

Big Brother Watch and Fair Trials briefing on the Single Justice Procedure ('SJP'): unlawful Coronavirus prosecutions

In an unprecedented step, which acknowledges the complexities of new restrictions and the much-publicised issues surrounding enforcement, the CPS has committed to reviewing all charges under the Health Protection (Restrictions, Coronavirus) Regulations ('the Regulations') and the Coronavirus Act 2020 ('the Act'). These monthly reviews have overturned hundreds of unlawful charges: 18% under the Regulations and 100% under the Act.

Martin Hewitt, NPCC chair, agreed that these prosecutions should be reviewed:

*"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."*¹

However, the majority of charges under the Regulations and Act have not been reviewed, as they have been brought using the SJP. SJP 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 figures² for prosecutions under the SJP show:

- **4,242 under the Regulations.** Applying the CPS review's rate of unlawful prosecutions, we can estimate that at least 700 of these prosecutions were unlawful.
- **37 under Schedule 22 of the Act.** Given that these offences were in relation to "events and gatherings", i.e., Schedule 22, which has never been activated in England, these prosecutions cannot be lawful.
- **8 under Schedule 21 of the Act.** The CPS review has found that 100% of charges they have reviewed under the Coronavirus Act were unlawful, meaning it is likely these prosecutions were also unlawful.

In relation to all Coronavirus offences charged via the SJP, 90% of individuals who receive a notice do not respond at all or provide a plea. 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.³ Given the highly complex and constantly changing Coronavirus-related legislation, the lack of safeguards surrounding the SJP make it highly unsuitable for dealing with charges under the Regulations and the Act.

Lord Chancellor Robert Buckland MP has said of the use of the SJP for Coronavirus offences:

"It is a vital part of the system which allows magistrates courts to plough through many, many cases. (...) I keep a very close eye upon any concerns about potential miscarriages of justice. I look to independent prosecutors to rectify any such errors or problems."

However: there are no independent prosecutors under the SJP.

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

² Criminal Court Statistics Quarterly: <https://questions-statements.parliament.uk/written-questions/detail/2021-05-26/7818>

³ <https://www.thetimes.co.uk/article/call-to-scrap-plead-by-post-secret-trials-5p6w8r3fz>

The Joint Committee on Human Rights has stated:

*"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."*⁴

RECOMMENDATIONS

The CPS must review all prosecutions under both the Regulations and the Act, including those dealt with under the Single Justice Procedure.

Suspend the use of the Single Justice Procedure for Coronavirus-related offences.

⁴ 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>