to stop me doing something in order that they can protest? I think that is quite a difficult question to answer sometimes.

Earl of Onslow: For instance there was a case of someone wearing a Countryside Alliance t-shirt being rude to Mr Blair at the Royal Norfolk Show and they were arrested and charged. There was a case of the police charging somebody for reading out names at the Cenotaph. All of these are incidences where issues of police discretion—

Chairman: The Cenotaph was a different issue altogether. It was a SOCPA issue.

Q307 Earl of Onslow: There are police powers for discretion and it seems to me nobody but a complete BF would arrest somebody for going up to a policeman and saying, "Is your horse gay?" This is what brings the police into disrespect. This is going back to my previous point and I think the same applies over the other two incidents. I have here in front of me the fact that there have been allegations that the policing of a demonstration can be altered by whether the police have some view on it. For instance, there was a case whereby a group of Conservative Party campaigners dressed as Father Christmas with Gordon Brown masks were holding a banner outside Downing Street. The police said it was a publicity stunt so they did not have to have permission to demonstrate. Even though I am a Conservative sometimes, it does seem slightly dodgy. If you are going to arrest somebody for reading out War Memorial names but not for dressing as Father Christmas, do you see what I am getting at? There is a lack of judgment floating about somewhere. A number of witnesses have complained that the policing of protest in different areas is inconsistent. Do you think this is due to discretionary powers in legislation or differences in police practices? If it is discretionary powers, I think that is a good idea. If it is due to police practices, I think it is not a good idea.

Mr Coaker: I agree with what you have said. There are 43 police forces and there will be discretion for those in their areas. Sue Sim, as the Deputy Chief Constable, has been trying through the ACPO public order guidance to get greater consistency across the country in terms of how demonstrations are policed. ACPO have tried to do that through the training of police officers when they join the service through their probationary training, through their intermediate training, and also through various public order command courses that the police run to try and ensure that there is this consistency and you do not get some of this unwarranted difference, which as you say is not due to discretion. It has to be said as well that the NPIA is also trying to bring about greater consistency with respect to the policing of protests across the country. I think that would be a good thing. It goes back to the point that you and Dr Harris were making before about the use of section five. You do get these examples that are brought up which do sometimes make people wonder whether the power was used appropriately.

I will take those examples back, talk to the police about them and see whether we can clarify and get some guidance out of it.

Q308 Chairman: The two key examples here are SOCPA ones. We were told by the police that the SOCPA rules are absolutely clear. You have to apply for permission to do your demonstration and the permission is not going to be unreasonably withheld. We have two different issues. We have a bunch of Tories dressed up as Father Christmas with Gordon Brown masks with protest banners. Maybe the police did not want to nick more MPs—I do not know—but this is described as a publicity stunt. It actually sounds more like a demonstration to me. You have somebody who is reading out names at the Cenotaph, which is a publicity stunt but it is treated by the police as a demonstration. That is inconsistent enforcement of the law entirely the opposite way round. Those two cases really do highlight the inconsistencies that appear. If the police have discretion on these cases, why was not the discretion exercised sensibly? We were told in relation to reading out of the names that they were told quite clearly they had to apply for permission. They refused to do so. In this other case, quite clearly if they are politicians, they should know the law absolutely clearly because we all know what the SOCPA rules are, I would have thought, in this building. They do not bother to apply, despite what the law says, and yet they are treated entirely differently.

Mr Coaker: The Cenotaph case was upheld by the court. Discretion is important and does happen in different circumstances across the country, but there is a need for greater clarity about how some of the powers of the police are used and how the officer on the beat uses the powers he has available to him.

Q309 Chairman: This SOCPA thing is mandatory. There is no discretion, we were told by the police. The rules are absolutely clear. You have to apply for permission. If you get permission, fine. The chances are you are going to get it unless there is something really peculiar about it. You told us that if the person who read out the names at the Cenotaph had applied for permission they would have got it but they were making it effectively a publicity stunt to say that they opposed SOCPA and that is why they did that; yet the other one is treated differently. Either there is one rule which says quite clearly you apply for permission—if you do not, you get busted—or there is not.

Mr Coaker: My understanding of it is that, even within the SOCPA rules, the police can give warnings. They do not have to go straight to an arrest of somebody. As you know from the response we have made to the draft Constitutional Renewal Bill, we have announced our intention to do something about the SOCPA rules anyway.

Q310 Dr Harris: The question the Chairman is asking is whether there should be an exemption for publicity stunts. Mark Thomas—I do not know whether you would call him a politician—the activist

and comedian, gives another example where, when Gordon Brown and Nelson Mandela unveiled the statue in Parliament Square and read some speeches, they did not need to get permission. When he stood there and read exactly the same speeches as a one man pronouncement, he had to get permission and clearly the police decided that the Prime Minister and Nelson Mandela were not demonstrating.

Mr Coaker: The key difference is that Nelson Mandela and Gordon Brown, when they were unveiling the statue or whatever they were doing, were not demonstrating in Parliament Square. With others, even if it was a publicity stunt, people were looking as to whether they were demonstrating.

Q311 Earl of Onslow: Publicity stunts are allowed.

Mr Coaker: I take the point. Was it a publicity stunt or a demonstration? That is where you start dancing on the head of a pin. I personally see lots of things as publicity stunts and they are quite amusing. You would not stop them because that is part of the life blood of democracy, to use humour and caricature in order to make a political point. That has been done through the centuries. It is a perfectly reasonable thing to do. Are we saying somebody is using that to demonstrate or simply as a publicity stunt?

Q312 Chairman: If the woman who came to read out the names in Trafalgar Square dressed up as Father Christmas, that would have been all right?

Mr Coaker: No, it would not.

Q313 Dr Harris: Mark Thomas gave the example of a man dressed as Charlie Chaplin, holding a placard in the SOCPA area saying “Not allowed/aloud”. He was arrested. That is a publicity stunt. I think the point is that the police are able under the current law to pick and choose. We are asking whether you think the law should be either more relaxed or more specific.

Mr Coaker: Obviously with respect to SOCPA, we have announced our intention to change the law anyway. If you are asking about—

Q314 Dr Harris: Will you take the opportunity to clarify the position?

Mr Coaker: With respect to the Public Order Act which will apply to the area around Parliament as well as to the rest of the country, I have already said to the Committee to try and be helpful that with respect to section five, which is the power the police have which is causing some of the issues to be raised that we are raising here, I will raise this with the police, talk to them about the issues that have been raised by the Committee and see whether we can bring greater clarity and certainty to some of these issues.

Q315 Dr Harris: I have one more example of different approaches. It is about the Oxford Union which one week had a visit of the President of Pakistan. They created a cordon round the Oxford Union to ensure he was able to get there and speak. I suppose that is appropriate. No one is arguing that

is not appropriate. The same with the Chinese leader. The protestors were kept way back so that there was no imposition against him. There was a protest against the President of Pakistan. Later in that term, there was another meeting on free speech where there was a protest seeking to stop it. It was the clear intention of the protestors that they would not allow the debate which involved David Irvin and Nick Griffin debating free speech with me and a couple of journalists. They did not want it to go ahead and no cordon was put round resulting in the protestors being able to get inside, having a sit in and preventing the speech going ahead, intimidating the students and indeed the speakers who were trapped inside the building and could not have their meeting as they planned. The police defended that by saying it was only their job to ensure that the protest outside was peaceful. It was the job of the private building to ensure that there was no trouble inside, even though they policed it so that people could get in. They said, because they needed to make no arrests, it was a success. I wanted to ask you whether (a) you think that sort of differentiation is justified based on the police's opinion of the merits of the two groups of people—I do not think I disagree with them about the odiousness of Mr Griffin—and (b) whether the right of people to debate, especially debating free speech, is something that they should consider as an outcome, whether that has been allowed to go ahead or whether they are just allowed to say, "It was a good policing incident because we did not make any arrests."

Mr Coaker: That is a very important question. I take the point about you not defending the other individual involved. That goes without saying. The police's job is to try and ensure that you facilitate free speech. I do not think there should be a judgment made on the merits of whoever is speaking necessarily. I think the issue is about security of the people who are involved. It is about ensuring that free speech is maintained and that includes the right of people to speak balanced against the right of people to protest. I think there are some quite significant issues that have arisen out of the example you have just given and I would hope the police would look at it.

Q316 Earl of Onslow: Arising out of my original question, surely on this issue of police discretion, if in doubt, the police should give the offensive person the benefit of the doubt. After all, free speech is really about me being offensive to you. That is what you do not like and what you might get cross about. Me saying, "Mr Coaker, you are the greatest statesman since the Emperor Justinian" is not free speech. Free speech is being rude about people, arguing with people. Unless that offensiveness is going to cause a riot, they should on the whole always allow the offensiveness.

Mr Coaker: It is difficult to judge every single, individual case but, as a principle, defending freedom of speech is important, even if somebody sometimes is saying something that other people do not like or pushing the boundaries. In fact, sometimes it is only because people have pushed the

boundaries that change has occurred. I know the Committee is wrestling with this. Everybody agrees with the right of protest and everyone agrees with the balancing rights as well. The issue is where they rub up against each other and how you ensure that, in the interests of ensuring public order, you do not undermine the right to protest but, on the other hand, in allowing the right to protest or to say things that are beyond the accepted norm, you do not cause the undue offence that none of us would want.

Q317 John Austin: You have reaffirmed the government's intention of repealing sections 132 to 138 of SOCPA. In earlier evidence, the government have said to us that this was a matter of constitutional renewal and it was not because of the government's feelings that there was a compliance problem on human rights grounds. I notice, unless I have missed it, that the Constitutional Renewal Bill is not in the Queen's Speech this year. If you are going to do it as part of constitutional renewal, when do you expect to bring in the repeal of 132 to 138 of SOCPA?

Mr Coaker: We expect that to come in this session. We think it is an important part of the constitutional renewal and in the response that you will have seen to the document in managing protests around Parliament there was general recognition in the responses that we had to that that it was unpopular.

Q318 John Austin: Which Bill will it be part of?

Mr Coaker: The Constitutional Renewal Bill.

Q319 Chairman: That is not happening.

Mr Papaleontiou: The programme of constitutional renewal was referenced in the Queen's Speech. We will be taking forward measures which will be addressed.

Q320 Chairman: It is somewhere towards the back end of the queue. Why can you not take it as part of the Law Reform Bill?

Mr Coaker: My understanding was that we were changing this with respect to the SOCPA clauses and we were amending those in this session of Parliament. I will go back to the Department and clarify that. I have been briefed to say that to the Committee. That was my understanding as well but I will go back and clarify that with the Department and write to the Committee to make sure that I am not misinforming you.

Q321 Chairman: That is helpful but if it looks as though the Constitutional Renewal Bill is going to be at the back of the queue for the parliamentary year, we may need to carry the Bill into the next year, which may mean it gets alongside of the General Election, that is not very helpful. It is a relatively minor reform in terms of drafting so I will put it to you again: we know there is going to be a Law Reform Bill. Why can it not be part of that? I ask it in a rhetorical way.

Mr Coaker: I cannot answer that because I do not know, having been told that we are going to take this forward in this session, whether there is some other

Bill that I have not thought of that it is going to be part of. What I need to do is to check this so that I properly inform the Committee of what the intention is.

Q322 Chairman: It could also go in the Policing and Crime Bill, could it not?

Mr Coaker: It is the Policing and Crime Bill which I am taking forward, as I think you have probably just been told. This is an extremely important measure. It is important as a statement about our country and protest. Therefore, it is an important legislative change that we need to take forward. My own personal commitment to it is something that is there. I will find out what is happening and come back to the Committee so we can properly inform you how we are moving on that.

Chairman: It would be very helpful if it could get into an earlier Bill. I certainly feel an amendment coming on.

Q323 John Austin: Apart from the regulation of protests around the House of Commons, there is the issue of access as well. There was some question as to whether the Public Order Act was adequate for the purpose. Can I ask you what options the Home Office is actually looking at for changes to the Public Order Act to deal with protests around Parliament?

Mr Coaker: We obviously want to remove the SOCPA provisions but we do know that session orders are passed by Parliament at the beginning of each day and it is important that Members of Parliament and members of the House of Lords can gain access. Part of the changes that we will make will be looking at how we can ensure, notwithstanding the changes I have said we intend to make with respect to taking those clauses out, that Members of Parliament, Members of the House of Lords and others, can access Parliament. We will look at that, not only in terms of accessing when Parliament is sitting but when Parliament is not sitting as well.

Q324 John Austin: Will there be an opportunity for adequate discussion of the options that you might be considering?

Mr Coaker: Yes. There will be. It will be my intention to ensure that we negotiate and involve members of this House in terms of what action there should be. We will have a full, frank and open discussion about how we bring that about.

Q325 John Austin: Very often we have a very last minute opportunity of commenting on proposals.

Mr Coaker: You are right to say that. That is not my intention. Everybody will be pleased about the withdrawal of the SOCPA provisions but alongside that there is a recognition however that there is a need to ensure that we can access Parliament.

Q326 John Austin: Can I come on to comparisons with the situation in Northern Ireland? Clearly it is a very different situation and I am not advocating it for the mainland, but could you say what lessons the Home Office has drawn from the experience of

policing protests in Northern Ireland and in particular the attention which has been paid in Northern Ireland to addressing human rights issues in regulating protests?

Mr Coaker: It is a very different situation in Northern Ireland but even there they have demonstrated that the human rights sensitive approach is not something that means you cannot have a strong policing approach and you cannot resolve difficult issues. It sometimes seems that you are either somebody in favour of human rights and therefore weak policing or you are somebody who is not in favour of human rights and in favour of tough policing. I think the lesson we can learn from Northern Ireland is that you can have a tough approach to difficult problems but you can do that in a way which also ensure that the rights of individuals are respected as well.

Q327 John Austin: The PSNI does have dedicated human rights lawyers who are involved not only in the training of police officers but also are available for police officers making decisions on protests to consult with. When we had ACPO and the Met Police here, it was clear that in England there is not that same availability. Do you think the British police forces would benefit from doing the same as in Northern Ireland?

Mr Coaker: What is important is that they have access to human rights advice. My understanding is that not only now are human rights issues incorporated into their training but also alongside that the police do have access to human rights advice. I would be a strong supporter of ensuring that the police have access to that advice and that they take it strongly into account when they are making the decisions that they do with respect to protests.

Q328 Chairman: When we visited the Metropolitan Police Control Centre last week, they told us that when they had major operations they would have a human rights responsible person advising the gold commander and the silver commander, but that person was a uniformed police officer themselves, which begs the question about the independence that we see in Northern Ireland. Would you like to have a look at the Northern Ireland model as opposed to for example what happens in the Met, which is also a good example, bearing in mind the volume of work that they do, to see whether the Northern Ireland experience ought to be transferred to the capital?

Mr Coaker: I will have a look at that. I think the Committee probably knows more about the Northern Ireland model than I do but I will certainly see whether there are lessons that can be drawn from it. I do reiterate the point I made to Mr Austin. I do think the importance of what Northern Ireland has demonstrated is that you do not have to choose between strong, effective policing or the human rights approach. You can marry the two.

Q329 Chairman: Can I come on to the use of counterterrorism powers and the policing of protests? Obviously it goes back to the Walter

Wolfgang protest at the party conference. How can you make sure that the counterterrorism powers are used appropriately for counterterrorism and not for policing protests?

Mr Coaker: By keeping it constantly under review so that counterterrorism legislation and powers are used appropriately. I give you the example of section 44 which, as you know, is the stop and search power available under counterterrorism legislation. There has been some disquiet about that and you will know again that the Prime Minister announced a year ago a review of the use of stop and search under section 44. As a result of that review, changed guidance was published and if Lord Lester were here he would be pleased that has been published. It is public, so that people can see it. That was published about ten days ago on 28 November. That is an example of the scrutiny, diligence and oversight that we should make sure we have so that counterterrorism legislation is used for the purposes it is designed for and does not, with the best intentions, the best will and without malicious intent, spill over into other policing areas. I think the section 44 example is a very good example of the way that can be done.

Earl of Onslow: There have been distinct impressions—I cannot needlessly to say call one to mind now—of the police using counterterrorism powers as a convenience tool. For instance, the policing of the anti-arms trade people. The police were using counterterrorism powers which seemed to me excessive and I know there have been others but I cannot immediately recall them, apart from the Icelandic banks.

Chairman: That has nothing to do with protest.

Q330 Earl of Onslow: We were also talking about the over-use of the Terrorist Act and it is something that frankly worries me quite a lot.

Mr Coaker: I take the point. That is why it is important to have oversight. Of course, the courts have oversight of it if there is inappropriate use of legislation. The Earl of Onslow will know that the defence contractor issue that he is referring to was upheld by the courts.

Q331 Chairman: Can I move on to cyber protest using the internet, trying to jam people's phone lines, fill up email boxes and all that sort of thing, using the internet generally? Have we the right laws to deal with that sort of protest or do we need additional civil or criminal law to monitor or control it?

Mr Coaker: We need to ensure that we recognise that what is illegal offline is illegal online. We need to use the law that exists with its full force perhaps a little bit more powerfully than we do. Others here may be bigger experts on the internet than I am but one of the things that even people who recognise that more needs to be done with the internet will say is that it is an extremely difficult thing to do. If you look at child exploitation, we do a lot here but sites are just posted elsewhere. You have to have blocking mechanisms which are technically very difficult. I know what the police do and what others do is to try to pursue the law with respect to hosting of sites and what appears on the internet but they also try to get

behind it with respect to the criminality, in terms of seeing who the individuals are, so that we do not have a situation where people can act with impunity on the internet. I do not meet all the time with the NUJ but I did meet with the NUJ and some of our colleagues in Parliament about for example issues with respect to Redwatch on the internet, which I know have been of considerable concern to some of our colleagues. The approach of the police there was to look not just to bring the site down, which they did once and it reappeared the next day, but to get behind it to see whether there was a way in which they could identify who was responsible and use the criminal law against them.

Q332 Chairman: In your Green Paper, "From the Neighbourhood to the National, Policing our Communities Together", at paragraph 4.20 on page 59, you say that you propose to develop a new three year quality, diversity and human rights strategy for the Police Service in partnership with policing partners. That is obviously a very welcome announcement. Can you tell us what you are thinking about in terms of this, what it might include and how things might change once you do that?

Mr Coaker: The initial intention is particularly to look at the issues with respect to policing in terms of equality and diversity and to do more. Some progress has been made. You will know that I recently did a piece of work for the Home Secretary on how we encourage more diversity in the police force, not only in terms of recruitment but in terms of retention and progression. In the first instance much of the work we will do will be about that, because it is extremely important—we would all agree with this—that the police force reflects the communities it serves and we need to do more work on that. That will be the immediate piece of work in terms of the strategy but we also recognise that human rights are an important part of the work that we do and that the police do. What we need to try and understand is how we can incorporate that more effectively into some of the training that is done and some of the decisions that are made about balancing up the various rights that we have been discussing for the last hour and a quarter or so.

Q333 John Austin: Can I raise the issue of tasers and the announcement by the Home Secretary of additional funding to buy another 10,000 tasers for frontline officers? Could you tell us briefly why the Home Secretary has decided to increase the availability, given the very real human rights concerns about the use of tasers?

Mr Coaker: This has not been a rushed decision. We introduced tasers for authorised firearms officers in 2003. They were used by a very small number of police officers. Just over a year ago in September 2007, that was then extended and not just limited to authorised firearms officers but extended to officers who had training in a certain number of forces. I think it was ten additional forces. As a consequence of that extension to these officers, it was reviewed in terms of what the effectiveness of tasers had been, both in terms of police effectiveness but also in terms

of what the consequences had been for medical or other issues that may have arisen. That was observed all the way through. The trial was successful. The police believed it was successful. The medical opinion we had back was that the taser had not caused any particular problems. As the Home Office we made the decision that in terms of helping to give the police an additional resource, to make it available to them under very strict controls and guidance, subject to the desire of the Chief Constables to use them in their particular area, it was a proportionate and appropriate extension of the equipment that could be made available to police officers on the front line to deal with very difficult situations. When they were used during the trial period, they often were not used in a huge number of cases in terms of being fired. They were drawn considerably more. What actually had the impact on the situation was the appearance of the red dot on the individual who was causing a problem. I do not know whether it is because people have seen lots of films and seen red dots appear—I do not mean this as a sarcastic remark—but the red dot had a significant impact. The taser helped resolve a situation which was dangerous for the police officer, dangerous for other members of the public and dangerous for that person the police were trying to deal with much more effectively than some of the equipment that either had been or is available to the police.

Q334 Lord Morris of Handsworth: Is there any monitoring about the longer term impacts? I accept what you say about the medical knowledge as it is today. What about three, four or five years down the line?

Mr Coaker: Our intention is to continue the medical monitoring of the use of tasers and also to continue monitoring with ACPO and others the use of the taser in an operational sense.

Q335 Lord Morris of Handsworth: Will your findings be published?

Mr Coaker: Yes.

Q336 John Austin: You have given an explanation of the Home Secretary's rationale for increasing deployment of tasers. The day after the Home Secretary made that announcement, the Metropolitan Police in their statement said that they did not plan to use more tasers because it could cause fear and damage public confidence. How would you respond to the Met's response?

Mr Coaker: My understanding is that that was a statement by the Metropolitan Police Authority, not the Metropolitan Police. I stand to be corrected but I think that is right.

Q337 John Austin: We should talk to Boris?

Mr Coaker: No. It is just a statement of fact. I think tasers are going to be used under very strict guidance. The officers will be trained. The reaction we have had, not just from police officers but generally from members of the public is that this, as an alternative to either CS spray or in worse

situations firearms themselves, is a proportionate and reasonable response. I hope that the Metropolitan Police Authority reflects on what they say, talks to its police officers and sees that this is a proportionate, responsible way forward.

Q338 John Austin: Our inquiry at the moment is about the policing of protest. When we had ACPO and the Met here we did ask about the potential use of tasers in policing protests, possibly if there was a feeling that there was a risk of violence. We had a reply today from Sue Sim which the Committee has only just received, which talks about the deployment of specially trained units. She says in her letter, "The deployment of STUs is very clear and must be when officers or the public are facing or are likely to face serious violence. It is my personal view that I do not see any situation when STUs would be deployed to a protest. Indeed, the very nature of taser is such that it should not be deployed against large numbers of people and officers are trained to use other options when dealing with these situations." Would you therefore concur that the use of tasers is wholly inappropriate when dealing with protests?

Mr Coaker: I agree absolutely with what the Deputy Chief Constable has said in the letter to you. I cannot envisage a situation in which taser, which has a very short range anyway, irrespective of the moral argument around it, practically would be something that would be useful. I cannot see a situation in which it would be appropriate to use taser to control demonstration or protest.

Q339 John Austin: Where would the guidance on that come from? Would that come from the Home Office or would different police forces be able to interpret it differently?

Mr Coaker: The joint guidance with respect to that would be ACPO/Home Office. Ultimately we would be involved in that but in the end it would be ACPO guidance.

Q340 Chairman: Can I ask you about the decision of the European Court of Human Rights on DNA last week? Obviously it is a very recent decision but the implications are pretty wide from the human rights point of view and we can understand where they are coming from. How long do you think it will be before the Home Office makes its mind up about what it is going to do about resolving this quite important decision?

Mr Coaker: It is a very important decision and something we need to reflect on. I cannot say to you exactly how long it will take. I have tried all the way through to be helpful so I am not trying to be unhelpful now. I cannot give you a realistic answer to that, other than to say we will deal with it diligently.

Q341 Chairman: I am sure you will. The question is really I suppose whether you believe it needs primary legislation or whether it can be dealt with more quickly as it was in Scotland.

9 December 2008 Mr Vernon Coaker MP and Mr Christian Papaleontiou

Mr Coaker: I do not think it needs primary legislation. If I am wrong I will write to the Committee.

Q342 Chairman: I will be writing to the Home Secretary about it, I expect, so a letter will be winging in her direction very, very soon. Going back to the terrorism issue, I have been reminded that in Northern Ireland the police service there made it absolutely clear to us that counterterrorism legislation would never be used against ordinary protestors. Can you give us the same assurance here?

Mr Coaker: I do not think counterterrorism legislation should be used other than to deal with terrorism. Sometimes it is difficult however in certain situations for the police not to use counterterrorism powers in a situation where you might have a protest but a protest that could be used by terrorists in order to bring about a terrorist attack. I say that to be open and frank. If I give you one example, if you have a big protest near a big power station or airport, I think it is very difficult to say that under no circumstances should the police in those situations ever consider using a counterterrorism power when we all know it is perfectly possible for the legitimate protestors to be infiltrated by one or two who may have other desires. We should not use counterterrorism measures automatically or except in a very limited set of circumstances where the intelligence tells you that you may have a threat which you need to deal with.

Q343 Chairman: In those circumstances—if we are talking about an airport perimeter or whatever—what you are saying effectively is that counterterrorism powers should not be used unless there is clear intelligence that there is a terrorist problem?

Mr Coaker: Yes.

Q344 Earl of Onslow: That is a totally different thing from the police slightly using it as a catch all. Somebody might have infiltrated the thing so they were going to use those powers anyway.

Mr Coaker: They will make a risk assessment. I would not expect counterterrorism legislation to be used to deal with public order or protests.

Q345 Earl of Onslow: I do not think anybody would criticise in any way if the police had a smidgeon of evidence that somebody with terrorist inclinations was involved and they should not under those circumstances use terrorist powers, but one would I hope think that, unless they had some evidence that that was going to happen, they would not use terrorist powers.

Mr Coaker: I think that is fair comment. Their intelligence will sometimes lead them to make a risk assessment about situations as well.

Q346 Chairman: Thank you very much. Thank you for coming and talking to us. I hope we can work collaboratively on this as we have in the past.

Mr Coaker: Absolutely. I have a couple of letters to write, which I will do. Thank you very much.

Written evidence

Letter to Mike O'Brien MP, Minister of State, Department for Energy and Climate Change

My Committee is currently conducting an inquiry into the human rights issues arising from policing and protest.

In the context of our inquiry, a number of witnesses have raised questions about section 128 of the Serious Organised Crime and Police Act 2005 (SOCPA). Section 128 creates a criminal offence of trespass on certain protected and designated sites, which include nuclear sites. Commission of the offence is punishable by a fine or imprisonment.

As you may be aware, we raised concerns about these provisions as part of our legislative scrutiny of the Bill.¹ We wrote to the Government about the breadth of the proposed power, its capacity to interfere with the rights to freedom of expression and to freedom of peaceful assembly under Articles 10 and 11 ECHR and the fact that the power to designate sites on the grounds of national security depended entirely on the Secretary of State's subjective view. We asked the Government to explain why it considered that such a wide power to designate sites would be prescribed by law, serve a legitimate aim, and be proportionate to that aim for the purposes of ECHR Articles 10(2) and 11(2). In reply, the Government did not agree that the clauses conferred a very wide discretion, and said that in implementing the provisions "full account will be taken of any ECHR issues which will be balanced against the security and operational needs of the site, as well as other issues ...". In our final report on these provisions, we concluded:

The way in which the Government's response was phrased does not give us confidence that the measures would in practice be operated in a manner compatible with Convention rights, or that appropriate safeguards are in place to secure compatibility short of a challenge before the Courts.²

In their evidence to the Committee, some witnesses have suggested that section 128 should be repealed, given the Government's commitment to repeal sections 132-138 SOCPA which restrict protest around Parliament. They suggest that protests around designated or protected sites could be adequately policed using existing public order and/or criminal law. Alternatively, other witnesses have suggested that additional protection of some types of facilities (such as coal-fired power stations) is required and that section 128 should be extended.

As we continue to take evidence in our inquiry, it would be of assistance to the Committee if you could please answer the following questions:

- Do you consider that section 128 remains necessary in relation to protected and designated sites? If so, why? If not, does the Government intend to repeal the section?
- Why is ordinary public order and/or criminal law insufficient to deal with protest around protected and/or designated sites? Please provide examples of problems which could not have been addressed without section 128 SOCPA.

I would be grateful if you could reply by 27 November 2008 and if an electronic copy of your reply, in Word, could be emailed to jchr@parliament.uk.

Andrew Dismore MP
Chair, Joint Committee on Human Rights

Letter to the Chairman from Vernon Coaker MP, Minister of State, Home Office

Further to my appearance before the Joint Committee's enquiry into policing and protest on 9 December, I undertook to clarify a number of issues about which the Committee asked.

First, I wanted to clarify the timetable for repeal of the provisions in sections 132 to 138 of the Serious Organised Crime and Police Act. These provisions, as the Committee is aware, are currently in the draft Constitutional Renewal Bill. Whilst a slot for the Bill cannot be guaranteed, I can assure you that we remain strongly committed to constitutional renewal and our aim is to bring the Bill forward in the spring, subject to the parliamentary timetable. I am well aware of the Committee's concern to see the repeal of SOCPA introduced as soon as possible. Clearly we need to consider carefully all the options.

As the Lord Chancellor and Secretary of State for Justice, Jack Straw, said on 4 December: "My earnest intention, which requires negotiation with the usual channels as well as with my colleagues, is that the Bill should be brought forward. I cannot guarantee that, not least because of the negotiation with the usual channels. We shall have to see what progress is made on other Bills, but that remains my earnest intention."

Secondly, you asked what the Home Office was going to do and how long it would take to resolve the decision in the recent European Court ruling of *S. and Marper*.

¹ See in particular 4th and 8th Reports of Session 2004–05.

² 8th Report of Session 2004–05, *Scrutiny: Fourth Progress Report*, para. 2.69

We are considering the detail of the Judgment in the S and Marper case and its implications. WE need to ensure compliance with the Judgment whilst ensuring that we meet the difficult job of balancing rights against protection. That is why the approach to the European Court's Judgment will be subject to wide consultation next year in the White Paper on Forensics.

Thirdly, as promised, I am enclosing a copy of my letter of 3 December to Jeremy Dear, General Secretary of the NUJ, following the meeting I had with him and the Metropolitan Police in October about the problems that have been reported to the NUJ relating to surveillance by the police of journalists.

There are a number of other issues which I agreed to follow up with ACPO and I shall write to the Committee in the New Year, once those discussions have taken place. These include the lessons to be learned from the Climate Camp protest at Kingsnorth and in due course meeting some of the organisers of the Climate Camp.

I also agreed to follow up the ACPO concerns around the use of Section 5 of the Public Order Act and its impact on freedom of expression. In order to assist with this, it would be very helpful if those members of the Committee who raised their concerns about the use of Section 5 by the police would write to me with more information about specific cases. Finally I also agreed to discuss with ACPO the transferability of the Northern Ireland model to policing protests in England and Wales.

6 January 2009

Letter from the Chairman to Vernon Coaker MP, Minister of State, Home Office

Thank you for your helpful letter dated 6 January 2009 following up on a number of issues arising from your evidence to the Committee on 9 December. We are grateful to you for the information which you have provided and look forward to hearing from you on the further matters which you have promised to write to us about in due course.

In your letter, you request information about specific cases on which Members have concerns relating to the use of Section 5 of the Public Order Act 1986. You will recall that Dr Evan Harris MP provided some examples during the evidence session. A copy of the relevant parts of the transcript is attached. We would be grateful if you could follow up on these examples in your discussions with ACPO and respond to us on them. I have also drawn your letter to the attention of other Members, and you may therefore be contacted separately by individual Members.

I would be grateful if you could reply by 5 February 2009 and if an electronic copy of your reply, in Word, could be emailed to jchr@parliament.uk.

20 January 2009

Letter to the Chairman from Vernon Coaker MP, Minister of State, Home Office

Thank you for your letter of 13 November, which has been forwarded to me as the Home Office was the department responsible for the implementation of the relevant provisions under section 128 of the Serious Organised Crime & Police Act 2005 (SOCPA). I am sorry it has taken so long for you to receive a reply.

As you know, section 128 of SOCPA creates an offence of criminal trespass on certain designated sites. The categories of sites that can be designated are:

- Crown Land;
- Land belonging to HM The Queen in her private capacity, or the immediate heir to the throne in his private capacity;
- A site which it appears to the Secretary of State to be appropriate to designate in the interests of national security; and
- Licensed nuclear sites.

The new offence was a response to the recommendation in the Armstrong Report of July 2003 (following Aaron Barschak's intrusion at Windsor Castle on 21 June 2003) that such an offence should be created. This was supported by the Security Commission Inquiry Report of May 2004 (following revelations of Ryan Parry's activities at Buckingham Palace late in 2003). Both of these recommendations were subsequent to the Ministry of Defence's considerations of an offence, initiated after the House of Commons Defence Committee commented on the apparent lack of effective legal sanctions against persistent protestors following their inquiry into the MoD security response to the terrorist attacks of 11 September 2001. After careful consideration it was decided to implement such an offence both as a deterrent to such intrusions and to provide the police with a specific power of arrest in such situations.

The new powers addressed a serious capability gap in dealing with intrusions on to sensitive sites. Before the introduction of the legislation, the police had no power to detain an individual who agreed to be escorted off a site, but refused to explain their identity or why they were there. Trespassers were in effect escorted off

site and given a meaningless warning not to do it again. In addition, existing powers did not provide a sufficient deterrent. High profile intrusions not only wasted valuable police time, but in certain circumstances presented a needless risk which endangered the lives of intruders and the lives of others. The offence under SOCPA provides the police with the means to ascertain the reason for a person's presence on a site, and to ascertain whether they present a threat.

The decision to legislate remains valid, and the assurances given at the time that the power to designate would be used sparingly have been strictly adhered to. Licensed nuclear sites were designated by an amendment to SOCPA by section 12 of the Terrorism Act 2006 (details of these sites are available at <http://www.hse.gov.uk/nuclear/licensees/pubregister.pdf>), along with 13 military sites (Statutory Instrument 2005 No. 3447 <http://www.opsi.gov.uk/si/si2005/20053447.htm>) and a further 16 Royal, Governmental or Parliamentary sites (Statutory Instrument 2007 No. 930 http://www.opsi.gov.uk/si/si2007/uksi_20070930_en_1). There has not been a disproportionate application of the Secretary of State's use of the power nor an incremental expansion of the number of sites falling under the offence.

I note from your letter that you have received evidence from some witnesses that section 128 should be repealed, given the Government's commitment to repeal sections 132–138 of SOCPA, which place requirements on protest around Parliament, and that designated or protected sites could be adequately policed using existing powers.

The two provisions you mention are not connected and it does not follow that one should be repealed in the wake of the other. Section 128 is aimed at preventing trespass at and intrusion into secure, sensitive sites and is not intended to impinge on anyone's legitimate right to protest. Whilst the offence deters protestors from entering designated sites it does not prevent them from protesting at those sites. Designation ensures that protests are conducted outside of the sites, thus reducing the risk to both protestors and police forces and preventing the activities of protestors being exploited by terrorists. The offence provides the police with appropriate powers to deal with individuals on sites to which there was no right of access in the first instance. Designation does not remove therefore the right to protest but will assist in ensuring the safety of protestors, the public and the security forces guarding those sites.

You also asked if there are any examples where police have used section 128 to deal with a problem and would previously not have had the appropriate powers to do so. As well as acting as a significant deterrent, the powers have been used effectively on a number of occasions, and three examples provided by the relevant security forces are set out below.

CHEQUERS

In April 2008 during a period of residency by the Prime Minister, the perimeter road to Chequers was blocked due to a serious car crash which was being dealt with by police and ambulance. A person was seen to come into the grounds and walk towards the main house. A police vehicle was sent to intercept him but on hearing the approach he tried to hide in undergrowth. When he was spoken to by officers and searched he was evasive with his answers. He was arrested under section 128 of SOCPA. At the police station he was interviewed, his house was searched with his parents consent and relevant checks took place.

The individual's reason for coming onto the site was that he had seen the blue lights from the police vehicles at the crash scene and wanted to avoid the police. His odd behaviour was due to suffering from dyspraxia and being intoxicated. Apart from the trespass act he had committed no offence for which he could have been arrested and therefore he would have been allowed to continue. This would have left the officers with a number of doubts about his behaviour. The Act allowed the police to fully investigate the individual's background and intentions and satisfy themselves that the Prime Minister's security was not at risk.

PALACE OF WESTMINSTER

In February 2008, a number of demonstrators from the protest group Plane Stupid gained access to a roof of the Palace of Westminster.

Without the offence under section 128 of SOCPA, the police would have been limited to treating protestors as trespassers (simple trespass not being a criminal offence), escorting from the building and being unable to take further action. Being able to arrest for the S.128 offence, triggers the use of the full powers conferred under The Police and Criminal Evidence Act (which also provides safeguards and rights for the suspect(s)). This permits the formal arrest and interview of suspects to investigate and establish their intentions; the taking of fingerprints and photographs and allows police to build an intelligence picture around those involved.

The protest itself presented a danger to the protestors and to the security authorities themselves, who must make split-second decisions about the threat posed by intruders. The arrest and subsequent conviction of a number of the protestors is a clear illustration that unauthorised access to such sites is a criminal offence, yet it does not affect the right to legitimate protest in and around the publicly accessible areas near the site.

MINISTRY OF DEFENCE LAND

Between March 2001 and March 2002 the perimeter of AWE Aldermaston was breached on 175 occasions, with as many as 19 breaches on a single day.

Between July 2003 and June 2004 the MDP and local constabularies arrested 147 individuals for breaching the security perimeter at 23 separate establishments. The resources expended dealing with this problem were significant, and reduced the ability of the security forces concerned to deter and remain responsive to terrorist threats.

Since April 2005 when the MOD sites were designated, there have been very few incidents of criminal trespass, with only three prosecutions, two of which resulted in convictions. The resulting reduction in risk to both protestors and armed guards is considered to be a proportionate response to what was an escalating security problem.

24 February 2009

Letter from Michael Jabez Foster, Chairman Joint Committee on the Draft Constitutional Renewal Bill

As you may know, a Joint Committee of both Houses is currently undertaking pre-legislative scrutiny of the Government's Draft Constitutional Renewal Bill. Several issues have arisen in evidence relating to protest around Parliament and I am writing to ask if your Committee would be willing to assist us by giving your views on the human rights aspects of two proposals made to us:

(1) The Clerk of the House of Commons and the Serjeant at Arms proposed a ban on permanent and overnight protests outside Parliament on various grounds including their appearance, the possibility of their causing difficulties as more pedestrians are attracted to Parliament Square under the World Squares proposals and the security threat that they cause; and

(2) The Serjeant at Arms and Black Rod also propose a ban on all forms of protest along the strip of pavement running parallel to the main entrances of the Houses of Parliament and Portcullis House in order to ensure access to those entrances. The proposal was initially raised by the Metropolitan Police Service in their response to the Government's recent consultation, Managing Protest around Parliament.

In addition, the Committee has received conflicting evidence on the adequacy of existing noise control powers. It would be very useful to hear the views of the your Committee in relation to sections 134 and 137 of the Serious Organised Crime and Police Act 2005 in so far as they impose a ban on the unauthorised use of loudspeakers and permit the police to impose conditions on the maximum permissible noise level of demonstrations.

The timetable for the Joint Committee's work is very tight and we have been ordered to report by 22 July. If your Committee is able to input into our inquiry, we would be most grateful to hear from you by 3 July, if possible. The Committee Clerk, Kate Lawrence, or the Committee's Legal Specialist, Simon Fuller, would be happy to provide you with any further information you might require.

June 2008

Letter to Michael Jabez Foster, Chairman, Joint Committee on the Draft Constitutional Renewal Bill

Thank you for your letter dated 18 June 2008. I am sorry not to have been able to reply by 3 July as requested.

Your letter seeks my Committee's views on the human rights aspects of two proposals which have emerged during the course of your Committee's work: a ban on permanent and overnight protests outside Parliament and a ban on all forms of protest along the strip of pavement outside the Houses of Parliament and Portcullis House.

As you are aware, our inquiry into Policing and Protest, which extends beyond the issue of protest around Parliament alone, is still in its early stages. We issued a Call for Evidence on 24 April 2008. We have received a number of written submissions and anticipate receiving more written evidence throughout the course of our inquiry. We held our first oral evidence session on 24 June 2008 where we took evidence from Liberty and Justice on the scope of the right to protest and the proportionality of current legislative measures which restrict protest or peaceful assembly and their operation in practice. A copy of the uncorrected transcript of this session is attached. Last week, we visited Spain and France to learn more from similar European countries on their approach to policing and protest. We anticipate holding further evidence sessions after the long recess and concluding our inquiry with a report before Christmas.

Given the fact that we have only just started taking oral evidence and are continuing to receive written evidence, it is fairly difficult for us to respond in detail to your specific questions. However, we are able to do so in general terms on the principles which inform our inquiry and the evidence we have so far received. I hope this will be helpful.

The Committee's inquiry proceeds on the basis of the relevant human rights standards, most significantly, Article 11 of the European Convention on Human Rights (which deals with freedom of peaceful assembly). This Article sets out the principle of non-interference with Convention rights, unless it can be shown by those seeking to interfere with the right that the interference is both necessary in the pursuit of a legitimate aim (which are set out in an exhaustive list³), and proportionate. As the European Court of Human Rights stated, in a recent judgment:

In view of the essential nature of freedom of assembly and its close relationship with democracy, there must be convincing and compelling reasons to justify an interference with this right.⁴

According to the Judicial Committee of the House of Lords:

These rights [Articles 10 and 11 ECHR] are fundamental rights, to be protected as such. Any prior restraint on their exercise must be scrutinised with particular care. The [ECHR] test of necessity does not require that a restriction be indispensable, but nor is it enough that it be useful, reasonable or desirable.⁵

A number of witnesses to our inquiry speak in strong terms of the fundamental nature of the right to protest in a democratic society. Some witnesses note the significance of Parliament and the importance of being able to protest in its vicinity.

We asked the witnesses, during our recent evidence session, specifically about protest around Parliament. Liberty and Justice both expressed opposition to a ban on the use of loudspeakers in Parliament Square, although they accepted it might be appropriate to regulate the manner, place and time loudspeakers are used, if used disproportionately. However, the witnesses were not convinced that this was currently an issue.⁶ In relation to a question on access to Parliament, the witnesses said:

Dr Metcalfe: I think it would be perfectly appropriate, in times of very vigorous protest, for example, to establish a cordon to ensure that the driveways around Parliament and the public access, the footpath on the Parliamentary side of Parliament Square, remains open.

Lord Bowness: ... it is actually not quite as simple as that, is it? It is no good putting a cordon around the gates, if you cannot come over Lambeth Bridge or whatever, whether you are on foot or in a vehicle, it is not just keeping the gates open, is it? It is people actually getting to the gates.

Dr Metcalfe: Right. I think it is difficult to discuss outside the context of a particular case. You could, in any large scale protest, always require at least one viable route or more than one viable route, that seems to me the kind of manner and form of restriction that you would impose on any large scale gathering, simply in order to manage a large scale protest successfully. It certainly does not seem to me a basis for the kind of blanket restrictions that always seem to be banded about.

Mr Welch: I am not sure that the provisions of the Serious Organised Crime and Police Act add anything to the powers which would exist under section 14 of the Public Order Act anyway. The power to impose restrictions under the two provisions are very similar, slightly wider in relation to under the Serious Organised Crime and Police Act, but if there were a large gathering of people outside the Houses of Parliament, and they were blocking access to Peers and Members of Parliament, access to the building, then the police could impose a restriction at that time under section 14 of the Public Order Act to allow access. The practicality is whether the crowd would actually obey, but I am not too sure that you need the whole edifice of SOCPA in order to ensure that that will not happen.⁷

Article 11 and established caselaw require that any restrictions on protest around Parliament must be both necessary and proportionate to a legitimate aim. As the above quotation from the House of Lords decision in *Laporte* makes clear, this is a high threshold and does not permit restrictions which are merely convenient or helpful. If measures already exist (such as under the Public Order Act 1986) which could adequately deal with protests around Parliament, this would significantly reduce the likelihood that additional restrictions would be considered to be necessary and proportionate.

We wish your Committee well with the remainder of its deliberations on the Draft Constitutional Renewal Bill and look forward to reading its Report.

Andrew Dismore MP
Chair, Joint Committee on Human Rights

July 2008

³ "national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

⁴ *Makhmudov v Russia* App. No. 35082/04, 26 July 2007, para. 64.

⁵ *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2007] 2 All ER 529, para. 52 (Lord Bingham).

⁶ Q22.

⁷ Qs 445 and 45.

Letter to Superintendent Steve Pearl, National Extremism Tactical Coordination Unit

My Committee is currently conducting an inquiry into the human rights issues arising from policing and protest, focussing in particular on peaceful protest. We have received evidence from a wide range of organisations and individuals, including protesters, target organisations and the police. Future evidence sessions are planned with representatives from ACPO, the Police Federation, the Metropolitan Police and the Minister, Vernon Coaker MP.

In our most recent evidence session we heard, amongst others, from Andrew Gay of Huntingdon Life Sciences. He told us of the positive steps and learning which have taken place in Cambridgeshire since 1999. He said:

At that stage [five or six years ago] the police did not know how to handle the protesters whatsoever even though there was learning in other police forces around the country because there had been similar protests in Oxfordshire before that with animal rights activists. But the police at that stage did not seem to learn from other police forces and they acted singly and in silos. What has happened in the last five or six years is that there is much better cross-boundary co-operation between police forces, there is the set up of an organisation called NDET and NETCU who promote best practice within police forces; that is across boundaries ... and that is working very well to improve the coverage of protests. That is for the benefit of protesters as well as those people being protested against and so there is, if you want, best practice. There is still a way to go, it is by no means a level playing field, even within Cambridgeshire for instance which has had a lot of experience of this. Certainly there are best practice ideas out there which are being communicated and so in general it is improving but there is a long way to go. (Evidence session, 21 October 2008, Q 90)

My Committee is keen to learn from experiences of good practice in policing protest across the UK. We recently visited Northern Ireland to speak to the Police Service and Policing Board about the lessons they have learnt from policing parades and protests there.

We are writing to you in your current capacity and also as we understand that you were formerly in the Cambridgeshire Police during the period referred to by Mr Gay. In order to assist our inquiry, we would be very grateful if, based on your current and past experiences, you were able to respond to the following:

- In your view, are there any differences in the way that police forces deal with protests across the country? If so, can you give some examples?
- Please could you provide some examples of good practice in relation to policing protests, including across police boundaries.
- What are the main lessons to be learnt from the policing of protests within Cambridgeshire over the last five or six years?
- How is current practice on policing protests disseminated to police officers? Could it be more effectively disseminated? (And if so, how?)
- What are the main obstacles to officers policing protest in accordance with best practice? (For example, does more need to be done to enable police officers to meet best practice standards? (And if so, what?))
- What are the commonest causes of problems occurring during the policing of protests?

11 November 2008

Memorandum submitted by the National Extremism Tactical Coordination Unit

Police forces across England and Wales essentially deal with protests in the same way. This is certainly the case with planned demonstrations where the organisers have notified the police of their intentions for the event under Section 11 of the Public Order Act 1986 (PO Act 1986). This allows the police to plan for and effectively manage the event, particularly where there is a risk to public safety and the potential for disorder.

The police service will facilitate peaceful protest wherever it occurs. Where the police are not notified of a demonstration in advance, inconsistencies in the police response can occur. In my experience this is where the real problems in policing protest lie: dealing with spontaneous or pop up demonstrations usually small in numbers, and moving rapidly from site to site.

An example of this is four to six protestors with placards and loud hailers turning up outside a shop premises (eg, a British Heart Foundation Charity shop) located in a busy High Street shopping area, entering the shop, verbally abusing the shop staff, frightening the customers and potential customers by their actions. The police response may be to send a Community Support Office who is untrained in public order issues or divert a Police Officer from other frontline duties, with a limited of knowledge on protest legislation to deal with the incident.

Often by the time the police have responded to a call made by the shop manager, the protestors have either left or are standing in the street protesting peacefully. In these circumstances the police are unlikely to take any action even where offences may have occurred. Police officers, unfamiliar with public order issues, have

to make decisions in respect of whether or not there are grounds to impose conditions under Section 12 or 14 PO Act. This can lead to both the protestors and their targets ie the store staff, customers/potential customers, feeling dissatisfied.

The larger Metropolitan forces have standing police support units and trained public order tactical advisers, who can advise on and/or deal with spontaneous demonstrations quickly and effectively. They also provide forward Intelligence Team Officers—essential to the police to identify trouble makers in the crowd.

Examples of good practice in policing protest can be seen in the Thames Valley policing of the SPEAK demonstration against Oxford University, including the policing of the High Court Injunction obtained by the University.

Kent Police planned for and policed the “climate camp” demonstrations effectively recently at Kingsnorth Power Station. This demonstrated the value of preplanning made possible by prior notification despite the additional complications of a “cross border” policing operation.

Cambridgeshire Constabulary developed good practice in dealing with several different policing protest situations. These included animal rights—the SHAC campaign against Huntingdon Life Sciences, the National Front demonstration in Peterborough, NATO Chiefs of Staff conference in Cambridge and, more recently, the anti GM (Genetically modified) crops demonstrations in Cambridge. In Thames Valley Police and Cambridgeshire the good practice was promoted through force specialist support units.

The main lessons learnt in Cambridgeshire have been to provide good practice, understanding, knowledge and support to front line officer(s) dealing with spontaneous and planned demonstrations through a specialist support unit.

Cross border public order protocols are also good practice and have been successfully used to deploy trained officers across force boundaries when policing a mobile demonstration.

Current practice on policing protests is disseminated to officer(s) through the:

- National Police Improvement Agencies (NPIA), which provides tactical advice on the “Genesis” website relating to demonstrations.
- The ACPO Manual of Guidance on “Keeping the Peace”.
- Through NPIA public order training courses (delivered locally by forces).
- NETCU “Policing Protest” pocket legislation guide (e-copy provided).
- NETCU policing protest workshops aimed at front line officers and their supervisors, and involving local stakeholders.
- Briefings to local public order commanders, policing a specific protest event.
- The development of a student officer policing protest training package.
- Thames Valley Police “Operation Rumble” Team, Staffordshire police “environmental protest unit” delivering current good practice.
- By the National Public Order Intelligence Unit (Public Order Policing Section) attending demonstrations and the provision of tactical advice.

One of the main obstacles, despite the above, is the lack of understanding of protest and knowledge of the legislation allowing officers to deliver good practice on a consistent basis. This is particularly so at spontaneous demonstrations.

This could be addressed if the requirements of a demonstration organiser to notify the police of their intentions. (Section 11 PO Act 1986) applied to both processions and assemblies—and was enforced. (However see the ruling by Lord Philips on the Critical Mass cycle rides in London—Judgements—Kay (FC) commander of the police of the Metropolis Appellate committee Lord Phil, which limits the interpretation of the section.)

The above would help the police to provide the right level of response and good practice to demonstrations.

In addition, I believe that Public Order Legislation now needs codifying. This would enable clearer understanding by both police officers and protestors of what is and what is not acceptable as part of a demonstration. In essence codifying the criminal law would provide the clarity that High Court, “Protection from Harassment Act” Injunctions now deliver in a way the criminal law seemingly cannot.

Basic public order training, undertaken by all police officers, should include practical scenarios on dealing with spontaneous demonstrations where officers may have grounds to apply conditions on protestors eg Section 12 or 14 PO Act 1986 etc.

Public order tactical advisers should be provided to advise and support front line officers responding to deal with demonstrations, particularly the small scale spontaneous demonstrations. Whilst this does happen in some forces, mainly the larger forces, it most certainly does not across the country.

The most common causes of problems occurring during policing of protests is the lack of intelligence on the intentions of the protestors, ie where are they going to go and what they are going to do as part of their protest.

The failure of protestors to provide an organiser to clarify their intentions and stewards to help with maintaining the safety of the protestors, the public in the immediate vicinity and the police officers policing the event is one of the major difficulties faced by police commanders trying to deliver an even-handed proportionate response to protest.

The unpredictability of protest events with protestors failing to comply with an agreed route, sit down protests, with the consequent disruption and secondary targeting of businesses and homes all lead to the potential for perceived police over reaction or heavy handedness.

Steps need to be taken to overcome difficulties or unwillingness to communicate between organisers and police.

It also needs to be recognised that some protests are attended by activists intending to carry out criminal actions, in the belief that their cause gives them the moral right to break the law. Some believe that their interpretation of Human Rights take precedence over the rights of others.

27 November 2008

Memorandum from the Agricultural Biotechnology Council

INTRODUCTION

The Agricultural Biotechnology Council (abc) welcomes the opportunity to respond to the Joint Committee On Human Rights' inquiry on policing and protest.

abc is the umbrella group for the agricultural biotechnology industry in the UK. The companies involved include BASF, Bayer CropScience, Dow Agrosciences, Pioneer (Du Pont), Monsanto and Syngenta. Our aim is to provide information about genetically modified (GM) crops in the UK and around the world and the important role of GM technology in delivering high quality affordable food in a way that minimises the environmental footprint of agriculture.

- Whilst appropriate public protest should of course be permitted, intimidation of company staff and farmers carrying out their legitimate business is not acceptable and cannot be sanctioned under any circumstances.
- GM crops have the potential to increase yields, reduce the environmental footprint of agriculture and improve the nutritional quality of our food. Farmers should be in a position to utilise and benefit from opportunities deriving from the growing of GM crops in the UK.
- For that to happen, field trials of GM crops, carried under UK rules and enshrined under European law, should be permitted to be carried out without fear of their being destroyed by individuals or groups opposed to this technology.

1. *Are current legislative measures which restrict protest or peaceful assembly necessary and proportionate to the rights to freedom of expression and peaceful assembly?*

The right to protest is quite rightly enshrined in the law of all democratic and reasonable countries; however, with rights come responsibilities; the right to protest must not be allowed to override the rule of law governing intimidation, destruction of property, and real or implied threats to people going about their legitimate business.

2. *How do existing common law and legislative police powers (such as the common law power to prevent a breach of the peace, stop and search under the Terrorism Act 2000 and the use of force) operate in practice?*

abc has no specific comment to make in this area.

3. *Can the competing interests of public order and the right to protest be reconciled?*

abc recognises that there are small sections of UK society who have concerns about the use of biotechnology in agriculture. According to credible surveys, such as those carried out by the Food Standards Agency, such concerns are not widely held but it is nevertheless entirely reasonable that concerned people are allowed to reasonable opportunity to protest their cause.

The key here is what constitutes "reasonable" protest. This year, there were protests held at NIAB in Cambridge where one of our member companies was carrying out a field trial of potatoes, genetically modified to resist blight.



Protest at NIAB—<http://www.indymedia.org.uk/en/2008/06/400028.html>

Likewise, there were protests at the BASF site in Cheshire that shut down the site for many hours, denying employees access to their place of work.

Last year, the same field trial at NIAB was deliberately vandalised, damaging important scientific research. This year, academic research at Leeds University was damaged by protestors.



Protestors at NIAB—2007—<http://earthfirst.org.uk/actionreports/node/2912>

Any incidence of vandalism of GM crop trials is totally unacceptable. It is essential that scientific trials approved by the UK Government are conducted without illegal interference from a small minority of extremist groups who are preventing the collection of important scientific data. The economic and environmental benefits of GM crops are clear; UK farmers and consumers should not miss out because of deliberate vandalism.

Consumers expect evidence-based scientific assessment to demonstrate the value of GM crops, but destruction of trials denies them this expectation.

In previous years, there have been many occurrences of anti-GM activity that go way beyond reasonable protest. They have ranged from mindless (but still illegal) vandalism to serious intimidation of employees of companies and farmers involved with GM crops.



There have been many occasions where physical methods, such as steel spikes in fields and tampering with farm equipment, which could have resulted in both serious equipment damage and potentially serious, even life-threatening injury. But we must also not forget the immense psychological harm caused to some farmers going about their rightful and lawful work, as well as to their families. This transgresses the line from peaceful protest into violence against the person and anarchy.

CONCLUSION

abc agrees with the committee that reasonable protest is entirely appropriate. Nevertheless, we strongly believe that the police should be able to deal forthrightly with any unreasonable protest. The right to protest has to be balanced by consideration of the human rights of those affected by the protest. There can be no

justification for physical and intimidatory attacks against law-biding citizens engaged in legitimate research and business activities.

July 2008

Memorandum submitted by Aldermaston Women's Peace Campaign

Aldermaston Women's Peace Campaign (AWPC) has held an explicitly non-violent women's camp outside the Atomic Weapons Establishment (AWE) Aldermaston on the second weekend of each month for 23 years. AWPC witnesses, monitors and protests against the building of the UK's nuclear weapons at Aldermaston.

1. *Reconciling competing interests of public order and protest*

1.1 AWE ALDERMASTON BYELAWS AND S. 128 SOCPA

- proportionality of legislative measures to restrict protest or peaceful assembly at Aldermaston;
- prohibition of protest by specific groups and in geographical areas.

During the 1980s attempts were made to limit protest at AWE Aldermaston, and other sites covered under the 1892 Military Lands Act, through the introduction of site-specific byelaws. The 1986 Aldermaston byelaws were unenforceable, as the Ministry of Defence (MoD) had failed to secure ownership of all the land covered by the byelaws.⁸

In 2006 new draft Military Lands Act byelaws covering Aldermaston were put out to consultation. They were to be introduced by Statutory Instrument, alongside s.12 Terrorism Act 2006 amending SOCPA 2005, providing for the offence of criminal trespass at nuclear licensed sites.⁹ According to the MOD SOCPA would "protect the general public's democratic right to protest by ensuring that any such protests are conducted in a safe and controlled environment."¹⁰

Yet the byelaws put out to consultation would have prohibited *all* forms of protest within the "controlled area" outside the perimeter fence at AWE Aldermaston.¹¹ They would have criminalized meetings, assemblies and processions, handing out leaflets, holding placards, using mobile phones and cameras, placing things on surfaces (banners on fences) and camping.

An appeal to the JHRC was not fruitful.¹² AWPC then challenged the byelaws in a submission to the MoD Byelaws Review Committee, succeeding in the removal or amendment of most of the offending sections.¹³ The amended byelaws came into effect on May 2007; *inter alia* placing banners on the fence and camping remained criminal offences.

In March 2008, in their judgement on a judicial review (JR) of three byelaws, brought by a member of AWPC, Lord Justice Maurice Kay and Mr Justice Walker, found that the MoD had acted unlawfully with regard to the byelaw on "placing things on surfaces" and ordered that this be quashed.¹⁴ Camping remained unlawful, but permission to appeal the JR on this was granted in May 2008 by Justice Waller, who stated: "it seems to me that the byelaw as construed catches a form of peaceful protest used in many places, and that it is worthy of consideration...".

The Aldermaston byelaws (before amendment) would have criminalized AWPC, other groups and individuals protesting against nuclear weapons at Aldermaston, a site with 50 years' history of protest. Pending appeal camping is criminalized, effectively rendering AWPC unlawful. Such measures against explicitly non-violent groups are grossly disproportionate. Further, protest is not restricted to identifiable "protest" groups, but is an individual right.

In criminalizing protest within a *certain geographical area*, the effect of the Aldermaston byelaws is that on one side of an invisible line x metres outside the fence, protest is prohibited, while x.01 metres outside, it is lawful.

⁸ Loose Minute of 25 January 2002 (HCDC Inquiry on Defence and Security in the UK: Evidence Session on Wednesday 30 January 2002).

⁹ http://www.opsi.gov.uk/acts/acts2006/ukpga_20060011_en.pdf
SOCPA 2005 had previously entered into force in April 2006 at other MoD sites listed at: <http://www.gnn.gov.uk/content/detail.asp?ReleaseID=194233&NewsAreaID=2&NavigatedFromSearch=True>

¹⁰ Serious Organised Crime and Police Act, <http://www.defence-estates.mod.uk/byelaws/Internet/Intro.html>, "The Military Lands Byelaws and the SOCAP powers, although capable of being used independently, are mutually supportive and together provide a layered form of legal protection for the Ministry of Defence."

¹¹ For controlled areas see <http://www.defence-estates.mod.uk/byelaws/Internet/Reviewed.php>. The distance from the fence varies.

¹² In a letter to Juliet McBride (17 May 2006), the Chair of the JCHR noted that the committee could not review the byelaws, which as a statutory instrument, were not required to be laid before parliament; the JCHR had to prioritise primary legislation.

¹³ See link ("all responses") <http://www.defence-estates.mod.uk/byelaws/Internet/Intro.php>

¹⁴ *Tabernacle v Secretary of State for Defence*: http://www.defence-estates.mod.uk/byelaws/WordDocs/Tabernacle_DC_judgment.rtf

1.2 s. 128 SOCPA

SOCPA entered into force at Aldermaston in April 2006.¹⁵ According to the MoD, it would provide a “high level of protection against criminal trespass” in “protected areas” within the perimeter fence,¹⁶ with byelaws providing “a lower level of protection”.¹⁷ In the JR (above), the defendant reported that, “the MOD stated that the offence of criminal trespass under s.128 would be used sparingly, principally to target multiple repeat offenders”.¹⁸

A woman was arrested under SOCPA in March 2007 for sitting on a fence with a banner. She was known to the Ministry of Defence police (MDP)¹⁹ and had no previous convictions at Aldermaston in 18 years of protest. The arrest was said to be “necessary” (under s.24 Pace as amended, see below) for the expeditious investigation of the offence—even though the whole incident was recorded on CCTV. She is scheduled for trial in August 2008, 17 months later.

To date there have been 12 arrests for criminal trespass at four military and nuclear installations under s.128.²⁰ Of five persons tried to date, two received a conditional discharge, two were admonished and one acquitted. It appears that s. 128 SOCPA has been used for relatively trivial incidents rather than for serious organised crime.

This coupling of minor byelaws with a serious criminal offence under s.128 ratchets up the criminality of the peaceful protester, by associating “protesters” with “terrorists”, merely if they are identified as “multiple repeat offenders”.

1.3 OTHER MEASURES

Public Order Act (POA) 1986. S.14 POA has been persistently used at AWE Aldermaston, to the point where its provisions were institutionalised in June 2007, following the introduction of the byelaws, in a notice informing AWPC that the MDP had provided a “designated protest area” (a pen) where AWPC could “lawful[ly] protest”, essentially meaning “police approved protest”.

S.14 is used to limit protest—firstly through malicious arrest and subsequent punitive bail conditions; charges are then dropped. In 2000 several people were arrested for alleged breaches of a s.14 order, imposed by Thames Valley Police (TVP) during a demonstration at Aldermaston, one of whom was arrested while trying to enter the designated protest area. All but one case was dropped.

Secondly, TVP and MDP have both falsely alluded to s.14 orders being in force, with the intent of intimidating individuals. When questioned by legal observers, they have admitted that no such orders were in force, but that they had sought to force protesters into a location where they could be controlled.

In June 2006 an AWPC woman was arrested under s.14. At the trial a senior officer who had cited the order told the court he had lost all the paperwork proving the order was in force; she was nevertheless convicted. In November 2006 part of a Greenpeace demonstration was confined to a roadside verge, again under s.14, when no such order was in force.

Peaceful protest should be facilitated by the State to the extent that law is not misused to restrict it. In practice, government policy, policing objectives and police training combine to result in all protest being viewed as potentially criminal.

Limits should not be placed on the right to protest. The police are starting from the position that protest is unlawful unless it has authorisation, yet Articles 10 and 11 HRA state that no restriction shall be placed on these rights except “in the interests of national security or public safety, for the prevention of disorder or crime”. It is therefore of crucial importance to ensure that disorder is clearly and separately defined, so as to explicitly exclude protest. Any attempt at pre-emptive action, further limiting or denying people their right to protest, would require extremely wide-ranging powers that would inevitably be applied in a discriminatory manner.

¹⁵ Introduced in 2005 at military sites.

¹⁶ Previously not a criminal offence, unless under provisions of Aggravated Trespass, s 68, Criminal Justice & Public Order Act, 1994.

¹⁷ See footnote 3.

¹⁸ *ibid.*

¹⁹ Footnote 3: according to the MoD SOCPA was necessary because, “At each of the [designated] sites there has been persistent activity by protestors who, by actively trespassing, place themselves at risk of being mistaken as terrorists. It has always been difficult for security forces protecting MOD sites to determine the difference between trespasser and potential terrorist”.

²⁰ Two arrests at Menwith Hill; eight at Lakenheath; one at Aldermaston; three at Faslane.

2. Existing powers available to the police and their use in practice

OPERATION OF COMMON LAW AND LEGISLATIVE POLICE POWERS AT ALDERMASTON

Breach of the Peace: is used, most often as a pretext to “pen” demonstrators, by the MDP even when demonstrations have been advertised explicitly as non-violent.

Stop and Search: AWPC and others are routinely subject to “stop and search” allowing police the opportunity to obtain identity, gain intelligence, prevent photography and for general harassment. Although grounds are rarely given, when pressed the MDP have sometimes cited powers under s.44, Terrorism Act 2000 (where no reasonable suspicion is required), on the grounds that, “protesters can cause “cover” for terrorists”, and that police therefore require “intelligence” on the identity of protesters. Other searches at Aldermaston have been explicitly carried out under the Terrorism Act.²¹ AWPC believes that counter-terrorism powers should not even be considered for use in policing protests.

S. 60 searches are used unlawfully where there is no threat of violence. A woman reported being stopped and searched in a car on her way to a demonstration at Aldermaston. When she questioned the police’s powers, they said “a padlock had been reported missing”. The police then stole (s.1 Theft Act) items from the vehicle, despite having no power to do so. They did not find or seize drugs, weapons or items used for committing criminal damage or evidence of any crime or make an arrest. Such searches are routine. If police are pressed, they cite a “plausible” reason to cover their use of stop and search powers to treat protest as criminal. Indeed TVP have called for increased powers of stop and search at Aldermaston.²²

In a further abuse of police powers AWPC are regularly stopped by the police at local public events or meetings related to Aldermaston with questions as to their “intentions” or with the purpose of gathering intelligence about “known protestors” and new arrivals. Women who drive to the camp are subject to harassment by MDP – who only have jurisdiction in relation to Crown Land and property, or for serious crime—who automatically ask drivers, or even people who are not driving, for documentation, and threaten to have legally parked vehicles towed away if documents are not produced. Such “intelligence gathering”, where local residents see police gathering round vehicles, also reinforces perceptions of protest as crime.

In an abuse of non-existent powers, the MDP tell visitors to the camp that they must wipe their camera’s memory card of any images of Aldermaston taken from outside the fence, implying that an offence has been committed and often threatening arrest. The police do not try this tactic with AWPC, who know they have no power to force the deletion of data.

It’s too easy for the police to justify unnecessary use of force or restraint, for example, “to prevent a crime” by the forcible removal of peaceful protestors and, for example in April 2007, of two legal observers. The police justify this under s.3 Criminal Law Act 1967, even though they have power of arrest for criminal offences or breach of the peace. Without arrest, this never comes to court and the legality of the use of force in the circumstances is never investigated or regulated.

S.24 PACE (as amended) imposes the criterion of “necessity” on any arrest, but the necessity is often spurious. For example, officers tick the box stating that custody is justified for the purposes of interview, yet TVP have an apparent policy of not interviewing AWPC and other demonstrators.²³ Custody officers no longer inquire as to whether the arrest was lawful as long as the arresting officer can tick one of the boxes provided in s.24.²⁴

AWPC’s experience of the policing of protests is that the attitude and actions of the police on the ground depend to some degree upon the senior officer in charge, who in turn is under pressure from more senior officers, the MoD, AWE plc (the private company which runs Aldermaston) and US interests.²⁵

3. Can the competing interests of public order and the right to protest be reconciled?

The issue of competing interests²⁶ is a red herring, and only applicable under the current “protest as disorder” paradigm, in which “protest” is linked to “disorder” and “criminality”, a deliberate structuring of what is termed “protest”, and how it is dealt with. Freedom to protest (the rights to freedom of assembly and expression) is enshrined in the HRA, and guaranteed under international standards to which the UK is a signatory, and should not be subverted by police practice. We resent the implication that protest necessarily equates with disorder, and the assumption by the police that protest will become disorderly if they don’t control it.

²¹ Members of AWPC were repeatedly stopped and searched under the Terrorism Act at USAF Fairford in 2003 and assisted in the compilation of Casualty of War: 8 weeks of counter-terrorism in rural England, Liberty, Gloucestershire Weapons Inspectors and Berkshire CIA, July 2003.

²² http://www.thisishampshire.net/news/hampshirenews/display.var.1509811.0.police_look_to_combat_awe_demonstrators.php

²³ TVP officers confirmed this to a member of AWPC arrested in July 2008.

²⁴ Meeting with Chief Inspector Judith Johnson & Inspector Dave Griffiths, TVP, September 2007. A TVP custody inspector has stated that no arresting officer could ever be faulted on these grounds

²⁵ Not only is the US-based Lockheed Martin one of the companies that makes up AWE plc, but under the 1958 Mutual Defence Agreement, Aldermaston is involved in the exchange of nuclear technologies with US.

²⁶ The right to drive a car, for example, is not set out in international standards; yet demonstrations at Aldermaston are invariably controlled or prevented on the grounds that they will interfere with traffic.

The right to protest at Aldermaston is curtailed on the grounds of both public order and national security, where it is easy to use anti-terrorism laws against protestors (because if the possible problem is security the possible answer is the Terrorism Act).

AWPC does not agree that the right to protest can be “balanced” against “security concerns”. Nothing can be weighed against security concerns (because they are subjective), and because the police and government see protest itself as a security concern. There are political, economic and reasons of convenience why the police, the government and AWE plc want protest restricted: they do not want a debate about the renewal of Trident.

At Aldermaston “security” is used as an excuse to prevent protest. Until overturned by JR, banners were not allowed on the fence since they “obscure[d] the view of security personnel and cameras”. Yet AWE plc have permanently obscured the view by planting trees and building walls around the perimeter. Further, while sitting all day and night next to the perimeter fence is not prohibited, camping and demonstrations are perceived as a threat to national security on the grounds that a terrorist might take cover amongst the participants. Daily traffic jams of workers at Aldermaston are not so regarded.

Even the Crown Prosecution Service is besotted with the links between terrorism and protest. During a pre-trial review when an AWPC woman was being prosecuted for Aggravated Trespass, the prosecutor suggested to the District Judge that, although everyone knew she was not a terrorist, a member of her family might be kidnapped and she would be forced to jump the fence. Just how fanciful is the criminal justice system allowed to become? The woman was acquitted—after a year’s prosecution.

We consider that actions during protests should not be further criminalized. There is a vast repertoire of existing law used (and abused) to deny the right to protest. Indeed, where protest appears to be successful, new legislation is immediately enacted to criminalize previously lawful activities. The present criminal justice structures have made a protester a police target. No one, setting out on a protest, can guarantee that however well (or lawfully) they behave, they will not be arrested or unlawfully deprived of their liberty. This did not come about by chance, despite the theoretical importance given to political protest over and above other forms of “freedom of expression”. Existing criminal law and practice pays little regard to human rights.

Finally, AWPC does not consider that complaints, whether formal or informal, are adequately addressed. For example, on 8 June 2007, within hours of the first camp after the byelaws came into effect, 10 AWPC women and a dog were arrested for camping. They were held for over 12 hours and given bail conditions of a five-mile exclusion zone—despite the fact that there is no power to impose bail conditions to prevent the commission of an offence for summary only offences (which the byelaws are). In August 2007, all charges were dropped.

A complaint against the MDP and TVP by those arrested relating to 15 breaches of law and detention/custody procedure resulted in a few minor breaches being acknowledged in writing. However, the most serious complaint—that contrary to PACE 1984, the bail conditions for any byelaw offence by any person, were pre-arranged between Chief Inspector Rowe of the MDP and TVP—was never investigated, despite a complaint to the IPCC.²⁷

In conclusion: we do not protest for its own sake. Protest is part of a process of effecting change. AWPC protests against the UK government’s development of a new generation of nuclear weapons, which we consider unlawful under international law.

We fear the creation of a vicious circle. If the freedom to protest is restricted through criminalization (and treated differently in law from any other activity where people express a common purpose or engage in a common activity)²⁸, then it becomes easier to commit an offence for an action that in other circumstances would be lawful. It further criminalizes those who seek to effect change.

June 2008

Memorandum submitted by Mr Stuart Andrews

THE RIGHT TO PROTEST

It is the mark of a free society that individuals are able to communicate their opinions, views, experiences and aspirations without the permission of government, or the prior permission of its servants. It is the primary responsibility of government to listen to the resulting public debates and attempt to reach a consensus—this being one of the defining principles of democracy. Unfortunately, when political doctrine defines policy, governments are less inclined to listen, and habitually ignore the *vox populi*.

²⁷ Rejected by the IPCC on the grounds that additional information provided by the complainant to further substantiate the complaint had not been included in the original complaint.

There is also generally a readiness to apply similar bail conditions to any “protester” without regard to the individual circumstances.

²⁸ The rush-hour, football matches, queues for sales, outside clubs, visits to tourist destinations.

It follows that there are circumstances where members of the public are sufficiently aggrieved as to make direct representations to the state and media. Thus we arrive at the situation where society (individually or by grouping) collectively seeks representation via the act of public protest.

It is the author's intension to show that this most traditional of rights is being significantly and progressively eroded in modern Britain. I am concerned that the discourse of democracy is being stifled by the proscriptive apparatus of the state. It is paradoxical that the right to speak, and to protest, is being extinguished by the same civil force that is sworn to defend it.

Quis custodiet ipsos custodiet?

Much of the blame for this unfortunate state of affairs must be firmly laid upon ill-considered laws expediently wrought by politicians. It is to them that we must seek redress.

AN ESCALATION OF VIOLENCE—AN ASSESSMENT

The committee who will consider this report will, I suspect, pay great attention to facts, statistics, claims of rising lawlessness, and arrests. But alongside the official accounts of policing must lie the victims of its enforcement.

I have reviewed the video and film evidence of many of the larger demonstrations of the last 30 years. One factor predominates—the escalation of violence.

There were a few older people in the thick of the fighting but only a few. One guy with grey hair on being arrested repeatedly had his head bashed against a wall by the police just outside the gates of Downing St. (Thatcher's residence). Poor bastard; if the everyday tensions springing from the accumulating anachronisms of the 1980s weren't sufficient to bring on migraine attacks this police beating surely must. *First hand witness Poll Tax riot 1990 BCM Blob WC1N 3XX.*

It can be argued that policing of a demonstration is determined by a series of factors The popular mood, the social class of the protester, availability of alcohol, public speakers, music and encouragement.

My focus is on the actual level of violence. It is profoundly unsettling to note that much of the violence resulting in injury at demonstrations is inflicted by the police service—and that modern British police appear increasing willing to apply violent force as a primary response to a crowd movement.

Some may take offence at that observation and might mistake it for a political viewpoint, but consider this:

It is a truism that if you only give a man a hammer, then every job becomes a nail. The same applies to law enforcement. If you give a policeman a helmet, shield and a baton. It will be used and used more frequently than in ordinary circumstances. When the Countryside Alliance gathered outside Downing Street, the police response was to hit unarmed women and farmers.

I question the methodology of violent response to those who are not a proper threat. Shouting and moderate "argy bargy" is not a licence for police officers to assault members of the public.

It can be argued that the erosion of that responsibility diminishes our police in the public eye.

Clearly, some aspects of police training may be deficient. But there seems to be a recent trend to a military-style determination to forcibly dominate the interaction between police and demonstrators. I think this is unfortunate, on six counts.

- 1) It reduces the public's esteem for the police.
- 2) Innocent people become injured.
- 3) It antagonises the crowd, and engenders rebellion.
- 4) Officers become injured.
- 5) It encourages the use of excessive force.
- 6) It perpetuates a paramilitary attitude amongst senior officers.

I witnessed military chinhook helicopters flying at treetop height, over the of a peaceful colourful march at Gleneagles in 2005, landing behind "police lines" and disgorging troops of riot police like something out of Judge Dredd, for god's sake..

Witness to 2005 Gleneagles demonstration. Guardian blog.

CHANGES IN CROWD CONTROL TRAINING

Policemen should only resort to violence in self-defence. In recent years I have seen evidence of the integration of military CQB (Close Quarter Battle) techniques taught as an amendment to standard self-defence for police officers. CQB is designed to kill, injure and incapacitate. I suggest these are inappropriate tactics for police officers to learn, or to deploy.

It is a matter of record that during the 1994 miner's strike, police "short-shield" units were sent into action with the specific instructions to injure. There exists in the BBC and Channel 4 archives, dramatic video evidence of such acts being inflicted. Policemen should be trained to arrest and restrain, but not to willfully injure members of the public.

In 2008 I have seen officers using round plastic shields to push demonstrators. That is acceptable but, the same officers have then tuned their shields edge-on and slashed at protesters causing facial injury this is not uncommon. I would like to see a blanket prohibition against that slashing shield technique.

The use of batons. When the author was trained to use a wooden truncheon, it was made clear that any blow against a suspect's head could have fatal consequences, and was not permitted.

The introduction of lower mass metal batons improved operational police self-defence. Unfortunately, it seems that the injunction against striking the heads of suspects has been abandoned. It is now common practice for heads blows to be landed. I think this a dangerous trend that needs to be halted. I would recommend that training is thus revised in the matter of head blows.

I also strongly advise that the British police are not issued with chemical weapons, incapacitates, baton rounds or electric weapons, when dealing with crowd control issues. The use of such weapons always result in increased crowd rage and proportionately greater public disorder.

In very severe cases of crowd disturbance, water-cannons might be deployed, but continental experience has shown that these again become a focus for crowd outrage.

The tactic of driving police vans at speed through demonstrators as was done during the 1990 poll tax disturbances is dangerous, irresponsible and invites a backlash from the crowd. I hope it is not repeated.

THE ROLE OF ACPO

It is my view that ACPO have lobbied ministers for power beyond their responsibilities, and have accumulated legislation that criminalises legitimate demonstrations. It is unfortunate that ministers commonly mistake ACPO's "shopping lists" as a model for proper policing.

We must also question the cost to the public purse as a result of ACPOs' successful lobbying.

If we are to have a debate about the impact of demonstrations, it follows that a private organisation like ACPO should carry a minority voice. It is not representative of the views of ordinary policemen or policewomen. It is certain that ACPO's vision is not shared by the public and ACPO has never solicited or polled their response. In my view much of what is currently operationally wrong with the policing of demonstrations can be laid at the door of ACPO.

AGENT PROVOCATEURS

Traditionally British law enforcement has distained the use of agent provocateurs, regarding such tactics as being counterproductive to matters of public disorders. There used to be an understanding that a tactic would be an incitement—a potential criminal offence.

Unfortunately the active role of agent provocateurs by the London metropolitan police service has recently been exposed. On 21 June 2008 the Daily Mail carried a report which clearly showed a serving police inspector acting as an agent provocateur during the London demonstration against the visit of President George Bush. The MP George Galloway later identified the police inspector as Chris Dreyfus and laid a formal complaint.

This raises grave concerns. Does the involvement of a senior officer indicate that this regrettable tactic is more widespread? The answer to that question is (unfortunately) yes. I refer the committee to the Channel 4 documentary of the 1990 poll tax riots. Footage transmitted by that programme clearly showed policemen, removing uniforms and dressing as anti-violence stewards, then disembarking from a metropolitan police minibus. It has been claimed that a number of those "stewards" then encouraged members of the crowd into acts of violent disorder.

It is a matter of record, that the metropolitan police took legal action against the television production company, so as to try to obtain the video-master tapes of this programme—and prevent its transmission.

Of the 400 arrested during the disturbance that day, most were acquitted due to poor evidence gathering and alleged incitement by plainclothes members of the metropolitan police.

I believe that the metropolitan police currently make use of *agent provocateurs*.

The existence or usage of *agent provocateurs* is a clear breach of public trust and contrary to the interests of public order.

I therefore suggest that the committee give consideration to making this tactic an *inchoate* criminal offence. For example "while on-duty in plain clothes, it will be unlawful for a serving police officer to incite or cause an act of public unrest by a crowd, or assembly".

PROTEST EXCLUSION ZONES

To criminalise the actions of Bran Haw (a lone anti-war protester) the government prohibited any act of public protest within 1km of Parliament.

The law was comprehensively enforced, and legitimate protesters have complained that it effectively prohibited the exercising of free-speech, and acted as a prior brake on dissent. Any act of protest within this designated zone had to be prior authorised by the metropolitan police. It can be argued that in a democratic society, it is not the role of the police service to adjudge who can speak out.

The comedian Mark Thomas has shown the absolute futility of SOCPA. Small-scale protests have become a frequent occurrence. To prove the point, on one day, some 2500 individual demonstrators applied to the metropolitan police for authority to hold no less than 2500 separate demonstrations.

Of course, this situation did not arise out of a need to stage a political farce. It arose because the metropolitan police had abused their powers within the exclusion zone. They behaved obnoxiously and excessively. They arrested individuals whose only offence was to wear tee-shirts printed with a slogan critical of the former prime minister. One woman was threatened with arrest because her tee-shirt was printed with works from a famous artist. A young man was apprehended for displaying a sign that criticised scientology. A single woman was arrested for reading out the names of the Iraqi war dead SOCPA section 132. On this matter a contrite Home Secretary informed BBC's Newsnight:

“...this arrest was an error and would never happen again”. Believing this assurance, the very same woman repeated her lone reading—and was promptly arrested a second time.

This amply illustrates the reasons why politicians should never give such draconian power to police officers. Because it is inevitable that those powers will be abused.

A BRAKE ON POWER

It is a sobering reminder that almost every use of new anti-terrorism law has been directed at non-terrorists. Its first victims were peaceful protesters campaigning outside an international arms fair. In separate incidents environmentalists were also targeted.

Not only was Walter Wolfgang assaulted by private guards at the Labour party conference, he was arrested under anti-terrorism law. I note with displeasure that he, and a witness, were badly beaten and no security guard has currently been charged with that crime (Channel 4 still has the videotape).

It is police inability to act properly and proportionately that is so often cited as being problematical when it comes to enforcement.

Constables often have to reply on the opinions of senior police officers, who can only interpret the law as they see it.

Parliament has passed poor quality legislation that allows considerable digression in the way the law is enforced. Thus, we may have one set of interpreted laws from one constabulary, and an entirely different set from another police authority. The law cannot be two things at once. We must have consistency.

The primary responsibility for this failing must be centered on parliament and its regrettable new fashion for passing Acts into law without proper scrutiny. The present government's legislative programme has underlined the observation that:

“hasty politics make bad law”. It is any wonder that, in recent years, the judiciary have made so many judgements against the excesses of government?

The fact remains that many innocent individuals have paid a heavy price for the government's lax legislative drafting. The committee should be reminded that jail is a punishment, not a period of administrative respite for public servants to modify bad law...

I argue that parliament must take the full responsibility for the definition of each law as passes, and not pass legislation that can be subject to interpretation by ministers, civil servants, and certainly not senior police officers.

The Regulation of Investigatory Powers Act (RIPA) is a case in point. A law so badly defined that it has occasioned an epidemic of “function creep”—whereby the actions of every legitimate activist, litterer, or dog owner, is becoming a reason for the state's suspicion and micromanagement.

In recent weeks we have seen RIPA powers being exploited to enable intrusive investigations to be conducted by any petty council official. It is an unpleasant thought that your local Librarian could be authorised to access your most personal records.

Thus, we see the hazards of function creep' RIPA has abolished privacy in Britain.

Parliament did not foresee such consequences when it debated RIPA The fault is with Parliament—as is the solution.

The modern policeman has changed. He is no longer regarded as “Dixon of Dock Green” and a friend to the poor. Nowadays, he is driven less by public duty, and more by instructions to achieve “targets” and fulfill the PC demands of his senior officers. Our newspapers are filled by case after case of decent middle-class

people who fall foul of “targets”, and are astonished to be arrested for trivial or non-existent offences. With this type of policing now prevailing, it is my view that ordinary police officers should not be expected to exercise discretionary powers. Indeed, they should not be burdened with them at all.

A Roll-back of Legislation is Desirable.

As an example of bad law, we only have to read The Serious Crimes Act 2007. Of which section 5, 44, 45, 47, 49, 50 & 63 effectively criminalises dissent and enables the issuing of serious crime prevention orders (SCPO) on the sole basis of a suspicion by any public official. The potential for abuse is colossal.

It is incompatible with free speech and the free press.

Did parliament anticipate such draconian consequences, or was the Act nodded through committee on the assumption that someone from the department of justice would get it right? Either way, the 2007 Act is in urgent need of repeal before it makes criminals of us all.

A PARAMILITARY POLICE?

A case study. The policing of the recent “Climate Change Camp” in Kent stands out as an example of how not to conduct operations.

This was a primarily peaceful gathering created for the purpose of debate and campaigning. It was anticipated that there would be a demonstration, but this would be token and fundamentally non-violent.

Unfortunately, the chief of police saw the camp as an exaggerated threat to general law and order and implemented an extravagant policing solution that was more in keeping with an outbreak of terrorism.

Thus, Kent police ceased acting as a law-enforcing third-party, and appointed themselves as the guardians of a private power station. It can be argued that the police role should have been to stand back until clear evidence of law breaking occurred. Unfortunately, they did not. Instead they wrongly interpreted their role into one of misplaced “crime prevention”. To prevent such (unspecified) offences, the chief constable instructed his officers to disrupt, frustrate and sabotage the lawful activities of the environmental camp.

The result was something that is contrary to the principles of British fair play, and an object lesson in negative policing.

The following actions were conducted by Kent police, assisted by the additional manpower of over 26 county and metropolitan forces.

Intrusive searches were made with the practical purpose obstructing members of the public from getting on-site. Some were kept waiting up to two hours. Everyone who tried to enter was subjected to police photography. Names and address were demanded.

The random and mass confiscation of ordinary items was endemic. The police removed:

- Children’s chalk and games.
- Potato peelers.
- Kitchen items.
- Camping equipment.
- A disabled person’s walking stick.
- Water pipes.
- Disabled access ramps.
- Banners.
- Bicycles.
- Saws.
- Tools.
- Kites.
- Paper.
- Writing materials.
- Board games.
- and anything with an edge or point.

It was also reported that, at one point, some policemen were even confiscating food and water.

MPs Bob Marshall-Andrews, Norman Baker and Cohn Chalen witnessed these actions and wrote to the assistant chief constable in an attempt to resolve “an increasingly threatening confrontation”.

The police response was to constantly fly helicopters at low level over the camp at night and arrange a storming of the camp at 6AM with hundreds of riot police. Upon failing to provoke a confrontation, the riot police withdrew after helping themselves to whatever they could carry. That included the cooking

breakfasts of bemused campers, guy ropes, bolts, a spanner, a set of table knives (still in the wooden knife block), water bottles and equipment from the toilets. According to police PR, this was done “to prevent criminal damage”.

After this the police turned their attention to vehicles, dragging one car into a ditch, damaging others, then using angle-grinders to cut security chains that locked bicycles to trees. The bicycles were taken away. A video of this action was posted on U-Tube. Further mass charges by the riot police were made over the next three days. They met only passive resistance. In one charge the police deployed dogs, right-handle batons and pepper spray. MP Norman Baker narrowly avoided a jet of indiscriminate pepper-spraying.

All this to “police” a mere environmental camp where the principle activity was debate. MP, Cohn Challen commented “The climate change debate was of a higher caliber than in the House of Commons”.

Meanwhile, the PR dept of Kent police were artfully arranging media “opportunities” where kitchen knives and other “weapons” were displayed by po-faced police officers. A standard media smear. A legal observer, and lawyer, described the scene “It’s a concerned attempt to demonize people and alienate members of the public so they don’t think it’s safe to come here. It’s a depressing and chilling attack on the right to freedom of expression and assembly”.

It was certainly disproportionate. By what right does the chief constable deploy hundreds of highly paid officers to violently assault an unarmed sleeping campsite then there is the matter of the systematic harassment of campers by intrusive searching and constant noisy night time low-level helicopter flights.

Where does the execution of authority cease to reasonable, and transforms it’s self into oppressive policing?

I suggest that the entire police operation mounted by Kent Police was a grotesque squandering of public resources and a gross and disproportionate display of unnecessary force.

This was, after all, a camp of hippy environmentalists -not a military training ground for Al Qaeda.

By his actions, it could be considered that the chief constable of Kent breached ECHR article 11,E.

I would suggest he is removed from fu her office before he can carry out any more misjudged policing operations.

I also question the need for the extensive prior surveillance operation that was mounted against the organisers of this camp. It was an open perfectly legal organised public event. The committee who reads this report may consider that such a large surveillance exercise was inappropriate.

The chief constable of Kent, and other police forces, urgently need to be reminded that dissent is not, in itself, a crime. At least not yet...

DEPLOYMENT OF FIREARMS

I strongly urge that tactical firearms unit are never deployed during demonstrations. There is too greater risk of a misjudgment, a communication issue or wrong intelligence. We are reminded of the unfortunate extra-judicial execution of the Brazilian man on the underground during 2005. I suggest the potential for police human error and misjudgment is far greater during a demonstration and we must not see police guns being used against unarmed members of the public. The political and social consequences of such a shooting would be catastrophic.

I deplore the way by which the London metropolitan police trained sniper rifles on peaceful demonstrators during the visit of George Bush in June 2008.

Source, Daily Mail. 21 June 2008.

If firearms are issued and placed on “stand-by”, then in moments of stress, they will tend be used. There has already been an instance of a “close call”. I cite the following cautionary example. During the Poll Tax riots of 1990.

Documented police radio communications and surveillance reports indicate that at one stage the police ended up calling for armed response teams to support attempts to regain control despite there being no reports of the possession of firearms amongst the protestors.

LEGISLATIVE THREAT

Within a single generation government has passed numerous criminal justice acts each granting additional attacks on civil liberties. The following Acts highlight just how profligate the Labour government's legislating machine has been in this area—apparently with little effect on overall crime levels.

Criminal Justice and Public Order Act 1994

Police Act 1994.

Terrorism Act 1997.

Anti-terrorism, Crime and Security Act 2001.

Social Security Fraud Act 2001.

Proceeds of Crime Act 2002.

Proceeds of Crime Act 2003.

Criminal Justice Act 2003.

Regulation of Investigatory Powers Act (PAPA). 2003.

Civil Contingencies Act 2004.

Prevention of Terrorism Act 2005.

Serious Organised Crimes and Police Act 2005.

Identity Cards Act. *Et al.*

The public order sections of all these acts have been employed by various police forces as an impediment to peaceful demonstrations. The same acts contain provisions which have been appropriated to harass and suppress individuals who planned future demonstrations.

If an authoritarian government were so minded, the compounded implementation of these acts would cause democracy (and its expression) to cease in the United Kingdom.

I share the uneasy of *Justice** in the existence of such draconian statutes, indeed, I question the need for them at all.

CONCLUSIONS

After great consideration, I would recommend the progressive repeal of the majority of current public order legislation (as below) and its replacement with more liberal statutes. These new laws will have to be drafted with care, and must satisfy a diverse set of interests. It must strike a balance between security and liberty, with the intension to preserve the latter. I regard adequate representation from civil liberties groups and law-enforcement as being essential for the necessary consultation.

This will not be an easy task, and it is too important an issue to be entrusted to only one political party. For this reason I urge that a Royal Commission is established so as to enable non-violent protest to be enshrined as a constitutional right and afforded due protection in law.

THE DANGER OF DOING NOTHING

The government has made much of “Britishness” in its recent pronouncements. We are told that political freedom is integral to our democratic way of life. Yet, this is a time when more and more young people are failing to engage with the traditional democratic process. Many do not vote. And who can blame them when the state offers violence to peaceful demonstrators and harassment to those who try to speak out?

Our newspapers carry daily accounts of the loss of privacy and the increasing intrusiveness of petty officials. A climate of fear seems to prevail in greater England and those with political opinions are choosing to keep silent. A different silence pervades government, which seems content to hide behind spin and PR. The net result is a reducing engagement between the state and the ordinary electorate.

Such a thing cannot be good for democracy.

Britain is recognised as one of the oldest and most stable democracies. Its written constitution *Magna Carta and The Bill of Rights (1689)* have been honorably enhanced by centuries of informed debate and expert legal thinking. It has endured by virtue of the fact that it binds its successors by law and by oath. For centuries it has guaranteed liberty against tyrants, political opportunism and elective dictatorships.

Yet, in the space of only 20 years, government has managed to impose more injurious restrictions against liberty than at any other time in our history.

That is propounding disturbing, as is the present government's rush to impose a total surveillance society via ID cards *et al.*

It would be a tragedy if the United Kingdom went the way of the United States, whose freedom of speech is, in theory, guaranteed, but where its public expression invites arrest and criminal charges.

Historically we are a nation of individuals, not an individual nation.

Within living memory, Winston Churchill famously warned of the dangers of a new dark-age of fascism (a political creed where individual expressionism is sublimated to the absolute power of the state). That was in 1940, and history has a habit of repeating itself. Now, in 2008, another dark storm of unfettered state power is threatening traditional liberties inside the UK.

I fear that unless the United Kingdom rolls back the apparatus of police authoritarianism, sufficient to again allow free demonstrations, then we will walk into that very long night without realising the terrors of the darkness.

August 2008

Memorandum submitted by Adrian Arbib

My name is Adrian Arbib. I am a freelance photographer with over 25 year experience. I have worked all over the world for clients as wide ranging as Reuters, AP, Christian Aid, Oxfam La Repubblica to the BBC.

In February 2007 I was working as an accredited photographer for the Guardian Newspaper and BBC Wildlife magazine.

I was covering the story, of N power preparing a Lake site to dump Didcot Power station's waste fuel ash into. The site was at Radley Lakes nr Abingdon, Oxfordshire.

There was a substantial outcry regarding this in the area, since the lakes were considered a wildlife area and much loved by locals.

I was told that N Power contractor's were cutting down a tree in which there was an active Kingfishers nest (a protected Species under the Wildlife act—it is a criminal offence to cause damage to their habitat). Taking a picture of such activity was therefore very much part of my brief/ job and in the public interest.

Shortly after taking the picture of the said contractors (from a public highway) I was then approached by large group of men, led by two men in suits flanked by balaclav'ed security.

Despite showing them my NUJ press card the two men in suits handed me an injunction preventing from taking photographs; breaking this injunction was punishable by up to 5 years in jail.

I was effectively stopped from doing my job in a highly confrontational manner

I filmed the event and part of it ended up on this Channel 4 news report (I can supply the full unedited item if required on a DVD).

<http://uk.youtube.com/watch?v=vmdOFRaDXd2g>

This injunction was also handed out to members of the press from the Oxford Mail and the Courier group of newspapers.

Assisted by the NUJ I then challenged the injunction at the High Court which we in turn won and had the wording altered to exclude members of the media. It seems highly irregular that the media should have been included at all.

The piece of legislation being used to get the injunction placed was the 1997 Anti Harassment act which was part drafted by Timothy Lawson Cruttenden. It was his operatives that issued the injunction so surely they should have been better informed about the press? The injunction was put in place behind closed doors with no right of contest and on closer inspection was largely based on fabricated evidence concocted by the security guards.

I wrote to Michael Howard MP (under whose auspices the Anti-Harassment Act was initiated) who replied to me in writing stating that the Act was not meant to target journalists.

Conversely on Lawson Cruttenden's web site it clearly states that the act is designed to stop "investigative journalists and invasive photographers." This fiasco has doubtless done no favours for his client N Power, it has also wasted everyone's time (particularly the High Courts) and created a huge amount of public mistrust in "the system".

I suggest that in the interest of good governance that this piece of legislation be re-examined. It was designed to stop stalkers and not to prevent bona fide journalists covering stories that are very much in the public interest, and in this case protecting a large corporation in its criminal activities.

On this occasion the police were not present. A point worth noting that it is now seen as acceptable that private security forces are wrongly enacting High Court injunctions on members of the press free of police scrutiny. The police showed no interest in protecting the rights of the press in this situation.

December 2008

Memorandum submitted by the Association of the British Pharmaceutical Industry

SUMMARY

1. The ABPI believes that the introduction of SOCPA 2005, improved policing and the use of injunctions has helped to protect companies, their employees, customers and suppliers from animal rights extremists, whilst allowing peaceful protest.

2. ABPI has been collecting data on attacks and protests by the animal rights movement since the beginning of 2002: this data clearly indicates that the new legislation, effective policing and use of civil injunctions has reduced the levels of attacks on peoples’ homes, while the level of protest has remained virtually unchanged.

INTRODUCTION

3. The Association of the British Pharmaceutical Industry (ABPI) is the trade association for more than 100 companies in the UK that research, develop, manufacture and/or supply more than 80 per cent of the medicines prescribed through the National Health Service (NHS). Our membership encompasses contract research organisations who support the sector, including those providing pre-clinical research services to pharmaceutical and biopharmaceutical companies.

4. In the UK, any facility run by companies, universities or charities where animal research takes place are required to obtain licenses by the Home Office under the Animal (Scientific Procedures) Act 1986, as are the individuals carrying out such research. Furthermore every procedure carried out on an animal requires licensing approval by the Home Office.

5. In 2003 there were 259 attacks at the homes of employees of companies and organisations either directly or indirectly engaged in animal research. Such attacks—termed “Home Visits” by extremists—had one simple objective: to intimidate and scare employees or customers and suppliers so that they would either resign from targeted companies or stop the company acting as a supplier or customer.

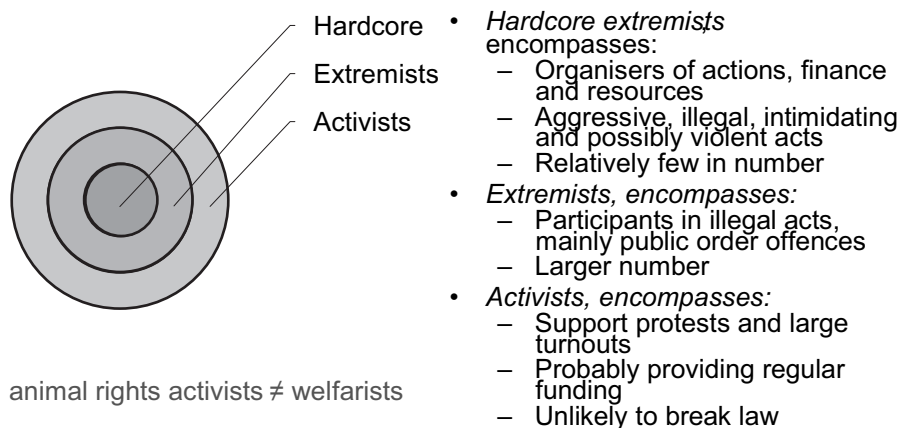
6. “Home Visits” were not only aimed at those involved directly in animal research but were also targeted at customers and suppliers, such as couriers, laundry service providers, scientific supply companies and insurance companies (see Annex A). Of these, while 113 were of Directors, whose addresses had been identified through the public Companies House register, 146 were against employees, including cleaners, administration and secretarial staff and other staff not in any way directly engaged in animal research.

7. There have been a variety of tactics utilised by animal rights extremists, such as those outlined in Annex A, including use of incendiary devices, letting off fireworks in the middle of the night and a variety of letters, threatening various actions against families, including children, and friends.

8. Animal rights extremists are not the same as “welfarists”, who play a positive role in encouraging organisations to replace the use of animals in research, challenging standard practices, seeking to minimise the impact on the animals used. Figure 1 outlines the “anatomy” of the animal rights movement.

ABPI Submission to the Joint Committee on Human Rights (SOCPA 2005), June 2008

Figure 1: Anatomy of the animal rights movement



9. The ABPI in all its work on supporting our companies and their supply chain threatened by animal rights extremism has always defended the right to peaceful protest and expression. However such protest should not and cannot include the use of intimidation or harassment.

10. The ABPI first noted the threat of attack by animal rights extremists to employees and companies in July 2002. Consequently, with the help of security advisers and the companies themselves, the ABPI has been collating statistics on the number and type of direct or indirect attacks on pharmaceutical and biopharmaceutical companies. These statistics, from January 2002 up to the end of April 2008, are presented in Annexes A and B.

11. In April 2003 the ABPI developed a three-fold strategy after careful analysis and discussions with industry and legal experts (Figure 2). The strategy covered: encouraging improved policing and enforcement; facilitating civil injunctions where appropriate; and introducing new legislation to protect victims' Human Rights and companies going about their lawful business and research activities.

THE THREAT FROM ANIMAL RIGHTS EXTREMISM

The situation in 2002-2005—the evolution of “home visits”

12. Between 2002 and 2005 we saw a shift in the level and types of attacks made on organisations directly or in directly linked to animal research. The key points are:

- “Home Visits”, usually involving substantive criminal damage and harassment, become a tactic of choice of extremists trying to intimidate companies into giving up UK-licensed animal research or being customers or suppliers of such companies.
- In 2002 most “Home Visits” took place during the day, with protestors, often wearing balaclavas and using loud hailers, turning up at employees homes. This would often happen at weekends or when the employee was not at home, but young family members were.
- Between 2002 and 2004, “Home Visits” evolved into attacks during the middle of the night with damage to property and vehicles. Such damage included paint stripping and spray painting of vehicles and occasional setting of incendiary devices. Also use of fireworks and rape alarms thrown into gutters became a routine tactic.

Figure 2: ABPI strategy from 2002



- Employees and directors have also received threatening letters with large coloured shapes in envelopes—those targeted were told to put the coloured shapes into their children’s window so that the extremists knew “where they should not throw bricks”. Such letters routinely named the spouse and children.

The changing nature of animal rights extremist attacks

13. In 2002 the principal foci of attacks were Directors and employees of the companies engaged in animal research. Between 2002 and 2005, the focus of attacks evolved with first and second-tier suppliers and customers becoming targeted. Such targeting often followed a distinct pattern:

- First companies are identified either in animal rights movement publications or on the internet on such sites as Bite Back—a site regularly used to post threats to companies and their employees as well as being used as a place to report attacks on companies and individuals

- Letters are usually sent prior to protests. Some are polite requests to cease animal research or trading with an organisation that carries our animal research. Others are threatening and anonymous letters.
- Protests would take place outside companies' premises. These could be announced (this is required for companies with injunctive relief) or unannounced. Such protests would not have many people, but those participating are often wearing balaclavas and using loud hailer, shouting abuse and intimidating employees in general (see photograph below). Often employees arriving and leaving the site are confronted, videoed and number plates noted. In the past employees, including secretaries and administrative support have been followed home after work to identify their home addresses.

PHOTOGRAPH 1: A recent protest at a targeted company – taken in 2008



- A series of attacks on directors and employees would subsequently take place after such protests with increasing levels of intimidation and threat until the company gave into the demands of the extremists.

The role of injunctions

14. In April 2003, Huntingdon Life Science gained injunctive relief against specific actions by extremists. Such injunctions did not prohibit protest, but rather placed constraints on them to ensure they were peaceful. They also provided protection around employees' homes. The injunctions can be seen on the website of the National Extremism Tactical Coordinating Unit at:

<http://www.netcu.org.uk/enforcinglaw/civilremedies/injunctionsearch.jsp>

15. Shortly after the HLS injunction, the SHAC campaign started focusing on the Japanese companies (see Annex C). Five Japanese companies, after a short and vicious campaign, gained injunctive release in August 2003. Since then a number of further injunctions were obtained.

16. Overall there are now 29 injunctions. The impact of these injunctions has been clear: figures 5 and 6 in Annex B demonstrate the decline in "Home Visits" on employees of first HLS and second on Japanese companies.

SPECIFIC RESPONSES TO QUESTIONS

1. *Are current legislative measures which restrict protest or peaceful assembly (such as SOCPA 2005 and the Public Order Act 1986) necessary and proportionate to the rights to freedom of expression and peaceful assembly?*

17. The ABPI believes that the legislation introduced in SOCPA 2005 and the Public Order Act 1986 are proportionate and have had the desired impact to reduce intimidation of employees, the families and friends, without hindering the ability of individuals to protest within the law.

18. Since 2002 the ABPI has been collating data on all types of incidents and protests associated with animal rights. Figure 4 in Annex B clearly demonstrates that protest can continue allowing people to express their views, after the introduction of the additional powers in SOCPA 2005. Figure 4 indicates both the numbers of protests on a cumulative monthly basis and the average number of protesters attending these.

19. However ABPI remains concerned that much of the protest continues to be intimidatory with masks being used, along with loud hailers and other mechanisms to confront and intimidate staff. The civil injunctions gained by companies allow their employees to go about their lawful business without intimidation, while balancing the ability of animal rights protestors to lawfully protest.

2. *How do existing common law and legislative police powers (such as the common law power to prevent a breach of the peace, stop and search under the Terrorism Act 2000 and the use of force) operate in practice?*

3. *Can the competing interests of public order and the right to protest be reconciled?*

20. The ABPI firmly believes that recent legislation, the way the High Court has granted the civil injunctions sought by companies has allowed companies with regulated facilities under the Animals (Scientific Procedures) Act 1986, their employees, customers and suppliers to go about their lawful business, while facilitating peaceful protest.

21. It remains an issue however that pharmaceutical companies have to spend substantial amounts of money on applying for injunctions to go about their legitimate businesses of developing innovative medicines that save patients' lives. Such expenditure is in addition to the already extensive expenditure on site and employee security.

CONCLUSIONS

22. The ABPI firmly believes that the UK has a good balance in current legislation, allowing companies and their employees to go about their legitimate business, while facilitating peaceful protest within the law.

23. In early 2003 the ABPI proposed a strategy to Government of improving local policing, utilising civil injunctions and developing new legislation that reduces the harassment of companies, their Directors, employees, families and friends. To its credit, this Government, with support of opposition parties, has realised this vision.

24. In 2005 the tactics described above forced many companies to "capitulate" from providing services to companies and organisations involved in Government-licensed animal research. The impact of the legislation has reduced the number of recent capitulations (Annex B, Figure 3), while allowing protests to continue at nearly the same rate as before the introduction of SOCPA 2005.

25. The ABPI firmly believes that this must continue to be monitored, not just to ensure that legal protest can continue, but that intimidation and harassment of employees is minimised. Should intimidation at "protests" by animal rights extremists continue to frequently occur, consideration must be given to further measures and initiatives to ensure people are allowed to go about their lawful activities without the fear of harassment and attack.

June 2008

Memorandum submitted by the Association of Electricity Producers

1. The Association's membership includes large, medium and small companies in the electricity generating industry. Between them they embrace virtually all of the technologies used commercially for electricity production in the UK—coal, gas, nuclear power and a wide range of renewable energy sources. Some 95% of the UK's electricity production is represented in the Association.

2. To meet future demand for electricity in the UK and the requirements of government energy and environmental policy, the industry is contemplating new investment that could be as much as £160 billion by 2020. A proportion of this investment has to be made in the next decade, in order to replace ageing plant which is scheduled to close. The UK depends on electricity for heat, light and power and if new plant is not built soon enough, there may be a shortage of electricity from which serious social and economic consequences would arise. Similar problems can arise from disruption to the operation of existing power stations.

3. In recent years, several of our members' power stations have been the focus of protests by environmental groups. In some cases, the protesters have broken into the power stations with the express intention of disrupting production or closing down the plant. The most recent example of this was at Kingsnorth Power Station in Kent, in August 2008, when the "Camp for Climate Action" took place. The organisers of the protest declared that their intention was to shut the power station down. In the event, following expensive preventative measures by the company that owns the power station and a large-scale police operation, the protest went ahead, but, the plant remained operational. On a previous occasion at the same power station, protesters broke in. Some chained themselves to operating equipment and others climbed the power station chimney and painted a slogan on it. They were later prosecuted and found not guilty of causing criminal damage. Drax Power Station, in Yorkshire, was targeted by the Camp for Climate Action in August 2006 and in June 2008, a train taking coal to that station was hijacked by protesters, who

chained themselves to the train and shovelled some of its contents on to the railway line. In November 2006, protestors entered Didcot Power Station, in Oxfordshire with the declared intention of closing it down. They climbed the chimney and chained themselves to equipment.

4. Our members are deeply concerned at what they believe to be the probability of a growth in such protests. They are concerned that:

- a) existing electricity production may be disrupted causing loss of supply regionally or, in some circumstances, even nationally;
- b) companies may incur serious and irrecoverable financial losses from disruption to power production;
- c) construction of new power stations may be impeded and delayed, which could lead to power shortages;
- d) the working and private lives of power station staff are seriously disrupted by these protests and the lives of those staff are put at risk and
- e) because power stations are hazardous sites, where compliance with health and safety procedures is vitally important, the protesters themselves face the risk of death or injury.

5. Power companies have invested in tighter security measures and given early warning of protesters' intentions, are able to issue injunctions which enable the police to respond more quickly and which may deter some of the protesters from taking their intended action. Trespass is not a criminal offence however and the more radical protesters are not deterred by these measures. Power stations can have a lengthy perimeter (at Drax Power Station, for example, it is 18km long). A mass occupation of a power station site could occur in circumstances where the police were unable to respond quickly enough and a station could have to be shut down, with serious consequences.

6. Under existing legislation, to remove trespassers from a power station could require a possession order, which is a fairly slow procedure.

7. From the point of view of the power station operators, the situation has been aggravated by the court decision that the Kingsnorth protesters (Paragraph 3 above) were not guilty of causing criminal damage. The decision and the headlines in the press, such as "Cleared: Jury decides that threat of global warming justifies breaking the law" (*The Independent*, 11 September 2008) has caused enormous concern and this will probably encourage further, radical protest. It may well also discourage the police from using their powers of arrest, if they believe that the grounds for a conviction are no longer strong.

8. The Association therefore believes that the law as it affects unlawful access to power stations and other installations necessary for the functioning of society needs to be reviewed to provide additional protection under criminal law. One option would be to make it an offence of criminal trespass to gain access to power stations without the operator's consent (access to nuclear sites is already covered by the Serious Organised Crime and Police Act 2005). An alternative approach would be to amend legislation to clarify the circumstances in which an individual has a lawful excuse to cause criminal damage.

9. The Association must make clear that it recognises fully the importance of maintaining the freedom of expression and peaceful assembly which are such important features of a democratic society. It has no problem with lawful protest outside the perimeter of a power station, nor with the debate about how the UK's future energy requirements should be met.

10. We are not able to accept, however, protests in which the participants cause damage and disruption; in which they jeopardise the welfare of power station employees and threaten the electricity supply in which power companies have a legitimate commercial interest and upon which the people of the UK depend so heavily.

September 2008

Memorandum submitted by the British Fur Trade Association

INTRODUCTION

The British Fur Trade Association represents retailers, fur traders, wholesalers and manufacturers in the UK. BFTA represents over 95% of the British fur trade. BFTA fur trader members buy pelts at international auction and are responsible for buying a significant share of fur traded on the world market as pelts. This trade is worth some £400–£500 million a year to the UK. Today, fur is not only sold through fur retailers but through fashion houses and designer boutiques.

PROTEST AND ANIMAL RIGHTS EXTREMISM

Animal rights extremism (ARE), a form of domestic extremism is not new. By 1982 several animal rights extremist cells were established in the UK. These cells were prepared to commit burglary, criminal damage and theft in order to further their aims. More seriously the first letter bombs were sent to scientists, politicians and furriers.

This was followed by the cigarette packet incendiary device campaign, 1986–88. In some cases, these devices were placed in large stores with fur departments, with many millions of pounds worth of damage caused.

The meat industry suffered from an equally concerted campaign. Over 100 transport vehicles were firebombed with petrol devices.

Arrests and convictions resulted in these campaigns ending and brought about a major rethink by animal rights extremists. National campaigns were instigated against the fur industry and the pharmaceutical research company, Huntingdon Life Sciences (HLS).

In the early 1990's, Hockley a BFTA retailer based in Mayfair was the subject of repeated harassment. Staff were followed and received threatening letters, the store was regularly picketed with protestors directly outside the door. Customers felt intimidated and were nervous about entering the store.

A tirade of threatening phone calls was made on an almost daily basis. Red paint was sprayed on the owner's car. The owner of the store received "home visits" by a baying mob using megaphones outside his house.

During this period there were protests outside a number of other BFTA fur retailers. The protests were often vicious—designed to instil fear and using the tactics of psychological warfare. Protestors shouted "Kill a fur trader" or "Burn down the fur shop". The extremists visited the homes of fur trade members. At one home 18 windows were smashed. The owner received death threats.

Fur farmers were also being intimidated by extremists. At a fur farm in northern England extremists planted a hoax bomb. In March 1999 an extremist fired a rocket at same farm just missing a farm worker.

CURRENT PROTEST CAMPAIGN

Within the UK legislation and a renewed political will to encourage law enforcement agencies to investigate crimes resulting from "direct action" have largely brought about an end to violent campaigns and protests at people's homes. However, the animal rights leaders have reorganised their campaign strategies.

The growing popularity of fur means that it is more widely available in fashion houses, designer boutiques and other stores beyond the specialist fur retailers who are BFTA members. Currently the activists have moved their protest away from BFTA members, concentrating their protests outside one or two well-known stores in the West End and Knightsbridge, where fur is sold as part of a range of items.

Megaphones, drums and whistles are often used during these protests. In the case of one department store protests take place weekly, sometimes twice weekly. Customers, staff and passers-by are intimidated and the reputation of London as a tourist destination is undermined.

Fear rather than legitimate protest has forced several other department stores in London to make the decision to stop selling fur. In these cases personal intimidation aimed at the directors of these stores has gone hand in hand with legitimate protest.

These decisions to stop selling fur were not commercial decisions related to changing trends in the market place. This is at a time of resurgence of fur, with BFTA members reporting sales up often more than a quarter year on year over the last few years.

As the National Extremism Tactical Coordination Unit (NETCU) state on their website the purpose of a domestic extremist campaign is to force change by creating a climate of fear through harassment, intimidation and the threat of criminal activity.

INTERNATIONAL PROTEST CAMPAIGNS

Advancement in communication technology along with ease of travel has assisted the animal rights activists in their coordination of campaigns. During 2008 around 20 animal rights training workshops have been organised in seven countries. The purpose of these gatherings is to instruct supporters on the techniques of supposedly peaceful protest, how to successfully commit direct action crime, how to behave under police arrest, lobby governments and engage the media.

Campaigns by animal rights protesters targeting fur retailers, are now internationally coordinated. Most campaigns follow a similar pattern. Once identified as a target, a retailer within Europe, Scandinavia, North America and Asia alike will see campaigns begin with lawful, non-threatening actions.

This will begin with letter writing where the animal rights group will threaten protest action unless the targeted retailer stops selling fur products. Often in reality this is tantamount to a threat to the retailer to give up fur in return for not being targeted by the animal rights group.

From October 2007 to June 2008 protests have been held against an international fashion company at its retail outlets in countries throughout the democratic world, so far they have endured some 335 protests throughout 16 countries.

This is why the large majority of organisations faced with this request refuse to meet with the authors of these letters with good reason. There is no compromise, no amicable discussion, the animal rights group demand the retailer stops selling fur or face the threat of protest activity.

GOOD PRACTICE

In November 2000, Hockley, one of the BFTA fur retailers obtained an injunction under the Protection from Harassment Act 1997. This injunction was granted under the civil law and allows the judge who is considering the injunction to strike a balance between the legitimate right to protest and the right of individuals to conduct their lawful business without fear of intimidation or violence.

The injunction grants an exclusion zone around the store and means that the protestors cannot cross this exclusion zone. Because the protestors are not directly outside the shop, the effect of the protest is less intimidating and the Police have powers of arrest if protestors breach the exclusion zone.

There are significant legal costs involved in taking out an injunction. Whilst this is an example of good practice, not every furrier or retailer can afford these levels of costs, especially if it is a fashion boutique in which fur is only one of the range of items sold.

There have been some improvements to the law since the cases of harassment described earlier in the paper. We welcome the fact that “home visits” have now been outlawed.

STRIKING A BALANCE

The rights to freedom of assembly and expression protect the right of people to lawfully express their feelings on issues important to them. Large scale protests organised in advance are usually efficiently policed ensuring safety for both the protesters and those they disagree with. In most democratic countries permission to protest is required to ensure this safety. Permission is always given.

Smaller protests within the UK designed to surprise and frighten the retailer are more difficult to police effectively. The protesters arrive noisily and appear threatening. By the time that the police arrive they may have already left or are outside the shop handing out leaflets and displaying banners. They are very rarely asked to move.

STRIKING A BALANCE—THE RIGHT TO LEGITIMATE PROTEST—THE RIGHT TO ENGAGE IN LAWFUL ENTERPRISE

We recognise that it is every citizen’s right to protest, but the rights to freedom of expression and assembly (articles 10 and 11 of the European Convention on Human Rights), are qualified in various ways, and are qualified by the need to protect the rights of others.

The right to freedom of expression includes the freedom to hold opinions, and to receive and impart information and ideas, but not the right to put a lawful retailer or its employees in fear. It certainly does not include the right to threaten further protest action unless the lawful business changes to suit the activist.

Animal welfare is a serious subject and should quite rightly be debated by societies, with the right to protest protected. But there has to be a balance and perhaps governments, local authorities and police organisations are now required to look beyond the simple acceptance of protest behaviour, especially if that protest forms part of a national or more often an international campaign to intimidate retailers into stopping or altering their lawful businesses.

Is it right to allow protests outside a store in Knightsbridge every week, sometimes twice a week? Is it balanced and fair to allow 335 protests in eight months against a perfectly lawful business? Is it right to allow freedom of assembly and expression on every occasion without examining the background to the protest? Is this protest part of a wider campaign to intimidate or is it a balanced display of objection?

Those protesting are adequately and rightfully protected, surely the same should apply to those engaged in lawful enterprise.

June 2008

Memorandum submitted by British Irish Rights Watch

British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.

British Irish RIGHTS WATCH welcome this opportunity to participate in the Joint Committee on Human Rights (JCHR) inquiry into the human rights issues which arise from policing and protest. Much can be drawn from the example of Northern Ireland, which has seen some of the most substantive challenges to the rights of those who wish to protest, and the rights of those who live in areas, through which others seek to protest/march. This highly contentious area, where the rights of two communities and the police collide, engages issues such as human rights compliant policing, the use of lethal and less lethal force, and the strength of institutions such as the Parades Commission.

In Northern Ireland, the right to march (which engages the rights of freedom of expression, freedom of conscience, freedom of movement and freedom of assembly) has to be balanced against the rights of those who live in the areas through which contentious parades pass (which engage the right to life, right to a family life and privacy, minority rights and freedom of movement). In this context, the balancing of rights has become highly politicised, and in some ways, come to represent a symbol of the wider divisions in Northern Ireland.

BACKGROUND

It is the Orange Order, and associated bands, all exclusively Protestant, who assert their right to follow what, according to them, are traditional routes to attend religious services on significant days such as 12 July²⁹. The routes of these marches used to pass through Protestant areas, but changing demographics in Northern Ireland has meant that these areas are now predominantly Catholic. While many of the Orange Orders' marches are peaceful, the marches are sometimes accompanied by aggressive loyalist bands, who shout sectarian abuse or cause violent confrontations with local residents. Most recently, conflict has also emerged between these loyalist bands and Orangemen and the Police Service of Northern Ireland (PSNI).

BALANCING RIGHTS

From a human rights perspective, the key to balancing rights, in situations such as these, is proportionality. Here, one person's right extends only to the point where the exercise of that right does not violate another individual's right. Using an example from Northern Ireland, in the summer of 1996, the Royal Ulster Constabulary (RUC) confined residents on the lower Ormeau Road in a 17 hour curfew, so as to enable the Orange Order to march down that road. Here proportionality was not employed, and it is clear that it was unreasonable to prevent people from leaving their homes for such a protracted period of time.

The balancing of rights applies in both directions. Just as a marcher would argue that s/he had the right to assembly, s/he also has the right to be free from attack by those opposing the march. The Police Service of Northern Ireland (PSNI) have a duty of care to protect public order as well as the right to protect their own lives and those of their colleagues should they come under attack. There needs to be a clear understanding of the meaning of rights amongst those engaging with the issues of marches/protests. For instance, while there is a right to freedom of assembly, this only applies where the right is exercised peacefully.

During the 1990s, the administration of marches was marked by an absence of fairness from both decisions by the RUC on the route of marches and rulings from the court. Here the fact that the right to march carried with it a responsibility to exercise that right with due respect for the rights of others was disregarded. Unlike in the aforementioned scenarios, any decision-making by the police or the courts on the issue of protests should be fair.

Finally, any decision-making must be non-discriminatory. In the case of Northern Ireland, the majority of those who suffered as a result of the Orange Order marches were Catholics. Here, reference to international human rights law is useful. Article 2 of the European Convention on Human Rights (ECHR) guarantees all other rights set out in the Convention free from discrimination; as does Article 2 of the International Covenant on Civil and Political Rights in application to the Covenant.

PUBLIC BODIES

In Northern Ireland, the decision-making process on parades falls to the Parades Commission. The Commission has, for the most part, adjudicated fairly on parades issues. However, this is not to say it has been without contention. In November 2007, a case was brought by Joe Duffy, a member of the Garvaghy Road Residents Coalition, to the House of Lords regarding the appointment of Commissioners to the Parades Commission. The issue was whether the appointment, by the Secretary of State for Northern Ireland of two prominent members of loyalist organisations to the Parades Commission, and the process leading up to such appointments, were lawful. The Law Lords found that the decision to appoint was unlawful, because the Secretary of State had not considered the conflict of interest which arose by appointing members of the Orange Order to the Parades Commission, and that a similar encouragement was not

²⁹ The Twelfth commemorates victory at the Battle of Boyne, 1690.

extended to nationalist residents. What this incident illustrates is the continued politicisation of the parades issue and the direct or indirect attempt by Government to undermine the reputation of the Parades Commission.

The policing of parades in Northern Ireland has been the subject of several reports by the Human Rights Advisors to the Policing Board. In 2005, though most parades were carried out without any violence, there were some serious, albeit contained, incidents of violence. In July 2005, during the Tour of the North, the PSNI came under attack from nationalists, and over 80 police officers were injured. In September 2005, the re-routing of the Whiterock Parade contributed to three days of violence; there were 21 arrests and 50 policeman and two rioters were injured. BIRW's concern in relation to such an incident is the response of the PSNI, particularly relating to the use of AEPs (plastic bullets) and live rounds.³⁰ We have made previous submissions to the Committee on this issue.

NORTHERN IRELAND: CONCLUSION

The key lesson learnt from Northern Ireland is the need to balance the conflicting rights which emerge in such scenarios. The method to achieve this is through dialogue between those seeking to protest and the police. As such, the creation of draconian legislation which cuts into this dialogue can only undermine efforts to balance conflicting rights. A dialogue will also enable the police to make appropriate operational decisions on the day, enabling the development of a policing strategy tailored to each event to be created (and learnt from) rather than responding to events as they happen. The balancing of rights needs, from the perspective of the police, to be followed through; where physical assault, damage to property or the unlawful use of lethal or less lethal force occurs, where possible charges and convictions should be brought.

JOINT COMMITTEE ON HUMAN RIGHTS, SPECIFIC ISSUES

The Joint Committee on Human Rights asked a number of specific questions relating to their inquiry into policing and protest. BIRW's response to these questions, are outlined below.

To what extent should peaceful protest be facilitated by the State?

BIRW agree with the concern of the Joint Committee on Human Rights that the right to protest is being curtailed. As the Committee acknowledges, the right to protest is a fundamental feature of democratic society, and the associated rights of expression and assembly are protected on both a national and international level.

What limits, if any, should be placed on the right to protest and why?

As noted throughout our examination of the parades issue in Northern Ireland, the key to the understanding and operation of rights is the balancing of rights.

There is a need for those balancing rights to employ fairness and non-discrimination in any decision-making process.

Should specific limitations be placed on the ability of certain groups to protest? If so, who and why?

BIRW do not agree that specific limitations should be placed on the ability of certain groups to protest; where protests or groups are contentious, appropriate dialogue should take place between the relevant parties.

Should the right to protest be more strictly curtailed in relation to certain geographical areas? If yes, where, why and what limits would be acceptable?

As noted above, BIRW believe that there may be a need to carry out a balancing act between the right to protest and national security and public convenience.

³⁰ During the Ardoyne riots, eight members of the public were hurt included two people who were injured by AEPs. A 22-year-old man said that he had been singled out by the police as he stood by the side of the road. He was hit in the stomach. He said, "... I felt an awful pain. I hit the ground and I could not breathe". A 15-year-old boy was hit on the back of the leg and hurt his knee as he fell. His mother, who claimed that her son was not rioting and had his back to the police when he was hit, said, "He was very pale, shaken and confused and his leg was swollen." Both these people were later arrested for rioting. (see *Two arrested on riot charges, Daily Ireland*, unknown date). It is of particular concern that one of those hit was a child and the other was hit in the stomach, in breach of the firing guidelines

In what circumstances would it be permissible for the State to take pre-emptive action which curtailed protests?

BIRW believe that a protest should only be curtailed when there is a genuine risk to life.

Are counter-terrorism powers appropriately used in the policing of protests?

Counter-terrorism and protest are two separate areas, and as such legislation and powers should be tailored to each, and not applied inappropriately.

Are there positive examples of good practice in the policing of protests (whether in the UK or in other countries)?

We draw your attention to the decision by the Police Commander in Derry not to use AEPs (plastic bullets) in public disorder situations. His success was in part due to the fact that he worked at building relationships with all sides of community and those affected by the parades issue.

In what circumstances may actions during protests be justifiably criminalised?

BIRW believe that protests should be criminalised where protestors break the law, for instance, damaging property.

Are complaints about the handling of protests (including police action during protests) adequately addressed?

In Northern Ireland, the Police Ombudsman for Northern Ireland (PONI) investigates every firing of AEPs. However, PONI does not look at the use of CS spray or tasers, which may also be employed during the policing of a protest. The Police Service of Northern Ireland (PSNI) are also subject to scrutiny by the Policing Board. The Human Rights Advisors to the Board have investigated the PSNI's handling of parades in several reports, including the Ardoyne and Whiterock Parades in 2005.

How should the balance be struck between the rights of protesters and other competing interests (such as the rights of others or the prevention of disorder or crime)? Would legislative changes be desirable to strike a better balance between competing rights, or is the current legislative framework about right?

BIRW's experience in Northern Ireland has indicated that the best approach is dialogue between the key parties.

June 2008

Memorandum submitted by the Campaign for the Accountability of American Bases

Over many years, we have been increasingly concerned about the encroachment of the State in the area of protest and human rights. It is a worrying trend. We are mindful of that protest is a legal right. It is also necessary to be vigilant that this right is maintained and that the citizen can exercise this right. The police have a duty to enable the right to protest. We remember that this precious right has been struggled for over centuries by peoples before.

We confine this submission to the remit of the Joint Committee on Human Rights inquiry and will therefore not go into details concerning the campaigning issues which trouble the Campaign for the Accountability of American Bases (CAAB).

We acknowledge that there must be a balance between the right to protest and the duty of the governments to protect people from specified and unspecified dangers. However, we are very concerned that this balance has tipped dangerously and worryingly in favour of the State. We endorse the statement made by the Joint Committee on Human Rights in the Press release dated 24 April 2008. We therefore very much welcome this inquiry.

BACKGROUND INFORMATION

The Campaign for the Accountability of American Bases (CAAB) evolved out of the long campaign of protest at Menwith Hill, near Harrogate, North Yorkshire in 1992; local people having expressed their concerns at the arrival of the US Army at Menwith Hill in 1951.

We have continued to build on the work and struggles of many people over the years since the arrival, occupation and control of the US Visiting Forces in the UK. Menwith Hill is referred to as RAF Menwith Hill but is in reality occupied and controlled by the American Visiting Forces and their Agencies.

We concentrate on the presence, role and functions of the US Visiting Forces and their Agencies in the UK (also world wide). We are based in Harrogate and Leeds—therefore much of the work of CAAB focuses on the American base at Menwith Hill and RAF Fylingdales—both bases are in North Yorkshire. However CAAB is also concerned about the increasing and worrying expansion of the US military world wide. Our long term aim is to send the US Visiting Forces and their Agencies back to within their borders. In our view, the information we have gathered over the years, is deeply concerning for us all.

CAAB campaigns non-violently.....

- to oppose weapons of mass destruction
- for accountability and public scrutiny concerning the roles, functions and purpose of the US Visiting Forces in the UK and world wide
- for Independence FROM America (with meaningful Parliamentary accountability and scrutiny)
- to reveal the true nature of the American Missile Defense system (aka “Star Wars”)— (CAAB was the first campaign in 1997 to reveal that Menwith Hill (and later Fylingdales) was to be a crucial part of MD)
- accountability of the Ministry of Defence Police Agency (who are paid for and under the operational control of the US authorities—Memorandum of Understanding 1989)

CAAB works to reveal this by.....

- asking questions
- using the democratic process by working with local councillors, MPs and MEPs—asking Parliamentary questions
- taking action through the legal system to change unsafe law—bringing the executive to account through the courts
- regularly monitoring US bases and Planning Departments for developments
- working with researchers, academics, media, peace activists
- submitting information that has been credibly researched and referenced
- using the US and UK Freedom of Information Act
- giving talks round the country about the work of CAAB
- maintaining a website (www.caab.org.uk)
- organizing demonstrations
- taking non violent direct action and civil disobedience

HUMAN RIGHTS AND PROTEST

CAAB has organized many demonstrations over the years. There has been a demonstration every Tuesday evening (6-8 pm) at the main entrance to the American base at Menwith Hill organized by CAAB. We have been there every week since 2000. We organize two other main demonstrations—on 4 July (Independence FROM America) and since 2000, in October, we organize a demonstration as part of the international call by the Global Network Against Weapons and Nuclear Power in Space against the American Missile Defense System.

The demonstrations are “policed” by North Yorkshire Police (NYP). who have jurisdiction outside the base and the Ministry of Defence Police Agency (MDPA) who have to seek permission from NYP to “police” outside the base.

We have had many struggles to maintain these protests over the years. We have tried to address these problems by setting out our concerns through letters to senior officers and meetings/discussions with NYP and the MDPA. It is a constant struggle.

The people who come to the Tuesday evening demonstrations are all known to the police, in that they attend the demonstrations. Over the years, despite there being a fixed video recording CCTV camera constantly surveilling the demonstration, there has also been an “evidence gathering” officer operating a hand held CCTV camera. It is often harassing, intimidating and certainly unnecessary. The MDPA must have reams of video recordings which are stored somewhere. We seriously question this practice.

We have always carefully liaised with NYP. The demonstrations have been peaceful and without trouble. We make sure that this has continued.

The police presence at the major demonstrations has been and continues to be excessive, with Home office police forces being “bused” in from all over North Yorkshire and beyond. They have been accompanied by police horse, officers on quad bike and pedal bikes. The ratio of police to protestors is sometimes: 1 protestor to 10 officers.

EXAMPLES OF RESTRICTIONS TO PROTEST

CAAB has used the US flag as a symbol of protest over the years. It is upside down (for specific reasons) and has political, polite and non-offensive statements written on it eg "Please do not bomb Iran." We refer the Committee to the authority which sets out the background to this case:

PERCY V DIRECTOR OF PUBLIC PROSECUTIONS

*Court of Appeal before Lord Justice Kennedy and Mrs Justice Hallett
Judgment December 21, 2001*

We have many examples of difficulties re protest and restrictions imposed but confine this to one example of how the right to protest is being eroded.

Each year, at the two major demonstrations and having carefully liaised with NYP, we have walked round the base at Menwith Hill as part of a general information exercise for people who attend. The police have accompanied us, enabling the protest to happen and have been very helpful in the past. The police have closed roads so that the protestors can proceed and the right to protest upheld.

Last year things were suddenly very different. A month before the demonstration on 4 July 2007, we received a Home Office document entitled "Organisers Responsibilities" which set out the "duties" of the organizers. One of the clauses said that the organizers were now responsible for the "policing" of the demonstration. For example, it was the responsibility of the organizers if roads needed to be closed and this would be done by making an application to the local Highways Department. Since we had only had a months notice ourselves and the Highways Department required three months notice, it was an impossible task.

We had two meetings with NYP and the MDPA who warned us that further conditions would be put on the demonstration. We would not be permitted to walk round the base. The police said that the A59 road was "too dangerous". We questioned this at the meeting, as it seemed to us that nothing had changed from previous years. Incidentally there is a wide grass verge abutting the road. We have always been very mindful of the health and safety of all concerned with the demonstrations.

We were disappointed therefore when conditions were suddenly imposed by NYP and we were prevented from walking round the base which was to be part of the protest on 4 July 2007.

As a result of this action by NYP, CAAB contacted Liberty. We were sufficiently concerned as this seemed to be another erosion of civil liberties and the right to protest. Liberty were also concerned and took up the issues, on behalf of CAAB. The situation is still not resolved one year later. We ask the Committee to contact Liberty for background information and an update as to this situation.

HUMAN RIGHTS ACT 2000

The right to protest is now enshrined in English law. It is a precious right. There is also the right of assembly. Both these Articles have been violated in the experience of CAAB. It has been difficult to uphold these rights and we are constantly having to address these problems with the police.

"STOP AND SEARCH"

There have been many incidents of local people being "stopped and searched" by the anti-terrorist units that patrol round Menwith Hill (in particular). One of the coordinators of CAAB has been apprehended many times under this law despite being well known to the police. A letter of complaint to the Chief Constable of North Yorkshire finally stopped this intrusive and intimidating practice. However many people have been arbitrarily stopped and searched by the police.

CONCLUSION

CAAB has briefly set out some concerns about the erosion of our human rights and civil liberties that we have experienced. We are concerned that in today's climate of fear and with the threat of terrorist activity, the laws hurriedly passed by the government have been disproportionate and oppressive. We urge the Committee on Human Rights to redress the balance in favour of the citizen.

We are willing and would hope that the Committee on Human Rights will call us to give oral evidence as we feel that we cannot do justice to our concerns in this brief submission.

We surely owe it to future generations to make sure that the civil liberties and human rights, so keenly and persistently struggled for over the centuries are upheld and nurtured. Not to do so diminishes us all.

June 2008

Memorandum submitted by the Campaign for the Accountability of American Bases

Arising out of the oral evidence given to the Joint Committee on Human Rights (JCHR) on 21 October 2008 by Lindis Percy (Coordinator with Laila Packer of CAAB), we are grateful for the opportunity to submit further examples and concerns on the issue of “policing and protest”.

In the first submission by CAAB, we made reference to the increasing encroachment of the State in the area of “policing and protests” that we have experienced over many years.

We draw the attention of the JCHR to the aims and objectives of CAAB which are specifically, to bring public scrutiny and awareness to the accountability and presence of the US Visiting Forces and their Agencies in this country and world wide. Protest is just one of the ways CAAB campaigns to raise these concerns.

Our experience inevitably involves the US Visiting Forces and their Agencies, when protesting at and around US bases. It is an issue which is politically sensitive. We consider that this is important to note when referring to the undermining of civil liberties concerning such protests. At US bases and where there is a contingent of Ministry of Defence Police Agency (MDPA) officers, it is also important to note that these officers are paid for and under the control of the US authorities (revised Memorandum of Agreement 2008).

FURTHER EXAMPLES OF RESTRICTIONS BY THE POLICE TO PROTEST

Application for an Anti-Social Behaviour Order

In 2005 North Yorkshire Police and the MDPA made an application to the court for an Anti-Social Behaviour Order against one of the Co-coordinators of CAAB. The implications for the future of peaceful protest were potentially very serious.

The application was for a 10 mile exclusion area around the American base at Menwith Hill for a period of 10 years. The application was wisely rejected by the District Judge hearing the case. The defendant was eligible for and granted legal aid. However the outcome may have been different if the defendant had had to represent herself. We make the point that not only is the benefit of legal aid for representation often essential, the necessity and importance to challenge the law is prohibitively expensive for the citizen.

FURTHER CONDITIONS IMPOSED (SECTION 12 PUBLIC ORDER ACT 1986)

We are concerned about the “creeping” and insidious restrictions imposed by North Yorkshire police on demonstrations organized by CAAB and other groups. Once the precedent was set last year (annual 4 July “Independence FROM America” demonstration and referred to in the first submission), the police have continued in this practice; regardless of careful liaising with the police and representations made by the organizers. For example, we suggested and were willing to provide stewards wearing reflector jackets, put in place warning notices of the demonstration and inform those wanting to participate in the walk round the base of the health and safety issues. These suggestions were firmly rejected. The rationale behind these restrictions sometimes appears petty and illogical.

We were again prevented from walking round the American base at Menwith Hill on 4 October this year. The grass verge, at the lay-by where the demonstration was being held was also out of bounds; it being legally part of the highway. Several demonstrators were aggressively threatened with arrest when trying to retrieve banners from the grass verge and needing to cross the road. The conditions referred to “a procession”. Despite discussing this with senior officers no compromise was forthcoming. Again the numbers of police brought in was out of all proportion to the numbers of protestors present; involving police horses, police waiting in vans, police on foot and on bikes and in vehicles.

We suggest that this way of policing demonstrations (which are very small in comparison with some of the London demonstrations) only increases the growing antagonism between the police and the public. This is not in the interests of either party.

VIDEOING AND PHOTOGRAPHING PROTESTORS

On 4 July this year (Independence FROM America) we learnt that many of our Muslim brothers and sisters who wanted to come to the demonstration were deterred from coming because they were frightened that they would be “arrested and detained for 42 days”. Others said they feel intimidated and harassed by the constant photographing and videoing by NYP and the MDPA.

RIGHT TO PROTEST AGAINST RIGHT TO GO ABOUT LAWFUL BUSINESS

These concerns apply to the regular Tuesday evening protest outside the American base at Menwith Hill and therefore technically involving the highway. We recognize that the right to protest and a person’s right to go about his/her lawful business is a matter of balance. However we draw the attention of the JCHR to the authority of *Hirst and Agu v Chief Constable of West Yorkshire 1987* which is a helpful authority on this issue and includes some historical quotes concerning protest.

CAAB has many experiences of the balance being tipped by the MDPA in favour of the person whose right it is to go about their lawful business; rather than the police enabling the protest. We believe that this often happens because of the business relationship between the MDPA and the US authorities. The way of policing these protests is often inconsistent despite having meetings and writing letters expressing our concerns. It is a continual struggle. Complaints made against the police are rarely substantiated in our experience despite having a credible concern. The training of police officers and the application of the law concerning the legal right to protest is clearly an issue we believe.

USE OF THE LAW TO RESTRICT PROTEST

Over the years, several new laws have been brought in to restrict protest, often by way of a Statutory Instrument. Some of these laws were never meant to be directed at peaceful protest eg, “aggravated trespass” (sections 68 and 69 Criminal Justice and Public Order Act 1994). Section 69 is often used against protestors and it appears to be used as a form of bail conditions regardless if officers “reasonably believes that the alleged offence will be is about to be and/or has actually been committed”. This law and the Serious Organised Crime and Police Act 2005 (see below) has been used in favour of Military Land Byelaws; many of which we believe are invalid yet are still extant.

SERIOUS ORGANISED CRIME AND POLICE ACT (SOCPA) 2005

The issue of “public and private space” was raised at the oral hearing. We make a general point about this. Increasingly and because decisions of great importance to us all are not meaningfully debated in Parliament (eg the UK link to the Missile Defense System at Menwith Hill and Fylingdales), we firmly believe that it is important to protest within public and private spaces. The caveat being that the protest must be peaceful. SOCPA criminalizes those peacefully protesting and labels them as “terrorists”. Protestors are caught up in an Act entitled “serious organized crime”. We respectfully submit that mere trespass is not a “serious organized crime” and protestors are not terrorists.

CONCLUSION

In an increasingly dangerous and complex world and where the systems and structures in a democratic society often fail the citizen, it is more important than ever to maintain and nurture the precious right to protest without fear, interference or erosion of this right by the State. It is the duty of the police to enable protest. We owe it to future generations to ensure that our rights are maintained and stewarded.

We very much welcome the investigation by the JCHR concerning “policing and protest” in this country and for the opportunities to voice our concerns in this forum.

November 2008

Memorandum submitted by the Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) is working for the reduction and ultimate abolition of the international arms trade, together with progressive demilitarisation within arms-producing countries.

2. In the course of its work, CAAT reports about the arms trade, gives talks to local groups, runs information stalls, lobbies parliamentarians and has undertaken action through the courts as well as many other activities. As part of this many faceted approach, CAAT organises protests and vigils both for publicity and to raise awareness of the problems caused by arms exports with, for example, Government, arms companies and the like.

3. CAAT generally notifies the police in advance of these and always seeks to minimise the inconvenience to bystanders. It has guidelines for those taking part in CAAT activities which are on the website and distributed to those involved. If the guidelines are not adhered to, CAAT asks people to leave the given event, or remove the offending words.

HARASSMENT AND PHOTOGRAPHY

4. Reed Elsevier AGM. On 27 April 2005 the Reed Elsevier plc Annual General Meeting was held at the Millennium Hotel in Grosvenor Square, London W1, as the company at that time owned a number of arms exhibitions. A few CAAT supporters had bought single (“token”) shares in the company and went into the AGM to ask questions whilst two people were outside the hotel handing out leaflets. No publicity was given to encourage others to attend.

5. Metropolitan Police Evidence Gatherers and Forward Intelligence Team (FIT) officers were present at the event. Two of the CAAT token shareholders, who left when the AGM finished and before the others, were photographed outside the hotel and then followed by an officer at a distance. When they reached Oxford Street, a police vehicle drew up and the photographer started taking photos again. Three or four

other officers came walking towards them. These officers asked the two for their names (one gave his, the other declined) and if they had asked questions at the AGM. After this one officer followed the two, walking about a yard behind them, to Bond Street tube. There were more officers at the station.

6. Six other token shareholders left the Millennium Hotel rather later. Again, all these people, were photographed. Although originally in pairs as they were not all going to the same destination, about four police officers (including the photographer) walked around them as they crossed Grosvenor Square and forced them into a group of six. The officers walked very close to indeed, sometimes stepping directly in front of them, and crowded around the six as they left the square, following two to Bond Street tube.

7. All the CAAT supporters involved believed the action of the officers to be motivated by intimidation. The people being harassed were all quite obviously leaving the area quietly and the event for which they had gathered had finished. The behaviour of the officers, including the photographer, was extremely aggressive and seemed designed to draw the attention of passers-by.

8. CAAT complained to the Independent Police Complaints Commission (IPCC) which, in November 2005, ruled there was no case to answer. The IPCC's report, however, contained several factual inaccuracies in its summary of the witness statements, most importantly saying that there had been no mention of two individuals present, in whom the police were interested, when in fact there had. An appeal against the IPCC ruling would almost certainly have been made by CAAT, except that the ruling came when the member of staff handling the complaint was away for over two months. When she returned it was out of time for an appeal.

9. One of those present, however, CAAT's then press officer Andrew Wood, applied for a judicial review, with the help of Liberty, as it was unclear what the police were going to do with the information gathered. The police exhibits in the court case showed police photographs of, and notes about, him. The judicial review was dismissed in May 2008, but an appeal is being mounted.

10. Toynbee Hall Conference. On 13 September 2005 CAAT held an "alternative conference" at Toynbee Hall, London E1, in the evening following a demonstration at the DSEi arms fair. About an hour after the conference started, Forward Intelligence Team officers began looking through the windows and pointing a camera in. After closing the curtains, a colleague went outside, asked the officers why they were there and was told it was because CAAT was "a group known to do direct action".

11. Clearly, no protest actions were taking place on this occasion, and the officers seemed to become bored after about 20 minutes and left. However, some of the participants at the conference, especially speakers from refugee communities, felt intimidated by the officers' presence.

EXCESSIVE NUMBERS OF POLICE AND PENNING PROTESTERS

12. Although CAAT has no documentary evidence with regards to the policing of its protests a decade or so back, individuals remember far fewer police attending smaller vigils outside, for example, the offices of the then Defence Sales Organisation in Soho Square.

13. Today, significant numbers of police attend even the small vigils, which are no different in size or nature from those in earlier times. For instance, 34 officers were present on the occasion of the Reed Elsevier AGM in April 2005 mentioned above. Most of the police sit in vans, not doing anything. Their presence in such numbers is, however, unnerving for protesters, as well as tying up a large amount of police time and resources.

14. Additionally, there is an increasing use by the police of "pens" to contain perfectly peaceful demonstrators, even when very few in number. These "pens" are often some distance from, and sometimes even out of sight of, the intended focus of the protest.

TRANSPORT PROPERTY, ROYAL PARKS AND PRIVATISED LAND

15. Protests are not allowed on Transport for London property, which can cause problems for CAAT. The biennial DSEi arms fairs are held at the ExCel Centre in London Docklands. Most of the delegates visiting DSEi arrive at Royal Victoria Docks or Custom House stations on the Docklands Light Railway which have exits leading directly into the ExCel Centre. This prevents protesters making their point to delegates as effectively as they would like.

16. Likewise, protests are generally forbidden in the Royal Parks. However, in October 2007, CAAT organised a protest vigil on the occasion of the Saudi Arabian state visit to London. The Saudi delegation was met by the Queen at Horse Guards Parade and processed down The Mall to Buckingham Palace. This entire route came under the auspices of the Royal Parks Police, but part of it was also in the area covered by the Serious Organised Crime and Police Act (SOCPA) so CAAT was able to apply for permission and hold a peaceful protest vigil at the foot of the Duke of York's steps.

17. In many places, public space is increasingly becoming privatised in the form of shopping centres, building forecourts and the like. One example of this is the Thames embankment outside City Hall in London.

18. Restrictions on protest in areas such as these can prevent vigils or the like taking place within sight of those at whom they are aimed thus lessening their impact. In the case of shopping centres, it can also mean there are restrictions on street stalls where local campaigners take their message to fellow citizens.

STREET STALLS

19. Most of those involved in local groups wish, at times, to set up a stall in their high street, distribute leaflets to passersby and the like. The uneven enforcement of the law on these occasions can lead to a great deal of uncertainty. This has been exacerbated by the reported events in Liverpool in early October 2008 when police attempted to move on those running campaigning stalls.

MEDIA COVERAGE OF PROTESTS

20. On 24 July 2007 and again on 6 May 2008, anti-arms-trade campaigners in Nottingham protested at the premises of arms manufacturer, Heckler & Koch. Campaigners sent press releases to local media, which initially expressed interest in covering the demonstration.

21. The campaigners involved have told CAAT that, shortly after reporters contacted the company for a statement, the media outlets received telephone calls from Nottinghamshire Police advising them that it would be “irresponsible” of them to cover the demonstration. Most of these media outlets decided to drop the story as a result, Individual reporters told the campaigners about the police intervention.

22. Whilst the campaigners were not aware of any actual legal threat made by the police to the media, this appears, in effect, to be a form of censorship, as a police warning about being “irresponsible” carries a lot of weight. The local TV, radio and newspaper media are unlikely to ignore such a warning from the police, from whom they get much of their news information. The fact that this happened for both demonstrations suggests a policy of keeping these demonstrations out of the media.

23. The Nottingham campaigners are raising with issue with the police. CAAT believes that this is a clear case of the police going well outside their remit.

RECOMMENDATIONS

24. The police need to recognise that the right to protest peacefully is as much part of democracy as is casting a vote. It is something to be encouraged and facilitated, and protesters should be respected as active citizens.

25. The police should consider each protest on its merits, with a default position that only a modest number of officers should be used and that protesters should not be penned up.

26. There should a general right to peaceful protest, with legislation enshrining this even where the landowner is a Royal Park, a transport authority or a shopping centre. There is also a need for consistent rules around the country so that protesters know what they can legally do.

27. The police should remember their neutrality with regard to protests and should not suggest any particular stance to the media, to which it should also leave decisions regarding coverage.

28. The presence of FIT teams or other police at meetings and conferences should cease.

November 2008

Memorandum submitted by the Campaign against Criminalising Communities

GENERAL COMMENTS ON THE PROPORTIONALITY OF LEGISLATIVE MEASURES TO RESTRICT PROTEST OR PEACEFUL ASSEMBLY

(a) Existing powers available to the police and their use in practice

It is important that the scope of the Committee’s deliberations about this question is not defined too narrowly. For example many powers available to the police, particularly in the City of Westminster, are derived from municipal regulations rather than from national law. Moreover the enforcement agency in some situations where protests are restricted or even attacked is not the police but a private security company. This arises not just in situations where trespass is occurring anyway, but in public spaces such as shopping malls and parks, where security and/or crowd management are contracted to private security guards. We offer examples later on.

We are particularly concerned about the use of anti-terrorism laws in relation to peaceful protest given the wide and growing powers to detain and punish without trial which are associated with these laws. Again we offer more detail later on. In particular the Counter-Terrorism Bill 2008 provides for the possibility of travel bans and long-term daily reporting or surveillance arrangements for anyone convicted of an offence under anti-terrorism legislation, without any regard for the seriousness of the offence.

(b) Reconciling competing interests of public order and protest.

Any honest democracy must admit of the possibility of failure of the Parliamentary system, that is, issues or points in time when significant groups of people will become dissatisfied with its actual or expected decisions and turn to more direct means of expression. This is why the right to protest is vitally important in a democracy. We believe that to give full expression to the spirit of the ECHR on freedom of expression and peaceful assembly, there should be a positive right to protest which should over-ride temporary considerations of freedom of traffic circulation, noise control or use of open space, which may be relatively minor issues compared to the matter of the protest, unless there are specific and defensible arguments why a particular protest is unacceptable. In other words, the burden of proof should be on the authorities to show why protest should be restricted, rather than trivial obstructions of the highway or loudspeaker use being assumed to be disorderly unless they are specifically permitted.

1. ARE CURRENT LEGISLATIVE MEASURES WHICH RESTRICT PROTEST OR PEACEFUL ASSEMBLY (SUCH AS SOCPA 2005 AND THE PUBLIC ORDER ACT 1986) NECESSARY AND PROPORTIONATE TO THE RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY?

(a) To what extent should peaceful protest be facilitated by the State?

The right to peaceful assembly is enshrined in the European Declaration of Human Rights and should be protected as a positive right. In view of this right, it would be logical for conditions regarding marches to be liberalised rather than those on assemblies to be tightened. The right to protest should be protected as a positive element of a democracy. Currently, any breach of this right has to be challenged through judicial review, which is time-consuming and costly. There should be a positive right to protest, with a quick, cheap and easy procedure for people to complain against the police or other parties if this right is infringed.

The obligations under the Public Order Act and under SOCPA to seek advance authorisation of protest are frequently burdensome and antagonistic towards the need for protest at short notice because of the essential nature of protest as a response to events. It should not be a criminal act merely to organise a protest without authorisation, although organisers clearly have a responsibility to avoid violence and also to minimise disruption to uninvolved passers-by and residents.

We are also concerned about the way in which privatisation of public space may affect the right to political expression. Whereas leafleting in a street is in principle legal, leafleting in a town square which has been re-developed as a shopping mall, or a park where the local authority has contracted out management to a private company, may attract prosecution for trespass. We believe that the right to protest should exist in any space to which the public have free access for shopping or recreation, regardless of whether it is managed by local authority or a private company. Company security personnel should be expected to respect this right and not to expel people who are leafleting or holding placards, any more than police would prevent them from assembling in a public street. It should also be clear to demonstrators who is giving them instructions and to whom those giving instructions are accountable. For example, on the occasion of the "Make Poverty History" march in Edinburgh, mentioned earlier, it was not clear to participants whether the uniformed private security guards, who were telling people that they could not use certain exits from the Meadows, were acting on behalf of the police, or the local authority which manages the park, or the organisers of the event. Nor was it clear what authority or powers they had to tell people not to use those exit routes which offered the quickest access to shops, even when participants who had been waiting two hours or more only wanted to leave the area temporarily to buy drinking water.

We have also come across instances where council officials have insisted that leafleters should stop their activity or dismantle tables distributing free literature about peaceful campaigns, even where no obstruction or disruption was being caused. In the London Borough of Haringey this has occurred both to campaigners against ID cards and to the Green Party.

The legal concept of a positive right to peaceful assembly, protected by a fast-track complaints procedure against police, local authority or company action to infringe this right, would address all these concerns. We feel that the Public Order Act already went too far by making it possible to criminalise marches and their organisers on the grounds, for example, that their scale exceeded the expectations of the organisers, or that placards were brought along which did not conform to organisers' or stewards' directions.

(b) Should the right to protest be more strictly curtailed in relation to certain geographical areas? If yes, where, why and what limits would be acceptable?

The ban on the use of loudspeakers under SOCPA is unacceptable, because without loudspeakers it is impossible for people to hear speeches. This makes protest ineffective and impedes its proper function of intelligent argument and debate in a public place. Since there is very little restriction on noise from public entertainment in Trafalgar Square, and none at all on traffic noise close to Parliament, the ban on loudspeakers is exposed as a form of harassment of protest rather than a genuine pursuit of a quiet working environment in local offices. We would draw attention to the fact that even if this part of SOCPA is repealed, users of loudspeakers in the area of Parliament will still have to seek a licence from the City of Westminster, at a substantial cost, and that this local authority apparently has powers to impose its own restrictions of various kinds including the use of loudspeakers. It also requires expensive third party insurance as a condition of any organisation using the grassed area in Parliament Square. Without using the grassed area, only a very small crowd can find space in front of Parliament. In practice, therefore, the easing of SOCPA powers about restrictions on protest close to Parliament will have little effect; the police can continue to rely on the local authority to impose the same type of restrictions.

(c) The Government proposes to repeal sections 132-8 SOCPA dealing with protest around Parliament and invites Parliament to consider whether additional provision is needed to ensure that Parliament's work is not disrupted by protests in Parliament Square. What, if any, additional provision is required?

Again, we suggest that a positive right to protest would be able to over-ride unreasonable restrictions or licence fees imposed by a local authority or by a private security company managing public space.

2. HOW DO EXISTING COMMON LAW AND LEGISLATIVE POLICE POWERS (SUCH AS THE COMMON LAW POWER TO PREVENT A BREACH OF THE PEACE, STOP AND SEARCH UNDER THE TERRORISM ACT 2000 AND THE USE OF FORCE) OPERATE IN PRACTICE? DO EXISTING POLICE POWERS PAY SUFFICIENT REGARD TO HUMAN RIGHTS?

(a) Are existing police powers necessary? Are more or fewer required?

The common law power to arrest for breach of the peace is frequently used excessively; for example to give a criminal record to people who have merely stepped into a roadway to avoid being crushed by others, or passed a police cordon without realising its importance for some innocent purpose like seeking a toilet or actually trying to go home. Arrest is not infrequently accompanied by physical roughness such as frogmarching, pushing arms up someone's back, kicking and hitting, and even the excessively tight use of handcuffs which may cause nerve injuries lasting several months. All these forms of treatment are common experiences of peaceful protestors on many occasions in many parts of the country. (see, for some examples, <http://www.guardian.co.uk/environment/2007/aug/19/climatechange.travelandtransport> ;

We are concerned about the use of injunctions being sought by private companies to limit the expression of public concern against their activities. The right to protest must include the possibility of non-violent picketing outside company premises or company meetings using placards, leaflets and speeches to make a point.

We are also aware of an element of "function creep" in the use of the Prevention of Harassment Act 1997. In the absence of powers to control the duration of an assembly or numbers participating under powers designed to control demonstrations, Sussex police and the arms manufacturer EDO sought to restrict protests outside the EDO factory near Brighton to ten people, who should remain silent, for two and a half hours per week. The application for this injunction was happily rejected by the courts. The establishment of a positive right to protest would prevent the time of the courts from being wasted by attempts like this to test alternative legal routes to the limitation of protest.

However SOCPA (sections 122 and 123) has separate powers on harassment which could be used very widely to intimidate and criminalise protestors. In the view of George Monbiot, these sections, in effect, 'redefine harassing someone in his or her home in such a way as to permit the police to ban all protest in a residential area. Under the bill you don't have to go knocking on someone's door to merit a year inside and a £2,500 fine. You merely need to represent to "another individual" (ie anyone) "in the vicinity" of someone else's home "that he should not do something that he is entitled or required to do; or that he should do something that he is not under any obligation to do"'. (See George Monbiot in the Guardian, February 22 2005, available at <http://www.guardian.co.uk/politics/2005/feb/22/ukcrime.uk>). Monbiot's article goes on to mention the prosecution of a protestor for sending two e-mails to a company, which 'though courteous, constituted harassment as one person received two of them.'

Currently police can impose conditions on a march under section 13 of the Public Order Act 1986 if they think it will entail serious damage to property, serious disruption to life of community, serious disorder, or coercion by intimidation. These conditions can in theory include limitation of the content or wording of placards, etc., as well as conditions about the duration and number of participants in a march. George Monbiot (Guardian 22.2.05, see <http://www.guardian.co.uk/politics/2005/feb/22/ukcrime.uk>) mentions the

prosecution of someone for holding a placard with a picture of a dead cat. Such limits on placards are an unjustified restriction on freedom of speech unless there is a clear case that the placards may infringe the law on incitement to violence or to racial or religious hatred.

Police photography is sometimes used in an intimidating way and is not even confined to the site of protest. For example in June 2006, a group of only seven people walking quietly from the railway station in Leatherhead through the town centre, and not displaying any placards, were stopped and asked where they were going, on the day of an environmental protest in the suburbs of the town. The stop and question procedure was accompanied by photographing the group, presumably for some record of “suspect” persons.

Groups of protestors may be dispersed under anti-social behaviour laws, without any regard for the proportionality of this measure to their conduct or the seriousness of their demands. They may also be incriminated under SOCPA for trespass within a designated site (no justification for designation is required).

(b) Are counter-terrorism powers appropriately used in the policing of protests?

We abhor the growing use of anti-terrorist powers and of legislation against anti-social behaviour to control peaceful protest. This is a clear case of “function creep” which threatens to criminalise and intimidate what should be normal forms of political expression in a democratic society.

Anti-terrorism powers can be used to disperse protestors without reason within a “designated area”; the whole of London has in fact been made a designated area and anywhere can be designated without clear justification. In 2004, protestors at the arms fair in Docklands were stopped and searched under the Terrorism Act 2000 although they were not committing or threatening any violent act. (see <http://www.liberty-human-rights.org.uk/news-and-events/1-press-releases/2005/arms-fair-05.shtml>). In the well-known Fairford coach incident in 2003, anti-terrorist powers were used to prevent a coach load of people from attending a demonstration altogether (see <http://www.liberty-human-rights.org.uk/issues/pdfs/casualty-of-war-final.pdf>)

This is not the only way in which anti-terrorism laws are used to ban freedom of expression in designated areas. For example, Walter Wolfgang was removed from the Labour party conference for heckling Jack Straw. People have been searched simply for wearing slogans on their T-shirts (one example in Brighton during the Labour Party conference was ‘Bollocks to Blair’) or for carrying banners. John Catt, aged 81, was searched in Brighton for “carrying placard + T-shirt with anti-Blair information” The police record said the purpose of the stop and search was “terrorism”. The T-shirt, in this case, accused Bush and Blair of war crimes (see <http://www.independent.co.uk/news/uk/crime/helen-and-sylvia-the-new-face-of-terrorism-472993.html>). On another occasion, a man was detained while collecting signatures against the government’s ID card proposals. (See Henry Porter, Guardian, 12 December 2007; available on <http://www.guardian.co.uk/commentisfree/2007/dec/12/whatjackstrawforgottomention>)

Anti-terrorism powers were again used to question anyone approaching the Climate Camp near Heathrow airport in August 2007, (see <http://www.guardian.co.uk/uk/2007/aug/14/transport.greenpolitics>) and even against residents in a nearby village who were preparing to march against loss of their homes to airport expansion. This type of stopping and questioning is intimidating and creates a powerful deterrent to exercising the right to freedom of expression. The police already have wide powers to stop and search people whom they suspect of planning an offence; to label such persons as potential terrorists appears to be political strategy to create a climate of fear of the police.

3. CAN THE COMPETING INTERESTS OF PUBLIC ORDER AND THE RIGHT TO PROTEST BE RECONCILED?

—How should the balance be struck between the rights of protesters and other competing interests (such as the rights of others or the prevention of disorder or crime)? Would legislative changes be desirable to strike a better balance between competing rights, or is the current legislative framework about right?

We draw attention to the suggestion made under heading 1, for a legal right to peaceful protest which would put the burden on the authorities to show why a protest should not be permitted, rather than on demonstrators to show why it should.

June 2008

Memorandum submitted by the Campaign for Nuclear Disarmament

1. EXECUTIVE SUMMARY

In response to the call for evidence for the Joint Committee on Human Rights inquiry into the human rights issues arising from policing and protest, the Campaign for Nuclear Disarmament (CND) has prepared the following body of evidence.

Our evidence refers to the policing of one demonstration on 15 June 2008 in London, policed by the Metropolitan Police, and the policing of demonstrations at the Atomic Weapons Establishment Aldermaston, policed by both Thames Valley Police and Ministry of Defence Police and demonstrations at RAF Menwith Hill policed by Ministry of Defence Police and North Yorkshire Police.

The Campaign for Nuclear Disarmament has growing concerns over the recent intensification of police action to which our supporters have been subject. As an organization with 50 years experience of organizing peaceful demonstrations, often at locations with genuine security concerns, we are concerned about what seems to be a change of attitude towards peaceful protest recently.

It seems us that the responses of authorities faced by citizens who wish to exercise their hard-won rights to freedom of speech have become steadily more draconian in recent years. A series of decisions, from those taken by individual police forces to those initiated by central government are diminishing citizen's ability to engage in perfectly orderly protests, often with an explicit or implicit argument that the measures are justified by the heightened terror alert state.

2. MAIN BODY OF EVIDENCE

2.1 *16 June 2008 demonstration against the Presidential visit of George W. Bush*

On 15 June 2008 during the visit of US President George W. Bush a demonstration called jointly by CND Stop the War Coalition and the British Muslim Initiative met in Parliament Square with the intention of marching along Whitehall to Downing Street to deliver a letter of protest to the Prime Minister. The demonstration was called to protest against the decision of President Bush to invade and militarily occupy Afghanistan and Iraq, resulting in the deaths of hundreds of thousands of civilians.

2.2 A recent letter to Kate Hudson, Chair of CND, from the Rt Hon Tony McNulty MP, Minister of State at the Home Office did not provide a satisfactory reason for the closure of Whitehall. He states that "The position as I understand it was that Whitehall was closed during the day because of wreath laying ceremonies taking place which were booked a long time in advance and are annual events. In addition, a decision was taken on security grounds to close part of Whitehall (to the public in general, not just to protestors) during the visit by President Bush." We understand that a ceremony by the Combined Irish Regiments Association took place at 10.00am.

2.3 A precedent had already been set on 20 November 2003, when a much larger body of demonstrators marched along Whitehall against the visit of President Bush. Considering 20 major antiwar demonstrations since October 2001 have passed off peacefully, it was totally unreasonable for the police, alluding to decisions beyond their control, to prevent a march past Downing Street and to deny representatives—of the likes of Tony Benn and Walter Wolfgang—the chance to deliver a letter to the Prime Minister. The decision of police to ban the protest co-organised by ourselves, Stop the War Coalition and the British Muslim Initiative, both from marching up Whitehall during the visit of President Bush, and from handing in a letter to Downing Street and the subsequent disproportionate and aggressive policing marks a new low-point in the restriction of civil liberties.

2.4 The heavy-handed and unnecessarily violent police response when demonstrators reached the barriers across Parliament Street was truly shocking. It is clear that an enormous gulf exists between the Prime Minister's most welcome words on relaxing protest around Parliament and the reality faced by many of our supporters, hit with batons despite taking no aggressive action, merely as a result of being at the front of a crowd which posed no threat to the safety of the President. Protesters who had come prepared—not for violent confrontation—but to peacefully make their point, suffered beatings on their hands and heads despite there being no prospect of them moving away due to the crowd behind them. Not surprisingly, tensions rose in the crowd attacked so unnecessarily a situation exacerbated by the deployment of the heavily armed and intimidating Territorial Support Group officers. The use of "snatch squads" at the point when most demonstrators were dispersing was predictably resisted by surrounding individuals making a bad situation worse.

2.5 Subsequent police statements claiming the demonstration could have provided a cover for terrorism were particularly reprehensible, resembling the behavior of repressive governments which attempt to outlaw expressions of dissent by suggesting they are linked to terrorism.

2.6 Mr. McNulty also stated in his letter that I take very seriously allegations that the police used excessive force and equally I am very concerned to read reports about violence by demonstrators. We are concerned by his statement that police tactics and decisions on how to achieve these objectives are a matter for the independent operational judgement of chief officers of police, but he has not sought to investigate the use of excessive force by the police.

2.7 Restrictive byelaws at the Atomic Weapons Establishment (AWE) Aldermaston

The second linked case is that of new restrictive byelaws at AWE Aldermaston, specifically designed to prevent the long-running monthly peace camp from taking place alongside the facility. Again, this has been accompanied with the suggestion that it could provide a cover for those threatening security. The rolling-out of this seemingly catch-all excuse for a clamp-down on long-running protests may start at AWE, but could as easily be deployed at a whole range of military and government sites. Freedom of speech and freedom of protest should not end when one comes close to a sensitive site—if civil liberties mean anything, they must allow for dissent as decided by the individual, not at the prescription of the state as to where, when and in what form it should exist.

2.8 The effect of SOCPA legislation on demonstrations at Menwith Hill and Fylingdales

The third case is that of the marked difference in the policing of demonstrations at the Yorkshire bases of Menwith Hill and Fylingdales since the introduction of SOCPA in 2005. The right to walk around Menwith Hill without fear of being apprehended has been severely curtailed, even during organized demonstrations. Whilst the legislation was drafted to apply to the site itself, stop and search powers have been used in the entire vicinity of the base under increasingly varied circumstances. The intrusive use of FIT officers to record demonstrators has no valid security rationale as those joining well publicized demonstrations are inherently in the least permissive situation possible for anyone planning violent acts of disorder. These measures are used to intimidate those on well-ordered public protests and not to protect the US intelligence station. I therefore request that you begin an investigation into the use of SOCPA at sites such as Menwith Hill and Fylingdales in the context of the review of the provisions covering Westminster demonstrations.

2.9 Recent experience suggests that the legislation is used to harass demonstrators, rather than through any genuine concern over security. On 29 March this year, protesters walking around the Menwith Hill base were searched under Section 44 of the Terrorism Act, but in a perfunctory fashion, and only when they were passing a point where the MoD police would not be required to cross muddy areas to reach them. If real suspicions had existed, such a lackadaisical police response should be condemned, but as their behaviour clearly demonstrates the lack of any genuine suspicion, and instead an intent to intimidate the fact that any police action was taken at all is reprehensible.

2.10 We are also concerned by developments shown by events on 4 July when a demonstration was held at Menwith Hill. Two police community support officers were posted outside the Yorkshire CND office in Bradford to monitor which individuals were using a mini-bus to end the demonstration. On the same day Joe McKenzie, Head of Intelligence at the Menwith Hill base phoned Yorkshire CND to inquire who from Revd. Chris Howson's congregation would be attending the demonstration, and admitting that he had monitored Revd Howson's correspondence with parishioners. We are concerned by this growth in surveillance, both in person and through monitoring private communications, which we believe is intimidating behaviour that infringes upon their security and right to protest.

3. CONCLUSION

3.1 It is the view of CND that policing measures and being misused and applied in situations for which they were not intended to discourage legitimate protest.

3.2 Although these actions may deter some, they will firm the resolve of committed activists. Decisions to prevent protest at government buildings and military facilities have already provoked a situation of confrontation resulting in harm to protestors and may in future result in a worse scenario.

3.3 If the hard-won civil liberties and democratic rights of British citizens are to be preserved we strongly feel that there are several legislative and operational policies that the Home Office should be actively reviewing. A slow slide towards a culture less open to expressions of dissent is something we all must oppose. We would therefore welcome the chance to discuss the situations we describe above in more detail with you.

Memorandum submitted by the Children's Rights Alliance for England

INTRODUCTION

The Children's Rights Alliance for England (CRAE) seeks the full implementation of the UN Convention on the Rights of the Child in England (UNCRC). Our vision is of a society where the human rights of all children are recognised and realised.

CRAE welcomes the Committee's inquiry into policing and protest. Our response focuses on whether existing police powers pay sufficient regard to human rights in the particular context of children and young people (those aged 17 and under). We have four primary concerns in this regard: the failure to ban the use of Taser guns, the retention of children's DNA, the disproportionate use of stop and search powers, and the use of dispersal powers under the Anti-Social Behaviour Act 2003.

CRAE asks that the Committee consider these issues in light of children's human rights and the non-discriminatory application of police powers.

USE OF TASER GUNS

Since July 2007, authorised firearms officers in police forces across England and Wales have been able to use Taser stun guns, emitting a 50,000-volt electric shock, where the use of firearms is not authorised. (Taser stun guns have been in use in England and Wales since 2003, as a "less lethal alternative" where firearms are authorised.) In addition to these extended powers, a 12-month trial of the deployment of Tasers by specially trained units who are not firearms officers began in September 2007 in 10 police forces. According to Home Office figures published on August 5 2008, police use of the guns is growing, with the weapon used on nearly 2,700 occasions since they were first introduced in 2003 as a "less lethal alternative" to police firearms. It is not known how many times Tasers have been used against children.

Amnesty International has called for Taser guns to be banned in Canada where four people have died after being "Tasered". In May 2007, the Defence Scientific Advisory Council's Sub-Committee on the Medical Implications of Less Lethal Weapons (DOMILL) reported that it had:

"reviewed 10 cases of the exposure of persons under the age of 18 to Taser currents in Great Britain up to December 2006, under firearms authority" and stated that it "anticipates that there will be an increase in the numbers of children subjected to Taser". DOMILL concluded that children are at "potentially greater risk from the cardiac effects of Taser currents than normal adults".³¹

Contrary to these concerns, the use of Taser devices on under-18s has been authorised by the Government. This constitutes a potential breach of children's rights under Articles 2, 3 and 8 of the European Convention on Human Rights as well as Articles 6, 16 and 19 of the UNCRC.

In November 2007, CRAE wrote to the Home Secretary urging her to ban the use of Tasers on children. In response the Home Office's Public Order Unit acknowledged DOMILL's statement on the subject and said, "We need to be wholly confident about the medical implications of any extension to Taser, to protect both the public and police officers", explaining that "[t]he trial will be subject to critical evaluation by the Association of Chief Police Officers and the Home Office". Despite the safety concerns, the Home Office declined to end the use of Tasers on under-18s in the meantime.

In its recent list of issues relating to the 2008 examination of the Government's implementation of the UNCRC, the Committee on the Rights of the Child included the use of Taser guns on children as a major concern.³²

DNA RETENTION

The Criminal Justice Act 2003 gave the police additional powers to retain DNA samples of anyone arrested for a recordable offence without the person's consent—which covers most criminal offences. The sample is retained regardless of whether the police take no further action or the person is subsequently acquitted by the courts of any offence. Home Office estimates indicate that the police currently hold DNA profiles of up to 360,000 children. Up to 82,000 of these are of innocent children and around half relate to those who receiving reprimands or warnings for low-level offences, not a finding of guilt in law.³³

A case is currently pending in the High Court in which a 17 year-old boy is challenging Staffordshire Police's refusal to destroy DNA material taken from him. The outcome of the case has implications for other children whose DNA is held permanently by the police. Judgement in the ECHR case of *S & Marper v UK* concerning a child, expected shortly, could also have relevant implications for children.

³¹ House of Commons written answer, 23 July 2007: Hansard Column 697W; House of Commons written answer, 26 November 2007: Hansard Column 197W; DOMILL statement: reference DSTL/ BSC/27/01/07 dated 30 May 2007

³² Committee on the Rights of the Child 49th session, *List of issues to be taken up in connection with the consideration of the third and fourth periodic reports of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/Q/4*, Part IV, 14

³³ *R (R) v Durham Constabulary and Another* (2005) UKHL 21 [2005] 1 WLR 1184

STOP AND SEARCH POWERS USED DISPROPORTIONATELY AGAINST CHILDREN

Section 44(1) of the Terrorism Act 2000, which came into force in February 2001, allows the police to stop and search anyone aged 10 or older. Metropolitan Police stop and search figures from May 2007 show disproportionate use on under-18s. Under-18s comprise between 18% and 20% of London's population, yet 40% of stops and 30% of searches were made on children between January and May 2007.³⁴

POLICE GIVEN MORE POWERS TO MOVE CHILDREN OFF THE STREETS

Police and local authority powers to designate an area a dispersal zone under the Anti-Social Behaviour Act 2003, and wide-ranging police powers to take home under-16s (who are unsupervised in public places) between the hours of 9pm and 6am, remain of great concern. Home Office research shows that 42 police forces designated 809 areas as dispersal zones in the 12 months to June 2005. Asked about the number of under-16s who were taken home by police officers, in the 18 forces that responded an estimated 520 under-16s were escorted home from 236 areas.³⁵ Further research published by the Home Office in 2007 showed that a total of 1,065 areas were designated as dispersal zones between 1 January 2004 and 31 March 2006.³⁶ There have been successful legal challenges to these wide police powers, yet the Government has not issued any guidance in response.

September 2008

Memorandum submitted by Mrs Wendy V. R. Clark

INTRODUCTION

My name is Wendy Clark. I am a 63 year old pensioner of good character and live in South Shropshire with my husband and our rescue animals. I have peacefully campaigned on behalf of animals and their welfare for many years.

SUMMARY

My submission deals with the Serious Organised Crime and Police Act 2005 (SOCPA) Sections 145, 146 & 147. These sections deal exclusively with anti-vivisection protest and the consequences of these sections of SOCPA have, I believe, been overlooked and ignored by campaigning groups such as Liberty.

I respectfully wish to draw to the Committee's attention my prosecution and subsequent acquittal of charges brought against me and others under Section 145 of SOCPA. My trial, along with six other defendants, was the first legal challenge to this legislation; we were jointly charged with conspiracy and all pleaded not guilty. A second trial of five individuals, also charged under the SOCPA Act 2005, Section 145, was scheduled to take place after ours. I am the first person to have been acquitted of Section 145 SOCPA charges.

In presenting their case, the prosecution relied on protests that had taken place outside the animal testing laboratory Sequani Ltd. However, at no time during protests at which I was present did the police give any indication whatsoever that unlawful activity was taking place.

The prosecution also relied on the subjective opinions of their witnesses when they gave evidence. If these witnesses said they felt upset when protest was taking place, such protest was deemed to be criminal behaviour. Police "expert" witnesses misrepresented innocuous electronic information as proof of criminal activity.

I am of the opinion that this prosecution was politically motivated, as are Sections 145, 146 & 147 of the SOCPA 2005 Act, following pressure on the government by the pharmaceutical industry. I believe its aim was to stop all anti-vivisection protest and to effectively criminalise peaceful protest. There seems no doubt that the Crown Prosecution Service anticipated that all the defendants in the trial would plea-bargain before the case came to trial. Thus a costly trial would be avoided and they would have got convictions.

I regard my prosecution as having been malicious, ill thought out and a gross infringement of my Human Rights.

³⁴ Metropolitan Police Authority (May 2007), *Stop and search monitoring mechanism*

³⁵ Home Office (June 2005), *Use of dispersal powers*

³⁶ Home Office (January 2007), *Tools and powers to tackle anti-social behaviour*

FACTUAL INFORMATION

a. Over several years, on an infrequent basis, I had been peacefully protesting outside a contract animal testing laboratory named Sequani Limited, which is located in Ledbury, Herefordshire.

b. At about 7am on 10th May 2006, our home was raided by 13 police officers from the West Mercia Constabulary. This was part of an operation involving raids on 12 households in the West Midlands area over a two-day period. The action was code named Operation Tornado and concerned anti-vivisection protest at Sequani and protest at firms in the Hereford area that supply equipment and services to the vivisection industry.

c. Following my arrest I was taken to Worcester police station, which is approximately fifty miles from our home. During my absence, my husband was restrained from trying to get me legal representation. When he contacted Worcester police station to ascertain my welfare, he was told that I was old enough to look after myself and to mind his own business.

d. Between the time of my arrest and release on bail—approximately 10 hours—I was neither offered nor given anything to eat. This is, I understand, an infringement of the rules governing individuals being held in custody.

e. During the ensuing months I was required on numerous occasions to surrender to custody and be re-bailed. Because of the distance to Worcester—a round trip of one hundred miles—my solicitor endeavoured to arrange for me to do this at our nearest police station. Without exception, the police never confirmed to me that this was acceptable until immediately before the deadline. This made me extremely anxious and fearful that they would come back and re-arrest me for not answering bail.

f. On 10 October 2006 I was charged with four substantive counts under the SOCPA 2005 Act. In July 2007 the charges against me were changed to one of conspiracy under the SOCPA 2005 Act. I pleaded not guilty on both occasions.

g. Prior to the commencement of the trial, an Application to Recuse was submitted jointly by the defendants' barristers. This application was made on the basis of potential judicial bias because the judge who had been appointed to hear the case had been found to be a participant in bloodsports. At the hearing the judge declined to stand down.

h. On 7 January 2008 the trial commenced at Birmingham Crown Court. The judge immediately invoked press restrictions, so there was no press reporting throughout the trial. Following the selection of jurors, the judge ordered that the jurors be bussed to and from court each day and the jury subsequently arrived and departed from a side entrance of the court. Prior to the commencement of the trial no bail restrictions had been imposed on any defendants. The judge however imposed bail restrictions on all defendants. The Committee should perhaps consider why these draconian steps were taken by the judge.

i. On day two of the trial, the person who was last on the indictment list plea bargained. On day three of the trial I was offered a plea bargain by the prosecution; to plead guilty to four substantive charges and I would be put on probation. I declined this offer. Several weeks into the trial I was offered a second "deal", this time under the same terms but to plead guilty to two substantive charges. Again I declined.

j. The prosecution relied, in their case against me, on the following:

- a) Knocking three times on a window of the premises of a company—Propath Ltd. at a protest on 28 October 2005.
- b) Miscellaneous email between myself and one of my co-defendants, some of which mentioned protest dates, hunt monitoring, and the welfare of my animals.
- c) CCTV footage of myself and another person not involved in the trial moving free standing barriers outside the premises of Sequani.
- d) Contained in the jury bundle and forming part of the prosecution evidence against me, the following items seized from my home:
 - One rubber "witches" nose.
 - One diary, on the front inside cover of which were phone numbers/addresses of some co-defendants, as well as other infrequently used numbers, such as that of an equine dentist.
 - One anti-hunt sticker.

k. Throughout the eighteen week trial I was rarely mentioned as I had been at so few of the protests within the indictment period.

l. On 12 May 2008 I was found not guilty by a unanimous verdict of the jury. In spite of this, the judge unsuccessfully tried to bind me over. Following legal submission, he gave leave for me to claim reimbursement of all my travelling costs.

m. Within two hours of my acquittal, one of my Character Witnesses, who had provided a written statement which was read out in court, received an anonymous and malicious phone call. The detective who was in charge of the case was requested by the judge to investigate. I subsequently learned that the police claimed not to have been able to trace this call. The perpetrator was never found.

n. By 16 May 2008, the culmination was:

- One acquittal by unanimous jury verdict (myself)
- Two acquittals by majority jury verdict
- One conviction
- One conviction by way of plea bargain
- Two defendants, undecided jury verdict—a hung verdict

Following this, the detective, mentioned in item m. above handed the judge a printout of a website posting. This posting inaccurately stated that all defendants' costs had been covered by a fund that had been set up to help with these costs. The judge then rescinded the order for costs that he had made on 12 May.

o. Of all the items seized from our home at the time of the raid on 10 May 2006, it was acknowledged that certain items, held in "secure store" by the police had been lost. My husband subsequently received compensation for an item belonging to him that had gone missing. Lost and gone forever are three rolls of film which were developed by the police and contained photographs of a personal and highly sentimental nature—only the empty canisters were returned.

CONCLUSION

At the time of writing this Submission, I have not received a single penny in reimbursement of my out of pocket expenses. This is in spite of my solicitor having submitted my sworn affidavit confirming the amount I was given from the fund. The judge states he requires documentary evidence, which I do not have and am in no position to provide.

I feel sure that the Committee will draw its own conclusions from the foregoing and request that it gives due consideration to this Submission.

September 2008

Memorandum submitted by Climate Camp

EXECUTIVE SUMMARY

1. This summer approximately a thousand people attended Climate Camp near Kingsnorth Power Station in Kent. Many had intended to conduct civil disobedience at the power station. They hoped to draw attention to the contradiction between official declarations of concern about climate change and the decision to build a series of new power stations burning unabated coal (ie. without carbon capture and storage measures). However, a massive deployment of police largely prevented them from doing so.

2. This is now the third year that Climate Camp has been organised. Despite the fact that those attending the camp have consistently proved themselves to be peaceful protestors, the level of policing has each year been more repressive than the year before, in terms of its scale as well as its intrusiveness and interference with individuals.

3. The clear purpose of the police operation appears to be to prevent effective civil disobedience taking place, and the level of resources which the police command is clearly adequate to enabling them to succeed in this. This year their bill came to £5.9 million.

4. While views about the legitimacy of civil disobedience vary widely, few would regard it as a risk to public order on a par with rioting. Nobel Peace Prize winner and former US Vice-President Al Gore stated last week "I believe we have reached the stage where it is time for civil disobedience to prevent the construction of new coal plants that do not have carbon capture and sequestration,"³⁷ A similar view was also recently reached by a jury at Maidstone Crown Court. Presented with information about the social, economic and environmental consequences of burning coal, they decided that stopping emissions at Kingsnorth by direct action could be justified as preventing a greater crime.

5. However, whatever the views of wider society may be, in practice the government and/or police, appear to enjoy a wide-ranging discretion to designate a particular protest as a public order problem and act to prevent it taking place. Theoretical safeguards in legislation, the ECHR or police codes of practice are inadequate to protect rights to freedom of assembly or freedom of expression when protestors are faced with overwhelming pre-emptive police operations of this kind. The police will say, (and we will agree) that mistakes are inevitable in an operation of this scale. The problem is precisely the scale of the operation.

6. Threat prioritisation, and thereby spending decisions in public order policing, should be based on objective and evidence-based risk assessments, analogous to flood planning or road safety improvements. A prerequisite for this is clarification of the objectives of public order policing since it is impossible to discuss the proportionality or rationality of measures undertaken to "preserve public order" without it.

³⁷ Reuters 25.9.08

7. We favour the introduction of a statutory definition of public order framed in similar but opposite terms to the concept of breach of the peace in *R. v Howell*³⁸, ie a definition which describes it in terms of the security and safety of individuals from harm and fear of harm to their person and their personal property. We also favour the introduction of an independent scrutiny mechanism with the power to evaluate objectively the evidence base of any purported risk to public order to ensure that resourcing decisions are proportionate to the threat posed.

8. Without these two reforms, public order policing risks being perceived as simply a political tool serving the interests of the government of the day.

9. This document attempts to identify and address some of the systemic problems raised by the unaccountable overpolicing of Climate Camp. A separate document from the legal observer team provides an evidence base which sets out the detailed impact of police measures on individuals. These two documents should be read together.

10. The author has attended Climate Camp during the last three years. I have much experience of public order policing (particularly of environmental protests) since the early 1990s. Over the last decade I trained as a barrister. Following pupillage I now work in a Law Centre.

INTRODUCTION—WHAT IS CLIMATE CAMP?

11. There have now been three annual Climate Camps, one in 2006 at Drax (coal-fired) power station, one last year at Heathrow, and this year's camp at Kingsnorth power station in Kent. The organisation of these camps has taken a "grassroots" form. "Climate Camp" does not have a formal legal constitution; it has no paid staff; it has been set up by individuals rather than by existing institutions. Major decisions are made by whoever shows up to monthly meetings through a process of consensus decision-making. Working groups concerned with particular matters (eg, those planning the workshop programme, toilets, or publicity) take their own decisions, seeking ratification of them at the main meeting where these are of wider significance.

12. The land used for the camps has been squatted to sidestep the police putting pressure on land-owners to refuse permission (as has been done with vehicle hire). Notwithstanding this, the level of organisation and discipline has been widely commented on favorably in the press. A nightly curfew on amplified music was observed and hygiene precautions, electricity provision, fire safety and site-wide disabled access were all approved by local authority health and safety officers.

13. The people who attended the camp were a wide mix of ages and types, by no means exclusively weighted towards the young, although these predominated. The camp was attended by a number of Councillors, MPs and an MEP, as well as by most of the well known public commentators on Climate Change more familiar with TV studios or on Today, for instance Mark Lynas, George Monbiot and George Marshall. Given that the event comprised five days of workshops and discussions, the average level of education of the campers was fairly high. In short, this was an extra-ordinary gathering of ordinary citizens, united by a shared concern that the Government's decision to build a new raft of power stations burning unabated coal is an inadequate response to the global threat posed by climate change.

VIOLENCE?

14. We believe that an impartial body reviewing the evidence about Climate Camp protests would have predicted that, left to itself, the risk of violence ensuing from it was considerably less than in a medium sized town at closing time on Saturday night, and could have recommended policing arrangements commensurate with that threat. On this we suggest the facts speak for themselves.

15. There were no prosecutions for violence at Climate Camp 2006. At Climate Camp 2007, a single prosecution for assault was dismissed by magistrates. This year two prosecutions for assault have been commenced (though by no means proved). This is despite the fact that in 2006 and 2007 police were not slow to use baton blows against protestors attempting to get between police lines in order to gain access to the sites and in 2007 and 2008 they did not flinch from using force to gain access to the camp, striking out at protestors standing in their way.

CIVIL DISOBEDIENCE AND PUBLIC ORDER

16. Civil disobedience most typically takes the form of protestors placing their bodies in the way of processes which to which they object, for instance blockading roads or occupying machinery. Occasionally, it has also taken the form of criminal damage—for instance the dismantling of Hawk aircraft destined for East Timor.

³⁸ There is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance." *R v. Howell (Errol)* [1982] QB 416

17. Many civil disobedience campaigns have been vindicated by history: for instance the Suffragettes, the Indian Independence Movement, the Civil Rights movement. They have often served as a safety valve in democracies by helping to catalyse necessary social change in fields blocked by vested interests.

18. Obviously given the contradictions between the acknowledged global urgency of climate change, and the expansion in burning of unmitigated coal we believe that such retrospective vindication might well also have been earned by any civil disobedience carried out at Kingsnorth, had it been possible to actually get past the police and do it. Contemporary endorsements from a former Vice-President and Nobel Peace Prize winner as well as from 12 representatives of the Kent public chosen for jury service only reinforces this belief.

19. Obviously anyone who breaks the law can and should be prosecuted like everyone else. What we oppose is spending millions of pounds of taxpayers' money on pre-emptive action to prevent such law-breaking taking place, or having any political impact.

A STATUTORY DEFINITION OF PUBLIC ORDER

20. We believe that legislation should frame a definition of public order which prioritises the safety of individuals from harm and fear of harm to their person and their personal property. This would make explicit that protecting corporate and/or government private property interests is not, without more, "preventing disorder".

PREVENTING CIVIL DISOBEDIENCE

Police Success

21. Whatever the stated purpose of the police operation at Climate Camp 2008 (and equally the two previous ones), the obvious practical goal was to prevent effective civil disobedience taking place. In large part the police succeeded in this. By contrast with the much more lightly policed anti-road campaigns of the 1990s where protestors routinely gained access to building sites or land owned by the building contractors³⁹, massive police deployments at the Climate Camps have largely prevented incursions onto the sites (with the one notable exception being the successful blockade of BAA offices at Heathrow last year). Certainly, this year police were impressively successful in protecting a perimeter fence several miles long. Despite the determined efforts of hundreds of people, reports suggest that only a handful of people were able to gain access.

22. By ensuring that protestors never got anywhere near EON's site, the police protected EON from adverse publicity and ensured that they stayed out of the story. Instead of a David and Goliath dispute between a company committed to boosting carbon emissions and ordinary people trying to stop them the matter appeared in the media as a dispute between the forces of order and disorder. Instead of media coverage of EON security guards pulling bodies out of Kingsnorth power station, we see protestors ineffectually running around fields in the shadow of police helicopters. The experience was disempowering and discouraging for individuals. They may decide not to try it again.

Elements of police success

i) Site protection

23. Although simple trespass is not a crime in this country, no one attending Climate Camp 2008 could fail to note that, in common with previous years, the single most important strategic objective of police was to preserve the territorial integrity of EON's site by preventing trespass. They fortified the site with dogs, riot police, batons and CS gas. They used helicopters to track the movements of anyone approaching the site. Violence was freely threatened and deployed against anyone considering stepping over the fence.⁴⁰

³⁹ At Newbury and other road protests, private security firms dealt with trying to prevent trespass and with removing protestors from their sites who would then be handed to police for arrest where there was evidence of criminal activity (eg, aggravated trespass). Police were on hand to prevent a breach of the peace, and would be appealed to by protestors as an umpire where they felt the security firms were behaving in a heavy handed fashion. Police appeared to see their goal as responding to crime rather than pre-emptively stopping it taking place.

⁴⁰ Violence was even threatened against people who were at the fence with consent of the police. Although an agreement in writing with police about the main procession made no reference to any leaving time, police decided to impose a deadline on the day of the event which they announced from helicopters saying, "disperse now, or dogs, horses and long-handled batons will be deployed". Apparently this was a "mistake". See supplementary report.

 ii) Seizures

24. One of the most significant changes in the policing of climate camp this year was the introduction of an extremely wide ranging seizures policy. Of significance here is both the scale and the nature of the seizures. Full data is not yet available, but the police clearly took hundreds and possibly thousands of items from individuals. To facilitate the return of property for people unable or unwilling to negotiate the individual return of items police have been preparing to bulk release some of the items and recommended a 7.5 tonne truck be brought for the collection.

25. Although the sheer volume of objects seized (encompassing pens, tools, wood, banners and much more) had the effect and possibly the purpose of generally disrupting the setting up of camp and deterring attendance, the narrower police goal was clearly to seize any object capable of being used to facilitate trespass or carry out civil disobedience. Explanations given by police officers were consistent with this. For instance, a person who had brought a large quantity of homemade soap for use at the wash stands on the site was told that it was being seized because protestors might use it to make themselves slippery and evade the grip of police. A person bringing a clown costume was told that it was being seized because it might be used to cause a public nuisance. During the first two days of the camp all bike locks were automatically seized by police. I personally witnessed an elaborate replica model of a carbon capture and storage plant designed by a retired 70 year old engineer being confiscated on the grounds that holes in the model appeared to the officer to be potential “finger locks”.

iii) Intimidation and overpolicing

26. The total number of police deployed was reported as numbering 1,500. At any one time the police outnumbered protestors. Certainly, the area felt saturated in police. Continuous intrusive filming took place on the way into the camp. Police were hardly ever wearing normal uniforms, and were generally in paramilitary style jumpsuits. Everyone attending the camp was subjected to extremely detailed, intrusive, time consuming and repetitive searches, unprecedented in scale or intensity on protests in the UK within recent decades. One person was searched 25 times. Although the police set up a base like a customs checkpoint, the quality of searching was much more like the regime for prison visits. People were required to queue for lengthy periods before being searched—at the busiest times this was taking up to two hours. Commonly, the search would be filmed by evidence gatherers. Many people then faced the irritation of having personal property seized. Police frequently made persistent attempts to garner names and addresses (see second submission for details), including through alleging a crime had been committed and detaining people while these matters were investigated. For instance, carrying property for a friend would typically lead to an investigation for theft and the person would be required to supply proof of identity and have the friend come out in order to prove that they had permission to do so. When police were carrying out these searches or “investigations” they would usually try to isolate individuals from others, often taking them off to one side behind police lines. The individual here would typically be outnumbered by police in a ratio of 2-1 or 3-1.

27. Some people may be deterred from attending at all by this treatment. For many of those that do come it has a powerful effect. We believe that being repeatedly subjected to these forms of isolating and individualising control and enforced helplessness is experienced by many as more than merely harassment but rather serves to intimidate and frighten people and discourage them from taking direct action. The message individuals hear is: “We are watching you extremely carefully, we suspect everything about you, and the minute you step out of line we will arrest you.”

28. This three-pronged police approach of seizing anything useful for carrying out civil disobedience, threatening violence against all trespassers, and instilling fear in any waverers proved an extremely effective combination of tactics and successfully protected EON against the embarrassment of direct action.

LEGALITY

29. All three of these means by which police prevented demonstrators from carrying out civil disobedience were of questionable legality, yet practical, enforceable remedies for protestors are very limited, and—at the point the protest is happening—virtually non-existent⁴¹.

30. We doubt that the use of force by the police to secure EON’s site could be justified either under s. 3(1) of the Criminal Law Act 1967—“A person may use such force as is reasonable in the circumstances in the prevention of crime”, or under their powers to prevent a breach of the peace. This is because at the moment of trespass onto the site no crime is committed, and the police can have no means of knowing whether a person is intending to simply engage in trespass or may be intending to commit aggravated trespass or worse. Given that the maximum sentence for aggravated trespass is only three months, it is likely that using CS gas

⁴¹ For instance, courts in this country (unlike the USA) are extremely reluctant to issue injunctions fettering the discretion of the police; the administrative court is an unsuitable forum for challenging policies which can only be inferred via a fact-heavy analysis of hundreds of discrete incidents and the IPPC’s jurisdiction excludes strategic or policy matters.

or truncheons to avert it taking place would in any case be unreasonable. In relation to breach of the peace, we doubt that merely trying to gain access to EON's site in and of itself could amount to a breach of the peace.

31. In relation to the police seizures, although police were only legally empowered to seize items intended for use in causing criminal damage and/or as offensive weapons they took items that were obviously either virtually impossible to imagine being used in this sense (eg, a wetsuit) or to rely as evidence of intention simply on the fact that the person was attending Climate Camp. For instance, flip chart marker pens intended for use in workshops were seized without any specific knowledge or suspicion about the individual carrying them beyond their presence at the camp.

32. In relation to the stop and search regime, it is hoped that a judicial review challenge will be shortly brought.

DEFAMING PROTESTORS

33. There are two mechanisms which encourage police to exaggerate the risks of violence posed by protestors. Since the government cannot openly say that it is spending £5.9 million in order to secure EON's private property against incursions from trespassers the police are under pressure to justify their budget, which in turn encourages them to exaggerate violence on the part of protestors. Secondly, if the police can claim to reasonably believe that violence is likely it triggers a number of powers useful to their operation, particularly the power to prevent a breach of the peace and the power to authorise a s.60 stop and search order.

34. A particularly extreme example of this occurred on 5 August, the day after the police had received generally negative media coverage for heavy handed behaviour inside the camp. Carefully tapping into a very current public concern about knife crime, police ran a press release claiming a "weapons cache" of (mostly) knives had been found in the woods near the camp. The Assistant Chief Commissioner of Police is cited as saying "I would suggest that a minority of people had hidden them with the intention of causing harm to police officers, and possibly to the horses or dogs that we are using." Although it is impossible to prove, we simply do not believe that the ACC genuinely believed this accusation. Most of the knives publicly displayed by the police were kitchen knives, which had an obvious use in the camp. Many people resorted to leaving items likely to be seized outside the camp, simply to avoid the inconvenience of having them confiscated and the hassle of then reclaiming them. I considered leaving my bike lock in a bush for exactly this reason. No one requires the ACC to list the recent occasions on which knives have been used against horses or officers on environmental protests; no one expects an apology or retraction when violence fails to materialize and no one expects the police to stop scaremongering at next year's protest: this kind of spin has simply come to be expected as part and parcel of a police operation on this scale.

ACCOUNTABILITY

35. Just as NICE prevents GP surgeries wasting public money on ineffective drugs simply because a marketing campaign has swayed one of the partners, we would like to see a body empowered to scrutinise spending decisions on policing public order threats. We would like to see a mechanism whereby the police are required to justify their spending decisions by producing evidence-based risk assessments which would be available for review and scrutiny by an objective and independent body. This body would have a duty to ensure that policing was oriented towards safeguarding "public order" which would be expressly defined as the safety of individuals from harm and fear of harm to their person and their personal property.

36. Without this, public confidence in the impartiality of police will be damaged, and there is a risk policing will be perceived as political or—worse—in collusion with powerful business interests.

September 2008

Memorandum submitted by Climate Camp

EXECUTIVE SUMMARY

1. This report by drawing extensively from written accounts provided by those attending the Climate Camp, is intended to illustrate some of the key concerns arising from the policing of the Climate Camp. It does not seek to draw conclusions or make recommendations. Appendix 2 provides weblinks to relevant videos.

INFORMATION ABOUT THE SUBMITTER

2. The Climate Camp has four aims: movement building, education, providing an example of sustainable living and non-violent direct action. In August 2008, the Climate Camp formed at Kingsnorth to protest about the prospect of a new generation of coal-fired stations.

3. This submission is from the legal observer working group of the Climate Camp's legal team. The author is a non-practising solicitor.

A. POLICE USE OF SEARCH POWERS

4. People travelling to or from the Climate Camp were searched from time to time at Strood railway station, in Hoo village, at the A228 roundabout. All were searched at Deangate Golf Club's car park on which a large canopy was erected by Kent Police and their search receipts checked at a mid-point in the lane to the Climate Camp and again at the gate to the Climate Camp and sometimes searched again. As a matter of routine, people being searched, waiting to be searched, and Legal Observers present were filmed by police evidence gatherers. Searches of people leaving the Climate Camp also took place increasingly towards the end of the week.

5. Of particular concern is the blanket use of section 1, the intrusion on the liberty of people attending the Climate Camp as a result of the number of searches being undertaken and the resulting delays, the variety of means used to obtain names and addresses, the treatment of Legal Observers, and the inappropriate seizure of property and these are addressed below.

USE OF SECTION 1 OF PACE 1984

6. Section 1 of PACE was used to search everyone attending the Climate Camp. The authorisation of section 60 CJPOA 1994 searches from Thursday 7 August 2008 at 9.30am resulted in no material change to the frequency or number of searches. This is now to be the subject of a judicial review.

INTRUSION ON LIBERTY

7. Paragraph 1.2 of Code A of PACE 1984 states "The intrusion on the liberty of the person stopped or searched must be brief and detention for the purposes of a search must be brief...".

8. As everyone going to the Climate Camp was searched substantial queues frequently built up and there was a particular problem arising from the lack of female officers.

9. The Home Office recognises that stop and searches typically take 25 minutes of police time. With the number of people involved, despite the number of officers deployed, delays of 60 minutes and longer were common.

10. Food, tat (assorted necessary equipment to establish the camp) and other deliveries were not permitted to come to the Climate Camp site. This meant that vehicles were unpacked and searched at the Golf Club search point and then repacked and parked on the other side of the A228 (parking any nearer was not permitted by the police). People from Climate Camp with wheelie bins, wheelbarrows and bikes then crossed the busy A228 just before the roundabout to collect the deliveries and come to the search point to be individually searched again. Where items had names on them, the person transporting the item were accused of theft (for example, trestle table given below). This approach resulted in considerable delay and inconvenience and risk to their safety and that of car drivers on the A228.

SEEKING TO OBTAIN NAMES AND ADDRESSES WHEN THE PERSON SEARCHED HAS DECLINED TO GIVE THIS INFORMATION

11. Those attending Climate Camp usually seek to exercise their legal right not to give their name and address during a search. However, a variety of approaches have been used by officers to obtain or put pressure on them to disclose their name and address. These have included:

Writing down of personal details from bank and other cards and other sources

12. Examples:

Officer PC 2460 at 18.49 on 8 August 2008 at the main gate to the Climate Camp searched Ian under section 60. Ian declined to give his name but the officer looked at his previous search form where he had given his details and despite his protests copied the information on to the officer's copy of the search form.

Robert, was searched under section 60 by PC 1259 at the Golf Club search point on 7 August 2008 and declined to give his name and address. He showed him the inside of the wallet, then the officer asked him to give him the wallet, Robert said he had no right to read the details on things so wanted to take the items out himself which he then did. Then an officer said he needed to see all the cards

as well in case there were razor blades attached to them or the edges sharpened. So, Robert handed over the cards and then one of the officers took the cards one at a time reading out the details, the original search form with details declined was torn up and a new one written with his details.

Timmy, as a Legal Observer, saw officer PC Kings 4037 from Welsh Police on Thursday 7 August 2008, at 20.42 search a lady aged 50–60 years old who refused her personal details. The officer took the details from her rail card and added them to the search form.

Sophie was searched under section 1 on 5 August 2008 at 14.35 at the Golf Club search point and declined to give her details. The officer found the details from her wallet and told PC Freeman (587) who was writing the search form, so her name and date of birth are on the form: next to name is stated “refused—Miss Sophie Charters” and next to date of birth “refused” is deleted and her date of birth inserted.

Joseph was searched on 8 August 2008 by PC O’Toole PC 416 Met, under section 60. His wallet was searched and on refusal of his name and address, the officer wrote refused and then added the name from his bank card.

Kayte was searched on 4 August 2008 by PC 312, Southall. No legal observers or other Campers were present save for her 17 year old companion. It was around 11pm. Five officers approached and separated them. During the search, the officer took a bank card from her purse and asked her to tell them her first name, which she did and then asked her tell them her surname. This name was written on her search form despite her protesting. The male officer present then went through every piece of paper in her bags and another male officer said “tell me if you get an address”, which they did from a medical prescription. This was added to her search form.

Threatening arrest for theft of bank cards, phone or items being unloaded and transported for the Climate Camp with a name on

13. Examples:

Sarah was a Legal Observer at the main gate to the Climate Camp on Friday 8 August 2008. At 08.45 two women were taken to the side of the road by three officers. A fourth officer (KG124) moved to prevent Sarah following to observe. The women appeared to be in distress and one appeared to be looking for help. As the fourth officer had moved towards the search, Sarah moved forward to watch and noted the numbers of two other officers (KD 896) and (KD 601). A membership card and a cheque book were removed during the search of one of the women who was being questioned as to whether she had stolen the items. She was distressed and talked of “being called a thief”. She confirmed under pressure her identify and ownership of the card and her mother that the cheque book was hers. No search form was completed. One of the women asked for a search form. There was no immediate response. The officer (KG124) said something to the effect that we have actually done you a favour because under section 1 we could have arrested you. He then walked away. Officer KD 896 asked the woman to spell her name for the search form but she declined and the officer wrote it anyway and handed over the form. Christabel, one of the women searched, said that officer KD 601 asked for her name when looking at her cards and she reported that when she declined “the officer said he wanted it as he thought I had stolen the wallet”. Officer KG124 told her that she had to give her details or she would be arrested. She asked for the Legal Observer to be there to give advice but the officer told the legal observer to move to the other side of the road. In the end she felt pressured into giving her details. Five minutes after the search no search form had been completed. She also reported that Officer KG 124 said that he was doing her a favour by checking the card was hers so she did not get arrested and that he would have been able to arrest if she had been searched under section 1.

James was assisting with unloading a delivery of “tat” for the Climate Camp on 5 August 2008 and his part of the delivery included a table. The table had an army address on and a telephone number. He was accused of stealing the table and arrested and his name and address demanded. The officer refused to phone the number on the table until a name and address was given. This persisted for some time. He was searched and his details found on his person. When the number was called, the table was confirmed as army surplus and he was de-arrested.

Tom was told by PC Hogan PC2539CW Met, during a search on 5 August 2008 that he could not enter the Climate Camp without giving his name due to an agreement between the Camp and the police.

Roger was searched under section 60 at Bells Lane, in Hoo on 9 August 2008 and when he saw the officer (PC 650) reading the cards from his wallet, he protested and sought to take back his wallet. He was then handcuffed and was told by other officers present that they were looking through his wallet for a concealed knife.

Tim was searched on 7 August 2008 at the entrance to the Climate Camp under section 60. He refused to give his name and address. PC Lowe (10813, Sittingbourne) said he was checking whether he had stolen cards when Tim questioned whether he had the legal powers to look at his personal details in his wallet. Tim asked what reason he had for suspecting him of having stolen cards and the officer said it was because he had refused to give his personal details. He also told

Tim that he would be taken down the station and fingerprinted. The officer called another officer over, when Tim said he thought this threat was illegal, who then checked the cards in the wallet, and said Tim was fine to go.

Carol, a Legal Observer, reported that a man in his mid-70s had his walking stick seized, on the grounds that it could be used as an offensive weapon, by PC 2475 from the Welsh Police during a search at the Golf Club search point on 8 August 2008 at approximately 12.35pm. The man asked her to approach the officers to ask for it to be returned. She was told that he could not have it back unless he gave his personal details which he refused to do.

Asserting that individuals with foreign accents will be arrested on suspicion of immigration offences

14. Examples:

Emily was searched under section 60 at High Halstow on 9 August 2008 at 11.25. The female officer from West Yorkshire PC 2805 found a credit card in her pocket and asked her to confirm her name. She declined and the officer said it could be stolen and could she prove it was hers. The officer said it was misinformation that she could not take personal details from items found whilst searching. Another officer came over and asked where she was from (she had a mid-Atlantic accent). She declined to answer and the officer stated how could he know she had the right to be here and added something about there being some people who come to this country to make trouble. Emily had her naturalisation papers on her and offered to show them if they agreed not to take down her name. The officer took the form and walked away so she was unable to see if he was making a note of her details—he returned with her search form.

Enrico was searched on Wednesday 6th August around 12.00 at the Golf Club search point and declined to give his name. The officer informed him and his non-English speaking friend that they had to give their names to prove they had the right to be in the country as they could be illegal immigrants or over-stayed. Both stated they were Italian. They were told that they could be from anywhere and would be arrested if they could not prove they were not illegal and so reluctantly gave their details.

Dominique was searched on 6 August 2008 at 1.40pm by PC 2137 and declined to give her name and address. Another officer told her that he suspected she was an illegal immigrant and asked for id. Dominique asked why he suspected her and was told it was because she had declined her name and address and he had noticed her accent. Dominique said he was from a EU country. The officer said not all native French speakers were from the EU and she could be from Guadeloupe. Dominique is white with blue eyes and straight, brown hair—stereotypically French in her looks. The officer said if she did not cooperate she would be arrested on suspicion of being an illegal immigrant and with that she gave her name.

Joseph was searched on 7 August 2008 by the Welsh police. He had been delivering food and despite having been searched when the van was searched, he was searched again when the food was being brought through. When he refused his name and address, the officer said that his accent (he is of mixed Scottish/English descent) and that his refusing to give his details gave them reasonable grounds to suspect him of being in the country illegally. He tried to shout to the legal observer for advice but the distance at which the legal observer was being kept made that unrealistic. Eventually, uncertain about the situation, he gave his name and address and released. He was filmed extensively throughout the search.

The use of section 50 (anti social behaviour) without adequate grounds relating to the individual

15. Example:

Frances witnessed the use of section 50 with one person. When she questioned its use, she was told it was because the person had refused his name and address and would be attending the Climate Camp. The officer said he had used section 50 twice before. Under the threat of arrest, the person being searched reluctantly gave their name and address. Frances had seen section 50 used on similar grounds on a previous day and when she approach a more senior officer the use by the officer had stopped.

The frequent assertion of a need for a name and address to collect property seized despite it being established early on during the Climate Camp that this was not necessary

16. Examples:

Megan, aged 16, on 5 August 2008 had a penknife seized and was told she had to give her name and address to get it back, a Legal Observer said this was not true and was pushed away, and the officer then said it would make it easier if she gave her name and address.

ROLE OF LEGAL OBSERVERS

17. Legal Observers offer information on their rights to those attending Climate Camp and observe and record information about searches and police activity. Their presence is intended to be a visible reminder to police officers that their actions are being observed and noted and of comfort to those attending the Climate Camp.

18. They have an important role of ensuring Legal Support is informed of the detail of arrests so that those arrested can be monitored through custody and arrangements can be made for their release, and of giving bust cards to those about to be arrested so they are aware of how to access support from the Climate Camp Legal Support team and from the Climate Camp's solicitors.

19. In relation to searches, Legal Observers are advised to stand near enough to searches to watch and hear what is being said without obstructing officers. They have been asked to offer support and reassurance and respond to any questions from those being searched and to offer information or to question officers directly (and approach more senior officers if necessary) if they have any concerns about the direction of the search. They are advised of the common methods used by police to obtain names and addresses and to be especially alert on this point.

20. Increasingly during the Climate Camp Legal Observers were prevented from undertaking this important role. From Wednesday 6 August Legal Observers were kept back from searches so they could not properly see or hear the search or speak to either the officer or those being searched. The reasons given for excluding Legal Observers during the Climate Camp included: they would be arrested for trespass (sic), arrested for obstruction, for their own safety, Data Protection and in the interests of privacy, to keep the evidence collection zone sterile and section 3 of the Criminal Law Act. In addition, Legal Observers were threatened with arrest under the section 20 of the Solicitors Act 1974. From Thursday 7 August 2008 Legal Observers were unable to observe searches.

21. Example:

Thomas was returning from Hoo on Wednesday 6 August 2008 when he saw a number of Met police. He put on his Legal Observer tabbard to observe. A woman immediately approached to report an assault by JC13 at 15.40. The Legal Observer was then searched by PC 120JC from serial MC 154 and a pen knife seized. The officer said the assault report was not true and asked what legal training he had. He grabbed the Legal Observer tabbard from his body and put it in his pocket, saying Thomas could only have it back when he could prove he had a legal qualification and that he was confiscating it because he was acting with a false identity and walked off.

B. SEIZURE OF PROPERTY

22. A wide ranging seizure operation was mounted by the police from the day the Climate Camp was established. A very large number of items were seized from people when searched and during a site-wide search under a warrant on Thursday 31 July 2008. Yet there were only a handful of arrests for possession of items seized and those related to drugs or the possession of knives.

ITEMS SEIZED UNDER THE WARRANT

23. The list of the items seized produced by the police after the search does not specify from where or whom property was taken during the search of the site making returning property to their legitimate owners very difficult. The list of items (retyped and included in this document as appendix 1) needs to be read in the context of the materials needed to establish a functioning camp for over 1,000 people.

24. Many items had obvious and immediate practical uses in setting up and running a camp, but only at best conjectural or hypothetical or potential uses for the purposes of causing criminal damage. The items seized included tools, marquee rope, stakes and wooden mallet, rope, nails, bolts, tape, plastic piping, crayons, chalk, paint and marker pens. In addition, during the execution of the warrant the police attempted, but after peaceful resistance desisted, to seize the 1.5" diameter, blue, flexible plastic piping for the water supply, plastic waste piping for the water drainage systems, and a large wood pile for constructing the toilets, sink stands, water drainage systems and so forth. To illustrate what these items meant to the functioning of the Climate Camp: sign-posting of facilities and communicating details of the extensive educational programme required flipchart/marker pens, crayons, paint and chalk; to erect the large marquees safely required hard hats, marquee rope, stakes, wooden mallets; and, toilet construction required bolts, nails, and tools.

25. The items seized included items including bike locks, a wetsuit, hooded white suits, wooden painted shields, hard hats and bed rolls. From a common sense point of view it is hard to see how these items cause criminal damage. Some of these articles may have been used as tools for or used during attempts to protest and/or civil disobedience more widely. The explanation given at the time for the bed rolls was that a protestor could wrap it around their person and to help resist arrest. The wetsuit may have been used during any attempt to gain access to the site by water, the shields and at least some of the hard hats may have been

used to protect people from baton blows by police and bike D-locks may have been used by protestors to chain themselves to immovable objects. While some (though not all of these actions) might amount to criminal offences, many would not.

ITEMS SEIZED DURING SEARCHES OF INDIVIDUALS AND VEHICLES

26. A considerable quantity of items were seized from persons attending the Climate Camp. It has been difficult to document these items as people needed to retain their search forms as it the only evidence they have of the seizure. The items included a clown outfit and the bag it was packed in, soap chalk, crayons, marker pens, highlighter pens, paint, bamboo poles for flags, washing lines, tent pegs, puncture repair kits for bikes, walking sticks and much more.

27. Examples:

Shirley was stopped and searched on arrival near the Camp on Wednesday 6 August 2008 around 2pm and again near the Climate Camp. On her second search her walking stick was taken as it could be used as a weapon despite her protesting that she had had a knee replacement and needed the stick returned. She was told this was on the orders of the Chief Inspector of the Welsh police force.

Moth, who arrived on Friday 1st August 2008, was searched at the Golf Club search point and had a small bag containing a wig, two fabric flowers, a stripy top and red and white tights, seized on the basis they could be used to cause a public nuisance and a yellow highlighter pen seized. These items were to be worn during the procession to Kingsnorth. He requested that he be able to retain the top so he had an extra layer to wear at night but was refused. The highlighter pen was to be used to highlight the workshops and meetings in the Climate Camp guide that he wished to attend during the extensive educational programme.

Ruth had her bag in someone else's vehicle during the journey to the camp. Her rain protection (an army surplus poncho) was seized.

Joanna was a passenger in a van and on arrival at the Golf Club search point on 2 August 2008 at 11.15pm, 60 bamboo poles were seized under section 1 on the basis that the items could be used for criminal damage. The flag material was present but not seized. Similar flags were already placed at the entrance to the camp alongside the police.

28. There was a particular problem with bikes and bike locks. The Climate Camp was in a rural location and many protestors arrived with their bikes and bike locks. Bike locks were routinely seized even where they were not in the form of D-locks (which are sometimes used for "locking on"), leaving people's bikes vulnerable to theft at the camp site and afterwards. At one point during the week the police permitted bikes to be locked to the railings of the Golf Club search point. Later, late at night and without any prior warning to the Camp even though the police had previously communicated with the Camp over other matters, the police cut the locks and seized the bikes. Subsequently the police offered compensation and to return the bikes after the camp had ended, saying that there had been a failure of communication and the Golf Club had required their removal.

C. POLICE ACTIVITY AROUND THE CLIMATE CAMP SITE

29. Following the warrant to search the site on Thursday 31 July 2008, a manned mobile police station and police van were left at the main entrance to the Climate Camp and the gate to the field removed. The police presence increased at the other gates and the officers walked and drove around the field.

30. On Sunday 3 August 2008 around the time the procession and caravan approached Kingsnorth, the police left the site.

31. Attempts were made to return at dawn on Monday 4 August and again during Monday afternoon. The attempts to return by force were mainly made at the rear entrance to the field. Riot police were used and some form of spray utilised. A number of protestors were seriously injured. No police officers were assaulted. A number of arrests took place.

32. This location continued as a source of tension for the remainder of the Climate Camp. Negotiations took place unsuccessfully over police access to the site.

33. Of particular concern was the number of times protestors were woken up during the night, an activity which to those subjected to it seemed to be a deliberate attempt to deprive protestors of sleep.

34. Some of the more colourful examples include:

Rachel and 11 others, state that about 2.20am on Wednesday 6 August 2008 a line of police cars and vans sped down the road next to where they were camping, playing Flight of the Valkyries, and that then the helicopter arrived and stayed overhead.

On Friday 8 August 2008, a family was sleeping in the North East part of the field and was woken at 2am by three low-flying helicopters and at 3am officers at the boundary fence were shining search lights into the tents keeping them awake. She reports on Sunday 10 August 2008 at 6am officers played “Hi de Hi”, duck and dogs noises and alarm bells to wake them up. There is a second statement from another family which supports this report.

A few accounts state that on Monday 11 August 2008 at around 6am, a police van arrived playing loud music and a recording of what sounded like an American police station’s automated switchboard message. Officer NI 687 said it was time for the camp to pack up and leave and he would not turn the music off. He threatened one protestor with arrest who had asked for the music to be turned down. The van later departed playing “I fought the law and the law won”.

D. POLICE ACTIVITY ON THE DAY OF ACTION

35. The account below concerns the policing of the procession to Kingsnorth which was notified to the police and had conditions imposed on it. The following extract from an individual complaint to Kent Police made by Nigel gives a good overview of the policing of the march.

“Myself

I am a 57 year old consulting engineer, Parish Councillor, ex-school head of governors, stalwart of my local village community and sports clubs etc—as one of the search officers put it ‘clearly not a troublemaker, sir’.

As an engineer and scientist, and as a parent, I am however deeply concerned about the issue of global warming and am convinced of the gross error of constructing new coal-fired generation. I therefore decided to attend last days of the Climate Camp, the first such protest action I have taken since student days in the 1970s, and found it an inspirational gathering of highly intelligent, committed and likeable young people.

My position during the march

At an organizing meeting the previous day there had been a call for more volunteers as stewards for the march, and I put my name forward, as I am older, greyer, and experienced in dealing calmly and with good humour with both authority and with groups of younger people. I also have experience, albeit from 30+ years ago, of the situations which can arise on demonstrations, and I recognize the importance for safety of sensible stewarding and good communication.

At the start of the march itself, by accident of timing and through curiosity I found myself as one of the two stewards at the front, and during the wait to start in Dux Court Lane had amicable talks with some of the officers in charge of policing the front of the march, and we established that I or a fellow steward on the other side would act as a channel of communication both ways.

Policing of the march in general

The march, as intended, made its point through being beautiful, colourful, musical, and fun. It included families, small children, pushchairs, local residents, old people, and disabled people in wheelchairs. From sitting through organizing meetings, I knew that a consensual vital objective was to keep the march peaceful and ensure the safety of all these vulnerable people.

Although the numbers of police on the sidelines at junctions and other locations were grossly excessive and intimidating, I have to say that my personal experience of the policing of the front of the march itself was generally light-handed, reasonably intelligent, quite sympathetic and good-humoured. The officers concerned deserve fair recognition for this.

There were however several dangerous incidents about which I feel strongly and wish formally to complain, mainly on the basis that the actions of the police threatened the safety of the protestors, whom they had a public duty to protect.

Helicopter threats

On arrival at the power station gates, there was a festive ‘picnic’, with speeches, banners, music and dancing. The police presence in the immediate area, though numerous, was relaxed. The march was scheduled, according to the formal conditions laid down by the Chief Constable, to start to return to Climate Camp, by the same route, at 1.00pm, and this was indeed the intention.

At approximately 12.40 however, one of the police helicopters hovered low and announced (wording as accurately as I can remember) ‘You must disperse immediately or police horses, dogs and long-handed batons will be used against you’.

This was a total shock to all, including the officers on the ground. I went up to the principle officer with whom I had been liaising and asked what was happening, and he rolled his eyes and gave a non-verbal response which clearly indicated his despair at the stupidity of that announcement.

I told him that it was the worst possible thing to do. It would provoke anger, change the whole mood, and result in 'dispersed' groups of people all over the roads and footpaths, indistinguishable from other unconnected groups of protestors whom we could see in the distance being chased by police horses across the fields. It would make the return unsteerable and unpoliceable, and greatly endanger the safety especially of the vulnerable people involved. Our principle concern was to get all the protestors, as a group, safely back to the camp. I went round and said the same thing to several other officers who had been involved earlier, and they mostly agreed.

However, when I spoke to the policemen forming the line behind which we should have lined up to leave the location, they said 'you heard, you're not going to march back, now disperse'. There was clearly a complete breakdown of planning and communication among the police.

A stream of frightened people started to return, as the helicopter announcement was repeated twice, still before the agreed 1pm limit.

To the great credit of the marchers, despite this aggressive and frightening provocation, and despite the noise of the low-hovering helicopter which made communicating with the crowd almost impossible, the march re-assembled. A police decision must have been taken on the ground that this would indeed be the sensible way to proceed, and with police co-operation, most of the march moved off only a little after 1pm.

(I understand that a group of 19 decided to sit down in passive protest at the aggressive threats from the helicopter, and were arrested for obstruction, but from the front of the return march I had only a distant view of this across the field.)

The following day, on leaving, I spoke about the incident to one of the officers who I knew had been present, and he assured me that internal feedback had been made by the force on the ground regarding the totally unnecessary threats and the risk to safety which it created.

However, I believe that internal feedback is not enough. Were it not for the calm and sensible reaction of the protestors and the common sense of some of the police officers, the helicopter intervention could have led to complete chaos and possibly serious injury to many people had the mood of protestors and police altered.

To threaten a peaceful, compliant and vulnerable group of people, who were conforming exactly to the terms set out by the Chief Constable, with being forcibly dispersed by 'police horses, dogs and long-handed batons' was totally unacceptable. One can only speculate on the reason. It has been suggested that it was a continuation of the intimidation which had been seen all week around the Climate Camp, or even that it was intended to provoke the sort of trouble which would justify the massive police presence and expenditure. It was certainly deliberate, repeated, and in contravention of the agreed conditions of the march.

Arrest for snapping plastic tape

Early in the march, while on Radcliffe Way, the march was supposed to keep within the inner lane, inside a rather flimsy line of red plastic tape and bollards. The sheer weight of numbers meant that the tape was constantly giving way and people spilled into the outer lane (which was also blocked to traffic, so there was no danger). The stewards and police twice re-funnelled people back inside the tape, but eventually it became obvious that this was going to be impossible to maintain, and the officers at the front verbally agreed that as we were only about two hundred meters from the roundabout, we would just let it go and allow people to use both lanes.

A few minutes after that, there was a sudden commotion just behind me, and a man was being arrested. The crowd reacted, officers charged in, two horses waded into crowd, and a man was violently dragged away by police. The photograph in the Observer page 5 shows the incident, where the EGT officer has the arrestee's neck in an armlock. This vicious incident was also featured on Channel 4 and BBC television news, which provoked national comment. The whole episode was a sudden shocking interruption of a happy festive mood, and I would think, a terrible own-goal for the police's reputation.

We were later told that the man had been arrested for breaking the thin plastic tape, ie 'criminal damage'.

It is hard to comprehend that some officers were prepared to endanger the whole psychology of the march and police operation by making a violent arrest for snapping a piece of plastic tape, after it had been accepted that marchers could walk on both sides of it. The tape was anyway getting underfoot, tangled and tripping people.

I do not know what subsequently happened to the man, and I cannot bear witness to the actual snapping or the immediate arrest, but I was very close to the ensuing fracas, the violent dragging away by the neck, and use of police horses and mounted officers with raised batons within a such a crowd, at that point composed mostly of young girls.

An otherwise reasonably intelligent policing operation was nearly wrecked by the hot-headed attitude of some individual officer, the arrestee in question probably has neck injuries as a result of his violent handling, and innocent people's safety was severely endangered by the violence. All for snapping a piece of plastic tape.

[The man was subsequently de-arrested on the scene.]

Refusal of permission to leave the march

Toward the end of the return march, once the front body had safely turned back into Dux Court Lane, I remained on the roundabout with Radcliffe Way as a steward, to see the remainder of the march safely home. The end of the march was by then a wet and bedraggled trickle. A few of the returning protestors, perhaps one every half minute, wished to make a short diversion left into Hoo to the local shop.

Stationed on the roundabout was a squad of Metropolitan Police officers, some of whom were clearly in a very bad mood. For no apparent reason, shortly after I arrived, a few of them took up position across the pedestrian crossing on the Radcliffe Way side of the roundabout, and refused to let any further people go down into the village. The officer leading this action was very large, very angry and shouting. I explained calmly to him that the protestors were entitled to do this under the Chief Constable's written terms 'Anyone may leave the march at any time, but will not be permitted to rejoin'. If he wished to prevent them returning before the end of the march, although unreasonable, he would be entitled to do so, but he could not stop them leaving.

His response was that as some marchers had earlier taken a return route from a road junction way back on the march through the village, we had broken the terms of the march and so the police could too. He would not give any other justification or the legal power under which he was obstructing entry to the village. I and some others did however negotiate with a senior officer present that anyone clearly leaving the camp for good, could proceed into the village."

There were many accounts concerning the policing of the march returning from Kingsnorth to the camp site. The examples below concern the tail-end of the march (at this point, mainly parents and children, some with pushchairs and some on bikes and at least one person in a wheelchair), some of whom had sought to leave to go into Hoo (see above account), shortly after passing the Golf Club search point:

"We were suddenly aware of police behind us as they began moving us on, shouting aggressively for us to hurry up. With no warning immediately they said this they began using arms and bodies to push forward. There was a collection of officers 4 mounted police and vans filling the road immediately behind us. We attempted to negotiate our position with our cold, wet and tired children. My wife and I became separate from [our friend] and the children on the bike [containing one of his children and his friend's child] and the police continued to intimidate us, my son, in my arms was jostled [11 months old] and was crying. We were separated from my daughter and we managed to move through the police line to see an officer pulling the bike forcibly from the road. All the children were extremely distressed, and my wife was shouted at officers to stop and appreciate they were being unreasonable. I was grabbed by the throat and held forcibly so I could barely move by an officer wearing leather gloves. My son was in considerable distress, he was being jostled, my wife was attempting to reach him to comfort him, police continued to push and argue with us..." Richard

"...they then barged the police line past us and demanded I move the large bike and trailer on to the pavement without giving us time to move safely together, grabbed the bike and tried to pull it onto the pavement with me and two kids still on it, while I protested that my leg was trapped...the police continued to shout at our group when we were sat by the road together waiting for A to recover and the kids to stop crying....Legal support saw it at a distances and were stopped from coming to help." John

36. The Kent police's press announcement said of the march:

"We worked closely with Climate Camp representatives to agree a safe route and reasonable timescales for the march and subsequent assembly, taking into account that the marchers included children and people with mobility problems... The march kept to the timings, so we were able to keep disruption to local people to the minimum possible."

37. One further aspect concerns the use of Section 50 introduced to deal with antisocial behaviour being used to obtain names and addresses of protestors. For example, individuals on a raft complied with directions to leave the water and were specifically told that they were not being arrested by the river police. On returning to the jetty, different officers threatened to arrest them if they did not give their names and addressees under section 50.

September 2008

PROPERTY LIST OF ITEMS SEIZED DURING THE WARRANT EXECUTED
AT CLIMATE CAMP ON 31/07/2008

1.	Description	Golf club
2.	Description	Blue bag containing 9 radios
3.	Description	Metal link chain and padlock
4.	Description	Bag containing lots of packets crayons/chalks, 3 x darts
5.	Description	Black book containing believed to be plans to commit damage
6.	Description	Plastic bag containing tub of large metal nails, climate camp 2008 documentation and schedule, personal radio

7.	Description	Floral Phillips screwdriver, small floral hammer opening into floral Phillips screwdriver
8.	Description	Rope and dollies
9.	Description	Wetsuit
10.	Description	9 x cardboard boxes containing coveralls and masks, bits of wood, quantity of carpet, orange bad with chains and d lock, grey box containing grappling hooks 4 carrier bags of various tools carpet squares and superglue, two parcels of digging implements and 2 scledge hammers, roll of rope 2 x tyre welds and spray paints, 3 board games "War on Terror"
11.	Description	Thick latex gloves, 8 x flares, 4 x smoke grenades
12.	Description	1 x saw, 2 x claw hammers
13.	Description	3.47m scaffold pole, Tesco bag containing rope, 3 x scaffold spanners, stanley knife, jubilee clips, screwdriver
14.	Description	Reels of rope and numerous metal stakes
15.	Description	1 x bundle of rope
16.	Description	2 x boxes hard hats, orange rope, cable ties, hooded white suits, disposable gloves, tape, paint and markers
17.	Description	Superglue in tube, bar and rope
18.	Description	Bag containing ropes
19.	Description	Marker pen
20.	Description	Nails
21.	Description	Model of power station, station, aerial photographs of power station and CD, 2 x boxes of maps of power station, 6 x painting overalls
22.	Description	Five shields
23.	Description	Items used for damage
24.	Description	Hammer with one hook, blue bolt cutters, TRT orange saw, town and country gloves, white duct tape
25.	Description	Green foam mat (4' x 6'), smaller foam mats (green) with Amanda written on, black tubing containing map.
26.	Description	Black d-lock, green netting wire, 8 cans of spray paint assorted colours, white bag containing pain brushes and masking tape, bag containing metal poles and rope, white bucket which contained spray cans, padlock and chain, pair of pliers, 4 cable ties all contained in blue bag.
27.	Description	2 x 3 metre grey coloured waste pipe, 1.97cm grey coloured waste pipe, 1 x grey waste pipe elbow
28.	Description	Green spraycan
29.	Description	Wooden mallet
30.	Description	Length of white nylon rope
31.	Description	Scaffold corner base adjustor
32.	Description	2 x yellow handled saws
33.	Description	2 boxes of coach bolts in yellow carrier bag, white carrier bag containing rope
34.	Description	Various rope

APPENDIX 2

ILLUSTRATIVE VIDEO LINKS

1. POLICE USE OF SEARCH POWERS

1.1 BBC report on the climate camp. Stop and search can be seen being carried out on the first days of the camp. Legal observer also searched. BBC news wrongfully reported that the blanket stop and search under s.1 was brought in after the warrant search and arrests as this policy existed from the start.

<http://video.google.com/videosearch?hl=en&q=climate%20camp%20raid&um=1&ie=UTF8&sa=N&tab=wv#q=climate%20camp%20monday%202008&hl=en&emb=0&start=20>

1.2 Vision on TV: Police stop and search takes around two hours at this point. Protestor complaining over length of time it has took. Two protestors allowed through on "discretion" by Inspector when they challenge the search powers. Over 100 protestors leaving search site with no police resistance and not having been searched.

<http://uk.youtube.com/watch?v=SjN3xBcJKIU&feature=user>

1.3 BBC News reporting on blanket searching under s.60. Protestor complaining about being searched three times in less than 1.30 hr. Local resident complaining about being stopped jogging and interrogated surrounded by six police. Another local complained being stopped three times going down his own road.

<http://news.bbc.co.uk/1/hi/england/7547557.stm>

1.4 Protestor being told he has to be searched or he can not go to the camp and would have to go back up the road. Told “it is the order of the Country we’re good at queuing” and told to queue. As a “condition of entry you have to be searched”.

<http://video.google.com/videoplay?docid=-7583444356594635195&ei=ZYbCSKrbJYyuiALwzczDBQ&q=climate+camp+stop+and+search&vt=lf>

1.5 Climate campers detained for refusing to be stopped and searched as they leave climate camp at the main search area.

<http://video.google.com/videoplay?docid=-495758946553528936&ei=VGK8SOv0LoyqiwLFoNXzDA&q=climate+camp+stop+and+search&vt=lf>

1.6 Heavy handed policing used to force protestors to be searched at the main search area including on the legal observer: <http://uk.youtube.com/watch?v=DMLaJSmDGLI>

Summary

- Seeking to obtain names and addresses when the person searched has declined to give this information.
- Asserting that individuals with foreign accents will be arrested on suspicion of immigration offences.
- The use of section 50 (anti social behavior) without adequate grounds relating to the individual.
- The frequent assertion of a need for a name and address to collect property seized despite it being well-established early on during the Climate Camp that this was not necessary.
- Threatening arrest for theft of bank cards, phone or items being unloaded and transported for the camp with a name on.

2. POLICING TACTICS USED ON LEGAL OBSERVERS

2.1 Vision on TV: Legal observer being blocked by police to the main search area.

<http://uk.youtube.com/watch?v=Q8iajCJMgow&feature=related>

2.2 “kent online” footage: Legal observer being arrested:

<http://uk.youtube.com/watch?v=DMLaJSmDGLI>

3. THE SEIZURE OF PROPERTY

3.1 BBC report on the climate camp. Stop and search can be seen being carried out on the first days of the camp. Legal observer also searched. BBC news wrongfully reported that the blanket stop and search under s.1 was brought in after the warrant search and arrests as this policy existed from the start.

<http://video.google.com/videosearch?hl=en&q=climate%20camp%20raid&um=1&ie=UTF8&sa=N&tab=wv#q=climate%20camp%20monday%202008&hl=en&emb=0&start=20>

3.2 Stories from protestors filmed by vision on TV off what they had confiscated by police:

<http://uk.youtube.com/watch?v=BfaCdQHnIs0&NR=1>

3.3 Bicycles being taken from secure police area with no explanation. Even though protestors told they would be safe there.

<http://uk.youtube.com/watch?v=T43jG5v5EhE&feature=related>

- On the Individual (particularly the effect on the individual).
- From site under warrant.
- From vehicles.

4. POLICE ACTIVITY AROUND THE CLIMATE CAMP SITE

4.1 BBC news footage of K5 raid. Police baton can be seen to be used against protestors. When police entered through the back gate at K5 Gate the police with riot shields can be seen using the shield to push back protestors in one case hitting one protestor in the head forcefully.

<http://news.bbc.co.uk/1/hi/england/7541274.stm>

4.2 Police using batons at K5 raid. Police numbers can be heard shouted from police officers who used excessive force as can be seen on the footage.

<http://video.google.com/videosearch?hl=en&q=climate%20camp%20raid&um=1&ie=UTF-8&sa=N&tab=vv#>

4.3 BBC South East: Heavy handed policing. Police using batons at K5 raid. Police numbers can be heard shouted from police officers who used excessive force as can be seen on the footage.

<http://video.google.com/videosearch?hl=en&q=climate%20camp%20raid&um=1&ie=UTF-8&sa=N&tab=vv#>

4.4 View from red van window smashed by police.

<http://video.google.com/videoplay?docid=-4260766749663007871&ei=JjC8SJbUIZfcjQKaqrn9DA&q=climate+camp+monday+2008&vt=lf&hl=en>

5. POLICE ACTIVITY ON THE DAY OF ACTION

5.1 *Orange*

5.1.1 Film includes the carnival. Near the end shows the 20 protestors who stayed at the gate removed by many police with riot uniform helmets.

<http://uk.youtube.com/watch?v=G49MNVqkZ3w&feature=related>

5.1.2 Some pushing and shoving on the carnival procession by police and protestors.

<http://uk.youtube.com/watch?v=Jzc65VtPk3k&feature=related>

5.2 *Green*

5.2.1 SKY news. Green groups can be seen moving across fields, police can be heard clearly shouting “move back or force will be used” and scuffles breaking out. A legal observer can be seen to be searched by many police. Blue group rafts can be seen being stopped. Batons on police can be seen drawn on many occasions and a protestor can be seen hit by the police with a baton when he is on the ground and seen with a head injury as a result.

<http://uk.youtube.com/watch?v=xUtFmA8aKys&feature=related>

5.2.2 Protestor beat on the ground with a baton also on SKY highlight:

<http://uk.youtube.com/watch?v=WZyHmZqsHBw&feature=related>

5.3 *Blue*

Blue groups attempt to get out to water

<http://uk.youtube.com/watch?v=qmwoVnnvhIk&feature=related>

September 2008

Memorandum submitted by the Countryside Alliance

OVERVIEW

- As President of the Countryside Alliance I have been closely involved with eight major demonstrations which have taken place either within Parliament Square or which have passed through it. The Alliance has, therefore, perhaps unique experience of demonstrations in the vicinity of Parliament over a number of years. All save two were totally peaceful. All involved close co-operation with the police. Where there were disturbances we believe that co-operation had broken down.

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- The principal demonstrations were:
 - December 2000—A vigil held in Parliament Square during Second Reading of Hunting Bill in the Commons.
 - 15 May 2002 to 22 September 2002—A round the clock vigil in Parliament Square.
 - 22 September 2002—The Liberty & Livelihood March. 407,791 people march, with over 100,000 “marching in spirit”. This is the largest civil liberties march in modern history culminating in Parliament Square.
 - 16 December 2002—A march from Hyde Park Corner to Parliament Square for a mass lobby of Parliament, to mark the Second Reading of the Government Hunting Bill in the Commons.
 - 29 to 30 June 2003—Women’s Vigil over two days to coincide with the Report Stage of the Hunting Bill in the Commons.
 - 9 July 2003—Demonstration involving working dogs, owners and handlers in Parliament Square during the Hunting Bill’s Third Reading in the Commons.
 - 15 September 2004—Demonstration in Parliament Square, arranged at short notice to coincide with All Stages of the Hunting Bill in the Commons.
 - On only two occasions did any public disorder occur. The fact that the vast majority of demonstrations were peaceful and orderly indicates that demonstrations involving Parliament Square do not of themselves pose any greater risk of trouble than demonstrations elsewhere. On the 16 December 2002 disturbance occurred as a direct result of the police, without prior warning, trying to prevent the march from reaching Parliament Square. On the 15 September 2004, when more serious disturbances occurred in Parliament Square, problems of crowd control were exacerbated by inadequate police communications on the ground and some heavy handed tactics. Stewards who identified trouble makers, unrelated to the protestors, who appeared to be inciting an otherwise peaceful crowd, were unable to liaise with police quickly enough to have them removed effectively. There was inadequate communication on the ground—the Countryside Alliance having been refused permission for loud speakers in all corners of Parliament Square in order to communicate with the crowd. Where organisers and police work together and the policing is appropriate and sensitive then trouble is rare.
 - The 2005 Serious Organised Crime and Police Act, in respect of Parliament Square has proved ineffective and the Government’s intention to repeal these provisions is welcome. The ban on protest without police authorisation (the right to assembly under the European Convention on Human Rights) is unacceptable in a democracy.
 - The repeal of these provisions however, should not be used to “harmonise” the differing regimes in respect of marches and static assemblies under the Public Order Act 1986. Such a move would seem inevitably to lead to considerably more control of assemblies across the UK and would place unnecessary limitations on the right to protest. The differences in the existing regimes reflect practical considerations between a moving and static protest.
 - Harmonisation could result in the police being able to arrest someone simply for handing out leaflets about a local issue on their high street, even if he was law abiding in every other respect. This is clearly unacceptable.
 - A requirement to give notice of protests, in the designated area or elsewhere, is unacceptably bureaucratic and threatens to criminalise spontaneous protest and to make people feel unable or unwilling to participate.
 - Censorship of placards/banners, allowed under the 2005 legislation, is absolutely unacceptable unless there is a clear offence of incitement to violence or racial/religious hatred.
 - There is a substantial, and growing, array of legislation and provisions already in place, giving the police powers to control protestors throughout the UK. Around Parliament the Sessional Orders are in place to ensure access by parliamentarians and byelaws exist to protect the “World Heritage Site” of Parliament Square.
 - The draft Constitutional Renewal Bill currently being considered by a Joint Committee proposes to remove the additional restrictions governing protests in the vicinity of Parliament as imposed by the 2005 Serious Organised Crime and Police Act. The purpose of this Bill must be to re-engage people with the process of government and to encourage participation in our democracy, not to isolate Parliament from the voice of the people and legitimate protest. It is hard to see how the existing law is compatible with human rights and the proper operation of democracy.
 - Lastly, Parliament is world famous not only as a building but more importantly as the “mother of parliaments”. Free speech and the right to peaceful protest is an essential prerequisite of a healthy democracy. It is important that these freedoms are seen and understood not just by our own citizens but by those who visit this country, sometimes from countries which do not enjoy these freedoms. However unsightly a protest may be the right to protest must be protected. Parliament’s status as a tourist attraction is incidental to its primary purpose and the rights and freedoms which it embodies.

 REPEALING THE CURRENT LAW

- The provisions of the Serious Organised Crime and Police Act 2005 are not a reasonable way to deal with demonstrations around Parliament. They are too restrictive of the rights of freedom of expression and assembly and have proven to be ill-defined and hard to implement on a practical level, as legal cases have demonstrated. Both the nature of conditions that can be imposed on demonstrations and the circumstances in which conditions can be imposed are too broadly defined. The rules should revert to those of the Public Order Act 1986.
- The powers under the Public Order Act 1986, the byelaws relating to Parliament Square Gardens and the requirements placed upon the police under Sessional Orders provide sufficient powers to the police to deal with demonstrations in the vicinity of Parliament.
- Parliament as the seat of our democracy is rightly the focus of protest. It is imperative that the right to free speech is protected and I am unpersuaded that the area around Parliament should be treated differently than anywhere else in the country. Demonstrations, under the 1986 Public Order Act and other legal provisions give the police ample powers to ensure the security of the public and Parliament and at the present there is no case for additional police powers.
- It should be noted that the current area designated under the 2005 Act does not simply extend to Parliament and Parliament Square but also covers civil service and security service buildings. This was not what the 2005 Act was supposed to cover and indicates a lack of proper distinction between Parliament and Government and is a far greater area than that which would be required to ensure the protection and proper functioning of Parliament. It is unacceptable, for example, that people such as Maya Evans and Milan Rai should face criminal sanctions for protesting outside Downing Street by reading out names of Iraqi and British dead killed in the invasion and occupation of Iraq.

ACCESS

- We agree that the business of Parliament must be allowed to continue unhindered and that the police need appropriate powers to ensure that this takes place. The Sessional Orders, which are renewed each session at the Opening of Parliament, require that the Commissioner of the Metropolitan Police ensures that access to Parliament is kept free. Although the Sessional Orders do not confer any special powers of arrest on the police, they are sufficient when taken together with other police powers, including under the Public Order Act 1986, to deal with all ordinary occurrences.
- In considering whether the police actually need additional powers to enforce Sessional Orders, it is important to remember that the Public Order Act 1986 already contains the power for a senior police officer to impose conditions when he or she considers that an assembly may cause “serious disruption of the life of the community”. This power would be activated if any serious or prolonged disruption to parliamentarians was reasonably envisaged. Given the variety of access points to the Palace of Westminster and other parliamentary buildings, the obligations on the police under Sessional Orders, when taken together with existing police powers, are more than sufficient to ensure the free movement of parliamentarians and their staff to and from Parliament and to ensure the continued functioning of Parliament during protests. The arguments of the police for additional/specific powers are unfounded in our opinion.
- In the case of persistent obstructions, general powers such as the power to arrest for obstructing a police officer in the execution of his duty, for breach of the peace, or for public order offences would operate. For larger gatherings, the Public Order Act 1986 provides powers to prevent disruptions to the life of the community, for example. In addition, the Greater London Authority has authority over the central gardens and Westminster City Council has responsibility for the pavements, which can be exercised in the event of serious obstructions. Existing highways legislation also gives extensive powers to the police to ensure that highways are kept clear.
- While understanding the importance of ease of access to parliamentary buildings and especially for divisions, we would suggest that rather than unduly banning or restricting demonstrations Parliament might consider other options to respond to the very rare occasions when a protest might render access to Parliament less easy. Parliamentarians have various options for accessing Parliament which do not all access onto Parliament Square itself. It is also worth remembering that any sizeable assembly due to take place in Parliament Square, of the type capable of causing a hindrance to parliamentarians, would be widely publicised in advance, allowing the opportunity for suitable arrangements to be made by the relevant authorities in Parliament.
- Accepting that the right to demonstrate in a peaceful and responsible way is a key human right and aspect of democracy, Parliament could consider special provisions where a particularly large demonstration has restricted access to the Palace via one or more entrances involving for example greater flexibility in the timing and duration of divisions.

NOISE

- The ban on loudspeakers in the designated area is unacceptable because it makes protest ineffective. It is now almost impossible for people to hear speeches at demonstrations or for large groups of people to be addressed by organisers. This is a significant infringement on freedom of assembly. It also restricts the ability of peaceful protesters to co-ordinate, express themselves collectively and protest effectively.
- There is no doubt that excessive noise impinges on the work of those working within the parliamentary estate. This however is a small price to pay for free speech and it does not prevent work continuing. Moreover, both chambers are sufficiently removed from Parliament Square that it seems unlikely that noise from the Square would make sitting impossible. The same would apply to many other parts of the Palace.
- Moreover the police have powers under the 1986 Act to place conditions on the location and duration of a static demonstration which can be used to ensure that the use of loudspeakers and any inconvenience caused is managed. In any case written permission of the Mayor of London is required in respect of Parliament Square Gardens for the use of a loudspeaker. What is required is a proportionate and proper use of existing powers not draconian restrictions which undermine basic democratic rights.
- If noise is the primary concern surely a possible solution would be, in addition to the police's existing powers to impose restrictions under the POA on place and duration, for the reasons given in that Act, to allow the police to specify the duration of noise above a certain volume by mechanical device in a given place. It should however be noted that the existing byelaws already forbid the use of loudspeakers on Parliament Square Gardens and there is only a narrow area of pavement, for which I believe Westminster Council is responsible, where such noise could be made without permission. I would also question whether, as the police have suggested in evidence to the Joint Committee on the draft Constitutional Renewal Bill, a restriction on noise etc using the existing Public Order Act provisions when imposed on a whole assembly would be disproportionate when enforced against a single person breaking that restriction when part of a bigger group. It would also be a concern if this review, in relation to Parliament Square, were to result in further nationwide restrictions. I am unaware of this being a pressing problem nationwide but can see that due to the unique status of Parliament the issue of a continuous noise problem might be a problem, as opposed to a short term disruption on a given day.

NOISE—IMPOSING CONDITIONS BASED ON SERIOUS DISRUPTION

- In evidence to the Joint Committee on the draft Constitutional Renewal Bill the police stated that “serious disruption”, as found in the 1986 Public Order Act, sets a high threshold for the level of noise that is necessary before they have power to intervene. They seem to have answered their own point. If the disruption is not “serious” why stop it? Moreover the ordinary powers of arrest and Common Law breach of the peace, not to mention causing alarm or distress and a host of other powers are more than sufficient. Again I do not see why Parliament and its environs represent some special case and would object to any tightening up of the law throughout the UK.

PERMANENT PROTESTS AND ENCAMPMENTS

- While unsightly and possibly irritating to some parliamentarians, tolerating longer term protests is a small price to pay when what is at stake is a fundamental democratic right. Byelaws already exist in respect of Parliament Square Gardens. It is also against the law to block footpaths and public roads. It would seem that the laws and police powers already exist to prevent permanent encampments on Parliament Square or indeed elsewhere. In respect of permanent protests, such as that mounted by Brian Haw, there appears to be a lack of willingness by the authorities to act not an absence of laws which allow them to do so. Between the Mayor of London's byelaws, and other legislation the police could remove him. Perhaps the reluctance of the respective authorities to co-ordinate and use their powers is a healthy indication that the right to protest is seen as more important than legal niceties, or the aesthetics of the area around Parliament. The Countryside Alliance throughout the summer of 2002 held a longstanding vigil and a variety of themed protests, all of which were peaceful and admirably tolerated by the authorities although there must be doubt as to whether they were all within the strict letter of the law.
- The Government has stated that “we need to ensure that all groups have the opportunity to protest peacefully at the seat of the UK elected Parliament”. Indeed former Prime Minister Tony Blair famously said in a speech at the George Bush Senior Presidential Library on 7 April 2002: “When I pass protestors every day at Downing Street, and believe me, you name it, they protest against it, I may not like what they call me, but I thank God they can. That's called freedom.”
- However, the Government also wants this to be consistent with Parliament Square as a World Heritage site and visitor attraction. The right to protest is as much a part of that “heritage” which should be celebrated, as the buildings. Parliament Square is a “living” place and the presence of

protestors is in itself an example to the world that we are a free and democratic society. While Brian Haw's protest is aesthetically unpleasing it has commanded a huge amount of respect worldwide and is an attraction for visitors. As I have said above the freedom to protest is more important than any considerations which relate to Parliament and its environs as a tourist attraction. The right of protest must be safeguarded regardless of World Squares or indeed any other proposals.

- When discussing the Serious Organised Crime and Police Act (Designated Area) Order 2005 on 14 July 2005, Lord Dholakia reminded the House of Lords of the words of Lady Amos, who had said, in response to questions on her Statement about the terrorist attacks in London on 7 July: "On the issue of democratic liberties, which was raised by the noble Lord, Lord Strathclyde, I cannot think of any other country in the world where the demonstration that is going on right outside Parliament this afternoon—right outside my window—would be going on. We should take immense pride in that." [Official Report, 11/07/05; col. 905].
- Following on from Lord Dholakia, Baroness Williams of Crosby argued: "Parliament is properly described as 'the people's house'. It is the house of the representatives of the people; it is not a house that belongs to the Government, but a house that belongs in the end to the people. Therefore, there has to be some way in which the people can have access or enable their feelings to be heard by Parliament. That is a duty on Members of Parliament, as much as members of the Government, and I find it extraordinary that we should be segregating members of the public from those that they elected." [Official Report, 14/07/05; col. GC 154].

LONE DEMONSTRATORS

- The only way a lone demonstrator might be a policing issue could be the continuous use of a megaphone and noise. Clearly if he was abusive, threatening etc he could be arrested under existing Statute and Common law and the police have the power to take action. It seems fundamentally wrong for the police to have powers in respect of an individual beyond those existing where his actions become unlawful. Noise may be an issue but otherwise I can see no need for the police to have additional powers. In respect of Parliament Square there are, as I have already mentioned, existing laws which make it virtually impossible to demonstrate lawfully.

POWERS OF ARREST AND CONFISCATION

- The Police in evidence to the Joint Committee on the draft Constitutional Renewal Bill indicated that they would like powers to remove loudspeakers from a protestor prior to arrest. This is clearly contrary to human rights. Unless some offence can be identified you cannot take away people's possessions prior to arrest. Assuming the protestor was peaceful and lawful then the police should have no right to intervene. If the law is changed in respect of extreme noise then they could arrest and following arrest equipment removed. I fail to see what the police were driving at. In theory the Countryside Alliance's loudspeaker system was illegal on 15 Sept 2004, as we did not have the written consent of the London Mayor under the byelaws and as such the police could have acted, in accordance with the law. The police have all the powers necessary to "end serious disturbance pending court proceedings" against those duly arrested and charged. If the law was modified to deal specifically with noise in Parliament Square the powers of arrest etc would apply in the usual way. Once again it would be a concern if such powers were extended nationwide.

PUBLIC SAFETY

Section 14 of the Public Order Act 1986 allows a senior police officer to impose conditions on a public assembly if he reasonably believes the assembly may result in:

1. Serious public disorder.
2. Serious damage to property.
3. Serious disruption to the life of the community.
4. Or, that the purpose is to coerce by intimidation.

However, conditions may only relate to:

Place

Duration

Number of persons who may assemble

Failure to comply with these provisions knowingly and within one's control is a criminal offence. It is interesting that Parliament uses the word "serious". I assume it was deliberate to prevent restrictions on protest where any disruption etc was not serious and to prevent the police using their powers to restrict free speech etc.

There are also Common Law powers of arrest for breach of the peace etc. I see no reason why the police cannot act under the existing law.

Any further tightening of the law would seem incompatible with human rights.

SECURITY AND PUBLIC SAFETY

- No evidence has been provided that the security risk has been reduced around Parliament as a result of the 2005 Act. A public demonstration poses no more of a security risk than large numbers of tourists. Moreover, the scope of the 2005 Act, which criminalises lone protesters, undermines the official justification. It is illogical to suppose that a single person demonstration could pose a security risk or indeed hinder the business of Parliament; or compromise the equal right of protest.
- Under the 1986 Public Order Act the police already have specific powers in respect of public safety and these are more than adequate, coupled with powers of arrest.

PRIOR AUTHORISATION

- Sections 11 to 14 of The Public Order Act 1986 cover public marches and public assemblies. A march involves people moving along a route although the law does not define a minimum number of persons who constitute a march. An assembly is defined as two or more persons in a public place in the open air. It was under the 1986 legislation that the various Countryside Alliance demonstrations took place.

Marches

- Under Section 11 organisers of marches must give advance notice to the police. Notice must be given six clear days in advance, in writing and must include the date, time, proposed route and name and address of the organiser.
- Notice need not be given if it is not reasonably practicable to do so as in the case of spontaneous marches and if a march is planned at short notice then the organiser is required to deliver notice as soon as reasonably practicable.
- A senior police officer can impose conditions if he reasonably believes the procession may result in:
 1. Serious public disorder.
 2. Serious damage to property.
 3. Serious disruption to the life of the community.
 4. Or, that the purpose of the march is to coerce by intimidation.
- Failure to comply with these provisions knowingly and within one's control is a criminal offence.
- Under Section 13 the chief officer of police may apply to the local authority for an order banning a march if he reasonably believes imposing conditions will not prevent serious public disorder. Such an order requires the Home Secretary's consent. In London the Commissioner of the Police of the Metropolis may seek consent for such an order from the Home Secretary directly. It is a criminal offence to participate in a banned march.

Assemblies

- Unlike marches there is no requirement to give prior notice to the police. In practice organisers usually consult the police to ensure a safely managed event.
- Section 14 does allow a senior police officer to impose conditions on a public assembly for the same reasons as given for marches above. However, conditions may only relate to:
 1. Place
 2. Duration
 3. Number of persons who may assemble
- There is however no power to ban a public assembly, although under Section 14A of the Public Order Act the Chief Officer of Police can apply to a district council for an Order prohibiting the holding of a trespassory assembly ie one which is on land to which the public has no, or limited right, of access, and where it is likely to be held without permission of the landowner and is likely to result in serious disruption to the life of the community. A protest in Parliament Square Gardens would be a trespassory assembly.
- I can see the arguments in favour of it being a requirement to notify the police of any assembly just to enable the police to prepare, allocate resources, and make an assessment of the appropriate levels of policing and the likelihood of public order issues, especially where a counter demonstration may be likely in the same vicinity. However, this should be a "where possible" provision and not a requirement, the absence of which would render an assembly illegal. I am

unaware that the absence of this requirement for assemblies elsewhere in the country has proved problematic and why Parliament and its environs should be subject to a different regime. It is of course possible the police want notification to be compulsory UK wide which must be undesirable and seems incompatible with free speech and freedom of assembly. I would refer you to the case of *Bukta and Others v Hungary* (2007) in which the European Court of Human Rights found that: “in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.

July 2008

Memorandum submitted by Elinor Croxall

1. *Are current legislative measures which restrict protest or peaceful assembly (such as SOCPA 2005 and the Public Order Act 1986) necessary and proportionate to the rights to freedom of expression and peaceful assembly?*

No. SOCPA 2005 specifically restricts freedom of expression and peaceful assembly. As acutely demonstrated by Mark Thomas and other activists the legislation is absurd and has been introduced to specifically restrict protest considered unfavourable by the government.

To what extent should peaceful protest be facilitated by the State?

Protest is a key principle of freedom of speech, it is an asset to democracy.

What limits, if any, should be placed on the right to protest and why?

None. Other legislation is in place to deal with issues such as racism.

Should specific limitations be placed on the ability of certain groups to protest? If so, who and why?

No.

Should the right to protest be more strictly curtailed in relation to certain geographical areas? If yes, where, why and what limits would be acceptable?

No—why would this be necessary? where are the boundaries? and what do these represent? Freedom of speech should not be restricted.

The Government proposes to repeal sections 132–8 SOCPA dealing with protest around Parliament and invites Parliament to consider whether additional provision is needed to ensure that Parliament’s work is not disrupted by protests in Parliament Square. What, if any, additional provision is required?

Parliament’s work should rely on listening to the people and political protests—the closer the better.

In what circumstances would it be permissible for the State to take pre-emptive action which curtailed protests?

Never. There are other laws to deal with violence, racist behaviour etc.

2. *How do existing common law and legislative police powers (such as the common law power to prevent a breach of the peace, stop and search under the Terrorism Act 2000 and the use of force) operate in practice?*

Stop and search in particular is used to intimidate and is used for political government motives—this should be abolished under the Terrorism Act 2000.

Are existing police powers necessary? Are more or fewer required?

Existing police powers should if anything be reduced. There is adequate provision of power without SOCPA—has this prevented any terrorist acts?

Are counter-terrorism powers appropriately used in the policing of protests?

They are not appropriately used. Most protesters are not terrorists.

Counter terrorism powers would be better spent building productive relationships with other countries and cultures, not trying to exploit them. Freedom of Expression is a fundamental and internationally recognised human right.

Do existing police powers pay sufficient regard to human rights?

No.

Are there positive examples of good practice in the policing of protests (whether in the UK or in other countries)?

When SOCPA and Terrorism legislation are NOT used. Passive policing at large demonstrations—such as Climate marches. No cameras please—another intimidation tactic—these are taking photographs of activists NOT terrorists.

3. *Can the competing interests of public order and the right to protest be reconciled?*

Yes.

In what circumstances may actions during protests be justifiably criminalised?

When they are violent, cause damage, incite racial hatred...all things covered outside of terrorism legislation.

Does existing criminal law and practice pay sufficient regard to human rights?

No.

Are complaints about the handling of protests (including police action during protests) adequately addressed?

No—eg Brian Haw being assaulted recently in a police van.

How should the balance be struck between the rights of protesters and other competing interests (such as the rights of others or the prevention of disorder or crime)? Would legislative changes be desirable to strike a better balance between competing rights, or is the current legislative framework about right?

Remove certain legislation—fundamental human rights should be respected—ie Article 9, 11, 19 and 20 of the Universal Declaration of Human Rights. Since Blair was Prime Minister these have all been breached.

May 2008

Memorandum submitted by Drax Power Limited

INTRODUCTION

1. Drax Power Limited (“Drax”) welcomes the opportunity to contribute towards the Joint Committee on Human Rights’ inquiry into the human rights issues arising from policing and protest.

2. Drax is the owner of Drax Power Station, the largest power station in the UK. Drax considers this an important opportunity to share with the Committee some of the practical challenges that it has faced, and continues to face, from radical environmental protestors who have made it clear that their intention is not only to trespass onto Drax’s land but also to shut down the power station.

3. Drax wishes to make clear at the outset that it recognises and supports the importance of freedom of expression and peaceful assembly in a democratic society. As such, it wishes to be clear that its concerns relate not to what happens outside the power station’s perimeter fence in terms of protestors exercising their lawful right of peaceful protest. Rather, its concerns relate to the threats from a radical minority of protestors who are determined to enter the power station and shut it down.

DRAX'S SPECIFIC CONCERNS REGARDING TRESPASS BY PROTESTORS

4. Before setting out the details of Drax's experience of trespass and protest, it may be helpful to set out Drax's specific concerns regarding trespass onto the power station site by protestors.

5. Although Drax has invested significantly in security measures in recent years, there remains a risk that radical protestors who are intent on shutting the power station down may have a reasonable chance of success.

6. Drax's main concern about the power station being shut down is that it would have a dramatic effect on the nation's electricity supply. Drax is the largest power station in the UK and provides enough electricity to meet 7% of the UK's electricity needs. Consequently, it is a critical piece of the nation's infrastructure and its loss, even for a matter of hours, would likely have a major impact on the nation's electricity supply. Whilst it is difficult to predict the duration or geographical extent of the disruption, it is probable that one or more geographical regions of the country would completely lose their electricity supply.

7. Drax also has very real concerns about the safety implications of having protestors on its site, especially in circumstances where they are intent on causing damage to the site. The power station site is hazardous to those who have not been trained in the company's health and safety procedures and there is a real risk that protestors may expose themselves to death or physical injury. Drax also fears that the protestors' actions in this regard might put its employees, contractors and visitors at risk.

8. Drax is also concerned that if the power station is shut down, it will suffer large and irrecoverable financial losses.

9. Drax has been the target of environmental protests three times in the last two years, in August 2006, September 2006 and in June 2008. Its experience of being on the receiving end of protest on these occasions is set out below.

CAMP FOR CLIMATE ACTION IN AUGUST 2006

10. In August 2006, Drax was targeted by the Camp for Climate Action. The Camp's website revealed that whilst many of the planned activities appeared to be lawful, some of the organisers had more threatening intentions. According to the website, one of the main purposes of the Camp was to use direct action to shut Drax Power Station down by means of mass trespass and protestors locking themselves to the power station equipment. Worryingly, the organisers seemed to anticipate violent clashes with the police and widespread arrests. It seemed clear that although many protestors were planning to take part in a week of peaceful protest, a more radical contingent was planning to risk clashes with the police to shut the power station down.

11. For the reasons that are set out in the previous section, Drax found the protestors' threats extremely concerning and responded by seeking an injunction from the High Court (a) preventing the Defendants from entering or remaining upon any part of its land without its consent (b) preventing the Defendants from causing or encouraging anyone else to do the same and (c) preventing the Defendants from using the public footpath which runs around the perimeter fence for the purpose of entering the power station site. The injunction defined the "Defendants" as the two named spokespersons for the Climate Camp and any "person and persons entering or remaining without the consent of the Claimant on the land the subject of this order or any part of that land or causing or encouraging people to do so"⁴². Although careful consideration was given to the possibility of giving notice to the Defendants, it was concluded that this might precipitate the very action that the injunction was designed to prevent and so the application was made without notice.

12. Having obtained the injunction (endorsed with a Penal Notice), Drax emailed it to the Climate Camp email address and placed it in clear plastic envelopes fixed to the fence in conspicuous places and at both ends of the footpath. The Penal Notice stated: "If you, the within intended Defendants, disobey this order you may be found guilty of contempt of court and liable to imprisonment or a fine". Its legal effect was that any one entering the power station without Drax's permission, or causing or encouraging others to do so, committed the offence of "contempt of court". The reason that Drax sought an injunction was because it felt that it might deter law-abiding protestors from breaking the law.

13. Whilst it realised that some hard-core protestors might be prepared to disobey the injunction, Drax hoped that most people would obey its terms. It also thought that the injunction might help the police respond to mass trespass on the site. At meetings with the North Yorkshire Police before the Camp took place, the police had concerns about their authority to take any action against trespassers on the power station's site. The reason for their concern stemmed from the fact that trespass per se is a civil tort, rather than a criminal offence. Drax hoped that the injunction would reinforce the police's position and give them more authority to direct the protestors off the land.

⁴² This wording was deemed to be in accordance with *Bloomsbury Publishing Group Ltd v Newsgroup Newspapers Ltd* [2003], EWHC 1205, *Hampshire Waste Services Ltd & Ors v "Persons intending to trespass and/or trespassing upon incinerator sites at" certain addresses* [2003] EWHC 1738 and *South Cambridge District Council v Persons Unknown* [2004] EWCA Civ 1280

14. Whether as a result of the injunction or as a result of what turned out to be a strong police presence by the North Yorkshire Police, the protestors failed to close down the power station and the Camp was a relatively peaceful event. In the event, 600 demonstrators marched to the power station site on the “Day of Action” and no serious damage was done to the power station. Thirty eight people were arrested for offences that included aggravated trespass, criminal damage and assaulting a police officer.

15. Some two weeks later in the wake of Camp for Climate Action 2006, a further attack was made on the perimeter fence of the power station’s site. Police presence was able to contain the incident and following a search, during which cutting and climbing equipment were discovered, the protestors were arrested and security of the site was not compromised any further.

16. It should be noted that the policing costs for both of the above incidents were considerable, the majority of which was funded by the North Yorkshire Police Force.

TRAIN HIJACKING IN JUNE 2008

17. On 13 June of this year, twenty nine climate campaigners claiming to be part of a group called “Leave it in the Ground!” hijacked a train taking coal to Drax Power Station. The protestors posed as rail staff wearing fluorescent jackets and directed the driver of the train to halt with red flags. They then used an iron girder bridge and climbing equipment to scale the 12 feet high wagons. Once on top of the train, some of the protestors chained themselves to the vehicle, while others proceeded to shovel some of the train’s contents onto the railway line. They had brought food, water and a portable lavatory with them and they stated that they hoped to stay on the train for several days.

18. It was clear from the protestors’ statements that Drax was the ultimate target of the protest. A protestor interviewed by the BBC stated “We have stopped this train to prevent it delivering a 1,000 tonnes of coal to burn at Drax and then be released to the atmosphere”⁴³.

19. Fearing that the protestors might proceed from their location on Network Rail property to the power station, Drax sought an injunction in similar terms to the injunction that it had sought in August 2006 to deter the protestors from entering the site. As in 2006, it was concerned that if the protestors entered the site, there was a real risk that they might shut the power station down.

20. In the event, the protestors were removed from the train by the police and twenty nine of them are facing charges of obstructing the railway in York Magistrate’s Court.

GENERAL CONTEXT OF ENVIRONMENTAL PROTEST AGAINST COAL-FIRED POWER STATIONS

21. It is clear that the incidents above are not isolated incidents but part of a well organised and continuing campaign of direct action that is being conducted against coal-fired power stations across the UK. Other similar incidents are as follows:

- In November 2006, around 25 environmental protestors entered Didcot Power Station threatening to shut it down. They scaled the chimney on the site and chained themselves to various pieces of equipment.
- In October 2007, 50 Greenpeace protestors took over Kingsnorth Power Station stating that they wished to shut it down. One group immobilised the huge conveyor belts carrying coal into the plant then chained themselves to the machinery. A second group climbed a 200 metre ladder up the chimney, with supplies, intending to force the power station off the National Grid.
- In August 2008, Kingsnorth Power Station was the target for the Camp for Climate Action and the organisers announced that it was their intention to force the power station to shut down.

22. On 10 September 2008, the six climate change activists who were involved in the protest at Kingsnorth Power Station in October 2007 were cleared of causing £30,000 of criminal damage to the power station chimney. Their defence was that they had “lawful excuse” because they were acting to protect property around the world “in immediate need of protection” from the impacts of climate change, caused in part by burning coal.

CONCLUSION

23. In the light of the above, Drax feels that is likely to be only a matter of time before it is targeted again by radical climate protestors who wish to shut it down. On this basis, and on the basis of Drax’s critical importance to the nation’s power supply, Drax considers it important that the law provides the site of the power station with greater security than is currently the case. Drax’s recommendation to the Joint Committee on Human Rights in this regard is that the site of the power station (excluding the public footpath) should be made a designated or protected site under s128 of the Serious Organised Crime and Police Act 2005 (“SOCPA”).

⁴³ BBC, 13 June 2008, http://news.bbc.co.uk/2/hi/uk_news/england/north_yorkshire/7452395.stm

24. Drax believes that, alongside a strong police presence, the injunction sought before the 2006 Camp for Climate Action ensured a relatively peaceful protest. However, in the event that less information is provided about the intentions of environmental protestors, it may prove difficult for Drax to seek an injunction before the protestors arrive at the site.

25. In Drax's view, the fact that trespass on the power station site is not a criminal offence exposes the power station to a real risk of being shut down by radical climate protestors. It does not take much imagination to see how a mass occupation of the site by protestors—however peaceful—could allow a small radical group of protestors to take advantage of the situation to shut the power station down. In this situation, there is a significant risk that the police would not be able to respond quickly enough to protect the power station from being shut down.

26. To remove trespassers from its land in such a situation, Drax would have to seek an interim possession order from the Court. This relatively slow court procedure would give trespassers a significant opportunity to impede the operation of the site before they could be served with a possession order requiring them to leave. On the basis that Drax is critically important for the security of the nation's electricity supply, Drax considers that there are strong arguments for the site of the power station (not including the public footpath) to become a "protected" or "designated" site under s128 of SOCPA. This would enable police to arrest trespassers at the point at which they enter the site in instances where no injunction is in place and no further criminal offence has been committed. It would also create a deterrent to protestors considering trespassing on the power station's site and thereby greatly increase the security of the nation's electricity supply.

27. Importantly, Drax does not believe that including the power station within s128 of SOCPA would constitute a restraint on any protestors' ability to exercise peaceful and lawful protest. Rather, it considers that the measure would be an important defence against unlawful trespass on a site that is of critical importance to the nation's electricity supply and would afford some protection to protestors, employees, contractors and visitors alike in terms of their own safety.

September 2008

Memorandum submitted by Mr Simon Gould

The Committee asks "Are current legislative measures which restrict protest or peaceful assembly necessary and proportionate to the rights to freedom of expression and peaceful assembly?"

I should like to comment on SOCPA 2005, section 145, "Interference with contractual relationships so as to harm animal research organisation." This seems like a discriminatory measure. It would be akin to the Government making a law saying "Manchester United fans must not drive above 40 MPH." such a measure discriminates against one group, and by discriminating against this group in this instance, it also leads to this group being discriminated against in general. Everyone is supposedly equal under the law, and so if Parliament wishes to enact a general measure of this type (not that I would personally support such a measure) then it should read something along the lines of—145 "interference with contractual relationships so as to harm commercial organisations." Currently SOCPA 2005 Section 145 is not suitable to be part of the law of the land and should be repealed.

The Committee also asks "can the competing interests of public order and the right to protest be reconciled?" and "in what circumstances may actions during protests be justifiably criminalised." Talking again about SOCPA 2005, as I understand it the law was brought in as a reaction to increased security concerns. I don't want to address the general concern about whether SOCPA is or is not justified on those grounds as I am sure plenty of others will do that, but I would like to raise the particular question of SOCPA, Section 137 "Loudspeakers in designated area (1).....a loudspeaker shall not be operated, at any time or for any purpose, in the street in the designated area." How can loudspeakers be said to represent a security threat? Is the idea that they may be a disguised weapon of some kind? What exactly is the threat? If we look in the detail we find that loudspeakers can still be used in vehicles if they are for the entertainment of the passengers [SOCPA, 137, (2)h and (3)(a)] within the designated area. So does this mean that loudspeakers used to describe Parliament Square to tourists are less of a security threat than loudspeakers used to complain about an issue? Another dispensation allows the local council to give permission for the use of loudspeakers within the designated area. All this leads me to conclude that SOCPA 137 is a politically motivated measure designed to limit public awareness of the content of the various protests that enter Whitehall and/or Parliament Square. I don't think that this type of limitation of democracy is acceptable. Nor do I think there are circumstances where loudspeakers can be criminalised in the designated area. Further I don't think the interests of the right to protest compete with the right to public order when it comes to loudspeakers. SOCPA Section 137 should be repealed, and if Sections 132–138 are repealed anyway then Section 137 should definitely not be replaced by any similar measure.

September 2008

Memorandum submitted by Mr Brian W Haw

1. I, Brian William Haw, of the above address, state the following, for the consideration of The Human Rights Committee—as they examine evidence, responses and submissions placed before them.

2. I am well known Nationally/Internationally, as a Peace Campaigner, and for a Peace Campaign outside Parliament and elsewhere—with the Peoples visible and audible demonstration, manifestation of their expression.

3. (This visible expression comprised, 45 + metres of display, prior to seizure without law on 23 May 2006 by Sir Ian Blair Met Commissioner—legal actions are ongoing to redress this crime.)

4. I initiated this witness/vigil on God's instructions, on 2 June 2001, directly opposite the Carriage Gates of Parliament at Westminster. I entitled this expression "Westminster U.N. Heart Gallery". You may be aware a facsimile of it was in Tate Britain and won the Turner Prize recently, It is now in Paris and goes on to Geneva from there. We look forward to welcoming U.N. personnel to view it there.

5. I/We directly challenge the British Parliament and USA Government in particular, re exercising Human Rights without distinction on a Global basis. I have maintained this witness/vigil 24/7 every day ever since 2 June 2001 with the support of exceptional Colleagues of various nationalities, superlative Human Beings, of the same mind and heart.

6. Some of us give up our lives in order that others may live. "The Right to Life" has to be the first right, without it all other "rights" are academic. We are very practical people.

7. Thus it is seen from the outset my/our evidence is highly Germaine to an enquiry re the Human Rights Act—its practical outworking, operation and exercise in Britain and the World as a whole.

8. Therefore—I hereby make request to give oral submissions, and further written submissions as deemed necessary appropriate and helpful to this enquiry.

9. It is of note 54% on Channel 4 voted me the most inspiring political person of 2007. With Cameron gaining 6% PM Blair 8% etc.

10. I was shortlisted for Liberty/Law Society Human Rights Award in 2006, and Muslim News Person of Excellence in 2008 etc.

11. Thus I can lay just claim to being an authentic voice for the people the HR Act affects. Plus, it confirms my ability to enunciate the views of the people in good clear English, not the gobblydegook of certain Politicians or Lawyers or dare I say it Priests.

12. Furthermore I was European of the Month for June 2007 on RTE. This, with warm response from media worldwide to my/our expressions, demonstrates—I/We are a welcome voice nationally and internationally.

13. This is something of note for a British commission eliciting the views of the British populace in arriving at decisions for the benefit of us in Britain and indeed the whole world.

14. Regrettably, due to our imperialistic war-making adventures, our reputation is very low at present. We would do our part to improve this sad situation with our input to this commission, as part of our holistic endeavours.

15. I/We would provide evidence from my/our unique perspective, of the reality of persons exercising freedom of expression and assembly, as per the Human Rights Act, outside the very gates of Parliament, now seven years into our campaign, for "As Long As It Takes", as I told the first policeman on 2 June 2001.

16. For the record, my/our Campaign is For Humanity, Love Peace Justice for All—Versus Infanticide Genocide Torture and all the terrible harm emanating from illegal wars of aggression.

17. I would expect to concisely sum up my oral evidence of seven intensive years experience in 10 minutes, and would then be available to further answer any questions my submissions elicit.

18. We welcome the opportunity to give our perspective, that of dedicated activists, conscientiously fulfilling their obligations re National/International Law, towards every person in our International Family wherever they live, and towards our joint obligation to be good stewards of the world we jointly inhabit for a fleeting spell.

19. For those of us who are believers we have a responsibility to our Creator, and for all of us as we share common humanity, indeed we are our brother and sisters keeper.

June 2008

Memorandum submitted by Dr Peter Harbour

1. The right to protest: The right to protest is a cornerstone of democracy. Protestors should receive consideration, respect and humane treatment, particularly if the protest is being conducted according to the law. I only have experience of legal protest so that is what I concentrate on, with emphasis on the Protection from Harassment Act 1997, which has evolved to limit protest in a manner which can never have been intended when this anti-stalking act was drafted. I draw the committee's attention to the discussion recorded under Q. 59 at an earlier session, and under Q. 109 to 112

2. Who am I? I am an executive member of the very well respected campaign group, Save Radley Lakes⁴⁴, formally constituted in July 2005. As a 69-year old retired government scientist and university lecturer, playing my role⁴⁵ in Save Radley Lakes' peaceful and legal campaign to protect a lake near Oxford, a campaign which enjoys immense popular support, I was shocked to be served a high court injunction⁴⁶ and by the circumstances which surround it.⁴⁷

3. What do the police say about their duties to protestors? I quote two divergent examples. The Thames Valley policy is set out by their gold commander, ACI David Murray, and begins:

“to provide impartial policing services that:

- Facilitate lawful protest
- Facilitate lawful business and activity
- Minimise disruption to the local community and provide reassurance....”

Sounds good! In contrast a booklet used by the police entitled “Policing Protest”⁴⁸, begins:

“NETCU provides tactical advice and guidance on policing single-issue domestic extremism. The unit also supports companies and other organisations that are the targets of domestic extremism campaigns. NETCU reports...to the Association of Chief Police Officers Terrorism and Allied Matters—ACPO(TAM) committee.”

The thinking seems to be that protest is always perpetrated by domestic extremists. The support is for companies but not, apparently, for legitimate protestors. Both need protection. Page 51 of the booklet, alarmingly takes this a stage further:

“High Court Injunctions that relate to domestic extremism campaigns are listed on the NETCU website www.netcu.org.uk”.

And on the front page of the NETCU website under a tab labelled “High Court Injunctions” I find: 27/04/07 RWE Npower PLC (3.76 Mb) HQ07X00505

27/04/07 RWE Npower PLC (3.76 Mb) HQ07X00505

This “Radley Lakes Injunction” is in this context being described to policemen on the ground as a restraint order against a domestic extremist campaign! This is unacceptable.

4. My experience of actual policing of protest: The group Save Radley Lakes has organised a couple of marches with speeches, involving the mayor, the MP and so on. It has also organised cycle-rides, dog-walks, a swim down the Thames through Abingdon, a petition to number 10, and members have attended a wide range of County Council planning and other meetings and a public inquiry. The police have been notified and consulted as needed. The good-natured collaboration of the police has been all it should, and we have been complimented on how we conduct operations.

In contrast the senior management of TVP had not one interaction with us until autumn 2007. However in April 2007 (21 months after Save Radley Lakes was constituted) evidence was presented to the High Court by the TVP Silver Commander. This reflected the serial information supplied to them from one side but ignored the experience and knowledge of their policemen on the ground, and was totally unable to reflect any knowledge of the Save Radley Lakes group. It is impossible to say whether I would still be restricted by injunction at this stage, had this evidence been presented with greater knowledge of the actual situation, but it cannot be seen to be reasonable for the police to present such one-sided evidence.

An example of police attitude to action by bailiffs against protestors is in Appendix B.

5. Protection from Harassment Act, 1997: Faults and possible remedies: There is something wrong when a company can bring a case to the High Court, give evidence effectively in secret (no notice was given to the defendants), using anonymous witnesses to produce a wide ranging injunction against innocent, law-abiding ordinary people, needlessly preventing them from access to land they have previously been able to enjoy over many years (in the Radley Lakes case, to such an extent that an application was made—and is continuing—to

⁴⁴ www.saveradleylakes.org.uk See also www.radleyvillage.org.uk

⁴⁵ My activities had included writing a report on Hydrology and Geology of the Radley Lakes, and participating in writing a report on PFA (pulverised fuel ash) and its uses. I had also lobbied local politicians with some success and written a series of letters to the press, some no doubt very unpopular with the power company.

⁴⁶ The media exhibited far ranging opposition to the injunction. Please see Appendix A for a brief summary of a selection of media reports.

⁴⁷ The injunction was served on five defendants who were not local to the Radley area and were not members of the campaign group, Save Radley Lakes; my name was added as the sixth defendant. I don't understand why.

⁴⁸ NETCU Pocket legislation guide [Association of Chief Police Officers Terrorism and Allied Matters ACPO(TAM) (Edition 2) November 2007, published on the web and accessed via Wikipedia.

designate the area as a town green), when the basis upon which the injunction is brought is so insubstantial, as it was in the Radley Lakes case. This committee is urged to consider whether an accusation of harassment should be required to be made first to the police, or perhaps to a lower court, with limited cost implications for the defendants. There should be an opportunity for the accused to respond, before bringing a case in the High Court under the Act⁴⁹.

6. Impossibility to defend due to costs: By the time an application has been made to the High Court it is impossible for a person of average means to defend themselves because the financial risks are much too large. This is not acceptable. Someone of average means can be enjoined for a long time (in my own case almost two years to date) without a defence being mounted, and without an opportunity to clear their name. I believe that I could clear my name, but I am unwilling to accept the considerable financial risks, so I am unable to defend myself against the accusations made.

7. It should not be possible to make criminal accusations in a civil case under the Protection from Harassment Act 1997 (eg dangerous driving) without first making a criminal accusation to the police. No charges were brought by the police against me with regard to dangerous or threatening driving, even though an accusation of that type of driving was made in the civil court. I have asked and verified that no criminal accusation was made to the police, and am confident that had it been, I would have been able, readily, to defend myself.

8. The consequences pursuant to the issuing of an injunction are too far-reaching and unreasonable: in my own case the company benefited more than I think reasonable, whereas I suffered in a number of ways which are beyond reasonableness:

- for the company:
 - it could carry out its intentions (“clearance of vegetation” was the unusual description of what turned out to be mainly felling of trees) confident that photography of their action was prohibited, even though it could be argued, for sound environmental reasons that photography should not merely be permitted, but encouraged;
- for me:
 - serious, long-lasting effect on my health, since spring 2007 (I am 69 years old and of good character, with no criminal record) and on my family life;
 - prevention from enjoying an area I have come to love, over a period of more than 30 years—I am the sole resident of Abingdon who has been so treated;
 - my name and address were displayed around the lake and my name on NETCU under National extremist injunctions (please see Para.3), so I am portrayed, it would appear, as a national extremist.

9. SUMMARY AND CONCLUSION

The experience I have had of policing and the laws related to protest have shocked not just me, but everybody I know who has considered what happened. My experience has been greeted with amazement in France, Spain (including an editor of *El Pais*), Sweden (including a professor from Lund), Belgium (including a fonctionnaire in DG Environment), Netherlands and Germany (including a company director and a civil servant representing the German Foreign Office in the UK), as well as in the UK.

The contradictory information that I have indicated is supplied to the police allows them to exercise their discretion with a breadth that cannot be helpful, if only because it is unclear.

The workings of the Protection from Harassment Act 1997 allow a gagging of protest, even a gagging of the press, enabling companies, if they so choose, to carry out illegal and anti-social activities as well as anti-environmental activities without documentation. I have shown examples of police policy which is balanced and other police policy (and advice to policemen) which seems biased towards companies and seems to assume that protestors are national extremists. I have quoted good examples of the working of the police force at protest marches and the like, and I have shown an apparently poorly-judged submission to the court by the police, inevitably skewing its interpretation of what actually happened. A further example of policing protest is in Appendix B.

I make a suggestion that there should be a first hearing, either with the police or with a lower court, before a case under the Protection from Harassment act 1997 be brought to the High Court. The aim of this is to avoid, in the first instance, the crippling cost (or fear of costs) which prevent justice from being done at present.

I argue that if a criminal accusation is implicit in evidence being brought to bear on a civil prosecution under the protection from harassment act 1997, then that accusation should first have to be made to the police and to the criminal court if appropriate, whereupon a defence can properly be mounted, impossible

⁴⁹ A local newspaper (Oxford Mail, 17/2/07 Phil Vintner) reported that “Police say they have not received any formal complaints by npower, npower employees or sub-contractors about harassment or threatening behaviour at the lake.”

for most at present. My recommendation is that if the police submit evidence to a civil court in connection with an injunction under the Act, they be required to take evidence from both sides of an issue, as it is my perception that they do for criminal cases.

I show by example that the consequences of injunctions served under the Protection from Harassment Act 1997 are unsatisfactory. The power able to be wielded, possibly quite arbitrarily, by a large company against an individual is unbalanced and infringes basic rights such as assumption of innocence unless proven guilty.

APPENDIX

A. HOW THE MEDIA PORTRAYED THE RADLEY LAKES INJUNCTION

The first article indicating that something is very wrong if an injunction can be issued to mild protestors as at Radley Lakes⁵⁰ is a local newspaper editorial written by Derek Holmes, whom I have known for a number of years. Despite shortening it is still lengthy, but relevant.

We cannot let RWE npower's heavy handed approach pass without comment. Balaclava clad security guards at the lakes have provoked a lot of concern. The company has every right to protect itself against a minority of extremists ...while it may find the activities of Save Radley Lakes irritating, the group is not extreme—it is made up of respected members of the local community....The clincher this week was RWE npower's recourse to a draconian court order seeking to limit protest at the site. Not only...served...on those squatting at Radley Lakes but also on Dr Peter Harbour, a respected member of the community and a key Save Radley Lakes campaigner. ...The court's decision...to grant an injunction raises important issues of freedom of speech and the right to protest. We are not aware of any evidence that those working for or on behalf of RWE npower face anything like the sort of threat that those associated with animal laboratories do. As for the idea that RWE npower should need to resort to these measures to protect itself from Save Radley Lakes, it would be laughable if there were not serious cause for concern for every protest group in the country.

Clearly this news editor, who knows his local people, and has known my work in the community over a number of years, felt something to be wrong and had the courage to say so.

The second article was on Channel 4 News⁵¹ : first John Snow said:

If you don't want to risk being jailed for up to five years, look away now. What began as a local environmental battle has now escalated into something a lot more serious. When the people of Radley village took on the electricity giant Npower, because of its decision to destroy a local beauty spot, they little expected what would follow. It is a cautionary tale of how large corporations are now able to suspend some basic freedoms we all thought we enjoyed.

Alex Thomson takes up the story. A significant quote is that the action of the power company in claiming an injunction is:

Something which strikes...at things we hold dear, the right to assemble, the right to protest peacefully, the right to have a free and open press and media. But be warned, if you carry on watching this report you will be enjoined by law, and if you break that injunction you could be faced with up to five years in prison.

In effect covering a story of the destruction of the lakes is now a criminal offence. A local newspaper editor said "Our job is being compromised and we can't actually report what is going on on our doorstep, because some multinational company has decided they are going to take a heavy hand against a bunch of people who live in the area who are concerned about what's going on there."

The full report can be found at⁵¹, and is recommended as essential background material for this inquiry.

Of the many other press reports, three national ones stand out^{52,53,54}, all contrasting the validity of the Save Radley Lakes campaign with the heavy handed application of the legislation.

⁵⁰ Heavy Handed (from *The Oxford Times* editorial 12.2.07)

⁵¹ <http://uk.youtube.com/watch?v=mdOFRaDXd2g>

⁵² Financial Times: Harry Eyres, Beautiful Lofty Things 2007, 29 Dec. 2007

⁵³ Independent: Jonathan Brown, Activist's battle against waste dump could end in jail, 25 August 2007

⁵⁴ Guardian: George Monbiot: A glut of barristers at Westminster has led to a crackdown on dissent, 6 March 2007

B. AN EXAMPLE OF POLICE ATTITUDE TO ACTION BY BAILIFFS AGAINST PROTESTORS

The following description is of a raid by bailiffs to evict people (not members of the Save Radley Lakes group) who had squatted at a house by Radley Lakes. Oxford Mail, 6 Feb 2007 reads:

Specialist bailiffs working on behalf of RWE npower smashed open French windows in one of the downstairs rooms where squatter Lisa Peakman was sleeping at about 5.30am.

Ms Peakman, 38, said: "I was woken by a loud bang and showered with broken glass from the French windows".

"The bailiffs were dressed in black and wore black balaclavas. There was no warning, they just smashed their way in. Fortunately I was not hurt but it was a very unpleasant experience."

Members of Save Radley Lakes witnessed the eviction. The police were in attendance. I personally interviewed Ms Peakman shortly after 6 am; she seemed traumatised by the eviction. BBC reported, in contrast, that a senior member of Thames Valley Police, said:

"This was a peaceful and safe operation."

"Our role was to observe the eviction, prevent any breach of the peace, and ensure the right to peaceful protest was balanced with people's right to go about their lawful business."

Unreasonable treatment is suggested but the police apparently disagree.

December 2008

Memorandum submitted by the Home Office

This paper responds to the Joint Committee's request for evidence to its inquiry into the human rights issues arising from policing and protest. It seeks to respond to the themes outlined by the Committee, namely:

- the proportionality of legislative measures to restrict protest or peaceful assembly, and
- reconciling competing interests of public order and protest.

It does not seek to respond to wider human rights issues surrounding other legislative measures.

INTRODUCTION

2. Peaceful protest is a fundamental part of a democratic society and has a very long and respected tradition in the United Kingdom. Many of the rights and freedoms we enjoy today were gained because people were prepared to protest. The Government is clear that there should be no unnecessary restrictions on people's right to peaceful protest.

3. This tradition was cemented into the rights to freedom of assembly and expression through the incorporation of the European Convention on Human Rights into domestic law in the Human Rights Act 1998. So while we were previously free to do anything which was not otherwise proscribed by law, we now have a positive right to assemble, to march together, to campaign and to express our views and opinions, albeit subject to qualifications.

4. The rights to freedom of expression and peaceful assembly are not absolute and Articles 10 and 11 of the Convention outline the possibility of legitimate restrictions. Interference with these rights is permissible only if what is done:

- has its basis in law;
- secures a permissible aim set out in the Articles; and
- is necessary in a democratic society, in the interests of national security or public safety, for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.

5. The Government is confident that the legislative framework in England and Wales upholds the right to protest while providing appropriate latitude to impose legitimate restrictions. As part of the Government's commitment to keep legislation under review, the Government is currently addressing one area where it has concerns (see paragraphs 19 to 28). The powers available to the police through this legislative framework reflect the need to consider and weigh different rights against each other and gauge competing interests. For example, the right to peaceful protest which the police have a duty to facilitate, needs to be balanced against the other responsibilities of the police to promote public safety, maintain public order, prevent crime and protect the rights of others. The challenge for the police is how to use their powers in a way that is sensitive to these sometimes competing needs and the expectations of people and communities in which they live.

 QUESTIONS RAISED BY THE COMMITTEE

Are current legislative measures which restrict protest or peaceful assembly (such as SOCPA 2005 and the Public Order Act 1986) necessary and proportionate to the rights to freedom of expression and peaceful assembly?

To what extent should peaceful protest be facilitated by the State?

6. The State is under a positive duty to refrain from interference with the individual's right to peaceful assembly and to prevent others from doing so. It can only interfere with that right if the interference is prescribed by law, is intended to achieve a legitimate objective, such as prevention of disorder or crime and is proportionate to the end that is to be achieved.

7. In addition to not unjustifiably restricting the freedom to peaceful assembly, the State is under a positive duty to take reasonable and appropriate measures to enable lawful demonstrations to take place without the participants being subjected to physical violence or other threats from those who object to a demonstration.

8. The Government is clear that this is not just a question of duties. The Government is committed to upholding and reinforcing these rights as part of a wider programme of Constitutional renewal and reinvigorating our democracy, as set out in the Governance of Britain Green Paper published in July 2007, and the current draft Constitutional Renewal Bill.

What limits, if any, should be placed on the right to protest and why?

9. The rights to freedom of expression and peaceful assembly, although fundamental, are not absolute, and Articles 10 and 11 of the Convention outline the possibility of legitimate restrictions, necessary in a democratic society, for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.

10. The purpose of public order law is to ensure that individual rights to freedom of speech and freedom of assembly are balanced against the rights of others to go about their daily lives unhindered. Criminal offences in relation to public order are designed to prevent violence and disorder.

11. The Government believes that in order for the police to be able to maintain the difficult balance of competing rights, there is a need for proportionate limits on the right to protest in certain circumstances, and that the framework set out in the Public Order Act 1986 allows the police to strike that balance.

12. For example, sections 12 and 14 of the Public Order Act, allow senior officer to impose conditions on organisers of processions and assemblies to prevent serious public disorder, serious damage, serious disruption to the life of the community and intimidation. In the case of assemblies, the conditions are more exhaustively defined in that they can only be imposed in relation to the location of an assembly, its maximum size and maximum duration.

13. Additionally, section 11 of the Public Order Act requires the organisers of processions to give written notice to the police 6 days in advance, unless not reasonably practicable, notifying them of the date, time and route of the march and the name and address of the organiser. The interference here can be justified on the grounds that in order to facilitate a peaceful march and minimise disorder, the police need to be able to plan ahead with the organisers. The caveat of "not reasonably practicable" allows for more spontaneous protest.

14. Another area where it may be appropriate to impose limits is in relation to what people say or display in public—in so far as what is said, or displayed could cause harassment, alarm or distress. This is reflected in section 5 of the Public Order Act which covers the use of threatening, abusive, insulting words or behaviour, or the display of any writing or sign which is threatening, abusive or insulting. Clearly this provision has to be read and given effect in a way which is compatible with the right to freedom of expression. Article 10 (1) of ECHR applies "not only to ideas that are favourably received, or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb." (*Handyside v UK* (1976) 1EHRR 737.)

Should specific limitations be placed on the ability of certain groups to protest? If so, who and why?

15. The legislative framework covering policing and protest does not impose limits on the ability of certain groups to protest simply because of their membership of a group.

16. However, the Home Secretary has the power to lay before Parliament a draft Order placing an organisation on the proscribed list if she believes that the organisation is concerned in terrorism. The effect of this, once confirmed by Parliament, is that membership of the organisation becomes unlawful, as does fundraising for it and arranging meetings or speaking at meetings where the purpose is to encourage support for it or further its activities. Clearly this means that such groups will not be able to protest, although it is

often the case that a proscribed terrorist organisation will be closely associated with a separate political body which is of course free to protest the wider issues as long as it does not encourage support for the proscribed group itself.

17. A proscribed organisation, or anyone affected by a proscription, may apply to the Home Secretary for the organisation to be deproscribed. If this application is refused, they may appeal this refusal to the Proscribed Organisations Appeals Commission.

18. Lord Carlile, in his independent annual reviews of the operation of the Terrorism Act 2000, has consistently said that he believes proscription to be a necessary and proportionate response to threat that terrorist organisations pose.

Should the right to protest be more strictly curtailed in relation to certain geographical areas? If yes, where, why and what limits would be acceptable?

The Government proposes to repeal sections 132–8 SOCPA dealing with protest around Parliament and invites Parliament to consider whether additional provision is needed to ensure that Parliament’s work is not disrupted by protests in Parliament Square. What, if any, additional provision is required?

19. Whether the right to protest should be more strictly curtailed in relation to certain geographical areas has been a key consideration in the context of protests in the vicinity of Parliament. We posed this question in our consultation paper *Managing Protests around Parliament* which was published last October.

20. In passing sections 132 to 138 of the Serious Organised Crime and Police Act 2005, Parliament took the view that a more stringent regime was appropriate for demonstrations in a designated area around Parliament, compared with elsewhere. The provisions in SOCPA sought to establish a framework around Parliament that:

- balanced the competing rights of demonstrators and the wider community;
- provided the police with appropriate powers to manage this balance; and
- protected the rights and interests of demonstrators and those undertaking other lawful activities.

21. We are however well aware of the concerns which organisations, including the Joint Committee and individuals have raised around the proportionality of these provisions, and following on from our consultation have included provision in the draft Constitutional Renewal Bill to repeal the SOCAP provisions.

22. The Government has proposed repeal of SOCAP as part of a wider programme of constitutional renewal—not because of concerns over ECHR compliance.

23. The compliance of the provisions has been supported by the courts. The JCHR refers to the case of *Maya Evans* who was convicted under section 132 of the Serious Organised Crime and Police Act. Ms Evans was not convicted for reading out the names of the war dead at the Cenotaph, but for failing to comply with the prior notification requirements of SOCPA (the provisions of which actually ensure that such protests would be authorised if notice given). The High Court upheld the conviction on appeal, ruling that the procedure under section 134 of the Serious Organised Crime and Police Act 2005 for authorising demonstrations in a designated area was compliant with Article 11 of the ECHR, and there was no need for the state, in its various public authority guises, to justify the necessity to act on the individual facts of the case where a person had been charged with organising or taking part in an unauthorised demonstration in a designated area.

24. Once an authorisation procedure was Article 11 compliant, Parliament had to be entitled to impose sanctions where authorisation had not been obtained; otherwise, the finding that the sections were compatible was illusory.

25. In another ECHR case, (*Rassemblement Jurrasien Unite v Switzerland*, EctHR 1979) the court has ruled that subjecting peaceful demonstrations to a prior authorisation procedure does not encroach upon the essence of the Article 11 right which can be regulated in its exercise.

26. In moving to repeal sections 132–138 of the Serious Organised Crime and Police Act, the Government takes seriously the need to ensure that the operation of Parliament is safeguarded and security is not compromised. In response to concerns raised by the Metropolitan Police and others, we are seeking the views of Parliament on whether additional provision is needed to ensure access to the House is not hindered and the workings of the House are not disrupted. These concerns need to be balanced against Parliament’s status as the natural focus for the electorate to express its views which was very strongly articulated in response to our consultation.

27. In terms of whether additional provision is needed in the wake of the repeal of sections 132 to 138, we are keen to hear the views of the JCHR. The JCHR will be aware that the Joint Committee on the draft Constitutional Renewal Bill which has been examining protests around Parliament, including the repeal of SOCPA, has now published its recommendations. We are carefully considering the Committee’s recommendations and will respond in due course before introduction of the Bill during the fourth Parliamentary session.

28. The Government has made it very clear that the overarching aim of the review of the provisions covering protest around Parliament is to ensure there are no unnecessary restrictions on peoples' right to protest.

29. Another area where limitations on protest may be legitimate is in relation to demonstrations which take place outside a person's home. The Government introduced provisions which give a police officer at the scene the power to issue reasonable directions to prevent harassment of a person in their home and created an offence of knowingly causing harassment of a person in their home. These provisions balance the rights of freedom of expression and peaceful assembly with the right to respect for private and family life.

In what circumstances would it be permissible for the State to take pre-emptive action which curtailed protests?

30. The framework for managing protest in England and Wales set out in the Public Order Act 1986 only allows the State to take pre-emptive action to prevent a march. It does not allow the state to take action to prevent an assembly. This reflects the different risks posed by moving and static demonstrations to public order.

31. Under section 13 of the Public Order Act it is permissible for the State to authorise the ban of a march on the basis that a chief officer of police reasonably believes that because of particular circumstances existing in any area, the powers to impose conditions under section 12 would not be sufficient to prevent a march resulting in serious public disorder. In such a case, the chief officer can apply to the local authority to ban a march and would also need the consent of the Home Secretary. In London it is the appropriate Commissioner who makes the order with the consent of the Home Secretary.

32. The sorts of considerations which will need to be taken into account include the public safety of the protestors and the local community, the risk of violence, regard to community tensions and whether counter demonstrations are likely to take place. One of the key questions for the police will be whether the right of the marchers to assemble supersedes the public order threat. Police have to balance their rights against the interests of wider community.

33. The Committee will be aware that the powers in section 13 are used rarely and then only in extreme cases. The Committee will also be aware that the courts have ruled that it is not permissible for the police, relying on their duty to prevent a breach of the peace, to take pre-emptive action to curtail protest where there is no risk of imminent violence.

34. In *R(Laporte)* the House of Lords ruled that police officers acted unlawfully when, relying on their duty to prevent a breach of the peace, they intercepted coach passengers travelling from London to a protest demonstration in Fairford (Gloucestershire) and prevented them from continuing to the demonstration, since no such breach was about to occur. The action was an interference with the protestors' rights under articles 10 and 11 ECHR and was disproportionate.

3. *Can the competing interests of public order and the right to protest be reconciled?*

In what circumstances may actions during protests be justifiably criminalised?

35. Actions during protests may be justifiably criminalised if they involve the use of violence or intimidation or amount to an unreasonable obstruction of the highway or harassment, alarm or distress. The provisions in the Public Order Act give the police powers to impose conditions on marches and assemblies in anticipation of serious public disorder etc. as well as at the scene, and knowingly failing to comply with a direction given by a police officer is an offence.

Does existing criminal law and practice pay sufficient regard to human rights?

36. The Government believes that existing criminal law pays sufficient regard to human rights. English law took account of ECHR long before we incorporated it in the Human Rights Act 1998.

37. In terms of practice, in exercising any of the powers potentially available to them, the police will be mindful of their role as a public authority under section 6 of the Human Rights Act 1998 and of the need to balance the rights of the protestors under articles 10 and 11 with the need to preserve order. Police decisions will fall to be justified as necessary and proportionate under articles 10.2 and 11.2 in the interests of public safety, or in order to prevent disorder or crime, or to protect the rights of others.

38. Police are operationally independent and must be afforded a level of discretion to, for example, vary conditions in a rapidly changing situation to maintain public order and to do so proportionately. The legislative framework on policing and protest gives them this discretion. The check to ensure that discretionary powers invested in the police are exercised in an accountable and non-discriminatory way is that the Human Rights Act 1998 forbids any public body, such as the police and local government, from acting in ways that conflict with the principles set out in the Convention. It enables demonstrators to use the courts, in principle, to challenge decisions that would restrict protest.

39. There are examples of where protestors and others have used the courts to challenge police decisions, particularly in relation to their exercise of the common law power to prevent a breach of the peace. Common law powers of the police allow them, where appropriate to prevent people from travelling to certain locations. Such an anticipatory power is, however, exceptional and will only arise if there is an imminent threat to public order or risk of violence (see Laporte above).

40. That said, in *Austin* the Court of Appeal found that where (and only where) there was a reasonable belief that there were no other means whatsoever whereby a breach or imminent breach of the peace could be obviated, the lawful exercise by third parties of their rights might also be curtailed by the police.

41. The case of *Austin & another* concerned the containment of persons within a police cordon at Oxford Circus for over seven hours, in order to prevent an imminent breach of the peace by others. In that case people innocently caught up in the demonstration were also legitimately penned in as the police sought to control crowds. The judge concluded that “there was not simply a static crowd of protestors in Oxford circus surrounded by police and held in place for seven hours; it was a dynamic, chaotic and confusing situation in which there were also a large number of other protestors in the immediate vicinity outside the cordon who were threatening serious disorder and posing a threat to the officers both on the cordon and within it.”

How should the balance be struck between the rights of protesters and other competing interests (such as the rights of others or the prevention of disorder or crime)? Would legislative changes be desirable to strike a better balance between competing rights, or is the current legislative framework about right?

42. Public order law and the policing of it “involves balancing opposing rights of individuals with one another against wider entitlements and requirements of society—a task that, in practical terms, can seem like trying to satisfy the insatiable.” Blackstones General Policing Duties 2008 This sums up how difficult that balance is.

43. In so far as large marches or demonstrations are concerned, irrespective of whether there is a requirement to notify the police in advance, it is in the interests of those organising such events to notify the police voluntarily to ensure competing interests are satisfied.

44. The Government believes that the validity of police powers to impose conditions on marches and assemblies under the Public Order Act, together with other provisions to prevent harassment, intimidation and obstruction strikes the right balance. However, we keep the law under review and in particular we are reviewing the law in relation to protest around Parliament.

September 2008

Memorandum submitted by Huntingdon Life Sciences

1. *Are current legislative measures which restrict protest or peaceful assembly (such as SOCPA 2005 and the Public Order Act 1986) necessary and proportionate to the rights to freedom of expression and peaceful assembly?*

To what extent should peaceful protest be facilitated by the State?

The liberty or indeed the qualified right of people to assemble in public in order to express their views on political matters is, in our opinion, an essential element in a free and open society. In England there are presently few express legal limits on the freedom of people to associate together for political purposes. As such, we do not see the necessity for the State to “facilitate” the same any more than that this liberty or right presently provides unless, of course, it is a means to control the protest for safety reasons or to protect the conflicting rights of others.

What limits, if any, should be placed on the right to protest and why?

In usual circumstances there are commonly two interests to be reconciled—the protestors’ liberty or right to protest, up to a point when it threatens to infringe (or actually infringes) the rights of the person to whom such protest is directed. In the latter case protection of the target, the potential victim, should be paramount.

It has been widely recognised that methods of protest and their levels of severity have become increasingly sophisticated. This has been both facilitated and compounded by the widespread availability of the internet and other forms of new media. This has enabled seemingly innocuous forms of protest to have a high psychological effect with a minimum of effort on the part of the protestor(s).

Even if protest is conducted peacefully it needs to be considered in context. Often it is not the “one off protest” that is harassing, intimidatory or threatening but “the sum of the parts.” If the peaceful protest takes place in the context of, in association with, or in support of, an ongoing campaign which has been

associated with illegal activities, the protest will inevitably be seen in a different light by the target, however peaceful it is. Full account must be taken of all the “real” aims of the protest and the context in which it is held, not just the described aims of the protest organisers.

More rigorous conditions should be placed upon those seeking to organise protests. Prior notice requirements in relation to processions should be strengthened, enforced and expanded to ensure that those organising protest assemblies, or other forms of protest, should advise relevant law enforcement agencies as a condition of conducting the same.

New legislation is required to control the many abuses that are rife via the internet.

Should specific limitations be placed on the ability of certain groups to protest? If so, who and why?

Clearly racially motivated protests should be curtailed.

Should the right to protest be more strictly curtailed in relation to certain geographical areas? If yes, where, why and what limits would be acceptable?

Specifically—protests should not be permitted within the vicinity of an individual’s home, and where a company is targeted there should be careful consideration on the impact of secondary targeting.

Protests should also be controlled so they do not impede access to and from organisations, so those organisations can continue with their lawful business with no disruption.

The Government proposes to repeal sections 132–8 SOCPA dealing with protest around Parliament and invites Parliament to consider whether additional provision is needed to ensure that Parliament’s work is not disrupted by protests in Parliament Square. What, if any, additional provision is required?

No comment.

In what circumstances would it be permissible for the State to take pre-emptive action which curtailed protests?

If past experience associates the organising group with illegal activities and there is good potential that these could re-occur. Equally, if there is solid evidence that criminal acts are planned to take place in association with the protest.

2. How do existing common law and legislative police powers (such as the common law power to prevent a breach of the peace, stop and search under the Terrorism Act 2000 and the use of force) operate in practice?

Are existing police powers necessary? Are more or fewer required?

Yes, they are necessary—but there needs to be greater consistency of interpretation and enforcement of those powers across the police forces. We accept that this is easy to ask for and difficult to deliver. Great improvements have been made in this area following the creation of, and support given by NETCU.

Are counter-terrorism powers appropriately used in the policing of protests?

No. In the context of the targeting of Huntingdon Life Sciences (HLS) and its employees by SHAC, it is our opinion and that of our advisors that insufficient consideration was given to counter-terrorism powers in what was widely considered in practice (but not in name) to be domestic terrorism.

Do existing police powers pay sufficient regard to human rights?

In our experience sufficient regard has historically been paid to the human rights of the protester but not the target / victim. Those human rights provided in Article 10 and 11 of the European Convention on Human Rights (ECHR) have always been commonly espoused in the media. Consequently they have become better known than those provided by Articles 5 and 8 ECHR. When the Human Rights Act 1998 was introduced, there was initially a climate of fear amongst police officers in relation to potential breaches of Articles 10 and 11. As law enforcement agencies have become more familiar with these provisions, and as (through time) the Human Rights Act has bedded in, we see this as less of an issue.

Are there positive examples of good practice in the policing of protests (whether in the UK or in other countries)?

Animal rights protests, under the banner of SHAC, began at Huntingdon Life Sciences in November 1999 at any time of the day and night. These were seldom peaceful, and from the start they were a vehicle for abuse, harassment, intimidation, threats, coercion and violence. Similar protests took place at the homes of employees.

It took Cambridgeshire Police some time to gain control of the excesses of the protest, and then some years to find a balance between the rights of the protesters and the rights of those targeted, the employees. As this protest activity took place over many years and was initially very aggressive, a dedicated operational police team was created by the Cambridgeshire Constabulary which was both familiar with protest activities and with the legislation. This helped to control the excesses of protest and combat the claims and assertions of protesters who were frequently in mobile phone contact with legal advisers during protests vigorously challenging police direction.

Use of “mutual aid” between Constabularies and proactive use of S.14 Public Order Act 1986 and other changes in legislation introduced earlier this decade (Criminal Justice and Police Act 2001, Antisocial Behaviour Act 2003 and the Serious Organised Crime and Police Act 2005) were welcomed efforts by the police. The protesters had many potential targets—primary, secondary and tertiary stakeholders in their main target, and this allowed them to cross county boundaries in a day of planned protest activities. Police forces initially failed to cope with this protest tactic, but “joined up” policing across force boundaries soon became common place.

During the early years of this decade protests outside homes were legal, this was the most intimidatory, threatening and coercive aspect of the protests, even when no criminality took place (it always could have!). Changes to legislation have dramatically helped in this and now the only “home visits” are totally criminal in nature.

3. Can the competing interests of public order and the right to protest be reconciled?

In what circumstances may actions during protests be justifiably criminalised?

Any illegal activity must be criminalised.

An appropriate balance is very difficult to achieve—single or occasional actions that push the envelope of the law can be seen as challenging, but if these actions are then allowed to continue on a regular, or even frequent basis, their combined impact can dramatically increase long term attrition. Again the perspective and feelings of the target, not just the protester, must be considered in any such judgement.

Does existing criminal law and practice pay sufficient regard to human rights?

In our experience existing criminal law and practice has facilitated peaceful protest, but as we have stated previously, the rights of the target have frequently been subjugated and so the enactment of the legislation does not pay sufficient regard to their rights. See above.

Are complaints about the handling of protests (including police action during protests) adequately addressed?

No comment.

How should the balance be struck between the rights of protesters and other competing interests (such as the rights of others or the prevention of disorder or crime)? Would legislative changes be desirable to strike a better balance between competing rights, or is the current legislative framework about right?

We believe the legislative framework is about right. However, the use of injunctions and in particular those obtained under the Protection from Harassment Act 1997, has proven to be one of the most effective tools in controlling various criminal and tortious protest activity. The continued use of such injunctive relief, along side the recent changes in legislation, has produced conditions that appear more conducive to dealing with the excesses of protest. The existence of well drafted and unambiguous terms enables all parties to know what the precise parameters of protest are and assist the police in facilitating protest within those written parameters.

We do need a better understanding of the context of the protest, eg one off vs series of planned events, and to take far more account of the feelings and perspective of those targeted.

We do need greater consistency in how legislation is enacted both across and within police forces—ACPO and NETCU have made a positive start along that road.

October 2008

Memorandum submitted by Andrew Gay, Huntingdon Life Sciences

The following tactics have been used against HLS and a number of its stakeholders:

- Demonstrations : advertised or “ad hoc”, at sites, town / city centres, homes.
- Mobile demonstrations : targeting sites, 2° and 3° targets—suppliers, customers, associated organisations, staff / directors homes, shareholders, etc.
- Abuse and intimidation at site : staff leaving and entering during protests.
- Lock ins : staff held on site for up to three hours.
- Incursions : sites, 2° and 3° targets—suppliers, customers, associated organisations.
- Theft of company documentation : anything, specifically staff /customer / supplier details.
- Black faxes.
- Phone blockades.
- Email attacks.
- Computer virus attacks and website attacks (electronic civil disturbance).
- Neighbourhood leafleting : propaganda, misinformation and personal details.
- Home demonstrations : staff, directors, third party associates—day or night.
- Attacks on home / property : windows smashed, cars damaged, gardens trampled.
- Junk mail : vast quantities sent to homes.
- Unsolicited goods : homes inundated with anything from mail order companies.
- Publication of home addresses in leaflets / newsletters / websites.
- Email threats : along with personal details published on web sites.
- Abusive mail / email : home and work, threatening self and family.
- Abusive / threatening phone calls : home, work, family.
- Bomb threats and hoax bombs : homes and site.
- Drive ways blocked : scrap cars dumped blocking home driveway.
- Neighbourhood mailings : alleging paedophilia, rape.
- Arson : cars destroyed at night, outside homes.
- Personal attack : caustic spray in eyes, pick-axe handles—outside homes.

October 2008

Memorandum submitted by JUSTICE

INTRODUCTION

1. JUSTICE is an independent all-party legal and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. It is the UK section of the International Commission of Jurists.

2. JUSTICE is grateful for the opportunity to provide evidence to the Joint Committee on Human Rights (the Committee) on the important issue of policing and public protest. We have been very concerned in recent years at the volume and progressive severity of statutory restrictions on protest contained in Home Office Bills before Parliament. Due to the word limit, our evidence here must necessarily be brief, but we are refer the Committee to our other publications, including our Parliamentary briefings on the relevant Parts of the Serious Organised Crime and Police Bill, and the Serious Organised Crime and Police Act 2005 (Designated Area) Order 2005, for more information.

RECENT CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

3. In considering the questions raised by the Committee’s inquiry, we would first like to draw the Committee’s attention to certain recent cases in the European Court of Human Rights (ECtHR) concerning public protest: *Aldemir v Turkey* (32124/02 and linked applications, 18 December 2007); *Balcik v Turkey* (25/02, 29 November 2007); *Makhmudov v Russia* (35082/04, 26 July 2007) and *Bukta v Hungary* (25691/04, 17 July 2007). These cases have shown the ECtHR to be willing to offer strong protection to the right to protest under Article 11 of the European Convention on Human Rights (ECHR). The following points are noteworthy:

- a. The ECtHR affirms the importance of democracy as the only political model compatible with the ECHR, and the importance of peaceful assembly, like the right to freedom of expression, as one

of the foundations of a democratic society;⁵⁵ “in view of the essential nature of freedom of assembly and its close relationship with democracy there must be convincing and compelling reasons to justify an interference with this right”;⁵⁶

- b. The ECtHR places three obligations upon the state in relation to the right to protest under Article 11 ECHR, namely:
 - i. “[A]uthorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens”;
 - ii. “States must not only safeguard freedom of peaceful assembly, but must also refrain from applying unreasonable indirect restrictions upon that right”;
 - iii. “[A]lthough the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities in the exercise of the rights protected, there may also be positive obligations to secure their effective enjoyment”.⁵⁷ In *Balcik*, the Court said that it was important that preventive security measures eg first aid services be taken in order to guarantee the smooth conduct of gatherings and for this reason protestors should comply with regulations in force.⁵⁸
- c. While the ECtHR accepts that authorisation/notification requirements for public protests may be justified for needs of public order and national security, these regulations should not represent a hidden obstacle to the freedom of peaceful assembly.⁵⁹ Forcible intervention by police in a non-violent protest may be disproportionate under Article 11 even if notification requirements have not been complied with.⁶⁰ This may be so even if the protest causes some disruption to members of the public.⁶¹ The key seems to be whether the protestors presented sufficient threat to public order to justify the intervention. In *Balcik*, it was relevant that the authorities had prior notice of the unauthorised demonstration and could have taken preventive measures.
- d. Even if there is a notification requirement, “in special circumstances when an immediate response might be justified, in the form of a demonstration, to a political event, to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.”⁶² This passage is important when considering what should replace the provisions in SOCPA dealing with protest around Parliament.
- e. The ECtHR affirmed the principle that: “where demonstrators do not engage in acts of violence, 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.”⁶³
- f. Where a State asserts that restrictions on protests protected by Article 11 ECHR are necessary (for example, due to a terrorist threat), the ECtHR must satisfy itself “that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts”.⁶⁴

LEGISLATION REGARDING THE RIGHT TO PROTEST IN ENGLAND AND WALES

4. We have three main concerns about statutory police powers and relevant criminal offences/civil orders in relation to protest in England and Wales:

a. *Overbroad legislation*

i. The relevant legislative provisions tend to be overbroad/excessively vague. Terms subject to broad definition—such as “antisocial behaviour”, “disorder” and “harassment, alarm and distress” are frequently used. Further, offences and triggers for the exercise of powers are often defined subjectively—in the eye of the beholder—rather than, or in addition to, in terms of specified unlawful acts or intentions, making it difficult for protestors to know that they are remaining outwith the application of the relevant power or offence.⁶⁵

⁵⁵ Cf *Makhmudov v Russia*, para 63.

⁵⁶ *Makhmudov*, para 64.

⁵⁷ Cf *Aldemir v Turkey*, paras 40–42 and *Balcik v Turkey*, paras 45–46.

⁵⁸ Para 49.

⁵⁹ Cf *Aldemir*, para 43.

⁶⁰ Cf *Aldemir*, paras 46–47;

⁶¹ In *Aldemir*, the protest took place in “a particularly busy square in central Ankara”.

⁶² *Bukta v Hungary*, para 36.

⁶³ *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, §§ 41–42.

⁶⁴ *Makhmudov*, para 65.

⁶⁵ Eg offences defined in terms of causing “harassment, alarm or distress”.

ii. Further, wide discretion is often given to police officers—including a constable at the scene—to restrict protest.⁶⁶

iii. The line between lawful and unlawful conduct is therefore unclear and the scope for police interference is wide. This tends to delegitimise peaceful protest in the eyes of decision-makers and the public, and to deter legitimate protestors.

iv. Overbroad legislation is often justified on the basis that the police and other officials will not be able to use it in circumstances contrary to the Human Rights Act 1998 (HRA). However, the Convention, as interpreted in case-law, provides a standard for interference which is both complex and mutable. In effect the individual police officer or protestor is being asked to determine—sometimes in circumstances where an urgent response is required—whether his or her actions, while within the statutory power, are in accordance with the HRA. This is a complex legal question and clear guidance is necessary.

v. Because the legislation is overbroad, it relies upon individuals taking legal action against the police, often after the fact, to deter its inappropriate use. Litigation is not well suited as the sole or primary deterrent against violations of the right to protest—which is often time-sensitive. Further, there are many reasons why protestors may not choose to pursue a litigation remedy. Such litigation, which may be appealed to the highest level because of its constitutional importance, is also an inefficient and expensive way of determining the limits on statutory police powers and criminal offences which on their face embrace legitimate conduct. Better and tighter drafting ab initio would reduce the need for such cases.

vi. Further, it is part of the guarantee of legality under the ECHR that the law should be sufficiently predictable: the criteria for legality in *Sunday Times v UK*⁶⁷ of adequate accessibility and “sufficient precision to enable the citizen to regulate his conduct...if need be with appropriate advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”⁶⁸ are supplemented by the emphasis in *Malone v UK*⁶⁹ that the criterion “implies...that there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded [by the Convention]”.

vii. Overbroad legislation undermines the principle of legality: an illustration of this problem was seen in *R (Gillan) v Commissioner of Police for the Metropolis*⁷⁰ where, while clear that stop and search powers authorised under s44 Terrorism Act 2000 should not be used in an arbitrary or discriminatory way, the House of Lords found it difficult to show how this could effectively be prevented in practice, beyond recourse to the county court after the event.

b. *Progressive legislative limitation of the right to protest*

i. In recent years there have been a high number of legislative provisions restricting and interfering with public protest. This trend is not new—some commonly used provisions (such as the offence under s5 Public Order Act 1986) are of long standing. However, more recently the rate of such legislation has increased: SOCPA contained a large number of measures affecting protest—some of which arguably did not receive sufficient Parliamentary time because of focus upon other Parts of the Bill (such as that concerning racial and religious hatred). It should also be recalled that the right to protest has been affected by other legislation not, on its face, concerned with such activity, including the Protection from Harassment Act 1997; the Terrorism Act 2000; and the Anti-social Behaviour Act 2003.

ii. There are now, therefore, a bewildering array of powers and offences in relation to protest activities—many of which overlap in application. This further decreases the foreseeability and predictability of the law. Some provisions seem to have the character of “message legislation”: to send a message to certain groups or regarding certain activity (such as animal rights protests) even if undesirable conduct could be tackled using existing common law and statutory powers.⁷¹ Other provisions seem designed to circumvent safeguards against “blanket” measures—allowing peaceful protestors’ rights to be circumvented alongside those intent upon unlawful action.⁷²

iii. Further, in addition to increasing in volume recent legislative restrictions have also arguably increased in their severity. The offence of harassing a person in his home under s126 SOCPA, for example, contains no defence of “reasonableness”, despite the fact that it is perfectly possible for peaceful protests (for example, against a former foreign official implicated in human rights abuses and now resident in or merely visiting the UK) to be covered by the offence. The “reasonableness” defence has previously been used by protestors in relation to s5 Public Order Act 1986.⁷³ SOCPA also extended the potential to use the law of trespass against protest: while the Criminal Justice and Public Order Act 1994 criminalised “aggravated trespass”, under SOCPA the Home Secretary can designate any site on the grounds of “national security”

⁶⁶ Eg dispersal directions under the Anti-Social Behaviour Act 2003; directions to stay away from a person’s home under SOCPA.

⁶⁷ App no. 6538/74, judgment 26 April 1979.

⁶⁸ At para 49.

⁶⁹ (1997) 24 EHRR 523.

⁷⁰ [2006] UKHL 12.

⁷¹ Eg the specific provisions re animal rights groups in SOCPA.

⁷² Eg the extension of the maximum period for police directions under s42 Criminal Justice and Police Act 2001 in s127 SOCPA.

⁷³ Cf *Percy v DPP* (2002) Crim LR 835

as one where simple trespass becomes a criminal offence.⁷⁴ It also continues the trend of allowing draconian police directions—effectively giving police the discretion to impose a ban a person protesting outside a particular dwelling for three months.⁷⁵ A similar problem is raised by ss132–138 SOCPA, concerning protests around Parliament: the power to impose conditions on protests in the interests of preventing “disruption to the life of the community” goes further than previous regulatory powers which referred to serious disruption. An amendment to require serious disruption was specifically rejected by the government in the Lords.⁷⁶ This is despite the fact that the ECtHR has said that “[i]t goes without saying that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility.”⁷⁷

c. *Reluctance of the courts to provide clear limits on overbroad powers under s3 HRA*

i. The domestic judicial response to the use of overbroad statutory police powers and discretions against protest has not been a strong one. The cases of *R (Singh) v Chief Constable of the West Midlands*⁷⁸ and *R (Gillan) v Commissioner of Police for the Metropolis*⁷⁹ illustrate this. The Committee will be familiar with these cases and for reasons of brevity we will not set out the facts here. Suffice it to say that in both cases, broadly drafted police powers capable of interfering with the right to protest were found to be compatible with the HRA but it was accepted that the exercise of those powers in a particular case could violate that right. In *Singh*, Hallett LJ failed to give specific and clear guidance as to when the use of a dispersal direction under ASBA against a protestor would be incompatible with the HRA but merely referred back to the ECHR, saying:

“Whether or not a group’s behaviour on any particular occasion warrants a dispersal direction will depend on the circumstances. Police officers must act proportionately and sensibly...

They cannot act on a whim. Both authorisations and dispersal directions must be justified on an objective basis. If used improperly or disproportionately they may be challenged. Articles 10 and 11 are there to protect the peaceful and lawful protest.”⁸⁰

ii. While Lord Bingham in *Gillan* did give the example of using stop and search under s44 Terrorism Act “to silence a heckler at a political meeting”⁸¹ as one example where the exercise of the power would infringe Articles 10 and 11 ECHR, and said that “[i]n exercising the power the constable is not free to act arbitrarily, and will be open to civil suit if he does. It is true that he need have no suspicion... This cannot, realistically, be interpreted as a warrant to stop and search people who are obviously not terrorist suspects, which would be futile and time-wasting”,⁸² the House of Lords did not read specific safeguards into the exercise of the relevant powers—despite the fact that the exercise of such a broadly drafted discretion is almost impossible to review effectively in a civil case.

CONCLUSIONS

5. We therefore believe that future legislation regarding the right to protest should consider enacting, inter alia:

- clear legislative definitions of offences/triggers for the exercise of police powers that do not prima facie include peaceful protest;
- legislative confirmation that peaceful protest, without more, cannot constitute anti-social behaviour or harassment;
- provisions ensuring that broad police discretions such as stop and search; dispersal directions; etc are not used to restrain or deter peaceful protestors; and
- a positive duty on police and other authorities to facilitate peaceful protest and ensuring mechanisms are in place to allow this to occur effectively.

6. We welcome the indication by the government that they propose to repeal ss132–138 SOCPA affecting the area around Parliament. We emphasise that protest at the location of Parliamentary decision-making has a particularly important democratic function, and in some cases protest in a prominent location offers the best opportunity for marginalised groups to receive political attention and mainstream media coverage in relation to their cause, and thereby to participate in the democratic process. We believe that those seeking

⁷⁴ Cf ss128–131 SOCPA. See also the Serious Organised Crime and Police Act 2005 (Designated Sites) Order 2005 SI 2005/3447, in which various military sites were so designated, including RAF Fairford.

⁷⁵ S127 SOCPA.

⁷⁶ Cf Hansard, 5 April 2005 col 686–687, Baroness Scotland of Asthal: “we must be able to ensure that those who work around Parliament are able to carry on their business without disruption and that the commissioner is able to place conditions on demonstrations to prevent this disruption. The Government believe that serious disruption is too high a threshold for demonstrations around Parliament and, given the importance of this area, the police need to have the ability to control all disruptive demonstrations.”

⁷⁷ *Aldemir*, para 43.

⁷⁸ [2006] EWCA Civ 1888.

⁷⁹ [2006] UKHL 12.

⁸⁰ Paras 89–90.

⁸¹ Para 30.

⁸² At para 35.

specific restrictions for the area around Parliament should justify them in terms of the democratic functioning of Parliament and/or national security/public order. The ECtHR case-law above should also be considered.

June 2008

Supplementary memorandum submitted by JUSTICE

INTRODUCTION

1. JUSTICE is an independent British-based human rights and law reform organisation with around 1,600 members. Its mission is to advance justice, human rights and the rule of law. It is also the British section of the International Commission of Jurists.

2. JUSTICE provided written and oral evidence to the Joint Committee on Human Rights (the Committee) inquiry into Policing and Protest in June 2008. At the oral evidence session, we were asked to provide supplementary evidence regarding the right to protest on, and in the vicinity of, private land, both dwellings and commercial/other land. This supplementary paper is designed to provide such evidence.

SPECIAL CONSIDERATIONS APPLYING TO DWELLINGS

3. In our oral evidence to the Committee we acknowledged that the right to personal autonomy in a dwelling, as protected by Article 8 of the European Convention on Human Rights (ECHR), could justify greater legislative restrictions upon protest in the vicinity of a dwelling than would apply in what we termed a “pure” public space, such as a town square. However, any such restrictions must remain proportionate in all the circumstances.

4. We emphasise here that we are not talking about the right to protest in or on a dwelling—such as the example given by Lord Lester of a protest on the roof of a government minister’s house. We would not support any right of unlawful entry inside a private dwelling to carry out expressive activity, and any incursion onto the occupier’s private property to carry out a protest (eg through climbing onto a roof or assembling on a driveway) would, we believe, constitute a trespass even if no offence were committed (eg of criminal damage) and would therefore entitle the occupier to use reasonable force to remove the protestors.

5. However, this would not apply to activities normally tolerated by occupiers such as leafleting through letterboxes or doorstep canvassing, since permission for such activity is, we believe, implied until revoked by the occupier. These activities, together with protests on public land in the vicinity of dwellings (for example, marches or assemblies in the public highway in a residential area) should not, we believe, be the subject of blanket or overbroad legislative restriction. However, they may be legitimately made subject to proportionate regulation in order to prevent situations of intimidation, harassment (in the narrow sense) or violence.

6. In our view, it is helpful to examine the relationship between the rights to freedom of expression and assembly, on the one hand, and the right to privacy on the other, in this context, from the viewpoint of autonomy.⁸³ From this perspective, the right of the protestor to make his/her viewpoint known should be respected provided that it does not genuinely impinge upon the personal autonomy of the resident of a dwelling. Expressive activity whose purpose is to coerce would not be tolerated under this balance. For example, noisy night-time protest directly outside a dwelling preventing sleep, or threats of violent action or property damage, should clearly be prevented by legislative restriction.

7. Our concerns with the criminal law governing protest in the vicinity of dwellings is not that they prohibit activity such as this, but that they are so broadly drafted that they also embrace—and are likely to deter—protests that do not impinge excessively upon the right to privacy and that should be protected by Articles 10 and 11 ECHR.

8. The characteristics of this legislation are that it criminalises activity which can fall within an extremely broad definition (eg “harassment”); that protest activity falls within the definition because of its perceived potential effect rather than the intention with which it is carried out (eg “likely to cause harassment, alarm or distress”), and that it grants very broad discretion to officials to restrict protest activity if they believe that it falls within the broad definition. Such legislation is likely, we believe, to deter protestors from activity which should be permitted and indeed facilitated according to the jurisprudence of the European Court of Human Rights (ECtHR).⁸⁴

9. Prior to 2005, public protests in the vicinity of dwellings were, we believe, already the subject of sufficient regulation to protect the privacy rights of local residents. Static assemblies in a public place⁸⁵ in the vicinity of a dwelling were already subject to s14 Public Order Act 1986, which allowed the police to

⁸³ Cf H Fenwick, *Civil Liberties and Human Rights*, 4th edn, Routledge, p940.

⁸⁴ Cf JUSTICE’s main written evidence to the *Policing and Protest* inquiry.

⁸⁵ In a place wholly or partly open to the air.

impose conditions as to the size, place and duration of assemblies⁸⁶ in order to prevent serious public disorder, serious damage to property or serious disruption to the life of the community, or if the purpose of the assembly was to intimidate others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do. The ordinary criminal law of course also applied to such assemblies, prohibiting offences such as harassment, criminal damage, threatening behaviour and other offences under the Public Order Act 1986, common assault, etc.

10. Further, s42 of the Criminal Justice and Police Act 2001 gave increased protection to residents; it permitted a police officer to give directions to protestors to leave the vicinity of a person's home on extensive grounds, which in our view would, on the face of the statute, include some circumstances where the right to protest should predominate over the Article 8 privacy right. This provision was, we believe, overbroad, since although it fell to be interpreted in accordance with the Human Rights Act 1998 (HRA), an individual police officer is not best placed to make such an interpretation on the ground without clear legislative guidance.

11. Since the passing of the Serious Organised Crime and Police Act 2005, however, the situation has become even more imbalanced. Today, for example, if a former dictator or war criminal were to take up residence or stay in a dwelling in England, and a person protested on the highway outside the dwelling for one hour in the daytime, then provided the protest was likely to cause "distress" (by, for example, the use of a placard with a picture of a mass grave or torture chamber on it), the protestor would be committing the offence of harassment of a person in his home under s126 SOCPA and could be imprisoned. There is no defence of reasonableness in relation to this offence.⁸⁷

12. Furthermore, under the extension of s42 Criminal Justice and Public Order Act 2001 under s127 SOCPA, a police officer who reasonably believes that such an offence is being committed can order the protestors to leave and not to return for up to three months. A group protesting human rights abuses in Country A, for example, could be ordered to leave the vicinity of Country A's embassy where they were protesting (an embassy being of course a dwelling) and not to return for three months, because a police constable reasonably believed it might "distress" the ambassador to see them there. The breadth of the legislation (including the vagueness and subjectivity of the definition of "harassment") leaves the police constable at the scene to make the legal determination of how the rights under Articles 8 and 10 and 11 ECHR should be balanced. This is, in our view, inappropriate.

13. In addition to the criminalisation of legitimate protest activity we believe that these provisions are likely to have a substantial chilling effect upon lawful protest in the vicinity of dwellings. Such protest may be the best or most appropriate forum in which to call attention to an issue: for example, the residence of a war criminal in the UK.

14. We therefore believe that while legislative regulation to prevent intimidatory or coercive protest, and to regulate other protest to prevent excessive duration, noise, etc, is legitimate for the vicinity of dwellings, the current legislation goes too far and makes even peaceful protest near a dwelling very difficult. It is therefore a disproportionate restriction upon the freedoms of expression and assembly.

15. We draw particular attention to the fact that some dwellings may also have an official or representative function eg embassies; No. 10 Downing Street. This additional function of the building may present a particularly compelling reason why protest should not be subject to disproportionate restriction in its vicinity. While relevant, the fact that the building is also a dwelling could be dealt with by, for example, greater regulation of night-time protests outside it.

SPECIAL CONSIDERATIONS APPLYING TO COMMERCIAL AND INDUSTRIAL ACTIVITIES

16. While a person does have a right to privacy in the workplace, we believe that this justifies a lesser degree of regulation for protest in the vicinity of places of work than would be applicable to private dwellings. Further, while we would not support a right of entry to a private dwelling for the purposes of expressive activity (see above) we believe that where privately owned land is open to the public in general⁸⁸ there should be a presumption that it be treated as a public space for the purposes of the right to protest.⁸⁹

17. For example, we would support a right of reasonable access for expressive activities to a shopping centre during opening hours and to, for example, a gated housing estate during hours where the public are normally granted access eg for transit through the estate.

⁸⁶ Following amendment in the Anti-Social Behaviour Act 2003, an assembly could be 2 or more people.

⁸⁷ Contrast this with the case of *Percy v DPP* [2002] Crim LR 835.

⁸⁸ For example, a shopping centre during its opening hours. We recognise, however, that the ECtHR did not recognise this principle in *Appleby v UK*.

⁸⁹ Cf also J Rowbottom, "Property and participation: a right of access for expressive activities", [2005] EHRLR 186-202. Rowbottom notes that the New Jersey Superior Court affirmed the right of access to a gated residential community to distribute political leaflets cf n31 at p194.

18. We recognise that the current state of English law does not recognise such a right, but in light of the privatisation of considerable amounts of public space—for example, the replacement of traditional town centres with shopping centres or the private ownership of land such as Canary Wharf in London—we believe that the development of the law in this way would be appropriate, in order to prevent barriers to expressive activity in the most appropriate location.⁹⁰

August 2008

Memorandum submitted by Milan Rai, Justice Not Vengeance

1) QUESTIONS OF PRINCIPLE

In general, freedom of expression is a central value in the continual struggle to develop and expand democracy. Without freedom of expression, not only is there no check on concentrations of power such as the State executive or corporate elites, but there is, in a deeper sense, no opportunity for the general public to develop its own understanding of the social situation through dialogue.

Freedom to protest is one element of freedom of expression, and a vital one, as extra-parliamentary protest can be an effective means of exerting restraint on concentrations of power when conventional channels fail to defend basic principles or to reflect the wishes of the majority.

When we reflect on the history of the last century, it is painfully clear that the great powers of the modern age have suffered from too little rather than too much dissent and disruption. The problem of our time—certainly in the West—has been large-scale conformism and acquiescence in great crimes, rather than the muted and intermittent rebellions against them.

It is therefore critical that the State executive is forced to respect the right to peaceful protest, and to remove legislative, procedural and other obstacles to such activity.

I am reluctant, however, to endorse the notion that the State should “facilitate” peaceful protest. Ideally, the State should negotiate between the competing interests involved in a protest situation, and raise as few obstacles as possible to nonviolent protest. The word “facilitate” has an undercurrent of “assisting” or “making easier”—I think that neither the police nor the protesters should consider the police role in this fashion.

Protesters have a right to protest. The police force is charged with preventing criminal activity (assuming that protest itself is not criminalized). These are separate roles. To consider the police role as one of “facilitating” protest tends to give them an elevated or paternalistic position which is inappropriate in a properly-functioning democracy.

Before proceeding, there is a question of context which we should address. Many of the major protest movements of recent times in Britain have been sparked by major State crimes.

The invasions of Afghanistan and Iraq were violations of international law on a grand scale, amounting to the supreme crime of aggression. The harm done to persons and property—and to the fabric of international law—as a result of these reckless crimes is incalculable.

In this context, it is shameful, in considering the role of the police, to restrict one’s attention to the question of what limits should be placed on protest.

For millions of people in Britain (setting aside the possible interest of the peoples of Iraq or Afghanistan), the question is: what limits should be placed on Government, and on the unfettered power of the British Government to make war outwith the Charter of the United Nations?

How can the police, charged with detecting and preventing crime, and arresting and charging the perpetrators of crime, be forced to live up to their responsibilities in relation to some of the greatest crimes of our era?

When one considers the scale of the crimes involved, it is easier to properly evaluate the threat to social order from the limited, timid and muted activities of the anti-war movement (I do not exclude myself from this category).

In principle, when protest moves into the realm of physical harm (or threatened harm) to people or property, or the disruption of legitimate activity, there begins to be a role for the police. However, protesters can often legitimately invoke the defence of necessity for their unconventional actions, despite considerable property damage or social disruption.

One thinks of the Greenpeace activists recently acquitted despite admitting £30,000-worth of damage to the Kingsnorth coal-fuelled power station, for example.

⁹⁰ For example, a protest drawing attention to the activities of a particular retailer whose branches are mostly housed within privately owned shopping malls.

The problems arise acutely when the police and judiciary—and Parliament—have failed to act to defend the rule of law when this has been threatened or violated by the Government, as in the case of aggressive war.

More problematically, as with the Kingsnorth example, or with nuclear weapons, there are sometimes fundamental challenges to social existence, and therefore to the foundations of law, which have not yet been incorporated into law.

In such circumstances, protest is of fundamental importance to the continuation of society, but does not receive legal protection. It is difficult to conceive of ways in which police discretion could be modified to take account of such cases.

In all of these, and similar cases, while Parliament and the law fail to address overwhelming social problems, and to offer effective constraints on the destructive behaviour of the State and other concentrations of power, one cannot expect police procedure or public order law to offer any remedy.

A similar problem arises in relation to animal rights. While few are convinced that animals (we may restrict the discussion to mammals for the purposes of discussion) should enjoy the rights afforded to human beings, it is the case that there has been a significant movement towards recognizing some degree of animal rights in law over the last century.

It is likely that this trend will continue, perhaps even accelerate (one thinks of the moves in Spain to grant primates legal rights) and that therefore animal rights protesters will shortly be seen in a somewhat different light.

If this is the case, then it may be proper to consider the activities of the animal rights movement in the light of the vast scale of animal suffering currently tolerated by the law.

One of the questions posed by the Joint Committee asks whether there are particular groups of protesters whose rights to protest should be limited.

I can see no argument in favour of such selectivity.

The criterion for police action should be the actions of the particular individual(s). If a protester engages in nonviolent protest, they should enjoy the same freedom as any other protester engaged in such activity. If they engage in criminal acts (leaving aside the qualifications entered above), they should be arrested and prosecuted in exactly the same fashion as any other protestor.

The cause involved, and the general tenor of that movement, should not affect police procedure or police behaviour.

Freedom of expression is either universal, or it is no longer a freedom. If it is selective, it becomes a privilege granted by the State to permitted opinions.

It goes without saying that this principle applies as much to neo-Nazis and Holocaust-deniers as to civil liberties protesters; as much to the Countryside Alliance as to the Animal Liberation Front; as much to supporters of the Israeli occupation of neighbouring territories as to the Palestine Solidarity Campaign.

Police powers in relation to protest should guarantee freedom of speech and freedom of expression—whatever the variety of speech.

The exception, in my view, should be speech which crosses into the realm of action, as with incitement to immediately commit criminal acts. This exception should not, however, permit police action against speech which consists of generalized encouragement of such acts.

2) PARLIAMENT

I can see no argument for restricting protest in any particular geographical areas—such as in the vicinity of Parliament. Parliament is a focus for extra-parliamentary protest because it is a vital part of British democracy.

There is no security risk posed by the presence of protesters which is not posed by the presence of commuters and tourists. Certainly, the risk from protesters is orders of magnitude lower than that posed by the presence of vehicles and vessels in roads and on the Thames immediately around Parliament.

While the movement of commuters, tourists, vans and boats is uncontrolled, there is no rational basis for controlling nonviolent protest around Parliament.

Section 128 of the Serious Organised Crime and Police Act (2005) also criminalized trespass at designated national security sites—a number of military bases, all licensed nuclear sites, Downing Street and other locations in Whitehall, and so on.

The purpose of this legislation is clearly to criminalize nonviolent protest. Terrorist activities, for example, can and would be prosecuted under a multitude of other laws. I can see no justification either for the criminalization of the civil offence of trespass, or for the geographical discrimination involved in the designation of these “protected sites”.

3) POLICING IN PRACTICE

It is my experience that the policing of protests is determined to a considerable extent by the perceived acceptability of the opinions being voiced. I regard this as unacceptable.

There is also discriminatory policing based on the perceived acceptability or “dangerousness” of the group organising the protest. While it is right and proper for the police to prepare appropriately for different kinds of protests, by different kinds of groups, this does not excuse harsh and discriminatory treatment of stigmatized protesters—behaviour which merely hardens attitudes among already-alienated protesters.

For example, a police tactic which has evolved in recent years consists of isolating a group of people (protesters, media personnel, passers-by) in what is known by protesters as “kettling”. Often the police do not permit people trapped within the cordon to leave unless they give their names and addresses, and allow their possessions to be searched.

This unacceptable, repressive and intrusive policing tactic is generally reserved for stigmatized protest groups.

The operational equivalent is the use of counter-terrorism powers in policing protest—as in the case of the peace camp at the B-52 bomber base near Fairford, Gloucestershire. The taking of people’s details, and search of their possessions, was justified by recourse to section 44 of the Terrorism Act (2000).

Along with other examples of the abuse of counter-terrorist legislation (see, for example, John Catt’s recent successful appeal to the Independent Police Complaints Commission in relation to his section 44 arrest at the 2005 Labour Party Conference for wearing an “unacceptable” T-shirt), this is evidence of a general trend towards repressive policing of protest.

Either terrorism laws are there to counter terrorism or they’re not. They should not be used against protesters.

(I leave aside the question of whether recently-passed terrorism laws are necessary or effective in dealing with political violence.)

Any experienced criminal lawyer or protester knows that the police in practice go beyond the letter of the law in pursuing their objectives—in this case, a certain kind of public order.

Every additional police power to repress protest that is passed by Parliament constitutes a signal to the officer on the beat that dissent and disruption, however mild, however nonviolent, is a blot on the social and physical landscape—to be minimized and neutralized wherever possible.

4) MY CASE

My direct involvement in this debate began in October 2005, when I rang the Events office at Charing Cross police station to register the fact that I was organising a remembrance ceremony for Iraqi civilians and British soldiers who had died in the Iraq war, to take place opposite Downing Street. I knew that the law on protests near Parliament had been altered recently, but did not know the details. I was informed of the new regulations, and sent an application form for our event.

Initially resigned to the new arrangements, and ready to fill in and sign the form, I became more and more troubled by the loss of freedom involved in moving from a system of voluntary notification to one of compulsory advance registration and authorization of nonviolent protest.

I rang the Events office once again, to inform the police that I was unable in good conscience to fill in and return the form, but that I would be going ahead with the remembrance ceremony—which they quite rightly saw as a protest against the ongoing war in Iraq.

I was arrested on 25 October 2005, within ten minutes of beginning to read aloud the names of Iraqi civilians who had died in the war and occupation. (My colleague Maya Anne Evans was reading aloud the names of British soldiers who had died in the conflict.) I was convicted of organising an unauthorized protest under the Serious Organised Crime and Police Act (SOCPA) on 12 April 2006, and fined £350 (with £150 court costs). I served a 14-day sentence in HMP Wandsworth for non-payment of this fine, beginning on 23 August 2007.

As I told Horseferry Road Magistrates Court upon conviction, I felt bound to stand by my judgement that one should not require police permission to remember the dead, and therefore I could not in conscience pay any fine for failing to obtain the permission of the police to do so.

I should perhaps point out that the prison sentence included a penalty for failing to pay a fine for a later name-reading ceremony at the October 2006 “No More Fallujahs” peace camp in Parliament Square, for which both I and Maya Anne Evans were convicted of both organising and participating in unauthorized protests.

One of the strange aspects of SOCPA protest restrictions has been the arbitrary pattern of arrests and non-arrests at different events, or of people at the same events. At the “No More Fallujahs” peace camp, there were a few arrests—though those arrested were subsequently released without charge; most people were neither arrested or asked for their details; and only two people (not arrested on-site) were prosecuted—Maya and myself.

I personally have experienced no police mistreatment during this sequence of events. The police officers involved in my case have behaved with professionalism and courtesy throughout—while implementing a nonsensical and frankly time-wasting law. However, I have witnessed harsher treatment of other protesters involved in the same protests.

5) THE FUTURE

In relation to protests around Parliament, I understand that one proposal is the replacement of “compulsory advance registration and authorization” with “compulsory advance registration and notification”.

While this seems to remove the power to impose conditions—which under SOCPA threatened to neutralize political protest by limiting the time, location, size and visibility of demonstrations—there is a problem.

The demand for compulsory notification is equivalent to authorization, in that if advance notification is not given (in the approved manner), the protest will be illegal—it will not be authorized.

If there is to be a move back towards “notification”, the word must mean something, and this must mean “voluntary notification”.

I would like to make three general concluding remarks.

Firstly, I suggest that the starting point for legislation in this area should be the defence of the twin freedoms of expression and assembly. Human rights should be at the centre of our concerns, rather than being treated as an annoying and possibly dangerous fringe element.

Secondly, that there should be a legal right to protest in public spaces, including privately-owned semi-public spaces, such as privatized parks or city centre areas, as Liberty has argued in its recent compelling submission to the Joint Committee on Human Rights.

Finally, recent decades have seen a sea-change in public attitudes towards protest, as extra-parliamentary protest, even nonviolent civil disobedience, has become more and more acceptable to the British public.

There is, I believe, a deepening appreciation of the unprecedented scale of the problems confronting us, and a perhaps unprecedented degree of desperation for social change.

Granting further repressive powers to the police could help to stifle these hopeful developments. Removing existing repressive legislation could help to nurture the growth of an active citizenship that lays the basis for a decent future.

October 2008

Memorandum submitted by Liberty

INTRODUCTION

1. Liberty is delighted that the Joint Committee on Human Rights has decided to inquire into the human rights issues arising from policing and protest. Since its formation, peaceful protest has been at the core of Liberty’s work. Indeed, we were founded in 1934 as the National Council for Civil Liberties, principally to monitor the policing of protests and in response to the use of police agent provocateurs to incite violence during the hunger marches of 1932. We continue to campaign against unjustified and disproportionate interferences with the right to protest, including through the courts, in Parliament and in the media.

2. This short response draws on Liberty’s long and varied history of fighting for the right to peaceful protest. We consider why the right to peaceful protest is such an important part of the post-War human rights framework and plays such a vital role in democratic societies. Next, we look at some of the many and varied restrictions imposed on peaceful protest: (A) legislation specifically designed to restrict protest; (B) legislation which has, in practice, restricted peaceful protest; and (C) non-legislative restrictions on protest.

THE RIGHT TO PEACEFUL PROTEST

3. From the lobbying and petitioning of the early anti-slavery movement, to the Chartist’s first public meetings in the 1800s, through to the anti-war march of 2003, Britain has acquired and developed a vital political culture of peaceful protest and dissent. Central to this culture of protest has been the ability of ordinary people to organise, gather, collectively express their grievances, and agitate for reform.

4. In the recent case of *R (on the application of Laporte) v. Chief Constable of Gloucestershire*, Lord Bingham commented that the “approach of the English common law to freedom of expression and assembly was hesitant and negative, permitting that which was not prohibited”.⁹¹ The law is certainly no longer

⁹¹ [2006] UKHL 55, para 34

“hesitant and negative” in its protection of this important right. It is now expressly protected by the Human Rights Act 1998, enshrined in Articles 10 and 11 of the European Convention on Human Rights (the “HRA” and the “Convention” respectively).

5. Strasbourg case law provides an important reminder of the importance of freedom of expression and assembly. In *Steel and Others v United Kingdom*, freedom of expression was said to constitute “an essential foundation of democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment.”⁹² In *Ziliberberg v Moldova*, the Court observed at the outset that “the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society.”⁹³ Peaceful protest is important at an individual level, for personal self-fulfilment, and at a societal level, for a healthy democratic society.

6. The right to peaceful protest is not, however, absolute. First, Articles 10 and 11 of the Convention do not encompass “a demonstration where the organisers and participants have violent intentions which result in public disorder.”⁹⁴ The Articles also expressly permit restrictions which are lawful, which pursue a legitimate aim (such as national security, public safety, the prevention of disorder or crime and protecting the rights and freedoms of others) and which are proportionate to that aim.⁹⁵ These three tests of legality, legitimate aim and proportionality are strictly applied by the courts in considering restrictions which are imposed on protest.⁹⁶

7. The Court has, indeed, stated that it is the duty of member states to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully:⁹⁷

“Genuine, effective freedom of peaceful assembly cannot ... be reduced to a mere duty on the part of the state not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. ... Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.”⁹⁸

RESTRICTIONS ON PEACEFUL PROTEST

8. Restrictions on peaceful protest take many forms:

- First, some legislation like provisions of the Public Order Act 1986 (“POA”) and Serious Organised Crime and Police Act 2005 (“SOCPA”) are specifically designed to regulate protest;
- Secondly, laws designed to tackle other issues have, in practice, been used to restrain protest; and
- Thirdly, importantly, non-legislative obstacles have been used to prevent and deter peaceful protest.

We consider below each of these types of restraint on peaceful protest. In particular we assess how far we consider them to constitute legitimate and proportionate restraints on this important right.

Targeted Statutory Limitations

SOCPA

9. Like the JCHR, Liberty raised serious concerns with several clauses contained in the Serious Organised Crime & Police Bill when it was first introduced in 2004. Of primary concern were the provisions, now contained in Sections 132–138 of SOCPA, which together place onerous restrictions on the rights of individual protest and the rights of assembly within the vicinity of Parliament. The fact that these specifically relate to the area around Parliament is of particular concern. The importance of the right to peaceful protest cannot be divorced from the right to do so in locations where protest will be best heard.

10. Under SOCPA those wishing to protest in the vicinity of Parliament are now subject to obligations and potential restrictions that go far beyond the rules governing peaceful assembly elsewhere in the country. Liberty believes that these exceptional powers and duties are individually onerous and collectively oppressive. For example under Section 134 there exists a very low threshold for the imposition of conditions on demonstrations, requiring, for example, a senior police officer to have only a reasonable belief that the demonstration may cause: “a hindrance to any person wishing to enter or leave the Palace of

⁹² (1998) 28 EHRR 603, para 101

⁹³ (App no 61821/00, 4 May 2004, unreported), para 2

⁹⁴ *G v Germany* (1989) 60 DR 256

⁹⁵ Articles 10(2) and 11(2)

⁹⁶ *Laporte*, [2006] UKHL 55 (para 37), *The Sunday Times v United Kingdom* (No 2) (1991) 14 EHRR 229, para 51; *Hashman and Harrup v United Kingdom* (1999) 30 EHRR 241, para 32

⁹⁷ *Plattform “Ärzte für das Leben” v Austria* (1988) 13 EHRR 204

⁹⁸ *Ibid*, para 32

Westminster⁹⁹. Any reasonably sized demonstration is likely to “hinder” someone’s access to Westminster at least temporarily. Consequently this provision is framed so widely that any medium-sized demonstration in the vicinity of Parliament can have conditions imposed upon it.

11. Further, the blanket requirement of notification at least 6 days in advance for demonstrations in the vicinity of Parliament unduly restricts spontaneous protest: a category of protest that should be at the very heart of any authentic democracy. If freedom of expression is to be meaningful in any sense it cannot be controlled or managed to such an extent as to effectively undermine its impact. If an important event or vote in Parliament is announced at short notice protesters will not be able to meet SOCPA’s six day notification requirement. In some cases demonstrators may not even be able to give the 24 hour notice that is the absolute minimum permitted when six days is not reasonably practicable. The European Court of Human Rights has recently considered a case in which a domestic court upheld a police decision to close down a necessarily spontaneous demonstration on the basis that no prior notification had been given. In the case the Court found that:

“in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.”¹⁰⁰

12. Once the authorities have decided that conditions can be imposed they have the power to determine the timing of demonstrations, the size of banners to be used and the permissible noise levels, on top of conditions that can already be imposed under the POA. Taken together, the conditions that can be imposed are intrusive and comprehensive, with the potential to undermine the effective impact of a demonstration. Liberty further believes that these conditions, when coupled with the criminal sanction for non-compliance, have a dangerous chilling effect on demonstrations. If the organisers of a demonstration are informed that only 500 people may attend and they believe that over 1,000 will arrive, they are likely to cancel rather than risk committing a criminal offence. While it is a defence that the size was beyond the organisers control this may well not help them if they had a suspicion, albeit slight, that there could be larger attendance.

13. The Home Office has referred to a number of factors which in their view could justify the different arrangements provided for in SOCPA, including: to allow the business of Parliament to proceed unhindered; to manage a security risk; and to ensure equal access to the right to protest.¹⁰¹ The Home Office has also indicated that the status of Parliament Square as a World Heritage Site should be taken into account when considering the need a need to “manage” protest. Liberty questions whether there were, in fact, different objectives behind the legislation which may not have been legitimate from a human rights perspective.¹⁰²

14. Putting aside the question of whether these provisions of SOCPA pursued a legitimate aim for human rights purposes, it is difficult to see how the restrictions and conditions permitted under the Act can pass any test of proportionality. This test can be summarised as whether the State has adopted the least intrusive way of achieving the legitimate aim having regard to all the circumstances. In assessing the balance of proportionality the powers already in place under the POA as well as the fundamental and critical nature of the right of peaceful assembly must be borne in mind. Liberty believes that Section 132(7)(e) is inherently disproportionate as it determines that one person can constitute a demonstration within the meaning of the Act. As a result SOCPA catches demonstrations that are entirely unconnected with the stated purpose of the legislation. The single-person demonstration of Brian Haw perfectly illustrates SOCPA’s disproportional definition of “assembly”.

15. SOCPA is also disproportionate in its criminalisation of those that fail to notify the authorities or abide by conditions imposed by the police (Section 132(1) and 134(7)). The widely publicised convictions of Maya Evans and Milan Rai effectively demonstrate the disproportionate nature of the criminal sanction imposed for failure to notify. Liberty does not believe that an automatic criminal sanction can be justified.

16. In light of SOCPA’s unjustified and disproportionate impact on the right of peaceful protest, Liberty welcomed comments made by Gordon Brown soon after he became Prime Minister in June 2007 indicating that SOCPA restrictions will be reviewed.¹⁰³ Liberty further welcomes the Government’s proposals to repeal sections 132–138 SOCPA, as contained in the White Paper on Constitutional Renewal published in March

⁹⁹ The police may also impose conditions on assemblies in the designated area if they consider it necessary to prevent: (a) hindrance to any person wishing to enter or leave the Palace of Westminster, (b) hindrance to the proper operation of Parliament, (c) serious public disorder, (d) serious damage to property, (e) disruption to the life of the community, (f) a security risk in any part of the designated area, (g) risk to the safety of members of the public (including any taking part in the demonstration). It is worth noting that the fifth of these reasons further broadens the police’s already wide discretion to impose conditions under the Public Order Act (1986): under the POA the police can impose conditions to prevent “serious disruption to the life of the community” (emphasis added). This is further discussed at paragraph 17.

¹⁰⁰ *Bukta and Others v Hungary* (2007)

¹⁰¹ The Home Office Consultation Document on the future of Sections 132–138 (*Managing Protest Around Parliament*) emphasises that Sections 132–138 of SOCPA sought to build on Sessional Orders which require the Commissioner of the Metropolitan Police to make ensure that the passageways to and from Parliament are kept free from obstruction: “[SOCPA] did not emerge out of a vacuum...the absolute essence of democracy is that the people’s elected representatives should be able to meet freely...in turn this imperative requires that these elected representatives should get to the place they meet—freely, and then meet in a peaceable atmosphere”.

¹⁰² It is widely believed that the principal aim behind the Act was to remove or downsize the 24 hour peaceful vigil of Brian Haw, whose highly publicised protest against the UK’s invasion of Iraq became an embarrassing thorn in the Government’s side.

¹⁰³ 3 July 2007

2008¹⁰⁴. However, while accepting the overwhelming call for the repeal of sections 132–138, the White Paper leaves open the possibility of additional provisions “for the purpose of keeping passages leading to the House free and open while the House is sitting, or to ensure that, for example, excessive noise is not used to disrupt the workings of Parliament”. The Paper seeks the views of Parliament on whether such additional provisions are required. Liberty would urge that the fundamental importance of the right to protest in the vicinity of Parliament is weighed heavily against any consideration of additional provisions that may affect this right.

Public Order Act 1986

17. Before the enactment of SOCPA, powers to prevent public disorder and regulate public assemblies which apply elsewhere in the country applied equally in the vicinity of Parliament. These are primarily contained in the Public Order Act 1986 (the “POA”).

18. Under the POA a senior police officer has the power to impose conditions as to: the place at which an assembly may be held; its maximum duration; or the maximum number of persons who may constitute it.¹⁰⁵ These conditions may be imposed where a senior police officer reasonably believes that the assembly may result in: serious public disorder; serious damage to property; serious disruption to the life of the community; or that the purpose of the assembly is to coerce by intimidation.¹⁰⁶ The third of these: “serious disruption to the life of the community” is vague and potentially confers on the police a large discretion to impose conditions. We are concerned that, in practice, this worryingly uncertain phrase could be interpreted very broadly so as to allow, for example, conditions to be imposed whenever a planned assembly has the potential to cause inconvenience to the public.

19. Another example of the stringent controls already accorded to police under the POA is found in Section 16 (as amended by the Anti-Social Behaviour Act 2003) which now defines an assembly as consisting of “2 or more persons”.¹⁰⁷ Liberty opposed the amendment to this definition at the time and we continue to do so. While we acknowledge that the police should have appropriate powers to deal with violent protests, we have always been concerned about the way in which these powers give rise to criminal sanction for behaviour that would not in itself be unlawful, but for the imposition of conditions. The fact that, previously, over 20 people were required to trigger the powers was at least a concession to the fact that it would only be appropriate for them to be used when there were a substantial number of people involved. It is now the case that if a senior police officer decides that two people could cause disorder, he could order that a third person could not join them and if an extra person did appear the “organiser” will commit an offence punishable by up to three months imprisonment. We are not aware of the reasoning for this change in the law and we maintain that the extended definition cannot be justified.

20. Under the POA organisers of public processions must notify the authorities at least six days before the procession is intended, with failure do so constituting a criminal offence¹⁰⁸. There is no such notification requirement for organisers of a public assembly. While Liberty strongly opposes the criminal penalty imposed for failure to notify of a public procession, we can see a logical reason for the distinction that has been drawn between public assemblies and public processions. Public processions necessarily involve the use of roads, can potentially clash with other processions and are likely to cause greater disruption than static assemblies, making prior notification more apt to allow the authorities to make necessary practical arrangements. While maintaining that the criminal penalty for failure to notify of a public procession is disproportionate, Liberty acknowledges the reason for the functional distinction and can see no reason why the distinction which exists in the rest of the country should not also exist in the vicinity of Parliament.

21. Liberty has recently had cause for concern in relation to the application of section 5 of the POA. Under section 5 a person is guilty of an offence if he: (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. On 10 May 2008, a young person was issued a summons by the City of London Police for refusing to remove his sign which read: “Scientology is not a religion, it is a dangerous cult.” The boy was taking part in a group protest outside the Church of Scientology’s central London headquarters and the police said that his use of the word “cult” violated section 5. Although City of London police later informed the boy that the prosecution would not be pursued, Liberty has concerns over police policy in this area and the chilling effect of such cases on legitimate free speech.

¹⁰⁴ The White Paper can be accessed at: <http://www.justice.gov.uk/docs/constitutional-renewal-white-paper.pdf>

¹⁰⁵ Section 14(1) Public Order Act (1986)

¹⁰⁶ Ibid

¹⁰⁷ Section 16, Public Order Act (1986). Previously an assembly was defined as consisting of “20 or more persons”.

¹⁰⁸ Section 11, Public Order Act (1986)

Other Statutory Limitations

22. A number of other statutory powers have in practice been used to restrict protest. In many cases the use of these broader statutory powers was not foreseen when legislation was passed and the implications of the powers on the right to protest was not, therefore, considered by Parliament. A detailed and exhaustive examination of such powers is beyond the scope of this short submission. Instead, there follows a brief description of some of the most notable and high-profile examples:

Section 44 Terrorism Act 2000

23. Under Section 44 of the Terrorism Act 2000, if a senior police officer believes that it is “expedient for the prevention of acts of terrorism”, he can grant powers to police officers to search people for “articles of a kind which could be used in connection with terrorism”. Once these powers have been granted there is no requirement that the officers exercising it should have reasonable (or even unreasonable) grounds for believing that the people that they search have done or will do anything wrong. Furthermore, although the original authorisation has to relate to preventing terrorism, it appears that stops and searches under Section 44 have been used against protesters who are in no way suspected of involvement in terrorism or of carrying articles which could be of use in connection with terrorism. Schedule 7 of the Terrorism Act provides similar powers at ports and airports.

24. The broad, discretionary stop and search power under Section 44 has, in practice been used to restrict peaceful protest:

- In September 2003, protestors at an arms fair in east London were stopped by the police under Section 44 of the Terrorism Act. The police initially denied that they had used Terrorism Act powers at all. In the ensuing litigation, it was revealed that Section 44 authorisations had been in force for the whole of Greater London continuously since February 2001. Section 44 allowed the police to stop and search them without the need for any suspicion that they had committed an offence. Section 44 was also routinely employed during the policing of demonstrations at Fairford and Welford, Gloucestershire, in 2003.¹⁰⁹
- The 82-year-old Walter Wolfgang was famously ejected from the 2005 Labour Party conference after heckling Jack Straw. When he attempted to return to the hall, he was prevented from doing so under Section 44. The officers concerned controversially interpreted their stop-and-search powers as including the authority simply to stop individuals without going on to search them.

Anti-Social Behaviour Legislation

25. Anti-Social Behaviour Orders (ASBOS) can be imposed on individuals found to have carried out anti-social behaviour. “Anti social behaviour” is defined as “behaviour likely to cause harassment, alarm or distress”. ASBOS can contain any conditions deemed necessary to prevent a repeat of the behaviour. On occasion peaceful protest has been considered to fall within this very broad statutory definition and ASBOs have been used against protestors.

- In January 2005, Heather Nicholson, a leading animal rights activist, was given a five year anti-social behaviour order to keep her away from animal research laboratories. She was barred from going within 500 metres of Huntingdon Life Sciences’ sites in Cambridgeshire and Suffolk and prevented from approaching other firms linked to the research. In particular the ASBO prevents Ms Nicholson from contacting the owners, shareholders or employees of Huntingdon Life Sciences or their families.
- Lindis Percy, a 63 year old midwife from Hull, gained notoriety in November 2004 when she climbed the gates of Buckingham Palace shortly before George Bush’s visit to London. A dedicated peace campaigner, Lindis organises a weekly protest at Menwith Hill airbase in Yorkshire. Menwith Hill plays a key role in the American missile defence system. Lindis is among the many concerned citizens who have pursued non-violent protest at the base for years. In 2005 the Ministry of Defence police and North Yorkshire police made a joint application for an ASBO, in which they accused Lindis of frightening, harassing and alarming the community. While the ASBO was not granted in this case, the judge did warn that there could be circumstances where ASBOs may be used against those engaging in political or other protests if they indulged in “intimidating behaviour”.

26. Other powers designed to deal with anti-social behaviour have been used to restrict peaceful protest. Section 50 of the Police Reform Act 2002 gives the police the power to demand the name and address of anyone they have reason to believe has acted antisocially. It is an offence to refuse to give your name and address or to give false details. Section 30 of the Anti-Social Behaviour Act 2003 gives police and community

¹⁰⁹ See “Casualty of War: 8 Weeks of Counter-Terrorism in Rural England”, July 2003 (<http://www.liberty-human-rights.org.uk/issues/pdfs/casualty-of-war-final.pdf>)

support officers the power, within designated areas, to disperse any group of two or more people whose behaviour they think is likely to cause harassment, alarm or distress to members of the public. Failing to disperse, or returning to the area, constitutes a criminal offence.

Protection from Harassment Act 1997

27. The Protection from Harassment Act 1997 (PHA) was introduced initially to deal with “stalkers”. However, it has been used extensively against protesters. Under Section 1 PHA it is an offence for a person to pursue a “course of conduct” which harasses, and which the person knows or ought to know amounts to harassment. Harassment is not defined, but includes conduct which causes “alarm and distress”. The Serious Organised Crime and Prevention Act 2005 (SOCPA) introduced Section 1A PHA which extends the definition of harassment to include conduct on one occasion only, provided that it involves the harassment of two or more persons and is done with the intention of persuading them to do something that they are entitled not to do or not to do something which they are entitled to do. A crowd of people protesting against a company or public official is likely to cause “alarm and distress”. A single act of protest that targets one company may involve the harassment of several employees, and so breaches this section.

28. In addition to the criminal offence, the PHA allows those who apprehend that they may be victims of harassment to apply to the court for an injunction prohibiting that harassment. An injunction is a civil remedy, but the breach of the injunction is a criminal offence. Companies have been known to apply for very broad injunctions to prevent any sort of protest against them. These powers were brought to the public attention last year when injunctions were obtained by RWE NPower to prevent protests against the proposal to allow the company dump waste in a local beauty spot, Radley Lakes, Oxfordshire.¹¹⁰ These injunctions were not granted against identified individuals or groups but “contra mundum”, ie against anyone with notice of the injunction. Later in 2007 BAA also sought a broad injunction to prevent protest about Heathrow.

Other Legislation

29. Other pieces of legislation, not intended or aimed at governing protest, have been used to impose additional obligations on those seeking to protest:

- The Licensing Act 2003 has been used to restrain protests which involve the use of music. There is an exemption where the use of music is incidental to a non-licensable activity but there have been disputes about when exactly this exemption applies.
- The Environmental Protection Act 1990 makes it a criminal offence to distribute free printed matter in designated areas without prior consent.¹¹¹ There is an exemption for leaflets distributed for charitable or political purposes but this exemption has been interpreted very narrowly and the legislation has been used to prevent protesters handing out leaflets.
- The following example shows how the Road Traffic Regulation Act 1984 has also been used to restrict peaceful protest:

STUDENTS AT ST GEORGE’S ROMAN CATHOLIC HIGH SCHOOL, WORSLEY

In February 2008, Liberty took up the case of three schoolchildren in Worsley who had organised a march to protest against the closure of their school. Negotiations had taken place between the schoolchildren and the police about the route and time of the march which were agreed in accordance with the Public Order Act. However, subsequent discussions with Salford City Council resulted in a charge of £1866.45 being imposed on the students by the Council for the march. The amount of the charge was said to cover (a) the Council’s Urban Traffic Control Unit’s charges for switching traffic lights to red (b) the Council’s Legal Services Department’s legal documentation costs and (c) the “vehicles, manpower, signage etc” to be provided by the Highway Services Team. The Council is arguing that the charge can be levied because a road would have to be closed in order for the march to take place. They are claiming that such a road closure is authorised by s 16A of the Road Traffic Regulation Act 1984 (which applies to “sporting events, social events or entertainment”) and that by virtue of section 3 of the Local Authorities (Transport Charges) Regulations 1998, a charge can be levied on the “promoter” of the relevant event.

¹¹⁰ Cf “A glut of barristers at Westminster has led to a crackdown on dissent: The harassment law now being used against anti-dumping protesters in Oxfordshire is turning into the riot act of our day”, *Guardian*, 6 March 2007.

¹¹¹ Section 94B and Schedule 3A of the Environmental Protection Act 1990 (as inserted by Section 23 of the Clean Neighbourhoods and Environment Act 2005)

Non-Statutory Restrictions

30. In addition to the large volume of legislative interference with protest, there also exists a raft of non-statutory restrictions and hurdles for those wishing to organise peaceful protests. While, in theory, many of these hurdles could be challenged for incompatibility with Articles 10 and 11, Liberty is concerned that they could dissuade protesters from organising a demonstration, and in so doing, effectively stifle free speech rights. We consider below only a few of the many non-statutory restraints that can infringe on peaceful protest:

- *Local Authority Guidelines*—In May 2008 Liberty sought to organise a peaceful protest in the vicinity of Parliament. We discovered that along with the requirement for SOCPA authorisation, further permission (from various authorities) was required in order to protest peacefully in other areas around Parliament. In particular, permission from the GLA was required in order to organise a peaceful protest in Parliament Square. Among other things, GLA guidelines prescribe that:
 - Applications for a public gathering or static protest must be permitted five working days in advance (with longer notice periods required for “large or complex proposals”).
 - Not more than one public meeting in Parliament Square is allowed on the same day.
 - Public gatherings and static protests in Parliament Square cannot last longer than three hours and must be in daylight hours.
 - Public Liability Insurance (minimum £5 million cover) is required for public gatherings and static protests in Parliament Square. The public liability insurance certificate must be provided to the GLA five days before the planned protest. This is prohibitively expensive.
 - Banners may not be attached to any part of Parliament Square.

Permission is also required in order to protest on College Green or Old Palace Yard—both strategically important locations for protest around Parliament. To protest on these locations, permission must be sought from the Houses of Parliament and certain restrictions can be imposed¹¹².

- *Bye-laws*—Determined at the local level, bye-laws can place unnecessary and unjustified restrictions on protest. Often they list certain activities that cannot be engaged in, such as erecting “any structure”¹¹³ or taking “photographs or any other recordings of visual images”¹¹⁴. In practice this can mean, for example, that protesters are unable to set up a stall to display their campaigning materials.

31. These guidelines and bye-laws are imposed by public authorities who claim that certain rules are practical and necessary to regulate the use of land that is under their control. Liberty is concerned that in dealing with their logistical challenges, public authorities are failing to properly consider their duties under the Human Rights Act (1998). Under the HRA, public bodies are required to protect the rights of freedom of speech and freedom of assembly and to only permit restrictions that are proportionate and that fall within specified “legitimate aims” such as national security and the prevention of disorder and crime. Instead, as the examples above illustrate, restrictions and conditions are imposed by public authorities for reasons of logistical convenience.

June 2008

Supplementary memorandum submitted by Liberty

INTRODUCTION

1. This short note supplements Liberty’s written and oral evidence to the JCHR’s protest inquiry in June 2008. During the oral evidence session a number of questions were raised about the right to protest in privately-owned space—an issue which was not covered in our original evidence. Liberty was asked to submit an additional paper on this issue.

2. The discussion during the evidence session focused on two distinct issues: first, protests on or in the vicinity of the private homes of public figures; and, secondly, protests in quasi-public spaces which are privately owned. The second issue is of particular interest to Liberty and one which we have litigated in the European Court of Human Rights. In this paper we focus principally on that issue but, before doing so, clarify Liberty’s position on the first issue.

¹¹² For example, only 12 persons are allowed to protest on College Green at any one time.

¹¹³ Trafalgar Square and Parliament Square Byelaws

¹¹⁴ *Ibid*

 PRIVATE HOMES OF PUBLIC FIGURES

3. The particular example discussed in the evidence session was the protest by two members of Fathers for Justice on the home of Rt Hon Harriet Harman QC MP. We understand from press reports of the incident that two men scaled the roof of Harriet Harman's house in Herne Hill, South London, where they unfurled a banner reading "A father is for life, not just conception".¹¹⁵ We also understand that the incident involved the use of significant police resources, that Ms Harman and her family were forced to leave their home and that their neighbours also suffered significant disruption. There has been a repeat of the incident. We would like to emphasise that Liberty does not and has never condoned the actions of these protesters.

4. The trial of two of the men involved in these incidents is likely to take place later this month and we would not wish to comment in detail on these particular cases. In general terms it is, however, clear that the right to private and family life is affected by protests which target the private residences of public personalities. A public figure does not waive their right to a private life or home when they decide to go into public life. Legal restrictions on protest in this context would, therefore, pursue a legitimate aim.¹¹⁶ As was pointed out in oral evidence such actions might indeed fall within the scope of existing criminal offences including aggravated trespass¹¹⁷ and harassment.¹¹⁸

5. Slightly different issues arise where the peaceful protest is not on private property but on public space outside the private residence of a public figure, eg on a pavement or road.¹¹⁹ Even in this context we would, however, accept that proportionate legal restrictions on protest could be legitimate given the clear potential for interference with private and family life. We would not, however, support blanket prohibitions on peaceful protest in the vicinity of the private residences of public figures. Such a prohibition could be disproportionate and lead to unjust outcomes. A building which serves as a public figure's private home could, for example, have broader public significance, making it a valid focus of peaceful protests. Number 10 Downing Street and Buckingham Palace are obvious examples. Furthermore, the fact that a public figure lives in a particular property or on a particular street should not operate as a blanket bar on protests in the area. There could, for example, be other legitimate reasons to stage a protest in a street in Herne Hill, South London—perhaps a protest against planned developments in the area.

6. It is worth pointing out that there are already legal restrictions on protest near private residence. S 42 of the Criminal Justice and Police Act 2001 criminalise a failure to comply with the directions of a police officer given in the belief that a protestor's presence will cause distress to the occupants of private premises¹²⁰. Meanwhile S.137 Highways Act 1980 makes obstruction of the highway an offence.

PRIVATELY-OWNED QUASI-PUBLIC SPACES

7. The Joint Committee on Human Rights has frequently commented on the continual blurring of the distinction between the public and the private and its implications for human rights protection. As the Committee has recognised we live in an "environment where many services previously delivered by public authorities are being privatised or contracted out to private suppliers."¹²¹ This phenomenon is not, however, restricted to the provision of public services. A growing number of quasi-public spaces are also now owned and managed by private bodies. Earlier this year, *the Guardian* ran a story on this issue entitled "Cities for Sale", stating:

"Urban public space is at the heart of city and town life. It is the essence of public freedom: a place to rally, to protest, to sit and contemplate, to smoke or talk or watch the stars. No matter what happens in the shops and cafes, the offices and houses, the existence of public space means there is always somewhere to go to express yourself or simply to escape.

Yet this, too, is under assault. From parks to pedestrian streets, squares to market places, public spaces are being bought up and closed down, often with little consultation or publicity. In towns and cities all over England, what was once public is now private. It is effectively owned by corporations, which set the standards of behaviour."¹²²

8. The precise scale of the shift of quasi-public spaces from public to private ownership is difficult to ascertain. There are, however, a number of high profile examples of urban regeneration projects which epitomise the change:¹²³

¹¹⁵ Times, "Harriet Harman abandons home after Fathers4Justice protest on roof, 8 June 2008

¹¹⁶ In the context of Article 11 "the protection of the rights and freedoms of others" and in the context of Article 10 "the protection of the ... rights of others."

¹¹⁷ Section 68 of the Criminal Justice and Public Order Act 1994

¹¹⁸ Section 2 of the Protection from Harassment Act 1997

¹¹⁹ Aggravated trespass would not, for example, be applicable.

¹²⁰ The Serious Organised Crime and Police Act 2005 goes further by introducing a new S.42A which removes the need for police directions before the offence is committed but this has not yet come into force

¹²¹ Ninth report of 2006-07, "The Meaning of Public Authority under the Human Rights Act", Para 4

¹²² 29 March, 2008, edited extract from *Real England: The Battle Against The Bland*, by Paul Kingsnorth

¹²³ Examples sourced in "The privatisation of public space", RICS, 2006: <http://www.rics.org/NR/rdonlyres/14C852FF-1BC0-4453-B9A7-D80649BF245D/0/50479Privatisation.pdf>

- The Broadgate Centre (EC2)—a 30 acre site, adjacent to Liverpool Street Station is now owned entirely by British Land and is maintained and managed by its management arm Broadgate Estates, a management company which also manages “private-public” estates at More London, Chiswick Park, Regents Place, Paternoster Square and Fleet Place.
- The Paradise Street Development Area (Liverpool)—Developer Grosvenor’s Paradise Street scheme in Liverpool is one of the largest regeneration schemes currently under construction in Western Europe, redeveloping 42.5 acres, including 34 streets, in the heart of Liverpool. While the council retains the freehold, it has leased the entire site to Grosvenor for 250 years.
- Excel Centre, Royal Victoria Dock, London, E16—the 100 acre private “campus” which opened in 2000 is a mix of enclosed mall, conference and shopping centre with six on-site hotels and 2,000 homes. The majority owners are the Malaysian conglomerate Usaha Taegus, who also partly own the Petronas Towers in Kuala Lumpur, and control of the estate is in the hands of their management company.

9. It is certainly not Liberty’s aim to criticise such developments which may well lead to significant and welcome capital investment and redevelopment opportunities.¹²⁴ Our concerns are restricted to their impact on the protection of civil liberties and human rights and, in particular, the right to protest.¹²⁵ At the heart this lies the fact that as soon as a person enters onto privately owned property the scope of potential legal restriction is greatly enhanced. The implications are, therefore, real and practical; not theoretical or academic. This is clearly demonstrated by the facts of two cases in which Liberty has been involved:

- Washington First: In March and April 1998 members of an environmental group, the Washington First Forum, set about collecting signatures for a petition to persuade the Council to reject a project to build on a public playing field in the vicinity of Washington town centre. They tried to set up a stall and canvas views in “The Galleries”, a shopping complex in Washington that had become the effective town centre. They were prevented from doing so by Postel, the private company which had bought most of the shopping area from the local authority. This case was litigated by Liberty in the European Court of Human Rights. Our arguments and the disappointing judgment of the Court are considered below.
- Canary Wharf: In 2004, the Transport and General Workers’ Union planned to march on Canary Wharf in London to protest against the low wages of its cleaning staff. Canary Wharf was, of course, the most appropriate place to hold a protest on this issue—to bring the cleaners’ wages to the attention of other workers in the area and members of the public shopping or doing business there. The owners of the Canary Wharf estate obtained an injunction to stop the march. As a result the TGWU advised its members not to attend the march. Liberty was a legal observer at the very limited stationary protest which did take place in an area near to Canary Wharf.

10. There is currently no legal requirement for private individuals or organisations, owning quasi-public property, to respect the right to peaceful protest on that land. It seems unlikely that such bodies would fall within the definition of “public authority” for the purposes of the Human Rights Act. Even when deciding whether or not to allow people to protest in the quasi-public spaces they own they would not, therefore, be required to respect the right to peaceful protest. This could lead to clear anomalies. Take, for example, a town centre which is sold by a local authority to a private development company. Before the sale there would be a right to protest under Articles 10 and 11 of the European Convention, enforceable against the local authority. After the sale, no one would be under any obligation to respect the right to protest in the same town centre. The only difference might be a legal transfer of ownership with everything else remaining the same.

11. In the Washington First case Liberty argued that this issue should be addressed by “carefully drafted legislation” including a “definition of “quasi-public” land.¹²⁶ There is not, of course, any bright line between privately-owned land where people should have the right to peaceful protest and privately-owned land where no such right exists. We would not suggest that a simple definition of “quasi-public” land would be easy to reach. The following factors might, however, be indicative, not determinative, of whether a piece of land is “quasi-public”:

- The historical uses of the land—has it historically been used for broader public purposes such as protests.
- The geographical position of the land within a local community and its significance to that community.
- How the space is normally used (Is it a public gathering space, do public events or entertainment take place there?).
- Whether the dominant use of the space is for non-public purposes (Is the land is a shop, theatre or restaurant?).
- The availability of other areas nearby in which a person can reasonably and effectively exercise their right to peaceful protest.

¹²⁴ The Paradise Street Development in Liverpool, for example, led to an injection of £750 million into the city

¹²⁵ Other rights may, of course, also be affected by this shift such as the right to respect for private life (Article 8)

¹²⁶ *Appleby v United Kingdom*, (App no. 44306/98), para 35

Factors like these could also be applied in a judicial determination of whether a private owner of quasi-public land is a public authority for the purposes of the Human Rights Act when deciding whether to allow protests on that land. Case law on this issue from the United States may also provide some guidance.¹²⁷

12. in a disappointing judgment in *Appleby v United Kingdom* the European Court of Human Rights decided that the UK Government had not breached its obligation to protect the right to peaceful protest. In particular the Court relied on the fact that, in the case before it, the land-owner's refusal to allow the protest had not prevented the communication of their views in other ways:

“It did not prevent them from obtaining individual permission from business within the Galleries ... or from distributing their leaflets on the public access paths into the area. It also remained open to them to campaign in the old town centre and to employ alternative means, such as calling door-to-door or seeking exposure in the local press, radio and television”.¹²⁸

While disappointing, this judgment should not deter from the need, domestically, to address issues relating to the question of the right to protest in privately-owned quasi-public spaces. It should be remembered that the standards set by the European Court provide a floor and not a ceiling to rights protection in the UK. The Court has also, understandably, been reticent to impose positive obligations on states to protect rights.

13. Even assuming that the private owners of quasi-public land were required to respect the right to protest, it would not, of course, follow that protests would always have to be permitted without restriction. Even on publicly-owned land, legitimate and proportionate restrictions may be imposed on protest. Additional factors might also need to be taken into account where quasi-public land is privately owned. It would, for example, be legitimate to allow a land-owner to impose proportionate restrictions on protest where needed to protect his property interests protected by Article 1, Protocol 1 of the Convention.¹²⁹

July 2008

Memorandum submitted by Shelley Lea

I write to you to bring your attention to Climate Camp in Kent in August. Immediately after the camp I rang your office and spoke about my concerns to a woman in your office. Now I am writing. I went to Climate Camp in Kent with and at the request of my three daughters (one adult, two teens) and was overwhelmed, terrified, shocked beyond my imaginings, and saddened by police brutality, intimidation, harassment and obstruction.

I was among hundreds of peaceful people who came to the camp to learn more about climate change, what we could do to help. We were prepared to peacefully protest against climate change brought about by the proposed coal fired power station. This was an educated, involved and peaceful group of people who had activities and lectures for an entire week as well as employing sustainable living practices during the week. During the entire week I did not hear or witness any violence of any kind from the campers.

The police however employed shocking brutality against unarmed, harmless people. Riot police charged quiet, innocent, unarmed protestors with batons and shields swinging. An elderly woman was knocked to the ground by a riot shield and pinned to the ground with the weight of an officer on top of the shield.

The sheer numbers of police was enormous. Many, many police were involved in searching every single man, woman, child and disabled person coming into and going out of the camp must have been in the high hundreds. People were herded through pen-like waiting areas to be made to unpack every bit of camping gear and personal possessions, if the officer felt like it. Innocent people with an aspirin or antihistamines were arrested on suspicion of drug possession only to be questioned, detained for many hours and released without charge in the middle of the night not knowing where they were.

Day after day multitudes of heavily armed police appeared at the perimeter of the camp threatening violence and doing violence. Most nights a police helicopter hovered over the camp making sleep impossible. The campers were continually photographed by dozens of police held cameras.

Communal shared cooking supplies (fruit, veg, bread etc.) were not allowed to be delivered close to the camp so campers had to walk long distances to collect the food in wheelbarrows or barrows behind bicycles (substantial food supplies for the hundreds of people in the camp). Every load of bread was searched before being allowed into camp.

The local shopkeeper said the police had circulated information before the camp warning the town of danger. The shop keeper said he had enjoyed the campers and had much more trouble with the local estates. Local women told me that they were in complete sympathy with the Climate Camp.

¹²⁷ Considered in *Appleby v. United Kingdom*, paras 24 ff

¹²⁸ Para 48

¹²⁹ This was expressly recognised by the ECHR in *Appleby v. United Kingdom*, para 43

I witnessed police force a young man to the ground. There were probably 10 police and one young man. As a nurse, I asked to see the young man to offer him medical help if it was needed. The police refused to allow me or any other camper near the man who was taken away and put in a police van. I do not know what happened to him.

One day I witnessed an elderly lady waiting for a long time in a queue to be searched after leaving the camp. The woman told me she was on medication and felt dizzy and unwell. I asked the police if they might have a chair for her to sit on. The said, "no". The campers found something for her to sit on.

Please will you look into the matter of policing at Climate Camp in Kent. Huge amounts of resources were needlessly spent to brutalize, obstruct and harass innocent people. Surely we have better ways using our resources than repressing innocent involved citizens interested in climate change? Our democracy is in danger of looking like a police state where "might is right" and freedom of speech is a memory. Who ordered this massive police action? What kind of training is given to men and women officers that they can brutalise unarmed people?

October 2008

Memorandum submitted by the Mayor of London

INTRODUCTION

1. The Greater London Authority (GLA) is responsible for Parliament Square Garden under the GLA Act 1999. The vision for Parliament Square is that it should provide a symbolic and dignified setting for Parliament and the surrounding historic buildings, in keeping with its World Heritage setting. It should be both accessible and meaningful to Londoners and visitors.

2. Currently there are shared responsibilities in relation to Parliament Square. Westminster City Council (WCC) manages the pavements along the east and south of the main grassed area and also the road networks whilst the GLA is responsible for Parliament Square Garden. Currently the Metropolitan Police Service (MPS) are responsible for authorising demonstrations within the Serious Organised and Police Act (SOCPA) designated area. However, permission is also needed from the GLA under the byelaws if protests are to take place on Parliament Square Garden and WCC regulations will also apply.

3. In exploring the issues which arise from policing and protest and responding to the Joint Committee on Human Rights, Q1 and Q3 are the relevant questions raised that form the basis to our response.

Q1. Are current legislative measures which restrict protest or peaceful assembly (such as SOCPA 2005 and the Public Order Act 1986) necessary and proportionate to the rights to freedom of expression and peaceful assembly?

4. The Mayor fully supports proposals which enhance democracy in London and which serve the interests of all those who live, work or visit the capital.

5. There is a responsibility to manage high quality public spaces as a fundamental part of delivering an urban renaissance in London. Accordingly, the management of a key public space such as Parliament Square Garden requires the promotion of a safe and accessible environment for the benefit of all Londoners and visitors.

6. A key concern with regard to conditions of protests to be held on Parliament Square is proportionality and duration. If a protest takes place it will inevitably limit other public uses of the square, and therefore protests should be limited in duration. The Mayor supports the right to peaceful protest, including in the vicinity of Parliament, unless there is a quantifiable and justifiable safety or security risk.

7. Whilst the Mayor respects the right of Brian Haw to hold his protest, the Mayor does not agree that Parliament Square Garden should be used as a free campsite, creating an unsightly public health hazard of offence to the thousands of Londoners and visitors who use this public space every day. The amenity of Parliament Square Garden must be protected and remain a sanitary environment for all.

Q3. Can the competing interests of public order and the right to protest be reconciled?

8. A further consideration in relation to supporting protest and peaceful assembly is the cost to the public purse in managing such protests. The GLA has the burden of cost associated with the care and management of Parliament Square Garden and any protest held on Parliament Square may have an impact in terms of maintenance, clean up costs or resourcing. In the case of spontaneous protest or assembly the impact is even greater.

9. Prior to SOCPA, the management and administration of protests on Parliament Square Garden, under the Public Order Act 1986 and GLA byelaws provided a largely effective and simple route for applications to protest.

10. The Local Government & Public Involvement in Health Act 2007 provides powers for local authorities to implement changes to their byelaws, at present procedural guidance is awaited to enable this. This would provide the opportunity for the GLA to review our current byelaws in light of any changes made to the legislation and the management of protests in the vicinity of Parliament.

11. It is pivotal that, as at Trafalgar Square, all static protests where possible depending on size, should still allow people to actively engage with the Square as a public space at all times. In this way, protests that have been time specific have been able to be more effectively managed than those without time limits. There are different management issues and considerations if duration is 24 hours or longer and if overnight. In accordance with conditions on time, place, numbers and size of protest similar conditions could include duration of protest.

12. The impact on the Authority's ability to manage the permanent protests and camping around Parliament Square has required a significant resource investment to prevent low level disorder issues, to carry out maintenance and to manage special events on the Square. There have been instances of abuse to GLA staff and contractors whilst carrying out their responsibilities and day-to-day duties to look after and manage Parliament Square Garden. GLA staff should not be subjected to any type of harassment or abuse whilst carrying out their duties and the GLA finds such acts entirely unacceptable and takes such abuses very seriously.

October 2008

Memorandum submitted by Mr David Mead

I hope that the following memo will assist the Committee in its task of exploring:

- the proportionality of legislative restrictions on protest;
- existing police powers; and
- reconciling the competing interests of public order and protest.

1. *Are current legislative measures which restrict protest or peaceful assembly (such as SOCPA 2005 and the Public Order Act 1986) proportionate and necessary?*

Almost by definition the legal framework is neither necessary nor proportionate: nothing in those discrete pieces of legislation—or any other—creates the need to balance any competing rights or, in the case of protest, balance the right under Article 11(1) with wider social interests in Article 11(2). Sections 12–13 are good examples: the discretion to impose conditions on a march—or to seek a ban—is not, on the face of the POA 1986, a decision that can only be taken if it is necessary / proportionate: none of the triggers asks an officer to address such concerns. Clearly, all those decisions are subject to the proportionality test by virtue of the status of the police as a s.6 public authority—*Brehony* being a case in point—so to that extent, administrative regulatory powers must be exercised in a proportionate fashion—or at least held after the event to be so.¹³⁰

Given the range and overlap of several of the powers—actions to prevent breach of the peace at common law and the statutory powers under ss.12-14A of the POA 1986—it must be questioned how many are necessary. The gains by such an incremental, reactive approach must be marginal at best—and this disregards the unlikelihood of the police actually using the full range of powers (for want of training/awareness or because of reliance on trusted favourites such as breach of the peace and s.5 perhaps)—as to make their presence on the statute book often an exercise in political pandering and posturing. An example will help. The joint Home Office/DTI consultation paper in 2004 *Animal Welfare—Human Rights: Protecting People from Animal Rights Extremists*¹³¹ sets out in the Foreword (by the then PM and then Home Secretary) that a “tiny minority of animal rights extremists who are behind an illegal campaign of intimidation” and gives some very graphic examples of the sorts of activities that are engaged in such as firebombing, throwing bricks through windows, graffiti, sending razor blades or faeces through the post. The point is this: if their conduct and campaigns are labelled as “illegal”, their activities must already be against the law. If these activities are already against the law, why are newer and greater powers needed to deal with them? Why are they not being arrested and stopped? It cannot be for lack of an offence—how else could they be acting “illegally”?—so the “problem” must be one relating to enforcement—identification of the wrongdoers, insufficient resources for the police, lack of witnesses. None of these problems though will be rectified by creating another crime or series of crimes. In short, the problem is not insufficient law but how it is applied. My own research—admittedly only using data about defendants proceeded against at magistrates courts—shows that between 2001–03 there were only 14 cases calling upon the new offence in s.42 of the CJPA 2001 (harassment outside the home) in the whole of England and Wales, increasing 2-4-8 over the three years.¹³²

¹³⁰ Taking the “outcomes is all” approach of *Begum* [2006] UKHL 15, beyond the scope of this inquiry

¹³¹ <http://police.homeoffice.gov.uk/publications/operational-policing/humanrights.pdf> access 18 September 2008.

¹³² Source: RDS within Office for Criminal Justice Reform, supplied under the FoI Act in 2005

I lecture in Public Law and domestic human rights. I have written extensively on peaceful protest over the past five years or so. My manuscript *The Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era* is due to be submitted to Hart Publishing at Christmas. In 2006, I was the invited expert from the UK at an EU/TAIEX enlargement event in Ankara on peaceful assembly and association.

Increasing the number and range of offences might assist in reducing the “problem” of protest but will certainly vastly increase the range and scope of police discretion, at both macro- and micro-levels on the street. This in turn raises the usual concerns. Again, just to use an example, my own research shows across England and Wales vastly differing uses and reliance on different crimes in order to make arrests.¹³³ Of the 63 defendants proceeded with under s.241 TULRCA 1992 in 2003 (watching and besetting)—of course not all these may have been protesters—49 occurred in one county, Surrey, with 11 in Hertfordshire. Suffolk seems to prefer using s.68 CJPOA 1994 (19 out of 54 across England and Wales in 2002, 12 out of 74 in 2003) and it is inconceivable that such protest situations do not occur the country over.

The last problem is that the law does not respond particularly well or sensitively to different types/forms of protest. There is clearly the world of difference between throwing bricks through a banker’s window to “encourage” them not to lend money to arms dealers and standing in a shopping precinct with a banner. Along that spectrum is a large grey area—neither violent action nor peaceful communication—of activities that may obstruct or disrupt and, within that, which may do so deliberately or as a by-product: we might contrast chaining oneself to a motorway digger with a mass march through a town centre on the last Saturday before Christmas. The Committee might need to engage in some wider theoretical or philosophical debate—beyond this short memo—but any regulatory framework needs properly to cater to and differentiate between those. Currently, neither Strasbourg nor domestic law takes proper account of the functional importance (to a pathologically healthy democracy) of people expressing views one side effect of which might be temporary disturbance or suspension of “normal” life: there is too near an equivalence between the right to protest and the right to drive unhindered on the roads, even the right to shop to put it inelegantly. See, as examples, of the restrictive Strasbourg approach cases such as *G & E v Norway* and *GS v Austria*¹³⁴—though recent case law (*Öllinger v Austria* or *Oya Ataman v Turkey*¹³⁵) might indicate a change in attitude.

To what extent should peaceful protest be facilitated by the State?

Some state measures may be needed—not only in relation to providing a location (see below)—so that the right can be exercised: clearly proper policing will be required to keep rival groups apart. The state can facilitate protest too by ensuring a proper targeting of laws and measures aimed at (perhaps) only violent protest and disorder or at worst—and only if clearly necessary to protect some overriding interest—only towards activities that clearly are aimed at and are capable of obstructing or disrupting another lawful activity (and are more than merely preparatory to them). There may also need to be a re-ordering of a state’s quintessentially private law rules so as properly to protect peaceful protest: should companies be able to exclude from an AGM a known protester?¹³⁶ If Burberry did have the power to ban the vice-president of PETA (the animal rights group) despite his having a voucher and proxy card, a revisit seems needed—and if it did not, such activities create a chilling effect which in turn requires a state response to assuage. States themselves have duties to educate about the valuable instrumental role protest can play and has played over time—that is, its public utility—rather than simply focusing on the violent protesting minority: too few, I would imagine, see protest as anything other than an individualised activity and not as something that it is the public interest to protect and to foster. As an aside, a more participatory and responsive political system might lead to the isolating of those few protesters who see their task as trying to have outlawed an activity they personally see as abhorrent outwith the democratic system, irrespective of the views of (say) 95% of the rest of us.

What limits, if any, should be placed on the right to protest and why?

It is clear some limits are needed but the present law does not adequately respond to the nuances of different forms and effects, to distinguish between the brick thrower and the peaceful sit-in.

¹³³ Ibid.

¹³⁴ App. 9278/81 (inadmissible)—arrest of Lapplanders after a four-day protest in a tent outside Parliament in excess of permission was reasonably necessary to protect public order. App. 14923/89 (inadmissible)—conviction for holding a demonstration (erecting two small tables to provide information) on a public road was proportionate to the need to prevent disorder, viz. unhindered traffic.

¹³⁵ App 76900/01 judgment 29 June 2006 and app 74552/01 judgment 5 Dec 2006.

¹³⁶ *Eastern Daily Press* 18 July 2008.

Should specific limitations be placed on the ability of certain groups to protest? If so, who and why?

No, not on the basis solely of membership or aims but only on the basis of actual activities.

Should the right to protest be more strictly curtailed in relation to certain geographical areas? If yes, where, why and what limits would be acceptable?

The Government proposes to repeal sections 132–8 SOCPA dealing with protest around Parliament and invites Parliament to consider whether additional provision is needed to ensure that Parliament’s work is not disrupted by protests in Parliament Square. What, if any, additional provision is required?

No—the test to be applied should be the same but clearly the facts may warrant—at certain times—a more restrictive approach. There is no need for blanket additional protection and no argument has clearly been made for different regimes: why does Parliament need greater protection at night or when it is not sitting?¹³⁷

In what circumstances would it be permissible for the State to take pre-emptive action which curtailed protests?

Only in the very rarest, on demonstrable proof of imminent violence and then only the minimum action necessary to deal with the threat and against only the party intending violence.

2. How do existing common law and legislative police powers (such as the common law power to prevent a breach of the peace, stop and search under the Terrorism Act 2000 and the use of force) operate in practice?

Are existing police powers necessary? Are more or fewer required?

See above. One need only contrast two cases, *Laporte* with *Austin*, to see the problems and dilemma facing protesters.¹³⁸ It is not just statutes and not just policing practice but judicial decisions that lead to uncertainty and restriction. *Austin* edges us closer to the concept of an illegal gathering when historically domestic law has focused on individuals and their wrongdoing, actual or potential. What we see in *Austin* is effectively *en masse* guilt by association—and the larger the potentially guilty element is (that is violent or threatening), the more defensible it is for the police to exercise indiscriminate control. They do not need to make specific allegations of likelihood or propensity for trouble against any one person provided (it must be assumed or else the power is even wider) they can identify a cohort they cannot isolate and deal with separately. The view taken by Tugendhat J. and endorsed on different grounds by the Court of Appeal takes us nearer to a power of collective round-up of protesters on suspicion about a handful.

The width of powers, and the discretion that it brings is evidenced in no finer way than the case of Annabel Holt¹³⁹: this 64 year old grandmother was moved on by the police within minutes of starting a protest outside GlaxoSmithKline’s AGM which happened to be taking place in central London within the 1 km zone: there can be no doubt that ss.132–138 of SOCPA 2005 were never intended to be used to quell that sort of protest. Following *Gillan* (which of course was lost by the protesters¹⁴⁰) there would be some force in arguing that such a use of power was ultra vires—but that would require Ms Holt to take legal action away from the scene of her protest. Examples of such excesses abound on NGO websites though to my knowledge no research of the reality of police/protester interchanges on the ground has been conducted. Another would be the arrest in May this year—with the CPS later dropping all charges—of a 15 year old schoolboy who held up a placard “Scientology is not a religion, it is a dangerous cult”¹⁴¹ On any sensible basis this was an exercise in free speech: any of my undergraduates had I set this as an exam would, I hope, have looked to *Percy v DPP* and concluded it was open and shut in favour of the schoolboy.¹⁴² This is not a criticism of the police actions here or of the officer involved but of the training and guidance issued to them—and also of the dangers of overly broad laws leaving the police as what Maureen Cain called the fall guys. To take another example: the 2005 Act used the term “demonstration”, for the first time in the UK. As I have sought to show elsewhere, such a term is value-laden and contested: on what basis would the police on the street have been expected to differentiate between Brian Haw (protest demonstration) and Mark Wallinger’s State of Britain (award winning modern art)?¹⁴³ The risk that is run here—taking the scientology demo as an example—is the chilling effect on the day and at the scene of police practices later shown to be flawed.

¹³⁷ I made a separate submission during the consultation on protest around Parliament.

¹³⁸ [2006] UKHL 55 and [2007] EWCA Civ 989 respectively.

¹³⁹ The Guardian 18 May 2006

¹⁴⁰ [2006] UKHL 12.

¹⁴¹ BBC news webpage 23 May 2008.

¹⁴² [2001] EWHC 1125 Admin

¹⁴³ Mead [2007] EHRLR 345.

Are counter-terrorism powers appropriately used in the policing of protests?

The use of s.44 is well-known in the context of peaceful protest. Though it is not clear from his letter whether he was stopped under PACE or s.44, John Wilding a pensioner wrote to The Guardian in June this year.¹⁴⁴ He was on his way to Heathrow to a rally about the third runway. Three of his group were wearing T-shirts “Stop Airport Expansion” and were stopped. Heathrow by-laws, he was told, permitted access to the bus station only to air passengers or those meeting them: “oddly, only members of the party wearing t-shirts appeared to be in breach of these by-laws”. The group was questioned and forbidden access to the airport for 24 hours on threat of arrest; in one case “T shirt” was even recorded as the reason for the stop.

There can be no justification to call upon anti-terrorism legislation to police protests/protesters and such use debases the very real threat terrorists are capable of posing to us all. There is a real danger of the terrorist bogeyman subverting the discourse: an argument that Brian Haw’s protest might be used as subterfuge by terrorists was put to the Administrative Court in his case but so could, presumably, a group of sightseeing tourists at Big Ben—though as they do not constitute a “demonstration” they would not be required to obtain authorisation.

Do existing police powers pay sufficient regard to human rights?

Unlikely in light of the foregoing—news paper reports from the climate change camp at Kingsnorth over the summer do not bode well for a good balance being struck.

Are there positive examples of good practice in the policing of protests (whether in the UK or in other countries)?

I am not able to say: outside my expertise.

3. *Can the competing interests of public order and the right to protest be reconciled?*

In what circumstances may actions during protests be justifiably criminalised?

See above.

Does existing criminal law and practice pay sufficient regard to human rights?

No.

Are complaints about the handling of protests (including police action during protests) adequately addressed?

Not an area with which I am familiar.

How should the balance be struck between the rights of protesters and other competing interests (such as the rights of others or the prevention of disorder or crime)? Would legislative changes be desirable to strike a better balance between competing rights, or is the current legislative framework about right?

See above.

It is worth highlighting the fact that English law relating to protest has been informed by the imperative of order maintenance alongside a political need to (be seen to) respond to individual events/perceived social ills (rather than as a structured and balanced framework) and not by any concept of rights. Even in the HRA-era recent history shows a pattern of restriction and limitation against only a backdrop of rights protection. An overhaul and consolidation would be no bad thing. That though would need to take account of how the lawfulness of protest is now a function of a host of legal interactions more complex than simply being resolved by asking “is it an offence to...?” To that end, the Committee’s consultation is skewed towards the public arena of policing, legislative measures, executive decision-making and the like. Though these are clearly important matters that need to be explored, the shape and face of protest—both on the ground and legally—has changed quite dramatically over the past ten years or so. In essence the regulation (and so the restriction) of protest is now—if not as much then increasingly—a function of private law rules as it is of criminalisation and other public regulation. Whether the common law courts and private law are able and suited to respond to concerns of a more public nature as would the criminal/administrative courts must be moot. Three examples might illustrate the general point:

- a. The withdrawal of the state from land ownership—by various means and for various reasons—has meant a massive growth in land that is owned either purely privately or what is usually termed “quasi-publicly”. Much has been written on the subject¹⁴⁵ but the point is this. Absent a legally

¹⁴⁴ Letters page, 3 June 2008.

¹⁴⁵ Most notably Gray and Gray [1999] EHRLR 46

enforceable right to demand entry onto someone else's land—and the primacy given to property rights was largely accepted without question in *Appleby v UK*¹⁴⁶—where can people protest? This increase in privately-held land means fewer places where protest can take place.¹⁴⁷ Ironically this increase might buttress claims that there is a positive duty in Article 11 (using a *Golder*-type argument based on effectiveness) to provide protest space (though not in the sense of American “free speech” zones which tend to be corralled protest pens at some distance) like a permanent communal Speaker's Corner or at least not unduly to restrict access to council land for protesters. The demographic skew of landholding in the UK—think of farmers' fields bedecked in “Ban Hunting” posters—only serves to exacerbate this problem with its liberal assumption that political equality will be bestowed merely by granting a right equally: people who own land are unlikely to permit “The Land is Ours” protest group onto it. Private law principles of absolute title bring important ramifications for participation in the public sphere.

- b. There has been an increasing resort to private law remedies—whether at common law or created in legislation—by (usually) companies targeted by protesters, Huntingdon Life Science and BAA at Heathrow in 2007 being but two examples. It is not only these—under the PFHA 1997—but more quintessentially common law causes of action that have come to the fore: the McLibel Two spring to mind as does the media reporting that Land Rover had obtained an injunction and served a writ claiming damages totalling £12 million representing loss of profits as a result of a 12-hour Greenpeace occupation.¹⁴⁸ My own investigations have revealed no damages claim was ever started but that there is an extant injunction, though my research drew a blank as to the basis. Even without an action ever being brought the publicity it attracted is capable of raising the spectre of a chilling effect on others.
- c. In reverse, there has been an increase in the criminalisation of historically private law relationships when the scenario is a protest: again the obvious example is the increasing number of public order/protest offences that depend on someone having committed trespass (aggravated trespass, trespassory assembly being just two). Recent years have seen, effectively, the criminalisation of certain economic torts—in relation to animal rights organisations at least—in ss.145–146 of SOCPA 2005.

September 2008

Memorandum submitted by Metropolitan Police Service

I am currently the Acting Assistant Commissioner in the Metropolitan Police Service with responsibility for the policing of public order events. I have been asked to attend the Joint Committee on Human Rights to give evidence and in advance, have been asked to submit written evidence about the MPS position. This letter should be read in conjunction with that submitted by my colleague, ACC Sue Sim, who heads the ACPO Public Order portfolio. The MPS follows the ACPO guidelines in relation to such matters and I am in total agreement with her comments.

I have reminded myself of the Committee's remit from the Press Notice dated 24 April 2008 and have had a look at the uncorrected transcripts of the evidence already given to the Committee, and take this opportunity of providing information on some of the matters which appear to be of interest to the Committee.

The MPS has a long track record of policing public order events, covering an average of about 4,500 events a year. While the majority of these are not protest in the traditional sense, Central London is the most protested piece of real estate in the country. The right to assemble and protest are clearly set out within the Human Rights Act and the MPS is fully committed to managing those who wish to lawfully assemble and protest.

This letter should also be read in conjunction with our response to the Managing Protest around Parliament consultation and the evidence that I gave to the joint committee on the Draft Constitutional Renewal Bill. These clearly set out the MPS view in relation to the specific issue of dealing with protest in the heart of Government. I will not repeat our position in this letter, suffice to say that the current legislative framework does create us some challenges in dealing with protest in this area and we are anxious for any new regime to provide clarity, clarity that can be clearly understood by those who wish to protest, those who work in the area and the police who have to manage the protest.

I make no comment on questions regarding the making of legislation, which we believe is a matter for Parliament. The MPS gives its opinion during the drafting of relevant legislation but, once it is passed, our role is to ensure the law is upheld.

¹⁴⁶ (2003) 37 EHRR 38

¹⁴⁷ Access to state/public land for the purposes of protest is regulated by standard public law/judicial review considerations—with of course the s.6 HRA duty on councils not to take decisions in relation to land that disproportionately restrict the right of peaceful protest. Strasbourg case law will provide here at best only marginal protection, given the scope of Article 11 to provide public protest space (no case so far) and only limited incursions into a state's ability to regulate access.

¹⁴⁸ The Guardian G2 19 May 2005

The MPS trains its officers to deal with protest, there being three levels ranging from a basic awareness through to our most highly trained officers on the Territorial Support Group. In terms of Command, the MPS has invested for many years in training a CADRE of senior officers who are experts in the policing of public order events. At the heart of the training is the legislative framework under which we operate which clearly includes the Human Rights Acts.

The MPS have a dedicated branch dealing with Public Order (CO11). This branch deals with the planning of ceremonial and sporting events as well as protest. They are an acknowledged centre of excellence within UK and international policing. CO11 staff meet with event or protest group organisers to help draw up plans. Our starting point is to always facilitate lawful protest and to work with protestors to enable them to best get their point of view across.

The MPS fully understands that the effective policing of events of all types can only be done through partnership and works closely with organisers and communities during negotiations before these events take place. The reality is that almost all protest in the capital passes off peacefully with no issue and it is only in exceptional cases that we experience any difficulties. The few cases where there are problems are usually characterised by either a complete or partial failure of the organisers to engage in effective dialogue with the police or where those protesting refuse to accept the rights of others. While conditions can be imposed under the Public Order Act or under the Serious Organised Crime and Police Act, the reality is that these provisions are only required on rare occasions. However, the MPS remains firmly of the view that the ability to impose conditions is necessary to ensure that we can manage all protest effectively.

The MPS works very closely with the City of London Police and British Transport Police and any public order events that are, or are likely to be, cross-border are policed under the auspices of Operation Benbow which sets out our agreed joint working procedures. For other cross-border operations, such as Climate Camp, we agree protocols and joint working practices and we also train with other forces at our purpose built public order training site in Gravesend.

All public order policing, be it ceremonial, sporting or protest, is a question of balancing the human rights of one group against those of one or more others. MPS officers are trained to police protests using appropriate legislative tools and the common law to manage the competing interests. Articles 10 and 11 establish qualified rights, which give police the ability to impose restrictions that are both prescribed by law and necessary, for example, in the interests of national security or public safety, the prevention of disorder or crime or the protection of the rights and freedoms of others.

I note that in the first evidence session, the Committee were interested in the protection of residential premises in the context of protest, and Sections 42 and 42A of the Criminal Justice and Police Act 2001 are a good example of legislation which attempts to strike the balance between competing rights.

The MPS fully accepts the right of journalists to report protests and seeks to work with them to facilitate this. There are occasions where conflicts arise but through liaison, the MPS hopes to ensure that journalists and police can work together both recognising that each other has a vital role to play.

The MPS believes that it is fully accountable for its actions, which helps to ensure that it meets its Human Rights obligations in a positive manner. Individual protestors, journalists or groups can and have issued judicial reviews to challenge operational decisions of the MPS. This is a quick and effective way of reviewing our actions and holding us to account. They can, and do, take private law civil proceedings in relation to public order events where they claim their rights were infringed. The *Laporte* case is an example of the former (the MPS was named as an interested party), the case of *Austin and Saxby* an example of the latter. In addition, the Independent Police Complaints Commission can and has conducted investigations into specific events, publishing their findings. Since 2000, the MPS has also been accountable to its Police Authority.

The MPS believes that it is the proper function of the courts to act in this way. It takes into account relevant decisions, both domestic and before the European Court. Perhaps one of the most significant of recent years is the case of *Redmond-Bate* in 1999, where Lord Justice Sedley makes the often-quoted commentary that "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having." The MPS strongly believes that all groups must be given equal facility to protest. On the rare occasions where we do have groups with opposing views wishing to demonstrate at the same time, the MPS negotiates with both sets of organisers and puts in place proportionate arrangements so that both can take place.

I enclose a copy of a witness statement of Michael Messinger LVO, QPM, who was the Gold Commander for the Mayday 2001 event, which was relied upon in the *Austin and Saxby* trial in the High Court. The Committee may find his statement of interest in setting out the background to that event, which led to a quite unprecedented police operation in response. It may be worth pointing out that the danger that the police were seeking to avert in that case was not an adverse crown reaction to a controversial or inflammatory expression of free speech but rather a pre-planned incident of mass looting and criminality in central London.

The domestic courts have an obligation to take into account the previous decisions of the European Court of Human Rights and a good example of that is the case of *Blum, Evans and Rai v DPP* (2006), where the High Court determined that a provision establishing an authorisation procedure for protest was not in conflict with Articles 10 and 11, by applying the reasoning of the European Court of Human Rights in the case of *Ziliberg v Moldova* (2004).

In summary, I can only re-iterate the comments made by ACC Sue Sim. The MPS is on a daily basis managing the fine balance between an individual's right to protest with the wider freedoms of others. The fact that the overwhelming majority of protests in London pass off without any issue and to the total satisfaction of those who wish to protest is, I believe, a testament to the way in which the MPS approaches the policing of these types of events.

November 2008

Memorandum submitted by the National Union of Journalists

The NUJ, which represents 35,000 journalists working in the UK across all media, welcomes the opportunity to respond to the consultation on Policing and Protest.

The NUJ supports the right to peaceful protest and has expressed consistently its opposition to measures that seek to criminalise legitimate and peaceful protest that we believe SOCPA does. This infringes the civil liberties and democratic rights of members as well as the public generally and are disproportionate to the perceived threat.

Whilst the NUJ defends the right to protest and opposes restrictions on civil liberties our submission concentrates on the professional issues for those covering protests, notably photographers carrying out their work.

Journalists have a right to work free from threat, harassment, arbitrary arrest or detention in the public interest and with respect for the due laws in force at any time.

However in recent years journalists have increasingly been caught up in violence which has taken place at demonstrations, they have been deliberately attacked, detained without reason, had equipment and memory cards confiscated, erased or damaged, have been unlawfully denied access, been forcibly removed and have been verbally and physically attacked by police officers and demonstrators.

Journalists who have been covering protests in London regularly over the past two decades claim there have been a number of changes in demonstrations and in the policing of them over the years. SOCPA has we believe led to a deterioration in relations between photographers and police, and also increased the hazards of covering protests because of the different atmosphere it has created between police and demonstrators.

This arises because SOCPA has made any protests, including peaceful protests illegal in the area around parliament. Even when demonstrations have been properly authorised there are still various restrictions that apply. Where previously police largely saw their role as one of facilitating lawful demonstrations while preserving public order, frontline journalists tell us the attitude appears now to have changed to one of preventing and controlling demonstrations, particularly inside the SOCPA defined area, but also elsewhere.

Police are also increasingly controlling the movements and rights of the media both in the SOCPA area and elsewhere. Even where a demonstration is illegal, or illegal conduct takes place in an otherwise legal demonstration, covering it is not illegal and the rights of journalists are not being properly protected.

We have recorded incidents of journalists, in particular photographers being issued with warnings under SOCPA, despite showing a valid press card. While photographing events, journalists are increasingly denied reasonable access. At various events where demonstrators have been penned in on the edge of a pavement, for example opposite the American, Chinese and Burmese embassies (not in the defined zone) opposite Downing Street and in Parliament Square, the police have set up a traffic-free area in front of the protestors, and then denied press access to this zone, making it hard to photograph the protest.

While covering marches police at times order photographers/camera crews away from the marchers—as happened during the march up Whitehall by Stop the War/CND on 8 October 2007. Police often use the explanation that they could not distinguish the photographers from the protestors and, therefore, treated them identically. Professional photographers always make every effort to identify themselves as separate from protestors. On October 8 police constantly moved photographers into the march, making it impossible for photographers to remain separate.

On various occasions when marchers or static demonstrations have been surrounded by police, journalists have been prevented from leaving the demonstration, being treated by the police exactly as if they were demonstrators, despite showing a valid press card.

Part of the problem is that you don't actually need to be a demonstrator to be a part of an "assembly"—just to be in the vicinity is enough to be considered a criminal, even if you are simply carrying out your professional duties.

Press cards are often not recognised, or journalists are told that their card is “not a proper press card.” We have many examples of this, including recently at the ‘Tank Auction’ at Victoria Dock during the ExCeL Arms Fair on Sept 11. Members of the press were refused permission to go through the police line when they wanted to leave the area. In many of these instances the Terrorism Act is used to justify police action against photographers/camera crew.

Although the use of photography by police can be an extremely useful method of gathering evidence, there does appear to be an increasing use by police of surveillance of journalists covering protests (see enclosed letter to Home Secretary Jacqui Smith) despite the fact they are obviously going about their professional duties with valid press cards.

It is hard to understand why the press, particularly photographers, seem to be among the particular targets selected for this attention. Use of photography by the police in this way may associate photography with control and repression, making photography of protests by the press more contentious and making members of ours increasing targets for physical and verbal abuse by protestors.

The use in SOCPA areas of extremely large numbers of police at demonstrations, at times greatly outnumbering the demonstrators, has the effect of worsening relations between protesters and police, which again impacts on the press as they try to cover the event, making the job more difficult and more dangerous.

The increasingly proactive and many believe political role of the police as a result of SOCPA and other laws such as the Terrorism Act, increases the risk of injury to journalists, particularly photographers/camera crew who have to be close to the events to do their job.

Outside of major demonstrations in Central London we have recorded a number of other significant incidents.

For example earlier this year Lawrence Looi who has been a staff photographer with news agency News Team for the last three years, had been sent to cover a protest on public roads outside the International Conference Centre in Birmingham when he was approached by a police constable who objected to having been photographed.

According to the written complaint the officer held Looi by the upper arm and asked him to delete any photographs that had been taken of police officers. The officer also asked Looi to identify himself, but refused an offer to see Looi’s NPA-issued National Press Card.

Looi says he was then approached by a police sergeant who asked to view the photographs taken. Looi agreed to this, but refused a request from the sergeant for any photographs which showed identifiable police officers to be deleted.

When Looi refused, the complaint says: “[the police sergeant] then threatened to take my camera from me to delete the photographs, to quote...“Do it or I’ll do it myself”. He then grabbed hold of my camera with the intention of doing so”

The case is just one of a series of controversial incidents between police officers and photographers, and comes just a week after the Metropolitan Police agreed an out-of-court settlement with injured protest photographer Marc Vallee.

Under the 1984 Police and Criminal Evidence Act, journalistic materials such as a camera memory card are classified as “special procedure materials”, and are subject to certain safeguards under law. However, solicitor Mike Schwartz of Bindman and Partners has previously warned that police are using their powers of arrest to gain access to these materials.

Speaking at the 2007 NUJ Photographers’ Conference, he said: “The police are arresting journalists, seizing their equipment, treating them as suspects, looking at their photographs, taking copies, perhaps returning them to them, taking no further action often (but not always) and they’ve got, straight away, what they want.”

Looi’s incident joins a long list of controversial incidents where police have been accused of misusing their powers to try to control press photographers:

March 2006: A joint two-year effort between the British Press photographers Association (BPPA), the National Union of Journalists (NUJ) and the Chartered Institute of Journalists (CIJ) results in the first police-press guidelines being agreed with London’s Metropolitan Police.

March 2006: While photographing an armed incident in Nottingham, photographer Alan Lodge is arrested firstly for assault, then de-arrested, before being arrested and de-arrested for breach of the peace, and finally being arrested and later charged with obstruction. Lodge, who helped draft the guidelines used by the police for dealing with the press, was later found guilty.

August 2006: During a terror alert, police at Heathrow Airport forced two staff press photographers to delete images from their camera memory cards. All photographers arriving at the airport were banned from taking pictures of the incident.

September 2006: Milton Keynes News staff photographer Andy Handley is arrested for obstruction after refusing to hand over his equipment after photographing a traffic accident. Police later apologise, and describe his arrest as “a serious misjudgement”.

October 2006: Photographer Marc McMahon is arrested for breaching the peace while photographing an incident on Newcastle's Tyne Bridge where a man was threatening to commit suicide. Despite showing his press card, police unlawfully told McMahon he could not take photographs, and when he continued to do so, he was arrested. McMahon's camera bag containing £10,000 of camera equipment was later stolen after being left at the scene by police officers. A court found McMahon not guilty of obstructing a police officer, and said that he had acted "professionally". McMahon later sued the police for the loss of his equipment.

October 2006: Photojournalist Marc Vallée is hospitalised and left unable to work for a month with injuries sustained following police action at a demonstration in Parliament Square. The Metropolitan Police later agree an out-of-court settlement with Vallée, but do not accept liability.

April 2007: The police-press guidelines used by the Metropolitan Police are adopted by all other police forces in Britain.

September 2007: Freelance photographer Mike Wells is stopped and searched three times and had his phone taken while covering the Defence Systems and Equipment International exhibition in London. Despite showing his press card, officers told Wells that he was being searched on the grounds that he was a person likely to cause criminal damage such as graffiti.

November 2007: Amateur photographer Phil Smith was stopped from photographing the Christmas lights being switched on by police at a public event in Ipswich, and asked whether he had a "licence to use the camera". A police spokesperson later said that officers had been "overzealous in the execution of their duty". Any such measures increase the stress in such situations and thus present a possible danger to members reporting the events and so the problem is not just with the law but with police attitudes to photographers which increasingly are determined by political priorities with no concept of defending the freedom to report.

The guidelines recently agreed between ACPO and the NUJ should be an important element in helping to improve relations between the police and the media and in the conduct of the police towards the media and the understanding of the media of the role and responsibilities of the police in public order situations. However, this will only be so if all parties abide by these guidelines and that means not only senior police officers but junior and frontline officers too. Such guidelines should form an integral part of police training and pre-event briefings.

Media freedom is central to the democratic vitality of the UK. Unwarranted actions which restrict media freedom deny citizens their rights to participate in the democratic life of the UK. In this submission we have only been able to give a flavour of the kinds of issues faced by members of the press trying to carry out their lawful and important role covering protest.

We would welcome the opportunity to expand on this in verbal evidence sessions.

25 June 20

Jacqui Smith
Home Secretary

22 May 2008

Dear Jacqui,

I am writing to highlight our growing concerns regarding routine police surveillance of journalists.

In particular we have serious concerns about the activities of the Metropolitan Police's Forward Intelligence Team (FIT Team) in monitoring and recording the activities of bona fide journalists, especially photographers. A number of members have alleged that the police's surveillance action amounts to virtual harassment and is a serious threat to their right to carry out their lawful employment.

As you will be aware the FIT team have a responsibility to provide intelligence to police units in respect of individuals who may be involved in public order issues. "Targets" whose likenesses are retained by the police are given four-figure Photographic Reference Numbers and held on a database.

Recently, the FIT team has started surveillance of Press-Card-carrying journalists who cover and report on protests of any kind. For example, at a recent lobby against the SOCPA restrictions on protests on 1 March—all members of the press present were catalogued by the FIT team.

Through Data Protection Act requests we have learned that details of bona fide journalists are held on this database with photographic reference numbers.

I have met with a number of those journalists, mainly photographers who have been the victims of this intimidatory policing. For instance, members of the FIT team who know individual journalists by name still follow them and film them all the time they are working. The journalists have provided their Press Cards to FIT team members, have asked why they are under surveillance and have reminded police officers of their lawful right to carry out their work. Despite this the surveillance continues.

Despite repeated requests there has been no legitimate reason given why police photographers should be photographically cataloguing journalists going about their lawful business.

I would welcome from you information in respect of the guidance given to the FIT team.

- Are the FIT team issued with instructions to photograph and catalogue journalists? Can you provide guidelines issued to FIT Team members about their duties/role.
- For what purpose is information gained by the FIT team held on journalists by the police?
- Who has access to information being held on police databases about journalists?

The routine and deliberate targeting of photographers and other journalists by the Forward Intelligence Team undermines media freedom and can serve to intimidate photographers trying to carry out their lawful work. The rights of photographers to work free from threat, harassment and intimidation must be upheld.

I would welcome the opportunity to meet with you and/or relevant officials to provide further evidence of this activity, including photographic evidence and to seek assurances that the government will do all it can to ensure professional journalists are able to carry out their lawful work.

Yours sincerely

Jeremy Dear
General Secretary

June 2008

Memorandum submitted by Mr Richard D North

A NOTE

I have risked making my own recommendations to the committee. This is done out of a desire to be clear and useful.

IN BRIEF

Society should rethink its easy assumption that anyone who protests is probably on the side of the angels and that anyone who questions that assumption probably wants to oppress The People or destroy the planet.

Instead we should understand that much protest, especially most direct action, and even a good deal of Non-Violent Direct Action (NVDA), is problematic. For every example of protestors being over-policed, there are several more important ones of their being under-policed.

The committee should firmly declare that the rights of targets and victims are as much a human rights matter as the rights of protestors.

The committee should emphasise that representative democracy is itself an important example of human rights at work and that much protest attempts to trump it.

The committee should encourage authorities to learn from their occasional heavy-handedness: it produces a potent dissident folklore which plays into the hands of protestors.

NON-VIOLENT DIRECT ACTION (NVDA): A COMFORTING FUDGE

The essence of any direct action is that it aims to force change rather than win arguments. Even NVDA assumes that mere demonstrations won't cut it: civil disobedience or criminal acts are more effective. We need to consider whether each protest or direct action really has been necessitated by the failure of representative democracy. The further from peaceful, law-abiding protest an action is, the higher we need to set the bar of justification. Bearing witness is very different from bearing wire-cutters.

BACKGROUND

I have been reporting and commenting on all kinds of protest for around 30 years and have tended to concentrate on the abuse of human rights by a few extremist activists of one kind or another. But I have been equally concerned by the cultural damage done by the reluctance of authority to assert its rights over those of protestors.

There are two main reasons for my anxiety. The first is that the NVDA rubric has given a number of protestors too much freedom to cause serious disruption to democratically-legitimated research and commerce. The second is that the media and many campaigners believe that almost anything done in the name of NVDA is somehow superior to nearly anything done by the formal processes of representative democracy and its institutions. It is as though everything the protestors do is beatified by Ghandi and everything the politicians sanction is cursed with chicanery.

In discussions with audiences I have been very struck by the willingness of educated people, and especially sixth formers and university undergraduates, to believe that they are living in what they call a “police state”. Whilst this belief would be legitimate if it arose mostly from heavy-handed policing or legislation, it has in fact much more arisen from the rhetoric of civil liberties and other campaigners.

I am inclined to say that we live in one of the freest states in the world and that there is no sign of the legislature having allowed any serious change in that.

Whilst it is right to deploy the lightest effective touch with protest of any kind, it is fair to note that the “liberal elite” is too little inclined to understand protest from the point of view of its targets and victims.

In general it is fair to add that in the past few years the targets and victims of direct action have got a rather better hearing in the media, and often better protection and redress too. But there is plenty to worry about.

A PROTEST SPECTRUM: VOCIFEROUS, VIGOROUS, VICIOUS AND VIOLENT

Vociferous protest is the birthright of all democrats. At the other end of the scale, it is obvious that violent protest can very seldom be acceptable in democracies. However, the state and the media have had and still have great difficulty in handling protest I characterise as ranging from “vigorous” to “vicious”. By “vigorous” I mean activity which aims to force change by damaging (say) a research crop or a power station chimney. “Vigorous” action is normally directed at property, not persons, but that doesn’t make it acceptable. By “vicious” I mean protest which takes the form of covert activity against individuals and firms in private, often in the form of “home visits”, telephone calls and email and “slow” mail. The Protection from Harassment Act 1997 has made it easier to characterise such activity as the menace it is, but perpetrators remain hard to catch.

PROTEST: RECENT UK AND US HISTORY

In some evidence for a US Congressional inquiry 2002 I attempted a small history of protest and direct action in the UK and US, so I won’t repeat that here. (It is available online.¹⁴⁹)

For all sorts of reasons (including the fear of giving the activists the oxygen of publicity), the targets of much vicious and occasionally actually violent direct action often left the incidents unreported to police or media. Worse, for many years when incidents came to light the activists wrong-footed the legislators, courts and police.

Since 2002, we have seen much of the most vicious and violent protest curtailed by a mixture of fresh legislation, judicial action (especially injunctions in the High Court) and police effort. This has been achieved with very few instances of heavy-handedness. However, every incidence of excessive state force is regrettable in its own terms and because it gives ammunition to people who want an excuse to abuse the right to protest.

A MODEST PROPOSAL

The committee ought to advocate the production of an authoritative source of information on protest. The easiest way of publicising both the scale and nastiness of some activists and the (patchy) success of dealing with the perpetrators would be a government, police or judicial website which listed the outcomes of criminal and civil cases involving protest of every sort.

A LESS MODEST PROPOSAL

There is a wide and confusing rag-bag of Acts which affect the policing of protest. The Committee should review these and make an argument one way or the other for a thorough-going rationalisation. This review might usefully include consideration of the law of trespass and criminal damage as they apply to protest. (Legislative tidiness may not be justified by its demands on scarce parliamentary time.)

PROTEST, DIRECT ACTION AND TERRORISM

In recent years the state has had to deal with Islamist extremism which goes way beyond the kind of protest—even vicious and violent direct action—we are discussing here. There is an important distinction between protest or direct action and terrorism. They are linked of course, but it is useful to note that terrorists are people who use violence of a quite different order to even the worst of the animal rights campaigners. I would resist characterising even the most violent US anti-abortion activists as terrorists. Terrorism is a word we ought to reserve for some kinds of insurgency, or guerrilla or asymmetrical warfare. Terrorism is usually distinguished by its being aimed at scaring the whole of society and often at provoking

¹⁴⁹ Richard D North, testimony to Subcommittee on Forests and Forest Health Committee on Resources, US House of Representatives, 8 February 2002
<http://www.richarddnorth.com/journalism/power/congress.htm>

a disproportionate state response. Direct action, on the other hand, is usually aimed at stopping an activity or scaring target individuals or firms, though it often enjoys and seeks lapses from good behaviour by the state.

THEATRICALS, PROTEST AND DIRECT ACTION

“Direct action” and “protest” and “demonstration” are often used interchangeably. This is a dangerous habit because it allows what are essentially forceful protests to disguise themselves and be accorded the same respect as peaceable protest. Direct action is undertaken by protestors who aim to force change rather than to argue for it and whose exploits show a disregard at least for the convenience of fellow-citizens and often for the law. Of course, in the UK even people who break the law know they will be treated with consideration and considered gentleness. Thus, much direct action, and especially NVDA, is premised on being more theatrical than threatening.

Few people conducting direct actions with the ostensible aim of shutting down an operation actually believe they ever could. Indeed, such protest is often highly disingenuous: much direct action deliberately affects to be about forcing change when really it is about staging confrontations with the forces of law and order. Victory in such cases depends on provoking some hapless policeman to hit a protestor, on the principle that nothing is so radicalising as a truncheon.

FURTHER PROTEST TYPES

If we take some examples we can see a spectrum of theatricality and threat.

(1) *Protest and street theatre*

Brian Haw’s protest outside the House of Common is a sort of street theatre, and has actually achieved the status of being treated as installation art by the capital’s leading gallery of our national art. Reluctantly, I accept that Mr Haw and his protest are very widely regarded as classic and valuable examples of several sorts of British untidiness.

In general, it is worth noting that recent legislation against protest near Parliament has attracted much opprobrium and the committee will need to judge whether its effectiveness justifies its unpopularity.^{150,151]}

(2) *Potentially dangerous direct action stunts*

Fathers4Justice has produced various stunts (hanging out on cranes, for instance) which disrupt local life and strain people’s patience whilst getting their attention.¹⁵² Much more problematically, F4J have “occupied” the roofs of the private houses of politicians, as have Greenpeace and others.^{153,154,155} This form of direct action is dangerous because it strains the ability of police and others to keep people and property safe. At some point, it is quite possible that a police marksman may misread such a protest and hurt or kill a protestor. In the meantime, it is reasonable to ask whether politicians should have to accept such invasion of their privacy, and the anxiety that such events may turn nasty.

¹⁵⁰ Matthew Tempest et al, Peace campaigner fined for Whitehall protests, Guardian, 12 April 2006
<http://www.guardian.co.uk/politics/2006/apr/12/iraq.iraq>

¹⁵¹ markthomasinfo.com, 21 April 2007
<http://www.markthomasinfo.com/demo/april212007.asp>

¹⁵² F4J website accessed 18 September 2008
http://fathers-4-justice.org/f4j/index.php?option=com_content&task=view&id=22&Itemid=44

¹⁵³ Thisisbristol.co.uk website accessed 18 September 2008
<http://www.thisisbristol.co.uk/news/F4J-crusader-rooftop-protest-judge-s-home/article-260182-detail/article.html>

¹⁵⁴ Guardian staff and agencies, Harriet Harman target of fathers’ rights roof protest, guardian.co.uk, 8 June 2008
<http://www.guardian.co.uk/politics/2008/jun/08/harrietharman.children>

¹⁵⁵ Russell Jenkins, Prescott wife feared for her life, The Times, 2 November 2005
<http://www.timesonline.co.uk/tol/news/uk/article585582.ece>

¹⁵⁶ BBC Online, Pro-hunt protesters storm Commons, 15 September 2004
http://news.bbc.co.uk/1/hi/uk_politics/3656524.stm

¹⁵⁷ inthenews, Greenpeace scales parliament, inthenews.co.uk, 13 March 2007
[http://www.inthenews.co.uk/news/news/environment/greenpeace-scales-parliament-\\$1064149.htm](http://www.inthenews.co.uk/news/news/environment/greenpeace-scales-parliament-$1064149.htm)

¹⁵⁸ Sophie Goodchild, Greenpeace brothers climb Big Ben tower and spark security review, The Independent, 21 March 2004
<http://www.independent.co.uk/news/uk/this-britain/greenpeace-brothers-climb-big-ben-tower-and-spark-security-review-567121.html>

¹⁵⁹ BBC Online, Blair hit during Commons protest, 19 May 2004
http://news.bbc.co.uk/1/hi/uk_politics/3728617.stm

(3) *Invasions of Parliament*

Plane Stupid, Greenpeace, pro-hunt campaigners and F4J have all “invaded” and “occupied” parts of Parliament.^{160,161,162,163} It is important to note that this is the very worst sort of protest. Parliament is the place where representative democracy conducts its business of reconciling the tense differences of opinion in the country. We should take no pleasure in its being the scene of loud protest by non-elected special and single interest campaigners.

The committee should risk boldly defending the needs of Parliament.

More urgently, we have to wonder whether it is a good or a bad thing that campaigners have breached Parliamentary security. On the one hand, they put themselves at risk of having their protest mis-read by anxious and armed police. On the other, it may be an advantage to have parliamentary security tested so thoroughly by benign activists, since the alternative may be much worse.

(4) *Vociferous demonstration*

In recent years, mass protest has been rare and relatively polite. Between their debut in 2000 and their demise in 2005, London’s “Seattle” style May Day anti-capitalist demonstrations received increasingly savvy policing. By 2005, the police had developed quite good strategies for marshalling them and were also better at explaining that (a) there were legal union-led demonstrations to attend and (b) that the more rebellious and dissident demonstrations were only illegal because their organisers refused to liaise with police. Large scale pro-hunting and anti-war demonstrations mostly went off in exemplary fashion.

However, we can wonder whether it was sensible to imprison loud-mouthed Islamist extremists for six years for even the most intemperate speech during a demonstration.

(5) *Ecological direct action*

“Green” activists pose a variety of difficulties. Their “vigorous” actions against genetically-modified trial crops have been successful in sowing real doubt that this new science can be commercially developed in the UK.¹⁶⁴ A little differently, it is likely that the next few years will see a continuation of protest against various energy and transport facilities. If these develop along existing lines as “camps” and mass demonstrations, they should be fairly easy to police uncontroversially. It is quite possible that they will revert to older “Swampy” style occupations, which produce tense evictions but have in the past not much altered the timetable of developments or raised very serious civil liberty anxieties (though they were at least disrespectful of the pained democratic planning process). We have already seen Greenpeace successfully defend itself against charges of criminal damage against both GMO research crops and a power station on the grounds that it was preventing a greater damage.^{165,166} This disingenuous and disgraceful defence has trumped the democratic legitimacy accorded these activities for years and after detailed and continuing political and technical debate.

The committee should consider the need for a legislative overhaul of this defence.

(6) *Pacifist direct action*

Juries have proved unwilling to convict campaigners against the arms trade or the military even when the formal legal case against them seems self-evident.¹⁶⁷ These campaigns have taken many forms but seldom been as threatening or underhand as animal rights activism. The committee will doubtless hear evidence that policing of one Fairford demonstration was unduly heavy-handed.¹⁶⁸

¹⁶⁰ BBC Online, Pro-hunt protesters storm Commons, 15 September 2004

http://news.bbc.co.uk/1/hi/uk_politics/3656524.stm

¹⁶¹ inthenews, Greenpeace scales parliament, inthenews.co.uk, 13 March 2007

[http://www.inthenews.co.uk/news/news/environment/greenpeace-scales-parliament-\\$1064149.htm](http://www.inthenews.co.uk/news/news/environment/greenpeace-scales-parliament-$1064149.htm)

¹⁶² Sophie Goodchild, Greenpeace brothers climb Big Ben tower and spark security review, The Independent, 21 March 2004

<http://www.independent.co.uk/news/uk/this-britain/greenpeace-brothers-climb-big-ben-tower-and-spark-security-review-567121.html>

¹⁶³ BBC Online, Blair hit during Commons protest, 19 May 2004

http://news.bbc.co.uk/1/hi/uk_politics/3728617.stm

¹⁶⁴ Ian Sample, GM crop trial locations may be hidden from public, The Guardian, 16 February 2008

<http://www.guardian.co.uk/environment/2008/feb/16/gmcrops.greenpolitics>

¹⁶⁵ Gareth Crickmer, Greenpeace director cleared of criminal damage charge, The Independent, 20 September 2000

<http://www.independent.co.uk/environment/greenpeace-director-cleared-of-criminal-damage-charge-698449.html>

¹⁶⁶ John Vidal, Kingsnorth trial: Coal protesters cleared of criminal damage to chimney, 10 September 2008

<http://www.guardian.co.uk/environment/2008/sep/10/activists.carbonemissions>

¹⁶⁷ Esther Addley and Richard Norton-Taylor, Fairford Two strike blow for anti-war protesters after jury decide they were acting to stop crime, *The Guardian*, 26 May 2007

<http://www.guardian.co.uk/uk/2007/may/26/iraq.iraq>

¹⁶⁸ BBC Online, Police “abused power” during demo, 19 February 2004

<http://news.bbc.co.uk/1/hi/england/gloucestershire/3502199.stm>

(7) *Animal rights direct action*

The focus of much police and legal action, animal rights extremism remains a serious threat to its targets. The public has recently been gaining some understanding of the viciousness of much of this covert direct action. The protestors scored a spectacular own goal when they desecrated the graves of the family of a guinea pig farmer.¹⁶⁹ All the same, this kind of protest is under-reported by its victims and its horrors are not usually obvious enough to attract the public sympathy they deserve. There have been many successes in dealing with this sort of protest, but it is inherently difficult to police.

We should, by the way, assume that enthusiasm for this sort of activism may well prove cyclical and its focus may well shift. The committee should encourage the authorities to develop strategies for dealing with it, and ensure that we develop a good “institutional memory” of what worked and what didn’t.

(8) *“We know where you live” activism*

It is important to note how much vicious protest can be highly disingenuous. Many targets and victims of vicious protest receive at their residential address a letter discussing the (anonymous) sender’s views about the morality of the recipient’s involvement with animals, the arms trade, or whatever. Sometimes the letter will affect to be offering a friendly warning and stress that “some people” might think that such behaviour puts the recipient beyond the moral pale and that “some people” might be enraged into violent action by such behaviour. Often, these letters could have been sent to the recipient’s well-known work address. Sending them to a residential address is threatening in itself. It is the activist offering the timeless threat: “We know where you live”.

The committee should consider making it easier to obtain privacy for residential addresses.

September 2008

Memorandum submitted by Richard D North

(1) Lord Lester asked me whether I approved of protest against the Commonwealth Immigrants Act 1968. I should have said that I can’t remember ever having argued against the right to peaceful, controlled protest. If Lord Lester was asking whether the protest was even more legitimate because it was against a rushed Bill, I should have replied that it was a popular Bill which answered a considerable national swell of opinion and was supported by HM’s Opposition. A quick Google doesn’t show me evidence that protest against the Act was problematic. (Indeed, protest against the 1962 Immigration Act seemed dignified.) Anyway, no, I don’t object to the protest.

(2) Lord Lester asked me if I agreed with the House of Lords 1998 decision on the Shoreham protests.

My answer should have been that I can’t disagree with the law Lords that the Chief Constable had a legal obligation to balance the right to trade against the difficulty of enforcing it. As a legal matter, I can’t argue with the Law Lords that the Chief Constable was within his rights balance things the way he did.

I should have added that in the case of HLS and other set piece protests with a potential for violence we seem to have learned better ways of allowing protest whilst avoiding flashpoints.

I stick by my statement that ideally the protests should have been banned, so as to avoid their continuing to degenerate into violence. I should have added that alternative opportunities for banned protest always have to be put in place.

(3) Evan Harris asked me how my notion that much protest was aimed at upstaging Parliament survived cases such as protest during a State Visit by Chinese leaders. I got into a muddle.

I should have said, in passing, that a pavement parade to welcome a state guest is a legitimate opportunity for people to express a dissenting view. The more dignity and wit they bring to their protest, the better.

I should more importantly have added that I don’t mean to imply that all protest upstages Parliament nor that upstaging Parliament de-legitimises protest nor that protest that doesn’t upstage Parliament is necessarily more valuable. My argument is that in a parliamentary democracy no protest has the right to be an uncontrolled nuisance.

October 2008

¹⁶⁹ BBC Online, Four jailed in grave-theft case, 11 May 2006
<http://news.bbc.co.uk/1/hi/england/staffordshire/4762481.stm>

Memorandum submitted by Richard D North

(1) CLARIFICATION ON THE SEVERITY OF DIFFERENT SORTS OF PROTEST

Evan Harris asked me for a map of the seriousness of problem different sorts of protest presented. I should have replied that the spectrum in my written evidence (vociferous, vigorous, vicious and violent) provides a way of calibrating any particular activity.

But it doesn't really help us spot classes of action which are likely to be, say, vicious.

I take it that we are discussing demonstrations and direct action and that merely vociferous protest is unexceptionable.

I should have given more examples of how difficult it is to detect the seriousness of vigorous, vicious and violent protests merely from, say, their targets.

In general one would say that harm to people matters more than harm to property. But screaming vile abuse at a person in a business centre may carry less menace than spray-painting their car in a private driveway. A letter bomb at work may carry less menace than a polite phone call to an employee at home. Slight damage to a small trial GM crop threatens an entire science but would be trivial in a normal potato field. Slight damage to a waste pipe threatens a giant nuclear plant in a quite different way to the same sort of damage to a smokestack in a fossil fuel plant. Occupying one crane may bring a city centre to a standstill, but occupying another might be merely comically spectacular.

(2) CLARIFICATION ON THE SUCCESS OF DIFFERENT SORTS OF PROTEST

I stick by my statement that demonstrations and direct action have seldom achieved their goals.

More usefully to the committee, I should have said that it isn't obvious what sort will succeed. Certainly success is not proportionate to vigour.

Protest does sometimes succeed. Theatre companies are widely said to be avoiding certain religious subjects because of Sikh and Muslim protest. (Christian outrage has been unsuccessful.)

Sometimes protest is a bit successful. Many infrastructure projects have suffered some delay and cost increases as a result of protest, but have gone ahead in the end. (The anti-road campaigners claim indirect political success, but I doubt it.)

In some cases direct action has backfired. Britain has lost some facilities but been rendered a uniquely strong centre for animal research as a response to protest. The anti-fur campaign persuaded some firms to abandon the trade but others were emboldened to fight on all the harder and overall the trade thrives. GM crop research may go abroad as a result of field trial damage but it may just become less transparent at home.

Causes seem to succeed or fail according to subtler processes of change. Demonstrations or direct action for Ban the Bomb, Not In My Name, No Nukes, May Day, The Third Battle of Newbury, Liberty and Livelihood, Fathers 4 Justice, Fur Is Murder and other causes seem not to have much budged public opinion or Parliament. (One might count Drop The Debt a success.)

Very vigorous direct action has a surprisingly poor record. Wapping and the coal-miners' strikes did not budge policy. The effect of the Shoreham live veal export protest is harder to analyse: the trade was unpopular without the street protest.

The record of riots is very mixed. The May Day riots irritated the public. The Poll Tax was hugely unpopular, but I suspect the riots against it were too.

Wide-scale neighbourhood riots have a better record of success. Brixton and Toxteth influenced events.

My conclusion is that the illegality of most extreme protests is not justified by an argument that they have effected change in a unique way.

October 2008

Memorandum submitted by Dr Michael Hamilton and Dr Neil Jarman

THE LEGAL REGULATION OF FREEDOM OF PEACEFUL ASSEMBLY

As the Committee has acknowledged, legislation governing the policing of public protest in the UK has raised "significant concerns" in recent years. These have been heightened by fears of creeping securitization. We recognize the complexities of policing protests, including the difficult operational choices that often arise, and the backdrop of recent terrorist attacks.

Nonetheless, we have many concerns about both the legislative framework,¹⁷⁰ and the sheer breadth of common law police powers to take action in anticipation of a breach of the peace.¹⁷¹ Furthermore, while well-drafted legislation is vital in framing the discretion afforded to the relevant authorities, it is often the interpretation and implementation of the law that potentially compromises a robust rights-based approach to freedom of peaceful assembly.

In this submission, we refer on a number of occasions to the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* (2007).¹⁷² These Guidelines have recently been endorsed by the Venice Commission of the Council of Europe. Their basic premise (the presumption in favour of freedom of peaceful assembly) is based on the assertion that:

Participants in public assemblies have as much a claim to use such sites for a reasonable period as everyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used (such as pedestrian and vehicular traffic).¹⁷³

Many of the questions listed in the Committee's call for evidence refer to the importance of proportionality. This is reflected in Principle 4 of the OSCE-ODIHR Guidelines. We would emphasize that if a rights framework is to be meaningful, assessments of proportionality cannot be made in abstract, but rather only in conjunction with consideration of the specific "legitimate aim" being pursued, having regard to the particular factual circumstances. Considerations of proportionality are also relevant to establishing whether or not a criminal prosecution is an appropriate response.¹⁷⁴

ANTI-TERROR POWERS

In a number of countries, legislation dealing with "extremism" or "terrorism" has provided a Trojan horse for the imposition of onerous restrictions on the right to freedom of peaceful assembly. The OSCE-ODIHR Guidelines stress that measures to tackle such threats "must never be invoked to justify arbitrary action that curtails the enjoyment of fundamental human rights and freedoms."¹⁷⁵

We have concerns about the "stop and search" powers under s.44 Terrorism Act. While we note that authorisations must be for the purpose of preventing terrorism,¹⁷⁶ and we welcome the guidance provided in Circular 038/2004,¹⁷⁷ these powers are unduly expansive and potentially deleterious in at least three regards.

First, there is no requirement under s.44(3) that the senior officer has a reasonable belief as to the expediency of issuing an authorization.¹⁷⁸ On this, the OSCE-ODIHR Guidelines specifically state:

Individuals should not be stopped and searched unless the police have a reasonable suspicion that they have committed, are committing, or are about to commit, an offence, and arrests must not be made simply for the purpose of removing a person from an assembly or preventing their attendance...¹⁷⁹

Second, short-term authorisations—for which Ministerial confirmation is not required—could still be used to disrupt entirely peaceful assemblies—especially if such assemblies address issues pertaining, for example, to the UK's anti-terror policy. This discretion has the potential to allow the imposition of content-based restrictions (see further below); and

Third, authorisations—if confirmed by the Secretary of State—may remain in place for up to 28 days under s.46(2).¹⁸⁰

¹⁷⁰ Such as the offences of aggravated trespass under s.68 and s.69 *Criminal Justice and Public Order Act* 1994 (as amended by s.59 *Anti-Social Behaviour Act* 2003). See, for example, *Capon v DPP* EWHC Admin 261 (4 March, 1998) which points to the unlikelihood of a Court finding that it was impossible for a police officer to have formed a reasonable belief that the accused intended to commit the offence of aggravated trespass.

¹⁷¹ Indeed, this common law power almost renders academic any discussion of the statutory powers. We note, for example, that 29 of the 37 arrests made during the policing of the Olympic Torch protests were for breach of the peace. See *Beijing Olympic torch relay 6 April 2008* (21 April 2008) MPA briefing paper, Commander Broadhurst, Public Order Branch, MPS. Available at: <http://www.mpa.gov.uk/about/foi/briefings/2008/0805.htm>

¹⁷² Hereinafter, OSCE-ODIHR Guidelines. Available online at http://www.osce.org/odihr/item_11_23835.html

¹⁷³ At para.18. That public assemblies inevitably cause minor disturbance was most recently emphasized by the European Court of Human Rights in *Bukta and Others v Hungary* (2007), at para.37.

¹⁷⁴ See, for example, *Dehal v CPS* [2005] EWHC 2154 (27 September 2005).

¹⁷⁵ See, OSCE-ODIHR Guidelines at paras.75–77.

¹⁷⁶ It is at least noteworthy that Anti-Terrorism legislation was not used during the policing strategy during the procession of the Olympic Torch through London. See *Beijing Olympic torch relay 6 April 2008* (21 April 2008) MPA briefing paper, Commander Broadhurst, Public Order Branch, MPS. Available at: <http://www.mpa.gov.uk/about/foi/briefings/2008/0805.htm>

¹⁷⁷ *Authorisations of Stop and Search Powers under Section 44 of the Terrorism Act*. Available at <http://security.homeoffice.gov.uk/ripa/publication-search/circulars/38-2004.pdf?view=Binary>

¹⁷⁸ *cf.* the requirement that a senior officer must reasonably believe it to be expedient to authorise the use of powers under s.60 *Criminal Justice and Public Order Act* 1994, [similarly, Article 23B, *Public Order (NI) Order* 1987, as inserted by s.96 *Anti-terrorism, Crime and Security Act* 2001].

¹⁷⁹ At para.127 (emphasis added).

¹⁸⁰ *cf.* s.60 *Criminal Justice and Public Order Act* 1994, under which authorisations may only remain effective for up to 24 hours.

LIMITATIONS SPECIFIC TO PARTICULAR LOCATIONS OR IDENTIFIED GROUPS

Blanket provisions which apply to particular geographical areas risk being disproportionate because (1) they preclude a timely assessment of the specific facts of a given case, (2) their geographical boundaries may go beyond that which could routinely be said to raise concerns which relate to “legitimate aims” (such as national security), and (3) their reach often extends to entirely innocuous activities.¹⁸¹

— *Demonstrations in the vicinity of Parliament*

The restrictions contained in sections 132–8 *Serious Organised Crime and Police Act 2005* (SOCPA), preclude the consideration of the individual circumstances of each case and therefore run counter to the principle that restrictions be proportionate to the legitimate aim being pursued. We therefore welcome the Government’s proposal to repeal these provisions, and do not see any need to further supplement the discretionary public order powers already in existence.

— *“Designated” and “vulnerable” sites*

A number of legislative provisions enable the imposition of restrictions on assemblies in certain locations. These include s.14A *Public Order Act 1986*,¹⁸² s.77(1) *Anti-Terrorism, Crime and Security Act 2001*,¹⁸³ and s.128 SOCPA 2005.¹⁸⁴ In addition, Circular 038/2004 (re. s.44 Terrorism Act 2000) uses the language of “Vulnerable sites (eg airports, military bases etc)” and “Transport networks”.

We would caution against the special treatment of specific locations, particularly given the already wide range of statutory and common law public order powers which allow for the restriction of protests which cease to be peaceful.¹⁸⁵ At best, such provisions foster a perception of a State bent upon restriction. At worst, they can be used as a cover for the imposition of content-based restrictions on peaceful (albeit controversial) protest. Individuals and groups should be freely able to protest about issues relating to, for example, transport, healthcare, energy, and the military. Moreover, the OSCE-ODIHR Guidelines state that “as a general rule, assemblies should be facilitated within sight and sound of their target audience”,¹⁸⁶ and that content-based regulation should be strenuously avoided (except where the content is itself unlawful, such as stirring-up hatred, or urging imminent violence).¹⁸⁷

— *Restricting certain groups*

The argument against content-based regulation applies equally to the suggestion that certain groups might be singled out for restriction. Principle 6 of the OSCE-ODIHR Guidelines (non-discrimination) is especially relevant in this regard:¹⁸⁸

Principle 6. Non-discrimination.

- a. Freedom of peaceful assembly is to be enjoyed equally by everyone. In regulating freedom of assembly, the relevant authorities must not discriminate against any individual or group on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The freedom to organize and participate in public assemblies must be guaranteed to both individuals and corporate bodies; to members of minority and indigenous groups; to both nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants, and tourists); to both women and men; and to persons without full legal capacity, including persons with mental illness.

¹⁸¹ As, for example, in *Key Tabernacle v Secretary of State for Defence* [2008] EWHC 416. In this case, Kay LJ did not feel it necessary to reach a conclusion on the compatibility with the *Human Rights Act* of Byelaw 7(2) of the *Atomic Weapons Establishment (AWE) Aldermaston Byelaws 2007*, since he ruled that “the broad prohibition in Byelaw 7(2)(g)” “infringes common law principles”. These Byelaws were enacted under power derived from s.14(1) *Military Lands Act 1982*. Section 14(2) provides that byelaws may be issued to “prevent nuisances, obstructions, encampments, and encroachments thereon ... or to anything ... erected thereon.”

¹⁸² Inserted by s.70 *Criminal Justice and Public Order Act 1994*, and applying to assemblies on land to which the public has no right of access or only a limited right of access.

¹⁸³ Under which the Secretary of State may make regulations for the purpose of ensuring the security of nuclear sites and other nuclear premises.

¹⁸⁴ Offence of trespassing on designated site where (under s.128(2) and s.128(3)) “A ‘designated site’ means a site— (a) specified or described (in any way) in an order made by the Secretary of State, and (b) designated for the purposes of this section by the order” if, *inter alia*, “it appears to the Secretary of State that it is appropriate to designate the site in the interests of national security.”

¹⁸⁵ For example, recent examples of protest at MP’s homes could potentially fall within the offence of harassment of a person in his home under s.42A of the *Criminal Justice and Police Act 2001*, inserted by s.126 SOCPA 2005.

¹⁸⁶ See further, OSCE-ODIHR Guidelines at paras.82 and 100.

¹⁸⁷ See, OSCE-ODIHR Guidelines at paras.39, 74 and 135.

¹⁸⁸ See further, OSCE-ODIHR Guidelines at paras.45–59.

RECONCILING COMPETING INTERESTS: INTERPRETING THE “LEGITIMATE AIMS”

— *The prevention of disorder*

A number of cases in Northern Ireland have interpreted this clause to include consideration of relationships within the community, and the possibility of violence beyond the immediate event.¹⁸⁹ In this vein, we would draw the Committee’s attention to the forthcoming House of Lords judgment in the case of *In Re E* which relates to the policing of the Holy Cross dispute in North Belfast. We have concerns about the deference of the Court of Appeal to the significance accorded by the police to the potential for “secondary protests”,¹⁹⁰ and believe there ought to be greater temporal and geographical imminence of disorder (akin to the US “clear and present danger” test) to justify restrictions on an assembly. We would also emphasize that neither a hypothetical risk of disorder, nor the risk of minor, sporadic or isolated incidents of disorder, should be used to justify sweeping prior restrictions. The OSCE-ODIHR Guidelines are emphatic in this regard.¹⁹¹

The protection of the rights and freedoms of others

We also have concerns about the potential for an insufficiently robust approach to the interpretation of the phrase “rights and freedoms of others” in the limiting clauses of Articles 8–11 ECHR.¹⁹² While such “rights and freedoms” extend beyond ECHR rights,¹⁹³ the substantive content of these rights is of critical importance.¹⁹⁴ Any decision to restrict a public assembly on this ground should specify the rights of others at stake, ensure that the proper threshold test has been met (establishing that particular rights are actually engaged), and explain how the restrictions serve to protect these rights. This issue is discussed in both the OSCE-ODIHR Guidelines,¹⁹⁵ and (in greater detail) in Appendix B of the *Interim Consultative Report of the Strategic Review of Parading*.¹⁹⁶

OTHER ISSUES: POLICING, STEWARDING, AND MONITORING

We would draw the Committee’s attention to the improvement in the policing of contentious public events in Northern Ireland over the past ten years. This is perhaps best encapsulated in terms of a shift from escalated force to negotiated management models of protest policing. A key factor is the importance now attached to human rights considerations in the policing of demonstrations, and to increased police accountability on human rights grounds.¹⁹⁷ We believe that important lessons can be drawn from Northern Ireland about the contingency of police-community relations (and confidence in policing more broadly) upon the policing of public protest. Progress has also undoubtedly also been due to the roles played by independent monitors (deployed by the Parades Commission), and stewards (many of whom have now obtained accredited training).

June 2008

¹⁸⁹ Application by David Tweed for Judicial Review [2007] NIQB 69 (12 September 2007) at para. 29 per Weatherup J: “... The prevention of disorder as a legitimate aim under Articles 9,10 or 11 of the Convention may have a wider reach than the prospect of public disorder resulting from the procession that is considered under section 8(6)(a).” See also *In Re Pelan* [1996] NIJB 260.

¹⁹⁰ [2004] NIQB 35 (16 June 2004) per Kerr LCJ at para. 46: “...Those who had to decide how to deal with this protest were obliged to have regard to the effect that their decisions might have in the wider community. It is not difficult to understand that an aggressive, uncompromising approach to the protest might have been the catalyst for widespread unrest elsewhere. It is precisely because the Police Service is better equipped to appreciate and evaluate the dangers of such secondary protests and disturbances that an area of discretionary judgment must be allowed them, particularly in the realm of operational decisions...” The House of Lords judgment in this case is expected after 18 June (*In Re E (A Child) (AP)* (Appellant) (Northern Ireland), House of Lords 17–19 June 2008). See also *In Re Tweed’s Application* [2007] NIQB 69 (12 September 2007) at para. 25; and *In Re Pelan’s Application* [1996] NIJB 260, per Carswell LCJ at 271D.

¹⁹¹ See further, OSCE-ODIHR Guidelines at paras.63–4, 70 and 81.

¹⁹² See, for example, *In Re Tweed’s Application* [2007] NIQB 69 (12 September 2007) per Weatherup J at para.24.

¹⁹³ As emphasized in *Chassagnou v France* [1999] 29 EHRR 615, “It is a different matter where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect ‘rights and freedom’ not, as such, enunciated therein. In such a case only indisputable imperatives can justify interference with enjoyment of a Convention right.”

¹⁹⁴ As Professor Steven Greer has noted, “where conflicts between Convention rights have to be resolved, the key issues are how the rights in question are to be defined and whether, thus defined, the conduct in question constitutes their violation or realization.” See Steven Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects* (2006) at 277 and 269.

¹⁹⁵ At paras.13–15 and 70–72.

¹⁹⁶ Available online at <http://www.srpb.org.uk>

¹⁹⁷ See, for example, Keir Starmer QC and Jane Gordon, *Monitoring the Compliance of the Police Service of Northern Ireland with the Human Rights Act 1998: Report on the Policing of the Ardoyne Parades 12th July 2005 and the Whiterock Parade 10th September 2005*, available at: <http://www.nipolicingboard.org.uk/index/publications/human-rights-publications.htm>. See also the Policing Board’s Human Rights Annual Report.

Memorandum from the Police Federation of England and Wales

This submission paper outlines the response from the Police Federation of England and Wales (PFEW) to the "Policing and Protest" enquiry.

As the representative organisation for 140,000 rank and file police officers, the Police Federation of England and Wales (PFEW) welcomes the opportunity to contribute to the enquiry by the Joint Committee of Human Rights.

As well as providing answers to the specific questions raised in the document, this paper also outlines the PFEW's position in relation to the policing of protests. We believe a review of all relevant legislation is necessary and long over due.

It must be noted first and foremost the majority of protests which take place are conducted in a lawful manner and most protestors are not intent on breaking the law. The bulk of protests are undertaken with collaboration between police and organisers which therefore limits the need to use legislative powers.

The right to assemble and right to protest are clearly set out within the Human Rights Act. The PFEW fully supports these rights however we believe it is imperative that front line officers and the police forces dealing with such incidents are given the capacity to apply conditions where necessary or appropriate. We strongly advise that the powers available to the police service should be the same for both demonstrations and assemblies.

The PFEW believes there is an urgent need for clarity and consistency in the approach to policing protests, for example; s132-6 of the Serious Organised Crime and Police Act (SOCPA) should be amended so that all protests and marches should be governed by the Public Order Act 1986 (POA), whenever and wherever they occur.

We also recommend that a prior notification scheme should apply to all assemblies as this will further enhance the consistency of managing protests or gatherings within a defined area. Police forces involved in the management of any such assemblies should have the power to place conditions on any procession in advance of it taking place.

We would also like to highlight that the Public Order Act was introduced 22 years ago and security issues have considerably changed since its introduction. The increased threat of terrorism is another reason why the PFEW believes it is vital that police forces dealing with any demonstration should be permitted to put proportionate restrictions and conditions in place.

Public safety is paramount and these restrictions should be imposed on any procession or assembly as in the current climate no risks that could potentially jeopardise public security should be taken.

The PFEW is aware that the majority of demonstrations in the UK take place around the Westminster area and although we think the Public Order Act should be updated to allow police officers more discretion to successfully control and manage protests in this unique area, we firmly believe that any changes to specific geographical areas where protest is allowed, should be decided by Parliament. As mentioned earlier we agree that people should have the right to protest but we would also like to highlight that MPs, Peers and officials have the right to access their work without fear of opposition or protest. We would recommend a review of the areas where protests are permitted and which obstruct access to the Palace of Westminster. Any amendments should clearly stipulate the forbidden areas of access alongside the activities which would have a negative impact on the operation of Parliament.

The PFEW has concerns that some of the powers available to front line officers are considerably limited. We recommend that an extension of certain powers such as s60 of the Police and Criminal Evidence Act 1994 (PACE) would lessen the risk of violence associated with certain assemblies or demonstrations. Police officers are currently restricted when it comes to exercising the power to stop and search somebody. S1 of the PACE stipulates that an officer must have reasonable grounds to exercise the stop and search power. Whilst S.60 of the same act allows for searches within a defined area and timescale, this requires prior intelligence that disorder or violence is likely and the order has to be authorised by an Inspector and confirmed by a Superintendent.

The PFEW believes that the removal of this requirement and the implementation of allowing fully trained officers to use their discretion would be far more beneficial especially during protests or large assemblies.

Furthermore recent ACPO guidance suggests that the normal process post incident is that police officers do not confer when making notes. We have serious concerns that this could result in inaccurate recollection of events where serious disorder occurs.

Overall, we consider that the correct balance exists between the right to protest and human rights. We welcome the opportunity to expand on all the issues outlined during the oral session.

November 2008

Memorandum submitted by the Research Defence Society

BACKGROUND

The Research Defence Society (RDS) is a membership organization representing much of the bioscience sector in the UK. We have over 500 individual members, mostly researchers, as well as over 100 institutional members, including major research universities and pharmaceutical companies.

RDS is 100 years old. We have been involved in the debate about the limits of protest for much of that time. RDS has also been involved in the debate about criminality and animal rights extremism for approximately 30 years, since the foundation of the Animal Liberation Front in 1976.

RDS welcomes this inquiry and call for evidence. We agree with the committee that “the right to protest is a fundamental feature of a democratic society”. We assume any discussion on proportionality will look at both sides of the equation, namely the nature of the protest itself, and the extent and type of response, whether legislative or policing. We will provide the committee with an opinion on both of these in relation to the cause of animal rights.

The RDS is well aware of concerns about civil liberties when measures to control protests are considered and executed. In 2005 we organised a meeting to bring together representatives of the organization Victims of Animal Rights Extremism (VARE) and the civil liberties organization Liberty to discuss such issues. Our impression was that this was the first time that the staff at Liberty had fully understood the depth, nature and unpleasantness of animal rights extremist campaigns.

THE ANIMAL RIGHTS MOVEMENT

It is generally accepted that within society there is a spectrum of views about the use of animals in research. At one end of the spectrum are those who wish to abolish that use immediately. These are often divided into two groups:

Antivivisectionists: use mainly legitimate methods of campaigning. Much of the work of antivivisectionists is carried out through officer work, the media, letter writing, political lobbying etc. Antivivisectionists sometimes carry out peaceful protests, although these have diminished considerably in their numbers in recent decades. Antivivisection groups are sometimes formal, mainstream organisations with considerable budgets. It should be noted that antivivisection groups may carry out undercover infiltrations, and may subsequently publish information in breach of confidentiality laws. However, this occurs only occasionally and no new or specific policing measures are necessary. It is therefore presumably outside the remit of this consultation.

Animal rights extremists: this group uses “direct action” to achieve its aims (as described by themselves). They are described by us as “extremists” when they are either directly involved, or are closely linked to, campaigns of intimidation, harassment or criminality. Some individuals in the extremist movement will use the myriad of other campaigning techniques, such as the media, used by the antivivisectionists, but not usually to the same degree as direct action.

These are not legal definitions, and we are aware that the police use slightly different descriptions. Nonetheless, they have served as a good description of the movement.

The RDS does not describe animal rights extremists as terrorists. Mainstream antivivisection groups have from time to time expressed concerns about the measures introduced to control animal rights extremists, particularly within the last decade.

Nonetheless, we are not aware of any instances in which staff or supporters of those groups have been either restricted in their activities, or actually caught up in those new laws and police measures. For that reason, the rest of this submission will focus on animal rights extremism.

THE NATURE OF ANIMAL RIGHTS EXTREMISM

The purpose of the direct action is to halt legitimate research involving the use of animals in biomedical and scientific research.

Animal rights extremists have developed complex and multi-layered campaigns of an unusual nature. These campaigns have required additional policing and legislative measures to deal with them. Great care and thought has gone into those measures to counter the criminal activities of the extremist groups, whilst allowing legitimate and peaceful protest.

The animal rights extremists run “public-facing” campaigns which claim to be legitimate. Examples are SPEAK, Stop Huntingdon Animal Cruelty (SHAC) and the now wound-up Save the Newchurch Guinea Pigs (SNGP). These public-facing campaigns may often be seen on the high street collecting money, distributing leaflets and generally interacting with the public.

Behind these public-facing campaigns lie the sometimes criminal activities of the Animal Liberation Front (ALF) and other splinter groups such as the Animal Rights Militia (ARM).

It is clear that there is a link between these two groups. A significant number of individuals from the public-facing campaigns have been arrested and subsequently prosecuted for criminal actions¹⁹⁸. Furthermore, wherever the public-facing campaigns operate, there are almost inevitably campaigns of intimidation and harassment operating. We do not believe this could be just coincidence.

A UNIQUE FORM OF CAMPAIGNING

The animal rights extremists run campaigns which combine a mixture of illegal and legal activities, spanning the spectrum from annoying to disruptive to dangerous. Direct actions such as property damage and personal intimidation—either as isolated incidents or as part of sustained campaigns—are often linked to legitimate protests.

The book, *A Cat in Hell's Chance* chronicles the campaign against the Hill Grove cat farm. The author, a supporter of the campaign, makes a revealing disclosure, “like all good campaigns the Hill Grove campaign developed two wings and while one wing educated and agitated, the other kept the flame alive with a series of actions which worried, annoyed and damaged the property of the opposition.” (Page 193–194).

The multi-faceted character of extremist campaigns such as at Hill Grove is what makes them potentially different to other protest campaigns. In isolation the one off actions and activities, for example “polite” phone calls, emails and letters may not seem that significant. However evidence reveals that these legal activities can often broaden out to become campaigns of intimidation, as they act as rallying calls for others.

Further investigation reveals that these polite inquiries can act as “fishing exercises” aimed to discover as much information as possible; information that is later used in illegal activities.

DOUBLE SPEAK

The animal rights extremists go to some lengths to mask their illegal activity when they make a “call to action”. The public-facing campaigns that they run use disclaimers that disavow illegal activity, in the knowledge that these distance them from any responsibility from the unpleasant tactics which do occur. This acts as a buffer, separating them from the illegal actions. In some cases we later find that those individuals running the public-facing campaigns were in fact the instigators of the campaigns of intimidation and harassment themselves. In other cases we believe they recognize that intimidation and harassment is likely to be a consequence of their call to action.

When legal and illegal activities are different facets of the same campaign this adds up to a form of protest that consciously blurs the distinction between legal and illegal activities and often merges seamlessly into outright criminality.

UNDERSTANDING THE LAW TO THEIR ADVANTAGE

Animal rights extremists are usually very careful to say they engage in only lawful behavior. Hence they operate in the public domain through their public-facing campaigns.

As highly dedicated individuals, extremists develop cunning and effective methods, many of which betray their often substantial and nuanced knowledge of law.

They operate on the edge of legality. Activists are likely to know which of their tactics are legal and which are illegal, where the grey areas lie, and how best to exploit them. They work up to the letter of the law, and often exceed it in the knowledge that they may just get off with a warning. Moreover, they are extremely adept at baiting those caught up in their actions—targeting individuals or police—into acting outside the law.

FINDING VULNERABLE TARGETS

Animal rights extremist campaigns frequently involved the targeting of people and institutions not directly engaged in research. This so-called “secondary and tertiary targeting” has seen suppliers, family and friends become the subjects of illegal actions and legal campaigns. Finding the “soft targets” seeks to put pressure on the vulnerable. One of the favourite and most successful tactics is what has become known as “home visits”. The tactics of repeatedly arriving unannounced outside of the homes of those targeted has clearly intimidated many. As have the mass protests outside of places of work.

Taken together these add up to unusual forms of campaigning. The depth of animal rights extremist campaigns have not (yet) been duplicated in other areas of public protest, for example in environmental protest.

¹⁹⁸ Evidence can be provided if required.

VIOLENT CAMPAIGNS

As the author of the book on Hill Grove makes clear, these campaigns have sought to use any means possible to halt legitimate research, “A large wire fence, which had been forced to the ground” and “Missiles hurled at the Police” and further “This field was full of stones and very soon a chain formed and the ammunition was fed to the throwers who aimed at the windows, roof tiles and electric wires” (Pages 100–101).

Measures such as civil injunctions have had an immediate and tangible impact on protests. They have reduced both numbers and the ferocity of the campaigns.

This is why we consider that the measures taken to curtail some of these protests, such as civil injunctions, whilst clearly having an impact on the extent of protests, have been justified.

CONCLUSION

Our organization strongly supports the right to legal protest. However, we believe that many of the tactics of animal rights extremists have gone beyond legitimacy. Some types of protest have subsequently been criminalized through injunctions. We consider that this has in general been justified and proportional, taking into account the unusual nature of animal rights extremist campaigns, and their often insidious, frequently unpleasant, and occasionally violent character.

We consider that it is inevitable that sometimes judgement must be used about what is legitimate and acceptable protest, and what oversteps the mark. Such judgements have been taken by a wide variety of different High Court judges, for example in the awards of the many different injunctions against animal rights extremist groups across the country. The award of such injunctions has often been the result of court cases lasting many weeks or even months. Injunctions could therefore be said to have withstood the test of time and intense scrutiny.

RDS has repeatedly called for tougher measures to tackle animal rights extremism from Government. We strongly support the work that the Government and all the law enforcement agencies have now taken to combat such extremism.

September 2008

Memorandum submitted by Ms Lynn Sawyer

I have been involved in protests for many years and give evidence documentation from two unlawful arrests and a RIPA request (Regulation of Investigatory Power Act).

This is a very brief admission due to the time limit and to work commitments thus I am only including copies of West Mercia Professional standards conclusions regarding suppression of protest at Sequani Laboratory in Ledbury. Both cases involve being arrested for a combination of Section 42 Criminal Justice and Public Order Act and Section 50 Police reform Act. In both cases officers presumed that just by being present outside a laboratory I was both causing distress to home dwellers and behaving in an anti social manner. Whisl in my case I plead not guilty, complained and successfully sued another person may have pleaded guilty as indeed the clerk at Hereford magistrates advised me to do.

The “briefing note” I believe is the NETCU (National Extremist Tactical Coordination Unit, a police team who have the aim of disrupting and stopping peaceful protest whether or not it is in fact legal) handbook often seen in the hands of police officers and which should be perused by this committee, NETCU should certainly provide parliament with a copy as it is the blueprint by which police officers on the ground police protestors. Superintendent Pearl is the commanding officer and has even seen fit to link the site to pro animal testing lobby groups demonstrating clear bias.

The RIPA request came from Hampshire CPS and demanded the PGP keys for my computer which was taken in a police raid, I was not arrested, nor was I told why my house was invaded by 10 police officers at 5.30 on 1 May 2007. I do not use PGP and to be threatened with a two year prison sentence for not knowing about an old file which I suspect might have been an encrypted email is utterly disgraceful. Thirty other activists were threatened as well in an attempt to intimidate them into allowing the police to scrutinise every aspect of their lives. When none of us were coerced the police and CPS backed off and we have heard nothing else. RIPA ensures that no citizen can ever have privacy from the state. We were basically threatened with two years in prison if we did not incriminate ourselves and others or voluntarily allow the police (who have passed on private information to corporations in the past) to peruse through potentially personal and sensitive material.

If there is an extension on the time limit I would like to give a more comprehensive admission.

September 2008

Memorandum from Deputy Chief Constable Sue Sum, Association of Chief Police Officers (ACPO)

I'm writing in response to your request for evidence in respect of policing protests. As the ACPO Public Order Portfolio lead I have a national perspective in relation to the trends and developments of protests and the manner in which the police deal with them. I am aware that my colleagues from the Metropolitan Police have submitted a response based on their London experiences and therefore this letter makes no reference to events inside the capital.

The UK has much to celebrate in its record of policing recent protests. The majority of protest activity is conducted lawfully and without infringement of an individual's human rights. Most protesters are not intent in law breaking. I believe UK policing manages the sometimes difficult balance between the individual's rights to peaceful protest with the needs of the wider community with professionalism, and proportionality. This is in contrast to our European colleagues who on occasions resort to far more aggressive tactics to deal with protests.

The primary legislation for dealing with protests is the Public Order Act 1986, its objective is to ensure protests and assemblies are conducted peacefully. Powers are available to impose conditions on processional and assemblies in advance of, or in some cases at short notice to minimise disorder. Regardless of the amount of notice given the police commander will always take into account the intelligence relating to an event and undertake a risk assessment to ensure the policing response is proportionate and ECHR compliant.

In my role I have put in place national commanders training in respect of public order events. The training is followed by a process of accreditation to ensure consistency of approach and maintenance of standards. Part of this process ensures that police commanders carefully consider human rights issues when deciding on the policing plan for event. ECHR implications are documented as within the operational policing plan. It is my experience that that the policing response in relation to protests is ECHR compliant.

Legislative powers are not used on every occasion of a march or demonstration and in my experience they are used in the minority of events which tend to be higher profile events which attract media attention.

There are events which come to the attention of the police with no prior notification by the organisers. A recent example was at Derby in June this year. The British National Party had obtained a license to hold a three day festival on previous occasions with no opposition. This year approximately 50 people attended Ripley Town Hall to demonstrate against this years application. It was the early intention of the police not to use any legislation, but due to the threatening nature of the group and the disruption to the ongoing business at the Town Hall conditions were imposed under Section 14 of the Public Order Act to prevent the attendees from being intimidated from attending the meeting and going about their lawful business. There was no attempt by police to stop the protest, only to prevent disorder and disruption. The protest then continued in a peaceful manner.

In contrast at the recent National SPEAK protest in Oxford attended by 700 people police powers weren't used. On this occasion the organisers made early contact with the police, and agreement was reached about times, places and stewarding arrangements. This event passed off peacefully, allowing the attendees their democratic right and minimising disruption to wider Oxford community.

In response to the specific reference to the Fairford protest I believe a valuable lesson was learnt. With hindsight an error of judgement was made in the tactics used to prevent disorder ie stopping and retuning the coaches of protestors to London. It is only right that in a democratic society perceived or actual excesses of the State are challenged and tested. I do not believe that these events are indicative of a trend towards the eroding of the right to protest neither are they an inevitable and necessary reaction to the increased security concerns. I am not aware that such tactics have been replicated since.

In my view the police have become more professional in the manner in which we respond to protests. The vast majority of protests are undertaken with collaboration between the police and organisers where the two parties work together to ensure that the event occurs in a reasonable and safe manner. More controversial events normally involve individuals who do not wish to cooperate or consult with authorities and, at times, actively seek or encourage confrontation.

Whenever a march or demonstration takes place, the rights of the wider community not involved in the event could be infringed, and at times may be overlooked to facilitate the minority. In relation to peaceful protests many groups perceive that the blocking of roads is a non-confrontational activity. However there is potential for this to cause tension and negative economic impact on a community as has been experienced through some animal rights protests.

In summary I observe police forces across the country managing the sometimes fine balance between the individual's right to protest and the wider freedoms of others. I am confident this will continue without the erosion of the right to protest.

June 2008

Memorandum submitted by Deputy Chief Constable Sue Sim, ACPO

I write with regard to my undertaking on Tuesday 25 November 2008 to provide further information to the Joint Committee on Human Rights.

Firstly, with regard to statistics relating to the number of notices served under section 12 and 14 of the Public Order Act 1986 by the 43 police forces of England and Wales I have not been able to obtain definitive details from all forces in the time period required. I have however obtained figures from 38 forces for the current calendar year as follows:

- 21 notices under section 12 have been issued for pre-planned events;
- 3 notices under section 12 have been issued for spontaneous events;
- 14 notices under section 14 have been issued for pre-planned events; and
- 26 notices under section 14 have been issued for spontaneous events.

These figures can be taken by the Committee as indicative of the overall position across England and Wales. The statistics further support the evidence supplied to the Committee by DAC Allison and myself that the use of powers available under section 12 and 14 are used sparingly and only when necessary due to a failure to reach agreement with the protesting group concerned.

With regard to lessons learned from Kingsnorth I can advise that the de-brief report by the National Policing Improvement Agency has not yet been concluded. I can however outline that the following high level areas have been identified for learning from the structured de-briefs which have been held:

- Command protocols;
- Communication channels;
- Search strategy; and
- Briefings.

I have also been asked to comment on the relationship between taser and policing protest. It is important for me to emphasise that taser has been, and will be, issued to “Specially Trained Units” (STU). The criteria for the operational deployment of STUs is very clear and must be when officers or the public are facing, or likely to face serious violence. It is my personal view that I do not see any situation when STUs would be deployed to a protest, indeed the very nature of taser is such that it should not be deployed against large numbers of people and officers are trained to use other options when dealing with these situations.

I hope the above information is helpful to the Committee, if I can be of any further assistance please do not hesitate to contact me.

December 2008

Memorandum submitted by Professor John Stein

I have been involved in medical research involving animal experiments for many years at Oxford, first as a student, before going to London to become medically qualified, then on returning to Oxford in the 1970's to research and teach medical and psychology students. My work involves spending time researching, lecturing and tutoring either at my college, in the University science area or in hospitals in Oxford.

In addition to my work at the University, I spend quite a lot of time speaking in schools around the country and at other public debates and conferences describing my research on movement disorders and visual dyslexia and explaining why animal research is still necessary. I have always felt a duty to promote the public understanding of such science.

Initially I tried to engage in reasoned debate with animal activists, but I have now given up trying to do this as they are not prepared to discuss the issues rationally with me. Often becoming aggressive and rude instead. They insist that animal experiments are cruel and painful and refuse to acknowledge the evidence that animal welfare is uppermost in our minds, they are not subjected to pain and that such experiments benefit humans greatly,

Because I spoke in favour of animal experiments in relation to the new animal facility being built at Oxford University, in 2005 animal rights activists published my name and address on a website with a recommendation to “deal with” me. Although it was closed down within a few days, this was extremely worrying and I was particularly concerned for my wife's safety. I still check the protestors' websites to see if they have posted any more articles which attack my work or me personally. For quite some time after our address was published both my wife and I checked under our car before getting in, in case any bombs had been planted under them. For protection Thames Valley Police have installed two CCTV cameras recording activity in the street outside our house onto a computer connected directly with TVP.

On 11 July 2005 I took part in a Central TV debate in Birmingham. The leader of the opposition to the new Oxford animal house, Mel Broughton, attended this debate and behaved very abusively in response to my explaining how we build up good relationships with our animals, because we want them to help us by

solving puzzles for us, and how these experiments had paved the way for a new and very effective treatment for Parkinson's disease. He refused to listen and debate, but repeatedly shouted that my experiments were cruel and painful. Central TV thought it was "good television"!

Shortly after this in October 2005 I was in the University science area and walked past a demonstration which Mr Broughton was taking part in. As I passed him he shouted directly through the megaphone at me "shame on you Professor Stein". As I recall, this was during one of the regular protests that take place on a Thursday afternoon. I had to pass the protestors in order to give a lecture. Although I am to some extent used to the abuse shouted out by the animal rights protestors this was still a very unpleasant experience. It happened in front of some of my students and it must also have been quite worrying for them, though they gave me strong support.

Another specific incident that I remember well occurred at the Royal Institution in Albemarle St. London on Saturday 25 Sept. 2004. My brother, Rick Stein, and I were giving a presentation to over 600 people attending a whole day seminar on fish: he was cooking fish for the delegates while I was talking about omega 3 fish oils and how they can contribute to your health. Shortly before lunch we were told by the police that some animal rights activists were picketing outside the Royal Institute. The police came and told us that they thought it might be dangerous for us to go out of the front of the building after the seminar because of these demonstrators. Instead we had to leave by a side exit. These protesters were clearly associated with the activists that regularly congregate on Thursdays at Oxford University, because they were dressed up as monkeys and the Oxford protestors know that I do some work with monkeys.

I know that several of my colleagues are also very worried about the animal rights activists' activity. For example, the bursar of my college had to implement some special precautions to protect against attacks from animal rights activists, asking the Porters to be especially vigilant about enquirers about me and not to reveal my telephone numbers or addresses and to be on the look out for activist infiltration.

I, and other people in the University, connect the people who currently protest in the name of SPEAK with other earlier animal right campaigns. Things have been printed in the press about activities that occurred in the earlier campaigns and this increases the climate of fear around the University.

Some of my colleagues think it is a bad idea for me to speak publicly about research involving animals. This is because they believe that the animal rights activists will respond even more aggressively. They do not think it is a bad idea because they disagree with research involving animals; in fact many of them use animals in their own research; it is because they are frightened about what the animal rights activists might do to me and to others in the department I work in. Some of the antivivisectionist leaders have even called publicly for all students at Oxford University to be targeted and this is clearly very intimidating for them.

September 2008

Memorandum submitted by David Taylor MP

I supported both John Grogan's EDM on this topic in the last parliamentary session:

Early Day Motion

EDM 2344 GOVERNMENT POLICY ON THIRD RUNWAY AT HEATHROW AIRPORT
27.10.2008

GROGAN, JOHN

That this House urges the Government to rethink its plans for a third runway at Heathrow Airport and to give full consideration to alternative solutions; regrets the Government's heavy reliance on data supplied by the BAA in assessing the case for expansion and notes the likely forthcoming break up of BAA's ownership of three of London's airports following the investigation by the Competition Committee; believes that the consultation paper Adding Capacity at Heathrow Airport was deeply flawed, as it paid insufficient regard to the costs of air and noise pollution in the surrounding areas and the commitment to curb carbon dioxide emissions to tackle climate change; regrets the fact that provisions to improve high speed rail lines from Heathrow to major cities have not been fully explored, along with the potential of other UK airports to handle more long haul flights; and urges the Government to initiate a consultation on a new national planning policy statement on the theme of airports and high speed rail.

and also Martin Salter's related EDM in the present session:

Early Day Motion

EDM 339 ENVIRONMENTAL IMPACT OF THIRD RUNWAY AT HEATHROW
17.12.2008

SALTER, MARTIN

That this House notes the Government's commitment given in the 2003 Aviation White Paper, The Future of Air Transport to reduce noise impacts and to ensure that air quality and environmental standards are met before proceeding with a third runway at Heathrow Airport; further notes the assurance given by the Prime Minister on 12 November 2008 that support for a third runway at Heathrow is subject to strict environmental conditions; further notes that Heathrow Airport is already in breach of the European Air Quality Directive to be implemented by 2010; welcomes the statement by the Secretary of State for Environment, Food and Rural Affairs that these environmental commitments should be honoured; supports the Chairman of the Environment Agency's decision to oppose the third runway on environmental grounds; and calls upon the Government not to proceed with the third Heathrow runway or mixed-mode and to put the matter to a vote on the floor of the House.

You will be aware that the Official Opposition chose John's EDM to be their motion last Wednesday 28 January 2009. Presumably Greenpeace found out their intention some days beforehand because on the preceding Saturday, many hundreds of emails flooded in—predominantly from the South-East—urging me to vote against a third runway at Heathrow on 28.9, which as the text of the EDMs show I was likely to do anyway. I assume the MPs chosen for the email bombing were some, most or all of those 50+ Labour MPs who had signed EDM 2344; a bit illogical as it was others they needed to encourage.

There were several variants and some people had done their own; by the end of the weekend I had had c 6000 and a further 500+ by the day of the debate. My inbox was constantly full; the emails came in hundreds at a time—presumably via and from Greenpeace. It obscured and lost some constituency emails; took hours to delete the spam at my best time for doing online work. The House authorities did eventually set up a screen which diverted the later emails straight into the Deleted Box for examination. Greenpeace sort of apologised later—but I didn't buy their observation that this showed the strength of feeling—we already knew that.

February 2009

Memorandum submitted by Mark Thomas

I wanted to make available to the committee some of my experiences working with SOCPA and in particular the discrepancies in administering the legislation. I have had to get permission from the police to support the British Legion Poppy Appeal and Red Nose Day, both events I would suggest are fairly innocuous. As the British legion was deemed by the police to be a political lobbying organisation I had to get permission to stand, by myself in Parliament Sq with a banner supporting the Legion. On the occasion of Red Nose Day I had to get permission to stand in Parliament Sq with a small group of friends (six in all)—the police were made aware that all we would be doing is wearing red noses. So on the one hand there is a quite tight interpretation of the law.¹⁹⁹

I have also had to get permission for an event to celebrate the life and work of Nelson Mandela, this was held in Parliament Square by the Mandela statue. I wrote to the police asking if I needed permission to demonstrate for this gathering, where we would be reading speeches made by Nelson Mandela and Gordon Brown during the ceremony to unveil the statue. I had to get permission for my gathering under SOCPA, there was no permission given to by the police under SOCPA for the unveiling of the statue, where the exact same words and indeed support for the ANC's historic armed struggle were proclaimed.

When lawyers acting on my behalf wrote to the police asking them why MP's appeared to not need permission but I did, the police replied that they allowed media events to take place, despite the law offering no exemptions.

Another example of the police granting themselves discretionary powers was seen recently when activists from Tory HQ dressed as Santa Claus wearing Gordon Brown masks appeared with large banners outside Downing St. They did not have permission to demonstrate under SOCPA but were not arrested. Remembering that one man dressed as Charlie Chaplin and holding a banner reading NOT ALLOWED / ALOUD was arrested outside Downing St and found guilty of an offence under SOCPA, there seems to be an uneven policing of the law.

December 2008

¹⁹⁹ Please note that neither of these demos were part of the mass lone demos, but were entirely separate and organised independently.

Memorandum submitted by Barbara Tucker

It is transparently obvious that this politically, morally and legally corrupt Parliament sought through SOCPA 2005 ss 132–138 to legalize serious state harassment of those campaigning—against—the excesses of corporate greed in globalization, most seriously characterized by this Parliament brutally murdering our fellow human beings for money in illegal wars of aggression.

The audit trail shows that once the legal inadequacies of SOCPA 2005 ss 132–138 were quickly revealed, the collective “we” in the democratic deficit that is this ruthless government, ie: some members of the Metropolitan Police, the Crown Prosecution Service and Judiciary, then quite simply engaged in serious fraud and corruption.

Refer: CO/2460/2008 filed at Royal Courts of Justice on 11 March 2008, seeking a Declaration of Incompatibility, an independent public inquiry and independent police force investigation.

The obviously biased responses by the best/worst legal brains in the MPS, GLA and WCC to “Managing Protest”, only reveal—in their wish lists—a continuing desire for Parliament and public authorities to act outside a fundamental legal framework; ie: there remains, “no legitimate aim that is convincingly established in criminal law”, in an area where peaceful general public access, for example by tourists, red buses and their passengers, is not similarly banned.

Commonsense (underlined by substantial legal wins resulting from numerous malicious prosecutions) shows that this woman and this mother with no criminal convictions her whole life did not suddenly—by peacefully campaigning against this Parliament—become a “one woman crime wave” in Westminster.

Contrast SOCPA: The Movie with the malicious libel on CPS website entitled www.cps.gov.uk/london/case_studies/taira_s_court_battles_with_war_protestors

It was only mala fide to hold me incommunicado for 50 + hours before I was “sentenced” without trial to imprisonment at HMP Holloway on 11th April 2008—because—Parliament cannot answer what it has chosen not to deal with.

The illegal wars of aggression highlight to most people the worst excesses and imbalances of an ever accelerating and iniquitous process of globalization; whereby arbitrary decisions are arrived at without and irrespective of any consideration of the human perspective.

May 2008

Memorandum submitted by Marc Vallée

BACKGROUND

Marc Vallée is a well-respected photojournalist based in London. Mr Vallée is a member of the National Union of Journalists, International Federation of Journalists and the British Press Photographers’ Association. Mr Vallée specialises in documenting political protest in the United Kingdom. His pictures are regularly published in national and international publications.

STATEMENT

On Monday 9 October 2006 I was photographing a demonstration in Parliament Square. The protest was in the SOCPA zone and the protest was not authorised. I received injuries further to action by Metropolitan Police officers, which resulted in an ambulance attending to give urgent attention and then treatment at St Thomas’ hospital.

After taking legal advice I issued proceedings against the Commissioner of Police for the Metropolis for “Battery” (assault) and breaches of the Human Rights Act, relating to freedom of expression and assembly. On Monday 25 February 2008 I accepted a written apology, an out-of-court settlement and my legal costs paid for by the Metropolitan Police.

In 2007 Baroness Miller of Chilthorne Damer asked Her Majesty’s Government [HL108] “What was the cost of the police operation in connection with the ‘Sack Parliament’ demonstration on 9 October (2006)?” The response of Minister for the Home Office, Baroness Scotland of Asthal was: “I understand from the Commissioner of Police of the Metropolis that the estimated total policing cost was £298,000. Of this, £221,000 was for opportunity costs and £77,000 for additional policing costs.”

£50,000 can be added to policing costs after the settlement of my case.

The issue I would like to draw to the attention of the Committee is the role of the Metropolitan Police Forward Intelligence Team (FIT).

After taking up legal action in late 2006 I have been specifically targeted by officers of the FIT when working covering protests. Evidence of this has been provided to the Committee by the National Union of Journalists. (See Press Freedom—Collateral Damage DVD)

I have been witness to many examples of FIT officers targeting members of the press who have been subjected to intimidatory policing techniques whilst trying to cover protest situations. However, the Metropolitan Police Service deny that there is any coordinated policy regarding certain members of the press at protests.

On Tuesday 25 November 2008 Acting Assistant Commissioner Chris Allison MBE from the Metropolitan Police gave evidence to your Committee. Mr. Allison made the point that the police enforce restrictions before and during protests due in large part to the “intelligence” from intelligence officers. A large part of this intelligence is from the FIT and yet there is no public guidance on how the FIT operate or on what basis they retain and disseminate information on particular individuals or groups.

The Home Secretary Jacqui Smith in a letter to the National Union of Journalists on 26 June 2008 said, “The Home Office does not produce any guidance of photography in public places, and had not produced any specific guidance to FIT officers.”

As FIT officers make daily unaccountable decisions on the character, nature and alleged threat of protests, groups, protesters and even working journalists, publicly available guidance and a framework for accountability is vital to protect democratic rights and press freedom.

December 2008

Memorandum submitted by Voices in the Wilderness UK

Voices in the Wilderness UK has been campaigning in solidarity with the people of Iraq since 1998. As a group based in the UK, our focus has principally been the foreign policy of the UK government—economic sanctions, invasion and occupation—policies that have had devastating effects on the people of Iraq. We have organised numerous non-violent protests in the vicinity of Parliament, and elsewhere, to raise awareness amongst the general public, and those in Parliament and government, about these issues.

We firmly believe that it is the responsibility of a country’s citizens to engage with public policy and that it is the responsibility of the state to not interfere unduly with that process. Protest and dissent are a necessary part of this engagement and, as such, are vital to a democratic society. It is through protest that the freedoms of expression and assembly, and other freedoms which we value as a society, have been established.

The work of any campaign relies on public expressions of opinion, and public protest is an important part of that. Our experience over recent years, particularly in the build-up to the invasion of Iraq and thereafter, has been that spaces for public expression and dissent have been reduced or closed off altogether and that unacceptable conditions have been increasingly placed on the protests that are permitted to go ahead; these conditions can render a protest all but pointless.

Some of these recent changes are due to the introduction of new legislation specifically designed to limit protest; the Serious Organised Crime and Police Act 2005 (SOCPA) is the prime example, affecting protest around Parliament and a range of sites elsewhere as designated by the Home Secretary, loosely redefining harassment in terms of intending to “persuade”, and placing severe restrictions on any protest that could affect “contractual relations”. We are aware that a number of parliamentarians were concerned about the lack of debate on these matters as the legislation was passing through Parliament.

Legislation that was not specifically designed with protest in mind has also had its effect, as powers for stop and search and dealing with anti-social behaviour, for example, have gradually become part of the police’s toolkit. Also, changes in policy and practice within the police force have had a negative impact on how “freedom” to protest is perceived. For example, the standard use of the Forward Intelligence Team to record every person and movement on a demonstration is often very intimidating and always extremely intrusive. Another example is the increased use of the Public Order Act to pen demonstrations into a confined space, often away from the focus of the protest, and often with serious neglect of the reasonable needs of those demonstrating.

Changes in the way public space is managed is also affecting the spaces available for public assembly and expression—many “public” spaces in town centres have become privatised and are run by companies and subject to extra restrictions. Local authority spaces often have restrictions attached to them, or their use requires public liability insurance or applying for a license. A prime example of this is Trafalgar Square where it is not possible to display any symbol of political opinion without first getting permission from the GLA, or else be moved on immediately by a “heritage warden”.

Many of these developments, such as the requirement to seek permission from the police in order to protest around Parliament under section 132 of SOCPA, appears to foretell a world in which any action which is viewed as outside normal behaviour must be justified to the authorities, if it is to take place at all. People handing out leaflets, or even merely displaying some kind of political opinion, eg by wearing a T-shirt with a slogan, are increasingly questioned or moved on—around Parliament but elsewhere also. During the Labour Party Conference in Bournemouth in 2007, Voices UK protestors, calling for the Prime Minister to turn his foreign policy away from war and towards peace, were penned into a small area away from the conference and forbidden to wear political T-shirts around the town by the police.

Increasingly it seems that the police try to place constraints upon any person or group in a public place who is aiming to change opinion or influence activity. Furthermore, any person or group who seriously challenges vested interests is deemed to hold an “extreme” opinion. Such protestors are dealt with harshly while others are given more leeway. It is very worrying that this tendency for the police to judge which protests are acceptable and which are not is being facilitated by increased legislation which now provide the police with an extensive array of laws to limit or stop protest under different circumstances. Around Parliament, the enforcement of section 132 of SOCPA has not been consistent but has depended on who is protesting and what they are protesting about. Not only is it evident that protests are being judged by the police in a political way but it is unacceptable within a democratic society for every public expression of opinion to be monitored by the police.

There is clear evidence that people have been dissuaded from taking part in, or organising, protests around Parliament because of the risk of getting a criminal conviction under SOCPA, while even those protests that have gone ahead have often been hampered and harassed by a controlling and unpleasant police presence. This has a chilling affect on public expression as people decide it is too risky to participate. The possibility of contesting a charge in court is not a valid safeguard against increased police powers. Disproportionate policing may take many months, if not years, to redress, and is not a route that most people could afford, or want, to take.

Those who engage in activities that have a great affect on all our lives—Parliament, government and corporations—are a natural focus for protests and should not be shielded from dissent. The public spaces which we all share must be policed with a high regard for freedom of assembly and speech, an assumption in its favour and a respect for those taking part in demonstrations and protests.

The message of our campaign is one of peace and justice; most campaigns are trying to change the world for the better and people have a right and a responsibility to struggle for their beliefs and their own rights and welfare and that of others. It is unacceptable that this is responded to with disproportionate policing and a presumption that participants are a threat to normal society.

NOTES ON VOICES UK PROTESTS AROUND PARLIAMENT SINCE 2005

Since the restrictions on protest under sections 132–138 of the Serious Organised Crime and Police Act 2005 came into force, Voices UK has been involved in organising events and protests around Parliament including commemorations of the deaths of Iraqi civilians and UK soldiers, protesting against the forced deportations of Iraqi refugees from this country, and, the attacks on Fallujah that devastated the city. Because of this country’s direct involvement in these issues, we consider that our protest must take place in the vicinity of Government and Parliament. Voices UK did not to apply for permission to hold these events because we were not willing on principle to submit to political scrutiny by the police. On some occasions the police did enforce their SOCPA powers to some extent, on other occasions they did not, creating a sense of bias and a lack of clarity in the way the law is applied. Shortly before our latest protest in June 2008, the police themselves inexplicably granted permission for the event to go ahead even though none had been applied for. However, on every occasion, the fact that the event occurred within the SOCPA Designated Area had a chilling effect on our supporters’ involvement if they felt unable to put themselves in a position where they may be arrested. A number of our supporters have been arrested and received criminal convictions as a result of expressing their views freely about these important issues of peace and justice.

September 2008

Memorandum submitted by Wickham Laboratories

It is our understanding that every article of the European Convention on Human Rights (ECHR) is equal to all others. That is such that one person’s rights under the ECHR are not more important than that of any other European citizen.

As a company involved in pharmaceutical research, Wickham Laboratories are constantly reminded that the rights of persons to come here and demonstrate against our activities are enshrined in “Human Rights Act”, specifically Articles 9 & 10 of the ECHR covering Freedom of Expression and Freedom of Assembly respectively. However our rights are less often considered and are nearly always considered secondary to those of protesters. In particular we feel Article 8, the right to privacy, home life etc is often infringed, perhaps when we are prevented from leaving site for home by a “legal” protest. Even worse when protesters turn up at someone’s home address, attacks largely within the UK are a thing of the past in light of new legislation (though not illegal criminal damage attacks).

There may also be an infringement of rights under Article 5, Right to Liberty and Security. To use one definition of liberty; The power of choice; freedom from necessity; freedom from compulsion or constraint in willing. This would apply to any lawful activity, something we are coerced into changing particularly at protests where the police are not present; attempts are made to intimidate us into changing what we do for work. This is perhaps a little less obvious than Article 8 but such conventions are open to various interpretations. To quote a famous judge commenting on ECHR, “We will do our best to see that our

decisions are in conformity with it. But it is drawn in such vague terms that it can be used for all sorts of unreasonable claims and provoke all sorts of litigation. As so often happens with high-sounding principles, they have to be brought down to earth. They have to be applied in a work-a-day world.”

We believe that in a democratic society there is a clear right to protest, I would challenge anyone not to think of something they would take up a placard against. ECHR protects these precious rights amongst many others. However, many references are made in the Articles about “lawful actions” and “in accordance with the law” and this we believe is the crux of the issue. Within a democratic society protest must be lawful and must respect and protect the rights of the targets of the protest. Protesters must not be allowed to shelter under the shroud of human rights whilst ignoring other laws of the land and trampling over the human rights of others.

Once all subjects are equally protected under the European Convention on Human Rights, respect for this most well meaning of conventions will become more widespread. Until then it is likely to be seen as a liberal / anti-state / anti-establishment charter.

October 2008

Memorandum submitted by Westminster City Council

In our written response to the Joint Committee on the Draft Constitutional Renewal Bill, we spoke at length of the main streams of legislation relating to noise management, and their impact on the regulation of protests around Parliament Square.

In this response we concluded that, purely from a noise perspective, current legislation has “worked” in all cases except for political protests and specifically the case of Mr Haw. This relates to a specific exemption within existing legislation for political demonstrations or demonstrations supporting or opposing a cause or campaign.

The role of the City Council, in conjunction with our partners in the Metropolitan Police, should be one of facilitating lawful demonstrations while preserving public order. In this regard we fully support the line taken by the Metropolitan Police to repeal the sections 132 to 138 of the Serious Organised Crime and Police Act, 2005 and harmonise the Public Order Act with specific provisions that will allow the MPS to effectively manage protests and assemblies.

November 2008

Memorandum submitted by Yorkshire Campaign for Nuclear Disarmament

i) EXECUTIVE SUMMARY

In response to the call for evidence for the Joint Committee on Human Rights inquiry into the human rights issues arising from policing and protest, Yorkshire Campaign for Nuclear Disarmament (CND) has prepared the following body of evidence.

Yorkshire CND’s campaigning initiatives against the US Missile Defence programme within the Yorkshire region focus on the two key bases linked to US Missile Defence; Menwith Hill and RAF Fylingdales. Both bases are situated in North Yorkshire and are policed by both the North Yorkshire Police and the Ministry of Defence Police Agency.

The evidence aims to present a clear analysis of the US Missile Defence programme and CND’s opposition to it in order to accurately demonstrate the increasingly intolerant levels of policing faced by campaigners at these bases.

The evidence focuses on examples of policing at Menwith Hill, the location of the most regular visible protests. Menwith Hill is located between Harrogate and Skipton, on the A59 road and whilst still in a rural setting, is located on the busier thoroughfare of the two bases.

Sites of protest at Menwith Hill generally include the front gates, not visible from the main road and a large lay-by opposite the base on the A59. Both Police agencies patrol and monitor demonstrations at these sites.

The introduction of SOCPA 2005 legislation has invoked a marked difference in policing at the bases. The right to walk around Menwith Hill without fear of apprehension has been severely curtailed, even during organised demonstrations. (Fylingdales is marked by ancient bridleways, but is still difficult to walk around without being stopped.) The legislation is designed to apply to the site, but the use of Stop and Search powers is being used in the entire vicinity of the perimeter of the base, at seemingly varied discretion.

Large barriers outside the main gate are used to “pen” peace protestors in and are often combined with intrusive photography and filming by both police agencies. Yorkshire CND argues that these measures are nothing but intimidating. For what purpose would a protestor with “something to hide” willingly and compliantly join a demonstration at the biggest electronic monitoring station in the world?

Current limits to the rights to protest at bases such as Menwith Hill are designed to protect facilities operating solely in the economic and military interests of the US, and if not challenged will only get worse. If sections of SOCPA are to be repealed to allow protest around Parliament, then by the same token so must the sections applying to bases such as Menwith Hill. It is in the public interest to witness and have the opportunity to join lawful, peaceful protest and democratically hold the government’s actions to account.

The right to peaceful protest must be upheld, and the police agencies involved must actively engage with campaigners to facilitate that right. Currently North Yorkshire Police and the Ministry of Defence Police Association can “pass the buck” to each other for decisions made to limit protest. Any limitations on public peaceful protest must become transparent and accountable.

The work of peaceful campaigning organisations and networks such as CND have been crucial in upholding the long-fought right to protest that has ensured social change globally and throughout history. By increasing public awareness and support and holding the government to account, change can be achieved for the benefit of the majority.

If the current limitations and penalties for protestors are upheld and expanded, as is no doubt the objective, how will any citizen have an opportunity to portray their views on any issue?

Yorkshire CND welcomes the opportunity to submit this evidence to the Committee.

1. MAIN BODY OF EVIDENCE

1.1 *Yorkshire CND*

Yorkshire Campaign for Nuclear Disarmament (CND) is a campaigning organisation with members and supporters based across the Yorkshire and Humberside region. Yorkshire CND is an autonomous organisation working alongside and affiliated to the Campaign for Nuclear Disarmament. CND has been at the forefront of anti-nuclear and peace campaigning for the past 50 years.

1.2 Yorkshire CND has been researching and documenting issues relating to US Missile Defence for over 20 years. Yorkshire CND’s Convenor, Professor Dave Webb is a leading British expert on US Missile Defence and has contributed to numerous articles, journals and lectures on Britain’s role in the programme. In June 2007, Professor Webb joined panel of experts at a hearing on “Does Europe Need an Anti-Missile Defence Shield?” at the European Parliament.

1.3 Yorkshire CND Committee members Helen John and Sylvia Boyes were the first campaigners to be charged under Section 128 of the Serious and Organised Crime and Police Act 2005 (SOCPA).

Both women were found guilty of criminal trespass after walking into Menwith Hill wearing peace placards on April 1st 2006. John is currently preparing to appeal this ruling.

1.4 Yorkshire CND has a broad history of organising and supporting campaign initiatives such as demonstrations, peace camps, vigils and non-violent direct action events—many in liaison with the police, to highlight concerns and increase public support.

1.5 *US Missile Defence*

Since former President Reagan announced the “Star Wars” or Strategic Defence Initiative in 1983, over \$120 billion has been spent on US Missile Defence.²⁰⁰

The US Missile Defence Agency (MDA), describes Missile Defence as:

“an integrated, layered, ballistic missile defense system to defend the United States, its deployed forces, allies, and friends against all ranges of enemy ballistic missiles in all phases of flight.”²⁰¹

1.6 The US Administration claim the system operates in a global capacity to defend the territories of the United States. A network of ground, air, sea and space based facilities operate across the globe to launch detect, track and target ballistic attack. These include a system of ground based radar stations, including the Ballistic Missile Early Warning Radar station at RAF Fylingdales, North Yorkshire; recently upgraded to US requirements for Missile Defence.

1.7 Another component (the European Ground Based Relay Station for the Space Based Infra Red System) is situated at Menwith Hill, also in North Yorkshire. Menwith Hill intercepts electronic signals and communications (SIGINT) solely for US military intelligence through the US National Security Agency (NSA).

²⁰⁰ More information on this from “What are the Prospects, What are the Costs?: Oversight of Missile Defense (Part 2)”, US Committee on Oversight and Government Reform, 16 April 2008—available at <http://nationalsecurity.oversight.house.gov/story.asp?ID=1860>

²⁰¹ See: <http://www.mda.mil/mdalink/html/aboutus.html>

1.8 Missile Defence includes missile interceptors, currently operational in two locations in the United States, with further site proposals in Europe.

These facilities form part of a larger worldwide US military communications, command and control network known as Strategic Command (STRATCOM). In Omaha Nebraska, STRATCOM is responsible for US global military operations involving nuclear and conventional weapons based on land, at sea, in the air and space. STRATCOM describes itself as:

“a global integrator charged with the missions of full-spectrum global strike, space operations, computer network operations, Department of Defense information operations, strategic warning, integrated missile defense, global C4ISR (Command, Control, Communications, Computers, Intelligence, Surveillance, and Reconnaissance), combating weapons of mass destruction, and specialized expertise to the joint warfighter...”²⁰²

1.9 US Missile Defence is designed to help provide the US with a prompt global strike capability²⁰³. A 2000 US Air Force planning document states that a long-term goal of the U.S. military is to:

“enable an affordable capability to swiftly and effectively deliver highly effective weapons against targets at any required global location” in order to “affordably destroy or neutralize any target on earth...”²⁰⁴

Working with offensive weapons systems protecting US troops, bases and other US “strategic assets” globally, a core goal of US Missile Defence is to make threats of force, including nuclear, more credible.

1.10 SOCPA legislation applies to Fylingdales and Menwith Hill.

1.11 *The Campaign against US Missile Defence*

US Missile Defence is not a “defensive” programme. Its aims and operational features are open to challenge.

1. Purpose.

A White House report, October 2007 states:

“America faces a growing ballistic missile threat. In 1972 just nine countries had ballistic missiles. Today, that number has grown to 27 and it includes hostile regimes with ties to terrorists.”²⁰⁵

Despite strong evidence from the International Atomic Energy Agency (IAEA) that the Iranian government has no plausible nuclear military capabilities, the US still present a perceived ballistic missile strike from Iran as a core justification for the programme.

2. Military accuracy.

The success of Missile Defence as a defensive system is limited.

“Shooting down an enemy missile is like trying to hit a hole-in-one in golf when the hole is moving at 17,000 mph. And if an enemy uses decoys and counter measures, missile defence is like trying to hit a hole-in-one... and the green is covered in black circles the same size as the hole.”²⁰⁶

The costs and technology of the programme have been consistently undermined by failures in testing.

1.12 Reviewed as an aggressive system, the funding and support from the White House make more sense. Missile Defence shores up the US’s first strike ballistic capabilities.

Advancement of US Missile Defence has been at the expense of international treaties²⁰⁷ and the proposed development of the programme in Europe has sparked serious tensions with Russia.

1.13 As an organisation campaigning for the abolition of all nuclear weapons, working towards global sustainable peace initiatives, Yorkshire CND reject the “defensive” aims of the programme, believing that the true aims are to secure US military dominance to facilitate US economic advantages, including access to and control of energy resources. We support clear evidence²⁰⁸ that the development of the programme in Europe compromises security within the region to support US military objectives.

²⁰² U.S. Strategic Command History, <http://www.stratcom.mil/about-ch.html>

²⁰³ “Global Strike—A chronology of the Pentagon’s New Offensive Strike Plan” from the Federation of American Scientists—<http://www.fas.org/ssp/docs/GlobalStrikeReport.pdf>

²⁰⁴ U.S. Department of the Air Force, The Air Force Science and Technology Plan for Fiscal Year 2000, p. 22.

²⁰⁵ “Fact Sheet: Defending America and Its Allies Against Ballistic Missile Attack. President Bush Explains Need for Missile Defence System in Europe, Discusses Progress Defending America From Attack”, Office of the Press Secretary, White House, 23 October 2007.

²⁰⁶ “Missile Defense Malfunction: Why the Proposed US Missile Defenses in Europe Will Not Work”, Philip Coyle and Victoria Samson, Ethics & International Affairs, Volume 22.1, Spring 2008.

²⁰⁷ President Bush withdrew the United States from the Anti-Ballistic Missile (ABM) Treaty on 13 December 2001, to successfully advance the US Missile Defence programme.

²⁰⁸ See also: “The European Missile Defence Folly”, George Lewis and Theodore Postol, Bulletin of Atomic Scientists, Vol. 64, No. 2, p. 32–39, 61, May/June, 2008—<http://www.thebulletin.org/files/064002009.pdf>

1.14 *Menwith Hill*

Yorkshire CND campaigns at US Missile Defence bases in Yorkshire, opposing their existence and operations and the lack of British accountability.

1.15 Stop and Search and anti-terrorism legislation has been used to intimidate and harass protestors who wish to publicly, peacefully and lawfully demonstrate their opposition to the bases.

1.16 Anti-terrorism legislation such as SOCPA 2005, protecting facilities operating exclusively in the interests of US military objectives is fundamentally flawed and has been rightly challenged by committed individuals.

Yorkshire CND support a basic right of all citizens to peacefully challenge and dispute actions taken by any government—especially those seen to reduce the security of the public and undermine the accountability of British democracy; such as protesting at Menwith Hill.

1.17 Helen John and Sylvia Boyes walked 15ft into Menwith Hill on 1 April 2006, the day Section 128 of SOCPA came into force criminalising trespass at designated sites across Britain. Both women were prepared to suffer the maximum imprisonment of up to 51 weeks and/or a fine of up to £10,000 to challenge the legislation. Interviewed by *The Independent* on 6 April 2006, Shami Chakrabarti, the Director of Liberty observed:

“When does a peaceful protester become a trespasser? In a free society, when does he become a criminal? In Britain in 2006, only one man—the Home Secretary—will now decide instead of Parliament and the court. Just when our politicians lament the demise of participatory democracy they increasingly criminalise both free speech and protest.”²⁰⁹

1.18 The subsequent delays and costs bringing John and Boyes’ case to trial in October 2007, and the tone of District Judge Martin Walker in his summation displays the enormous waste in resources attributed to implementing this legislation. Finding both women guilty, Judge Walker imposed the deliberately minimal penalisation of three months conditional discharge and a fine of £50 towards the prosecutions costs.

1.19 From the action taken by John and Boyes’ and the subsequent outcome of the case, Yorkshire CND believe that to try veteran peace protestors as alleged terrorists indicates not only that the government has lost touch with British traditions of democratic peaceful protest, secured over centuries, but that it supports the interests of another state (the US) over the legal and constitutional principles of British democracy and the rights of British people.

1.20 A government imposing legislation to prevent legitimate and peaceful protest must expect that the public will demand to know why; particularly if the relevance to national security is as widely disputed as Britain’s role in US Missile Defence. Helen John has repeatedly stated that if governments acted legitimately and accountably, there would be no need for such protest:

“I wish I’d never had to put my foot over any line. Are governments elected to facilitate US interests or represent the British people?

We need to repeal laws that protect the government behaving illegally. It is the responsibility of all citizens to enforce democracy.”²¹⁰

1.21 *Stop and Search*

On Saturday 29 March 2008, 10 peace campaigners met at Menwith Hill in solidarity with campaigners protesting in Poland in opposition to proposals to locate US interceptor missiles in their country. Menwith Hill was chosen because of the government’s announcement in July 2007 that permission for the US to use the base as a Missile Defence facility had been granted. The process was subsequently criticised by the Foreign Affairs Select Committee for a clear lack of accountability.²¹¹

1.22 The campaigners met at the main gate, informed the Ministry of Defence Police (MODPA) of their reasons for meeting and proceeded to speak and take group photographs. At no point was any attempt made to enter the base or breach security. The campaigners decided to walk part way around the perimeter of the base to view the giant radomes. Taking into account the wet and cold weather, the campaigners agreed to keep the walk brief. At the Steeplebush gate, some of the group were apprehended by a Ministry of Defence Police (MDPA) officer who informed them that the rest of the group had been detained under Section 44 of the Prevention of Terrorism act and that they were all to be searched.

1.23 All six of the campaigners at Steeplebush gate were searched—although, perhaps due to the weather or lack of suspicion by the officers involved, in a somewhat perfunctory fashion. The campaigners were informed that they were being searched as they had breached the boundaries laid down in statute by SOCPA and that in touching the fence they had set off alarms in the base. The question “If we are such a terrorist threat, why did you wait until we got out of the mud to the nice dry concrete gate area to apprehend us?” was not answered.

²⁰⁹ <http://www.independent.co.uk/news/uk/crime/helen-and-sylvia-the-new-face-of-terrorism-472993.htm>

²¹⁰ Helen John, personal interview for Yorkshire CND, June 2008.

²¹¹ <http://news.bbc.co.uk/1/hi/uk/7111523.stm>

1.24 All campaigners were searched, as were the vehicles of the two drivers. The campaigners agreed afterwards that the policing and use of anti-terrorism legislation to challenge their right to protest were an attempt at intimidation. Those who had never been to the base before confirmed that it affirmed their resolve to return.

1.25 Armed police patrol the rural areas surrounding Menwith Hill and Fylingdales. Their unlimited Stop and Search powers under S44 of the Terrorism Act extend for a five mile radius round Menwith Hill and a 10 mile radius round Fylingdales.

Yorkshire CND has learnt²¹² that between September 2001 and June 2006, 2110 vehicles were stopped and drivers questioned and 941 drivers and passengers searched at Menwith Hill.

1.26 Yorkshire CND also has considerable anecdotal evidence from supporters from ethnic minorities that the perceived and actual behaviour of the Police agencies at Menwith Hill is a deterrent to lawful peaceful protest.

1.27 *Organised Protest*

On Saturday 17 May 2008, Yorkshire CND co-ordinated a demonstration at Menwith Hill entitled “Breaking the Links”. The Yorkshire CND staff member organising the event was in compliant co-operation with all agencies in advance—meeting with North Yorkshire Police (NYP) to discuss the plans and regular conversations with the MOD intelligence officer for Menwith Hill.

1.28 The event was planned as a small scale demonstration, less than 100 were expected and the organiser had specifically requested that:

- The barriers used by the police to “contain” protestors at the front gate be replaced with standard metal mesh fences as the large solid barriers create a claustrophobic environment. These barriers are a recent addition to organised protests at the base.
- The NYP Chief Constable agree not to impose a Section 12 Public Order Act (1986) and allow protestors to safely walk around the perimeter of the fence; to view all aspects of the facility and to maintain a visible protest to traffic passing the base, as observed by campaigners for many years.

Both requests were rejected. The first by email stating:

“There is a concern that changing the format for your participants is inconsistent with what is done such as 4 july (sic) and would set a precedent for challenge.”²¹³

The second in writing stating that:

“...the anticipated nature and extent of the procession and the physical feature of the A59... is too dangerous (and may itself result in serious disruption to the life of the community) to allow the procession ...”²¹⁴

1.29 During the event, further restrictions of movement at the main gates were imposed due to an alleged “counter protest” in support of the base. No further coherent information about the alleged “counter protest” (which never arrived), was provided, except that it was organised by a group who run an online network. Despite subsequent detailed research, no evidence of any group or “counter protest” has been found.

1.30 Visible police levels on the day were estimated to be of a ratio of 3:1 to campaigners. Police horses from South Yorkshire and the usual array of photographers and camcorders were operational.

1.31 Freedom of Information requests for figures of policing and the alleged “counter protest” have been submitted by Yorkshire CND. These requests are currently pending with NYP and have been rejected by MDPA.

1.32 Yorkshire CND believe that policing at Menwith Hill on 17 May 2008 was deliberately excessive and designed to intimidate and deter legitimate and lawful protest.

2. CONCLUSIONS AND RECOMMENDATIONS

2.2 It is the view of Yorkshire CND that policing measures are being misused and applied in situations for which they were not intended to discourage legitimate protest.

2.3 Although these actions may deter some, they will firm the resolve of committed activists. Further misuse of anti-terrorism legislation to protect facilities such as Menwith Hill may in a worse-case scenario provoke a situation of confrontation, jeopardising the safety of protestors.

²¹² Hansard; <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060620/text/60620w0003.htm#06062036000411>

²¹³ Email from Chief Inspector Chris Chelton, North Yorkshire Police to Sarah Cartin, Development Worker, Yorkshire CND on 9 May 2008.

²¹⁴ Notice of Section 12 Public Order Act 1986 issued by Chief Constable Grahame Maxwell, North Yorkshire Police, 13 May 2008.

2.4 There have been no convictions of terrorists as a result of Stop and Search under SOCPA. Any anti-terrorism legislation being used to prevent or criminalise legitimate protest at bases such as Menwith Hill should be repealed; for the upholding of core democratic and judicial principles.

2.5 The peaceful majority should not be criminalised for challenging the government's role in programmes such as US Missile Defence. Protest at bases such as Menwith Hill should be upheld as a democratic principle in any society, not least one with a rich history of principled campaigns for peace and social justice such as Britain.

June 2008

Memorandum submitted by Angie Zelter

1. The current legislative measures which restrict protest or peaceful assembly (such as SOCPA 2005 and the Public Order Act 1986) are not necessary and proportionate to the rights to freedom of expression and peaceful assembly. In fact they severely limit our rights to freedom of expression and peaceful assembly. The police and state have more than adequate measures to arrest and detain people for breaches of the peace and many other public order offences without adding these extra measures.

Peaceful protest should be facilitated by the State who need to enact a Bill of Rights enshrining our rights to peaceful protest even when it might disrupt (in a nonviolent manner) work or proceedings against which the protest has organised and even where free speech might "offend".

Civil society need to be given these rights in order to bring to public and government attention matters that they are not responding adequately too and to provide a social feedback mechanism that in itself can do much to relieve societal tensions.

The limits to be placed on the right to protest should be those limits that are on any kind of behaviour and should be covered by the normal rules of society and legislation, ie those that inhibit violent physical acts. This is important because all protest should be nonviolent and also because protest should be encouraged in order to provide a focal point for alternative voices and strategies for exploring ways out of the many complex and serious problems of a world entering climate chaos, wars, poverty and environmental collapse.

There should be no specific limitations placed on the ability of any groups to protest. But the current limitations against racism, sexism and violence should be respected more widely and the police should arrest and encourage the prosecution of any group threatening violence.

Protest, however uncomfortable to certain individuals and groups, is an important social mechanism for conflict resolution processes, the first step of which is often protest but which can then lead on to dialogue and resolution.

The right to protest should not be more strictly curtailed in relation to certain geographical areas. It is especially important that the more powerful parts of society and especially the sites of important decision-making like Parliament, Corporate HQs and AGMs, Military Bases, Embassies, Prisons and Police Stations be open to protest, as this is where many abuses of power can take place.

The Government proposes to repeal sections 132–8 SOCPA dealing with protest around Parliament and invites Parliament to consider whether additional provision is needed to ensure that Parliament's work is not disrupted by protests in Parliament Square. I think this is not an appropriate way to phrase this as it may well be appropriate for civil society to be able to disrupt the work of Parliament in certain specific circumstances, when for instance it might be engaged in breaking international law (like its decision to go to war in Iraq or to renew its nuclear weapons system). Obviously, such disruption should not be easy nor encouraged. However, if society is so disturbed at the workings of Parliament that and to object vociferously to what they consider wrong-doing, then society at large needs to accept this as a necessary part of a democratic system and to protect this right.

I can think of no circumstances where it would be permissible for the State to take pre-emptive action which curtailed protests as long as those protests were to be nonviolent and were not encouraging violence or abuses of any of the Universal Human Rights to which all civilised societies have signed up to.

2. The existing common law and legislative police powers (such as the common law power to prevent a breach of the peace, stop and search under the Terrorism Act 2000 and the use of force) are not evenly operated in practice. They are used in a discriminatory and abusive manner and are mainly directed against black or moslem minorities.

Existing police powers are already too wide and fewer are required. The police need to act and be seen to act equally and in a non-partisan manner against all criminals not just the poor and disadvantaged.

Counter-terrorism powers are not appropriately used in the policing of protests. There have been some ridiculous examples of infringements of rights to protest whereby police have invoked counter-terrorism when dealing with nonviolent protesters who are attempting to act in solidarity with groups whose human rights are being abused—eg, Palestinian or Kurdish rights.

Do existing police powers pay sufficient regard to human rights. No.

Are there positive examples of good practice in the policing of protests (whether in the UK or in other countries). Yes. The operations of Strathclyde Police in the policing of the protests at Faslane, Scotland during the Faslane 365 year of blockades (October 2006 to October 2008) was an example of good policing.

3. The competing interests of public order and the right to protest can and must be reconciled.

Any actions during protests that encourage racism or violence of any kind can and should be justifiably criminalised.

Existing criminal law and practice does not pay sufficient regard to human rights. It is not in accordance with human rights for students at Nottingham University for instance, to be picked up and questioned for six days because the downloaded information from internet terrorist sites in order to write their MA Thesis on Islamic Extremism and International Terrorist Networks (14 May to 20 May 2008).

Complaints about the handling of protests (including police action during protests) are not adequately addressed as there is no process, independent of the police or state, who deals with such complaints.

Internal complaints never get far as I can testify from my own experience.

There is obviously a difficult balance to be struck between the rights of protesters and other competing interests (such as the rights of others or the prevention of disorder or crime. But there are already laws for breach of the peace and against assault and violence, and these are sufficient. If murder is outlawed why are laws against mass murder needed? SOCPA and the Anti-Terrorism Laws should be repealed and we should rely upon natural justice to deal with the problems—that and a reform of the UK's own human rights record, ie. A real ethical foreign policy where we stop arming human rights abusers, stop supporting repressive regimes and start behaving in a globally responsible manner.

May 2008
