

# From Parking Tickets to the Pandemic: Fixed Penalty Notices, Inequity and the Regulation of Everyday Behaviours

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Since the 1960s, Fixed Penalty Notices (FPNs) have become a widely used sanction in the United Kingdom, used to deal with various low-level offences. More recently, the sanction came to prominence as the mechanism chosen to enforce the Coronavirus Health Regulations. This article critically examines the decision to employ FPNs in this context, and the implications in respect of inequality and inequity. We show that the decision was at odds with contemporaneous policing trends, and, drawing on new research evidence, argue that the Regulations stretched FPNs beyond their intended use, creating inequalities in enforcement and inequitable punishment effects. Our findings raise policy questions about the impact of the Health Regulations and what actions should be taken in the event of future pandemics.

**KEY WORDS:** fixed penalty notices, policing, COVID-19

## INTRODUCTION

Since the 1960s, Fixed Penalty Notices (FPNs) have become a widely used and publicly accepted sanction in the United Kingdom. Issued by the police, local authorities and regulatory agencies, FPNs are fixed-value fines, usually capped at a relatively small amount, which act as an out-of-court disposal. Eligible offences include traffic offences, anti-social behaviour, fly-tipping, dog-fouling, littering, and school non-attendance. Although rarely discussed or studied, FPNs came to prominence as the main mechanism used by UK police forces to enforce breaches of the Coronavirus Health Regulations (hereafter ‘Covid-FPNs’) during the pandemic.

At first glance, the decision to use FPNs to respond to the pandemic appears in keeping with their use for other low-level regulatory infractions. There are, however, three reasons why this bears closer scrutiny. Firstly, the size and incremental nature of some Covid-FPNs issued during

the pandemic was very different to other low-level fines. Secondly, FPNs are inherently inequitable insofar as the ‘punishment’ effect is dependent on individual circumstances or income, which means the Regulations introduced an element of baked-in unfairness. That the then Prime Minister Boris Johnson paid the same value fine for breaching the regulations as those on very low incomes is a case in point. Finally, as we shall demonstrate, FPNs had largely fallen out of use in UK policing prior to the pandemic.

This article critically examines the decision to use Covid-FPNs to enforce the Coronavirus Regulations in England, Wales and Scotland, and the impact on those subject to enforcement, focussing on issues around inequality and inequity. It draws on a wide-ranging review of documentary sources, including Hansard reports, policy literature and media reports, as well as evidence from original reports published by the authors, and interviews with police officers undertaken as part of the UKRI-funded ‘Policing the Pandemic in Scotland’ project.<sup>1</sup> For the most part, we focus on England, Wales and Scotland, as there was relatively little material or data available for Northern Ireland.

The article is structured as follows. First, we overview theory and research on financial penalties and identify some of the problems associated with fixed-value fines. The analysis then traces the rise of FPNs in the United Kingdom, and their subsequent decline prior to the pandemic. Next, we look at what is known about the rationale for choosing FPNs as the primary enforcement mechanism for the pandemic. We then draw on empirical evidence about the demographic distribution of Covid-FPNs, and their likely impact on different groups, in terms of equality and equity. Pulling the analysis together, the article concludes that the decision to use FPNs to deal with breaches of the Coronavirus Regulations resulted in significant inequality in the profile of those subject to enforcement, and inequity in terms of the varying impact of Covid-FPNs.

This article is the first to critically evaluate the Coronavirus Regulations through the lens of police-led enforcement. We argue the Regulations departed from the ‘limitation principle’ that underpinned the mainstream introduction of FPNs in the 1960s and stretched them far beyond their intended use. We conclude a fundamental review of the FPN-based enforcement model is needed ahead any future pandemic, and that legislators should consider non-financial sanctions (such as formal warnings) as a potential alternative, as per the prevailing direction of contemporary policing: with the strong caveat that research is needed into the impact and limitations of such measures.

## THEORIZING FIXED PENALTY NOTICES

From a conventional penal theory perspective, FPNs do not easily align with most established punishment aims (Bottoms 1983; Young 1999; O’Malley 2009). Incapacitation (public protection) is not relevant, nor is rehabilitation, given ‘the law pays no attention to who actually pays the penalty’ (O’Malley 2009: 7). In this respect FPNs sit awkwardly with theories that assume pain is inflicted on the individual (Flew 1954). Fox (1995) observes retribution may have some bearing, although the relationship between the offence and punishment needs to be proportionate. In the case of fixed penalties, which do not account for individual circumstances, this puts the onus on legislators to ensure fine values fairly reflect the gravity of the offence, as far as possible.

In policy terms, general deterrence is perhaps the most widely cited rationale (Grace 2013; Joint Committee on Human Rights 2021a). From this perspective, the main objective is to

<sup>1</sup> The Policing the Pandemic in Scotland project was funded by UKRI (grant reference ES/W001845/1) under the Covid-19 rapid response call. For further information on the study, including publications, see <https://bit.ly/46Qp7M9>.

secure compliance, although the extent to which FPNs act as a deterrent is not entirely clear (Grace 2013). Classical deterrence theory (Bentham 1789; Beccaria 1872) posits that if a punishment is appropriately severe (proportionate), certain, and swift, a rational individual will weigh the potential gains and losses before choosing to engage in unlawful activity. In practice, research evidence is mixed, indicative of the multiple factors at play, from levels of public awareness, to individual capacity to weigh up costs and gains. Of the various criteria underpinning classical deterrence theory, certainty or the perceived probability of detection and/or punishment tends to be cited as most relevant (Levy *et al.* 2014: 5). Research on the severity of punishment is less clear (Levy *et al.* 2014: 5), although higher value fixed fines carry disproportionality (and legitimacy) risks. More broadly, it is difficult to disentangle deterrent effects from ordinary law-abiding behaviour (Fox 1995).

For governments and administrators, the main appeal is expediency. In many jurisdictions, including the United Kingdom, legislators have turned to FPNs to help unclog courts, and take pressure off police and prosecutors (Fox 1995). Individuals may also benefit from an expedient system, providing payment can be met. As Fox explains, 'The citizen trades the legal right to a hearing for a swifter form of disposal; a fixed but discounted flat rate monetary penalty; and the promise of a clean slate' (Fox 1995: 2). These features can also be framed in progressive terms. As a lighter-touch sanction, FPNs are usually 'capped at a relatively low level' (Joint Committee on Human Rights 2021a: para. 13), require no admission of guilt, and do not result in a criminal conviction if paid within a fixed period. FPNs are also largely private transactions with few, if any, stigmatizing effects (Braithwaite 1989), compared to liberty-depriving punishments, or larger court fines.

Yet despite these qualities, fundamental difficulties around equality (relating to the uneven distribution of fines across groups) and equity (relating to their differential impact) remain. Unlike the classical liberal ideal of a fine, whereby fines are 'tailored to deliver punishment equally to rich and poor by calculating them as a proportion of the offenders' wealth', thereby allowing for 'exact proportionality of offence and sanction' (O'Malley 2009: 67–68),<sup>2</sup> FPNs are inflexible. As such, the measure of 'financial pain' (Young 1999: 195) depends on individual circumstances and how fines are distributed. For those on higher incomes, FPNs may function as a retrospective licence (Bentham 1789; Rusche and Kirchheimer 1939), sitting at odds with proportionality principles. Further, as noted above, the 'pain' can be circumvented and passed onto other people, such as family or friends. For these reasons, fixed fines such as FPNs are 'fundamentally inequalitarian' (Quilter and Hogg 2018: 17). Given the ease of administration, FPNs are also liable to net-widening effects, with the risk of disproportionate use (Grace 2013).

Whilst the inequity problem underpinning FPNs cannot be eliminated, it can be circumscribed by restricting the range of eligible offences, thereby limiting the degree of discretion afforded to officers. If eligible offences are tightly defined and narrow in scope, with clear criteria on which to base decision-making, the risk of unequal impact can be reduced, and legitimacy of the sanction increased. Restricting FPNs also helps shore up criminal justice system legitimacy, by making moral distinctions about the gravity of different behaviours.

To summarize, FPNs can be characterized as an essentially bureaucratic response to lower-level offending, largely detached from high-level political or moral imperatives, and relatively light-touch. Whilst it is somewhat inevitable that FPNs are inherently inequitable, this can be mitigated by carefully delineating the type and range of eligible offences. We refer to this as the 'limitation principle'.

2 These principles are evident in the 'day-fine' system which calculates the value of a fine by taking into account both the severity of an offence and ability to pay (see Faraldo-Cabana 2020).

## THE RISE AND FALL OF FIXED PENALTY NOTICES: A HISTORICAL AND EMPIRICAL OVERVIEW

Drawing on the above observations, this section traces the rise and fall of FPNs in the United Kingdom, prior to the Covid-19 pandemic. The analysis shows how a tightly defined sanction, initially limited to minor traffic offences, was expanded to cover a profusion of low-level anti-social offences; thereby departing from the limitation principle. We discuss the consequences of this shift, including net-widening and vulnerability to organizational pressures. Further indicative of organizational factors, the analysis then shows how FPNs fell out of favour in the United Kingdom, as police forces increasingly turned to non-pecuniary sanctions to deal with low-level offending.

### From parking tickets

The mainstream introduction of FPNs in the UK dates to the Road Traffic and Road Improvements Act 1960. Motivated by bureaucratic pressures, the Act introduced a modest on-the-spot fine for various motoring offences, mostly pertaining to parking. Citing administrative expediency, Minister of Transport Ernest Marples set out a conditional formula that would be broadly replicated thereafter:

If the person pays the penalty there will be no conviction and no sentence. It will be the justices' clerk who receives the penalty. If the person concerned pays the fixed penalty within 14 days the police are not entitled to take out a summons against that man. If, on the other hand, he waits to be prosecuted, the summons will be issued in the ordinary course, as it is now... The idea of this is to do away with a great deal of the clerical work that is taking place on parking offences, which is clogging the courts and the police. (Marples 1960: col. 905–906)

The proposal was not without controversy. Lord Lucas of Chilworth presciently argued the 'principle of punishment without trial' (1960a: col. 420) was likely to be extended to other offences:

I am arguing on the principle of this matter. As soon as we institute a system of ticket fining, we are instituting something which is entirely new in this country. I think that this system will expand. I cannot see anything to stop it expanding. I think that a great many other offences will be subject to ticket fining in years to come. (Lucas 1960b: col. 1062)

Other concerns included inequitable punishment effects, the application of a fixed fine to offences of varying severity, a loss of judicial decision-making, and the risk people would make 'cynical' cost–benefit calculations (Mellish 1960: col. 101). Nevertheless, the view was firmly held that, for most people, the positives associated with the speed and efficiency of these relatively low-level financial penalties for a very tightly defined set of offences would far outweigh any negatives. As Lord Chesham (1960: col. 506) stressed:

I believe that the ticket system, with the safeguards that have been built into the Bill, will prove acceptable to the public. I think that most motorists—and, after all, an overwhelming majority, for better or worse, already plead guilty by post when they are charged with parking offences—will accept without difficulty the somewhat simpler procedure of paying the fixed penalty, while those who wish to contest the charges will recognise that they are perfectly free, as free as they are to-day, to do just that.

### Legislative creep: the expansion of FPNs

FPNs thereafter became a fixture of the motorist landscape (Fox 1995). In 1977, the Scottish Office appointed a Committee under Lord Stewart, to 'consider the effect on the criminal courts and the prosecution system of the volume of minor offences at present dealt with by summary prosecution and whether some other process might be devised to deal with such offences whilst maintaining essential safeguards for accused persons' (Lord Stewart 1983: 9).

The Committee published two reports (Lord Stewart 1980; 1983), the first of which recommended extending FPNs to a wider range of motoring offences and raising the gravity of eligible offences (Fox 1995). More radically, the second report recommended a new prosecutor or 'fiscal fine' as an alternative to prosecution for a range of statutory and common law offences. Some members of the Committee, including Lord Stewart (1983: para. 439), opposed the proposal, arguing the model would see independent prosecutors acting as 'surrogate judge', and that an 'offer' not to prosecute was 'fraught with the possibility of undesirable consequences'. Critics also raised net-widening concerns, given the ease of administering the new fines (Fox 1995: 24). Nonetheless, pragmatism won over and the report was passed by a Committee majority, who stressed the scheme was voluntary, and 'the delays which are evident in the system may cause more difficulty and inconvenience for the offender and more concern to him than any niceties of the philosophy of justice' (Fox 1995: para. 4.38).

The Transport Act 1982 saw new FPN provisions introduced in England and Wales, with separate legislation for Scotland in 1983 (Fox 1995: 26). As per the Stewart Committee recommendations, the Criminal Justice (Scotland) Act 1987 subsequently introduced fiscal fines for less serious criminal offences.

At this juncture, offences eligible for police FPNs remained limited to motoring offences and involved minimal discretion, as per the limitation principle. In contrast, those eligible for prosecutor fines extended to non-regulatory offences such as breach of the peace, assault and being drunk and incapable. This distinction would, however, become blurred by developments around a decade later.

### Widening police powers under a 'tough on crime' agenda

Penal politics in the United Kingdom took a punitive turn in the 1990s, following the election of a New Labour government which came to power on a 'tough on crime' policy manifesto (Newburn 2007). Extending FPNs in England and Wales to the 'mainstream of criminal behaviour' (Young 2008: 169) the Criminal Justice and Police Act 2001 created new 'on-the-spot' police fixed penalties known as 'Penalty Notices for Disorder' (PNDs), initially for ten low-level criminal offences (Grace 2014). During the passage of the Bill, legislators raised familiar concerns around the removal of court process safeguards, the expansion of police discretion, net-widening risks, a lower burden of proof and inequality of impact. As Grace (2014: 49) documents: 'Lord Brennan argued that the system for road traffic offences was not comparable as, by virtue of those offences, the offenders in traffic cases at least have the means to run a car and thus should also have the means to pay the fine. This is not true of the disorder offences to which penalty notices would apply'. In response, the government argued that the FPN system was necessarily standardized, citing motoring fines as a precedent. The number of eligible offences for PNDs thereafter expanded, to 30 at the time of writing.

Following devolution in 1999, Scotland was under the control of a nascent Labour-Liberal Democrat coalition government which had also taken an uncharacteristic turn towards more punitive penal politics (McAra 2008). Broadly mirroring the 2001 Act, the Anti-Social Behaviour (Scotland) 2004 Act (ASB) enabled the police to issue ASB-FPNs for low-level disorder (including breach of the peace, disorderly conduct whilst drunk and vandalism) to those aged 16 years or over.

In England and Wales, the UK Government maintained FPNs provided swift punishment, acted as a deterrent and saved police time (Grace 2013). Additional aims included public reassurance and visible punishment, signalling the behaviour 'is being tackled and not tolerated' (Home Office 2006: 6), and securing public confidence (Grace 2014). In Scotland, ASB-FPNs were described as part of an enforcement agenda, although for frontline officers the rationale seemed less clear:

There was a lack of consensus among police officers about the overall purpose of FPN fines: if they are about providing a just punishment for offenders who are caught, if they are set to deter potential offenders who are considering committing an offence or if they are a token penalty to inconvenience an offender to allow them to reflect on their behaviour and feel that they have this time had a lucky escape from a prosecution. (Cavanagh 2009: 46).

### Expediency, net-widening and discretion

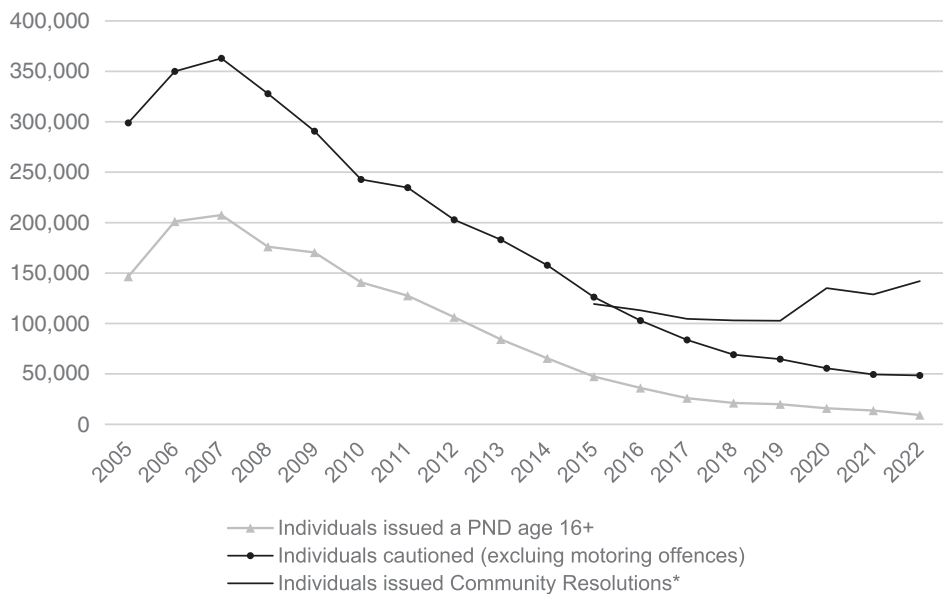
Respective evaluations of PNDs (Halligan-Davis and Spicer 2004), and ASB-FPNs (Cavanagh 2009), reported time-saving effects. Both penalties could be issued on the spot, without needing to take the alleged offender to a police station, or prepare reports. At the same time, the expansion to anti-social behaviours re-ignited concerns levelled at the second Stewart report, including net-widening effects. In Scotland, Cavanagh documented ASB-FPNs being issued for minor offences that might otherwise have prompted an informal warning or, marked 'no action' if reported to the prosecution service. In the first year of the national rollout, police officers issued 65,490 ASB-FPNs, whilst the number of FPN-eligible charges dealt with by the prosecution service fell by 47,847 (Cavanagh 2009: Tables 12 and 15), producing a net gain in sanctions.

The unintended consequences of increasing police powers of enforcement and affording officers the role of 'surrogate judge' was particularly evident in Scotland's legacy Strathclyde police force.<sup>3</sup> Under the direction of Chief Constable Sir Stephen House, ASB-FPNs were incorporated into its proactive, enforcement-based approach to tackling violence (Murray and Harkin 2017). Following the operational rollout of ASB-FPNs in 2007, Strathclyde accounted for 42 per cent of those issued in Scotland, in line with its population share. By 2010/11, this had increased to 76 per cent (Travers 2012: Table 2a), driven in part by performance targets for detecting offences such as consuming alcohol in a public place (Strathclyde Police Authority 2010). Simultaneously, the ASB-FPN payment rate in Strathclyde fell steadily (reaching 33 per cent in 2011/12, compared to around 55 per cent in other forces), reflecting the high volume issued to 'regular and repeat offenders who act out of compulsivity' and those unable or unwilling to pay (Travers 2012: 3, 5–6).

### Pre-pandemic trends: the fall of FPNs and the rise of non-pecuniary sanctions

Well before the pandemic, the use of PNDs in England and Wales, and ASB-FPNs in Scotland, fell away sharply. Figure 1 shows the number of offenders issued with a PND in England and Wales fell by 96 per cent, from 207,544 in 2005 to just 9,293 in 2022. In the same period, the number of offenders cautioned (excluding motoring offences) fell by 84 per cent, from 362,895 to 48,510. From 2009 onwards, police forces in England and Wales introduced non-statutory Community Resolutions (CRs), a type of contract between the police and accused person, broadly based on restorative justice principles, and aimed at lowering the number of First Time Entrants to the criminal justice system (Sutherland *et al.* 2017: 18). National data available

<sup>3</sup> Scotland's eight legacy police forces merged into a single police service (Police Scotland) in April 2013. Of these, Strathclyde covered the largest proportion of Scotland's population (43 per cent).



**Fig. 1** Trends in police notices for disorder, cautions and CRs in England and Wales (2005–22).  
 Source: [Ministry of Justice \(2022\)](#) Criminal Justice Statistics Quarterly: December 2022, Table Q2\_1; [Ministry of Justice \(2017\)](#) Criminal Justice Statistics Quarterly: December 2016, Table Q2.1; Q2.2.

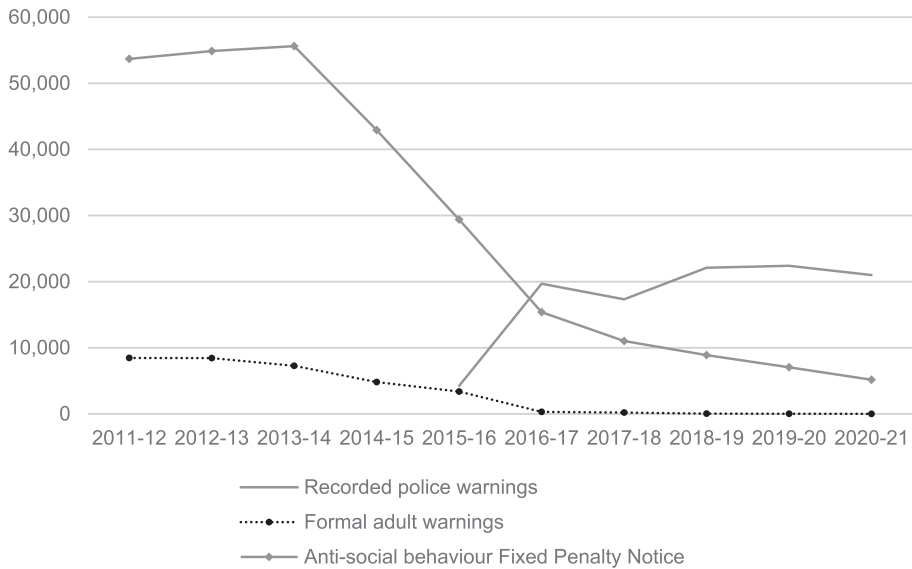
from 2014/15 ([Home Office 2015](#)) show that by 2016, police use of CRs had outstripped both PNDs and cautions.

A shift towards non-pecuniary sanctions is also evident in the Police, Crime, Sentencing and Courts Act 2022, which introduced an out-of-court disposal framework based on cautions, with various conditions attached ([Ministry of Justice 2023](#)).

Scotland has seen a similar shift away from pecuniary disposals. [Figure 2](#) shows the number of ASB-FPNs peaked at around 56,000 in 2013/14 ([Scottish Government 2022](#): Table 17), coinciding with the first year of the amalgamation of Scotland's eight legacy forces into Police Scotland. This was followed by a 91 per cent decline to just over 5,000 in 2021/22. In January 2016, Police Scotland introduced Recorded Police Warnings (RPWs), replacing the narrower Formal Adult Warning scheme. Between 2015/16 and 2016/17 the number of RPWs more than quadrupled, from 4,242 to 19,678, and fluctuated at just over 20,000 from 2018 onwards. In the year prior to the Covid-19 pandemic, officers issued around three times more RPWs than ASB-FPNs.

The trends outlined above may be explained by several factors that underline the vulnerability of FPNs to organizational pressures. In England and Wales, this includes the removal of the Home Office 'offences brought to justice' target in 2008, which had required police forces to increase the proportion of recorded crimes with an identified offender—leading to more PNDs/cautions issued, via a focus on lower-level offences ([Grace 2022](#)). Conversely, the rise in CRs may be related to their promotion in the 2017 National Police Chiefs' Council out-of-court disposal strategy ([Grace 2022](#)).

In Scotland, the high rate of ASB-FPNs at time of police-force unification most likely relates to the enforcement approach imported from legacy Strathclyde, under the continued leadership of Sir Stephen House as Police Scotland's first Chief Constable. The sharp reduction in ASB-FPNs in 2014/15 broadly coincides with his resignation following several high-profile controversies ([The Scotsman 2015](#)). The increase in RPWs is less easily explained, given a lack of research or



**Fig. 2** Trends in anti-social behaviour order FPNs and police warnings in Scotland (2011/12 to 2020/21).

Source: [Scottish Government \(2022\)](#) Criminal Proceedings in Scotland 2020–21, Main Bulletin Table 17.

transparency around the scheme (eligible offences are directed by confidential guidance from the Lord Advocate). Relevant factors may include the extension of the warning scheme to 16/17-year-olds, a wider range of eligible offences (compared to ASB-FPNs), and financial pressure on Police Scotland, making a more time-efficient disposal particularly attractive.

The analysis so far has shown how the scope of police FPNs expanded in the 2000s, to include a wider range of more subjective criminal offences, thereby departing from the limitation principle. Notwithstanding the fall in cautions in England and Wales, the analysis then showed a sharp fall in FPNs prior to the pandemic, and a shift towards non-pecuniary out-of-court disposals. It is thus striking that in the face of a global pandemic, the United Kingdom and devolved governments turned to FPNs to regulate public behaviour; raising the question as to why lawmakers believed this to be the best approach. To address this, we look at what is and is not known about decision-making in relation to the introduction of Covid-FPNs.

## RESURRECTING FPNs: THE RATIONALE BEHIND COVID-FPNs

In response to the rapid global spread of the Coronavirus, in March 2020 each of the four UK countries introduced Health Protection Regulations, imposing severe restrictions on personal freedoms and civil liberties. Breaching the Regulations constituted a criminal offence, although to offset this liability the Regulations provided police powers to offer an FPN (Covid-FPN) to any eligible person. With prohibitions on leaving home without a reasonable excuse, and strict limits on social contact, the Regulations stretched the breadth of offences eligible for FPNs to an unprecedented level.

Across all countries, a first offence resulted in a fine of £60, reducible to £30 for timely payment ([Gorton et al. 2022a](#)). Unusually, the Regulations also introduced an incremental fining structure, whereby the fine value doubled for each subsequent offence. Each country set a maximum of five FPNs per person, up to a value of £960, except Wales where the maximum fine

was limited to £120. As the pandemic unfolded, the substance of the Regulations and value of Covid-FPNs diverged between countries, with implications for consistency and proportionality. By September 2020, the minimum fine value in England had increased to £200 and maximum value to £6,400. More controversially, in August 2020 the UK government introduced £10,000 fines for organizing gatherings of over 30 people in England. In Wales, the maximum fine increased to £1,960 in May 2020, with a first fine remaining at £60. In Scotland, the minimum value also remained the same, but the maximum fine value was reduced to £480 under guidance from the Lord Advocate. In addition, ongoing amendments to the Regulations in each country meant that what counted as an eligible offence frequently changed and varied geographically, leaving police officers and the public struggling to keep up with the law. Each government also published separate non-statutory guidance, which led to further confusion (Hickman 2020), and heightened the risk of police officers acting beyond their powers (Hogarth 2020).

We have struggled to identify formal documentation that explains the rationale for choosing FPNs to help secure compliance with the Regulations, or the decision to use an incremental fining structure. Internal Scottish Government correspondence obtained through Freedom of Information suggests Scottish Ministers were keen to adopt a 'four nations approach' and took the lead from the UK Government on offences and fixed penalties, and that Police Scotland welcomed the proposed use of FPNs.<sup>4</sup> For the most part, government discussion focussed on the practicalities of administering the fines.<sup>5</sup> A Scottish Government Ministerial briefing noted that the UK Government wanted Scotland to introduce the same incremental structure, although no explanation was given for choosing this approach.

We found no clear evidence to suggest UK lawmakers sought to align the policy with considerations around equality or equity, either prior to (or even after) establishing FPNs as the primary means of enforcement. At the start of the pandemic no government undertook Equality Impact Assessments on the new Regulations, reflecting both the pace of events and government under-preparedness (House of Commons Committee of Public Accounts 2022). The cross-national legislative harmony suggests that no concerns were raised at the early stages.

Looking at retrospective accounts of government decision-making, in evidence to the House of Commons Justice Committee, the then UK Minister for Crime and Policing, Kit Malthouse MP drew on familiarity, proportionality and expediency to explain the decision:

FPNs were, I think, selected because they are a known science. They are a familiar part of the landscape and are proportionate in terms of us dealing with human behaviour. From speeding to dog fouling or littering, an FPN is an easy and quick way to make an enforcement point that we felt would be recognised and understood by the public... in terms of the familiarity of the public with the method, it seemed to be the best way. To be honest with you, other than there being a specific crime committed, which would be that much more of a palaver for the courts, it seemed like a good and efficient way to deal with the problem.

(Malthouse, cited in House of Commons Justice Committee 2021a: Q136)

The Minister also described the system as light-touch, albeit recognizing that £100 was 'quite a lot' for some people:

I think it is worth saying that the FPN system was designed to be relatively light touch. There is a big discount for early payment... A relatively small number per force were issued. I

4 See Witness Statement INQ000369767 to the UK Covid-19 Inquiry. <https://covid19.public-inquiry.uk/documents/inq000369767-witness-statement-from-professor-susan-mcvie-member-of-independent-advisory-group-dated-15-12-2023/>.

5 Police IT and administrative systems were not set up to record and process the new fine amounts (McVie 2022), which meant frontline officers initially had to issue adapted paper tickets. Discussions with senior NPCC officers suggest UK police forces faced similar problems.

acknowledge that to quite a lot of our fellow citizens £100 is a lot of money, nevertheless it is not a huge sledgehammer of a penalty designed to encourage compliance. ([House of Commons Justice Committee 2021a: Q139](#))

In responding to the [Joint Committee on Human Rights \(2021a: 34\)](#) on the proportionality or otherwise of £10,000 fines for organizing gathering of more than 30 people, the UK Government stated:

This FPN is intentionally high in order to act as a deterrent to anyone who might otherwise choose to organise a gathering that would significantly breach the gathering restriction limits.

The Home Office has since asserted, ‘Fixed penalty notices were a strong deterrent for the small minority of people who broke Covid rules. [They] allowed individuals to avoid conviction in exchange for a fee’ ([The Times 2023](#)). We are not aware of any robust research on the deterrent effect of Covid-FPNs, or how this may have compared to other measures (such as public messaging). Nor has there been research on how the public viewed the fines, or the impact on recipients. There are also uncertainties about the public’s expectations of unusually large fines being issued by the police, and the use of an incremental fining structure that bears no relation to existing on-the-spot penalties.

More broadly, the use of a fixed fine sat uneasily with proportionality principles, given the huge variation in people’s ability to pay. It could reasonably have been foreseen that using a fixed fine to help secure compliance would most likely lead to unequal and inequitable effects. It was, for instance, predictable that compliance with the rules would be more challenging for those living in cramped or inadequate housing without access to outdoor space, those with alcohol and/or drug dependencies, and those with mental health vulnerabilities. Since these challenges are also associated with poverty, it was foreseeable that many of those who failed to comply would also struggle to pay a fine.

To investigate these concerns further, the next section draws on research data to consider what is known about inequality and inequity in respect of the use of Covid-FPNs.

## EQUALITY AND EQUITY? POLICING THE PANDEMIC

This section presents evidence on who was fined for failure to comply with the Regulations in England, Wales and Scotland, how this changed over time, and differential impacts across the population. We draw on a series of reports published by the authors on the use and distribution of Covid-FPNs, interviews with police officers, and evidence on payment outcomes, all undertaken as part of the UKRI-funded Policing the Pandemic in Scotland project (see footnote <sup>1</sup>). Our analysis covers the period from 27 March 2020, when the regulations came into force, to 31 May 2021, by which time most restrictions had ended. We also compare changes in the distribution of Covid-FPNs between two UK ‘lockdown’ periods, during which most fines were issued. These are: 27 March to 3 July 2020; and 1 January to 31 May 2021.

Over the period studied, police officers issued 110,502 Covid-FPNs in England, 20,410 in Scotland and 12,004 in Wales ([Gorton et al. 2022a: 11](#); [McVie et al. 2023: 24](#)).<sup>6</sup> In all three countries, the distribution of Covid-FPNs fell unequally across the population, with enforcement highest amongst younger people, males, those from an ethnic minority background and those living in areas of high deprivation. In some ways, the demographic profile of those fined was reflective of routine policing activities such as stop and search ([Bradford and Loader 2016](#)).

<sup>6</sup> This refers to FPNs issued in relation to breaches of restrictions on movement, attending gatherings, and failure to comply with instructions which were in place across all UK nations. It excludes some offences introduced in specific jurisdictions.

However, closer examination of FPN recipients and how they changed over the course of the pandemic raises particular concerns about equality and equity.

### Equality of enforcement by demographic profile

The strongest demographic predictor of non-compliance was age. As Wright and Fancourt (2021: 153) noted, 'younger adults had lower levels of compliance than older adults in April [2020] and these age-related differences grew considerably as the pandemic continued'. It is unsurprising, therefore, that young people were over-represented in the enforcement data. Almost half of all Covid-FPN recipients in England (48 per cent) and Wales (46 per cent) were aged between 18 and 24 (McVie *et al.* 2023: 32); whilst 59 per cent of recipients in Scotland were aged 16–25 (Gorton *et al.* 2022a: 52).<sup>7</sup> Overall, people in these age groups were over four times more likely to be fined compared to their respective population share in all three countries. However, enforcement became more intensively centred on younger people over time as the restrictions became focussed on social gatherings. As a result, the proportion of all fines issued to young people increased from around 30–40 per cent in the first lockdown, to 50–70 per cent in the second.

Men were more likely to be fined than women, with around seven in ten Covid-FPNs in England, Wales and Scotland issued to males, against a 49 per cent population share (Gorton *et al.* 2022a: 52; McVie *et al.* 2023: 29). Survey data indicate that men were less likely to comply with the Regulations than women (Wright and Fancourt 2021); however, survey-based sex disparities do not fully account for the differences in fining rates. As the pandemic progressed, sex differences reduced substantially. Indeed, the ratio<sup>8</sup> of fines issued to men compared to women more than halved between the two lockdown periods: from 4.5 to 2.4 in England; from 3.4 to 1.7 in Wales; and from 3.8 to 1.7 in Scotland (Gorton *et al.* 2022a: 18; McVie *et al.* 2023: 30). This reflects a narrowing of the gap in non-compliance between (especially young) men and women.

The biggest discrepancy between survey and enforcement data was in respect of ethnicity. Survey evidence suggests that compliance did not vary greatly by ethnic group (Wright and Fancourt 2021; Wright *et al.* 2022); however, there was significant disparity in the rate of Covid-FPNs issued to people from ethnic minority backgrounds, compared to white backgrounds. Ethnic disparity was highest in Wales (2.8) and England (2.3) (McVie *et al.* 2023: 75) and lowest in Scotland (1.4) (Gorton *et al.* 2022a: 21). Despite little evidence of change in behaviour by ethnic group (Wright and Fancourt 2021), the ethnic disparity in Covid-FPNs issued in England increased from 1.9 in the first lockdown period, to 2.6 in the second; whereas, in Wales it reduced from 4.3 to 2.4 over the same period (i.e. both ending up at the same level but from very different starting points) (McVie *et al.* 2023: 37). In Scotland, where compliance was higher amongst those from minority ethnic backgrounds (Wright and Fancourt 2021), there was little change in the degree of ethnic disparity, from 1.3 in the first lockdown period to 1.4 in the second (Gorton *et al.* 2022a: 22).

It is not unusual for policing data to show ethnic disproportionality, especially in relation to stop and search in England and Wales (Miller *et al.* 2020); however, the degree of ethnic disparity in Covid-FPNs—especially in the face of high levels of compliance—is concerning and bears further scrutiny. Analysis at police-force area level suggests some over-policing of those from ethnic minority backgrounds crossing local authority boundaries during periods of

<sup>7</sup> As noted earlier, the legislation in Scotland initially allowed for fines to be issued to people aged 16 or over. In May 2020 this was increased to age 18.

<sup>8</sup> This describes the different between groups, with bigger values indicated larger differences. In this case, the disparity ratio is calculated by dividing the rate per 10,000 fines issued to men by the rate per 10,000 fines issued to women.

tightened travel restrictions (McVie *et al.* 2023), possibly because of increased visibility (Turner *et al.* 2022).

### From the usual to the unusual suspects

There is no available personal socio-economic data about who was fined during the pandemic; however, research shows large differences based on where people were living. Based on standardized Indices of Multiple Deprivation,<sup>9</sup> people living in the 10 per cent most deprived neighbourhoods in England were almost five times more likely to receive a fine over the course of the pandemic than those living in the 10 per cent least deprived neighbourhoods (McVie *et al.* 2023: 42). Similar disproportionality was observed in Wales and Scotland, albeit the overall disparity was not as great (3.0 and 2.6, respectively) (McVie *et al.* 2023: 42, Gorton *et al.* 2022a: 26). A lack of baseline data makes it difficult to say how different these figures might have been to routine policing practices, such as stop and search; however, higher rates of policing amongst those living in more deprived communities are not uncommon (Williamson *et al.* 2007).

Neighbourhood inequality was most pronounced during the first lockdown, especially in Scotland. Between March and June 2020, those living in the 10 per cent most deprived Scottish neighbourhoods were 12.6 times more likely to receive a Covid-FPN than those living in the 10 per cent least deprived neighbourhoods (Gorton *et al.* 2022a: 2); the equivalent figures for England and Wales were lower, at 7.2 and 4.3, respectively (McVie *et al.* 2023: 13). Scottish data also show three quarters (73.5 per cent) of all those fined during the first lockdown were already known to the criminal history system<sup>10</sup> (McVie and Matthews 2021: 29). In other words, the Regulations mainly impacted those that might be described as the ‘usual suspects’. This was substantiated through interviews conducted by HM Inspectorate of Constabulary in Scotland (2020: para. 21), in which police officers stated that blatant non-compliance during the first lockdown was mainly concentrated amongst a minority of the population with ‘chaotic lifestyles’ who ‘seemed intent on non-compliance’. Officers interviewed by the authors (see footnote <sup>1</sup>) gave similar accounts:

Probably the vast majority of Covid tickets or Covid incidents that I personally dealt with were people with a pre-existing police record.

With those 20 or so tickets that I issued... it was all to people who already had a criminal record who had no fear of the police, had no fear of a jail cell.

Over time, however, the socio-economic profile of those receiving Covid-FPNs changed dramatically. The disparity in likelihood of receiving a fine between those living in the 10 per cent most and 10 per cent least deprived neighbourhoods between January and May 2021 fell to 4.7 in England, 3.2 in Wales (McVie *et al.* 2023: 13) and to just 1.8 in Scotland (Gorton *et al.* 2022a: 27). Moreover, the proportion of those who were already known to the criminal justice system in Scotland fell to 46.4 per cent in the latter months of 2020 (Gorton *et al.* 2022a: 29). So, whilst breaches were still being recorded amongst the ‘usual suspects’, there was much higher representation amongst those with no prior criminal history and amongst those living in far more affluent communities, in other words the ‘unusual suspects’. This shift in the characteristics of

<sup>9</sup> Separate Indices of Multiple Deprivation are available for England, Wales and Scotland. They are compiled across a range of domains and based on Census and other small area data. The measure in England and Wales is based on Lower Layer Super Output Areas (LSOAs). These are small area geographies with an average population of 1,500 people or 650 households. In Scotland, the LSOA equivalent are data zones with an average population of 500–1,000 people.

<sup>10</sup> The Criminal History System records details of a person who has been recorded by the police for committing a crime in Scotland, although they may not have received a formal criminal conviction. Data for Scotland were only available from March to December 2020. Equivalent data were not available for England and Wales.

FPN recipients was also reflected in research interviews with Police Scotland officers conducted by the authors, both in terms of personal profile:

it appeared to me that there was an increase in the number of households that maybe previously had no police interactions.

it was kind of older people, over thirties, professional, a lot of professional folk or ex-professionals, folk that I thought should know better.

And in terms of the neighbourhoods that police officers were being called to:

We were going to housing estates that we would normally go to for somebody reporting a crime, if you know what I mean. Very expensive houses, very nice areas...

We were in affluent areas, not in the schemes...

This shift in enforcement from the 'usual' to the 'unusual' suspects resonates with falling compliance levels across the population. Wright and Fancourt (2021: 7–8) note 'individuals with higher incomes had higher initial compliance but faster decreases over time', and suggest 'it may be that greater wealth and a sense of privilege or a lack of financial fear over fines may have driven a more relaxed approach to compliance'. The now infamous 'lockdown parties' at Downing Street, and various other high-profile regulatory breaches (Independent 2020), also indicate that individuals at all levels of society may have been interpreting the rules to suit their own ends (Gorton *et al.* 2022b). Public demand, in terms of calls for service to deal with breaches of the Regulations, was not always specifically recorded during the pandemic (Aitkenhead *et al.* 2022); however, a significant rise in anti-social behaviour incidents suggests that widespread public reporting was driving enforcement patterns. Research interviews also suggest that police frustration over lack of compliance (especially amongst younger people) led to an increasingly muscular approach to enforcement, with officers moving more swiftly through the first 3 Es. Nevertheless, despite this *relative* shift in enforcement patterns, it is important to note that the *absolute* number of FPNs issued to people living in the most deprived neighbourhoods remained higher than all other areas, and increased substantially between the two lockdowns, reflecting ongoing geographic inequality.

### Equity of punishment effect

The evidence thus far suggests that, although compliance declined across the population as the pandemic progressed, enforcement remained most prevalent amongst potentially vulnerable groups. Nevertheless, the impact of Covid-FPNs on recipients remains a major research gap. Given the inequitable nature of financial penalties generally, and the very large value of some Covid-FPNs in particular, it is inevitable that the degree of 'punishment' varied, with some individuals put at severe detriment, particularly in England where the size of fines was highest.

A plausible indicator of the variable punishment effect of Covid-FPNs is the rate of payment, which shows considerable disparity across social groups. In England and Wales, only 57 per cent of Covid-FPNs issued between March 2020 and February 2022 were paid within the prescribed 28-day period (National Police Chiefs' Council 2022: 33). Payment was particularly low amongst people from black backgrounds, those living in areas of high deprivation, and amongst those who received more than one Covid-FPN (McVie 2022). Thousands of unpaid or contested cases have subsequently been prosecuted in England and Wales, despite the UK Government's stated intention not to criminalize breaches (Guardian 2023). In some cases, individual fines have reached up to £13,000 (Evening Standard 2021). Research in Scotland showed that, overall, Covid-FPNs were more likely to be paid than ASB-FPNs (most probably

due to the increasing prevalence of enforcement amongst the ‘unusual suspects’); however, payment of Covid-FPNs was lowest amongst those living in areas of high deprivation, those with a prior criminal history and those who received multiple Covid-FPNs (McVie 2022). Given the potential consequences of non-payment of fines, especially in terms of imposing even greater financial hardship, the inequity of Covid-FPNs is clear.

For those who could afford to pay their fines, who (as shown by Wright and Fancourt 2021) were progressively less likely to comply with the regulations, the financial impact is likely to have been less severe. In evidence to the UK Justice Committee, Daniel Greenburg (Counsel for Domestic Legislation in the House of Commons) stated that FPNs ‘can be seen to amount in effect to prohibitions that apply only to people for whom the sums charged by way of penalty notice are significant’ (House of Commons 2021b: para. 52). In interviews, police officers described how Covid-FPNs were treated by some young people as ‘*the price of a party*’ which people weighed up against the costs of a social life in ordinary times:

a lot of these people spend more money on a night out than they did to pay off a ticket. For example, you’ve got the younger generation, they’d be quite happy to take a £60 ticket to meet up with their friends.

I think the mentality was, particularly among the students... well, I’m at risk of getting the equivalent of a parking fine to have a party. I’m quite happy to take that risk... what’s the worse that can happen?

The fact that it did not matter who paid the fine exacerbated the potential for unfairness. A report by HMICS (2021: para. 32) noted, ‘When officers attended students often indicated they were not bothered about the fixed penalty notices as their parents would pay’. Likewise in our own research interviews, police officers indicated for many young people (especially students from more affluent backgrounds), payment would most likely be met by other family members:

it was probably rich kids so probably yes, parents would be paying it, and there was a distinct, overall, impression of that it didn’t matter, and they didn’t care, and it wasn’t a financial burden.

a lot of [students] would be like ‘oh I’ll have to get Daddy to pay it’ or you know, there was that kind of, wealthy, so obviously from very wealthy families.

Taken together, it can be reasonably concluded that Covid-FPNs impacted most disproportionately on those with the least ability to pay, for whom the fine acted as a punishment; and least on those who were easily able to pay, for whom the fine acted as a licence to break the rules. That the same value fine was meted out to everybody, regardless of circumstances, for the same behaviours, adds to the inequity of this approach.

## CONCLUSION

There is no doubt that the United Kingdom and devolved governments had to act quickly and decisively to protect people from the Coronavirus. In the face of predictions that thousands of people may die from the disease, it was inevitable that those in power had to implement a plan to minimize its spread and impact. However, the rationale for introducing an enforcement-based approach has never been fully justified, and no evidence exists as to whether the policing response made any material difference to the spread of the virus or the rate of deaths. Moreover, the decision to use Covid-FPNs as the main method of enforcement raises fundamental questions around fairness and equity that stem from the distinctive nature of the penalty itself, and the profile of those most impacted by it. As a fixed-value sanction, FPNs do not account for

ability to pay and impact differently across the population. For some, a fine may feel trivial and unlikely to act as a deterrent. For others it is a significant proportion of income. Nor does it matter who foots the bill. For the most part, this is understood to be offset by lighter-touch qualities. In other words, there is a trade-off: an FPN may be more inequitable, but the value of the fine tends to be relatively low, the punishment is not physically intrusive or stigmatizing, nor does it involve a criminal conviction.

The counter argument to this 'light-touch' premise is the ease with which the penalty can be administered and the potential for unequal impact. Damage limitation relies on restricting the range of eligible offences. It is this limitation principle that helped legitimize the mainstream introduction of FPNs in 1960, restricting it to a narrow set of motoring offences. Nevertheless, as forewarned by Lord Lucas, over the next five decades the scope of FPNs expanded to include a wide range of low-level anti-social behaviours in the 2000s and, under the Coronavirus Health Regulations, to everyday behaviours and routines.

The rationale for introducing FPNs to secure compliance with the Health Regulations has not been formally documented, beyond retrospective nods to deterrence theory, and even the UK Minister in charge of its introduction seemed unsure of the reason. To apply the theoretical observations discussed in part one, disentangling the various drivers of deterrence remains difficult. At the time of writing, we are not aware of evidence indicating that Covid-FPNs acted as a deterrent. [Halliday \*et al.\* \(2022: 403\)](#) identify 'the prospect of peer disapproval' as a stronger deterrent than Covid-FPNs in themselves. And [Murphy \*et al.\* \(2020\)](#) found that a normative sense of duty was more likely to underpin compliance than the type of instrumental decision-making that underpins classical deterrence theory.

In terms of expediency, it is understandable that legislators, faced with a rapidly unfolding public health emergency, reached for FPNs as a ready-made, easily dispensed out-of-court disposal. Yet, this decision was out of kilter with the substantial decline in police FPNs in favour of non-pecuniary and more expedient alternatives. More fundamentally, it was foreseeable that widely applying a penalty with baked-in inequity, contrary to the limitation principle, would lead to unfairness both in terms of who would receive them and what impact it would have. The increase in non-compliance amongst those rarely subject to public policing was perhaps less foreseeable; however, it intensifies the argument around inequity. Even at a relatively modest starting value of £60, some struggled to pay their fines. At the same time, echoing Bentham's aphorism (1789), others treated the sanction as a retrospective licence. This inequity was particularly acute in England, where the political rhetoric around proportionality and deterrence was wholly at odds with the reality of increasingly large penalties and a punitive approach to non-payment that saw thousands criminalized. The demographics of enforcement also reveal significant disproportionality for certain groups. To some extent this distribution reflected self-reported patterns of non-compliance; yet the degree of difference was not great enough to explain ethnic disparities in fine rates, nor why these disparities increased in England, fell in Wales, and stayed the same in Scotland. An unclear set of rules exacerbated these inequities further. Describing the Regulations as muddled, discriminatory and unfair, the Chair of the [Joint Committee on Human Rights \(2021b: online\)](#) stated, 'the whole process disproportionately hits the less well-off and criminalizes the poor over the better-off'. Despite the Committee calling for a review of all fines, this was not taken forward.

More broadly, the decision to use a financial mechanism to secure compliance with the Regulations has been subject to minimal scrutiny in respect of its impact. Little is known about the extent to which Covid-FPNs created or exacerbated pre-existing inequalities, created hardships for those at most risk of failure to comply, or added to hardships brought on by the pandemic.

At the time of writing, the UK and Scottish Covid-19 Inquiries are ongoing. We would suggest our analysis raises important questions for both inquiries as to how governments might

respond in a future pandemic. Given that financial penalties have largely fallen out of favour over the last decade, a warning-based model would be more consistent with contemporary penal practice, and compatible with the drivers of deterrence identified by Halliday *et al.* (2022) and Murphy *et al.* (2020), above. Lastly, and more fundamentally, warnings would provide a more proportionate, consistent and equitable first response that does not discriminate against those who may struggle to pay a fine (also Brooks and Lopez 2020).<sup>11</sup> On a more cautionary note, we would recommend detailed research is needed to scope out the respective advantages, limitations and ethical implications of a warnings model for, just as FPNs gained traction in the United Kingdom with limited oversight or research, the same is true of the non-pecuniary disposals that have replaced them.

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<sup>11</sup> Both non-pecuniary and financial out-of-court disposals (including Covid-FPNs) may be disclosed in an enhanced disclosure in limited circumstances, depending on the relevance and period of information held. In this respect, the punishment effect is unlikely to differ significantly between the disposal types.

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