

## **National Police Chiefs' Council response to the recommendations of the Fourteenth Report of the Joint Committee on Human Rights – the Government response to covid-19: fixed penalty notices**

Dear Ms Harman,

I am writing to respond to the recommendations made by the Joint Committee on Human Rights in its fourteenth report: 'The Government response to covid-19: fixed penalty notices' published on 27 April 2021.

We welcome the committee's report and its recognition of the obvious challenges for police when enforcing changing restrictions over the past sixteen months. Police officers and staff have gone above and beyond during this pandemic to support the public health response and keep people safe.

Throughout the pandemic, police have used the 4 E's approach of engage, explain, encourage and where necessary enforce as a guiding principle. While we have moved more quickly to enforcement as the pandemic has progressed and understanding of the rules became more widely understood, we have continued to take a cautious approach to enforcement throughout due to the wide impact of these public health measures, and our focus has been on the most blatant breaches.

### Changes in legislation

As police officers and staff have had to adapt quickly to changing restrictions, we have worked closely with the College of Policing as part of Operation Talla, the policing response to the pandemic, to quickly develop clear and accurate information which can be shared with frontline officers and staff. This information is also available publicly on the College of Policing website.

Each police force has specific points of contact who receive the updated legislation and guidance as soon as it is available and are responsible for ensuring that this information is distributed within their force. While the national guidance provides a clear and easy to understand guide to the changes and what this means for Covid engagement and enforcement, forces will also provide this in numerous formats based on local needs. Some examples include the top lines being provided in officers' daily briefings and on mobile applications which they are able to refer to when responding to a reported breach.

While we recognise that mistakes have occurred, especially during the early months of restrictions, we have worked hard to learn from these, and improve the means by which we ensure officers are fully aware of the restrictions in place and the speed at which this guidance reaches them. Where it has not been possible to provide guidance due to the speed of changing legislation, we have informed forces not to enforce updated legislation before the operational guidance is available and has been thoroughly distributed.



## Review process

***Recommendation: 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. (Paragraph 56)***

Police forces have established thorough review processes for fixed penalty notices. These occur as standard before someone receives a notice to ensure that errors are caught, and can occur at several additional points after it has been submitted to ACRO Criminal Records Office for processing.

The below gives an example of the review process that Hampshire Police use as part of assessing whether fixed penalty notices have been issued correctly. Each FPN issued will be reviewed by a specialist team of Covid Enforcement Review Officers. While processes will vary within each force, similar processes are in place in every force throughout the UK.

### **Example: Hampshire Police**

In the majority of cases, police respond to reports of breaches of Covid regulations that have been submitted by members of the public. In these cases, the force control room will be responsible for reviewing each call to understand whether it is Covid-related before determining whether it should be followed up by a response officer. There are extra staff (provided by surge funding) within the control room who can provide tactical advice as required.

Where someone has been found to be in breach of Covid regulations and has refused to comply after an officer has engaged with them, followed by the officer explaining why the restrictions are in place and encouraging them to follow them, they will be notified that they will receive a fixed penalty based on the nature of the offence and will receive a notification in the post detailing the penalty amount and their right to challenge it.

#### **First review stage**

At the point at which the responsible officer has written up their statement of the incident, they will submit this to the Covid Enforcement Review Team. This is before anything is submitted to ACRO who are responsible for sending out the notifications.

At this stage, the review officer will review the statement provided by the issuing officer, and any evidence such as body worn video. They will review these against both the guidance that is provided to officers, as well as the relevant legislation. Where necessary they will also engage with the force legal team.

Where the evidence bar is met, this will then be passed on to ACRO who will then issue a letter to the individual concerned. Where it is not met, these fines will be rescinded.

#### **Second review stage**

Once the letter has been sent by ACRO, no further action is required if the individual chooses to pay the fine.

If they choose to contest the fine or do not pay the fine amount after the last payment notice, ACRO will notify the individual that the details will be passed back to the police force where the

review team carry out a more in-depth review of all available evidence to consider whether they wish to rescind the FPN or continue through the Single Justice Process.

If there are any concerns about the evidence bar not being met, the FPN will be rescinded at this point. Otherwise, the case file will go on to the force's Criminal Justice Unit and a Single Justice Notice will be sent to the individual who then has an additional 21 days to decide if they wish to challenge the notice by pleading not guilty.

#### Court stage

If the person pleads guilty at this stage, the case will be dealt with by a Magistrate and is unlikely to require any further action.

If the person chooses to plead not guilty or to plead guilty but ask for mitigation, this will go to a case management hearing. This will give them an opportunity to explain why they believe additional consideration should be given to their circumstances. For example, concern over payment is a common issue due to a substantial number of FPNs being issued to those who repeatedly breach restrictions. This can then be reviewed and taken into consideration by the police and Magistrate.

In the very small number of cases where agreement is not reached on mitigation or the defendant pleads not guilty and the police believe the evidential threshold has been met, the case will then be passed to the Crown Prosecution Service (CPS), affording access to full legal advice and representation.

In addition to the internal review process, ACRO also assists forces in ensuring the requirements to issue an FPN are fully made out.

Of the small number of cases that are referred onto the CPS, these rightly receive very close scrutiny due to the implications that a criminal prosecution could have on an individual's life. While these errors have rightly seen the cases sent back to be rectified or withdrawn entirely, this does not suggest that the individual received the FPN incorrectly.

Some of the primary reasons for a case being withdrawn have been clerical errors in which the wrong iteration of the rules were selected, or where the rules were correctly selected but had been issued to an individual alongside a charge for a crime. We have advised all forces that FPNs should not be issued for breaching coronavirus restrictions when charging someone for a crime, but that this should be noted in the case file.

Due to the substantial length of time it takes for a case to be referred onto the CPS after all other means of resolution have been exhausted, and for those cases to be reviewed at the first court hearing, additional safeguards that have been put in place to prevent these errors will also take time to be reflected in the CPS figures. However, we have been encouraged to see a reduction in errors as a result of additional guidance and improved working processes with the CPS.

#### Proportionality analysis

***Recommendation: 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. (Paragraph 49)***

In July last year we published our first independent and peer-reviewed analysis of the available data related to FPNs that enables further scrutiny of how police have used these unprecedented powers. This covered the period to the end of the first national lockdown and was conducted by the Government Statistical Service.

The outcome of this review found the number of FPNs issued to Black, Asian and ethnic minority individuals across all of England and Wales was at a rate of 4.0 per 10,000 population. This compared with 2.5 per 10,000 population for individuals who identified as White – a rate 1.6 times higher for people from a these background than for White people. This rose to 1.8 times higher for both Asian and Black people.

Additionally, the review found that young men, across all ethnic groups, were significantly over-represented amongst those who were issued with an FPN for breaching the regulations. For example, those aged 18-34 were estimated to comprise 14% of the resident household population in England and Wales but accounted for 57% of those issued with an FPN – a rate some four times higher than would be expected if FPNs were issued proportionately across all age-groups.

However, young men (aged 18-24 and 25-34) from Black, Asian and ethnic minority backgrounds were over-represented by around twice the rate of young White men in the same age-groups. In contrast, young women (18-24) from a White background had similar levels of representation (among those issued with FPNs) as their representation in the general population, whereas women of the same age from a Black, Asian and ethnic minority background were slightly under-represented.

The report sets out a number of points of caution in interpreting the data, including the relatively small sample size, particularly in some forces, and the indirect method of analysis which cannot take into account all the interactions where there was no enforcement. Nevertheless, it is a concern to see disparity between people from different ethnic communities.

A second analytical review is ongoing and will be subject to peer review before publication. This will cover the period until December 2020. We have also committed to carrying out a further review once all restrictions have been lifted.

The outcome of this work will be used by individual chief constables to understand their data in their local context, as well as to inform the work being undertaken nationally as part of the Police Plan of Action on Inclusion and Race which will be chaired independent of policing.

We aim to share the outcome of the review with the committee at the earliest possible time.

Yours sincerely,



**Martin Hewitt QPM**  
**Chair, National Police Chiefs' Council**