

30th June 2020

Martin Hewitt
National Police Chiefs' Council

By email only

To Martin Hewitt and Police Chiefs of England and Wales,

We are writing to you following Martin Hewitt's letter, dated 16th June 2020, in response to our letter of 20th May 2020 urging the NPCC to instigate or support a national review of all fixed penalty notices (FPNs) issued under emergency laws in England.

Currently, the NPCC has neither acknowledged the systemic issue of unlawful, inconsistent and discriminatory enforcement of emergency laws, nor taken the initiative to support reviews by police forces of FPNs.

We welcome Mr Hewitt reiterating that enforcement should be a last resort but the evidence points towards this not being followed by officers in practice. No reasons were given as to why the NPCC does not support a review.

The case for a review has only grown since our initial letter one month ago and is now extremely compelling.

The "perfectly reasonable" case for review

Ministers have made clear that there is a "reasonable" case for a review of all FPNs and that fines are a matter for the police.

During the Government's Daily Press Briefing on 26th May, Reverend Martin Poole asked the Health Secretary if he would instigate a review of FPNs. In response, he said he it was:

"perfectly reasonable to take away that question (...) We'll look at it (...) We'll make sure that we write to you with a full answer and make an announcement from this podium. I think we can make that commitment."¹

Government ministers, having acknowledged the case for a review, later stated that FPNs are "for the police to decide" in line with the law.² In the absence of the government setting up a review panel, it is the responsibility of police chiefs to take leadership on this issue and instigate a national review..

Statistics

The number of FPNs issued unlawfully is highly likely to have increased since our previous letter, and continues to grow.

The latest statistics released by NPCC show that 15,856 FPNs have been recorded in England up to 22nd June for breaches of the Health Protections (Coronavirus, Restrictions) Regulations 2020 (the Regulations). This is an increase from the 13,445 FPNs that were issued in England up to 11th May. In Wales, 2,583 FPNs have been recorded in the same timeframe, up from the 799 issued up to 11th May.

Big Brother Watch's analysis shows at least 21 forces rescinded FPNs (i.e. issued them, but did not process/finalise them) between 27th May and 8th June as their overall FPNs recorded decreased, indicating a high number of FPNs that had been issued incorrectly³. Further, the

1 Health Secretary, Daily Press Briefing, 26 May 2020:
<https://twitter.com/BigBrotherWatch/status/1265325522315350016?s=20>

2 <https://www.bbc.co.uk/news/uk-england-sussex-52823073>

3 For example, Surrey Police rescinded at least 134 FPNs in this period: the force had recorded 632 FPNs up to 27th May but recorded FPNs dropped to 498 as of 8th June – a decrease of 21%.

inconsistency in forces identifying and rescinding wrongly issued FPNs is remarkable. For example, Dyfed Powys Police (the force that issued the highest number of FPNs proportionate to its population size) recorded a 693 or 85% increase of FPNs issued during the same two-week period.

The CPS's review of every charge and prosecution under emergency laws has continued and, since our first letter, has identified an increasing proportion of unlawful prosecutions. The CPS review found that, in May, just under 10% of the charges reviewed under the Health Protection Regulations in England and Wales were unlawful. This is a significant and unacceptable amount of unlawful charges and demonstrates serious systemic failings in policing during this period. Furthermore, it is a serious lapse in responsibility by law enforcement to accept that the law repeatedly has been wrongly applied by the police but to ignore an obvious remedy; to review FPNs in the same way the CPS has reviewed charges.

FPNs do not have the safeguards of subsequent review by prosecutions lawyers and/or magistrates. Several of the signatories to this letter have been contacted by individuals who have been wrongly issued with FPNs. Some have proceeded to pay them due to a lack of resources to legally challenge them, a loss of trust in the system, and the fear of a criminal prosecution. If, as a conservative estimate, only 10% of the 18,489 FPNs recorded in England and Wales were unlawfully issued, this would account for over 1,800 unlawfully issued FPNs. This represents serious injustice during the pandemic that must be investigated and remedied.

Mr Hewitt's letter states that "where mistakes have been made, we have recognised this". Whilst we welcome the stated willingness to rectify mistakes you are aware of and learn from them in future, we are concerned at the failure to recognise that there are many cases in which mistakes have gone unidentified. The only means to ensure injustices are recognised and remedied is to review all fines already issued.

Disproportionate Application of FPNs

The disparities in the numbers of FPNs issued across forces has increased since our previous letter.

The figures suggest a postcode lottery of FPNs.⁴ Of further concern is evidence of disproportionate issuing of FPNs to Asian and Black people in England:

- The NPCC's FPN data pack dated 26th June⁵ states that, of FPNs issued in England where the individual's self-identified ethnicity was recorded, 79% were to people who self-identified as white. Despite representing 7.8% of the population in England, 12% of FPNs were issued to those identifying as Asian and despite representing 3.5% of the population in England, 5% went to those identifying as black. Ethnicity was not recorded for 23% of those receiving FPNs.
- Analysis by Liberty Investigates and the Guardian found that black and minority ethnic (BAME) people were 54% more likely to be fined than white people;⁶

We request that the NPCC and all police chiefs provide all ethnicity data relating to FPNs across all forces so that this analysis can be conducted in an open and democratic way. We are aware that Tola Munro, President of the National Black Police Association, and Yvette Cooper, Chair of the Home Affairs Select Committee, also have requested this data. Force-specific ethnicity data for FPNs disclosed thus far demonstrates the need for a closer analysis:

Staffordshire Police similarly appeared to have rescinded at least 17% of FPNs in this period and West Midlands 11%.

4 For example, as of 8th June, Dyfed Powys Police has issued 75 times as many FPNs proportionate to population size (and 34 times as many, simply numerically) as Staffordshire Police. North Yorkshire Police has issued almost 5 times as many FPNs proportionate to population size as neighbouring South Yorkshire Police (which issued 705 fewer FPNs).

5 <https://news.npcc.police.uk/releases/statistical-update-on-number-of-lockdown-fines-given-by-police-1>

6 <https://www.theguardian.com/world/2020/may/26/bame-people-fined-more-than-white-population-under-coronavirus-laws>

- On 3rd June, the Metropolitan Police disclosed that, up to 15th May, 26% of its FPNs issued were to black people, who make up 12% of London's population and 23% were to Asian people, who are 18% of London's population.⁷ These shocking statistics are a clear indication of racism in lockdown policing in London. The Metropolitan Police has not given a satisfactory answer to explain these worrying statistics, only stating "crime is not proportionate"⁸ in addressing these alarming figures.
- Through Freedom of Information (FOI) requests, Liberty Investigates obtained the ethnicity breakdown of FPNs issued by 25 police forces, of which 18 evidenced statistically significant ethnic disproportionality between FPNs issued to BAME and white people.⁹
- Liberty Investigates found that the most ethnically disproportionate issuing of fines was by Cumbria Police, where BAME people were 6.8 times more likely to be fined than white people. Other heavily disproportionate forces were Avon and Somerset, Lincolnshire and Suffolk where BAME people were at least 4 times more likely to be fined than white people.

Mr Hewitt stated in his reply to us that the matter is "complex" and that "a sizeable number of FPNs issued by local forces have been to non-residents who had travelled into their area in contravention of the Regulations."

We find this an unconvincing and unevidenced explanation that implies or assumes that it is disproportionately black and Asian people who contravened the Regulations.

Alarming statements have been made by other senior police figures. Defending statistics showing the Metropolitan Police was twice as likely to issue FPNs to black people than white people, chair of the Metropolitan Police Federation Ken Marsh reportedly said, "Anyone out in the first four weeks was a drug dealer."¹⁰ These kinds of statements, relying on racist stereotypes to dismiss concerns about discriminatory policing, perpetuate harmful policing practices. They also bring policing into disrepute. Mr Marsh's comment was quoted in the House of Lords by Baroness Brinton who said,

"Let that sink in. Any black person out in the first four weeks was a drug dealer. Most of us fear catching the virus, but if you are black, you also have the conscious bias of police officers to fear.

What advice will the Government offer to the law-abiding vast majority of black people in London when they go out? Will they undertake to talk to the Home Secretary and the Mayor of London, so that this shocking view can be challenged wherever it is found in the Metropolitan Police?"¹¹

Remedy

A NPCC statement on 3rd June issued in response to the death of George Floyd in the US said "we are not afraid to shine a light on injustices or to be held to account."¹²

7 <http://news.met.police.uk/documents/final-fpn-arrest-analysis-report-96756>

8 Fixed Penalty Notices (FPNs) and Covid-19 Enforcement Report – Metropolitan Police, 3rd June 2020, p.2: <http://news.met.police.uk/documents/final-fpn-arrest-analysis-report-96756>

9 <https://libertyinvestigates.org.uk/articles/police-forces-in-england-and-wales-up-to-seven-times-more-likely-to-fine-bame-people-in-lockdown/>

10 <https://www.theguardian.com/uk-news/2020/jun/14/former-top-met-police-officers-say-racism-blighted-their-careers-black>

11 HL Dec (15th June 2020) vol. 803, col. 2023: [https://hansard.parliament.uk/lords/2020-06-15/debates/852C6EE6-D006-4059-905B-8BAEE20975FB/HealthProtection\(CoronavirusRestrictions\)\(England\)\(Amendment\)\(No2\)Regulations2020](https://hansard.parliament.uk/lords/2020-06-15/debates/852C6EE6-D006-4059-905B-8BAEE20975FB/HealthProtection(CoronavirusRestrictions)(England)(Amendment)(No2)Regulations2020)

12 <https://news.npcc.police.uk/releases/uk-police-stand-with-those-appalled-by-george-floyd-death>

A further NPCC statement on 18th June on the police response to concerns about racial injustice in the UK expressed a "determination to tackle racism, discrimination and bias wherever we find it."¹³

There is evidence of racism, discrimination and bias in the issuing of lockdown FPNs. Having been presented with the evidence of this injustice you must now tackle it.

We note, that the Regulations under which these fines are issued represent the most severe restrictions of rights and freedoms since World War II. In this context, it is imperative that these powers are exercised (and seen to be exercised) cautiously – as well as proportionately and fairly. The evidence that the opposite has occurred, and that these draconian powers have repeatedly been used unlawfully, undermines public trust and confidence in authorities and the rule of law.

We urge you to honour the NPCC's recent commitments by investigating and remedying this matter and instituting a review of all lockdown FPNs.

We look forward to your response.

Silkie Carlo, director of Big Brother Watch
Diane Abbott MP
Yasmine Ahmed, Rights and Security International
Paula Barker MP
Apsana Begum MP
Lord Beith
Sian Berry AM, Green Party London Assembly Member
Kevin Blowe, Netpol
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Christine Jardine MP, Liberal Democrat Home Affairs Spokesperson
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Jenny Jones, Baroness Jones of Moulsecoomb
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13 <https://news.npcc.police.uk/releases/police-determined-to-tackle-inequalities-and-injustices>

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