



House of Lords  
House of Commons  
Joint Committee on Human  
Rights

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# Demonstrating Respect for Rights? Follow Up: Government Response to the Committee's Twenty-second Report of Session 2008–09

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**Sixth Report of Session 2009–10**

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

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to be printed 26 January 2010  
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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.

### Current membership

#### HOUSE OF LORDS

Lord Bowness  
Lord Dubs  
Baroness Falkner of Margravine  
Lord Morris of Handsworth OJ  
The Earl of Onslow  
Baroness Prashar

#### HOUSE OF COMMONS

Mr Andrew Dismore MP (Labour, *Hendon*) (Chairman)  
Dr Evan Harris MP (Liberal Democrat, *Oxford West & Abingdon*)  
Ms Fiona MacTaggart (Labour, *Slough*)  
Mr Virendra Sharma MP (Labour, *Ealing, Southall*)  
Mr Richard Shepherd MP (Conservative, *Aldridge-Brownhills*)  
Mr Edward Timpson MP (Conservative, *Crewe & Nantwich*)

### Powers

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 [www.parliament.uk/commons/selcom/hrhome.htm](http://www.parliament.uk/commons/selcom/hrhome.htm).

### Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Chloe Mawson (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), Lori Verwaerde (Committee Assistant), John Porter (Committee Assistant), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

### Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2467; the Committee's e-mail address is [jchr@parliament.uk](mailto:jchr@parliament.uk)

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# Report

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With this Report we are publishing the Government's reply to our twenty-second report of 2008-09, *Demonstrating Respect for Rights? Follow Up*, which we received under cover of a letter from Rt Hon David Hanson MP, Minister of State, Home Office, dated 13 January. We are also publishing the interim response we received from Mr Hanson on 24 October 2009 and correspondence relating to our recommendation that the report into the death of Blair Peach at a demonstration in Southall in 1979 should be made public.

## Formal Minutes

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Tuesday 26 January 2010

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Dubs The Earl of Onslow	Dr Evan Harris MP Fiona Mactaggart MP Mr Virendra Sharma MP
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Draft Report *Demonstrating Respect for Rights? Follow Up: Government Response to the Committee's Twenty-second Report of Session 2008-09* proposed by the Chairman, brought up and read the first and second time, and agreed to.

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

Two Papers were ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 13 October in the last session of Parliament.

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

[Adjourned till Wednesday 3 February at 2 pm.]

## List of written evidence

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- 1 Letter from Rt Hon David Hanson MP, Minister of State, Home Office, dated 13 January 2009 p 5
- 2 Letter from Rt Hon David Hanson MP, Minister of State, Home Office, dated 24 October 2009 p 19
- 3 Letter from Moir Stewart, Commander, Directorate of Professional Standards, Metropolitan Police Service, dated 17 July 2009 p 20
- 4 Letter from Catherine Crawford, Chief Executive to the Authority, Metropolitan Police Authority, dated 6 August 2009 p 21

## Written Evidence

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### **Letter to the Chair of the Committee from Rt Hon David Hanson MP, Minister of State, Home Office, dated 13 January 2009**

I wrote to you on 24 October with an update to the Government's planned response to the report *Demonstrating Respect for Rights? Follow-up* by the Joint Committee on Human Rights (JCHR) which was published on 14 July 2009. I now write to provide you with a detailed response to the recommendations contained within your Report. This response builds on the HMIC Report *Adapting to Protest, Nurturing the British Model of Policing* published on 24 November, and the Government's position on the policing of protest set out in the *Policing White Paper, Protecting the Public: Supporting the Police to Succeed* published on 2 December 2009. It also incorporates progress in repealing relevant SOCPA provisions, the conclusion of our consultation on Section 5 of the Public Order Act and our further detailed views on the use of civil injunctions.

The Government welcomes the Joint Committee Report, together with the other Reviews into policing and protest published this year. The government agrees that there are some key lessons to be learnt from G20 and other recent policing operations, and is committed to working with the police and other stakeholders to ensure those lessons are learnt.

As we set out in the Policing White Paper, the public have the right to expect the highest standards of policing at big public events and we have to support every officer in delivering those high standards, recognising the impact that a single image or incident can have on public confidence. Forthcoming events, notably the Olympics, make this all the more pressing.

We agree with the HMIC Report that the policing of protest needs to be built on the British model of policing, and that the key principles of the British model need to be reflected in the updated guidance and training that the Association of Chief Police Officers (ACPO) and the National Policing Improvement Agency (NPIA) are already developing. These in turn need to be underpinned by a Home Office Code of Practice that sets both the strategic framework and supports common standards across forces.

We have, in the White Paper, pledged to work with the police and the public to ensure that the recommendations of the HMIC report are properly acted upon and act as an agent for change. A programme of work which we and the police have undertaken to deliver by summer 2010 has accordingly been put into place. This programme of work will directly address a number of the Joint Committee's recommendations. However, our response also recognises the progress the police have already made in learning the lessons from G20 which in itself illustrates the police's proactive commitment to constantly improve its service to the public

The Government looks forward to engaging with the Joint Committee on this programme of work beginning with your conference on policing and protest at the end of this month.

## GOVERNMENT RESPONSE TO THE COMMITTEE'S RECOMMENDATIONS

The Committee made 23 conclusions and recommendations. Some of these recommendations have been grouped together for this response.

### DIALOGUE BETWEEN POLICE AND PROTESTERS

**1. For "no surprise" policing of protests to be effective, both protesters and police must share information. Whilst this happens in many cases, it is clear that at least some aspects of communication at the G20 protests were very poor. Mutual distrust was apparent and the police and protesters seemed to have different expectations of what the dialogue should be about and how it should proceed. This ineffective communication led to frustration on both sides and, possibly, to the police taking a more heavy handed approach to the Climate Camp protest than would otherwise have been the case. (Paragraph 13).**

**2. We were particularly disappointed to hear that the Climate Camp Legal Team should find it so difficult even to make contact with appropriate officers of the City of London and Metropolitan Police forces to discuss their protest. We recommend that there should be a nominated point of contact in every police force, whom protesters can contact in advance of protests taking place should they wish to do so. Police forces should take steps to advertise their point of contact and to explain why dialogue can be beneficial to all parties. (Paragraph 14).**

The Government agrees that good communication between the police and protesters is the key to 'no surprises' policing of public protest events. This is clearly articulated in the Policing White Paper published on 2 December which sets out clear principles for the policing of public protests. The HMIC Report *Adapting to Protest, Nurturing the British Model of Policing* also highlighted the need for the police to develop effective communication strategies which will deliver improvement in communication between the police and key stakeholders before, during and after public order policing events.

ACPO is already working on revised guidance and training to deliver this and the police have begun to put into practice ideas such as nominating designated contact points for communicating with protesters as seen at a number of the English Defence League demonstrations in the summer. The use of technology to communicate with protesters is also being utilised, as demonstrated by the MPS who used Bluetooth messaging as a means to communicate with protesters during the Tamil protests, explaining the policing approach and stating their intention not to disperse protesters and to allow the protest to continue.

However, we must not lose sight of the fact that, in the interest of fostering good relationships, communication with protesters must be a priority for all police officers, not just designated individuals.

**3. In our earlier report we recommended that there should be a "quick and cost free system for resolving complaints and disputes in advance of protests taking place". The Government noted our recommendation and said it would "feed it into the current HMIC Review into G20". We see merit in using independent negotiators to facilitate dialogue between police and protesters, where the parties encounter difficulties in**

**communicating directly. Such negotiators could also help resolve disputes, as we previously recommended. We recommend that the Government consider this matter with relevant parties such as the Independent Police Complaints Commission and HM Inspectorate of Constabulary. (Paragraph 16).**

Both the Government and the police are keen to consider any approach which will facilitate dialogue between police and protesters, build trust and provide an effective means of resolving complaints and disputes. Good, effective communications is key to this and the Government agrees with HMIC that public order command training should be enhanced to provide explicit guidance to officers on communication strategies before, during and after public order policing events. We are pleased to report that a revised Bronze command course was piloted in October, a Silver command course in December and a Gold command course is under development.

On the issue of resolving disputes more generally, the Government has, in the White Paper, stated its belief that "in most cases speedy and informal efforts by front line officers to put things right are preferable to lengthy, formal procedures". The Government has also given a clear undertaking to "support the IPCC by streamlining the police complaints process and introducing a wider range of potential resolutions."

#### **CONTAINMENT**

**4. We are disappointed that the *Keeping the Peace* manual on public order had not been amended by the time of the G20 protests to reflect the judgement in *Austin*. In our view, the containment section of the manual at the time of the G20 protests was deficient in a number of respects and would have provided little concrete guidance to officers making strategic or operational decisions on the day. We are therefore pleased to hear that ACPO is proposing to revise *Keeping the Peace* and we would be grateful for the opportunity to receive a draft of the relevant section so that we can assist ACPO in getting it right. (Paragraph 27).**

**5. In our view, containment can be a useful and lawful tactic in some circumstances but it must be used in a proportionate manner with due regard to the human rights of the people contained. This requires the police's careful consideration in advance during the protest of whether the tactic overall remains necessary and proportionate. It also requires individual officers policing the perimeter of the contained area to consider whether, in an individual case, it is appropriate to maintain that cordon for that individual, given his or her particular circumstances. It is this second aspect of containment – respecting the rights of individuals being contained – which we consider that the Metropolitan Police did not give sufficient weight to during the G20 protests. In our view, it would be a disproportionate and unlawful response to cordon a group of people and operate a blanket ban on individuals leaving the contained area, as this fails to consider whether individual circumstances require a different response. (Paragraph 28).**

**6. For the tactic of containment to be operated in a manner which complies with human rights, we consider that the following issues must be addressed:**

- **Containment should only be used where it is necessary and proportionate to do so generally and in relation to each individual contained.**
- **It should be imposed for the minimum amount of time necessary.**
- **It should be regularly reviewed during each containment in order to see whether it remains necessary and proportionate.**
- **There must be effective, clear and timely communication between the police and those within the containment.**
- **The police should establish a means of considering individual circumstances and identifying who can be let out: the presumption should be that people should be allowed to leave where it is possible for them to do so.**
- **Contained individuals should be given access to facilities such as toilets, medical assistance and water.**

**We note that the HMIC report on the G20 protests includes a similar list and we recommend that all these matters should be addressed in the revised ACPO guidance. (Paragraph 29).**

The Government accepts the Committee's comments on the issue of containment. Both the Government and police are very clear that containment, in keeping with the House of Lords decision in *Austin*, must be proportionate, used in good faith and enforced for no longer than is necessary. Further, all efforts must be made to provide adequate services to those contained.

The Government supports HMIC's recommendations on containment as set out in *Adapting to protest Part 1* – no surprises, a clear release plan, easy access to information, clear signposting and awareness and recognition of the UK press card. We also support *Part 2* findings which consider that the key to achieving proportionate and appropriate use of containment is good intelligence and information about protest crowds and crowd dynamics, together with the ability to communicate to them – both before and during containment – the reasons for the tactic and how it will be managed. Police use of both technology and face to face communication will be important in this area.

The revised ACPO manual of guidance is due to be finalised by summer 2010. It will set out common standards, tactics and techniques in the field of public order. The Policing White Paper stressed ACPO's commitment for this guidance to be public facing. The Joint Committee together with a number of other stakeholders will be consulted on the guidance in the spring.

It is important to stress that ACPO has already produced interim guidance on the use and management of containment and the Metropolitan Police has established the role of Bronze Cordon to ensure the correct deployment and management of containment should the tactic become necessary.

### **MEDIA REPORTING OF THE BUILD UP TO THE G20 PROTESTS**

**7. We have had the opportunity to review the transcripts of the press briefings provided by Commanders Broadhurst and O'Brien and they are consistent with the oral evidence we heard from AC Allison. The briefings clearly set out the police's concerns that the G20 summit would create some difficult public order challenges, without forecasting violence or buildings being stormed and without giving the impression that the police were relishing the opportunity for a fight. Consequently, we conclude that the main responsibility for talking up the prospect of violence and severe disruption rests with the media, not the police. (Paragraph 33).**

**8. AC Allison said that the police had responded to exaggerated press comment about the protests by briefing the Chairman of the Metropolitan Police Authority to undertake a round of interviews to argue that the prospect of violence had been over-emphasised. We welcome this approach, but suggest that the Metropolitan Police could have done more to respond to exaggerated and distorted press coverage of its briefings. We note the conclusions of the parliamentary observers' report that "aspects of the media strategy employed by the police prior to the demonstrations may have contributed to escalating expectations of violence". We recommend that the Metropolitan Police review how the media reported its briefings on the G20 protests with a view to ensuring that exaggerated and distorted reporting can be countered with a quicker and more effective and authoritative response in future. (Paragraph 34).**

The Government is pleased that the Committee recognises that police press briefings were not responsible for talking up the prospect of violence

The Government supports the conclusions of the HMIC report that the police need to develop more effective media communication strategies to ensure an accurate understanding of the police operational approach and style.

Good, open and transparent communication between the police and the media should in itself also reduce the risk of the kind of exaggerated and distorted reporting noted by the Committee. The Government also has a role in supporting such transparent communication.

The Metropolitan Police has already taken a number of positive steps in this area, including the integrated community strategy developed during the policing of the Climate Camp in August 2009, increased dialogue with the National Union of Journalists (NUJ) and inclusion of the role of the media in operational briefings.

### **TREATMENT OF JOURNALISTS**

**9. We reiterate our recommendation that police forces must do more to ensure that officers fully appreciate the role of the media and do not subject journalists to mistreatment of any sort while they are covering protests. (Paragraph 36).**

Both the Government and police agree that good, open and transparent communication between the police and the media is important in all areas of policing and a key element in upholding our democratic traditions. These principles are already set out in ACPO guidance and will be reinforced and refined in the updated *Keeping the Peace* Manual in

line with the findings from HMIC's *Adapting to Protest* report which highlighted the need for "awareness and recognition of the UK press card by officers on cordons, to identify legitimate members of the press and ensure application of associated ACPO guidelines."

#### **IDENTIFICATION OF OFFICERS**

**10. Correct identification of police officers is crucial to ensuring that the police are accountable for their actions, including the extent to which they respect the human rights of the people they deal with. We recommend that it should be a legal requirement for police officers to wear identification numbers while on duty or to identify themselves when asked. We note that Baroness Miller of Chilthorne Domer has tabled an amendment to the Policing and Crime Bill on this issue and look forward to this issue being explored further in that context. (Paragraph 39).**

As the Committee recognises, the Government, ACPO, the Metropolitan Police, the IPCC and HMIC are unanimous in their view that uniformed police officers should be identifiable at all times by their shoulder identification numbers. We agree with the Committee that being able to identify any uniformed officer who is performing their duty is crucial to ensuring that the police are accountable to the public for their actions.

As the Joint Committee notes, we explored the specific issue of making the wearing of identification numbers a legal requirement in the context of the amendment tabled by Baroness Miller to the Policing and Crime Bill last session. As the Committee will be aware, police officers of any rank are subject to the standards of professional behaviour set out in the Police (Conduct) Regulations 2008. These standards reflect the expectations that the police service and the public have of how police officers should behave. Any breach of those standards may lead to disciplinary action being taken. An officer deliberately removing his or her identification to avoid being held accountable is likely to be in breach of the standards expected and therefore liable to be dealt with under the disciplinary arrangements.

As HMIC found in its report *Adapting to Protest*, "aside from the well publicised examples, having examined hours of CCTV and press footage, it is clear that the overwhelming majority of officers on the same video footage can be seen displaying their identification correctly." The Government therefore considers current Police (Conduct) Regulations sufficient to ensure compliance and remains unconvinced of the need to make failure to display identification numerals an explicit legal requirement.

We have however flagged in the recent Policing White Paper that display of numerals is one of the areas requiring particular attention in revised training and guidance. Additionally, ACPO has produced interim guidance reinforcing the importance of the identification of officers and the Metropolitan Police Service has included specific reference in all briefing for the need for officers to display numerals.

#### **HUMAN RIGHTS AWARENESS**

**11. We remain concerned that there is a long way to go before promoting and protecting human rights is central to police policy, training and operations. We hope**

**to return to this issue before the end of this Parliament to check on the progress being made by ACPO. (Paragraph 40).**

As stated in the Policing White Paper, the Government is clear that a human rights based approach to the policing of protest is needed in order to comply with the law, support the founding principles of policing, and crucially to provide a practical framework for the police to resolve any area of conflict.

The Government notes the Committee's concerns and those raised by HMIC about the inadequate training and the low level of understanding of the human rights obligations of the police under the Human Rights Act 1988. The government supports the revision of ACPO training to provide officers with a clear understanding of the use of police powers that can apply in a public order situation, including explicit training on the facilitation of peaceful protest as the starting point, and human rights obligations on the police. In this context, we are pleased to note that the NPIA has arranged a 'Training the Trainers' course for January 2010, which will include training on human rights and public order legislation. Further, the Home Office will issue a Code of Practice on public order to ensure revised guidance is followed by all forces, and to reaffirm the key principles around balancing rights and using proportionate force in public order policing.

#### **PROTEST AROUND PARLIAMENT**

**12. The careful management of the Tamil protest in our view struck an appropriate balance between protecting the right of the Tamils to protest in Parliament Square and the need to maintain access to parliament for Members, staff and the public. The protest did cause inconvenience to some, but this is a small price to pay for living in a vibrant democracy. We welcome AC Allison's realistic attitude towards the enforceability of the SOCPA provisions but are concerned at the ambiguous legal position created by the long delay since Government first announced that the provisions would be repealed. We also remain concerned that the police are unclear about the minimum level of access to Parliament which they are required to maintain. (Paragraph 44).**

The Government agrees with the Committee's view of the effective and sensitive policing of the Tamil protest last year. As that protest showed, a compulsory prior notification scheme is impractical when communities feel very strongly about an issue and want to make their views known. However, in terms of the legal position since the Government announced its intention to repeal sections 132 to 138 of SOCPA, the law remains in force until such time as it is repealed.

The Government notes the Committee's concern at the delay since we first announced that we would repeal the SOCPA provisions. However, part of that delay has been to ensure a proper Parliamentary scrutiny of the provisions given concerns expressed by some in Parliament that it was not sufficiently consulted when sections 132 to 138 of SOCPA were introduced in 2005. The Committee will be aware that in moving to repeal sections 132 to 138 of SOCPA, we have taken seriously the need to ensure the proper operation of Parliament is safeguarded, particularly in terms of ensuring minimum levels of access.

The Joint Committee on the draft Constitutional Renewal Bill in its scrutiny of the contents of the draft Bill in June 2008 and the Joint Committee on Human Rights in its report *Demonstrating respect for rights? A human rights approach to policing protest* (recommendations 13 and 16) made a number of recommendations about maintaining access to Parliament which we believe are addressed by the provisions contained in Schedule 5 of the Constitutional Reform and Governance Bill (see paragraph x)

The Government recognises that the police, the public and Parliament need to be clear about powers to maintain access to Parliament. We believe that the provisions in Schedule 5 of the Constitutional Reform and Governance Bill provide that clarity by providing the police with powers to secure a level of access to Parliament which is commensurate with Parliament's expectations but does not restrict the right to peaceful protest. .

**13. The Government has undertaken to repeal the SOCPA provisions in the forthcoming Constitutional Renewal Bill, the introduction of which was promised during the current parliamentary session and which is one of the bills featured on the draft legislative programme for 2009-10. The former Speaker, Michael Martin MP, initiated a meeting of relevant parties to discuss how the various outstanding issues could be resolved. We hope that Speaker Bercow may be willing to carry on the discussions initiated by his predecessor on resolution of the various outstanding issues. (Paragraph 45).**

As the Committee will be aware, the Constitutional Reform and Governance Bill was introduced into Parliament on 20<sup>th</sup> July and had its Second Reading on 20<sup>th</sup> October. Clause 35 of Part 4 of the Bill repeals Sections 132 to 138 of the Serious Organised Crime and Police Act 2005. Clause 35 also gives effect to Schedule 5 which contains new provisions to provide the police with discretionary powers to impose conditions on marches and demonstrations in an area around Parliament in order to maintain access to and from the Palace of Westminster. Schedule 5 also provides the Secretary of State with power to make an order specifying the requirements that must be met in relation to maintaining access to the Palace of Westminster and the area around Parliament in which the new powers can be exercised.

We have consulted the Metropolitan Police and the House Authorities on the specific requirements that must be met and we intend to provide the House with a draft order for scrutiny at Committee stage of the Bill.

The Government has also been in discussion with Westminster City Council and the Greater London Authority to ensure a co-ordinated approach is taken to the repeal of SOCPA. We look forward to continuing these discussions.

#### **COUNTER-TERRORISM POWERS**

**14. We share the Minister's attitude to counterterrorism powers and we deplore the obvious overuse of section 44 of the Terrorism Act 2000 in recent years. We do not agree with the suggestion from AC Allison that the public are likely to be reassured by the routine use of stop and search powers. Targeting likely offenders is a proportionate response to the terrorist threat and we look forward to the Metropolitan Police adopting this practice throughout London. (Paragraph 48).**

The Government agrees that it is important that stop and search powers are used only for the purposes specified in the relevant legislation.

The Government is committed to working with ACPO and NPIA to support officers to ensure that stop and search powers, including section 44 of the Terrorism Act 2000, are always used proportionately and appropriately. The Home Office is working closely with the police and the independent reviewer of terrorism legislation, Lord Carlisle, to further enhance the use of section 44, through more focussed processes including improved application procedures and more rigorous scrutiny of section 44 authorisations.

In particular, refined tactics in the use of stop and search under the Terrorism Act 2000 have been introduced across the Metropolitan Police area. Section 44 powers will now only be deployed at pre-identified significant locations, such as iconic sites and crowded places, and when specific operations have been agreed for specific areas.

In May 2009 the Home Office completed a review, in consultation with ACPO that examined its methodology in processing s44 authorisations. It led to the implementation of a number of measures ensuring an enhanced level of effectiveness and scrutiny in the processing of s44 authorisations.

**15. The other counter-terrorism issue we raised concerned section 76 of the Counter Terrorism Act 2008, which makes it an offence to elicit or attempt to elicit information about a constable which is of a kind likely to be useful to a person involved with terrorism. We noted media reports that this could criminalise anyone who took a photograph of a police officer. The Government agreed with our recommendation that guidance should be issued to police officers about the scope of the power "making it clear that it does not criminalise legitimate photographic or journalistic activity". We welcome the Government's commitment to develop and issue guidance on the scope of this power and the clear statement that it is not intended to criminalise legitimate photographic or journalistic activity. (Paragraph 50).**

The Government is clear that counter-terrorism powers are not designed or intended to stop people taking photographs. The Home Office has produced a national circular on photography in public places in consultation with stakeholders. The circular which was published on 18<sup>th</sup> August 2009 clarifies the position on sections 43, 44 and 58A of the Terrorism Act 2000 for the police and public alike. It makes clear when the police should be applying section 58A and more importantly when they should not, for example in the context of legitimate journalistic activity

The Metropolitan police have issued their own local guidance on section 58A.

The Home Office has written to the President of ACPO and Chief Constables with standing section 44 authorisations, notifying them of the national circular on photography and asking them to ensure that police officers adhere to both the circular and NPIA stop and search guidance.

#### **CIVIL INJUNCTIONS**

**16. We were surprised that the Government's reply to our report did not give a view on our recommendations on the use of civil injunctions against protesters, other than to**

**question the evidence base for them, and that in oral evidence the Minister appeared to argue that they were wrong in principle. We urge the Government to review the evidence we published on this point and to look again at our detailed recommendations about changes to the Civil Procedure Rules. If the Government remains of the view that the current Rules remain appropriate despite the Protection from Harassment Act being applied to protesters in a way not envisaged in 1997, we expect the Government to set out the reasons for its view in full. (Paragraph 53).**

We have looked again at the Committee's recommendations about changes to Practice Direction 39 and 25 of the Civil Procedure Rules ("CPR") in relation to injunctions brought against protestors under the Protection from Harassment Act 1997. The Government remains unconvinced of the need to make changes and as requested we set out our reasons below in full.

The Committee's concerns are centred on its belief that interim injunctions can restrict peaceful protest. The Government considers that the Rules provide sufficient safeguards to ensure that those who are the subject of injunctions have the opportunity to make representations and the Civil Procedure Rules Committee would be unlikely to be convinced about the need for change on the basis of what appears to be an isolated case.

CPR 25, applies to *all* interim remedies, not just those under the Protection from Harassment Act 1997. An application for an interim remedy made without notice to the other side will not be successful unless the courts consider that there are good reasons for not giving notice ( CPR 25. 3).

Practice Direction 25 provides further safeguards. For example, paragraph 3.4 provides that where an application is made without notice to the respondent, the evidence must also set out why notice was not given. Paragraph 5.1 provides that "Any order for an injunction, unless the court orders otherwise, must contain (amongst other things):

- (1) an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay;
- (2) if made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable; and
- (3) if made without notice to any other party, a return date for a further hearing at which the other party can be present."

Therefore, even if an application comes before a judge without notice, and evidence is only presented by the applicant, it does not necessarily follow that the judge will make the order requested. The judge could dismiss the application altogether; could order it to be heard on notice with both parties present; or could make an interim order. Where an interim injunction is issued without notice to the other party, a further hearing date will be fixed for the purpose of allowing the respondent to attend to either defend the matter or to apply to vary or set aside the order.

If we were to alter CPR 25 so that an interim remedy could not be applied for without notice in certain circumstances such as protest activities, we would have to define the

circumstances and define protestors. It would be difficult to create appropriate definitions that could not be exploited by those intent on harassment or intimidation given there is no legal definition of a protestor and anyone could claim to be engaged in protest activity. More significantly, we are not convinced that the interests of justice would be served by removing the possibility of an interim injunction without notice in relation to protestors. A small number of individuals associated with single issue protest campaigns have pursued a determined course of criminal activity that amounts to harassment and intimidation of targeted individuals. The Government is clear that such targets should have the same protections from harassment as any other victim of harassment.

Nor are we convinced by the Committee's argument that CPR 25 should be changed because, "the potential risk of substantial costs faced by protestors who seek to amend or revoke an injunction once it has been granted" is greater than if they had been able to make representations at the initial hearing. Costs could be similarly incurred if an individual had the opportunity to contest an interim injunction prior to it being granted.

In relation to CPR 39, paragraph 1.5 of Practice Direction 39 which requires hearings, including proceedings brought under the Protection from Harassment Act, to be listed by the court in private, we are not convinced of the need to reverse this presumption.

Although it is clearly possible for an initial hearing to take place without notice being given to the respondent under CPR 25, paragraph 1.5 of Practice Direction 39 does not exclude the respondent from a hearing in private. A private hearing would include only the people involved in the case, their witnesses and solicitors. Additionally, although applications under the Protection from Harassment Act 1997 are listed as private hearings, this does not preclude parties making representations to the Judge for the matter to be heard in public. The Government does not therefore see the need to review Practice Direction 39.

#### **SECTION 5 OF THE PUBLIC ORDER ACT 1986**

**17. We welcome the Minister's commitment to give careful consideration to amending section 5 of the Public Order Act to remove the reference to "insulting" words and behaviour and look forward to receiving and scrutinising the conclusion his successor reaches in the autumn. (Paragraph 54).**

As the Committee will be aware, since its report in July, the Government has been consulting a number of stakeholders on the Committee's recommendation to remove the reference to "insulting" words and behaviour from section 5 of the Public Order Act.

The Government has considered responses from ACPO, the Police Federation, the CPS, Justice, the Law Society and Justices' Clerks' Society. While the Government understands the reasons for the Joint Committee's proposal, we consider that it would in fact be counter productive. As some respondents to our consultation pointed out, the proposal would result in the courts being left in a very curious position on having to decide on a case by case basis whether particular words or behaviour were (criminally) abusive or merely (non-criminally) insulting.

The Government also agrees with the views of the police and the CPS that the effect of the amendment on minority ethnic and faith communities is likely to be negative and would have a detrimental effect on victims of hate crime. By way of example, in the context of

disability hate crime, where insulting words and behaviour are a common feature, if “insulting” is removed from the offence, it is possible that people who mock and verbally torment disabled and other vulnerable people would commit no offence, even though the overall circumstances and failures to respond to requests to desist meant that the behaviour concerned could properly be described as criminal. In its current form, Section 5 protects citizens from being gratuitously insulted as they go about their business in public.

The Government is nevertheless concerned about inappropriate use of Section 5 of the Public Order Act, particularly where it interferes with the right to freedom of expression. Although Section 5 is a broad offence which offers the police wide discretion, the courts have held that it does not conflict with the right to freedom of expression contained in Article 10 of ECHR and sections 5 and 6 contain the necessary balance between the right of individual freedom of expression and the right of others not to be insulted and distressed.

In our discussions with the police and others about the Committee’s proposed amendment, the Government has been unable to identify specific guidance or training for the police on the use of Section 5. Given the wide discretion which is afforded to the police and the potential impact on freedom of expression, it is vital that officers have a clear understanding of this offence both in the context of its use in protests and tackling lower level disorder on the street. The Government shares the conclusion of the HMIC report *Adapting to Protest* that “it is disquieting that such a modest amount of time is devoted in public order training to the complex legal landscape. It is hard to overestimate the importance of officers’ understanding of the law when each individual officer is legally accountable for the exercise of his or her powers..” The Committee will be aware that the ACPO Manual of Guidance on Keeping the Peace is being revised and we shall ensure that advice on the use of section 5 in the public order context is incorporated within that Manual.

The Government notes the Committee’s previously expressed view that guidance will not be sufficient to address inappropriate use of section 5 by the police. We do not share this view and intend to provide separate guidance for the police on Section 5 which reiterates the balance between the right of individual freedom of expression and the right of others not to be insulted and distressed gratuitously. We shall draft guidance in consultation with ACPO, the CPS, NPIA and civil liberty groups. We intend to have a draft ready in line with the timetable for the revision of wider ACPO guidance on public order which we shall share with the Committee.

### **QUASI-PUBLIC SPACE**

**18. We called on the Government to "consider the position of quasi-public space to ensure that the right to protest is preserved". The Government's reply acknowledged our concern and indicated that the Home Office would discuss the issues with local authorities and relevant NGOs. The Minister undertook to provide us with a progress report later in the year and we welcome this commitment. (Paragraph 55).**

The Government is working with ACPO to clarify the extent of police powers in relation to protests on private land. We are taking on board HMIC’s advice on how to police protest

on private land in a way that upholds people's right to peaceful protest, balanced against the rights of others to peaceful enjoyment of possessions including private property .

Compliance with any guidance will be further underpinned by a Code of Practice on Public Order. The Government will be consulting a wide range of stakeholders on the Code of Practice and will take this opportunity to ensure local authorities and NGO views on this issue ( as well as wider issues) are taken into account.

#### **TAKING AND RETENTION OF PHOTOGRAPHS**

**19. The Court of Appeal gave judgement on 21 May 2009 in the case of *Wood*. This concerned the taking and retention of photographs of an anti-arms campaigner at the AGM of an organiser of trade fairs for the arms industry by the Police's Forward Intelligence Team. The home office is working with ACPO to develop guidance on this issue and the Minister undertook to report back to us in the autumn. We look forward to hearing more from the Home Office in the autumn about guidance to police forces on complying with the Court of Appeal's judgement in the *Wood* case. (Paragraph 56).**

The Government recognises that the issue surrounding the retention of personal information is a sensitive area. The Management of Police Information (MOPI) Code of Practice (2005) and its supporting operational guidance which were introduced to provide a common national framework and standards for the management of police information, while not expressly dictating on the taking and retention of photographs, sets out the key principles which are relevant, namely on the collection, review, retention and disposal of police information.

As the Committee will be aware, HMIC in its report *Adapting to Protest* has recommended that Home Office should clarify the legal framework for the use of overt photography by police during public order operations and the collation and retention of photographic images by police forces and other policing bodies. In line with this recommendation, the Home Office will issue further detailed advice on *Wood* drawing on the summary of the implications of the judgment as set out in the HMIC report *Adapting to Protest*, Counsel's advice sought by ACPO and the Metropolitan Police's revised standard operating procedure on overt filming and photography.

Compliance with Home Office guidance on *Wood* will be further underpinned by a Code of Practice on Public Order.

#### **CONCLUSION**

**20. A theme implicit in our consideration of policing and protest issues has been the tension between the broad discretion given to police officers in dealing with public order issues and ensuring compliance with the UK's human rights obligations. We noted in paragraph 48 an example of the Government having a clear policy in relation to the use of counter-terrorism powers which has not always been consistently followed by police forces. The use of containment raises this issue in a different way. Containment raises human rights issues of sufficient importance that they will be considered by the European Court of Human Rights, but the Government's view is that the use of containment is a tactical matter for the police to decide. The Minister**

**described police training on human rights as “essential” but also said “I cannot dictate to the police what training they should or should not do”.(Paragraph 57).**

The Government reiterates its support for the revision of ACPO training to provide officers with a clear understanding of the use of police powers that can apply in a public order situation, including explicit training on the facilitation of peaceful protest as the starting point, and human rights obligations on the police. The Government stands ready to provide input on legislation and powers into training and guidance and commends the police and NPJA on their swift action on rolling out revised training programmes.

**21. This raises three issues of general concern. The first concerns establishing the proper role for the Government in setting statutory boundaries for the police, so that police officers can exercise discretion without cutting across Government policy or contravening human rights legislation. We are not convinced that the Government is clear what its role should be. ACPO is taking an increasingly important role as an informal regulatory body for police forces – producing guidance on public order and other operational matters: to what extent is it answerable to the Home Office for the advice it provides? (Paragraph 58)**

The Home Secretary has responsibility for setting the strategic direction and national framework for policing in England and Wales but the roles and responsibilities of the partners involved in the current `tri-partite' arrangement is, as noted in the Policing White Paper, "a complex and changing picture". In considering this issue however, the White Paper confirms the need "to uphold a key tenet of British policing – the ability of Chief Constables to make operational decisions without political interference."

HMIC has also given consideration to the role of ACPO, noting that" The position and status of the Association of Chief Police Officers should be clearly defined with transparent governance and accountability structures, especially in relation to its quasi-operational role of the commissioning of intelligence and the collation and retention of data."

The Government notes that the new ACPO President is giving consideration to how ACPO should be structured, organised and funded and the national role it should play in policing. The Government stands ready to work with tripartite partners on proposals for future changes.

**22. A key finding of our enquiry into policing protest concerned the importance of leadership on human rights matters. We look forward to continuing engagement with ACPO, the Home Office and individual police forces to ensure that human rights become fully integrated into police policy, training and guidance and operational decision making. (Paragraph 59)**

The Government can confirm that the police are committed to ensuring that human rights become fully integrated into police policy, training, guidance and operational decision making. As this response has repeatedly stressed, work has already begun on this through the revision of guidance and training courses at command level setting common standards. That guidance will be supported by a Code of Practice both of which will be public facing and informed by wide consultation with a range of partners including the valuable input of the Joint Committee.

**23. The police serve our community and must be fully accountable to it. Public trust in the police can be seriously damaged where accountability is seen to be lacking. We recommend that the Metropolitan Police publish the Cass report into the death of Blair Peach without redaction, to help bring some closure to the family and friends of Mr Peach and to initiate a debate about how the policing of protest has improved and can improve still further. (Paragraph 60).**

Earlier this year the Metropolitan Police Commissioner publicly stated his desire to publish the report into the death of Blair Peach unless there were overwhelming reasons not to do so. This view has not changed. At the request of the MPS the Crown Prosecution Service has agreed to review the report and provide advice as to whether any further investigation into any aspect of the matter would be justified. This independent oversight should provide clarity to the family of Blair Peach and the public that the MPS has exhausted all investigative options in relation to this historic case.

The report was handed to the CPS on 14 December 2009.

### **Letter to the Chair of the Committee from Rt Hon David Hanson MP, Minister of State, Home Office, dated 24 October 2009**

#### DEMONSTRATING RESPECT FOR RIGHTS? FOLLOW-UP REPORT

I wanted to provide you with an update on the Government's planned response to the report 'Demonstrating Respect for Rights? Follow-up' by the Joint Committee on Human Rights (JCHR) published on 14 July 2009.

The Home Office submitted written and oral evidence to JCHR's review into policing protest and published a formal reply in May 2009. The Government welcomes the JCHR's follow-up report and is committed to continuing to engage constructively with the Committee on what remains a very important area.

As you will be aware, there have been a number of reviews into the policing of protest in recent months, and we await Her Majesty's Inspectorate Constabulary's (HMIC) full Report which is due to be published in November. We are in the process of carefully considering JCHR's latest recommendations, and will be able to provide you with a more comprehensive response once the HMIC Review is published and following the publication of the Policing White Paper next month: I will ensure you are provided with a full response by 9 December 2009, but in the interim I wanted to give you an update on the Government position of the core issues raised in your Report;

Firstly, it is important to reiterate the evidence provided by my predecessor, Vernon Coaker. The Government is clear that it is important to recognise the professionalism of police forces in facilitating the vast majority of protests without conflict or disorder. It is also important to recognise the successes of the G20 policing operation: criminal activity and wider disruption to London was minimal, the police maintained the high levels of security needed to protect those attending the Summit and over the course of two days thousands were able to protest peacefully.

However it is of course right that those incidents that call into question the actions of individual officers, and any concerns over police tactics, are properly explored and lessons learnt.

I would also reiterate that we are committed to protecting and facilitating the right to peaceful protest. We will be using the opportunity of the White Paper to reaffirm this commitment and to set out the key principles that must underpin the policing of protest.

We agree too that good communication between police and protestors – and with the media – is the key to ensuring 'no surprises policing', and that the use of tactics like containment and use of force must be proportionate. We will set out in our full response how we think this can best be achieved working with a full range of partners.

In our reply to your report and in oral evidence to the Committee, the Home Office also gave undertakings to consult on amendments to section 5 of the

Public Order Act 1986, to look at how the Protection from Harassment Act is Sometimes used against protestors and to look at the impact of the privatisation of public space on the right to protest. We have sought views from a range of stakeholders on section 5 and are currently collating the responses; we remain in discussions with the Ministry of Justice on the use of injunctions against protestors and will be drawing on the work of the HMIC Review in responding to the Committee's concerns around quasi-public space.

Finally, you will have seen that the Government has brought forward repeal of sections 132-138 of the Serious Organised Crime and Police Act 2005 in the Constitutional Renewal and Governance Bill. In doing so we have directly addressed the Committee's concerns about the level of access the police are required to maintain. I look forward to the Committee's support for these provisions as we take them through both Houses.

I am copying this letter to the Commissioner of the Metropolitan Police

Service, the President of ACPO and Her Majesty's Chief Inspector of Constabulary.

**Letter to the Chair of the Committee from Moir Stewart,  
Commander, Directorate of Professional Standards, Metropolitan  
Police Service, dated 17 July 2009**

*Re: Disclosure of report into death of Blair Peach*

Thank you for your letter dated 9<sup>th</sup> June 09 addressed to the Commissioner of Police for the Metropolis which has been forwarded to me for response. Please accept my apologies for the delay in responding.

I can advise you that the Commissioner has asked Deputy Commissioner Tim Godwin to consider if the report can be made public, starting from the principle that it should be. However it is on the basis that the MPS needs to review the material and to consider all the relevant factors, including taking legal advice.

The intention is for the process to be completed by the end of this year and it is too early at this stage to give a view as to the details of how disclosure/non disclosure will take place.

Once the MPS is in a position to comment we will ensure that the MPA and interested parties are made aware.

**Letter to the Chair of the Committee from Catherine Crawford, Chief Executive to the Authority, Metropolitan Police Authority, dated 4 August 2009**

The Metropolitan Police Authority (MPA) writes in response to your call for the release of the findings of the Metropolitan Police Service (MPS) inquiry into the death of Mr Blair Peach.

The MPA, the body that oversees the MPS, moved a motion at our June Full Authority (25<sup>th</sup> June 2009) meeting requesting that the MPS publish the report by the end of 2009. The Commissioner, Sir Paul Stephenson said at that meeting that his starting point was a desire to publish the report and that began a review to consider the issues arising out of publication particularly in relation to fairness and legality. He also noted that it “would be reckless of me not to do that, particularly if we get that judgment wrong it may well end up in litigation and an issue of public money”. He agreed to complete that review as soon as he could. In passing the motion, the Chair of the Authority Boris Johnson said that “there is a very strong call from this MPA for that report to be released”. The Authority will continue to monitor the progress of the MPS’s internal review and to press for publication of the report.

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Fifteenth Report	Legislative Scrutiny: Policing and Crime Bill (gangs injunctions)	HL Paper 81/HC 441
Sixteenth Report	Legislative Scrutiny: Coroners and Justice Bill (certified inquests)	HL Paper 94/HC 524
Seventeenth Report	Government Replies to the 2 <sup>nd</sup> , 4 <sup>th</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> and 12 <sup>th</sup> reports of Session 2008-09	HL Paper 104/HC 592
Eighteenth Report	Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009	HL Paper 119/HC 726
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Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
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Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754
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Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of Session 2007-08	HL Paper/ HC 1079