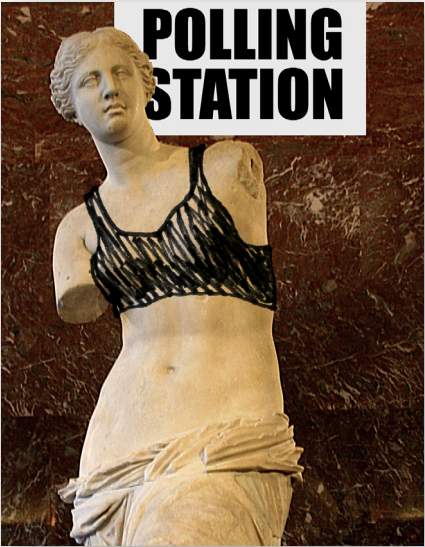


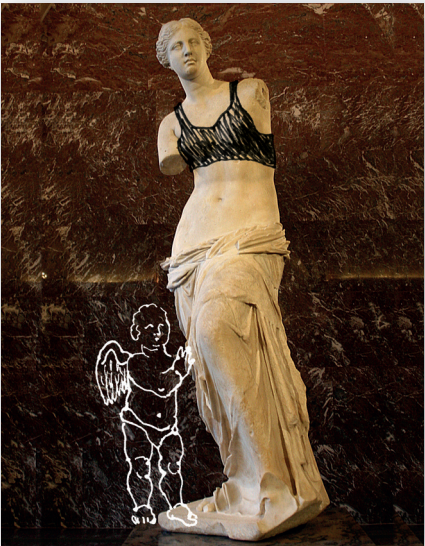
# Model Law Commission Report 2024



ELECTORAL LAW



PROTEST LAW



REPRODUCTIVE RIGHTS



SPORTS LAW

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# Foreword note by the BVL Chief Executive Officer

BVL is a social mobility charity, which aims to inspire young people from non-fee paying schools to pursue a career in the legal profession. To achieve this aim, we give students the opportunity to experience what a legal career involves. One such opportunity is the Model Law Commission (“MLC”).

The MLC is a three-month long project that provides our students with the chance to simulate the work of the Law Commission. We split our pool of students into four groups, each tasked with the reform of one of the following areas of law: (1) Family, Trusts or Land Law; (2) Criminal Law; (3) Commercial and Common Law; or (4) Public Law. This year, the students considered the law on Reproductive Rights, Protest Law, Sports Law and Electoral Law.

We have now run the MLC for 11 years. Over that time, it has gone from a project run entirely in person, out of a school in London, to a project reaching students across England and Wales. We now run our projects in a hybrid model, with weekly sessions online and then final events taking place in person. This enables us to have a wide geographical reach, without sacrificing the benefits of getting together in person. Importantly, the final event for the MLC takes place in Portcullis House in Westminster. There is no better way to break down barriers than to physically open the door to institutions like Parliament.

This hybrid model has been made possible not just by improvements in technology (thank you, Zoom), but also by the generosity of our sponsors and partners. In particular, this year we are incredibly grateful to BCL Solicitors for making BVL its Charity of the Year. In previous years, we have had to limit the number of students who take part in the MLC from outside of London, due to the cost of the travel and accommodation required for the final event. BCL Solicitors’ financial support of the charity this year has enabled us to remove that cap and as a result, this MLC has had the widest geographical reach of any of our projects to date. I am sure I speak on behalf of the whole BVL team and its students when I thank BCL Solicitors, and all of our supporters this year, for their support.

2024 has also seen our students and alumni go from strength to strength. Recently, I was contacted by a former student who had successfully obtained a position as a solicitor apprentice at a leading law firm in Liverpool. She wanted to thank the BVL team for their support and offered to assist in the future with mentoring of current students. That kind of ‘pass it on’ mentality is, I am delighted to say, not uncommon. A number of our volunteers are former students.

That former student also kindly shared what her time on BVL’s projects meant to her. And since there is no better way to understand the value of this work than by reading the students’ words, I share them with her permission here:

*“BVL significantly contributed to my growth and development in various aspects of law enabling me to secure top university offers and a solicitor degree apprenticeship.*

*Participating in the BVL moot competition was a transformative experience. Reaching the quarter-finals and presenting arguments to experienced lawyers and Supreme Court judges improved my confidence in legal advocacy. Working closely with a mentor I learned to construct persuasive arguments and strengthened my resilience when exposed to fictional tort law cases for the first time whilst meeting deadlines to deal with cross-appeals, and create skeleton arguments and bundles.*

*Without a doubt, I would recommend BVL to any aspiring lawyers. A great opportunity to work collaboratively with likeminded driven individuals who are keen to gain a deeper understanding of the law.”*

I hope that this year’s MLC students will share a similar sentiment and that they too will go on to obtain their desired next steps, be it at university, an apprenticeship or something else entirely.

In the meantime, it is with great pride that I now present the report of the 2024 MLC; I hope you enjoy reading it.

# Introduction

## BVL

BVL is a social mobility charity and legal education charity, which seeks to engage young people from non-fee paying schools between the ages of 16 and 18 years old with law and legal policy. This is all with the aim of assisting them in entering the legal profession should they choose to pursue a career in law. To further this aim, we take students from non-fee paying schools and provide them with opportunities to give them insight into the law, such as the Model Law Commission.

Since BVL's inception in 2011, BVL has gone from a small student-run organisation to a registered charity and continues to grow, reaching out to more students each year. We now run a variety of programmes, including: a Mooting Competition with the UK Supreme Court, an Introduction to the Legal System project, also in association with the UK Supreme Court, a Summer School and the Model Law Commission.

From 2020 onwards, as a result of the Covid-19 pandemic, BVL took its projects online and has offered the last four years' projects, including the Model Law Commission, to students across the whole of England and Wales. As a result of our growth to a national charity, in 2021 we changed from 'Big Voice London' to 'BVL'.

We are delighted to be able to name 5RB Chambers, Bam Legal, BCL Solicitors, The Blair Partnership, Deka Chambers, Eversheds Sutherland LLP, ICLR, the Magdalen College Trust, Oxford, the Peter Cruddas Foundation, the PTL Foundation and Schillings International LLP as financial donors and sponsors of the charity, in addition to ongoing support from Cumberland Lodge, Linklaters LLP, the Law Commission, Town Legal LLP, and the University of Law. We also extend our appreciation to the UK Supreme Court for its continued support of our objectives.

## Model Law Commission 2024

The Model Law Commission is a three-month long project that provides A-Level students with the chance to simulate the work of the Law Commission. We split our pool of students into four groups, each tasked with the reform of one of the following areas of law: (1) Family, Trusts or Land Law; (2) Criminal Law; (3) Commercial and Common Law; or (4) Public Law. From October to December, the young people undertook a five-stage process: research, formulating recommendations, consulting with their peers, reporting on their proposals and devising their legislation.

Each year, the Model Law Commission begins with a two-day conference, which again this year was hosted via Zoom. It is over the course of these two days that our students are introduced to their respective topics by experts in the field who spoke to them from all over the country. The young people then take that information and over the following weeks discuss reform ideas with each other, their Group Leaders and their peers.

The results of these months of hard work are contained within this report. This is a reflection of what these young people believe should be the law governing these particular issues and is written entirely in their own words.

## Our students

When recruiting students, our only requirement is that applicants come from non-fee paying schools. We do not set grade boundaries or have entrance exams. We only ask that students be keen to learn and commit to the project.

All the students that participate in the Model Law Commission apply to this project entirely independently. It is not a school-run activity; these are students who want to learn about and have their voices heard in the law. With sessions run every week in the evenings after school, this is not a small commitment to undertake alongside studying for all-important A-Level exams. We hope that as we expand, we will be able to provide this valuable opportunity to more ambitious young people.

## The Authors/Commissioners

The young people that have contributed to this briefing paper are:

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## Acknowledgement

We are extremely grateful to the ICLR team for kindly sponsoring this publication and for their support of BVL.

Finally, we would also like to thank the BVL Management Board for their assistance in bringing the Model Law Commission to life.

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*BVL, January 2025*

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## Disclaimer

The work, recommendations and opinions contained in this report are solely those of the student authors listed. The views expressed do not represent those of any other external organisation or individuals, including guest speakers listed in this report, the UK Supreme Court and the Law Commission. BVL is an entirely independent organisation, and while we value the ongoing support and guidance of many organisations all views expressed are our own.

# Part One: Property, Family & Trusts

## Recommendations on the law governing Reproductive Rights

Compiled with thanks to:

Andrew Powell, Barrister at 4PB

Joanne Anton, Head of Policy at Human Fertilisation and Embryology Authority

Professor Katarina Trimmings, Lecturer at University of Aberdeen

Dr Sandra Duffy, Lecturer at University of Bristol

Sarah Jones, Chief Executive at Surrogacy UK

Tim Bowe KC, Barrister at 1GC

## Reproductive Reform: Surrogate's Control over Her Body and Parental Order

Surrogacy in the UK produces several issues that affect both the intended parents (IPs) and the surrogate. The current law of surrogacy allows full freedom of the surrogate mother to consume harmful substances during pregnancy and imposes a delay before IPs are considered the legal parents of the surrogate baby. These 2 core concerns can link with each other as because the IPs are not regarded as legal parents until at least 6 months after the birth, they cannot gain a right to control what the surrogate consumes as it is still legally her baby.

There are some Acts that provide protection and structure.<sup>1</sup> Moreover, the encouragement of surrogate agreements can reduce the risk of the 2 concerns that have been addressed.<sup>2</sup> However, surrogacy agreements are not currently binding in the UK.<sup>3</sup>

Acts like the 'Surrogacy Arrangements Act 1985' are outdated; and the 'Human Fertilisation and Embryology Act (HFEA) 2008' delays legal parenthood, which creates the risk that the surrogate mother changes her mind once the baby is born and stays the legal parent. With this, comes the difficulty to justify control over what the surrogate mother is allowed to consume. In addition, the HFEA 2008 can be criticised for its complex legal framework, especially concerning same-sex couples and single parents. We believe that both statutes are seen as inadequate in addressing modern surrogacy practices, thus we would like to propose reforms in order to uphold all the tenets of justice, and better reflect the requirements of contemporary society.

The two reforms we want to propose to tackle the two concerns addressed are:

1. Parental order, governed by HFEA 2008:  
To change the current requirement of the parental order by allowing the intended parents to become the legal parents of the surrogate baby before their birth.
2. Control of surrogate mothers during pregnancy:  
To make a legal right for IPs to restrict surrogate mothers from using harmful substances.

## Methodology

Similar to the approach used by the Law Commission, our process was divided into four key stages: pre-consultation, consultation, policy development, and reporting. In the pre-consultation stage, we reviewed the laws on surrogacy, focusing on identifying their weaknesses. To gain practical insights, we heard from the chief executive of Surrogacy UK and for a deeper understanding of the theoretical processes behind surrogacy, we learned from professors, such as Professor Katarina Trimmings from the University of Aberdeen. During the consultation phase, we conducted a detailed survey with which we received 115

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<sup>1</sup> Surrogacy Arrangements Act 1985 and Human Fertilisation and Embryology Act 2008.

<sup>2</sup> NGA Law, 'Surrogacy in the UK (UK law)' (NGA Law, 2024) <https://www.ngalaw.co.uk/knowledge-centre/uk-surrogacy-law/> accessed 24 November 2024.

<sup>3</sup> Ibid.

responses. It allowed us to gather public opinions on the roles, responsibilities and rights of a surrogate. The third stage involved policy development: we had in-depth discussions on various proposals. This stage's success relied on reaching an agreement on the topics of parental order and the surrogate's control over their body. Finally, we completed the process by writing our report, in which we detailed reforms in regards to parental order and the surrogate's control of their own body.

## The Surrogate's Control Of Her Body

When considering pathways of surrogacy, there are two types: straight and host.<sup>4</sup> Host, also known as gestational surrogacy, is when the eggs of the intended mother or a donor are used and there is therefore no genetic connection between the baby and the surrogate.<sup>5</sup> Straight is the conventional form of surrogacy where the surrogate provides her own eggs to produce the surrogacy.<sup>6</sup> The sperm originates from an intended parent who undergoes self-insemination or artificial insemination. Unlike artificial insemination, self-insemination can occur without the help of a fertility clinic,<sup>7</sup> increasing the risk of infection transmissions ultimately putting the surrogate at risk. Ensuring there is a fertility clinic within the process of self-insemination ensures the surrogate's health and safety are prioritised and they are aware of the precautions taken. This protects the autonomy and mental wellbeing of the surrogate as she is made to feel secure and well-informed throughout the process.

The confidentiality over the surrogate's medical history can vary depending on the contract between the surrogate and intended parents as there is no explicit framework.<sup>8</sup> Introducing a standardised framework which states what medical information must be shared, while the surrogate obtains the power to alter terms and conditions, will reduce the chance of the surrogate feeling pressured into sharing personal information and provides the surrogate with greater control over the medical information she is willing to share with the intended parents.

Regulated Surrogacy Statements are "agreements are frequently used at present, and set out a more detailed record of agreements reached between the intended parents and surrogate on a range of issues relating to lifestyle choices of the parties during pregnancy, arrangements as to the birth, and contact post-birth between the surrogate and the child, for example. Such supplementary agreements could continue to be used but, as at present, they would not be legally binding or enforceable. However, the teams may choose to take legal advice or seek to have them drafted by lawyers."<sup>9</sup> This highlights how although legally the surrogate has the right to make her own medical decisions, including those about diet, lifestyle, and medical procedures, there can be ethical and contractual pressures. Agreements, while unenforceable by law, often outline expectations that a surrogate will follow specific guidelines (e.g. refraining from certain substances, attending particular prenatal appointments, or accepting particular medical recommendations). This can create a psychological or ethical expectation that subtly impacts her autonomy, as she may feel obligated to adhere to these for the intended parents' peace of mind or to avoid conflict.]<sup>10</sup>

In the United Kingdom, the surrogate mother has more body autonomy than in other countries, as the law states that binding agreements around surrogacy are not enforceable by the UK law.<sup>11</sup> However, for example in the USA, commercial contracts (binding contracts)<sup>12</sup> can be produced by lawyers and it lays out what the surrogate can and or cannot do such as medical treatments, dietary restrictions, lifestyle restrictions, travel restrictions, and prohibition to sexual intercourse. The UK legal system creates more

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<sup>4</sup> Department of Health and Social Care, 'Guidance – The surrogacy pathway: surrogacy and the legal process for intended parents and surrogates in England and Wales' (25 April 2024) <https://www.gov.uk/government/publications/having-a-child-through-surrogacy/the-surrogacy-pathway-surrogacy-and-the-legal-process-for-intended-parents-and-surrogates-in-england-and-wales> accessed 24 November 2024.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> 'Care in Surrogacy: Guidance for the Care of Surrogates and Intended Parents in Surrogate Births in England and Wales' (GOV.UK) <https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales> accessed 21 November 2024.

<sup>8</sup> 'Care in Surrogacy: Guidance for the Care of Surrogates and Intended Parents in Surrogate Births in England and Wales' (GOV.UK) <https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales> accessed 21 November 2024.

<sup>9</sup> Law Commission of England and Wales/Scottish Law Commission, *Building families through surrogacy: a new law (Volume II)* (Law Com No 411/ Scot Law Com No 262) para 9.10.

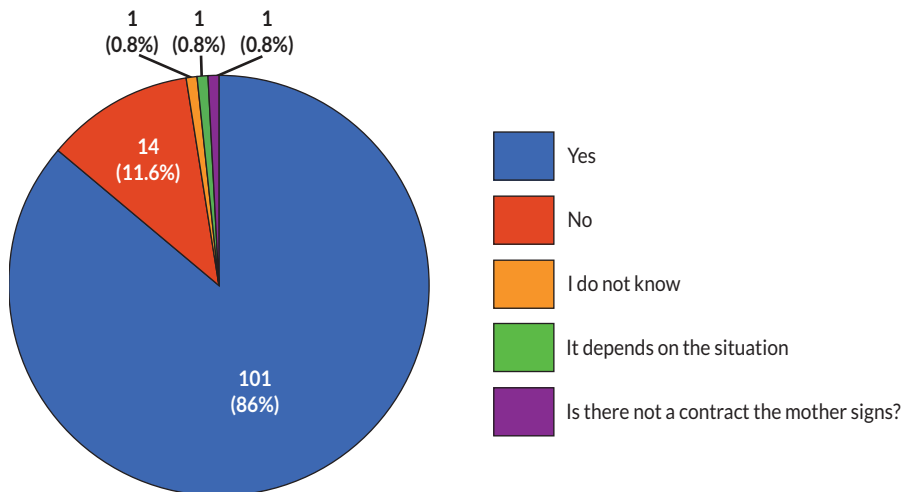
<sup>10</sup> ("Surrogacy law in the UK: ethical considerations").

<sup>11</sup> Service GD, 'Surrogacy: Legal Rights of Parents and Surrogates' (GOV.UK, 5 April 2015) <https://www.gov.uk/legal-rights-when-using-surrogates-and-donors> accessed 21 November 2024.

<sup>12</sup> 'Surrogacy Contracts' (*Klein Fertility Law*) <https://www.kleinfertilitylaw.com/surrogacy-lawyer/surrogacy-contracts> accessed 21 November 2024.

freedom for the mother which is beneficial for her mental health as her decision-making is not restricted. This is often viewed as a controversial topic as there should be some clear restrictions put in place in order to satisfy both parties involved.<sup>13</sup> If not this, could create tension between the two parties as rules are not strictly in place. This might lead to overthinking as the surrogate mother is put under pressure whenever making decisions and the intended parents are not fully aware of everything further causing frustration which could escalate into conflicts. This further suggests that there is a need for reform surrounding binding agreements in order to create more stability for both parties, as 81.6% of the respondents agreed that the surrogate mother is liable for performing harmful activities.

**Question: Should the surrogate mother be liable for performing harmful activities while pregnant (i.e: smoking or drinking)?**



After conducting primary research, the questionnaire results revealed that only 11.3% of the respondents said that the surrogate mother should not be liable for performing harmful activities while pregnant. However, 86.1% of the respondents agreed that surrogate mothers should be liable, highlighting the need for reform so that there can be proper regulation to ensure that there is no direct harm to the unborn child.

### Diet and life control

When discussing the control a surrogate has on their diet by law, she is allowed to make her own decisions as the binding agreements are not legally enforceable.<sup>14</sup> However, it can be overwhelming for the mother as she needs to constantly overthink the opinion of the intended parents.

When discussing who should have control of food choices, it can be difficult when taking into account different factors such as lifestyle choices and food restrictions. Many of these problems are assumed to have been resolved when the surrogate mother and intended parents familiarise themselves with one another. Intended parents may feel as though they lack control over reproduction options, having no control over the surrogate’s food choices will leave them feeling helpless and in the end ultimately trusting the surrogate. This can lead to tension between the two parties as the intended parents might not be fully comfortable with the surrogate mother’s decision. Surrogates may follow certain lifestyles that require them to make certain food choices, which can be questioned by the intended parents. Therefore there will always be a chance of conflict if someone is dissatisfied.

The current legislation dictates that “the surrogate mother shall not be bound by any agreement made prior to the pregnancy.”<sup>15</sup> The law fails to ensure that surrogate mothers continue to reaffirm their consent throughout the pregnancy. The framing of this statement can arguably position surrogates as vulnerable to dilemmas such as medical changes, emotional pressures, and at times coercion from intended parents and third parties. According to the Law Commission’s Consultation Paper on Surrogacy

<sup>13</sup> Zairu Nisha, ‘Negotiating ‘Surrogate Mothering’ and Women’s Freedom’ (2022) Asian Bioethic Review Negotiating ‘Surrogate Mothering’ and Women’s Freedom (Accessed 24 November 2024).  
<sup>14</sup> ‘Surrogacy in the UK (UK law)’ (NGA Law), <https://www.ngalaw.co.uk/knowledge-centre/uk-surrogacy-law/> accessed 24 November 2024.  
<sup>15</sup> ‘Human Fertilisation and Embryology Act 1990’ (Legislation.gov.uk, 1 November 1990) <https://www.legislation.gov.uk/ukpga/1990/37/contents> accessed 21 November 2024.

safeguarding the surrogate's autonomy and informed decision-making requires that any law in place ensures that they are fully informed and not subjected to undue influence, but ultimately calls for the utmost consideration in protecting the surrogate's lifestyle choice legally.<sup>16</sup> As such, it is imperative on those grounds that surrogates be periodically asked to confirm their consent or alter any previous decisions in order not to undermine their rights to body integrity and medical self-determination during the course as well as prior to the pregnancy.

There are many countries that have specific regulations around the surrogate mother's lifestyle and bodily choices during pregnancy, including restrictions on harmful activities. These measures are often implemented to ensure that the welfare of the unborn child and also the expectations of the intended parents are met. For example in California, USA, intended parents and their surrogate mothers are required to have different attorneys representing each party during the development of the surrogacy agreement to avoid conflict of interest. In the contract, there are expectations for diet and lifestyle habits, communication between parents, and attendance at medical appointments.<sup>17</sup> It is clear that other countries have more efficient regulations to ensure smooth surrogacy arrangements so if this is adopted in the UK, the safety of the unborn child can be secured.

## Parental Order

In the UK, parental orders transfer legal parenthood from a surrogate to the intended parents. This system is currently regulated by the 'Human Fertilisation and Embryology Act 2008' with amendments made for single parents in 2019.<sup>18</sup>

As the law currently stands, upon birth, the surrogate mother is granted legal rights to the child. It is the surrogate mother who is deemed the 'legal mother' of the child following the birth, with the surrogate's spouse being deemed the 'legal father' unless:

- i. The surrogate is not in a marriage or civil partnership
- ii. The surrogate's spouse did not give permission<sup>19</sup>

The surrogate's partner too has full legal rights over the child unless they explicitly refuse their role.<sup>20</sup> If the surrogate mother is not within a marriage or civil partnership, if the intended father's sperm has been used, he will then be deemed the 'legal father' which enables him to be named on the birth certificate as well as hold legal parental responsibility.

This legal parenthood can be transferred to the intended parents via a parental order.<sup>21</sup> Both the surrogate and her partner must consent to this transfer with the surrogate mother and her spouse retaining legal decision-making rights until the order is granted.

This is currently regulated under the Human Fertilisation and Embryology Act (HFEA) 2008 in which there are set criteria that must be met before a parental order can be issued.<sup>22</sup> This includes:

- a. Must be made by two people -the intended parents- with at least one gamete used to bring the creation of the embryo(s.54(1))
- b. The two must be in a marriage, civil partnership or an enduring family relationship(s.54(2))
- c. They must have applied for the order in the 6-month period following the child's birth(s.54(3))
- d. The child's home must be with the two intended parents(s.54(4))
- e. Both applicants must have attained the age of 18. (s.54(5))
- f. The surrogate child was purely conceived through the means of surrogacy and that the applicant is not a parent of the child (s.54A(1)(a))

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<sup>16</sup> Law Commission/Scottish Law Commission, *Building families through surrogacy: a new law (A joint consultation paper)* (Law Com No 244/Scot Law Com Discussion Paper 167).

<sup>17</sup> Surrogacy Legal Information for Intended Parents, 'California Center for Reproductive Medicine' Surrogacy Legal Information for Intended Parents | San Diego (Accessed 21 November 2024).

<sup>18</sup> n 1.

<sup>19</sup> Human Fertilisation and Embryology Act 2008 s35.

<sup>20</sup> Barcan Kirby, "The Law on Surrogacy and Parental Responsibility (November 2023)" <https://barcankirby.co.uk/surrogacy-parental-responsibility-law/> accessed 21 November 2024.

<sup>21</sup> Gov.uk, 'Surrogacy: Legal Rights of Parents and Surrogates' <https://www.gov.uk/legal-rights-when-using-surrogates-and-donors> accessed 21 November 2024.

<sup>22</sup> HFEA 2008 s54.

- g. The court must be satisfied that the woman who carried the child and any other person who is a parent of the child but is not one of the applicants, must have full understanding of what is involved and come to an agreement of the making of the order. (s.54(6))
- h. The courts are satisfied that there is no money or other benefit other than granted expenses that are reasonably incurred (s.54(8))
- i. If there is disagreement regarding who the child's legal parents should be then this can be done based on the best interests of the child.<sup>23</sup>

If there is any disagreement over who should be the child's legal parents, the courts will make a decision based on the child's best interests.<sup>24</sup> In such cases, the court will prioritise the child's welfare, potentially overriding the surrogate's or her partner's wishes if necessary to ensure the child's emotional and legal security.

#### Issues with the current law and its criteria are:

- a. That there must be two applicants who must be in a marriage, civil partnership or/and enduring relationship.
- b. Where the intended parents must apply for the parental order following the birth within six months.
- c. That the application must be agreed by the surrogate before it can be made.

Currently, the intended parents are only able to apply for a parental order following the birth of the child, which can take anywhere from 4 up to 12 months.<sup>25</sup> This seemingly leaves the intended parents for a long period of time where they have no power to make any decisions over their child. It is only when the surrogate and their partner relinquish their rights that they can gain legal authority over the child.<sup>26</sup> This means that during this time the intended parents' rights to the child are withheld in which they lack the legal power to make decisions over instrumental things regarding the child's life such as medical treatment and education. This places the intended parents in a difficult circumstance in which they may undergo significant distress in trying to gain rights over their child with it further becoming a more complex issue if the surrogate mother wishes to withhold a parental role.<sup>27</sup> Due to this if the intended parents wished for no involvement from the surrogate mother following the birth, this would not be enforceable unless the surrogate herself consents and agrees to it also.<sup>28</sup>

We believe that it is important to ensure that the intended parents automatically receive parental rights upon the birth as this would rightfully reinforce the belief that the child is in fact theirs as would originally have been agreed upon. Our findings from a self-conducted questionnaire emphasise this need for reform to address these prolonged and challenging circumstances for intended parents. We found that 60% of respondents expressed that the intended parents should be granted automatic rights, highlighting this strong public support for immediate legal recognition. This majority view reflects the belief that intended parents should not be left without the authority to make essential decisions for their child's well-being.

In contrast, 34.8% of respondents favoured a more cautious approach, suggesting that a brief interim period would respect the surrogate's role before transferring full parental rights. These findings reveal broad support for prompt legal recognition, balanced with sensitivity to all parties, to affirm the intended family structure from the child's birth.

<sup>23</sup> 'Surrogacy: legal rights of parents and surrogates' (GOV.UK) <https://www.gov.uk/legal-rights-when-using-surrogates-and-donors> accessed 24 November 2024.

<sup>24</sup> 'The surrogacy pathway: Surrogacy and the legal process for intended parents and surrogates in England and Wales' (GOV.UK, 25 April 2024) <https://www.gov.uk/government/publications/having-a-child-through-surrogacy/the-surrogacy-pathway-surrogacy-and-the-legal-process-for-intended-parents-and-surrogates-in-england-and-wales> accessed 24 November 2024.

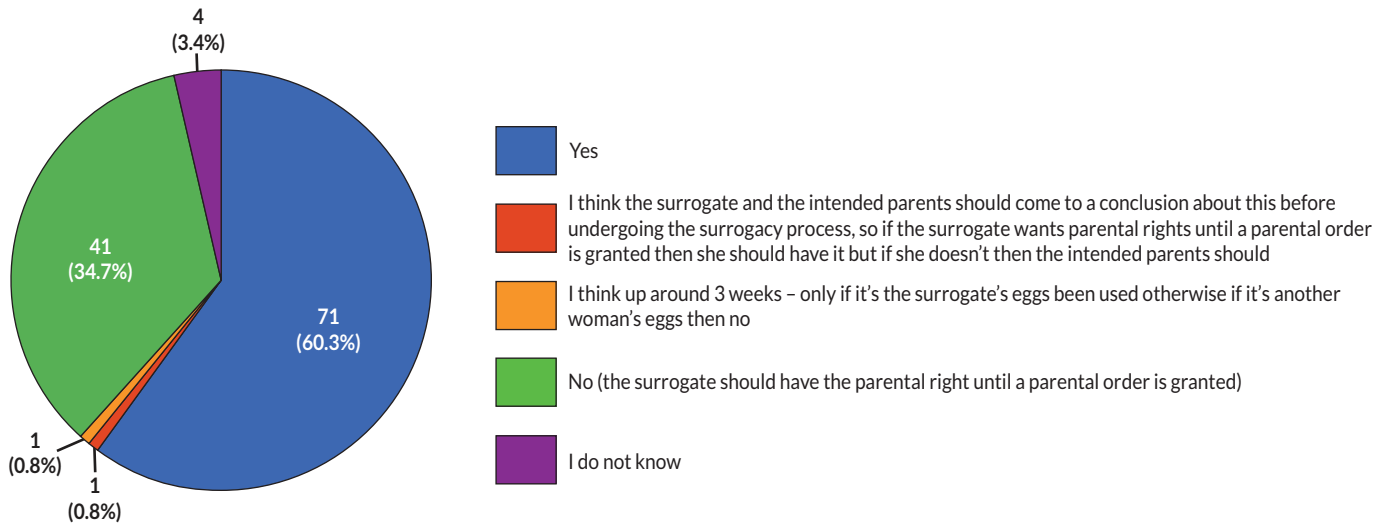
<sup>25</sup> 'Parental Orders (Surrogacy Law)' (NGA Law, 21 November 2022) <https://www.ngalaw.co.uk/knowledge-centre/parental-orders-surrogacy-law> accessed 21 November 2024.

<sup>26</sup> Ibid.

<sup>27</sup> n 9 para 10.110.

<sup>28</sup> Alexandra Hirst and Pipa Cook, 'A surrogate's right to be involved in the child's life? Where does Re Z (Surrogacy: Step-parent Adoption) leave us?' (2024) Boodle Hatfield A surrogate's right to be involved in the child's life? Boodle Hatfield accessed 24 November 2024.

**Question: Should the intended parents have automatic parental rights when the child is born? If not, how long after can the surrogate have the parental rights?**



Furthermore, the conditions of the transferral of the legal rights of the child seem to be on the surrogate mother's terms with her holding the right to not consent to any such application being made in the first place. This may result in the surrogate mother changing her mind and since no prior agreement is legally binding, it can potentially create conflict for the parties involved. This therefore can create uncertainty in the procedure in which the surrogate mother has full rights to back out and keep legal rights over the child even though the child is not intended as hers. This would pose significant issues, especially in relation to gestational surrogacy and completely undermine and revoke the rights of the intended parents as the agreement is made on the basis that the child will be handed over.

Additionally, it could be argued, regarding the criteria that the applicant's intended parents must be in a relationship, that the criteria are potentially discriminatory to single applicants who still wish to have children. As it removes the opportunity for single parents participating in surrogacy to gain parental rights of the surrogate child. Therefore, depriving single people who are unable to conceive a child themselves, of the right to become a child's legal parent.

We propose that in order for the surrogacy process to be more efficient, the immediacy of the legal parental rights should be taken under advisement for the intended parents to have automatic parental rights. This could be achieved in the form of a pre-birth agreement that is made legally binding by the courts prior to the birth of the child so that such impactful decisions can be made by the intended parents in the crucial early stages of the child's life. This would save this extensive period of time when the intended parents lack such power and can relieve some of the distress they would otherwise face. Parental orders are a serious matter therefore it makes sense why it can be a lengthy process. However, the length of time that parental orders can take can come at the expense of the intended parents, who already have to endure a range of ordeals before the surrogacy process even takes place. We do acknowledge that this reform may be overridden in rare cases, such as if there are any major complications after the birth or the intended parent(s) are unable to accept the parenthood of the child due to extenuating circumstances such as incarceration.

In addition, we feel that it should be allowed for a single person to become an applicant for a parental order. There are a significant number of people who may feel that this form of surrogacy is untraditional. However, it is unfair to discriminate against single people who want a child but are unable to have one.

## Conclusion

The process of surrogacy is not a widely discussed matter and so we believe it is important that the current issues with the law regulating it are reformed to adequately reflect modern attitudes.

We propose that the UK introduce legally binding agreements to address the surrogate's control over her body during pregnancy. These agreements should strike a balance between safeguarding the surrogate's autonomy as well as ensuring the welfare of the unborn child. Clear, enforceable guidelines restricting harmful substances and activities can reduce conflict and provide reassurance to the intended parents

while respecting the surrogate's rights to make informed decisions about her body. This reform ensures a more stable and equitable surrogacy process for all the parties involved.

Furthermore, currently, in order for intended parents to gain parental legal rights over their surrogate child, they have to wait between 4-12 months. A clear reform that should be made regarding the duration of a parental order is that the intended parents should have automatic rights over the child. This is considering that the child is biologically one of the intended parents and that they, alongside the surrogate, have gone through the process of bringing the child into the world.

There are lots of couples in the world who really want a child which is why the regulations surrounding surrogacy are so important. Such implements could make a substantial impact on those whose only means of starting a family is surrogacy. Such changes can significantly make the process of surrogacy easier and more considerate to all parties involved.



# Part Two: Commercial & Common Law

## Recommendations on the law governing Sports Law

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## Suggestions for reform regarding the relationship between socio-economic status and gambling

### Introduction

The gambling epidemic has long been recognised as a highly addictive and harmful issue by both the government and its citizens. According to the latest Public Health England report on gambling, an estimated 0.5% of the population, equating to approximately 246,000 individuals, are classified as problem gamblers with an additional 2.2 million people being considered at risk of developing gambling-related problems.<sup>29</sup>

Perhaps a problem that is more often overlooked is the clear connection between socio-economic status and gambling, which is becoming more prevalent with the increasing effect it is having on vulnerable individuals within society. For instance, research has revealed significant disparities, with the most deprived areas in the UK hosting more than ten times the number of betting shops compared to the most affluent regions.<sup>30</sup> This concentration of gambling outlets in economically disadvantaged communities highlights the need for urgent reform to protect vulnerable populations and prevent the problem from threatening the future generations to come.

As the UK continues to update its gambling legislation, several key measures have been identified through our research, suggesting a desire for more importance to be placed on particular reform ideas moving forward. These include: imposing more stringent levels of advertising, increasing public education about gambling risks, offering financial support to those affected, and introducing a more robust age verification process. Such reforms are essential to tackling the root causes of this issue, helping to safeguard the communities that are most at risk and ensuring gambling becomes a safer practice.

### 1. Limit betting advertisements

The relationship between socio-economic status and gambling-related harm in the United Kingdom remains a relevant issue, with lower-income individuals more susceptible to its harmful consequences.<sup>31</sup> The extent of an individual's decision to gamble stems from an exposure to mass advertisements, which compels one to bet on sports.<sup>32</sup> The 2005 Gambling Act, which permitted widespread advertising and marketing of betting services,<sup>33</sup> inadvertently worsened this discrepancy by relaxing the advertising regulations for betting companies, introducing provisions that allowed for the promotion of various forms of gambling, including sports betting, in an attempt to modernise the gambling industry.<sup>34</sup> As a result, economically disadvantaged populations have higher rates of problem gambling and its financial, social, and health consequences. This imbalance has prompted greater calls for changes to reduce gambling-related

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<sup>29</sup> UK, A. (2023). The Gambling Problem in the UK. [online] Addictions UK. Available at: <https://addictionsuk.com/blogs/the-gambling-problem-in-the-uk/>

<sup>30</sup> Davies, R. (2021). UK's most deprived areas have highest number of gambling outlets – report. [online] the Guardian. Available at: <https://www.theguardian.com/society/2021/aug/23/uks-most-deprived-areas-have-highest-number-of-gambling-outlets-report>

<sup>31</sup> Latvala, T.A., Lintonen, T.P., Browne, M., Rockloff, M. and Salonen, A.H. (2021). Social disadvantage and gambling severity: a population-based study with register-linkage. *European Journal of Public Health*, 31(6). doi: <https://doi.org/10.1093/eurpub/ckab162>

<sup>32</sup> <https://pmc.ncbi.nlm.nih.gov/articles/PMC9120120/>

<sup>33</sup> The Gambling Act 2005.

<sup>34</sup> Woodhouse, J. (2024). *Gambling Advertising: how is it regulated?* House of Commons, pp.1–22.

harm in these communities, with the goal of mitigating the larger societal repercussions of gambling for low-income individuals.

One objective of reforming sports law to limit public betting advertisements is to reduce exposure, particularly among young and vulnerable individuals, to gambling.<sup>35</sup> The aim is to prevent the normalisation of gambling and decrease problem gambling and associated social and financial harms.<sup>36</sup> The strategy involves prohibiting betting advertisements during live sporting events, applying the “whistle-to-whistle” regulation to all platforms, and limiting gambling sponsorships on player uniforms and stadium logos.<sup>37</sup> The UK government could establish a regulatory body to oversee gambling ads in sports and impose penalties and fines for resistance. In addition, public awareness campaigns could be conducted to inform stakeholders, including sports organisations and gambling companies, about the new rules. Furthermore, sports teams may be encouraged to lessen their reliance on gambling money by offering other sponsorship opportunities. The effectiveness of this reform could be evaluated through surveys assessing public perception and awareness of gambling ads, as well as monitoring the prevalence of high-profile problem gambling cases, which would provide critical data for scoring the success of the initiative. Annual reviews by pertinent regulatory bodies would help update and refine the regulations to keep pace with changes in advertising trends and platforms.<sup>38</sup>

The argument of the impact of warning signs on betting advertisements has been largely debated. The UK Gambling Commission requires all betting agencies to provide their consumers with adequate links to responsible gambling within the advertisements of their products.<sup>39</sup> However, it could be suggested that the majority of betting consumers already know the risk levels, and such will not take heed to advertisement warnings. Usually, such ads are followed by a ‘Gamble Responsibly’ declaration, but the infrequency of this on a national scale fails to limit the number of bets being made. An example of this is evident in the Senet Group’s 2015 slogan ‘When The Fun Stops, Stop’, which was in response to public concerns around betting adverts.<sup>40</sup> It has not made any significant impact from what it was intended to do and was criticised for its contradictory wording of ‘fun’, printed in a larger font than any of the other words in the message, which subliminally encouraged most viewers to bet more. Dr Lukasz Walasek at the University of Warwick measured the effect of this slogan on 506 fans of Premier League football and found that the majority of those who were even shown the warning label actually ended up betting more often than those that had not seen it.<sup>41</sup> Therefore, evidence from failed warning campaigns highlights the drastic urgency for greater warnings around betting advertisements.

The influence of digital betting advertisements raises serious concerns, particularly when evaluating potential reforms. In November 2018, the Gambling Commission reported that 45% of online gamblers were prompted to spend money on gambling activities due to advertisements. This figure increased to 49% among those with social media accounts exposed to gambling ads on social platforms.<sup>42</sup> Such a strong correlation underscores the need for stricter regulation of digital betting ads to address their impact on the relationship between gambling and socio-economic status. Currently, the Gambling Industry Code for Socially Responsible Advertising which promotes initiatives like educational gambling messaging, targeting consumers aged 25 and over, and blacklisting vulnerable audience keywords, has encouraged betting companies to better consider the influence of their advertising on vulnerable societies.<sup>43</sup>

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35 University of Sheffield, ‘Gambling Advertising Restrictions Could Reduce Harm’ ([www.sheffield.ac.uk](http://www.sheffield.ac.uk) 23 January 2023) <https://www.sheffield.ac.uk/news/gambling-advertising-restrictions-could-reduce-harm> accessed 24 November 2024.

36 Gambling Commission, ‘Young People and Gambling 2023: The Impact of Gambling on Young People (Summary)’ <https://www.gamblingcommission.gov.uk/report/young-people-and-gambling-2023/ypg-2023-the-impact-of-gambling-on-young-people-summary> accessed 24 November 2024.

37 Conway, R. (2018b). Gambling firms agree ‘whistle-to-whistle’ television sport advertising ban. *BBC Sport*. [online] 6 Dec. Available at: <https://www.bbc.co.uk/sport/46453954>

38 Commission, G. (2023a). - *Overview of the British gambling sector*. [online] Gambling Commission. Available at: <https://www.gamblingcommission.gov.uk/report/annual-report-and-accounts-2022-to-2023/annual-report-22-to-23-performance-report-overview-of-the-british-gambling>

39 ‘What We Regulate’ (*Gambling Commission* 2021) <https://www.gamblingcommission.gov.uk/about-us/guide/what-we-regulate>

40 ‘Do People Pay Attention to Gambling Warnings? – Bobs Betting’ (*Bobs Betting* 11 October 2024) <https://www.bobsbetting.com/articles/do-people-pay-attention-to-gambling-warnings/> accessed 14 November 2024.

41 Rob Davies, ‘Warning Message on Gambling Ads Does Little to Stop Betting – Study’ (*The Guardian* 4 August 2019) <https://www.theguardian.com/society/2019/aug/04/warning-message-on-gambling-ads-does-little-to-stop-betting-study>

42 Gambling Commission Digital Advisory Panel (2021) Digital Advisory Panel Advice: Impact of online platforms, Gambling Commission. Available at: <https://www.gamblingcommission.gov.uk/licensees-and-businesses/guide/digital-advisory-panel-advice-on-the-impact-of-online-platforms-on-gambling> accessed 15 November 2024.

43 ICRG (2023) Gambling industry code for socially responsible advertising, Gambling Industry Code for Socially Responsible Advertising. Available at: <https://bettingandgamingcouncil.com/uploads/22703-BGC-IGRG-Code-7th-Edition-111023.pdf> accessed 15 November 2024.

However, further reform or strategies could help to specifically combat the potential harms of gambling on individuals from a low socio-economic background. For instance, restricting targeting based on socio-economic factors like income and education. Additionally, capping the frequency and volume of ads in economically disadvantaged areas could reduce exposure. Clear harm warnings and financial advice links should be prominently displayed, particularly tailored to highlight the risks for those financially vulnerable. Finally, stronger penalties, such as ad suspensions or licence revocations, should be enforced for operators who fail to protect vulnerable groups. Such reforms could be pivotal in fostering a more responsible advertising environment that prioritises consumer protection and reduces the risk of gambling-related harm.

Under the current legislation of the 2005 Gambling Act, there is no requirement for advertising companies to comply with a limited budget for gambling advertisements. With a 56% increase in total spending of gambling companies marketing since 2017, reaching a sum of £1.5 billion,<sup>44</sup> marketing has clearly become a lucrative economic investment for gambling companies.

One form of marketing used by companies involves sponsoring team shirts, essentially allowing themselves to reach not only a nationwide market (of all ages) but rather an international basis. This can be seen through Leeds United and the partnership with SBOTOP, described by Leeds as ‘the biggest commercial deal’ in its history, bringing £6 million in a year.<sup>45</sup> These mutually beneficial deals have one caveat: introducing gambling to the mainstream media. Thus, limiting the budget of advertising could reduce the frequency and widespread nature of such sponsorships, perhaps eradicating the link between sports and betting, especially for young people.

Furthermore, such an approach would limit the growing increase of utilising online canals to further gambling markets, with 48% of gambling adverts taking place online.<sup>46</sup> Introducing a cap on budget would greatly reduce the calibre and availability of advertisements, in turn aiding individuals to be less influenced to partake in betting.

## 2. Increase education on gambling risks i.e schools

The dangers of gambling continue to threaten the younger generation and it is becoming increasingly relevant to the youth of today. Hence, the need for education regarding this issue seems discernible and the best way to address this issue is directly targeting the groups of individuals at the highest risk, by addressing this through the secure environments of school communities.

Increasing education on the dangers of gambling in schools is being addressed in several ways supported by government bodies and charities.<sup>47</sup> Recent findings indicate a significant number of young people in the UK are exposed to gambling, with reports from the Gambling Commission suggesting that nearly a third of 11 to 16-year-olds have gambled with their own money in the past and as a result were experiencing social or emotional difficulties due to their gambling.<sup>48</sup> This highlights a growing concern over gambling-related harm among young people.

One effective strategy to raise awareness about the risks of gambling is to integrate gambling education into the Personal, Social, Health, and Economic (PSHE) curriculum. This approach encourages teachers to discuss the dangers of gambling in the same way they address issues like alcohol and drugs. Currently, gambling awareness education in UK secondary schools is not compulsory within the PSHE curriculum, and while it is recommended, only sex and relationship education is legally required.<sup>49</sup> This proposal advocates for making gambling awareness a mandatory part of the curriculum. Gambling can have severe financial, social, and mental consequences. One must provide the younger generation with the knowledge

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<sup>44</sup> Gamble Aware, ‘Gambling companies spend £1.2 billion marketing online, five times more than on television ads.’ (2018) <https://www.gambleaware.org/media/d1ejd4ut/2018-11-24-gambling-marketing-online-five-times-tv-ad-spend.pdf>

<sup>45</sup> Ed Dixon, ‘Leeds United bag record-breaking SBOTOP shirt sponsorship’ (2020) , Sports Pro <https://www.sportspromedia.com/news/leeds-united-sbotop-shirt-sponsorship-deal-premier-league-clipper-logistics/>

<sup>46</sup> Gamble Aware, (n 44).

<sup>47</sup> ‘Personal, Social, Health and Economic Education: Gambling-Question for Department for Education’ (Parliament.uk 2021) <https://questions-statements.parliament.uk/written-questions/detail/2021-05-13/1032/> accessed 24 November 2024.

<sup>48</sup> Supporting” schools to tackle and prevent gambling harms” (11/10/2022) – date accessed 21/11/2024 <https://schoolsweek.co.uk/supporting-schools-to-tackle-and-prevent-gambling-harms/>

<sup>49</sup> Department for Education, ‘Relationships Education, Relationships and Sex Education (RSE) and Health Education’ (2019) [https://assets.publishing.service.gov.uk/media/62cea352e90e071e789ea9bf/Relationships\\_Education\\_RSE\\_and\\_Health\\_Education.pdf](https://assets.publishing.service.gov.uk/media/62cea352e90e071e789ea9bf/Relationships_Education_RSE_and_Health_Education.pdf)

to combat the dangers posed by this practice. By making gambling awareness education compulsory, it can ensure legally that this message is conveyed to students, reducing the risk of them becoming involved in gambling in the future and can make informed, pragmatic decisions.

Resources like the Gambling Education Framework, developed by organisations like YGAM (Young Gamers and Gamblers Education Trust), aim to give teachers the skills and knowledge they need to effectively highlight the risks associated with gambling.<sup>50</sup> Additionally, programs like those run by the charity Gambling with Lives, focus on educating young people about the addictive nature of gambling. Their efforts include educational films and workshops led by individuals with lived experiences of gambling harm.<sup>51</sup>

Gambling expenditure tends to increase proportionally where incomes increase. However, studies reveal that those with lower incomes tend to spend a greater proportion of their total budgets on gambling than those with better financial stability.<sup>52</sup> This can pose serious problems, especially for those from disadvantaged demographics and socio-economic statuses as they lack the financial capacity to recover from gambling losses, which causes a destructive domino effect on their livelihoods, as well as their families, homes and assets. The Gambling Commission revealed that concerning the cost of living crisis, those on lower household incomes i.e. between £7000 to £14000 per annum, and within the “DE” socio-economic grade were reported to be the most concerned about their spending on gambling, in a survey.<sup>53</sup> Thus, the best solution would be to implement screening programmes within schools and communities targeted to those with lower socio-economic standing, provide tailored education regarding financial literacy, and bring in guest speakers to speak on their personal experiences with gambling to foster a heightened level of emotional maturity and intelligence to students and the general public. In this way, it is paramount to recognise that the risks of gambling unfold beyond the conventionalised notions that it only concerns a more mature audience. Its heightened threat towards younger demographics is outstandingly eminent. Thus, by screening individuals who pose a high risk of participating in gambling, and providing tailored education to them, the adverse consequences of gambling can be reduced.

Increasing education on gambling risks is overall essential for raising awareness, promoting ethical behaviours from a vast amount of gambling industries that are ever-present inside of the United Kingdom, and protecting individuals from the harm within gambling to hinder further addictive behaviours. With online betting websites such as Stake, BetMGM and 888Casino increasing in popularity, there is an increased exposure to gambling and consequently, increased risk of suffering its adverse impacts.

This is perfectly encapsulated through UK statistics depicting the average estimated gambling debt ranging from £9000 – £10,000, showing a clear detriment with the lack of education for individuals gambling and a similar report documenting 3.3 million people inside of the UK dealing with gambling debt presenting a clear ever-present trend of the lack of education on gambling.<sup>54</sup> To aid this particular issue, the incorporation of programmes installed inside of school curriculums can be necessary to apply knowledge to gambling habits attained from guardians, companions or general usage inside of media sources. Moreover, the necessary reform that can be used could also be used to teach financial literacy, critical thinking and self-control, which are extremely vital inside of the resistance of harmful gambling habits. Gambling also comes with financial, psychological and social risks documented from the Royal College of Psychiatrists equating to low self-esteem, stress-related disorders, anxiety or poor sleep and appetite.<sup>55</sup>

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50 Gamcare Gambling Support Starts Here, ‘Gambling Education Framework – Delivering Effective Gambling Education’ (29 September 2022) <https://www.gamcare.org.uk/news-and-blog/blog/gambling-education-framework-delivering-effective-gambling-education/#:~:text=We%20recently%20launched%20The%20Gambling,to%20deliver%20effective%20gambling%20educationGambling%20Education%20Framework%20%E2%80%93%20Delivering%20Effective%20Gambling%20Education> accessed 24 November 2024.

51 ‘Education’ (Gambling With Lives.org 2024) <https://www.gamblingwithlives.org/education/> accessed 24 November 2024.

52 Tiina A Latvala, Tomi P Lintonen, Matthew Browne, Matthew Rockloff, Anne H Salonen, Social disadvantage and gambling severity: a population-based study with register-linkage, *European Journal of Public Health*, Volume 31, Issue 6, December 2021, Pages 1217–1223, <https://doi.org/10.1093/eurpub/ckab162>

53 Gambling Commission – “Understanding the Impact of increased cost of living on gambling behaviour – Final Report”. Date accessed – 14/11/2024 <https://www.gamblingcommission.gov.uk/print/understanding-the-impact-of-increased-cost-of-living-final-report>

54 ‘Gambling and Debt | Help with Gambling Debt | Lowell’ (Lowell.co.uk 2021) <https://www.lowell.co.uk/help-and-support/debt-guidance/gambling-and-debt/> accessed 24 November 2024.

55 Gamcare n (50).

### 3. Provide Financial Support Programs For Vulnerable Athletes

Athletes facing financial difficulties, such as those early in their careers or nearing retirement, are vulnerable to bribery and coercion in betting scandals due to irregular earnings and the pressure to support themselves and their families, often pushing them to compromise their integrity.<sup>56</sup> A notable example is Mohammad Amir, the Pakistani cricketer involved in the 2010 spot-fixing scandal.<sup>57</sup> At 18, Amir felt financially vulnerable and was pressured to bowl no-balls during a Test match.<sup>58</sup> This damaged his career and tarnished cricket's reputation, eroding trust among fans.<sup>59</sup>

Reducing financial vulnerabilities would protect athletes from coercion, promote their well-being, and allow them to focus on performance. This would preserve the integrity of sports, maintain fan trust, and benefit stakeholders, such as sponsors and governing bodies, who depend on the sport's credibility to protect their investments. Reforms should address the connection of socio-economic challenges and gambling among emerging athletes by providing targeted financial support. Many young athletes from disadvantaged backgrounds face financial pressures that may drive them toward gambling as a quick fix for financial struggles; many may use it as an enticing but harmful escape.<sup>60</sup> Funding programs, mentorship, and access to financial education can minimise these risks by creating a stable support system that prioritises athletes' long-term development.

English footballer Joey Barton is a demonstration of this.<sup>61</sup> Barton, who grew up in a working-class environment, faced gambling addiction during his career, ultimately leading to a suspension for betting violations.<sup>62</sup> His struggles highlight how socio-economic backgrounds, and a lack of early financial guidance, can lead to problematic behaviours. Barton also criticised the lack of consideration for his addiction during his punishment, which highlights the need for proactive support systems to address gambling pressures in sports.<sup>63</sup> Providing grants or sponsorships for emerging athletes can serve as a preventative measure against gambling-related issues. This approach focuses on athletic development and reduces the temptation of gambling by addressing the root socio-economic complexities that often push athletes into vulnerable positions. Such reforms would ensure opportunities and safeguard young talents.

Further reform could also mean taking care of injured athletes, looking beyond their physical recovery to also include mental and financial support, especially for those facing long-term or career-ending injuries. Many football clubs in the Premier League and EFL do not offer enough psychological support, often leaving physiotherapists to handle mental health needs they are not trained for.<sup>64</sup> This lack of support can leave athletes isolated during a time when mental health care is essential, especially since the pressures of an injury can impact their entire recovery process.

The economic strain injuries can cause is also an issue, particularly for athletes from lower socio-economic backgrounds who might turn to gambling as a quick way to cope or escape. To counter this, better financial education and support systems would help athletes manage this strain in healthier ways. Improving tools like the Official Injury Claim (OIC) portal could make it easier for athletes to seek compensation, providing financial relief when they're unable to earn due to injury.<sup>65</sup> On the legal side, cases like *Czernuszka v. King*<sup>66</sup> brought attention to the need for more straightforward standards of care. The analysis of this case argues that clearer rules around responsibility could make it easier for injured

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<sup>56</sup> LAWRENCE A WENNER, *The Oxford Handbook of Sport and Society* (Oxford University Press 2022).

<sup>57</sup> David Conn, 'Pakistan Cricketers Convicted of Spot-Fixing' *The Guardian* (1 November 2011) <https://www.theguardian.com/sport/2011/nov/01/cricket-spot-fixing-pakistan-trial-guilty> accessed 18 November 2024.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.] His case highlights how financial insecurity exposes athletes to exploitation when safeguards are weak. To address this, athletes need financial support, including education, sponsorships, fair wages, and wealth management, to avoid unethical practices.

<sup>60</sup> Kalle Lind, *Problem Gambling and Criminal Behavior : Perspectives on Comorbidities and Social Disadvantage* (Tampere University 2022) <https://urn.fi/URN:ISBN:978-952-03-2559-6> accessed 24 November 2024.

<sup>61</sup> Recovery Lighthouse (2024) Footballer Joey Barton Retires After Ban Due to Betting Offences <https://www.recoverylighthouse.com/blog/stories/footballer-joey-barton-retires-after-ban-due-to-betting-offences>

<sup>62</sup> Ibid.

<sup>63</sup> Recovery lighthouse n (61).

<sup>64</sup> Samuel Lovett, 'Premier League and EFL clubs failing to provide psychological support for injured players' (*The Independent*, 15 August 2019) Premier League and EFL clubs failing to provide psychological support for injured players | *The Independent* | *The Independent* (Accessed 13 November 2024).

<sup>65</sup> House of Commons Justice Committee, 'Whiplash Reform and the Official Injury Claim Service: Government Response to the Committee's Ninth Report of Session 2022-23' (Parliament UK Publications, 29 November 2023) Whiplash reform and the Official Injury Claim Service: Government Response to the Committee's Ninth Report of Session 2022-23 - Justice Committee (Accessed 14 November 2024).

<sup>66</sup> [2023] EWHC 380 (KB), [2023] 1 WLR 1234.

athletes to get the support they deserve.<sup>67</sup> Strengthening these standards would also push organisations to prevent injuries in the first place.

Lastly, sports organisations could help prevent injuries and mental health struggles by providing regular health screenings and concussion awareness sessions.<sup>68</sup> Reducing the visibility of gambling sponsorships in sports could also help by lowering the risk of athletes, especially younger ones, turning to gambling as a coping mechanism. Together, these changes would ensure that injured athletes have the resources they need to recover without extra financial or emotional strain.

Retired athletes more often than not face serious problems, including financial uncertainty and poor mental health, during the transition period following their careers. For example, Paul Gascoigne publicly discussed his addictions and emotional problems since his retirement from football.<sup>69</sup> These struggles with alcohol and mental health were triggered by the sudden change from a strictly regimented life as a sportsman into real uncertainty, an example of why mental health care for retired athletes is needed.<sup>70</sup>

Another common problem that is faced is financial adversity. Few sports people, including ex-footballers, manage their wealth the right way once they are retired. Surveys show that a high percentage of retired footballers go through some financial crisis within years of retirement partially because the earning was for a short-term and not well-planned for.<sup>71</sup>

To overcome these challenges, organisations such as the Professional Footballers' Association provide necessary support, including mental health counselling, career retraining, and financial advice. This enables former athletes to be better equipped in handling the transition into retirement from active sport, enabling them to deal with emotional and financial stress.<sup>72</sup> The holistic post-career care that they receive will help them stay healthy and cope with life post-career.

#### 4. More stringent age verification

Age verification is also another area of concern regarding sports law and betting. As the popularity of online gambling continues to rise in the UK, so too does the number of minors engaging in these activities.<sup>73</sup> Currently, legislation states that the legal betting age in the UK is 18;<sup>74</sup> however, a lack of thorough restrictive processes on online websites has allowed minors to find loopholes to this and participate in activities like online sports betting. In 2023, the Sunak Conservative Government released a plan to close such loopholes to make sure under 18s could not gamble online but this plan never came to fruition since Labour's ascension to power the following year.<sup>75</sup> As such, there is significant reform needed on age verification processes in sports gambling, that will be explored in further detail in the report.

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<sup>67</sup> Simona Gesheve, Scott Richardson-Peat, Jamie Perriam 'Duty of Care in Sport and Head Injuries: What Rights Do Athletes Have?' (The Signet Library, 1 September 2021) Duty of care in sport and head injuries: what rights do athletes have? – The WS Society (Accessed 15 November 2024).

<sup>68</sup> Baroness Tanni Grey-Thompson DBE, DL, 'Duty of Care in Sport: Independent Report to Government' (Assets publishing service UK Government April 2017 pages 18–28) Microsoft Word – 170419 Duty of Care Review – Final version .docx accessed 16 November 2024.

<sup>69</sup> "Homeless Paul Gascoigne opens up on alcohol battles and new life living in his agent's spare room," LBC. <https://www.lbc.co.uk/news/paul-gascoigne-opens-up-bender-addiction-struggle/>

<sup>70</sup> Ibid.

<sup>71</sup> "Footballers' toughest goal: making high incomes last a lifetime," Schroders. <https://www.schroders.com/en-us/us/wealth-management/insights/footballers-pain-making-high-but-short-term-incomes-last-a-lifetime/#>

<sup>72</sup> "PFA Support for Retired Players," PFA Official. <https://www.thepfa.com/wellbeing>

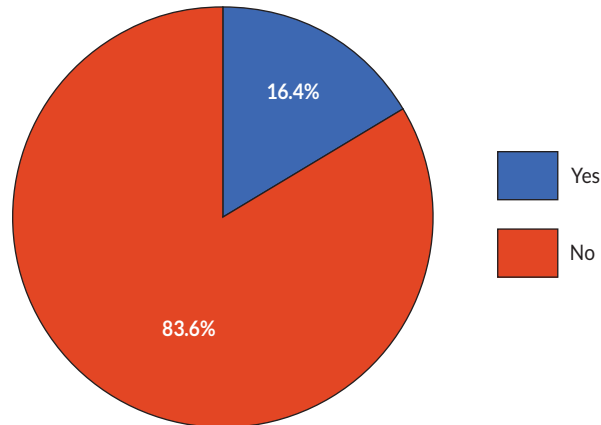
<sup>73</sup> 'Young People and Gambling 2024: Official Statistics – Experience of Different Gambling Activities' (Gambling Commission, 7 November 2024) <https://www.gamblingcommission.gov.uk/report/young-people-and-gambling-2024-official-statistics/ypg-2024-wider-experience-of-gambling-experience-of-different-gambling> accessed 21 November 2024.

<sup>74</sup> 'Guidance to Licensing Authorities – Age Restrictions' (Gambling Commission, 1 April 2021) <https://www.gamblingcommission.gov.uk/guidance/guidance-to-licensing-authorities/part-16-age-restrictions> accessed 23 November 2024.

<sup>75</sup> Ibid.

## Have you ever bet on sports?

159 responses



The UK's age verification process still has its strengths when protecting minors from betting. For example, the Gambling Commission's report for 2024 states that only 3% of young people have placed bets on sports and games,<sup>76</sup> which remains consistent with statistics from 2022 and 2023 respectively. Likewise, in our survey it states that 83.6% of participants have never even participated in sports betting, showing that the current legislation in place from the Sunak Government has clearly supported maintaining the low levels of participation. Additionally, this could also be attributed to Section 2 of The Gambling Commission's Guidance for Licensing Authorities which forbids the entry of under 18s into AGCs (Adult Gaming Centres), which could also explain the relatively low figures for sports betting amongst youths compared to other forms of gambling. Either way, in protecting young people from the harsh and unforgiving effects of gambling, we as a society have created many systems that can deter specific people from accessing betting & gambling websites, companies and stores. However, we are not yet at a point where children are completely free from the influence of gambling and betting culture in sports. Likewise, there are still ways to bypass age verification algorithms and methods, which people are consistently exploiting to, in some cases, gamble their hard-earned and very important savings – which often has a larger impact on socio-economically disadvantaged families.

One commonly used technique is VPNs which is used to encrypt your personal information to protect it from phishers and scams on the internet, but it can also be used to bypass age restriction programs when gambling.<sup>77</sup> Gregory Laned states that “VPNs can be utilised to bypass geographic restrictions imposed by sports betting websites. By connecting to a VPN server located in a region where sports betting is legal and unrestricted, users can effectively mask their actual location and access betting platforms from anywhere in the world.”<sup>78</sup> Which essentially makes it a very attractive program for those wishing to illegally access specific websites and services. Another common method is using an adult's (family member/friend) identification to access the service. This is essentially fraud and is declaring that the child accessing the service is the owner of the ID when in reality they are underaged and a completely different person. No system is able to prevent/detect a child who is using the ID of their parent/friend,<sup>79</sup> and this makes this method extremely dangerous and very hard to fix.

The UK has made a mostly successful effort for a more stringent age verification process however it is still clearly in need of reform. A good foundation for this reform is the success of other countries, such as Germany's “Gemeinsame Glücksspielbehörde der Länder” which mandates biometric verification (such as face recognition) to confirm identity in online gambling.<sup>80</sup> These tools, used by organisations like HooYu,

<sup>76</sup> 'Young People and Gambling 2024: Official Statistics – Experience of Different Gambling Activities' (Gambling Commission, 7 November 2024) <https://www.gamblingcommission.gov.uk/report/young-people-and-gambling-2024-official-statistics/ypg-2024-wider-experience-of-gambling-experience-of-different-gambling> accessed 21 November 2024.

<sup>77</sup> Microsoft – *What is cloud computing?: Microsoft Azure, What Is Cloud a VPN?* | Microsoft Azure. Available at: <https://azure.microsoft.com/en-us/resources/cloud-computing-dictionary/what-is-cloud-computing> accessed 19 November 2024.

<sup>78</sup> Laned, G. (2024) *Can you use VPN to sports bet? A comprehensive guide, Can You Use VPN to Sports Bet? A Comprehensive Guide*. Available at: <https://medium.com/@gregorylaned/can-you-use-vpn-to-sports-bet-a-comprehensive-guide-ae5366872d82> accessed 16 November 2024.

<sup>79</sup> Nicolls, D. (2020) *Commentary: The urgent need to strengthen age & identity verification for online gambling, Age & Identity Verification for Online Gambling*. Available at: <https://www.jumio.com/age-identity-verification-online-gambling/> accessed 16 November 2024.

<sup>80</sup> Susan Makin, 'HooYu Launches Complete KYC Orchestration Service for German Gaming Operators | HooYu | KYC & Customer Onboarding' (HooYu.com2021) <https://www.hooyu.com/h/hooyu-launches-complete-kyc-orchestration-service-for-german-gaming-operators/> accessed 18 November 2024.

not only confirm the age and identity of the user but also combats the problem of fraud – where an underage individual uses an adult’s account to gamble. While similar biometric tools are used through third-party providers in the UK, they are not yet officially mandated which leaves room for reform.

Furthermore, the implementation of international cooperation could significantly enhance protections against underage gambling. Currently, underage users can use VPNs to bypass UK restrictions which exposes them to addictions and harmful practices. Therefore, a standardised international framework for age verification will be useful as the UK can collaborate with countries with a similar view on strict age verification (such as Germany and Sweden).<sup>81</sup> Finally, a requirement for operators of sports gambling to publish age verification success rates (with higher penalties for non-compliance) may help promote accountability and public trust, along with highlighting the gaps in the system.<sup>82</sup>

## Conclusion

In light of the key issues addressed in this report, it is imperative that there is reformation, to not only shield vulnerable individuals and demographics but also in the interest of public policy.

To achieve this objective, we must impose harsher restrictions on betting advertisements and promotional activities to reduce public exposure and reduce the risk of vulnerable groups engaging in gambling, which can be achieved by enforcing promotional regulations. Secondly, it is vital to incorporate mandatory education on gambling within school curriculums, so that young people are equipped with the maturity and skills to recognise the risks associated with gambling, and as a result, steer clear of it. Furthermore, there is a need for financial assistance programmes; such as hardship funds and financial mentorship, for vulnerable groups of people such as those from lower socio-economic backgrounds or struggling athletes in order to discourage gambling behaviours. Additionally, to protect younger, vulnerable demographics, there is a requisite for strengthened age verification processes in order to prevent minors from accessing gambling platforms. This can be done by imposing biometric identification or implementing standardised international frameworks for age verification. In addressing and reforming these key issues, working towards a more financially sustainable and responsible society that recognises structural inequalities that may foster gambling behaviours, can be facilitated.

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<sup>81</sup> European Gaming & Betting Association, ‘EGBA – Standards’ (EGBA) <https://www.egba.eu/about-us/standards/> accessed 18 November 2024.

<sup>82</sup> Victoria Collins, ‘Ensuring Compliance and Protecting Minors: Age Verification Systems in the Online Gambling Industry’ (Urban Robotics8 May 2024) <https://urbanrobotics.net/online-gambling-industry-compliance/> accessed 17 November 2024.



# Part Three: Public Law

## Recommendations on the law governing Electoral Law

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## Introduction

Electoral law is a branch of public law that establishes the legal framework overseeing the electoral process; it ensures elections are held freely and fairly. Its values are based on honesty, transparency, and, above all else, impartiality.<sup>83</sup> Our current electoral process is favourable in its attempt to emulate this through transparent voting processes, the choice of various candidates, and efficient vote counting, enabling society’s views to be reflected quickly and effectively. Despite this, misinformation and disinformation have increasingly undermined democracy in the electoral process. Recent technological advancements, particularly Artificial Intelligence, have catalysed the spread of both.<sup>84</sup> Disinformation is the deliberate spread of false information, whereas misinformation refers to the unintentional spread of false information.<sup>85</sup> Nevertheless, both can equally erode trust in democratic institutions. For instance, the deep-fake audio of Keir Starmer on the first day of the Labour Conference in 2024, which purported him to be verbally abusing staff, has generated a sense of worry and concern.<sup>86</sup> This is due to the fact that it is becoming virtually impossible to differentiate between ‘fakeness’ and ‘truth.’ Situations like these can pose substantial risks in skewing electoral outcomes as they put candidates at a disadvantage and mislead voters, undermining the democratic process.<sup>87</sup>

In this report, misinformation and disinformation will be examined in relation to electoral law, focusing particularly on reasonably holding election-related organisations accountable. This will allow for an updated stance on legislative action against false information. The report will also tackle any existing gaps found within legislation. Through our proposed reforms, we aim to urgently tackle these issues through recommendations to ensure our laws are up to date.

## Current laws surrounding misinformation

Having fair and transparent elections is an issue the UK government has had to address. Early Acts of Parliament tend to suffer a deficiency in provisions regarding misinformation online. For example, the Malicious Communications Act 1998<sup>88</sup> solely guards misinformation intended to cause ‘distress’ to the recipient.<sup>89</sup> Since there are examples where misinformation is not offensive or defamatory, the current legislation in place is not enough to defend against illegitimate claims that can subsequently cause harm to an individual should they rely on it.<sup>90</sup>

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<sup>83</sup> ‘Elections Act’ <https://www.electoralcommission.org.uk/news-and-views/elections-act> accessed 25th November 2024.

<sup>84</sup> Full Fact, ‘Trust and truth in the age of AI: Full Fact Report 2024’ (Full Fact 2024) <https://fullfact.org/policy/reports/full-fact-report-2024/> accessed 20th November 2024.

<sup>85</sup> Parliamentary Office of Science and Technology, ‘Disinformation: sources, spread and impact’ (April 2024) <https://post.parliament.uk/research-briefings/post-pn-0719/> accessed 20th November.

<sup>86</sup> Sky news, ‘Deepfake audio of Sir Keir Starmer released on first day of Labour conference’ (9 October 2023) <https://news.sky.com/story/labour-faces-political-attack-after-deepfake-audio-is-posted-of-sir-keir-starmer-12980181> accessed 21st November 2024.

<sup>87</sup> Centre for Emerging Technologies and Applied Sciences, Alan Turing Institute, ‘AI-Enabled Influence Operations: A Threat to the UK General Election’ (28 May 2024) <https://cetas.turing.ac.uk/publications/ai-enabled-influence-operations-threat-uk-general-election> accessed 20th November 2024.

<sup>88</sup> Malicious Communications Act 1998.

<sup>89</sup> Plamen Bouhlarski, ‘Social Media, Misinformation and the Law’ (Queen Mary University Legal Advice Centre, 7 February 2022) <https://www.qmul.ac.uk/lac/our-legal-blog/items/social-media-misinformation-and-the-law.html> accessed 20 November 2024.

<sup>90</sup> Ibid.

The Political Parties, Elections, and Referendums Act of 2000<sup>91</sup> (PPERA) created important requirements for the transparency and integrity of political campaigns in the UK. Its primary goal is to regulate campaign expenditures and political donations, ensuring an understanding of how political parties and politicians raise and spend funds.<sup>92</sup> While PERA was not primarily meant to combat misinformation, it indirectly relates to the issue of objectively false claims associated with campaign spending that substantially impact public opinion and election results. The Act attempts to avoid undue influence and manipulation, including the propagation of misinformation, by funding regulation in political campaigns and demanding transparency in spending.<sup>93</sup> However, the Act does not directly address the control of online content or misinformation, indicating a vacuum in its implementation in the digital age.

Following PERA, The Communications Act of 2003<sup>94</sup> was passed, which stated that it shall be the duty of OFCOM to 'publish the results of any research carried out by them...and to consider...to take account of such research in the carrying out of their functions.'<sup>95</sup> In addition to this, OFCOM also has the duty to 'bring about or encourage, a better public awareness of the available public systems by which access to material published by means of the electronic media... can be regulated.'<sup>96</sup> Under the Communications Act,<sup>97</sup> broadcast media have to adhere to strict rules about fairness and accuracy during election campaigns or risk facing penalties from OFCOM. However, since 2003, a new form of information has grown: social media. Platforms such as Instagram, Facebook, X (formerly known as Twitter) and more recently TikTok, have millions of users and are constantly exchanging information – providing a new challenge for the law to combat misinformation at a much larger scale.

Criticisms stemming from the severe lack of regulation surrounding misinformation online due to the rise of social media prompted the government to pass some relevant reforms within the Election Act 2022.<sup>98</sup> Under Section 41 of the Act, electronic political content must be published with 'the name and address of the promoter of the material', and 'the name and address of any person on behalf of whom the material is being published (and who is not the promoter).'<sup>99</sup> While this did result in increased public transparency about the drivers behind the political content we view online, the Act ultimately only addressed a very small section of the wider issues surrounding inaccurate and malicious digital political content.

During the 2019 General Election, deepfake videos of Boris Johnson and Jeremy Corbyn began circulating across social media,<sup>100</sup> which showed the potential of technology being used to undermine democracy and the legitimacy of elections. This prompted the Electoral Commission to investigate misinformation online and push for an Online Safety Act passed in 2023.<sup>101</sup> The Act 'requires providers to mitigate and manage the risks of harm...from illegal content and activity'.<sup>102</sup>

As mentioned previously, deepfakes are one of the most potent threats that contribute to social media misinformation. These AI-generated media forgeries are among the rising tools used to manipulate and misinform voters, with the propensity to go viral on the Internet. For example, in January 2024, research conducted by Fenimore Harper unearthed that more than 100 video adverts were promoted on Facebook that falsely impersonated Prime Minister Rishi Sunak.<sup>103</sup> This is a serious issue as, nowadays, most people use social media as an avenue to inform themselves about campaigns or political parties.

Furthermore, there is no specific legislation pertaining to the regulation of deepfakes around the electoral process. Whilst there was a proposal to make the sharing of sexually explicit deepfakes illegal under Rishi

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<sup>91</sup> Political Parties, Elections and Referendums Act 2000 (PPERA).

<sup>92</sup> Ibid, introduction.

<sup>93</sup> The Electoral Commission, 'Party spending and pre-poll donations and loans: UK Parliamentary general election' (11 June 2024) <https://www.electoralcommission.org.uk/party-spending-and-pre-poll-donations-and-loans-uk-parliamentary-general-election/spending-limit> accessed 19 November 2024.

<sup>94</sup> Communications Act 2003.

<sup>95</sup> Ibid s 15(1).

<sup>96</sup> Ibid s 11(1)(c).

<sup>97</sup> Communications Act 2003.

<sup>98</sup> Nick Harrison, 'Online political advertising in the UK' (TaylorWessing, 27 June 2024) <https://www.taylorwessing.com/en/interface/2024/democracy-in-the-digital-age/online-political-advertising-in-the-uk> accessed 14 November 2024.

<sup>99</sup> Elections Act 2022, s 42(3).

<sup>100</sup> BBC News, 'The fake video where Johnson and Corbyn endorse each other' (12 November 2019) <https://www.bbc.co.uk/news/av/technology-50381728> accessed 19 November 2024.

<sup>101</sup> Online Safety Act 2023.

<sup>102</sup> Ibid, s 1(2)(a)(i) and (ii).

<sup>103</sup> Emma Woollcott and Isabella Piasecka, 'The Impact of deep fakes on the UK general election' (*Mishcon de Reya*, 11 June 2024) <https://www.mishcon.com/news/the-impact-of-deepfakes-on-the-uk-general-election> accessed 18 November 2024.

Sunak's government, those plans fell through due to the general election of 2024.<sup>104</sup> Even though there has been discussion regarding the spread of deep fakes, none of the legislation proposed has helped tackle misinformation during elections. The regulation of such misinformation during an election is of the utmost importance; the use of deepfakes undermines the freedom and fairness of elections in the UK as citizens may not be voting on valid information, leaving them to fall victim to the agenda of an individual or party.

The EU has made a thorough attempt to try and combat this with their AI Act.<sup>105</sup> In March 2024, they passed this comprehensive law to monitor and regulate how AI can be used. The Act references the use of generative AI models and how the use of AI platforms to create content should not interfere with the EU's copyright laws<sup>106</sup> by, for example, declaring if the content has been AI-generated. This law could therefore impact the use of deepfakes, as under this law, they will now have to be declared fake, preventing the spread of misinformation. However, this legislation is still vague and does not put enough onus on social media companies to monitor and regulate their campaign material. Therefore, the UK should endeavour to make a more specific reform in electoral law to effectively mitigate the risks of social media misinformation.

Most recently, following the eruptions of the recent riots that plagued the UK with emotive attacks, current Prime Minister Keir Starmer has pledged to review the Online Safety Act<sup>107</sup> to ensure that the laws it entails are concrete and legally accountable.<sup>108</sup> A new false communications offence in the Act which outlaws the intentional sending of false information that could cause 'non-trivial psychological' or physical harm to users online, has been recently introduced, predominantly aimed at the impact of internet trolls spreading damaging misinformation.<sup>109</sup> OFCOM has urged the implementation of reformed rules on social media to be introduced as soon as possible despite their planned beginning in 2026.<sup>110</sup>

## Questionnaire Findings and the Case for Reform

Our survey, with over 170 participants, discovered public awareness of the threat of misinformation to the electorate was deeply concerning. 83.9% said that misinformation may have impacted the results of recent elections, whilst 88.7% said they doubt the information provided online by political parties and candidates is reliable. This tells us that we do not have enough regulations in place regarding misinformation, and it is imperative that we solve this issue. It is evident that the general public clearly feels that misinformation is posing a threat to our democracy. The key to a democratic society is an informed electorate, who can rely on the information they read and trust political sources they may be subject to online. It is clear that the electorate's trust in government is declining due to the exponential increase in misinformation that we have seen emerge in recent years, which we are subjected to daily. Moreover, 59.7% of participants agreed that sources must be held responsible for the spread of false information online.

The general consensus around our question on the presence of AI relating to election matters was startling, with 79.2% acknowledging its significance. Misinformation becoming prevalent through the media raises concerns over the potential of AI infringing upon content consumed by the public. Generative AI and deepfakes combined with data misuse, have reduced the reliability of commonly used election sources. This was demonstrated by the 2018 Cambridge Analytica scandal,<sup>111</sup> during which millions of individuals' data was harvested from Facebook to enable right-wing political groups to tailor content to their benefit. Since then, the existence of AI has opened up the possibility of catastrophic changes due to the accessibility of private data and the plausibility of fake news. Additionally, as a result of our questionnaire, we found that 76.8% of the people we asked used social media and news outlets as their primary sources of information. Consolidating our understanding that misinformation is particularly rife amongst these platforms, many have encountered misinformation, particularly concerning elections. Biased media sources

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<sup>104</sup> Laura Farris, 'Government cracks down on 'deepfakes' creation' (GOV.UK, 16 November 2024) <https://www.gov.uk/government/people/laura-farris> accessed 18 November 2024.

<sup>105</sup> AI Act 2024.

<sup>106</sup> European Parliament and Council Directive (EU) 2024/1689 of 13 June 2024 [2024] OJ L2024/1689, ss 106–108.

<sup>107</sup> Online Safety Act 2023.

<sup>108</sup> Hannah Basha and Mark Jones, 'Is Spreading Misinformation Punishable under the Online Safety Act?' (Payne Hicks Beach, 13 August 2024) <https://www.phb.co.uk/article/is-spreading-misinformation-punishable-under-the-online-safety-act/> accessed 20 November 2024.

<sup>109</sup> Ibid.

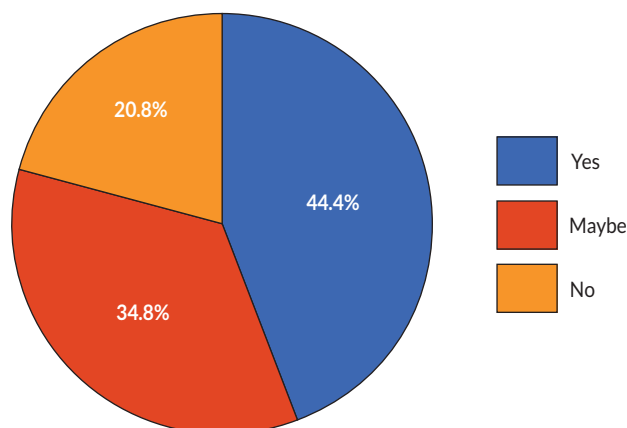
<sup>110</sup> Ibid.

<sup>111</sup> Nicholas Confessore, 'Cambridge Analytica and Facebook: The Scandal and the Fallout So Far' (New York Times, 4 April 2018) <https://www.nytimes.com/2018/04/04/us/politics/cambridge-analytica-scandal-fallout.html> accessed 20 November 2024.

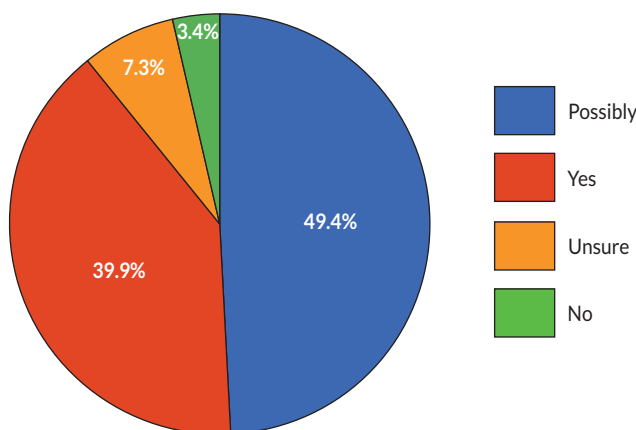
are given ample opportunity to engage people with inaccurate reports.<sup>112</sup> With regard to our current electoral system, and to stop this, it is imperative that we urge the regulation of social media platforms through countermeasures.

The effect of misinformation was evidenced by the Leave campaign’s use of “new digital technologies like social media bots, mass data harvesting and targeted advertisements to influence peoples’ opinions and spread misinformation and disinformation”.<sup>113</sup> Such as false claims that Turkey was going to join the EU, which would result in millions of people immigrating to the UK.<sup>114</sup> This misinformation was particularly effective due to emotion, with anger being most prevalent amongst Brexiteers. Angry people are quicker to draw conclusions and therefore, less likely to think critically about misinformation.<sup>115</sup> 61% of those who voted to leave cited immigration as a key concern.<sup>116</sup> This misinformation played into the narrative of fear surrounding immigration, reinforcing prejudices. This demonstrates how an inflammatory claim can impact how people vote. There is an urgent need for tighter regulations- the strength of our knowledge is the strength of our democracy.

**Are you fearful or anxious that AI is growing in significance in elections?**



**Do you believe misinformation has impacted the outcome of recent elections?**



<sup>112</sup> Sir David Omand, ‘How is “fake news” affecting the UK General Election and can anything be done about it?’ (King’s College London, 2024) <https://www.kcl.ac.uk/how-is-fake-news-affecting-the-uk-general-election-and-can-anything-be-done-about-it> accessed 25 November 2024.

<sup>113</sup> Foerster K and others, ‘Political Misinformation in the UK’ (2022) 4 [https://www.hertie-school.org/fileadmin/2\\_Research/2\\_Research\\_directory/Research\\_Centres/Centre\\_for\\_Digital\\_Governance/Student\\_publications/220420\\_UK\\_Misinformation\\_SLG\\_new.pdf](https://www.hertie-school.org/fileadmin/2_Research/2_Research_directory/Research_Centres/Centre_for_Digital_Governance/Student_publications/220420_UK_Misinformation_SLG_new.pdf) accessed 25 November 2024.

<sup>114</sup> Ibid.

<sup>115</sup> Wagnus M and Vasilopoulou S, ‘Emotions and Brexit: How Did They Affect the Result?’ (2016) <https://emotionsblog.history.qmul.ac.uk/2016/07/emotions-and-brexit-how-did-they-affect-the-result/> accessed 25 November 2024.

<sup>116</sup> Clarke D, Goodwin M, and Whiteley P, ‘Brexit Why People Voted to Leave 2023’ (2024) <https://www.statista.com/statistics/1395781/brexit-why-people-voted-leave/> accessed 20 November 2024.

# Proposals

Our first section of proposed reforms focuses on social media platforms to minimise misinformation, AI or deepfakes online. Our second section centres around preventing misinformation within campaigns and regulating political parties.

## 1. Social Media Reforms

The purpose of this section is to hold social media platforms accountable for the misinformation spread through them. If disinformation, misinformation, and the use of AI to support falsified information are prevented, a positive political climate will result.

1. Implementing a working relationship between social media platforms of significance and the Electoral Commission.
  - Requiring the platforms to write reports disclosing their moderation techniques and the restrictions they have imposed on incorrect information.
  - If platforms do not comply with these regulations;
  - Fines will be applied as preventive measures to discourage misinformation towards their users.
  - This will decrease the spread of political misinformation through social media and enable it to be used as a valuable research tool, particularly during elections.
2. A minimum requirement is for baseline fact-checking information on social media posts.
  - The structure of the specific algorithm will be divulged in these reports in order to ensure they are fit to serve the purpose of reducing misinformation, most significantly with regard to the increasing use of AI-generated images or “deepfakes”.
  - This will increase the reliability of these platforms for their users, allowing elections to be based on truth rather than misinformation.
3. Introducing penalties for social media platforms should they fail to comply with the Electoral Commission or implement fact-checking measures
  - A fine of up to £9 million or 5% of their qualifying worldwide revenue, whichever is greater.
  - Criminal action may also be taken against senior managers who fail to ensure their company’s compliance with the Electoral Commission.

This echoes around half of what the current Online Safety Act,<sup>117</sup> passed in October 2023, outlines. This act tackles harmful information to children online, but we propose that information corrupting elections and democratic processes be treated with the same severity. Hence, we must hold social media platforms to account.

## 2. Political Party Reforms

The latter part of our proposed reforms centres around political parties, including regulations and increased consequences for political parties if misinformation is circulated, as well as changes to how we require political parties to operate, increasing trust in elections.

1. Implementing mandatory documents detailing campaign funding for all political parties disclosed to the public.
  - This publication of funding would include all sources of money and amounts, working to eliminate ‘dark money’ that may be involved around elections, which will prevent misinformation being published, as well as ushering in a stricter crackdown on overspending during elections.
  - This would not only increase transparency in the election process but also result in greater public trust in political parties, helping reduce public mistrust during elections.

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<sup>117</sup> Online Safety Act 2023.

2. Criminalise the use of artificial intelligence and deep fakes in campaigns or as a vehicle to spread misinformation.
  - The use of AI or deepfakes to spread information would also be publicised, in order to further deter parties from transgressing this law.
  - This law would eliminate the appeal of AI or deepfakes to spread misinformation during elections.

3. Penalties for “electoral offences” should be proportional to a party’s income or offence.

- Replacing the current “fixed” penalty.
  - PPERA (Civil Sanctions) Order, fines “must be no less than £500 pounds nor more than £20,000”.<sup>118</sup>

Considering larger parties’ income compared to smaller or regional parties as well as offences of misused funds that exceed the current maximum penalty, it is evident that the current penalty does not ensure equal punishment is reaped across all political parties nor to all offences.

Rather, when an offender, be it a party or individual, breaches electoral law, the monetary penalty will:

- Be taken as 5% of the offenders’ income.
- Or in the case of misused funds, the penalty will be taken as a percentage of the funds in question as deemed fit by the Electoral Commission.

4. Mandate full transparency for all political advertisements on digital platforms.

This is to ensure that disinformation is addressed quickly and effectively through real-time monitoring.

- Current Law Gaps:

- Social media platforms such as Instagram use micro-targeting through “cookies” and “social plugins” to build an online profile of users.<sup>119</sup> This can lead to the manipulation of voter opinions due to having reinforced tailored messages that may amplify biases or fears without the user realising.
- Furthermore, the regulations for data are often unclear, allowing campaigns to exploit specific loopholes. Looking overseas in Germany, the “businesses must provide a clear notice to users,”<sup>120</sup> and beyond the GDPR it is relegated to telecommunications. While the UK’s GDPR is helpful, another prospective idea is that the UK implements stronger consent protocols such as requiring political parties to disclose types of data they collect for their political campaigns.

5. Impact Assessments regulated by Data Protection Organisations.

To further abate unethical methods of mass-data harvesting in elections, we propose impact assessments on the types of data used through Data Protection Organisations. These organisations will;

- Review cases of data-targeted marketing in elections by parties and if deemed “unethical,” using the below definition,
  - “Unethical” by targeting voters with prejudiced, misinformed or fear-driven beliefs.

The Organisation can act by;

- Monetary penalties as mentioned in sections 1.3 and 2.3.
- And/or a released warning available to the public of unethical targeted voting done by a party in order to misinform voters.

Our reform seeks to counter the lack of regulation governing the modern intertwined digital and political space, by bridging gaps in legislation that do not address the current risks. With increased collaboration of the two worlds, as well as greater transparency we would hope that the electorate can better become their own arbiter of the truth, and therefore strengthen our democracy.

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<sup>118</sup> The Political Parties, Elections and Referendums (civil sanctions) Order 2010, SI 2010/1001.

<sup>119</sup> Cookie Information ‘German Cookie Rules’ (Cookie Information) (2024) [https://cookieinformation.com/regulations/cookie-guidelines/german-cookie-rules/#:-:text=Under%20the%20German%20cookie%20rules,Information%20Management%20Services%20\(PIMS\)](https://cookieinformation.com/regulations/cookie-guidelines/german-cookie-rules/#:-:text=Under%20the%20German%20cookie%20rules,Information%20Management%20Services%20(PIMS)) accessed 25 November 2024.

<sup>120</sup> Ibid.

## Evaluation of Misinformation and Reforms

The reforms suggested to reduce misinformation can be evaluated in terms of their usefulness and the impact they would have on political campaigning.

1. *Type of reform: AI and machine learning*
  - Technology is able to analyse vast amounts of data at scale, detecting patterns that may signify falsehoods. Algorithms can verify information against credible sources and identify suspiciously coordinated campaigns (such as bot-driven information).
  - Early detection and prevention: AI can flag potentially harmful content before it gains traction, preventing its amplification.
  - Reduced human bias: Automated systems mitigate bias inherent in manual content moderation, providing accurate rebuttals to misleading claims.
  - While AI is not infallible and is prone to false positives or negatives, transparency in AI operations is crucial to avoiding censorship or algorithmic bias.
2. *Type of reform: Campaign Finance and Transparency Reforms*
  - Campaign finance reforms aim to mitigate the influence of large donors which help reduce the potential for misinformation that benefits particular entities. Transparency laws force disclosure of the identities behind campaign advertisements, enabling voters to critically assess the motivations and credibility of the messaging.
  - Limiting Corporate influence: By restricting undisclosed funding sources, reforms diminish the ability of corporations to seed misleading narratives that align with their interests.
  - Reduced “Dark Money” advertisements: Greater financial transparency discourages the use of misleading advertisements that thrive on anonymity.
  - These reforms foster a more informed electorate by exposing the origins of political narratives. However, effective enforcement and public accessibility to financial disclosures are essential for these reforms to have a meaningful impact.
3. *Type of reform: Social Media Accountability and Platform Responsibility*
  - Transparency in Advertising: Platforms disclosing the sources and funding behind political advertisements foster trust and mitigate manipulation.
  - By curbing the amplification of falsehoods, platforms contribute to a more level playing field for political disclosure. Accountability measures ensure platforms prioritise user safety. However, balancing freedom of expression with misinformation suppression remains a complex challenge.

## Analysing the effects and future impacts of more punitive legislation on misinformation

### Immediate effects of the reform

Introducing more punitive legislation to tackle misinformation spread by political parties and media outlets will likely produce significant changes in public trust. One immediate effect would be the heightened accountability placed on political campaigns and media organisations. By imposing stricter penalties for false claims, the reform will encourage these groups to adopt cautious approaches to the information they disseminate. Media outlets could face increased pressure to verify sources before publication, which could improve the overall quality of political reporting.

Public trust in elections is another area likely to see improvement. Misinformation has often been a major contributor to voter disillusionment, with people unsure over what or whom to believe. Clear penalties for those found guilty of spreading falsehoods will help rebuild this trust. Less misinformation will ensure voters feel more confident that election outcomes are legitimate, ultimately increasing civic engagement.

### Future Impacts of the Reform

#### Setting a legislative precedent

If this legislation proves effective, it could set a precedent for expanding accountability in other areas beyond elections. Similar reforms could emerge to tackle misinformation in public health, finance, or environmental policy. Furthermore, the UK’s approach could inspire other countries to implement similar

measures, particularly in democracies where misinformation during elections is a growing concern. In this way, this reform could establish a global standard for combating fake news.

## Transforming campaign practices

Over time, political parties may shift their strategies to avoid the risks associated with spreading unverified claims. Campaigns could place greater emphasis on transparency and fact-based messaging. This might also drive increased collaboration between governments, media platforms, and independent fact-checkers to ensure that false information is identified and addressed in real-time, reducing its impact on voters.

## Challenges to Implementation

Despite these potential benefits, challenges are inevitable. Political actors and media outlets will likely adapt to the new regulations by employing more subtle forms of influence, such as emotionally charged but technically accurate messaging. This would make enforcement more complex and require frequent legislation updates to stay effective. Additionally, the legislation is likely to spark debates around freedom of speech. Striking a balance between protecting voters from misinformation and ensuring open political discourse will remain a critical and perhaps contentious issue.

## Restoring Electoral Integrity

If implemented and enforced, this reform will be key to restoring public trust in the electoral process. Voters would understand that deliberate attempts to mislead them face real consequences, fostering a sense of fairness in the electoral process. However, inconsistent enforcement or loopholes in the legislation could have the opposite effect, further eroding trust and highlighting the need for tough implementation.

Introducing more punitive measures against misinformation represents an important step in safeguarding democracy. The reform will encourage accountability, improve public trust, and restore integrity to the electoral process. Due to its adaptability to new technology, its success will outlive previous attempts. Managed well, this reform will be upheld both within the UK and globally, helping to create a political environment where facts, not falsehoods, determine the outcomes of elections.

## Conclusion

Our aim is to prevent increased public mistrust (as seen in the questionnaire) due to the vacancy of documentation on how political parties use their funds as attempted by PPERA.<sup>121</sup> To discourage the use of misinformation to influence large amounts of people for the benefit of a singular party/individual or the defamation of another, through regulation of objectively incorrect claims made by political parties or their members, past and future members included, or organisations affiliated with them. This can be achieved by developing the Malicious Communications Act,<sup>122</sup> drawing inspiration from current EU laws<sup>123</sup> through preventative measures such as fact-checking from social media platforms, transparency of algorithms and punitive measures such as the criminalisation of AI/deepfakes in campaigns and percentage cuts from political parties in the future.

To ensure the electoral system embodies transparency, trust and impartiality, actively addressing these reforms is pivotal for the future of electoral integrity. This is beneficial in increasing adaptability to an evolving technological world, while without this, the risk of misinformation, microtargeting and AI misuse in elections will grow exponentially. The rise of digital campaigning introduces these challenges, so stringent guidelines will make sure the democratic process is not undermined. By integrating these changes, we ensure that active proposals are systematically implemented to update the electoral legal framework to protect and promote a trustworthy and transparent democratic system.

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<sup>121</sup> Political parties, Elections and Referendums Act 2000.

<sup>122</sup> Malicious Communications Act 1988.

<sup>123</sup> European Parliament and Council Directive (EU) 2024/1689 of 13 June 2024 [2024] OJ L2024/1689, ss 106-108.



# Part Four: Criminal Law

## Recommendations on the law governing Protest Law

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## Introduction

The definition of a protest is the gathering of people with the intention of expressing disagreement with a specific idea, policy, or action, often through marches and public gatherings.<sup>124</sup> However, a necessary question arises with the enhancement of police powers through stop-and-search measures and advanced surveillance technologies. Since these powers were brought to light, there has been debate and discussion over them in terms of whether they protect the public or are viewed as a threat to democratic rights.<sup>125</sup>

This report, prepared by the BVL Model Law Commission, examines how police powers are applied to protests, testing the measures for their fairness and public liberties. First, it traces the evolution of these powers, focusing on significant reforms such as the Police, Crime, Sentencing, and Courts Act 2022 and the Public Order Act 2023 which have reshaped protest regulation in the UK. It also analyses whether the current measures strike a fair balance between public order and freedom of expression, including their impact on public confidence in policing methods and any limitation of the right to assemble. These major issues are explored alongside recommendations for reform, aiming to ensure protest laws respect both public security and democratic freedoms in the UK.

## History of police powers in regards to protesting

The history of police powers in the UK dates back to the 19th century with the establishment of the Metropolitan Police by Home Secretary Sir Robert Peel.<sup>126</sup> The main reason for this development was due to the increase of public gatherings, particularly due to the rise of labour movements. The police had the responsibility to manage the public order at this time and to prevent any civil unrest. In the 1840s, the police would sometimes work with the military in large scale protests such as the 1848 Chartist rally.<sup>127</sup> Over time, the police used strategies such as using officers to monitor protests rather than confronting the protesters in order to allow them to express their views.<sup>128</sup> The Public Order Act 1936 was passed due to the increasing political extremism leading to uniforms associated with political groups being banned.<sup>129</sup> This Act also gave the police more control over marches, for example restricting timing and routes.

Currently, the Public Order Act 1986 restricts protests by placing conditions on both static and moving protests.<sup>130</sup> Under this Act, police decisions have to be based on 'reasonable grounds' to ensure

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<sup>124</sup> Public Order Act 1986, s 11(1).

<sup>125</sup> William Downs, *Police powers: Protests* (House of Commons Library, 2024) <https://researchbriefings.files.parliament.uk/documents/SN05013/SN05013.pdf> accessed 23 November 2024 8.

<sup>126</sup> UK Parliament, 'Metropolitan Police' (*UK Parliament*, 2024) <https://www.parliament.uk/about/living-heritage/transformingsociety/laworder/policeprisons/overview/metropolitanpolice/> accessed 24 November 2024.

<sup>127</sup> 'Policing the Chartists' (*Chartist Ancestors*) <https://www.chartistancestors.co.uk/policing-the-chartists/> accessed 24 November.

<sup>128</sup> HMICFRS, *Getting the balance right – an inspection of how effectively the police deal with protests* (March 2021), accessed 24 November 2025, 19.

<sup>129</sup> John Simkin, '1936 Public Order Act' (*Spartacus Educational*, September 1997, updated January 2020) <https://spartacus-educational.com/Lpublic.htm> accessed 24 November 2024.

<sup>130</sup> n 125 13.

restrictions on protests are justified. The penalties when one commits offences became harsher for example if one organising a moving protest did not notify the police prior to the protest or had changed specific parts of the protest such as the route, date and time without notifying the police, they could be fined up to £1000.

Police powers during the 20th century took a more severe turn, as strikes ran rampant under Margaret Thatcher's government in the 1980s.<sup>131</sup> Notable protests such as the miners' strikes where many protesters were reportedly mistreated by police, and the protests throughout 1981 in large cities such as Leeds, Birmingham, London and Liverpool. These clashes often arose from allegations of police abuse of stop-and-search laws, which at the time required neither formal evidence nor strong suspicion to justify stopping and searching members of the public. Partly in response to these numerous protests, the Public Order Act 1986 was introduced to codify existing laws and make them more practical/comprehensible.<sup>132</sup>

The police's pushback against protesting at this time became arguably heavy-handed. Their role in stopping protests at this time was largely rooted in violence until Tony Blair's government of the 1990s solidified protesting rights with the Human Rights Act 1998.<sup>133</sup> This Act extrapolated upon Articles 11 and 12 of the European Convention on Human Rights,<sup>134</sup> and also limited police intervention in protest unless they suspected it would be violent or a nuisance/danger to the public, which has also been implemented into current laws, like the Public Order Act of 2023 enacted last year by the Conservative government on the basis of using police to discourage protest.<sup>135</sup>

An increase in policing powers at protests has historically been facilitated by judicial precedents justifying detrimental force against protestors in the UK. This is evident in the case of Ian Tomlinson, a vendor caught in the midst of a 2009 G20 protest, who passed away after being struck by a police officer.<sup>136</sup> Initially, the officer was not criminally charged on the grounds that there was a lack of advance communication between the protest organisers and the police, resulting in the use of repressive methods.<sup>137</sup> Although the officer was eventually charged with manslaughter after video footage was released, the initial ruling demonstrates the legal impunity the police force exercised in cases where the extent of their powers was brought into question. The use of the absence of previous dialogue between protest organisers and the police as a defence for brutish violence demonstrates how rights to 'freedom of expression and assembly' are implicitly restricted by the police's attempts to assert control over protests. Ian Tomlinson was merely a bystander in the proximity of the G20 protests and still experienced repressive acts at the hands of the police, displaying the breadth of police powers during protests.

In relation to the recent rise of protests, recent Acts such as The Police, Crime, Sentencing and Courts Act (PCSCA) 2022<sup>138</sup> gave police more power to impose restrictions on protests if they found it too noisy.<sup>139</sup> The new definition of "disruptions" means the police have very broad powers to decide what amounts to "serious disruption".<sup>140</sup> Furthermore, the Public Act 2023 is the most recent act in relation to protest law. This Act gave police the power to search people at protests for suspects of carrying harmful weapons.<sup>141</sup> This illustrates the growing power of the police while limiting people's rights to protest which as a result sparks debate on whether the police are given excessive power, undermining democratic rights while attempting to maintain public order.

The PCSCA aimed to maintain the right to protest peacefully, whilst also providing the police with the power to stop protests deemed disruptive, when necessary.<sup>142</sup> This Act has been criticised due to it being seen as threatening freedom of expression, as a result, leading to numerous protests around the UK. On

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<sup>131</sup> Cindi John, 'The Legacy of the Brixton Riots', (*BBC News, April 5th, 2006*) *BBC NEWS | UK | The legacy of the Brixton riots*, accessed 23rd November, 2024.

<sup>132</sup> Law Commission, *Offences Relating to Public Order* (Law Com No. 123, 1983) para 2.4.

<sup>133</sup> Human Rights Act 1998.

<sup>134</sup> European Convention on Human Rights 1950 Article 11, Article 12.

<sup>135</sup> POA 2023.

<sup>136</sup> Rebecca Scott Bray, 'Paradoxical Justice: The Case of Ian Tomlinson' (*Journal of law and medicine*) <https://pubmed.ncbi.nlm.nih.gov/24597393/> accessed 23 November 2024.

<sup>137</sup> 'Policing protest: An authoritarian consensus | Centre for Crime and Justice Studies' [www.crimeandjustice.org.uk/publications/cjm/article/policing-protest-authoritarian-consensus](http://www.crimeandjustice.org.uk/publications/cjm/article/policing-protest-authoritarian-consensus) accessed 23 November 2024.

<sup>138</sup> Police, Crime, Sentencing and Courts Act 2022.

<sup>139</sup> PCSCA 2022, s72.

<sup>140</sup> 'How does the new Policing Act affect my protest rights?' (*Liberty*) [https://www.libertyhumanrights.org.uk/advice\\_information/pcsc-policing-act-protest-rights/](https://www.libertyhumanrights.org.uk/advice_information/pcsc-policing-act-protest-rights/) accessed 24 November 2024.

<sup>141</sup> William Downs, 'Policing and protests' (*House of Commons Library*, 16 July 2024) <https://commonslibrary.parliament.uk/policing-and-protests/> accessed 24 November 2024.

<sup>142</sup> PCSCA 2022.

the 21st of March, one month before the Act was officially legislated, the city centre of Bristol saw thousands of protestors gathering against the Act.<sup>143</sup> In this protest: individuals marched across the city and confronted police, and police vehicles were set on fire with numerous fireworks being set off. Upon controversy, a Daily Mirror journalist was assaulted which was seen via a video recording of the journalist being both pushed and hit with a baton, which the police later acknowledged and apologised for.<sup>144</sup> By 28 April 2022, fifteen had been jailed in connection with the riot.<sup>145</sup> The Bristol Mayor described the day as “shameful”<sup>146</sup> and the Chief Constable stated the original peaceful protest had been hijacked by “violent extremists and criminals”.<sup>147</sup> Returning back to the PCSCA, the events that took place in Bristol provided evidence as to both why the Act needed to be legislated, but also how the power that comes from these reforms can be abused.

However, current actions undertaken by the new Labour government show an unwillingness to reform the current protest legislation.<sup>148</sup> In 2023, under the previous Conservative government, the Home Office, under new powers from The PCSCA amended the Public Order Act 1986 from allowing the police to intervene to prevent ‘serious disruption to the life of the community’ to preventing ‘more than minor’ disruption by using a Henry VIII clause.<sup>149</sup> In May, the High Court found this decision unlawful<sup>150</sup> since it did not clarify the law, instead, by lowering the threshold, it gave the police more power to intervene, without parliament’s approval. This ruling from the High Court resulted in an appeal being lodged by the Conservative government which has now been continued by the new Labour government.<sup>151</sup> This decision shows an unwillingness to reform current protest legislation and has been described as ‘showing disregard for the law’ by civil liberties group, Liberty.<sup>152</sup> However, the Labour government’s decision to uphold this appeal also shows a willingness to combat more disruptive forms of protest which cause a nuisance to the public. For example, in *R v Hallam & Ors*, it was calculated that Just Stop Oil’s blocking of the M25 created 50,856 hours worth of delay to motorists and affected 708,503 motorists,<sup>153</sup> showing the wide levels of disruption caused.

## Issues with police powers

A common theme when exploring police powers is the proportionality of their application. The powers utilised must be necessary and essential in the interest of maintaining public order, and most importantly, must not be excessive. In instances where individuals feel that excessive measures have been taken, the issue may be brought before the courts. Judicial scrutiny will play a vital role in determining whether the actions taken by the police were proportionate.<sup>154</sup> Article 11(1) of the ECHR states that everyone has the right to freedom of assembly and freedom of association with others.<sup>155</sup> However, this right can be restricted, provided such restrictions are proportionate to the goal that the police are intending to achieve. A case that demonstrates this is *R v Chief Constable of Gloucestershire*.<sup>156</sup> In this case, police intercepted three coaches of protestors from London who planned to disrupt an anti-war demonstration. The passengers were sealed onboard, sent back to London and even denied them a lavatory stop en route. The judge ruled that the “claimant had been detained on a coach back to London and such detention could not

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<sup>143</sup> Tom Wall, “It was so wrong’: why were so many people imprisoned over one protest in Bristol?” (*The Guardian*, 5 March 2024) <https://www.theguardian.com/world/2024/mar/05/it-was-so-wrong-why-were-so-many-people-imprisoned-over-one-protest-in-bristol> accessed 24 November 2024.

<sup>144</sup> Molly Blackall and Damien Gayle, ‘Police under fire for ‘assault’ of journalist at Bristol protest’ (*The Guardian*, 27 March 2021) [https://www.theguardian.com/uk-news/2021/mar/27/boris-johnson-bristol-kill-the-bill-protest-violence-is-disgraceful?\\_twitter\\_imp=webuproar](https://www.theguardian.com/uk-news/2021/mar/27/boris-johnson-bristol-kill-the-bill-protest-violence-is-disgraceful?_twitter_imp=webuproar) accessed 24 November 2024.

<sup>145</sup> Louisa Streeting, ‘Woman from Bristol found guilty of riot after Kill the Bill protests’ (*Bristol Live*, 28 April 2022) <https://www.bristolpost.co.uk/news/bristol-news/woman-bristol-guilty-riot-after-7012700> accessed 24 November 2024.

<sup>146</sup> Tristan Cork, ‘Mayor condemns riot as ‘unacceptable’ on ‘shameful day’ for Bristol’ (*BristolLive*, 21 March 2021) <https://www.bristolpost.co.uk/news/bristol-news/mayor-condemns-riot-unacceptable-shameful-5211472> accessed 24 November 2024.

<sup>147</sup> Conor Gogarty, ‘Bristol riots: ‘Violent extremists and criminals’ hijacked protest, says police chief’ (*BristolLive*, 22 March 2021) <https://www.bristolpost.co.uk/news/bristol-news/bristol-riots-violent-extremists-criminals-5214519> accessed 24 November 2024.

<sup>148</sup> Linda Ladakhir, ‘Britain now stifles peaceful dissent like a repressive regime. It’s time to roll back our anti-protest laws’ *The Guardian* (London, 10 September 2024).  
PCSCA 2022.

<sup>149</sup> [2024] EWHC 1181 (Admin), [2024] WLR(D) 234.

<sup>150</sup> Matthew Weaver, ‘Home Office to continue appeal over protests law, says human rights group’ *The Guardian* (London, 28 August 2024).

<sup>151</sup> “Government Anti-Protest Legislation Unlawful after Liberty Legal Challenge,” *Liberty*, May 21, 2024.

<sup>152</sup> *R v Hallam and others* (Crown Court, 18 July 2024) Sentencing remarks of HHJ Christopher Hehir p 6 <https://www.judiciary.uk/wp-content/uploads/2024/07/R-v-Hallam-and-others.pdf> accessed (23/11/24).

<sup>153</sup> *R (on the application of Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55.

<sup>154</sup> ECHR 1950, Article 11(1).

<sup>155</sup> *R v Chief Constable of Gloucestershire* [2007] 2 All ER 529.

be covered by Article 5(1)(b) or 5(1)(c) of the convention”.<sup>157</sup> The police’s actions were not proportionate to detain the individual and highlights how an inaccurate assessment of necessary interventions did not take place. The police must consider the type and scale of protest and, if intervention is required, use the least restrictive method. Failure to adhere to this principle can lead to inappropriate use of police powers.

Another issue with police power is the criminalisation of protest. The police can target protesters using stop-and-search methods.<sup>158</sup> Many people involved in peaceful protests, or happened to be in the area at the time, have been arrested by police for unlawful assembly and disorderly conduct due to the lack of clarity in policing laws that do not specify what exactly defines unlawful assembly and disorderly conduct.<sup>159</sup> This situation occurred in 2021 when Patsy Stevenson was arrested at a vigil for Sarah Everard. Stevenson was pinned to the floor by police and arrested although she had never been to a protest.<sup>160</sup>

Another common issue with policing powers and response to protests is the lack of accountability from the police. Police violence and unreasonable arrests can result in police not being disciplined or taking responsibility for the harm that they caused.<sup>161</sup> This is leading to a lack of trust between police and the public which enables the abuses of power and impunity in UK law enforcement. A 71-year-old legal observer was knocked face down onto the floor by two police officers while they ran towards Westminster Bridge during the first pro-Palestine demonstration of 2024. She was left bleeding and unconscious by the police officers who looked down to see her fall but failed to go back and check on her. The Metropolitan Police acknowledged the incident, however, no one was held accountable and no one has been charged for this assault even though there is video evidence of the legal observer being knocked over.<sup>162</sup> These recurring offences by police towards civilians have disturbed the relationship between police and the public and are resulting in people being less inclined to ask for police help.<sup>163</sup> Therefore, the duty of the police to protect the public has been unsettled as more and more protesters are being wrongfully assaulted and arrested without clear reasoning.

Furthermore, the outline of police powers in the current law could be regarded as subjective and leading to inconsistent policing of protests. For instance, The Public Order Act 1986<sup>164</sup> aimed to manage public protests and maintain public order. The Act defines a riot as a group of 12 or more people using or threatening unlawful violence and a violent disorder as three or more people who collectively use or threaten violence.<sup>165</sup> Affray is the use or threat of violence that could cause reasonable fear of safety. Under sections 14 and 14(a), the Act states that protesters must notify the police of large public processions and it allows the police to impose conditions or even prohibit events that they believe could be a major risk of harm, serious public disorder or damage to property. Some people argue that the outline of police powers under the Act is subjective and therefore can lead to inconsistent management of protests.<sup>166</sup> Also, Article 10 (freedom of expression) and Article 11 (freedom of assembly) of the European Convention on Human Rights (ECHR) are directly impacted by The Public Order Act as the fear of potential arrest of ‘heavy-handed’ tactics sometimes exercised by the police in these situations could deter people from utilising their rights.<sup>167</sup> The PCSCA and the Public Order Act 2023 expanded police powers further. This includes restrictions on noise during protests, banning lock-on techniques and criminalising the obstruction of infrastructure. These problems are invaluable to protestors as there have been times when the police have misused their powers. For example, in May 2023, during the King’s Coronation protests, members of the public were arrested on suspicion of planning to disrupt the event. Items they carried were mistaken for ‘lock-on devices’ intended to halt the procession.<sup>168</sup> This caused major backlash

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<sup>157</sup> ECHR 1950, Article 5(1)(b) and (c).

<sup>158</sup> Liberty, ‘Public Order Act: New Protest Stop & Search Powers’ (*Liberty*, 2024) [https://www.libertyhumanrights.org.uk/advice\\_information/public-order-act-new-stop-search-powers/](https://www.libertyhumanrights.org.uk/advice_information/public-order-act-new-stop-search-powers/) accessed 24 November 2024.

<sup>159</sup> Jemma Crew & Megan Fisher, ‘Met Police: Women reveal moments before Everard vigil arrest’ *BBC News* (London, 2nd March 2023).

<sup>160</sup> *Ibid.*

<sup>161</sup> Tom Wall, ‘Police aggression towards Gaza march observers ‘on the rise’ in UK as woman says officers knocked her over’ *The Guardian* (London, 2nd March 2024).

<sup>162</sup> *Ibid.*

<sup>163</sup> Rebecca Owen-Evans, ‘Public trust and confidence in the police’ (*UK Parliament*, 31 October 2024) <https://post.parliament.uk/public-trust-and-confidence-in-the-police/> accessed 24 November 2024.

<sup>164</sup> POA 1986.

<sup>165</sup> POA 1986, Part 1, Section 1.

<sup>166</sup> ‘Briefing on Revised Protest Regulations’ (*Amnesty International*, 2023) <https://www.amnesty.org.uk/files/2023-06/Amnesty%20International%20UK%20-%20%20Briefing%20on%20Revised%20Protest%20Regulations.pdf?VersionId=8bzm5daPEAmMgzdsPRR8lk6HNhNIB.gA> accessed 24 November 2024.

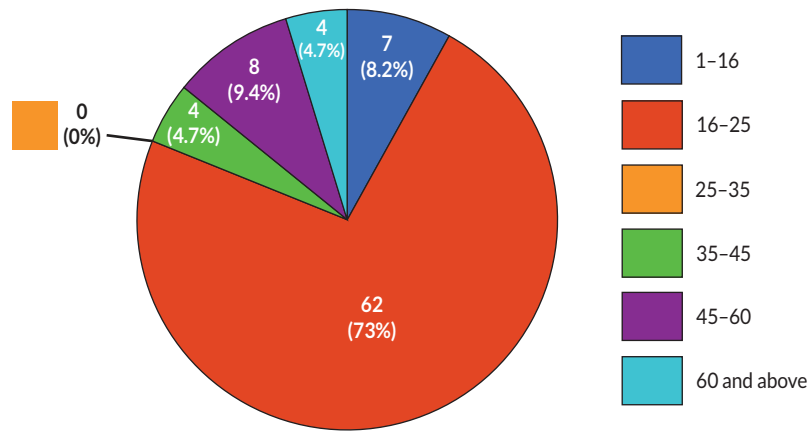
<sup>167</sup> ECHR 1950, Article 10 and Article 11.

<sup>168</sup> UK Parliament, *Policing of Protests*, (Third Report of session 2023–2024, 27 Feb 2024) para 3.

and the Met Police publicly stated their 'regret' for the arrest of the 6 protesters as the individuals posed no real threat.<sup>169</sup>

## Survey results – Demographics

Question: What is your age?



The results reflect a demographic skew, with 72.9% of the respondents between the ages of 16 and 25; 81.2% of participants were female, and more than 42.4% identified as Asian or Asian/British. While this is not a representative sample for the whole population, it nevertheless shows significant insight into the opinion and knowledge of this specific demographic group on protest laws and policing powers.

This narrows the concentration down to a focused lens of younger, largely female respondents of Asian or Asian/British background, from which to consider the views and knowledge levels of those who may face particular socio-political dynamics and cultural influences. These insights are important in understanding how the protest laws and policing powers are considered by this group, particularly because, with increased exposure to social issues, young people may have other ideas about civil liberties and law enforcement. The overrepresentation in this sample from respondents representing diverse ethnicities means that experiences and perspectives on protest policing will be different and indicative for any future legal and social policy discussion. Demographically concentrated, the data cannot easily be generalised to the greater population; however, it is an informative resource for studying public perception and knowledge in a vital and often vocal demographic sector.

## General survey results

For this report, we conducted a survey of 85 participants, from which we have gathered both qualitative and quantitative data to assess the scope of public awareness and experiences concerning protests, particularly in regard to policing procedures. Through the survey, we have obtained primary data that supports our hypothesis: police powers in protest law are extensively broad and unclear, and require legislative reform to protect the rights of protestors. Of our 85 respondents, 42.4% had attended a protest before, depicting a statistically fairly high direct engagement, with just under half of participants having experienced first-hand the characteristics of a protest. Markedly, 10.6% of the 42.4% of the respondents who attended a protest felt unsafe during the protest due to law enforcement.

It is worth noting, however, the implications of the limited sample size. 85 respondents, as a fairly marginal sample size in comparison to national surveys, is not representative of the wider population, and as such, our survey results do not offer a widespread, collective depiction of a variety of opinions and experiences, which would enhance the reliability of our results. Nonetheless, our survey still provides insight into the opinions regarding the policing of protests.

The survey results demonstrate that 31.8% of respondents said that they felt safe and protected during their protest, suggesting that existing safety measures or some current laws are effective, to an extent.

<sup>169</sup> Joe Connor, 'Met Police 'regrets' arrests of six protesters ahead of King's Coronation' (*The London Economic*, 8 May 2023) <https://www.thelondoneconomic.com/news/met-police-regrets-arrests-of-six-protesters-ahead-of-kings-coronation-348099/> accessed 24 November 2024.

Comparatively, 9.8% of the respondents stated that they felt unsafe during a protest. This could be because 42.4% said they are not aware of their protest rights and the majority, 71.8%, felt that they are unaware of recent changes in regard to protest laws. This correlation highlights the need for education around protest law but also potential gaps in reforms that need to be addressed. For example, addressing police management could mean that more people will feel safer whilst protesting as around 40% think that the current powers police have are inadequate.

Of our respondents, 61 reached a consensus that a protest is deemed illegal in the case of ‘violence,’ or ‘harm to other persons and property.’ However, 37.6% of responses feel as though the management of protests by current police powers is inadequate, meaning that while the majority of participants believe in the intervention of law enforcement in instances of violence during a protest, a sizable amount disagrees with current regulation methods of the police.

Furthermore, it is evident that the public is mostly unaware of their individual rights in relation to protest laws and current legislation which have been recently passed. This is evident in the 35.3% who had signified their understanding of protest law as confident if they were to attend a protest in comparison to the remaining 64.7% who had seemingly been divided into multiple categories. The contradicting opinion in relation to sentencing and the extent of police powers could also indicate public confusion in terms of protest laws as well as the widespread discontent with current policies.

Overall despite our sample size being unrepresentative of wider society, especially considering the majority of the sample falling under the age bracket of 16–24 years of age, the survey results demonstrated the widespread lack of knowledge in regards to protest laws and the underlying processes and procedures behind the police handling of protestors.

## Proposed Reforms

The first reform to consider involves the increased regulation of the police who would use only non-aggressive means of crowd control, such as de-escalation and negotiation as the first means of response, prior to resorting to other methods. This can be bolstered by strict oversight on the use of less-lethal arms like tear gas, rubber bullets and pepper spray, with permission granted only when there is a clear, immediate threat to life. The introduction of new legislation making real-time video recording using technology such as bodycams a requirement for any and all protest interactions, along with independent civilian oversight committees formed that are empowered through this legislation to conduct investigations into any misconduct on the part of the officers involved, taking due measures, will serve best the interests of the protection of protester rights and reduction in police overreach.

By emphasising non-aggressive techniques such as de-escalation and negotiation, the reforms aim to minimise the risks of escalation of conflict and engendering trust between protesters and law enforcement agencies. Success, however, is dependent on comprehensive implementation, efficient training of officers, and a clear legislative framework that prevents misinterpretation or loopholes. Though these proposals represent significant steps in the right direction, their practical impact is going to depend on political will from authorities to ensure that these changes are implemented.

The Public Order Act 2023 built on previous legislation such as The Police and Criminal Evidence Act 1984 and created a new suspicionless stop and search power.<sup>170</sup> This has raised concerns over how this affects the right to protest, with the survey suggesting people felt their right to protest is not adequately protected under the current UK laws. The UK Supreme Court in *Roberts v Commissioner of Police* raised the concern that suspicionless stop and search powers can be used in a ‘discriminatory manner’ in individual cases due to the ambiguity of the current law.<sup>171</sup> According to a report by Netpol, an organisation that challenges the use of police powers, young people from ethnic minorities have been disproportionately affected by the escalation of police powers during protests.<sup>172</sup>

A potential reform to ensure that these excessive policing powers are limited is to distinguish between peaceful and violent protests in the use of these new stop and search powers. They should only be used in response to situations of escalating violence or if there are reasonable grounds to believe there is a

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<sup>170</sup> POA 2023 s11.

<sup>171</sup> *Roberts v Commissioner of the Metropolitan Police* [2015] UKSC 79 [3].

<sup>172</sup> The Network for Police, *A report by the Network for Police Monitoring (Netpol) based on protesters’ and legal observers’ testimony about the policing of protests in Britain against Israeli genocide in Palestine* (2024), accessed 24 November 2024 18.

serious threat to public safety, rather than during peaceful protests. By clarifying the scenarios they should be used in, the scope for their use can be limited. However, a key concern is that distinguishing between protest types could be challenging for officers in urgent situations. To address this, providing officers with additional situational training can help them use these new powers judiciously. Regular reviews by an independent body could help monitor the use of these powers and assess whether officers had reasonable grounds for their actions. These measures would allow the right to protest to be protected whilst still enabling the police to effectively manage 'serious disruption'.

Another potential reform would involve implementing comprehensive, mandatory training for police officers that emphasises non-discriminatory practices, de-escalation techniques, and sensitivity to diverse cultural backgrounds and socio-political dynamics. The training should be developed in consultation with civil rights groups, youth organisations, and community representatives to ensure it is both relevant and inclusive. This initiative would incorporate evidence-based practices, including modules on implicit bias, the historical context of systemic inequalities, and restorative justice approaches. Training should feature realistic simulations, periodic evaluations, and be delivered by diverse trainers, including community leaders and mental health professionals.

Given that survey data indicates younger, diverse demographic groups feel disproportionately impacted by protest policing tactics, this training would aim to address those concerns by reducing discriminatory actions and fostering trust between law enforcement and communities, particularly among marginalised or vocal sectors. Importantly, this reform must be tied to broader accountability initiatives, with measurable goals such as a reduction in discrimination complaints and increased community trust indices. Periodic community-led evaluations and performance tracking would ensure the training remains impactful and evolves alongside changing societal needs.

The proposed reform offers a comprehensive approach to addressing police reform and improving community relations. The emphasis on mandatory training, community involvement, and accountability is particularly promising. However, successful implementation will require significant resources and commitment from law enforcement agencies. Long-term sustainability and community buy-in are also crucial factors for the success of this reform.

## Conclusion

Throughout time, the right to peacefully protest freely has been condemned by various laws, the most recent being the Public Order Act 2023 and The PCSCA 2022 which threatens freedom of expression through the introduction of suspicionless 'stop and searches' and stricter definitions of what makes a protest disruptive.<sup>173</sup> These Acts have resulted in a lack of freedom and power for the protesters, as well as an increase in powers of the police who interact with protesters. This creates many issues for protesters, as the police are able to use violence to stop peaceful protests which results in a vast amount of injury to anyone in the area of a protest regardless if they are actually protesting or not. Furthermore, our survey showed that 71.8% of people are unaware of the changes to changes in protest laws, which means the police can utilise their power to arrest people either protesting or surrounding a protest without any countering from the arrested due to their lack of knowledge of their rights and new police powers. Therefore we propose these reforms: body cams are required for any police interaction with protesters, investigations from independent civilian committees must be carried out when police have used violence against protesters, the scenarios that the new police powers from the PCSCA and POA can be used must be clarified and there must be increased training for police in order to reduce discrimination and develop a sensitivity to diverse cultural issues. This is vital to limit the increasing violence against protesters in the modern day, leading to a society more able to express its views.

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<sup>173</sup> POA 2023, s11.

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