



House of Lords
House of Commons
Joint Committee on Human
Rights

Facilitating Peaceful Protest

Tenth Report of Session 2010–11

*Report, together with formal minutes, oral and
written evidence*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at <http://www.parliament.uk/jchr>

Current Staff

The current staff of the Committee is: Mike Hennessy (Commons Clerk), Rob Whiteway (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick (Assistant Legal Adviser), Lisa Wrobel (Senior Committee Assistant), Michelle Owens (Committee Assistant), Claudia Rock (Committee Assistant), Greta Piacquadio (Committee Support Assistant), and Keith Pryke (Office Support Assistant).

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Summary

In this Report we make available the evidence we have taken on the policing of recent protests and preparations for the imminent Trades Union Congress (TUC) March, 'the March for the Alternative', on 26 March. The Committee took evidence from representatives of student bodies, the Metropolitan Police (on two occasions), Her Majesty's Inspectorate of the Constabulary (HMIC) and the TUC at two meetings in December 2010 and March 2011.

In our Report we consider and make recommendations on the role of the police, the role of HMIC and the role of protest organisers in the context of how to ensure that the policing of protest respects human rights and in particular facilitates the right to peaceful protest.

The TUC March for the Alternative, 26 March 2011

We welcome the high level of cooperation we saw between the Metropolitan Police and the TUC in planning for the demonstration of 26 March, as well as the planned involvement of independent human rights advisers in the control room during the demonstration itself. We hope this example of good practice will become general practice in the future.

Communications

We heard from our witnesses that effective and proactive communication between the organisers of protests and the police was critical for the 'no surprises' approach to policing of protest. Good organisation between police and protestors should be established at the planning stage and carry through to the protest itself.

We welcome the Metropolitan Police's communication with protestors through both social media and leaflets tailored for the demonstration in question. We recommend that organisers of protests have arrangements in place to communicate with protestors, including about changes to the route of a march. They should make appropriate use of social media in order to communicate these messages effectively. We also welcome plans for the police to be in radio contact with stewards at the forthcoming march on 26 March.

Containment

We heard much evidence about the use of containment or "kettling" as a tactic during the policing of the student demonstrations in November and December last year. We found that there was a lack of clarity about what level of violence must occur before containment or "kettling" is resorted to. In our Report, we express concerns about the lack of opportunity for the peaceful and vulnerable to leave the containment and the lack of information provided about how to leave. There remains considerable room for improving understanding of front line officers of the ACPO guidelines on the use of the tactic and we look forward to hearing practical proposals for how to ensure the guidance is translated into action on the ground.

Force

Some concerns were raised by HMIC about police training on the use of force and we were pleased to hear that the Metropolitan Police have changed their training on the use of force.

We were, however, surprised to find that no specific guidance setting out circumstances in which the use of the baton against the head might be justifiable and recommend that such detailed guidance about the use of batons be drawn up, and that in the meantime training reflects this concern.

Lessons learned

We agree with HMIC that the lessons to be learned from events must be extracted very quickly and assimilated by those on the ground. The system for doing this needs to be more nimble than the current system of policy reviews.

1 Introduction

Introduction

1. The main purpose of this short Report is to make available the evidence we have taken about the policing of recent protests and preparations for the imminent TUC March. We took the evidence with a view to identifying the most important lessons to be learned from recent protests and to feed those lessons into preparations for protests to come.

2. On 14 December 2010 we took evidence from Aaron Porter, President of the NUS, and Simon Hardy, Spokesperson for the National Campaign against Fees and Cuts; and from DC Allison of the Met Police and Sue Sim, ACPO lead on Public Order and Safety. On 1 March 2011 we took further evidence from Nigel Stanley, Head of Communications, and Carl Roper, Head Steward for the 'March for the Alternative', the Trades Union Congress; Jo Kaye, Assistant Inspector, Her Majesty's Inspectorate of Constabulary (HMIC); and Lynne Owens, Assistant Commissioner, and Commander Bob Broadhurst, Head of Public Order, the Metropolitan Police Service. We thank these witnesses for their evidence. We also wrote to the Metropolitan Police with a number of detailed questions following the first evidence session and received a very full and helpful response which is attached to this Report.¹

Human rights, policing and protest

3. Our particular interest is the extent to which the policing of protest in practice respects human rights. The policing of protest engages a number of human rights and freedoms. Most obvious are the rights to freedom of expression and peaceful assembly, which are both recognised as fundamental by the common law and protected by Articles 10 and 11 of the European Convention on Human Rights (ECHR). Tactics for policing protests also engage a range of other rights protected by both the common law and the ECHR, including the right to life (Article 2 ECHR), the prohibition against inhuman or degrading treatment (Article 3 ECHR), the right to liberty (Article 5 ECHR) and the right to respect for private life, which includes the right to physical autonomy (Article 8 ECHR).

The role of the police

4. We heard evidence from the Metropolitan Police that it has in some respects changed its stance since the G20 protests so that it is now more facilitative of protest.² We welcome this renewed commitment to facilitating protest. We accept that policing public order is a very challenging task, and that in the current climate the police have to deal with various regulatory burdens with diminishing resources, and with the changing profile of protests detailed in the recent HMIC report, *Policing Public Order* published in February 2011. We note in particular the increasing unpredictability of protests which poses particular challenges for the police. We also note that the police's senior leaders welcome scrutiny,

¹ WE2, p. 17.

² See e.g. Q93 (Commander Bob Broadhurst).

accepting that it inevitably produces recommendations which they see as their leadership responsibility to translate into practical guidance for frontline officers on the ground.

The role of the HMIC

5. The oral evidence we received from HMIC served to emphasise the importance of that organisation's role. *Policing Public Order* is an important report, reviewing progress made against recommendations in two previous HMIC reports (issued following the G20 protests of 2009) and setting out the key challenges for policing protests which have been brought into increasing prominence by the protests of 2010. The report identifies a number of questions which it says require urgent consideration: containment, the capacity of the police to remove problematic groups from amongst peaceful protestors, the ability to filter the vulnerable away from containment zones or possible disorder, information gathering and communication. While recognising the progress made by the police against many of the recommendations from the earlier reports, the 2011 report is critical of the amount of time that is being taken to transfer changes of policy into changes of actual practice and sees better and updated training as key to improving this.

The role of protest organisers

6. We also heard evidence from organisers of demonstrations about their acceptance of the responsibilities that accompany the organisation of a demonstration and about their attempts to discharge those responsibilities. There is also a duty upon those organising protests to try and ensure so far as they can that the protest is peaceful, well-marshalled and well run. We touch on some key issues for organisers, in relation to communications and stewards a little later in this Report.

The TUC 'March for the Alternative'—Saturday 26 March

7. **We welcome the high degree of co-operation between the Metropolitan Police and the TUC in planning for the demonstration on 26 March. We agree with the observations of witnesses that in many respects the planning for this event between the police and the organisers provides a model of good practice. We hope that this will be reflected in a successful and peaceful demonstration in which all participants feel that they have exercised their democratic right to protest. We also hope that this example of good practice will be followed and generalised in the future, including, so far as possible, in relation to smaller scale and more impromptu protests than the proposed TUC march.** We do however note that, when we took evidence, neither side had raised with the other the possibility of the need to use containment or "kettling". This was an oversight that ought not be repeated with regard to the planning of future demonstrations. **We also welcome the involvement of expert human rights and civil liberties NGOs such as Liberty in preparations for the TUC March and the plan to involve independent human rights observers and advisers, as well as representatives of the organisers, in the control room during the demonstration itself.**³

Communications

8. Effective and proactive communications between the organisers of a protest and police before major demonstrations is recognised to be one of the most important features of a ‘no surprises’ approach to policing protest. We heard evidence that liaison between police and organisers prior to some of the student demonstrations in November and December had not been as good as it ought to have been. We also heard that communications from the police during the student demonstrations were not very effective in reaching the demonstrators, particularly once the containment/t/kettle had been imposed. The police recognised the importance of communication and acknowledged that this was a challenge during the demonstrations in question.

9. We welcome the Metropolitan Police’s development of its capacity to communicate directly with protestors by means of social media such as Twitter, and through the use of leaflets distributed to protestors and tailored for the demonstration in question.

10. The police were critical of the organisers of the student protests on 9 December for failing to communicate effectively with the demonstrators, including about the route of the march. They provided evidence of officers having attempted to communicate with stewards about the need to keep the march moving, and of stewards being uncooperative and failing to communicate with the protestors.⁴ There is an important responsibility on the organisers of protests to communicate with those who are protesting. The proper discharge of this responsibility is an important aspect of facilitating the right to peaceful protest.

11. We recommend that the organisers of future demonstrations ensure that they have arrangements in place to communicate with protestors during the demonstration, including about the route of the march or any changes to that route, and make the best use of social media to do so. We also welcome the plans for the police and the stewards at the forthcoming TUC March to be in radio contact during the demonstration, which will enable the police to relay communications to demonstrators through the stewards’ chain of communication, and vice-versa. Good communications between police and protestors should be established at the planning stage and carry through to the demonstration itself.

Stewards

12. In terms of protest organisers responsibilities, the use of stewards, trained or experienced where possible, is important. We commend the TUC for its detailed plans for the use of stewards during the 26 March demonstration and recognise that this must involve significant cost for the organisation. Not every organisation can call upon a reservoir of trained or experienced stewards, or can train them prior to any protests. However, the importance of the clear provision and identification of sufficient stewards who understand how the protest is to be run cannot be overstated.

4 Letter from Assistant Commissioner Allison, 24 January 2011, Q2.

Containment or “kettling”

13. At the first of our two evidence sessions, we heard considerable concern expressed about the use of the tactic of containment or “kettling” at the student demonstrations in November and December last year. The complaints included the length of time for which people were detained within the containment or “kettle”; the large numbers of people affected and the apparently indiscriminate nature of the restrictions imposed; the lack of access to basic needs such as food, water, toilets and in some cases medication; the effect on particularly vulnerable individuals such as the young and the disabled; the lack of communication with the protestors about matters such as the reasons for the use of the tactic, the likely duration and the arrangements for leaving the area; the disregard of factors such as the low temperatures and the age of many of the protestors; and the lack of opportunity for peaceful protestors to cross the police cordon and leave the area. As a result, we heard that demonstrators were “terrified of kettling”⁵ which caused “significant anxiety.”⁶

14. We also heard the Metropolitan Police’s account of the use of containment or “kettling” at these demonstrations.⁷ Assistant Commissioner Chris Allison of the Metropolitan Police Service, who has responsibility for the policing of demonstrations in London, told us that containment was only used at the 24 November 2010 demonstration after police came under attack. He said that commanders took the view that allowing the demonstration to move on would have led to “widespread damage and disorder”; they ensured that it was necessary and proportionate in the first place and then implemented what they had learnt from the G20 protests. Toilets and water were provided, he told us, access through the lines was given to journalists, and the vulnerable were allowed out. The long duration of the kettle was explained by “fear of disorder”.

15. We consider it the responsibility of demonstrators and organisers to recognise that failure to protest peacefully will require the police to take action, but there does appear to be a lack of clarity about the level or seriousness of the violence that must have occurred before containment or “kettling” can be resorted to. We are concerned about the apparent lack of opportunity for non-violent protestors to leave the contained or “kettled” crowd, the adequacy of arrangements to ensure that the particularly vulnerable such as disabled people are identified and helped to leave the containment, and the general lack of information available to the protestors about how and where to leave. We consider that there remains considerable room to improve the understanding of the ACPO Guidance concerning containment on the part of frontline officers. We look forward to hearing practical proposals for how to ensure the guidance is translated into action on the ground.

Use of force

16. In its 2009 Report, *Nurturing the British Model of Policing*, only one police force (West Yorkshire) was found to be using the correct definition of the term ‘proportionate’ with respect to the use of force in its training materials. The recent HMIC Report found, with

5 Q5.

6 Q7.

7 Q18.

regard to the use of force, that there is still a very broad range of interpretations within police forces of ‘proportionality’ in this area, from “the minimum required to achieve the legitimate aim” (the correct definition) through to such inaccurate explanations of the term as “corresponding” or “making defensible decisions”.

17. The Metropolitan Police thought that HMIC’s assessment of its understanding of the use of force was “a little harsh”.⁸ **We were pleased to hear that the Metropolitan Police have changed their training on the use of force, which now starts off with “a whole first day about the proportionate use of force and the escalation of that process.”⁹ We look forward to seeing the training materials on the use of force which are currently being finalised.**¹⁰

18. The Association of Chief Police Officers’ guidelines on the policing of protest state that during demonstrations batons should only be used in a reasonable and proportionate manner by officers. Specific guidance on the use of batons is set out in the ACPO Manual of Guidance on Keeping the Peace.¹¹ It states that “the level of force should be reasonable and proportionate (*i.e.* the minimum required to meet a lawful objective). However, we were surprised to find that there appears to be no specific guidance setting out the circumstances in which the use of the baton against the head might be justifiable. The human rights requirement that the use of force be proportionate requires operational guidance to frontline officers which deals directly with this issue. We recommend that such detailed guidance about the use of batons be drawn up, and that in the meantime training reflects this concern. The use of horses in some of the demonstrations of November and December 2010 was controversial and claims were made about horses “charging” which were challenged by the police in their evidence to us. This is an issue which we hope to look at in more detail in the future.

Undercover officers

19. On a broader point, **in the light of recent public concern about the use of undercover police officers in peaceful protest movements, we asked the Metropolitan Police to confirm that undercover police officers are not being used in the trade union movement.** We understand the considerable public benefits that can be obtained by the appropriate use of properly authorised covert intelligence gathering within a proper regulatory framework. We also understand the important need to protect the safety of legitimately deployed undercover officers. **The response to our questions was that the Metropolitan Police are “not in a position to confirm or deny what level of undercover officers will be deployed in the event.”¹²**

Lessons learned

20. **In its evidence to us, HMIC forcefully argued that the lessons to be learned from events must be extracted very quickly and as simulated by those on the ground. The**

8 Q99.

9 Q99.

10 Qs 102 and 104.

11 Appendix 1, pp. 106-7.

12 Q106.

system for doing this needs to be more nimble, compared to the lengthy and arduous process of policy reviews and the formulation of new guidance involving AC PO, HMIC, the National Policing Improvement Agency and individual forces. We agree. We also sense that in the context of the changing profile of protest, those organising demonstrations will be keen to learn what lessons they can both from the difficult circumstances of the November and December protests and the larger and more diverse TUC demonstration planned for 26 March.

21. The issue of policing and protest within the framework of respect for human rights is an important one for this Committee, and indeed is of vital concern for everyone in a democracy, and we very much hope to return to it in the near future.

Conclusions and recommendations

The TUC ‘March for the Alternative’—Saturday 26 March

1. We welcome the high degree of co-operation between the Metropolitan Police and the TUC in planning for the demonstration on 26 March. We hope that this will be reflected in a successful and peaceful demonstration in which all participants feel that they have exercised their democratic right to protest. We also hope that this example of good practice will be followed and generalised in the future, including, so far as possible, in relation to smaller scale and more impromptu protests than the proposed TUC march. (Paragraph 7)
2. We also welcome the involvement of expert human rights and civil liberties NGOs such as Liberty in preparations for the TUC March and the plan to involve independent human rights observers and advisers, as well as representatives of the organisers, in the control room during the demonstration itself. (Paragraph 7)

Communications

3. We welcome the Metropolitan Police’s development of its capacity to communicate directly with protestors by means of social media such as Twitter, and through the use of leaflets distributed to protestors and tailored for the demonstration in question. (Paragraph 9)
4. We recommend that the organisers of future demonstrations ensure that they have arrangements in place to communicate with protestors during the demonstration, including about the route of the march or any changes to that route, and make the best use of social media to do so. (Paragraph 11)

Containment or “kettling”

5. We consider it the responsibility of demonstrators and organisers to recognise that failure to protest peacefully will require the police to take action, but there does appear to be a lack of clarity about the level or seriousness of the violence that must have occurred before containment or “kettling” can be resorted to. We are concerned about the apparent lack of opportunity for non-violent protestors to leave the contained or “kettled” crowd, the adequacy of arrangements to ensure that the particularly vulnerable such as disabled people are identified and helped to leave the containment, and the general lack of information available to the protestors about how and where to leave. We consider that there remains considerable room to improve the understanding of the ACPO Guidance concerning containment on the part of frontline officers. We look forward to hearing practical proposals for how to ensure the guidance is translated into action on the ground. (Paragraph 15)

Use of force

6. We were pleased to hear that the Metropolitan Police have changed their training on the use of force, which now starts off with “a whole first day about the proportionate

use of force and the escalation of that process.” We look forward to seeing the training materials on the use of force which are currently being finalised. (Paragraph 17)

7. We were surprised to find that there appears to be no specific guidance setting out the circumstances in which the use of the baton against the head might be justifiable. The human rights requirement that the use of force be proportionate requires operational guidance to frontline officers which deals directly with this issue. We recommend that such detailed guidance about the use of batons be drawn up, and that in the meantime training reflects this concern. (Paragraph 18)

Undercover officers

8. In the light of recent public concern about the use of undercover police officers in peaceful protest movements, we asked the Metropolitan Police to confirm that undercover police officers are not being used in the trade union movement. The response to our questions was that the Metropolitan Police are “not in a position to confirm or deny what level of undercover officers will be deployed in the event.” (Paragraph 19)

Lessons learned

9. In its evidence to us, HMIC forcefully argued that the lessons to be learned from events must be extracted very quickly and assimilated by those on the ground. The system for doing this needs to be more nimble, compared to the lengthy and arduous process of policy reviews and the formulation of new guidance involving ACPO, HMIC, the National Policing Improvement Agency and individual forces. We agree. (Paragraph 20)

Formal Minutes

Tuesday 22 March 2011

Members present:

Dr Hywel Francis MP, in the Chair

Lord Bowness

Lord Dubs

Lord Morris of Handsworth

Baroness Stowell of Beeston

Dr Julian Huppert MP

Mr Dominic Raab MP

Mr Richard Shepherd MP

Draft Report, *Facilitating Peaceful Protest*, proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 21 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Tenth Report of the Committee to each House.

Ordered, That the Chairman make the Report to the House of Commons and that Lord Bowness make the Report to the House of Lords.

Ordered, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

Written evidence reported and ordered to be published on 18 January, 1 February and 22 March was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 29 March at 2.00 pm]

Declaration of Lords Interests

Lord Bowness

Close relative of a member of the Territorial Support Group, Metropolitan Police.

Lord Morris of Handsworth

Former President of the TUC.

A full list of Members' interests can be found in the Register of Lords' Interests:
<http://www.publications.parliament.uk/pa/ld/ldreg/reg01.htm>

Witnesses

Tuesday 14 December 2010

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Aaron Porter, President of the National Union of Students and **Simon Hardy**, Spokesperson for the National Campaign against Fees and Cuts Ev 1

Assistant Commissioner Chris Allison, Metropolitan Police Service and **Temporary Chief Constable Sue Sim**, Northumbria Police, ACPO lead on Public Order and Public Safety Ev 6

Tuesday 1 March 2011

Nigel Stanley and **Carl Roper**, Trades Union Congress Ev 12

Jo Kaye, Her Majesty's Inspectorate of Constabulary Ev16

Assistant Commissioner Lynne Owens and **Commander Bob Broadhurst**, Metropolitan Police Service Ev19

List of written evidence

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- 2 Letter to the Chair, from Assistant Commissioner Allison, Metropolitan Police Service, 24 January 2011 p 17
- 3 Letter from the Chair, to Rt Hon Theresa May, Home Secretary, 12 January 2011 p 34
- 4 Letter to the Chair, from Rt Hon Nick Herbert MP, Minister of State for Policing and Criminal Justice, Home Office, January 2011 p 37

Written Evidence

1. Letter from the Chair, to Assistant Commissioner Allison, Metropolitan Police Service, 20 December 2010

Thank you for providing evidence on 14 December on the policing of the student protests in November and December 2010. I am writing to follow-up on a number of issues, some of which I raised at the end of the session. I have set these questions out below. I would be grateful if you could respond to them by close of play on Monday 24 January 2011.

1. You told us that on 9 December the containment strategy was used on protestors in Parliament Square until around 9pm when the remaining demonstrators were moved to Westminster Bridge. You also told us that containment was used as a last resort after disorder broke out. I would be grateful if you could provide us with more detail on the decision making process, in particular:

- (a) The degree of disorder and the attendant risk to public safety which triggered the decision to use the containment technique;
- (b) How the commanding officer determined that containment was a necessary and proportionate response to that risk;
- (c) Whether advice on human rights issues was taken by the commanding officer prior to making that decision, and/or had the decision-making officer had training on human rights and the right to protest?
- (d) Why it was necessary to contain demonstrators for as long as 7 hours?
- (e) Whether the necessity of the maintaining the containment tactic was regularly reviewed during this time? Can you provide us with evidence to show that these regular reviews took place?

2. You told us during the evidence session that officers communicated with those demonstrators on 9 December who were being contained in Parliament Square including through the use of a “warning and informing” tannoy system. The representatives of the National Union of Students and the National Campaign Against Fees and Cuts told us that communications were not received by all demonstrators.

- (a) Please provide more detail on the “warning and informing” tannoy system used;
- (b) What steps were taken by you to ensure that communications were received throughout the contained crowd, and to facilitate supplementary information being provided by stewards and marshals, if any.
- (c) What were those being contained told by the police about:
 - (i) the reasons for the containment,
 - (ii) the likely duration of the containment,
 - (iii) access to facilities and how to exit the containment? What other information was communicated to the contained demonstrators?

3. During the evidence session Mr Porter of the National Union of Students questioned what efforts had been made by the police to gather information on demonstrators that had caused trouble during the demonstrations on 10, 24 and 30 November and how this information was used to police the demonstrations on 9 December. Can you explain what intelligence was gathered on those expected to be participating on the demonstrations on 9 December and how this informed the policing strategy on this date?

4. The Association of Chief Police Officers' guidelines on the policing of protest state that during demonstrations batons should only be used in a reasonable and proportionate manner by officers. Can you comment on whether the use of batons on 9 December was both reasonable and proportionate and provide evidence for your view? Is there any more specific guidance about how batons should be used, e.g. are there any specific instructions that officers using batons should attempt to avoid blows to the heads of demonstrators?

5. There have been reports that a disabled demonstrator was pulled from his wheelchair by police officers on 9 December. Is specific guidance and training available for officers on the treatment of disabled demonstrators during protests?

6. You described to us an "active advance" made by mounted officers on 24 November to disperse demonstrators, but told us that no such advance was used on 9 December. Can you comment on suggestions that mounted officers approached those contained in Parliament Square on 9 December at a fast pace and explain the purpose of the advance in this case, given that the demonstrators were already contained and so had nowhere to move to?¹ You described the "active advance" as an ACPO-approved tactic. Is there any specific guidance on when and how it should be deployed?

I thank you again for providing evidence to the Committee and encourage you to include any further information you feel would be helpful to the Committee in your reply.

20 December 2010

1 <http://www.youtube.com/watch?v=qhUTF4hOp8>

2. Letter to the Chair, from Assistant Commissioner Allison, Metropolitan Police Service, 24 January 2011

I am writing in response to your letter dated 22 December 2010. In it, you ask me to respond to a number of questions following my appearance in front of the Joint Committee on Human Rights on the 14 December 2010.

The attached twenty five page document (Appendix 1) contains the answers to those questions as best I possibly can, with the information having been pulled together from a large number of the officers' decision logs and such records from the day that at the time has allowed us to review. I apologise for the length of the document but I feel that it is necessary to be that long to properly answer your questions and provide an explanatory narrative. The Metropolitan Police Service accepts that it is fully accountable for its actions and I hope that the detail that I have provided in the report shows our willingness to fully explain what we do and why we do it. I have also attached other supporting material that is referenced in the document.

As you will see from the document, there are extensive references to the Silver Commander who was the tactical decision maker on the day. Regrettably, he has been on an extended period of annual leave abroad and is not contactable until he returns to work in the second week of February which is after your deadline for a reply. As such, he has not had the opportunity to add any of his comments to the document or to assist in deciphering some of the writing in his logs which is why the word "illegible" appears in two extracts included in the report.

As I said at the beginning of my oral evidence, the student protests at the end of 2010 saw some of the most serious and sustained disorder the MPS had seen at public protest in nearly ten years. I pay tribute to both those officers who worked on the front line and those who commanded them. The MPS fully accepts that people have a right to peacefully protest and will work with the organisers over any such protest. However, violence can never be justified in the name of protest and the MPS hopes that protests in the future are not marred by the disorder and damage that we witnessed in November and December.

Question 1

1. You told us that on 9 December the containment strategy was used on protestors in Parliament Square until around 9pm when the remaining demonstrators were moved to Westminster Bridge. You also told us that containment was used as a last resort after disorder broke out. I would be grateful if you could provide us with more detail on the decision making process, in particular:

- (a) The degree of disorder and the attendant risk to public safety which triggered the decision to use the containment technique;
- (b) How the commanding officer determined that containment was a necessary and proportionate response to that risk;
- (c) Whether advice on human rights issues was taken by the commanding officer prior to making that decision, and/or had the decision-making officer had training on human rights and the right to protest?
- (d) Why it was necessary to contain demonstrators for as long as 7 hours?
- (e) Whether the necessity of the maintaining the containment tactic was regularly reviewed during this time? Can you provide us with evidence to show that these regular reviews took place?

1. Your question touches on a number of areas that I will address in the following chronological order.

- The availability of human rights advice and/or human rights training available to the Silver Commander

- The degree of disorder leading to the decision to contain the protestors
- The determination of necessity of containment
- Silver's ongoing reviews of the containment tactic
- The duration of the containment

The availability of human rights advice and/or human rights training available to the Silver Commander

2. Across the MPS, human rights (HR) awareness training has been extensive and the fundamental principles that the European Convention (ECHR) and 1998 Act (HRA) seek to protect are firmly embedded in the conscience and actions of this organisation. This knowledge forms the foundation of public order command training.

3. The Silver Commander for this operation is part of the MPS's Public Order Cadre, established to ensure that only the most competent and capable officers are permitted to command these types of operations. The Cadre has an enviable reputation for the quality of the officers who serve on it and the results they routinely achieve.

4. The training of Cadre officers is grounded in a legal framework that includes comprehension and application of HR legislation. There are basically three levels of training that lead to an officer joining the Cadre and then remaining a part of it.

Foundation Course for Event and Major Incident Management

5. This is a mandatory course of all officers promoted to the rank of Chief Inspector and those Inspectors responsible for planning operations on London boroughs. Officers aspiring to join the Cadre must have completed this course.

Advance Public Order Command Training

6. This is effectively the process for joining the Cadre. Officers apply for selection and are assessed for their suitability. To join the course, they must pass an examination that includes a significant assessment of their HR knowledge, including Articles 2, 5, 9, 10 & 11.

7. The course then consists of 3 separate modules throughout which an individual's knowledge and application of the whole legal framework is continuously tested.

8. The modules continue to be pass or fail and there is an approximately 30% attrition rate on first attempt.

Continuation Training

9. Once accepted into the Cadre, officers are required to attend 2 workshops and 1 seminar a year.

10. Additionally, each commander is expected to show operational competence by commanding at least 3 operations a year, the quality of which is objectively reviewed by peers. When they are assessed as experienced enough, they are allowed to command more complex operations.

11. A record is maintained of each commander's operational activity. Since 1999, the Silver Commander for 9 December has commanded at least 351 operations as either Bronze, Silver or Gold. In the calendar year up to 9 December, he had commanded 82 public order events, making him one of the most experienced commanders in the MPS.

12. It is therefore not surprising to find constant references to HR within the documents associated with the student protest of 9 December. Of course, the fact that both the planning of the police response and our subsequent actions are well documented is the first indication of the Silver Commander's awareness of his HR

responsibilities. I would like to give you a sense of Silver's awareness of HR issues from some of the entries in documents he created.

13. Firstly, the Silver Commander produced a planning document that was richly sown with HR considerations. I would cite the following abstracts from the planning document. These are not exhaustive references but give an insight as to how intrinsic HR considerations were to the planning of the whole operation:

Legal Powers:

All legal powers will be considered in accordance with the Human Rights Act, in respect of proportionality, legality, accountability and necessity.

While considering tactics I have ensured that the various Bronze Commanders pay particular attention to the various articles within ECHR legislation. They have recorded this in their individual tactical plans.

Use of Force

ECHR Article 2 controls the use of force, as does ECHR Article 3 and Article 8

When extreme or excessive force is used, or where the application of force is maintained for longer than is necessary to achieve a lawful aim, this may constitute a violation of ECHR 3 [...] or ECHR 8 Human Rights

I have considered human rights throughout the planning of these event. The tactical plans reflect these consideration as they apply

[...]

Containment

[...] I have ensured that Bronze Commanders are aware of the need to consider, the Right to Liberty, (ECHR Article 5) and that the tactic must be resorted to in good faith, be proportionate to the situation making the measure necessary and not be enforced for longer than is necessary.

14. Later, in his log of the day's events, Silver continues to demonstrate an awareness of how his decisions might engage with HR considerations and some of this will become apparent in later answers, particularly with reference to proportionality.

15. The Silver Commander had also commanded the demonstrations on 24 and 30 November 2010 and had discussed his decision making at those events with a senior lawyer within the MPS Directorate of Legal Services. As the principle witness in the MPS defence to a judicial review claim arising from the containment of demonstrators in Bishopsgate on 1 April 2010, he is also particularly aware of and familiar with the engagement with human rights issues that is inherent to a public order event of this nature. The MPS Directorate of Legal Services was available on 9 December 2010 to provide advice and guidance as required, and did in fact provide advice in relation to the incursion of demonstrators on to Parliament Square Gardens during the afternoon.

16. The Silver commander also had the use of a Tactical Adviser on the day, who was a specialist public order trainer from the MPS Public Order and Operational Support Unit in Gravesend. In this role, he provides human rights training to officers within the public order context and was therefore particularly able to assist with any human rights considerations that arose.

The degree of disorder leading to the decision to contain protestors

17. The earliest recorded disorder occurred at 11.25 when protestors were reported to be climbing statues in Parliament Square.

18. There was a degree of disorder almost from the outset of the march from University of London in Malet Street.

19. The ULU notified march commenced as agreed but at 11.55 a number of persons were reported in Malet Street wearing masks, carrying padded shields and wearing hard hats. At 12.07, marchers in Malet Street began throwing placards at police. Police decided to take a negotiated approach to stop this from happening rather than through enforcement. By this time there were about 2000 people in Malet Street. Intelligence suggested that some people had concealed weapons about them.

20. The next significant event was at about 13.15 when the front of the ULU march started to fight with police and attempted to break away from the main body and deviate from the agreed route. A high level of force was used in this breakout, which required other officers to be drafted in to redirect protestors back to the agreed route. Shortly afterwards, the levels of threat within London started to increase. This included reports of a petrol bomber in the area of Trafalgar Square and the first of many sustained assaults against police formations. At 1507 a man was reported to be in Parliament square with a firearm although this was never substantiated by arrest or seizure of the weapon.

21. Up to 15.23 hours, the time at which Silver directed a full containment of Parliament Square, there are over 40 incidents of violent or disorderly behaviour recorded in the main bronze command logs.

22. The following are key entries taken from Silver's public order decision log (rationale in brackets taken from the right side of log):

13.18 Bronze 4 asks: Does Silver want the march contained. Silver states not at this time. Let them continue on prescribed route. (Containment at Trafalgar Square—decision not to be attempted at this time. Rationale: [...] The containment tactic is one of last resort and at this time, although there have been some outbreaks of violence, the march is sticking to its route. I have fortified Parliament Square itself to prevent incursion, and therefore will allow protestors to continue on agreed route at this time.)

13.37 Bronze 9 informed that march entering P. Square

13.48 To Bronze 5.2. Request for demonstrators to be encouraged into Whitehall as the blockage in P. Square is causing safety issues. (Encourage march to move out of Parliament Square. Rationale: March has stopped in Parliament Square at junction with Whitehall/Parliament Street/Great George Street. This is causing those at the back to bunch up and (illegible) on those at the front. The agreed route is up Whitehall and then into Victoria Embankment.)

13.56 (Lockdown all VPs (vulnerable premises)—rationale—subjects been moving away from march and route. I do not want unlawful building incursions and damage and fear a breach of the peace.)

13.59 (Officers to withdraw to secondary line across front of Parliament. Rationale for this—The numbers on the march is 15–20,000 people. The front of the march is static and there is some disorder. The pressure being put on the demonstrators and police lines is now getting dangerous. Bronze 2 and I have agreed a contingency in the event of this happening. This will be officers withdrawing back to secondary lines at Broad Sanctuary and Victoria Street. This allows the protestors both sides of Parliament Square and will relieve pressure.)

14.06 (All officers to wear full protective equipment. Rationale: violence being offered is now very extreme. Missiles, including flares, have been thrown. The "protestors" have broken down the Heras fencing around the grass area of Parliament Square.)

14.08 Silver meeting [...] Tactical plan discussed re Parliament Square Cordons: Great George Street, Broad Sanctuary. Not a containment. Exit via Whitehall. (Cordons at locations to prevent entry in to POW—cordons in place preventing people in Parliament Square from entering POW. I have left

Whitehall open as this is the agreed route out and onto the rally. Officers to encourage people to leave via this exit. The cordons are in place to prevent a breach of the peace at POW and to maintain the democratic process of Parliament.)

14.16 *Fencing being used as a weapon.*

14.22 *St Margarets Church next to Westminster Abbey damaged.*

14.47 *Meeting with Gold: Tactics discussed re dispersal. Will wait until after vote.*

14.51 *Bronze 4.2—Large group heading north in Whitehall. Silver—establish where they are going. OK—Embankment—Victoria.*

15.08 *Churchill statue damaged by students.*

15.11 *Decision made not to go into crowd in Parliament Square at this time. (Not to enter Parliament Square and protect statues—Rationale: Numbers involved in violence are very high. 1000 seen to move from cordon line to cordon line. Information re missiles are they are concrete, snooker balls and such like. These could easily kill. Also information re possible firearm. At this time, entry will only be made if life at risk not to protect property at the expense of police officers getting seriously injured.)*

15.12 *Victoria Street cordon breached. Small number break through. Cordon back in, Missiles thrown, including flares.*

15.15 *Federation: yellow jackets not flame proof. Silver: message to all bronzes. Yellow jackets to be removed.*

15.18 *More flares used. Police being attacked from behind.*

23. These entries show a progressive and systematic escalation of violence on police, a number of hours before the Parliament Square containment was implemented. The level of violence was way above simple pushing and shoving that might be expected from a large crowd. I would highlight the deliberate destruction of fencing, protecting the grassed area of Parliament Square that was used to attack police across the barriers erected to protect the Palace of Westminster (PoW). The throwing of flares could have resulted in serious burns and the variety of other missiles could and did injure officers and protestors alike.

The determination of necessity of containment

24. The above extracts demonstrate the level of violence faced by police and indeed, those who wished to protect peacefully.

25. In the face of these events, Silver decided that the containment of Parliament Square was necessary at 15.23; his log again captures his rationale.

Silver meeting with Gold. Containment discussed. Due to serious offences being committed. People allowed to leave if not committed offences or vulnerable. Loud hailers to be used. Gold agreed. (Full containment of Parliament Square authorised. Rationale: There has been serious violence within Parliament Square over the last 2 hours. Demonstrators have attacked police lines in that it seems in getting through to POW. This will cause serious outbreaks of further damage and violence. I fear that unless I contain this group in Parliament Square, they will move onto other roads and rampage through London. I fear a real and imminent breach of the peace that I will not be able to prevent unless I contain them. I will then look for options to arrest people for offences, and disperse the group in small manageable numbers as soon as possible. However, I do take into account that the reason for the demonstration is the vote in POW and therefore release before this is unlikely unless the crowd dynamics change dramatically. I have briefed all bronzes to ensure discretion is used in allowing vulnerable people out of cordon wherever possible. I am also cognisant of the fact that Whitehall has

remained open for some time so they could leave if they had wished to do so [...] I have instructed the bronzes on cordons to undertake role of letting people out and helping vulnerable people out.)

Silver's ongoing review of the containment tactic

26. Silver's review of tactical options was a continuous process however, the containment tactic in particular was subject to regular and well documented review. There were 3 specific reviews and 2 other decisions specifically intended to bring the containment to an end. Again, I provide the relevant extracts to demonstrate both the timing of, and considerations made during, reviews.

1550—review con tainment. T o Conti nue. The level of violence continues. I now have groups of protestors in the west end causing damage and violence. The numbers are 100–150. I fear this will even larger if I do not contain this group in Parliament Square who already have shown their propensity to extreme violence; and I therefore fear a real and imminent breach of the peace if I rel ease them. I am satisfied that everything is being done to extract vulnerable people by the bronzes on the ground and have witnessed this myself.

1725—Review of containment. There is little change from when I last reviewed the circumstances of the containment. However I have met with Bx [Bronze] 11—Supt Bird and asked him to command my dispersal when I authorise it to take place [...] Evidence gatherers and cameras will be at dispersal point to arrest persons for substantive offences. The vote is imminent in the House of Commons.

1842—Authority to deploy into Parliament Square to arrest offenders given to Bronzes; Rationale: The level of violence has not desisted over the last 4 hours. The [illegible] appear to be trying to [illegible] and damage as much as possible in and around the Parliament Square area. It is now necessary to stop this as if these buildings catch light there is a real and imminent danger to life. I therefore want officers to intervene. This will mean the level of force will have to be higher and proportionate to nullify the real threat posed by the demonstrators.

1957—Containment reviewed—no change in circumstances at this time. BX's still releasing people if possible.

2059—Authorise the clearance of Parliament Square into Bridge Street. Rationale: The Breaches of the Peace and Criminal Acts continue. It is no w possible to move these people into a tighter containment. This will prevent them causing dama ge, violent acts and setting fires. The plan will mean forci ng them into Bridge Street. This is also part of the dispersal plan. It is necessary to do this to stop the violence and damage that ha s bee n occ urring in Parli ament Square. I note that the numbers in Parliament Square have reduced significantly. This is due to the hard work of "weeding out" some people (less of a threat) throughout the evening. Bx 11 is in overall charge of this tactic and the dispersal tactic following on from this.

The duration of the containment

27. The duration of 7 hours that you refer to was directly linked to the sustained violence that continued through Parliament Square and elsewhere up to the start of the final dispersal detailed above. Large groups continued to roam the West End and some of these committed acts of violence, mostly notably at 19.21 when a group attacked HRH The Prince of Wales and The Duchess of Cornwall. There were other incursions and violence used against commercial premises and the National Gallery, where 100 protestors forced their way in.

28. Within Parliament Square, some of the worst acts of violence of the whole day continued including repeated attacks on the Treasury building and the Supreme Court. Fires were set and police lines came under constant and sustained attacks.

29. However, it would be wrong to suggest that there was a continuous containment throughout this period. There is extensive evidence within comm and logs to show discretionary releases of peaceful or vulnerable protestors throughout the whole period. However, perhaps the most significant figure to support this would

be that at the start of events in Parliament Square there were 15,000–20,000 people present. At the point that the release plan was initiated there were only about four thousand remaining in the square.

Question Two

2. You told us during the evidence session that officers communicated with those demonstrators on 9 December who were being contained in Parliament Square including through the use of a “warning and informing” tannoy system. The representatives of the National Union of Students and the National Campaign Against Fees and Cuts told us that communications were not received by all demonstrators.

- (a) Please provide more detail on the “warning and informing” tannoy system used;
- (b) What steps were taken by you to ensure that communications were received throughout the contained crowd, and to facilitate supplementary information being provided by stewards and marshals, if any.
- (c) What were those being contained told by the police about:
 - (i) the reasons for the containment,
 - (ii) the likely duration of the containment,
 - (iii) access to facilities and how to exit the containment? What other information was communicated to the contained demonstrators?

30. I note from the outset that the representatives of the NUS and the NCAFC state that communications were not received by all demonstrators. We would not contest that this was likely among a crowd of up to 20,000 people, a significant number of whom were committing acts of violence and engaged in wide scale disorder. Ensuring contact is effective with everybody in a crowd that large, in the open air, would be a challenge for us even if they were entirely passive.

31. Notwithstanding the violence that ensued there were other environmental factors that created limitations to communication including:

- Traffic noise
- Acoustics
- Helicopters (police and media)
- Amplified music within the crowd

32. That said, we recognise the importance of communication, which should of course start with the provision of effective information being provided to protestors by the organisers of the event. From the outset this appears not to have happened and indeed, we have received communication from students involved in 9 December protest who acknowledge that they were not even aware of the route they were meant to be taking.

33. When it became necessary for the police to take over responsibility for communicating with the crowd, because the organisers had lost control, we had planned to do so in the following ways:

- Direct verbal contact between officers and public
- Amplified voice communications using loud-hailers or vehicle mounted tannoy systems
- Visual communication through “dot-matrix” display boards
- New and old media

34. There are variations on these themes and in some circumstances, it might be appropriate to use banners or written material such as leaflets. All communication systems have their uses and limitations particularly when taking into account the environmental factors explained above.

35. On 9 December the primary means of contact with protestors was through officers talking directly with them and by using the tannoy systems described above. The dot-matrix system was available however it was not deployed. The system is required to run on a petrol generator and there were concerns on this occasion that it could not be sited in such a place so as to make it effective and also ensure it was not overrun. You will appreciate the implications of violent protestors gaining access to a generator's petrol tank.

36. Once the crowd had become violent, it was not safe to enter the crowd in order to communicate with them. The operation became reliant on direct communication between officers at cordon lines or from the vehicle tannoy systems that can broadcast to a greater distance. The tannoy systems are not sophisticated systems, being part of the vehicles normal specification. They are almost always positioned behind police lines and therefore in front of protestors. As a result, those at the front of the crowd would have heard the message though it is accepted that those in the centre or at the back of the crowd may not have heard the messages being passed.

37. Direct verbal communications would have become virtually impossible once it became necessary for officers to don protective helmets and once attacks on police started, in many cases verbal communication would not have been more comprehensive than officers shouting "Get Back".

38. I would wish to reinforce the point that the containment was not established until some significant time after wide scale disorder had started and this made the universal communication of containment information all but impossible.

39. What is clear from command logs is that commanders on the ground were made very aware of the instructions to release vulnerable people. Some commanders report personally passing this information to the officers actively involved in controlling crowds and there are examples that this message was getting through to significant sections of it: I cite, as an example of how effective communication was, the significant reduction in crowd size that occurred over the period of containment.

40. As an example of how individual officers communicated I provide the following abstract from PC 470LX who in her Evidence and Action Book provides the following information about what her team did when positioned at the Victoria Street cordon sometime between 1330 and 1530.

[...] slowly there were growing numbers of protestors. They were given advice of where exit points were if they wanted to leave. Protestors stayed and were getting aggressive verbally. We informed them that the cordon was in place under section 3 of the Criminal Law Act to prevent any further damage to property in the street and under common law to stop a breach of the peace [...]

41. Prior to this event, PC 470LX had been subject to a number of attacks by protestors. She was typical of many officers that day who started work at about 0900 and were then continuously deployed into violent situations until nearly midnight. I think that the calm manner in which she has attempted to communicate with a hostile crowd is a great reflection of the professionalism all of our officers displayed throughout the day.

42. There was no single "corporate" message constructed, providing answers to the questions you pose in section c, and to most, the reason for containment would have been clearly visible around them. I do not believe it was practical to give containment duration assessments as this was entirely dependent on Silver's continuing threat assessments.

43. With regard to communication between police and stewards, various command logs show that police officers tried to communicate with organisers in order to keep the protest moving through Parliament Square. Again, I will provide first hand testimony from one of my commanders who perhaps best articulates the challenges of working with the organisers:

1342; I am negotiating with several different stewards/organisers and trying to get them to restart the march. I have explained to them there is a risk of crushing further up the march as the crowd becomes more dense. They are not engaging with the crowd so I have asked for them to use loud hailers. They state they are waiting for a banner to arrive before they will restart but I have again explained the importance of restarting the march along the agreed route to stop harm being caused to people in the crowd.

44. It would appear from this entry that not only had the organisers lost control by allowing the march to come to a halt but that they were also being uncooperative with the police. Shortly after this time, there were significant outbreaks of violence and it appears that very little recorded communication continued between the stewards and the police thereafter.

Question 3

3. During the evidence session Mr Porter of the National Union of Students questioned what efforts had been made by the police to gather information on demonstrators that had caused trouble during the demonstrations on 10, 24 and 30 November and how this information was used to police the demonstrations on 9 December. Can you explain what intelligence was gathered on those expected to be participating on the demonstrations on 9 December and how this informed the policing strategy on this date?

45. In answering this question I will restrict myself to generalities, as I would not wish to make public some of our intelligence gathering methods. To expose our processes could undermine the effectiveness of our methods or expose to risk those who deliver information into it.

46. There are however general matters that I am happy to share with you and which I hope will answer this question to your satisfaction.

47. Clearly, the MPS is always capable of responding to large-scale disorder and our commanders, planners and officers are regarded as being world leaders in managing public order events. We have considerable experience from policing some 4500 events a year in the Capital, most of which pass peacefully and without incident.

48. In many respects the policing of the recent student protests has presented the Metropolitan Police Service with unprecedented challenges. Protests descending into lawlessness and protestors using levels of violence not seen in recent times, has meant that the MPS has had to learn and adapt so as to provide an appropriate and proportionate response. The fact that these protests form part of a connected chain presents opportunities to learn about individual protestors, their organisation and tactics.

49. Very few protests require a significant intelligence input. In essence most are single events, many are organised by recognised groups or institutions and most are done in full cooperation with the police and local authorities.

50. In most cases, the police will have some capacity to gather information as an event progresses or it descends into disorder. This might be through police evidence gatherers deployed as part of the operation, or by something as simple as monitoring CCTV networks. Much of the thrust of this activity is in gathering evidence to support subsequent prosecutions if appropriate.

51. Such information may be of value as intelligence but most is not.

52. I think it is important to note that generally speaking, it is individuals who commit offences and not organisations and the opportunity to pre-empt which individuals may turn up to any particular protest may be very limited indeed.

53. The first student protests, which had been planned for many months, were expected by the police to be lawful and peaceful with the organisers being both willing and capable of fulfilling their responsibilities. Accordingly there will have been very little information gathering associated with them other than to monitor open sources such as social networking sites and public communications from the organisers themselves.

54. In the case of the student protests the MPS recognises the democratic rights of unions to exist without state interference. We have neither the resources nor political mandate to actively gather intelligence about the NUS or any other union. Moreover, the nature of student unions in particular, is that of transient, informal membership and thus identification within these organisations would be extremely difficult.

55. What the MPS does do is monitor the public actions of individuals associated with organisations. In this way, it might be possible to predict, based on their past actions, that individuals from Organisation A are more likely to turn to disorder than those from Organisation B and an appropriate policing response can be developed to match the presumed risks. We know from experience that those who would undermine peaceful protests prefer to work under the cover of large numbers and therefore we can add to the predictability equation, the anticipated size of the crowd.

56. It is fair to say that the rapid evolution of the student protests has resulted in a similarly rapid development of the way in which the MPS gathers, manages and uses information to inform our intelligence about them.

57. Up to and including the 9 December protests, much of the focus was to gather information and use it retrospectively to identify offenders. One of the limiting factors in exploiting the information gathered at earlier protests has been the scale of material seized and limited time between protests in which to view, assess and use it. There been 210 people arrested for offences committed at student protests and many of these will have come about because of the information gathered on those days. 60% of these people had never come to police notice before and of those that had, few were known to us for protest-connected criminality.

58. Sometimes, information becomes intelligence in that it can be used to predict criminality and therefore prevent or disrupt it. However, in many cases, this might not be practical. Mr Porter's question regarding our efforts to identify previous trouble-makers might be taken to presume that even having done so, police could act to neutralise their influence. The reality is of course far different.

59. Firstly, among thousands, it is nigh on impossible to say with certainty, which individuals may attend a protest.

60. Secondly, even people who have antecedence for trouble making have a right to attend protests unfettered by police interference, unless they are breaking the law or are known to be intending to do so. Even then, if they are identified among crowds of thousands, many of whom may be wearing face coverings, there are significant risks if attempts are made to remove them, even in the course of them committing offences.

61. It is far better to manage the situation that presents itself and deal with individuals when it is safe to do so.

62. Thirdly, too early an intervention risks allegations of heavy-handed policing and risks providing a n excuse, albeit one that is always unjustified, for those who would commit crime.

63. What became apparent from earlier protest is that those attending were a loose affiliation. It might be possible to predict (but not with certainty) which groups would turn up but it is virtually impossible to predict which individuals might join them. We saw legitimately interested parties attending to protest but these were joined by gains from elsewhere in London that were attending with the sole purpose of causing violence. Subsequently, we were able to monitor some locations in London so as to provide advanced warning of who and how many may be on their way to central London.

64. Although some of the earlier protests had been mostly peaceful there had been clear example that led police to believe that escalations to violence were not only possible but were perhaps likely. In response to this, there was a broader intelligence gathering operation in place on 9 December to provide commanders with an alert as to who might be attending.

65. On 9 December, the relevant opportunities to gather intelligence in Parliament Square and these were actively used. Based on this intelligence we were able to track and respond to a number of developments and arrests for some serious offences continue to this day.

66. Based on some of the learning from 9 December, we were able to create a more sophisticated information gathering operation on subsequent protests that created more opportunities for taking immediate action against offenders identified from earlier protests. This process will continue in future protests.

67. Lastly I would like to make brief comment on the information given to officers working within public order serials.

68. The basis of public order policing is of serials of police officers working as teams to an overall tactical plan. Officers rarely work independently and an officer being able to identify an individual suspect from an earlier incident is not only unlikely but is also likely to be un-actionable. It would not, for example, be appropriate for an individual or even a serial of officers to independently move into a crowd to detain someone they had recognised from an earlier event without this being part of the overall tactical plan: To do so would risk undermining the whole tactical plan. Therefore, providing individual officers with photographs or footage of shoes who had or were likely to commit offences could be counter-productive and was not done, except with specialist evidence gathering teams.

69. Similarly, the mindset of officers engaged in public order policing is very important and it was decided not to show video footage to officers so as not to cloud their views of events that may unfold in front of them on the day.

Question Four

4. The Association of Chief Police Officers' guidelines on the policing of protest state that during demonstrations batons should only be used in a reasonable and proportionate manner by officers. Can you comment on whether the use of batons on 9 December was both reasonable and proportionate and provide evidence for your view? Is there any more specific guidance about how batons should be used, e.g. are there any specific instructions that officers using batons should attempt to avoid blows to the heads of demonstrators?

70. Before answering this question, it is important for me to point out that I am unable to comment on individual uses of force on 9 December. However, all police officers are fully aware that they are individually accountable for any force they use.

71. You will appreciate that there are ongoing criminal investigations into the conduct of protestors and I would not wish to engage in discussion that would jeopardise the fairness of these or any subsequent criminal proceedings. Similarly, there is an IPCC investigation into some uses of force and it would be inappropriate for me to provide comment on these matters either.

72. However, I think it is useful to contextualise the use of force as posed by your question and I am happy to discuss how the MPS prepares its officers to use batons. I would like to address the following:

- The law as it relates to use of force
- Preventative planning to avoid use of force
- The training of officers in the use of the baton

The Law relating To Use of Force

73. The ACPO guidance to which you refer provides a number of considerations for the use of batons, among them being the imperative for reasonable and proportionate use. Although the deployment of batons is referred to specifically as tactical option in the ACPO manual, the use of batons is just one way in which a police officer may use force and is therefore covered by the same law that regulates any use of force.

74. Thus, the legality of an individual use of a baton in any situation is not governed by ACPO guidance, but determined by the laws that permit the use of force and should always derive from one of 3 sources. These are:

- Section 3, Criminal Law Act 1967
- Section 117, Police and Criminal Evidence Act, 1984
- Common Law

75. Overlaid on this domestic legislation is the requirement to comply with the articles of the European Convention on Human Rights. As you are aware, the 2010 ACPO Manual of Guidance "Keeping the Peace" was amended in the light of the recommendation and learning following on from the policing of the protests immediately prior to the G20 summit in April 2009. I enclose a copy of the relevant section of that Manual

which relates to the legal framework for Police Use of Force (pages 34–37).¹ The MPS was involved in the revision of the Manual and all the commanding officers for the policing operation on 9 December 2010 were familiar with the guidance.

76. Although there is no hierarchy among our domestic use-of-force laws, each may be used according to need and circumstance. Individual officers will commonly exercise their powers as they see fit under the legislation that is most appropriate to the circumstances they face. Ultimately, officers are individually accountable for their use of force.

77. In my view, there were many circumstances on the day when the use of batons would have been a wholly proportionate response to some of the extremes of force faced by officers.

Preventative Planning To Avoid Use of Force

78. I would like to make it very clear that contrary to evidence given to the Committee by others, my officers did everything that they could to avoid confrontations with protestors. This started with the operational plan.

79. The whole premise of the operational plan was underpinned by the need to protect Parliament and the democratic processes being undertaken therein. You will appreciate the challenge of ensuring that Parliament remained accessible to those with legitimate rights of access while preventing those who would disrupt them. You will further appreciate the national and indeed, international implications of parliament being overrun by protestors wishing to prevent legitimate voting taking place.

80. The University of London Union had made clear statements during our planning meeting that they intended to “march on Parliament” and the MPS sought to work with them to facilitate a peaceful protest.

81. You will have seen from media footage that there were clearly many within the crowd who sought to breach police lines that were probably the most effective barrier to mass invasion of Parliament. I have little doubt that had those lines not stood, there would have been a mass invasion of the Palace of Westminster (PoW), the results of which we could still very well be dealing with today.

82. Bearing this in mind, the planning principles that underpinned the policing operation on 9 December took account of the need to create a defensive barrier around PoW. Mindful of our extensive experience in policing protests we recognised that a simple police line, that would put officers “toe-to-toe” with protestors may be both insufficient to deal with a concerted attack on PoW and also create conditions where physical confrontation was more likely.

83. Accordingly, a box shape barrier (known as a ‘Wapping box’) was erected across the front of Parliament with express intention of preventing the invasion of Parliament but with an equal purpose of preventing the need for officers and protestors to come into physical contact.

84. You will undoubtedly have seen protestors attacking this line with fencing that had been torn down from Parliament Square, using this as an extended weapon because they could not, themselves, physically reach across the Wapping box barrier. A significant number of protestors attacked this line with such ferocity that barriers were crushed and officers had to resort to the use of batons to protect themselves and Parliament.

The Training of Officers in the Use of Batons

85. The officers used to police the 9 December protest were drawn from many areas of the Metropolitan Police Service. Their normal duties are many and varied, ranging from detectives to safer neighbourhood officers as well as others from specialist departments. All have common training in the use of batons.

86. Every officer up to and including the rank of Chief Inspector is required to undertake mandatory officer safety training every year. This is required to be for a minimum of 12 hours and covers those skill areas that involve use of force including, tactical communications, unarmed skills, handcuffing, batons, and use of

1 Not printed

incapacitant spray. This training is completed on a pass or fail basis, and officers unable to satisfy the instructors that they are competent are given development until they can do so or are ultimately removed from operational duties.

87. It is important to note, particularly in the context of proportionality, that batons are not taught in isolation from other use of force methods. Equally important is the fact that practical skills are underpinned by a great emphasis on being able to understand how and why force should be used. In the past 10 years there has been a significant move towards more classroom based “scenario” training so that officers may better understand the rationales behind use of force and therefore be more accountable. Ultimately, while the baton is a blunt and relatively easy to use instrument, there are skills to be learned in using the correct methods of drawing and striking.

88. All use of force training is linked to the Officer Safety Model (OSM) that requires an officer to consider

- Impact Factors (including person concerned, object they may be using against police and place where incident is occurring)
- Risk Assessment (that would include an assessment of risks to the officer and the subject)
- Powers and Policies (domestic and human rights law as well as local policies)
- Tactical Options (ranging from talking to people to actually using force by various means)

89. Within this model, the use of batons is specifically linked to an understanding of alternative methods such as tactical communications (i.e. warning people to get back, or trying to calm them down), acknowledging the potential medical implications of using a baton on any particular part of the body and understanding the law in which use of force is applied.

90. The use of the officer safety model is a dynamic process, being a cycle that an officer can go through many times a minute in an environment such as Parliament Square. Of course, this is not a precise science and there remains a degree of subjective assessment that is clearly commensurate with the law as described above.

91. The overlaying of medical considerations on the assessment process means that officers have a clear understanding of the consequences of any particular course of action. There is no prohibition on striking any part of the body but an officer would be expected to demonstrate their understanding of the consequences of any particular course of action and justify these in a legal context.

92. The use of batons in a public order context does become more complex and officers who are trained to police public order events receive additional “technical” training. Specifically, it is more difficult to use a baton when carrying a shield and officers are taught how to do this and there is a specific “show-of-force” tactic where officers will collectively raise their batons in warning to protestors. This is a relatively unique tactic in that it is reliant on a 3rd party (commander) giving an order to use force whereas this is almost always an individual decision for officers.

93. The “command” use of force is dictated by the conflict management model, which is a national model for determining what actions are appropriate based on; the information and intelligence available; the assessment of threat; the available powers, policies and procedures and the tactical options.

94. It may be that while an individual officer does not perceive a threat, the commander who has a much broader picture of the whole incident, may deem that use of force is necessary to meet the needs of the broader operation. On this basis, they may direct officers to use that force although the individual officers will remain accountable for the actual degree of force used. A simple example of this might be a line of police officers being directed to push a group of protestors towards a particular area. A simple guiding hand may be all the force that is required or, where violent resistance is encountered, a baton strike might be more appropriate. All officers and commanders are trained to understand the complexities of the use of force.

95. It is also recognised that the use of the baton in public order policing may occur in “toe-to-toe” situations that create additional difficulties. In a large and active crowd such as that in Parliament Square, officers may be faced with limited options as to where to strike persons using violence against them. In a crowd, an officer

may only be able to strike a head or shoulders and may still find this necessary and reasonable even in recognition of the potential medical consequences.

96. In a densely packed and dynamic crowd there remains potential for collateral injuries where an officer may miss their intended target and strike an adjacent person if there is a sudden movement. This would be subject to a dynamic risk assessment where the officer would weigh up the risks of striking against the consequences of allowing violence to continue.

97. Finally, following the G20 protests of 2009 there was an extensive review of our public order training including the use of batons. The Public Order Officer Safety Manual was rewritten to place a greater emphasis on human rights considerations. Included in this was review by a leading medical expert who was asked to consider the implications and provide advice on, the various techniques likely to be used.

98. In support of their training, officers have access in electronic format to the MPS Officer Safety Manual. This is a very lengthy resource and I enclose for you here a print out of the section that specifically deals with the use of the baton, as well as the introductory sections that deal with use of force and the medical implications.²

Question Five

5. There have been reports that a disabled demonstrator was pulled from his wheelchair by police officers on 9 December. Is specific guidance and training available for officers on the treatment of disabled demonstrators during protests?

99. The incident to which you refer is again subject to both a criminal investigation regarding the conduct of protestors and an IPCC investigation into the actions of police officers. You will again appreciate that it would not be appropriate for me to discuss this specific incident.

100. The Metropolitan Police Service has, as a strategic principle, the need to respect diversity and this extends to a much broader definition of disability than those who might use wheelchairs. We are supported in the development of our strategic response to disability by a Disability Independent Advisory Group that is a proactive in giving us advice on how to address a host of issues.

101. A diversity directorate oversees the development of diversity policies and practices and ensures that strategic intention continues to be implemented practically.

102. Our strategic position on disability comes to life through 3 means

- Mandatory training
- Performance review
- Experience

103. The strength of our public order policing is that, as explained previously, the officers used to police protests are drawn from what most would regard as “normal” policing duties. All the officers on duty on 9 December would have undertaken diversity training either on entering the police service or through a mandatory online learning package. Among the subjects covered within this package is disability.

104. Additionally, every officer in the MPS has, as part of their annual Performance and Development Review (PDR), an assessment of their contribution towards policing diversity. This constant focus on the practical demonstration of their respect for diversity means that officers maintain a high level of awareness of all issues.

105. Lastly, in terms of officer awareness, is the fact that the single point of entry to the police service (i.e. operational constable) means that all officers are exposed to a broad range of communities and policing activities from their earliest days. Most carry this vast experience of life with them throughout their whole

careers, constantly using it to inform their decision-making processes. This means that officers who become involved in public order operations come with the skills required to deal effectively with all the people they meet.

106. Within training for public order policing, there is no additional input aimed at raising officers' awareness of the needs of specific disabilities. Focussing on, for example, wheelchair bound protestors would be far too narrow a focus. It is highly likely that among a crowd of many thousands there will be many people suffering from different types and different degrees of disability including some that would be apparent to officers and many that would not.

107. There is however, specific tactical and strategic training and guidance given—constables through to commanders—regarding the use of containment tactics dependent on their role at a public order event. This includes all them being trained to consider the needs of those who might be viewed as vulnerable, and I accept that a disabled person may become vulnerable in any situation but especially so when they find themselves in the middle of a violent protest. In a broader context, commanders are also trained to consider the welfare needs of the whole crowd.

108. There are no separate tactics that police could implement to prevent a disabled person from attacking or obstructing a police line that are different to those that may be used with able-bodied people. Essentially, officers will use the level of force that is appropriate within the law to counter the violence used against them, taking into consideration the medical implications of such action as described in my answer to the previous question.

109. The police must be able to respond to vulnerable people who are identified and who wish to leave protests. There is strong evidence captured in various command logs that indicate a clear intent by commanders and officers to support vulnerable people within the crowd and release them through the appropriate cordons as soon as possible.

110. I would also expect the organisers of a protest to consider the needs of disabled participants; failure to do so may contravene legislation in some circumstances. I expect organisers to be responsible for ensuring that the planned peaceful activities are open to all and that those requiring additional support are afforded this. Where peaceful protest turns into violence and disorder, it remains incumbent on the organisers to ensure that vulnerable people are suitably supported. I am unaware of the provisions made by ULU to cater for disabled participants.

Question 6

6. You described to us an “active advance” made by mounted officers on 24 November to disperse demonstrators, but told us that no such advance was used on 9 December. Can you comment on suggestions that mounted officers approached those contained in Parliament Square on 9 December at a fast pace and explain the purpose of the advance in this case, given that the demonstrators were already contained and so had nowhere to move to? You described the “active advance” as an ACPO-approved tactic. Is there any specific guidance on when and how it should be deployed?

111. Thank you for the opportunity to provide further clarification regarding the use of horses on 9 December. I have reviewed the transcript of our meeting on 14 December and disagree with the statement that you attribute to me in your letter dated 22 December. The record does not show me as saying that “no such[active] advance took place on 9 December” as you state.

112. What we are talking about here are degrees of engagement and differences in tactical intent.

113. As I said to you on 22 December, horses are used for a wide variety of reasons. The ACPO Manual on keeping the Peace gives 5 reasons why they may be used:

- To assist with monitoring the crowd dynamics and information/intelligence gathering
- To demonstrate that force is about to be/may be used

- To support cordons
- To escort marches/groups
- To assist with the dispersal of a crowd

114. On 24 November, the intent of the active advance was to disperse the crowd and clear an area in support of further dispersal. There were significant dangers to the officers who were deployed in that area and who were being attacked despite being largely defenceless. The use of horses was a tactic of last resort to prevent further extremes of violence and their deployment at that time was proportionate.

115. On 9 December, the circumstances and use of the horses were somewhat different. What we saw at Victoria Street, was a sustained attack on a police cordon with a presumed intent to attack vulnerable premises in the near vicinity or to find an alternate route to the Palace of Westminster. There was a need to support and reinforce the cordon of officers trying to hold that area.

116. Initially, the foot officers at that location were providing a simple cordon to prevent large numbers of protestors deviating from the agreed route, which was still open for them to follow. The cordon was intended to allow the filtering of small numbers of protestors into Victoria Street and away from Parliament Square. However between 1400 and 1500 this cordon became the focus for sustained attacks from a crowd described as 20 deep. It was the attack on this cordon in particular, that was one of the reasons containment was commenced.

117. During this period a line of officers was attacked with fencing; had hundreds of protestors surging at them, and were barraged with scaffolding bolts, fireworks, flares and other missiles clearly intended to cause them harm.

118. Had this police line failed to hold its ground, a large number of violent protestors would have had free run up Victoria Street and then spread into the heart of the nearby government infrastructure.

119. At about 1500 a unit of mounted officers were making their way to take a refreshment break when they passed through this area and observed the perilous state of the cordon. They took the decision to self-deploy to Victoria Street to support their colleagues on foot and formed up behind the police line to provide a “show of strength”. This is a recognised tactic and is contained in the ‘MPS Guide to Mounted Branch Tactics’.

120. After consultation with a Bronze commander it was decided that the horses were the only means of preventing the crowd from overwhelming the cordon officers. Prior to directing the horses into the crowd, the bronze commander observed that there was a large open space behind the protestors into which they could move. It was obvious that this group of protestors could have moved to the exit point at Whitehall but chose not to.

121. Initially, the mounted unit tried to conduct a “Passive Push” into the crowd from behind the officers which involved the horses moving at walking pace. This tactic is described, and guidance contained, in the Public Order Tactical Trainer’s Manual. This is a less dynamic tactic than the ‘Active Push [Advance]’ that would ordinarily be supported by the shield officers and possibly take place at a faster pace.

122. They did this twice, withdrawing and assessing the impact of their push on each occasion. The tactic provided only temporary relief and on each withdrawal, the crowd surged forward again to apply pressure to and attack the cordon. Finally, the mounted commander took his team around the side of the cordon and came across the front of the line of officers, to form an “Absolute Cordon”. This was a successful tactic and the pressure started to abate. However throughout this engagement, protestors continued to attack officers and horses alike and it was at this point that one of the most serious injuries to officers occurred when one of the mounted officers was pulled from his horse.

123. Such was the ferocity of attacks on the mounted officers that some of the evidence booklets completed after the event refer to the horses “shivering” with fear. It is testament to the bravery and skill of these officers that the line was held.

124. There are several sources of guidance in the use of horses, primary among these are:

- The ACPO Manual on Keeping the Peace
- The MPS Public Order Tactical Trainers Manual
- The MPS Guide to Mounted Branch Public Order Tactics.

24 January 2011

3. Letter from the Chair, to Rt Hon Theresa May MP, Home Secretary, 12 January 2011

The Joint Committee on Human Rights is conducting its scrutiny of the Police Reform and Social Responsibility Bill for compatibility with the human rights obligations of the UK. I would be grateful if you could provide us with some additional information.

(a) Protests in Parliament Square (Part 3)

Part 3 of the Bill proposes to repeal Sections 132–138, Serious Organised Crime and Police Act 2005 (SOCPA). These provisions place a prohibition on protests within around 1 mile of Parliament without prior notification and authorisation on application to the police. These provisions were repeatedly criticised by the predecessor JCHR, which criticised their introduction as a likely disproportionate interference with the right to freedom of assembly (Article 11 ECHR) and called for repeal of these provisions on a number of occasions.

The Government proposes to replace these provisions with new limitations on the means of protest permitted within Parliament Square Gardens and the surrounding areas. The Bill will create new “prohibited activities” in this area. These will include:

- Operating amplified noise equipment (including loudspeakers or loudhailers);
- Erecting, keeping erect or using a tent or another structure for the purposes of sleeping or staying in that area for any period;
- Placing, keeping or using any sleeping equipment (which includes any sleeping bag, mattress or other similar item) for the purposes of sleeping overnight in that area.
- Performing a prohibited activity—without reasonable excuse—after being directed to cease by an authorised officer (including police, employees of GLA or Westminster City Council) will be an offence. Any constable or authorised officer may seize or remove any offending items, including through the use of reasonable force.

These limitations must be justified as necessary to meet a legitimate aim and proportionate to the proposed interference with the rights protected by Articles 10 and 11 ECHR, the right to freedom of expression and assembly. The Explanatory Notes explain the Government’s view that these provisions are proportionate in very broad terms.

In relation to the proposals relating to tents and sleeping equipment, the Government relies on the decision of the High Court in the eviction of the “Democracy Village” protesters earlier in 2010. In that decision, the judge considered eviction was proportionate in light of the rights and freedoms of others to access the square, the protection of health and the prevention of crime. While this assessment was relevant to the decision in this case, we are concerned that this does not provide justification specific to these proposals, including an indication of why the blanket restriction on the use of tents and sleeping materials is appropriate, necessary and justified.

In relation to loud speakers and loud hailers, the Explanatory Notes take a similarly broad approach:

“The Government considers that the legitimate aim pursued these provisions is the protection of the rights and freedoms of others—partly those members of the public who should be able to enjoy Parliament Square peacefully, partly those members of the public who wish to protest either with or

without using a loudhailer and partly those members of the public who wish to go about their lawful business without disturbance.”

The predecessor JCHR accepted that some measures to control disturbances to parliamentary business might be justifiable but called on the Government to consider the proportionality of any measures.¹ **I would be grateful if you could provide further information:**

1. In light of the justification provided in the Explanatory Notes, why are these measures necessary and limited to the area of Parliament Square Gardens? (Please provide a further explanation of why the reasons for the restrictions in the Bill in the Explanatory Notes justify these specific provisions in the vicinity of Parliament Square, as opposed to anywhere else in the UK)

2. Why are existing measures in the Public Order Act 1986, including the ability of police to impose conditions on marches and demonstrations that become violent or which pose a serious threat to public order, inadequate to regulate protest around Parliament? Please give examples of circumstances when the existing powers have been applied and proved inadequate to protect against public disorder.

3. If there are specific reasons for regulating protest around Parliament, particularly in relation to the use of sleeping equipment or amplified noise equipment, we would be grateful for a fuller explanation of the Government’s views of these reasons and the proportionality of the proposed measures, including evidence to support those views;

4. We would be grateful if the Government would explain why it considers that the breadth of the discretion which it is proposed that GLA, Westminster City Council and the police will have in practice is appropriate and legally certain enough to satisfy the requirement that any restriction on protest be prescribed by law; and

5. Please explain why the Government considers that it is appropriate for employees of GLA and Westminster City Council to have the statutory power to use reasonable force against individual protesters in order to seize sleeping equipment or to remove any individual who appears to be breaching the prohibition on sleeping equipment or intends to breach those provisions.

6. We would be grateful if you could explain what safeguards will be in place to ensure that this power will be applied in a way which protects individuals from the disproportionate use of force and respects the individual right to life (Article 2 ECHR); and the right to physical integrity (as protected by Article 8 ECHR).

(b) Private prosecutions for crimes of universal jurisdiction (Clause 151)

Clause 151 removes the power of ‘private prosecutors’ to seek an arrest warrant from a Magistrates Court without first getting the consent of the DPP, in relation to selected offences alleged to have been committed overseas. The prosecution of the majority of these offences have implications for the implementation of international human rights obligations of the UK. For example, the UK has free-standing obligations in relation to the prosecution of offences of torture, under the UN Convention against Torture (UNCAT). Equally, the right to life requires the UK to take measures to provide for the prosecution of offences which endanger life. It is clear that public prosecutions – and prosecutions subject to the authorisation of the DPP – will remain possible. However, we have some concern that these provisions are a retrograde step in the UK’s ability to meet its international obligations. The right to bring private prosecutions has been described as “a useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders against the criminal law.”²

1 Seventh Report of 2008-09, Chapter 5:
<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/47/4708.htm>

2 *Gouriet v Union of Post Office Workers* [1977] 3 All ER 70.

We consider that where there is an international obligation on the UK to provide for prosecution, any proposed departure from the ordinary criminal procedure should be justified and fully explained by the Government by reference to evidence to support their reasons for action.

This issue is not addressed in the Explanatory Notes. However, during the second reading debate on this Bill in the House of Commons, you explained:

“The Bill addresses another important area of law that is not currently working—the whole issue of how we apply universal jurisdiction, which is a key principle of international justice that enables some of the gravest offences to be prosecuted here, regardless of the state in which the offences were committed.

[...]

We are not changing the law because a foreign country has put pressure on us. In relation to this law, the evidential requirement that is needed in order for somebody to go and get an arrest warrant is significantly less than that required for a successful prosecution.”

Prior to the Bill’s introduction, the Secretary of State for Justice said:

“[I]t is important...that universal jurisdiction cases should be proceeded with in this country only on the basis of solid evidence that is likely to lead to a successful prosecution—otherwise there is a risk of damaging our ability to help in conflict resolution or to pursue a coherent foreign policy.”³

At present, on laying of information in connection with an offence, Magistrates can issue a summons or issue a warrant for arrest in order to bring a person before the court to answer the allegation. Under the proposals, the DPP would have to consent before an arrest warrant were issued in any case brought by a person who was not a public prosecutor. Unfortunately, the Bill and the Explanatory Notes provide very little guidance on the test to be applied by the DPP or the procedure that will apply in order to secure the consent of the DPP in order to allow a prosecution to proceed.

7. We would be grateful if you could provide us with a full explanation of the Government’s view that a departure from ordinary criminal procedure is required in relation to the offences covered by Clause 151. In particular:

- (a) Please explain what purpose the proposed restriction on the power of the magistrate to issue a warrant will serve, and provide the reasons for the Government’s view that the proposed restriction is proportionate and justified.
- (b) In light of the decision to introduce a separate procedure relating to offences of universal jurisdiction, we would be grateful to have a further explanation of the decision that these provisions are necessary now, rather than when the offences were incorporated into domestic law.
- (c) Please provide any evidence relating to the Government’s position, including any statistics on the use of the power of arrest in connection with crimes of universal jurisdiction or details of any cases where the Government considers that the existing magistrates’ power has been used inappropriately.

8. Please provide details on how an applicant will secure the consent of DPP in an ordinary case, including details of any safeguards to ensure that the decision of the DPP is taken in a timely way, in order to ensure that any planned prosecution is able to proceed without delay.

During the last parliamentary session, our predecessor Committee conducted an inquiry on the application of international crimes and international criminal law in the UK. The inquiry focused on gaps and

³ HC Deb 22 July 2010 c47WS; Ministry of Justice, News Release, *New rules of universal jurisdiction*, 22 July 2010.

inconsistencies in the implementation of these offences in UK law. Taking evidence from the former DPP, Sir Ken MacDonald, he asked whether the prosecution of offences pursuant to the International Criminal Court Act 2001 (ICC Act) should be subject to the supervision of the DPP rather than the Attorney General. These offences are not subject to universal jurisdiction, but extraterritorial jurisdiction based on the residence of a defendant in the UK. Currently, “proceedings” may not be “instituted” in relation to the offences in the ICC Act and in s1, Geneva Conventions Act 1957 (after amendments by the ICC Act in 2001) without the consent of the Attorney General (Section 53, ICC Act; Section 70, 1957 Act). The former DPP said:

“My view while I was DPP was that all decisions about prosecutions should be taken by an independent prosecuting authority, but that is a slightly broader point. At the moment, the Attorney General’s consent is required for these offences, no doubt because of their international elements. For my own part, I would support a regime in which consent is required from the Director of Public Prosecutions rather than the Attorney General.”

9. I would be grateful if you could explain the Government’s view on the continuing role of the Attorney General in relation to the prosecution of international crimes in the UK.

10. Please explain whether the Government has considered whether to use this Bill to rationalise the role of the DPP in relation to these offences, including by ensuring that any prosecution decisions in relation to international crimes are taken by the DPP acting as the UK independent prosecuting authority.

11. If not, we would be grateful if you could explain the Government’s view whether this would be appropriate or not.

It would be helpful if we could receive your reply by 28 January 2011. I would also be grateful if your officials could provide the Committee secretariat with a copy of your response in Word format, to aid publication.

I look forward to hearing from you.

12 January 2011

4. Letter to the Chair, from Rt Hon Nick Herbert MP, Minister of State for Policing and Criminal Justice, Home Office, January 2011

Thank you for the letter of 12 January to the Home Secretary regarding the Police Reform and Social Responsibility Bill. As the Minister responsible for the Bill, the Home Secretary has asked me to reply. I am grateful for the points you have raised and have responded to each in turn.

Parliament Square

1. Why are these measures necessary and limited to the area of Parliament Square Gardens?

The Government considers that these measures are necessary in the area of Parliament Square Garden because of the unique characteristics of this area. Parliament Square Garden is a World Heritage Site, situated directly opposite the Houses of Parliament, Westminster Abbey and the Supreme Court. Visitors and members of the public have varying reasons to wish to visit this site – whether as tourists, to see the Houses of Parliament and Big Ben; as a cultural experience, by visiting a World Heritage Site; as an individual interested in the democratic process, by seeing where Parliament is situated; or as someone who wants to express their point of view within sight and earshot of Parliament.

This means that we need to balance competing and legitimate needs of members of the public with members of Parliament who need to be able to carry out their daily work.

As this is a popular place, it is reasonable to ensure a level of control over the use of this space in order to ensure that no one particular person or group of persons can take over the area to the detriment of others.

For example, at present, there is an ongoing encampment in Parliament Square that many people find unsightly. This has the ability to spoil the public enjoyment of this unique location and even deter people from visiting this unique spot.

The Greater London Authority (GLA) has a statutory duty to keep Parliament Square Garden in good order and condition. It has powers to make such byelaws, to be observed by persons using Parliament Square Garden, as it considers necessary for securing the proper management of Parliament Square Garden, the preservation of order and the prevention of abuses there. There is evidence to show that byelaws have been breached. The Government's measures support the GLA in maintaining Parliament Square Garden's recognised status.

2. Why are existing measures in the Public Order Act 1986, including the ability of police to impose conditions on marches and demonstrations that become violent or which pose a serious threat to public order, inadequate to regulate protest around Parliament?

The Government does not consider that the existing measures in sections 12 and 14 of the Public Order Act are inadequate to regulate protest around Parliament. The Government agrees with the predecessor Committee (*JCHR 7th Report, 2008-09 Demonstrating Respect for Rights, paragraph 137*) that protest around Parliament should be governed by the Public Order Act, in particular through police powers to impose conditions under section 14. I am not able to provide examples of when Section 14 has been inadequate to protect against public disorder in the area around Parliament as it was specifically disapplied when sections 132 to 138 of the Serious Organised Crime and Police Act (SOCPA) came into force. On repeal of SOCPA, section 14 will apply to demonstrations in the area around Parliament.

SOCPA powers have proved inadequate to deal with public disorder, which is why the Government is repealing them—recent examples include the Tamil demonstrations in 2009.

The byelaws in place, to secure the proper management of Parliament Square Garden, were shown to be unenforceable during the occupation of Parliament Square Garden by the Democracy Village encampment.

The Government's proposals are intended to prevent encampments and other disruptive activity on Parliament Square. The provisions apply to everyone—not just protestors. The area around Parliament is understandably one of the most protested areas in the country and space is limited for those wishing to protest or simply enjoy the amenities of the Square. The Government is seeking to preserve that space for everyone.

It is also important to note that the predecessor JCHR recognised there may be something different required in relation to Parliament Square, something more than the Public Order Act can currently provide:

“We recommend that the Home Office, the police, Westminster City Council and the parliamentary authorities should develop alternative arrangements to manage noise levels from protest in Parliament Square, including consideration of whether legislative change is necessary and whether maximum noise levels should be imposed and enforced effectively.” (JCHR 7th Report, 2008-09 Demonstrating Respect for Rights, paragraph 133)

The conditions that can be imposed in relation to public assemblies (i.e. static demonstrations) under section 14 of the Public Order Act are limited to those about the place of the assembly, the maximum duration of the assembly and the maximum number of participants. The tests for imposing conditions include the need to prevent serious public disorder, serious disruption to the life of the community and serious damage to property.

Section 14 does not give the police specific powers to limit encampments or noise equipment for public assemblies (irrespective of whether such encampments are related to protest or not) and, therefore, it is not possible to address these current issues in Parliament Square by using only the existing powers under the 1986 Act.

3. Explanation of reasons and proportionality of proposed measures, particularly in relation to the use of sleeping equipment or amplified noise equipment.

The Government considers that the unique situation of Parliament, as described above, means that it is justified to have a special regime in place for this small area. The evidence that the predecessor Committee heard, both from members of Parliament and those who work in the Houses of Parliament, about the disruption that encampments outside Parliament have caused to the work of Parliament (JCHR 7th Report, 2008-09 *Demonstrating Respect for Rights* Chapter 5), provides further justification. It is important to stress that this regime applies to all and not just to protestors. It is accordingly focused on promoting the use of Parliament Square and is not about regulating protest per se. The Government wants to ensure that the area in which the new regime applies is as small as possible so that it targets the problem of the unique situation of Parliament Square, without extending any further than necessary.

The Committee will be aware of both the tents and loudhailer issues from its daily work in Parliament. The Committee will therefore be aware that Parliament Square Garden is not a suitable area to be used for any sort of encampment and that the Democracy Village encampment caused significant damage to the Garden that has required considerable remedial works, during which time nobody could enjoy this unique space.

The Committee will also be aware that Mr Justice Williams in *Mayor of London –v- Rebecca Hall and Others* [2010] EWHC 1613 held, at paragraph 48, that “*I am satisfied that PSG [Parliament Square Garden] is wholly unsuited for camping; there is no sanitation [...] no running water [...] no public toilets open 24 hours daily in the immediate area...no safe means for cooking; a camp site is wholly incompatible with the location; it would deprive the public of the use of the total area of well-maintained lawn and gardens at the heart of British democracy and government and a world renowned WHS [World Heritage Site]*”.

I understand that the Metropolitan Police Service is no longer authorising demonstrations on the footway opposite Carriage Gates due to concerns about the limited space available. In effect, people who wish to demonstrate here are not able to do so due to the presence of the encampment.

The predecessor Committee recognised the concerns about the long term presence of encampments (JCHR 7th Report, 2008-09 *Demonstrating Respect for Rights* paragraph 134), “*We have heard no good argument in favour of introducing an arbitrary limit on the duration of protests around Parliament, although we note the potential security concerns associated with the existence of the camp [...]. We are also concerned to ensure that the existence of long-term protests does not prevent or deter other people from protesting in Parliament Square.*”

The current encampment is preventing others from exercising their right to protest on the footways around Parliament Square Garden. Additionally, Mr Justice Williams in *Mayor of London –v- Rebecca Hall and Others* [2010] EWHC 1613 held, at paragraph 133 “*I am satisfied [...] the use of Parliament Square Garden by tourists and visitors, by local workers by those who want to take advantage of its world renowned setting and by others who want to protest lawfully, is being prevented.*” Prohibiting tents and other sleeping equipment in this limited area will ensure that everyone has equal rights to enjoy that space.

The Government takes the view that there is no legitimate reason why Parliament Square Garden should become a campsite and that the restrictions that apply to anyone (not just protestors) erecting tents or having sleeping equipment are a proportionate manner in which to ensure that it does not become a campsite. Limiting the period for which anyone could erect tents or use sleeping equipment would not solve this since one person could simply replace another person, leading to a permanent encampment manned by different people. The damage to the Garden would remain, as would the problem of the area then being inaccessible to other members of the public.

The Government does not consider that this is a disproportionate interference with either Article 10 or 11, because the restriction in place for the legitimate aims of “the protection of the rights and freedoms of others” to access Parliament Square Garden, but also the protection of health and the prevention of crime (as noted in paragraph 133 of the HC judgment in *Hall and Others*). The Government considers that, although some individuals or groups may wish to use tents or sleeping equipment as part of a protest, the limitation on this should not prevent the protest itself. On that basis, although it is accepted that it may interfere with Article 10 and 11 rights, the Government considers that, because of the very small geographical area in which this takes place and the fact that this provision does not prevent protest itself (rather it perhaps limits the way in which a protest can be carried out), this is proportionate to the legitimate aims.

In relation to the loudspeakers and other amplified noise equipment, the Government considers that the restrictions along the lines proposed are required in order to ensure that the rights and freedoms of others are adequately protected. The Government is concerned for members of the public who should be able to enjoy Parliament Square Garden peacefully; members of the public who wish to demonstrate or protest, either with or without using a loudhailer; and members of the public who wish to go about their lawful business without disturbance, including Members of Parliament. The Government accepts that this restriction can go more directly to individuals' Article 10 and 11 rights as there is a stronger argument to say that using a loudhailer, or something similar, is more commonly a scenario used in exercising Article 10 and 11 rights than setting up a tent. With this in mind, as the Government has no wish to prevent protest around Parliament, the Government has set up an authorisation scheme which enables loudhailers and the like to be authorised. This is considered necessary in order to ensure that that one or two individuals cannot usurp the rights of many others and it does not seem disproportionate for authorities to place limits on duration of use of a loudhailer. The details of this authorisation scheme are set out on the face of the Bill in order to ensure that this is clear and accessible to all.

4. We would be grateful if the Government would explain why it considers that the breadth of the discretion which it is proposed that GLA, Westminster City Council and the police will have in practice is appropriate and legally certain enough to satisfy the requirement that any restriction on protest be prescribed by law.

The Government is satisfied that the prohibited activities are clearly set out on the face of the Bill and readily accessible to anyone who may be in the controlled area. In addition, the Government considers it is more proportionate to ensure that, before anyone can commit an offence under these provisions, they must first be directed to remove the tent or stop using the loudhailer. This means that the person, before committing the offence, is warned that what they are doing is prohibited and therefore has the opportunity to stop doing it before any criminal liability attaches. The Government believes this ensures that the offences are both proportionate and enforceable, as they require a police officer or authorised officer of the Greater London Authority (GLA) or Westminster City Council (WCC) to be present at the scene. It also ensures that any particular circumstances of the individual can be taken into consideration, as appropriate in two ways – firstly, it is not mandatory for the authorised officer to issue a direction and, secondly, there is a defence of “reasonable excuse” for failure to comply. The Government considers it appropriate for the provisions to be structured in this way to ensure that they are properly enforced.

5. Statutory power to use reasonable force for employees of the GLA and Westminster City Council to seize sleeping equipment or to remove any individual who appears to be breaching the prohibition on sleeping equipment or intends to breach those provisions.

The power to use reasonable force attaches only to the power of seizure—there is not a power in the provisions for GLA or Westminster City Council employees to remove an individual (whether using force or not). The Government considers that a power to use reasonable force is necessary and proportionate in order to ensure that the seizure powers are actually enforceable. Otherwise, it is unlikely that the seizure powers could be used unless the particular items were left unattended. The Government considers that it is right for these powers to be available to all those who are able to issue a direction, otherwise this would require more than one authority to be present for the duration of the direction and any seizure which seems unnecessary, costly and bureaucratic.

6. Safeguards to ensure that this power will be applied in a way which protects individuals from the disproportionate use of force and respects the individual right to life and the right to physical integrity.

This power is only available when exercising a power of seizure. In turn, the power of seizure is only available in relation to an item which appears to have been used (or is being used) in connection with an offence under clause 141. The offence under clause 141 can only be committed if a person, without reasonable excuse, fails to comply with a direction given under clause 141. In other words, there are several steps that must be taken before any power to use reasonable force can be used. Therefore, the legislation itself ensures that this power can only be used in limited circumstances and protects against the disproportionate use of the power.

As for the disproportionate use of force, there are two safeguards against this in the provision itself. Firstly the provision makes it clear that the power is to use reasonable force; any disproportionate force is very unlikely to be “reasonable” and therefore not authorised by this provision. Secondly, the provisions make it clear that force can only be used if necessary. Again, this safeguards against the arbitrary use of force. All those who can use the power must abide by the safeguards on the face of the Bill and otherwise risk legal claims for an unlawful use of force. In addition, all those authorised to use the power are public authorities under section 6 of the HRA 1998 and are therefore obliged to act in a manner which is compatible with Convention rights.

On this basis, the Government is satisfied that the way in which the provisions are drafted mean that the provisions themselves guard against any disproportionate interference with both Article 2 and Article 8.

Arrest warrants for universal jurisdiction offences

7. Full explanation of the Government’s view that a departure from ordinary criminal procedure is required in relation to the offences covered by Clause 151. In particular:

- (a) Purpose of the proposed restriction on the power of the magistrate to issue a warrant and reasons that the proposed restriction is proportionate and justified.**

The proposed departure from the usual procedure is modest, affecting a very few cases of crimes under the law of England and Wales committed elsewhere. Unlike the proposal canvassed by the previous Government, it does not abrogate the right of private prosecution in universal jurisdiction cases—private prosecutors will still be able to apply for the issue of a warrant. Moreover, the power of the Police and Crown Prosecution Service (CPS) to investigate and prosecute alleged offences is entirely unaffected.

The Government considers it unsatisfactory that a warrant might be issued in a case where there is no realistic prospect of a viable prosecution taking place, especially in relation to a grave crime alleged to have been committed outside the United Kingdom by a person whose sole connection with this country might be his presence here as a visitor. The proposed change is designed to obviate that risk and is proportionate.

- (b) Explanation of the decision that these provisions are necessary now, rather than when the offences were incorporated into domestic law.**

The problem is that the test applied by the court is much less onerous than that applied by the CPS in deciding whether a case should proceed. It was only after a warrant was issued in a universal jurisdiction case, some years ago, that the implications of that discrepancy became apparent.

- (c) Evidence relating to the Government’s position, including any statistics on the use of the power of arrest in connection with crimes of universal jurisdiction or details of any cases where the Government considers that the existing magistrates’ power has been used inappropriately.**

Information about applications of this kind is not recorded, but staff at the City of Westminster Magistrates’ Court, where such applications are generally heard, are aware of ten applications for arrest warrants in respect of universal jurisdiction offences in the last ten years. It is public knowledge that two of these applications were granted. However, the Government’s argument is not about the number of warrants that have been issued, nor that warrants have been issued improperly. The Government’s concern is that warrants are capable of being issued in respect of grave offences in circumstances where there is no real prospect that a viable prosecution will ensue.

8. How an applicant will secure the consent of DPP in an ordinary case and safeguards to ensure that the decision of the DPP is taken in a timely way.

The arrangements for securing consent will be a matter for the independent DPP, who could be expected to be mindful of time constraints in making the decision.

9. The continuing role of the Attorney General in relation to the prosecution of international crimes in the UK.

The Government does not currently propose to change the requirement for the Attorney General's consent to prosecutions for certain offences under our law which are committed elsewhere. When granting consent to any prosecution, it is the well-established constitutional position that the Attorney acts independently of Government, applying prosecutorial principles. In cases where he decides to seek the views of Ministerial colleagues on relevant public interest considerations that may legitimately inform his consent decision, such as (if this arose in an individual case) the implications for national security of prosecuting or not prosecuting, the decision is and remains his alone. These are extremely grave crimes of international importance. As a professional lawyer with a constitutional role at the heart of Government in maintaining the rule of law, the Attorney General is well placed to take these decisions with propriety.

10 and 11. Use of this Bill to rationalise the role of the DPP in relation to these offences, ensuring that any prosecution decisions in relation to international crimes are taken by the DPP acting as the UK independent prosecuting authority.

For the reasons set out above, the Government does not consider that it would be appropriate to transfer the consent function in relation to prosecution of these offences to the DPP.

I hope this response provides the further information required by the Committee for consideration of the Bill. Should you have any further queries, please do not hesitate to contact me.

January 2011

List of Reports from the Committee during the current Parliament

Session 2010-11

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684

List of Reports from the Committee during the last Session of Parliament

Session 2009-10

First Report	Any of our business? Human rights and the UK private sector	HL Paper 5/HC 64
Second Report	Work of the Committee in 2008–09	HL Paper 20/HC 185
Third Report	Legislative Scrutiny: Financial Services Bill and the Pre-Budget Report	HL Paper 184/HC 184
Fourth Report	Legislative Scrutiny: Constitutional Reform and Governance Bill; Video Recordings Bill	HL Paper 33/HC 249
Fifth Report	Legislative Scrutiny: Digital Economy Bill	HL Paper 44/HC 327
Sixth Report	Demonstrating Respect for Rights? Follow Up: Government Response to the Committee's Twenty-second Report of Session 2008–09	HL Paper 45/ HC 328
Seventh Report	Allegation of Contempt: Mr Trevor Phillips	HL Paper 56/HC 371
Eighth Report	Legislative Scrutiny: Children, Schools and Families	HL Paper 57/HC 369

	Bill; Other Bills	
Ninth Report	Counter-Terrorism Policy and Human Rights (Sixteenth Report): Annual Renewal of Control Orders Legislation 2010	HL Paper 64/HC 395
Tenth Report	Children’s Rights: Government Response to the Committee’s Twenty-fifth Report of Session 2008–09	HL Paper 65/HC 400
Eleventh Report	Any of our business? Government Response to the Committee’s First Report of Session 2009–10	HL Paper 66/HC 401
Twelfth Report	Legislative Scrutiny: Crime and Security Bill; Personal Care at Home Bill; Children, Schools and Families Bill	HL Paper 67/HC 402
Thirteenth Report	Equality and Human Rights Commission	HL Paper 72/HC 183
Fourteenth Report	Legislative Scrutiny: Equality Bill (second report); Digital Economy Bill	HL Paper 73/HC 425
Fifteenth Report	Enhancing Parliament’s Role in Relation to Human Rights Judgments	HL Paper 85/HC 455
Sixteenth Report	Counter-Terrorism Policy and Human Rights (Seventeenth Report): Bringing Human Rights Back In	HL Paper 86/HC 111