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‘We were the Guinea pigs’: Police uncertainty enforcing coronavirus regulations in the UK.

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ARTICLE INFO
Keywords:
Coronavirus
COVID-19
Public trust
Policing
Police legitimacy
Fixed penalty notices (FPNs)

ABSTRACT
The regulations introduced under the UK’s Coronavirus Act 2020 to help curb the spread of COVID-19 caused considerable confusion due to conflation between what was regarded as ‘guidance’ and what was ‘law’. The fast-paced nature of the pandemic meant that restrictions on public liberty and increased police powers to enforce the new ‘rules’ led to accusations of overzealous enforcement behaviour of some officers, including a record number of Fixed Penalty Notices (FPNs) issued. This paper explores the experiences of police officers in a range of English police forces, using 28 h of qualitative interview data at two research points in time (2020 and 2022). The extracts presented here illustrate some of the challenges that officers faced enforcing the frequently changing rules and regulations during the COVID-19 pandemic in the UK.

1. Introduction

The first cases of the respiratory disease SARS-CoV-2, now known as ‘COVID-19’, were reported in Wuhan, China, at the end of December 2019 (World Health Organisation (WHO) 2020). By March 2020, over 1000 people in the UK had died and nearly three years later (December 2022) this figure stands at 180,000 with over 6.6 million deaths worldwide. In early 2020, when the mortality rate was rapidly rising, the UK government, headed up by then-Prime Minister Boris Johnson, announced a plan to ‘contain, delay, research, and mitigate’ the spread of the virus (Gov 2020). This initial plan did not work as well as hoped, and a few weeks later in late March, the government rushed through a bill to enable the enforcement of emergency powers. Boris Johnson instructed people to ‘stay at home’, imposing a full national lockdown and new coronavirus regulations were announced without any parliamentary scrutiny, approval or subject to the usual democratic processes under the Public Health (Control of Diseases) Act 1984 (Grogan 2022).

Within the regulations, the police were given powers to detain anyone, including children, for any amount of time, allowed to forcibly take biological samples, give out fixed penalty notices (FPNs) for breaches of regulations, and powers to criminalise protests and demonstrations. The relationship between the public and the police has always been historically tainted by contempt and mistrust in the UK (Kitson, 1999), and the profession has been tarnished considerably by tensions in the media (Mawby 2009). Although the police’s reputation has weathered scandal and failure, it has always been a controversial institution (Rentoul, 2021), and thanks to some scandalous high-profile events in recent years, policing is now in a state of ‘permanent crisis’ (Lowbridge, 2021).

The volatility of the police-public relationship, effects on officer morale and well-being, the myriad of bureaucratic challenges (both inter and intra-organisationally), can all affect the policing of a crisis (Laufs and Waseem 2020). Plans to infringe on public liberties inspired accusations that the UK was entering a dystopian society, and inflammatory hashtags began trending on Twitter such as #PoliceStateUK, #Authoritarianism, and #1984, amidst concerns that the police could use this opportunity to abuse their new E-mail address: c.decamargo@lancaster.ac.uk.
enhanced powers. These worries emerged following decades of corroded trust, resulting in the Independent Police Complaints Commission (IPCC) publishing a damning review on the public perceptions of police corruption in the UK in 2012, as well as years of repeated media exposure of police wrongdoing.

2. Confusion between law and guidance

The rushed coronavirus regulations came into effect before they were even laid before Parliament and in the months that followed, these conventions were amended and supplemented several times when lockdown restrictions changed. England was in national lockdown between late March and June 2020, and in May 2020, laws were tentatively relaxed. July to September 2020 saw minimal lockdown restrictions, with controls reimposed between September and October 2020. November saw a second national lockdown and in December 2020, the tiered system was reintroduced with modifications. In January 2021 the third national lockdown was introduced and finished with a phased exit in March 2021 with a promise to ‘cautiously but irreversibly’ ease lockdown restrictions (Baker et al., 2021). Lockdown controls were eased and strengthened at various points during 2020 and 2021: the length of time they were required for and with varying intensity; and they were combined with other temporary adaptations, such as the four-tier system which dictated severity of restrictions in different areas, and the ‘rule of six’ where gatherings of people indoors were limited to six people (see Baker et al., 2021 for more details). The fact that Wales, Scotland and Northern Ireland all chose to adopt different containment strategies (Paun et al., 2020) caused much confusion and frustration, and presented a particularly ‘unenviable challenge for the forces that policed the Welsh/English border during times when restrictions differed greatly’ (Aitkenhead et al., 2022, p. 11). Police officers (and everyone else) struggled to keep up with the many changes to regulations; the ‘rules’ were reportedly modified 65 times in just nine months (Syal 2020; Gov 2021) but detailing them here would be convoluted and is not the point of this paper (but see Baker et al., 2021 for a more detailed breakdown). The magnitude of the original Coronavirus Act 2020,300 page document, and the many amendments it saw over time, form an important backdrop to this paper. The uncertainty police officers faced in enforcing these rules, and their subsequent revisions, caused chaos, and is particularly problematic when the public tend to look to the police during stressful situations with the expectation that they are the ‘voice of authority, calm, and guidance’ (Brito et al., 2009, p. 1). It must not be underestimated that public perceptions of the police are perhaps the most critical in times of emergencies and threats (Perry et al., 2021).

Political populism, particularly in times of crisis, is structured around the ordinary public as the ‘blameless in-group, versus the evil politicians …’ as the enemies responsible for ordinary people’s problems’ (Hameeleer et al., 2017); consequently the nature of policing ensures its workers are regularly seen as ‘villains’ (Terpstra 2020; De Camargo and Whiley 2021). While the role of the police is, at the most basic level, to keep law and order; to do this they have to spoil a lot of people’s ‘fun’ to fully enforce the law as written, such as issuing arrest warrants, breaking up parties, and dispensing fixed penalty notices (De Camargo and Whiley 2021). The police were tasked with enforcing the rules put in place by the government – subsequently over-zealous interpretations of regulations and heavy-handed approaches made regular appearances in the media, and of course, mediated attributions of blame are highly attractive and persuasive to the reader (Iyengar, 1991).

The police are, after all, the arm of the government, and empowered to use force if necessary. High profile events such as the murder of George Floyd by police officer Derek Chauvin in the USA in May 2020 (which led to spill-over riots in English cities from Black Lives Matter protests), and later, the abduction, rape, and murder of Sarah Everard by police officer Wayne Couzens in London in March 2021 are just two major examples that aid in shaping the public’s view of policing more generally; [Events like these] ‘chip away at public confidence [which] remains the stated lifeblood of British policing, essential to its legitimacy and effectiveness’ (Dodd, 2021). Public confidence in the police had been on a downward trend prior to the pandemic (from 62% in 2017 to 55% in 2020 (Myenko and Ditcham, 2021). The media’s frequent coverage of police wrongdoing, such as the BBC documentary ‘Grindr Killer’ (January 2022) detailed the police failings in the Stephen Port case (2014–15), and the coverage of the police handling of Sarah Everard’s vigil ‘further tarnished an already bruised reputation’ (Myenko and Ditcham, 2021).

When the police are tasked with enforcing unpopular and ‘previously unthinkable restrictions’ there are understandable concerns that police legitimacy would ’suffer significantly’ due to the ‘public health role’ they were required to perform (Aitkenhead et al., 2022, p. 4). The advice to police forces was to use a ‘common sense approach’ defined by the ‘Four E’s’; Engage, Explain, Encourage and Enforce. By Engaging, officers should encourage voluntary obedience; By Explaining, officers would stress the risks to public health and educate people about the risks of COVID-19; By Encouraging, officers should seek compliance and emphasize the benefits about how cautious behaviour can save lives; and By Enforcing, officers will direct people to return home, using reasonable force, where necessary and proportionate. However, despite concerns about how enforcing public health rules would affect legitimacy, the 4 E’s approach was arguably ‘successful in avoiding any [further] major breakdown in the relationship between the public and the police’ (Aitkenhead et al., 2022, p. 4).

In late March 2020, the media began to report on the overzealous approach of some officers (over)enforcing the new regulations, and spotlighted ill-thought-out incidents such as Derbyshire police officers pouring black dye into the Peak District’s Blue Lagoon to stop people travelling to the beauty spot (Giordano 2020). Additionally, officers used drones to spy on walkers in the Peak District and published the images in a ‘name and shame’ campaign (Giordano 2020). Ex-supreme court judge, Lord Sumpton, claimed the pandemic was used by the government to stoke fear, relying on ‘police state tactics’ within an ‘authoritarian regime’ (Bowcott 2020). Derbyshire’s police commissioner argued that the actions were ‘necessary in a crisis’, but according to Lord Sumpton this response implies that ‘in a crisis the police were entitled to do whatever they thought fit, without being unduly concerned about their legal powers’ and ‘exercised powers over citizens on a scale never previously attempted’ (Bowcott 2020). Elsewhere, within days of the approved regulations, various UK police forces faced criticism for their heavy-handed approach over what was deemed to be ‘essential
travel’, and what were ‘essential items’ in supermarket trollies (Wilson 2020). The media reported on the sale ban of Easter eggs on the basis they were not ‘essential’ (BBC 2020a), the arrest of a retired 73-year-old nurse ‘rescuing’ her 97-year-old mother from a care home (BBC 2020b), and the erroneous ‘enforcement’ of children playing in their own front gardens (Henley 2020).

During this same period, Northamptonshire’s Chief Constable Nick Adderley, warned the force were only ‘days away’ from ruffling through people’s shopping trollies to check for essential items ‘if we don’t get the compliance we expect’ (Williams 2020). Other examples included, a pub landlord being fined £1000 for breaking regulations after one of his customers jumped up to celebrate a goal whilst watching a football match, because police said all patrons should have been ‘sitting down’ (Dimsdale 2022). Two women being fined at Foremark Reservoir for having takeaway coffee cups on their walk (which they had driven five miles to) (Lowbridge 2021); the drive was a breach of the rule to ‘stay local’ and carrying coffee turned their lawful exercise into an unlawful picnic. Using police discretion in this way proved problematic and controversial but discretion has always formed an important part of policing (Poyser 2004). In earlier works Lipsky (1980) referred to the critical role that ‘street-level bureaucrats’ play, such as police officers, in delivering the government’s ‘services’, and it is the individual decisions that these government ‘agents’ make in exercising wide discretion that can have significant impacts on public perceptions. Afterall, the police’s constant day-to-day interaction with the public, coupled with significant independence in decision-making (for example whether to enforce rules/law/give out FPNs) can have wide-ranging impacts on police legitimacy.

3. Undermining public trust

The lasting damage due to the inconsistent policing response as to what was prohibited by the regulations and what was encouraged by the Government’s guidance has yet to be seen. For example, during lockdowns, you were permitted to leave the house to exercise with other members of your family and there was nothing in the rules to suggest that people could not drive to an exercise area (the local park for example). Warrington police however, met criticism after posting on Twitter that they had summoned people for ‘driving due to boredom’ (Davies 2020). You actually could legally leave the house if you had a ‘reasonable’ excuse – although then-Metropolitan Police Commissioner Cressida Dick confused matters by declaring on national news that it had to be for an ‘essential reason’ (Cunliffe 2021).

It actually wasn’t illegal to travel for exercise, and guidance told people to stay local – but how close to home is local? The prime minister himself cycled seven miles from his home in Downing Street to exercise, not to mention his chief of staff’s, Dominic Cummings, ill-fated 260-mile drive to Barnard Castle to ‘test his eyesight’ during a period of national lockdown while symptomatic with COVID-19 (The Independent, 2020a). This was not actually the reason for his trip, however the public backlash ensured that certain controversial elements of the story were focused on, that is, that he visited Barnard Castle to ‘test his eyesight’. This event led to the so-called ‘Cummings Effect’ (Fancourt et al. 2020) – weekly political surveys showed that confidence in the government suddenly decreased after Cummings’ trip, indicating the effect that decisions can have on public trust (Fancourt et al., 2020). When members of parliament rushed to defend (and protect) Cummings and Johnson, the public were outraged. A poll by YouGov (2020) found that almost two-thirds of respondents thought that the Prime Minister’s actions had undermined the police’s task (Shaw, 2021), and these results were echoed in a similar study the following year (Aitkenhead et al., 2022). Cressida Dick argued that claiming ignorance of the regulations was ‘preposterous’, and a while later, photos emerged online showing a group of nine police officers dining together in a local café - each were later fined £200 (The Independent, 2020b). Public acknowledgement of mistakes by people in power and positions of authority are important – the way that organisations respond to failings can have a substantial bearing on organisational reputation. The Chair of the National Police Chief’s Council (NPCC) later admitted that mistakes had been made by some police forces during the first few months (Dodd 2020).

Since what people could and could not do (by law), and what people should and should not do (by guidance) changed 65 times in just nine months, it is unsurprising that everyone was confused; in Manchester, police officers were seen Googling laws trying to make sense of the latest amendments, and University College London’s ‘COVID-19 Social Study’ found that only 13% of Britons believed they ‘fully understood’ the lockdown rules (UCL 2020). Francis Fitzgibbon, a Queen’s Counsel, argued that ‘it matters if people do not know what the law forbids – that includes the police, whose every mistaken crackdown breeds more distrust. Distrust and confusion are the virus’s friends.’ On the June 10, 2020, a video was released on YouTube, entitled ‘Covid, Protest and the Law’, which showed many filmed examples of UK police officers reciting incorrect regulations to the public to gain compliance.

This article details a snapshot of the discretionary enforcement approaches taken by various police forces in the UK, mainly in the form of FPNs. A qualitative analysis of policing during the first few months of the pandemic enables a reflection of how confusing, obscure, and ‘unpoliceable’ legislation can be damaging to police legitimacy. One of the most basic principles of the rule of law is that as far as possible, the law must be intelligible, clear and predictable (Braithwaite, 2011). The flexibility of officers to personally decide what were breaches ensured that policing was incredibly inconsistent due to the elasticity of these rules that were difficult to enshrine in law. The distinctions between law and guidance made all the difference to the amount of FPNs issued, and these form the backdrop of this paper.
4. Methodology

This was a small-scale longitudinal empirical study, which took place at two different research time-points over two years (2020 and 2022). Originally, 18 police officers were recruited via a ‘call for participants’ on Twitter asking for volunteers.¹ Digital snowballing recruitment ensued (O’Connor et al., 2014), in which existing police contacts facilitated enlistment by sharing and ‘retweeting’ the request. There is much literature discussing the challenges of accessing police officers for the purposes of research due to long-standing reservations about ‘outsiders’ (Brown 1996). Twitter was chosen due to its potential to access a diverse range of participants, network connections, and is generally used as a platform for ‘widespread conversation and the sharing of ideas’ (Forgie et al., 2013, p. 8). Although all officers expressed interest in being interviewed again ‘further down the line’ (because we had no idea how long the pandemic would last), only ten of the original 18 responded to my re-call in early 2022, and these were subsequently re-interviewed in March–April 2022. After some ‘sociological stalking’ (Sharpe 2017), I drew the line at emailing three reminder requests. Although I will never know the reasons why the remaining eight officers did not respond, the original request asked for officers to discuss their fears and anxieties of policing the pandemic with little to no personal protective equipment (PPE), and to ruminate on managerial response. Originally officers voluntarily contacted me, and so it is very possible, judging by the divulgences and disclosures in the papers published by the author on these early interviews (De Camargo 2021a, 2021b, 2021c; De Camargo and Whiley 2021), that some officers used the opportunity to air grievances, complaining ‘in a safe space’ with promised anonymity (Jeschke et al., 2021). I did not offer them any compensation for their time, and often researcher-researched relationships are based on some level of reciprocity. One interviewee (2022) admitted he was ‘very tired thinking about the pandemic’ and had strongly considered not replying to my email at all. Additionally, I interviewed one officer when he was in bed with COVID-19 (his choice), and one who had Long-COVID. The effects on the police, and other key workers, taking part in any empirical research during this stressful time, is not to be underestimated; indeed, the methodological reflections are probably worthy of another paper. While the number of re-interviewees is lower than I would have liked, one cannot argue with Maruna and Matravers’s (2007) study, ‘N = 1’, with only one (albeit incredibly interesting) participant, Stanley – underscoring the argument that although it can be difficult to make claims about generalisability in a small sample, even one case can be theoretically illuminating. Due to the smaller second sample, further anonymisation was deemed necessary so officers are identified by a new number. One can only hope that during a global pandemic, to which some people COVID-19 is deadly, that all original participants in this study emerged relatively unscathed.

Interviews took place online between May–June 2020, and March–April 2022, resulting in over 20 h of anonymised interview data in 2020 and 8 h of data in 2022. Of the original 18 officers, 11 were male, seven were female, and averaged 35-years-old. A lack of diversity limits this study, and it would be pertinent to investigate issues of diversity and intersectionality in any future work on this topic, particularly because the risk to black and minoritized communities are higher (Lacobucci 2020). Interviews were professionally transcribed verbatim and analysed thematically via processes of data familiarisation, coding, and then formation of themes. Combining the new 2022 data with the original 2020 data, allowed for fresh analysis, and officers discussed some additional topics during second interviews – for example, the issues with PPE were resolved early on by Operation Talla in the pandemic (De Camargo 2021b) and were no longer a source of anxiety, perhaps explaining why some participants did not reinterview.

Initial themes (codes) were generated pertinent to the research aims and applied systematically using nVivo across the whole data set. I applied each step as specified by Clarke and Braun (2018) in a continuous manner, reviewing and considering the themes. This reflection is important because analysing initial ‘gut reactions’ and not being able to share preliminary responses with other researchers can lead to a lack of reflexivity (Archer 2007, p. 116). Archer (2007) analyses an individual’s capacity to evaluate their social circumstances, and consider how it can affect the ‘reading’ of data, but it is through processes of refinement as detailed by Clarke and Braun (2018), that researchers can attempt to mitigate this. I began by reading the transcripts and highlighted units of meanings (for example see Fig. 1).

Similarities were noted and grouped (see Fig. 2), for instance how accounts of being ‘confused’ by the guidance resonated amongst participants and how these linked in with the issuing of FPNs. Detailing how conclusions and interpretations have been reached allows another reader to clearly follow the decision trail (Sandelowski 1986).

Themes began to emerge, through a process of analysis, making judgements about coding and contextualising and de-contextualising the data (Starks and Trinidad 2007). This resulted in a process of toing-and-froing between the data and emergent themes to authentically convey participants’ accounts – this familiarisation process and decisions concerning what is interesting about the data is vital (Braun and Clarke 2006, and is a continuous process of reflection (Savage 2000). Themes were re-categorised, re-labelled, and re-interpreted to achieve meaning, for instance, the theme of ‘being baddies’ emerged which was a salient point regarding occupational prestige but the data was not sufficient to develop inferences on the broader phenomena, although a more comprehensive discussion emerged in another article (De Camargo and Whiley, 2021 - afterall Braun and Clarke (2006) argue that accounts that depart from the dominant story in the analysis should not be ignored). In the sections that follow, officer narratives provide a candid and detailed insight into the lived experiences of policing during COVID-19. Three main themes eventually emerged from the data: 1) The Four E’s (“We were the guinea pigs [of enforcement!”) 2) Fixed Penalty Notices (the differences in how some forces ‘enthusiastically enforced’ fines and others refrained after negative media coverage), and 3) The Wrong Tools for the Job (how the police were advised to break up parties/gatherings but were not given the appropriate powers to do so – ‘enforcing the

¹ “Call for participants: I am looking to interview front-line police officers policing the pandemic (ethics approved). I am interested in the fears and anxieties of contracting COVID-19 during this time – Interviews will take place over Zoom and will last approximately 1 h. Please DM [direct message] me if interested.”
5. The four E’s: engage, explain, encourage, enforce

The Coronavirus Act 2020 granted the police new powers to enforce the lockdown along with guidelines issued in partnership with the College of Police (CoP), the Police Federation of England and Wales (PolFed), and the National Police Chief’s Council (NPCC). Public support is vital for police legitimacy (Tyler and Fagan 2008), which was discussed by participants in this study:

“I think we lost a hell of a lot of public support over our enforcement of lockdown […] We were very, very much guinea pigs.” (P25, 2022).

Under the new legislation, police officers could instruct people to go home, and/or issue FPNs ranging between £200 for failing to wear a face covering, to £10,000 for organised gatherings offences, or breaking quarantine when returning from another country. If someone continued refusing to comply, they would have acted unlawfully and left themselves open to arrest. John Apter, National Chair of PolFed, advised in early 2020, “The practicalities of policing this lockdown will be challenging, but these new powers will assist us in keeping the public safe […] rest assured, it is not a responsibility that any of us take lightly.”

Following a year of these rules, Lochlann Parker, head of civil liberties legal practice, at the Joint Committee on Human Rights (February 21, 2021) argued the regulations had been confusing:

“We have talked about the four Es, engage, explain, encourage, enforce. There is a fundamental flaw that officers do not understand what the regulations are. Who are you engaging with? Why? What are you explaining? What are you encouraging them to do? Ultimately, when you are taking enforcement action, are you sure, or do you have a reasonable belief, that somebody is acting contrary to the guidance – sorry, the regulations? There is the obvious slip: the guidance and the regulations.”

In April 2021, Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) assessed the effectiveness and efficiency of the policing response to the coronavirus pandemic and found that whilst all forces reported following the four E’s approach, most officers found it difficult to give a consistent message to the public. HMICFRS found the regulations complex, were applied and interpreted differently, and applied to different areas at different times. This coupled with the frequency of changes in the situation, government announcements and the legislation itself led to the HMICFRS to review that, “new legislation and guidance have been produced at a fast pace, and public and press interest in police actions has been significant”. Additionally, the HMICFRS (April 20, 2021) argued that:

“[Police officers’] difficulty was made worse by a widespread confusion in relation to the status of Government announcements and statements by ministers. Ministers asserting that their guidance - which had no higher status than requests – were in fact ‘instructions to the British people’ inevitably confused people. In some cases, police officers misunderstood the distinction, and appeared to believe that ministerial instructions were equivalent to the criminal law.”

On rare occasions, police decision-making was viewed by some as heavy-handed or inconsistent, for example, over the first weekend that the new laws were implemented (27th-29th March 2020), some forces issued over 100 enforcement notices and others issued none at all (Aitkenhead et al., 2022). Officers in this study expressed their own misunderstandings:
“The government didn’t help at all. The whole legislation thing, by the time it got passed by the Commons, we were already almost in full lockdown and it was very hard to implement. A lot of people didn’t listen to the guidance, never mind understand it.” (P4, 2020).

“We were getting different guidelines, and [at one point] you’d get one in the morning, one in the afternoon, and one in the evening!” (P12, 2020).

“People were told to keep two metres away, only exercise once a day. But none of that was enforceable by law, there was no law specifying that. So, we will really limited with what we could do.” (P24, 2022).

“No wonder we were getting them mixed up – we had no training – you’d come off rest days and get sent straight to a job maybe, and you’ve had no chance to digest [the changes] or understand them. It was just ‘here’s an email, read it’. Nobody sat us down and said ‘right, this is what this legislation means’.” (P27, 2022).

Officers were disgruntled that they were being used as a scapegoat to enforce confusing laws and guidance from the government, and labelled as villains;

“Because we’re the ones that are trying to sort out the COVID rules, we’re the baddies, we’re telling everybody ‘you can’t do this and you can’t do that’. (P5, 2020).

Officers were dismayed at the changes in regulations being announced days before they actually came into force. For example, the ‘rule of six’, a restriction on gatherings of more than six people, was announced on a Wednesday, but did not come into force until five days later on the Monday (Elgot and Walker 2020). Similarly in the second lockdown, on Saturday November 2, 2020, it was announced that pubs and bars were to be closed on the following Thursday; these necessary legal gaps existed with all amendments during the pandemic. These interludes caused surges in regulatory breaches amidst the night-time economy and gatherings of people enjoying last days of ‘freedom’ before another lockdown of unknown length took place. After all, the first lockdown was generally complied with under the pretence that the tide of COVID-19 ‘could be turned in three weeks’ (Walker 2020), when in actuality, the first lockdown lasted nearly three months. The extended length of the first lockdown may have caused ‘lockdown fatigue’ for subsequent compliance of further restrictions (Dearden 2020). On one ‘super Saturday’, people flocked to the pubs and bars before they were due to shut two days later and some areas became so disorderly, five premises decided to close early for fear of further spreading the virus (Penna 2020). The days on which the new rules came into force also caused problems for officers:

“It was a Monday when I went into the park and was told [by a member of the public] ‘no, no’ it’s [coming into force] tomorrow, and I was like ‘no, no, it’s today!’, but then it made me think, actually what day is it, maybe they’ve changed the day? It became a bit farcical, and I would always notice how crazy people got in between announcements and new rule day, and I wasn’t entirely sure myself what was going on on any given week.” (P7, 2020)

“Looking back, we’d be looking at each other and going ‘which rule is it? Which one? Is it this week?’ I think people knew we were just as confused as anyone.” (P19, 2022).

Similarly, officers found the guidance and enforcement of laws overwhelming because there was so much information emerging, and at the beginning, the guidance was changing almost on a daily basis:

“When the new rules and regulations were introduced, we just had to go and get on with it without any prior training, and they were different interpretations of it […] we had to be on top of all emails and the notifications that were coming but it was just so much. You would go home after one shift and come back and there would be another half a dozen emails about the guidance – you spent half your shift trying to work out what the latest rules were.” (P6, 2020).

“… and don’t forget rest days, if you’re off for four days, you’d have 100 emails and you don’t read them all properly. It’s down to the individual to fully brief themselves, and it wasn’t written down anywhere permanent on the intranet.” (P16, 2020).

Adam Wagner, a barrister in London, argued that every time ministers announced amendments to the rules, there was an ‘element of theatre’ before the legislation was found to be difficult to enforce. He defended police officers and reasoned that they could not have been expected to read and understand each law at speed, because like the public, they were not going to read all the legislation; Wagner reasoned ‘[the police] are out and about and making decisions on the fly. No wonder mistakes are being made’ (Syal 2020). The College of Policing and NPCC., 2021, p. 17) advised forces to be consistent and adopt an ‘inquisitive, questioning mind-set’, only using enforcement when all other options had been exhausted. This has, however, resulted in a rather mixed punitive approach with the issuing of fixed penalty notices.

6. fixed penalty notices

Fixed penalty notices (FPN) were first introduced in the UK in the 1950s to deal with minor parking infractions. Since then, their use
has been extended to other authorities and the range of offences which can be penalised has expanded. An FPN is not a fine or criminal conviction as the recipient can either pay the fine or choose to be heard in court – enforcement of unpaid fines however can result in more serious sanctions, such as imprisonment. The Coronavirus Act 2020 gave police in England the power to issue £200 on-the-spot fines to enforce new rules on social distancing, amongst other things (see NPCC 2021 report for a full breakdown). FPNs were the main sanction available to the police to penalise non-compliance with the coronavirus regulations (Gov 2021).

The NPCC reported that between March 27, 2020 and June 20, 2021, there had been 177,213 FPNs issued in England and Wales. There were vast discrepancies in the number of FPNs issued between forces (relative to force area and size); for example, the Metropolitan police handed out 17,628 tickets, compared to the second biggest force, West Midlands, who issued only 3854. Officers in this study relayed their confusion on the issuing of FPNs:

“In terms of giving out fines, the rules are so vague, we don’t really know when we can or can’t give someone a ticket.” (P1, 2020).

“At the start, it was extremely confusing, because obviously there was something different coming out every day, so it was really difficult to know what to do and what our grounds were, so it’s all well and good saying ‘give someone a fine’, but we weren’t really sure what we were giving a fine for.” (P12, 2020).

“In the end I think everybody was a bit like, well, if I fine them today, that’s not going to be relevant by tomorrow right. So understandably a lot of these fixed penalty notices have been disputed.” (P21, 2022)

At the beginning, officers were given free rein to use their discretion in regulatory breaches, but following negative press coverage, management admonished officers for giving out too many fines. Some ‘over-zealous’ forces reported in the press were part of this study – the ‘top-10’ ticket-issuing forces nearly all but dropped off the top of the FPN table following the first lockdown after negative press and most resisted ticketing altogether and officers discussed their managers’ volte-face:

“[The regulations] weren’t the friendliest read – and no one broke it into bitesize pieces, even though the force said they were gonna do that, but they never did. So, people didn’t really know what they could do other than ‘oh we can give tickets out’, so we started giving tickets out, and then [our force] gave the most out in [month] and then they were like ‘shit! Rein it in guys, rein it in, don’t give any out for a while! We were called enthusiastic enforcers [laughs]” (P13, 2020).

There were reports of some rogue officers using the lockdown restrictions to ‘compete’:

“[…]Policing is driven by detections and positive outcomes. For [some officers] they had a fieldday and it became competitive – Yeah, with lots and lots of officers it became competitive. I took pride that [our team didn’t do that]. Some shifts were worse than others because it would be the inspector because some shifts couldn’t give a shit about detections. One shift used to have a bell that they rang whenever they got a detection […] so, giving out a ticket for a COVID breach at the time could be seen as a detection.” (P25, 2022).

“The pressure on us, in the Met[ropolitan Police], is different I think. I’ve spoken to other Met officers who say they don’t [give out fines easily], but we’re sort of asked to get numbers, you know, to get results, which I don’t really think is actually allowed […] I don’t think they’re allowed to set us targets, but they’ve said, ‘you’ve not done enough’, and then we have to send a monthly return to say what we’ve done.” (O’Connor et al., 2014)

It was not just about the number of fines issued; the number of FPNs that were wrongly dispensed has completely undermined the judicial process interfering with Articles 7 and 8 of the European Convention on Human Rights. Between March 2020 and February 2021, there were 252 wrongful charges, but regardless of whether the FPNs had been wrongly issued, some people were paying them to avoid criminality, and those who could not afford, or chose not to pay them, risked going to court for more severe penalties. When FPNs are issued by mistake, there is no instrument of review or appeal before the penalty is issued and payment demanded (Gov 2021); the amount of innocent people who paid in fear of further reprimands is unknown.

7. Wrong tools for the job

Knowing the police can, and do, use their discretion to enforce the regulations ‘can be both a blessing and a curse’ (Alcadipani et al., 2020), and officers discussed a spectrum of ‘enthusiastic’ over-enforcement and ‘toothless tiger’ under-enforcement (P9). Legislative shortcuts, where laws are amended with little to no parliamentary scrutiny, leads to misinterpretation, diminishes respect for the law, and ultimately reduces compliance (Grogan 2022). Officers were cognisant about members of the public ‘getting wise’ to what they

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2 For most COVID-19 regulatory offences, the fine was £200, payable within 28 days – halving to £100 if paid within 14 days. Fines were initially set at £60, up to £960 for subsequent offences but were increased on 13 May 2020 from £3200 to £10,000 for repeated infringements (Aitkenhead et al., 2022).

3 with the majority being issued for contravention of a) restriction of movement during emergency period, and b) participating in a gathering of more than two people. 71% of these were given to men, 47% to aged 18–24, and 76% were self-identified Whites.

4 The coronavirus regulations themselves interfere with the right to private and family life (Article 8 ECHR), and when an FPN is issued for conduct not prohibited by the regulations (guidance misinterpreted as law for example) this was an unlawful interference with Article 8, and potentially engages Article 7 which states there should be no punishment without law.
could and could not do within the regulations:

“Well, the scumbags have now started going to people’s houses and saying, ‘I’m living here now’, well mate, that’s the fourth house you’ve been living at in the crisis, so here’s your ticket.” (P5, 2020)

“I think people know now. Early on you’d stop cars and people were very nervous, you know, ‘what are you doing out?’, ‘erm, I was going to the shops to buy milk!’ They were panicking that they shouldn’t really be out, but then I think as time has gone on, people have realised that the police aren’t going to issues fines and they’re not gonna get arrested for nothing, I wouldn’t call it a toothless tiger as such … but, I think people have cottoned on that they can actually do what they want, and the police aren’t really going to do anything.” (P9, 2020)

“If we had given fines out to everybody we found breaching the rules, then we would have given out millions.” (P20, 2022)

The general consensus from officers is that the new powers were brought in to help curb gatherings of people (although the amount of people you were permitted to gather with changed several times5). Issuing FPNs to people gathering at houses proved to be one of the most difficult things to police:

“So, Section 17 of PACE [Police and Criminal Evidence Act] gives you certain powers to go into a property right, like to prevent a breach of the peace. But people in a house having a gathering, well how can I legally go into someone’s house? You can’t, so you have to charm your way through the front door, or bluff it and say ‘can I come in? You’re having a party, you shouldn’t be’, and then hopefully they’re compliant. But then if someone says ‘Yeah my family and friends are round but we’re not doing anything wrong’, and then we can’t do anything.” (P10, 2020)

Other officers expressed having their hands tied by the law and how the regulations were unenforceable as they contravened other older regulations:

“How am I gonna legally get in? Without basically breaking into that person’s property? I’m uninvited, I can’t go in. I mean, Section 17, if you know someone’s in danger or something like that, then obviously, but I can’t be going in to break up family member’s gathering, so there’s a major hole [in the legislation] there. So yeah, we need to stop these house parties, but if you cannot get into the property legally, unless you’re invited or charm your way in […] so they’re saying ‘this needs to be done’, but not giving you the tools to carry out the job.” (P14, 2020)

“(The government) wanted us to make sure that people weren’t gathering over X amount of people but that was ridiculous because we can’t go in [the house] anyway. So it’s like you’ve given me these instructions to go and police the public, but they’ve not given me the tools to do so.” (P20, 2022)

Some complications with FPNs that were existent before COVID, such as not being able to issue fines when people are inebriated, presented themselves during the pandemic too. The police faced criticism for the ‘excessive’ £10,000 fines for hosting parties, but perhaps purposefully redacted by the media was the fact that the police have no authority to decide the amount of fine (Gov 2021):

“The big fines being handed out [up to £10,000] were mainly for New Year’s Eve. That’s when [forces] were handing out the most penalties I think, but you can’t give them to people who are drunk. And a lot of people were drunk at these parties, and we’d have to wait to be invited in [the house] otherwise they couldn’t go in and people just said it was ridiculous. People were laughing in our faces. So yeah, you’re the middleman, the government go, yeah police go and do this and go and do that, but a lot of the time, [we] were enforcing the unenforceable.” (P22, 2022)

Despite the early criticism of police over-enforcement, after 500 reports in one week of people telling on their neighbours for regulatory infringements, the local Police and Crime Commissioner of West Midlands asked for more powers to enter people’s home if they were suspected of a breach (Walker 2020). After Priti Patel admitted she would call the police on her neighbours for breaking the rules (Rawlinson 2020), The Times reported extra officers being seconded to answer the 101-reporting line which was inundated with calls from members of the public reporting their neighbours for ‘rule of six’ breaches (O’Connor et al., 2014).

The symbolic power of the ‘rules’ were weakened by actions by authorities (Johnson’s bike ride, Cummings’ eye test, etc.) which were deemed to be ‘one rule for us, and another rule for them’ (Rentoul 2021):

“The guidance and the enforcement side of it is unpoliceable, completely unpoliceable […] It was weakened by Johnson doing what he wants […] Anyway, you were told to exercise near your house, great, everybody got that. Then as long as your exercise was one minute longer than the drive it took to get there, that was acceptable. Well then you got people taking the mick with it, as you would.” (P5, 2020)

“It just seems like as soon as the whole Dominic Cummings thing happened, people were like ‘yeah, we’re gonna do whatever we want now’.” (P10, 2020).

5 Permitted numbers ranged from 2, to 4, to 6, to 8, to 30 etc., and then two households, and then further confused by ‘support bubbles’ additions..., again see Baker et al., (2021) for more details.
“The government is guilty of breaching its own rules, and it’s made a complete mockery of the whole thing when you’ve got people at the top of government not listening to the rules but expecting the police to enforce them on their behalf, it’s a bit of a joke really. I think that will be the legacy of the lockdown restrictions.” (P23, 2022).

As well as government officials corraling public trust, officers expressed dismay at other police officers publicly misunderstanding rules or being involved in breaches (for example the nine officers in the café) as it made their job to police with consent significantly harder:

“The day after Nick Adderley, the Chief Con of Northamptonshire came out and said, ‘we’ll check your trollies’, he said, ‘Oh, no I didn’t say that!’ I was so mad about it, because well I’m sorry Sir, but you absolutely did say that live on television, just put your hands up and say ‘I kinda got that wrong, sorry.’” (P18, 2020).

After some time of living under restrictions, compliance seemed to wane. Highly-publicised police and government scandals, and vaccination roll-outs led to some members of the public breaching regulations more regularly (Wright et al., 2022). Matt Hancock, who was the UK’s Secretary of State for Health and Social Care 2018–2021 argued that interpreting the ‘flexing’ of the government’s rules as liberally as possible was a ‘potential threat to life’. A few months later Hancock subsequently broke his own social distancing rules by kissing his closest aide, Gina Coladangelo, and was exposed when photos emerged evidencing their affair in an elevator. He resigned with immediate effect and said he breached his guidelines because he ‘fell in love’ (Walker 2022). These highly-publicised events (namely Hancock, Johnson, and Cummings) led to a sharp decline in faith in official responses (and people’s willingness to comply – see aforementioned ‘Cummings Effect’) – is crucial in understanding public attitudes and behaviours which the police have to monitor. Devon and Cornwall’s deputy chief constable Paul Netherton, told BBC News that due to this, the public began to wonder ‘How can I get away with the rules?’ (Davies 2021).

8. Discussion

There is a wealth of literature on the importance of police legitimacy and how it encourages compliance, not only with regards to cooperation with the police upon interaction, but just a general willingness to obey the law, and its significance cannot be overstated here (Tyler and Fagan, 2008). In February 2020, a YouGov poll found that 70% of Britons thought the police were ‘doing well’ – two years later this figure has dropped to 53%, and the percentage that believe the police are doing a ‘bad job’ has doubled from 15% to 37% (YouGov, 2022b). Legitimacy and public trust is marred by over-zealous policing and people designing or enforcing these laws not following them themselves. Similar to the UK’s policing by consent model, adherence to emergency regulations for rules such as social distancing rely heavily on voluntary compliance and individual responsibility above all else. Whilst most people did comply – 90% according to UCL (2020) - some did not, and these figures are of course, self-assessments of compliance. During the first few months of the pandemic, UK polls revealed mass public support for more radical social distancing measures (Henley, 2020). However, those that did break the law knowingly, or unknowingly, and were subsequently given FPNs, expressed disagreement with the fines. This unsurprisingly follows reports that nearly all the fines given out under the regulations were unlawful. Additionally, there is clear evidence that it disproportionately affected young people from black and ethnic minority backgrounds who were socially deprived (Grace, 2021), and statistics show that black and Asian men were twice as likely to receive FPNs as their white counterparts (Gov 2021). This aligns with previous research on FPNs that argued disagreement stemmed from beliefs that offending behaviour was never serious enough to warrant a fine, a warning would have been suffice, or self-assessments of distributive fairness (they had been ‘wronged’) (Grace, 2021; see also Snow 2019), although all forces (and officers in this study) vowed that (sometimes several) warnings were always given before issuing fines.

The Siracusa Principles (adopted by the United Nations Economic and Social Council in 1984 and the United Nations Human Rights Committee) (AAICJ, 1985) provide authoritative guidance on certain restrictions that can be lawfully placed, such as freedom of movement to protect public health in states of emergency but they must be clear in law and proportionate to the specific aims. The COVID-19 landscape has ensured an overlap between provisions which are usually separate (National Health Service, government, police etc.) which has distorted the perception of boundaries between the government and these partner institutions (Jennings and Perez 2020). The ‘authorities’ in this context, the ones who were designing the rules (the government) and enforcing them (the police), came under even more scrutiny than usual, so the reports of several high-profile events has potentially damaged trust in these institutions. Following ‘Partygate’, the Metropolitan police issued 126 fixed penalty notices to 83 members of government staff, including one to the then-prime minister, at a time when some of the strictest regulations were in place banning such gatherings. Boris Johnson was the first sitting prime minister to ever receive a police fine whilst in office, and there were repeated calls for his resignation.

Ghaemmaghami et al. (2021, p. 2325), argued that, moving forward, the police will have to strengthen their legitimacy again in the post-pandemic world, and while their study’s respondents sympathised that the police were ‘doing their best’, the consequences of discretionary decisions are yet to be seen. HMICFRS commissioned a YouGov poll to gauge public perceptions of the police during the

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6 Partygate was a political scandal in the UK about parties and other gatherings of government officials held during the COVID-19 pandemic in 2020 and 2021, when public health restrictions prohibited most gatherings. In late January 2022, twelve gatherings warranted police investigation by the Metropolitan Police and at least three of these gatherings were attended by Boris Johnson.

7 Boris Johnson eventually resigned two months later.
first nine months of the pandemic, and despite negative press, the survey found that 33% of the British public believed the police did the right amount of enforcement (or should have done more – 38%), and 33% also believed the police were effective at providing pandemic-related guidance (although 35% believed they were not effective) (YouGov, 2020a). This is of course, dependent on various factors, but Moule (2020) has argued that often public dissatisfaction with the public is often over-inflated by the media. It is perhaps only with the benefit of hindsight that police action should be assessed fairly. MP Harriet Harman (QC), speaking at the Joint Committee on Human Rights posed the question:

‘Do the authorities not have to be judged by what they thought might be the case at the time, not by what then emerged to be the case with hindsight, if they are doing their Article 2 duty, which is to protect lives?’

Afterall, most police officers in this study did not condone the controversial behaviour of some government officials, they did agree for the most part that the government just did what they thought was best at the time during an unprecedented global crisis. However, the officers argued that enforcing unenforceable regulations caused them problems with morale. The lack of clarity on when they were ‘supposed’ to issue FPNs, or enforce exercise ‘rules’, etcetera was problematic. This was illuminated particularly by the legislation that would allow entry into someone’s house (ordinarily under PACE, 1984) was muddled by officers knowing they could not legally enter to break up parties for example or give out an FPN to anyone who was inebriated.

Despite decades of tension due to some high-profile controversies, and accusations of the police being used as a political tool (see Rentoul, 2021 [2010] also Kitson 1999; Dearden 2019; Kitson, 1999), research shows that support for the police was generally very strong during the pandemic. The Police Foundation and Crest polled over 3000 members of the public and found that 66% supported the police approach either fully (37%) or with the caveat that in some cases, they ‘went too far’ (29%) and these views remained relatively unchanged throughout the pandemic (Aitkenhead et al., 2022, p. 25–6). The rare occasions that police employed heavy-handed tactics failed to produce the expected public backlash – the poll revealed that only a small minority (8%) said they thought overall ‘the police had gone overboard’ (Aitkenhead et al., 2022, p. 26). It seems that an important factor mitigating damage to police legitimacy was preserving the policing by consent model (thanks largely to the 4 E’s approach) and that there was understood to be a clear separation between the government and the police’s independence (Aitkenhead et al., 2022). This differed in other European countries, for example in France residents were subject to a nationwide 7pm-6am curfew during lockdown and were required to carry a travel certificate if they left their house. In Italy, in the most affected areas, police cars blocked roads into and out of quarantine zones and erected barriers with 400 police personnel at 35 checkpoints (Johnson and Davide, 2020). Similarly in Spain, there were strict lockdown measures put in place in the most affected areas, although more positive media coverage was seen – videos emerged of some officers making trips to quarantined populations and playing musical instruments for residents to lift spirits (Fridenberger, 2020). Contrastingly, in Belgium, amid a nationwide lockdown, a 19-year-old man was killed fleeing a coronavirus check after his scooter collided with a chasing police car. Anti-police press coverage followed, and the slogan ‘Adil, le virus c’est la police’ (Adil, the virus is the police) was graffitied at various locations around the region (Fatisis and Lamb, 2022, p. 20). International differences in policing practices throughout the pandemic are within an emerging body of research (see Fatisis and Lamb, 2022), and early analyses show the police in England and Wales issued significantly fewer fines per person than forces in Southern Europe (but similar to countries in Northern Europe) - for example, ‘by the end of the first lockdown, over one million fines were issued by Spanish police compared to just over 22,000 fines in England and Wales’ (Aitkenhead et al., 2022, p. 64).

The police officers in this study and others (see Elgot and Walker, 2020; Aitkenhead et al., 2022; Charman et al., 2022) indicate that while the confusion between law and guidance had the potential to cause damage to the already fragile police/public relationship, there are suggestions that police support remains at pre-pandemic levels (Aitkenhead et al., 2022), but other polls (YouGov, 2022b) found that public satisfaction in the police had dropped from 75% to 53% in just two years, so like most things, it always depends on who you ask. As Charman et al. (2022) argues, the fact remains that disproportionate enforcement policing, including the issuing of FPNs, has fallen more heavily on certain socio-economic or ethnic groups, but this was a feature of all European countries (Aitkenhead et al., 2022).

International differences in compliance, and subsequent issuing of FPNs may be due, in part, to the policing by consent model adopted in England and Wales, where enforcement is usually a last resort (Terpstra, 2021). Threats to legitimacy during the pandemic may be resultant of police officers being required to interpret and use discretion as to what they imagined was a breach of the rules. In contrast, Greece and France had clear administrative procedures with residents being required to carry a completed ‘movement certificate’ or ‘self-authorisation form’ (Terpstra, 2021, see also EAD 2022). Afterall, these misinterpretations (or heavy-handed approaches) have led to 30% of all FPNs issued during COVID in England and Wales to be cancelled by the Crown Prosecution Service (Fouzder, 2021; see also Jones, 2022) – the international differences in COVID-19 restrictions and policing styles will form part of an emerging body of literature for years to come.

9. Conclusion

Enforcement of coronavirus rules posed challenges for the public and those who make the rules (the government) and those tasked with enforcing the rules (the police). Whether people follow the law due to moral judgement (because it’s the right thing to do under the circumstances), or because it’s the law (p. 97, Braithwaite, 2011), they do so mainly because of their belief in these institutions as a legitimate power – therefore, trusting that police do the right thing is vital. During the COVID-19 pandemic, there were instances of over-zealous policing, government scandals, and the issuing of too many unlawful fixed penalty notices which were readily reported by the media. The breakdown in trust has been fostered by badly drafted laws, abundant with errors, and left nearly every piece of advice, guidance and law open to interpretation. It is clear from the experiences documented in this paper that police officers felt confused.
about what they could and could not enforce at any given time, particularly as the regulations changed so quickly and so frequently, there was not enough time to digest and understand important amendments.

Fixed penalty notices were originally designed to quickly deal with straightforward matters of law which would be easily understood by all involved. During the pandemic, while the symptom may have been over-policing, the cause of the problem goes straight to the heart of the government. Despite the statistics showing that there were many thousands of people breaking the law, and over a hundred thousand fixed penalty notices issued for regulatory breaches in England and Wales, the key issue was actually the government’s breach of the most basic principle of the rule of law – that it must be intelligible, clear, and predictable (Braithwaite, 2011).

Unfortunately, during the COVID-19 pandemic, the law was none of these things.

**Declaration of competing interest**

There are no conflicts of interest to report.

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