

Silkie Carlo
Director
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Chinaworks
London SE1 7SJ
Sent via email



27 July 2020

Dear Silkie Carlo,

Thank you for your latest letter dated 30 June. I will address your points in turn and then respond to your call for a national review of all Fixed Penalty Notices (FPNs) issued.

The “perfectly reasonable” case for review

The question asked by Reverend Martin Poole to the Health Secretary was a more specific question than a request for all FPNs to be reviewed. He asked:

“Will the Government review all penalty fines imposed on families travelling for childcare purposes during lockdown?”¹

As you say, the Government said it would not conduct such a review. We did not judge it would be proportionate for the NPCC to review FPNs issued in these specific circumstances.

FPNs rescinded

Police forces have internal scrutiny processes in place for all FPNs issued to ensure the evidential bar is met. Police forces will rescind an FPN where the evidential bar is not met or where the details taken are incomplete, and do not enable an FPN to be issued.

For FPNs related to Coronavirus Regulations, ACRO Criminal Records Office also assists forces with ensuring the requirements to issue an FPN are made out. ACRO additionally returns any non-compliant cases (ie non-payment of an FPN or contested cases) to police forces for them to conduct further quality assurance checks within their criminal justice teams before a decision is made on further escalation of the case. Forces can decide to rescind a case based on this further scrutiny.

The most common reasons for rescinding are:

- missing or incomplete data including evidence of the first three ‘E’s’ being exhausted before issuing with a fine;
- dual charging – officers responded to circumstances with actions under the Coronavirus regulations and in relation to a substantive offence e.g. in response to an instance of shoplifting, officers responded with two sanctions, a charge for theft and an FPN issued pursuant to the Coronavirus regulations. This is outside of the CPS charging protocol;
- and public interest to prosecute not being met having reviewed all of the circumstances.

¹ <https://www.theargus.co.uk/news/18476402.reverend-martin-poole-poses-stinging-question-daily-briefing/>

The fact that FPNs are being rescinded shows that internal scrutiny and evidential review are effective in spotting and correcting mistakes in enforcement or in rescinding FPNs where an officer has not provided sufficient evidence to sustain the issue of an FPN. In the coming weeks we will be able to publish data on the status of FPNs issued including the numbers rescinded. We do expect to see some variance in the FPNs rescinded by forces because there is variance in the number of FPNs issued per force linked to their local context.

There does appear to be some evidence that forces that use mobile data terminals for issuing FPNs are less likely to rescind FPNs than those forces which rely on hand-written forms. This is likely due to the additional errors, such as missing data, which can occur with hand-written forms and get picked up as part of the quality assurance processes referred to in this response. The publication of national data on the status of FPNs issued will allow further scrutiny of this issue.

Comparison with the CPS review of charges under the Coronavirus Act 2020 (the Act) and the Coronavirus Regulations

The Crown Prosecution Service (CPS) has rightly reviewed all criminal charges under the Act and the Coronavirus Regulations given the clear implications that a criminal conviction could have on a person's personal and professional life.

However, an FPN issued under the Coronavirus Regulations cannot amount to a criminal conviction, only a financial penalty. Criminal proceedings under the Act and the Coronavirus Regulations and the issue of an FPN are therefore clearly not comparable. The latter, while still important that it is issued correctly, has significantly less impact on an individual than a criminal conviction. Processes are in place to assure the validity of the FPNs issued and allow them to be disputed by the recipient.

The CPS review of prosecutions completed in June under the Coronavirus Act and the relevant Coronavirus Regulations found 99 out of 141 were charged correctly.²

Of the 42 erroneous charges, six were under the relevant Coronavirus Regulations. Of those six, four were because Welsh regulations had been used in England or vice versa and two on evidential grounds. Under the Act, 36 were discontinued because there was no evidence they applied to potentially infectious people.

Many cases were charged earlier in spring and relate to enforcement which occurred in the first weeks of their introduction.³ Since then, officers have received additional guidance on the legislation and we continue to provide them with advice to support them in their roles and reduce errors in the application of the Coronavirus Regulations.

The internal scrutiny processes for FPNs issued under the Coronavirus Regulations mirrors that of other FPNs such as for motoring offences, which similarly are issued without review by the CPS.

Challenging an FPN

The Government determined that they wished to use FPNs as a means of enforcing the Coronavirus Regulations and the Regulations also set the processes for challenging an FPN.

If someone believes they have been issued an FPN in error or unfairly, then this can be formally contested. Recipients need to respond to their enforcement letter to inform police that they intend

² <https://www.cps.gov.uk/cps/news/latest-findings-cps-coronavirus-review>

³ <https://www.cps.gov.uk/cps/news/latest-findings-cps-coronavirus-review>

to challenge the FPN issued to them. Through means of a single justice procedure form they are able to enter a plea of either not guilty or guilty but with a request for a hearing, both resulting in either a police prosecutor or Crown Prosecution lawyer reviewing the case. All cases whereby the defendant contests the FPN are prosecuted by the CPS, affording access to legal advice and representation.

Disproportionate application of FPNs

We have today released an analysis of available data related to FPNs that enables further scrutiny of how police have used these powers. I have attached the analysis to this letter.

The analysis, conducted by staff from the Government Statistical Service, found that men, especially those under 45 years-old, were disproportionately represented in those given an FPN – 70 per cent of FPNs issued went to men under 45 when they comprise 22 per cent of the population.

This was most evident for young men aged 18-34 years old who make up 14 per cent of the resident population but accounted for 57 per cent of those issued with an FPN, a rate some four times higher than would be expected if FPNs were issued proportionately across all age-groups.

The number of FPNs issued to all black, Asian and minority ethnic people (BAME) across all of England and Wales was at a rate of 4.0 per 10,000 population. This compared with 2.5 per 10,000 population for people who identified as white. Rates per 10,000 were highest for Asian (4.7) and black people (4.6), followed by mixed (3.1) and other ethnic minority people (2.6).

Expressed as a disparity rate (i.e. the rates per 10,000 BAME people as a ratio of the rates per 10,000 White people) showed that it was 1.6 times higher for BAME people than white people. Disparity rates were higher than the BAME average for Asian and black people (both 1.8 times higher than white people). Those people in the mixed ethnic group experienced a rate 1.2 times higher than white people, while those from the other ethnic minority groups had the same rate as for white people.

The report sets out a number of points of caution in interpreting the data, including the relatively small sample size, particularly in some forces, and the indirect method of analysis which cannot take into account all the interactions where there was no enforcement.

It is also important to note that the relatively small number of FPNs issued and the relatively small size of the resident BAME population in some force areas can produce large differences in rates per 10,000 population, which are the result of a very small difference in the absolute numbers. This is particularly so for specific ethnic groups within the BAME population and careful interpretation of the comparative rates is required. For example:

- There were 19 forces that each issued less than 40 FPN's in total to BAME individuals, which is much less than one FPN to a BAME person across the entire force per day in each of these forces over the two month period.
- One police force issued FPNs at a rate of 30 per 10,000 to black individuals. However, this relates to just three FPNs being issued to black people. If one less, or one more, FPN had been issued to a black person in that county this would have changed the rate from 30 per 10,000 to 20 and 40 per 10,000 respectively.

It is important to remember that fines were issued to those who, despite officers' best efforts, refused to follow the rules that we know have saved lives.

Nevertheless, it is a concern to see disparity between white and BAME people. Individual chief constables will use this analysis to better interrogate and understand their data in their local context,

and take appropriate action including mitigating any risks of bias – conscious or unconscious – or minimising disproportionate impact where possible. It also enables communities to scrutinise the data and ask questions of their local police. Many forces have brought in community representatives to help them scrutinise the circumstances around each FPN and if it has been issued fairly.

The findings of this work will inform our work to develop a plan of action to address issues of inclusion and race equality in policing.

The case for a review of all FPNs

The analysis of FPNs is not able to draw conclusions about the causes of the disproportionality it finds.

It says:

“Disproportionality could legitimately result from the fair application of the regulations when sub-groups differ in their observance of the regulations or from an uneven enforcement by the police of the regulations across different sub-groups of the population.

... This raises several questions which are not easily answered with the data available. For example, does the generally lower rate of FPNs in the metropolitan force areas reflect a more sensitive approach to the challenges of complying in built-up areas without as much access to private open space or was there simply better public compliance? Similarly, do the higher rates of enforcement in many of the force areas with beauty spots reflect a lower tolerance of the police of those in breach of the regulations? Were stops of vehicles simply based on information yielded from their number plates and not any profiling or stereotyping on the part of some officers?”⁴

I cannot agree with you that there is “*evidence of racism, discrimination and bias in the issuing of lockdown FPNs.*” While I understand the concerns about the disproportionality between ethnicities and have noted the further analysis to be undertaken by individual chief constables, I do not believe the evidence available to me supports that statement.

Nevertheless, I do believe we must do more to address issues of inclusion and race equality that still exist in policing - like the lower trust in us from black communities, their concerns about use of powers like stop and search and the concerns from people of colour within policing about inclusivity and equality at work.

This is why I am leading the development of the plan of action on racial equality and inclusion. I will ensure the findings of this analysis is considered as part of that plan and I look forward to engaging a wide group of stakeholders in its design.

In summary, I do not believe that a national review of all FPNs is appropriate because:

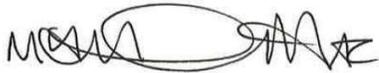
- police forces have followed a proportionate approach of engaging, explaining, encouraging and, only as last resort, enforcing⁵;

⁴ Policing the Pandemic: Detailed analysis on police enforcement of the Public Health Regulations and an assessment on disproportionality across ethnic groups

⁵ The actual number of FPNs issued (17,039) represented a rate of 3 FPNs for every 10,000 residents in England and 6 FPNs per 10,000 Wales during this period. The NPCC has reported that during the 4-week period to the 24th May alone, the police recorded 134,188 incidents that were related to policing of the Covid-19 pandemic. (Policing the Pandemic: Detailed analysis on police enforcement of the Public Health Regulations and an assessment on disproportionality across ethnic groups)

- police forces are internally scrutinising FPNs and rescinding them where they have not met the evidential test – the need to rescind FPNs may vary dependant on local factors including those I have highlighted;
- those issued with a FPN can contest it and have their case reviewed as well as challenging it in court;
- and each chief constable is held to account at local level by their Police and Crime Commissioners for how officers use their powers.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Hewitt', with a large, stylized flourish extending to the right.

Martin Hewitt QPM
Chair
National Police Chiefs' Council

