



House of Commons

House of Lords

Joint Committee on Human
Rights

The Government response to covid-19: fixed penalty notices

Fourteenth Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
and the House of Lords to be printed
21 April 2021*

**HC 1364
HL Paper 272**

Published on 27 April 2021
by authority of the House of Commons and the House of Lords

Joint Committee on Human Rights

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

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

Current membership

House of Commons

[Harriet Harman QC MP](#) (*Labour, Camberwell and Peckham*) (Chair)

[Fiona Bruce MP](#) (*Conservative, Congleton*)

[Karen Buck MP](#) (*Labour, Westminster North*)

[Joanna Cherry QC MP](#) (*Scottish National Party, Edinburgh South West*)

[Pauline Latham MP](#) (*Conservative, Mid Derbyshire*)

[Dean Russell MP](#) (*Conservative, Watford*)

House of Lords

[Lord Brabazon of Tara](#) (*Conservative*)

[Lord Dubs](#) (*Labour*)

[Lord Henley](#) (*Conservative*)

[Baroness Ludford](#) (*Liberal Democrat*)

[Baroness Massey of Darwen](#) (*Labour*)

[Lord Singh of Wimbledon](#) (*Crossbench*)

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publication

© Parliamentary Copyright House of Commons 2021. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright-parliament/.

Committee reports are published on the [Committee's website](#) by Order of the two Houses.

Committee staff

The current staff of the Committee are Miguel Boo Fraga (Committee Operations Manager), Chloe Cockett (Senior Specialist), Estelle Currie (Media Officer), Busayo Esan (Inquiry Manager), Liam Evans (Committee Specialist), Alexander Gask (Deputy Counsel), Eleanor Hourigan (Counsel), Lucinda Maer (Commons Clerk), Nicholas Taylor (Second Clerk), George Webber (Lords Clerk) and Dan Weedon (Lords Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2467; the Committee's email address is jchr@parliament.uk.

You can follow the Committee on Twitter using [@HumanRightsCtte](#)

Contents

Summary	3
1 Introduction	5
Background	5
Our previous work	5
Our current inquiry: The Government's Response to Covid-19: human rights implications of long lockdown	7
2 The legal framework	8
Coronavirus restrictions and fixed penalty notices	8
ECHR Articles engaged by FPNs issued under coronavirus Regulations	11
3 Policing the pandemic and FPNs	15
Policing using the "Four Es"	15
FPNs issued by local authorities and others	16
4 Is there unlawful discrimination in the use of FPNs?	18
Age	18
Gender	18
Ethnicity	19
Socio-economic status	19
Conclusions	20
5 Wrongly issued FPNs	21
How many FPNs have been wrongly issued?	21
Why are FPNs being incorrectly issued?	23
6 Inadequate review and appeal process	26
Reviews before an FPN is sent out	26
Reviews before proceeding to prosecution	27
Review at prosecution	27
Challenging an FPN	27
Informal methods of challenging FPNs	28
Urgent need for a review mechanism	28
Concerns over the single justice procedure	29
7 The size of the penalties	31
Criminalisation of those who cannot afford to pay	31
Conclusions	32

Conclusions and recommendations	33
Declaration of interests	36
Formal minutes	37
Witnesses	38
List of Reports from the Committee during the current Parliament	39

Summary

Since the laws put in place to control the spread of covid-19 first came into force in March 2020, more than 85,000 fixed penalty notices (FPNs) have been issued to those who have broken the restrictions in England. FPNs are an enforcement tool, which allow people to pay a penalty instead of being prosecuted and potentially face a criminal record. Their use has been common in the UK since the 1950s to deal with minor infractions such as road traffic offences. However, their use in relation to the coronavirus restrictions raises human rights concerns. Our concerns are so serious that we recommend that every penalty issued since the start of the pandemic under the Regulations containing the restrictions introduced to respond to the covid-19 outbreak needs to be reviewed, and new checks put into the system to prevent errors and discrimination from taking place in future.

The coronavirus Regulations have changed at least 65 times since March 2020; this has provided obvious challenges for the police. The Government have often produced guidance which differs from the law without making this distinction clear. Furthermore, Ministers have made misleading and inaccurate comments about what is and is not allowed under the coronavirus Regulations. We were told that a recent survey showed that nine out of ten police officers did not feel the coronavirus Regulations were clear. In such circumstances, the opportunities for mistakes to be made are high. This has the potential to raise rule of law concerns. Where the authorities have sought to penalise people for behaviour that is not prohibited by law, then this risks breaching Article 7 of the European Convention of Human Rights (ECHR) (“no punishment without law”) as well as other ECHR rights, such as Article 8 ECHR right to private and family life, that are being interfered with by seeking to prevent people’s enjoyment of their human rights otherwise than is “in accordance with the law”.

When mistakes are made in the issuing of FPNs, there is no mechanism of review or appeal available to the individual given the FPN, before the penalty is issued and payment demanded. Recipients of penalties, which range from £200 for the failure to wear a face covering to £10,000 for organised gathering offences, must pay the penalty, or risk prosecution in court.

Whilst the police told us that there is some form of internal review that takes place before the fine is issued, this process is not clear or transparent, and incorrect penalty notices get through. We know this because those penalties that are not paid are then progressed through the system towards a prosecution for offences under the coronavirus Regulations. At that point they were initially all reviewed by the Crown Prosecution Service (CPS), although since 3 June 2020 some prosecutions have been dealt with by the single justice procedure and have therefore not been reviewed. Those reviews have found a significant proportion—27% in February 2021 for example—to be incorrectly issued. Most people will not have their penalty reviewed by the CPS: if a person does not pay their fine and is prosecuted, then they risk a criminal record. It is therefore likely that many penalties have been paid which were unlawfully issued.

Furthermore, it is questionable whether the right to a fair trial under Article 6 ECHR is properly protected when an FPN recipient is too intimidated by the risk of a criminal record to challenge the FPN and risk a criminal prosecution. We are concerned that even

those that are prosecuted in court, especially those that have been subject to the single justice procedure, may not have benefited from appropriate fair trial protections. As such, we recommend all penalties and convictions under the coronavirus Regulations since the outset of the pandemic must be reviewed. In addition, a full internal review procedure must now be put in place by the police for all newly issued FPNs under the coronavirus Regulations *before* the penalty notice is sent to the individual to prevent the high error rate continuing. There should be an administrative mechanism for those who receive an FPN to appeal the penalty notice.

Excessively costly FPNs, such as those of £10,000, are highly problematic in a system in which mistakes are so frequently made, and where those who cannot afford the penalty risk prosecution and a criminal record. Whilst the wealthy are able to pay the fine, those without the means will find themselves in court. Although we acknowledge the role of deterrence in considering penalties, given the confusion over the law, the high rates of error and the disproportionate impact on different groups within society, it is not clear why a more graduated approach to the highest fines cannot be taken. We recommend that consideration be given to removing convictions under the coronavirus Regulations from criminal records.

The problems we have identified with the FPNs issued under the coronavirus Regulations are even more concerning when you take into account statistics that show that young people, those from certain ethnic minority backgrounds, men, and the most socially deprived are much more likely to be issued with FPNs than those from other groups. Article 14 of the ECHR provides for protection from discrimination in the application of other ECHR rights. Were, for example, the rights to a fair trial, no punishment without the law and the right to a family and private life (as guaranteed by Articles 6, 7 or 8 ECHR) being respected unequally on the basis of factors such as, sex, race, age or any other status without justification, then Article 14 ECHR would be breached. Research and analysis must be commissioned by the Government to fully understand why some groups have received FPNs at a higher rate than others, and steps must be taken to address any potential discrimination in policing or the law.

The police have no doubt had a difficult task in policing the pandemic. Their initial approach, which was to Engage, Explain and Encourage compliance, was correct, especially with the novelty of the law, the fact that this was public health—not public order—legislation, the extraordinarily wide-ranging impact these laws had on every day activities and the lack of clarity in what might be considered a “reasonable excuse” to leave the house. We are aware that more recently the police have moved more quickly to enforcement action. This is problematic given the confusion over the state of the frequently changing law, and in light of confused communications from the Government which continue to conflate guidance with the law. A heavy-handed approach to enforcement in such circumstances risks unjustly penalising a wide range of behaviour, in circumstances where there are insufficient safeguards in place to protect people from arbitrariness and unjustified interferences with basic human rights.

1 Introduction

Background

1. In response to the covid-19 pandemic, the Government has introduced restrictions on people's daily lives to prevent the spread of the disease, limit loss of life, and to ensure the National Health Service is not overwhelmed. Covid-19 has caused devastating loss of life, and dramatically impacted the quality of life of many of those who get seriously ill.¹ Since March 2020, around 130,000 people have died in the UK within 28 days of testing positive for covid-19.² Many others have had routine, and even urgent care for other issues cancelled for reasons related to the public health situation and the response to covid-19.
2. The Government has a positive duty to safeguard the lives of those within its jurisdiction under Article 2 of the European Convention on Human Rights (ECHR). In some cases, this may require interferences with other ECHR rights. As we noted in our September 2020 report on human rights and the Government response to covid-19, in order to ensure compliance with human rights law, it is crucial that the Government can justify the proportionality and necessity of interferences with other human rights through the measures taken to control the pandemic. Moreover, enforcement of the law must be proportionate, and comply with rights under the ECHR.
3. Fixed penalty notices (FPNs) are an enforcement tool, which allow people to pay a penalty instead of being prosecuted and potentially face a criminal record. FPNs are the main sanction available to the police to penalise non-compliance with the coronavirus Regulations. For the purpose of this report, when we refer to "coronavirus Regulations" we mean those Regulations made under the Public Health (Control of Disease) Act 1984 that have placed restrictions on individuals' ability to be outside of their home, to undertake certain activities, and to participate in gatherings or to see friends and family.³
4. There are concerns over the use, unequal application, review and appeal process, and size of FPNs as an enforcement tool under the coronavirus Regulations. These concerns engage human rights—in particular the right to a fair trial (Article 6 ECHR), the principle of no punishment without law (Article 7 ECHR), the right to family and private life (Article 8 ECHR) and freedom from discrimination in the enjoyment of other Convention rights (Article 14 ECHR). The rights of freedom of assembly and association, and freedom of expression under Articles 10 and 11 ECHR have also been engaged by the enforcement of these restrictions, as we explored in detail in our report, *The Government response to covid-19: freedom of assembly and the right to protest*.⁴

Our previous work

5. This Committee has scrutinised the Government's response to the pandemic on human rights grounds since the start of the crisis.

1 NHS, [Long-term effects of coronavirus \(long COVID\)](#) page last reviewed 1 April 2021

2 Gov.uk, [Deaths in United Kingdom](#), as 12 April 2021

3 A summary of these restrictions has been produced by the House of Commons Library: *Coronavirus: Lockdown laws*, Briefing Paper 8875, April 2021; and the relevant Statutory Instruments can be found on the Government website: [Coronavirus Legislation](#), last accessed 13 April 2021. Adam Wagner has also published a list showing how the laws have changed, [Covid-19 Regulations Table](#), last accessed 12 April 2021.

4 Joint Committee on Human Rights, Thirteenth Report of Session 2019–21, [The Government response to covid-19: freedom of assembly and the right to protest](#), HC 1328/HL Paper 252

- a) In April 2020, we published a “Chair’s briefing paper” on the coronavirus Regulations in which we set out concerns about inconsistencies in the communication of the lockdown restrictions—and the potential confusion between law and guidance, noting the consequent risks for Article 7 ECHR (no punishment without law).⁵ This briefing paper also expressed concerns relating to unduly heavy-handed policing by some individual police officers and police forces.
- b) In May 2020 we reported on the privacy concerns around the digital contact tracing app. The Government initially intended to design a ‘centralised’ model, which we argued posed significant privacy risks, and we called for protections to be put in legislation if this model was going to be used. The original model was later abandoned in favour of the decentralised model, which raises fewer privacy concerns.⁶
- c) In June 2020 we reported on the situation for those with autism and/or learning disabilities in assessment and treatment units and hospitals. We concluded that blanket visiting restrictions would breach Article 8 ECHR and called for the relevant bodies to allow visits by family members unless an individualised risk assessment was conducted which proved, and explained, why visits could not be carried out safely.⁷
- d) In July 2020 we considered how the rights of children whose mothers were in prison had been affected by the pandemic and the limits on visiting that had been in place. We concluded that visits must not be ruled out on a blanket basis and that the early release scheme should be extended to allow mothers to return home if they did not pose a risk to the public and were within two months of their release date.⁸
- e) In September 2020 we published a major report to inform the six-monthly debate in the House of Commons required under the Coronavirus Act 2020 to keep the provisions of that Act in force. Our report, *The Government’s Response to COVID-19: human rights implications*, looked at what we considered the biggest issues in the early response to the pandemic. We covered: the legal framework; the lockdown regulations; health and care; detention; contact tracing; children and the right to education; access to justice; procedural obligations to protect the right to life; and accountability and scrutiny.⁹ In relation to the coronavirus Regulations and lockdown restrictions, we set out our concerns around ambiguity, mixed messaging and confusion about the substance of the law containing the coronavirus restrictions. We also set out concerns around the

5 Joint Committee on Human Rights Chair’s Briefing Paper, [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020 and the Lockdown Restrictions](#), 8 April 2020

6 Joint Committee on Human Rights, Third Report of Session 2019–21, [Human Rights and the Government’s Response to Covid-19: Digital Contact Tracing](#), HC 343/HL Paper 59

7 Joint Committee on Human Rights, Fifth Report of Session 2019–21, [Human Rights and the Government’s response to COVID-19: The detention of young people who are autistic and/or have learning disabilities](#), HC 395, HL Paper 72

8 Joint Committee on Human Rights, Sixth Report of Session 2019–21, [Human Rights and the Government’s Response to COVID-19: children whose mothers are in prison](#), HC 518/HL Paper 90

9 Joint Committee on Human Rights, Seventh Report of Session 2019–21, [The Government’s response to COVID-19: human rights implications](#), HC 265 / HL Paper 125

enforcement and policing of coronavirus restrictions, including the use of FPNs. Many of the criticisms we made in that report are regrettably still relevant, and we will refer to them as appropriate in our current report.¹⁰

Our current inquiry: The Government's Response to Covid-19: human rights implications of long lockdown

6. On 30 November 2020 we launched our inquiry into the implications of long lockdown, before the reintroduction of the national lockdown which began in January.¹¹

7. Earlier this year we wrote letters to the relevant Secretaries of State on issues around visits in care homes, hospitals, and prisons.¹² We also drafted legislation that would secure rights for relatives to visit people in care homes and hospital settings, unless an individualised risk assessment determined it was too risky to do so.¹³ In March 2021 we published a report on the right to assemble and protest, and whether interferences with this right had been justifiable and proportionate during the pandemic.¹⁴ We recommended that outdoor protest be included in the list of exceptions to the prohibition on gatherings alongside picketing and communal worship, subject to equivalent safeguards for those activities.

8. We now turn our attention to issues around enforcement and policing during the pandemic. This report will focus on the following questions raised in our call for evidence:

Is the way that Fixed Penalty Notices (FPNs) are being used to enforce lockdown justifiable, fair and non-discriminatory? Is it clear why FPNs have been issued? Are there adequate ways to seek a review or appeal of an FPN? Are the amounts of FPN fines proportionate? Has there been a disproportionate impact on certain groups?¹⁵

9. We are grateful to those who gave oral evidence to this inquiry, to those who made written submissions in response to our call for evidence, and to Jennifer Brown of the House of Commons Library. We have also been assisted in our work on this inquiry by our specialist adviser, the barrister Adam Wagner.

10. This report focuses primarily on how the coronavirus Regulations and restrictions have been enforced in England. However, given the similarities of some of the restrictions and the shared challenges, many of the issues raised may well also be of relevance in Wales, Scotland and Northern Ireland.

10 Joint Committee on Human Rights, Seventh Report of Session 2019–21, [The Government's response to COVID-19: human rights implications](#), HC 265 / HL Paper 125

11 Joint Committee on Human Rights, [Call for evidence](#), closed 11 January 2021

12 Letter to Rt Hon Matt Hancock MP, Secretary of State for Health and Social Care, [regarding visiting care homes and mental health hospitals](#), dated 3 February 2021; and Letter to Lucy Frazer QC MP, [regarding children whose mothers are in prison](#), dated 2 February 2021

13 Joint Committee on Human Rights, Draft SI: [The Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) Regulations 2021](#)

14 Joint Committee on Human Rights, Thirteenth Report of Session 2019–2021, [The Government response to covid-19: freedom of assembly and the right to protest](#), HC 1328 / HL Paper 252


15 Joint Committee on Human Rights, [Call for evidence](#), closed 11 January 2021

2 The legal framework



Coronavirus restrictions and fixed penalty notices


11. Since March 2020, laws have been in place to respond to and control the covid-19 outbreak. Restrictions have been placed on meeting with others both inside and outside; on leaving one's home; on the activities of business; and on the movement of people both within and into the United Kingdom. The laws have continually changed as the pandemic and the experience of what works to control it have evolved. In England, the laws and restrictions imposed under the various coronavirus Regulations have changed more than 65 times since March 2020.¹⁶

12. When people breach the coronavirus Regulations, part of the enforcement powers for police are to issue Fixed Penalty Notices (FPNs). The chart below summarises the coronavirus offences for which FPNs can be issued in England, and the size of the penalties. Similar laws are in place in Scotland, Wales and Northern Ireland, but these are not considered in detail in this report.

FPN levels for coronavirus offences applicable to individuals in England				
		First Offence	Subsequent Offences	Maximum
Lockdown* 	Restrictions on leaving the home, and restrictions on small gatherings	£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
	Attempting to leave the United Kingdom without a "reasonable excuse"	£5,000	£5,000	£5,000
	Failure to present a "travel declaration form"	£200	£200	£200

¹⁶ Our specialist adviser Adam Wagner provided this figure.

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)
	Failure to quarantine at self-designated place as required	£1,000	Doubles with each subsequent offence	£10,000 (for fourth and subsequent offences)
International quarantine*** 	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 fourth and subsequent offences)
	Failure to possess a coronavirus testing package on arrival	£1,000	£1,000	£1,000
	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
	Failure to self-isolate	£1,000	Doubles at the second and third offence	£10,000 (for the fourth and subsequent offences)

Self-isolation**** 	Failure to self-isolate and come into close contact with someone/ were likely to 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
	Employers allowing worker to leave place of self-isolation	£1,000	£1,000	£1,000

* The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 ([SI 2020/364](#)) Regulations 12–17

**The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 ([SI 2020/791](#)), Regulation 7; The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 ([SI 2020/592](#)), Regulation 7

*** The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2020/568](#)), Regulation 7

****The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, ([SI 2020/1045](#)), Regulation 7

Source: *Coronavirus: Enforcing restrictions*, Briefing Paper [9024](#), House of Commons Library, March 2021

13. Fixed penalty notices (FPNs) have been an enforcement tool in the UK since they were introduced to deal with minor parking offences in the 1950s. In lieu of prosecution, they punish minor infractions such as littering, graffiti or driving without a seatbelt with a financial penalty. They have previously primarily been used for offences that are easy to prove and where there are no complex or subjective elements to the offence. If paid within a fixed period, most FPNs do not result in or go on a criminal record. Fast payment is often incentivised, for example, an FPN for littering has a default value of £100, but the issuing authority can accept £50 if the penalty is paid within a maximum of 14 days.¹⁷ FPNs are ordinarily capped at a relatively low level. Serious offences, that can result in prosecution and prison, such as drink driving, are dealt with through the courts, rather than through FPNs.

14. Unlike more regular uses of FPNs, offences for which FPNs may be issued under the coronavirus Regulations deal with complex offences where there may be a need for a considered appreciation of, for example, whether a person had a “reasonable excuse” for being outside their home. They also differ because the level of the fine is more punitive: penalties for offences on the road are worth hundreds of pounds, but some breaches of the coronavirus Regulations can result in a £10,000 fine.¹⁸ The police (or other enforcement officers) have no discretion as to the amount of the penalty notice.

17 Department for Environment Food and Rural Affairs, [Part 1A—Effective enforcement Code of practice for litter and refuse](#), September 2019, p 19

18 For example, £50 for a lighting offence (broken headlight), £100 for careless driving, £300 for driving with no insurance. RAC - [Fixed Penalty Notices: all you need to know](#), May 2019

ECHR Articles engaged by FPNs issued under coronavirus Regulations

15. The right to life (Article 2 ECHR) has been, and must remain, central to the Government's response to covid-19. The Government has a positive duty to take appropriate steps to safeguard the lives of those within its jurisdiction (Article 2 ECHR). The Government has had to protect lives whilst also only interfering with other human rights to the extent that it is necessary and proportionate in the circumstances.

16. The restrictions contained in the coronavirus Regulations and the use of FPNs to enforce those restrictions, engage consideration of other human rights—in particular the right to private and family life (Article 8 ECHR), no punishment without law (Article 7 ECHR), the right to a fair trial (Article 6 ECHR) and the principle of non-discrimination in the enjoyment of other Convention rights (Article 14 ECHR). They also engage the right to freedom of expression and the right to assembly (Articles 10 and 11 ECHR) which we considered in detail in our March 2021 report: *The Government response to covid-19: freedom of assembly and the right to protest*.¹⁹

17. Other human rights are engaged by restrictions put in place in response to the threat posed by covid-19. For example, the right to liberty and security under Article 5 ECHR prohibits the arbitrary or unjustified deprivation of liberty. The prohibition on leaving the home during lockdown, with its exceptions for exercise, essential shopping and work etc, is not strict enough to amount to a deprivation of liberty for the purposes of Article 5 ECHR, as interpreted by the European Court of Human Rights (ECtHR). However, it is possible that Article 5 ECHR could be engaged by the travel restrictions under the Health Protection (Coronavirus, International travel) (England) Regulations 2020, and especially in light of the conditions attaching to those required to undergo hotel quarantine under those Regulations.²⁰ The travel restrictions mean that everyone who arrives from outside the common travel area²¹ must undergo mandatory 14-day self-isolation, either at home, staying with a friend, or in a hotel. These requirements may be proportionate to prevent the spread of disease and protect the right to life, but appropriate safeguards against arbitrariness are required. As the ECtHR has held in *Enhorn v Sweden*:

“[...] the essential criteria when assessing the “lawfulness” of the detention of a person “for the prevention of the spreading of infectious diseases” are whether the spreading of the infectious disease is dangerous to public health or safety, and whether detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest. When these criteria are no longer fulfilled, the basis for the deprivation of liberty ceases to exist.”²²

The right to private and family life (Article 8 ECHR)

18. The restrictions contained in the various coronavirus Regulations have made previously normal and private activities illegal—including interaction with family and

19 Joint Committee on Human Rights, Thirteenth Report of Session 2019–2021, [The Government response to covid-19: freedom of assembly and the right to protest](#), HC 1328 / HL Paper 252

20 The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (SI 2020/568)

21 The Common Travel Area comprises the United Kingdom, the Republic of Ireland and the Crown Dependencies

22 *Enhorn v Sweden*, ECHR (Application No. 56529/00) [2005] at paragraph 44.

friends. These restrictions engage the right to private and family life (Article 8 ECHR).²³ As Article 8 ECHR is a qualified right, it can be interfered with where necessary and proportionate, and for a legitimate reason—for example if an interference is necessary in the interest of protecting the health and the rights of others and does not exceed what is necessary for that purpose. Therefore, lawful and proportionate restrictions on our ability to interact with family and friends imposed in order to prevent the spread of covid-19 will not violate Article 8 ECHR.

19. However, in order to be compatible with Article 8 ECHR, such restrictions must contain sufficient exceptions such that they do not have a disproportionate impact on certain groups' and individuals' quality of life. In the current pandemic this has arisen in many different scenarios, such as people who live alone being allowed to form a bubble so that they are not entirely isolated; some people in a loving relationship being allowed to see each-other if they fall within the 'linked household' exception; people being allowed to maintain their health, fitness and emotional well-being through outdoor recreation and safe visits being facilitated to those in hospitals, care homes and prisons.

20. Article 8 ECHR rights may be violated by excessive or unnecessary interferences with private life in the application of the restrictions by authorities such as the police or by any interference that is not 'in accordance with the law'. Therefore were the police to seek to restrict a person's family or private life by enforcing 'rules' that were not reflected in the law in force, then this would be an unjustified interference with that person's right to private or family life. This could arise, for example, where the police seek to enforce requirements not reflected in the law, but merely in guidance or a press statement. There have been a number of examples of such conduct, such as when Northamptonshire's Chief Constable threatened to search people's shopping trolleys to ensure they were only buying "essential" items and to mount roadblocks to stop non-essential travel—neither of which were prohibited by law.²⁴

21. The fact that there is no adequate mechanism to seek a review of a FPN other than through a criminal prosecution makes this all the more troubling. It significantly increases the risk that breaches of human rights will not be remedied.

No punishment without law (Article 7 ECHR)

22. The enforcement of the coronavirus Regulations has the potential to raise rule of law concerns due to confusion and ambiguity as to what has been prohibited by law, as opposed to what is contained in "guidance". Where the authorities, such as the police, have sought to penalise people for behaviour that is not prohibited by law, then this risks breaching Article 7 ECHR ("no punishment without law").

23. Article 7 ECHR provides: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence... at the time when it was committed". This embodies the principles that "only the law can define a crime and prescribe a penalty and that the criminal law must not be extensively construed

23 Joint Committee on Human Rights, Seventh Report of Session 2019–21, [The Government's response to COVID-19: human rights implications](#), HC 265 / HL Paper 125

24 ["Police threat to inspect shopping and penalise sunbathers during coronavirus lockdown criticised"](#), The Telegraph, 9 April 2020

to an accused person's disadvantage".²⁵ Where FPNs are issued by the police for behaviour that is considered to be in breach of guidance or in breach of 'the spirit' of lockdown, but is not actually prohibited by law, then Article 7 ECHR may be engaged.

24. The concept of law and the principle of legality require that the law is sufficiently accessible and foreseeable and that any offences are clearly defined. Failings in these respects, resulting in insufficient "quality of law" can constitute a breach of Article 7 ECHR.²⁶ To the extent that it has at times been difficult to ascertain what conduct is prohibited by the restrictions contained in the coronavirus Regulations and to the extent that there has been public confusion as to what is prohibited, there could be concerns as to whether these laws have been sufficiently accessible, foreseeable and clearly defined, as is required by Article 7 ECHR. Therefore, efforts to impose penalties or otherwise enforce lockdown 'rules' where those 'rules' were not sufficiently accessible, foreseeable or clearly defined could constitute a breach of Article 7 ECHR.

The right to a fair trial (Article 6 ECHR)

25. The right to a fair trial is guaranteed to anyone subjected to a criminal charge (or in its civil form, to anyone whose civil rights or obligations are determined). Issuing an FPN amounts to a criminal charge, and the general position is that Article 6 ECHR rights are guaranteed by the ability to opt for a criminal trial where those rights, such as the presumption of innocence and the right to legal representation and to equality of arms, will be respected.²⁷ However, whether Article 6 ECHR is properly protected when an FPN recipient is unaware of their right to not pay the FPN and risk prosecution, or too intimidated by the risk of a criminal record to challenge the FPN at trial, is questionable.

26. FPNs as an approach have always blurred, somewhat, the distinction between administrative law and criminal law. They have traditionally been used in relation to simpler, often strict liability, offences, such as speeding, where it was more clear-cut as to what constituted the offending behaviour and the severity of it. It is doubtful whether FPNs are really suited for use with offences such as those relating to the restrictions under the coronavirus Regulations. Under the coronavirus Regulations, there is some ambiguity or subjectivity as to exactly what would constitute an offence, for example, whether certain conduct is, or is not, a "reasonable excuse" for being outside, or for participating in a gathering. The enforcement of such laws is better suited to the protections offered by involvement of the CPS and the courts.

27. Moreover, it is also questionable whether the FPN process is appropriate at all when the potential penalty is as high as £10,000. The police have no discretion to issue an FPN of a lower value than £10,000 for certain offences under the coronavirus Regulations,²⁸ even where there may be mitigating factors that would make such a fine wholly unreasonable and disproportionate. These large fines are for non-imprisonable offences. If a person went to court, their fine would likely be much smaller because courts assess fines by taking

25 European Convention on Human Rights, [Guide on Article 7 of the European Convention on Human Rights](#), para 2

26 Insufficient "quality of law" can also result in a breach of any other Convention right that is interfered with.

27 *Jordan Queen v The Lord Advocate and Others* [2020] CSIH 15; *Ozturk v Germany*, ECHR [1984] (Application no. 8544/79).

28 See, for example, Regulation 15 of The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 ([SI 2020/364](#)).

into account the seriousness of the offence and also the financial circumstances of the offender.²⁹ This raises significant concerns about the proportionality of these high value FPNs, as applied in individual cases, and therefore their legality.

The principle of non-discrimination in the enjoyment of other human rights (Article 14 ECHR)

28. Article 14 ECHR provides for protection from discrimination in the application of other ECHR rights. Were the rights guaranteed by the ECHR (as above) being respected unequally on the basis of factors such as, sex, race, age or other status without justification, then Article 14 ECHR would be breached. For example, if Black males, or young people were being given disproportionately more FPNs for breaching coronavirus Regulations by gathering with family and friends, this could amount to a breach of Article 14 ECHR taken together with Article 8 ECHR.

29. Given that the statistics, which we cover in detail below, show that a disproportionate number of younger people have been receiving FPNs, as well as males and those of Black or Asian ethnic origin, then this could lead to concerns that the rules and their enforcement are having a disproportionate and discriminatory impact, for example, on their Article 8 ECHR rights.

29 Sentencing Act 2020, [section 125](#)

3 Policing the pandemic and FPNs

Policing using the “Four Es”

30. In April 2020 Dame Cressida Dick, Commissioner of the Metropolitan Police, set out the approach to policing the pandemic as “to engage, explain, encourage and, only if absolutely necessary, enforce and this seems to be working well.”³⁰ This approach is known as the “Four Es”. Assistant Chief Constable Owen Weatherill of the National Police Coordination Centre (the NPoCC) further described the Four Es as “a core element that underpins all the guidance that we push out to officers”.³¹ The police have some discretion, as they do with other matters, as to whether a person breaching lockdown restrictions should be issued with an FPN or whether they should be given advice or a warning, but must use this discretion within the law.

31. In evidence to us, ACC Weatherill cited statistics to demonstrate that the police dealt with the majority of cases through engaging, explaining and encouraging. Of around 74,000 interactions with members of the public, British Transport Police (BTP) issued only 173 FPNs (0.2%). Chief Constable Harrington, Public Order and Public Safety Lead and the National Police Chiefs Council (the NPCC) also provided statistics for Essex, where 929 FPNs have been issued from over 37,000 interactions (2.5%).³² This is an encouraging pattern, suggesting the four Es have been used effectively with police successfully managing most interactions without resorting to a penalty. However, equivalent statistics are not in the public domain for most other forces and the BTP’s remit means they are perhaps likely to come across different types of breaches to other forces.

32. On 20 April, Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), published a report analysing the police response to the covid-19 pandemic in 2020.³³ This report found that “all forces adopted the Four Es approach” but noted that officers “found it difficult to explain, engage and encourage when faced with the large number of changes.” Gracie Bradley, Interim Director of Liberty raised concerns about how well the four Es model was being followed:

“In Liberty’s view, the four Es model is very good in principle. From what we have seen, it has not worked hugely well in practice. It has not been applied consistently across forces”.³⁴

33. The NPCC publishes monthly statistics on the use of FPNs under coronavirus Regulations which showed that 85,975 FPNs were issued in England between 27 March 2020 and 14 March 2021.³⁵ Unsurprisingly, most FPNs have been issued in periods of national lockdown when restrictions have been tightest.

30 [Letter from Cressida Dick, Commissioner of the Metropolis to Rt Hon Harriet Harman MP, Chair, regarding guidance dated 24 April 2020](#). The NPCC also published an explainer of the January lockdown regulations which outlines the four Es model: College of Policing, NPCC, [Tier 4 National Lockdown](#), 20 January 2021

31 [Q 32](#)

32 [Q 32](#). -It was not specified over what period these interactions had taken place.

33 Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [Policing in the pandemic – The police response to the coronavirus pandemic during 2020](#), 20 April 2021.

34 [Q 22](#)

35 National Police Chiefs’ Council [Fixed penalty notices issued under COVID-19 emergency health regulations by police](#), 25 March 2021

34. The police have issued significantly more FPNs later in the pandemic than in the beginning. Around 55% of the total FPNs issued during the pandemic up to 14 March were recorded as being given out between 17 January and 14 March 2021. This may in part reflect lessening compliance from a public fatigued with the restrictions, but may also reflect the shift in approach set out in the statement by Metropolitan Police Commissioner Dame Cressida Dick, that police would start moving faster to enforcement action, including FPNs, at the start of this year:

“It is preposterous to me that anyone could be unaware of our duty to do all we can to stop the spread of the virus. We have been clear that those who breach Covid-19 legislation are increasingly likely to face fines. We will still be engaging, explaining and encouraging but those who break the rules or refuse to comply where they should without good reason will find officers moving much more quickly to enforcement action.”³⁶

35. Martin Hewitt, Chair of the NPCC also implied that while the ‘Four Es’ are still being followed, officers would be moving to enforcement faster than they may have previously with those who breach the coronavirus Regulations:

“While we are still following our 4 E model of engage, explain, encourage and only using enforcement as a last resort, officers are not getting into a debate or discussion with [a small number of completely defiant and irresponsible] people about what the rules are or whether they are necessary. We all know we must wear a face covering in a shop or on a bus and we all know we can’t meet up in groups.”³⁷

36. The number of FPNs issued by the police in England was at its highest during the January-March 2021 lockdown. We hope that the police are still engaging, explaining and encouraging rather than moving quickly on to issuing fines which can penalise and potentially criminalise a wide range of behaviour.

FPNs issued by local authorities and others

37. Local authorities may designate a “relevant person” to enforce compliance with restrictions on businesses, such as ensuring customers wear face coverings, and closing non-essential venues. The Government expanded these powers in December 2020 “to support local authorities’ efforts to maintain COVID-secure environments in their area”.³⁸ “Relevant persons” designated by local authorities cannot issue FPNs for any other offences.³⁹ The Secretary of State also has the power to designate an individual to enforce the Regulations, but this power does not seem to have been used.⁴⁰

36 “*Police need a jab*”, Cressida Dick, The Times, 12 January 2021 [paywall]

37 National Police Chiefs’ Council, [Update on Coronavirus FPNs issued by police](https://www.npcc.police.uk/news/2021/02/25/update-on-coronavirus-fpn-issued-by-police/) (npcc.police.uk), 25 February 2021

38 Department of Health and Social Care, [Guidance—Additional COVID-19 local authority enforcement powers](https://www.gov.uk/guidance/additional-covid-19-local-authority-enforcement-powers), 4 December 2020

39 The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, (SI 2020/1374), Regulation 9, paragraph (9)(b)(iii) and (1) and regulation 11, paragraphs (9)(a)(iv) and (10), which is now found in The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (SI 2020/364), Regulations 10 and 12.

40 The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, (SI 2020/1374), Regulation 11 paragraph 9(a)(iii). PQ 156233 [on Coronavirus: Fines], 12 March 2021; which is now found in The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (SI 2020/364), Regulation 12.

38. The NPCC publish regular statistics on how many FPNs are issued by police forces under the coronavirus Regulations. There is no equivalent data we are aware of available on the number of FPNs issued by local authorities. The lack of data on the use of these powers is unacceptable. *In order to understand the impact of the enforcement of the coronavirus Regulations on businesses and the people who own, work at, or visit them, local authorities must publish data on the number of FPNs issued by individuals to whom they have designated powers. The data should be collated by the Ministry of Housing, Communities and Local Government and published regularly.*

4 Is there unlawful discrimination in the use of FPNs?

39. The statistics published by the NPCC show that FPNs are disproportionately issued to certain groups in society: young people; people from certain racial or ethnic minority groups; and men.⁴¹ Whilst there could be a number of reasons as to why this is the case, such disparities can raise human rights concerns under Article 14 ECHR. For example, if Black males, or young people were being given disproportionately more FPNs for breaching coronavirus Regulations by gathering with family and friends, this could amount to a breach of Article 14 ECHR taken together with Article 8 ECHR.

Age

40. Younger people are more likely to be issued FPNs than older people. Of all FPNs issued up to 14 March, 46% went to those aged 18–24, 17% to those aged 25–29 and 12% to those aged 30–34.⁴²

41. Gracie Bradley suggested young people are perhaps less able to articulate why they might have a reasonable excuse to leave the house and therefore more likely to end up with a fine:

“When you consider who is potentially most likely to understand the rules, but also who has the most power to potentially challenge or give a valid reason for being out and about, younger people have less of that kind of power. As far as I am aware, there has not been a huge amount of targeted information to younger people, so we can see that it may have been more difficult for them to explain what they were out and about doing.”⁴³

42. It is possible that young people are receiving proportionally more FPNs because young people’s infringements of the rules are by their nature more likely to be picked up by police. For example, they may be more likely to socialise outside as they have less private space of their own—potentially sharing homes with families, friends or near-strangers in shared accommodation—or living in very small, cramped accommodation. As such, socialising would be more noticeable to police. In contrast, those with their own homes might be more likely to break the rules in a much less visible way. However, more detailed information, research and analysis would be required to understand fully why young people are receiving disproportionately more FPNs.

Gender

43. Men received 72% of FPNs issued under coronavirus Regulations up until 14 March 2021.⁴⁴ This is consistent with the pattern of the criminal justice system where men are significantly more likely to be engaged at every stage.⁴⁵ However, given how the restrictions

41 National Police Chiefs’ Council [Fixed penalty notices issued under COVID-19 emergency health regulations by police](#) 25 March 2021

42 National Police Chiefs’ Council [Fixed penalty notices issued under COVID-19 emergency health regulations by police](#) 25 March 2021

43 [Q 26](#)

44 1% have gone to those recorded as either “unknown” or “other” in the NPCC categorisation.

45 Men made up 85% of arrests, 74% of prosecutions and 95% of the prison population in the UK in 2019.

under the coronavirus Regulations affect basic elements of daily life, this gender divide is surprising. It is difficult to know whether this discrepancy reflects a different approach to complying with the restrictions as between men and women, or perhaps a different approach to enforcement by the police, based on gender.

Ethnicity

44. Those who belong to certain ethnic minority groups are over-represented among those who have received FPNs for breaches of the coronavirus Regulations. 22% of FPNs issued in England went to people whose ethnicity was not recorded, but where an individual provided an ethnicity, the NPCC figures show 75% of FPNs issued up to 14 March were issued to white people, 13% went to Asian people, and 8% to Black people.⁴⁶ This is compared to general population figures of 86% white, 7.5% Asian and 3.3% Black.⁴⁷

45. The NPCC conducted a review into potential disproportionality in July 2020.⁴⁸ This found that people from all BAME backgrounds were issued FPNs at a rate of 4.0 per 10,000 of the population, compared to 2.5 per 10,000 for white people. FPNs were issued to Black and Asian people at a rate 1.8 times higher than white people. The review compared this disparity to Stop and Search, where Black people are 9.7 times more likely to be stopped than white people. This comparison is not comforting; in a context where we are criminalising what would otherwise be everyday behaviours, any disparity is deeply problematic. Gracie Bradley told us that, given the pre-existing bias of the criminal justice system, such a disparity was predictable, and steps should have been taken to mitigate it:

“I think it is important to reflect on this disproportionality in its context, because the overpolicing of certain communities is not a new development. Overall rates of stop and search, for example, have decreased since 2014, but race disproportionality in the use of the powers has risen. Despite a dramatic drop in people being outdoors during the first lockdown, use of stop and search in London surged to its highest in over seven years. We have not seen necessarily less police activity, and Liberty’s view is that the Government failed to take steps to assess, address or mitigate the foreseeable impact of race discrimination when the regulations were made and additionally since they have been implemented.”⁴⁹

Socio-economic status

46. Research conducted in Scotland showed that people living in the 10% most deprived Scottish neighbourhoods were 11.2 times more likely to receive an FPN than those living in the 10% least deprived Scottish neighbourhoods.⁵⁰ ONS data in England and Wales showed that people in the most deprived areas were twice as likely to die of covid-19 than those in the least deprived areas.⁵¹ The disproportionate application of FPNs could

46 National Police Chiefs’ Council, [Fixed penalty notices issued under COVID-19 emergency health regulations by police](#) 25 March 2021

47 Gov.uk, [Population of England and Wales](#), 1 August 2018

48 National Police Chiefs’ Council, [Policing the Pandemic](#), 27 July 2020

49 [Q 26](#)

50 Understanding Inequalities, Professor Susan McVie OBE FRSE, [Second data report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#), 24 February 2021

51 Office for National Statistics, [Deaths involving COVID-19 by local area and socioeconomic deprivation: deaths occurring between 1 March and 31 May 2020](#), 12 June 2020

be another way in which the pandemic, and the Government response to it, is being experienced unequally by the most deprived. Better data is required to understand the extent of the issue.

Conclusions

47. Some groups in society seem more likely to receive FPNs under coronavirus Regulations than others. But not enough is known about why this is the case. Kirsty Brimelow QC of Doughty Street Chambers explained how it is difficult to draw any conclusions in the absence of thorough analysis of the disproportionate application of FPNs by the NPCC. She told us that analysis was needed, “Then it would be clearer whether what we are seeing is a matter of discrimination, and whether it is direct or indirect discrimination”.⁵²

48. The way that FPNs have been used under coronavirus Regulations has disproportionately penalised some groups over others. Given the human rights engaged by the enforcement of the coronavirus Regulations, the disproportionate use of FPNs seems likely to engage the principle of non-discrimination in the enjoyment of other human rights (Article 14 ECHR).

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

5 Wrongly issued FPNs

50. There have been cases of coronavirus Regulations being wrongly applied and FPNs incorrectly issued. As we set out above, the coronavirus Regulations themselves interfere with the right to private and family life (Article 8 ECHR). Where an FPN is issued for conduct that is not prohibited by the Regulations, this becomes an unlawful interference with Article 8 ECHR. Such an unlawful FPN also potentially engages Article 7 ECHR (“no punishment without law”).

How many FPNs have been wrongly issued?

51. Throughout the pandemic, the CPS has reviewed all cases where a person decided to contest or not pay an FPN and was prosecuted in open court. Since 3 June 2020, and more so since 9 February, many cases have not reached (and will not reach) open court and have not been reviewed by the CPS.⁵³ This is because the Attorney General passed statutory instruments enabling offences under different coronavirus Regulations to be prosecuted through the single justice procedure.⁵⁴ The single justice procedure is where a magistrate (and legal advisor) reads the details of the case and delivers a verdict without hearing from the individual charged. If the individual pleads not guilty or does not want to be dealt with by the single justice procedure, then they will still be prosecuted in open court. The proportion of incorrect charges identified by the CPS is high. It was 25% in January 2021,⁵⁵ and 27% in February 2021.⁵⁶

52. The majority of FPNs are not challenged in such a way as to lead to review by the CPS. For example, in September 2020 while 122 cases were reviewed by the CPS,⁵⁷ 929 cases under the coronavirus Regulations were dealt with by the single justice procedure.⁵⁸ None of these 929 cases as we understand it were reviewed by the CPS. Given the likelihood of errors, and the numbers of mistakes found by the CPS in the cases they review, it is concerning that so many completed prosecutions lack this safeguard.

53. As there are fewer safeguards for an FPN that is simply paid, the numbers issued incorrectly could be even higher. Kirsty Brimelow QC told us:

“I do not think that those statistics are usual in a criminal justice context. It is not usual at all to see the law being repeatedly unlawfully applied. It demonstrates that the safeguards are not working within the criminal justice system. It is highly likely, where there are no safeguards in the application of fixed penalty notices, where there is no lawyer overseeing them, that thousands of those fixed penalty notices have been unlawfully issued.”⁵⁹

53 Written evidence from the Crown Prosecution Service to the Constitution Committee, (CIC0483), paras 34–37, 23 December 2020.

54 The Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2020, (SI 2020/562). The effect of this instrument is explained in this letter from the Attorney General, 3 June 2020; and The Prosecution of Offences Act 1985 (Specified Proceedings) (Coronavirus) (Amendment) Order 2021, (SI 2021/126). The effect of this instrument is explained in this letter from the Attorney General.

55 Crown Prosecution Service, [January’s coronavirus review findings](#) | The Crown Prosecution Service, 22 February 2021

56 The Crown Prosecution Service, [February’s coronavirus review findings](#), 22 March 2021

57 The Crown Prosecution Service, [September’s coronavirus review findings](#), 28 October 2020

58 [PQ 143756](#) [on Prosecutions], 1 February 2021. September is the most recent month for which statistics are available.

59 [Q 24](#)

54. The FPNs reviewed by the CPS have, according to the NPCC, already passed through a “force level review”. The NPCC website explains:

“if an FPN is contested or not complied with within the 28 day payment period, the case becomes a matter for HM Courts and Tribunals Service following a force level review.”⁶⁰

55. It is not clear what this “force level review” involves but if, after this process, the CPS is still finding large numbers of incorrectly issued penalties this is clearly problematic.

56. **CPS data shows that a significant proportion of the cases which go to open court are incorrectly charged. These cases will have been through more safeguards than those penalties dealt with by payment or through the single justice procedure. The NPCC must undertake a review to understand why police are issuing so many incorrect FPNs and then take appropriate action based on that review to prevent such mistakes from occurring in the future.**

57. The CPS also reviews every case brought under the Coronavirus Act 2020 as these are prosecuted in court rather than dealt with through the FPN process. The numbers show that all of the 252 charges for an offence under the Act (relating to infectious and potentially infectious persons) were wrongly charged in the period between March 2020 and February 2021.⁶¹ This raises serious questions about the efficacy and utility of the legislation. Individuals have suffered the stress of a prosecution that was wrongly brought, and the costs of legal representation. Each case is an administrative burden and cost for the CPS and the courts in trying to untangle these incorrect charges. **It is astonishing that the Coronavirus Act is still being misunderstood and wrongly applied by police to such an extent that every single criminal charge brought under the Act has been brought incorrectly. While the coronavirus Regulations have changed frequently, the Act has not, and there is no reason for such mistakes to continue.**

60 National Police Chiefs' Council, [Update on national Crime Trends, and Fixed Penalty Notices issued under Covid Regulations](#), 8 January 2021

61 This figure was calculated by adding together the number of Coronavirus Act charges reviewed by the CPS each month: See for example, Crown Prosecution Service, [January's coronavirus review findings](#), 22 February 2021.

Box 1: Case study: FPNs issued to two women in Derbyshire, January 2021

In January 2021 the media widely reported the case of two women who had gone for a walk to Foremark Reservoir, a local beauty spot in Derbyshire, and were issued FPNs that were later rescinded. The women had driven about seven miles to the Reservoir, in separate cars. They had coffee with them from home to drink on their walk. They were stopped by the police who issued them each with £200 FPNs. Initially, according to media reports, the police stated that driving a distance to the beauty spot was “not in the spirit” of lockdown and claimed that taking pre-prepared coffees meant the outing constituted a picnic.⁶² At the time, there was no restriction on how far people in England could travel to take exercise, although guidance was to stay local. Two people meeting outside for exercise was a reasonable excuse under the law to leave home, but socialising was not. Several days later the police issued an apology stating the women had not broken any law and the fines were rescinded. The NPCC also sent guidance to Derbyshire Constabulary after the event clarifying that there was no restriction in English law on how far people could be from their home to exercise and FPNs could not be issued for people travelling to exercise.⁶³

Why are FPNs being incorrectly issued?*Rapidly changing law*

58. The unprecedented and changing context of the pandemic has led to frequent changes in the Regulations. This may be understandable, but it puts significant pressure on police forces to understand the new rules and communicate changes to their officers. John Apter noted the lack of time police officers have had to understand the new Regulations before they come into force. He said they often have “very little time, if not no time at all, to digest it.”⁶⁴ This echoed comments made in May 2020 by Martin Hewitt when he apologised for the proportion of incorrect FPNs issued in March and April of that year, “These were unprecedented circumstances in which officers were presented with new powers within days of them being announced. This has all been done at pace and everyone in the Criminal Justice System has had to deal with a new body of legislation, which has undoubtedly led to some confusion.”⁶⁵ Officers were cited in the HMICFRS report as feeling “frequent frustration at the lack of notice they were given about some changes in the law and guidance.”⁶⁶

59. We identified this issue in our September 2020 report on the Human Rights Implications of the Government Response to Covid-19 and concluded:

“it is imperative that Government provide sufficient warning of changes to the law, and coordinate with appropriate bodies, so that police forces and bodies such as the NPCC and CoP [College of Policing] have time to understand and explain those changes.”⁶⁷

62 [Matt Hancock backs police after £200 fine for women who drove five miles for a walk](#), The Telegraph, 10 January 2021 [paywall]

63 Derbyshire Constabulary, [Force welcomes new guidance from NPCC about travelling during lockdown](#), 8 January 2021

64 [Q 35](#)

65 Crown Prosecution Service, [CPS announces review findings for first 200 cases under coronavirus laws](#), 15 May 2020

66 Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, [Policing in the pandemic—The police response to the coronavirus pandemic during 2020](#), 20 April 2021.

67 Joint Committee on Human Rights, Seventh Report of Session 2019–21, [The Government's response to COVID-19: human rights implications](#), HC 265 / HL Paper 125, p 4.

Clarity in law

60. Ambiguities in the law cause problems for the police and public. The coronavirus Regulations have been (in)famously difficult to interpret. When exactly does exercise stop being exercise? How long can someone rest while exercising with a friend before they are no longer exercising? What exactly is a “substantial meal”?⁶⁸ Such questions may appear frivolous but are not when criminal sanction may result. It is deeply concerning that laws lacking sufficient clarity are being promulgated and even more concerning that people may be receiving criminal sanctions based on unclear laws. To do so runs up against both the rule of law and Article 7 ECHR. All possible steps must be taken to avoid such ambiguities.

61. John Apter, Chair of the Police Federation, told us that “A recent survey that we did showed that 9 out of 10 officers felt that the regulations were not clear. They are the ones who are having to deal with it out on the street.”⁶⁹ This raises questions about the accuracy of the FPNs and as such it seems likely that people are being penalised and even criminalised outside of the law in breach of Articles 8 and 7 ECHR, as well as any other ECHR rights that may be engaged, such as Article 10 and 11 ECHR.

62. Far more must be done by Government and police forces to ensure officers understand the Regulations they are asked to enforce. This is crucial to ensure that there is no punishment without law (Article 7 ECHR) and no unjustified interference with individual’s right to family and private life (Article 8 ECHR).

Divergence between guidance and the law

63. Government guidance has at times been more restrictive than the legislation. There may be good reasons for some of this, as the Government may wish to encourage people to avoid something where possible, but where it would be disproportionate to establish an outright ban. But having different requirements in law than in guidance, and referring to both interchangeably as “the rules,” has led to misunderstandings. Consequently, the police and public have at times misunderstood what the law requires, often with serious consequences for those involved. The HMICFRS analysis found

“Their (police officers’) 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.”⁷⁰

64. Gracie Bradley told us “there has been widespread confusion on the part of more or less everybody about what is law and what is guidance”.⁷¹ Kirsty Brimelow QC even suggested this confusion extended to the level of judges, initially in response to a question

⁶⁸ [“Scotch egg is definitely a substantial meal, says Michael Gove”, The Guardian, 1 December 2020](#)

⁶⁹ [Q 35](#)

⁷⁰ Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [Policing in the pandemic—The police response to the coronavirus pandemic during 2020](#), 20 April 2021.

⁷¹ [Q 22](#)

about the right to protest, but clarifying that it went further, “People are just confused. That goes all the way to those who are sitting in positions as district judges and similarly with the fixed penalty notices.”⁷²

Government communications

65. It is not uncommon for guidance to go into more detail or to give examples of how the law might apply to a given case. Sometimes guidance can also contain advice as to what conduct might be best practice, going beyond what is legally required. However, it needs to be clear whether it is advisory or reflective of the law, otherwise there will be a lack of clarity as to the law and consequent real risks for the rule of law. The principal confusion has been caused by Government messaging not drawing any distinction between what is law and what is advice or guidance.

66. Indeed, Ministers have on occasion specifically endorsed police actions that have gone beyond the law. In the case in Derbyshire set out in Box 1 above the Secretary of State for Health and Social care said that he “absolutely backs” the police who issued the FPNs, despite the police force later rescinding the FPNs because the women involved had not broken any law.⁷³ The Home Secretary has also publicly described large gatherings as “illegal” and “unlawful”, when the law did not impose a blanket ban.⁷⁴ The HMICFRS report criticised Government communications for seeming to create criminal offences; it reiterated: “Ministers may create criminal offences only if authorised by Parliament to do so; they may not do so by the simple expedient of demanding action from a podium or behind a lectern.”⁷⁵ Ministers should be clear that it is unlawful for the police to issue sanctions for behaviour that does not breach the law—to do so runs counter to the principle of legality, the rule of law and the protection of human rights. We made the same point regarding to the right to protest as protected by Articles 10 and 11 of the ECHR in our March 2021 report.⁷⁶

67. As we noted in our April 2020 Chair’s briefing note, and recommended in our September 2020 report, more care must be taken by the Government to distinguish between advice, guidance and the law. The public cannot be expected to know the law if the guidance does not reflect the law, and politicians’ statements match neither. It is disappointing that the problem has persisted.

72 [Q 29](#)

73 [“Matt Hancock backs police after £200 fine for women who drove five miles for a walk”](#), The Telegraph, 10 January 2021 [paywall]

74 Home Office, [Home Secretary: op-ed on protests](#), 8 June 2020; @pritipatel, (2020, June 13), [We are in the grip of an unprecedented national health emergency](#)

75 Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [Policing in the pandemic—The police response to the coronavirus pandemic during 2020](#), 20 April 2021.

76 Joint Committee on Human Rights, Thirteenth Report of Session 2019–21, [The Government response to covid-19: freedom of assembly and the right to protest](#), HC 1328/HL Paper 252

6 Inadequate review and appeal process

68. There is no formal process for reviewing or appealing FPNs at the request of the recipient. If a person wishes to challenge an FPN, the only way to do so is through judicial review. This is an expensive process which may not necessarily proceed as there is an ‘alternative remedy’, namely not paying the FPN and so risking prosecution. However, it seems likely that for most people, the stress of a criminal prosecution combined with the significant life impacts of a criminal conviction is such a significant risk that they would rather pay an FPN (even an unjustified FPN), meaning this avenue is not in reality available to them.

Reviews before an FPN is sent out

69. The first step in the FPN process is a police officer notifying an individual that they will be issued an FPN. In his evidence to us, ACC Owen Weatherill, set out that reviews should take place before an FPN is issued to an individual:

“To unpack some of the process that we apply, when a police force issues a ticket at a local level it will go through a force-level review process before it is referred up to the body that issues the ticket formally for us, which is done at a national level called ACRO [ACRO Criminal Records Office]. There is a review first in the force. If it gets referred up from the force, there is then a further review, which is done at a national level within ACRO, before the formal ticket is issued. There are two in-house reviews, both of which designed to make sure that the FPN complies with the regulations and that the evidence is sufficient to meet the standard that needs to exist for that offence.”⁷⁷

70. We are unclear as to what the police review prior to an FPN being sent entails and are surprised we have managed to find no public record of these reviews. We are also not aware of individuals issued with FPNs being invited to contribute to such reviews, or being able to ask for the circumstances in which the FPN was issued to be reviewed. This would seem an essential part of any such review as many of the restrictions do not apply if the individual has a “reasonable excuse”.

71. The reference by ACC Owen Weatherill to a review by ACRO is particularly confusing because, as we understand it, they merely process the FPNs, send them to the individual, and deal with their eventual payment. Indeed, on ACRO’s “Covid-19 fixed penalty notice (FPN) frequently asked questions” webpage, it states “ACRO does not have the authority to review, investigate or cancel your FPN.”⁷⁸

72. The nature and extent of any police reviews prior to the FPN being sent are not transparent. There needs to be a clear internal review process in place before the FPN is issued. Without such a consistent internal review process there are significant risks of the law being misapplied and people penalised for what is actually lawful conduct.

⁷⁷ Q 34

⁷⁸ ACRO Criminal Records Office, [Covid-19 fixed penalty notice \(FPN\) frequently asked questions](#), 8 April 2021

Reviews before proceeding to prosecution

73. We are aware that police forces conduct a review of unpaid FPNs before they refer a prosecution to the CPS, although what this review entails is unclear.⁷⁹ If 27% of charges checked by the CPS in February 2021 were brought incorrectly, after having been reviewed by the police to check they are correct, it appears that these reviews are not particularly effective.

74. Kirsty Brimelow QC told us how she and others had written to the Chair of the NPCC and “suggested that there be panels set up by each police force where those who have been issued with fixed penalty notices could submit their fixed penalty notice for review... The response from Martin Hewitt to date has been that they will not take that step”.⁸⁰

Review at prosecution

75. Finally, the CPS reviews cases that proceed to prosecution. Initially the CPS reviewed all prosecutions brought under the Regulations, but as outlined above, since 3 June, many cases have been dealt with under the single justice procedure and these are not reviewed by the CPS. These reviews alone are clearly insufficient. Significant resource will have been used by proceeding with an erroneous prosecution that may well have been identified as such with better safeguards earlier in the system. Individuals will have been put through the unenviable and stressful process of the threat of prosecution.

Challenging an FPN

76. For most people, the main way of arguing that an FPN was wrongly issued is to be prosecuted in court for that offence and to mount a defence during that criminal prosecution. If an individual is not successful in justifying their defence in court (e.g. of a ‘reasonable excuse’ for being outside), this results in a conviction, a criminal record, and they must pay any fine awarded by the court. The amount or payment method of a fine will be set by the court (rather than the FPN values set by the relevant regulations) and will take into account factors such as personal income and the exact nature of the breach. Fines awarded by a court may therefore be less costly than FPNs. FPNs are normally considered a diversion from the traditional justice system, but because a prosecution in court is the only option available to those who do not wish to pay the FPN, this distinction has been eroded. Kirsty Brimelow QC explained:

“fixed penalty notices were set out, and they are set out still in the regulations as a diversion from the criminal justice system. What has developed is that because of the way fixed penalty notices are set up they have become part of the criminal justice system”.⁸¹

77. Under the current system, there is no adequate administrative method for challenging an FPN, but individuals can avoid a criminal record by simply paying an FPN. This strains compliance with ECHR rights, because, the threat of a criminal prosecution creates a strong incentive to not contest an FPN, even if an individual believes it was wrongly issued. As Kirsty Brimelow QC told us:

79 National Police Chiefs’ Council, [Update on Coronavirus FPNs issued by police](#), 25 February 2021; ACRO Criminal Records Office, [Covid-19 fixed penalty notice \(FPN\) frequently asked questions](#), 8 April 2021

80 [Q 24](#)

81 [Q 22](#)

“most people, even if they have been wrongly issued an FPN, will pay the fine rather than risk being prosecuted and then getting a criminal record and conviction, and those without any money are in an impossible situation.”⁸²

78. Lochlinn Parker, Head of Civil Liberties at ITN Solicitors, also pointed out that when someone contests an FPN in court, they could be left with significant legal costs and this can further dissuade people from contesting even unlawful FPNs:

“You will end up paying possibly the same as the fine you may be seeking to avoid in legal fees, which you will not necessarily get back, or at least in whole. A lot of people are left without legal advice and are left vulnerable as a result, and most likely take the fixed penalty notice to avoid the fear of conviction.”⁸³

Informal methods of challenging FPNs

79. We heard evidence from Kirsty Brimelow QC of informal approaches leading to police forces dropping FPNs in some instances:

“An informal process has grown up among lawyers whereby we have been writing informally to the specific police force and stating why it has the law wrong, or in some cases that the FPN is not proportionate or just, and asking that it sets it aside. On quite a number of those occasions that has been successful, so we have developed an informal system. An informal system is necessarily arbitrary, and we are seeing a difference in attitudes across different forces. That is not really a sustainable or positive solution, but it is one that we are taking forward. I should add that we are all acting pro bono. It is really a public service, and that should not be happening either when people are already suffering different stresses due to the pandemic itself.”⁸⁴

80. Lochlinn Parker additionally told us that a lot of this work was done pro bono as legal aid was not available for it:

“The potential of having a fine in the magistrates’ court means that it does not meet the interests of justice test and criminal legal aid is not available.”⁸⁵

81. An informal, unpublicised and seemingly ad hoc process is neither an adequate nor sustainable way of delivering justice. It will necessarily result in unequal outcomes between those who have legal representatives who seek out ways of making such informal approaches to local police forces, and those who do not. Moreover, it appears to rely entirely on legal representatives doing work, often pro bono, to rectify mistakes that the police are not pro-actively rectifying themselves.

Urgent need for a review mechanism

82. In our September 2020 report, we concluded that “There is currently no realistic way for people to challenge FPNs which can now result in fines of over £10,000 in some cases.

82 [Q 25](#)

83 [Q 25](#)

84 [Q 25](#)

85 [Q 25](#)

This will invariably lead to injustice as members of the public who have been unfairly targeted with an FPN have no means of redress and police will know that their actions are unlikely to be scrutinised”.⁸⁶ Our view is unchanged.

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

Concerns over the single justice procedure

84. Where an individual pleads guilty or does not engage with the criminal process, prosecutions under certain coronavirus Regulations may take place using the single justice procedure.⁸⁷ This means that rather than being dealt with in an open court, a single magistrate (and legal advisor) reads the details of the case and delivers a verdict.⁸⁸ This happens without the charged individual attending to put forward any information in their defence, or indeed to explain what their “reasonable excuse” might have been for whatever conduct is alleged to form an offence. In the three months of July to September 2020, 1,086 defendants were tried by this method.⁸⁹ In the same three months 396 prosecutions were reviewed by the CPS after reaching court.⁹⁰

85. Whilst individuals can request for their case not to be dealt with through the single justice procedure, there is a risk that those who are not fully engaged with the process, as well as those who do not understand the implications of its use, may well find themselves found guilty through a lack of action on their part. In July 100% of those charged under the single justice procedure entered no plea and in August and September 88% entered no plea.⁹¹ A defendant who was unaware of the proceedings can re-open them by swearing a declaration to that effect and has the option of appealing to the Crown Court.

86. There are real concerns about the fairness of these hearings for an area of law whose enforcement has been riddled with errors, and where there often needs to be careful consideration of whether the accused had a “reasonable excuse” in order for an offence to have been committed. These cases are also not reviewed by the CPS. A newspaper investigation from October 2020 identified seven cases in the previous month where individuals charged under the various coronavirus laws in Westminster Magistrates Court had been found guilty incorrectly.⁹²

86 Joint Committee on Human Rights, Seventh Report of Session 2019–21, [The Government's response to COVID-19: human rights implications](#), HC 265 / HL Paper 125

87 The Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2020, ([SI 2020/562](#)); The Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2020, ([SI 2021/126](#)).

88 Gov.uk, Blog—Inside HMCTS, [Adapting the single justice procedure for Coronavirus \(COVID-19\)](#), 1 April 2021

89 [PQ 143756](#) [on Prosecutions], 1 February 2021. There is currently only data available on the use of the single justice procedure from July to September 2020.

90 Crown Prosecution Service, [July's coronavirus review findings](#), 14 August 2020; Crown Prosecution Service, [August's coronavirus review findings](#), 25 September 2020; Crown Prosecution Service, [September's coronavirus review findings](#), 28 October 2020. These are the most recent statistics.

91 [PQ 143756](#) [on Prosecutions], 1 February 2021

92 [“Covid rule breakers targeted in secret London prosecutions”](#), Evening Standard, 16 October 2020

87. We are concerned that the single justice procedure is an inadequate tool to provide the necessary fair trial protections for people accused of offences that are so poorly understood and lacking in clarity and where so many mistakes have been made by enforcement authorities.

7 The size of the penalties

88. The maximum FPN available under coronavirus Regulations is the £10,000 penalty for organised gathering offences, for providing false or misleading information about one's travel through "red list" countries, entering the country via an undesignated port, as well as for a repeated failure to quarantine. Statistics provided by the NPCC show that 284 £10,000 FPNs had been issued up to 14 March. 1,647 £800 FPNs have also been issued during the same time period.⁹³ The £10,000 penalty is significantly larger than FPNs issued under other legislation. Whilst the size of the penalty may act as a deterrent for behaviour that risks spreading covid-19, there is a question as to whether such a punitive sanction should be issued automatically without any discretion or judicial oversight.

Criminalisation of those who cannot afford to pay

89. There are also fears that penalties are disproportionately being given to those who are least able to pay and in situations where, in other circumstances, police officers could exercise discretion. This is particularly the case for students and young people, many of whom would struggle to pay the £10,000 for organising large gatherings, or indeed some of the smaller penalties available.⁹⁴

90. There have been reports of police repeatedly visiting halls of residence and students being issued with penalty notices for being in the communal areas of shared accommodation.⁹⁵ Halls of residence are where students live—they are their homes—and as such are protected by the right to family life. We have serious doubts as to whether the police should be entering into halls of residence without invitation by the residents. Moreover, issuing penalties to students for being in their living accommodation does seem to be an unduly heavy-handed and disproportionate approach to enforcing the coronavirus Regulations. Those who can least afford this sanction can be left with significant penalties.

91. FPNs of up to £10,000, and the lack of a mechanism to challenge an FPN outside of court, risk criminalising those who are unable to pay these large sums, and those who cannot afford or find appropriate representation. Those with less money may be unable to pay even the smaller penalties and will be forced to risk prosecution while those with more disposable income will simply pay. As the ACRO website states, if a person would like to pay an FPN, but cannot afford to pay in full, they should contest the FPN.⁹⁶

92. This leads to a two-tier system. Those who can afford to pay a penalty can escape criminality. Those who cannot afford to pay the penalty may consequently receive a criminal record along with the damage that this may signal for their future development and career. Evidence from Scotland showed that FPNs are disproportionately going to

93 National Police Chiefs' Council, [Fixed penalty notices issued under COVID-19 emergency health regulations by police](#), 25 March 2021. The number of £10,000 FPNs issued is for England, but it is unclear from how the data has been presented in the release whether the number of £800 FPNs issued is for England and Wales or England only.

94 Covid: Woman fined £10k over Ormskirk 'student birthday party', BBC News, 3 February 2020

95 "People were weeping": Police raid Manchester student common room at 2am and fine students £800 each for 'large gathering', Manchester Evening News, 8 February 2021

96 ACRO Criminal Records Office, [Covid-19 fixed penalty notice \(FPN\) frequently asked questions](#), 8 April 2021

those in the most deprived areas.⁹⁷ A system that punishes poorer people more severely than those with greater economic means is inherently unfair and unjust. The whole FPN process seems to disproportionately impact the least well off.

93. We have significant concerns that large fixed penalties, such as those of £10,000, which are awarded irrespective of the individual's circumstances, risk being inherently unjust. Given all that we know about the flaws in the system of enforcement of the coronavirus Regulations, it is woefully inadequate simply to assert that such FPN fines can be contested in the course of a criminal prosecution for those willing to run the risk of having a criminal record. This can seriously damage the future prospects of those convicted. Such an approach risks casualising criminality for so many, without any adequate appreciation of the significance or proportionality of such measures.

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

Conclusions

95. *There must be a comprehensive review of all FPNs issued under the coronavirus Regulations as soon as is feasible. We have significant concerns about the validity of the FPNs issued, the inadequacies of the review and appeal process, the size of the penalties, and the criminalisation of those who cannot afford to pay. It is also difficult to see why a breach of the coronavirus Regulations would be relevant to someone's future employment prospects or ability to travel to certain countries. We recommend that consideration be given to removing convictions under the coronavirus Regulations from criminal records.*

97 [Understanding Inequalities, Professor Susan McVie OBE FRSE, Police use of Fixed Penalty Notices under the Covid-19 regulations in Scotland: A new data report highlights links with deprivation and inequality](#), 19 August 2020

Conclusions and recommendations

Policing the pandemic and FPNs

1. The number of FPNs issued by the police in England was at its highest during the January-March 2021 lockdown. We hope that the police are still engaging, explaining and encouraging rather than moving quickly on to issuing fines which can penalise and potentially criminalise a wide range of behaviour. (Paragraph 36)
2. *In order to understand the impact of the enforcement of the coronavirus Regulations on businesses and the people who own, work at, or visit them, local authorities must publish data on the number of FPNs issued by individuals to whom they have designated powers. The data should be collated by the Ministry of Housing, Communities and Local Government and published regularly.* (Paragraph 38)

Is there unlawful discrimination in the use of FPNs?

3. The way that FPNs have been used under coronavirus Regulations has disproportionately penalised some groups over others. Given the human rights engaged by the enforcement of the coronavirus Regulations, the disproportionate use of FPNs seems likely to engage the principle of non-discrimination in the enjoyment of other human rights (Article 14 ECHR). (Paragraph 48)
4. *The Government must commission research and analysis of the FPNs that have been issued to people by a range of characteristics including age, gender, race and social deprivation. Such analysis must look into the reasons behind such variable rates of enforcement amongst different groups. If this analysis finds that the approach to enforcement, and to issuing FPNs, is discriminatory, swift action must be taken to address this.* (Paragraph 49)

Wrongly issued FPNs

5. CPS data shows that a significant proportion of the cases which go to open court are incorrectly charged. These cases will have been through more safeguards than those penalties dealt with by payment or through the single justice procedure. *The NPCC must undertake a review to understand why police are issuing so many incorrect FPNs and then take appropriate action based on that review to prevent such mistakes from occurring in the future.* (Paragraph 56)
6. It is astonishing that the Coronavirus Act is still being misunderstood and wrongly applied by police to such an extent that every single criminal charge brought under the Act has been brought incorrectly. While the coronavirus Regulations have changed frequently, the Act has not, and there is no reason for such mistakes to continue. (Paragraph 57)
7. Far more must be done by Government and police forces to ensure officers understand the Regulations they are asked to enforce. This is crucial to ensure that there is no punishment without law (Article 7 ECHR) and no unjustified interference with individual's right to family and private life (Article 8 ECHR). (Paragraph 62)

8. As we noted in our April 2020 Chair's briefing note, and recommended in our September 2020 report, more care must be taken by the Government to distinguish between advice, guidance and the law. The public cannot be expected to know the law if the guidance does not reflect the law, and politicians' statements match neither. It is disappointing that the problem has persisted. (Paragraph 67)

Inadequate review and appeal process

9. The nature and extent of any police reviews prior to the FPN being sent are not transparent. There needs to be a clear internal review process in place before the FPN is issued. Without such a consistent internal review process there are significant risks of the law being misapplied and people penalised for what is actually lawful conduct. (Paragraph 72)
10. An informal, unpublicised and seemingly ad hoc process is neither an adequate nor sustainable way of delivering justice. It will necessarily result in unequal outcomes between those who have legal representatives who seek out ways of making such informal approaches to local police forces, and those who do not. Moreover, it appears to rely entirely on legal representatives doing work, often pro bono, to rectify mistakes that the police are not pro-actively rectifying themselves. (Paragraph 81)
11. The current review processes are not clear, consistent, or transparent. They are inadequate. The CPS figures show large numbers of incorrectly issued penalties slip through those nets. *The Government must now introduce a means of challenging FPNs by way of administrative review or appeal.* (Paragraph 83)
12. We are concerned that the single justice procedure is an inadequate tool to provide the necessary fair trial protections for people accused of offences that are so poorly understood and lacking in clarity and where so many mistakes have been made by enforcement authorities. (Paragraph 87)

The size of the penalties

13. A system that punishes poorer people more severely than those with greater economic means is inherently unfair and unjust. The whole FPN process seems to disproportionately impact the least well off. (Paragraph 92)
14. We have significant concerns that large fixed penalties, such as those of £10,000, which are awarded irrespective of the individual's circumstances, risk being inherently unjust. Given all that we know about the flaws in the system of enforcement of the coronavirus Regulations, it is woefully inadequate simply to assert that such FPN fines can be contested in the course of a criminal prosecution for those willing to run the risk of having a criminal record. This can seriously damage the future prospects of those convicted. Such an approach risks casualising criminality for so many, without any adequate appreciation of the significance or proportionality of such measures. (Paragraph 93)
15. *The Government may only interfere with human rights to the extent necessary and proportionate. The Government should explain and justify why it considers that a £10,000 fine is proportionate (i) for anyone, and (ii) for an individual with limited*

financial means. The Secretary of State should give careful consideration as to whether a more graduated approach to FPN amounts might be more proportionate. The Secretary of State should furthermore carefully consider whether more can be done to limit the discriminatory approach of the current system that criminalises the poor over the wealthy. (Paragraph 94)

16. *There must be a comprehensive review of all FPNs issued under the coronavirus Regulations as soon as is feasible. We have significant concerns about the validity of the FPNs issued, the inadequacies of the review and appeal process, the size of the penalties, and the criminalisation of those who cannot afford to pay. It is also difficult to see why a breach of the coronavirus Regulations would be relevant to someone's future employment prospects or ability to travel to certain countries. We recommend that consideration be given to removing convictions under the coronavirus Regulations from criminal records. (Paragraph 95)*

Declaration of interests

Lord Brabazon of Tara

- No Interests declared

Lord Dubs

- No relevant interests to declare

Lord Henley

- No Interests declared

Baroness Ludford

- No relevant interests to declare

Baroness Massey of Darwen

- No relevant interests to declare

Lord Singh of Wimbledon

- No Interests declared

Formal minutes

Thursday 22 April 2021

Lord Brabazon of Tara	Fiona Bruce MP
Lord Dubs	Ms Karen Buck MP
Lord Henley	Joanna Cherry MP
Baroness Ludford	Ms Harriet Harman MP (Chair)
Baroness Massey of Darwen	Mrs Pauline Latham MP
Lord Singh of Wimbledon	Dean Russell MP

After consulting all Members of the Committee, the Chair was satisfied that the Report represented a decision of the majority of the Committee and reported it to the House of Commons (Order of the House of 24 March 2020) and the House of Lords.

[Adjourned till 28 April at 2.40pm.]

Witnesses

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

Wednesday 24 February 2021

Lochlinn Parker, Head of Civil Liberties, ITN Solicitors; **Kirsty Brimelow QC**, Doughty Street Chambers; **Gracie Bradley**, Interim Director, Liberty

[Q21–31](#)

Owen Weatherill, Assistant Chief Constable, National Police Coordination Centre; **John Apter**, National Chair, Police Federation of England and Wales; **Ben-Julian Harrington**, Chief Constable, Essex Police, Public Order & Public Safety, National Police Chiefs Council

[Q32–41](#)

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.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2019–21

Number	Title	Reference
1st	Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019: Second Report	HC 146
2nd	Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report	HC 148
3rd	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing	HC 343
4th	Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report	HC 256
5th	Human Rights and the Government's response to COVID-19: the detention of young people who are autistic and/or have learning disabilities	HC 395 (CP 309)
6th	Human Rights and the Government's response to COVID-19: children whose mothers are in prison	HC 518 (HC 518)
7th	The Government's response to COVID-19: human rights implications	HC 265 (CP 335)
8th	Legislative Scrutiny: The United Kingdom Internal Market Bill	HC 901 (HC 901)
9th	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill	HC 665 (HC 1120)
10th	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill	HC 847 (HC 1127)
11th	Black people, racism and human rights	HC 559 (HC 1210)
12th	Appointment of the Chair of the Equality and Human Rights Commission	HC 1022
13th	The Government response to covid-19: freedom of assembly and the right to protest	HC 1328
1st Special Report	The Right to Privacy (Article 8) and the Digital Revolution: Government Response to the Committee's Third Report of Session 2019	HC 313
2nd Special Report	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill: Government Response to the Committee's Tenth Report of Session 2019–21	HC 1127

Number	Title	Reference
3rd Special Report	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill: Government Response to the Committee's Ninth Report of Session 2019–21	HC 1120
4th Special Report	Black people, racism and human rights: Government Response to the Committee's Eleventh Report of Session 2019–21	HC 1210