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| <b>Meeting</b>                   | <b>Scottish Police Authority</b>  |
| <b>Date</b>                      | <b>25 August 2021</b>   |
| <b>Location</b>                  | <b>Video Conference</b>   |
| <b>Title of Paper</b>            | <b>Report of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis</b> |
| <b>Presented By</b>              | <b>John Scott QC</b>  |
| <b>Recommendation to Members</b> | <b>For discussion</b>   |
| <b>Appendix Attached</b>         | <b>Appendices A – E included</b>  |

**PURPOSE**

To provide the Authority with the substantive findings of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis, in its eight report to the Authority.

To the Board of the Scottish Police Authority

For the Meeting of 25 August 2021

## **Eighth Report of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis (“the IAG”)**

### **Chair’s Introduction**

This report is to update the Board of the Scottish Police Authority (“SPA”) with a detailed account of our work since our seventh report dated 21 February 2021. It is written at a very different stage of the pandemic. In particular, it is written after 19 July when Scotland moved to level 0 of the Scottish Government’s Strategic Framework Update<sup>1</sup> and 9 August when Scotland moved “beyond level 0”.

Most of the significant legislative restrictions related to the pandemic have now been removed. In line with staged easing of restrictions, policing activity which falls within our Terms of Reference, namely relating to the use of emergency powers, has continued to reduce steadily over recent months. As the attention of the country continues to focus increasingly on recovery from the effects of the pandemic, the removal of most legal restrictions has obvious implications for the work of the IAG. I will return to these later in this report.

In the period since our last full report, our work has continued with weekly meetings until the end of July. We have reported three times to the Board by way of letters dated 22 March, 24 May and 30 June. Ongoing liaison is maintained through our secretariat which has been provided throughout by key staff at the SPA. I remain extremely grateful to them for their astute and helpful contributions to our work which has been key to the efficiency of the IAG. Special mention should be made of Eleanor Gaw and Jennifer Blackwood. As with the contribution of my other IAG colleagues, I appreciate that their work for us is additional to their many other responsibilities.

The main content of this report is in four appendices – two on data analysis by Professor McVie and her colleagues at Edinburgh University; the HMICS Report on the second tranche of Police Scotland interviews (the first tranche occurring in June 2020); and a second briefing paper

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<sup>1</sup> <https://www.gov.scot/publications/coronavirus-covid-19-scotlands-strategic-framework-update-june-2021/documents/>

for the IAG by Maria Galli of the Children and Young People's Commissioner Scotland ("CYPCS").

The data report on FPNs in Appendix D extends the analysis contained in an earlier report by Professor McVie (published with our report to the Board dated 17 August 2020) of all tickets issued by the police under the Coronavirus Regulations in Scotland during the initial months of the lockdown. That report dealt with the period from 27 March to 31 May 2020. The latest report extends the timeline of analysis to 31 December 2020, and therefore includes the period of easing of restrictions over summer 2020 and the introduction of new restrictions in the autumn and over the Christmas period. It therefore provides detailed analysis of data for the period 27 March 2020 to 31 December 2020, taking account of the size of the financial penalties issued, the characteristics of those who were fined, the geographical area in which incidents occurred, and the timing and locus of events. It also provides analysis of change over time in the profile of FPNs and offers some reflections on potential explanations for these changes, specifically with reference to changes in the Regulations under which Police Scotland were operating and wider societal factors that may have impacted on patterns of enforcement.

### **Public Events – IAG and SPA Board**

As Board members know, in order to give additional public airing to our work, two joint public events were held last year involving the IAG and Board members. These took place on 30 July and 5 October (recordings are still available on the SPA website at <https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/public-webinar/> ).

Both events were chaired by Dr Liz Aston, Director of the Scottish Institute for Policing Research ("SIPR").

In addition, earlier this week (18 August), the SPA, Police Scotland and SIPR held a joint online roundtable event entitled "Policing and the Pandemic: the Scottish Experience". Attendees included some from other jurisdictions. The event was streamed live for the public. Among others who have contributed to our work over the last 18 months, IAG member Professor McVie spoke at the event.

### **Proportionality**

The 4 Es approach – engage, explain, encourage and enforce - has been successful in helping the public, police and government to view policing of the pandemic primarily as part of a package of public health measures.

The level of engagement with the public has been high and the use of enforcement has been low. The number of people who have been impacted from the point of view of criminal justice contact has been extremely small. Policing has sought to respond appropriately and proportionately to public reporting of possible breaches and related demand, and to do so without “taking sides” as between those who wanted to see more enforcement and the growing numbers during the pandemic who wanted to see less (or no) enforcement. This is part of operational independence, a crucial feature of policing in a democracy. Coupled with the appropriate exercise of discretion by individual officers, this helps to explain an overall approach which we have reported on regularly as proportionate and consistent with relevant human rights principles.

Data analysis and other forms of evidence available to us support our impressions of policing which has risen to the extraordinary challenges of the last 17 months.

### **Inequality**

Inequality has been a key theme emerging from the different forms of evidence we have seen and heard over the past 16 months. It is worth returning to it as we reach the end of our work.

The entire population was expected to adhere to legislative restrictions which were unlike anything our country has experienced other than during wartime. However, just as pre-existing inequalities caused greater problems and challenges in many areas of life, restrictions were more difficult for some people than others, for example, working from home is impossible in many jobs, giving rise to additional worry and pressure for some which may well have contributed to non-adherence due to a practical inability to do so.

Some, especially when it comes to self-isolation, have simply been unable to adhere to requirements due to financial or other need which continued in many cases to go unmet and unsupported.

Professor McVie’s latest data report contains additional detail which assists in illustrating aspects of inequality, in particular the impact over

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the course of last year on those living in areas of deprivation. Although, in relation to policing, there appears to have been a significant reduction in inequality in terms of those who were subject to enforcement as the pandemic continues which tells a story in itself about the impact of the restrictions on wider groups within the population.

Along with others, we have repeatedly emphasised the need for support to allow adherence rather than enforcement in these extraordinary times. Removing barriers to adherence/compliance, especially by providing additional support to those living in deprivation, must be a lesson for all governments from the pandemic.

In our report in February, we mentioned “*If not now, when?*”, the report by the Social Renewal Advisory Board which was set up by Scottish Ministers to “*make proposals that can renew Scotland once we start to emerge from the pandemic*”. The report included recommendations emphasising the importance of economic, social and cultural rights in effecting necessary societal change.

In the Foreword, the report offered significant claim and ambition:

*We are all calling for a fair and equal society, underpinned by a strong commitment to human rights and economic justice. This is a Scotland already on its way to becoming a reality. We just need to get there faster, using existing levers and creating new enablers.*

Consistent with our work and that of many others during the pandemic, the report stated:

*But alongside that civic response, this pandemic has brutally exposed the inequalities that still blight the lives of too many, limiting our ability to flourish, control our own lives and contribute our talents to create an inclusive, fairer Scotland. Disabled people, minority ethnic communities, people on low incomes, older people, younger people, and women are amongst those who have experienced disproportionate impacts, with multiple disadvantage making things even harder for many. So, while Covid-19 is still very much with us and evolving in a deeply concerning way at the time of writing, we should not wait for the pandemic to be over to learn lessons and begin to plan a way forward towards social renewal.*

*This report by the Social Renewal Advisory Board is, therefore, a **Call to Action**. A call to not hold back the social action which made the difference to so many lives but instead to unleash it so it can grow. A call*

*to turn the tide on poor outcomes created – often unwittingly – by barriers in the systems that shape how our society works. A call to realise in full the change we now know is possible.*

*The Board's aspiration is not to produce a blueprint for a top down 'to do' list. The spheres of government have their vital role, as do national performance targets, legislation, regulation, guidance and delivery vehicles. But social renewal will not be real unless communities of people, of identity and of place have more say, power and influence; unless we "super-charge" how we address the structural inequalities that still hold us back as a country. We can change some things quickly, but other actions will need several steps, with clear milestones, to get there – so let's start the journey now.*

In June 2021, the Scottish Parliament passed the Coronavirus (Extension and Expiry) (Scotland) Act 2021. This is the piece of legislation which removed pandemic provisions from earlier legislation that were no longer required and extended those still thought necessary until the end of March 2022, with the possibility of further extension to the end of September 2022, subject to the agreement of the Scottish Parliament.

The Fairer Duty Scotland impact assessment for the Act stated:

*The Scottish Government continues to work to identify further opportunities to reduce or mitigate inequalities arising for socio-economically disadvantaged groups as a result of the coronavirus pandemic.*

The Scottish Government is now consulting ahead of Autumn this year when it intends to publish its Covid Recovery Strategy<sup>2</sup>. The consultation addresses the legislative powers used as part of the government's response to the pandemic and seeks views on whether some of these should be made permanent. The consultation opened on 17 August and runs until 9 November 2021. The Foreword by John Swinney MSP, Deputy First Minister and Cabinet Secretary for Covid Recovery, states:

*The Scottish Government's highest priority is to continue to lead Scotland safely through and out of the Covid pandemic and to re-open the country as quickly and safely as possible. We therefore now also*

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<sup>2</sup> <https://www.gov.scot/publications/covid-recovery-consultation-public-services-justice-system-reforms/>

*have a real opportunity to achieve a fairer and more equal post-Covid Scotland, where no one is left behind.* [Emphasis added]

The consultation document states (page 10):

*As we emerge from the pandemic we are committed to addressing the underlying inequalities that have been exacerbated by recent events. To inform not just what we do but how we do it, the Deputy First Minister and Cabinet Secretary for Covid Recovery held a number of Stakeholder Recovery Roundtables over the summer recess and the outputs from those meetings will be reflected in a Covid Recovery Strategy that will be published in autumn 2021.*

*(page 20/21) Many of the topics being consulted on in this Chapter have a “digital” element in that the provisions remove some of the older working practices in public and justice system services and make things more convenient for users. The Covid crisis has shone an intense spotlight on the importance of public services which are not only secure, accessible to all and resilient, but which are able to work across organisational boundaries, adapt and scale in response to changing demands. It has increased the pace of digital adoption and innovation, as organisations and businesses in every sector of the economy have had to, almost overnight, become digital organisations. An unprecedented opportunity therefore exists to reimagine public services in key areas like health and social care, learning and justice, and to ensure that they are designed and delivered in Scotland; are based around the lives and needs of users; and drive better outcomes for people. The Covid pandemic, and our response to it, has shown that the public sector can act at speed to design and deliver new services that meet the needs of users and reflect a rapidly changing environment. The provisions being consulted on conform in particular to the digital principle “inclusive, ethical and user focussed” from the Scottish Government’s March 2021 Digital strategy: “A changing nation: how Scotland will thrive in a digital world”...*

*Of course this will not ever be the only approach we offer; this is about increasing access without creating barriers for those who don’t want to or can’t always use digital means.*

Given the increased exclusion and isolation of some members of society during the pandemic, not least because of digital exclusion, great care is

needed to address these issues rather than ignoring or exacerbating them.

When it comes to addressing these issues, IAG members from the Glasgow Disability Alliance have emphasised the importance of addressing intersectionality: where there is more than one protected characteristic the barriers to inclusion can multiply exponentially.

A key lesson from the pandemic is the need to address inequalities, especially those which pre-date the pandemic and have been exacerbated by it. Unless that lesson is learned by the Scottish and UK Governments, a further wave of the current pandemic or a future pandemic or similar emergency will once again bite harder on those who are already vulnerable or marginalised. Any impact will be felt more keenly by those who are still marginalised but it will also be felt by the State and therefore the public more generally as resources and services – health, housing, benefits and other areas as well as policing - will have to be found to try to address the effects of inequality. In seeking to avoid this, it will be important to recognise the value of community empowerment - that those who face barriers and inequality should be in the driving seat of efforts to tackle them. Community voices and lived experience should help to inform the design and delivery of recovery approaches.

## **Appendix**

Our report is accompanied by the following documents as appendices:

- A. Charges reported to the Crown Office and Procurator Fiscal Service (“COPFS”) under the Coronavirus legislation:  
Data Report on Police: March 2020 to June 2021, Professor Susan McVie, June 2021
- B. Report on interviews with Police Scotland Officers and Staff –  
Phase II, HMICS, June 2021
- C. The impact of emergency police powers on the human rights of children and young people in Scotland during the Covid-19 pandemic (IAG Briefing 2), CYPCS, Maria Galli, July 2021
- D. Third Data Report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland: March to December 2020, Professor Susan McVie, August 2021
- E. Updated workplan.



John Scott QC Solicitor Advocate

20 August 2021

## **Online reporting for Covid-19 breaches**

In December 2020, Police Scotland established a facility to allow online reporting - <https://www.scotland.police.uk/secureforms/covid19/>

From 18 December to 15 August, the system recorded 32,054 reports with 66 in the week to 15 August (a reduction on the previous week's figure of 110). These numbers reflect a steady reduction in the use of this facility, consistent with the easing of restrictions and fall in overall policing activity related specifically to the pandemic.

## **Compliance, Enforcement and Data: Exercise of the Powers – including the issuing of Fixed Penalty Notices**

Throughout the lifespan of the main emergency restrictions, undoubtedly assisted by continuing high levels of public adherence and the application of the four Es approach by Police Scotland, enforcement has consistently represented only a small percentage and amount of overall police activity, even in relation specifically to the pandemic.

Police Scotland continue to publish enforcement data<sup>3</sup> on a weekly basis which is drawn from the CVI system<sup>4</sup>. Important information is therefore publicly available, demonstrating continuing awareness of the need for transparency.

For ease of reference, the relevant table for the week to 11 August is included here:

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<sup>3</sup> <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>

<sup>4</sup> In response to the introduction of The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 and Coronavirus Act 2020, Police Scotland developed a 'Coronavirus Interventions' (CVI) recording system. This system allowed Police Scotland to begin gathering data in relation to the public co-operation levels with the new legislation. This system relies on Police Officers manually updating the system with the co-operation level they experienced when they encounter an individual in contravention of the new legislation. The CVI System was introduced on 06/04/2020, and as result, data is only available at a sub-divisional level from this date onwards.

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The below totals are **indicative only**. Caveat on first sheet must be read. Actual figures may be higher. Please see corresponding COVID 19 Weekly Bulletin for total enforcement action as per Police Scotland Crime Management Systems.

| <b>Totals (All figures represent No. of Individuals)</b>   |                                |   |                                       |                      |                 |  |
|--|--------------------------------|---|---------------------------------------|----------------------|-----------------|--|
| <b>Division</b>  | <b>Dispersed when informed</b> | <b>Dispersed but only when instructed</b> | <b>Removed from Place or Premises</b> | <b>Issued an FPN</b> | <b>Arrested</b> | <b>Issued FPN under Travel Regulations</b> |
| <b>A</b>   | 3522                           | 1259                                      | 217                                   | 427                  | 45              | 14   |
| <b>D</b>   | 3901                           | 948                                       | 219                                   | 672                  | 33              | 50   |
| <b>N</b>   | 5220                           | 1327                                      | 150                                   | 429                  | 39              | 94   |
| <b>C</b>   | 6494                           | 1700                                      | 238                                   | 821                  | 80              | 53   |
| <b>E</b>   | 13407                          | 5537                                      | 1371                                  | 2339                 | 84              | 49   |
| <b>J</b>   | 4584                           | 1175                                      | 199                                   | 455                  | 31              | 89   |
| <b>P</b>   | 6284                           | 1110                                      | 291                                   | 808                  | 103             | 36   |
| <b>G</b>   | 25057                          | 8370                                      | 1097                                  | 5823                 | 211             | 131  |
| <b>L</b>   | 7895                           | 1688                                      | 91                                    | 1002                 | 45              | 141  |
| <b>K</b>   | 5067                           | 1689                                      | 146                                   | 1294                 | 66              | 81   |
| <b>Q</b>   | 5126                           | 1902                                      | 344                                   | 2006                 | 113             | 75   |
| <b>U</b>   | 6323                           | 2472                                      | 453                                   | 710                  | 67              | 59   |
| <b>V</b>   | 2160                           | 769                                       | 74                                    | 220                  | 55              | 67   |
| <b>Total</b>   | <b>95040</b>                   | <b>29946</b>                              | <b>4890</b>                           | <b>17006</b>         | <b>972</b>      | <b>939</b>                                 |
| <b>Total number of FPNs issued over the last 7 days - 0</b>  |                                |   |                                       |                      |                 |  |
| <b>Total number of Arrests over the last 7 days – 0</b>  |                                |   |                                       |                      |                 |  |
| *Please note - the FPNs issued under Travel regulations are also included within the total 'Issued an FPN' and should not be considered as 'in addition to' these. |                                |   |                                       |                      |                 |  |

The IAG has received weekly updates from Police Scotland of data on breaches of relevant restrictions, for example, (when still in force) data on house gatherings (including entries using reasonable force), and breaches of regulations covering travel and quarantine restrictions. In addition, with the new online system for reporting, we have received an update on the number of reports made that way.

The weekly reports have included detailed examples in some of these categories to assist us in understanding context and considering issues around proportionality. The low numbers of enforcement activity in each area of restrictions in recent months have provided additional assurance of proportionality.

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Taken together, this gives us a good picture of policing activity up to and including enforcement. This has been supplemented with direct input to the IAG from Divisional Commanders in different parts of the country.

It has also been supplemented on a weekly basis by input from Police Scotland's OpTICAL group<sup>5</sup>, chaired by ACC Gary Ritchie. This group has continued to support our work and offers an additional opportunity for discussion as we explore explanations and context for some of the data. It is attended on a weekly basis by IAG members Ephraim Borowski, Professor Susan McVie and John Scott. Dr Liz Aston is also a member. Operating in tandem with the IAG, the work of this group has provided a crucial underpinning to our work.

In addition to data provided by Police Scotland, we have looked at other sources of evidence on adherence and other issues.

The UCL Covid-19 Social Study<sup>6</sup> has provided a useful indication of UK-wide public attitudes and reported adherence or non-adherence to restrictions, based as it is on responses from a panel study of over 70,000 respondents.

The latest report (release 37)<sup>7</sup>, dated 13 August 2021, included the following conclusion:

- *Despite the ending of the latest restrictions, majority compliance with the rules and guidelines continues to be high and is currently at 89%. Complete compliance with the rules, has, however been decreasing since the beginning of the year and is now being reported by fewer than 1 in 2 people (38%).*

Although the media has continued to publish images suggestive of large-scale breaches of restrictions, this and other evidence suggest a much smaller scale of breaches against a backdrop of majority adherence. We have previously acknowledged the difficulty in portraying widespread

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<sup>5</sup> For more information about OpTICAL, see our second interim report – <https://www.spa.police.uk/spa-media/5erhkjeb/rep-b-20200629-item-5-iag-report.pdf>  
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<sup>6</sup> <https://www.covidsocialstudy.org>

<sup>7</sup> [https://b6bdcb03-332c-4ff9-8b9d-28f9c957493a.filesusr.com/ugd/3d9db5\\_95a35b753c9349a5a54030e5640db2d3.pdf](https://b6bdcb03-332c-4ff9-8b9d-28f9c957493a.filesusr.com/ugd/3d9db5_95a35b753c9349a5a54030e5640db2d3.pdf)

adherence, but many media stories might misleadingly suggest majority abandonment of adherence some time ago.

In Scotland, there is ongoing polling of public attitudes reported by the Scottish Government<sup>8</sup> which is broadly consistent with the UCL study. The latest report in Scotland is dated March 2021. It included the following findings:

- *Three quarters of respondents agreed that the best thing to do is to follow the government's advice. This has remained high and stable through January and February. However, those stating they had engaged in a non-compliant activity has risen from the start of January (23% to 33%).*
- *Those who strongly agreed that it was more important now than ever to stick to the rules had declined from 57% at the start of January to 40% at the end of February.*

Enforcement is an area which is addressed more fully in the data report by Professor McVie at Appendix D on the use of FPNs up to the end of last year. There was a change in enforcement at the start of this year which was mentioned in our report in February. This change, involving an increase in enforcement, will be discussed in more detail in a further report by Professor McVie which is not yet available. Police Scotland have done most of the work to provide the relevant data which will update the picture on FPNs to May 2021. It is therefore hoped that this report can be completed soon although not in time for the September meeting of the Board.

The picture around FPNs looks different when one considers Professor McVie's report which is at Appendix D. The report is obviously available to be read in full and includes an executive summary. Nonetheless, it may also be useful to quote from the report here in relation to the overall picture of police activity relating to the pandemic:

*A total of 97,948 interventions with members of the public in Scotland were recorded on the CVI system between 27th March and 31st December 2020...The vast majority (91.7%) of recorded interventions involved use of dispersal powers, either after being 'informed' of the public health risks by police officers (71.6%) or after being explicitly 'instructed' to disperse (20.1%). A further 0.7% of interventions involved*

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<sup>8</sup> <https://www.gov.scot/publications/public-attitudes-coronavirus-march-update/>

*'removal' of a person from a place or premises... These three types of intervention broadly to conform to the first three of the 'Four Es'...*

*Less than one in twelve of all interventions involved use of the Fourth E (i.e. enforcement). An estimated 7.1% of interventions involved the offer of an FPN, while in a further 0.5% of incidents an individual was arrested. This indicates that, even when enforcement was used, the vast majority (93.4%) of such instances involved use of a financial penalty that does not count as a criminal conviction. Overall, therefore, the CVI system indicates that enforcement represented a relatively small proportion of all policing activity during this phase of the pandemic; and the vast majority of enforcement was at the lowest end of the tariff in terms of a punitive response...*

*A total of 8,273 FPNs were issued under the Coronavirus Regulations in Scotland between 27th March and 31st December 2020...*

*The number of FPNs issued as a result of the Coronavirus is small in comparison to other policing activity; for example, the police recorded around 380,000 crimes and offences over roughly the same time period.<sup>9</sup> This means that a very small proportion (an estimated 0.18%) of the Scottish population was issued an FPN for breaching the Coronavirus Regulations during this period.*

The report looks at the overall period from March to December broken down into three phases of time, noting the peaks in the use of enforcement and offering possible reasons for these. The report looks at the use of FPNs according to age, sex, ethnicity, country of birth, criminal history profile, deprivation profile, geographical profile (including the issue of FPNs issued to non-residents), locus and timing of FPNs. Again, it is worth quoting briefly from the report in relation to some of the sections of the report:

### **Age**

*[J]ust over a half (53.4%) of all tickets were issued to people up to the age of 25, and two thirds (66.2%) were issued to people up to the age of 30.*

### **Prior criminal history**

*[T]here was a substantial drop in the percentage of FPNs issued to people with a prior criminal history from 73.5% in phase one to 52.5% in*

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<sup>9</sup> <https://www.scotland.police.uk/spa-media/t13dedwk/covid-19-weekly-bulletin-to-30-december-2020.pdf>

*phase two. In phase three, this declined even further to 46.4%. This ties in strongly with the second set of interviews conducted with police officers by HMICS as it suggests that, as the pandemic progressed, the profile of those who were being issued an FPN for breaching the Coronavirus Regulations was widening out to include a more diverse range of people, many of whom were not previously known to be offenders in Scotland...*

### **Deprivation**

*It shows a very skewed relationship, in which around one in four (27.0%) FPNs were issued to people living in one of the 10% most deprived areas of Scotland while one in twenty (5.2%) were issued to people living in one of the 10% least deprived areas. This represents a disparity rate of 4.8 between those living in the most and least deprived communities. However, it is notable that the skewed relationship between SIMD and FPN receipt is more evident at the deprived end of the SIMD distribution ... but flattens out at the affluent end... In other words, there was greater inequality in the likelihood of receiving an FPN amongst those people living in communities in the deprived half of the SIMD spectrum than amongst those living in the affluent half...*

*The overall deprivation profile for all FPNs conceals distinct shifts over time. Looking across the three phases of the pandemic, Figure 13 shows how the proportion of FPNs issued to people living in different SIMD deciles changed. During the first phase, there was a very steep gradient with 32.8% of FPNs issued to people living in the 10% most deprived areas of Scotland and only 2.6% issued to people living in the 10% least deprived areas. This represents a disparity rate of 12.6, and demonstrates a high degree of inequality in the likelihood of receiving an FPN based on area of residence during the initial lockdown (although it is important to note that inequality in these data does not necessarily mean unfair or disproportionate policing).*

*During the second phase, the proportion of all FPNs issued to people living in the 10% most deprived areas fell to 17.8%, while the proportion issued to those living in the 10% least deprived areas increased to 14.2%. While the total number of FPNs issued during phase two was very low, this change at both the top and bottom ends of the SIMD spectrum represents a significant shift in the profile of those issued FPNs for breaching the Coronavirus Regulations. During phase two, the disparity between the top and the bottom reduced to 1.3, which indicated*

*much greater equality in the likelihood of receiving an FPN for those living in the most and least deprived quintiles. However, it is important to note that the relationship between SIMD and deprivation was close to being U-shaped due to the substantial increase at the most affluent end of the spectrum.*

*This substantial increase in the offer of FPNs to those living in Scotland's most affluent communities during phase two is highly likely to be related to tickets issued as a result of parties organised and attended by younger people, and particularly students...*

*During phase three, the distribution of FPNs according to the recipient's home SIMD decile changed again, although it did not return to the high level of skew seen during phase one. ... The disparity between those living in the 10% most and 10% least deprived communities rose to 2.9, reflecting an increase in inequality but not approaching anything like the level seen in phase one...*

### **Place and time of day**

*[The] changing temporal pattern of enforcement indicates a shift away from daytime policing of open spaces towards a 'night time economy' pattern of policing focused on private places, which would have impacted significantly on shift patterns and operational planning...*

And, finally on this subject, a brief quote from Professor McVie's summary:

*Looking at the big picture, the data reflect a restrained approach to policing during the pandemic. Just over 8,000 FPNs were issued as a result of breaches to the Coronavirus Regulations in Scotland between March and December 2020. This represents a fraction of all policing activity, given that the police recorded around 380,000 crimes and offences over the same period of time. It also reflects a marginal impact on members of the Scottish population, given that less than 0.2% of Scottish adults were issued an FPN. In addition, despite having the power to issue multiple tickets at incremental amounts, the vast majority of FPNs issued during this time period were recorded as being for the lowest ticket amount of £60, which suggests that repeat ticketing was relatively uncommon. It is likely that this pattern of minimal enforcement reflects a combination of high levels of adherence amongst the population and Police Scotland's commitment to the use of the Four Es approach. Nevertheless, the data do show variation over time in the use*

*of enforcement, with larger peaks in activity during April and May (when the restrictions were at their strongest) and again in November and December (when the restrictions were re-tightened).*

## **COPFS**

While the IAG is concerned only with the exercise of emergency powers by Police Scotland, it was agreed that it might be useful to look at data from COPFS as an additional cross-check on the question of whether the use of powers by the police had been proportionate. We are grateful to IAG member, John Logue (Deputy Crown Agent) and his colleagues for their assistance with this work. It will be seen that the report in Appendix A on data analysis involving cases reported to COPFS offers additional assurance around the issue of proportionality in the exercise of police powers.

Quoting briefly from the report:

- *The number of charges reported to COPFS equates to an eighth of all police encounters that led to enforcement and represents a very small minority of all policing activity during the pandemic.*
- *These data suggest that the policing response has been effective in keeping those who did not comply with the Coronavirus Regulations out of the prosecution system.*
- *The overall pattern of enforcement and charges to COPFS indicates a strong and consistent relationship between police use of enforcement and charges to COPFS over time...*
- *From a human rights perspective, these data provide assurance that efforts were made by Police Scotland to deal in a fair and proportionate way with the majority of people in breach of the Coronavirus legislation and that prosecutorial decision making was broadly in line with expectation.*

## **Outstanding data work**

In addition to a final report on FPN data to update the picture to May 2021, Professor McVie will finalise some work involving data from the Scottish Courts and Tribunals Service Police Scotland, some of which she has been able to link with data from Police Scotland. This involves data linkage that has not previously taken place and, along with some of



Professor McVie's other work for the IAG, will hopefully inform wider justice partners about some of the benefits of ethical data linkage.

## Public attitudes

We have commented previously on the importance of public confidence in government and policing. This can be increased or decreased by the extent of the feeling that "we are all in this together" (as opposed to one rule for some and another for the rest of us – see, for example, the Cummings effect after Barnard Castle and the recent swift about-turn by the Prime Minister and Chancellor of the Exchequer after considering some obscure and selective waiver of self-isolation requirements) and clarity of communications.

The latest UCL Covid-19 Social Study, dated 13 August 2021, states:

- *Confidence in government to handle the Covid-19 pandemic remains lower in England than devolved nations and has been decreasing since the end of April. Levels of confidence appear to have increased in England over the last month, but more data will be needed to confirm this trend.*
- *In England, confidence in government is still lowest in those under the age of 30. Confidence also remains lower in urban areas, amongst people from ethnic minority groups, in people with a mental health diagnosis, people with higher household incomes, and amongst people with higher educational qualifications.*

These findings do not specifically address issues relating to the police but confidence in government has remained an important part of effective messaging.

In terms of maintaining public confidence in policing, the challenges have continued with demands for more and less policing growing louder at different times. The dilemma was captured recently in a piece by Gina Davidson in the Scotsman on 30 July:

*For some months, Police Scotland has been front and centre in controversial events which have seen its legitimacy questioned; criticised by some as going beyond its powers while at the same time criticised by others who feel it hasn't gone far enough in its actions.*

*Since the first Covid regulations were passed in Holyrood to deal with the pandemic, the police have found themselves in a position which*

*absolutely places them in spaces and places rather more grey than black or white.*

We repeat our concern about any attempt to politicise policing or to seek to characterise it as having been politicised. Policing in Scotland should be held to the highest standards and scrutinised publicly by the main oversight body, the SPA, as well as our Parliament and the media. Such scrutiny, however, must be carried out responsibly. It should be grounded in facts and evidence. The operational independence of the police and the proper exercise of discretion by all police officers are a crucial protection for us all in a civilised democracy.

When considering public attitudes, it is also important to reflect on the attitudes of officers and staff at Police Scotland. IAG member Gill Imery, HM Chief Inspector of Constabulary in Scotland, assisted us by arranging a second tranche of interviews at Police Scotland (see Appendix B). These reflect the different experience and position twelve months on from the last set of Police Scotland interviews which were also conducted by HMICS. Some of the key findings include:

- *Although some officers felt wearied by the experience of policing during the pandemic, there was also a strong sense of achievement and of fulfilling an important role in helping to keep the public safe*
- *Overall view was that the force had responded well in terms of providing guidance and instruction initially, given the speed of introduction of emergency legislation*
- *Although guidance was comprehensive the frequent updates, in line with legislative changes, made it too cumbersome and unwieldy over time, such that it was challenging for officers to navigate*

## OFFICIAL

- *The “four Es” approach (Engage; Explain; Encourage; and Enforce) was well understood by officers and viewed positively, in keeping with the force values*
- *A swifter acceleration through the four Es was more prevalent in more densely populated areas where house parties and large gatherings were a particular issue*
- *Although the majority of the public were generally supportive of the police, either in accepting advice or in receiving a fixed penalty, some officers had experienced a lack of support. This was largely associated with officers who had attended house parties/gatherings. Some had experienced abuse and a small minority had either been subject to assault or had witnessed colleagues being assaulted*
- *Some groups have found it more difficult to comply with the restrictions, notably those suffering from mental ill health and young people. The policing approach was tailored for these groups of people*
- *The impact of staff absences either due to officers contracting Covid-19 or having to self-isolate has been considerable at times. One supervisor advised that the mental health of some officers had suffered and there were currently waiting lists for counselling to be received*
- *Officers felt the police service had been required to fill the gaps for other services, such as Social Work and Housing. They perceived this as being the result of insufficient flexibility or lack of resilience to provide the same level of service. Support was also provided to the ambulance service when they were busy*
- *The force-wide roll out of CAM, the limited attendance policy and the positive impact Resolution Teams had on fielding/dealing with*

*calls without the necessity of officers attending were all viewed positively by frontline officers*

- *Consistent messaging from political leaders and others in authority out with Police Scotland was considered important*
- *Overall the police service responded well and demonstrated the ability to be flexible, resilient and provide an ongoing service in difficult times, assisting other services that were periodically struggling*

Our work on the IAG has allowed us to appreciate the extent of unprecedented challenge offered during the pandemic by the exercise of extraordinary powers by the police and remarkable adherence by the public. With the passage even of only 17 months, it is hard to bring to mind the full extent of the strange and frightening times through which we all lived. It was in that period of deep uncertainty that our police service and individual officers were called upon to adopt a frontline role in crucial matters of public health. This was a novel, difficult and rapidly changing role for which little or no training was available. In our view, it has been carried out well and in line with the rights-based approach and values which were already well established and understood within Police Scotland.

As acknowledged by the Chief Constable and others in the Executive Team at Police Scotland, mistakes have been made. Good faith mistakes, by the public and the police, are to be expected in such difficult circumstances, especially in the early stages when restrictions were at their most severe and the public and police were learning together to adapt to an entirely new way of engaging with severe legal restrictions and guidance.

### **Impact on children and young people**

Appendix C provides a summary of some issues of law and policy affecting children and young people. The paper covers areas which are of importance. Many of them go beyond our Terms of Reference but, as with some other subjects, the IAG has been interested in wider context. Some discussions in these areas have started or continued at the IAG

between the CYPCS, Police Scotland and others. They will continue after the IAG has ceased its work.

The paper prepared by IAG member Maria Galli, is informed by CYPCS work and engagement with stakeholders, partners, civil society, families, and importantly, children and young people since the outset of the pandemic in 2020.

Professor McVie's paper in Appendix D is also relevant in this section given the extent of enforcement which involved young people. It is notable, however, that the deprivation profile of those who received FPNs show least inequality amongst younger people. This is a sure sign that the restrictions on people's freedom of movement and association have had a far greater impact on young people from all social backgrounds in ways that may not be true for other age groups. This is well worth bearing in mind as the pandemic abates and we stand back to reflect on the damage it has left in its wake.

As the CYPCS paper reminds us, and not only in the area of policing and criminal justice, there should be concern "that the most profound effects of the pandemic have been felt by some of our society's most vulnerable children and young people. There is no doubt that the long-term impacts will be significant for many years to come."

We were struck by the quote from a Young Advisor to the CYPCS which ends the paper:

*What we need is for people to listen, **support and empower us**. Don't just put us on the kid's table and then ignore us. Give us a seat at the table where decisions are being made about our futures and our lives. And if bureaucratic structures mean that's not possible, then **it's time for a new table**. One where everyone has a voice, no matter their age.*

## **Disabled People**

The quote from the Young Advisor to the CYPCS about inclusion and empowerment is relevant to disabled people as well.

The easing of restrictions has been a challenging and worrying time for many but especially for some of those with disabilities and underlying health conditions which had previously seen them in the "shielding" category. Increased freedoms for others could mean greater worry for them and their carers.

On 9 July, disability groups and carers (including IAG members Tressa Burke and Brian Scott of the Glasgow Disability Alliance) wrote to the First Minister and Cabinet Secretary for Health to express their concerns about the decision of the UK Government to end most restrictions on 19 July and “live with Covid”. The plans in England included ending the requirement for face coverings, social distancing and limits on gatherings.

Shortly after receiving the letter, the First Minister Sturgeon ruled out an “abrupt” end to all measures and said measures like mask-wearing may continue for some time yet.<sup>10</sup>

It is worth noting the complications for some disabled people – continued use of masks may be welcomed by some because it may provide them with additional protection and confidence but some disabled people and those with certain hidden disabilities may be unable to wear masks and may be worried about being challenged or abused for not doing so. In both cases, anxiety may result in continued isolation and enforced shielding.

### **Quarantine regulations**

Given the uncertainties about progress in dealing with the virus in other countries, it appears that quarantine may continue to be part of the landscape for some time. It will therefore be incorporated as part of the “business as usual” operations of Police Scotland.

As we said in our last report, for requirements around quarantine, as with other requirements for self-isolation, support rather than enforcement is key, and is certainly more important and effective than enforcement alone.

### **The Work of the IAG**

Following discussion on 16 August with the Chair and Chief Executive of the SPA Board and the Chief Constable, it has been agreed that the IAG should now look to wind up its work, subject to the possibility of reconvening the group in the event of any unexpected developments in relation to the pandemic which result in the reintroduction of significant emergency restrictions on the population.

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<sup>10</sup> <https://www.thenational.scot/news/19431257.disability-groups-unpaid-carers-write-nicola-sturgeon-covid-19-fears/>

It will be noted that there is some work still to be completed as regards data analysis. It is hoped that this could be completed in time for a final report to the SPA Board in November 2021.

## **Work Programme**

See appendix E for the detail. Notes of our meetings since our letter of 30 June will be put on our page on the SPA website after this report is published.

## **Conclusion**

The conclusion in each of our earlier reports and letters has become familiar. As our conclusion on each occasion has been the same, for the sake of clarity we have adopted a similar formulation each time. This should not be mistaken as a mere 'cut and paste' exercise. It is intended as an acknowledgement of the key part of our Terms of Reference.

The same careful consideration has been given to our conclusion on each occasion. It is a crucial part of our work and the first part read by many who follow what we do. In addition, it has allowed us to make clear our view in light of our Terms of Reference<sup>11</sup>.

Having regard to the evidence mentioned in this report as well as other evidence and sources mentioned in previous reports, it remains our view that use of emergency powers by Police Scotland in general remains compliant - both in application and spirit – with:

- (a) human rights principles and legal obligations, including those set out in the Human Rights Act 1998 and the Scotland Act 1998
- (b) the values of Police Scotland – integrity, fairness and respect - and its 'safety and wellbeing' remit as laid out in the Police and Fire Reform Act (Scotland) 2012, and
- (c) the purpose of the 2020 Act and Regulations, namely safeguarding public health.

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<sup>11</sup> <https://www.spa.police.uk/spa-media/5gXHinni/tor-final-27-4-20.pdf>



Data Report on Police Charges Reported to the  
Crown Office and Procurator Fiscal Service  
under the Coronavirus Regulations:  
March 2020 to June 2021

Professor Susan McVie OBE FRSE FAcSS  
School of Law, University of Edinburgh

25<sup>th</sup> August 2021



## Acknowledgements

The analysis contained in this report was based on data that were provided by the Crown Office and Procurator Fiscal Service (COPFS) to the Scottish Government in June 2021, and were kindly shared with the IAG to support its scrutiny role. Acknowledgements and thanks are extended to Fiona Roberts, Statistician in the Management Information Unit of COPFS, who provided the data and reviewed the contents of the paper for accuracy. While this report was produced to support the scrutiny role of the IAG, the views expressed do not necessarily reflect those of IAG members, and all opinions, interpretations of the data and errors are the responsibility of the author.

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## Executive Summary

- This data report provides information on all charges reported by Police Scotland to the Crown Office and Procurator Fiscal Service (COPFS) under the Coronavirus Regulations between 26 March 2020 and 30 June 2021.
- Police Scotland reported 2,221 charges under the Coronavirus Regulations to the COPFS.
- The vast majority of charges were reported under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 introduced on 27<sup>th</sup> March or the Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 introduced on 2<sup>nd</sup> November.
- Local Regulations started coming into force in August 2020, and from November onwards became the predominant underpinning legislation for all charges.
- The number of charges reported to COPFS equates to an eighth of all police encounters that led to enforcement and represents a very small minority of all policing activity during the pandemic.
- These data suggest that the policing response has been effective in keeping those who did not comply with the Coronavirus Regulations out of the prosecution system.
- The overall pattern of enforcement and charges to COPFS indicates a strong and consistent relationship between police use of enforcement and charges to COPFS over time.
- Just under half of all charges resulted in a decision to take court proceedings, although they were around five times more likely to result in Summary than Solemn proceedings (i.e. they were at the less serious end of the spectrum).
- A third of all charges resulted in a decision to use a non-court disposal and a fifth were still awaiting a decision about how to proceed.
- Summary court cases were far more likely to have actually proceeded compared to Solemn cases, although that may well be due to the complexity and timing of the Solemn cases.
- Very few charges resulted in a decision of no further action, which provides assurance that the vast majority passed the threshold for taking prosecutorial action.
- Where a non-court disposal had been used, the most common was a Fiscal Fine of which the majority had been paid. Where diversion had been used, in most cases this was still ongoing.
- Only one in ten charges resulting in a direct measure (and one in forty of all charges) resulted in a referral to the Children's Reporter, although the age of accused persons was not known.
- Comparing first marking data before and after the start of the pandemic suggested that there was only a slight change in the overall profile of COPFS decision making.
- There was a slight drop in the proportion of accused who were proceeded against in court, which was most likely due to an overall reduction in markings for the Sheriff and JP court.
- Comparing the profile of charges under the Coronavirus Regulations with all first markings over the same period of time also showed only slight differences in the profile of decision making.
- The proportion of charges that resulted in court proceedings was slightly higher than that for the first markings; whereas, the proportion of charges resulting in no action was much lower.
- The overall similarities in the profile of COPFS decision making provides no evidence that different decisions were being taken with regards to Coronavirus-related charges.
- The very small proportion of charges resulting in no action also provides evidence that officers were reporting very few charges that did not meet the threshold for prosecutorial disposal.
- From a human rights perspective, these data provide assurance that efforts were made by Police Scotland to deal in a fair and proportionate way with the majority of people in breach of the Coronavirus legislation and that prosecutorial decision making was broadly in line with expectation.

# 1 Introduction

## 1.1 Content of this report

This data report was produced to assist and inform the deliberations of the Independent Advisory Group ('the IAG') on Police Use of Temporary Powers related to the Coronavirus Crisis. The IAG was established by the Scottish Police Authority in April 2020 to provide scrutiny around the role of policing during the course of the pandemic under the chairmanship of John Scott QC. The report provides information on the number of charges that were reported by Police Scotland to the Crown Office and Procurator Fiscal Service (COPFS) under the Coronavirus Regulations between 26th March 2020 and 30th June 2021. It also summarises the outcome of these charges in terms of whether the charges were dealt with via court or non-court disposals.

Although prosecutorial decision making was not within the Terms of Reference of the IAG<sup>1</sup>, the report contributes to scrutiny around 'proportionality' as it provides information on the extent to which enforcement action taken by the police in relation to breaches of the Coronavirus Regulations went beyond the use of police direct measures (i.e. a Fixed Penalty Notice).

## 1.2 Background context

Under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (hereafter referred to as the Regulations), police officers in Scotland were given the power to enforce the law by means of offering someone a Fixed Penalty Notice (FPN) or by arresting and charging them, in which case they would typically be reported to the Crown Office and Procurator Fiscal Service (COPFS). However, it is important to bear in mind the discretionary nature of police officer decision making when reporting a case to the COPFS. A member of the public may refuse to accept the offer of a police FPN, at which point the officer can decide whether or not to report them to the COPFS. In addition, police officers are subject to guidelines issued by the Lord Advocate in respect of the operation of the FPN scheme.<sup>2</sup> While the Regulations allow for an individual to be issued up to five FPNs (from a starting value of £60, and then doubling each time to a maximum value of £960), the Lord Advocate has stipulated a maximum of four. However, even when an officer gets to the fourth fine, they still have a choice as to whether to issue a FPN or report it to the COPFS. They may choose to report it without issuing a FPN (because they think it is serious enough on its own terms or because the guidelines require it) or they may offer a FPN. Having issued an FPN, they may still have to report it if it is refused.

# 2 Number of charges reported to COPFS by legislative statute

A total of 2,221 charges under the Coronavirus Regulations were reported by Police Scotland to the COPFS between 26<sup>th</sup> March 2020 and 30<sup>th</sup> June 2021. Table 1 provides a breakdown of the number of charges reported to COPFS under the relevant legal statute, by the date of offence.<sup>3</sup>

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<sup>1</sup> For details on the Terms of Reference of the IAG see: <https://www.spa.police.uk/spa-media/5gxinini/tor-final-27-4-20.pdf>

<sup>2</sup> [Lord Advocates Guidelines on the Operation of the FPN Scheme issued November 2020](#).

<sup>3</sup> Data were also provided by date of report, but it was felt that data of offence was more in keeping with Police Scotland's CVI data.



Table 1: Legal statute for charges reported to the COPFS, March 2020 to June 2021

| Legal statute  | Date of implementation | Number of charges | Number as a % of total |
|--|------------------------|-------------------|------------------------|
| The Coronavirus Act 2020   | 25 Mar 2020            | 48                | 2.2%                   |
| The Health Protection (Coronavirus) (Restrictions)(Scotland) Regulations 2020                        | 27 Mar 2020            | 847               | 38.1%                  |
| The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020               | 8 Jun 2020             | 36                | 1.6%                   |
| The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020                   | 5 Aug 2020             | 1                 | <0.1%                  |
| The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020   | 28 Aug 2020            | 168               | 7.6%                   |
| The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020      | 14 Sept 2020           | 101               | 4.5%                   |
| The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temp) Regulations 2020 | 9 Oct 2020             | 152               | 6.8%                   |
| The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020                 | 2 Nov 2020             | 868               | 39.1%                  |
| Total  |                        | 2,221             | 100                    |

On 25<sup>th</sup> March 2020, the Coronavirus Act received Royal Assent and created the legal basis for the lockdown of people and premises as a result of the pandemic in the UK. Only 2.2% of all charges to the COPFS were reported under the Act. Two days later, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 were laid before the Scottish Parliament and came into force the same day. Almost two in five (38.1%) of all charges were reported to the COPFS under these Regulations. Most (90.0%) charges were in relation to failure to comply with the Regulations as stipulated, while the remainder related to obstructing a person carrying out a function under the Coronavirus Regulations (1.9%) or contravening a direction, instruction or prohibition notice under the Coronavirus Regulations (8.1%).

In June 2020, the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 were introduced placing restrictions on people arriving into Scotland from outside the common travel area. They were subsequently amended to take account of testing requirements, following quarantine restrictions, and staying in designated accommodation. Overall, only 1.6% of all charges to COPFS were under these Regulations.

Following concerns about the spread of the Coronavirus in the City of Aberdeen, the Scottish Government placed the city into lockdown on 5<sup>th</sup> August and introduced the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations. However, only one charge was ever reported to the COPFS under this statute. Later that month, the Scottish Government made provision for all local authorities to take direct measures relating to restrictions on the opening of premises, organisation of events and travel to specific localities. This was legislated through the Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020. In total, 7.6% of all charges were reported under these Regulations.

Rising infection rates in September 2020 led to the introduction of the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 which placed new stricter limits on the size of public and private gatherings (commonly known as the 'rule of six'), use of face coverings within

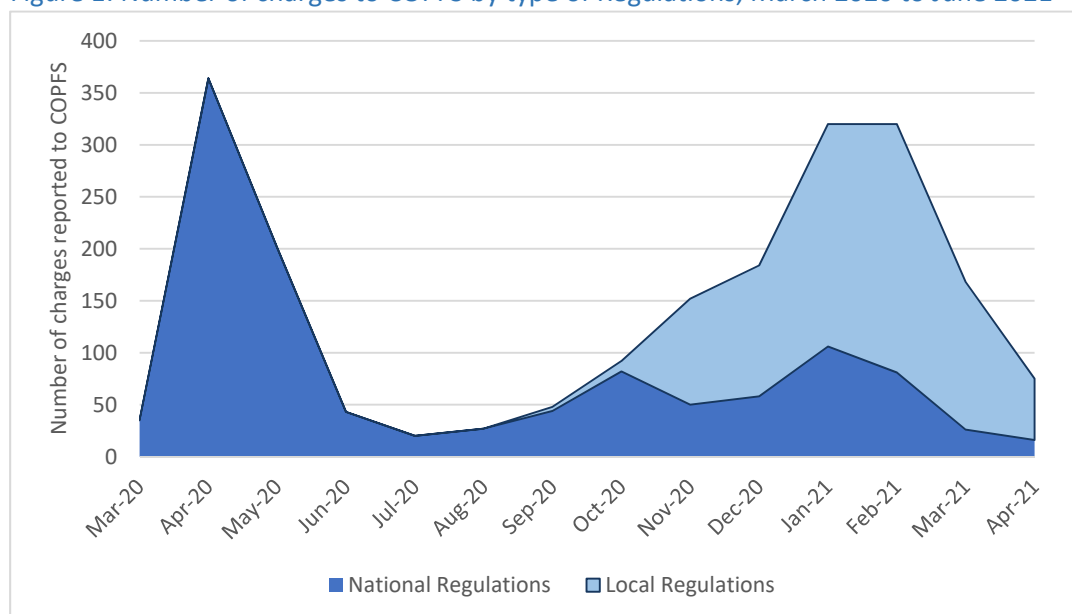
hospitality settings, and attendance at weddings, civil partnerships and funerals. Just under one in twenty (4.5%) of all charges to COPFS was in relation to this legislation.

Further restrictions relating to the timing and provision of hospitality, sports and entertainment services were introduced under the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temp) Regulations 2020. These measures were divided, with stricter restrictions being put in place on 18 Local Authorities within the central belt of Scotland. Just over one in twenty (6.8%) of all charges to COPFS was in relation to this legislation.

Finally, on 2<sup>nd</sup> November the Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 came into force. These implemented a new, more targeted, levels based approach to tackling the spread of the Coronavirus and created five different levels (or tiers) into which different Local Authorities could be placed according to the perceived level of risk. They also required the closure of certain businesses and required hospitality businesses to collect personal information from customers. Around two in five (39.1%) of all charges were recorded under this legislation. The vast majority of these charges (96.3%) were a result of failure to comply with the Regulations, while the remainder were a result of obstructing a person carrying out a function (0.8%) or contravening a direction, instruction or prohibition notice (2.9%).

There legislation implemented in respect of the Coronavirus started with a clear focus on national restrictions, then changed emphasis over time to introduce measures at a more localised level. Figure 1 shows the temporal change in the type of Coronavirus Regulations under which charges were reported to COPFS. There was a peak in charges reported under the national Regulations during the initial lockdown, in April and May 2020. While national Regulations continued to form the basis of some charges, they did so to a lesser extent as time went on. Although local Regulations started coming into force in August, it was not until November that there was an increase in charges under these Regulations. Nevertheless, it is clear that the majority of charges reported for prosecutorial decision making during the second national lockdown was based on these local restrictions.

Figure 1: Number of charges to COPFS by type of Regulations, March 2020 to June 2021<sup>4</sup>



<sup>4</sup> Note that month refers to date of offence and not date of reporting.

### 3 Comparing charges to COPFS with enforcement activity

Data was examined to see whether the pattern of reporting charges to the COPFS aligned with Police Scotland's enforcement activity more generally. This involved comparing the trend in the number of charges reported to the COPFS with the trend in the number of incidents of enforcement (i.e. FPNs issued and arrests) as recorded on the Coronavirus Intervention (CVI) system. The CVI system was introduced by Police Scotland to collect information on encounters with members of the public in relation to the use of the Coronavirus Regulations. As noted in other reports, the CVI system does not provide a completely accurate count of all police activity in relation to the Coronavirus; however, does provide an accurate account of the trends in policing activity (as compared to FPN data).<sup>5</sup>

Between 26<sup>th</sup> March and 30<sup>th</sup> June 2021, there were 17,006 FPNs and 972 arrests recorded on the CVI system. This represents a total of 17,978 interventions across Scotland that involved the use of enforcement under the Regulations. The number of charges reported to COPFS is equivalent to only 12.4% - or one eighth - of the recorded number of enforcements. When account is also taken of the much larger number of non-enforcement interventions recorded by Police Scotland over this period (which totalled just under 130,000), it is clear that the number of cases (and, therefore, individuals) who were charged as a result of breaches of the Coronavirus Act and associated Regulations was extremely small in relative terms. This provides good evidence that Police Scotland's use of the four Es has provided an effective method of keeping most of those who failed to comply with Coronavirus legislation out of the prosecution system.

Despite a large difference in numbers, the overall pattern of enforcement and charges to COPFS was very similar. Figure 2 shows that the monthly trend in the number of enforcements (FPNs and arrests) recorded by Police Scotland on the CVI system was a very close match to the trend in the number of charges reported to COPFS (based on the date of the offence rather than date of report). There were similar peaks in activity in April 2020 and again in January/February 2021, which suggest that increases in police enforcement activity had a proportionate knock-on effect on charges to the COPFS. There was a slight peak in police enforcement in November 2020 that was not reflected in the COPFS data. Police bulletins suggest that this was mainly explained by a spike in cases involving parties and gatherings of younger people in early November (potentially related to Halloween and Bonfire night)<sup>6</sup>, so it is positive to note that this did not result in an increased number of charges to COPFS.

There was a slightly earlier drop off in charges to the COPFS than enforcements recorded by Police Scotland between March and June 2021, which suggests there was a tailing off in the reporting of charges to the COPFS as enforcement was declining (i.e. a lower proportion of all enforcement was resulting in charges). Overall, the trends presented in Figure 2 suggest that there has been a strong and consistent relationship between police use of enforcement and charges to COPFS over time.

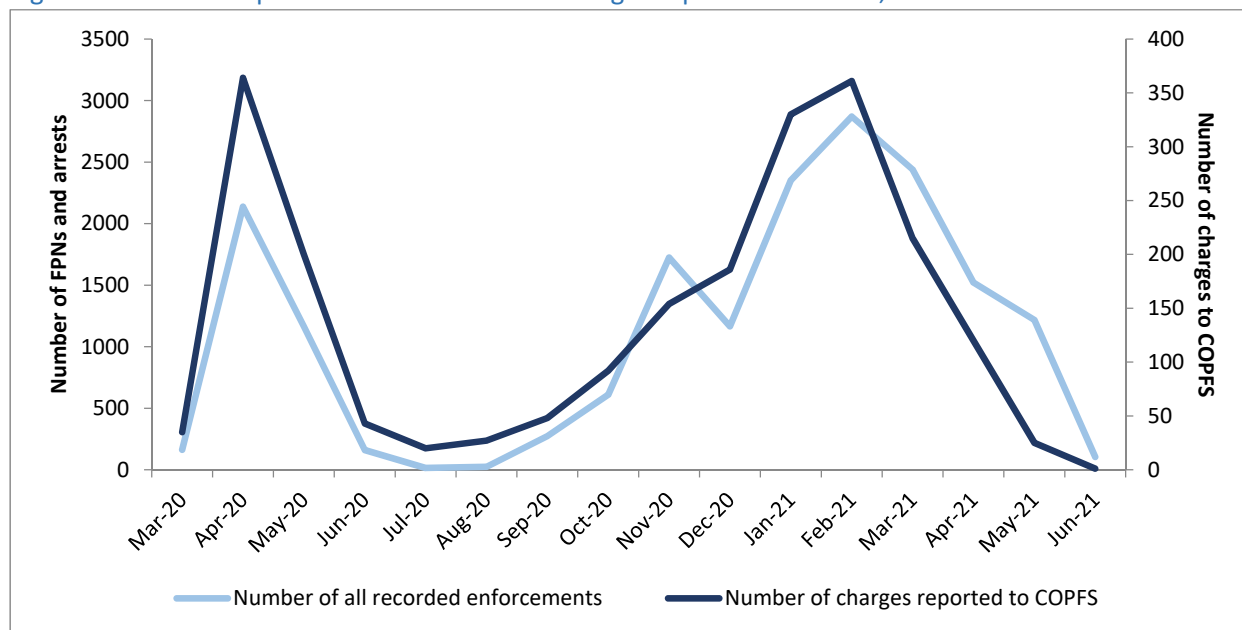
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<sup>5</sup> See McVie, S. and Matthews, B. (2021) Third Data Report on Police Use of Fixed penalty Notices under the Coronavirus Regulations in Scotland: March to December 2020.

<sup>6</sup> See Police Scotland Bulletins and Briefings published on the SPA website: <https://www.spa.police.uk/strategy-performance/oversight-of-policing-covid-19/>



Figure 2: Number of police enforcements and charges reported to COPFS, March 2020 to June 2021



## 4 Decisions taken in relation to charges reported to COPFS

Once a charge has been reported to COPFS, a Procurator Fiscal decides how the case should be dealt with. In the majority of cases, it is determined that a case should proceed to court under either Sheriff Summary proceedings (i.e. heard by a Sheriff sitting alone) or under Solemn proceedings (i.e. heard by a jury in either the Sheriff or High Court). The remaining cases are dealt with by means of a non-court disposal. This can include use of a ‘direct measure’ (e.g. a fiscal fine or other financial penalty, some kind of diversion, or a warning letter)<sup>7</sup>; or it may be decided that no formal action should be taken (most commonly because it is determined that further action would be disproportionate or because there is a lack of evidence that a crime occurred).<sup>8</sup>

### 4.1 Overview of decisions taken

Figure 3 shows the decisions taken by COPFS in relation to all charges reported under the Coronavirus legislation as at 30<sup>th</sup> June 2021. The first thing to note is that around a fifth (21.1%) of all charges were still awaiting a decision at that time. Looking at those where a decision had been taken, the majority had been marked for court proceedings, although most (38.7% of the total) were marked for summary proceedings while only 8.0% overall were marked for solemn proceedings. This suggests that the majority of charges reported under the Coronavirus Regulations where court action was considered appropriate were at the lower end of the spectrum in terms of seriousness. Moreover, even in cases that were marked for solemn proceedings, it is not possible to conclude that charges reported under the Coronavirus Regulations were any more serious than those taken forward under Summary proceedings. Indeed, according to COPFS, it is more likely that the Coronavirus charges led in Solemn

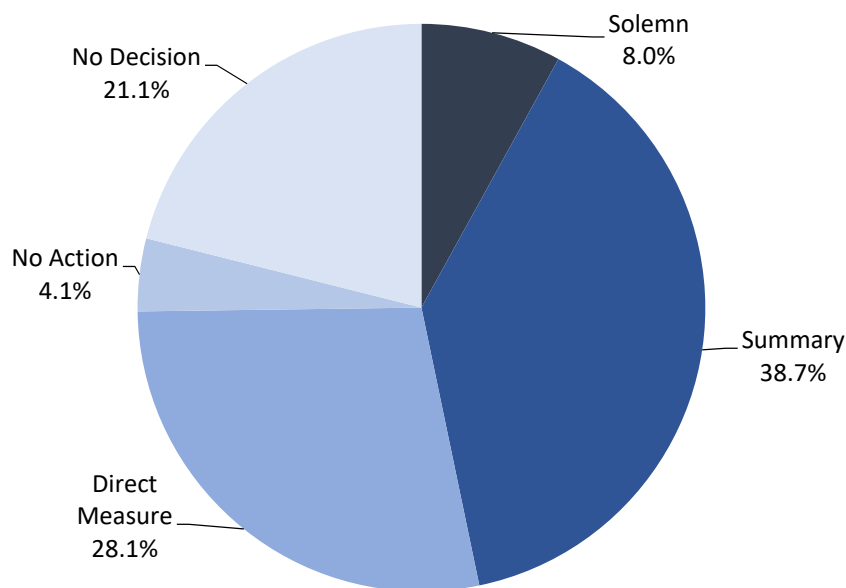
<sup>7</sup> See COPFS response to a FOI request on use of direct measures: <https://www.copfs.gov.uk/foi/responses-we-have-made-to-foi-requests/40-responses2014/817-direct-measures-alternative-to-prosecution>

<sup>8</sup> See COPFS response to a FOI request on use of no action: <https://www.copfs.gov.uk/foi/responses-we-have-made-to-foi-requests/42-responses2012/844-cases-marked-no-action>

court had been rolled together with other serious charges (e.g. spitting at or otherwise assaulting a police officer) that were likely to incur a higher tariff disposal. It is notable, however, that when proceedings were taken in relation to charges reported to COPFS under the Coronavirus Regulations they were five times more likely to result in Sheriff Summary than Solemn proceedings.

For around a third of all charges, a decision was taken to use a non-court disposal. In the majority of these cases (28.1% of the total) a direct measure was used. While only a small proportion (4.1%) of all charges resulted in no formal action being taken.

Figure 3: Decisions made by the COPFS in relation to all charges reported under Coronavirus Regulations, March 2020 to June 2021



#### 4.2 Outcome of court proceedings

For all charges that resulted in court proceedings, Table 2 shows the outcome as at 30<sup>th</sup> June 2021. Of those charges that were marked as solemn cases, 59.6% had actually resulted in the case proceeding to court. This compares to 80.7% of charges that were marked as Summary cases. A large proportion of both Solemn (43.3%) and Summary (49.8%) cases were still ongoing on 30<sup>th</sup> June 2021. Where cases had been resolved, charges marked as Summary cases were more likely than those marked as Solemn to have resulted in a conviction, although this was low for both types of charge (10.8% versus 2.2%, respectively). The proportion of charges that had resulted in no conviction was slightly higher for Summary cases (16.7%) than Solemn cases (12.9%). No further action had been taken in respect of charges that were marked for court proceedings in a very small proportion of cases overall. No further action was taken in relation to only 1.1% of Solemn and 3.4% of Summary charges that proceeded to court. According to COPFS, this provides assurance that the vast majority Coronavirus-related charges ending up in court passed the threshold for taking prosecutorial action.

A small proportion of all cases marked for court proceedings were still awaiting a decision; however, this was proportionately higher for Solemn cases (7.3%) than Summary cases (0.3%). In addition, a higher proportion of charges marked for Solemn than Summary proceedings were recorded as being

‘not separately actioned’ (33.1% versus 19.0%, respectively).<sup>9</sup> It is the view of COPFS that these differences were due to the different nature of Summary and Solemn proceedings and the time involved in preparing cases. Accused in Solemn cases are not immediately proceeded against in court (on indictment). It can take some months for case preparation and investigation to conclude and not all of the charges reported by the police may feature on the indictment.

**Table 2: Outcome of charges proceeded against in Solemn and Summary court, March 2020 to June 2021**

| <b>Outcome</b>             | <b>Solemn cases</b> |                   | <b>Summary cases</b> |                   |
|----------------------------|---------------------|-------------------|----------------------|-------------------|
|                            | <b>Number</b>       | <b>% of total</b> | <b>Number</b>        | <b>% of total</b> |
| Proceeded against in court | 106                 | 59.6%             | 694                  | 80.7%             |
| Convicted                  | 4                   | 2.2%              | 93                   | 10.8%             |
| Not Convicted              | 23                  | 12.9%             | 144                  | 16.7%             |
| Ongoing                    | 77                  | 43.3%             | 428                  | 49.8%             |
| No Further Action          | 2                   | 1.1%              | 29                   | 3.4%              |
| No Decision                | 13                  | 7.3%              | 3                    | 0.3%              |
| Not Separately Actioned    | 59                  | 33.1%             | 163                  | 19.0%             |
| <b>Total</b>               | <b>178</b>          |                   | <b>860</b>           |                   |

### 4.3 Outcome of direct measures

As noted in Figure 3, 28.1% of all charges reported to the COPFS were dealt with by direct measures. Table 3 shows that just over half (54.9%) of these charges resulted in a Fiscal Fine. Most (78.9%) of these fines were successfully paid while a further 17.0% were still ongoing, and the remainder were unpaid but had resulted in no further action.

A further 14.8% of charges resulted in some kind of diversionary measures, of which 21.6% had been successfully completed, 75.0% were still ongoing, and the remainder had not been completed but resulted in no further action. Just over one in ten (11.6%) charges marked for direct measures resulted in a warning letter, while a further one in ten (9.5%) were referred to the Children’s Reporter for disposal. The remaining charges were either not separately actioned or dealt with in some other way (such as a work offer or a fixed penalty).

**Table 3: Outcome of direct measures, March 2020 to June 2021**

| <b>Outcome</b>                  | <b>Number</b> | <b>% of total</b> |
|---------------------------------|---------------|-------------------|
| Fiscal Fine                     | 342           | 54.9%             |
| Diversion                       | 88            | 14.1%             |
| Warning letter                  | 72            | 11.6%             |
| Referral to Children’s Reporter | 59            | 9.5%              |
| Not separately Actioned         | 45            | 7.2%              |
| Other decision                  | 17            | 2.7%              |
| <b>Total</b>                    | <b>623</b>    |                   |

<sup>9</sup> Not separately actioned – the total number of charges reported will also include charges where action was taken in relation to other charges reported in the case; for example, because the prosecutor took the view that an alternative charge was more appropriate or because details of the charge were included within the body of another charge for evidential reasons.

## 5 Comparing charges reported to COPFS with first markings

The overall profile of decisions made in relation to charges reported under the Coronavirus Regulations was compared to COPFS data on first markings for 2019/20 (prior to the pandemic), and for the whole of 2020/21 and the first four months of 2021/22 (during the pandemic). ‘First marking’ is the description given to the initial substantive decision made by Procurators Fiscal in respect of all charges reported to COPFS.<sup>10</sup> Comparing the profile for the Coronavirus charges to all first markings addresses two questions about the possible impact of the pandemic on COPFS decision making:

- 1) Were there any substantial changes in COPFS decision making during the pandemic when compared to the previous year?
- 2) Was decision making in relation to Coronavirus charges broadly similar to the overall profile of first markings (which includes both Coronavirus and non-Coronavirus cases)?

It is important to note that the data for first markings and the data for charges reported to COPFS differ in three key respects. First, the data for charges reported to COPFS (illustrated in Figure 3) reflect decisions made in relation to individual *charges*, whereas first markings data (which is the standard way of measuring prosecutorial decision making) is by *accused*, and one accused might have more than one charge in the same case. Second, the first markings data include all accused regardless of the nature of the charges against them, whereas the Coronavirus-related charges represent a relatively small proportion of all charges reported (estimated to be less than 1% of all charges received in an average year). And third, the first markings data are reported by financial year, whereas the Coronavirus-related charges are reported for the period from March 2020 to June 2021. Despite these differences, comparing the two data sources does provide some useful information.

Table 4 shows the breakdown of decisions made by the three types of marking options available to COPFS for accused (under first markings) and Coronavirus-related charges reported to COPFS. In relation to the first question posed above, Table 4 shows that the overall profile of first markings for 2019/20 was very similar to that for 2020/21 and the first four months of 2021/22. The proportion of accused with court proceedings was slightly higher in the pre-pandemic year compared to the post-pandemic years, while the proportion of accused receiving direct measures or having no action taken was slightly higher in the post-pandemic years. However, these represent very small substantive differences in the overall profile of first marking decisions.

A report by Scottish Government’s Justice Analytical Services published in June 2021 noted: “the total number of reports received by COPFS decreased substantially at the beginning of lockdown. Numbers increased to pre-pandemic levels before a substantial decrease in February 2021. Reports in March recovered to just under pre-pandemic levels and have remained around that number over the last few months.”<sup>11</sup> Of the three types of marking decision available to Procurators Fiscal, use of direct measures and no action had almost increased to levels equivalent to the previous year by June 2021; however, cases marked for court proceedings were far lower than they had been in 2019/20. The Justice Analytical Report notes that the number of people marked for proceedings in Solemn cases remained at or above pre-pandemic levels throughout 2020/21; however, people marked for Sheriff Summary court had remained below average since April 2020, while markings for the Justice of the Peace court had remained well below average compared to 2019/20. This provides a reasonable explanation for the slight differences observed between first markings shown in Table 4.

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<sup>10</sup> See p18 of Scottish Government (2021) [Coronavirus \(COVID-19\): Justice Analytical Services Data Report - June 2021](#).

<sup>11</sup> Scottish Government (2021). Op cit.

Table 4: Comparison of marking decisions made by COPFS in relation to first marking for accused in 2019/20, 2020/21 & 2021/22, and charges reported under Coronavirus Regulations in 2020/21

|                   | 2019/20 First Markings by accused | 2020/21 First Markings by accused | 2021/22 First Markings by accused (Apr-Jul only) | 2020/21 Charges reported under Coronavirus Regulations* |
|-------------------|-----------------------------------|-----------------------------------|--|---|
| Court proceedings | 58.9%                             | 54.8%                             | 53.4%  | 59.2%   |
| Direct Measures   | 30.7%                             | 33.8%                             | 34.7%  | 35.5%   |
| No Action         | 10.4%                             | 11.3%                             | 11.8%  | 5.2%  |

\* This excludes 468 charges for which no decision had been made as at June 2021.

In relation to the second question posed above, Table 4 shows that the proportion of Coronavirus-related charges resulting in court proceedings during 2020/21 was around 4-6% higher than the percentage of all first markings recorded during 2020/21 and the first four months of 2021/22. The proportion of charges that resulted in direct measures was very slightly higher than that for the first markings; whereas, the proportion of charges resulting in no action was less than half of that for the first markings. It is not possible to draw any definitive conclusions from these data, due to the differences in the two data sources noted above. Nevertheless, it is reassuring that the balance of decision making is broadly comparable and does not give rise to any particular concerns about the decisions taken with regards to Coronavirus-related charges when compared with decisions made about all first markings during the pandemic year. If anything, the higher proportion of Coronavirus charges dealt with using court proceedings, and the very small proportion resulting in no action, gives assurance that Police Scotland was submitting very few Coronavirus-related charges to COPFS that did not pass the threshold for some form of prosecutorial disposal.

## 6 Conclusion

The analysis provided in this report provides a useful insight into the number and outcome of charges that were reported by Police Scotland to the COPFS under the Coronavirus legislation between 26 March 2020 and 30 June 2021. There were a number of changes to the Regulatory framework over that period, and it is clear from the pattern of charges reported to the COPFS that police officers were increasingly using the more localised Regulations that were introduced to create different levels of restriction across different Local Authorities. This is interesting in the context of divisional differences in patterns of enforcement (as reported in data reports on the use of FPNs), and provides additional evidence that localised policing approaches became increasingly important as the pandemic progressed.

In total, there were only 2,221 charges reported to the COPFS between March 2020 and June 2021 (i.e. an average of less than 150 per month). This was equivalent to around an eighth of all enforcement encounters recorded by Police Scotland on the CVI system, and represented a tiny fraction of all policing activity in relation to the Coronavirus. Such small numbers provides good evidence that Police Scotland's commitment to a consent-based policing model and use of the Four Es approach has been effective in terms of keeping most of those who did not comply with the Coronavirus legislation out of the prosecution system.

The overall trend in the number of charges reported to COPFS was extremely similar to the trend in the use of FPNs and arrests as recorded by Police Scotland on the CVI system. Overall, the trends suggest that there was a strong and consistent relationship between police enforcement and reporting to

COPFS. It is reassuring that there was no evidence of a relative increase in the reporting of charges to COPFS over time.

Looking at the decisions that had been taken in relation to the charges reported under the Coronavirus legislation, just under half of all charges reported to the COPFS were marked for court proceedings and just over a quarter were dealt with using direct measures, primarily by means of a Fiscal Fine. Of the remaining charges, the majority were still awaiting a decision.

Where a decision had been made to take court proceedings, charges reported under the Coronavirus Regulations were around five times more likely to be marked for Sheriff Summary than Solemn proceedings. This indicates that, even when a court-based disposal was considered appropriate, in most cases it was anticipated that this would be at the lower end of the judicial tariff. Charges that had been marked for Solemn court were considerably less likely than those marked for Summary court to have actually been proceeded against in court by June 2021; however, it is likely that this could be explained by differences in the complexity or timing of the charges. Where court proceedings had progressed, Solemn charges were less likely than Summary charges to have resulted in a conviction; however, since the majority of all cases in both types of court proceedings were ongoing, no conclusion can be drawn about differences in outcome.

Analysis of first markings data was able to address two important questions. The first question was whether there were any differences in COPFS decision making in the period following the pandemic compared to the pre-pandemic year. Data on the three types of decision available to COPFS showed that the profile of first markings for 2020/21 and the first four months of 2021/22 was broadly comparable to that for 2019/20. The proportion of accused with court proceedings was slightly higher in the year before the pandemic, and the proportion of accused receiving direct measures; however, this is most likely to be explained by a slow recovery in the number of people being marked for court proceedings, especially in the Sheriff Summary and JP courts. It could also be explained by a slightly higher use of direct measures in an effort to take pressure off the courts system.

The second question was whether decision making in respect of the Coronavirus charges was broadly similar to the overall profile of first markings. The profile of COPFS decision making in relation to first markings during 2020/21 and the first four months of 2021/22 was compared to that for all charges reported under the Coronavirus Regulations over the same period of time. Despite the fact that differences in the datasets meant they were not directly comparable, the two profiles were very similar overall. Most notably, charges reported under the Coronavirus Regulations were slightly more likely to result in court proceedings, which does provide reassurance that they were likely to be at the 'more serious' end of the spectrum in terms of non-compliance. In addition, charges reported under the Regulations were far less likely to result in a decision of 'no action', which also provides reassurance that the vast majority of charges reported to the COPFS met the appropriate prosecutorial threshold.

Overall, the data presented in this paper suggests that police use of the 4Es has been effective in keeping those who did not comply with the Coronavirus Regulations out of the prosecution system. Moreover, those who did end up in the prosecution system were mainly dealt with through non-court disposals or proceeded against in Summary, rather than Solemn, court. Moreover, there is no evidence that a higher than normal proportion of charges were being reported to the COPFS that did not meet a suitable prosecutorial threshold. From a human rights perspective, these data provide assurance that efforts were made by Police Scotland to deal in a fair and proportionate way with the majority of people in breach of the Coronavirus legislation and that prosecutorial decision making was broadly in line with expectation based on previous years.



June 2021

## Independent Advisory Group Report on interviews with Police Scotland Officers and Staff – Phase II

### Introduction

1. This document provides a summary of findings from research interviews carried out by Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) on behalf of the Independent Advisory Group (IAG) established to review Police Scotland's use of the emergency powers provided by the Coronavirus Act 2020 and the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.
2. The aim of the research interviews was to understand the experiences and views of police officers and staff involved in exercising the new powers during the pandemic, in particular how this has changed over time, by interviewing:
  - police officers involved in applying the new powers on the front line;
  - police officers in supervisory positions involved in giving advice and instruction to police officers involved in front line duties;
  - police officers/staff working in Contact, Command and Control (C3) involved in receiving and dealing with calls from the public about coronavirus related issues.

### Methodology

3. The research was limited to one to one interviews and in line with public health guidance, conducted by teleconference, with the exception of one interview which was conducted using Microsoft Teams. HMICS did not inspect any police briefing materials or other documentation prior to or during the interviews. The methodology and developed question set (Appendix A) were approved by the IAG and were designed to explore the following themes:
  - Training and support around the introduction of the new policing powers
  - Public compliance with the powers
  - Experience of policing the pandemic and using the new powers
  - Future Lessons
4. The HMICS inspection team selected officers for interview from a list provided by Police Scotland, which included front line response, community and supervisory officers and those working in Resolution Teams within C3. This method provided a degree of randomisation in the selection process.

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5. Data recorded by Police Scotland were analysed by the IAG on the extent and nature of policing during the course of the last 12 months. From this a small number of sub-divisions were selected based on levels of interventions/enforcement and changes in such activity over the period. In respect of call handling, an officer from the Resolution Teams situated in Govan, Bilston Glen and Inverness were interviewed. In addition, the Divisional Commander for C3 Division, Chief Superintendent Roddy Newbigging, was interviewed.
6. A total of 32 interviews were conducted between Monday 26 April and Friday 6 May.

### Interview Sample

7. The interview sample provided a cross section of frontline roles and age, gender and length of service within the specific geographical areas selected to capture the experience of policing across these different communities.
8. None of the officers selected were involved in the first round of police interviews conducted by HMICS on behalf of the IAG.<sup>1</sup> This was not logistically possible and, in any event, the focus of round two was to capture the experience of officers working in specific contexts and in smaller geographical areas than the larger divisional areas which featured in round one.
9. Given the small numbers of individuals interviewed and the specific smaller geographical areas selected care should be taken in drawing any definitive conclusions as the views expressed may not necessarily present a representative view of all officers across Scotland.
10. Those interviewed were comprised of the following:
  - South East Edinburgh (E Division), one community officer, one response officer, one community supervisor and one response supervisor
  - Glasgow City Centre (G Division) , two response officers and two response supervisors
  - West Dunbartonshire (L Division), one community officer, one response officer, one community supervisor and one response supervisor
  - Paisley (K Division), two response officers and two response supervisors
  - Stirling (C Division), two response officers, one community supervisor and one response supervisor
  - Central/East Fife (P Division), two response officers, one community supervisor and one response supervisor
  - South Highlands (N Division), two response officers and two response supervisors
  - Contact, Command and Control (C3) Division, three Resolution Team officers and the Divisional Commander

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<sup>1</sup> [Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis](#) SPA Board Meeting 30 June 2020 (Item 5, Appendix E)



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### Key Findings

11. The research themes and responses are explored in broader detail however the following high level feedback from officers has been summarised:
- Although some officers felt wearied by the experience of policing during the pandemic, there was also a strong sense of achievement and of fulfilling an important role in helping to keep the public safe
  - Overall view was that the force had responded well in terms of providing guidance and instruction initially, given the speed of introduction of emergency legislation
  - Although guidance was comprehensive the frequent updates, in line with legislative changes, made it too cumbersome and unwieldy over time, such that it was challenging for officers to navigate
  - More user friendly, scenario based, guidance would have assisted officers together with opportunities for shared learning
  - Lack of clarity on what was legislation and what was guidance, the introduction of local levels/ restrictions and the various exceptions all created confusion and some anomalies which made policing more difficult
  - The “four Es” approach (Engage; Explain; Encourage; and Enforce) was well understood by officers and viewed positively, in keeping with the force values
  - The four Es approach allowed a consistency in policing tone and style in the early stages of the pandemic and has remained the fundamental approach to policing throughout
  - The main emphasis of the police has been on engaging, explaining and encouraging compliance with enforcement being the last resort
  - With the passage of time, whereby the public health objectives became well understood, the approach to the four Es flexed with a quicker acceleration to enforcement, aligned to public health considerations within local areas together with other factors
  - A swifter acceleration through the four Es was more prevalent in more densely populated areas where house parties and large gatherings were a particular issue
  - Whilst the vast majority of the public have been compliant and have remained supportive of the police, public compliance has waned over time and latterly there has been a greater incidence of individuals interpreting the rules to suit their own ends
  - Although the majority of the public were generally supportive of the police, either in accepting advice or in receiving a fixed penalty, some officers had experienced a lack of support. This was largely associated with officers who had attended house parties/gatherings. Some had experienced abuse and a small minority had either been subject to assault or had witnessed colleagues being assaulted.
  - Some groups have found it more difficult to comply with the restrictions, notably those suffering from mental ill health and young people. The policing approach was tailored for these groups of people<sup>2</sup>

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<sup>2</sup> See paragraphs 35,36, 53 and 54

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- Officers experienced a rise in incidents relating to mental ill health. The availability of local mental health protocols and the Mental Health Pathway to access advice/support from mental health practitioners was a positive development
- The impact of staff absences either due to officers contracting Covid-19 or having to self-isolate has been considerable at times. One supervisor advised that the mental health of some officers had suffered and there were currently waiting lists for counselling to be received
- Officers felt the police service had been required to fill the gaps for other services, such as Social Work and Housing. They perceived this as being the result of insufficient flexibility or lack of resilience to provide the same level of service. Support was also provided to the ambulance service when they were busy
- The roll out of the Contact Assessment Model (CAM) and the introduction of on-line reporting in December 2020 provided a measure of flexibility to cope with increasing workload and staff absences within the C3 environment
- The force-wide roll out of CAM, the limited attendance policy and the positive impact Resolution Teams had on fielding/dealing with calls without the necessity of officers attending were all viewed positively by frontline officers
- The main challenge for C3 has been the lack of ability to forecast demand as it tended to fluctuate/spike with Government messaging in relation to easing or tightening restrictions
- Operational police officers highlighted challenges in keeping pace with the legislative changes
- A potential gap in the policing response was the lack of ability to require individuals to provide their details and to use a formal recorded warning system, or similar recording system, to retain details of individuals the police had repeatedly engaged with
- Looking to the future the main concerns are: the potential for an increase in disorderly conduct as licensed premises return to normal service, and the level of public compliance reducing should further lockdowns be introduced in the future
- Consistent messaging from political leaders and others in authority out with Police Scotland was considered important
- Overall the police service responded well and demonstrated the ability to be flexible, resilient and provide an ongoing service in difficult times, assisting other services that were periodically struggling
- Frontline officers felt disappointed they had not been prioritised for the vaccination programme, given their front facing role in keeping the public safe

12. The report will now take each research area in turn and summarise the interview responses.

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### Training and support around the introduction of the new policing powers

13. The fundamental role of the response officers interviewed remained unchanged throughout the pandemic, although call demand/type changed with: closure of retail and licensed premises, the introduction of Covid-19 related calls and a rise in “cause for concern” calls, many of which were associated with mental ill health.
14. In contrast, the traditional role of community officers changed significantly. Most community engagement meetings with partners such as local councils stopped, and whilst some of this work has returned it is generally being undertaken remotely. Community officers were re-deployed to assist with Police Scotland’s Covid-19 response. In more rural areas they were deployed to local beauty spots to engage with members of the public who may have travelled there. In urban areas they were involved in patrolling parks, beaches and other public spaces known to attract large groups of people to support the public health objectives.
15. Significant changes also occurred within the C3 environment. The already planned roll out of the Contact Assessment Model (CAM), in areas of Scotland where it had not yet been introduced, was accelerated.<sup>3</sup> The West Command area provided support to these areas during the transition period. The THRIVE<sup>4</sup> assessment was also adapted to include questions regarding householders who may be vulnerable, shielding or displaying Covid-19 symptoms, in order to assess the appropriate response. A limited attendance policy was introduced to ensure, following risk assessment, that officers only attended where absolutely necessary and otherwise calls were resolved remotely by service advisors or the Resolution Teams.
16. Overall, officers interviewed were positive about the force’s initial response to the introduction of emergency legislation, acknowledging the speed with which the legislation was enacted which provided little time for the force to consider and prepare.
17. Information was provided for officers and staff through an extensive PowerPoint which was regularly updated with changes to the legislation. In addition, updates were circulated regularly by e-mail. Face to face briefings were provided by some supervisors, taking into account the level of experience and needs of their teams, but this was limited in duration and emphasis was placed on officers self-briefing. A microsite was created on the force intranet containing Covid-19 guidance and health and safety information.
18. Most felt that although the PowerPoint guidance was very comprehensive, it became too cumbersome and unwieldy given the volume of updates received over time, as legislative changes were made. The experience was that it was hard to wade through the volume of information to find what was relevant. Consequently it became a challenge for officers to keep up to date with restrictions that were applicable, and a feeling of playing catch up developed. There was not always time to self-brief before starting a shift and officers had to also rely on word of mouth from colleagues, advice from supervisors and/or keeping abreast of news reports and Government briefings in their own time. The guidance was generally viewed more positively by those working in C3 who had immediate access to the intranet whilst doing their work.
19. Despite these observations some acknowledged they could see no other way for the force to respond given the quick and constant pace of change.

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<sup>3</sup> CAM is used by Area Control Room (ACR) – officers are dispatched to attend using CAM which involved undertaking a THRIVE assessment.

<sup>4</sup> THRIVE (Threat, Harm, Risk, Investigation, Vulnerability and Engagement) is a risk management tool which considers 6 elements to assist in identifying the appropriate response grade based on the needs of the caller and the circumstances of the incident.

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20. Others provided suggestions for improvement to make guidance more user friendly and easier to apply:
- Breaking information down to smaller chunks with key points
  - Including a dedicated and regularly updated Frequently Asked Questions section
  - Providing more scenarios and practical examples
  - Including flowcharts to demonstrate different processes for different situations
  - Greater use of technology, perhaps creating an App accessible to officers on patrol. Although an Aide memoire had been added to officers' mobile devices, which was helpful, we were told this was not refreshed as time went on to take into account legislative changes.
21. The heavy reliance on self-brief did not suit the learning style of some officers who would have preferred either face to face or virtual training. The opportunity to share learning, perhaps by use of a forum, was also suggested as a means to improve knowledge and understanding.
22. The force briefings followed the UK approach, characterised by the four Es: Engage; Explain; Encourage; and Enforce. The use of the four Es approach was universally known and understood by the officers interviewed. It was viewed as a positive approach, in line with the manner in which they go about their duties in general. Its use allowed a consistency in policing tone and style in the early stages of the pandemic. This was seen as being important for public confidence when society was trying to understand what was required/expected of them in a public health crisis.
23. Those interviewed were clear that use of the 4 Es has remained the fundamental approach to policing throughout. However, most stated that as the pandemic continued, in the latter part of 2020 and beyond, there was a shift towards accelerating more quickly through the 4 Es and utilising enforcement more frequently (predominantly the issuing of fixed penalty notices). This was aligned to public health considerations within local areas and took into account levels of public non-compliance and the nature of the conduct/breach. This approach was more prevalent in more densely populated urban areas.
- Officers working in urban areas advised that on a night shift they would expect to attend 3 or 4 calls regarding house parties. This would be replicated across the other teams working.
24. Most felt supported by their line managers/supervisors in their application of the four Es. However, there was a clear frustration from many officers in urban areas that the shift to quicker enforcement should have happened earlier in the pandemic, given the frequency and blatant nature of breaches encountered and the passage of time where it was considered the public were well aware of the rules.
25. Some officers were acutely aware of their decisions being scrutinised and that justification for their approach to the 4 Es could/would be required by supervisors. Again, this was more prevalent in urban areas. A small number felt this influenced decision making and inhibited use of discretion at times.

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26. Many thought that there were too many grey areas in relation to what is law and what is guidance. Although there was an understanding of the legislation, on drilling down it was vague and prone to different interpretations thus providing loopholes. Unlike other legislation they had dealt with, the speed and frequency of changes also made it particularly challenging and difficult to enforce.
27. Following introduction of the tier system it became increasingly difficult to keep up to date with restrictions on the number of people allowed to mix in particular situations and in relation to travel. Certain anomalies emerged, such as:

In Tier 3, travel out with your Local Authority area was not permitted but when restrictions tightened after Christmas and everyone was placed in Tier 4 travel was allowed 5 miles out with your Local Authority boundary area for certain purposes.

28. Such anomalies caused confusion, resulted in an increased number of calls from the public seeking clarification and made policing more difficult.

### **Public compliance with the powers**

29. The consensus was that the vast majority of the public have been compliant in relation to restrictions and generally supportive of the police. This was particularly so at the early stages of the pandemic, driven by uncertainty and fear of the virus. However, officers felt public compliance has waned over time, particularly in the latter part of 2020 and post-Christmas. Individuals, including those who are normally law abiding, had started to conduct their own risk assessments and interpret the rules to suit their behaviour rather than strictly adhere.
30. A small minority of individuals have been non-compliant throughout, largely formed by sections of the community who live chaotic lifestyles and do not conform to regulation generally. They remained intent on non-compliance, regardless of attempts to utilise all strands of the four E approach. When fixed penalties were issued this had little/no deterrent effect.
31. In urban areas where there were large student populations, officers found this group to be generally non-compliant, with a large number of calls relating to house parties at student accommodation/student lets. Universities worked jointly with the police and also took action internally in an attempt to curb such behaviour.
32. Most felt there was general support from the majority of those they had dealt with, either in accepting advice or receiving a fixed penalty. However, a sizeable minority of officers had experienced a lack of support from those they engaged with. This view was largely associated with officers who had attended house parties/gatherings who were often challenged by those present. Some had experienced abuse and a small minority had either been subject to assault or had witnessed colleagues being assaulted. Some officers felt the anger and abuse directed towards them by students, and from young people in particular, went beyond what would ordinarily be expected, which may have been influenced by other world-wide events reported in the media.

Repeat calls were received regarding house parties within student accommodation in South East Edinburgh. When officers attended students often indicated they were not bothered about the fixed penalty notices as their parents would pay.

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Officers deployed to patrol “The Meadows” in South East Edinburgh, as part of Police Scotland’s Covid response due to the large numbers gathering there, had occasion to speak to a 14 year old about anti-social behaviour whereupon a group gathered and started throwing objects at the officers and abusing them.

33. Competing expectations have, at times, proved challenging for officers. Some had experienced criticism from law abiding members of the public for not using enforcement at public protests/football gatherings and, on the opposite side of the coin, criticism when using enforcement at unlawful house parties/indoor gatherings for exercising double standards – “why us and not them?”
34. Meeting public expectations whilst applying the four E approach also created challenges in rural communities when there was an influx of visitors from more highly populated areas for the purposes of exercise, to holiday or to visit second homes.

People travelling from other areas caused the biggest issue as it caused friction with those living locally. Some people felt that the police should be moving straight to enforcement, however the first 3 Es were usually successful in removing people from the area.

The police would get calls about people visiting second homes and would attend but often the individual would explain they were there to conduct essential maintenance. The local community would get frustrated that the police were not doing enough and sometimes make multiple complaints.

35. In contrast to frontline policing, officers in the Resolution Teams felt the public were largely appreciative and accepting of advice. User experience surveys are conducted regularly by an independent company, Progressive Partnership Limited, on behalf of Police Scotland. Questions are included to measure the level of user satisfaction with: the ease of contact, how they were treated during the initial contact, and whether they felt the staff member had properly understood what they needed. The satisfaction rates for the third quarter, October to December 2020/21 ranged between 75- 89%.<sup>5</sup>
36. A rise in incidents relating to mental ill health was a common experience of officers. This group had found it particularly difficult to cope with restrictions, feeling more socially isolated and without the same access to support networks. In dealing with these “cause for concern” calls wellbeing was put at the heart of the policing response.
37. Some front line officers praised the availability of local mental health protocols which provided access to mental health professionals by phone to those who required support, thereby reducing the need for hospital attendance, which is often very time consuming. This was echoed by officers working in the Resolution Teams who could use the Mental Health Pathway to access advice from mental health practitioners and thereafter refer some individuals to NHS community psychiatric nurses.<sup>6</sup>

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<sup>5</sup> Scottish Police Authority [Quarter 3 Performance Report October - December 2020 - Appendix A page 60](#)

<sup>6</sup> Following a THRIVE assessment mental health pathway is available - a collaboration between Police Scotland, NHS 24 and the SAS providing a dedicated mental health hub within the NHS 24 Contact Centre staffed by appropriately qualified mental health practitioners. Similar protocols exist within divisions using local arrangements with the local Mental Health Assessment Services.

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38. Responding to the pandemic, partner agencies had placed vulnerable groups such as the homeless in local hotels, converted into temporary hostels to provide shelter and food. Officers found that, despite this, they struggled to comply with restrictions. Placing so many people with vulnerabilities together inevitably led to them socialising together and breaching regulations. In addition, it resulted in some violent incidents as rivaling factions had been inadvertently housed together.
39. Many thought young people had also struggled to cope with restrictions. A combination of having been kept in their houses, schools being closed and apathy towards the pandemic due to messaging that they were not as susceptible to becoming ill, fuelled a lack of compliance. Large groups of young people gathering to socialise in public spaces was common place, often organised in advance. During periods where schools were closed there was not the same opportunity for youth engagement officers to access this group and get public health messages across. Some officers advised that for those young people where enforcement was not an option, which they stated applied to those under 16 years old<sup>7</sup>, they sometimes resorted to taking them home to their parents to emphasise the public health objectives.
40. The 4 Es has remained the fundamental policing approach throughout and on the vast majority of occasions the first 3 Es has proved effective. However, with the passage of time, whereby the public gained a better understanding of the public health objectives the approach has flexed. In recent months, where there is a blatant disregard for the legislation and the public health objectives, officers are more likely to accelerate through the 4 Es to enforcement. Whilst public compliance with the restrictions has reduced over time, the experience of the majority of officers is that the public remain broadly supportive of the police, although some officers thought this too may be waning.

### **Experience of policing the pandemic and using the new powers**

41. The pandemic has impacted the day to day work of officers in a number of ways:
- The need to consider the risks of contracting and/or spreading Covid-19 changed the way officers engaged with members of the public: a greater number of calls were resolved remotely by telephone or on-line; witness statements were taken over the phone, where appropriate; PPE was worn when face to face contact was necessary
  - Many community police officers were re-deployed to assist in the COVID-19 response
  - Within the workplace, safety measures have evolved over time with the introduction of signage and social distancing measures, hand sanitisers and improved cleaning regimes, COVID-19 marshalls, and more recently, lateral flow testing within the Area Control Room (ACR) environment
  - For Supervisors, additional health and safety checks are now an additional feature of their day to day work to secure the safety of officers and staff
42. Whilst acknowledged as necessary for safety, some officers felt the reduction in face to face interactions had affected the quality of service provided, as personal engagement can be more reassuring for victims and witnesses. Also some felt wearing PPE made interactions with the public more difficult and that when dealing with volatile suspects there was the potential for matters to escalate further than they perhaps would have previously.

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<sup>7</sup> The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 originally enacted that a fixed penalty notice may be issued to a person aged 16 years or over however this was amended on 27 May 2020 by the Coronavirus (Scotland) (No.2) Act 2020 section 16(1) and schedule 2, para 7 (2) to 18 years old

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43. The impact of staff absences, either due to officers contracting Covid-19 or having to self-isolate, was considerable at times. Some of those interviewed had had to self-isolate which not only affected them but their families, some of which had vulnerable family members. One supervisor advised that the mental health of some officers had suffered during the pandemic and currently there were waiting lists for counselling to be received.
44. Across C3 it was reported that staff absences can normally run daily to 140-150 but at its peak there were 395 absences. Whilst some additional recruitment was undertaken, numbers were restricted due to social distancing requirements. The flexibility of CAM allowed work to be moved around the country in order to cope during these times. Online reporting was also introduced in December 2020 for lower level incidents which gave officers and staff greater control around the timing of providing a response.
45. In terms of workload, demand reduced initially across operational policing: the volume of acquisitive crime, violence and disorderly behaviour dropped due to the closure of retail and licensed premises; the limited attendance policy meant more calls were being dealt with remotely by the Resolution Teams; and in community policing, engagement/meetings with partners halted. However, demand soon picked up in other areas such as Covid-19 related incidents and increasing "cause for concern" reports, mostly associated with mental ill health. As time went on, workload associated with "business as usual" has fluctuated depending on the level of restriction imposed, particularly in relation to retail/licensed premises. It is now returning to more normal levels.
46. The Resolution Team officers interviewed in East and West command areas experienced an increase in calls, specifically related to the Covid-19 regulations. A combination of this and staff absences resulted in "call stacks" significantly increasing and consequently in poorer response times. Demand tended to increase coinciding with Government messaging around easing or tightening of restrictions, for example in relation to travel restrictions.
47. Whilst some experienced good partnership working with other agencies, the majority felt the police service had been required to fill the gaps for many others such as Social Work and Housing. This was perceived as being the result of either insufficient flexibility or lack of resilience to provide the same level of service during the pandemic. In addition a lot of support had to be provided to the ambulance service when they were busy, both in terms of triaging 999 calls within ACRs and by frontline officers attending calls.

Because the NHS were under pressure there were not enough ambulances and the police had to deal with this instead. For instance, an officer advised that they had taken an unconscious man who was rasping for breath to the hospital when an ambulance was not available.

On one occasion a police officer had to insist a Local Authority hold a crisis meeting to help a vulnerable individual who was living in unsuitable accommodation, resulting in a deterioration of their mental health.



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48. There was a rise in house parties/gatherings in the latter part of 2020 and after the festive period which put additional pressure on resources, particularly as they were spread across a larger geographic area – unlike pre-pandemic night time activity which tended to be concentrated in town/city centres. Officers were also of the view these calls took longer to deal with than would normally be the case. When dealing with these parties/gatherings, the availability of resources was a factor that had to be taken into account in deciding what, if any, enforcement action to take.
49. The policy of custody suites not accepting individuals except for serious crimes, and the designation of a limited number of custody suites for those who were potentially positive for Covid-19 created logistical challenges for front line officers. There was no option but to issue repeated fixed penalty notices, even where this was having no deterrent effect. An increase in accused being released on undertaking was also difficult to explain to victims, particularly in domestic abuse incidents.
50. Some officers thought a backlog of work had built up in relation to enquiries into some low level crimes, which couldn't be progressed due to retail and licensed premises being closed, and in relation to executing some warrants.
51. Those supervising the use of the new powers (the 4 Es) found this relatively easy. Most officers also found exercising the new powers relatively straightforward, although some reported they initially lacked confidence which had built over time, and others felt it was made more difficult by the frequent changes to restrictions.
52. Most officers advised that the first three Es were used frequently, generally on a daily basis. The last E had been used less often but enforcement had become a more frequent occurrence in recent months, particularly in urban areas in relation to house parties and large gatherings. As such, enforcement was used more when officers were on back and night shifts.

During the busy festive season 30-40 tickets could be issued on a Saturday night in Paisley

53. In more rural areas there was a different experience. Local communities were, in the main, compliant although there was one extreme example given where an individual was reported to the Procurator Fiscal for culpable and reckless conduct (see below). The issues encountered in rural areas were mainly associated with those travelling from more populated areas for exercise, day trips, holidays or to visit second homes. The experience in these areas has been frequent and often daily use of the first 3 Es and far less enforcement. However, more recently fixed penalty notices have been issued for blatant breaches of regulations and/or where those involved were unwilling to comply with advice.

A licensee held a Christmas party for staff and friends knowing they had already tested positive for Covid-19. This subsequently came to the attention of the authorities and a police investigation was undertaken. A report was submitted to the Procurator Fiscal for culpable and reckless conduct. As a consequence of the licensee's actions medical staff and several officers, including custody staff, required to self-isolate. Additionally, some of those who attended the party tested positive for Covid-19. The impact on the community and local services was significant.

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54. A different well-being approach has been taken in relation to those suffering from mental ill health. Where needed, support has been accessed from mental health professionals either through use of local mental health protocols or the mental health pathway. Some individuals with hidden disabilities, such as autism, also had difficulties complying as they were out of their normal routine. Those interviewed advised that such instances were dealt with sensitively.

One supervisor was aware of a person with autism who had struggled to comply and briefed his officers that if they were dealing with a vulnerable member of the public they should use common sense and support them to comply rather than moving to enforcement.

55. The way young people were dealt with depended on their age, for instance, officers advised that for those where it was not possible to issue a fixed penalty notice, which they thought applied to those under the age of 16, they would sometimes be taken home to their parents to highlight the public health concerns<sup>8</sup>. In an effort to deal with large gatherings of young people, additional community patrols and youth engagement officers were utilised in some locations and one supervisor was aware of letters being sent to parents to re-enforce the public health objectives.
56. Whilst the four Es approach has remained the policing approach some supervisors, most of which were in response policing in urban areas, had promoted a swifter acceleration towards enforcement for blatant breaches of regulations, such as house parties. This change occurred towards the end of 2020 and continued beyond the festive period. The view taken was that the public were well aware of the rules given the passage of time. Officers interviewed confirmed this move towards enforcement, either because of messaging received from supervisors/management or as a natural progression when dealing with overt breaches and/or the same individuals repeatedly. Many shared a feeling of frustration that this had not happened sooner.
57. Whilst acceleration through the 4 Es has also occurred in rural areas when dealing with more blatant/extreme local breaches or for blatant breaches of travel restrictions, this has not been as prevalent and there has been greater use of discretion by officers. A supervisor and an officer from different rural areas advised that the four Es would be applied in the same way even where people had travelled a considerable distance breaking travel restrictions, or there were repeated breaches involving the same individual.

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<sup>8</sup> The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 originally enacted that a fixed penalty notice may be issued to a person aged 16 years or over however this was amended on 27 May 2020 by the Coronavirus (Scotland) (No.2) Act 2020 section 16(1) and schedule 2, para 7 (2) to 18 years old

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58. Supervisors thought a consistent approach had been taken by those under their command and could cite no instances when the last E had been used ineffectively. To achieve consistency those interviewed cited a number of measures used:
- Shift muster briefings
  - Handovers between supervisors, where details of incidents and police response were discussed
  - Incidents recorded on the sergeant's log, including details of repeat offenders/addresses to inform the next shift
  - Daily sheets completed by Inspectors, providing details of incidents and any fixed penalty notices issued, submitted to divisional command for feedback
59. Whilst local processes were used to log details of individuals/addresses, where interventions short of enforcement had been used, some officers thought the ability to require individuals to provide their details and to use a formal recorded warning system or similar recording system to retain details would have provided greater confidence to escalate the response for repeat offenders. A formalised system or policy would also have the benefit of ensuring GDPR compliance.
60. The main challenge encountered by those interviewed in operational policing was keeping up to date with the legislation at any given point throughout the pandemic and understanding the difference between what was legislation and what was guidance. Other challenges reported were: the restrictions on availability of custody and associated logistical issues, staff absences due to requirement to self-isolate, and policing large scale events and gatherings due to practical difficulties of issuing fixed penalty notices.
61. From a C3 perspective the main challenge has been the impact on the ability to forecast demand with any degree of certainty. Demand tended to fluctuate/spike coinciding with Government public health messaging and thus was difficult to predict. This coupled with staff absences, and reduced staff capacity in order to comply with social distancing requirements, negatively affected response times to calls.
62. Those interviewed had not required to use force that often. Of those that had, use of spit hoods when officers were being coughed at or spat on, and forced entry to premises were the most common. Officers welcomed the addition of the power to force entry and explained that often the threat of this was enough to gain access to premises. Other uses of force had been used sparingly and only in extreme circumstances:

One supervisor was aware that PAVA spray had been used when officers had been called to a gathering where an officer had been hit on the head with a bottle. Another supervisor was aware that an attempt had been made to use PAVA spray when an officer had been placed in a choke hold, but it failed to operate.

### Future Lessons

63. As progressive easing of public health restrictions continues across large parts of Scotland, many officers were concerned that this may lead to an increase in disorder, particularly as licensed premises return to normal service. There was an associated concern by some that this may put officers at risk of contracting Covid-19, when many have not yet been vaccinated or lead to further periods of having to self-isolate.

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64. Many were also concerned about a future return to lockdown, being of the view large sections of the public would be unlikely to comply making policing by consent extremely difficult.
65. Other concerns shared were around staff workload, skill set and morale, including:
- Backlogs of work to be cleared (some enquiries into low level crimes had not been possible with the closure of retail/licensed premises and some warrants were not being executed)
  - Potential additional demands to support Public Health Scotland in relation to quarantine requirements following foreign travel, and the lack of connectivity that currently exists with this agency
  - Likely staff absences with court demands returning and large scale events due to take place (Euro 2020 and COP 26)
  - Those relatively young in service/probationers had not yet been exposed to normal policing associated with town/city centres. Supervisors were aware of a need to ensure they are not overwhelmed
  - A backlog in training, including essential officer safety training
  - Officers and staff being fatigued by the impact of the pandemic both professionally and personally – although some felt the mood had lifted recently with the lifting of restrictions
66. Some were also concerned that a further increase in workload relating to mental ill health and other harms was yet to come, particularly if partners were not able to build up resilience.
67. Some community officers feared that with schools being closed for large periods of time and youth engagement officers being unable to engage with young people in the same way, some may have slipped through the net, although they were now trying to play catch up. Effort would be required with students and young people over the coming months to re-build relationships.
68. From a C3 perspective, there were concerns that should there be a spike in demand whilst still operating at a limited capacity, due to social distancing requirements and limitations on training, this could present significant challenges.
69. It was acknowledged that some improved ways of working had been introduced during the pandemic. The use of video conferencing was recognised by many as providing a huge benefit, particularly in more remote locations where significant savings could be made in the time/ costs associated with travelling to meetings and logistical difficulties could be overcome.
- A supervisor explained that video conferencing had enabled a meeting to take place with four head teachers which would normally be very difficult in the non-virtual world.
70. There was however a note of caution that some face to face engagement needs to be retained to maintain relationships, and that a balance needs to be struck.

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71. In addition, some reported that it was not possible to continue community engagement activity as local councils used other IT platforms, such as Zoom. Police Scotland may want to consider this aspect in its ICT and resilience strategies moving forward to assist sharing of key messaging, and to maintain community confidence and good intelligence links during any periods of crisis.
72. Officers positively viewed the force-wide roll out of CAM and the positive impact the Resolution Teams had on fielding/dealing with calls without the necessity of officers attendance and it was hoped this would continue.
73. On offering comment on the wider impact on the Criminal Justice System, the use of virtual courts and electronic search warrants were seen as a positive development.
74. The availability of the Mental Health Pathway and local mental health protocols had been a significant improvement, often reducing hours spent by officers at hospitals.
75. The ability of Police Scotland to flex and allow some officers the facility to work from home, for instance to assist with childcare or whilst shielding, was much appreciated and many officers hoped this could be continued in some form in the future.
76. Improved sanitisation and availability of PPE in offices was also seen as a positive that should be continued.
77. The main learning from those interviewed was that the legislation was too vague and open to different interpretations. Over time it also became too complex to navigate, particularly with the introduction of various exceptions and the tier system. From a policing perspective the feeling was a national approach was better than local restrictions. In future, legislation should be kept simple and should be supported by a clear rationale.

At times the rules didn't seem to make sense. You were allowed to travel on a plane but not have family in your house. When the rules didn't seem to make sense it made it much harder to explain to the public.
78. Consistent messaging from political leaders and others in authority out with Police Scotland was also seen as important. One suggestion was that it would have been easier for the public and police to keep up to date with changes had they been announced and introduced on a set day of the week.
79. Officers generally welcomed the four Es approach, which offered a practical solution aligned with the principles of policing, facilitated engagement and provided the opportunity to de-escalate rather than criminalise.
80. The lack of ability to require individuals to provide their details and to use a formal recorded warning system, or similar system, to retain details of individuals the police had repeatedly engaged with was seen as a potential gap in the policing response.
81. Overall, the sense from those interviewed was the police service had responded well and had demonstrated an ability to be flexible, resilient and provide an ongoing service in difficult times, picking up where other services were struggling at times.

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82. However, there was also a clear disappointment amongst many officers that despite their important front facing role, which often brought them into regular contact with members of the public including vulnerable people, front line officers had not been prioritised for the vaccination, unlike NHS staff. There was a belief that not only would this have improved the well-being of officers and their families but would have enhanced public confidence when police were attending incidents.
83. Officers resorted to forging links with local NHS contacts and making local arrangements to obtain “end of day” vaccines for themselves and others in the absence of a coordinated approach by Police Scotland.

### Conclusions

84. In order to support public health objectives, a clear, unambiguous and well communicated policing approach (the four Es), easily understood by both the public and police and aligned to policing principles, was key. This model allowed incidents to be resolved, where appropriate, without enforcement. It also provided the flexibility to take a variety of factors into account such as public health concerns within local communities, levels of general compliance, the nature of the conduct and individual circumstances, in order to make decisions on any appropriate action.
85. Perhaps inevitably, and certainly with the passage of time whereby the public became educated on the public health objectives, a quicker acceleration to use of enforcement occurred. This was more prevalent in highly populated areas, no doubt driven by local factors.
86. To assist front line officers and equip them in their roles the provision of readily accessible, simplified guidance/briefing is essential.
87. There was a strong feeling amongst frontline officers that in order to enhance public confidence in policing and provide protection to officers, their families and the general public they ought to have been prioritised for vaccination. Whilst most officers interviewed had been well supported by their line managers and superiors, both professionally and domestically, throughout this difficult time, the lack of prioritisation for vaccination was seen as a missed opportunity to offer them protection and demonstrate the value placed upon them.
88. Whilst there was a sense of some officers feeling wearied by the experience of policing during the pandemic, there was also a strong sense of achievement and of fulfilling an important role in helping to keep the public safe.

| THEME  | KEY QUESTIONS  |
|--|--|
| <p><b>1. Training and support around the introduction of the new policing powers</b></p> <p><i>Areas for discussion</i></p> <p><i>Extent and quality of training and guidance over use of the new powers</i></p> <p><i>Degree of support with using the new powers</i></p>   | <p><b>1.1</b> What is your role within Police Scotland?<br/>i Did your role change at all during the course of the pandemic? (if yes, in what way did it change?)</p> <p><b>1.2</b> What is your view on the level of ongoing training and/or guidance you received on interpreting and applying the new powers?<br/>i. How easy or difficult was it to interpret and apply the new powers as the guidance and legislation changed over time?<br/>ii. Was there any change in approach to the use of the 4 Es over time? If so, could you describe what these changes were and why they occurred?<br/>iii. In what ways (if any) do you think the training and/or guidance you received could have been improved?</p> <p><b>1.3</b> How well supported have you felt in doing your job (particularly in exercising/supervising the exercise of the 4 E's)? (Probe: support from whom and in relation to what?)</p> |
| <p><b>2. Public compliance with the powers</b></p> <p><i>Areas for discussion</i></p> <p><i>Level of public compliance with the law and guidance and how this changed over time</i></p> <p><i>Reasons for non-compliance amongst different sectors of the population</i></p> | <p><b>2.1</b> How would you describe the public's compliance with the new policing powers (the 4 E's)?</p> <p>i. How would you describe the degree of public support/compliance you have received when doing your job? Can you provide any examples to illustrate this?</p> <p>ii. What factors have prevented some people complying with the new laws? (Probe: vulnerable, susceptible or disadvantaged groups, those with disabilities or hidden disabilities, those living in poverty, children and young people, etc.)</p> <p>iii. In what ways, if any, has the level and nature of compliance changed over time? (Probe: Distinguish between those who were unable to comply and those who were unwilling to comply). What (if any) difficulties has this posed for you?</p> <p>iv. How did the change in restrictions impact you in terms of doing your job?</p>  |

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| <p><b>3. Experience of policing the pandemic and using the new powers</b></p> <p><u>Areas for discussion</u></p> <p><i>Impact of lockdown and legislative change on day-to-day policing activities and roles (frontline, supervisory and C3)</i></p> <p><i>Experience of exercising the powers on the frontline (frequency, circumstances, and consistency)</i></p> <p><i>Specific challenges for policing practice, management and call handling</i></p> | <p><b>SUPERVISORY OFFICERS 3.1 – 3.4</b></p> <p><b>3.1</b> What impact has the lockdown had on your day to day work?</p>  |
|   | <p><b>3.2</b> How easy or difficult has it been to supervise the exercise of the new powers (the 4 E’s) ?</p> <p>i. How frequently have officers used the new powers in the course of their day to day activities? How has this changed over time?</p> <p>ii. Do you feel there is consistency amongst officers in terms of how they have used the powers?</p> <p>iii. Have you been aware of any particular issues with officers using the powers more in relation to certain people or groups? If so can you provide any examples?</p> <p>iv. Has there been any change in the advice/guidance you have given officers about the use of the 4 Es over time? If so, explain.</p> <p>v. Have there been occasions when officers did not use the last E effectively? What did you do about this?</p> |
|   | <p><b>3.3</b> What are the main challenges or difficulties you have encountered in exercising the powers?</p>   |
|   | <p><b>3.4</b> To what extent, and in what circumstances, have officers needed to use “force” (e.g. spit hoods, restraint, tasers, CS spray, forced entry to premises etc.)</p>  |
|   | <p><b>FRONTLINE OFFICERS 3.5 – 3.8</b></p> <p><b>3.5</b> What has been the main impact of the pandemic on your day to day work over the last year?</p> <p>i In what ways has the pandemic affected your overall workload? (Probe to ascertain impact of work generated due to the pandemic whilst dealing with business as usual)</p>   |
|   | <p><b>3.6</b> Overall, how easy or difficult have you found it to exercise the new powers (the 4 E’s)?</p> <p>i. How frequently have you used the new powers in the course of your day to day activities? (Probe the different types of enforcement). How has this changed over time?</p> <p>ii. Could you describe the typical circumstances in which you have used the powers? (Probe for where and who)</p>  |



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iii. Have you taken a different approach to using the powers with some people/groups compared to others? (Probe to explore; if yes, why was this the case?)

iv. Have you changed your approach to using the 4 Es over time? (if yes, how and why?)

v. Have there been occasions when you did not use the last E effectively? Why do you think this was the case?

**3.7** What are the main challenges or difficulties you have encountered in exercising the powers?

**3.8** To what extent, and in what circumstances, have you needed to use “force” (e.g. spit hoods, restraint, tasers, CS spray, forcing entry to premises etc.) while exercising the powers?

**C3 OFFICERS AND STAFF 3.9 – 3.16**

**3.9** What is your role within C3?

**3.10** To what extent, and in what ways, did the pandemic affect C3 business over the course of the last year? (Probe: level of demand, changing nature of calls, staff absence, introduction of the new online reporting system etc)

**3.11** What impact did these changes in C3 business have on your day to day work?

**3.12** What have the main challenges been around responding to calls for service?

**3.13** How did the policy of ‘limitations on attendance’ impact on officers and staff?

i What changes have you seen around partnership working over the last year?

**3.14** Can you describe any change over time in the way that members of the public have responded to Government messaging around changes to guidance and restrictions? How did you respond to this?

**3.15** Has there been sufficient capacity to deal with changing nature of demand and, if/when not, what were the reasons?

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|  | <b>3.16</b> What (if any) changes do you anticipate in calls for service over the coming months?   |
| <b>4. Future lessons</b><br><u>Areas for discussion</u><br><i>Concerns and expectations for policing as the lockdown starts to change</i><br><i>Key lessons learned during this period</i> | <b>4.1</b> What (if any) concerns do you have about policing over the coming months?   |
|  | <b>4.2</b> What, if any, improvements or innovations have been achieved in policing over this period? And do you anticipate that these improvements or innovations will be retained after the pandemic ends? |
|  | <b>4.3</b> What would you say is the main thing you have learned from using the new powers that needs to be recognised by the IAG?   |
| <b>5. Conclusion</b><br><u>Areas for discussion</u><br><i>This section serves to wrap up the discussion and ascertain key learning points</i>  | <b>5.1</b> To sum up, reflecting on what we have talked about today what would be your main recommendations for improvement?   |
|  | <b>5.2</b> Why is this important?  |
|  | <b>5.3</b> Is there anything else we haven't talked about that you think is important here? And what might be especially important for us to feed back to the Independent Advisory Group                     |

## CYPCS BRIEFING 2: Independent Advisory Group

### ***The impact of emergency police powers on the human rights of children and young people in Scotland during the Covid-19 pandemic***

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC).

The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

### Introduction

This second briefing has been prepared by the office of the Children and Young People's Commissioner Scotland (CYPCS), as an update, to support the scrutiny and monitoring of the Independent Advisory Group (IAG) and is informed by our work and engagement with stakeholders, partners, civil society, families, and importantly, children and young people since the outset of the global health pandemic in 2020.

In our first briefing we outlined both the international and domestic human rights, legal and policy frameworks, which underpin Scotland's care and justice systems for children, young people, and families. We continue to *'pay particular attention to any use of powers involving children, young people or persons within disadvantaged communities ... to ensure that they are fully reflective of Police Scotland's duties,'* and values to uphold international human rights principles, with the overall aim of safeguarding public health.

Over the last 15 months, the lack of clarity and certainty around the status of law, policy and guidance, coupled with little opportunity for scrutiny, contributed to a growing corpus of evidence<sup>1</sup> highlighting the impact of the pandemic on children and young people's everyday lives: Covid-19 restrictions have exacerbated existing inequalities.

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<sup>1</sup> and particularly the extensive and valuable contributions, research, and reports from internal and external contributors to the IAG, which we have used to support the work of our office.

With the benefit of this evidence, as well as hindsight, we have highlighted 5 areas of policy or law which may be of relevance to the scope and remit of the IAG's scrutiny and focused on children and young people who are:

- (i) already in conflict with the law or deprived of their liberty.
- (ii) living in poverty.
- (iii) are care experienced, vulnerable or at risk of abuse or exploitation.
- (iv) have mental health needs or other disabilities; or
- (v) exercising their rights of association and peaceful assembly.

We remain concerned that the most profound effects of the pandemic have been felt by some of our society's most vulnerable children and young people. There is no doubt that the long-term impacts will be significant for many years to come.

*'For children caught at the apex of this crisis, there is a genuine prospect that its effects will permanently alter their lives.'*

*Children facing acute deprivation in nutrition, protection or stimulation, or periods of prolonged exposure to toxic stress, during the critical window of childhood development are likely to develop lifelong challenges as their neurological development is impaired.<sup>2</sup>*

## Background

This 'critical window' of 'childhood' has been afforded a special status in international human rights law. Whilst the human rights of children are protected in numerous international treaties<sup>3</sup> the UNCRC, is the only international treaty to focus exclusively on protecting and promoting children's interests.<sup>4</sup>

The rights contained in the UNCRC are universal, indivisible, and interdependent, and, in the context of the remit of the IAG, the UNCRC Articles most directly relevant to policing and child justice are:

<sup>2</sup> [United Nations Policy Brief: The Impact of COVID-19 on children](#)

<sup>3</sup> Including, for example, in the: International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); Convention on the Elimination of All Forms of Discrimination Against Women (1979); and Convention on the Rights of Persons with Disabilities (2007).

<sup>4</sup> Goldson, B. & Muncie, J. (2012). 'Towards a global 'child friendly' juvenile justice?', International Journal of Law, Crime and Justice 40: 47-64.

Firstly, the four general principles of the UNCRC, which underpin how the Convention should be interpreted, and put into practice, namely:

- Article 2: Non-Discrimination<sup>5</sup>
- Article 3: the 'best interests' of a child must be a primary consideration<sup>6</sup>;
- Article 6: the right to life, survival and development<sup>7</sup>;
- Article 12: the right to have views taken into account in all decision-making.

and,

- Article 1: the UNCRC applies to all children under 18<sup>8</sup>;
- Article 15: freedom of association and peaceful assembly<sup>9</sup>;
- Article 16: the child has the right to privacy and family life<sup>10</sup>
- Article 19: the child has the right to protection from abuse.
- Article 24: the child has the highest attainable standards of health.
- Article 27: the child has the right to an adequate standard of living.
- Article 37(b): no child shall be unlawfully or arbitrarily deprived of liberty<sup>11</sup>;
- Article 37(c): if deprived of liberty to be treated with humanity and dignity.
- Article 39 the child has the right to assistance to recover from abuse/trauma.
- Article 40(1): a child must be treated in a manner consistent with their dignity and worth, which considers their age and promotes reintegration into society.
- Article 40(2): a child has the right to a fair trial.<sup>12</sup>
- Article 40(3): the state must promote and establish laws, procedures, and institutions specifically applicable to children in conflict with the law; and
- Article 40(4): the state must provide a variety of dispositions, such as care, guidance, counselling, education, and vocational training programmes... to ensure that children are dealt with in a manner appropriate to their wellbeing.

<sup>5</sup> mirrors Article 14 of the European Convention on Human Rights

<sup>6</sup> In many areas of Scots law, the 'best interests' of a child is the paramount, as opposed to 'primary' consideration.

<sup>7</sup> mirrors Article 2 of the European Convention on Human Rights

<sup>8</sup> As outlined in CYPCS Briefing (1) the varying Scots law definitions of a 'child' 'young person' and 'adult' continue to cause concern for the human rights protection of children aged 16 or 17.

<sup>9</sup> mirrors Article 11 of the European Convention on Human Rights.

<sup>10</sup> mirrors Article 8 of the European Convention on Human Rights.

<sup>11</sup> mirrors Article 5 of the European Convention on Human Rights.

<sup>12</sup> and mirrors Article 6 of the European Convention on Human Rights.

In interpreting the UNCRC, the UN Committee on the Rights of the Child gives guidance in its recent *General Comment on children's rights in the child justice system*,<sup>13</sup> reminding States of the international standards and principles of 'child-friendly justice'<sup>14</sup>:

*"States parties should enact legislation and ensure practices that safeguard children's rights **from the moment of contact** with the system, including at the **stopping, warning or arrest** stage, while in **custody of police** or other law enforcement agencies, during **transfers** to and from police stations, places of detention and courts, and during **questioning, searches** and the taking of evidentiary **samples**."*

In accordance with these human rights obligations, the expectation must be that police officers engaging with a child or young person, whether as a suspect, accused person, victim or witness, must take account of the international human rights principles, in line with their statutory duties and national policy and guidelines.

Over the past year, we welcomed efforts by the Scottish Government and Police Scotland to embed a rights-based approach for all children and young people through commitment to the Promise of the Independent Care Review<sup>15</sup>, wholesale reviews of the youth justice<sup>16</sup>, care, protection<sup>17</sup>, and education<sup>18</sup> systems, and, of course, incorporation of the UNCRC into Scots law.

In October 2020, we published a report on whether Scots law complies with the UNCRC in its consideration of children aged 16 and 17 in conflict with the law: a legal analysis undertaken by Kate Whiting, a University of Edinburgh LLM student<sup>19</sup>. It concludes that Scots law does not comply with the UNCRC, as our systems often fail to afford children the special safeguards and access to child-friendly justice in accordance with their rights under international human rights law.

<sup>13</sup> UN Committee on the Rights of the Child, 'General comment No.24 (2019) on children's rights in the child justice system'.

<sup>14</sup> Echoing the Council of Europe's Guidelines on child-friendly justice.

<sup>15</sup> [www.thepromise.scot](http://www.thepromise.scot).

<sup>16</sup> [A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities Scottish Government June 2021](#)

<sup>17</sup> The introduction of a Scottish [Barnahus \(House for healing\)](#) to support taking of children's evidence in the justice system is a welcome model of a human rights based approach and child-friendly justice. The [Child Protection National Guidance](#) has been revised and will be published at the end of July 2021

<sup>18</sup> [Support for Learning: All our Children and All their Potential Angela Morgan Independent Review 2020](#)

<sup>19</sup> [Older Children in Conflict With the Law: A legal analysis of Scots law compliance with the United Nations Convention on the Rights of the Child, for children aged 16 and 17 years](#) - 'Whiting K. CYPCS 2020

This conclusion aligns with the findings and recommendations of the *Independent Children’s Rights Impact Assessment on the Response to Covid-19 in Scotland*<sup>20</sup> (CRIA), which we published last July, alongside a child-friendly version of the findings. This is the biggest children’s rights impact assessment on COVID-19, conducted anywhere in the world and it assembles evidence and expert analysis from the Observatory of Children’s Human Rights Scotland. Of relevance to the work of the IAG, Appendix 9<sup>21</sup> provides assessment and recommendations on the human rights impacts on children in conflict with the law and children in secure care, largely informed by the views and reflections of young people and people working with them in the care and justice systems on their experiences of policing during the pandemic.<sup>22</sup>

The CRIA found that COVID-19 has starkly highlighted areas of existing Scots law that are not compliant with the UNCRC. For example, inconsistencies in the definition of ‘a child’ across existing Scots law resulted in emergency legislation which is incompatible with the UNCRC. As we outlined in our first paper, disappointingly, emergency Coronavirus legislation was put in place (some of which is still in force) that defines Scottish 16- and 17-year-olds as ‘adults’, contrary to the internationally recognised definition of ‘a child’ as, ‘any person under the age of 18’.

There are ongoing concerns that this may have resulted in children being criminalised, prosecuted or detained for breaching COVID-19 regulations without necessarily benefitting from special safeguards with regard to mental health, care, protection, and safeguarding in the justice system.

*“If we could get our response to 16- and 17-year-olds right and make sure we recognised and truly treated all of these children as children, then we would go a long way towards really getting it right for every child.”<sup>23</sup>*

It is critical that all existing Scots law and policy is reviewed and assessed to ensure compatibility with international human rights law, and specifically the UNCRC. Some of the consequential amendments in the criminal justice system were identified in Kate Whiting’s analysis, and we welcome Scottish Government’s plans to undertake this wider compatibility assessment across all areas of Scots law and policy in

<sup>20</sup> <https://cypcs.org.uk/news-and-stories/rights-of-children-overlooked-during-coronavirus-emergency/>  
<sup>21</sup> Appendix 9 Compiled by Claire Lightowler and Debbie Nolan from the Children and Young People’s Centre for Justice (CYCJ) <https://cypcs.org.uk/wp-content/uploads/2020/07/CRIA-appendix-conflict-law.pdf>  
<sup>22</sup> ‘Spend Time With Me’ Children and young people’s experiences of COVID-19 and the justice system Nolan D., CYCJ 2020  
<sup>23</sup> CYCJ quoted: ‘Older Children in Conflict With the Law: A legal analysis of Scots law compliance with the United Nations Convention on the Rights of the Child, for children aged 16 and 17 years’ Whiting K. CYPSC 2020

preparing for implementation of the UNCRC (Incorporation)(Scotland) Act (when in force).

In our first Briefing, we called upon Police Scotland to take the following action:

- **Police Scotland should undertake a review of FPNs issued to 16/17 year olds prior to the amendment of the Scottish Regulations to ensure that the penalties will be removed from the children's records and the interim Vulnerable Persons Database.**
- **Police Scotland should confirm how many children and young people were referred to SCRA, Crown Office and Procurator Fiscal Service or subject to diversionary measures under the Youth Justice Strategy as a result of their conduct or behaviour during the emergency period.**

Unfortunately, Police Scotland were unable to provide this information and data, due to methods of recording and retrieval across different Police databases. In order to assess the impact of the use of the emergency Coronavirus powers, and not merely enforcement through issuing Fixed Penalty Notices (FPN), including assessment of any unintended consequences on children and young people's rights, our office will continue to engage with Police Scotland and the Scottish Government on this issue.

### Deprivation of Liberty during the pandemic

As the impact of the pandemic became clear, international experts,<sup>24</sup> including the UN High Commissioner for Human Rights, Michelle Bachelet, recognised that the pandemic's effect on children in places of detention (including police custody) was a serious concern and a risk to their rights to life, liberty and health. Factors including increased risk of infection within facilities where people were detained, limitations on rights to family life and contact, and reduced opportunities to access professional supports such as mental health supports, all combined to exacerbate the impact of the deprivation of liberty.

However, these concerns were not reflected in the steps taken by the Scottish Government to ensure the emergency measures complied with children and young people's human rights.

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<sup>24</sup> This included the UN Committee on the Rights of the Child (UNCRC), the Office of the UN High Commissioner for Human Rights (OHCHR), the World Health Organisation (WHO), the UN Office on Drugs and Crime (UNODC), the UN Joint Programme on HIV/AIDS (UNAIDS), and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



For example, children and every detainee (of any age) detained on 'remand'<sup>25</sup> were excluded from the eligibility criteria under the *Release of Prisoners (Coronavirus) (Scotland) Regulations 2020*.<sup>26</sup>

CYPCS called on the Scottish Government to follow the UN Committees' recommendations and uphold international human rights standards, remove all children from custody, find alternative places of safety as necessary, and amend the provisions. Despite the concerns raised in the Scottish Parliament by the Scottish Human Rights Commission, the UK's National Preventative Mechanism (NPM) along with civil society organisations and our office,<sup>27</sup> no child, nor remand prisoner was released early in Scotland.

We reiterated our concerns on World Children's Day (20 November 2020), in a blog with Claire Lightowler (Director of the Children and Young People's Centre for Justice)<sup>28</sup> and in an article for the Scottish Journal of Residential Childcare.<sup>29</sup> We considered the human rights experiences of children detained on remand and reflected on why such a high proportion of children who have not been tried or sentenced, are being detained at all, let alone during a pandemic, in adult penal facilities.

We have continued to seek accountability and assurances from the Scottish Government regarding the urgent removal of children deprived of their liberty in YOIs and the legislative and policy amendments necessary for the cessation of detention of children under 18 in police custody, adult court cells, as well as in secure hospitals, immigration accommodation and any unregulated, residential placements.<sup>30</sup> We have engaged with Police Scotland and other public bodies to ensure that adequate human rights protections are in place for all vulnerable children who are subject to interventions and restrictions on their freedoms in institutions during the pandemic.<sup>31</sup>

<sup>25</sup> Untried or awaiting sentence or deportation.

<sup>26</sup> [The Release of Prisoners \(Coronavirus\) \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>27</sup> Letter 25 May 2020 from Bruce Adamson to Margaret Mitchell MSP, [https://archive2021.parliament.scot/S5\\_JusticeCommittee/Inquiries/20200525\\_CYPctoMM.pdf](https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/20200525_CYPctoMM.pdf)

<sup>28</sup> <https://www.cycj.org.uk/not-cut-out-for-prison-depriving-children-of-their-childhood/>

<sup>29</sup> "Not cut out for prison": *Depriving children of their childhood*, Lightowler, Adamson Galli SJRCC 2021 [https://www.celcis.org/files/5916/1468/5804/2021\\_Vol\\_20\\_No\\_1\\_Lightowler\\_C\\_Not\\_cut\\_out\\_for\\_prison\\_Depriving\\_children\\_of\\_their\\_childhood.pdf](https://www.celcis.org/files/5916/1468/5804/2021_Vol_20_No_1_Lightowler_C_Not_cut_out_for_prison_Depriving_children_of_their_childhood.pdf)

<sup>30</sup> The Commissioner has intervened in the public interest in both the UK Supreme Court and the Court of Session in Scotland, on some of these matters over the last year where children from England have been deprived of their liberty, outwith the Scottish statutory scheme, in non-secure, unregulated accommodation.

<sup>31</sup> Including the Care Inspectorate, the National Preventative Mechanism, the Promise team, the Ministry of Justice, HM Inspector of Prisons in Scotland, the Youth Justice Improvement Board, COSLA

## ***Police Custody***

In our first Briefing we sought assurances from Police Scotland around the practices of stopping, searching, charging, arresting, restraining and detaining any child in custody, during the pandemic.

We also called for greater scrutiny and monitoring of conditions of detention to prevent breaches of children's human rights. For example, for the practices of strip searching, restraint and the use of 'spit-hoods' in police custody to be prohibited. In this time of a life-threatening health pandemic, the violation of children's rights to be protected from cruel, inhuman and degrading treatment, and to privacy and bodily integrity, may also put police officers and children at serious risk to their lives, health and wellbeing. We had been reassured by Police Scotland that children were only ever detained in police custody and restrictive practices used very rarely, as protective measures of last resort.

However, we were disappointed when, in March 2021 we made aware of the number of children who had been detained in police custody during the pandemic.<sup>32</sup> It was reported that over the 3 years, (including during the pandemic) children as young as 11 years old had been detained in police custody rather than in a place of safety<sup>33</sup>. The vast majority of the approximately 6,000 children were 16 or 17 years old, with over 1,500 children being detained for longer than 24-hour periods. We are gravely concerned that these practices fail to comply not only with international human rights requirements as outlined above, but with Police Scotland's own commitment to a human rights-based approach in policing. Many of these children were deprived of their liberty for minor offences.<sup>34</sup> Importantly, 3 of the children were detained having 'failed to comply with coronavirus regulations'.

Police Scotland recently produced a report providing an update on progression against the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to the United Kingdom in 2018, and a custody update regarding children.<sup>35</sup> We welcome the approach being taken to ensure increased availability of alternatives to custody and places of safety to ensure children's human rights are fulfilled. However, there is still insufficient data to assess whether children's rights are being upheld when detained in police custody.

<sup>32</sup> As reported in Scotland on Sunday article M. McLaughlin, 28/03/21 <https://www.scotsman.com/news/politics/revealed-children-as-young-as-11-among-nearly-6000-youngsters-held-overnight-in-police-cells-3180336>

<sup>33</sup> In accordance with s22 Criminal Justice (Scotland) Act 2016

<sup>34</sup> Minor offences, such as possession of false identification documents, being drunk and incapable, or being found with alcohol in a sports ground: with 125 children detained overnight after being arrested in connection with shoplifting offences.

<sup>35</sup> Police Scotland Children in Custody update Report 08 June 2021: <https://www.spa.police.uk/spa-media/cw2d1tey/rep-20210607-item-4-police-scotland-custody-update-cover-paper-docxnew.pdf>

We call again on Police Scotland to **ensure that data is provided to the CYPCS and, insofar as relevant to its Terms of Reference, the IAG, confirming the number of children under 18 and young people under 21 who were detained, for any reason, and who were searched or restrained during the period from 27 March 2020 to date.**

### Vulnerable children and young people

*“You get like vilified...you’re not a child anymore, you’ve committed this offence now you’re a monster instead.” (Young Person)<sup>36</sup>*

There are continuing risks that children who display distressed behaviour, whether as a result of mental health concerns, poverty, disability, or as a response to neglect or abuse, are criminalised because of distressed or challenging behaviour.

Officers must be mindful of needs that may not always be immediately apparent. Some groups of children experienced disproportionate levels of police contact prior to the pandemic, including care experienced children and children from Black, Asian and minority ethnic backgrounds. For example, children living in residential care reported their carers frequently calling for police assistance in circumstances where families would only do so as a last resort. Police Scotland have taken a proactive approach following a pilot in Dumfries and Galloway and significantly reduced the number of children in care being criminalised as a result of distressed behaviour.

Throughout the pandemic, we have continued to receive concerns that police action may inadvertently criminalise certain groups of young people, who are less able or less likely to observe Scottish Government guidance, such as young people who live in unsafe housing, or are exposed to abuse or violence at home, or whose placements break down, and who may be more likely to be in public spaces more often.

Concerns were also raised about the impact on children’s rights in the administration of justice with a significant backlog of cases in courts and tribunals, which were already overstretched and have been unable to work at normal capacity, exacerbated by an increase in legal cases resulting from the lockdown periods. in the medium and long-term.

Similarly, in the Children’s Hearings System, there have been significant concerns raised by families and representatives, about the impact on children’s rights to

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<sup>36</sup> Young person quoted in Whiting K, see fn19

participate, be included and to have their views and best interests taken into account in judicial decision-making without adequate supports, including access to technology and advocacy services.

## Poverty

In their landmark research on children in conflict with the law, McAra and McVie’s findings suggest that, whilst probably unintentionally, the police unfairly target certain categories of children and appear to make distinctions about the ‘respectable’ and the ‘unrespectable’, and thus those who can be accorded leniency and those who cannot.<sup>37</sup>

The research evidence has continued to show that children in conflict with the law are some of the most vulnerable members of any society, with high levels of trauma, adversity and victimisation. The Edinburgh Study found that early victimisation, rather than early involvement in violence, was one of the most significant predictors of later involvement in violence, leading McAra and McVie to argue that there is a need to treat children involved in violence first and foremost as vulnerable children rather than as offenders.<sup>38</sup> Their work highlights how the system continues to create and maintain a focus on a small group of ‘usual suspects’ who are drawn from the most vulnerable and challenging backgrounds and highlighting that attention on this group has become increasingly concentrated as we see reduced numbers of entrants into the youth justice system.<sup>39</sup>

This is a continuing concern as highlighted by Claire Lightowler and noted in the Independent CRIA where children and young people who are treated as ‘the usual suspects’ have described their experience of police contact during lockdown as:

*‘Nasty... they approach me most times I am out.’  
‘I’ve made an effort to stay in and keep my head down and the police have still been at my door blaming me for things.’ (Young Person)<sup>40</sup>*

Claire Lightowler found that poverty has a significant and direct effect on children who come into conflict with the law: “Scotland’s approach to children in conflict with the law should grapple with responding to poverty and redressing economic

<sup>37</sup> (McAra and McVie, 2005). P42

<sup>38</sup> McAra, L., and McVie, S. (2010) ‘Youth crime and justice: key messages from the Edinburgh Study of Youth Transitions and Crime’, *Criminology and Criminal Justice*, 10(2): 211–230.

<sup>39</sup> McAra, L., and McVie, S. (2005) ‘The usual suspects? street-life, young people and the police’, *Criminology and Criminal Justice*, 5(1): 5–36.

<sup>40</sup> Children quoted in Independent CRIA evidence ‘Spend Time with Me’ Nolan D 2020

inequalities; as well as paying attention to how agencies, professionals and organisations respond to poorer children, families and communities.

It is particularly concerning that children who experience poverty are more likely than more affluent children to be charged by the police for identical behaviours.

This raises questions about discrimination, fairness and the ability of certain children to exercise their rights.<sup>41</sup>

From Police Scotland data on the use of fixed penalty notices under the Covid-19 regulations in Scotland, Professor Susan McVie noted that 'there was a significant difference in the likelihood of receiving a Covid-related FPN based on the level of deprivation for the recipient's home address with more than half (51.8%) of all FPNs being offered to people living within Scotland's 20% most deprived communities.'<sup>42</sup>

Professor McVie has advised the IAG that the evidence suggests that this gap reduced as the pandemic went on, which, in her view reflects a 'perverse equity' caused by an increase in police encounters amongst those at the 'affluent' end of the poverty spectrum, rather than a reduction amongst those at the 'deprived' end. The reduction in prior criminal histories amongst people who received FPNs suggests that the pandemic created a large number of first-time offenders, many, or most of whom, are younger people.

### ***Mental Health***

*'I have seen the police around but have not directly spoken to them but the thought of them approaching me asking why I'm out gives me so much anxiety and makes me not want to go anywhere.'* (Young Person 2020)<sup>43</sup>

Almost two fifths (39%) of the young people who responded to the Scottish Youth Parliament, YouthLink Scotland and Young Scot's survey, were concerned for their mental wellbeing, and 46% stated that they felt moderately or extremely concerned about the mental wellbeing of others,<sup>44</sup> and there has been an increase in the number of young people admitted to hospital because of mental health issues and overdoses.<sup>45</sup>

<sup>41</sup> Lightowler, C. (2020) Rights Respecting? Scotland's Approach to Children in Conflict with the Law. Glasgow: Centre for Youth and Criminal Justice (CYCJ), University of Strathclyde.

<sup>42</sup> See section 6.1 of McVie, S. (2021) Second Data Report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland.

<sup>43</sup> Children quoted in Independent CRIA evidence 'Spend Time with Me' Nolan D 2020

<sup>44</sup> Para 381 Report on the impact of the COVID-19 pandemic on equalities and human rights Scottish Parliament Equalities and Human Rights Committee March 2021

<sup>45</sup> Para382 'Report on the impact of the COVID-19 pandemic on equalities and human rights' Scottish Parliament Equalities and Human Rights Committee. 02 March 2021 <https://sp-bpr-en-prod-cdnep.azureedge.net/published/EHRiC/2021/3/2/1283533c-8aed-4a8c-8034-1ab216baca73-1/EHRiCSO52021R5.pdf>

Some young people have been particularly vulnerable and at risk of deterioration in their mental health. LGBT Youth Scotland<sup>46</sup> highlighted that LGBT young people are more likely to experience mental health problems, compared to their non-LGBT counterparts, and face barriers in accessing mental health services. In their survey of LGBT young people, 91% responded that they have concerns about their mental health and wellbeing.<sup>47</sup>

Similarly, young carers have reported taking on greater roles and responsibilities compared to their usual stressful and busy schedule. Lockdown presents challenges for respite services usually available and 90% of Carers Trust Scotland members have had concerns around their own mental health and wellbeing.<sup>48</sup>

With the closures of schools and places for play and leisure, young carers have been under increased pressure and anxiety without any supports being available. Public authorities are under a duty to provide additional supports to these young people and we note that, after the re-opening of schools, many of these services and supports were reinstated.

### *Children at risk of harm*

The Scottish Children's Services Coalition (SCSC) emphasised that some children and young people rely upon the care and protection provided by schools and other agencies.<sup>49</sup> During school closures or mandated isolation periods, children were unable to access supports and services from trusted adults and partners in Children's Services, through the policy frameworks of GIRFEC and the Whole Systems Approach.

The Scotland in Lockdown study, published in December 2020, found that for domestic abuse sufferers who were still living with their abusers during lockdown (all of whom were living with school aged children) abuse had intensified and 'safety was a critical issue for this population,'<sup>50</sup> where children were at risk of increased harm from exposure to domestic abuse.

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<sup>46</sup> LGBT Youth Scotland is a Scottish youth organisation dedicated to the inclusion of lesbian, gay, bisexual and transgender (LGBT) young people aged from 13 to 25.

<sup>47</sup> Para383 Report on the impact of the COVID-19 pandemic on equalities and human rights Scottish Parliament Equalities and Human Rights Committee March 2021

<sup>48</sup> Para385 Report on the impact of the COVID-19 pandemic on equalities and human rights Scottish Parliament Equalities and Human Rights Committee March 2021

<sup>49</sup> Para 355 Report on the impact of the COVID-19 pandemic on equalities and human rights Scottish Parliament Equalities and Human Rights Committee March 2021

<sup>50</sup> Scotland in Lockdown study ('Health and Social Impacts of Covid-19 Suppression for Vulnerable Groups in Scotland') December 2020 The University of Glasgow, Scottish Government, p6

Despite the number of referrals to social work services being down, the number of Child Protection Orders (CPOs) taken in the last week in April 2020 increased by 38% from the 2019 level. *Includem* raised concerns that the impact of lower thresholds of risk results in more young people being taken into care. They advised the Equalities and Human Rights Committee that young people experiencing poverty are 10 times more likely to come into care. Children have been removed from their families at a time when the measures to protect their rights, enshrined in the UNCRC, have been reduced due to the Coronavirus (Scotland) 2020 Act, which extended the timescales for review of the granting of CPOs and Interim Compulsory Supervision Orders or Secure Care authorisations by Children's Hearings.<sup>51</sup>

We continue to raise our concerns with the Scottish Government at the introduction and continuation of the legislative and policy changes to the Children's Hearings System and the impacts on children's human rights which have resulted in some children being removed from their families and communities during the lockdown period and placed for lengthy periods of time in care, without sufficient protection of their human rights to direct and meaningful contact and association with their families and friends, and reduced opportunities to seek legal advice, advocacy or participation in reviews of decision-making.

### ***Exploitation and Trafficking***

A UN report on the Impact of the Pandemic on Human Trafficking found that children are being increasingly targeted by traffickers who are using social media and other online platforms to recruit new victims and profiting from the increased demand for child sexual exploitation materials. We note that, prior to the pandemic, concerns existed about the extent to which Scottish children were recognised as victims of trafficking, with only a small proportion of victims identified in Scotland being from within the UK, in contrast to the norm in both the rest of the UK and internationally.<sup>52</sup>

However, recently we have received concerns that some children identified by police and social services as victims of trafficking have been detained, charged and prosecuted and remanded to custody, pending trial. We are continuing to support young people and their agents on an individual basis and engaging with Scottish Government, Crown Office and Procurator Fiscal Service regarding the protection of these young people's human rights to care and protection and recovery from trauma, whilst in Scotland.

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<sup>51</sup> Para 369 [Report on the impact of the COVID-19 pandemic on equalities and human rights Scottish Parliament Equalities and Human Rights Committee March 2021](#)

<sup>52</sup> Child Trafficking in Scotland. Scottish Government. 15 October 2020 <https://www.gov.scot/publications/child-trafficking-scotland-research/pages/7/>

We are engaging with the Scottish Government to establish the extent to which existing legal protections are sufficient to ensure the non-punishment of child trafficking victims. As part of that process, it may be that there is a need to review Police practice around charging decisions.

We welcome SPA's rights-based approach in their preparations for their new Corporate Parenting Plan and welcome further discussions in preparation for incorporation of the UNCRC into Scots law.<sup>53</sup>

*'It would be helpful if Nicola Sturgeon could reassure care experienced young people that police are still Corporate Parents and they have a responsibility to make sure we are safe and can confide in the police. I worry that a lot of care placements will be breaking down and young people will feel helpless in these situations.'*  
(Young Person)<sup>54</sup>

## Protests, Gatherings and Peaceful Assembly

As highlighted in the SHRC paper for the IAG, children's ECHR rights to peaceful protest are echoed in the UNCRC for children under the age of 18, as autonomous rights to freedoms of expression, (Article 13 UNCRC); thought, conscience and religion (Art 14 UNCRC); privacy (Article 16) and particularly association and peaceful assembly (Art 15 UNCRC).

Attempts to restrict the rights in the interests of 'morals' have been rejected as incompatible with the right to freedom of association, as "operating from an assumption of children acting against their own interests". Special considerations of age and evolving capacities, risks of harm or conflict and balancing of the rights of parents exist when it comes to the enjoyment of these rights by children.

The UN Committee on the Rights of the Child has stressed the obligations on all states to facilitate protest, and to protect the safety of children in this context; to educate officials on children's protest rights; to encourage children to form associations, and to refrain from requiring children to seek parental consent to join associations." It was clear in the SQA examination protests in August 2020 that children's rights to protest were not only respected in the policing and engagement by Police Scotland but had a powerful impact on the Scottish Government's decision to reverse the public policy.

<sup>53</sup> As highlighted in the recent report SPA Corporate Parenting Plan preparation and consideration of the UN Convention on the Rights of the Child to the SPA Policing Performance Committee June 2021.

<sup>54</sup> Young person quoted in Independent CRIA Appendix 9, p56



Throughout the pandemic, children and young people have consistently demonstrated their commitment to obey the rules in order to protect public health. In September 2020, we heard directly from young students left anxious and distressed by the confusion about restrictions and changing guidelines, targeted at them where many felt terrified to leave their student accommodation for fear of disciplinary action.

As Professor McVie reports, there was then an increase in the proportion of FPNs issued to younger people from September 2020 onwards. Students, in particular were significantly impacted by the restrictions on their lives, where they were deprived of opportunities to socialise and engage in inter-personal contact, assemble peacefully, and the right to family life, in accordance with their human rights.<sup>55</sup>

In advance of the return to the new academic session this year, it is essential that Scottish Government and further/higher education institutions communicate directly, accurately, and early with students with a definitive position on the law, and any revised guidance.<sup>56</sup>

There has been much discussion in the IAG regarding Police Scotland's approach to policing demonstrations, protests and gatherings throughout the pandemic, and we are aware that these discussions will continue in preparation for the COP 26 Summit in Glasgow later this year, including at the IAG established to offer advice to Police Scotland on COP 26.<sup>57</sup> Children and young people have been present at some of the controversial gatherings, including the Rangers Football Club celebrations and Black Lives Matters and immigration protests. Whilst some of these children may have been exposed to violence, and even abuse during these events, we have been unable to establish a link between the events and any child protection or 'wellbeing' concerns being reported by Police Scotland.<sup>58</sup>

We would urge continuing consideration of children and young people's human rights to protest and peaceful assembly in Police Scotland's strategies and approaches, during and beyond the pandemic.

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<sup>55</sup> Brownlee K.,[2014]

<sup>56</sup> CYPCS Position Statement September 2020 <https://cypcs.org.uk/news-and-stories/position-statement-covid-restrictions-on-students/>

<sup>57</sup> the CYPCS is also involved in membership of the COP 26 IAG

<sup>58</sup> This may be in part due to the difficulties in obtaining disaggregated data from the Police Scotland Vulnerable Person Database.

## Incorporation of the UNCRC and other developments

Finally, as we reflect on the past year, we are struck that, across all areas of children's lives, they have felt excluded and ignored by decision-makers, we would urge all decision-makers in the justice system to be proactive in meaningfully engaging with children and young people.

*“Life-changing decisions being made during coronavirus like exams being cancelled has felt like playing a game and every time it should be our turn, someone skips over us and we end up left behind and forgotten. Feeling out of control with no say has made young people’s mental health worse. We need to be involved in key decisions about our lives and it is even more important when life still feels scary and unclear for us all.” ( Abigail, 15)*

Looking ahead, we are delighted to report that in March 2021, the Scottish Parliament unanimously passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. This fulfils Scotland’s duty under Article 4 of the UNCRC which requires governments ‘... to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the UNCRC.’

Last month, the Bill was considered by the United Kingdom Supreme Court after being referred by the UK Law Officers, asking that the Court determine whether specific provisions of the bill are within the competence of the Scottish Parliament under Constitutional Law. Pending the judgment being handed down, we welcome and encourage public authorities, including Police Scotland and the Scottish Police Authority (SPA) to continue work towards implementing the UNCRC into policy and practice.<sup>59</sup>

This Bill is the most important piece of children’s legislation in the history of the Scottish Parliament. Implementation of incorporation will require significant changes to legislation within the policing and justice systems, but, more importantly, should encourage a culture change in the way children are viewed within Scottish society.

Our ambition for the changes that incorporation will bring about for the children of Scotland is summed up by the *Poyum for Rights*<sup>60</sup>, written by Len Pennie (aka *Miss PunnyPennie*), commissioned by us to celebrate incorporation.

<sup>59</sup> See Fn51

<sup>60</sup> see Annex 1

In the words of one of our Young Advisors:

*“What we need is for people to listen, support and empower us. Don’t just put us on the kid’s table and then ignore us. Give us a seat at the table where decisions are being made about our futures and our lives...  
...and if bureaucratic structures mean that’s not possible, then it’s time for a new table...One where everyone has a voice, no matter their age.”<sup>61</sup>*

**Maria Galli**

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21 July 2021

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<sup>61</sup> 'Promote, Protect, Defender' 2019 CYPSC Young Human Rights Defender.

## ANNEX 1: Poyum Fur Rights - Len Pennie

A wee disjasikit birdie sat upon a rowan tree, his face wis awfy crabbit an he  
wouldnae smile at me

I spiered tae thon wee birdie why his puss wis awfy sad,  
he telt me that the world wis dark an everything wis bad

He said I'm only wee ye see it's hard tae stay alive  
He said the big yins eat the wee yins and the wee yins cannae thrive

I asked him if he kent his rights an the birdie laughed at me  
Whit's a right gonnae dae when the worlds fu ae wrangs?

Why should ma rights matter tae me?

So I stared at thon wee birdie till he cracked a peerie smile  
Awright awright the birdie said, I'll listen fur a while  
Tell me about these rights ye hink that I'm supposed tae hae  
But ye'd better git a jildie oan, I dinnae hae aw day

I said ye hae the right tae bide in peace no matter whur ye're fae  
Be the way ye want tae be, say whit ye want tae say  
Ye hae the right tae mental health, fur help wae whit's inside  
The right tae climate justice protects the world in which ye bide  
The right no tae worry about the money that ye possess  
The right tae live a life that's guid an ayeways free fae stress  
The right tae play's another yin, they cannae gie ye work  
Ye hae the right tae pray annaw, mosque synagogue or kirk they maun protect ye  
physically so ye dinnae come tae hairm  
An though birdies dinnae gang tae school, bairns hae the right tae lairn

So I said this tae thon birdie an am sayin it tae you  
No jist because it sounds giy braw but also cause it's true  
Ye may no be the biggest but ye hae a voice an rights  
An there's them that would defend them, gie ye hauners in yer fights

So haud ontae the knowledge that fur aw the bairns oot there  
There'll ayeways be the champions, the wans who truly care  
Gin life seems hard jist mind these words tae heeze ye while ye're pushin:  
They cannae tak yer rights away, they cannae smoor yer fushin  
These champions willnae stop the fecht, they'll ayeways demand more  
Let yer rights heeze up yer smeddum and lit thon birdie ye will soar



# Third Data Report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland: March to December 2020

Professor Susan McVie OBE FRSE FAcSS and Dr Ben Matthews  
School of Law, University of Edinburgh

25<sup>th</sup> August 2021

## Acknowledgements

This third data report was produced to assist and inform the deliberations of the Independent Advisory Group (the IAG) on Police Use of Temporary Powers related to the Coronavirus Crisis. The IAG was established by the Scottish Police Authority in April 2020 to provide scrutiny around the role of policing during the course of the pandemic under the chairmanship of John Scott QC Solicitor Advocate.

Analysis of data and evidence has been a crucial element of the work of the IAG, and this was facilitated and supported by Police Scotland's Operation Talla Information Collation, Assurance and Liaison (OpTICAL) Group, led by Assistant Chief Constable Gary Ritchie. We are extremely grateful to the members of the OpTICAL Information Cell, in particular Chief Inspector Christine Boyd, Inspector Ryan Todd and PC Jason Storrie, for their assistance in providing and quality assuring data and offering expert advice to support the work of the IAG. Thanks are also extended to members of both the OpTICAL Group and the IAG who peer reviewed and provided comments on drafts of this report and insights from their own areas of work that have improved the focus of data analysis.

The production of reports and briefing papers for the IAG has been facilitated by the Scottish Police Authority secretariat, led by Eleanor Gaw, so thanks are extended to them for their diligence and unfailing support. The development of this, and other, data reports for the IAG was also supported by members of the ESRC-funded Understanding Inequalities project and the Scottish Centre for Administrative Data Research, both based at the University of Edinburgh.

While this report was produced to support the scrutiny role of the IAG, the views expressed do not necessarily reflect those of all IAG members, and all opinions, interpretations of the data and errors are the responsibility of the authors.

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# Executive Summary

## Introduction

- This is the third in a series of data reports on Police Scotland's use of Fixed Penalty Notices (FPNs) produced on behalf of the Independent Advisory Group (IAG) on Police Use of Temporary Powers during the Coronavirus Crisis in Scotland.
- The report focuses on FPNs issued between 27<sup>th</sup> March 2020 and 31<sup>st</sup> December 2020 in respect of the various Coronavirus Regulations introduced in Scotland.
- The analysis is based on data from Police Scotland's Coronavirus Intervention (CVI) system which provides an estimate of FPNs issued (based on police officer reports) and a database containing details of all FPN tickets that were actually issued.
- The data relate to individual 'tickets' and not 'people' (who may have been issued more than one FPN), which means all rates per capita (based on population size) are estimates and statistical testing for differences between groups cannot be verified.

## Background to the Coronavirus Regulations

- In March 2020, the Coronavirus Act 2020 was enshrined in law by the UK Parliament and the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 gave Police Scotland extraordinary powers to enforce public health measures to prevent the spread of the virus.
- Under the powers, officers were granted authority to issue a Fixed Penalty Notice (FPN) or arrest individuals who were in breach of the Regulations.
- Public messaging from Police Scotland gave a commitment to policing by consent and use of the 'Four Es' approach (i.e. engagement, explanation, encouragement and enforcement), but emphasised that enforcement would be used to deal with persistent or blatant non-compliance.
- Since March 2020, there have been a significant number of amendments to the Regulations, involving changes to the measures taken to prevent the spread of the Coronavirus, which have impacted significantly on the work of Police Scotland.
- It is important to bear these regulatory amendments in mind when reading this report as many of the trends and patterns in the use of enforcement reflect a complex underlying mixture of factors which are related to the quickly changing (and often conflicting) legislative provisions.

## Police Fixed Penalty Notices in context

- Public surveys have suggested that most people complied most of the time with the Coronavirus Regulations, but a small minority of people struggled to comply.
- There is evidence that some groups complied more than others and public tolerance for the restrictions has waned over time with people modifying the rules to suit their own purposes.
- Police Scotland recorded just under 100,000 interventions with members of the public in respect of non-compliance with the Regulations between March and December 2020.
- The vast majority of interventions involved use of the first three Es and less than eight per cent involved the fourth E, enforcement.
- Even when enforcement was used, the vast majority of instances involved use of an FPN (a financial penalty that does not result in a criminal conviction) rather than an arrest.
- Use of enforcement (compared to the other 3 Es) was relatively high during periods when the restrictions were at their tightest (i.e. April and May, and November and December).

## General profile of Fixed Penalty Notices

- A total of 8,273 FPNs were issued under the Coronavirus Regulations in Scotland between March and December 2020.
- This represents a very small aspect of policing activity when considered in the context of the 380,000 crimes and offences recorded over roughly the same time period.
- It also impacted on a very small proportion of the Scottish population (less than 0.2%).
- The relatively low number of FPNs issued in Scotland most likely reflects both high levels of compliance with the Regulations and Police Scotland's use of the Four Es strategy.
- Trends in the use of FPNs changed over time and represent three broad 'phases' of policing:
  - Phase one (March to June) covers the period of the first national lockdown.
  - Phase two (July to October) covers the lifting of the restrictions during the summer period followed by the introduction of new local restrictions across local authorities and tighter limits on the size of gatherings.
  - Phase three (November to December) coincides with the introduction of the new 'levels' system and reflects a renewed tightening of restrictions prior to Christmas.

## Monetary value of Fixed Penalty Notices

- The Regulations set out an incremental penalty structure which allowed for a maximum of five FPNs, rising from £60 to £960; although Lord Advocate guidelines capped the number at four.
- The vast majority of FPNs issued were for the lowest ticket amount of £60, and less than one per cent were issued at the maximum amount.
- The data suggest that repeated ticketing of individuals was rare and declined over time.

## Demographic profile of Fixed Penalty Notices

### *Age and sex*

- Three quarters of all FPNs were issued to males and a quarter to females, which represents a disparity rate of 3.0.
- Survey data suggest that compliance was higher amongst women, although not to the extent that would explain such a high disparity rate, which suggests other factors must be involved.
- Younger people were significantly more likely to be issued FPNs than older people, and two thirds of all those issued a fine were age 30 or under.
- Again, survey data suggests compliance amongst those aged under 30 was lowest overall and declined the most over time, which would help to explain the age profile of FPNs.
- The overall age profile of men and women who received FPNs was more or less identical, although the disparity between men and women receiving FPNs did increase with age.
- The proportion of FPNs issued to women increased from around a fifth in phases one and two to around a third in phase three, which could indicate a change in underlying behaviours, motivations, levels of compliance, or in the circumstances in which FPNs were being used.
- The proportion of FPNs issued to people aged 30 or under increased substantially from phase one to phases two and three, and reflects concerns about non-compliant behaviour and the spread of the virus amongst younger people, including students, in the later phases.

### *Ethnicity*

- The vast majority of FPNs were issued to people from white backgrounds, which is broadly in line with the population profile.
- The estimated rate of FPNs issued to people from BAME backgrounds was slightly higher than that for white people; however, the disparity rate was only 1.1.

- Survey data suggests compliance was lower amongst BAME groups, which may partly explain a slightly higher than expected percentage of FPNs being issued to those from BAME during phases one and two, but this could also be explained by other factors (such as age and sex).
- The profile of FPNs in phase three reflected no disparity between white and BAME groups.

#### *Country of birth*

- Nine out of ten FPNs were issued to individuals who were born in the UK, which is only slightly lower than the Scottish population figure.
- Differences in the estimated rates per capita of FPNs reflected a disparity rate of 1.3 for people born in the EU and 1.7 for people born elsewhere in the world, compared to UK nationals.
- The estimated rate per capita was highest for those born in EU2 countries, reflecting a disparity rate of 2.8 compared to UK nationals; however, this reflects an extremely small number of FPNs.
- Published data suggests that immigrants to the UK have found it harder to comply with the Regulations as a result of employment status and other economic factors, which may help to explain why they were more likely to be issued FPNs.
- The proportion of FPNs issued to non-UK nationals was highest during phase two and could possibly reflect students who were subject to enforcement for organising or attending parties.

#### **Criminal history profile of Fixed Penalty Notices**

- Three out of five FPNs were issued to people who were already known on Police Scotland's criminal history system.
- There was no sex or ethnic difference amongst FPN recipients who had a prior criminal history.
- UK born FPN recipients were more likely to be already known to the police than non-UK nationals; and older people were more likely to have a criminal history than younger people.
- The proportion of FPNs issued to people with a prior criminal history fell dramatically from around three quarters in phase one, to a half in phase two, and below half in phase three.
- This change over time in the prior criminal history profile of FPN recipients is consistent with accounts from police officers about a gradual expansion of non-compliance across different sections of the population, especially amongst younger people.

#### **Deprivation profile of Fixed Penalty Notices**

- People living in Scotland's most deprived communities were more likely than those living elsewhere to be issued an FPN in respect of breaching the Coronavirus Regulations.
- Overall, there was a disparity rate of 4.8 in the likelihood of being issued an FPN amongst those living in the 10% most deprived and those in the 10% least deprived neighbourhoods.
- However, the deprivation profile of FPNs changed significantly over time, reflecting a disparity rate of 12.6 during phase one, reducing to just 1.3 during phase two, and increasing slightly to 2.9 in phase three.
- This large reduction in inequality by residential deprivation most likely reflects the significant changes in the characteristics of those who were being issued FPNs, the circumstances in which FPNs were being issued and the geographical locations in which breaches were occurring.
- Even though the disparity rate diminished over time, there continued to be greater inequality in the likelihood of receiving an FPN amongst those people living in communities at the deprived end of the SIMD spectrum than amongst those living in the affluent half.
- Younger FPN recipients were the least likely to be living in the most deprived communities and the most likely to be living in affluent communities (which may well be a reflection of those living in student accommodation).

- FPN recipients from white backgrounds and born in the UK were more likely than those from BAME backgrounds or non-UK nationals, respectively, to live in the most deprived communities.
- Those with a prior criminal history were more likely than others to be living in the most deprived communities, and least likely to be living in the most affluent areas.

### Geographical profile of Fixed Penalty Notices

- Overall, divisions in the West of Scotland had issued the most FPNs and those in the North of Scotland had issued the least.
- Greater Glasgow division had issued the largest number of FPNs (around three times greater than the next nearest division, Lanarkshire); while Argyll & West Dunbartonshire had issued the highest estimated rate of FPNs per 10,000 people aged 18 or over.
- There were three high 'outliers' in terms of rate of FPNs issued: Greater Glasgow, Argyll & West Dunbartonshire, and Renfrewshire & Inverclyde.
- Overall, around three in twenty FPNs were issued to people who were not resident to that division (suggesting that they had breached travel regulations), which did partially (but not completely) explain the higher rates in the outlier divisions.
- FPNs being issued to individuals who were resident in another division varied significantly across divisions, and changed over time, but the biggest impact was on divisions covering more rural areas with significant areas of natural beauty and popular tourist destinations.
- Although it could not be verified, the data suggest that police officers working in more remote and rural divisions faced the biggest challenges in terms of people breaching travel restrictions.
- Estimated rates per capita of FPNs also varied considerably across divisions, and changed over time, reflecting variation in restrictions imposed in different parts of the country and behavioural challenges posed by different groups in the population.
- There was a distinct urban/rural pattern to the data such that more remote and rural divisions issued by far the largest proportion of FPNs during phase one; whereas, more urban and densely populated divisions issued by far the most FPNs during phases two and three.

### Locus and timing of Fixed Penalty Notices

- Changes to the Regulations over time saw increasing restrictions on social contact between households and, consequently, the focus of police enforcement adapted to address this.
- During phase one, the majority of FPNs (where locus was known) involved activities that occurred out of doors (e.g. beauty spots, beaches or parks); however, by phases two and three the vast majority of occurrences involved indoor gatherings and house parties.
- The temporal profile of FPNs also changed over time, with much less activity during daytime hours and a greater emphasis on incidents during the late evening and early morning hours.
- These changes reflect a shift away from daytime policing of open spaces towards a 'night time economy' pattern of policing focused on private places.
- These changes would have impacted significantly on shift patterns and operational planning, and reflect a very different dynamic in terms of engagement between the public in the police.
- More remote and rural divisions were most likely issue FPNs in respect of outdoor incidents, while more urban divisions were most likely to issue FPNs as a result of indoor gatherings.
- These data demonstrate the importance of having both a national strategy, aimed at minimising the use of enforcement, as well as localised approaches which could adapt to the changing scale and nature of demand for policing over different phases of the pandemic

# 1 Introduction

## 1.1 Content of this report

This is the third in a series of data reports on Police Scotland's use of Fixed Penalty Notices (FPNs) during the Coronavirus pandemic. Under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations Scotland 2020, police officers were given the power to issue a Fixed Penalty Notice (FPN) to any individual aged 16 or over who was thought to have committed an offence under the Regulations. This lower age limit was increased to 18 on 27<sup>th</sup> May 2020, bringing it in line with the definition of a child under the UN Convention on the Rights of the Child.<sup>1</sup> This report focuses on the FPNs issued by Police Scotland between 27<sup>th</sup> March 2020 (when the Regulations came into effect) and 31<sup>st</sup> December 2020.<sup>2</sup>

The report was produced on behalf of the Independent Advisory Group (the IAG) on Police Use of Temporary Powers during the Coronavirus Crisis in Scotland, established by the Scottish Police Authority (SPA) under the chairmanship of John Scott QC Solicitor Advocate in April 2020.<sup>3</sup> The contents of this report should be considered in the context of a wider series of reports and papers produced on behalf of the IAG for the SPA.<sup>4</sup>

The first data report on FPNs<sup>5</sup>, published in August 2020, presented analysis of all tickets issued by the police under the Coronavirus Regulations in Scotland during the initial months of the lockdown, from 27<sup>th</sup> March to 31<sup>st</sup> May 2020. The second report on FPNs<sup>6</sup>, published in February 2021, provided more detailed, individual-level analysis of the same data, examining the characteristics of those people who were issued FPNs (especially those who received multiple tickets) and comparing them to the population profile. This third report replicates the first report (as it does not include individual-level analysis); however, it extends the timeline of the analysis to 31<sup>st</sup> December 2020, so it includes the period of easing restrictions over the summer and the introduction of the new Regulations in the autumn and over the Christmas period.

## 1.2 Data used for this report

The data presented in this report came from two Police Scotland sources. The main source was a database of all FPN tickets issued in Scotland, which was collated by the Operation Talla Information Collation, Assurance and Liaison (OpTICAL) Group, led by Assistant Chief Constable Gary Ritchie. These data included information on the characteristics of ticket recipients, including sex, age, ethnicity, country of birth and home datazone. They also indicated whether the individual was known on Police Scotland's criminal history system prior to being issued an FPN under the Coronavirus Regulations.

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<sup>1</sup> Under Regulation 9 of the Health Protection Regulations, FPNs could be issued to those aged 16 or over; however, following pressure from the Children & Young People's Commissioner Scotland, the Coronavirus (No. 2) (Scotland) Act amended Regulation 9 to raise the minimum age to 18, coming into effect on 27<sup>th</sup> May. This was intended to bring it in line with the UN Convention on the Rights of the Child, Police Scotland's 'Policing Approach to Children and Young People 2016-2020' and respond to calls by the UN to ensure children's rights were safeguarded during the pandemic.

<sup>2</sup> Note that police officer guidance requires that FPNs can only be given when the individual is compliant and understands the process. If those criteria are not met, the individual may be arrested and/or a report may be submitted by Police Scotland to the Procurator Fiscal.

<sup>3</sup> <https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/>

<sup>4</sup> All reports produced on behalf of the IAG can be found on the Scottish Police Authority website: <https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/iag-public-reports/>

<sup>5</sup> McVie, S. (2020) [Data report on police use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#). Report to the SPA Authority Meeting on 19<sup>th</sup> August 2020.

<sup>6</sup> McVie, S. (2021) [Second data report on police use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#). Report to the SPA Authority Meeting on 24<sup>th</sup> February 2021.

Information was also provided on the amount of the fine issued, the date and time it was issued, the police division in which it was issued and a broad indication of the locus (indoors or outdoors).

The second data source was the Coronavirus Intervention (CVI) system, introduced by Police Scotland on 6<sup>th</sup> April 2020 in response to the introduction of the Coronavirus Act 2020 and associated Health Protection Regulations in Scotland.<sup>7</sup> The main purpose of this system was to gather data on levels of public co-operation with the new Regulations, based on police officer interventions. The CVI system relies on manual updates from police officers about any interventions they have had with members of the public in respect of the legislation. It is not compulsory and, as a result, does not provide an accurate estimate of the total number of policing encounters. Nevertheless, it measures all policing-related activity (not just use of enforcement) and so provides a useful indicator of the relative use of different types of police activity in the context of the 'Four Es strategy', which was widely adopted by police forces across the UK in the context of the pandemic.<sup>8</sup> To our knowledge, the CVI System is the only database of its kind to be used to measure the overall use of extended policing powers across the UK police forces from the start of the pandemic. Therefore, it provides an extremely useful source of complementary information to the FPN data.

The work of the IAG in reviewing data and evidence is ongoing and so this report does not cover the entire period of the pandemic. In addition, this report does not include a detailed analysis of the individual people who received FPNs nor the profile of those who were in receipt of more than one ticket up to the end of December. These topics will be covered in a final report to the SPA Board.

### 1.3 Notes on statistical validity

The data analysis in this report has been conducted to the highest ethical standards and efforts have been made to explain any data limitations throughout the report. It should be borne in mind that the data relates to individual 'tickets' and not 'people' (who may have been issued more than one FPN). This has a consequence for the creation of rates per capita (based on population size) and testing for statistical significance between groups, as explained below.

It is standard practice to compare data about sub-populations with population level data to establish whether there are differences between groups or with the wider population. Where possible, the analysis contained in this report provides comparison with Scottish population data to identify any differences to what might have been expected if FPNs were issued proportionately across all social and demographic groups. Calculation of population rates for different groups was conducted using the most recently available population estimates. However, any error in the underlying population figures (especially for minority groups such as the number of people from certain ethnic backgrounds or born in countries outside the UK) could affect the estimated rates substantially. In addition, because the analysis is based on tickets and not people, the calculation of rates based on population size may over-inflate rates for some groups. Therefore, rates per capita are presented as estimates and caution should be exercised before drawing definitive conclusions based on population rates for certain groups (especially for those with smaller numbers, such as ethnicity and country of birth).

It is also standard practice to examine differences between groups by testing for statistical significance at a minimum level of 95%. This means we can be confident that the likelihood of any differences we find between groups occurring by chance is less than one in twenty. Even within a 95% confidence interval is still possible that differences between groups may have occurred by chance (i.e. did not

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<sup>7</sup> Data from the CVI system are publically available on the Police Scotland website: <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>

<sup>8</sup> Guidance on the Four Es issued by the Police Federation on 26<sup>th</sup> March 2020: <https://www.polfed.org/news/latest-news/2020/guidance-offered-on-new-police-powers/>

represent any real difference between groups); however, testing data at a 95% level is a commonly used threshold of certainty. However, please note that because the analysis was based on tickets and not people (who may have received more than one FPN), statistical differences between groups may be artificially inflated and so an extra level of caution is advised when interpreting statistical significance. Moreover, it should be borne in mind that differences that are statistically significant are not always substantively important.

Any significant differences between groups identified in this report (such as between men and women or different age groups) do not necessarily mean that policing activity was disproportionate or targeted. Moreover, differences in levels of enforcement between groups may not reflect demographic characteristics at all and may be explained by other underlying factors, including differences in likelihood of non-compliance or in likelihood of being reported to, or otherwise coming to the attention of, the police. Where evidence is available from other sources, possible reasons for differences in compliance with the regulations between groups are included throughout this report.

## 2 Background to the Coronavirus Regulations

In March 2020, the Coronavirus Act 2020 was enshrined in law by the UK Parliament. It provided the legal basis for the ‘lockdown’ of citizens and businesses across all four nations of the UK. At the same time, each of the four nations introduced Health Protection Regulations setting out the specific measures that were to be used to curb the spread of the virus and save lives in each country. These included the introduction of temporary powers for the police to enforce the new Regulations, where required. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (hereafter referred to as the Regulations) gave Police Scotland extraordinary powers to enforce social distancing measures amongst the public and businesses in line with strict public health guidance. People were asked to work from home where possible and only to leave their homes if they had a ‘reasonable excuse’ or to exercise within their local area. The powers gave police officers the ability to close businesses, direct people to return home, forcibly take people to a medical facility and disperse groups of three or more people from different households, whether congregating in a public or a private area. They were also able to take steps to ensure that parents prevented their children from breaching the Regulations.

In the event that individuals did not comply with or adhere to the Regulations and were considered to have committed an offence, Police Scotland was granted the authority to issue a Fixed Penalty Notice (FPN) to anyone age 16 or over<sup>9</sup> or, in extreme circumstances, to arrest them. A police FPN is a financial penalty or ‘on the spot fine’ which can be issued by a police officer at the time of an offence occurring. They are typically used for very minor offences and do not count as a criminal conviction (although they are recorded on police systems and may be disclosed to a court or via an enhanced disclosure application within a certain period of time). In a departure from existing legislation on FPNs, the Coronavirus Regulations allowed for an individual to be issued a maximum of five tickets, with the value of the fine doubling each time.

From the beginning, the public messaging from Police Scotland placed an emphasis on policing by consent and stressed the importance of personal responsibility in supporting the collective effort to reduce the spread of the virus. On 27<sup>th</sup> March, the Chief Constable expressed an expectation that the public would ‘do their duty and contribute to the national effort to keep people safe from the spread of

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<sup>9</sup> As noted earlier, this lower age limit was raised to age 18 on 27<sup>th</sup> May 2020.

coronavirus'.<sup>10</sup> He recognised that the Regulations placed unprecedented restrictions on public movement and freedom of association and that this would be a significant challenge to individuals and families, but emphasised that 'those who persistently and blatantly defy the law must know we will enforce the law'. Guidance was issued to officers to use the 'Four Es' strategy, meaning that they should use engagement, explanation and encouragement as much as possible and, only when absolutely necessary and after sufficient warnings, resort to enforcement.

Since the start of the first lockdown in March 2020, there has been a significant number of amendments to the Regulations, involving changes to the measures taken to prevent the spread of the Coronavirus, which have impacted significantly on the work of Police Scotland. There is not space to cover these changes in detail in this report; however, key points of change include: the easing of restrictions following the first lockdown in June 2020; the introduction of new provisions for local authorities to take direct measures relating to premises, events and localities in August 2020; new restrictions on the size of gatherings (including the 'rule of six') introduced in September 2020; the introduction of new local restrictions and the multi-level 'tier' system, in October 2020; and the implementation of tighter restrictions on the size of gatherings, and on travel, hospitality and entertainment in and around the central belt of Scotland in November 2020.

It is important to bear these regulatory amendments in mind when reading this report as many of the trends and patterns in the use of enforcement reflect a complex underlying mixture of factors which are related to the quickly changing (and often conflicting) legislative provisions and 'guidelines'. These include: changes in behaviour in response to (or in spite of) these changing Regulations (e.g. 'lockdown fatigue'); variations in restrictions across different geographical areas (including between UK nations); different emphases on the measures needed to curb the spread of the virus over time; differential test and death rates; and changes over time in the scale and nature of policing demands and availability of resources. It is not possible to cover all these issues in this report, which focuses principally on the use of Fixed Penalty Notices. However, where these issues have particular relevance to the findings, commentary has been included to draw attention to these wider factors.

### 3 Police Fixed Penalty Notices in context

While the focus of this report is on police use of Fixed Penalty Notices, it is important to consider this in the wider context of public compliance with the Regulations, operational policing practice and the strategic approach adopted across UK-police forces during the course of the pandemic.

In terms of compliance, a number of public surveys carried out during the pandemic suggested that levels of public adherence to the Regulations were high for the most part.<sup>11</sup> In Scotland, surveys carried out on behalf of the SPA during the early stages of the pandemic found that the vast majority of people had 'tried to comply with all or most of the rules and guidance', although a small minority had found it a struggle.<sup>12</sup> Nevertheless, there is evidence that some groups complied more than others throughout the pandemic, and that public tolerance for the restrictions waned over time with people modifying the rules to suit their own purposes.<sup>13</sup> There is no completely accurate measure of the extent to which members of the public really complied with the Regulations, or followed the guidance, during the

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<sup>10</sup> Police Scotland News Release, 27<sup>th</sup> March 2020: <https://www.scotland.police.uk/whats-happening/news/2020/march/social-distancing-enforcement-measures-in-place>

<sup>11</sup> Fancourt, D. et al. (2021) [Covid-19 Social Study: Results Release 33](#). UCL Report.

<sup>12</sup> Scottish Police Authority (2020) [SPA Public Opinion Survey: High Level Results](#).

<sup>13</sup> Office for National Statistics (2021) [Coronavirus and Compliance with Government Guidance, UK: April 2021](#).



course of the pandemic. Therefore, trying to estimate the extent to which police use of enforcement reflected underlying patterns of behaviour is impossible. Nevertheless, examining patterns and trends in the use of FPNs provides a valuable insight into policing activity in different parts of the country, at different points in time and in response to the varying challenges that emerged during the course of the pandemic.

Recognising the significant challenge to the public in complying with the Coronavirus Regulations, Police Scotland's response was underpinned by both existing values and principles of policing, including the Peelian principle of 'policing by consent', and emerging guidance in March 2020 for all UK police forces to adopt the Four Es' strategy.<sup>14</sup> The strategy emphasised the use of 'Engagement', 'Explanation' and 'Encouragement' in the application of the Coronavirus Regulations, and advocated resorting to 'Enforcement' only for those who demonstrated a blatant or flagrant abuse of the legislation. Therefore, when considering police use of FPNs during the pandemic, it is important to put this in the context of their wider application of the powers using the Four Es strategy.

Unfortunately, it is not possible to examine the application of the Four Es at a UK-wide level, as most police forces did not collect data on their use of different modes of intervention. However, as noted in Section 1 of this report, Police Scotland introduced the Coronavirus Intervention (CVI) system at the start of the pandemic to gather data on levels of public co-operation with the new Regulations based on police officer interventions. It was not compulsory for police officers to complete an entry for the CVI system and, therefore, it provides an underestimate of the total number of interventions in Scotland. Nevertheless, it records information about different types of policing intervention, which allows some estimation of the extent to which 'Enforcement' was used relative to the other three Es.

The CVI system records activity across five types of intervention, as detailed below:

- Dispersal after being informed of the Regulations
- Dispersal after being instructed to comply with the Regulations
- Removal from places or premises
- Issued a Fixed Penalty Notice (FPN)
- Arrested

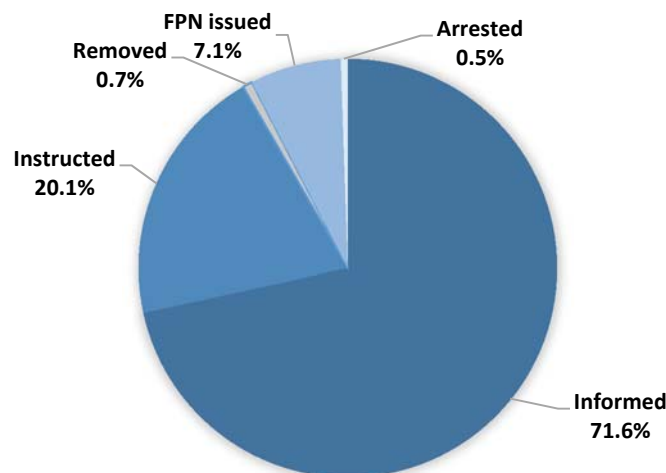
A total of 97,948 interventions with members of the public in Scotland were recorded on the CVI system between 27th March and 31st December 2020. Figure 1 shows the relative distribution of the five types of intervention used by police officers. The vast majority (91.7%) of recorded interventions involved use of dispersal powers, either after being 'informed' of the public health risks by police officers (71.6%) or after being explicitly 'instructed' to disperse (20.1%). A further 0.7% of interventions involved 'removal' of a person from a place or premises (e.g. being escorted from a location or being taken home). These three types of intervention broadly conform to the first three of the 'Four Es' (i.e. engagement, explanation and encouragement).

Less than one in twelve of all interventions involved use of the Fourth E (i.e. enforcement). An estimated 7.1% of interventions involved the issue of an FPN, while in a further 0.5% of incidents an individual was arrested. This indicates that, even when enforcement was used, the vast majority

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<sup>14</sup> See Police Federation announcement on 26<sup>th</sup> March 2020: <https://www.polfed.org/news/latest-news/2020/guidance-offered-on-new-police-powers/>; and HMICFRS report published on 29<sup>th</sup> April 2021 <https://www.justiceinspectorates.gov.uk/hmicfrs/publication-html/the-police-response-to-the-coronavirus-pandemic-during-2020/>

(93.4%) of such instances involved use of a financial penalty that does not count as a criminal conviction. Overall, therefore, the CVI system indicates that enforcement represented a relatively small proportion of all policing activity during this phase of the pandemic; and the vast majority of enforcement was at the lowest end of the tariff in terms of a punitive response.



*Figure 1: Distribution of interventions recorded on the CVI system in Scotland, 27th March to 31st December 2020 (n=97,948)*

Although enforcement represented a small proportion of all policing activity, there was some variation over time in the relative use of enforcement compared to other types of activity. Figure 2 illustrates the relative daily distribution of the first three Es in comparison to the use of enforcement (with FPNs and arrests combined) between 27th March and 31st December 2020. It shows that encounters with the public predominantly involved engagement, explanation, and encouragement throughout 2020. However, use of enforcement was relatively high at the start of the pandemic (peaking at around 30% of all interventions in early April). Over the summer months when the total number of interventions declined, enforcement was barely used. However, from September onwards there was a gradual increase in the relative use of enforcement, peaking at between 40 to 50% of all interventions on some days during November and December.

The subsequent sections of this report are mainly based on data provided by Police Scotland that captures the actual number of FPNs issued during 2020. The number of FPNs in the subsequent analysis is, therefore, higher than that in the preceding analysis, which is based on CVI data. Nevertheless, it is important to bear this wider policing context in mind – and the relatively low use of enforcement overall - when considering the detailed information on FPNs.

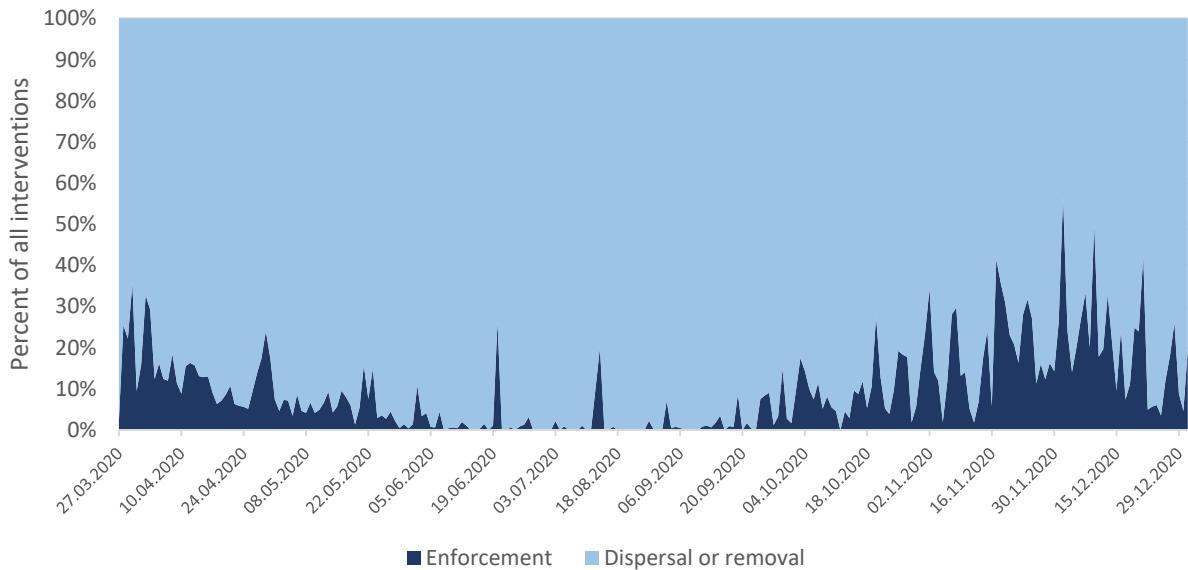


Figure 2: Change over time in the relative daily use of ‘dispersal or removal’ and ‘enforcement’ as recorded on the CVI system in Scotland, 27th March to 31st December 2020 (n=97,925)<sup>15</sup>

## 4 General profile of Fixed Penalty Notices

### 4.1 Number of Fixed Penalty Notices issued

A total of 8,273 FPNs were issued under the Coronavirus Regulations in Scotland between 27th March and 31st December 2020. The vast majority (98.2%, n=8,124) of these tickets were issued to individuals who were resident in Scotland at the time.

The number of FPNs issued as a result of the Coronavirus is small in comparison to other policing activity; for example, the police recorded around 380,000 crimes and offences over roughly the same time period.<sup>16</sup> This means that a very small proportion (an estimated 0.18%) of the Scottish population was issued an FPN for breaching the Coronavirus Regulations during this period.<sup>17</sup> This is higher than the figure reported during the previous analysis of FPNs issued to the end of May 2020 (which was less than 0.1%)<sup>18</sup>; however, this reflects the fact that the total number of FPNs issued almost doubled between May and December 2020.

It is likely that the relatively low number of FPNs issued in Scotland reflects a combination of the high levels of adherence to the Coronavirus Regulations that were observed amongst most members of the population during the pandemic in Scotland<sup>19</sup> and Police Scotland’s commitment to the use of the Four Es strategy.

<sup>15</sup> Note that any days with less than 10 interventions in total have been excluded from this analysis, as small numbers can distort patterns in the data and give a misleading picture of activity.

<sup>16</sup> <https://www.scotland.police.uk/spa-media/t13dedwk/covid-19-weekly-bulletin-to-30-december-2020.pdf>

<sup>17</sup> This figure is an estimate as it is based on the total number of tickets issued, not the number of people issued tickets; therefore, the true figure is likely to be lower than 0.18%.

<sup>18</sup> See Section 3 of McVie, S (2020) [Data Report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#).

<sup>19</sup> See the results of the Scottish Police Authority public surveys: <https://www.spa.police.uk/strategy-performance/oversight-of-policing-covid-19/>; and findings from the Scottish Government (2021) [Covid-19 Support Study](#).

## 4.2 Trend over time in Fixed Penalty Notices issued

The trend over time in use of FPNs is shown in Figure 3 as a seven-day rolling average between 27<sup>th</sup> March and 31<sup>st</sup> December 2020. The dark line shows the average number of FPNs issued, and the light line shows the average number recorded on Police Scotland's CVI system. Both trend lines show three 'phases' of policing activity in relation to FPNs which are broadly reflective of the tightening and easing of restrictions in Scotland.<sup>20</sup>

**Phase one - March to June 2020:** This phase represents the period of the first national lockdown in Scotland. It shows a sharp surge in the use of enforcement during the first three weeks under the new restrictions – peaking around mid-April 2020 - followed by a gradual decline to the end of June 2020. The spikes in enforcement activity during this first phase mainly coincided with bank holidays and exceptionally good weather in Scotland, as well as some changes in messaging around restrictions of movement.<sup>21</sup> As restrictions started to ease, use of enforcement became far less prevalent. Just over half (55.1%, n=4,558) of all FPNs were issued during phase one.

**Phase two - July to October 2020:** This phase covers the lifting of the restrictions during the summer period followed by the introduction of new restrictions across Scottish local authorities in August 2020 and the tightening of rules around the size of gatherings (including the 'rule of six') in September 2020. Use of FPNs remained low during July and August, but started to increase in September. The increase in enforcement at this time coincides with the re-opening of Scottish universities, and reflects an increase in police activity around managing indoor gatherings and parties, many of which involved students in halls of residence or other student accommodation. While the number of FPNs issued during this second phase did reflect an increase in enforcement, the numbers remained low compared with the first phase, which was in line with the use of the Four Es policy. Only one in ten (10.2%, n=844) of all FPNs were issued during this phase.

**Phase three - November to December 2020:** This coincides with the introduction of the new local authority protection measures (including the Tier system) and reflects a renewed tightening of restrictions on people and businesses prior to the Christmas period. The number of FPNs rose sharply in early November (which includes with a significant number of parties and gatherings reported around Halloween and Bonfire Night), and then declined gradually over November and December, but remained high in comparison to phase two. Around a third (34.7%, n=2,871) FPNs were issued during this third phase.

Overall, trends in the use of FPNs over these three phases were very different and reflect changes in underlying Regulations, as well as changes in the nature and locus of the incidents that were being dealt with by officers (e.g. a shift away from the breaches that were occurring in outdoor locations towards indoor gatherings and house parties). Further analysis of these three phases is provided throughout this report to show changes in the underlying profile and characteristics of those individuals who were receiving FPNs at different points in time.

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<sup>20</sup> For further details on the precise timeline of the restrictions in Scotland, see <https://spice-spotlight.scot/2021/07/23/timeline-of-coronavirus-covid-19-in-scotland/>.

<sup>21</sup> See McVie, S. et al. (2020) [Interim report on data for the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis](#).

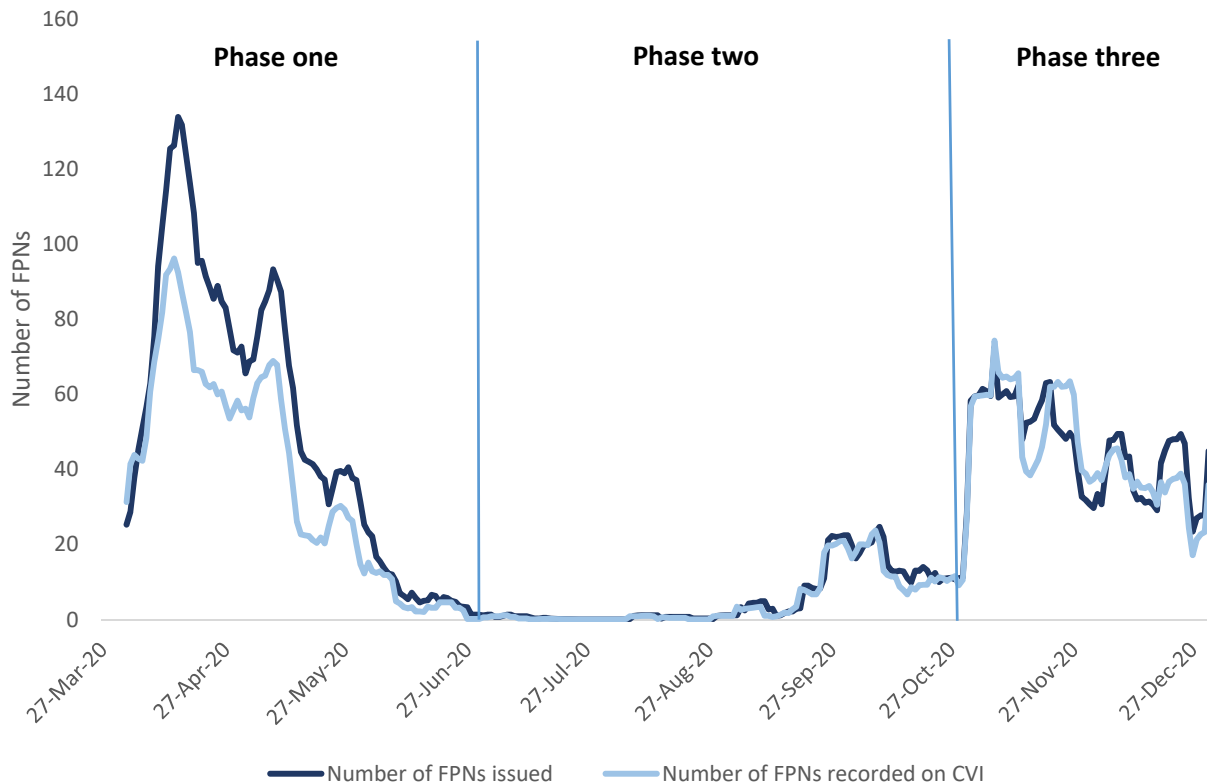


Figure 3: Comparison of seven day rolling average of FPNs issued (n=8,273) and recorded on the CVI system (n=6,907) in Scotland, 27th March to 31st December 2020

#### 4.3 Comparison of FPN and CVI data

The total number of FPNs issued (n=8,273) was almost twenty per cent larger than the number recorded on the CVI system over the same period (n=6,907). As noted earlier, the CVI provides an under-estimate of actual policing activity because it was not compulsory to enter data into this system. It is likely that recording was lower on days where overall levels of policing activity were higher, and officers simply did not have time to complete it. In addition, some tickets that were issued and then rescinded by Police Scotland may not have been recorded on the CVI system.

Despite the sizeable difference in the number of FPNs recorded on these two systems, the trend lines shown in Figure 3 are remarkably similar. This suggests that the CVI system gives an accurate picture of the changing trend over time in policing activity, if not the absolute level. Moreover, Figure 3 suggests that the degree of discrepancy between the two data sources diminished over time, which indicates that police officer recording on the CVI system improved over time. There is some minor variance, which could be due to slight differences in the recording dates. Nevertheless, the similarity in the two trend lines suggests that the creation of the CVI System was a worthwhile investment in terms of providing a reasonable estimate of the extent and nature of policing activity during the pandemic.

## 5 Monetary value of Fixed Penalty Notices

Unlike other domestic legislation around the use of financial penalties in Scotland, the Coronavirus Regulations set out an incremental penalty structure for those who were in breach of the rules. For a first offence, a fine of £60 could be issued, which was reduced to £30 if paid within 28 days. Thereafter, the Regulations provided that a further four FPNs could be issued by the police, with the amount of the fine doubling each time up to a maximum of £960. However, Lord Advocate’s Guidelines issued in Scotland instructed that it would not be appropriate for police officers to issue more than four FPNs under the Regulations (mainly because this would be out of alignment with restrictions on the maximum amount of fine that could be issued by Procurators Fiscal, which is set at £500).<sup>22</sup> Therefore, in practice, FPNs up to a maximum of £480 were issued in Scotland.<sup>23</sup>

The distribution of FPNs issued by the value of the ticket (as recorded by the issuing office) between 27<sup>th</sup> March and 31<sup>st</sup> December 2020 is shown in Figure 4. The vast majority (92.3%) of FPNs issued during this time period were recorded as being for the lowest ticket amount of £60.<sup>24</sup> A further 5.7% of FPNs with a value of £120 were issued and only 1.4% had a value of £240. As can be seen in Figure 4, an extremely small number of tickets issued (0.6% of the total) had a value of £480. From these figures, it can be estimated that around 13.4% of all tickets were issued to individuals who received more than one; although, this may be an underestimate as there were some individuals who were issued more than one £60 ticket (either in error or because a prior ticket had been rescinded).<sup>25</sup>

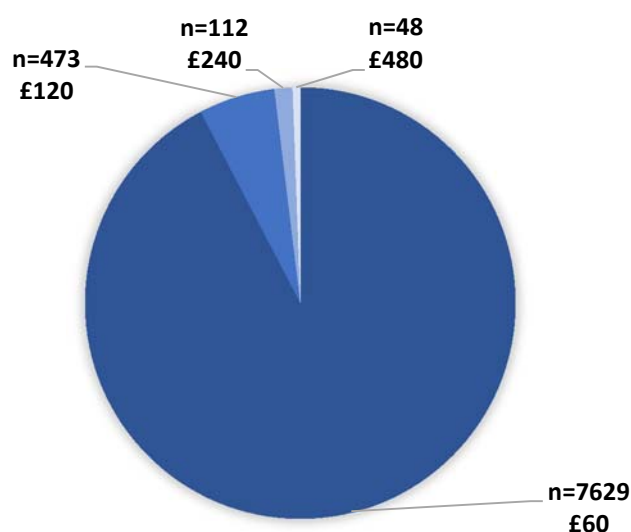


Figure 4: Distribution of FPNs issued by value in Scotland, 27th March to 31st December 2020 (n=8,262)

Figure 4 indicates that repeated use of ticketing was relatively rare, which means an extremely small number of individuals in Scotland were subject to the maximum level of enforcement as a result of breaching the Coronavirus Regulations. The prevalence of repeat ticketing also appears to have reduced

<sup>22</sup> [Lord Advocates Guidelines on the Operation of the FPN Scheme issued March 2020.](#)

<sup>23</sup> Note that very different payment structures were in operation in other parts of the UK. See guidance issued by the Metropolitan Police: <https://www.met.police.uk/advice/advice-and-information/c19/coronavirus-covid-19/coronavirus-covid-19-police-powers/>

<sup>24</sup> There were 11 FPN cases with missing information on the amount of the ticket issued.

<sup>25</sup> Prior analysis of FPN data to the end of May 2020 found that 21.9% of all tickets were issued to individuals who had received two or more. Section 3 of McVie (2021) [Second data report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#)

over time. Looking at the three phases of policing activity, described in Section 4.3, the proportion of FPNs issued with a value of £120 or more was highest during phase one (10.8% of all tickets) and diminished during phase two (5.1%) and again during phase three (3.4%). This could be explained by less frequent use of repeat ticketing by police officers and/or fewer repeated infractions of the law by the same individuals as time went on (although this would need to be verified using data based on people rather than tickets).

## 6 Demographic profile of Fixed Penalty Notices

### 6.1 FPNs by age and sex

Looking at all FPNs issued between 27<sup>th</sup> March and 31<sup>st</sup> December 2020, Table 1 shows that three quarters were issued to males and a quarter to females. This represents a disparity rate of 3.0 between men and women (i.e. FPNs were three times more likely to be issued to men than women). Published data for the UK suggest that ‘complete compliance’ amongst women was higher than that amongst men throughout the pandemic, although ‘majority compliance’ was virtually identical.<sup>26</sup> Therefore, the disparity between men and women in the level of enforcement appears to be wider than the disparity in terms of self-reported compliance. This suggests that something other than the person’s sex was responsible for the higher level of enforcement amongst men.

Table 1 also summarises the age profile of those who were issued FPNs and shows that a very high proportion were in the younger age groups. Indeed, just over a half (53.4%) of all tickets were issued to people up to the age of 25, and two thirds (66.2%) were issued to people up to the age of 30. Published data for the UK shows that the level of both ‘complete compliance’ and ‘majority compliance’ amongst those aged under 30 was lower than for older age groups throughout the pandemic, and the compliance gap between age groups increased markedly over time.<sup>27</sup> This also helps to explain the age pattern shown in Table 1.

A very small proportion of all tickets (3.4%) was issued to people aged 16 or 17 years; however, this reflects a quirk of the Scottish legislation. Regulation 9 of the original Health Protection Restrictions in Scotland stipulated that anyone aged 16 or over could be issued an FPN. The Children and Young People’s Commissioner Scotland (CYPCS) raised an objection on the grounds that this age limit was incompatible with the definition of a child under the UN Convention on the Rights of the Child and in areas of Scots law.<sup>28</sup> As a result, the lower age limit was increased to 18 by the Coronavirus (No. 2) (Scotland) Act and came into effect on 27<sup>th</sup> May 2020. This means that FPNs should only have been issued to individuals of age 16 or 17 for two months at the start of the pandemic. Analysis of the FPN data shows that an extremely small number (n=24) of FPNs (all of a value of £60) were issued to individuals aged 16 or 17 after the legislation was amended. However, it is most likely that this occurred in circumstances where the age of the individual could not be verified by officers at the time of issue, and the tickets would have been subsequently withdrawn.

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<sup>26</sup> See Figures 2i and 2u in Fancourt, D. et al. (2021) [Covid-19 Social Study: Results Release 33](#). UCL Report.

<sup>27</sup> See Figures 2a and 2m in Fancourt, D. et al. (2021) [Covid-19 Social Study: Results Release 33](#). UCL Report.

<sup>28</sup> See CYPCS statement issued 12<sup>th</sup> May 2020: <https://cypcs.org.uk/coronavirus/our-coronavirus-work/full-text-stage-1-coronavirus-2-debate/>

Table 1: Sex and age profile of people issued FPNs in Scotland, 27th March to 31st December 2020

|                         | Number of FPNs issued | Percent of all FPNs issued |
|-------------------------|-----------------------|----------------------------|
| <b>Sex<sup>29</sup></b> |                       |                            |
| Male                    | 6,210                 | 75.2                       |
| Female                  | 2,045                 | 24.8                       |
| <b>Age<sup>30</sup></b> |                       |                            |
| 16-17                   | 282                   | 3.4                        |
| 18-20                   | 2,156                 | 26.1                       |
| 21-25                   | 1,982                 | 24.0                       |
| 26-30                   | 1,058                 | 12.8                       |
| 31-35                   | 778                   | 9.4                        |
| 36-40                   | 633                   | 7.7                        |
| 41-45                   | 500                   | 6.0                        |
| 46-50                   | 358                   | 4.3                        |
| 51-55                   | 248                   | 3.0                        |
| 56-60                   | 170                   | 2.1                        |
| Over 60                 | 105                   | 1.3                        |

Note: Some individuals will be represented more than once as multiple tickets could be issued.

Although the number of FPNs issued to women was far smaller than that for men, Figure 5 shows that the overall age profile for men and women was more or less identical. Compared to the overall Scottish population profile<sup>31</sup>, there is a clear skew in the distribution of those issued FPNs which means that they were overwhelmingly issued to both men and women at the younger end of the age spectrum. These findings fit with wider evidence that younger people – and especially young men - were more likely to breach the Regulations than older people.<sup>32</sup> In particular, research has found that levels of compliance were lowest amongst people under the age of 30, and this increased as the lockdown progressed, which again helps to explain the age profile of FPNs issued in Scotland.<sup>33</sup>

Nevertheless, there are likely to be other factors that explain this pattern. For example, regulatory breaches by younger people may have involved larger gatherings than those of older people and were, therefore, more likely to come to the attention of the police. In addition, the activities of younger people may have been more visible or disruptive to others (e.g. loud parties) and, therefore, more likely to be reported to the police than those of older people. It is also possible that younger people may have been less likely than older people to respond to police use of the first three Es, therefore resulting in more frequent use of enforcement. In addition, large gatherings of younger people may have been

<sup>29</sup> There were 18 FPNs with no information on the sex of the recipient.

<sup>30</sup> There were three FPNs with no information on the age of the recipient.

<sup>31</sup> Scottish population data was based on the most recently available mid-year population estimates for 2019, from the National Records of Scotland: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

<sup>32</sup> [IPSOS Mori Coronavirus Poll](#) (November 2020); Levita, L. (May 2020) [Initial research findings on the impact of Covid-19 on the well-being of young people aged 13 to 24 in the UK](#).

<sup>33</sup> Fancourt, D., Bu, F., Mak, H.W. and Steptoe, A. (2020) Covid-19 Social Study. Results Release 9. Nuffield Foundation. <https://mk0nuffieldfounpg9ee.kinstacdn.com/wp-content/uploads/2020/04/COVID-19-social-study-results-release-20-May-2020.pdf>



more likely to result in tickets being issued to multiple people, which would also contribute to this overall age pattern.

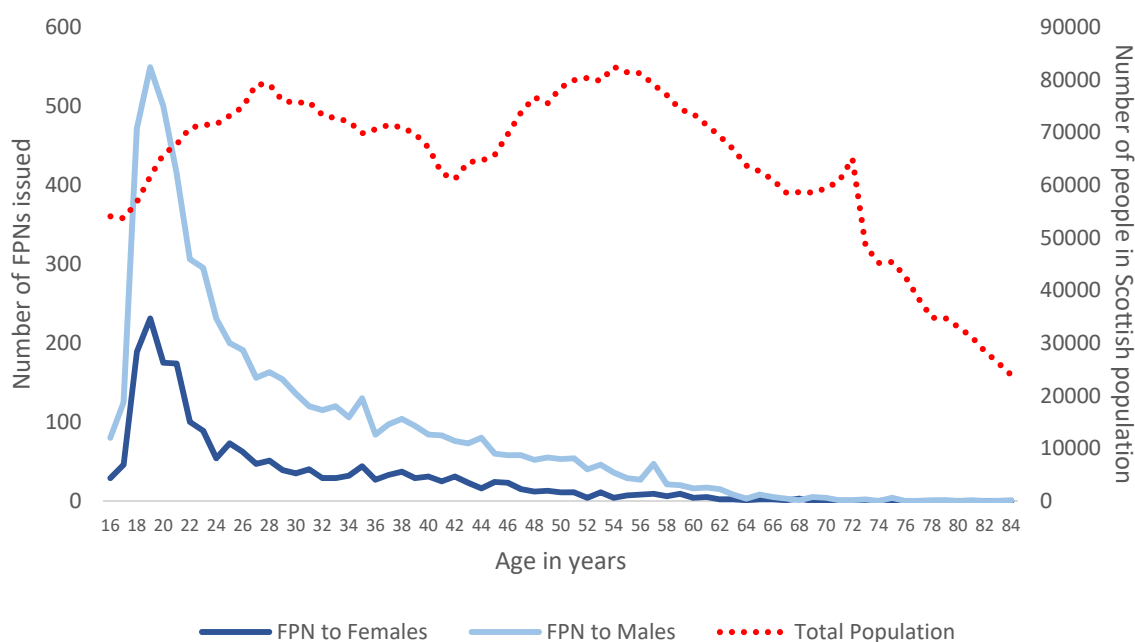


Figure 5: Number of FPNs issued by age and sex in Scotland, 27th March to 31st December 2020 (n=8,720)<sup>34</sup> compared to the Scottish population aged 16+ (n=4,414,816)

Generally speaking, the profile of FPNs shown in Figure 5 suggests that age was a far more important factor in determining police use of enforcement than sex. Nevertheless, the effect of sex was not equal across all ages, as shown in Figure 6. Looking at the rate of FPNs issued per 10,000 men and women in Scotland, it is clear that FPNs were more likely to be issued to men than women across all age bands. However, the red line shows that the disparity between men and women increased with age. In other words, while the absolute likelihood of being issued an FPN decreased with age for both men and women, the relative likelihood of being fined fell faster for women than it did for men (which means the disparity gap widened). This could be explained by general patterns of offending, with greater levels of desistance amongst women compared to men. Published data on rates of compliance suggest that women were more compliant than men; although, recent published data suggest that female offenders aged over 40 had around the same rate of reconviction as men.<sup>35</sup> Unfortunately, published data on levels of compliance amongst men and women across different age groups could not be accessed.

<sup>34</sup> This excludes individuals issued FPNs who were not resident in Scotland (n=149) to allow for comparison with the population data.

<sup>35</sup> Scottish Government (2020) [Reconviction rates in Scotland: 2017-18 Offender Cohort](#).

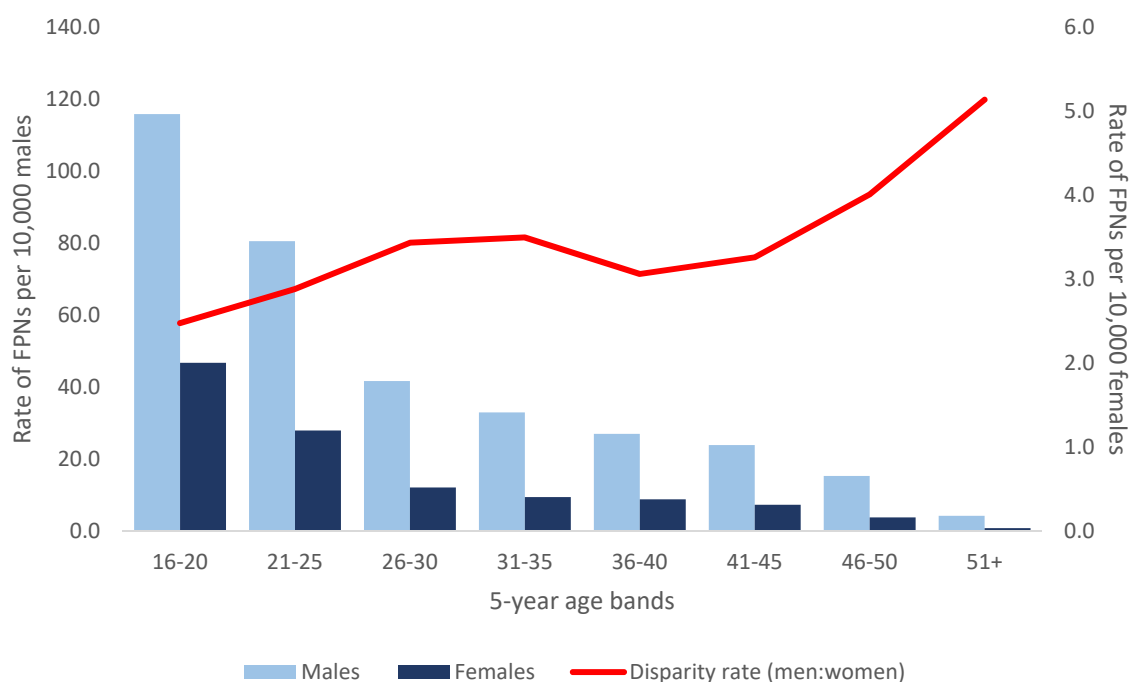


Figure 6: Rate of FPNs issued by age and sex in Scotland, 27th March to 31st December 2020 (n=8,106)<sup>36</sup>

It is important at this point to reflect on how the age and sex profile of those who were issued FPNs changed over the three phases of the pandemic. Between phase one (March to June 2020) and phase two (July to October 2020), the proportion of FPNs issued to women fell slightly (from 21.7% to 18.6%); however, it increased substantially to 31.4% during phase three (November to December 2020). This could indicate a change in the underlying behaviours, motivations and/or levels of adherence to the Regulations amongst males and females. Alternatively, it could reflect an underlying shift in the circumstances in which FPNs were being issued by the police. For example, during phase three policing activity was far more focused on large gatherings and house parties, rather than outdoor breaches of the Regulations, and it is possible that indoor breaches were increasingly being organised or populated by women over this period.

There were also substantial changes in the age profile of those issued FPNs over the three phases. Figure 7 shows that during phase one, around half (53.6%) of all FPNs were issued to people up to the age of 30; however, during phase two this increased to over eight in ten FPNs (82.0%) and remained at around the same level (81.5%) during phase three. The difference in the proportion of all FPNs that were issued to people aged between 16 and 20 years between phase one and phases two and three is particularly notable, as it more than doubled.

<sup>36</sup> This excludes individuals not resident in Scotland at the time of being issued an FPN.

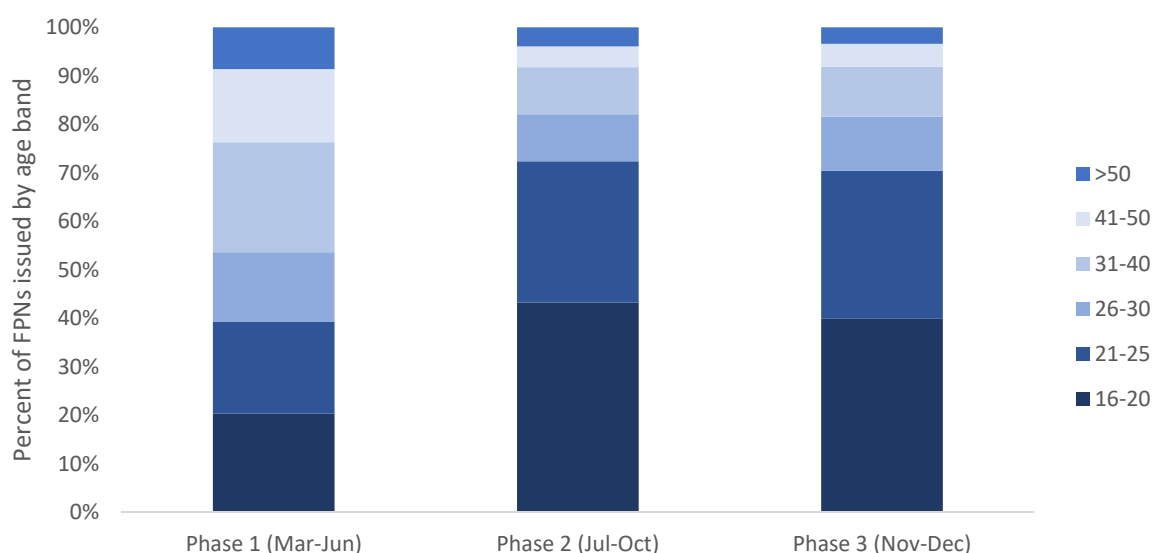


Figure 7: Percentage of FPNs issued by age band across the three phases of lockdown, 27th March to 31st December 2020 (n=8,273)

It is important to remember that the overall number of FPNs issued during phase two was much smaller than the other two phases. However, the increase amongst younger age groups during this period was largely due to major concerns about the spread of the Coronavirus amongst younger people, and especially the student population during their return to universities in September and October 2020. New Regulations introduced on the 14th of September placed tight restrictions on the size of gatherings (referred to as the ‘rule of six’) had a particular impact on younger people, especially students living away from home in halls of residence and other student accommodation. During this time, the police in Scotland were reported to be breaking up ‘hundreds of house parties every week despite the ongoing ban on home visits because of Covid-19’.<sup>37</sup>

The overall number of FPNs issued during phase three was more than three times greater than during phase two; however, the age profile continued to reflect higher levels of enforcement amongst those at the younger end of the age spectrum. This undoubtedly reflects some continuing issues with the student population. However, reports of growing unrest at the restrictions placed on the population<sup>38</sup> and the further tightening of restrictions across some council areas in November, makes it probable that the age profile of FPNs during phase three was representative of a much wider problem of growing non-compliance within the population, especially amongst younger people.

A study by the Office for National Statistics found that many younger people, and especially students, were less concerned about following the guidance around social contact as they believed that they were less likely to catch the virus or, if they did, less likely to be seriously affected by it.<sup>39</sup> News reports also show that the police were dealing with an increasing number of various different types of house parties (not just involving students) across the whole of Scotland in the weeks running up to Christmas.<sup>40</sup>

<sup>37</sup> Marc Ellison, BBC Scotland (28<sup>th</sup> October 2020) [Covid in Scotland: Police break up hundreds of parties every week](#).

<sup>38</sup> Scott Macnab, The Scotsman (9<sup>th</sup> September 2020) [Scotland faces growing public ‘unrest’ over Covid lockdown, MSPs warned](#).

<sup>39</sup> Office for National Statistics (12 April 2021) [Coronavirus and compliance with government guidance, UK: April 2021](#).

<sup>40</sup> Mark Ellison, BBC Scotland (17 December 2020) [Police Scotland make repeat visits to break up illegal house parties](#).

## 6.2 FPNs by ethnic group

The pandemic is known to have had a particularly severe impact on people from Black, Asian or Minority Ethnic (BAME) backgrounds within the UK.<sup>41</sup> In Scotland, it has been reported that people from BAME groups experienced the economic effects of the crisis more severely than white people.<sup>42</sup> Particular stressors impacting on people from BAME backgrounds included the closure of particular sectors (such as hospitality), unequal access to employment, increases in living costs, lower wages and savings and increased instances of hate crime. In addition, deaths from Covid-19 amongst those from the South Asian community in Scotland were found to be twice as high as deaths amongst white people.<sup>43</sup> Therefore, it was important to examine whether there were any differences in use of enforcement across different ethnic groups.

Looking at the FPNs issued between 27<sup>th</sup> March and 31<sup>st</sup> December 2020 where ethnic group was recorded, Figure 8 shows that the vast majority (93.6%) were issued to people from white backgrounds.<sup>44</sup> The most recent population estimates show that 94.3% of the Scottish population is white, which suggests the overall proportion of FPNs issued to white people was similar to the population as a whole.<sup>45</sup>

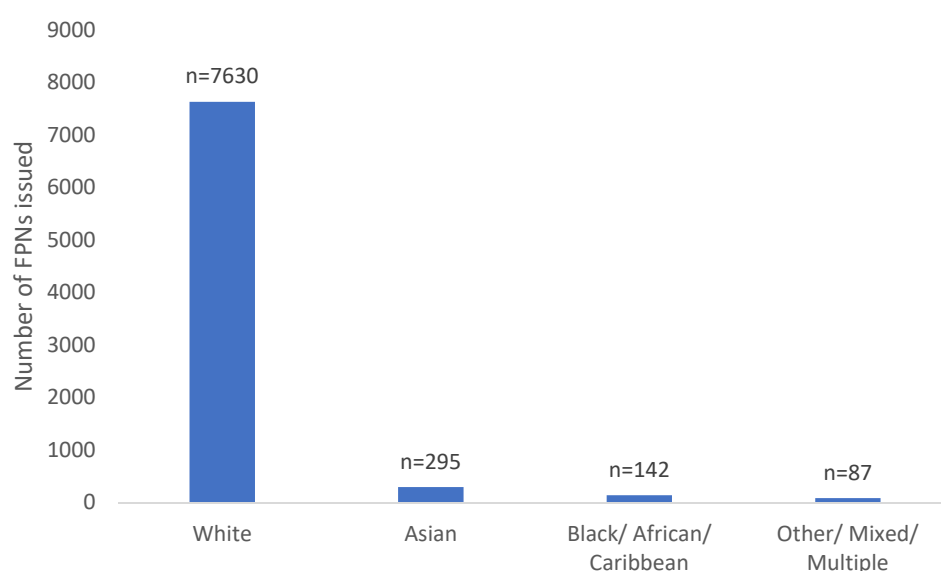


Figure 8: Profile of FPNs by ethnic group in Scotland, 27th March to 31st December 2020 (n=8,154)

Figure 8 also shows that the number of FPNs issued to those from non-white backgrounds was extremely small (reflecting only around 0.01% of the Scottish population aged 18 or over). Only 3.6% of all FPNs were issued to people from an Asian background (who make up 3.0% of the population), 1.7% were issued to people from Black, African or Caribbean background (who make up 1.1% of the population), and 1.1% went to people from multiple, mixed or other ethnic groups (who make up 1.6% of the population). So while the overall profile of FPNs issued to 'white' and 'any BAME' groups was

<sup>41</sup> House of Commons Women and Equalities Committee (8 December 2020) [Unequal impact? Coronavirus and BAME people.](#)

<sup>42</sup> Scottish Government (2020) [The Impacts of Covid-19 on Equality in Scotland.](#)

<sup>43</sup> National Records of Scotland (8 July 2020) [Analysis of deaths involving coronavirus \(COVID-19\) in Scotland, by ethnic group.](#)

<sup>44</sup> There were 119 FPNs with missing information on ethnicity.

<sup>45</sup> Population comparisons and rates by ethnicity were based on estimates from the 2020 Annual Population Survey, provided on request by the National Records of Scotland. Note that it was not possible to conduct analysis for any specific ethnic groups within these four broad categories.

similar to the population, there were some slight differences in terms of specific ethnic categories; however, the numbers are so small that it is impossible to say that this reflected any real difference.

Population figures were used to estimate the likelihood of receiving an FPN by ethnic group based on the rate per capita of FPNs. Due to the very small numbers in each of the BAME categories, these have been combined into one group to improve the reliability of the rates. Note that these rates are estimates because the data represent ‘tickets’ and not ‘people’. This means that rates could be artificially inflated if people from one demographic group were more likely to receive multiple tickets than those from another group. Figure 9 shows the estimated rates per capita for people from white backgrounds compared to those from any BAME group. It shows that FPNs were slightly more likely to be issued to people from BAME backgrounds at a rate of 16.4 per 10,000 people compared to white people at a rate of 14.8 per 10,000 people. The estimated disparity rate between those from BAME backgrounds compared to white people was 1.1. It is not possible to determine whether this difference between groups was statistically significant as the analysis was not based on individuals. Nevertheless, it is extremely small and represents little substantive difference.

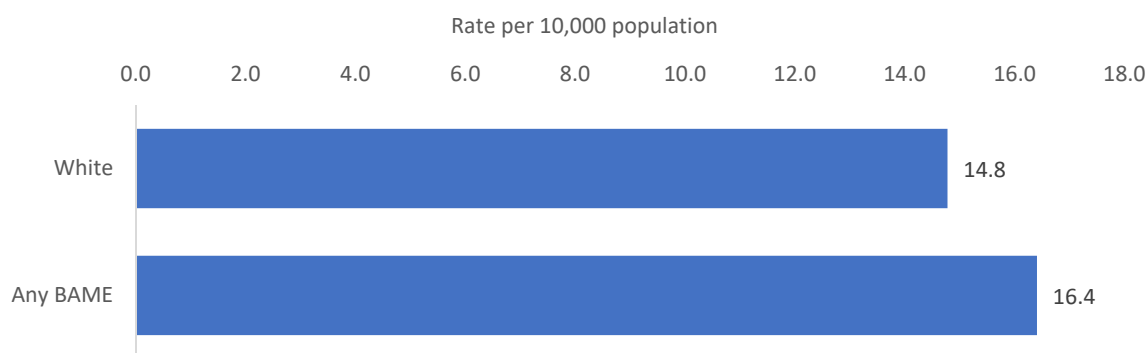


Figure 9: Rate of FPNs issued per 10,000 people in Scotland by ethnic group, 27th March to 31st December 2020 (n=8,012)<sup>46</sup>

Published data for the UK as a whole shows that reported levels of ‘majority compliance’ and, especially, ‘complete compliance’ were consistently lower amongst people from minority ethnic backgrounds during the course of the pandemic.<sup>47</sup> This does not mean that people’s non-compliance was directly related to their ethnicity; it may have been variously related to their sex, age, employment status or other behavioural factors. Nevertheless, there is evidence that people from BAME backgrounds were more likely to be subject to enforcement in some parts of the UK. A report on FPNs issued by police forces in England and Wales found a disparity rate of 1.8 in the use of enforcement against those from BAME backgrounds, compared to white people, during lockdown.<sup>48</sup> Earlier analysis of FPN data from Scotland also found a higher rate of enforcement amongst those from BAME backgrounds during the initial phase of the pandemic, although the disparity of 1.3 was much lower than that for England and Wales.<sup>49</sup>

Table 2 shows how the ethnic profile of FPNs changed across the three phases of the pandemic. The vast majority of FPNs were issued to white people during all three phases; nevertheless, there was a

<sup>46</sup> Excludes FPNs where ethnicity was not recorded and those issued to people who were not resident in Scotland.

<sup>47</sup> Figure 2j and 2v in Fancourt, D. et al. (2021) [Covid-19 Social Study: Results Release 33](#). UCL Report.

<sup>48</sup> Currenti, R. and Flatley, J. (2020) [Policing the Pandemic: Detailed analysis on police enforcement of the Public Health Regulations and an assessment on disproportionality across ethnic groups](#).

<sup>49</sup> McVie, S. (2021) [Second data report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#)

slight shift over time. The percentage of all FPNs that were issued to people from BAME backgrounds was slightly higher in phase two compared to phase one; however, it was far lower in phase three. Based on the population profile, this means that the likelihood of being issued an FPN was lower for people from BAME backgrounds than that for white people during November and December 2020.

*Table 2: Percentage of FPNs issued by ethnic group across the three phases of lockdown, 27th March to 31st December 2020*

|              | Phase one   | Phase two  | Phase three | Total       |
|--------------|-------------|------------|-------------|-------------|
| White        | 92.7%       | 92.3%      | 95.4%       | 93.6%       |
| BAME         | 7.3%        | 7.7%       | 4.6%        | 6.4%        |
| <i>Total</i> | <i>4489</i> | <i>843</i> | <i>2822</i> | <i>8154</i> |

Observed differences in the proportion of people from white and non-white backgrounds who received FPNs may well reflect other aspects of people’s characteristics and circumstances rather than their ethnicity. For example, individuals from BAME backgrounds who received an FPN were significantly more likely to be male than those from white backgrounds (88.8% compared to 74.3%, respectively). In addition, FPN recipients from BAME backgrounds had a significantly lower mean age compared to those from white backgrounds (26.9 years compared to 28.9 years, respectively). Therefore, changes in the age and sex profile over time may have influenced the ethnic profile of those receiving FPNs one way or another. Published population data does not enable us to explore rates based on the overall age and sex profile of those from BAME backgrounds; however, the much bigger influence of age and sex on likelihood of receiving an FPN suggest that demography, rather than ethnicity, may explain any differences between white and non-white groups.

### 6.3 FPNs by country of birth

There is relatively little information across the UK on the impact of the pandemic for those born in other countries. Nevertheless, the International Observatory of Human Rights (IOHR) notes that the “Covid-19 pandemic has exacerbated the inequalities in society and emphasized the gaps in the protection of migrants, including refugees and asylum seekers”.<sup>50</sup> In addition, a cross-comparative study of Organisation for Economic Co-operation and Development (OECD) countries found that immigrants were affected more severely by Covid-19 than native-born people in terms of infection risks, mortality rates, labour market instability, educational disadvantage, negative communication campaigns and hate crime.<sup>51</sup> Given that these forms of disadvantage may have impacted on the ability or willingness of individuals to comply with the Coronavirus Regulations, analysis of the FPN data was undertaken by country of birth.

Figure 10 shows that 89.3% of all FPNs were issued to individuals who were born in the UK. This is slightly lower than the population figure published by NRS which shows that 92.8% of the Scottish population were born in the UK.<sup>52</sup> Of the remaining FPNs, 5.7% were issued to those born in other EU countries (compared to 4.3% of the population) and 4.9% were issued to people born elsewhere in the

<sup>50</sup> International Observatory of Human Rights (June 2021) [The impact of COVID-19 responses on migrants and refugees in the UK](#).

<sup>51</sup> OECD (2020) [What is the impact of the Covid-19 pandemic on immigrants and their children](#).

<sup>52</sup> National Records of Scotland (2019) [Population by Country of Birth and Nationality, 2019](#).

world (compared to 2.9% of the population).<sup>53</sup> This suggests a slightly higher likelihood of receiving an FPN amongst those born in countries outside of the UK.

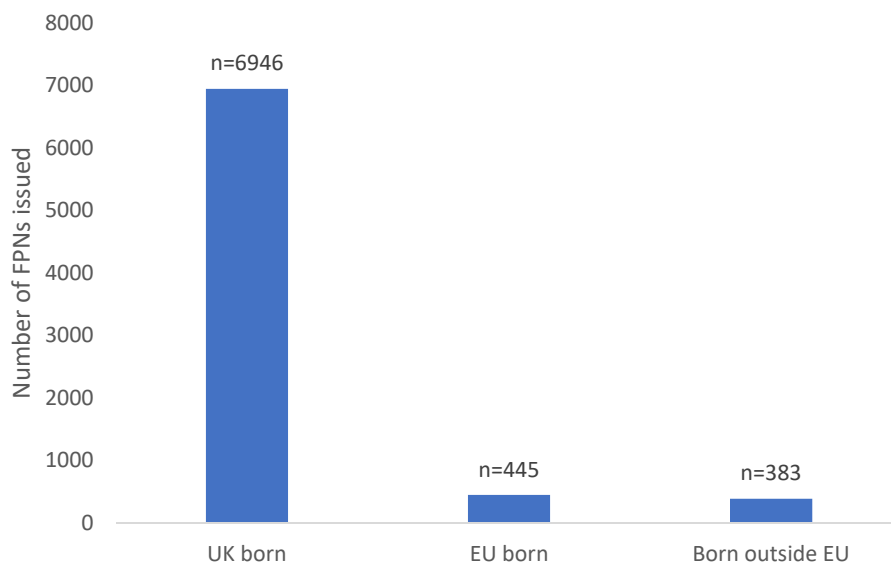


Figure 10: Profile of FPNs in Scotland by country of birth, 27th March to 31st December 2020 (n=7,774)

Taking account of population size (and restricting the analysis to those who were resident in Scotland at the time the FPN was issued), Figure 11 shows the estimated rate per capita of FPNs issued based on the most recent Scottish population figures. As noted previously, these rates are only estimates since the data represent ‘tickets’ and not ‘people’, which means they could be artificially inflated if people from any one group were more likely than the others to receive multiple tickets. The estimated rates suggest that FPNs were less likely to be issued to UK born people (13.7 per 10,000 people) compared to those born in EU countries (18.3 per 1,000 people), while the highest rate per capita was found amongst those who were born elsewhere in the world (23.6 per 10,000 people). Compared to those born in the UK, the estimated disparity rate for FPNs issued to EU born people was 1.3, while for those born outside the EU it was 1.7.

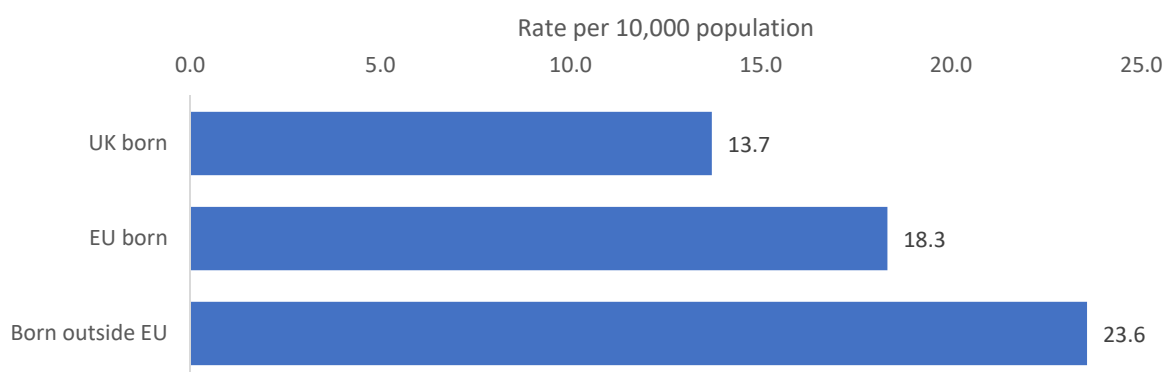


Figure 11: Rate of FPNs issued per 10,000 people in Scotland by country of birth, 27th March to 31st December 2020 (n=7,637)<sup>54</sup>

<sup>53</sup> There were 499 FPNs with missing information on country of birth.

<sup>54</sup> Excludes FPNs where country of birth was not recorded and those issued to people who were not resident in Scotland.

Looking in more detail at those born outside the UK, the estimated rate per capita was highest for those born in the EU2 countries (Bulgaria and Romania) at 38.4 per 10,000 people, reflecting an estimated disparity rate of 2.8 compared to those born in the UK. However, it is important to note that this represents only 73 FPNs, which was just under 1.0% of the total issued where country of birth was known, and so this estimated rate may not be reliable.

Both the IOHR and OECD reports, referenced above, found that immigrants were concentrated in ‘essential occupations’ (such as domestic, cleaning care and food processing services) that could not be undertaken from home. Looking specifically at the impact of the pandemic on Eastern European workers within the UK, the Huffington Post reported cases of people who were not key workers being ‘forced’ to work in cleaning, non-essential construction and housing renovation jobs during the initial lockdown period.<sup>55</sup> Notably, those from the EU2 countries (Romania and Bulgaria) were by far the most likely of all UK migrant groups to be self-employed (22% compared with 13% of EU8 and 10% of UK-born)<sup>56</sup>, which is likely to have placed a particular economic strain on these individuals during lockdown.<sup>57</sup> It is entirely possible that working in these types of precarious labour market roles could have made people born outside the UK more visible during periods of the lockdown, which may have increased their likelihood of being reported to, or coming to the attention of, the police. There is also some evidence that keyworkers were less likely to comply completely with the rules, although no data on whether this varied by country of origin.<sup>58</sup>

There were some changes over time in the relative distribution of FPNs issued according to country of birth, as shown in Table 3. While the majority of people issued an FPN in all three phases was born in the UK, Table 3 shows that the proportion of all fines that were issued to people who were born outside of the UK was higher during phase 2 than during phases one and three.

*Table 3: Percentage of FPNs issued by country of birth across the three phases of lockdown, 27th March to 31st December 2020*

|                 | Phase one   | Phase two  | Phase three | Total       |
|-----------------|-------------|------------|-------------|-------------|
| UK born         | 90.5%       | 85.6%      | 88.8%       | 89.3%       |
| EU born         | 5.2%        | 6.7%       | 6.1%        | 5.7%        |
| Born outside EU | 4.3%        | 7.7%       | 5.0%        | 4.9%        |
| <b>Total</b>    | <b>4085</b> | <b>836</b> | <b>2853</b> | <b>7774</b> |

Note: Columns may not total 100% due to rounding.

The data do not tell us exactly who this impacted on; however, a higher proportion of FPN recipients who were not born in the UK were aged 25 or younger (79.7% compared to 72.3% of those who were UK born). So, the increase in the proportion of FPNs issued to non-UK nationals during phase two could well be linked to students. A report published by the Scottish Government in 2018 showed that 22% of people who enrol on higher education courses in Scotland are international students, which is higher

<sup>55</sup> Huffington Post (12/5/20) [First Brexit, Now This: How UK’s Covid-19 Crisis has Hit Eastern European Workers](#).

<sup>56</sup> The EU-2 countries are Bulgaria and Romania. The EU-8 countries are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

<sup>57</sup> Figures taken from Figure 7 on the [Migration Observatory website](#) (accessed 18<sup>th</sup> November 2020):

<sup>58</sup> See Figure 2f in See Figures 2i and 2u in Fancourt, D. et al. (2021) [Covid-19 Social Study: Results Release 33](#). UCL Report.



than any other part of the UK.<sup>59</sup> Therefore, it is possible that different enforcement profile by country of birth during phase two reflects an increase in fines amongst young people from outwith the UK who came to study in Scotland and breached the restrictions that were introduced to prevent social gathering in an effort to reduce the spread of the Coronavirus. Nonetheless, it is important to bear in mind that the actual number of non-UK nationals who received FPNs was very small in real terms (as shown in Figure 10).

## 7 Criminal history profile of Fixed Penalty Notices

Interviews with police officers conducted by Her Majesties Inspector of Constabulary in Scotland (HMICS) in June 2020 reported that most people were perceived to have adhered to the Regulations and public guidance during the initial lockdown.<sup>60</sup> However, concern was raised about a small proportion of the population who had created a disproportionate amount of work from a policing point of view. The report noted that ‘Officers interviewed said challenges emerged with some members of the public who were living chaotic lifestyles and seemed intent on non-compliance, regardless of attempts to utilise all strands of the 4 Es approach. On these occasions, this appeared to be due to an indifferent attitude to the overall public health objectives, the legislation and consequences for breaching same, therefore enforcement was not seen as an effective deterrent’ (HMICS 2020: 4).

By the time a second round of interviews was conducted in April/May 2021, police officers’ perceptions of public compliance had changed. The report noted that ‘Whilst the vast majority of the public have been compliant and have remained supportive of the police, public compliance has waned over time and latterly there has been a greater incidence of individuals interpreting the rules to suit their own ends’ (HMICS 2021: 3). Officers indicated that compliance was lower amongst some groups, including younger people and those with mental health difficulties, and that ‘a sizeable minority of officers had experienced a lack of support from those they engaged with’ (HMICS 2021: 7).<sup>61</sup> This view was expressed in particular by officers who had dealt with house parties and large gatherings, with specific reference being made to repeated calls to student accommodation, although concern was expressed about an attitude of defiance from young people in general. It was also stated that there was a quicker acceleration through the Four Es to the enforcement stage in areas where public health concerns were greater.

Prior analysis of the Scottish FPN data, covering the period from 27th March to 31st May 2020, found that 82.0% of all FPNs were issued to individuals who were already known to Police Scotland’s Criminal History System (CHS).<sup>62</sup> Analysis of this more recent data to 31st December 2020 found that this proportion had declined significantly, to 61.9%. This suggests a substantial change in the profile of FPN recipients over time. Unfortunately, it was not possible to conduct detailed analysis on the length of time since the individual first came to the attention of the police as these data were not available.

Women who were issued an FPN were slightly (but not significantly) more likely to have a prior criminal history compared to men (63.3% vs 61.6%, respectively). Older FPN recipients were substantially more likely to have a prior criminal history than younger recipients (for example, 52.6% for FPN recipients aged 16-20 had a prior history compared to 76.4% of those aged 41-45). In terms of ethnicity, white

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<sup>59</sup> Scottish Government (2018) [The Impact of International Students in Scotland: Scottish Government response to the Migration Advisory Committee’s consultation on the impact of international students in the UK.](#)

<sup>60</sup> HMICS (2020) [Independent Advisory Group Report on Interviews with Police Scotland Officers and Staff.](#)

<sup>61</sup> HMICS (2021) [Independent Advisory Group Report on interviews with Police Scotland Officers and Staff – Phase II.](#)

<sup>62</sup> Section 6 of McVie, S. (2020) [Data report on police use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland.](#) Report to the SPA Authority Meeting on 19<sup>th</sup> August 2020.

people were very slightly (but not significantly) more likely (61.8%) to have a prior criminal history compared to those from BAME backgrounds (59.7%). FPN recipients who were born in the UK were most likely to have a prior criminal history (64.2%) and those born outside the EU least likely (51.4%). These differences were statistically significant; however, they could be affected by length of residence in Scotland amongst those who were not born in the UK (which could reduce their likelihood of being known to the police in Scotland). It is also possible that some individuals may have had a criminal history in another country.

As noted earlier in terms of the changing profile of FPN recipients, Table 4 shows that there was a substantial drop in the percentage of FPNs issued to people with a prior criminal history from 73.5% in phase one to 52.5% in phase two. In phase three, this declined even further to 46.4%. This ties in strongly with the second set of interviews conducted with police officers by HMICS as it suggests that, as the pandemic progressed, the profile of those who were being issued an FPN for breaching the Coronavirus Regulations was widening out to include a more diverse range of people, many of whom were not previously known to be offenders in Scotland.

*Table 4: Percentage of FPNs issued by criminal history across the three phases of lockdown, 27th March to 31st December 2020*

|                        | Phase one   | Phase two  | Phase three | Total       |
|------------------------|-------------|------------|-------------|-------------|
| No criminal history    | 26.5%       | 47.5%      | 53.6%       | 38.1%       |
| Prior criminal history | 73.5%       | 52.5%      | 46.4%       | 61.9%       |
| <b>Total</b>           | <b>4558</b> | <b>844</b> | <b>2871</b> | <b>8273</b> |

## 8 Deprivation profile of Fixed Penalty Notices

The negative effects of the pandemic on the health, mortality, economic and employment outcomes of those living in areas of social deprivation across the UK have been well documented.<sup>63</sup> In Scotland, it has been reported that the most disadvantaged people in society were most severely impacted across a range of outcomes, especially in terms of health (e.g. poorer mental health and physical wellbeing, lower life satisfaction and feelings of loneliness) and financial stability (due to the financial downturn, increasing unemployment and associated poverty).<sup>64</sup> Moreover, analysis of the 2020 Scottish Index of Multiple Deprivation (SIMD) shows that age-standardised death rates are more than twice as high for those living in the 20% most-deprived areas compared to those in the 20% least deprived areas.<sup>65</sup> Some data has suggested that compliance levels were higher amongst those in lower household incomes, although that could be an artefact of age (i.e. older people on pensions would be classed as low income households).<sup>66</sup> There is very little data on levels of compliance according to levels of neighbourhood deprivation, although analysis of Scottish data during the first lockdown period found that people living

<sup>63</sup> Public Health England (2020) [Disparities in the risk and outcomes of Covid-19](#); Local Government Association information on [Deprivation and Poverty – The Impact of Covid-19](#).

<sup>64</sup> Scottish Government (2020) [The Impacts of Covid-19 on Equality in Scotland](#).

<sup>65</sup> Death rates by SIMD can be accessed from Public Health Scotland at [opendata.nhs.scot](#). On 9<sup>th</sup> August 2021, the crude death rate for those living in the 20% most deprived neighbourhoods in Scotland was 206 per 100,000 compared to 101 per 100,000 for those living in the 20% least deprived neighbourhoods.

<sup>66</sup> See Figure 2c in Fancourt, D. et al. (2021) [Covid-19 Social Study: Results Release 33](#). UCL Report.

in the 10% most deprived communities were 11.2 times more likely to be issued an FPN for breaching the Coronavirus Regulations than those living in the 10% least deprived communities.<sup>67</sup>

Using the FPN data from 27<sup>th</sup> March to 31<sup>st</sup> December 2020, the deprivation profile of all fines issued was analysed using the home datazone of FPN recipients, which were ranked according to the 2020 SIMD.<sup>68</sup> Analysis was conducted using SIMD deciles (aggregated into ten categories) and quintiles (aggregated into five categories) to compare the proportion of FPN recipients living in the top 10% or 20% most deprived communities, respectively, against other categories. It is important to note that the SIMD is a measure of where somebody lives and does not necessarily reflect where the FPN was issued to the recipient; therefore, it is not an indicator of targeted policing practice within deprived communities. In addition, it should be remembered that the analysis presented in this report is based on tickets and not people (as some people may have received more than one ticket); so any differences between SIMD categories could be influenced by larger numbers of people in any one category being more likely to receive multiple tickets.

### 8.1 Distribution of FPNs by SIMD decile

Figure 12 shows the deprivation profile of all FPNs according to the SIMD decile in which the recipient was living at the time.<sup>69</sup> It shows a very skewed relationship, in which around one in four (27.0%) FPNs were issued to people living in one of the 10% most deprived areas of Scotland while one in twenty (5.2%) were issued to people living in one of the 10% least deprived areas. This represents a disparity rate of 4.8 between those living in the most and least deprived communities. However, it is notable that the skewed relationship between SIMD and FPN receipt is more evident at the deprived end of the SIMD distribution (between SIMD decile 1 and SIMD decile 5) but flattens out at the affluent end (between SIMD decile 6 and SIMD decile 10). In other words, there was greater inequality in the likelihood of receiving an FPN amongst those people living in communities in the deprived half of the SIMD spectrum than amongst those living in the affluent half.

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<sup>67</sup> McVie, S. (2021) [Second Data Report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#).

<sup>68</sup> The SIMD is tool for identifying concentrations of deprivation across Scotland. Each of Scotland's 6,976 datazones (small areas of geography) are ranked from first (most deprived) to last (least deprived) based on 32 separate indicators that measure different aspects of deprivation (e.g. economic, health, education, employment, crime, etc). It is used for a wide range of purposes including as a statistical classification and as an indicator to target resources and policies. See [www.simd.scot](http://www.simd.scot).

<sup>69</sup> Data for 629 FPNs (7.6%) were missing information on datazone.

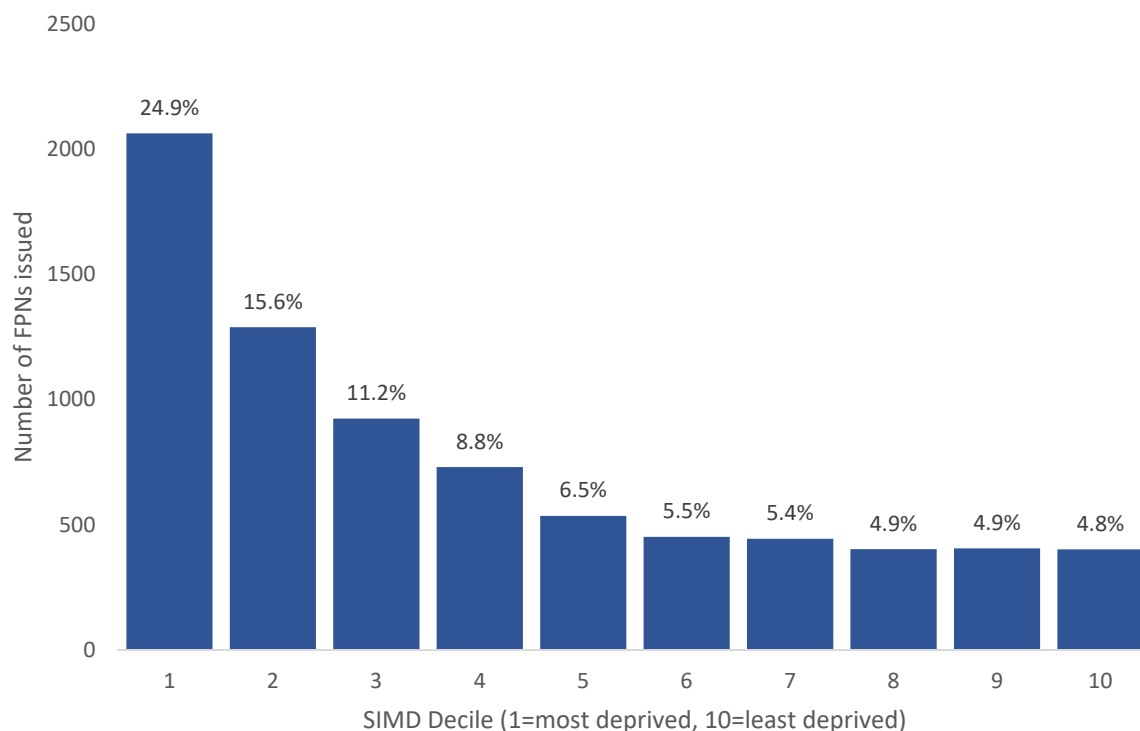


Figure 12: Profile of FPNs issued in Scotland by SIMD of recipients' home address, 27th March to 31st December 2020 (n=7,644)<sup>70</sup>

## 8.2 Distribution of FPNs by SIMD decile across the three phases of the pandemic

The overall deprivation profile for all FPNs conceals distinct shifts over time. Looking across the three phases of the pandemic, Figure 13 shows how the proportion of FPNs issued to people living in different SIMD deciles changed. During the first phase, there was a very steep gradient with 32.8% of FPNs issued to people living in the 10% most deprived areas of Scotland and only 2.6% issued to people living in the 10% least deprived areas. This represents a disparity rate of 12.6, and demonstrates a high degree of inequality in the likelihood of receiving an FPN based on area of residence during the initial lockdown (although it is important to note that inequality in these data does not necessarily mean unfair or disproportionate policing).

During the second phase, the proportion of all FPNs issued to people living in the 10% most deprived areas fell to 17.8%, while the proportion issued to those living in the 10% least deprived areas increased to 14.2%. While the total number of FPNs issued during phase two was very low, this change at both the top and bottom ends of the SIMD spectrum represents a significant shift in the profile of those issued FPNs for breaching the Coronavirus Regulations. During phase two, the disparity between the top and the bottom reduced to 1.3, which indicated much greater equality in the likelihood of receiving an FPN for those living in the most and least deprived quintiles. However, it is important to note that the relationship between SIMD and deprivation was close to being U-shaped due to the substantial increase at the most affluent end of the spectrum.

This substantial increase in the issue of FPNs to those living in Scotland's most affluent communities during phase two is highly likely to be related to tickets issued as a result of parties organised and

<sup>70</sup> Figure excludes FPNs where home datazone was not known or was outside of Scotland.

attended by younger people, and particularly students. Indeed, more detailed analysis at datazone level revealed that the four most common home datazones amongst those receiving FPNs during phase two were affluent areas containing university halls of residence and other student accommodation in the cities of Edinburgh and Glasgow.

During phase three, the distribution of FPNs according to the recipient’s home SIMD decile changed again, although it did not return to the high level of skew seen during phase one. Figure 13 shows that the SIMD profile of FPNs during phase three was less skewed towards the most deprived areas than during phase one, but it also had more of a gradient between the top and the bottom compared to phase two. The disparity between those living in the 10% most and 10% least deprived communities rose to 2.9, reflecting an increase in inequality but not approaching anything like the level seen in phase one. During this third phase, the percentage of FPNs issued to people who were living in the most deprived SIMD decile remained around the same as phase two, but there was a much flatter distribution at the more affluent end of the SIMD scale (from decile 5 to 10). Looking at the ten most common home datazones amongst those receiving FPNs during phase three, they were located in various parts of central Glasgow but most were located close to some kind of student accommodation.

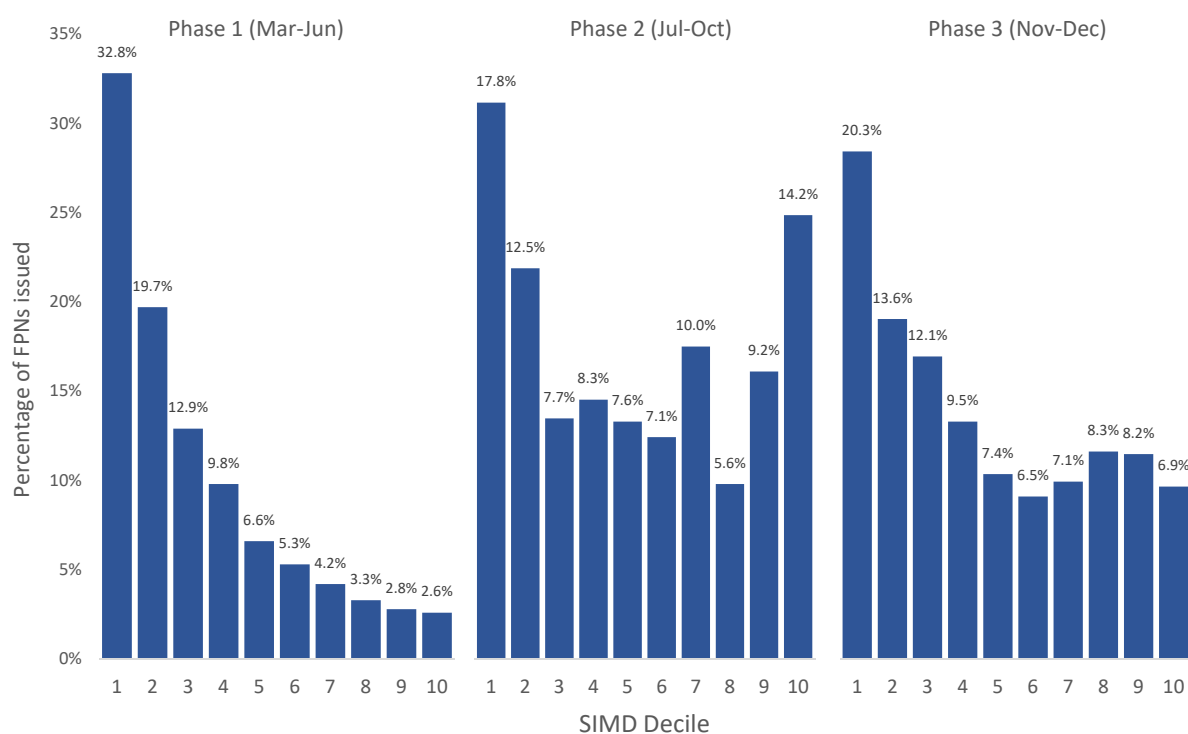


Figure 13: Profile of FPNs issued in Scotland by SIMD of home address across the three phases of lockdown, 27th March to 31st December 2020 (n=7,644)

### 8.3 Age profile of FPN recipients by SIMD quintile

To explore whether the change in the SIMD profile of FPN recipients may be related to the age of those receiving tickets, Figure 14 shows the distribution of FPNs issued to people in different age bands by SIMD quintile (with each quintile representing 20% of the population according to SIMD). It shows that more than 30% of FPNs were issued to people from the most deprived quintile, regardless of the age of the recipient. However, there is a clear gradient by age, with FPN recipients aged between 16 and 20 years being least likely (33.6%) to be living in the 20% most deprived communities in Scotland and those

aged between 41 and 50 years being most likely (57.9%). Conversely, people aged between 16 and 20 who were issued FPNs were far more likely (17.5%) to be living in one of the 20% least deprived Scottish communities than those who were older than them, especially those aged 26 or over for whom less than 7% in each age band were resident in the least deprived quintile.

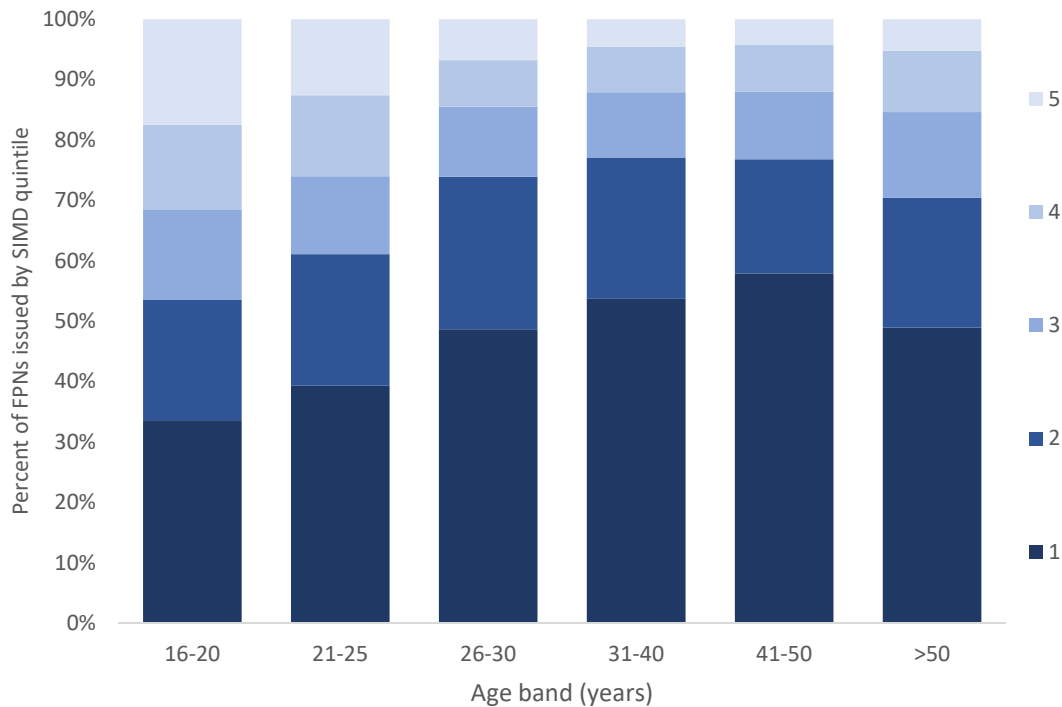


Figure 14: Age distribution of FPNs issued by SIMD quintile (1=most deprived, 5=least deprived), 27th March to 31st December 2020 (n=7,641)

#### 8.4 Ethnic profile of FPN recipients by SIMD quintile

We examined the SIMD profile of FPN recipients from white and non-white to see if the pattern of deprivation varied by ethnicity. Figure 15 shows the proportion of FPNs issued to residents of different SIMD quintiles by whether the recipients were white or from BAME backgrounds. For both groups, a higher proportion of FPNs was issued to people living in the most deprived SIMD quintile. However, the proportion of FPNs issued to people living in the most deprived quintile was higher for white people (44.2%) than those from BAME backgrounds (38.3%). At the other end of the spectrum, FPN recipients from white backgrounds were less likely (10.2%) to be living in one of Scotland’s most affluent SIMD quintiles compared to people from BAME groups (16.5%). As before, the analysis was based on tickets and not people, so we cannot be certain that there were significant differences in the SIMD profile of FPN recipients based on ethnic group.

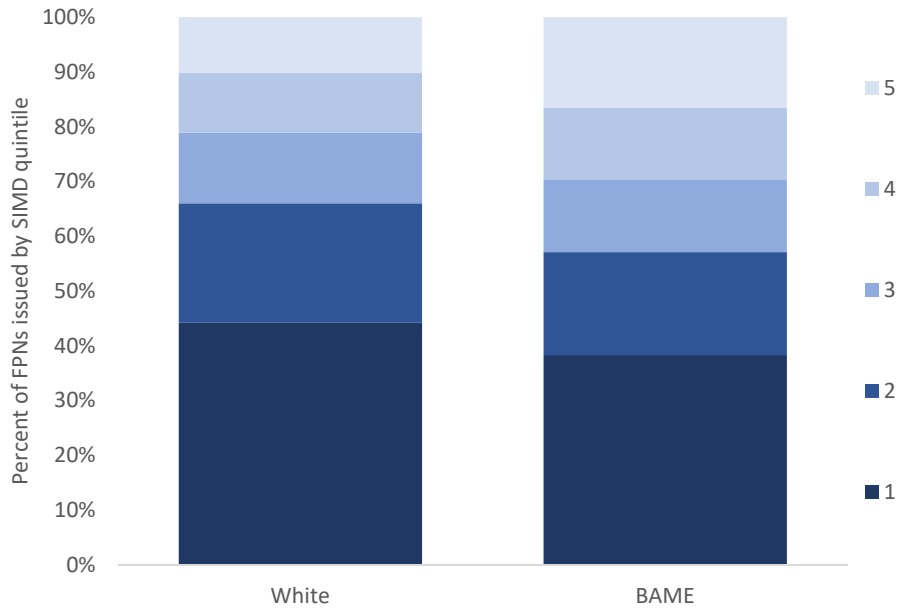


Figure 15: Percentage of FPNs issued to people by ethnic group by SIMD quintile (1=most deprived, 5=least deprived), 27th March to 31st December 2020 (n=7,542)

### 8.5 Sex profile of FPN recipients by SIMD quintile

Looking at the SIMD profile of FPN recipients by sex, Figure 16 shows remarkably little difference in the proportion of FPNs issued to males and females according to the SIMD quintile in which they were living. More than two fifths of all FPNs were issued to both men and women living in the most deprived areas of Scotland, while only around one in ten were issued to those living in an area in the least deprived quintile.

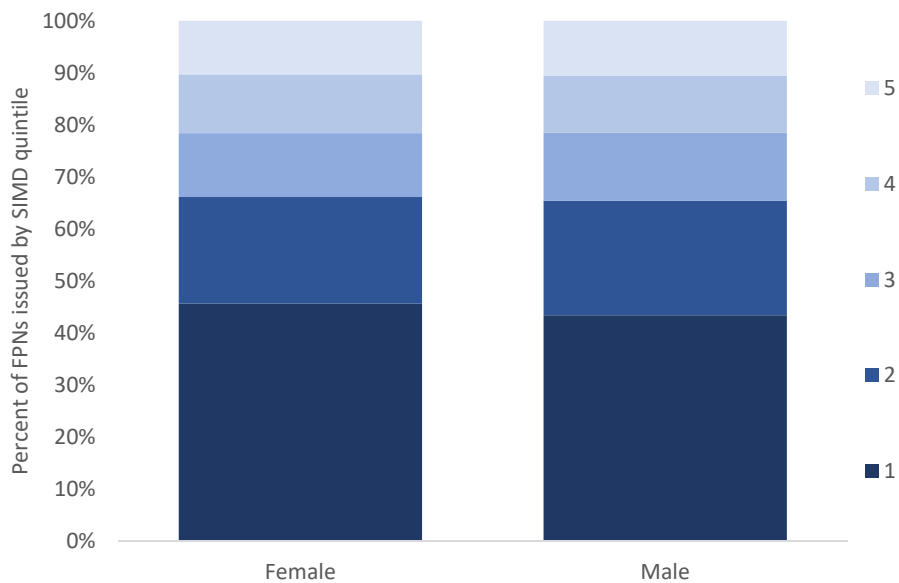


Figure 16: Percentage of FPNs issued to males and females by SIMD quintile (1=most deprived, 5=least deprived), 27th March to 31st December 2020 (n=7,628)

## 8.6 Country of birth profile of FPN recipients by SIMD quintile

Figure 17 shows the proportion of SIMDs issued to people from different countries of birth broken down by SIMD quintile. Again, FPN recipients were more likely to be resident in the most deprived quintile than any of the other quintiles regardless of where they were born. However, those born outside the EU were less likely (36.8%) than those born in the UK (44.4%) or wider EU (43.4%) to be living in one of the 20% most deprived communities of Scotland. Moreover, those born outside the EU were more likely (18.5%) to be living in one of the most affluent communities in the top quintile compared to those who were born in the UK (10.2%) or wider EU (12.9%). Again, we cannot say whether these differences are larger than those we may expect to see by chance given that the analysis is based on tickets issued, and not individuals.

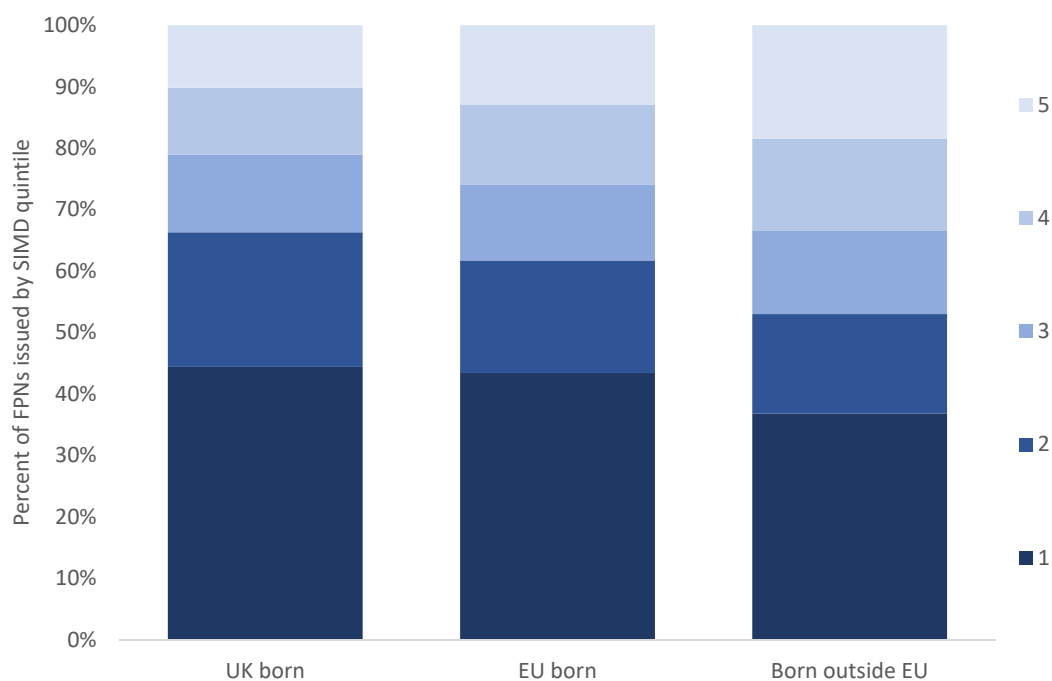


Figure 17: Percentage of FPNs issued to those from different countries or birth by SIMD quintile (1=most deprived, 5=least deprived), 27th March to 31st December 2020 (n=7,197)

## 8.7 Criminal history profile of FPN recipients by SIMD quintile

Finally, the proportion of FPNs issued to residents in different SIMD quintiles was broken down by whether a person was known on Police Scotland's Criminal History System. Figure 18 shows that FPN recipients with a criminal history were more likely to be living in a community in one of the most deprived SIMD quintiles (46.8%) compared to those with no prior history (38.9%). In addition, those known to the police were far less likely (8.5%) to be living in communities in the least deprived quintile (14.0%). Again, however, since this analysis was based on tickets and not people we cannot say whether differences between people in these two groups were statistically significant.



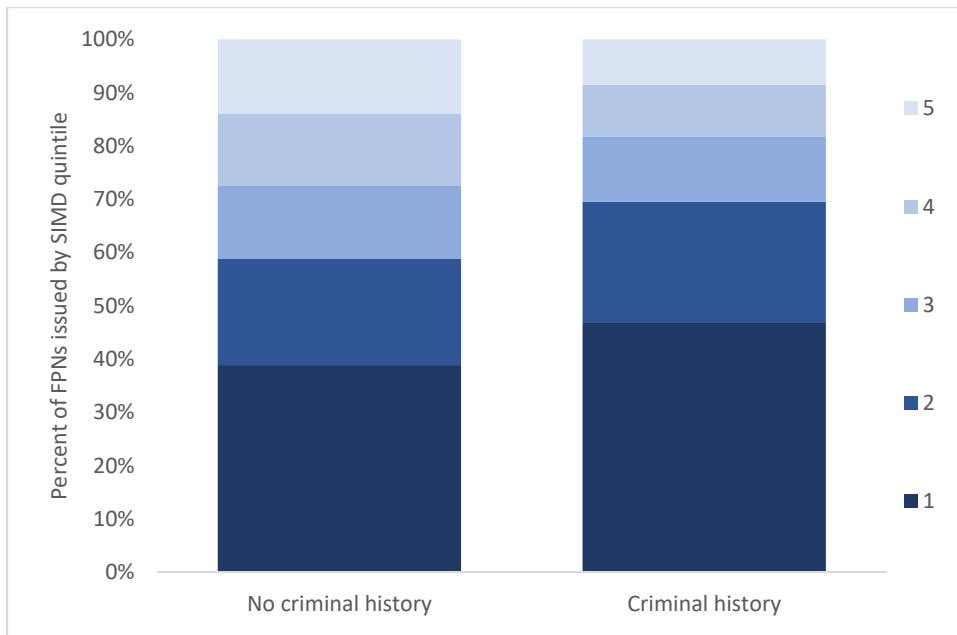


Figure 18: Percentage of FPNs issued to those with or without a criminal history by SIMD quintile (1=most deprived, 5=least deprived), 27th March to 31<sup>st</sup> December 2020 (n=7,644)

## 9 Geographical profile of Fixed Penalty Notices

### 9.1 Number and rate of FPNs by police division

Analysis of data for the first lockdown in Scotland found that seven out of ten FPNs were issued in the West of Scotland, with Greater Glasgow division accounting for by far the largest number of tickets, and Argyll & West Dunbartonshire having by far the highest rate per capita.<sup>71</sup> Both the number and rate of FPNs issued in the North and East of Scotland were far smaller than in the West. This analysis was updated to the end of December 2020 to determine whether the geographical profile of FPNs changed over time.

Figure 19 shows the number (left hand panel) and rate per 10,000 people aged 18 or over living in each division (right hand panel) of FPNs issued in each of the thirteen police divisions across Scotland. Again, Greater Glasgow issued the largest number of FPNs (around three times greater than the next nearest division, Lanarkshire). Argyll & West Dunbartonshire had the highest rate of FPNs per 10,000 people aged 18 or over; however, the gap in rates between divisions has closed since the previous report. The rate of FPNs issued in Argyll & West Dunbartonshire was only slightly greater than that for Greater Glasgow and Renfrewshire and Inverclyde divisions. Divisions in the North of Scotland (North East, Highlands & Islands, and Tayside) issued the fewest FPNs (only 7.1% of the total) and had very low rates per capita. Whereas, those in the West of Scotland (Greater Glasgow, Lanarkshire, Renfrewshire & Inverclyde, Argyll & West Dunbartonshire, Ayrshire, and Dumfries & Galloway) collectively issued the most FPNs (71.6% of the total) and had the highest rates per capita, with the exception of Dumfries & Galloway which was amongst the lowest. The number and rate of FPNs issued in three of the four divisions in the East of Scotland (Lothians & Scottish Borders, Fife, and Forth Valley) was lower than

<sup>71</sup> See section 8 of McVie, S. (2020) [Data report on police use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#). Report to the SPA Authority Meeting on 19<sup>th</sup> August 2020.

those in the West; however, Edinburgh was ranked fourth in terms of both the number and rate of tickets issued.

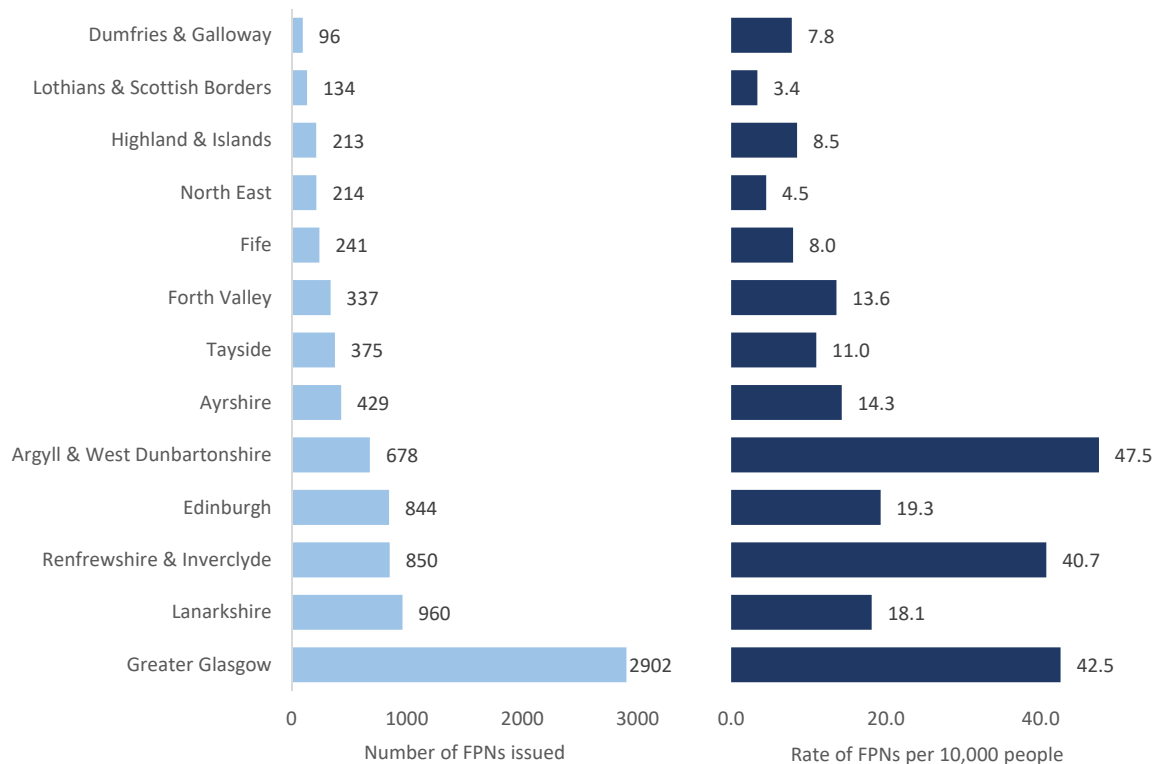


Figure 19: Number of FPNs issued and rate per 10,000 population aged 18+ by division, 27th March 2020 to 31st December 2020 (n=8,273)

Generally speaking, the ranking of divisions based on rates per capita in Figure 19 follows a similar pattern to that of the numbers issued. If the level of enforcement was directly proportionate to population size, the per capita rate would be the same across all divisions; however, there are three high ‘outliers’: Argyll & West Dunbartonshire, Greater Glasgow, and Renfrewshire & Inverclyde. In these three divisions (ranked one to three respectively) the rate of FPNs issued was around double that in Edinburgh, which was ranked fourth. Argyll & West Dunbartonshire, and Renfrewshire & Inverclyde particularly stand out because their ranking based on rate of FPNs is higher than that based on the number of FPNs issued.

## 9.2 Proportion of FPNs to non-residents by division

When interpreting the rate of FPNs in each division, it is important to take account of differences in the number of FPNs issued to non-residents (i.e. people travelling into the area from elsewhere in Scotland or another country). Analysis conducted on FPN data for England and Wales found that disparities in the rates of FPNs issued across police force areas during the initial lockdown period were substantially influenced by people travelling into the area to visit tourist attractions and areas of scenic beauty.<sup>72</sup> Similar analysis for the first lockdown period in Scotland also showed that rates of enforcement in some

<sup>72</sup> Currenti, R. and Flatley, J. (2020) [Policing the Pandemic: Detailed analysis on police enforcement of the Public Health Regulations and an assessment on disproportionality across ethnic groups.](#)

divisional areas (especially Argyll & West Dunbartonshire) were inflated by people travelling into these areas while tight restrictions were in place.<sup>73</sup>

Looking at all FPNs issued between 27<sup>th</sup> March and 31<sup>st</sup> December 2020, 16.4% were issued to people who were not resident in the division in which the regulatory breach occurred. As before, this varied substantially across divisions. Using the same ordering as Figure 19, Figure 20 shows the percentage of all FPNs that were issued to people who were not resident within the division in which the incident occurred (left hand panel) and the adjusted rate of FPNs taking account only of those who were resident in the division (right hand panel). The purpose of this analysis was to determine whether divisions had a similar rate of enforcement when taking into consideration only the resident population. Figure 20 shows that a third of all FPNs issued in Argyll & West Dunbartonshire involved people who were non-residents, making it highest across all divisions. When these tickets were excluded from the analysis, the rate of FPNs issued in Argyll and West Dunbartonshire reduced from 47.5 per 10,000 people (as shown in Figure 19) to 31.4 per 10,000 residents. This is a substantial reduction; however, FPNs issued to non-residents did not fully explain the higher overall rate per capita, which as the right hand panel in Figure 20 shows, remained high compared to most other divisions.

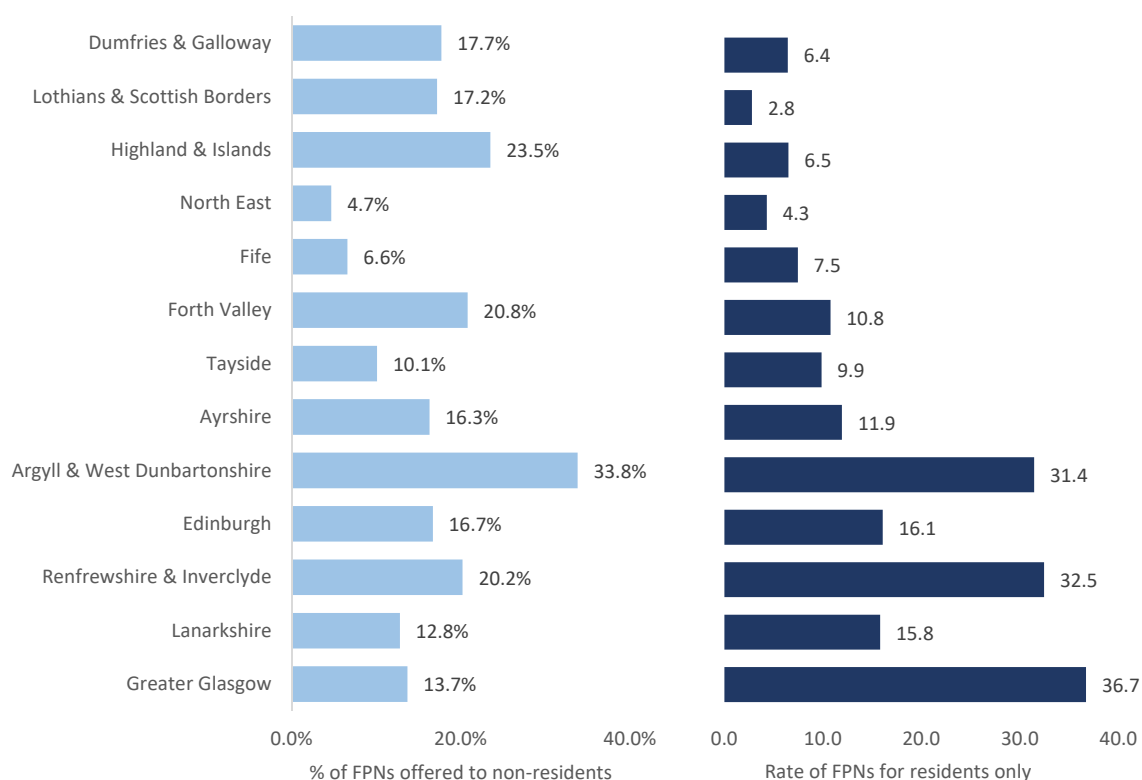


Figure 20: Percentage of FPNs issued to non-residents (left panel) and rate of FPNs per 10,000 residents (right panel) by division, 27<sup>th</sup> March to 31<sup>st</sup> December 2020 (n=6,917)

A similar pattern emerged for Renfrewshire & Inverclyde where a fifth of FPNs were issued to people living outside the divisional boundary. Once these were excluded, the rate of FPNs reduced from 40.7 per 10,000 people to 32.5 per 10,000 residents. Again, this is a substantial reduction, but Figure 20

<sup>73</sup> See section 8.2 of McVie, S. (2020) [Data report on police use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#). Report to the SPA Authority Meeting on 19<sup>th</sup> August 2020.

shows that the rate of FPNs issued in Renfrewshire & Inverclyde continued to be ranked second highest across the divisions. The proportion of FPNs issued to non-residents was lower still in Greater Glasgow, at only 13.7%. While excluding these individuals did reduce the rate of FPNs in Greater Glasgow, it still had the highest rate per 10,000 residents.

Overall, taking account of the non-resident population did not alter the ranking of divisions to any great extent. So, while people breaching the Regulations by travelling across boundaries had some impact on policing – especially in specific areas – this does not fully explain the geographical differences in rates of policing activity across Scotland.

### 9.3 Proportion of FPNs to non-residents by division over the three phases

The proportion of FPNs issued to non-residents within divisions changed substantially over time. This was almost certainly influenced by the changes in restrictions over time and the increasing degree of variation in rules as the Coronavirus spread across different parts of Scotland. Figure 21 shows the percentage of all FPNs issued to non-residents by division across the three phases of the pandemic (note that this analysis focuses on where people were travelling to, and not where they had travelled from). The first panel reveals substantial differences between divisions in the proportion of all FPNs that were issued to non-residents during phase one, when the same restrictions on movement were in place across the whole country. During this phase, we can see that the largest percentage of FPNs issued to non-residents occurred in Argyll & West Dunbartonshire, followed by Forth Valley and Highland & Islands. These are all divisions with significant areas of natural beauty and popular tourist destinations. It was commonly reported during the first phase of the pandemic that people (especially those living in urban areas) flouted the Regulations by travelling outside their local area to take walks or exercise in these types of rural locations.<sup>74</sup>

In the second phase of the pandemic, the overall number of FPNs issued was much smaller, as restrictions were eased for much of this time. However, some travel restrictions were still in place, especially for those living in the central belt of Scotland who were subject to the tightest controls during October. The second panel in Figure 21 shows that there was still some variation in the percentage of all fines issued to non-residents across divisions; however, the differences are far smaller than during phase one. The figures suggest that divisions covering rural parts of Scotland with large areas of natural beauty continued to face particular challenges in terms of people flouting the Regulations by travelling to destinations beyond their local area; although, there was some change in the divisions with the highest proportions. In this second phase, the highest proportion of FPNs issued to non-residents occurred in Dumfries & Galloway, the Lothians & Scottish Borders, and Argyll & West Dunbartonshire.

Moving on to the third phase of the pandemic, for most divisions the percentage of non-residents issued FPNs was around the same or lower than in the second phase. The division that stands out in the third panel of Figure 21 is the Highland & Islands, where the proportion of FPNs issued to non-residents doubled (although it is important to view this in the context of very small numbers, as shown in Figure 19). The percentage of FPNs issued to non-residents in Renfrewshire & Inverclyde also increased substantially in phase three compared to phase two, while the proportions in Argyll & West Dunbartonshire, and the Lothians & Scottish Borders remained about the same as phase two, but were higher than average compared to other divisions.

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<sup>74</sup> See, for example, newspaper headlines in the Glasgow Times: <https://www.glasgowtimes.co.uk/news/18502875.fury-day-trippers-continue-flouting-lockdown-rules-beauty-spot-trips/>; the Daily Record: <https://www.dailyrecord.co.uk/news/scottish-news/roads-closed-scots-beauty-spots-22148442>; and the Scotsman: <https://www.scotsman.com/whats-on/arts-and-entertainment/tourism-chief-blasts-terrible-behaviour-scots-who-flouted-lockdown-rules-beauty-spots-2874019>.

Overall, Figure 21 indicates that police officers working in more remote and rural areas of natural beauty and scenic tourist destinations may have faced the biggest challenges in terms of people breaching travel restrictions, as they were most likely to issue FPNs to individuals from outwith their divisional areas in all three phases of the pandemic. However, the impact of illegal travel in different divisions does appear to have varied over time.

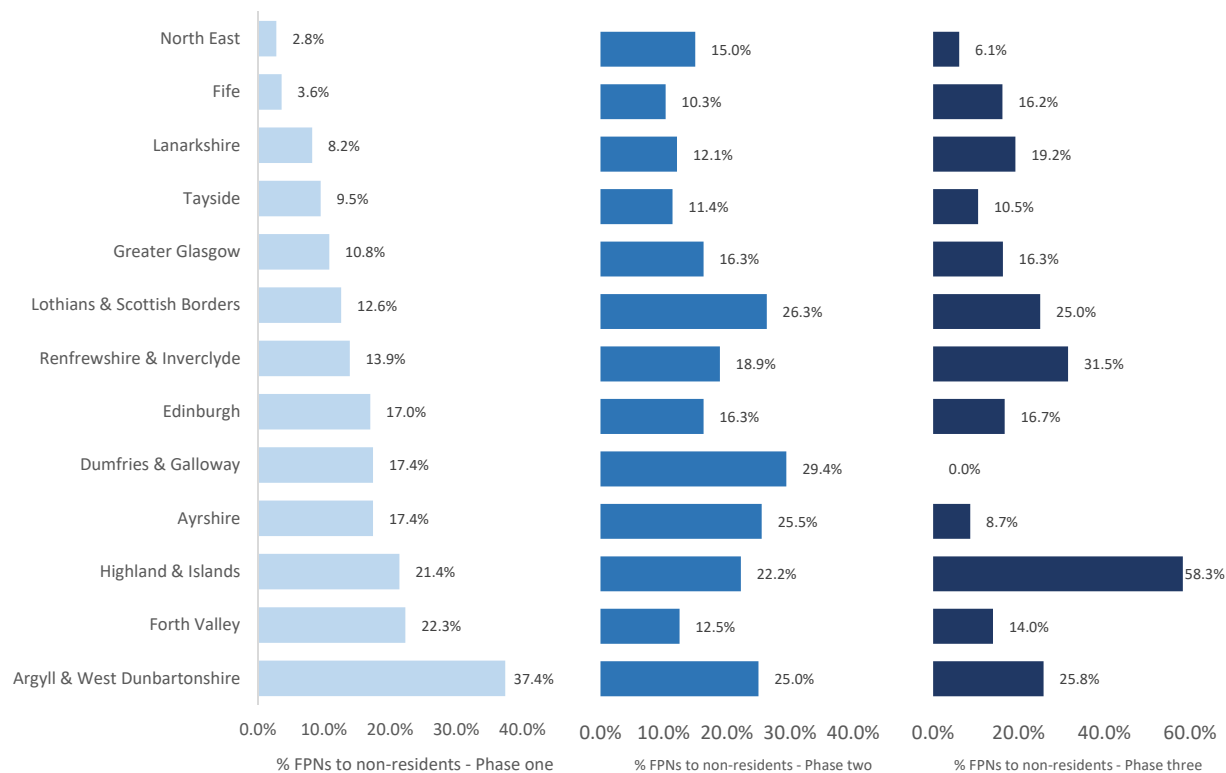


Figure 21: Percentage of FPNs issued to non-residents by division across the three phases of lockdown, 27th March to 31st December 2020 (n=8,273)

#### 9.4 Rate of FPNs in each division across the three phases

Looking at the rates of enforcement for each of the three phases of lockdown separately tells an important story about how policing changed under different periods of restriction. Figure 22 shows that phase one saw the highest rate of FPNs overall, albeit with considerable variation across divisions, which ranged from a rate of 2.2 per 10,000 people aged 18 or over in the Lothians & Scottish Borders to a rate of 33.0 for Argyll & West Dunbartonshire. This reflects a disparity rate between the top and bottom divisions of 15.0. As noted in section 9.1, the three divisions with the highest rate of FPNs per capita were all in the West of Scotland, and their rates were around twice as high or more compared to the other divisions.

During the second phase of the pandemic, the rate of FPNs fell sharply across all divisions and the rate of disparity between the top and bottom division fell to 12.8. The most notable decline in the rate of FPNs occurred amongst the three divisions that had the highest rates during phase one, namely Greater Glasgow, Renfrewshire & Inverclyde, and Argyll & West Dunbartonshire. While rates during the period were exceptionally low for all divisions, it is notable that the rate for Edinburgh fell the least and, as a consequence, was highest during the second phase (at 5.1 per 10,000 people aged 18 or over). This fits with the views expressed by police officers during HMICS interviews of significant problems around

student accommodation and a lack of concern amongst young people about being issued FPNs for breaching the Regulations.<sup>75</sup>

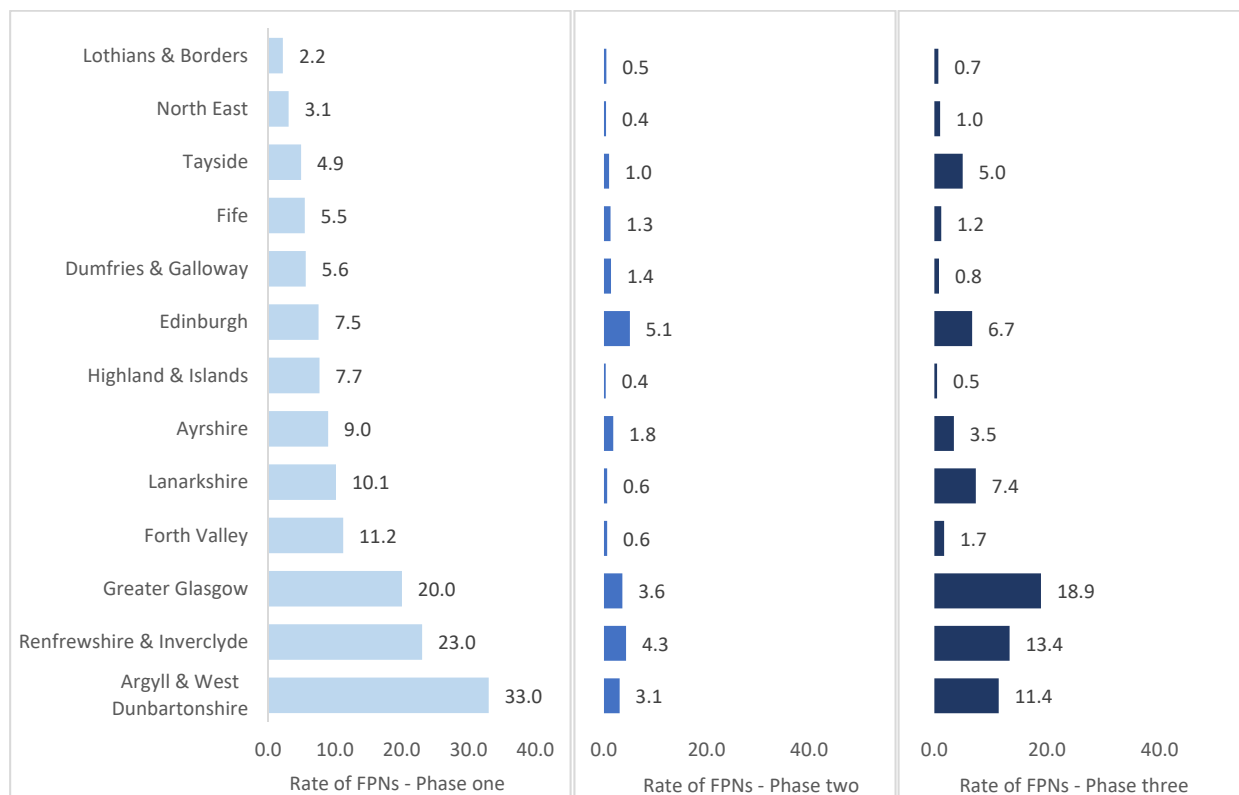


Figure 21: Rate of FPNs issued by division across the three phases of lockdown, 27th March to 31st December 2020 (n=8,273)

Rates of FPN increased on average during phase three of the pandemic, although they did not return to the levels seen during phase one (although bear in mind that the first phase spans three months and the third phase spans two months). Moreover, rates did not increase across the board and this phase reflects the widest divergence between divisions. Most divisions (especially those with the highest rates in phase one) did show an increase in rates of FPN between phases two and three; however, some remained broadly the same (such as Highland & Islands, Fife, and Lothian & the Scottish Borders), and rates in Dumfries & Galloway actually declined. As a result of the changes, the rates during phase three were lowest in Highland & Islands, at just 0.5 tickets for every 10,000 people aged 18 or over, and highest in Greater Glasgow at 18.9 per 10,000. This reflects a disparity rate of 37.8. It is highly likely that this large disparity between divisions with low and high rates during phase three was at least partly due to the introduction of the new levels system in November 2020, which placed different levels of restriction in different parts of Scotland.

Despite continuing problems with large gatherings and student parties encountered, the rate of FPNs in Edinburgh increased only marginally between phases two and three. Edinburgh also moved down in the rankings between phases two and three, from first to fifth. The largest increases in rates during phase three were in divisions with the highest overall rates during phase one: Argyll & West Dunbartonshire, Renfrewshire & Inverclyde, and Greater Glasgow, the latter returning to almost the same rate as phase

<sup>75</sup> See Para 32 of HMICS (2021) [Independent Advisory Group Report on interviews with Police Scotland Officers and Staff – Phase II.](#)

one. The higher rate of FPNs within these three divisions - especially Greater Glasgow - during November and December 2020 is likely to reflect the higher levels of restriction placed on these local authority areas as a result of the rising spread of the Coronavirus. Local restrictions on indoor visits were introduced in September 2020 for individuals living in Glasgow, West Dunbartonshire, and East Renfrewshire, which remained in place for several months. In addition, Scotland’s new system of levels, which came into operation in November 2020, placed eleven local authorities – nine of which were in the West of Scotland, including Glasgow - initially into level three, and then level four, with severely tightened restrictions on travel, businesses, hospitality, and gatherings. Police Scotland bulletins<sup>76</sup> throughout November and December record continuing issues across divisions in the West of Scotland with large student parties, but also new problems, including large gatherings organised in Air BnB properties and other non-residences in an effort to circumvent the Regulations, as well as instances of people travelling into Glasgow from lower tier areas.

### 9.5 Proportion of FPNs in each division across the three phases

To get a clearer picture of the changing nature of policing activity across the three phases, Figure 23 shows the variation across divisions in the proportion of FPNs issued during each of the three phases of the pandemic. Note that this is a comparison of the *relative* use of FPNs (Figure 19 demonstrated significant variation in the *absolute number* of FPNs issued). At the top end of Figure 23, we can see that nine out of ten FPNs in Highlands and Islands division were issued during the first lockdown phase, with only around one in ten of all FPNs issued in phases two or three. On the other hand, at the bottom end of Figure 23, only four out of ten FPNs in Edinburgh were issued during the first phase, around a quarter in phase two (the largest proportion of any division) and around a third in phase three.

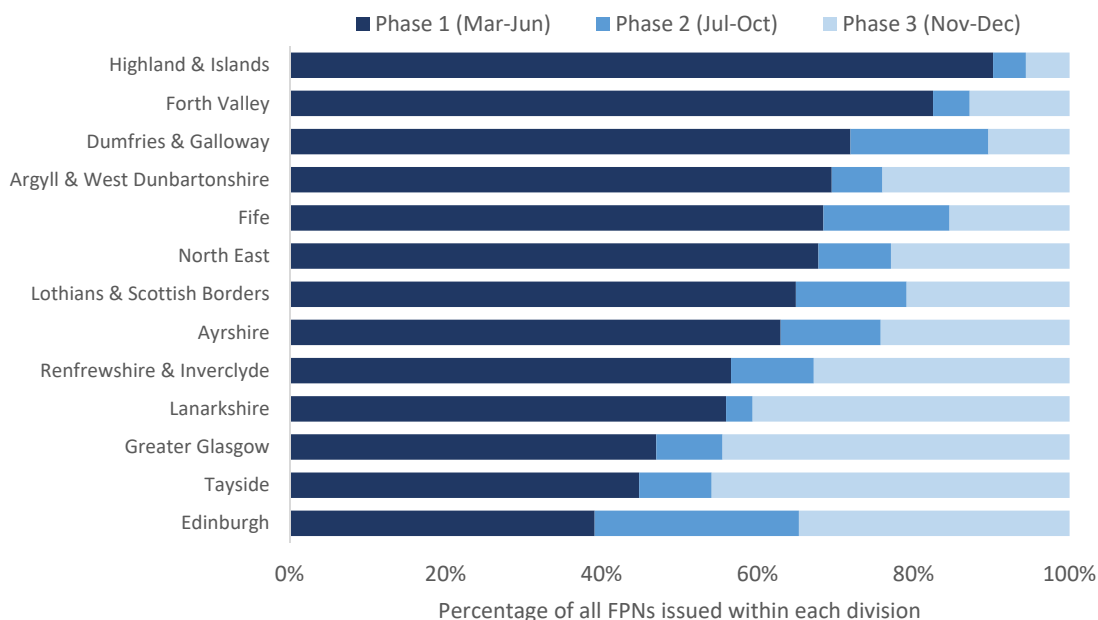


Figure 23: Proportion of FPNs issued during the three phases of the pandemic by division, 27th March to 31st December 2020 (n=8,273)

<sup>76</sup> Police Scotland Covid-19 Bulletins and Briefings were published on the Scottish Police Authority website throughout the pandemic: <https://www.spa.police.uk/strategy-performance/oversight-of-policing-covid-19/>.

There is a distinct urban/rural pattern to the data presented in Figure 23. The divisions that issued the greatest proportion of all FPNs during phase one were largely those that covered more rural parts of Scotland and/or included beauty spots and tourist destinations (which were the focus of the bulk of enforcement activities during the initial lockdown when people’s ability to travel outside of their local area was severely restricted by the Regulations). By contrast, those divisions that issued a larger proportion of FPNs during phase three mainly include urban conurbations with large populations, including sizable numbers of students. It was noted earlier that indoor parties and gatherings became an increasing issue of concern in terms of the spread of the disease during phases two and three, and thus became a primary focus of police enforcement. Figure 23 indicates that this was particularly the case in the divisions including three of Scotland’s four largest cities, namely Glasgow, Edinburgh and Dundee; although, this did not seem to be case for Aberdeen (in the North East division).

## 10 Locus and timing of Fixed Penalty Notices

### 10.1 Locus of FPNs

Analysis of data from the first lockdown period showed that seven in ten of all FPNs issued were as a result of breaches of the Regulations in public places (e.g. lack of social distancing in public areas and parks or unnecessary travel to scenic and rural locations); with just three in ten FPNs issued as a result of breaches in private places or indoor locations (e.g. social gatherings of multiple households or house parties).<sup>77</sup> Over the course of the pandemic, however, the Regulations changed significantly to focus on restricting social contact between households and, consequently, the nature of police enforcement adapted to address this.

Looking at the overall picture from 27<sup>th</sup> March to 31<sup>st</sup> December 2020, Table 5 shows the number and percentage of FPNs issued by locus type. Note that for over a fifth of FPNs (n=1,844) the locus of the incident was not recorded on the ticket, so the analysis presented in this section may be subject to some error. Based on the available data, more than six out of ten FPNs (61.7%) involved incidents occurring indoors or in a private place (e.g. someone’s home, a pub or a restaurant) while just under four in 10 (38.3%) were issued as a result of some breach of the Regulations in a public place (e.g. a park, beach or someone’s garden). This is a substantial change from the trends found in the previous analysis of the first lockdown phase, discussed above.

*Table 5: Number of FPNs by locus type, 27<sup>th</sup> March to 31<sup>st</sup> December 2020*

| <b>Locus type</b>     | <b>Number of FPNs</b> | <b>% of all FPNs</b> | <b>% FPNs where locus recorded</b> |
|-----------------------|-----------------------|----------------------|------------------------------------|
| Indoors/private place | 3,965                 | 47.9%                | 61.7%                              |
| Outdoors/public space | 2,464                 | 29.8%                | 38.3%                              |
| Not recorded          | 1,844                 | 22.3%                | -                                  |
| <i>Total</i>          | <i>8,273</i>          | <i>100%</i>          | <i>100%</i>                        |

Note: Percentages may not sum to 100 due to rounding

<sup>77</sup> See section 7 of McVie, S. (2020) [Data report on police use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#). Report to the SPA Authority Meeting on 19<sup>th</sup> August 2020.



Comparison with the previous results for the initial lockdown period indicates that the pattern of FPNs changed substantially over the course of the pandemic. To look at this in more detail, Figure 24 shows the proportion of FPNs issued within each phase that involved an indoor or outdoor locus, but also taking account of the cases for which information was missing. As discussed above, during the first phase of the pandemic the majority of all FPNs issued (where locus was known) involved activities that occurred out of doors (e.g. beauty spots, beaches or parks). However, by phases two and three the vast majority of incidents (where locus was known) involved indoor gatherings. This shift in locus largely reflects the changing emphasis of Regulations and guidance that shifted away from messaging around ‘stay at home’ during the first phase towards ‘no social gatherings’ during phases two and three. However, it likely also reflects higher levels of reporting to the police of house parties or domestic gatherings by members of the public. Regardless of the specific reasons for the change, it represents a very different dynamic in terms of engagement between the public in the police between the first lockdown and later phases of the pandemic.

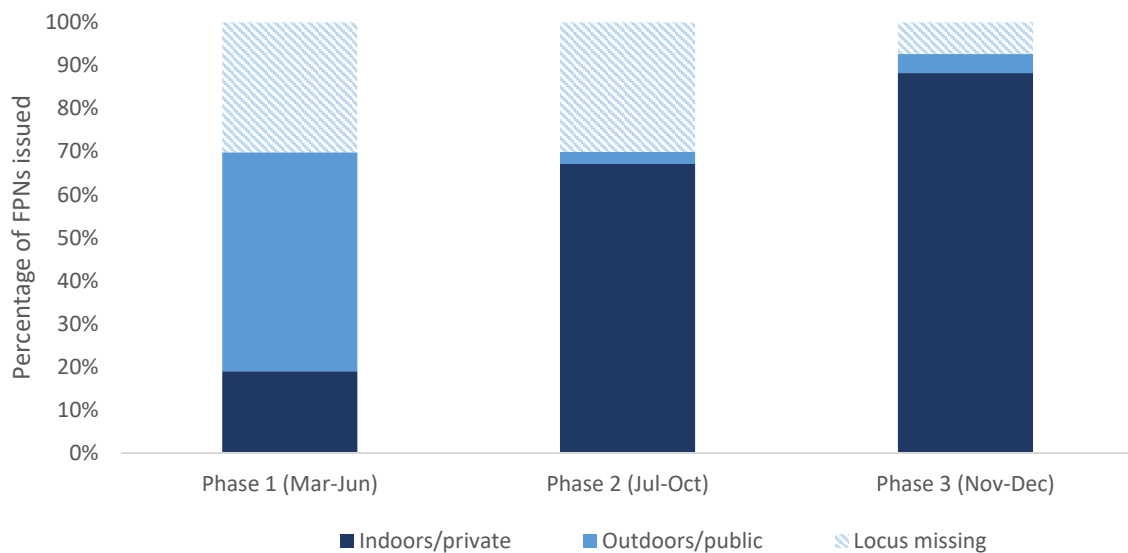


Figure 24: Percentage of FPNs issued in different types of locus by phase of the pandemic, 27th March to 31st December 2020 (n=8,273)

## 10.2 Timing of FPNs by locus

Previous analysis for the first phase of lockdown showed substantial fluctuation in when FPNs were issued throughout the day.<sup>78</sup> Between March and May 2020, activity was highest during the late afternoon and evening/early morning, and lowest during the morning and early afternoon. This was true for both indoor and outdoor incidents, although incidents in public places tended to peak around 4pm compared to a peak at around midnight for indoor incidents. As there were far fewer indoor incidents, the bulk of Coronavirus-related enforcement tended to occur during daytime hours.

As shown in Figure 24, the locus at which FPNs were issued changed dramatically between the first lockdown phase and the subsequent two phases. As a result, the temporal profile of FPNs issued between March and December 2020 also shifted, with a much greater emphasis on activity during the

<sup>78</sup> See section 7 of McVie, S. (2020) [Data report on police use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland](#). Report to the SPA Authority Meeting on 19<sup>th</sup> August 2020.

late evening and early morning hours. Figure 25 shows that the total number of FPNs issued over this nine month-period was predominantly accounted for by indoor gatherings or parties that occurred between around 10pm and 3am. The number of FPNs issued in relation to outdoor occurrences was much smaller and the trend continues to show some problems in the early morning hours, but most activity during the late afternoon and early evening.

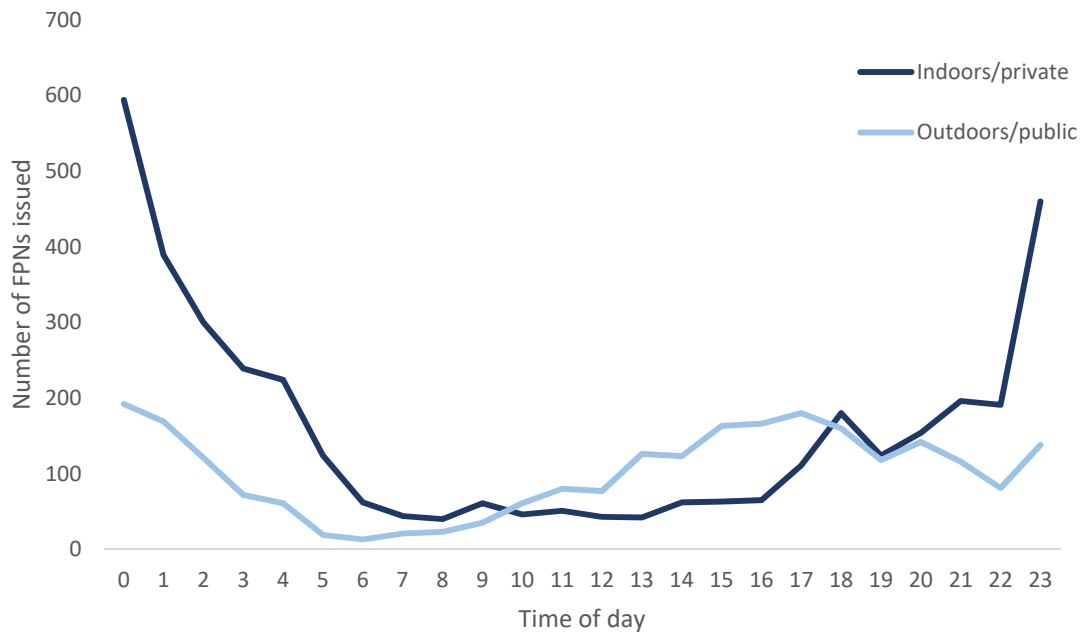


Figure 25: Number of FPNs issued by locus and time of day, 27th March to 31st December 2020 (n=6,328)

Looking in more detail at the temporal pattern of FPNs over time, Figure 26 shows the number of FPNs issued at different times of day across each of the three phases of the pandemic. There is a clear shift from phase one, where the bulk of incidents involved outdoor encounters and occurred in the afternoon and early evening (peaking at around 4-5pm), to phases two and three, where a far higher proportion of FPNs issued involved indoor gatherings in the late evening or early hours of the morning. In other words, this changing temporal pattern of enforcement indicates a shift away from daytime policing of open spaces towards a ‘night time economy’ pattern of policing focused on private places, which would have impacted significantly on shift patterns and operational planning.

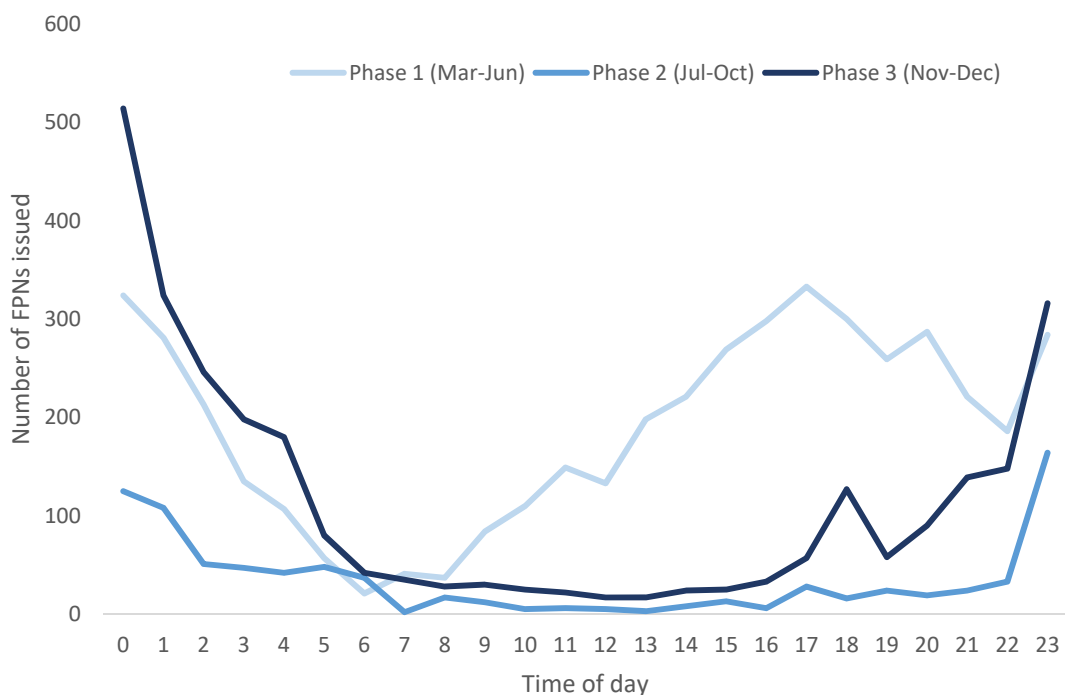


Figure 26: Number of FPNs issued by phase of lockdown and time of day, 27th March to 31st December 2020 (n=8.172)

### 10.3 Locus of FPNs by division

As might be expected, there were also geographical differences in the locus of incidents. Figure 27 shows the percentage of all FPNs that involved incidents occurring indoors versus outdoors for each division. Note that the missing data is excluded for this analysis as it varied substantially by division and makes comparison difficult, although it does mean that the patterns in Figure 27 may not give a completely accurate picture.

Highland & Islands division had the greatest proportion (73.8%) of incidents that involved an encounter in an outdoor location or public space. It is followed by Forth Valley (66.9%), Dumfries & Galloway (59.6%), and Argyll & West Dunbartonshire (50.1%). This is consistent with the data presented earlier, in Figure 21, as the divisions that issued the largest proportion of all FPNs to non-residents. At the other end of the spectrum, the divisions with the largest proportion of FPNs issued due to indoor gatherings or activities in private spaces were Edinburgh (73.8%), Greater Glasgow (67.4%), and Lanarkshire (65.7%). These were three of the four divisions that issued the largest relative proportion of all FPNs during the second or third phase of the lockdown (shown in Figure 23). Again, these data provide evidence that the pandemic impacted on policing in different ways and in different parts of the country at different stages of the lockdown, which highlights the major challenges for Police Scotland over this nine month period. It also demonstrates the importance of having a local, rather than a national, policing approach during the course of the pandemic.

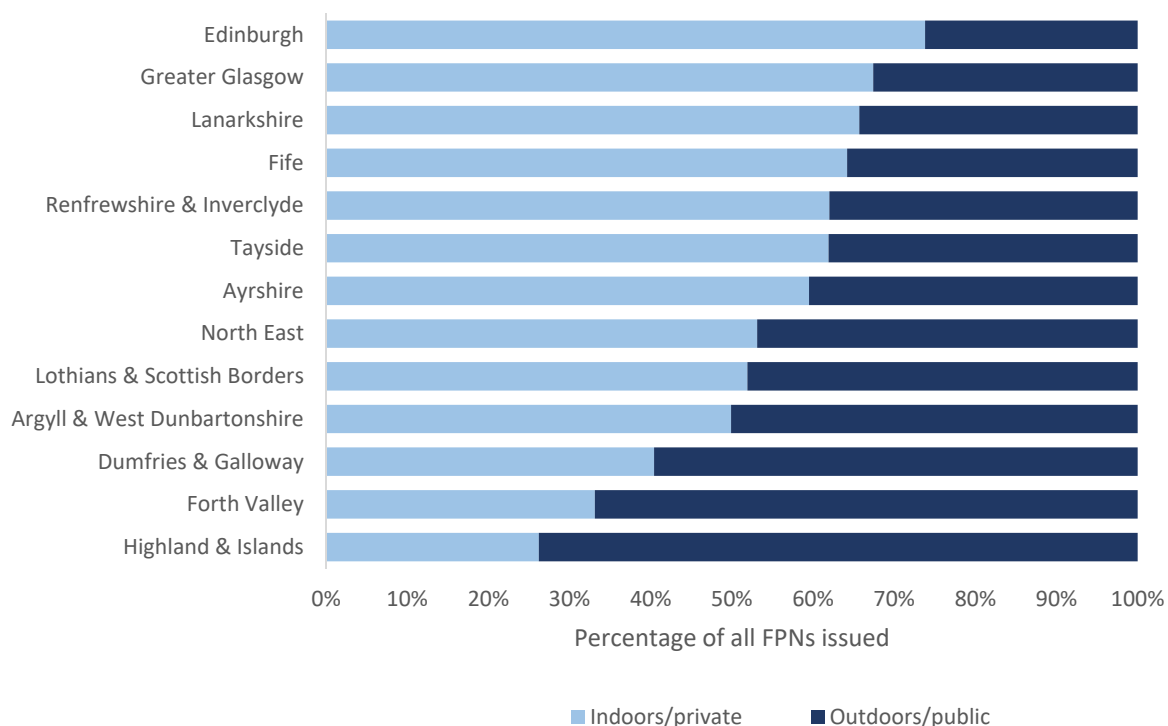


Figure 27: Percentage of FPNs issued in different types of locus by division, 27th March to 31st December 2020 (n=6,429)

## 11 Conclusion

The contents of this report have provided a detailed analysis of available data about the FPNs issued by Police Scotland between 27<sup>th</sup> March 2020 and 31<sup>st</sup> December 2020, taking account of the size of the financial penalties issued, the characteristics of those who were fined, the geographical area in which incidents occurred, and the timing and locus of events. It has also provided analysis of change over time in the profile of FPNs and offered some reflections on potential explanations for these changes, specifically with reference to changes in the Regulations under which Police Scotland were operating and wider societal factors that may have impacted on patterns of enforcement.

The report benefited from having access to data from two data sources compiled by Police Scotland: a database of all the FPN tickets issued in Scotland; and information from the Coronavirus Intervention (CVI) system introduced to monitor interactions with members of the public during the course of the pandemic. While the CVI system did not provide an accurate measurement of all policing activity, comparison to the FPN database shows that it did provide a good account of the changing trends over time. No equivalent database was established by other UK police forces during the pandemic. As a result, the CVI system represents good planning on the part of Police Scotland and a sound investment in terms of monitoring the impact of the pandemic of policing activity.

Over the course of the time period covered by this report, there were many amendments to the Regulations and guidelines that were introduced with the intention of curbing the spread of the Coronavirus and saving lives across the UK. Each of these amendments had substantial implications for the public, in terms of placing difficult restrictions on people’s freedom of movement and association. However, they also impacted significantly on policing and placed increasingly complex demands on police officers to enforce the law while at the same time maintaining a degree of discretion in handling

situations that arose in the context of potential breaches of the Regulations. From the start of the pandemic, the Chief Constable of Scotland emphasised his commitment to ‘policing by consent’ during the course of the pandemic and issued officers with guidance about following the Four Es approach (i.e. Engage, Explain, Encourage and, only when necessary, Enforce). The data show that the vast majority of all encounters recorded by officers did involve engagement, explanation and encouragement, and that less than one in twelve interventions involved the use of enforcement. Moreover, the vast majority of all enforcement involved use of a financial penalty which avoided a criminal conviction. There is clear evidence, therefore, that the Four Es model was successfully applied in Scotland.

Of course, the role of the police was contingent on the actions of the public in terms of complying with the Regulations and guidelines (which were often competing or conflicting, difficult to follow and rapidly changing). For the most part, evidence suggests that the vast majority of the public complied with the Regulations, although many struggled to follow them to the letter, and a small minority did not comply at all. In general, it appears that compliance was highest during the first lockdown period, when the rules were clear and consistent across the whole population. However, over time, as the Regulations became more differentiated (e.g. across different localities), public messaging became less clear (even by government ministers), and examples of high profile breaches diminished public confidence in the effectiveness of the Regulations, the challenges for policing increased. The data presented in this report provide a lens through which to examine these challenges based on the changing profile of those who were subject to enforcement, the differential demands on local policing across the country, and the shifting nature of when and where policing activity was required.

Looking at the big picture, the data reflect a restrained approach to policing during the pandemic. Just over 8,000 FPNs were issued as a result of breaches to the Coronavirus Regulations in Scotland between March and December 2020. This represents a fraction of all policing activity, given that the police recorded around 380,000 crimes and offences over the same period of time. It also reflects a marginal impact on members of the Scottish population, given that less than 0.2% of Scottish adults were issued an FPN. In addition, despite having the power to issue multiple tickets at incremental amounts, the vast majority of FPNs issued during this time period were recorded as being for the lowest ticket amount of £60, which suggests that repeat ticketing was relatively uncommon. It is likely that this pattern of minimal enforcement reflects a combination of high levels of adherence amongst the population and Police Scotland’s commitment to the use of the Four Es approach. Nevertheless, the data do show variation over time in the use of enforcement, with larger peaks in activity during April and May (when the restrictions were at their strongest) and again in November and December (when the restrictions were re-tightened).

The link between the use of enforcement and the easing and tightening of restrictions is indicative of a measured approach to policing; however, the data do reflect shifts in the profile of those who were being impacted by the restrictions over time. To explore these shifts over time, data analysis was conducted across three phases: phase one, from May to June 2020, broadly represented the initial lockdown period; phase two, from July to October 2020, encompassed the period of summer easing and the gradual tightening of restrictions on travel and social gatherings; and phase three, from November to December 2020, reflected the re-tightening of restrictions on travel, hospitality, entertainment, business and gatherings.

Overall, the data show that there were three times as many tickets issued to men than women, and younger people were substantially more likely to be fined than older people, although the age profile for both sexes was the same. There was an increase in the proportion of tickets issued to women between the first two phases and the third phase (from around a fifth to a third). However, there was a more notable increase in the proportion of FPNs issued to people aged 30 or under, which rose from

around five in ten during phase one to eight in ten during phases two and three. These findings fit with wider evidence that compliance was lower amongst younger people as the pandemic wore on; although it suggests that non-compliance amongst younger women was increasing at a faster rate than amongst young men. However, these findings are also likely to be reflective of changes in the circumstances in which policing activity was occurring and the reasons for which FPNs were being issued by the police.

Towards the autumn of 2020, there was significant concern about the spread of the Coronavirus amongst younger people, and especially the student population as they returned to colleges and universities in September and October. The new Regulations that were introduced on the 14th of September, which placed tight restrictions on the size of gatherings ('the rule of six'), undoubtedly had a disproportionate impact on younger people, especially students who were living away from home in halls of residence and other student accommodation and looking forward to enjoying 'student life'. During phase two, it was widely reported that a large amount of police time was spent breaking up student parties. Nevertheless, the overall number of FPNs issued during this period was much lower than during phases one or three. In fact, the number of FPNs issued during phase three was more than three times higher than during phase two, although it still involved a greater level of enforcement amongst those at the younger end of the age spectrum. While the increased rate of enforcement in phase three undoubtedly reflected some continuing issues with the student population, it is probable that the age profile of FPNs during phase three was representative of a much wider cross-section of the population, but especially younger people, who were growing increasingly frustrated and non-compliant with the restrictions.

It is well recognised that the pandemic has had a particularly acute impact on people from Black, Asian or Minority Ethnic (BAME) backgrounds within the UK. During the initial lockdown period, data for England and Wales showed that rates of FPN were 1.8 times higher for people from BAME backgrounds than white people, while similar data for Scotland showed a smaller difference of 1.3. In this report, we found an ethnic disparity of only 1.1 and, looking across the three phases, the likelihood of receiving an FPN amongst those from BAME communities reduced to the extent that it was lower compared to white people during phase three. Published data for the UK have suggested that compliance was consistently lower amongst people from minority ethnic backgrounds during the course of the pandemic. However, the data presented in this report suggest that any differences in enforcement between white and non-white groups were marginal and may be more readily explained by demography rather than ethnicity.

While information on the impact of the pandemic on non-UK nationals is relatively scarce, there is some evidence to suggest that the more fragile labour market position of immigrants (e.g. as key workers, self-employed or part of the 'gig' economy) may have impacted on their ability to comply with the Regulations. However, non-UK born individuals would also include students travelling to the UK to study at our universities. The data presented in this report show that the vast majority of people who received FPNs in Scotland were born in the UK; however, the rate of issue was 1.3 times higher for people born in the EU and 1.7 times higher for those born outside the EU. The highest proportion of FPNs issued to non-UK nationals occurred in phase two, which coincides with the concern over the student population. Although the data do not include information on employment status, the age profile of the non-UK born FPN recipients indicates that many of them may well have been students. Therefore, albeit small in absolute terms, it is likely that the restrictions did have a particular impact on a number of young people who travelled to Scotland to study (who may or may not have been fully aware of the restrictions in place).

One of the key findings from previous reports about the use of FPNs in Scotland was the high proportion of recipients who were already known to the police at the time of enforcement. During the first lockdown, it was the view of police officers in Scotland that a very small section of the population had

created a disproportionate amount of work from a policing point of view. However, more recent interviews with officers highlighted a perception that compliance had waned across a wider swathe of the population, especially amongst young people. As a result, it was stated that there was often an acceleration in the speed at which officers went through the Four Es. The data showed that, overall, six out of ten FPNs were issued to people who were already known on Police Scotland's criminal history system; however, this varied across demographic groups (e.g. it was higher amongst older FPN recipients and lower amongst those born outside the UK). More importantly, it declined substantially over time. This suggests that as time went on, and enforcement was being applied more quickly, it was increasingly impacting on younger people and those who had no prior history of offending.

The impact of the pandemic on individuals living in poverty or in deprived communities has been a significant concern for policy makers across the UK, especially in the context of the 'levelling up' agenda. Linking the home datazone of FPN recipients to the Scottish Index of Deprivation (SIMD), analysis showed that FPNs were most likely to be issued to people living in the 10% most deprived communities in Scotland and least likely to be issued to those living in the 10% least deprived communities. However, the disparity between those at the top and the bottom of the SIMD changed dramatically over the course of the pandemic. During phase one, there was an extremely steep deprivation gradient, such that 12.6 times more FPNs were issued to people living in the 10% most deprived communities compared to those in the 10% least deprived communities. During phase two, however, this disparity between those living in the most and least deprived deciles reduced from 12.6 to just 1.3. The main reason for this was a sharp reduction in the proportion of fines that were issued to people living in the 10% *most* deprived communities, and a sharp increase in the proportion of fines issued to those living in the 10% *least* deprived communities.

This shift in the deprivation profile of FPNs is uncommon in criminal justice data, and demonstrates the peculiar nature of the Coronavirus Regulations in impacting on people who would not otherwise have been, or normally be, subject to enforcement. The increase in enforcement amongst those living in some of Scotland's most affluent communities is undoubtedly related to incidents involving students during September and October. Indeed, the four most common home datazones amongst those receiving FPNs during phase two were areas containing university halls of residence and other student accommodation in the cities of Edinburgh and Glasgow. Nevertheless, it is important to bear in mind the total number of FPNs issued during this second phase was much smaller than during phases one and three.

During phase three, the distribution of FPNs according to the recipient's home SIMD decile changed again, but it did not return to the high level of skew seen during phase one. The disparity between FPNs being issued to people living in the 10% most deprived communities compared to the 10% least deprived rose from 1.3 to 2.9. This reflects an increase in inequality, but does not approach anywhere near the level seen in phase one. During this third phase, the percentage of FPNs issued to people who were living in the most deprived SIMD decile remained around the same as phase two, but there was a much flatter distribution at the more affluent end of the SIMD scale. All ten of the most common home datazones amongst FPNs recipients during phase three were located in central Glasgow, and most were located close to some kind of student accommodation. Although, police officer accounts indicate that the problems encountered during phase three involved a far wider range of younger people than just students.

More detailed analysis of the deprivation profile of FPN recipients found no difference between men and women and only a slight difference by ethnic group (with white people being slightly more likely to live in deprived communities). There was also a difference according to country or birth, with non-UK nationals being less likely than UK born FPN recipients to be living in deprived communities. While

those with a criminal history also had a more deprived profile than those who did not. The biggest difference in the deprivation profile of FPN recipients was in terms of age, whereby those aged between 16 and 25 were by far the least likely to be living in areas of deprivation. However, since the analysis was based on 'tickets' and not 'individuals' (and individuals could have been issued more than one ticket) we cannot be certain that there were any significant differences between demographic groups.

Understanding the impact of lockdown on local policing is important, since it is clear that that the pandemic has impacted on different areas of Scotland in very different ways. Overall, Greater Glasgow division issued by far the largest number of FPNs in total; however, taking population size into account, the estimated rate in Greater Glasgow was very similar to that in Argyll & West Dunbartonshire and Renfrewshire & Inverclyde. Generally speaking, divisions in the North and East of Scotland used less enforcement than those in the West, the exception being Edinburgh which was ranked fourth overall in terms of both number and rate of FPNs (although its rate was less than half that of the top three divisions). Much has been reported in the media about people flouting the travel restrictions, especially with regards to visiting scenic beauty spots and tourist destinations. Analysis showed that while FPNs issued to non-residents was higher in more rural divisions with areas of natural beauty, excluding these individuals only partially reduced the rates in Argyll & West Dunbartonshire and Renfrewshire & Inverclyde. Moreover, there was change over time in the divisions that were most impacted by issuing FPNs to non-residents. So, while breaches of travel Regulations did have an impact on policing, this happened in different ways and at different times in different places, and it does not fully explain the geographical differences in local policing activity across Scotland.

Looking at change over time in the rate of enforcement activity across divisions offers some insight into the way that different phases of the pandemic impacted on local policing. During the first phase of lockdown, by far the largest estimated rate of FPNs was Argyll & West Dunbartonshire, followed by Renfrewshire & Inverclyde and Greater Glasgow. During the second phase, the estimated rates declined substantially across all divisions; however, Edinburgh had the largest rate during this phase. While, by phase three, Greater Glasgow had the largest estimated rate of FPNs, followed by Renfrewshire & Inverclyde, and Argyll & West Dunbartonshire. These changes over time no doubt reflect both ongoing challenges (particularly in these three western divisions) as well as new problems (such as in Edinburgh during the second phase). It is impossible to summarise the various nuances of change across divisions over time. However, a comparison of the percentage of all FPNs that were issued during the three phases of lockdown shows that policing in the most rural and remote parts of Scotland were most impacted during the first phase of the pandemic, while policing in urban, densely populated areas (which included large student populations) was most impacted during the second and, especially the third phase. In addition, it seems clear that enforcement was much greater overall in divisions that were affected most greatly, and for the longest periods, by the introduction of localised restrictions.

One particular consequence of change over time in the Regulations and public messaging was a distinct change in the locus of where policing encounters took place. During the first lockdown when people were told to 'stay at home', the vast majority of FPNs were issued as a result of breaches that occurred in outdoor locations and public places (such as parks, beaches and areas of natural beauty). However, during phases two and three, when the messaging was more complex and largest areas of concern were around social gatherings and household mixing, the vast majority of FPNs were issued at incidents occurring indoors or in private spaces (including people's homes, rented properties and other private venues). This change in both the focus of the messaging and the increasingly localised restrictions which targeted densely populated local authorities helps to explain why more rural divisions issued a larger proportion of all FPNs in phase one, while more urban divisions issued a larger proportion in phases two and three. However, this shift in locus also impacted on the temporal pattern of



enforcement, which moved away from daytime activity towards a pattern of policing that is more traditionally associated with the night time economy. Clearly this must have impacted on changing shift patterns and operational planning for senior officers in some divisional areas as the pandemic went on.

To conclude, the data presented in this report provide valuable insights into the changing nature of one small but important aspect of policing - the use of FPNs - in the context of the pandemic in Scotland. The data show that the pandemic impacted on policing in different ways, in different parts of the country, at different stages of the lockdown. It demonstrates that having a national strategy, in the form of the Four Es model, has helped to minimise the use of enforcement; however, the practical challenges in terms of the scale and nature of demand for policing have necessitated a local, rather than a national, policing approach throughout the course of the pandemic. It is clear that police use of enforcement has involved different groups of people, from different demographic backgrounds and very different social circumstances, at different points in time. It is not possible from the data presented here to comment on the changing reasons for FPNs being issued, the circumstances in which encounters occurred, or the demeanour of those involved at the time of the FPN being issued. However, the data do highlight a distinctive shift in the population of people who were subject to policing at certain points of the lockdown. There is no doubt that the ongoing nature of the pandemic, and the frequently changing Regulations, have created challenges for both the public and the police in ways that could not easily have been anticipated.

## Work Plan

The Independent Advisory Group Work Plan reflects the work the group has undertaken to ensure delivery against the group's terms of reference, what has been publicly reported, who has been engaged, and plans in place to complete any outstanding pieces of work. The work programme is designed to be iterative, reflect changes in priorities over time, and leave sufficient flexibility to address matters urgently when this is required.

The agreed areas of focus are:

- i. The data and evidence required to support the work of the IAG as laid out in the terms of reference, and understanding what the data and evidence are telling us. Data and evidence will: be collated and reviewed; inform recommendations on an ongoing basis; and be reflected in public reporting.
- ii. Delivering and promoting access routes into the group via professional and community networks as well as open access via a public portal, to enable the public and impacted groups to share perspectives and give evidence to the IAG on their experiences. Findings are reviewed; inform recommendations on an ongoing basis; and are reflected in public reporting. Particular attention is paid to ensuring any disadvantaged or impacted groups are able to participate.
- iii. Maximising the use of the professional input and expertise from within and outside the group, to access and review supporting evidence, offer advice, and inform associated recommendations.
- iv. Focus on the human rights implications of the use of the temporary powers.
- v. Set up processes which allow the group to access data and public perspectives to offer advice on a "live" basis, to support the policing response to any changes in lock down and public health guidance.

| Work Stream  | Actions  | Status Update  |
|--|--|--|
| <p>Communications – raising awareness of the work of the Advisory Group, establishing access routes into the group for public and stakeholders</p> | <p>IAG email address made available for public and stakeholder contact</p> <p>Citizenspace portal for public feedback and contact</p> <p>Website presence and public updates</p> | <p><a href="mailto:COVID19IndependentAdvisoryGroup@spa.pnn.police.uk">COVID19IndependentAdvisoryGroup@spa.pnn.police.uk</a></p> <p>Routes into the IAG have been promoted by IAG members to wider contacts and stakeholders, with details available online, <a href="#">IAG contact us</a></p> <p>115 responses were received 1 June 2020 – 14 June 2021, informing the group’s considerations.</p> <p>Web updates on the work of the group remain aligned to reports to the SPA. The latest meeting notes are made available online following each report to the SPA Board <a href="#">IAG public reporting</a></p>   |
| <p>Engagement</p>  | <p>IAG members routinely reach out across their own networks to facilitate evidence gathering and support participation.</p>   | <p>Members promote participation via professional and community networks and alternative access channels are available to help combat digital exclusion.</p> <p><b>5 August 2020.</b> Article by IAG Chair published in Policing Insight. “Policing the pandemic: How Scotland’s IAG led the way on human rights under emergency coronavirus powers”.</p> <p><b>2 September 2020.</b> The work of the IAG, including the contribution of the academic community to the work of the group, features in <a href="#">SIPR Annual Report</a>.</p> <p><b>13 August 2021.</b> <a href="#">HMICS Annual Report 2020-21</a> references the wide range of communities and interests, key human rights organisations, and representatives from bodies with specific responsibilities in relation to policing in Scotland (including HMCIC), actively participating in the IAG.</p> |

| Work Stream       | Actions  | Status Update   |
|-------------------|--|---|
| <p>Engagement</p> | <p>Engagement and information sharing with the National Independent Advisory Group (NISAG)</p> <p>Engaging staff associations</p> <p>Input, perspectives and expertise are invited from a range of stakeholders, to contribute to the work of the group.</p> | <p><b>18 August 2021.</b> Professor McVie presented on the work of the IAG, and the chair and members participated in a joint SPA/ Police Scotland roundtable event <a href="#">Policing and the Pandemic - the Scottish Experience</a></p> <p>IAG Chair attended the June 2020 NISAG meeting, and the IAG has built closer links with NISAG, sharing information where appropriate.</p> <p>The IAG Chair has met with senior office bearers in the Scottish Police Federation and the Association of Scottish Police Superintendents.</p> <p><b>30 July 2020 and 5 October 2020.</b> COSLA, Scottish Community Safety Network, Scottish Government Police Division and the academic community contributed questions for the IAG/ SPA webinars.</p> <p><b>30 October 2020.</b> Mike Callaghan, COSLA Policy Manager, attended and contributed to IAG discussions.</p> <p><b>6 November 2020.</b> Cllr Kelly Parry, COSLA Community Well Being Spokesperson, and Mike Callaghan COSLA Policy Manager. The perspective from COSLA members is that there has been a good, robust policing response, and that Police Scotland’s approach has their members’ full support.</p> <p><b>11 December 2020.</b> Denis Hamill, Chief Data Officer and Calum Dundas, Interim Data Governance Lead from Police Scotland attended to discuss the Police Scotland Data Strategy.</p> |

| Work Stream                 | Actions  | Status Update   |
|-----------------------------|--|---|
| Engagement                  |  | <p><b>12 February 2021.</b> Chief Superintendent Eddie Wylie, Scotland Commander, British Transport Police, briefed members on BTP’s use of the 4E’s approach, and undertook to engage with CYPSCS on the work of the BTP Vulnerability Team in safeguarding young people.</p>  |
| Data and Evidence Gathering | <p>Key questions and sources of evidence are identified and aligned with terms of reference. Data gaps are noted where they cannot yet be addressed.</p> <p>Data analysis and contextualization, and a review of sources of evidence, informs the group’s work and public reports.</p> | <p>The IAG reviews weekly data updates from Police Scotland OpTICAL Group on use of the temporary powers. As legislation has changed, updates have been enhanced to include data on quarantine referrals, gatherings and house parties (including forced entries), travel regulation contraventions, the use of online reporting, and additional context. The IAG Chair, and IAG members Ephraim Borowski and Susan McVie are members of OpTICAL Group.</p> <p>Further analysis of Police Scotland FPN, SCTS and COPFS data, undertaken by Professor McVie, will be publicly reported at SPA Meetings <b>25 August 2021 – 24 November 2021.</b></p> <p>Data report aligning Police Scotland and SCTS data and developing work on nominal data, by Professor McVie, reported to the SPA Board <b>February 2021.</b></p> <p>Interim data report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland, by Professor McVie, reported to SPA Board <b>19 August 2020.</b></p> <p>Interim data report for the Independent Advisory Group, Professor Susan McVie with assistance from Dr Fernando Pantoja and Dr Ana Morales. <b>20 June 2020.</b></p> |

| Work Stream                        | Actions   | Status Update  |
|------------------------------------|---|--|
| <p>Data and Evidence Gathering</p> | <p>Engagement with staff and officers in different areas of Scotland to understand staff and officer perspectives.</p> <p>SWAN Scotland survey.</p> <p>Police Scotland “Your Police” and User Experience Surveys</p> <p>SPA Public Opinion Survey</p> | <p><b>30 June 2021.</b> Her Majesty’s Inspectorate of Constabulary in Scotland (“HMICS”): Report on interviews with Police Scotland Officers and Staff – Phase II published on HMICS website, and appended to IAG report to SPA 25 August 2021.</p> <p><b>June 2020:</b> Her Majesty’s Inspectorate of Constabulary in Scotland (“HMICS”): Independent Advisory Group Report on Interviews with Police Scotland Officers and Staff published and reported in public to the Authority.</p> <p>Evidence and outcomes from SWAN Scotland survey were considered by the IAG, and reported publicly to SPA Board <b>19 August 2020.</b></p> <p><b>16 April 2021.</b> Members discussed Police Scotland’s approach to understanding and enhancing public confidence during the pandemic, key findings and next steps, following a briefing from ACC John Hawkins; Kirsty Louise Campbell, Police Scotland Head of Strategy and Innovation, and Davina Fereday, Police Scotland Research and Insight Manager</p> <p><b>7 August 2020.</b> Members considered evidence from Police Scotland Strategy and Insight on findings from the “Your Police” and User Experience surveys including Covid-19 response and public confidence measures.</p> <p>Evidence from the SPA Public Opinion Surveys has been shared on an ongoing basis, with briefings led by Martin Smith (SPA Strategy and Insight Lead) <b>31 July 2020, 4 December 2020, and 4 June 2021.</b> The focus on discussion included public confidence in policing, public support for the Police Scotland approach, and any regional variations.</p> |

| Work Stream   | Actions   | Status Update   |
|---|---|---|
| <p>Understanding and Assessment of Human Rights Impacts</p> | <p>Active consideration of the policing of public gatherings and protests during the pandemic from a human rights perspective</p> | <p><b>May 2021.</b> The process and outcomes from the group’s consideration of events in George Square Glasgow 15 May 2021, and in Kenmure Street Glasgow 13 May 2021, are outlined in IAG chair’s letter to the SPA Chair 24 May 2021 <a href="#">IAG letter SPA Chair May 2021</a></p>  |
| <p>Understanding and Assessment of Human Rights Impacts</p> | <p>Active consideration of the policing of public gatherings and protests during the pandemic from a human rights perspective</p> | <p><b>March 2021.</b> The IAG was asked by the Chief Constable to consider the policing of events in Glasgow during the weekend of 6 and 7 March, from the perspective of a group with significant experience and knowledge in relation to human rights. The process and the group’s findings were reported in public at the Authority meeting 24 March 2021 <a href="#">FOOTBALL-RELATED POLICING – GLASGOW – 6/7 MARCH 2021</a></p> <p><b>19 March 2021.</b> IAG briefing from ACC Alan Speirs and discussion on the overarching Police Scotland approach to policing of protests during a pandemic.</p> <p>Regular briefings, dialogue and regular engagement between the IAG and Police Scotland Divisional Commanders, to understand the policing public order approach, policing’s approach to human rights impact assessments and considerations, risk management, and the impact of Coronavirus regulations on the policing of public protests in Scotland.</p> <p>Consideration of policing of protests and public gatherings has been informed by IAG discussions with Professor Cliff Stott, Professor of Social Psychology, Keele University; Dr. Michael Rosie, Senior Lecturer in Sociology, Programme Co Director Nationalism Studies, University of Edinburgh; Professor David Mead, University of East Anglia; and a range of academic and human rights experts who are members of, or have contributed to, the work of the group.</p> |

| Work Stream   | Actions  | Status Update  |
|---|--|--|
| <p>Understanding and Assessment of Human Rights Impacts</p> | <p>Draw in additional expertise to better understand the impact of policing the pandemic on human rights across the UK, and provide additional context for assessing the impact of the Police Scotland approach.</p> <p>D Quiroz (SHRC) guidance note for the IAG, incorporating relevant human rights provisions, for example, UN Guidance on the use of force by law-enforcement personnel in time of COVID-19 emergency</p> <p>Independent Children’s Rights Impact Assessment</p> <p>Maria Galli (CYPCS) guidance notes for IAG on human rights implications of regulations for children and young people.</p> | <p><b>26 March 2021.</b> John Wadham, Human Rights Advisor, Northern Ireland Police Board, briefed the group and led discussion on the experience of policing the pandemic in Northern Ireland, including focus on the policing of public gatherings and protests.</p> <p><b>21 May 2021.</b> Briefing from and discussion with Adam Wagner, Human Rights Lawyer focusing on human rights and policing of the pandemic.</p> <p><b>30 April 2021.</b> Eleanor Hourigan, Counsel for UK Parliament Joint Committee on Human Rights, briefed members and led related discussion on Covid-19 and Human Rights impacts.</p> <p><b>5 October 2020.</b> SHRC paper on Article 11 of ECHR: right to freedom of peaceful assembly, considered at the IAG webinar. (Diego Quiroz, September 2020)</p> <p><b>June 2020.</b> Scottish Human Rights Commission (SHRC) Paper to Independent Advisory Group Considering Police Scotland Use of Temporary Emergency Powers: Human Rights Guide to Examining New Police Powers in Response to COVID-19 (Diego Quiroz, June 2020)</p> <p><b>17 July 2020.</b> Members were briefed by CYPCS and considered implications of the <a href="#">CYPCS Independent Children's Rights Impact Assessment</a></p> <p><b>August 2021.</b> The impact of emergency police powers on the human rights of children and young people in Scotland during the Covid-19 pandemic. CYPCS Briefing Note 2. (Maria Galli, August 2021)</p> |



| Work Stream   | Actions  | Status Update   |
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| <p>Understanding and Assessment of Human Rights Impacts</p> | <p>Review of Police Scotland Impact Assessment processes</p>   | <p><b>June 2020.</b> Children and Young People’s Commissioner Scotland (“CYPCS”) Briefing: The impact of emergency police powers on the human rights of children and young people in Scotland during the Covid-19 pandemic (Maria Galli, June 2020)</p> <p><b>11 June 2021.</b> Chief Inspector Jim McMillan briefed members on the work of Police Scotland’s Equality, Diversity Inclusion and Human Rights Oversight Board. The group were briefed on and discussed policing’s engagement with partners during the pandemic; understanding the impact of Covid-19 on people with protected characteristics and policing’s response; the importance of the wider human rights based approach; and improving understanding of the impact of hate crime.</p> <p><b>6 July 2020.</b> Police Scotland processes to progress Community Impact Assessments, Equality and Human Rights Impact Assessment, and Child Rights and Wellbeing Impact Assessment were considered as outlined in the report to the SPA Board 19 August 2020.</p> |
| <p>Drawing in additional expertise</p>                      | <p>The IAG invites input from a range of academic experts to inform the group’s deliberations. These discussions are more fully reflected in the meeting notes available on the IAG website – <a href="#">IAG public reports</a></p> | <p><b>1 May 2020.</b> Professor Steve Reicher ,Professor of Social Psychology at the University of St Andrews</p> <p><b>4 May 2020.</b> Professor Ben Bradford, Professor of Global City Policing at the Department of Security and Crime Science, UCL</p> <p><b>15 May 2020.</b> Dr Peter Neyroud, University of Cambridge</p> <p><b>22 May 2020.</b> Dr Megan O’Neill, SIPR and University of Dundee</p> <p><b>29 May 2020.</b> Fran Warren and Francesca Gualco, Scottish Government Justice Analytical Services</p> <p><b>1 June 2020.</b> Professor Roger Halliday, Chief Statistician, Scottish Government</p> <p><b>15 June 2020.</b> Dr Liz Aston, Director of the Scottish Institute for Policing Research (SIPR)</p>  |

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| Drawing in additional expertise |         | <p><b>10 July 2020.</b> Cliff Stott, Professor of Social Psychology, Keele University, Policing of Protests and the Pandemic</p> <p><b>21 August 2020.</b> Dr. Michael Rosie, Senior Lecturer in Sociology, Programme Co Director Nationalism Studies, University of Edinburgh, Policing of Protests and the Pandemic</p> <p><b>2 October 2020.</b> Professor Steve Reicher, Professor of Social Psychology at the University of St Andrews, Policing and the Pandemic.</p> <p><b>9 October 2020.</b> Professor Ben Bradford, Professor of Global City Policing at the Department of Security and Crime Science, UCL, Policing and the Pandemic</p> <p><b>30 October 2020.</b> Joe Griffin, Director of Safer Communities, Scottish Government</p> <p><b>8 January 2021.</b> Professor David Mead, University of East Anglia, Policing Protest in a Pandemic.</p> <p><b>5 February 2021.</b> Dr Liz Aston, Napier University and Director of SIPR, IAG self-evaluation.</p> <p><b>12 February 2021.</b> Chief Superintendent Wylie, Scotland Commander, British Transport Police</p> <p><b>19 February 2021.</b> Dr Peter Neyroud. University of Cambridge - A Comparative Study of Police Organizational Changes During the COVID-19 Pandemic</p> <p><b>26 February 2021.</b> Professor Sarah Armstrong and Professor Michele Burman, University of Glasgow.</p> <p>Left Out and Locked Down - <a href="https://scotlandinlockdown.co.uk/project-report/">https://scotlandinlockdown.co.uk/project-report/</a></p> <p><b>5 March 2021.</b> Katrina Caldwell, Anna Saunders and Lisa Magnani. Scottish Government Justice Analytical Services, "The Scottish Victimization Telephone Survey 2020"</p> |

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|   |   | <p><b>19 March 2021.</b> Professor Cliff Stott, Professor of Social Psychology, University of Keele. Policing of protests during the pandemic.</p> <p><b>28 May 2021.</b> Dr Sarah Charman, Reader in Criminology, University of Portsmouth, with colleagues from the University of Portsmouth, and Lynne Davies from Hampshire Constabulary. Partnership programme on “Pandemic Policing: Public attitudes towards compliance and organisational resilience”.</p>   |
| <p>“Sounding board” for Police Scotland forward planning and communications</p>   | <p>Ongoing role for group members, as representatives of civic Scotland, offering personal and professional expertise, and insight from across their professional and community networks.</p>   | <p>Group members had early sight of, and offered feedback on, refreshed guidance for officers, reviewed to take account of changing legislation and easing of lockdown.</p> <p><b>1 May 2020.</b> ACC Bernard Higgins attended to support IAG discussions and to assist in informing strategy and communications.</p> <p><b>18 May 2020.</b> The group met with Gold Commander, DCC Malcolm Graham, for an overview of Operation Talla and related discussions.</p>  |
| <p>“Real time” advice, guidance, feedback and assurance – to Police Scotland; and to wider stakeholders via professional and community networks</p> | <p>Regular dialogue has been maintained between group members and Police Scotland at Executive and Divisional Command level on local policing and public impacts and perspectives, policing local lockdown, and the impact of transition through the Scottish Government’s phased approach out of lockdown.</p> | <p><b>April 2021 onwards:</b> the group has considered the impact of easing of restrictions and related challenges on a weekly basis, informed by regular data briefings from the OpTICAL group.</p> <p><b>March 19 2021.</b> Briefing from and discussion with Police Scotland on the 4 nations approach to easing of lockdown, with ACC Alan Speirs and Superintendent Joyce Greenhorn.</p> <p><b>8 January 2021.</b> The Chief Constable requested that the Group review circumstances and Police Scotland’s approach, further to an instance of forced entry to a household in Aberdeen. The group noted that specific cases in which the police have taken action under the regulations will be considered independently in the</p> |

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| <p>“Real time” advice, guidance, feedback and assurance – to Police Scotland; and to wider stakeholders via professional and community networks</p> | <p>Real time contact with Divisional Commanders was established early in the work of the group, offering a “two-way street” for real time updates to members, and live input to Police Scotland to inform planning and response, and facilitate immediate discussion as required.</p> <p>The group has offered a range of written advice, guidance and feedback to Police Scotland, the SPA and wider stakeholders, outwith formal reports to the Authority.</p> | <p>normal way by other organisations, should there be a prosecution or complaint against the police.</p> <p>IAG engagement with Divisional Commanders has responded to changing local circumstances, tiers and restrictions, temporary travel regulations, and the local impacts across urban, rural and remote communities.</p> <p>The group maintains discussions with, and has regular contributions from, Divisional Commanders across Scotland , including - CS Sean Scott (Edinburgh); CS Mark Sutherland (Greater Glasgow Division); CS Conrad Trickett (Highlands and Islands); CS George Macdonald (North East); CS Alan Murray (Renfrewshire and Inverclyde); CS Faroque Hussain (Ayrshire); CS Alan Gibson (Forth Valley).</p> <p>Feedback from the IAG public email informs IAG advice to and discussions with Police Scotland on issues of public concern, on an ongoing basis.</p> <p><b>April 2020.</b> Open letter from SWAN Scotland to Police Scotland about autism, its impact on behaviours and how that can be perceived.</p> <p><b>30 September 2020.</b> Experience of autistic people of COVID-19 legislation and guidelines Survey May-June 2020 (Dr Catriona Stewart, July 2020). Included as an Appendix to the report to the SPA Board, with related discussion at the IAG webinar 30 July.</p> <p><b>19 August 2020.</b> Glasgow Disability Alliance. Advice on interactions with disabled people (Temporary Police Powers under Coronavirus Act); included as Appendix to the report to the SPA</p> |

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| <p>“Real time” advice, guidance, feedback and assurance – to Police Scotland; and to wider stakeholders via professional and community networks</p> | <p>Correspondence to SPA Interim Chair on the impact of regulations on face coverings</p> <p>Correspondence with the Cabinet Secretary for Justice on the impact of Quarantine and Border Controls</p> | <p>Board. The work of GDA on the impact of COVID-19 on disabled people featured in IAG Webinar discussions 5 October 2020 <a href="#">GDA Supercharged Covid-19 Report</a></p> <p><a href="#">Correspondence IAG Chair to SPA Interim Chair 13 July 2020</a></p> <p><a href="#">IAG letter to Cabinet Secretary for Justice 12 Feb 2021</a><br/> <a href="#">Managed isolation reply to John Scott QC 23 February 2021</a></p>   |
| <p>Identify any additional work priorities to deliver against TOR</p>   | <p>Police Scotland processes for Community Impact Assessments, Equality and Human Rights Impact Assessment, and Child Rights and Wellbeing Impact</p>  | <p>An initial review by the IAG Chair was undertaken, and reflected in forward planning for the IAG and the report to the SPA Board 30 June 2020. Areas identified for future focus included Gaps in Powers, and Impact Assessments: Community Impact Assessment, Equality and Human Rights Impact Assessments, which have subsequently been addressed.</p> <p><b>6 July 2020</b> – Police Scotland’s Impact assessments were considered by the IAG</p> <p><b>November 2020.</b> No new powers were given in relation to travel restrictions introduced. No further evidence was identified at this point relating to potential gaps in powers. The group considered the impact of absence of police power of entry related to regulations on smaller gatherings – this power was subsequently made available.</p> <p><b>11 June 2021.</b> Chief Inspector Jim McMillan briefed members on the work of Police Scotland’s Equality, Diversity Inclusion and</p> |

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| Identify any additional work priorities to deliver against TOR |   | Human Rights Oversight Board. The group were briefed on and discussed policing's engagement with partners during the pandemic; understanding the impact of Covid-19 on people with protected characteristics and policing's response; the importance of the wider human rights based approach; and improving understanding of the impact of hate crime.  |
| Public reporting   | <p>Public reporting to the Scottish Police Authority</p><br><p>Oral evidence from the IAG Chair to the Justice Sub-Committee on Policing 9<sup>th</sup> June 2020 and 23 November 2020.</p><br><p>Livestreamed webinars</p> | <p><a href="#">SPA Livestream April 2020</a><br/> <a href="#">IAG Report to SPA May 2020</a><br/> <a href="#">IAG Report to SPA 30 June 2020</a><br/> <a href="#">IAG Report to the SPA 19 August 2020</a><br/> <a href="#">IAG Report to SPA 30 September 2020</a><br/> <a href="#">Letter IAG Chair to SPA Interim Chair 19 11 2020</a><br/> <a href="#">IAG Report 22 Jan 2021</a><br/> <a href="#">IAG Report 24 February 2021</a><br/> <a href="#">IAG Letter to SPA Board 24 March 2021</a><br/> <a href="#">IAG Letter SPA Board meeting 26 May 2021</a><br/> <a href="#">IAG Letter SPA Board 30 June 2021</a></p><br><p><a href="#">Justice Sub Committee on Policing Official Report 9 June 2020</a><br/> <a href="#">Justice Sub Committee on Policing Official Report 23 November 2020</a></p><br><p><a href="#">IAG July Webinar</a><br/> <a href="#">IAG October Webinar</a></p> |