

N8 PRP Small Grant 2020/21

Every ticket tells a story: Understanding ethnic disproportionality in FPNs issued for breaching coronavirus restrictions

INTRODUCTION

This research (conducted by Dr. Scarlett Redman, Dr. Mike Rowe and Dr. Liz Turner, University of Liverpool) aimed to increase understanding of why BAME individuals were more likely to be issued with Fixed Penalty Notices (FPNs) for breaches of coronavirus regulations¹.

KEY FINDINGS

- Many officers experienced discomfort and uncertainty about the powers they were given to tackle the pandemic.
- To deal with these feelings of discomfort and uncertainty, officers resolved to use their discretion and only take enforcement action against breaches of the rules that they defined as “blatant”.
- This approach was underpinned and legitimised by the “4Es” guidance issued by the College of Policing.
- Whether a breach of Covid regulations was viewed as “blatant” and a fine issued seems to be related not just to how clear it was that the law was knowingly broken without reasonable excuse, but rather to who was breaking the law, the circumstances in which police encountered them, and how they were perceived to have responded to police intervention (their attitude).
- Officers were less comfortable using their enforcement powers against people they encountered under circumstances which would not, in non-pandemic times, form part of ordinary police work.
- Officers appeared more confident about using their enforcement powers against people who they encountered in the context of conducting more “business-as-usual” policing activities.
- The tendency to revert to a “business-as-usual” approach to policing has been a key factor underpinning disproportionality. The problem of ethnic disproportionality in relation to Covid-19 restrictions is perhaps best understood as a problem of both over and *under*-enforcement, with some groups seeming more likely to benefit from officer discretion than others.
- The 4Es guidance appears to have underpinned a tendency for officers’ practice to emphasise situational compliance through the performance of appropriate deference to police instruction.
- The concern with attitude and situational compliance in relation to specific breaches may have distracted officers from what should have been a core objective for policing during the pandemic: reducing overall risk by securing good population level compliance with the restrictions.

¹ See [Policing the Pandemic-4 \(npcc.police.uk\)](https://npcc.police.uk) [Accessed 4th January 2022]

FINDINGS

1. The importance of discretion

Many officers experienced discomfort and uncertainty about the powers they were given to tackle the pandemic. Many indicated that, at times, they were unsure what the rules were as they felt they were unclear, subject to frequent change and contained too many loopholes to be enforced effectively. Officers also expressed concerns about how the powers would impact on their relationship with the public and most welcomed the explicit support the 4Es guidance provided for using their discretion not to enforce the law.

To deal with the feelings of discomfort and uncertainty and supported by the “4Es” approach, many of our participants told us that they and their colleagues (with more or less explicit support from supervisors) resolved to use their discretion and only take enforcement action against breaches of the rules that they defined as “blatant”. To understand patterns of enforcement action during the pandemic (and thus also identify any factors potentially underpinning ethnic disproportionality in the use of enforcement), it is therefore important to explore how particular breaches came to be defined as “blatant”.

2. Defining breaches as “blatant”

We found that whether a breach of Covid regulations was viewed as “blatant” and a fine issued seems to be related not just to how clear it was that the law was knowingly broken without reasonable excuse, but rather to who was breaking the law, the circumstances in which police encountered them, and how they were perceived to have responded to police intervention (their attitude).

The circumstances in which FPNs were issued can be usefully divided into two categories:

- “Business-as-usual” – Officers encounter breach of Covid-19 regulations while carrying out ‘normal’ (pre-pandemic) policing tasks.
- “Not-without-Covid” – Issued in circumstances where officers might not, under non-pandemic circumstances, be expected to attend or take action.

Participants talked about issuing fines in these different circumstances in quite different ways, and this seems to have had an impact on whether or not particular breaches were considered to be sufficiently “blatant” to merit the issuing of a fine.

Individuals fined during more “business-as-usual” encounters with police, were often described using language such as “not caring”, “not bothered”, “cocky”, and this attitude was implied to be evidence that they had knowingly breached the rules. However, in the “not-without-Covid” cases, participants placed much more emphasis on explicit indicators that the individuals knew they were breaking the regulations (e.g. “they held their hands up”). They also tended not to use language that was negative about the character of the individuals who were fined, sometimes even expressing sympathy with them (e.g. “lovely people, absolutely no issues with that at all”).

Relatively inconspicuous breaches occurring within private dwellings where those in attendance were apologetic and complied with officers’ directions, and where there were no other forms of rule-breaking or anti-social behaviour occurring, seem less likely to have been seen as appropriate cases for FPNs than breaches occurring in public places, or where individuals may have been involved in breaking other rules or engaging in activities seen by some as anti-social even outside of pandemic times.

These differences suggest that officers were less comfortable using their enforcement powers against people they encountered under circumstances which would not, in non-pandemic times, form part of ordinary police work. Narratives of issuing FPNs under these circumstances placed much more emphasis on

explicit indications that the individuals knew they were breaking the rules. Officers appeared more confident in their narratives of using their enforcement powers against people who they encountered in the context of conducting more “business-as-usual” policing activities.

3. Disproportionality

Many of our participants had developed their own ideas and generalisations about how different ethnic groups were behaving in relation to the Covid restrictions and, in some cases, the reasons for any differences between groups. Whilst a few of our participants clearly felt that certain ethnic minority groups were simply more likely to be breaching the rules, others expressed the opposite view.

More officers expressed the view that, whilst BAME people may not be more likely to break the rules, they may be more likely to do so in circumstances that make them visible to the police and thus available for intervention. According to our participants, this might be because they are more likely to live in “poor” or “problematic” areas where police presence tends to be higher, or because they are more likely to live in smaller more overcrowded houses with less outdoor space.

Some officers also expressed the view that “cultural” differences in socialising behaviours rendered some BAME people, particularly young Asian men who, it was claimed, tend to socialise in their cars rather than at home, more visible to police. Other participants noted that BAME people’s behaviour may be more likely to be noticed and reported to the police, especially where they are in areas with small ethnic minority populations.

There is some limited data to support some of the suggestions made by our participants. It therefore cannot be entirely discounted that some of the disproportionality in the use of FPNs reflects different levels of compliance between different groups. However, available evidence about differences between BAME and White British people’s stated compliance does not reveal differences of the same magnitude as the level of disproportionality in the use of FPNs.

The evidence obtained through the 32 interviews with police officers conducted for this study suggests that ethnic disproportionality is unlikely to have arisen only or primarily because of different groups behaving in different ways. The attitudes expressed by our participants towards policing the Covid regulations and what they told us about how they approached this indicate that at least some of the disproportionality is likely to be reflective of the approach to policing the pandemic.

CONCLUSION

Based on our analysis of the interview data collected for this study, we think the following key points are central to understanding statistical disproportionality in the rate at which FPNs were issued to different ethnic groups.

1. Due to a combination of social and economic factors, and existing patterns of policing, some societal groups were clearly more at risk of being found breaching Covid-19 regulations (more available for police intervention).
2. Individuals regarded as usually “law-abiding” and encountered in circumstances that would not ordinarily attract police intervention were less likely to be fined for breaking the Covid-19 rules.
3. Officers’ evaluations of the general character of individual rule-breakers seem to have been more important than the level of risk and harm posed by their breach of Covid-19 regulations, in shaping decisions about whether to issue an FPN.
4. Some police officers used the highly oppressive regulations introduced to protect people from the spread of disease as another “tool in the toolbox” to meet other policing objectives.

The tendency to revert to a “business-as-usual” approach to policing has been a key factor underpinning disproportionality. The problem of ethnic disproportionality in relation to Covid-19 restrictions is perhaps best understood as a problem of both over and *under*-enforcement, with some groups seeming more likely to benefit from officer discretion than others. The 4Es guidance appears to have underpinned a tendency for officers’ use of discretion to emphasise situational compliance through the performance of appropriate deference to police instruction rather than securing more general population level compliance through a deterrent approach to enforcement.

Should lockdown restrictions be required again in the future, it will be important for police forces to take stock of all analyses of their pandemic response during 2020-21. Policing any such recurrence of “lockdown” restrictions will likely be more fraught and contested than was the case in the first and second “lockdowns” of 2020/21. Although small-scale, this study provides some important insights into the reasons for inequalities in the impact of the policing of Covid-19 restrictions on different societal groups.

RECOMMENDATIONS

RECOMMENDATION 1: Further research and analysis. Forces should consider all available sources of information on the circumstances in which fines were and were not issued for breaches of coronavirus regulations and any patterns of non-enforcement that may have contributed to insulating some societal groups from enforcement, thus reducing the deterrent potential of the regulations.

RECOMMENDATION 2: A change of emphasis in enforcement. Should any form of lockdown restrictions be imposed again the 4Es approach should be replaced with guidance that emphasises the need to reduce risk of harm by securing broad population compliance with the regulations.

RECOMMENDATION 3: Only using Covid FPNs for pandemic-related objectives. Should any form of lockdown restrictions be imposed again, forces should strongly discourage officers from using Covid-19 FPNs to pursue non-pandemic related objectives (for example, using them as “bonus” sanctions when dealing with individuals for other offences).

METHOD

We conducted 32 interviews with serving police officers in 5 police forces about their experiences of issuing coronavirus FPNs. Interviews were conducted by the project Research Associate (Dr. Scarlett Redman) between 25th March and 30th June 2021. We used a semi-structured interview approach to provide a space for officers to “tell the story” of how they came to issue a particular FPN. We also asked more general questions about officers’ experiences of policing during the pandemic.

Participants were 91% male and 75% White British. 84% were PCs, 9% Sergeants, and 6% Inspector or above. Age ranged from 24 to 58. Median age was 36. Length of service (recorded to nearest year) ranged from 1 year to 25 years. Median length of service was 9 years.

IMPLICATIONS FOR FURTHER RESEARCH

This small-scale qualitative study has provided important insights into the way officers understood and operationalised new powers to issue FPNs for breaches of Covid-19 social distancing regulations. Further analysis of police records on the circumstances in which FPNs were issued could involve coding FPNs according to the record of the breach in the incident logs, thus facilitating a broader quantitative analysis of the circumstances in which FPNs were issued to people from different ethnic backgrounds.