House of Commons

Justice Committee

Covid-19 and the criminal law: Government Response to the Committee's Fourth Report of Session 2021–22

Second Special Report of Session 2022–23

Ordered by the House of Commons
to be printed 6 September 2022

HC 644
Published on 8 September 2022
by authority of the House of Commons

Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Committee reports are published on the Committee's website at www.parliament.uk/justicecttee and in print by Order of the House.

Committee staff

The current staff of the Committee are Robert Cope (Clerk), Sara Elkhawad (Assistant Clerk), Philip Jones (Second Clerk), Anna Kennedy O'Brien (Committee Specialist), Tanya Lightfoot Taylor (Committee Specialist), Su Panchanathan (Committee Operations Officer), George Perry (Committee Media Officer), Owen Sheppard (Committee Media Officer), Jack Simson Caird (Deputy Counsel), and Melissa Walker (Committee Operations Manager).

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Second Special Report

The Justice Committee published its Fourth Report of Session 2021–22, Covid-19 and the criminal law (HC 71), on 24 September 2021. The Government's Response and a covering letter were received on 19 July 2022 and are appended to this report.[1]

Appendix 1: Deputy Prime Minister, Lord Chancellor & Secretary of State for Justice, 19 July 2022

Government Response to Justice Committee Inquiry Into Covid-19 and the Criminal Law

I am writing in response to the Committee's report on COVID-19 and the criminal law. I am very grateful to the Committee for conducting an inquiry into these cross cutting important issues.

Departments have taken time to consider the conclusions and recommendations set out in the report. The cross-government's response to the Committee's recommendations is attached at Appendix 2.

Yours sincerely

Rt Hon Dominic Raab MP

1 See also the following correspondence relating to the Government's Response: Letter from the Lord Chancellor and Secretary of State for Justice, dated 7 February 2022, on government responses to Covid-19 and the criminal law report and the Coroner Service report; Letter to the Lord Chancellor and Secretary of State for Justice, dated 25 May 2022, regarding Covid-19 and the criminal law; Letter from the Lord Chancellor and Secretary of State for justice, dated 9 June 2022, on Covid-19 and the criminal law report response; Letter to the Lord Chancellor and Secretary of State for Justice, dated 21 June 2022, regarding Covid-19 and the criminal law

Appendix 2: Government Response

The UK Government and the Devolved Governments have responded to unprecedented challenges during the pandemic in order to protect public health, the NHS, save lives, and livelihoods.

The response to the pandemic has required changes to our laws. Legal changes have only been used when necessary, with proportionate action being taken to help achieve the Government's strategic objectives in respect of the public health context at the time.

The Government has removed legal restrictions at the earliest opportunity when it has been safe to do so. The vast majority of COVID-19 restrictions were removed in July 2021, as part of the move to Step 4 of the Roadmap out of lockdown.

In responding to Omicron, the Government acted swiftly and proportionately, introducing time-limited regulations to underpin the move to Plan B of the Autumn/Winter Plan. Following the success of the booster program and the way the public responded to the Plan B measures, the Government announced on 19 January that Plan B measures were no longer necessary. England therefore reverted to Plan A, with the regulations underpinning Plan B removed.

As set out in the Living with COVID-19 Plan, the Government's objective in the next phase of the response is to enable the country to manage COVID-19 like other respiratory illnesses, while minimising mortality and retaining the ability to respond if a new variant emerges with more dangerous properties than Omicron, or during periods of waning immunity, that could again threaten to place the NHS under unsustainable pressure.

As part of this strategy, the Government will move away from deploying regulations and requirements in England and replace specific interventions for COVID-19 with public health measures and guidance.

The Government is able to take this step now because of the success of the vaccination programme, and the suite of pharmaceutical tools the NHS can deploy to treat people who are most vulnerable to COVID-19 and the most severely ill. The Government can only take these steps because it will retain contingency capabilities and will respond as necessary to further resurgences or worse variants of the virus.

It is important to recognise that the pandemic is not over. Living with and managing the virus will mean maintaining the population's wall of protection and communicating safer behaviours that the public can follow to manage risk.

Recommendation 4 (Cabinet Office) – **At the time of publication of this report, we recognise that almost of all of the COVID-19 restrictions we refer to are no longer in force. However, should the COVID-19 situation worsen again, and restrictions need to be reintroduced, we would urge the Government to act in line with the principles embodied in the conclusions of this report and with the lessons learnt.** (Paragraph 8)

The Government's objective in the next phase of the response is to enable the country to manage COVID-19 like other respiratory illnesses, while minimising mortality and retaining the ability to respond. This includes removing the last domestic legal restrictions in England.

As set out by the Government's Scientific Advisory Group for Emergencies (SAGE), the future path and severity of the virus is uncertain, and it may take several years before the virus becomes more predictable. During this period further resurgences will occur, it is possible more severe variants will emerge and there will sadly be more hospitalisations and deaths.

As a result, the Government is taking steps to ensure there are plans in place to maintain resilience against significant resurgences or future more severe variants and remains ready to act if a dangerous variant risks placing unsustainable pressure on the NHS.

In future, pharmaceutical capabilities will be the first line of defence in responding to COVID-19 if risk threatens to place unsustainable pressure on the NHS. Additionally, core infrastructure will be retained to enable testing to be scaled up in the case of a new dangerous variant. Going forward, if ever required, measures required to respond to future variants will be taken reflecting the advances made in population immunity given advances in vaccine technology and repeated exposure to the virus.

Recommendation 5 – **A central lesson from the COVID-19 pandemic is that future responses to pandemics needs to be cross-governmental from the outset, and not just led out of an individual department, such as in this case the Department for Health and Social Care.** (Paragraph 20)

The Government's response to the COVID-19 pandemic has been cross-governmental from the outset.

Government's decision-making mechanisms evolved to meet the demands of the pandemic. In line with its role as the mechanism through which the Government makes decisions in emergencies, from the start of the crisis, COBR acted as the central mechanism taking real-time decisions to coordinate the UK's operational response. In March 2020, upon the World Health Organization's declaration of COVID-19 as a pandemic, the Government created four bespoke Cabinet Committees known as Ministerial Implementation Groups (MIGs). The MIGs managed the whole of the Government response, with a specific general public sector MIG that considered preparedness across the rest of the public and critical national infrastructure, excluding the NHS. In June 2020, these were replaced by the COVID-19 Strategy Committee chaired by the Prime Minister, to drive the Government's strategic response to COVID-19 and recovery; and the COVID-19 Operations Committee, to deliver the policy and operational response, chaired by the Chancellor of the Duchy of Lancaster.

The COVID-19 Taskforce was established in May 2020 and was responsible for coordinating the Government's response to the pandemic. The Taskforce worked with Departments across Government to perform this role including: supporting decision-making through Cabinet committees; developing overarching strategy; and providing data and analysis. Accountability for individual COVID-19 related programmes rests with Senior Responsible Owners of those programmes within Government Departments. The Department of Health and Social Care (DHSC) owns a large number of COVID-19 related legislation and policies.

The Government's coordination of the response will continue to evolve as we move towards COVID-19 becoming endemic in the UK, drawing on capabilities such as the

Pandemic Diseases Capabilities Board formed in July 2021, co-chaired by the Civil Contingencies Secretariat in the Cabinet Office and DHSC to support pandemic planning across Government.

The public inquiry into COVID-19 will play a key role in examining the UK's pandemic response and ensuring that we learn the right lessons for the future. The inquiry was formally established on 28 June with the publication of its final terms of reference.

The Government looks forward to receiving the inquiry's findings and recommendations in due course

Recommendation 7 (Ministry of Justice and Cabinet Office) – **The Government should update its guidance on the creation of new criminal offences for all departments to clarify that the Ministry of Justice should as a rule be consulted. While circumstances may conceivably arise in which the need for a speedy response may temporarily suspend that need, as may have been the case in the early stages of the COVID-19 response, the Government should make a clear commitment to undertake the necessary consultation in all but the most exceptional circumstances and to do so retrospectively in the event of new offences being created without the proper procedures having been followed. The Ministry of Justice can play an important role in both ensuring a degree of consistency of approach and identifying the potential impact on the criminal justice system.** (Paragraph 22)

Government departments regularly consult the Ministry of Justice when they seek to create new, or amend existing, criminal offences or penalties. The Ministry of Justice does not take ownership of the entire spectrum of the criminal law, nor is it responsible for every criminal offence as this is a matter for each department.

It does, however, advise departments who are considering introducing new, or amending existing, criminal measures. This often culminates in that department completing a Justice Impact Test, an internal impact assessment that considers the downstream impact of government policy and legislative proposals on the justice system. The consideration of new, or amendments to, criminal offences which now forms part of the broader Justice Impact Test moves away from the Criminal Gateway process which was in use before 2015. The Ministry of Justice continues to scrutinise policy and legislation both through this impact assessment, as well as through the collective agreement process.

The usual practice is to approach the Ministry of Justice during policy development and often before clearance processes ensue. This allows for effective scrutiny of proposals in the context of the wider criminal law. Understandably the process is more dynamic when measures are needed on an urgent basis and the Ministry of Justice will support other Government departments pragmatically in these instances. The Ministry of Justice agrees to the recommendation from the report that there should be consultation with the Ministry of Justice as a matter of course when departments are considering whether to amend or create new offences or penalties.

The Government accepts the Committee's recommendation that guidance should be updated to highlight that other Government departments should be consulting the Ministry of Justice as a matter of course when considering new, or amending existing,

criminal offences or penalties. The guidance will also be updated to outline standard timeframes for responses as well as what to do in urgent situations. Updated guidance will be published in due course.

Recommendation 8 (Department for Health and Social Care) – **We support the creation of the UK Health Security Agency as a new body designed to ensure the nation can respond quickly and at greater scale to future pandemics. In line with Lord Wolfson's suggestion that expertise in the criminal law needs in future to be brought into pandemic planning, we urge the Government to ensure that the Agency has sufficient expertise in the criminal law,and factors such expertise into future pandemic preparation. We support the creation of the UK Health Security Agency as a new body designed to ensure the nation can respond quickly and at greater scale to future pandemics.** (Paragraph 23)

Recommendation 9 (Department for Health and Social Care) – **Given the central role that new COVID-19 related offences and lockdown laws played in protecting public health, we recommend that the Government commission a study, to be conducted by the UK Health Security Agency or other relevant body, into the role of the criminal justice system in protecting public health during pandemics. The aim of the study should be to examine how effective the creation of COVID-19 offences was in achieving compliance with public health regulations and protecting public health.** (Paragraph 24)

The UK Health Security Agency (UKHSA) is the country's public health agency, responsible for protecting every member of every community from the impact of infectious diseases, chemical, biological, radiological and nuclear incidents and other health threats. It provides intellectual, scientific and operational leadership at national and local level, as well as on the global stage, to make the nation's health secure. UKHSA works closely with the Department of Health and Social Care (DHSC), and with Cabinet Office's Civil Contingencies Secretariat to convene cross-government preparedness and response plans for future health security risks including pandemics. We agree with the Committee's conclusion that there are lessons to be learned from our experiences over the last two years, and we will draw upon expertise within UKHSA and other bodies in understanding this picture. The Government's response to the pandemic has involved almost every aspect of public services in local and central government and in the devolved administrations, with a significant international component. It is therefore likely that central government departments will be best placed to consider the role of the criminal justice system in protecting public health during pandemics and ensure that the right expertise in areas such as the criminal law is fed into the policy process. We continue to review the effectiveness of measures to protect public health including levels of compliance and the role of enforcement through the criminal justice system in our preparedness for future pandemics and other health emergencies.

Recommendation 12 (Cabinet Office) – **We recommend that the Government and the Procedure Committee of the House of Commons consider how future scrutiny of emergency regulations can be conducted in a timely fashion.** (Paragraph 29)

Government agrees that it is important to ensure that in an emergency the House of Commons is able to scrutinise the use of secondary legislation in a timely fashion. The biggest challenge of legislating for COVID-19 has been the need to legislate at an exceptional pace, because the cost of proceeding at a more normal speed would have been

paid by the loss of lives. Proceeding at a more normal speed would have also resulted in costs to business, given that measures would have taken longer to revoke when no longer necessary, and resulted in greater uncertainty for both businesses and the general public.

Though being made at pace, all statutory instruments brought forward in response to the pandemic have remained subject to parliamentary scrutiny and approval as set out in the terms of the parent Act. The creation of these powers and their terms would themselves have been scrutinised and debated in Parliament during the passage of the parent Act, informed by the work of the Delegated Powers and Regulatory Reform Committee and the departmental Delegated Powers Memorandum which sets out the proposed delegated powers in the bill, justification of their inclusion, the choice of procedure and justification for that choice.

Under normal circumstances it can take between six and eight weeks for a draft-affirmative SI to pass through Parliament. Waiting this long to implement some of the measures in response to the pandemic, such as the national lockdown initiated in January, would have led to significantly more cases, deaths and would have placed the NHS under severe pressure.

The Government has worked hard to ensure that parliamentary oversight of the Government's legislative programme has continued during the pandemic. Where regulations have needed to be introduced rapidly in order to implement measures to combat the spread of the virus and save lives, it has been necessary to use the emergency procedure.

In addition, the Government has, whenever possible, sought to ensure Parliament is able to debate and vote on measures of national significance before they come into force, and as soon as reasonably practicable where this has not been possible.

Recommendation 13 (Cabinet Office) – **It would represent good practice if all other government departments also undertook to keep their corresponding select committees informed of significant changes to the law made by statutory instrument.** (Paragraph 30)

All statutory instruments are laid in Parliament and available online at www.legislation.gov.uk. It is a matter for each Government department and for select committees to determine how they agree to manage the flow of such information.

Recommendation 14 (Cabinet Office) – **To facilitate effective scrutiny of new criminal offences in statutory instruments, it would be helpful if the Government would ensure that the accompanying explanatory memorandum should contain a specific section detailing any new offences, the reasons behind their creation, and the justification for the penalty applied. The memorandum should also contain a short statement setting out why the offence is considered both proportionate and necessary.** (Paragraph 31)

The Government considers that including a specific heading in the explanatory memorandum for new criminal offences created by a statutory instrument is disproportionate. It is important that the explanatory memorandum is kept as concise as possible, and the introduction of further headings are likely to lead to the document becoming unmanageably complex. For example, the Delegated Powers and Regulatory Reform Committee recently made a similar proposal in relation to new delegated powers

in its 12th Report of the 2021–22 session entitled "Democracy Denied? (HL 106)". As in that case, the Government will instead update existing guidance for drafters of explanatory memoranda to make clear that the "Policy background" section should provide an explanation of any new offences created by the SI.

Recommendation 17 (Cabinet Office and Home Office) – **The Government has a responsibility to ensure that the public and the police have a clear understanding of the distinction between guidance and the law.** (Paragraph 44)

Throughout the pandemic, the Government has evolved its approach to communicating clearly the effects of changes made to the law, alongside publication of the legislation and its associated guidance. We have been clear in publishing the guidance and law separately, and distinguishing between actions the public "must" take (under law) and "should" take (under guidance).

The guidance on government websites has helped people and businesses to understand what behaviours they should be undertaking to reduce the risk of transmission.

The Government continues to make every effort to communicate both the law and guidance as clearly and simply as possible to the public via our public information campaign. This has included activities such as the production and extensive promotion of digital assets to clearly outline the rules and expected behaviours, paid-for marketing and PR activity to widely communicate rules and regulations. This has also involved extensive engagement with local authorities, businesses, the education sector, and key stakeholders like the media, and parliamentarians.

It will continue to be important to communicate clearly with the public as we move towards managing COVID-19 as an endemic disease.

Police forces across the UK are operationally independent, however throughout the pandemic the Government has worked closely with policing partners to ensure that the restrictions set out in the regulations are reasonably and lawfully enforced. Specifically, police forces have worked in line with guidance issued by the College of Policing and the NPCC. The guidance issued has aimed to reflect the latest rules and to provide clarity so that regulations are understood by police forces and are appropriately implemented.

The police have throughout the pandemic used their common sense, discretion and experience to enforce the COVID-19 regulations. As they have done throughout the pandemic, the police have employed the 4Es approach: engaging with individuals who are not following the rules, explaining the rules to them and encouraging them to comply before moving on to enforce the law.

Recommendation 19 (Department for Health and Social Care) – **A key lesson from the COVID-19 pandemic is the importance of public communication of any new restrictions and criminal offences to delivering compliance and protecting public health. The Government should review how public health guidance and public health regulations are communicated to the public in future pandemics, including via public announcements and gov.uk, to ensure that it is clear to the public what constitutes advice and what is legally required of them. This could be done as part of the study which we recommend the UKHSA undertakes.** (Paragraph 46)

We agree that good communication is essential to delivering compliance and protecting public health. Throughout the pandemic the Government has communicated what everyone should do to minimise the risk to themselves, their loved ones and the population as a whole. This has been underpinned by regulations that outline what individuals can and cannot do. The Government has sought to learn lessons on its communications approach. For example, we have had a continued dialogue with the National Police Chiefs' Council (NPCC), engagement with local authorities, and scientific input to inform which measures are needed.

We have also responded to feedback from the general public, businesses and Parliament where we were told at the beginning of the pandemic that greater clarity was needed on what people should and should not do.

As part of this process, we reviewed guidance and Government communications and acted to both simplify it and make it more accessible. We have continued to develop this and have included clearer explanations of why people needed to follow the rules, to support individuals in making an informed decision to comply.

As with other parts of the response to the pandemic, we will look to learn lessons on how we have communicated guidance and public health Regulations, in particular through the public inquiry into COVID-19, and will take this forward for planning for future pandemics.

Recommendation 23 (Department for Health and Social Care and Home Office) – **The Government should conduct a review of fixed penalty notices for COVID-19 offences. The review should consider**:

- **how effective the fixed penalty notice scheme has been for delivering public compliance;**
- **what alternative options there might be for enforcing public health restrictions during a pandemic; and**
- **whether the use of fixed penalty notices should be limited to certain types of offences in the future. These terms of reference could be considered as part of our suggested review by the UKHSA.** (Paragraph 61 including Para 54 and 59)

Effectiveness of Fixed Penalty Notices

The British policing model is one of policing by consent and that has not changed. Throughout the pandemic the police have used the 4Es approach: engaging with individuals who are not following the rules, explaining the rules to them and encouraging them to comply before moving on to enforce the law.

The Government did not rely on enforcement as the primary driver of behaviour, but as complementary to other measures to encourage compliance. This included clearer and more consistent communications on the rules. The Fixed Penalty Notice (FPN) scheme was put into law in order to reduce transmission of the virus, and has been an important part of enforcement measures, which allow for quick and appropriate action to be taken

against people that are not following the rules. Evidence suggests that the success of measures to date has been founded on broad public support and understanding of the need for adopting safer behaviours to reduce the spread of the virus.

The National Police Chiefs' Council (NPCC) has routinely published data on Fixed Penalty Notices (FPNs).

Alternative options for Fixed Penalty Notices

The main legislative vehicle used by the Government to introduce restrictions, the Public Health (Control of Disease) Act 1984, limits the range of offences that can be deployed: regulations made under section 45B and C (under which Ministers may introduce regulations relating to international travel and domestically) may not create offences punishable with imprisonment. In general, FPNs provide a readily available sanction which avoids the need for prosecutions, provided those affected pay the FPN.

When restrictions were introduced in March 2020, swift action was needed to respond to extraordinary and unprecedented circumstances. Most people were happy to comply, but FPNs provided an effective sanction to encourage others. That's why the Government regarded this to be an important tool for responding to the pandemic allowing for quick and appropriate action to be taken to protect public health and save lives. However, examining how the regime has operated since its implementation, we are conscious of the concerns raised about the FPN regime, its proportionality and process, and recognise that it presented challenges for enforcement and compliance. We will take this into consideration alongside the issues raised in the Cabinet Office report from the Second Permanent Secretary and any findings from the public inquiry into COVID-19 as we develop our planning and preparedness for any future pandemics.

The Government did consider a range of measures to provide legal sanctions for potentially risky behaviour. This included:

- reviewing the extent to which behaviours and/or settings were, at a given moment in the course of the pandemic, a significant source of transmission risk
- assessing whether offences and potential penalties were both proportionate to that risk, and likely to have the desired deterrent impact
- considering the potential impact that a new offence could have on the public, including on different sectors of the population. This included consultation with relevant Government Departments to understand the impact that the offence would have on different stakeholders
- engagement with police and local authorities to gauge how new rules could be enforced effectively, and whether they could be communicated clearly to the public to deliver high levels of compliance.

We used this information to determine whether an offence was needed, the appropriate size of any penalty, and how any negative impacts were to be mitigated.

Limiting FPNs to certain offences/concerns on £10,000 FPN

The £10k FPNs were introduced for people who organised a gathering contrary to the regulations, that is for those who were committing a more egregious breach of the rules, thereby causing a significant risk to the public's health. At the time these measures were introduced it was considered important that the penalty for this offence communicated the public health risk known to be associated with the activity, and also acted as an appropriate deterrent.

The vast majority of forces will undertake a discretionary initial force-level review before referring to the Association of Chief Police Criminal Records Office, ACRO, (the body that administers the FPN regime) where it is reviewed, ensuring compliance with regulations before the formal FPN is issued.

An individual can decide to not pay an FPN, if, for example, they did not consider that they had in fact committed an offence, or felt that the penalty was not appropriate. An individual can ask the issuing police force to review the case and it is at the discretion of the relevant force to consider whether to withdraw the FPN. If the force does not withdraw the FPN and the recipient opts not to pay it, the force will then consider whether to pursue a prosecution. It is made clear in the letter issued to those who receive an FPN that they can contest the penalty. If the police prosecute the case, the defendant's rights remain untouched.

Where a request to review an FPN is made, the police have no power to enforce payment, and so there are no consequences for the recipient against which they might appeal. A person can also judicially review the decision to issue an FPN. There are therefore a number of routes through which the penalty can be challenged.

Recommendation 24 (Attorney General) – **The high error rate of charges brought under the Coronavirus Act and the public health regulations illustrates the importance of the need for future pandemic planning to consider the role of the criminal law.** (Paragraph 68)

It is regrettable that any incorrect charging decisions were made under the Coronavirus Act 2020. The primary issue identified by the Crown Prosecution Service (CPS) was that individuals were erroneously charged under Schedule 21 and 22 of the Act rather than being charged under other pieces of legislation, such as the various Health Protection Regulations. As such, the issue was primarily administrative rather than being the "wrongful" use of the powers provided by the Coronavirus Act.

Since April 2020, the CPS reviewed all finalised cases* which were charged under the Coronavirus Act 2020 to ensure that correct offences had been charged and prosecuted. That review is ongoing with finalised cases being reviewed each week by CPS lawyers. Whenever the CPS identify that an error has occurred in a case where the defendant has gone onto plead guilty or be found guilty, the case is referred back to the local CPS Area. This provides an effective safeguard by ensuring the case is re-opened and re-listed in court so that the error can be corrected (either by way of amending the charge or withdrawing the charge entirely).

In addition, the Government committed that these powers would not remain in place any longer than necessary or proportionate. The Schedules 21 and 22 powers were expired from the Coronavirus Act as of 9 December 2021.

It should be noted that the error rate under the Health Protection Regulations has not been unduly high. The CPS review shows that 79% of cases charged between April 2020 and January 2022 were correct. As this was a bespoke analysis developed in response to the unique circumstances of the pandemic, the CPS does not have a direct comparator that this can be measured against but an HMCPSI report on charging published in September 2020 may provide a useful comparison. From a sample of 1,400 cases charged by the CPS, inspectors found that 82.4% fully met the requirement to select offences that were appropriate and proportionate. The error rate of charges brought under the Health Protection Regulations is therefore broadly in line with other criminal offences.

*Finalised cases are cases where a prosecution has either been stopped or concluded with the defendant being found guilty, or where a guilty plea is entered and accepted.

Recommendation 26 (Home Office) – **In its response to this report the Government should provide us with data on** (Paragraph 70):

- **the number and proportion of fixed penalty notices that have not been paid;**

Data on the number of Fixed Penalty Notices (FPNs) paid within the 28-day statutory payment period can be found on the National Police Chiefs' Council (NPCC) website.

The latest figures published on 16 March 2022 and can be found here: Update on Coronavirus FPNs issued by forces in England and Wales, and the payment of FPNs (npcc.police.uk). Police in England and Wales have processed a total of 118,975 FPNs, with 70,495 having been paid within the statutory 28-day payment period by those who received them.

2,755 FPNs were contested by recipients, and 51,353 were not paid with within the statutory 28-day payment period. If an FPN is contested or not complied with within the 28 day payment period, the case becomes a matter for HM Courts and Tribunals Service (HMCTS) following a force level review.

- **the number of cases where the police have decided not to prosecute or no decision was taken before the expiry of the limitation period; and**

Data as to the number of cases where the police have decided not to seek a prosecution, or no decision was taken before the expiry of the limitation period, is not held centrally. ACRO Criminal Records Office (ACRO), the processing body for COVID-19 FPNs on behalf of the Police, hold some information received from individual forces on their handling of FPNs, but they do not have a comprehensive or accurate picture of the overall position in terms of compliance, or of decisions taken at force level. Presently, almost 50% of notices do not have a proceed/rescind outcome on ACRO records. HMCTS outcome data would assist with identifying the number and nature of the cases which resulted in prosecution but police do not have access to that information.

- **(Ministry of Justice) the total number of prosecutions of COVID-19 cases including single justice procedure cases.**

In response to the Report's request for the total number of prosecutions of COVID-19 cases (including single justice procedure cases), please find the below table on the number of prosecutions for COVID-19 offences in 2021, on principal offence basis, broken down by offence code and detailed offence.

Prosecuted	2021
16857 – Failure to comply with screening restriction/requirement (coronavirus)	1
16858 – Operator of Port fails to comply with direction under Coronavirus Act 2020	0
16859 – Offences by potentially infectious persons (coronavirus)	18
16860 – Breach of emergency period restrictions (coronavirus)	23,898
16861 – Offences in relation to events and gatherings (coronavirus)	66
Total prosecutions	**23,983**

There were 23,983 defendants prosecuted and 20,318 offenders convicted for offences relating to COVID-19, the majority of which were for breaching emergency period restrictions. Of the 20,317 offenders sentenced, almost all (99.5%) were fined, with an average fine of £1,001. The majority of COVID-19 related offences were dealt with out of court via a fixed penalty notice.

Recommendation 27 (Home Office) – **The guidance on ACRO Criminal Records Office's website is ambiguous. It should be made clearer to reflect the fact that contesting a fixed penalty notice does trigger a review by the relevant police force. If someone has a good reason to suspect that a fixed penalty notice has been issued in error, they should be made aware of the fact that a contest request will not necessarily result in a prosecution.** (Paragraph 72)

The guidance is owned and drafted by ACRO Criminal Records Office (ACRO), who have provided the following response:

Information on contesting a fixed penalty notice (FPN) is available on the ACRO website. This advises the recipient that, should they opt to contest, their case will be reviewed by the individual force and any decision to proceed is made solely by the owning force. The ACRO website conveys this information via FPN Frequently Asked Questions (FAQs) under the 'Contesting your FPN' section.

The FAQ below sets out the next steps following the recipient's contest request. However, FPN FAQs should not be read in isolation of the FPN letter which also clearly states that details will be passed on to the issuing force.

What happens after I contest and request a court hearing?

After the 28-day window outlined in your letter has passed without payment, we will return your case to the force. We will inform them of your contest request and forward any supporting information/evidence that you have provided. The force will then review your case and decide whether to withdraw the fine or proceed the matter to court. Once your case is returned to the force, ACRO are not involved in the next stages of the process. You will receive direct correspondence from the force if they wish to proceed the case to court.

Recommendation 28 (Home Office) – **For future use of fixed penalty notices the Government should ensure that the review process that enables an individual to challenge a notice without risking a criminal prosecution or incurring additional costs is clearly and consistently articulated.** (Paragraph 75)

As set out in the Government Response to the 'Joint Committee on Human Rights' (JCHR) Fourteenth Report of Session 2019–21. The Government response to COVID-19: fixed penalty notices', where an FPN is issued by a police force recipients have the opportunity to contest throughout the process.

In circumstances in which a recipient wishes to challenge an FPN, that individual can ask the issuing police force to review the case and it is at the discretion of the relevant force to consider whether to withdraw the FPN. If the force does not withdraw the FPN and the recipient opts not to pay it, the force will then consider whether to pursue a prosecution. It is made clear in the letter issued to those who receive an FPN that they can contest the penalty.

Where a request to review an FPN is made, the police have no power to enforce payment, and so there are no consequences for the recipient against which they might appeal. A person can also judicially review the decision to issue an FPN. There are therefore a number of routes through which the penalty can be challenged.

Recommendation 29 (Home Office) – **For COVID-19 related offences a recipient of a fixed penalty notice, who does not pay the fine within 28 days should be told promptly if a police force decides not to charge. A recipient of a fixed penalty notice should also be told when the limitation period for prosecution will expire.** (Paragraph 76)

Where a recipient does not pay their fine, they are sent a second letter from ACRO acknowledging the failure to pay and informing that the Fixed Penalty Notice will be sent to the issuing force. If the force subsequently informs ACRO that they wish to rescind the notice, then ACRO will send the subject a "no further action" letter. As per a previous answer (Recommendation 26, Paragraph 70), around 50% of the notices issued by ACRO do not have an outcome. It is, therefore, likely that some people who should have received a "no further action" letter have not. This data is not collected centrally and therefore is not available at a national level.

Notices do not make reference to limitation periods or statutory time limits.

Recommendation 33 (Ministry of Justice) – **A lesson learnt from the pandemic is that the Ministry of Justice should review the transparency of the single justice procedure and consider how the process could be made more open and accessible to the media and the public.** (Paragraph 91)

While the Criminal Procedure Rules oblige courts to give certain additional information on cases upon request from the media and other interested third parties, courts are currently obliged to give more information on SJP cases. Special provision has been made to provide the media with the additional information beyond what is routinely made available to the public. This is outlined in the HMCTS Media Protocol, here. HMCTS314_Protocol_on_sharing_court_lists. For example, the media are entitled to the prosecution statements of facts and the defendant's statement in mitigation.

In order to further improve transparency arrangements, a list of pending SJP cases on the Common Platform is published each day online which is available to the public. The media receive a more detailed list of pending SJP cases and also the court register which details the outcomes of SJP cases including COVID-19 offences, so that they can report on such cases. The result is that cases dealt with under the SJP are more transparent than traditional proceedings, where the media only receive the details if they actually attend the hearing. As such, the Ministry of Justice does not agree with the recommendation of the Report but provides assurance that the Government will continue to work with the media to ensure that SJP proceedings are both accessible and open.

Recommendation 34 (Ministry of Justice) – **The Government should also conduct a review of the use of the single justice procedure in COVID-19 cases. The review should consider the relative complexity of different COVID-19 cases and whether it was appropriate for more complex cases to be specified to allow use of the single justice procedure. This could be incorporated as part of our recommended review by the UK Health Security Agency into the role of the criminal justice system in protecting public health during pandemics.** (Paragraph 92)

It is a matter for prosecutors to decide whether it is appropriate to prosecute a defendant under the SJP, and work was done quickly with police forces and court staff to reduce error rates in COVID-19 prosecutions. Defendants do not have to choose the SJP procedure and have the right to request a traditional court hearing at any point before their case is considered. A case dealt with under the SJP is dealt with in the same way as any other case, except that a single magistrate can deal with it and the hearing need not be in public. The magistrate must comply with the same legislative safeguards as all other proceedings, and the Sentencing Council's Sentencing Guidelines apply in the same way.

The Government is not aware of any evidence to suggest that the error rate for prosecuting COVID-19 cases is higher under the SJP than any other court procedure or that the SJP procedure was the specific cause of those errors. As with all cases dealt with by the magistrates' court, there are safeguards in place to address such issues where they occur. If an error is made by the court, whether upon conviction or sentencing, the court will always notify the defendant and correct any error following the case being re-opened.

There are a number of additional safeguards built into the SJP process to ensure a defendant's fair trial rights are protected. Defendants prosecuted under the SJP have an automatic right of appeal to the Crown Court against conviction and sentence. In the event a defendant was unaware of the proceedings, they are entitled to make a statutory declaration which revokes the conviction and recommences the proceedings.

We are consistently working to improve the service provided under this procedure. Following consultation with users, we have recently revised the SJP notice and process to identify vulnerable users and make the process even clearer. Given the safeguards in place and the Ministry of Justice's ongoing commitment to continually review and improve the SJP process, we do not agree with the Report's recommendation that a formal review of the use of the SJP in COVID-19 cases is required.