

20th May 2020

Martin Hewitt
National Police Chiefs' Council

By email only

Dear Mr. Hewitt,

We are writing to urge you to instigate a national review of all Fixed Penalty Notices (FPNs) and fines that have been issued under emergency laws in England, namely under the Health Protection (Coronavirus, Restrictions) Regulations 2020.

We believe that a significant number of FPNs have been wrongly issued and, particularly in light of the amended Regulations that present new enforcement challenges, that there is a continued risk of FPNs being wrongly issued - and at significantly increased numbers. This is why an urgent national review of all FPNs issued under emergency laws is required.

In our comprehensive reviews of the use of emergency powers,[1] we have identified inconsistent policing that has sometimes been viewed as excessive or even unlawful. We have found examples of senior police figures systematically rejecting legal advice in favour of the Government's more restrictive guidelines. As you acknowledged in your opinion piece in the Times, there have been "well-publicised instances" of "overzealous" policing during early adjustment. You wrote that you were assured the public would read these instances as "well-meant attempts to encourage responsible behaviour." [2] However, to protect the rule of law and policing by consent, these failures need to be remedied. The public will not be reassured simply by good intentions, but by actions taken to address the policing mistakes that have been made.

Worryingly, we have even seen multiple cases of wrongful convictions. Human rights barrister Kirsty Brimelow QC and the Times identified a case in which a woman was wrongly convicted under the Coronavirus Act after failing to account for her movements at Newcastle train station. Big Brother Watch, The Times and Kirsty Brimelow QC identified a case where a teenager in Oxford who visited his vulnerable mother was not only wrongly convicted under the Coronavirus Act but under its Welsh provisions. This multi-layered incompetence

shows that institutional failures are putting fundamental rights and justice at risk in this crisis. We understand the difficulties of rapidly adjusting policing to these broad and vague new powers – but such exceptional powers require at least minimum safeguards.

We urge the NPCC to replicate the remedial action taken by the CPS in relation to emergency powers. We welcomed the CPS's announcement that every single charge, sentence and conviction made under emergency powers will be reviewed. Every single Coronavirus Act charge reviewed by the CPS so far (44) has been reversed, whilst over 6% of charges reviewed under the Health Protection Regulations in England and Wales were found to be wrong. This review was clearly needed. So too is a police review of every single FPN issued under the same powers. This is particularly the case since FPNs are issued with less scrutiny. The latest NPCC statistics show remarkable disparity between the rates at which FPNs are issued across forces, with police in North Yorkshire issuing over 20 times more FPNs than in Staffordshire (adjusted for population size). This suggests there is a postcode lottery of pandemic policing and fines are not being issued proportionately across the country. The latest figures also show disproportionate punishment of Asian and Black people in England. Asian people represent 7.8% of the population in England but received an alarming 13% of FPNs. Whilst 3.5% of the population in England is Black, 5% of those issued fines in England were Black. We require an explanation of these disparities, which can only be provided by a national review of the FPNs issued. Furthermore, there are many cases of children being issued FPNs, although there is not power to do so under the Regulations. Already, Wiltshire Police has withdrawn FPNs after a review conducted by its Scrutiny Panel found that some FPNs had been issued unlawfully^[3] but this is not a widespread practice. The CPS review and this evidence indicates that there is a high risk of many other wrongly issued FPNs.

The only way a person can contest a FPN is to risk a prosecution, incurring legal and financial risks. Vulnerability of recipients is not currently understood. We are concerned that many people are paying FPNs, even if inappropriately issued, to avoid this risk.

A specific case concerns Lancashire Police. They were forced to withdraw two £60 fines given to sisters who live in the same household for driving for exercise, after they sought to challenge the FPNs and instructed Bindmans LLP. Patrick Ormerod of Bindmans pointed out that this option is not available to everyone and “many people, even the innocent, will choose the easier, often cheaper, option of paying the penalty specified in the FPN (...) rather than risk magistrates' court proceedings.”^[4] This could be avoided if the Regulations gave individuals a statutory right to appeal a FPN without risking prosecution. At a time when

people are facing undue financial and psychological hardship, and when trust in policing is paramount, a national review of FPNs will ensure that they have been and will be used correctly, fairly and lawfully.

We understand the challenges police face and recognise that policing staff are doing a difficult job in unprecedented circumstances. Remedial action by way of a national review of all FPNs would increase trust in police enforcement of emergency laws, make frontline police officers' jobs easier and community relations stronger.

We look forward to your response.

Silkie Carlo, Big Brother Watch

Kirsty Brimelow QC

Kevin Blowe, Netpol

Jules Carey, Head of Bindmans' Actions Against Police and State Team

Deborah Coles, INQUEST

Katrina Ffrench, StopWatch

Bruno Min, Fair Trials

Martha Spurrier, Liberty

Police Action Lawyers Group

[1] Emergency Powers & Civil Liberties, 28th April 2020 – Big Brother Watch, <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/04/Emergency-Powers-and-Civil-Liberties-Report-april-2020.pdf>; Policing the Corona State – Netpol and Undercover Research Group: <https://policing-the-corona-state.blog>

[2] Police need your help in the fight against coronavirus – Martin Hewitt, The Times, 4th April 2020: <https://www.thetimes.co.uk/past-six-days/2020-04-04/comment/police-need-your-help-in-the-fight-against-coronavirus-9nt92t7pw>

[3] Wiltshire Police withdraws two coronavirus fines – Tom Seaward, Swindon Advertiser, 1st May 2020: <https://www.swindonadvertiser.co.uk/news/18421349.wiltshire-police-withdraws-two-coronavirus-fines/>

[4] Lancashire Police cancel coronavirus fines handed to Preston sisters who had driven to Docks for exercise – Matthew Calderbank, Lancashire Post, 5th May 2020: <https://www.lep.co.uk/news/crime/lancashire-police-cancel-coronavirus-fines-handed-preston-sisters-who-had-driven-docks-exercise-2842762>