



BRIEFING PAPER

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Police powers: protests

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Summary

This briefing provides information for England and Wales only

This briefing paper is part of a series which discuss police powers in England and Wales. The series is introduced by the briefing [police powers: an introduction](#).

Current Law

The right to peacefully protest is protected under the European Convention of Human Rights. Articles 10 and 11 of the Convention protect an individual's right to freedom of expression and assembly. Together they safeguard the right to peaceful protest. However, these rights are not absolute, and the state can implement laws which restrict the right to protest to maintain public order.

In the UK several pieces of legislation provide a framework for the policing of protests. The [Public Order Act 1986](#) provides the police with powers to place restrictions on protests and, in some cases, prohibit those which threaten to cause serious disruption to public order. There is also an array of criminal offences which could apply to protestors including aggravated trespass and obstruction of a highway.

In addition to the relevant criminal law there are civil remedies that can be used to disrupt protests. Provisions in the [Protection from Harassment Act 1997](#) allow individuals and organisations to apply for civil injunctions to prevent protestors from demonstrating in a way which causes harm or harassment.

Reform to police tactics in the early 2010s

Following criticism of the police's approach at the G20 protests in 2009 there was reform of policing tactics at protests. The police were criticised for their use of force and for not facilitating constructive dialogue with the G20 protestors. Partly in response to this criticism, the current police guidance emphasises that officers should start from a presumption of peaceful protests. It advocates for the use of force only as a last resort and advises officers to maintain open communication with protestors before, during and after a demonstration.

Debate about the future of policing protests

Recent protests have raised some questions about the current framework for policing demonstrations. Some have argued that police powers against protestors should be strengthened. Stronger legislation, it is argued, could enable the police to intervene more robustly against peaceful protests that cause lengthy and serious disruption.

Others have questioned whether legislation which seeks to restrict harmful speech (harassment and offensive language) is strong enough. When and how the police should intervene against protestors who use offensive language has been controversial in the past. Many civil rights groups argue that the use of harassment legislation against protestors presents a risk to the freedom of expression. Others argue that when protestors use offensive language, they can cause significant distress to their target and civil and criminal action should be taken against them.

1. Legislation

The right to peacefully protest is a corner stone of a liberal democratic society. In the UK this right is protected under the European Convention of Human Rights. However, the right is not absolute, and restrictions can be imposed on protests in order to maintain public order. The [Public Order Act 1986](#) (as amended) is the main piece of legislation that provides the police with powers to restrict protests. However, there are many more pieces of legislation which contain provisions associated with protest.

1.1 Human rights

The right to freedom of expression and assembly are fundamental aspects of a liberal democratic society. These rights ensure that people have the freedom to peacefully protest. Articles 10 and 11 of the European Convention of Human Rights (ECHR) provide for these rights.

Article 10 of the ECHR provides for the right to “freedom of expression”. It states that individuals have:

freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.¹

Article 11 provides for the “freedom of peaceful assembly and freedom of association with others”.²

The UK is a signatory of the ECHR and therefore obliged to ensure that ECHR rights are protected. UK citizens can take cases to the European Court of Human Rights if they think their convention rights have been breached and they have exhausted any potential domestic remedies.

The [Human Rights Act 1998](#) gave domestic effect to the ECHR. This means that individuals can bring claims based on breaches of Convention rights before the UK courts. [Schedule 1](#) of the Act sets out the Articles of the Convention. [Section 2](#) of the Act requires UK courts to ‘take account’ of judgments of the European Court of Human Rights (ECtHR) when considering a claim concerning Convention rights. However, the UK courts are not bound to follow judgments of the ECtHR.

The rights to freedom of expression and assembly guaranteed by Articles 10 and 11 are ‘qualified rights’ rather than ‘absolute rights’. This means that interference with these rights may be justified if the basis for doing so is clearly set out by the law; it is necessary in pursuit of a legitimate aim; and the interference is proportionate to that aim. Legitimate grounds for restricting these rights include national security or public safety; the prevention of crime or disorder; and, the protection of the rights and freedoms of others.

Police powers to restrict protests must therefore be exercised in a way that is proportionate to one of these aims in order to be compatible

¹ [European Convention on Human Rights](#), Article 10

² *Ibid*, Article 11

with the ECHR. This includes a positive duty to protect those exercising their right to protest peacefully.³

1.2 Police powers

[Part II](#) of *Public Order Act 1986* provides police with powers to manage protests. The Act classifies two types of protest: a 'public procession' and a 'public assembly'.

A 'public procession' is a **protest march** intended to demonstrate support or opposition for a particular view, publicise a campaign or commemorate an event.⁴ Processions that are "commonly or customarily" held in a certain area are excluded from the definition.

A 'public assembly' is a gathering of "two or more people that is wholly or partly open to the air" (essentially, gatherings which are outside).⁵ This briefing will use the term **static protest** when referring to the concept of 'public assembly' as defined in the *Public Order Act 1986*.⁶

Police powers associated with protest marches and static protests are similar. However, there are stronger powers to police protest marches. The 1986 Act provides the police with three powers:

- It requires individuals to notify the police when they are planning a protest march.
- It allows the police to request a protest march is prohibited if they have a serious public order concern. The police have more limited powers to request certain types of static protests are prohibited.
- It allows the police to impose conditions on any protests they suspect will cause serious damage to property, serious disruption or will incite unlawful behaviour.

Notifications

[Section 11](#) of the *Public Order Act 1986* requires those organising a protest march to notify the police. The notice must specify the date, time and route of the proposed march and provide the police with the details of those who are organising it. The 1986 Act requires the notice to be given six days prior to the march unless it is "not reasonably practicable".⁷

There is no requirement to notify the police of plans to conduct a static protest.

It is an offence to organise (*not to take part in*) a protest march without notifying the police. It is also an offence for the organiser to change the route, date and time of a march once the police have been notified. Those convicted of these offences can be fined.⁸

³ Ibid

⁴ s11(1), *Public Order Act 1986*

⁵ s16, *Public Order Act 1986* [as amended by s57, *Anti-social Behaviour Act 2003*]

⁶ The term static protest is used frequently in official guidance documents. The consistent use of the term 'static protest' is used in this paper to avoid confusion.

⁷ s11(2) and s11(6), *Public Order Act 1986*

⁸ s11(7) and s11(10), *Public Order Act 1986*

The government has provided some advice on notifying the police of a protest march on their website [Protests and marches: letting the police know](#). Most police forces also provide information on their websites.

Prohibiting protests

The police can request that the relevant local authority ban a planned protest march. They can only do so if they have a serious concern about their ability to safely police the proposed march.⁹ Local authorities must seek the consent of the Home Secretary before prohibiting a march.¹⁰ In London, the Metropolitan Police (and City of London Police) must apply directly to the Home Secretary for a march to be prohibited.¹¹

It is an offence to organise (*not to take part in*) a protest march that has been prohibited. Those convicted of this offence can be fined or imprisoned.

Powers in practice: Prohibiting protest marches

The Home Office signed 12 'banning orders' on protest marches between 2005 and 2012.¹² Of these 10 were associated with far-right political groups (The English Defence League and the National Front) and 2 were associated with anti-capitalist and anti-globalisation groups. In 2011, in a high-profile case, the then Home Secretary Theresa May agreed to ban a planned march of the English Defence League (EDL) in Tower Hamlets.¹³ There had been concerns about the 'public order implications' of the EDL march and the demonstrations that were planned to oppose it.¹⁴

The Home Office has not received a request to ban a march since the proposed protest in Tower Hamlets in 2011.¹⁵

Prohibiting static protests

Static protests (unlike protest marches) cannot be prohibited because of a general concern for public order. The police can only request a static protest is banned if they have a serious public order concern **and** they think it is likely to be held on private land without the permission of the land's owner.¹⁶ The police have powers to stop and search those they believe are on their way to a 'static protest' which has been prohibited.¹⁷

Conditions

The police can issue conditions on planned or ongoing protests to maintain public order. Their powers to issue conditions on protest marches are more wide ranging than those for static protests.

⁹ s13(1), *Public Order Act 1986*

¹⁰ s13(2), *Public Order Act 1986*

¹¹ S13(4), *Public Order Act 1986*

¹² Home Office, [FOI release: Applications for a banning order under section 12 of the Public Order Act 1986](#), 6 June 2014

¹³ Home Office, Home Secretary agrees march ban, 21 August 2011

¹⁴ Ibid

¹⁵ Home Office, Freedom of information request reference: 53776, 14 June 2019 [information provided upon request]

¹⁶ s14A, *Public Order Act 1986* [as inserted by s70, *Criminal Justice and Public Order Act 1994*]

¹⁷ s14C, *Public Order Act 1986* [as inserted by s71, *Criminal Justice and Public Order Act 1994*]

[Section 12](#) of the *Public Order Act 1986* allows senior police officers to issue a direction to individuals taking part in a protest march. These directions can impose *any* condition on the protest march that is “necessary to prevent disorder, damage, disruption or intimidation”. This could include proscribing what route the march must take.¹⁸

[Section 14](#) of the *Public Order Act 1986* allows senior police officers to issue directions to persons taking part in, or planning, a static protest. Whilst the police can impose *any condition necessary* on a protest march, they can only impose conditions on static protests which specify where a protest can take place, for how long it can last and how many people can be involved.¹⁹

Senior police officers can only issue a direction on a protest under the *Public Order Act 1986* if they “reasonably believe”:

- the protest may result in serious public disorder, serious damage to property or the serious disruption to the life of the community; or,
- the purpose of the protest is to intimidate others and compel them “not to do an act they have a right to do, or to do an act they have a right not to do.”²⁰

Protestors who do not comply with a police direction are committing an offence. Before arresting somebody for such an offence, the police should inform them they are in breach of the condition and give them an opportunity to follow it. Those convicted of not complying with a condition can be fined or imprisoned.²¹

Powers in practice: Conditions on protests

The Metropolitan Police issued numerous conditions on the ‘Extinction Rebellion’ (XR) protests that took place across central London in April 2019. The XR demonstrations were calling for the Government to take stronger action to combat climate change. The protests were non-violent but caused disruption to transport networks. Protestors gathered across central London. The Metropolitan Police issued several conditions under section 14 of the *Public Order Act 1986* requiring the protestors to restrict their activity to Marble Arch. The police said that the orders were necessary to “prevent ongoing serious disruptions to communities”.²² During the protest the police arrested over a thousand people, many of those arrested have since been charged. Criminal trials took place at London Magistrates Court over the summer of 2019.²³

The use of section 14 powers at a similar XR protests in October 2019 was subsequently challenged in the courts. This legal challenge and High Court’s findings are discussed in section 5.1 of this briefing.

1.3 Offences

There is no *specific offence* of conducting an unlawful protest. However, there are offences, as outlined above, of failing to comply with a condition or order issued in association with a protest. Individuals may commit another criminal offence committed whilst participating in

¹⁸ s12(1), *Public Order Act 1986*

¹⁹ s14(1), *Public Order Act 1986*

²⁰ s12(1) and s14(1), *Public Order Act 1986*

²¹ s12(10) and s14(10), *Public Order Act 1986*

²² Metropolitan Police, [Update: Extinction Rebellion - arrests & condition extension](#), 18 April 2019

²³ *BBC News*, [First Extinction Rebellion protesters appear in court](#), 12 July

a protest. Offences which are often associated with protest include 'public order offences', harassment (for which there are also civil remedies), aggravated trespass, obstruction of a highway and criminal damage.

Public order offences

Public order offences criminalise the use of violence and intimidation. They range in seriousness with the more serious offences punishable by lengthy prison sentences.

Most public order offences are found in [Part I](#) of the *Public Order Act 1986*. These include, for example, participating in a riot and using or displaying threatening or abusive words.²⁴

A public order offence can be considered a 'hate crime' if it can be shown that the offender was motivated by prejudice towards certain protected characteristics.²⁵ There are also specific offences in [Part III](#) and [3A](#) of the *Public Order Act 1986* associated with 'stirring up' racial or religious hatred and hatred on the grounds of sexual orientation.²⁶

The Crown Prosecution Service (CPS) has issued some general guidance on [offences during protest, demonstrations and campaigns](#) which discusses public order offences, harassment offences and communications offences. The CPS has also published specific guidance on [public order offences](#).

Harassment

In 2005 the (then) Labour Government strengthened both criminal and civil provisions in the *Protection from Harassment Act 1997* (PHA) to better facilitate its use against protestors (see [section 1.4](#) below for an explanation of the civil provisions in the PHA). The Labour Government explicitly stated that they intended the legislation to be used in response to protestors demonstrating outside animal testing facilities.²⁷

The Labour Government had already passed legislation allowing the police to issue directions to those harassing someone at their home. This was designed to prevent protestors demonstrating outside the homes of people who worked at animal testing facilities.²⁸

The *Serious Organised Crime and Police Act 2005* (SOCAP):

- made harassing two or more people to persuade them "not to do what they are entitled or required to do; or to do something that they are under no obligation to do" a criminal offence.²⁹

²⁴ s1 and s5, *Public Order Act 1986*

²⁵ See CPS guidance: [Racist and Religious Hate Crime, Homophobic, Biphobic and Transphobic Hate Crime, Disability Hate Crime and other crimes against Disabled people](#) [last accessed 31/05/19]

²⁶ Part 3A, *Public Order Act 1986* as inserted by the *Racial and Religious Hatred Act 2006* and amended by the *Criminal Justice and Immigration Act 2008*

²⁷ HM Govt, [Explanatory notes: Serious Organised Crime and Police Act 2005](#), paragraphs 45 & 302-304

²⁸ s42, *Criminal Justice and Police Act 2001*

²⁹ s1A, *Protection from Harassment Act 1997* [see also s2(1), *Protection from Harassment Act 1997*] as amended by the *Serious Organised Crime Act 2005*

- made harassing someone outside their home a criminal offence.³⁰
- gave the High Court the power to serve anyone convicted of or arrested for the offence of ‘harassing two or more people...’ with an injunction restricting their ability to take part in future protest.³¹
- Bought these new forms of harassment under the civil remedy scheme that already existed in the PHA (see section 1.4 below).

Obstructing a highway

There is a minor offence of ‘obstructing a highway’ which carries a penalty of a fine.³² [Section 137](#) of the *Highways Act 1980* creates an offence of “wilfully obstructing the free passage along a highway” without “lawful authority or excuse”.³³

The definition of “free passage” and “lawful authority or excuse” have been tested in the courts. There is an established precedent that a small obstruction of a highway cannot be considered an obstruction of “free passage”.³⁴ This allows for protestors to lawfully obstruct part of a highway, but only if traffic can continue to move along the road.

Several cases have established that the right to peaceful protest cannot be considered a “lawful authority” to obstruct a highway.³⁵ Therefore enforcing section 137 of the *Highways Act 1980* is seen as a justifiable encroachment on Article 10 and 11 rights.

Aggravated trespass

Trespass is not normally a criminal offence. Instead it tends to be a civil issue. However, there is a criminal offence of ‘aggravated trespass’. Someone who trespasses on land, intimidates those lawfully on the land or does anything to obstruct “lawful activity” could be committing the offence.³⁶ A person guilty of this offence can be fined or imprisoned.³⁷

The police can also issue a direction to those they “reasonably believe” are committing or intending to commit aggravated trespass. Failure to comply with such a direction is also an offence. Upon conviction the penalty is a fine or imprisonment.³⁸

Powers in practice: Arrest for aggravated trespass

The police have used their powers associated with aggravated trespass to disrupt direct action protests. For example, in 2013 anti-fracking campaigners, among them the Green Party MP Caroline Lucas, staged a ‘sit in’ at the offices of a company associated with fracking. Some demonstrators glued themselves to the doors of the office. Six protestors, including Ms Lucas, were arrested for aggravated trespass.³⁹

³⁰ s126, *Serious Organised Crime and Police Act 2005*

³¹ s125(5), *Serious Organised Crime and Police Act 2005*

³² *Ibid*

³³ s137(1), *Highways Act 1980*

³⁴ *Ibid*

³⁵ See: 1999 WL 477607 and [\[2018\] EWHC 1773 \(Admin\)](#)

³⁶ s68(1), *Criminal Justice and Public Order Act 1994*

³⁷ s68(3), *Criminal Justice and Public Order Act 1994*

³⁸ s69, *Criminal Justice and Public Order Act 1994*

³⁹ *BBC News*, [Green MP Caroline Lucas arrested at climate protest](#), 19 August 2013

In May 2019, ten protestors from the group *Green Peace* were arrested for aggravated trespass. The protestors scaled the offices of 'British Petroleum' and constructed blockades in front of the building's entrances.⁴⁰

1.4 Injunctions and orders

Civil injunctions

[Section 3](#) of the *Protection from Harassment Act 1997* (PHA) allows individuals to seek a "non-harassment" order, and/or damages against someone who is harassing them. A non-harassment order can contain whatever terms and conditions the court considered appropriate in the circumstances. Orders issued against protestors usually prohibit them from conducting activity associated with the protest in question.

Subsection 3(2) provides for damages to be available for (among other things) "any anxiety caused by the harassment and any financial loss resulting from the harassment". Subsections 3(3) through to 3(6) makes the breach of a non-harassment order a criminal offence, punishable in the magistrates' court with up to 6 months' imprisonment, and/or a £5000 fine, or in the crown court with up to 5 years' imprisonment and an unlimited fine.

Powers in practice: Injunctions against protestors

Civil injunctions issued under the *Protection from Harassment Act 1997* have been used against a variety of protestors. For example, recent reports have suggested that individual MPs have been granted civil injunctions against Brexit campaigners.⁴¹ Other news reports suggest that petroleum and gas companies frequently seek injunctions against climate change protestors.⁴²

However, with mixed results, these types of injunctions have frequently been challenged in the courts. For example, injunctions preventing animal rights activists demonstrating at the University of Oxford were upheld whilst (in a more recent judgement) injunctions preventing anti-fracking campaigners demonstrating at a fracking site were overturned.⁴³

Public Space Protection Orders

[Part 4, Chapter 2](#) of the 2014 Act allows local authorities to make Public Space Protection Orders (PSPOs). PSPOs can prohibit any activity associated with anti-social behaviour in a specified place in order to prevent it from (re)occurring. Individuals who fail to comply with a PSPO commit a criminal offence for which police officers can issue a Fixed Penalty Notices. PSPOs have effect for up to three years. They can be extended for three years at a time as many times as the local authority deems necessary.⁴⁴ The Library's briefing [tackling anti-social behaviour](#) describes PSPOs in detail.

⁴⁰ *The Guardian*, [BP headquarters in London blockaded by Greenpeace](#), 20 May 2019 see also Metropolitan Police, [Ten arrests following protest in central London](#), 20 May 2019

⁴¹ *The Times*, [Brexit: Bower boots? They're in case I need to escape, says Anna Soubry](#), January 2019

⁴² *The Independent*, [Surge in oil and gas companies using injunctions to block protesters at UK sites](#), 13 January 2019

⁴³ [\[2008\] EWHC 75 \(QB\)](#) and [\[2019\] EWCA Civ 515](#)

⁴⁴ s60, *Anti-social Behaviour, Crime and Policing Act 2014*

The use of PSPOs to prohibit activity associated with protests has been controversial. In 2018 the High Court found in favour of Ealing Borough Council after their use of a PSPO to prohibit anti-abortion protests outside an abortion clinic was challenged. The court found that protests could cause a “detrimental effect” to the lives of those in locality and therefore PSPOs could be used to regulate them. In this particular case the court found that the rights of those attending the clinic were being fairly balanced with the rights of the protestors.⁴⁵

⁴⁵ [\[2018\] EWHC 1667 \(Admin\)](#)

2. Police tactics

The policing of protests can be complex. Whilst some protest will require no policing presence at all, others will involve large policing operations. Sometimes officers will be required to make rapid judgements on how to balance the rights of demonstrators with their duty to maintain public order.

The College of Policing (the body responsible for professional standards in policing) has issued Authorised Professional Practice (APP)⁴⁶ guidance on [public order policing](#). This APP is designed to advise officers on how to police any large-scale public event and is not limited to the policing of protests. Police officers and staff are expected to have regard to the APP when on duty. However, it is not designed to be definitive and officers may deviate from it when there is a legitimate reason to do so.

In essence, the APP states that:

- The police should always start with a presumption in favour of facilitating a peaceful assembly.⁴⁷
- The most senior police officers at a 'public order event', known as Commanders, must be trained and accredited. The policing of public order events must be led by a clear chain of command based on these accreditations.⁴⁸
- Commanders should take a "flexible approach" during the event. Their decisions should be based on an 'assessment of threat'. They should use their powers and deploy tactics proportionately.⁴⁹

The APP explicitly states that proportionate decision making should "demonstrate consideration and application of relevant human rights principles".⁵⁰

2.1 Planning

If the police are aware that a protest is going to take place, they should make a plan for their policing operation. This plan should set out the 'policing tone' and overall strategy for the operation and detail the preferred tactical approaches in multiple potential scenarios.

The policing tone of an operation will depend on the circumstances and the strategic aims of the police. However, it should always be "fair, approachable, accessible and legally compliant" and underpinned by the principle of policing by consent.⁵¹ Police should also ensure they are

⁴⁶ APP is official police guidance. Police officers are expected to have regard to APP when on duty. However, there may be circumstances in which it would be legitimate for them to deviate from it. Further information about APP can be found in section 1.2 of the Library's Briefing [Introduction to police powers](#).

⁴⁷ College of Policing, [Public order: Core principles and legislation](#) [last accessed 05/06/19]

⁴⁸ College of Policing, [Public order: Command](#) [last accessed 05/06/19]

⁴⁹ College of Policing, [Public order: Tactical options](#) [last accessed 05/06/19]

⁵⁰ College of Policing, [Public order: Core principles and legislation](#) [last accessed 05/06/19]

⁵¹ See section 2 of the Research Briefing [Policing in the UK](#) for an explanation of the principle of policing by consent.

readily identifiable at protests. Commanders should be aware of the public's perceptions when setting the specific tone for the operation.⁵²

The policing strategy for the protest should set out clearly what the police are hoping to achieve and what outcomes they are hoping to avoid. Commanders will consider several factors when setting their strategy including the characteristics of the protest and the resources available to them. They may also consult with legal advice and stakeholders when setting the strategy.⁵³

Commanders should clearly describe preferred tactical options and the scenarios in which they should be deployed. The APP provides a [non-exhaustive list of tactical options](#) available to the police at public order events. The decision of which tactics to choose will depend on the 'policing tone' and the overall strategy of the operation.⁵⁴

2.2 During a protest

The police have a number of tactical options available to them during a protest. Some police tactics are more controversial than others. Below some specific tactics are discussed in more detail.

Use of *Public Order Act 1986* powers

As described in [section 1.2](#) of this paper, the *Public Order Act 1986* provides the police have powers to prohibit and place restrictions on protests. In addition to the APP on [public order](#), the College of Policing has published a [flow-chart](#) which provides officers with guidance on when to use these powers. The flow-chart also helps officers identify when the threshold might be reached to justify making an arrest for an offence related to protest.

Powers to prohibit a protest march

The APP states that the prohibition of a protest march is only justifiable...

...in extreme circumstances where there is a real threat of serious public disorder which cannot be prevented by other less stringent measures.⁵⁵

Powers to place conditions on protests

The APP provides four questions for officers to consider before issuing a condition on a protest. It states that for a condition to be proportionate the answer to **all four** questions should be 'yes'. The considerations are:

- is the purpose sufficiently important to justify the restriction (ie, are there relevant and sufficient reasons to justify the restriction)?
- will the measures proposed achieve that purpose?

⁵² Ibid

⁵³ College of Policing, [Public order: Command](#) [last accessed 05/06/19]

⁵⁴ College of Policing, [Public order: Command](#) [last accessed 05/06/19]

⁵⁵ College of Policing, [Public order: Core principles and legislation](#) [last accessed 05/06/19]

- are the measures to be taken the least restrictive to achieve the intended purpose?
- are the restrictions to ECHR rights necessary to meet the legitimate aims set out in the ECHR rights concerned?⁵⁶

Use of force

The APP states that, where possible, the policing strategy for a public order event should “minimise recourse to the use of force”.⁵⁷ However, there are some tactical options available to Commanders which involve the use of force or the threat of force.

The law recognises that police officers may have to use force in some circumstances. There are provisions in the *Criminal Law Act 1967* and the *Police and Criminal Evidence Act 1984* which specifically allow police officers to use force in reasonable circumstances.⁵⁸ In the APP “reasonable circumstances” is taken to mean that the use of force is “absolutely necessary” and the degree of force used is the “minimum required in the circumstances”.⁵⁹

Some tactics, such as the use of batons and the deployment of shields, require the use of force. Officers should be specifically trained to use these tactics and sometimes (as with the use of specialist’s public order batons) their use requires explicit authorisation.⁶⁰

Containment/ kettling

A particularly controversial police tactic involving the use of force is ‘containment’ (often known as kettling). Containment involves police officers holding protestors in a specific area until they are confident, they can be safely dispersed. In theory, this allows the officers to better control crowds.

Some argue that the use of containment is counterproductive. They say that the tactic serves to antagonise crowds a causes tension between the police and protestors.⁶¹

The public order guidance states that containment should be used as a “final resort” and is “only permitted where a breach of the peace is taking place or is reasonably thought to be imminent.”⁶²

The APP also notes that containment “presents a risk of interfering” with an individual’s human rights.⁶³

However, the courts have found that containment can in principle be compatible with human rights legislation.⁶⁴

⁵⁶ College of Policing, [Public order: Core principles and legislation](#) [last accessed 05/06/19]

⁵⁷ Ibid

⁵⁸ See: [s3](#), *Criminal Law Act 1967* & [s117](#), *Police and Criminal Evidence Act 1984*

⁵⁹ College of Policing, [Public order: Tactical options](#) [last accessed 05/06/19]

⁶⁰ College of Policing, [Public order: Tactical options](#) [last accessed 05/06/19]

⁶¹ *The Guardian*, [Being kettled was a shocking experience](#), 10 December 2010 & *BBC News*, [Met Police 'kettled children' at London student protest](#), 5 July 2011

⁶² Ibid

⁶³ College of Policing, [Public order: Core principles and legislation](#) [last accessed 05/06/19]

⁶⁴ [\[2011\] EWHC 2317 \(Admin\)](#); [\[2012\] EWCA Civ 12](#); [\[2013\], EWHC 1695 \(Admin\)](#)

The ECtHR has considered the compatibility of containment with the right to liberty, protected by Article 5 of the Convention. In *Austin*, a case stemming from the use of containment during the 2001 May Day demonstrations in London, the court concluded that those contained within the cordon had not been deprived of their liberty within the meaning of Article 5.⁶⁵ However, it noted that this conclusion was based on the “specific and exceptional” facts of the case in question, and in different circumstances the “coercive and restrictive” nature of the containment might have been sufficient to bring it within Article 5.⁶⁶

The court also noted that the case had not included a complaint under Articles 10 or 11. It emphasised that crowd control measures should not be used by national authorities to stifle protests “given the fundamental importance of freedom of expression and assembly in all democratic societies.”⁶⁷

Tactics in practice: Containment

The Metropolitan Police used containment during the ‘student fees protests’ in late 2010. Students and others were protesting the Coalition Government’s policy to increase university tuition fees from £3,000 to £9,000 per year. Protesters were frequently contained within Whitehall and Parliament Square sometimes for several hours at a time in what were cold and often hostile conditions. Protestors could exit the containment if they agreed to leave peacefully but were required to queue.⁶⁸

The police said the use of the tactic was necessary as many protestors were violent. Protests in early December 2010 did result in the injury of more than 30 police officers and 43 protestors.⁶⁹

The (then) Home Secretary Theresa May called the protestors behaviour “appalling” and unequivocally supported the use of containment by the police. Mrs May stated:

I want to be absolutely clear that the blame for the violence lies squarely and solely with those who carried it out. The idea advanced by some that police tactics were to blame, when people came armed with sticks, flares, fireworks, stones and snooker balls, is as ridiculous as it is unfair.⁷⁰

Some protestors, present at the demonstrations, questioned the use of containment. They argued that it was intimidating, indiscriminate and served to discourage young people from exercising their rights to protest in future.⁷¹ The use of containment during the protests was challenged in the courts but was ultimately found proportionate and in-keeping with human rights legislation.⁷²

Communications

The public order guidance states that communication with the public is an “essential element of modern public order policing”. Where possible the guidance encourages “proactive engagement” with protestors and other members of the public. It states that engagement with protestors specifically should aim to:

- Reduce and minimise conflict,

⁶⁵ [\[2010\] ECHR 459](#)

⁶⁶ Ibid, para 68

⁶⁷ Ibid

⁶⁸ *The Guardian*, [Being kettled was a shocking experience](#), 10 December 2010 & *BBC News*, [Met Police 'kettled children' at London student protest](#), 5 July 2011

⁶⁹ HCDeb, [Public Order Policing](#), c665, 13 December 2010

⁷⁰ Ibid

⁷¹ *The Guardian*, [Being kettled was a shocking experience](#), 10 December 2010

⁷² [\[2011\] EWHC 2317 \(Admin\)](#), [\[2012\] EWCA Civ 12](#), [\[2013\] EWHC 1695 \(Admin\)](#)

- Strengthen the relationships between the protest group and the police,
- Support a smooth policing operation, and;
- Identify the appropriate police response.⁷³

Tactics in practice: Making a public statement

As part of a communication strategy a police force may issue a public statement. In May 2019 the Chief Constable of West Midlands police issued a statement on ongoing protests concerning a new relationships curriculum in primary schools. The curriculum included content on same sex relationships and was controversial amongst some in Birmingham's Muslim communities. Protestors in favour and against the curriculum began gathering outside primary schools to demonstrate. At one school, Anderton Park, the protests were particularly heated, and the police launched an investigation into allegations of assault and criminal damage by protestors.⁷⁴

The Chief Constable's statement was clear that he wished for the protests to come to an end:

It is very important all those involved in the dispute at Anderton Park recognise the adverse impact this is having on the reputation of the city, broader cohesion and most importantly the children at this school. Views are entrenching with a determination to win this argument. This is creating an environment where those who seek division will have cause to celebrate and to exploit. Frankly a primary school is no place for the continuance of a large-scale protest, however lawful.

In this holy period of Ramadan, and as we celebrate Pride in our city, I urge those involved and those who can influence these events to think again and consider how they can come together to discuss these strongly held views and bring this protest to an end.

West Midlands Police cannot solve this problem, but we will support all involved in seeking a dialogue and a solution. Equally, we will act where people seek to exploit these matters and break the law.⁷⁵

Despite the appeal from the Chief Constable, the protests continued. Anderton Park eventually decided to close early on the last day of the school half-term.⁷⁶ Birmingham City Council were granted an interim injunction under the *Protection from Harassment Act 1997* against the protestors requiring them to cease their demonstration.⁷⁷

2.3 Review

After any major operation the police should review their performance.

The guidance on public order suggests that a review could...

... include such things as whether the identified threats have been reduced or eliminated and whether the action taken achieved all or any of the objectives of the working strategy/formal strategy.⁷⁸

⁷³ College of Policing, [Public Order: Communication](#), [last accessed]

⁷⁴ West Midlands Police, [Investigation launched following disorder outside Birmingham school](#), 20 May 2019

⁷⁵ West Midlands Police, Statement by Chief Constable and PCC on school protests, 21 May 2019

⁷⁶ *BBC News*, [Anderton Park school to close early amid protests](#), 23 May 2019

⁷⁷ *The Guardian*, [High court bans Birmingham school protests against LGBT lessons](#), 31 May 2019

⁷⁸ College of Policing, [Public order: planning and deployment](#) [last accessed 05/06/19]

3. 2009: A landmark year for the policing of protests

Concerns about police tactics at protests were raised following the G20 protests in April 2009. The subsequent public debate resulted in the publication of new guidance on public order policing. The new (and current) guidance is discussed in [section 2](#) of this briefing.

Following the G20 protests there were:

- Three parliamentary committee reviews into the policing of protests.⁷⁹
- A three-part review of the police's approach to protest conducted by Her Majesty's Inspectorate of Constabulary.⁸⁰
- A High Court case which considered the legality of the police tactics used at the G20 protests.⁸¹
- Official investigations into the death of Ian Tomlinson.⁸² Mr Tomlinson was a bystander at the G20 protests who died following contact with the police.

3.1 Events at the G20 summit

The [G20](#) is an international forum which consists of 19 of the world's richest countries and the European Union. The G20 met for an important summit in London in early April 2009 where they agreed an 'action plan' to respond to the [global financial crisis](#).⁸³

As is typical for major global political events of this kind, the London G20 summit was accompanied by large scale demonstrations. The protests were wide ranging but were mainly in aid of anti-capitalist and climate change causes. For the most part the protests were peaceful. However, there was some violence and clashes between protestors and police officers.

1 April 2009 was the most eventful day of the demonstrations. As shown in the map below, there were ten separate protests across seven sites on 1 April, including at the Excel Centre where the G20 summit itself was taking place.

The Metropolitan Police's operation at the summit, known as Operation Glencoe, was complex. Glencoe lasted for six days (between 29 March and 3 April). It included planned responses to known events associated with the summit (such as the state visit of the President of Mexico and

⁷⁹ JCHR, Demonstrating respect for rights? A human rights approach to policing protest, seventh report of the 2008-09 session HC 320-I. JCHR, Demonstrating Respect for Rights? Follow-up, Twenty-second Report of Session 2008-09. Home Affairs Select Committee, Policing of the G20 protests, eighth report of the 2008-09 session, HC 418. **Note:** JCHR's first inquiry into protests was ongoing at the time of the G20 protests. The Committee extended the inquiry following the protests.

⁸⁰ HMICFRS, [Policing Protest Reviews](#) [last accessed 05/06/19]

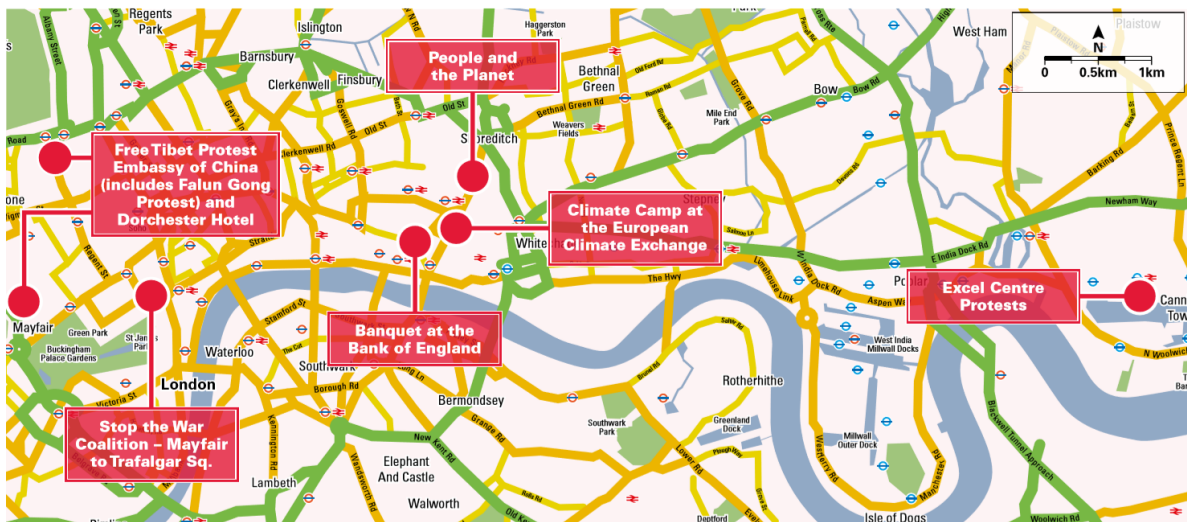
⁸¹ [\[2011\] EWHC 957 \(Admin\)](#)

⁸² *BBC News*, [Timeline: Ian Tomlinson's death](#), 5 August 2013

⁸³ G20, [London Summit- Leaders' Statement](#), 2 April 2009

the 'Stop the War' protest march), and responses to emerging events. At the time Glencoe was one of the largest operations undertaken by the Metropolitan Police in years. It involved the deployment of thousands of officers (5,500 on the 1st April alone).⁸⁴ The Met had little time to prepare Glencoe as the summit was only announced in December 2008.⁸⁵

Map of Protests and G20 Event – 1st April 2009



[HMIC, [Adapting to protests](#), July 2009, p23]

The Met's policing operation ensured that world leaders were able to attend the G20 summit safely. The Met also facilitated several peaceful protests during the summit. Initially, media commentators responded favourably to the policing operation.⁸⁶ However, as details emerged from those present at the demonstrations the police came under scrutiny. They were criticised generally for their use of force and poor communications with protestors and the media.⁸⁷ Specifically, they were criticised for:

- their use of containment at protests near the Bank of England and at the 'Climate Camp',
- their clearance of the 'Climate Camp' protest, and;
- their involvement in the death of Ian Tomlinson.

Protests at the Bank of England

On 1 April 2009 police were deployed to the City of London ahead of expected demonstrations near the Bank of England. The demonstration was "significantly larger" than the police had anticipated and were violent. Within an hour the police officers were ordered to use containment to control the crowd.⁸⁸ However; the crowd grew rowdier, the containment was "breached", police officers were attacked, and

⁸⁴ HMIC, [Adapting to protests](#), July 2009, p22

⁸⁵ HMIC, [Adapting to protests](#), July 2009, p3 [The April G20 summit was in addition to the G20's regular schedule of summits and was arranged specially to aid the global response to the Financial Crisis.]

⁸⁶ *BBC News*,

⁸⁷ Home Affairs Select Committee, [Policing of the G20 protests](#), eighth report of the 2008-09 session, HC 418, para 26

⁸⁸ HMIC, [Adapting to protests](#), July 2009, p50

the offices of the Royal Bank of Scotland were damaged. The police brought in reserves (both officers on foot and those mounted on horses) to control the crowd and were able to re-establish their containment. Eventually after hours of confrontation between police and protestors a 'dispersal plan' was agreed and the crowd was dispersed.

Her Majesty's Inspectorate of Constabulary (HMIC) raised some issues with the policing operation at the Bank of England. Whilst HMIC noted that there was a "clear rationale" for the use of containment, it criticised the execution of the tactic. HMIC highlighted poor communication between officers and protestors as a major issue. HMIC argued that officers were not able to explain clearly to protestors how and why they were using containment (in part because of confusing orders from their Commanders). The inspectorate concluded that

...a lack of information and understanding of the rationale for the use of containment served to increase resentment and anxiety amongst protestors.⁸⁹

Clearance of the 'Climate Camp'

A planned climate change demonstration, named the 'Climate Camp', was taking place at the same time as the Bank of England protest. The 'Climate Camp' was situated in Bishopsgate opposite the offices of the European climate exchange. At its height there were up to 5,000 people present at the camp.⁹⁰ The 'Climate Camp' was a peaceful demonstration. Initially the only police action was to place a cordon around the protest site to stop it causing an obstruction to the street. The police were allowing protestors to come and go as they pleased from the cordoned area.

Once the dispersal of the Bank of England protest was ordered, police at the 'Climate Camp' decided to begin a containment of the camp. Their rationale was to prevent protestors from the Bank of England joining the camp and continuing their disruption. The use of containment meant that protestors at the Climate Camp were no longer able to leave freely. Once the dispersal of the Bank of England protestors was complete, police at the Climate Camp decided to use their powers under section 14 of the *Public Order Act 1986* to require the climate camp to move location. However, the protestors at the camp refused to move. The police announced that protestors would be arrested if they did not disband the camp, but many protestors said that they could not hear the instructions. After almost three hours of confrontation, in which police used force, the 'Climate Camp' was eventually dispersed.⁹¹

The Home Affairs Select Committee was heavily critical of the policing operation at the 'Climate Camp'. The Committee criticised the police for their use of containment against a peaceful protest. They were particularly concerned with reports that officers were denying those in need of medical attention access to treatment during the containment.

⁸⁹ HMIC, [Adapting to protests](#), July 2009, p50

⁹⁰ Ibid, p52

⁹¹ Ibid, p53

They concluded that “it is not acceptable for a blanket ban on movement to be imposed” and advocated for officers to use discretion to allow those wishing to leave a containment, particularly those with medical needs, to do so.⁹²

The Committee also questioned the need to issue conditions under the *Public Order Act 1986* on the ‘Climate Camp’. They argued that the police were too quick to resort to their powers. They recommended that the police should, if possible, negotiate a “finish time” for a protest with participants and only issue an official direction under the *Public Order Act 1986* as a last resort.⁹³

The Committee also argued that images of police using force (throughout the G20 protests, including to disperse the ‘Climate Camp’) “undermined the public’s trust in the police”.⁹⁴

The Inspectorate of Constabulary was less critical of the use of containment and section 14 powers at the Climate Camp but did raise issues with the police use of force. They agreed that images of the police using force “have the potential to undermine the public’s trust in police”.⁹⁵

Challenge in the courts

The use of containment against the ‘Climate Camp’ protest was challenged at the High Court and found illegal. The court concluded that as the risk of infiltration of the peaceful protest did not constitute an “imminent breach of the peace” and therefore officers should not have used the tactic.⁹⁶ However, this decision was overturned on appeal.⁹⁷

The Court of Appeal found that the containment was lawful because it was the least drastic way of responding to what the Commander reasonably thought was going to be an imminent breach of the peace. However, the Court of Appeal did advise anyone considering whether the use of containment might be lawful should “bear in mind” the important factors raised in the original judgement. Particularly, that “the test of necessity is met only in truly extreme and exceptional circumstances.”⁹⁸

Death of Ian Tomlinson

Ian Tomlinson was a newsagent in central London who died trying to get home from work on 1 April 2009. Mr Tomlinson collapsed after coming into contact with the police as he tried to navigate through the demonstrations taking place near the Bank of England.

Following the death of Ian Tomlinson, conflicting post mortem reports threw doubt over the culpability of the police. Police statements issued

⁹² Home Affairs Select Committee, Policing of the G20 protests, eighth report of the 2008-09 session, HC 418, paragraph 46

⁹³ Ibid, paragraph 68

⁹⁴ Ibid, paragraph 58

⁹⁵ HMIC, [Adapting to protests](#), July 2009, p54

⁹⁶ [\[2011\] EWHC 957 \(Admin\)](#)

⁹⁷ [\[2012\] EWCA Civ 12](#)

⁹⁸ Ibid, Paragraph 96

in the immediate aftermath also failed to take responsibility for Mr Tomlinson's death.

However, video footage, taken by eyewitnesses and widely reported on in the press, showed Mr Tomlinson being hit with a police baton and pushed to the ground by an officer. Eventually, the inquest into Mr Tomlinson's death determined that he had died from internal bleeding caused by the officer's actions.⁹⁹

The officer involved, PC Simon Harwood, was acquitted of manslaughter at a criminal trial but was found guilty of 'gross misconduct' at an internal police disciplinary hearing and dismissed by the Metropolitan Police Service (MPS). The MPS eventually came to an out-of-court compensation settlement with the family of Ian Tomlinson and issued an official apology.¹⁰⁰

3.2 Recommendations

The events at the G20 protests sparked a national debate about the way the police respond to protests. Her Majesty's Inspectorate of Constabulary (HMIC) and the Joint Committee on Human Rights (JCHR) both published wide ranging reviews of protest policing. Both HMIC and the JCHR advocated for a greater focus on human rights in the policing of protests. This, they argued, should include reform to how police use force, particularly their use of the containment tactic.

HMIC advocated for a standardisation of guidance and practice across England and Wales. They argued that the police should only use the minimum amount of force necessary. They also said that the police should ensure they effectively communicate with protesters and the public before, during and after a protest. HMIC argued that this reform would ensure forces were compliant with the principle of policing by consent which is a cornerstone of the 'British Model of Policing'.¹⁰¹

Similarly, the JCHR were...

...struck by the accounts of the use of a wide range of police powers against protestors and others involved with protest – such as journalists – as well as the significant mismatch between the perceptions of protestors and the police about the way in which protest is managed.¹⁰²

Like the HMIC the Committee argued for greater standardisation of police practice and a stronger emphasis on dialogue between protestors and the police. The JCHR recommended (like HMIC) that the police operate a "no surprises" approach at protests where no one involved in a protest (the police, protestor or target) is surprised by another's actions.¹⁰³

⁹⁹ BBC News, [Timeline: Ian Tomlinson's death](#), 5 August 2013

¹⁰⁰ Ibid

¹⁰¹ HMIC, [Adapting to protest: Nurturing the British Model of Policing](#), November 2009

¹⁰² JCHR, [Demonstrating respect for rights? A human rights approach to policing protest](#), seventh report of the 2008-09 session HC 320-I, conclusion 1

¹⁰³ Ibid

At the time the (then Labour) Government agreed with sentiment of the JCHR and HMIC reports stating that:

The starting point on policing protest is a presumption in favour of freedom of expression and freedom of assembly. The Government is committed to protecting those rights and indeed we are conscious of our duty to do so. We fully take on board that inconvenience or simple disruption are not sufficient grounds to restrict protests. This is reflected in the Public Order Act 1986 which allows conditions to be placed on demonstrations to prevent serious public disorder, serious disruption to the life of the community, serious damage to property or intimidation of others. Restrictions can only be imposed where they can be justified as being proportionate and strictly necessary to achieve this high threshold.¹⁰⁴

Police response

The HMIC found that “a good deal of progress” had been made by the police when they followed up on their 2009 report in 2011.¹⁰⁵ They found that all forces were demonstrating an explicit consideration of their duty to facilitate peaceful protests in their planning processes for protest events. The Inspectorate found that forces had...

...shown a pronounced shift in the deployment of public order tactics, dialogue with protest groups and an imaginative range of initiatives intended to reach out to affected communities and the public.¹⁰⁶

Following a period of reform to the governance of policing services, the College of Policing (the new body responsible for police guidance) issued updated guidance on public order policing. This guidance (discussed in [section 2](#) of this paper) largely reflects the recommendations of HMIC and the JCHR.

¹⁰⁴ HM Govt, [The Government Reply to the seventh report from the Joint Committee on Human Rights session 2008-09: Demonstrating respect for rights? A human rights approach to policing protest](#), May 2009, Cm 7633

¹⁰⁵ HMIC, [Policing Public Order: An overview and review of progress against the recommendations of Adapting to Protest and Nurturing the British Model of Policing](#), p23

¹⁰⁶ Ibid, p36

4. A recent history of legislative reform

Parliament has long been engaged in a balancing act between protecting the right to protest and ensuring the maintenance of public order.

The Coalition Government's 'Programme for Government' pledged to "restore rights to non-violent protest".¹⁰⁷ This had been a key manifesto commitment of the Liberal Democrat Party during the 2010 General Election. The Liberal Democrats had argued for reform to both the *Public Order Act 1986* and the *Protection from Harassment Act 1997* in their 2010 General Election manifesto.¹⁰⁸

Ultimately, the Coalition Government passed three reforms to the legislation associated with protest. They decriminalised 'insulting' language, repealed controversial 'stop and search' powers in terrorism legislation and relaxed the rules for protests near Parliament.

4.1 Decriminalising 'insulting' language

Under [section 5](#) of the *Public Order Act 1986* (as amended) it is a criminal offence to use or display threatening or abusive words or behave in a way which is threatening, abusive or disorderly.¹⁰⁹ This is a minor offence which is punishable by a fine.¹¹⁰

Previously, section 5 of the *Public Order Act 1986* had criminalised the use or display of threatening, abusive or *insulting* words. Provisions in the *Crime and Courts Act 2013* removed the word 'insulting' from the section 5 offence. Thus, decriminalising insulting language.

This provision was added to the *Crime and Courts Bill* by an amendment tabled by Crossbench Peer Lord Dear (a former Chief Constable of West Midlands Police).¹¹¹ Lord Dear argued that removing the word 'insulting' from section 5 would ensure that only those who intentionally tried to harass or cause distress would be criminalised. He argued that his amendment would promote free speech.¹¹²

The amendment was not supported by the Government in the House of Lords.¹¹³ However, by the time the Bill was being considered by the Common's Bill Committee (the Bill had started in the Lords) the Government were in favour of removing 'insulting' from section 5. Government spokesman Jeremy Browne explained that advice from the Director of Public Prosecutions (then Keir Starmer) had reassured the Government that the section 5 offence was still strong enough to

¹⁰⁷ HM Govt, [The Coalition: our programme for government](#), May 2010, p11

¹⁰⁸ Liberal Democrats, [Manifesto 2010](#), p93

¹⁰⁹ s5(1), *Public Order Act 1986*

¹¹⁰ s5(6), *Public Order Act 1986*

¹¹¹ HLDeb, [Crime and Courts Bill](#), 12 December 2012, cc1132-1133: Division 1

¹¹² *Ibid*, c1123

¹¹³ *Ibid*, c1130

prosecute hate speech against protected characteristics even without the word “insulting”.¹¹⁴

In their 2009 report on policing protests the Joint Committee on Human Rights had recommended removing the word ‘insulting’ from the offence. The Committee argued that the criminalising ‘insulting’ language gave the police too much discretion to intervene against some protests and therefore presented a risk to the freedom of expression.¹¹⁵

The Coalition Government ran a public consultation on whether ‘insulting’ language should be decriminalised as the *Crime and Courts Bill* was passing through parliament. The consultations demonstrated “a clear polarisation” of views between those in favour (largely civil liberties groups) and against (some policing professionals, LGBT rights groups and some senior courts officials) decriminalising ‘insulting’ language.¹¹⁶

Insulting language and harassment

Using insulting language may still constitute a criminal offence if it causes “harassment alarm or distress”. Under [section 4A](#) of the *Public Order Act 1986* it is an offence to cause harassment, alarm or distress by using threatening, abusive or insulting words.¹¹⁷

Powers in practice: Offence of causing harassment, alarm or distress

On 7 January 2019 pro-Brexit protesters shouted at Anna Soubry MP as she walked between a media interview and the Houses of Parliament. The protesters were recorded calling Ms Soubry a Nazi.¹¹⁸ On 19 July 2019 two men plead guilty to the section 4A offence of causing harassment, alarm or distress to Ms Soubry by using threatening, abusive or insulting words. Both were sentenced to suspended sentences.¹¹⁹

4.2 Amending ‘no suspicion’ stop and search powers in *Terrorism Act 2000*

During their 2009 inquiry into the policing of protests, the Joint Committee on Human Rights heard evidence that protesters were being stopped and searched by police officers. These searches were being conducted using powers in terrorism legislation which allowed police officers to search anyone they reasonably thought might be a terrorist. In 2009 the JCHR recommended that guidance to police officers should be amended to emphasise that they should not use their stop and search powers under terrorism legislation against protesters.¹²⁰

¹¹⁴ Public Bill Committee, [Crime and Courts Bill](#), 12 February 2013, c407

¹¹⁵ JCHR, [Demonstrating respect for rights? A human rights approach to policing protest](#), seventh report of the 2008-09 session HC 320-I, conclusion 5

¹¹⁶ Home Office, [Police powers to promote and maintain public order, Section 5 of the Public Order Act 1986: Summary of consultation responses and Government response](#), January 2013

¹¹⁷ s4A, *Public Order Act 1986*

¹¹⁸ *BBC News*, [Anna Soubry urges police action after ‘Nazi taunts’ outside Parliament](#), 7 January 2019

¹¹⁹ CPS, [Pro-Brexit protestors sentenced after abusing Anna Soubry MP](#), 22 July 2019

¹²⁰ JCHR, [Demonstrating respect for rights? A human rights approach to policing protest](#), seventh report of the 2008-09 session HC 320-I, conclusion 6 & 7

The police's stop and search powers under terrorism legislation were highly controversial. Two demonstrators, who were searched under terrorism legislation on their way to a protest outside an arms fair, took a case against the government to the European Court of Human Rights. The demonstrators argued that being searched without reasonable suspicion violated their right to privacy under Article 8 of the ECHR. The European Court found in favour of the demonstrators. The court concluded that there were inadequate legal safeguards against an abuse of the power.¹²¹ The Government accepted the judgement and amended the powers accordingly via provisions in the *Protections of Freedoms Act 2012*.¹²²

4.3 Relaxing the rules for protests around Parliament

The Library briefing [Protests around Parliament](#) discusses the evolution of the rules about protest around Parliament in detail.

In short, there were calls from many (including the JCHR, civil rights campaign groups, individual protestors and all three of the major political parties) for the provisions in the *Serious Organised Crime and Police Act 2005* (SOCAP) restricting protests near Parliament to be repealed. [Part III](#) of the *Police Reform and Social Responsibility Act 2011* repealed and replaced the relevant SOCAP provisions. Protests around parliament are now, for the most part, governed like protests in the rest of the country (using powers in the *Public Order Act 1986*).

¹²¹ [Gillan and Quinton v UK \[2010\] ECHR 28](#)

¹²² s59, *Protection of Freedoms Act 2012*

5. A new case for legislative reform?

Several recent high-profile protest events have resulted in fresh calls to reform the policing of protests. Concerns have been raised with the policing of simultaneous protests, the ability of the police to move non-violent protests causing serious disruption and the police response to the use of insulting language.

The Home Office has asked Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services to conduct a new inspection of the police response to protest. The inspection will include an assessment of the legislative framework for police powers.¹²³

News reporting suggests the Government is planning legislative reform of the *Public Order Act 1986*.¹²⁴ Kit Malthouse, the Minister for Crime and Policing says the Government will make sure the police have "exactly the tools they need, from a legal and practical point of view".¹²⁵

5.1 Simultaneous protests

Extinction Rebellion (XR) members took part in two London "uprisings" in 2019, a "spring uprising" in April and an "autumn uprising" in October. Both uprisings lasted several days and involved multiple protest sites across central London. The existence of multiple simultaneous protest sites made the use of section 14, *Public Order Act 1986* orders complex.

During the spring uprising the Metropolitan Police Service (MPS) issued numerous section 14 orders on individual XR gatherings. These orders required the protestors to move to Marble Arch. They were designed to limit their ability to disrupt transport networks. The process of issuing orders and arresting those who were non-compliant was at times slow and some commentators questioned why the police were not using force to move the protestors quickly.¹²⁶

Following the protest, MPS Commander Adrian Usher questioned whether the 1986 Act provided them with appropriate powers to deal with this kind of protest:

We will conduct a sober review of our tactics against recent protests, which is likely to say that the legislation associated with policing protest is quite dated, that policing and protest has moved on and that legislation should follow suit.¹²⁷

¹²³ HMICFRS, [Terms of reference: inspection of the policing of protests](#), 5 October 2020

¹²⁴ Netpol, [Government plans major crackdown in 2021 on the right to protest](#), 26 November 2020

¹²⁵ HC Deb, [Birmingham Attacks and Extinction Rebellion Protests](#), 7 September 2020, c388

¹²⁶ *Financial Times*, [Climate protests unsettle police and politicians](#), 18 April 2019

¹²⁷ Joint Committee on Human Rights Uncorrected oral evidence: Democracy, privacy, free speech and freedom of association, HC 1890, Wednesday 24 April 2019, Q12

The MPS' use of section 14 during the autumn uprising was found unlawful in the High Court. Initially the MPS issued similar orders to those during the spring uprising. However, protestors continued to move around London regrouping at different locations to avoid police action.¹²⁸ In response the police issued an unusual section 14 order. An order issued on 14 October 2019 stated:

Any assembly linked to the Extinction Rebellion 'Autumn Uprising'... must now cease their protest(s) within London (Metropolitan Police Service, and City of London areas) by 21:00hrs [on Monday] 14th October 2019.¹²⁹

The order was unusual in that this single order applied across London. This contrasts to the police's previous approach, issuing separate orders on individual XR gatherings.

The MPS lifted the October 14 order four days later stating that it was "no longer necessary". During the autumn protest the police arrested 1,832 people. Some of those arrested were charged with failing to comply with the above section 14 orders issued by the MPS.¹³⁰

Human rights campaign groups were immediately critical of the section 14 order issued on the 14 October. Amnesty International and Liberty both argued that it was a disproportionate response to the XR protests.¹³¹

Several XR protestors challenged the October 14 order in the courts. On 6 November 2019 the High Court concluded the decision to impose the order had been unlawful.¹³²

The High Court found the 14 October order was unlawful for two main reasons:

- Because it wrongly treated the XR demonstrations as one single protest. The court found that section 14 powers can only be used to place conditions on a specific single protest and not a group of connected protests happening in different locations at the same time.¹³³
- Because it effectively enabled the MPS to prohibit future protests. A power not intended by section 14 of the *Public Order Act 1986*.¹³⁴

Assistant Commissioner of the MPS Nick Ephgrave commented following the judgment. He said that the

...case highlights that policing demonstrations like these, within the existing legal framework, can be challenging.¹³⁵

¹²⁸ [EWHC 2957](#), paragraphs 24-27

¹²⁹ Metropolitan Police, [*UPDATE* Conditions imposed on Extinction Rebellion protests](#), 15 October 2019

¹³⁰ *Ibid*

¹³¹ Amnesty International UK, [Extinction Rebellion blanket ban chilling and unlawful](#), 15 October 2019 & Liberty, [The Met's XR protest ban is 'grossly disproportionate'](#), 15 October 2019

¹³² [EWHC 2957](#), paragraph 72

¹³³ [EWHC 2957](#), paragraphs 65-69

¹³⁴ *Ibid*, paragraph 71

¹³⁵ Metropolitan Police, [Statement on judgement re Extinction Rebellion protests](#), 6 November 2019

Liberty and Amnesty International both welcomed the judgment. Liberty said the ruling would “help safeguard future protests from police overreach”.¹³⁶ Amnesty International said there must now be “no repeats of this attempt to suppress legitimate non-violent protest”.¹³⁷

5.2 Difficulty moving protestors

Several recent protests have involved “sit ins”. Protestors make it hard for police to move them by using tactics like “lock-on”. Lock-on involves protestors affixing themselves (using a variety of techniques) to objects or buildings. These tactics do present police with challenges, but they are not particularly novel.¹³⁸ The police have been able to use existing laws (like obstruction of the highway and aggravated trespass) to respond to these sorts of protests.

XR newspaper protests (September 2020)

During Extinction Rebellion (XR) protests in September 2020, XR members erected bamboo structures, some glued themselves to these structures, outside of multiple printing presses for News Corp newspapers (the Sun and the Times). The papers were the target of XR protests for failing to “report on the climate and ecological emergency”.¹³⁹

Police personnel from multiple forces across the UK were involved in responding to the protests. Eighty-one protesters were arrested and charged with obstruction of the highway at protests in Broxbourne and Knowsley. Protests in Scotland resulted in no arrests because “no disruption was caused”.¹⁴⁰ Protestors erected the bamboo structures on the evening of 4 September 2020, the protests were cleared by the afternoon of 5 September 2020.¹⁴¹ Herefordshire Police said the operation required “highly specialist resources and cutting equipment in order to safely remove the protesters from their locations”.¹⁴²

HS2 Euston Square protest (January/ February 2021)

Protestors objecting to the construction of the HS2 railway line tunnelled underneath Euston square.¹⁴³ Some then locked themselves to the structure.¹⁴⁴ The protestors were knowingly trespassing and were removed on the basis of civil orders granted by the courts.¹⁴⁵ The

¹³⁶ Liberty, [Extinction Rebellion High Court win a ‘victory for protest rights’](#), 6 November

¹³⁷ Amnesty International UK, [Police ban on Extinction Rebellion protests unlawful, court rules](#), 6 November 2019

¹³⁸ See: National Police Improvement Agency, [ACPO manual of guidance on dealing with the removal of protestors: 2006-2007](#), 2007

¹³⁹ *BBC News*, [Extinction Rebellion protesters block newspaper printing presses](#), 5 September 2020; HC Deb, [Birmingham Attacks and Extinction Rebellion Protests](#), 7 September 2020

¹⁴⁰ HC Deb, [Birmingham Attacks and Extinction Rebellion Protests](#), 7 September 2020, c384

¹⁴¹ *Ibid*

¹⁴² *BBC News*, [Extinction Rebellion protesters block newspaper printing presses](#), 5 September 2020

¹⁴³ *BBC News*, [HS2 protesters dig tunnel to thwart Euston eviction](#), 26 January 2021

¹⁴⁴ *BBC News*, [Euston tunnel protests: Father fears for children’s lives](#), 6 February 2021

¹⁴⁵ [\[2021\] EWHC 246 \(Admin\)](#), 10 February 2021

process of removing the protestors from the makeshift tunnels was complex. At the time of writing, the operation is still ongoing.¹⁴⁶

5.3 Harassment and insulting language at protests

There have been growing concerns that the police have been unable to intervene when protestors use harassing or insulting language. Images of Brexit protestors shouting at politicians as they enter and exit Parliament and of those opposed to a new 'relationships curriculum' causing disruption as children attend primary school in Birmingham, have caused some to question if the law is strong enough.¹⁴⁷

There has been controversy in the past about classifying certain types of language as criminal. As discussed earlier in this paper using 'insulting' language (except where it causes harassment, alarm or distress) was decriminalised by the Coalition Government in 2013. At the time the debate was polarised between those that supported and opposed the move.¹⁴⁸

There has also been a long-standing debate over the appropriateness of using the *Protection from Harassment Act 1997* against protestors. Back in 2009 the Joint Committee on Human Rights recommended that the *Protection from Harassment Act 1997* should not normally be used in relation to protests. They found that there was "the potential for overbroad and disproportionate application" of the Act against protestors. They recommended that the courts use Civil Procedure Rules to ensure that proceedings for harassment injunction hearings against protestors are held in public.¹⁴⁹

The *Protection from Harassment Act 1997* is still frequently used against protestors. For example, Birmingham City Council were granted an interim injunction under the 1997 Act against the protestors demonstrating outside primary schools against the new 'relationships curriculum'.¹⁵⁰

¹⁴⁶ BBC News, [Latest updates: Another HS2 protestor leaves tunnel](#), 15 February 2020

¹⁴⁷ BBC News, [Anna Soubry urges police action after 'Nazi taunts' outside Parliament](#), 7 January 2019; BBC News, [Anderton Park school to close early amid protests](#), 23 May 2019

¹⁴⁸ See section 4.1 of this paper

¹⁴⁹ JCHR, [Demonstrating respect for rights? A human rights approach to policing protest](#), seventh report of the 2008-09 session HC 320-I, conclusion 8

¹⁵⁰ *The Guardian*, [High court bans Birmingham school protests against LGBT lessons](#), 31 May 2019

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