

1st February 2022

To: the Rt Hon Dominic Raab MP, Secretary of State for Justice

By email: dominic.raab.mp@parliament.uk

Dear Secretary of State for Justice,

Re: The urgent need to review all coronavirus-related fines and prosecutions

We are writing to urge you to instigate an urgent review of all historic and ongoing fines and prosecutions under the Health Protection Regulations and the Coronavirus Act 2020. There is substantial evidence that thousands of people have been wrongfully fined and even prosecuted unlawfully under coronavirus-related legislation. There is also clear evidence that these laws have been applied in a discriminatory fashion. Amid allegations of numerous offences under these same laws in the heart of Government, it is vital that decisive action is taken to safeguard the public's trust in the justice system.

Where fines have been wrongfully or unlawfully issued they should be withdrawn, and any money paid should be refunded. Where prosecutions have been wrongfully or unlawfully brought, they should also be withdrawn, any convictions rescinded, and criminal records deleted.

Rights groups, lawyers and MPs, including many of the signatories to this letter, wrote to the former Secretary of State for Justice and senior figures in the National Police Chief's Council in May 2020¹ and June 2020² appealing for an urgent review of coronavirus-related fines. Rights groups also wrote to the former Secretary of State for Justice in June 2021 to raise concerns about the use of the Single Justice Procedure to hear coronavirus-related charges.³ These concerns have been echoed by the Justice Committee and the Joint Committee on Human Rights, which have both recommended on multiple occasions that the Government review the issuing of fines – Fixed Penalty Notices (FPNs) – for coronavirus-related offences.⁴

Unlawful charges

The CPS's unprecedented review of charges under coronavirus-related legislation was initiated in May 2020, in response to high profile cases of unlawful prosecutions under these emergency laws. It committed to ensuring that the "use of these new powers strikes the correct balance between public safety and acting in the interests of justice."⁵

¹ Rights groups call for urgent review of coronavirus fines – Big Brother Watch, 21st May 2020:

<https://bigbrotherwatch.org.uk/wp-content/uploads/2020/05/Letter-to-Martin-Hewitt-from-Big-Brother-Watch-Ors.pdf>

² Campaigners demand review of all lockdown fines – Big Brother Watch, 1st July 2020:

<https://bigbrotherwatch.org.uk/2020/07/campaigners-demand-review-of-all-lockdown-fines/>

³ Big Brother Watch sends joint letter on unlawful Coronavirus prosecutions to the Secretary of State for Justice – Big Brother Watch, 1st June 2021: <https://bigbrotherwatch.org.uk/2021/06/big-brother-watch-sends-joint-letter-on-unlawful-coronavirus-prosecutions-and-convictions-behind-closed-doors-to-the-secretary-of-state-for-justice/>

⁴ Fourth Report of Session 2021–22: Covid-19 and the criminal law – Justice Committee, HC 71, 24th September 2021, p. 26: <https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/71/71.pdf>; Joint Committee on Human Rights, 'Every Fixed Penalty Notice issued under coronavirus Regulations must be reviewed', 27 April 2021:

<https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/154842/joint-committee-on-human-rights-every-fixed-penalty-notice-issued-under-coronavirus-regulations-must-be-reviewed/>

⁵ <https://www.cps.gov.uk/cps/news/cps-announces-review-findings-first-200-cases-under-coronavirus-laws>

To date, these ongoing reviews have uncovered a total of 803 unlawful charges under coronavirus-related legislation, out of 2,716 charges overall – 30% of all charges reviewed.⁶ 100% of charges under the Coronavirus Act 2020 were found to be unlawful, and 21% of charges under the Health Protection Regulations were unlawful. We are not aware of any law in history that has an accompanying 100% unlawful prosecution rate. Overall, this is a significant and unacceptable amount of unlawful charges and demonstrates serious systemic failings in the criminal justice system.

Many 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, in line with the unlawful rate of prosecutions found by the CPS, 21% of the 118,963 FPNs⁷ recorded in England and Wales were unlawfully issued, this would account for almost 25,000 unlawfully issued FPNs. This represents serious injustice that must be investigated and remedied.

Additionally, the CPS' review does not cover coronavirus-related charges heard under the Single Justice Procedure. A significant number of charges under both the Coronavirus Act and the Health Protection Regulations are being heard under the Single Justice Procedure.⁸ As of 24th June 2021, 7,234 coronavirus-related offences had been heard under the SJP.⁹ If the error rate is in line with the CPS' reviews, this could mean over 2,100 unlawful charges.

In relation to coronavirus-related offences charged under the single justice procedure, more than 88% who receive a notice do not respond at all. 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.¹⁰ Hundreds and likely thousands of people have therefore been convicted and fined for coronavirus-related offences in their absence, without any checks or balances.

There have also been prosecutions under Schedule 22 of the Coronavirus Act 2020 through the Single Justice Procedure.¹¹ However, this Schedule (which was expired by the Government in December 2021) was never 'activated' by the Secretary of State. Any charges and prosecutions under this Schedule are therefore plainly unlawful. It is indicative of the significant failings in the criminal justice system's approach to coronavirus-related offences that these charges proceeded. This injustice must be remedied.

The Joint Committee on Human Rights has raised similar concerns, as has the Justice Committee:

“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

⁶ Obtained via correspondence from the Crown Prosecution Service

⁷ As at 19 December 2021. Source: NPCC, Update on the national police absence rate and Coronavirus FPNs issued by forces in England and Wales, 11 January 2021: <https://news.npcc.police.uk/releases/update-on-the-national-police-absence-rate-and-coronavirus-fpns-issued-by-forces-in-england-and-wales>

⁸ Wrongful convictions under Covid lockdown laws may be slipping through net – Fariha Karim, the Times, 28th February 2021: <https://www.thetimes.co.uk/article/wrongful-convictions-under-covid-lockdown-laws-may-be-slipping-through-net-slvs3nb6m>

⁹ Fourth Report of Session 2021–22: Covid-19 and the criminal law – Justice Committee, HC 71, 24th September 2021, p. 26: <https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/71/71.pdf>

¹⁰ Call to scrap 'plead by post' secret trials – Jonathan Ames, the Times, 18th February 2021: <https://www.thetimes.co.uk/article/call-to-scrap-plead-by-post-secret-trials-5p6w8r3fz>

¹¹ Coronavirus Act: Prosecutions, Oral Question, 15th July 2021, UIN 33912: <https://questions-statements.parliament.uk/written-questions/detail/2021-07-15/33912>

and lacking in clarity and where so many mistakes have been made by enforcement authorities.”¹²

“[...] given the relatively small number of covid-19 cases and their public importance, we do not think that all covid-19 offences in the regulations should necessarily have been specified to allow the procedure to be used. The use of the single justice procedure to deal with covid-19 offences has been problematic in the wider context of public uncertainty over what was prohibited and what was allowed, caused by the fast-changing nature of the covid-19 regulations.”¹³

It is critical that public trust is restored in the criminal justice system’s handling of coronavirus-related fines and prosecutions. In a situation where emergency legislation has been introduced rapidly and often without prior parliamentary scrutiny, the Government has a responsibility to ensure that these laws are enforced and prosecuted with the highest degree of transparency and accuracy. Reviewing FPNs and prosecutions under these laws is essential to achieving this.

Discriminatory and inconsistent enforcement of coronavirus powers

There is significant evidence that FPNs have been issued in a discriminatory fashion, with Black and Asian people in England disproportionately facing fines for coronavirus-related offences:

- The NPCC’s 2020 review of FPN data 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 people were 54% more likely to be fined than white people.¹⁴

The disparities in the numbers of FPNs issued across forces is also deeply alarming. The figures suggest a postcode lottery of FPNs, with some police forces issuing fines at a rate 7 times greater than others.¹⁵ These figures are indefensible and demonstrate the clear need for an urgent review of these charges and prosecutions.

We believe it is clear that there is an urgent need for a review of the enforcement of coronavirus-related laws and regulations, in order for justice to be served. This review is particularly critical given the allegations of unlawful gatherings held by the Prime Minister and senior officials at Downing Street during periods of lockdowns. Faced with apparent inconsistent enforcement of the stringent rules in place at the time, public trust in the criminal justice system has suffered a significant blow.

¹²Fourteenth Report: The Government response to covid-19: fixed penalty notices – Joint Committee on Human Rights, 27th April 2021: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1364/136402.htm>

¹³Fourth Report of Session 2021–22: Covid-19 and the criminal law – Justice Committee, 21st September 2021: <https://committees.parliament.uk/publications/7439/documents/77794/default/>

¹⁴ BAME people fined more than white population under coronavirus laws – Mattha Busby and Mirren Gidda, the Guardian, 26th May 2020: <https://www.theguardian.com/world/2020/may/26/bame-people-fined-more-than-white-population-under-coronavirus-laws>

¹⁵ Analysis of data published by the National Police Chief’s Council on 11th January 2022 has found that Merseyside Police has issued approximately 522 FPNs per 100,000 people, while Humberside Police has issued approximately 71 FPNs per 100,000 people: <https://cdn.prgloo.com/media/5d2ac899c29f46e19112654d9f77d2bb.pdf>

In this context, it is imperative that justice is exercised, and seen to be exercised, proportionately and fairly. The evidence that the opposite has occurred undermines public trust and confidence in authorities and the rule of law.

We look forward to your response.

Yours sincerely,

Big Brother Watch
Fair Trials
APPEAL
Diane Abbott MP
Bell Ribeiro-Addy MP
Tapir Ali MP
Steve Baker MP
Rebecca Long-Bailey MP
Lord Beith
Baroness Bennett of Manor Castle
Apsana Begum MP
Baroness Blower
Kirsty Brimelow QC
Baroness Browne of Ladyton
Baroness Bryan of Partick
Richard Burgon MP
Dawn Butler MP
Ian Byrne MP
Jules Carey, Head of Actions Against Police and State, Bindmans
Alistair Carmichael MP
Baroness Chakrabarti
Jeremy Corbyn MP
David Davis MP
Lord Davies of Brixton
Lord Foulkes of Cumnock
Marcus Fysh MP
Baroness Harris of Richmond
Lord Hain
Lord Hendy
INQUEST
Baroness Jones of Moulsecomb
JUSTICE
Kids of Colour
Ian Lavery MP
Clive Lewis MP
Liberty
Andy McDonald MP
John McDonnell MP
Ian Mearns MP
Grahame Morris MP
Network for Police Monitoring (Netpol)
Northern Police Monitoring Project
Patrick Ormerod, Crime, Fraud and Regulatory, Bindmans
Kate Osborne MP

Release
Baroness Ritchie of Downpatrick
Lord Rooker
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Lord Sikka
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Working Chance
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