

20 November 2020

Anthony Bangham

West Mercia Police

By email only: [chief@westmercia.pnn.police.uk](mailto:chief@westmercia.pnn.police.uk)

Dear Mr Bangham,

We are writing to urge West Mercia Police to instigate a review of all Fixed Penalty Notices (FPNs) and fines that have been issued under coronavirus emergency laws in England.<sup>1</sup> This is urgently needed to remedy the injustices experienced to date, demonstrate compliance with the force's duties under equality legislation, and avoid repeating past mistakes during the second nationwide lockdown.

### **Unlawful fines**

To date, a significant number of FPNs have been incorrectly issued. We are concerned that there is continuing risk that this pattern will continue.

In our comprehensive reviews of police use of emergency powers, we have identified inconsistent policing that has widely criticised as excessive, and even unlawful. The Crown Prosecution Service has identified significant numbers of unlawful charges brought using the new emergency legislation, including every single charge under the Coronavirus Act and approximately 9% of charges under the Health Protection Regulations.

This indicates serious failings in how these laws have been used which give rise to significant human rights concerns.<sup>2</sup> The Chair of the National Police Chief's Council, Martin Hewitt, agreed that there have been "well-publicised instances" of "overzealous" policing during the initial months of 'lockdown'.<sup>3</sup> Hewitt wrote that he hoped that the public would read these instances as "well-meant

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<sup>1</sup> Namely the Health Protection (Coronavirus, Restrictions) Regulations 2020; The Health Protection (Coronavirus, Restrictions) (England) (No. 2) Regulations 2020; The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 and The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020.

<sup>2</sup> The Chair of the Joint Committee on Human Rights, Harriet Harman MP, raised concerns over "heavy-handed policing" and "significant confusion between what is unlawful (in the Regulations) and what is merely contrary to 'guidance' or 'advice'." Where penalties and charges have been wrongly imposed, she warned "Article 7 ECHR [European Convention on Human Rights], which guarantees no punishment without the law, is potentially violated." See Letter from Harriet Harman MP to Health Secretary Matt Hancock, 9<sup>th</sup> April 2020: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/correspondence/200409-Letter-to-Matt-Hancock-regarding-Health-Protection-Coronavirus-Restrictions-England-Regulation-2020.pdf>

<sup>3</sup> Police need your help in the fight against coronavirus – Martin Hewitt, The Times, 4<sup>th</sup> April 2020: <https://www.thetimes.co.uk/past-six-days/2020-04-04/comment/police-need-yourhelp-in-the-fight-against-coronavirus-9nt92t7pw>

attempts to encourage responsible behaviour.” 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.

**We are calling on your force to carry out a review of FPNs issued by your force in order to rectify any potential unlawfully issued fines.**

### **Discrimination**

We believe West Mercia Police has a particularly pressing duty to review FPNs issued under the emergency laws given disparities in regard to who has been levied with fines.

We are extremely concerned by the high levels of disparity in which people of different ethnicities are receiving fines. The NPCC’s Policing the Pandemic Report revealed that across England and Wales, people of colour are 1.6 times more likely to be fined than white people. In West Mercia, this disparity is significantly higher still, with people of colour 4.5 times more likely to receive a FPN than white people. **This means West Mercia Police is one of the ten forces across England and Wales with the highest overall rate of racial disproportionality.**

In previous correspondence, Mr Hewitt has argued that disparities in fines are “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 explanation unconvincing. It implies that people of colour have contravened the Regulations at a higher rate than white people, an assumption for which there is no evidence. Furthermore, at no point during the ‘lockdown’ has there ever been a prohibition on travelling with a reasonable excuse across the country. Even if this were an acceptable explanation, people of colour who are residents of the area covered by West Mercia police are 2.9 times more likely to receive a FPN than white residents, which is a significant and wholly unacceptable disparity.

Last week, further disparities came to light in regard to the power to issue so-called “super fines” of £10,000, provided for by the coronavirus regulations. The NPCC reportedly issued guidance to police forces which recognised that many people who challenged the FPN in court had their fines significantly reduced following a means testing processes, whereas those who paid their fine within 28 days were liable to pay the amount in full.<sup>4</sup> This means that people who can afford to pay a £10,000 fine may do so immediately and avoid a criminal record, while others will wait to be prosecuted, may have a lower fine imposed but be left with a criminal conviction. We are seriously concerned that this may disproportionately disadvantage already marginalised communities.

West Mercia Police’s Public Sector Equality Duty means it is legally required to have due regard to the need to eliminate any discrimination when exercising a public function, such as issuing FPNs, or deciding whether to carry out a review. Your police force has a duty to take steps to remedy these

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<sup>4</sup> Vikram Dodd, Police can resume issuing instant £10,000 Covid fines, Guardian 17<sup>th</sup> November 2020: <https://www.theguardian.com/world/2020/nov/17/police-chiefs-tell-officers-stop-issuing-instant-10000-covid-fines>

disparities as they are clear evidence of discrimination that cannot be justified. **The most obvious and effective remedy would be to review all FPNs issued under these laws.**

**Inadequacy of avenues to challenge fines**

Many forces have been forced already to rescind fines, either through internal procedures or after proceedings in a Magistrates Court. However, we believe that many more FPNs have been incorrectly issued than are accounted for by these infrequent procedures and are calling for a more substantive procedure. At present, the only way a person can contest a FPN is to risk a prosecution, incurring legal and financial risks. Many people may feel unable to undertake these risks.

At a time when people are facing undue financial and psychological hardship, and when trust in policing is paramount, undertaking a review of FPNs will help ensure that they are used correctly, fairly and lawfully. Indeed, the Joint Committee on Human Rights has expressed its “significant concerns” about FPNs given out under the Health Protection Regulations, recommending an “administrative review or appeal” of all FPNs is established to ensure compliance with human rights standards.<sup>5</sup>

We understand the challenges your force has faced during this public health crisis and recognise that your staff are doing a difficult job in unprecedented circumstances. Remedial action by way of a review of all FPNs would increase trust in police enforcement of emergency laws and strengthen community relations.

We look forward to your response.

Yours sincerely,

Silkie Carlo  
Director  
Big Brother Watch

Grey Collier  
Advocacy Director  
Liberty

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<sup>5</sup> The Government’s response to COVID-19: human rights implications: Seventh Report of Session 2019–21, HC 265, 21<sup>st</sup> September 2020, Joint-Committee on Human Rights, p. 24-5:  
<https://committees.parliament.uk/publications/2649/documents/26914/default/>