House of Commons

Justice Committee

Covid-19 and the criminal law

Fourth Report of Session 2021–22

HC 71

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Report, together with formal minutes relating to the report

Ordered by the House of Commons to be printed 21 September 2021

HC 71
Published on 24 September 2021
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.

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Summary

This report examines what lessons can be learnt from the way in which new covid-19 related offences have been created and enforced throughout the pandemic. Specifically, we have considered the creation and enforcement of these offences within the context of the wider criminal justice system and from a rule of law perspective.

A central lesson from our inquiry has been that the Government needs to ensure that the criminal law is fully considered within future pandemic planning. In addition to creating a public health crisis, the covid-19 pandemic has shown that pandemics can have an enduring impact on our criminal justice system and courts. Given the speed and scale with which the Government needed to create new regulations in response to the pandemic, in future it needs to have the requisite tools in advance to respond in a swift and proportionate manner that does not risk criminalising behaviour in ways incompatible with widely understood principles of the rule of law, and avoids any lasting damage to our criminal justice system.

Other lessons we have identified in our report include:

- Parliament should play a bigger role in scrutinising the creation of new criminal offences in response to emergencies. One of the primary functions of parliamentary scrutiny is to make the law-making process more transparent and to aid public understanding. Parliament should ensure that the Government's justification for the creation of new criminal offences is tested and ensure that the Government explains why a particular offence is both proportionate and necessary.
- The Government should review how public health restrictions have been communicated to the public. While the priority must always be to communicate any new restrictions as clearly as possible, blurring the line between guidance and the law has potentially damaging long-term consequences, including for the rule of law.
- Fixed penalty notices have played a valuable role in policing the pandemic and protecting the public. However, in future the Government should be cautious of relying solely on fixed penalty notices of increasing magnitude to deliver compliance with public health regulations.
- The single justice procedure is an efficient way to avoid over burdening the courts. However, the use of the single justice procedure to deal with covid-19 offences has been problematic when there has been uncertainty caused by the fast-changing nature of the covid-19 regulations.

We commend the Government for learning lessons quickly throughout the pandemic and for its creation of the UK Health Security Agency to focus on future pandemic preparedness. The new agency must have sufficient criminal law expertise at its disposal. To further understand the lessons learnt from our inquiry we recommend that the UK Health Security Agency launches a study into the role played by the criminal justice system in protecting public health during pandemics. The aim of the study should be to examine how effective the new covid-19 offences have been at achieving compliance with public health restrictions.

1 Introduction

1. In March 2020, the covid-19 pandemic caused an emergency that required the UK Government to act at pace to protect public health. As part of its response, the Government created new criminal offences via public health regulations.[1] Restrictions or "lockdown laws", such as prohibitions on social gatherings and leaving home without reasonable excuse became part of daily life.[2] In March 2021 we decided to examine the Government's use of the criminal law during the pandemic to help protect the public and to see what lessons could be learned from the way in which new offences were created and enforced. We thank all who provided evidence.

2. Other parliamentary committees have examined issues related to the creation and enforcement of covid-19 restrictions, notably the Public Administration and Constitutional Affairs Committee, the Joint Committee on Human Rights, the House of Lords Constitution Committee and the Joint Committee on Statutory Instruments.[3] As the Justice Committee our focus has been to consider the creation and enforcement of covid-19 restrictions in the wider context of the criminal justice system and from a "rule of law" perspective—that is, to consider the offences and their application within the wider context of the widely accepted principles of the rule of law set out in 2010 by Lord Bingham.

1 In this report we focus primarily on the public health regulations as they have been made in England. The devolved Parliaments have been responsible for passing public health regulations in each of the other three nations of the United Kingdom.

2 For an overview of the "lockdown laws" see House of Commons Library Briefing Paper, "Coronavirus: A history of English Lockdown laws", Number 9068, 30 April 2021

3 Public Administration and Constitutional Affairs Committee, Parliamentary Scrutiny of the Government's handling of Covid-19, Fourth Report of Session 2019–21, HC 377; Joint Committee on Human Rights, The Government response to covid-19: fixed penalty notices, Fourteenth Report of Session 2019–21, HC 1364, HL Paper 272; House of Lords, Select Committee on the Constitution, "Covid-19 and the use and scrutiny of emergency powers", Third Report of Session 2021–22, HL Paper 15; House of Lords, Secondary Legislation Scrutiny Committee, Interim report on the Work of the Committee in Session 2019–21, 39th Report of Session 2019–21, HL Paper 200

Box 1: Lord Bingham's eight principles of the Rule of Law

(1) The law must be accessible and so far as possible intelligible, clear and predictable.

(2) Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.

(3) The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.

(4) Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.

(5) The law must afford adequate protection of fundamental human rights.

(6) Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.

(7) The adjudicative procedures provided by the state should be fair.

(8) The rule of law requires compliance by the state with its obligations in international law as in national law.

Source: Bingham, T, The Rule of Law, 2010

3. The Government summarised its approach to the criminal law during the pandemic as follows:

> In response to the extraordinary circumstances created by the pandemic, the Government has taken a range of measures to control the spread of the virus and to protect the most vulnerable, in order to protect lives and livelihoods. The vast majority of the public and businesses have followed these rules and made huge sacrifices. Unfortunately, small numbers of people and businesses have not followed the requirements and thereby put others at risk. As part of the Government response, therefore, it has been necessary to provide for new criminal offences and powers to allow the police to enforce the rules as part of the "4E's" model of Engage, Explain, Encourage, with Enforcement as a last resort.[4]

4. On 27 April 2021, Lord Bethell, the then Parliamentary Under Secretary of State, Department of Health and Social Care, further explained the Government's approach:

> [S]ome countries in Europe have policemen standing on the corner, and in Europe policemen have guns. They will stop you and ask you for your certificate when you are walking along. We never had that in the UK, and that was the situation that of course we wanted to avoid. That is not how we roll in this country. We were exploring the very fine line between trying to communicate really clear signals and clamping down on excess behaviours, but not criminalising behaviour, at which point we feared that we might lose the sentiments of the public. That did not happen, I am pleased to say.[5]

4 Ministry of Justice (COV0012)

5 Q143

Lord Wolfson, Parliamentary Under Secretary of State at the Ministry of Justice, said the offences were used to send a message to explain "the sorts of sensible behaviours which [people] should be undertaking".[6] Kit Malthouse, Minister for Crime and Policing, set out that the way that these offences were enforced through Fixed Penalty Notices "was designed to be relatively light touch".[7]

5. **In considering the Government's approach to its use of the criminal law during the covid-19 pandemic we recognise that the Government was required to act in exceptional circumstances and to respond to a public health emergency of a scale not seen in recent times. We therefore give credit to the Government and all those involved in developing and enforcing covid-19 offences in such difficult and unpredictable circumstances. The creation and enforcement of these offences played an important part in protecting the public.**

6. **The Government's first priority must be to protect public health and save lives. The Government should be commended for moving to strike a difficult balance between the need to provide police forces with tools to enforce the rules without criminalising behaviour in ways incompatible with the fundamental values of our society.**

7. **However, the creation and enforcement of any new criminal offence must be compatible with widely understood principles of the rule of law. Ensuring that those principles are upheld serves to enhance understanding of and compliance with the law, which is essential to achieving positive public health outcomes and to save lives.**

8. ***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.***

6 Q134
7 Q139

Chapter 2: Creating covid-19 offences

9. On 23 March 2020 the Prime Minister announced extraordinary measures to slow the spread of Coronavirus. The public were asked to stay at home. On 26 March 2020 the Government signed into law the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, which among other restrictions prohibited people leaving home without a reasonable excuse, banned public gatherings, closed all except essential high street businesses and provided the police with powers to issue Fixed Penalty Notices (FPNs) to those who committed offences.[8]

10. Since then, the Government has continued to introduce regulations in the form of statutory instruments (also known as delegated or secondary legislation) to put in place legal restrictions to protect public health.[9] Many regulations have been underpinned by criminal offences designed to limit the spread of covid-19, notably:

- failure to comply with a requirement/ restriction set out in the regulation;
- failure to comply with a lawful instruction of someone enforcing the requirement/ restrictions in the regulations; and
- obstructing enforcement of the regulations.

Throughout the course of the pandemic regulations have been introduced, amended, and revoked, resulting in regular changes to what types of activity were prohibited and would incur civil or criminal liability. The Hansard Society Coronavirus Statutory Instruments Tracker, which has tracked the introduction of covid-19 regulations since the start of the pandemic, states that 493 covid-related statutory instruments have been laid before Parliament.[10]

11. It is not unusual for criminal offences to be created by statutory instrument; indeed the majority of offences are enacted this way. Research published in 2018 demonstrates that in 2010–11 some 86% of new criminal offences were enacted by statutory instrument and 14% by primary legislation.[11] In 2014, the figures were 92% and 8% respectively.[12]

12. Although the Government proposed and Parliament enacted the Coronavirus Act 2020, the majority of the new criminal offences were introduced in public health regulations made under the Public Health (Control of Disease) Act 1984. The power to make such regulations is limited to the creation of summary-only offences.[13] Almost all covid-19 offences created were summary-only, meaning that they would be considered by a magistrates' court and punishable by a fine. An offender would face criminal prosecution only if a fixed penalty notice was unpaid after 28 days and the relevant police force decided to prosecute.

8 The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

9 For an overview of the "lockdown laws" see House of Commons Library Briefing Paper, "Coronavirus: A history of English Lockdown laws", Number 9068, 30 April 2021

10 https://www.hansardsociety.org.uk/services/statutory-instrument-tracker [last accessed 10 September 2021]

11 James Chalmers and Fiona Leverick, Criminal law in the shadows: creating offences in delegated legislation, Legal Studies (2018) 38 221–241, 223

12 Ibid

13 Public Health (Control of Disease) Act 1984 Section 45 F (5)(a)

Responsibility for criminal law policy within Government

13. In normal circumstances, a department planning to introduce a bill or a statutory instrument containing a new criminal offence consults the Ministry of Justice. Government guidance to departments explains that a new offence should only be created "if it is both proportionate and necessary to the policy objective they are trying to achieve".[14] The guidance also makes it clear that officials should consult the Ministry of Justice, "who scrutinise the creation of new offences, and impact on the justice system, through the Home Affairs Committee clearance process".[15]

14. We questioned Ministers on ownership of policy and the public health regulations throughout the pandemic. Lord Bethell, the then Parliamentary Under Secretary of State, Department of Health and Social Care, explained that at the start of the pandemic the Department for Health and Social Care was responsible for the origins of most covid-19 policy. However, as the pandemic emerged, implementation became increasingly "cross-governmental" with greater Ministry of Justice and Home Office involvement.[16] In its submission to our inquiry the Government stated:

> Departments across government have worked closely with each other and enforcement agencies on all aspects of the Covid-19 response, including in relation to enforcement and criminal offences. There has also been continued dialogue with the National Police Chiefs' Council (NPCC), engagement with local authorities, and scientific input to inform which measures are needed.

15. Lord Bethell told us that the shift to increasingly "cross-governmental" co-ordination was reflected in the creation of the UK Health Security Agency (UKHSA), which he stated "will play a really important role in public health policy" and "pandemic preparedness", and bring together the "expertise and legal guidance".[17] The UKHSA is a new executive agency, sponsored by the Department for Health and Social Care, which since April 2021 has been responsible for planning, preventing and responding to public health threats such as pandemics.[18]

16. With regard to enforcement, Kit Malthouse, the policing Minister, explained that the Home Office were in "almost constant conversation with the police about the regulations […] coming out of the Department of Health". Engagement with the National Police Chiefs' Council was led at both ministerial and official level and informed the measures the Government put in place in response to the emergency.[19] However, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services' report into "Policing the Pandemic" has suggested that the police's engagement with the Home Office did not always extend to the Department of Health and Social Care.[20]

14 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/481126/creating-new-criminal-offences.pdf
15 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/481126/creating-new-criminal-offences.pdf
16 Q101
17 Q101
18 https://www.gov.uk/government/organisations/uk-health-security-agency
19 Ministry of Justice (COV0012), p.3
20 Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, Policing in the pandemic: the police response to the coronavirus pandemic during 2020, (2021) p18

17. What is less clear is the extent of the role played by the Ministry of Justice at the earlier stages of the pandemic in determining evolving policy around use of the criminal law in response to covid-19. Sir Jonathan Jones QC, former Treasury Solicitor and former Head of the Government Legal Service (still in post at the start of the pandemic), suggested that the urgency of the situation might have meant that the Department of Health was not able to consult with the Ministry of Justice, as is normally the case, on the creation of criminal offences and on penalties.[21] Lord Wolfson suggested that the Ministry of Justice did not play a significant role in development of the criminal offences in covid-19 regulations:

> The regulations that we are talking about here are not MoJ regulations. The MoJ does not sign off on all criminal offences across Government before they are put into effect, obviously.[22]

18. The Attorney General is responsible for deciding whether criminal offences in the Coronavirus regulations should be specified under Section 3(2)(a) of the Prosecution of Offences Act 1985. Specified proceedings are subject to the "Single Justice Procedure" (see next chapter), which is a police-led prosecution that applies to summary-only, non-imprisonable offences. Gregor McGill, Director of Legal Services, Crown Prosecution Service, told us that the CPS had been asked to advise on changes in policy, how the regulations were formulated, the language used, and how they were set out.[23]

19. Lord Wolfson suggested that a key lesson that the government had learned from its approach to the criminal law during the pandemic had been the need "to bring criminal law into the planning":

> If you go back a number of years, I am not sure that people would have thought that when thinking about pandemic planning, you would think about the lawyers. You might think about it in a very general sense, but we have seen that, in any future pandemic—please God, there won't be one—we need to be prepared for the criminal law to have the granular detail, which is where we have got to now.[24]

20. **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.**

21. **Another lesson is that the Ministry of Justice should have greater oversight over the creation of criminal offences in response to public health emergencies, including a pandemic. As government guidance states, the Ministry of Justice should be consulted on the creation of new criminal offences to ensure they are proportionate and necessary and to consider their impact on the wider justice system. This is as important in a pandemic as in ordinary times, notwithstanding the need to move at pace.**

22. ***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***

21 Q10
22 Q123
23 Q85
24 Q152

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.

23. **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.***

24. ***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.***

The role of the House of Commons and the introduction of criminal offences

25. Throughout the pandemic the Government used delegated powers to legislate at speed to control the spread of the virus and protect the most vulnerable. The Government explained:

> One of the most significant challenges of legislating for Covid-19 has been legislating at speed to respond to the rapidly evolving context. Under normal circumstances, it takes between six and eight weeks for a draft affirmative instrument to pass through Parliament. Waiting this long to implement some of the measures, such as the national lockdown initiate in January, would have led to significantly more cases, hospitalisations—which would have placed the NHS under ever greater strain—and deaths.[25]

There has been general recognition of the need to respond very quickly to the changing circumstances of the pandemic, particularly as it began when facts about the virus were not well known. **The Government was right to use all the legislative tools at its disposal, as granted by Parliament, in order to legislate to protect public health during the covid-19 pandemic.**

26. Concerns have been raised, however, about the longer-term implications of legislating in this manner, particularly in relation to the principles and practicalities of the rule of law. Sir Jonathan Jones raised a number of issues with the Government's overall approach to legislating during the pandemic. While recognising that the powers used by Parliament were wide-ranging emergency powers that had been specifically designed for use in a public health emergency, he said:

25 Ministry of Justice (COV0012), p.1

> [T]he legislation very often has only been made available and has only been published with very little notice; and, secondly, that there has been no meaningful parliamentary debate or scrutiny before the law comes into force. That of course has wider implications for the ability of MPs to contribute to debate, and to scrutinise the content of the law, which of course has been extremely intrusive, and in some cases rather controversial. None of the usual process of debate and scrutiny has occurred in many instances.[26]

There were instances during the pandemic in which, owing to the nature of the made affirmative procedure, Members of Parliament were unable to scrutinise instruments before they had been repealed.[27]

27. Lord Bethell, a Minister in the Department of Health and Social Care, disagreed with Sir Jonathan's analysis stating that the "influence, challenge and scrutiny of Parliament" was "very much brought to bear" in the drafting of the public health regulations.[28] The Government noted that it had "continued to evolve its approach to legislating" over the course of the pandemic drawing on feedback from parliamentarians and key committees such as the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.[29] The Government also noted that at key stages (the introduction of local alert levels in October 2020, the national lockdown in November 2020, the regulations for the new tiers system in December, and the regulations implementing the roadmap out of lockdown in March 2021) Parliament was given an opportunity to scrutinise the legislation before it came into force.[30]

28. **Parliament has a responsibility to ensure that any criminalisation has democratic legitimacy. Legitimacy is vital when widespread curtailment of civil liberties is at stake and the risk of people ignoring the rules owing to low risk of detection is high.**

29. **A lesson from the covid-19 pandemic is that Parliament should play a more active role in the creation, scrutiny and oversight of new criminal offences in response to emergencies. One of the primary functions of parliamentary scrutiny of legislation is to make the legislative process, and the law it creates, accessible and transparent. Parliament plays an important role in making sure that the law and any new criminal offences are so far as is possible intelligible, clear and predictable. It is not satisfactory in this context that Parliament was not always able to fulfil its function when Members were required to consider statutory instruments already superseded. *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.***

30. The Ministry of Justice has undertaken to write to this Committee whenever it introduces a statutory instrument which may be of interest to this Committee. During the pandemic, we have corresponded with the Lord Chancellor over a number of statutory

26 Q2
27 For example, the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium, High and Very High) (England) (Amendment) Regulations 2020 came into force and lapsed without Parliament being able to scrutinise them. There were also other examples where statutory instruments that were debated in delegated legislation committees had already been superseded by subsequent amending statutory instruments, for example, the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020.
28 Q121
29 Ministry of Justice (COV0012), p.2
30 Ministry of Justice (COV0012), p.2

instruments, such as those for example regarding custody time limits and the stay on possession proceedings.[31] **The Ministry of Justice's commitment to ensure that this Committee is informed of significant changes to the justice system through statutory instruments is very important for our work. 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.**

31. ***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.***

The Government's communication of covid-19 offences

32. Throughout the pandemic the Government communicated changes to the law through public announcements in No. 10 press conferences and Parliament, the media and guidance published on gov.uk. All the regulations were published on legislation.gov.uk, run by the National Archives, which set up a special page to bring the covid-19 laws together.[32]

33. Lord Bethell, the then Parliamentary Under Secretary of State at the Department of Health and Social Care, explained that the Department for Health and Social Care's primary focus was "to take the population with us" and on "providing guidelines to the public":

> One of the great benefits of bringing guidelines into law is the clarity with which the legal process brings the thinking and advice from Government. As the pandemic emerged we actually found benefits from bringing guidelines into law so that the communication to the general public avoided duplication and could be consistent and clear in its messaging.[33]

34. Lord Wolfson, Parliamentary Under Secretary of State at the Ministry of Justice, explained that guidance was needed to clarify the aims of the legislation and provided the following example:

> The original legislation provided that you could not leave your home without a reasonable excuse. That would mean that it wouldn't be an offence if you left your home to go shopping for necessities, but once you were out, you decided to hold a barbecue on the village green. I would venture to suggest that nobody but a silk from Lincoln's Inn would take the view that that

31 Letter from Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice, dated 29 January 21, regarding Custody Time Limits; Letter from Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice, dated 28 September 2020, regarding the resumption of possession proceedings after 20 September

32 https://www.legislation.gov.uk/coronavirus

33 Q101

> was permissible. The reason that, if I may say, the ordinary person took the view that obviously that would be against "the law" is because the guidance made it very clear what the aim of all of this was.[34]

35. Sir Jonathan Jones expressed concerns with the way in which the Government communicated changes in the law:

> We have seen inconsistency between different statements, and between different pieces of guidance that have been produced on the law and what the actual text of the regulations says. We have seen different police forces, for example adopt different interpretations and different approaches to enforcement, partly because, as I say, it has been sometimes difficult to know with certainty what the law is actually going to say. None of this, it seems to me, is helpful to confidence in the law and making people understand what is actually required of them and therefore comply with it.[35]

36. There were high-profile incidents where confusion between the guidance and the law has led to misunderstanding about what it was acceptable to do, such as the case of the two women in Derbyshire who were fined for travelling to exercise.[36] Pippa Woodrow, a barrister at Doughty Street Chambers, highlighted further specific examples where government guidance and public announcements appeared to conflict with, or at least confuse, the underlying criminal offences.[37] Pippa Woodrow summarised:

> It is a basic common law requirement, as well as a feature of human rights protections, that criminal prohibitions in particular must be accessible, and they must be sufficiently certain for people to regulate their conduct and know in advance whether what they plan to do is or is not an offence, and what the consequences are likely to be. Unfortunately, we have seen many, many examples throughout lockdown that would tend to suggest that the regulations have in fact not satisfied that test.[38]

37. Similar concerns about Ministerial announcements and government guidance confusing the legal situation have been expressed by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS):[39]

> Their difficulty was made worse by a widespread confusion in relation to the status of Government announcements and statements by ministers. Ministers asserting that their guidance—which had no higher status than requests—were in fact "instructions to the British people" inevitably confused people. In some cases, police officers misunderstood the distinction, and appeared to believe that ministerial instructions were equivalent to the criminal law […] Some forces told us that they sought legal advice on the regulations so that they could produce clear guidance for their workforces.

34 Q134
35 Q4
36 https://www.bbc.co.uk/news/uk-england-derbyshire-55560814; For further examples of conflicts between guidance and the law during the pandemic see House of Lords Select Committee on the Constitution, "Covid-19 and the use and scrutiny of emergency powers", 3rd Report of Session 2019–21, HL Paper 15, paras 127–156
37 Q27
38 Q27
39 Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, Policing in the pandemic: the police response to the coronavirus pandemic during 2020 (2021)

> But the speed with which regulations were made and amended (usually by being added to) was great. And to many, the distinction between law and guidance remained uncertain.

HMICFRS noted the potentially damaging longer-term consequences of the uncertainty between guidance and the law:

> It is essential that the police are seen to be enforcing the criminal law, and not appearing to act as the coercive agents of ministers. The model of British policing is very different from those found in authoritarian countries, and nothing must be allowed to be done which leads the public to believe ministers can criminalise actions by edict then enforced by the police.[40]

38. The confusion has also been demonstrated by those responsible for introducing the law. For example, we asked Lord Bethell, the then health Minister, whether social distancing was a legal requirement or stipulated in guidance. He told us that "I think it is in the steps regs, which came through in January, and therefore it is in law. So, it is totally unambiguous".[41] The "steps regulations" referred to do not contain any direct reference to social distancing, although they do require the organiser of a permitted organised gathering to take into account government guidance which is relevant to the gathering.[42]

39. Daniel Greenberg CB, Counsel for Domestic Legislation at the House of Commons, expressed concern to us about "combination of regulations and guidance, and the lack of clarity as to where one starts and the other stops". He noted that "departmental reliance on informal non-statutory guidance to amplify or supplement provisions of the regulations is capable of amounting to unlawful sub-delegation".[43] Even in cases where it was clearer that the enabling power expressly permitted use of the guidance, he argued that "in rule of law terms there is a considerable decrease in certainty, transparency and accountability".[44]

40. Daniel Greenberg also suggested that there had been an inconsistent approach to drafting of the legislation, which had raised issues around legal certainty:

> The various tranches of coronavirus restrictions regulations have all been underpinned by provisions making breach of the regulations a criminal offence. The terms of the restrictions therefore require to be cast in terms of sufficient clarity and certainty to enable readers to determine in advance whether kinds of activity will or will not incur criminal liability. This has not, however, been a consistent approach of the regulations.[45]

He explained that in some instances (for example, isolation regulations that required people to stay in a "suitable place") the legislation did not provide sufficient objective criteria to allow people to determine whether they were compliant with the rules.[46] In other instances, the regulations were defined with sufficient certainty, but in terms that made it "difficult to identify any rational purpose behind the precision".[47] For example,

40 Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, Policing in the pandemic: the police response to the coronavirus pandemic during 2020, (2021)
41 Q118
42 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 Regulation 6 (3)(b)
43 Mr Daniel Greenberg CB (Counsel for Domestic Legislation at House of Commons) (COV0003), para 17
44 Mr Daniel Greenberg CB (Counsel for Domestic Legislation at House of Commons) (COV0003), para 18
45 Mr Daniel Greenberg CB (Counsel for Domestic Legislation at House of Commons) (COV0003), paras 2–4
46 Mr Daniel Greenberg CB (Counsel for Domestic Legislation at House of Commons) (COV0003), para 5
47 Mr Daniel Greenberg CB (Counsel for Domestic Legislation at House of Commons) (COV0003), para 7

off licences were prohibited from selling alcohol at certain times, but permitted to remain open for the purposes of delivery and collection, creating a loophole where customers could simply order the alcohol from outside the shop and collect it. He warned that "it is the very precision of provisions of this apparent irrationality that make them dangerous in rule of law terms, particularly in contexts where a breach of the regulations is a criminal offence, as they inevitably tend to diminish respect for the criminal law".[48]

41. Kit Malthouse, the policing Minister, acknowledged that there had been "teething issues" in the early stages of the pandemic, with regulations and guidance needing to reflect the "variety of nuances of human existence". He said that the interpretation of the regulations required "a bit of common sense on both sides" and concluded that people "got there" in the end.[49] Overall, he judged the legislative framework to be a success and suggested that whether that success was due to the law or to guidance was immaterial:

> From my point of view, the compliance was frankly astonishing. Tens of millions of people recognised our individual duty towards our collective health, and they stayed at home. They grumbled about it and were fed up about it—maybe we all were—but in the end, they all got it. The very small numbers of people who transgressed were largely dealt with by the first three of the four E's, and then an even smaller number were eventually enforced against. To me, that looks like success. I am the Policing Minister, right? So I am indifferent as to whether they did it because of the guidance or the regulations—I am just glad they did.[50]

42. **The Government's communication of new covid-19 offences created in response to the pandemic was essential to ensuring both that public and law enforcement agencies understood what was prohibited and delivering high levels of compliance.**

43. **We recognise that throughout the pandemic the Government's priority has been to communicate as clearly as possible to the public what they should and should not do. We also recognise that due to the speed with which legislation needed to be passed, and the complexity of the legislative framework, it was difficult always to capture the nuance between what was advisable and what was prohibited by law within Government announcements and ministerial press conferences.**

44. **However, blurring the line between government guidance and the law has potentially damaging long-term consequences, including for the rule of law. In a free society that respects the rule of law, only legislation can criminalise conduct, and it should be open to a person to decide whether to follow government guidance. 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.**

45. **We recognise that sometimes novel offences were created at speed and that there was inevitably, therefore, some initial uncertainty about their extent and application. However, the concept of legal certainty is an essential component of the rule of law. In principle, all restrictions should be cast in terms of sufficient clarity and certainty to enable people to understand whether certain kinds of activity will or will not incur criminal liability. Government communication of any new criminal offences must**

48 Mr Daniel Greenberg CB (Counsel for Domestic Legislation at House of Commons) (COV0003), para 7
49 Q124
50 Q133

always accurately reflect the true legal position so as not to undermine public trust, and subsequently public compliance. We recognise that the novelty of these offences meant the usual clarity in the law that evolves as cases are prosecuted and heard by the courts was necessarily absent and clarity and understanding of the public, police and the courts can naturally be expected to improve over time as happens with other offences.

46. **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.***

2 The enforcement of covid-19 offences

47. Enforcement of covid-19 criminal offences has proved a significant challenge for the Government, the police, the public and the courts in England and Wales. The Government has had to ensure that covid-19 offences are enforced, but also that the public support and comply with the law.

48. The Government's legislative scheme for enforcing covid-19 offences in the regulations largely relied upon fixed penalty notices (FPNs) (see Annex 1 for summary of covid-19 related FPNs and their fine values). The scheme was designed to deter people from committing offences without criminalising large numbers of people.[51] The police have used the flexibility of the rules, and a 'four Es' strategy (engage, explain, encourage, enforce) to deliver compliance with the restrictions. Both the number of FPNs issued and prosecutions for covid-19 offences through the courts since the start of the pandemic would appear to indicate that the level of compliance with the restrictions has been high. Nevertheless, important lessons may be learned from how covid-19 offences have worked in practice.

Fixed penalty notices

49. Fixed penalty notices play an important role in the legal system of England and Wales. For example, the Road Traffic Offenders Act 1988 establishes a system of fixed penalty notices to allow motorists the opportunity to discharge liability for conviction of a fixed penalty offence. Fixed penalty notices issued for offences under the covid-19 regulations are non-recordable, so whether the notice is paid or contested, it will not be recorded on the Police National Computer.[52] The Frequently Asked Questions on the ACRO website explains that "Local records may be held by the relevant force".[53] The policing Minister, Kit Malthouse, explained that the decision was made to rely on fixed penalty notices for covid-19 offences because they are a "known science": "from speeding to dog fouling or littering, an FPN is an easy and quick way to make an enforcement point that we felt would be recognised and understood by the public".[54]

50. Kit Malthouse told us that the fixed penalty notice system was "designed to be relatively light touch".[55] He emphasised that the police would issue a fixed penalty notice as a last resort and that there was a discount available for early payment. He explained the logic behind the system:

> Much of the notion behind FPNs is almost a psychological game. We put up dog fouling notices everywhere that say someone will be issued with an FPN, but in fact, if you look at boroughs across the UK, hardly any of them ever issue one of these things. They just never get issued. It is a psychological game that is being played. While I understand that your Committee will naturally be concerned about the integrity of the system, I do not think that, as yet, we are able to point to anything unusual about covid FPNs that we do not see with other FPNs.[56]

51 Q143
52 ACRO Criminal Records Office, Covid-19 fixed penalty notice (FPN) frequently asked questions
53 Ibid
54 Q136
55 Q139
56 Q139

Lord Bethell added that the Government's approach sought to explore "the very fine line between trying to communicate really clear signals and clamping down on excess behaviours, but not criminalising behaviour, at which point we feared that we might lose the sentiments of the public".[57]

51. Daniel Greenberg CB, Counsel for Domestic Legislation at the House of Commons, argued that that the use of fixed penalty notices for covid-19 offences was problematic, and that "civil penalties always raise a number of rule of law issues":

> it is questionable whether most members of the public understand the distinction between a civil penalty and a criminal penalty in general and, in particular, whether they are under an obligation to accept the penalty rather than argue the case before the court. Since there has been a lack of clarity as to what regulations applied to specific situations at what times, there is evidence that local authorities and police forces have on some occasions misunderstood the commencement, application and other aspects of particular regulations. So there are concerns that people may have paid in response to fixed penalty notices issued on the basis of misunderstandings by police officers or other officials, without appreciating their right to challenge the question of breach of the regulations before a magistrate.[58]

52. Daniel Greenberg also argued that civil penalties raise "inequality issues":

> [a]s they can be seen to amount in effect to prohibitions that apply only to people for whom the sums charged by way of penalty notice are significant. A person planning a wedding that may cost many tens of thousands of pounds, faced with a £10,000 penalty will simply budget that into the overall costs, as a risk amply justified by the benefit of holding a large celebration in breach of the regulations. They will be undeterred by a mere civil penalty in circumstances where potential criminal liability might well have deterred them, because of the reputational and other consequences of a criminal record, consequences that do not attach to the imposition of a civil penalty.
>
> […] As well as reflecting and enhancing socio-economic inequality, this feature of the use of civil penalties to enforce coronavirus regulations is likely to have diminished respect in the minds of some members of the public for the system as a whole (and, indeed, for the rule of law).

53. While these issues are common to all uses of civil penalties, Daniel Greenberg suggested that they were exacerbated in the context of covid-19 offences "because of the greater subjectivity involved in many of the prohibitions",

> Where traffic officers hand out civil penalty notices for infractions of parking prohibitions, they are generally relying on objective criteria with little or no room for discretion or interpretation and little or no room for dispute (although there will often be evidential problems arising out of difficulties in ascertaining and recording the facts). Imposing penalties for prohibitions which depend on an officer's understanding of what amounts to a reasonable excuse, or whether accommodation is "suitable" for isolation,

57 Q143
58 Mr Daniel Greenberg CB (Counsel for Domestic Legislation at House of Commons) (COV0003), para 11

> or even as to what constitutes a "gathering", gives a much greater degree of discretion and therefore power to non-judicial officers […][59]

We note, though, this is not always the case—for example, in relation to the FPN for drunk and disorderly for which a judgment must be made as to whether someone has behaved in an "unruly" or "offensive" manner.

54. **Fixed penalty notices have an established role in our legal system, for example for road traffic offences, but the context of new covid-19 offences is different from many of these offences and curtailed freedoms considered fundamental in a democratic society. We recognise that fixed penalty notices played a valuable role in policing the pandemic. However, in principle, when offences in question are complex, difficult to apply and give rise to significant sanctions, it should ordinarily be the responsibility of a court, rather than an official to determine liability. Any future review considering alternative approaches should give due weight to this.**

£10,000 fixed penalty notices

55. One of the most controversial fixed penalty notices was the £10,000 fine introduced for unauthorised gatherings of more than 30 people.[60] The government explained that this level of fine was designed to act as a deterrent and to communicate the serious public health consequences of holding such an event.[61] Lord Bethell explained that "it felt like it was on the right side of being reasonable without throwing the rule book or using the heavy hand of the law".[62] Kit Malthouse mentioned the example of Rita Ora, a popstar who was reported to have breached covid-19 rules by holding a party in November 2020.[63] He suggested that in that case, a fine of £10,000 "might be proportionate given that she is a very talented performer with enormous success internationally".[64]

56. As fixed penalty notices are usually used to punish low-level offences such as driving offences, littering and graffiti, the level of fine tends to also be relatively minor. For example, being drunk and disorderly in public can be punished by a penalty notice for disorder (PND), which is a type of fixed penalty notice available in England and Wales. The penalty for being drunk and disorderly in public is £90.[65] By comparison, a £10,000 first offence fixed penalty notice, over which the police or other enforcement officers have no discretion as to the amount (unlike a court), could be seen to be considerably more punitive.

57. Sir Jonathan Jones suggested that, although there will have been advice given and assessment of what the right level of fines should be, it was unclear how much consultation there would have been prior to the introduction of new fines such as the £10,000 fine, or comparison with other similar offences to determine a proportionate level.[66] He suggested that the very high levels of fines will have been used "to underlie how seriously [Ministers] view certain types of conduct":

59 Mr Daniel Greenberg CB (Counsel for Domestic Legislation at House of Commons) (COV0003)
60 For example. see the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, regulation 15; for a list of other offences which incurred a £10,000 fine for first offence see annex 1.
61 Kit Malthouse Q140
62 Q143
63 Q143
64 Q140
65 https://www.gov.uk/speeding-penalties
66 Q10

> We know that sometimes Ministers want to use legislation to send a message about how seriously they view a particular offence. I suspect that has been happening. Normally, it is quite a bad use of legislation to send a message. I understand that sometimes Ministers want to do it.[67]

58. Concern was expressed to us about the scale of the £10,000 fine issued as an instant FPN. Big Brother Watch argued that "a fine of this magnitude would be life-changing for most individuals" and that "given the justifiable confusion around the legal restrictions, a fine of this amount is disproportionate".[68] Big Brother Watch noted that "fines issued by a court are often means tested but result in a criminal record, leaving people to choose between a £10,000 FPN or the risk of a criminal conviction."[69] Tristan Kirk, courts correspondent at the Evening Standard, and Pippa Woodrow, a barrister at Doughty Street Chambers, agreed that offences that were deemed appropriate to be considered for a £10,000 fine should not be dealt with by way of simple fixed penalty notice; "if it is considered to be such a serious offence that that kind of penalty is to be considered, it needs to be treated a little more seriously, perhaps with a court hearing".[70] Tristan Kirk also suggested that, given the "confused way" in which the offences were dealt with during the pandemic, it was more appropriate for a court hearing to consider problems before any kind of penalty was administered.[71]

59. **A £10,000 fine for a criminal offence is a penalty so large that only a court should issue it. When a court issues a fine, it takes into account the financial circumstances of an individual; this is not the case with fixed penalty notices.**

60. **We recognise that, due to the reliance on the Public Health (Control of Diseases) Act as the legislative framework for creating new offences, the Government was limited in its options to create new offences. A lesson from the covid-19 pandemic for future pandemic preparedness is therefore that the Government needs to have a greater range of options at its disposal to introduce public health restrictions swiftly in a proportionate and predictable way. In future the Government should not solely rely upon fixed penalty notices of increasing magnitude to deliver compliance with public health restrictions. For example, given the seriousness of the offence of holding a large unauthorised gathering in a pandemic, the Government should consider developing alternative means of ensuring compliance that does not rely on a fixed penalty notice of £10,000.**

61. ***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***

67 Q10
68 Big Brother Watch (COV0010)
69 Big Brother Watch (COV0010)
70 Q35
71 Q35

- ***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.

The error rate and unpaid fixed penalty notices

62. We received evidence expressing concern about the level of error in the enforcement of covid-19 offences. The highest level of error came under charges brought under the Coronavirus Act; Pippa Woodrow noted at the time of her giving evidence 100% of the people who had been charged under that Act (approximately 250 people) had been wrongly prosecuted.[72] She also said that under the public health regulations "there has been a concerning level of error and confusion".[73]

63. The campaign group Fair Trials argued that the error rate in the prosecutions of offences in the regulations was unacceptable and that these errors "are putting fundamental rights and justice at risk in this crisis and threatening trust in the criminal justice system".[74] Fairs Trials also suggested that "the entire strategy of using new criminal offences to police a public health issue should also be reviewed".[75]

64. The Crown Prosecution Service told us that as of February 2021, 84% of prosecutions resulting from failure to pay or accept a fixed penalty notice were correctly charged (1,132 out of 1345 prosecutions).[76] The latest CPS figures, which cover March 2020 to June 2021, showed that 20% (or 389) of the 1,920 cases reviewed since the start of the pandemic were incorrectly charged.[77] National Police Chiefs' Council figures as of 28 June 2021 show that 117,213 notices have been given out in England and Wales since 27 March 2020.[78] There has been no external review to establish how many of these notices were correctly given.

65. On 25 August 2020, the Attorney General wrote to the chair of the Committee to provide an update on the number of fixed penalty notices that were unpaid and falling to be considered for prosecution.[79] At the time, the data indicated that almost 50% of fixed penalty notices were not paid within the 28-day period and fell to be considered for prosecution:

- 8,930 (7,375 England, 1,555 Wales) have paid a fixed penalty notice;
- 8,954 (8,325 England, 629 Wales) have not paid and therefore fall to be considered for prosecution; and
- 1,287 (England and Wales) have not paid but remain within the payment period.

We asked the Government to provide up-to-date data on the number of FPNs that have

72 Q27
73 Q27
74 Fair Trials (COV0008)
75 Fair Trials (COV0008)
76 Crown Prosecution Service (COV0009)
77 CPS, June's coronavirus review findings, 30 July 2021
78 NPCC, Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales, 28 June 2021
79 Letter from Rt Hon Suella Braverman QC MP, Attorney General, dated 25 August 2020, regarding follow-up of 21 July evidence session

fallen to be considered for prosecution, but in a letter dated 24 June 2021 Lord Wolfson told us that the data is not yet publicly available and will be published later in the year.[80]

66. Big Brother Watch claimed that "around 50% of fixed penalty notices have been unpaid across England and Wales, leading to a pending prosecution crisis".[81] They cited data obtained through an Freedom of Information Request by the Daily Mail which showed that nine forces saw 60% or more of the penalties go unpaid within 28 days between March 27 and September 21.[82] The highest proportion of unpaid fines was in the Cleveland force area, where 72% of fines for the period, 215 out of 298, went unpaid.[83] Tristan Kirk, courts correspondent at the Evening Standard, provided written evidence which set out the data obtained by a Freedom of Information Request to the National Police Chiefs Council and ACRO Criminal Records Office which showed that in 2020 the Metropolitan Police issued fines totalling £3,625,440 but received £538,100 in payments so far.[84]

67. The Metropolitan Police said that "the payment proportions for Regulation No1 FPNs published by the NPCC in September are broadly in line with what we would expect for other types of FPNs, such as for traffic offences".[85] Kit Malthouse made the same point to us.[86]

68. **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.**

69. **We recognise that the rates of payment for covid-19 related fixed penalty notices are broadly in line with what is expected for other types of fixed penalty notices such as traffic offences. However, given the high profile and pertinent nature of these penalties during the pandemic, we think the public would be concerned to know that the majority of people who were given a fixed penalty notice were either given the notice in error, or were given one correctly but have escaped any penalty.**

70. ***In its response to this report the Government should provide us with data on:***

- ***the number and proportion of fixed penalty notices that have not been paid;***
- ***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***
- ***the total number of prosecutions of covid-19 cases including single justice procedure cases.***

The internal review process

71. Kit Malthouse described the process after an FPN is issued:

> The force has to review the FPN. It goes off to ACRO, which reviews it. If it comes back unpaid to the force, they review it again to make sure it's

80 Letter dated 24 June 2021 from Lord Wolfson QC, Parliamentary Under-Secretary of State, Ministry of Justice, on Limitation period for prosecutions under coronavirus regulations
81 Big Brother Watch (COV0010)
82 Henry Martin, Mail Online, Majority flout coronavirus fines: More than three in five penalties handed out to Covid rule breakers by police have gone UNPAID in parts of England and Wales, figures show 18 November 2020
83 Henry Martin, Mail Online, Majority flout coronavirus fines: More than three in five penalties handed out to Covid rule breakers by police have gone UNPAID in parts of England and Wales, figures show 18 November 2020
84 Tristan Kirk (Courts Correspondent at London Evening Standard) (COV0011)
85 Tristan Kirk (Courts Correspondent at London Evening Standard) (COV0011)
86 Q136

> compliant. The individual can make representations to the force and, as Lord Wolfson said, in the end it can go to court, and they can make their representations there if they wish.[87]

The Frequently Asked Questions on ACRO's website suggest that it is not possible to dispute an FPN by making representations to the relevant force or ACRO:

> I want to appeal/dispute or have my case reviewed/cancelled within the 28 days, and do not want to go to court. Is this possible?
>
> No. There is no facility to appeal or dispute. You can only contest and request a court hearing.[88]

However, the website also says that if you dispute an FPN, the police will review it before deciding whether or not to charge the case:

> 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.

72. ***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.***

73. Pippa Woodrow told us that in some cases, representations made by the recipient of a fixed penalty notice can lead to its being withdrawn by the police. She also emphasised that individual police forces took different approaches to responding to challenges to fixed penalty notices:

> Some forces have been prepared to engage with that process, and where mistakes have very obviously been made they have been prepared to withdraw the fines, or in some cases to withdraw those fines and reissue fines for a more appropriate offence, for example. Other forces have been very resistant to any invitation to review fixed penalty notices, even in cases where they can offer absolutely no substantive justification for having issued a fixed penalty notice and where it is absolutely clear that a mistake has been made. The position effectively has been, "Well, the notice has been issued. If you want to avoid paying it, that's entirely up to you. You have an opportunity. You have a remedy because you can simply go to the magistrates court and plead your case there.[89]

Pippa Woodrow argued that where it is clear that a mistake has been made in issuing an

87 Q151
88 ACRO, Covid-19 fixed penalty notice (FPN) frequently asked questions
89 Q33

FPN, requiring someone to undergo a criminal prosecution is unreasonable.[90] She argued that in practice the result was that a recipient of an FPN, who might have good reason to challenge, was likely to pay the fine rather the risk criminal proceedings, especially when considering cost of being represented in the magistrates' court.[91] Joshua Rozenberg QC, the legal journalist agreed and told us that a formal appeal process that enabled an FPN to be challenged was needed.[92]

74. Kit Malthouse, the policing Minister, defended the lack of a formal appeal process:

> We need to bear it in mind that this was designed to be a proportionate system, not just for the individuals concerned but, frankly, for us as taxpayers, so that we were not involved in a massive machinery of appeal and all the rest of it and that we would follow broadly the same situation we do with other FPNs, whether they are for dog fouling or speeding, which is this: you get an offer, and you can pay the fine early and get a discount, or you can dispute it or not pay it. And at some point, you get the right to end up in front of m'learned friends, who will decide the merits of your case or otherwise. Given the level of the fine, it seems perfectly reasonable to me.[93]

75. **We acknowledge the policing Minister's point about proportionality but are concerned that the review process for covid-19 related fixed penalty notices was inconsistently applied by different police forces and unclear.** ***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.***

76. We asked Lord Wolfson, the Parliamentary Under Secretary of State for the Ministry of Justice, whether a defendant who has not paid an FPN would be informed by ACRO if the relevant police force decides not to prosecute or if the time limit for bringing a prosecution expires. In a letter to the Committee, Lord Wolfson explained that the 3 year limitation period, which is set out in the Act only applied in a situation where "if an offence were to come to the notice of the police for the first time after six months had elapsed—for example through material uploaded to YouTube or reported by an informant—the police could still prosecute provided no more than three years had elapsed".[94] Lord Wolfson confirmed that "police forces must notify ACRO Criminal Records Office if they decide not to proceed, and ACRO will send a letter as such to the defendant".[95] ***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.***

90 Q33
91 Q33
92 Q32 Q12
93 Q151
94 Letter dated 4 May from Lord Wolfson QC, Parliamentary Under-Secretary of State for Justice, on Limitation period for prosecutions under coronavirus regulations
95 Letter dated 24 June 2021 from Lord Wolfson QC, Parliamentary Under-Secretary of State, Ministry of Justice, on Limitation period for prosecutions under coronavirus regulations

The single justice procedure

77. The single justice procedure (SJP) is a court procedure that enables the police to serve a notice and evidence upon the accused in a magistrates court without their attendance at court for certain summary-only non-imprisonable offences.[96] A judge can accept a written response indicating a guilty plea by post and issue a fine. If no response to the charge is submitted, a magistrate can try the accused on the evidence served in their absence and, on finding the person guilty, issue a fine. Single justice procedure cases are decided in private by a single magistrate and a legal adviser, and the Crown Prosecution Service (CPS) does not play a role. A person served with a single justice procedure notice can opt out of the process by requesting a hearing or by pleading not guilty. Any defendant who was unaware of proceedings may re-open them by swearing a statutory declaration to that effect, which can render the proceedings void.

78. The single justice procedure was introduced by the Criminal Justice and Courts Act 2015. When the proposals were going through the Commons, the then Justice Minister, Shailesh Vara MP said that the procedure would deal with "low-level, routine offences".[97] He also added: "We have made it very clear that we must not lose transparency as a result of these reforms, and we cannot allow the new process to take place without any scrutiny".[98]

79. Since the start of the pandemic, the Government has used secondary legislation to "specify" the covid-19 criminal offences to enable them to be dealt with by the single justice procedure. The CPS' evidence explains:

> Under section 3 of the Prosecution of Offences Act 1985 the Director of Public Prosecutions (DPP) must take over the conduct of all criminal proceedings instituted on behalf of a police force, unless the proceedings are specified in an Order made by the Attorney General under section 3(3).
>
> Specified proceedings are subject to the SJP, which is a police-led prosecution that applies solely to summary only, non-imprisonable offences, where the defendant is 18 years or over when charged. The SJP allows suspects to plead guilty by post and a single justice will determine the level of fine on the papers without a traditional court hearing. The CPS only become involved in the SJP if and when a defendant pleads not guilty, at which point the case will be passed to the CPS to prosecute.[99]

80. The Government's evidence to the Committee set out the safeguards in place to ensure that the single justice procedure is fair:

> Before convicting a person through the Single Justice Procedure, the justice must be satisfied beyond reasonable doubt on the evidence presented. The justice is always advised by a legally qualified justices' legal adviser. In addition, Single Justice Procedure is a fair process as:
>
> - The court cannot compel the use of the Single Justice Procedure, and both parties can opt out;

96 see section 16A of the Magistrates' Court Act 1980
97 Criminal Justice and Courts Bill, Public Bill Committee, 25 March 2014, c316–352
98 Criminal Justice and Courts Bill, Public Bill Committee, 25 March 2014, c352
99 Crown Prosecution Service (COV0009)

- A defendant who pleads 'not guilty' cannot be dealt with through Single Justice Procedure;
- Service of the notice is subject to the same rules of service as other forms of process, requisition and summons;
- The court cannot proceed without proof of service;
- All the routes of appeal and challenge listed above apply to Single Justice Procedure proceedings. Single Justice Procedure proceedings are not secret;
- Lists of pending cases and the justice's decisions are sent to the press. The press can obtain the evidence and defendant's mitigating statement.[100]

Lord Wolfson told us that 4% of those who received a single justice procedure notice pleaded "not guilty" between August and November 2020.[101] He also said that even if a "normal hearing" were held, the defendant would not appear in many cases and would be tried in his or her absence because of the summary nature of the offences.[102]

81. A number of submissions to the Committee raised concerns over the use of the single justice procedure for covid-19 offences. Big Brother Watch and Fair Trials both raised concerns over the fact that single justice procedure cases are not reviewed by the CPS.[103] They suggested the lack of CPS supervision meant that incorrectly charged cases would not be identified. Transform Justice also stressed that around 70–80% of those who receive a Single Justice Procedure Notice do not respond.[104] They stated that in covid-19 related cases between March and September 2020 88% did not respond and did not plead guilty or not guilty (958 out of 1,084 cases).[105]

82. Lord Wolfson told us that a HMCTS review of 5,156 single justice procedure cases (including non-covid-19 cases) dealt with between 1 September and 30 October 2020, identified errors in 10% of cases.[106] He cautioned that although this was less than the 28% error rate found by CPS when looking at covid-19 cases, that could be explained by the fact that the "CPS was deliberately going through and looking for errors, so it is more likely that they are going to spot them".[107] We asked the Government how many covid-19 cases have been dealt with by the Single Justice Procedure. Lord Wolfson told us that since 1 March 2020 there had been 7,234 cases using the procedure, although that number had not been independently validated.[108] ***In response to this report the Government should provide us with data on the number of covid-19 related single justice procedure cases, which includes data on the outcome of the cases and the level of fine imposed.***

83. Joshua Rozenberg QC Hon raised concern about the use of the single justice procedure in relation to covid-19 offences:

100 Ministry of Justice (COV0012)
101 Q130
102 Qq143–145
103 Fair Trials (COV0008) Big Brother Watch (COV0010)
104 Transform Justice (COV0013)
105 Transform Justice (COV0013)
106 Q148
107 Q148
108 Letter dated 24 June 2021 from Lord Wolfson QC, Parliamentary Under-Secretary of State, Ministry of Justice, on Limitation period for prosecutions under coronavirus regulations

> The single justice procedure is fine if you are dealing with well-understood offences and minor offences—failure to pay for your transport ticket or something of that nature—where there is no doubt that you have committed the offence and you simply wish to deal with it and get over it and plead guilty. […]
>
> It is not suitable for an entirely new area of law where there is doubt as to whether an offence has been committed at all. That is what we are talking about here. Anybody who simply allows this to go before a single justice assuming that the case will be considered in detail, or anybody who pays a fixed penalty while thinking that they did not commit an offence and hoping that that is a way of sweeping it under the carpet, may well regret what they have done. I suspect that, if such a large backlog of cases is due to come before the Crown Prosecution Service in the future, the CPS may well decide to drop some of those cases simply because of the difficulties of proving them to the requirement that the law imposes. In those circumstances, there may be no penalty at all.[109]

84. Tristan Kirk, courts correspondent at the Evening Standard, similarly argued that the single justice procedure is "wholly inappropriate" to deal with covid-19 offences:

> These are cases of high public importance, given the context of the pandemic. They are new offences, sometimes legally complex, and appear to have been substantially misunderstood at times. There appears to me to be a pressing need for a full magistrate bench, or a District Judge to oversee these cases, with the presence of a prosecutor and the scrutiny that an open court offers.[110]

85. In relation to transparency of the single justice procedure, Tristan Kirk raised a number of concerns over how the procedure works in practice. His evidence set out several examples where it was difficult as a courts reporter to get hold of the relevant paperwork for covid-19 cases.[111] He argued that "the opportunity for contemporaneous reporting simply did not exist", which was problematic in a pandemic when it was important for the public to know how the rules were being applied:[112]

> It should be a matter of public concern that there are hundreds, potentially thousands, of cases of people being accused of these offences going through a system where they do not get the kind of scrutiny that you would expect from a full court hearing. They potentially are not being administered properly, and there is no real opportunity for the media or the public to see what is happening, which causes a problem of things potentially going wrong. It also raises the question of whether the system is sending the public message that you actually want it to send. This is a public health crisis, and you have a chance with the courts to send a message that, if people do not follow the rules that you want them to follow, they will face a penalty, punishment and a criminal conviction.[113]

109 Q39
110 Tristan Kirk (Courts Correspondent at London Evening Standard) (COV0011) Joshua Rozenberg made the same point. Q39
111 Tristan Kirk (Courts Correspondent at London Evening Standard) (COV0011)
112 Tristan Kirk (Courts Correspondent at London Evening Standard) (COV0011)
113 Q43

86. In defence of the use of the single justice procedure Lord Wolfson stressed that as far as the government was concerned the single justice procedure was "both appropriate and suitable for [covid-19 related] offences". He said that "the bulk of the work through the single justice procedure, we believe, has worked extremely well".[114] He argued it was needed because "the alternative—to have a full hearing before a bench of three magistrates—would be massively resource intensive and could overwhelm the magistrates courts".[115] He noted that this was the same procedure used for lots of fixed penalty notice-type offences.

87. More generally, Lord Wolfson reflected on the importance of the single justice procedure for keeping the justice system running throughout the pandemic:

> When we look back, we should not forget something that is easy to overlook—that throughout this we kept a justice system operating. I know that we might take that for granted, but we should not. To keep a justice system operating during a pandemic was no mean feat, but we did it, and the single justice procedure was a large part of that.[116]

88. On the issue of the transparency of the single justice procedure, Lord Wolfson challenged the concerns expressed, suggesting that the procedure was arguably more transparent than normal court processes:

> It may be that what one is used to, one thinks is always the best. If you just imagine a journalist walking into a magistrates court and sitting at the back, there is lots of material that the journalist does not see. But when you are in the single justice procedure, the statement of the prosecution and the defence is available to be looked at. Arguably, there is actually more transparency in the SJ procedure than in the traditional procedure.[117]

89. **A central lesson from the covid-19 pandemic is the enduring impact that pandemics can have on our criminal justice system and courts. In response to the pandemic the Government was right to look for ways to reduce pressure on the courts system and to avoid overwhelming the magistrates' courts with covid-19 related cases. We recognise that the efficiency of the single justice procedure had a role to play in this.**

90. **However, given the relatively small number of covid-19 cases and their public importance, we do not think that all covid-19 offences in the regulations should necessarily have been specified to allow the procedure to be used. The use of the single justice procedure to deal with covid-19 offences has been problematic in the wider context of public uncertainty over what was prohibited and what was allowed, caused by the fast-changing nature of the covid-19 regulations. We also appreciate concerns expressed to us about the transparency of the single justice procedure. In a pandemic it is also important for the integrity of offences that justice is seen to be delivered in line with the principles of the rule of law.**

114 Q108
115 Q108
116 Q109
117 Q147

91. ***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.***

92. ***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.***

Annex: Covid-19 fixed penalty notice fine values

Coronavirus FPN fine values			
Lockdown			
	First offence	Subsequent offences	Maximum
Gatherings and movement restrictions	£200 (reduced to £100 if paid within 14 days)	Doubles with each subsequent offence	£6,400 (for the sixth and subsequent offences)
Large gatherings of more than fifteen people	£800 (reduced to £400 if paid within 14 days)	Doubles with each subsequent offence	£6,400 (for the fifth and subsequent offences)
Illegal raves and large gatherings of more than thirty people	£10,000	£10,000	£10,000
Face coverings			
Failure to wear a face covering as required	£200 (reduced to £100 if paid within 14 days)	Doubles with each subsequent offence	£6,400 (for the sixth and subsequent offences)
International quarantine			
Failure to quarantine at self-designated place as required	£1,000	Doubles with each subsequent offence	£10,000 (for fourth and subsequent offences)
Failure to quarantine in a hotel as required	£5,000	£8,000	£10,000 (for third and subsequent offences)
Failure to provide a "passenger locator form"/ coronavirus test result on arrival	£500	Doubles with each subsequent offence	£4,000 (for forth and subsequent offences)
Failure to possess a coronavirus testing package on arrival	£1,000	£1,000	£1,000
	First offence	Subsequent offences	Maximum
Failure to obtain a coronavirus testing package	£2,000	£2,000	£2,000
Failure to take coronavirus tests in accordance with the testing package	£1,000	£2,000 (for second test)	£2,000
Obstructing the enforcement of international quarantine requirements	£1,000	£1,000	£1,000

Providing false or misleading information about ones travel through "red list" countries/ entering the country via an undesignated port.	£10,000	£10,000	£10,000
Self-isolation			
Failure to self-isolate	£1,000	Doubles at the second and third offence	£10,000 (for the fourth and subsequent offences)
Failure to self-isolate and come into close contact with someone/ were likely meet someone/ was negligent to the possibility of meeting someone.	£4,000	£10,000 for second offence	£10,000
Failure of worker to notify employer of need to self-isolate	£50	£50	£50

Source: House of Commons Library

Conclusions and recommendations

Introduction

1. In considering the Government's approach to its use of the criminal law during the covid-19 pandemic we recognise that the Government was required to act in exceptional circumstances and to respond to a public health emergency of a scale not seen in recent times. We therefore give credit to the Government and all those involved in developing and enforcing covid-19 offences in such difficult and unpredictable circumstances. The creation and enforcement of these offences played an important part in protecting the public. (Paragraph 5)

2. The Government's first priority must be to protect public health and save lives. The Government should be commended for moving to strike a difficult balance between the need to provide police forces with tools to enforce the rules without criminalising behaviour in ways incompatible with the fundamental values of our society. (Paragraph 6)

3. However, the creation and enforcement of any new criminal offence must be compatible with widely understood principles of the rule of law. Ensuring that those principles are upheld serves to enhance understanding of and compliance with the law, which is essential to achieving positive public health outcomes and to save lives. (Paragraph 7)

4. *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)

Creating covid-19 offences

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)

6. Another lesson is that the Ministry of Justice should have greater oversight over the creation of criminal offences in response to public health emergencies, including a pandemic. As government guidance states, the Ministry of Justice should be consulted on the creation of new criminal offences to ensure they are proportionate and necessary and to consider their impact on the wider justice system. This is as important in a pandemic as in ordinary times, notwithstanding the need to move at pace. (Paragraph 21)

7. *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 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)

8. 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)

9. *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)

10. There has been general recognition of the need to respond very quickly to the changing circumstances of the pandemic, particularly as it began when facts about the virus were not well known. The Government was right to use all the legislative tools at its disposal, as granted by Parliament, in order to legislate to protect public health during the covid-19 pandemic. (Paragraph 25)

11. Parliament has a responsibility to ensure that any criminalisation has democratic legitimacy. Legitimacy is vital when widespread curtailment of civil liberties is at stake and the risk of people ignoring the rules owing to low risk of detection is high. (Paragraph 28)

12. A lesson from the covid-19 pandemic is that Parliament should play a more active role in the creation, scrutiny and oversight of new criminal offences in response to emergencies. One of the primary functions of parliamentary scrutiny of legislation is to make the legislative process, and the law it creates, accessible and transparent. Parliament plays an important role in making sure that the law and any new criminal offences are so far as is possible intelligible, clear and predictable. It is not satisfactory in this context that Parliament was not always able to fulfil its function when Members were required to consider statutory instruments already repealed or already superseded. 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)

13. The Ministry of Justice has undertaken to write to this Committee whenever it introduces a statutory instrument which may be of interest to this Committee. During the pandemic, we have corresponded with the Lord Chancellor over a number

of statutory instruments, such as those for example regarding custody time limits and the stay on possession proceedings. The Ministry of Justice's commitment to ensure that this Committee is informed of significant changes to the justice system through statutory instruments is very important for our work. 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)

14. *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)

15. The Government's communication of new covid-19 offences created in response to the pandemic was essential to ensuring both that public and law enforcement agencies understood what was prohibited and delivering high levels of compliance. (Paragraph 42)

16. We recognise that throughout the pandemic the Government's priority has been to communicate as clearly as possible to the public what they should and should not do. We also recognise that due to the speed with which legislation needed to be passed, and the complexity of the legislative framework, it was difficult always to capture the nuance between what was advisable and what was prohibited by law within Government announcements and ministerial press conferences. (Paragraph 43)

17. However, blurring the line between government guidance and the law has potentially damaging long-term consequences, including for the rule of law. In a free society that respects the rule of law, only legislation can criminalise conduct, and it should be open to a person to decide whether to follow government guidance. 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)

18. We recognise that sometimes novel offences were created at speed and that there was inevitably, therefore, some initial uncertainty about their extent and application. The concept of legal certainty is also an essential component of the rule of law. In principle, all restrictions should be cast in terms of sufficient clarity and certainty to enable people to understand whether certain kinds of activity will or will not incur criminal liability. Government communication of any new criminal offences must always accurately reflect the true legal position so as not to undermine public trust, and subsequently public compliance. We recognise that the novelty of these offences meant the usual clarity in the law that evolves as cases are prosecuted and heard by the courts was necessarily absent and clarity and understanding of the public, police and the courts can naturally be expected to improve over time as happens with other offences. (Paragraph 45)

19. 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)

The enforcement of covid-19 offences

20. Fixed penalty notices have an established a role in our legal system, for example for road traffic offences, but the context of new covid-19 offences is different from many of these offences and curtailed freedoms considered fundamental in a democratic society. We recognise that fixed penalty notices played a valuable role in policing the pandemic. However, in principle, when offences in question are complex, difficult to apply and give rise to significant sanctions, it should ordinarily be the responsibility of a court, rather than an official to determine liability. Any future review considering alternative approaches should give due weight to this. (Paragraph 54)

21. A £10,000 fine for a criminal offence is a penalty so large that only a court should issue it. When a court issues a fine, it takes into account the financial circumstances of an individual; this is not the case with fixed penalty notices. (Paragraph 59)

22. We recognise that, due to the reliance on the Public Health (Control of Diseases) Act as the legislative framework for creating new offences, the Government was limited in its options to create new offences. A lesson from the covid-19 pandemic for future pandemic preparedness is therefore that the Government needs to have a greater range of options at its disposal to introduce public health restrictions swiftly in a proportionate and predictable way. In future the Government should not solely rely upon fixed penalty notices of increasing magnitude to deliver compliance with public health restrictions. For example, given the seriousness of the offence of holding a large unauthorised gathering in a pandemic, the Government should consider developing alternative means of ensuring compliance that does not rely on a fixed penalty notice of £10,000. (Paragraph 60)

23. *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)

24. 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)

25. We recognise that the rates of payment for covid-19 related fixed penalty notices are broadly in line with what is expected for other types of fixed penalty notices such as traffic offences. However, given the high profile and pertinent nature of these penalties during the pandemic, we think the public would be concerned to know that the majority of people who were given a fixed penalty notice were either given the notice in error, or were given one correctly but have escaped any penalty. (Paragraph 69)

26. *In its response to this report the Government should provide us with data on:*

    - *the number and proportion of fixed penalty notices that have not been paid;*
    - *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*
    - *the total number of prosecutions of covid-19 cases including single justice procedure cases.* (Paragraph 70)

27. *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)

28. We acknowledge the policing Minister's point about proportionality but are concerned that the review process for covid-19 related fixed penalty notices was inconsistently applied by different police forces and unclear. *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)

29. *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)

30. *In response to this report the Government should provide us with data on the number of covid-19 related single justice procedure cases, which includes data on the outcome of the cases and the level of fine imposed.* (Paragraph 82)

31. A central lesson from the covid-19 pandemic is the enduring impact that pandemics can have on our criminal justice system and courts. In response to the pandemic the Government was right to look for ways to reduce pressure on the courts system and to avoid overwhelming the magistrates' courts with covid-19 related cases. We recognise that the efficiency of the single justice procedure had a role to play in this. (Paragraph 89)

32. However, given the relatively small number of covid-19 cases and their public importance, we do not think that all covid-19 offences in the regulations should necessarily have been specified to allow the procedure to be used. The use of the single justice procedure to deal with covid-19 offences has been problematic in the wider context of public uncertainty over what was prohibited and what was allowed,

caused by the fast-changing nature of the covid-19 regulations. We also appreciate concerns expressed to us about the transparency of the single justice procedure. In a pandemic it is also important for the integrity of offences that justice is seen to be delivered in line with the principles of the rule of law. (Paragraph 90)

33. *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)

34. *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)

Formal minutes

Tuesday 21 September 2021

Members present:

Sir Robert Neill, in the Chair

Rob Butler	Kate Hollern
Angela Crawley	Laura Farris
Janet Daby	Dr Kieran Mullin
Maria Eagle	Andy Slaughter

The following declarations of interest to the inquiry were made.[118]

Draft Report (*Covid-19 and the criminal law)*, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 92 read and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Tuesday 19 October at 1.45 pm

118 For a full record of interests in relation to this inquiry see the formal minutes for the inquiry pertaining to meetings on 20 April 2021 and 27 April 2021, Session 2019–21.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Tuesday 20 April 2021

Sir Jonathan Jones QC, former Treasury Solicitor and former Head of the Government Legal Service — Q1–20

Tristan Kirk, courts correspondent at the Evening Standard; **Joshua Rozenberg QC**; Journalist; **Pippa Woodrow**, barrister, Doughty Street Chambers — Q21–62

Tuesday 27 April 2021

Beverley Higgs JP, Chair, Magistrates Association — Q63–84

Gregor McGill, Director, Legal Services, Crown Prosecution Service, Director of Legal Service, Crown Prosecution Service — Q85–100

Kit Malthouse MP, Minister of State (Minister for Crime and Policing), Ministry of Justice; **Lord Wolfson QC of Tredegar**, Parliamentary Under-Secretary of State, Ministry of Justice; **Lord Bethell of Romford**, Parliamentary Under-Secretary of State, Department of Health and Social Care — Q101–153

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

COV numbers are generated by the evidence processing system and so may not be complete.

1 Association of Police and Crime Commissioners (COV0006)

2 Big Brother Watch (COV0010)

3 Casey, Mrs Karen; and, Casey Mr Edward (COV0005)

4 Collard, Dr Melanie (Lecturer in Criminal Law and Criminal Justice, Brunel University London); Black, Dr Isra (Lecturer in Law, University of York); Forsberg, Dr Lisa (British Academy Postdoctoral Fellow, University of Oxford); Carvalho, Dr Henrique (Associate Professor in Law, University of Warwick); and Chamberlen, Dr Anastasia (Associate Professor of Sociology, University of Warwick) (COV0004)

5 COVID-19 Review Observatory, Birmingham Law School, University of Birmingham (COV0007)

6 Chapman, Mr Andrew (COV0001)

7 Crown Prosecution Service (COV0009)

8 Fair Trials (COV0008)

9 Greenberg CB, Mr Daniel (Counsel for Domestic Legislation, House of Commons) (COV0003)

10 Kirk, Tristan (Courts Correspondent, London Evening Standard) (COV0011)

11 Ministry of Justice (COV0012)

12 Oswald, Dr Marion (Vice-Chancellor's Senior Fellow in Law, Northumbria University); Janjeva, Ardi (Research Analyst, Royal United Services Institute); and Allsopp, Rachel (Research Associate, Northumbria University) (COV0002)

13 The Magistrates Association (COV0014)

14 Transform Justice (COV0013)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2021–22

Number	Title	Reference
1st	The Coroner Service	HC 68
2nd	Rainsbrook Secure Training Centre	HC 247
3rd	The future of legal aid	HC 70
1st Special	The future of the Probation Service: Government Response to the Committee's 18th Report of 2019–21	HC 475
2nd Special	Rainsbrook Secure Training Centre: Government Response to the Committee's Second Report of 2021–22	HC 565
3rd Special	The Coroner Service: Government Response to the Committee's First Report	HC 675

Session 2019–21

Number	Title	Reference
1st	Appointment of Chair of the Office for Legal Complaints	HC 224
2nd	Sentencing Council consultation on changes to magistrates' court sentencing guidelines	HC 460
3rd	Coronavirus (COVID-19): The impact on probation services	HC 461
4th	Coronavirus (Covid-19): The impact on prisons	HC 299
5th	Ageing prison population	HC 304
6th	Coronavirus (COVID-19): The impact on courts	HC 519
7th	Coronavirus (COVID-19): the impact on the legal professions in England and Wales	HC 520
8th	Appointment of HM Chief Inspector of Prisons	HC 750
9th	Private prosecutions: safeguards	HC 497
10th	Sentencing Council consultation on sentencing guidelines for firearms offences	HC 827
11th	Sentencing Council consultation on the assault offences guideline	HC 921
12th	Children and Young People in Custody (Part 1): Entry into the youth justice system	HC 306
13th	Sentencing Council: Changes to the drugs offences definitive guideline	HC 751
14th	Appointment of the Chair of the Independent Monitoring Authority	HC 954

Number	Title	Reference
15th	Appointment of the Chief Inspector of the Crown Prosecution Service	HC 955
16th	Children and young people in custody	HC 922
17th	Rainsbrook Secure Training Centre	HC 1266
18th	The future of the Probation Service	HC 285