



House of Commons

House of Lords

Joint Committee on Human
Rights

**The Government
response to covid-19:
fixed penalty notices:
Government Response
to the Committee's
Fourteenth Report of
Session 2019–21**

**First Special Report of
Session 2021–22**

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Joint Committee on Human Rights

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

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

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Publication

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First Special Report

The Joint Committee on Human Rights published its Fourteenth Report of Session 2019–21, *The Government response to covid-19: fixed penalty notices* (HC 1364/ HL Paper 272) on 27 April 2021. The Government response was received on 23 June 2021 and is appended below.

Appendix: Government Response

HMG Response to Recommendations

This is the Government's response to the Joint Committee on Human Rights' (JCHR) fourteenth report in the 2019–21 Session, *The Government response to covid-19: fixed penalty notices*. In this report the JCHR made recommendations, including on:

- 'Racial disparities';
- Incorrectly issued Fixed Penalty Notices;
- review and appeal process; and
- The size of the penalties.

In response to the extraordinary circumstances created by the pandemic, it has been necessary for the Government to put into place a variety of measures to protect lives and livelihoods. The Government has not undertaken these measures lightly.

The Government has worked closely with partners to provide guidance on regulations, to ensure reasonable and lawfully enforcement. Police have continued to use the 4E approach, seeking to Engage, Explain, Encourage and only Enforce as a last resort. A similar approach has been taken by local authorities when enforcing regulations against businesses. Where enforcement by way of a FPN has taken place, review procedures are in place to ensure that these have been issued correctly.

The Government is grateful to the JCHR for their consideration of this important issue. Our response to the recommendations posed to Government and its partners is set out below.

Recommendation 2 (page 33)

In order to understand the impact of the enforcement of the coronavirus Regulations on businesses and the people who own, work at, or visit them, local authorities must publish data on the number of FPNs issued by individuals to whom they have designated powers. The data should be collated by the Ministry of Housing, Communities and Local Government and published regularly.

Government Response:

The Government recognises the importance of understanding the impact of enforcement of coronavirus regulations on businesses to ensure that financial penalties issued in response to breaches are proportionate. Local authorities are responsible for encouraging businesses

to operate in compliance with coronavirus regulations, undertaking enforcement where egregious breaches occur. Local authorities are not responsible for enforcing coronavirus regulations against individuals, whether they are employees of businesses or members of the public. This is the remit of the police.

In line with the approach set out in the Regulators' Code, local authorities have taken a graduated approach to enforcement of coronavirus regulations against businesses.¹ In the event of non-compliance, local authority enforcement officers will first seek to educate businesses to help them comply. Enforcement action is taken as a last resort in the event that a business continues to not comply. Depending on the type, scale and severity of the breach, local authorities can issue a range of legal notices to demand businesses take action to bring their operations in line with coronavirus regulations. In the event of non-compliance with a direction or notice issued, a local authority enforcement officer may issue a fixed penalty notice (FPN).

To date, the Government has not required local authorities to submit the details of FPNs they have issued in response to breaches of coronavirus regulations. Since November 2020 local authorities have provided weekly information to the Office for Product Safety and Standards detailing their compliance and enforcement activity, which includes the number of FPNs issued. This information has been provided by local authorities on a voluntary basis. This data has shown that the number of financial penalties issued by local authorities to businesses is very low compared to the number of FPNs issued by the police to individuals. This reflects the graduated approach to enforcement that local authorities adopt as laid out in the Regulators' Code.

Government accepts the recommendation of the committee and will publish a summary of the aggregate data of the interventions undertaken by local authorities as detailed in the information provided to the Office for Product Safety and Standards from November 2020 to June 2021.

Government believes this is a proportionate response with evidence to date confirming that local authorities have not disproportionately issued financial penalties against coronavirus regulations. Rather, they have sought to encourage and educate the business community to support them to adhere.

Recommendation 4 (page 33)

The Government must commission research and analysis of the FPNs that have been issued to people by a range of characteristics including age, gender, race and social deprivation. Such analysis must look into the reasons behind such variable rates of enforcement amongst different groups. If this analysis finds that the approach to enforcement, and to issuing FPNs, is discriminatory, swift action must be taken to address this.

Government Response:

We are clear that nobody should be subject to police enforcement on the basis of race alone, or any other protected characteristic.

1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913510/14-705-regulators-code.pdf

The National Police Chiefs Council (NPCC) regularly publishes data on FPNs issued under covid-19 regulations, which includes a breakdown of the percentage of covid-19 FPNs issued to different demographic groups. The analysis in these reports is complex and needs to be interpreted carefully, the data available makes drawing definitive conclusions about disproportionality challenging and comparisons between forces are difficult due to their varying local contexts.²

That is why the NPCC have commissioned an independent analysis of FPNs issued to different demographic groups. The findings from this analysis will be published in due course. This activity is in addition to the NPCC committing to an action plan which will examine how they can improve diversity across forces, improve community relations and to also focus on the use of powers.

Recommendation 5 (page 33)

The NPCC must undertake a review to understand why police are issuing so many incorrect FPNs and then take appropriate action based on that review to prevent such mistakes from occurring in the future.

Government Response:

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. Police forces have also developed and operationalised safeguards concerning the issuing of FPNs (as set out further in our answer below).

While this is not a recommendation for the Government, the Home Office have made the NPCC aware of this recommendation who will respond independently.

Recommendation 11 (page 34)

The current review processes are not clear, consistent, or transparent. They are inadequate. The CPS figures show large numbers of incorrectly issued penalties slip through those nets. The Government must now introduce a means of challenging FPNs by way of administrative review or appeal.

Government Response:

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 police utilise the 4 E's approach so FPNs are issued after compliance has been encouraged.

2 <https://news.npcc.police.uk/releases/independent-analysis-of-coronavirus-fines-published>

The government believes there are substantial safeguards in place around the issuing of FPNs, the majority of which are set at £200, or £100 upon early payment, with opportunities for individuals to also contest them where appropriate.

Where enforcement of the restrictions is required, police forces in England have robust review procedures in place to ensure FPNs are issued in compliance with Public Health Regulations. Each FPN issued is subject to at least two evidential reviews before a person is prosecuted to ensure that it complies with the regulations and that there is sufficient evidence to meet the necessary threshold.

When an FPN is to be issued, the vast majority of forces will undertake a discretionary initial force-level review before referring to the ACRO Criminal Records Office (the body that administers the FPN regime) where it is reviewed, ensuring compliance with regulations before the formal FPN is issued. The police have no power to enforce payment of an FPN, and so there are no consequences for the recipient against which they might appeal. It is a matter for the respective force to consider how to deal with any representations received in relation to an FPN. A person can however judicially review the decision to issue an FPN.

If the recipient fails to respond to the original FPN letter within 28 days of it being issued, the originating force will conduct a final review. Where the originating force believes it has sufficient evidence to prosecute and that it is in the public interest to do so, it will issue Single Justice Procedure (SJP) proceedings. The recipient can plead guilty or contest where the burden of proof is on the prosecution to prove the breach. A recipient can also choose to ignore the SJP charge, which will result in the case proceeding via the SJP without their input.

Recommendation 15 (page 34)

The Government may only interfere with human rights to the extent necessary and proportionate. The Government should explain and justify why it considers that a £10,000 fine is proportionate (i) for anyone, and (ii) for an individual with limited financial means. The Secretary of State should give careful consideration as to whether a more graduated approach to FPN amounts might be more proportionate. The Secretary of State should furthermore carefully consider whether more can be done to limit the discriminatory approach of the current system that criminalises the poor over the wealthy.

Government Response:

The £10,000 Fixed Penalty Notice (FPN) for organising unlawful gatherings of more than 30 people was introduced in August 2020. This allowed action to be taken against the small number of people who were not following the rules and organising large unlawful gatherings, which were potentially contributing to increased transmission of covid-19. This FPN is intentionally high in order to act as a deterrent to anyone who might otherwise choose to organise a gathering that would significantly breach the gathering restriction limits.

Police have the powers to break up groups larger than the legal gatherings limit, including through dispersal and removal powers, and they can issue Fixed Penalty Notices. As with all offences, the police have used the 4Es approach of engaging, explaining and encouraging the general public to follow the rules before moving on to enforcement

action, with FPNs being issued as a last resort. The majority of people have complied with the rules throughout the pandemic, with only 341 £10,000 FPNs issued for organising a large gathering up to 16 May 2021. However, it is important that the police have the right tools to take action against those that are not complying and are putting themselves and the public at risk.

The police response has adapted over time. The four-step escalation method of engaging, explaining, encouraging and enforcing continues to apply. However, forces are now moving more quickly to enforcement where required, and are directing efforts to address high-risk gatherings, egregious breaches and repeat offenders.

The process of developing the £10,000 level for this FPN was governed by several factors. The high level reflects the severity of breaching the gathering restrictions. Mass gatherings, regardless of the reason, inherently risk spreading the disease, which in turn means an increased risk of hospitalisations and deaths. Evidence suggests that a significant amount of transmission to date may have been driven by large super-spreader events.

The FPN is designed to drive change in behaviour and therefore needs to be high enough to act as a deterrent, even for those with greater financial means. It is important that individuals face a penalty that reflects the impact of their behaviour. Individuals that organise gatherings of more than 30 people are both breaking the rules and encouraging others to do so. It is important that the penalty will have a meaningful impact on all individuals and that it mitigates the risk of an organiser charging other individuals for entry to potentially cover the cost of an FPN. As a result we believe that the level of the FPN is appropriate, and are confident that it is a successful deterrent.

We are aware that some people issued with an FPN for breaching large gathering restrictions will not be able to afford to pay. In these circumstances the recipient can ask the issuing police force to review the case, and the force can decide whether to withdraw the FPN or proceed the matter to court. If a court hears the case, and the person is convicted, a judge may decide that a means-tested penalty is more appropriate. We have made it clear in the letter issued to those who receive an FPN that they can contest the penalty. In order to ensure that the wider public were aware of the consequences of breaching the gathering limits, we have clearly communicated and explained the rationale for the existing rules, and the circumstances in which an individual may be issued with a £10,000 FPN.

The size of outdoor gathering limits for individuals participating in the gathering has recently increased to 30, as part of the move to Step 3 of the Roadmap on 17 May 2021. To reflect this change, we have also changed the restriction on organising a gathering, so the offence will now be applicable for organising unlawful gatherings of over 50 outdoors. This increased limit reflects the proportionality of imposing such a significant FPN in the light of the changing landscape of the pandemic. We consider that, although we have made significant progress, the £10,000 FPN remains appropriate for breaching this limit, as Coronavirus remains a real and present threat to all of us.

Recommendation 16 (page 34)

There must be a comprehensive review of all FPNs issued under the coronavirus Regulations as soon as is feasible. We have significant concerns about the validity of the FPNs issued, the inadequacies of the review and appeal process, the size of the penalties, and the criminalisation of those who cannot afford to pay. It is also difficult

to see why a breach of the coronavirus Regulations would be relevant to someone's future employment prospects or ability to travel to certain countries. We recommend that consideration be given to removing convictions under the coronavirus Regulations from criminal records.

Government Response:

The Government recognises that a law enforcement response has been necessary to control the spread of the virus and to protect lives and livelihoods. The overwhelming majority of the public can be expected to follow the rules without any need for enforcement action. However, it is right that we have a strong deterrent, and that the small minority of people who put us most at risk by ignoring rules face tough penalties, including upon conviction.

As set out above, the government also believes a robust set of review processes has been put in place by the police for FPNs issued and individuals still have the opportunity to contest FPNs at various stages of the process. FPN's are a proportionately response and it is important to note that around 96% of FPNs issued are for offences where FPNs are set at £200, or £100 if paid early.

The police have played an invaluable role in helping protect lives and livelihoods during the pandemic, and we will continue to work closely with them as our response to Covid-19 and the enforcement of key measures continues to evolve.