

Secretary of State for Justice, The Rt Hon Robert Buckland QC MP

By email only: robert.buckland.mp@parliament.uk

1st June 2021

Dear Secretary of State for Justice,

Single Justice Procedure: unlawful Coronavirus prosecutions and convictions behind closed doors

We are writing to urge you to suspend the use of the Single Justice Procedure in relation to charges under Coronavirus-related emergency laws, and to review all previous Coronavirus-related prosecutions made under the Single Justice Procedure.

Hundreds of people have been wrongly charged and prosecuted under the Health Protection (Restrictions, Coronavirus) Regulations ('the Regulations') and the Coronavirus Act 2020 ('the Act') and we are concerned that many more unlawful charges brought via the Single Justice Procedure remain unchallenged.

These charges and prosecutions are being brought without sufficient oversight, without any meaningful review process, and are resulting in guilty pleas and convictions for offences people have not committed, in a process they may also not be aware of. The current situation is unjust and the current process is unfit for purpose.

1. Review of all prosecutions to date under the Single Justice Procedure in relation to Coronavirus-related emergency laws

We have welcomed the Crown Prosecution Service's (CPS) decision to review all Coronavirus-related charges as part of its commitment to ensuring that the "*use of these new powers strikes the correct balance between public safety and acting in the interests of justice.*"¹ This unprecedented step acknowledges the complexities of the new restrictions and the much-publicised issues surrounding enforcement. The findings of these reviews have uncovered a significant level of unlawful charges and prosecutions under both the Regulations and the Act. In total, 549 unlawful charges under the Regulations and the Act have been overturned out of 1,821 overall. This represents almost a third of all reviewed charges: 18% of all reviewed charges under the Regulations and a staggering 100% of reviewed charges under the Act respectively. This is a grave statistic and highlights the necessity and importance of the CPS's monthly reviews.²

However, the majority of charges under the Regulations have not been reviewed, leading to the risk of hundreds more unlawful convictions, as they have been brought using the Single Justice Procedure. Single Justice Procedure cases are not considered by the CPS as part of their review. They are charged by the police and heard 'on the papers' by a single magistrate alongside a legal advisor.

The latest figures show that 1,084 charges were brought under the Regulations via the Single Justice Procedure.³ Considering the significant rates of unlawful charges found by the CPS' reviews, we can

¹ <https://www.cps.gov.uk/cps/news/cps-announces-review-findings-first-200-cases-under-coronavirus-laws>

² <https://www.independent.co.uk/news/uk/home-news/coronavirus-act-prosecutions-wrongful-cps-review-b1847194.html>

³ Criminal Court Statistics Quarterly <https://questions-statements.parliament.uk/written-questions/detail/2021-01-26/143756>

assume that a sizeable number of these unreviewed charges will also be unlawful. Two charges under the Act were also heard under the Single Justice Procedure,⁴ and given that these offences were in relation to “events and gatherings”, i.e., Schedule 22, which has never been activated in England, it is extremely likely that these two prosecutions were unlawful.

In addition, the current figure of 1,084 Single Justice Procedure charges which have been made public so far only relate to those heard between July and September 2020.⁵ It is therefore probable that thousands more charges have since been brought and similarly gone unreviewed.

The Joint Committee on Human Rights (JCHR) has also stated:

“There are real concerns about the fairness of these [single justice procedure] hearings for an area of law whose enforcement has been riddled with errors”⁶

and that:

“Given the likelihood of errors... it is concerning that so many completed prosecutions [under the single justice procedure] lack this safeguard [of the CPS review].”⁷

The JCHR concluded that:

“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.”⁸

In May, when the findings from the CPS’ first review were published, Gregor McGill, CPS Director of Legal Services, said:

“In such a fast-moving and unprecedented situation, it is important there are safeguards to assist police and prosecutors in applying these laws correctly.”⁹

Martin Hewitt, chair of the National Police Chief’s Council also welcomed the CPS’ reviews as an important safeguard:

“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 (...) It is right that any errors have been quickly identified and are being corrected through the CPS’s review process”¹⁰

It is clear that amid constantly changing restrictions, the CPS reviews have been crucial to avoiding unlawful prosecutions and convictions. **In order to remedy further injustice and uphold the rule of**

⁴ Ibid.

⁵ Ibid.

⁶ Joint Committee on Human Rights, ‘The Government response to covid-19: fixed penalty notices’, 14th Report of Session 2019-21, 21 April 2021

<https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1364/1364.pdf>

⁷ Ibid.

⁸ Ibid.

⁹ <https://www.cps.gov.uk/cps/news/cps-announces-review-findings-first-200-cases-under-coronavirus-laws>

¹⁰ Ibid.

law, the CPS must review *all* prosecutions under both the Regulations and the Act. We urge you to include Single Justice Procedure cases, past and future, within the CPS' review.

2. Suspension of the use of the Single Justice Procedure in relation to Coronavirus-related emergency laws

The Single Justice Procedure is not an appropriate mechanism for dealing with charges under the Regulations and the Act, given the high rates of unlawful charges, and wide confusion over the details of restrictions.

Confusion over restrictions has been well-documented, with police officers¹¹ and even government ministers¹² routinely demonstrating that the intricacies of new restrictions are not well understood. The CPS' reviews have made it apparent that magistrates have also failed to prosecute correctly and lawfully those charged under the Regulations and the Act.

In relation to all offences charged via the Single Justice Procedure, more than 70% of individuals who receive a notice do not respond at all or provide a plea. In relation to Coronavirus offences specifically, this rises to 88%. Hundreds and likely thousands of people have therefore been convicted and fined for Coronavirus offences in their absence, without any checks or balances. It has also been raised that due to postal errors, some individuals may not even be aware that they have been charged in the first place.¹³ Given the highly complex and constantly changing Coronavirus-related legislation, the lack of safeguards surrounding the Single Justice Procedure make it highly unsuitable for dealing with charges under the Regulations and the Act.

Coronavirus regulations are a complex area of law and people charged with coronavirus offences therefore need independent legal advice, and these new laws need testing. It is especially concerning that the Single Justice Procedure operates largely without the defendant having access to an independent lawyer. You will be mindful that the safety of these convictions can be challenged and the potential cost to the public purse for widescale miscarriages of justice, are significant. Cheap judicial process now could lead to thousands of pounds of damages in years to come and significant reputational damage to the criminal justice system.

Therefore, we also urge you to suspend the use of the Single Justice Procedure for Coronavirus-related offences.

We look forward to your response.

Yours sincerely,

Griff Ferris, Fair Trials

Madeleine Stone, Big Brother Watch

¹¹ <https://www.dailymail.co.uk/news/article-8865487/Police-officer-charge-enforcing-lockdown-laws-makes-shocking-confession-MPs.html>

¹² <https://www.theguardian.com/world/2020/mar/31/no-10-slaps-down-shapps-over-shop-once-a-week-comment-coronavirus>; <https://www.standard.co.uk/news/michael-gove-tennis-golf-lockdown-robert-jenrick-b43288.html>; <https://www.theguardian.com/world/2020/sep/29/tories-competence-questioned-as-minister-fails-to-clarify-lockdown-rules>

¹³ <https://www.thetimes.co.uk/article/call-to-scrap-plead-by-post-secret-trials-5p6w8r3fz>

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Sir Robert Neil MP, Chair of the Justice Committee