

Argument

7. We understand that police forces would welcome the ability to bring cases under the SJP once again. Our expectation is that this would also be supported by HM Courts and Tribunals Service (HMCTS) and by the Crown Prosecution Service (CPS) as it reduces operational pressures on all three of the above.
8. However, there are good reasons why the SJP is only available for limited types of cases. In principle, the SJP does not deny individuals accused of crimes the ability to contest their cases in open court, as when it has previously been adopted the practice has been that where individuals opt to contest the charges against them, the police hand the case over to the CPS.
9. In practice, though, we know that decisions on whether to issue Fixed Penalty Notices for Covid related offences very often hinge on police officers' views as to whether the accused had a reasonable excuse. Covid regulations are also complex and change frequently, especially when compared with the rules on traffic offences and littering where the SJP has traditionally been used. Legal Aid will not be available to those accused of Covid-related offences as they are non-custodial offences, and so it is likely that a significant proportion of those charged under Covid offences will not access legal advice before deciding on their plea or feel able to access legal representation. This will generate significant pressure for people to plead guilty even if they consider they had a reasonable excuse for their actions.
10. We are aware at least anecdotally from media reporting of offences being brought under the SJP (and convictions secured) where:
 - the conduct in question was not an offence at the time
 - police mistook guidance for law
 - the regulations cited were Welsh even though the offence was committed in England
 - fines were awarded which exceeded the maximum possible
 - incorrect paperwork had been submitted; or
 - police had failed to provide signed statements
11. While the involvement of the CPS in the case does not guarantee that any of the above will not happen, it is an important safeguard. Our recommendation is therefore that the SJP is not adopted unless and until it is demonstrated clearly that the consequences in Wales of failing to do so outweigh the risks of allowing the SJP to be used.
12. At present, we do not believe the data exists to make this judgement. We do not have recent figures on the numbers of outstanding unpaid FPNs in Wales, although in the past the proportion of FPNs in Wales that were unpaid were considerably lower than in England (36% compared to 53% in September). We do know that backlogs in Wales are currently very close to the level they were before the pandemic, which again is considerably lower than they were when the SJP was previously adopted – and is a contrast to England where the backlog remains around 25% higher than at the start of the pandemic.