



SNAPSHOT REPORT 3

POLICING AND PUBLIC SAFETY



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With special thanks to our reviewers Alexander Babuta, Keith Ditcham and James Sullivan

18 May 2021

EXECUTIVE SUMMARY

- Policing during a pandemic brings novel data-driven challenges. Solving them requires significant coordination and clear communication both within forces and across public sector agencies.
- This report presents three case studies demonstrating the range of opportunities and difficulties facing the police in this period: police access to NHS Test and Trace data; monitoring of crime and enforcement trends; and monitoring of police resourcing and wellbeing.
- Whilst there has been an increased 'thirst for information' regarding the police response to the pandemic, this has often been experienced as an 'overload of information' for frontline officers. Navigating this will require clearer national recording mechanisms for data-driven initiatives and frequent consultation with officers to identify points of saturation.
- Sharing of NHS Test and Trace data with the police may have been less effective than originally anticipated due to tensions between the desire for appropriate enforcement, the need to maintain legitimacy across communities, and the difficulty of retrospectively proving self-isolation offences.
- The pandemic has resulted in new ways of monitoring crime and enforcement trends giving indications of where and when disproportionate levels of policing may be occurring.
- Data-driven assessments of police resourcing and wellbeing were deployed at both the local force level and national level, although it was not always clear how localised responses fed into the central response. This, coupled with persistent concerns over data quality, detracted from the overall effectiveness of these approaches.

HEADLINE RECOMMENDATIONS

- **Police use of health data** – to demonstrate that police use of NHS Test and Trace data is a **proportionate use of policing powers**, further research is needed to **clarify its impact on self-isolation compliance and willingness to be tested for Covid-19**. The **Memorandum of Understanding (MoU)** underlying the data sharing arrangement between the National Police Chiefs' Council (NPCC) and Department for Health and Social Care (DHSC) **should be published as a matter of priority**.
- **Crime and enforcement trends** – using standardised labelling and terminology, there should be a concerted effort to continually improve the quality of data entering tools such as Police Scotland's Coronavirus Interventions System (CVI) and to improve the robustness of outputs.
- **Police resourcing and wellbeing** – led by the NPCC, a rigorous 'lessons-learned' exercise within and across police forces will ensure that best practice during the pandemic can be deployed by other forces whilst ensuring that appropriate governance and oversight processes are not overlooked.

CASE STUDY 1

POLICE USE OF PUBLIC HEALTH DATA

HEADLINE FINDINGS

- In the absence of further justification or clarity regarding data sharing arrangements, the **decision to permit the sharing of public health data with the police appears neither a necessary nor proportionate response to the pandemic**. This was partly due to the practical difficulties of enforcing self-isolation regulations and competing force-level priorities.
- There was a **lack of transparency** both in terms of **Parliamentary scrutiny** of new legislation in January 2021, and the **content of the MoU** between the NPCC and DHSC. It was difficult for the general public to understand how public health data was being shared with the police and for what purposes.
- There is no clear evidence that the decision to permit sharing of NHS Test and Trace data with the police has led to disproportionate policing in ethnic minority communities, although the **overall impact on police-community dynamics requires further examination**.

CASE STUDY OVERVIEW

On 28 September 2020, 'Self-Isolation Regulations'¹ came into force in England and Wales, making self-isolation a legal requirement for individuals notified by the bodies specified in the regulations. Soon after, it was announced that the NPCC had come to an agreement with DHSC allowing local police forces access to NHS Test and Trace data on a case-by-case basis. On January 29, 2021, data sharing provisions were brought into law through an Amendment to the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (S.I. 2020/1045).²

Importantly, in the case of enforcing self-isolation restrictions, police forces do not have wholesale access to the NHS Test and Trace database. It is only once police are notified by a member of the public or local authority about a suspected breach of restrictions that the police can begin the process of requesting additional information.

Before that request, however, an internal assessment of the initial report takes place. If this is deemed to warrant further investigation, then the police can seek confirmation that the individual does indeed have a legal duty to self-isolate by making a specific information request to Test and Trace. They, in turn, will confirm whether that individual has been notified and supply any other relevant data, leaving

¹ The Self-Isolation Regulations 'impose certain requirements on individuals to self-isolate where they are notified by one of the bodies specified in those Regulations that they have tested positive for coronavirus or have been in close contact with such a person.' See: Explanatory Memorandum to The Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021.

² The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020; The Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021. See: <https://www.legislation.gov.uk/uksi/2021/97/regulation/4/made>

it to the police to contact and visit the individual, before deciding whether to issue a fixed-penalty notice (FPN).

AIMS & OBJECTIVES

Public health emergencies are complex, dynamic environments where information held by individual stakeholders is often imperfect. They are also constantly evolving events, and in the Covid-19 context, new variants of the disease have altered expectations being placed upon stakeholders such as the police.³ The police's reach into the realms of individuals' personal data relating to test and trace and potentially health status has placed the 'policing by consent' mantra in the UK under the microscope, leaving some members of the public to question how temporary these shifting boundaries will be.⁴

The core objective underlying the decision to permit sharing of NHS Test and Trace data with the police is to 'drive up compliance among those most at risk of spreading the virus... bringing down rates of transmission, protecting the most vulnerable, reducing pressures on healthcare and aiding a return to normality'.⁵ It was argued that the police needed additional information to verify the identity of an individual to establish if they were under a legal duty to self-isolate and why, and to establish if the individual had received the relevant notification. This meant key changes to regulation 14 of the Self-Isolation Regulations were made: the addition of date of birth and email address to help verify identity; information on whether the individual is participating in coronavirus-related research to determine whether an exemption is applicable; a copy of the original notification to isolate served to an individual by NHS Test and Trace; and information on whether the suspected breach is a positive case or a close contact.⁶ Further contextual information such as whether the individual may have a disability or whether they have been threatening or abusive may also be acquired to help manage engagement.

It has, nonetheless, been reiterated that these additional data points may only be shared, 'for the purpose of the prevention, investigation, detection or prosecution of offences'.⁷ Although arguably police already have powers under common law to request health data from third parties for the prevention and prosecution of offences, the amendment created a permissive regime in respect of the disclosure of data from health bodies to the police.

³ Explanatory Memorandum to the Health Protection (Coronavirus, Restrictions) (All Tiers and Self-isolation) (England) (Amendment) Regulations 2021 No. 97. See: <https://www.legislation.gov.uk/ukSI/2021/97/memorandum/contents>

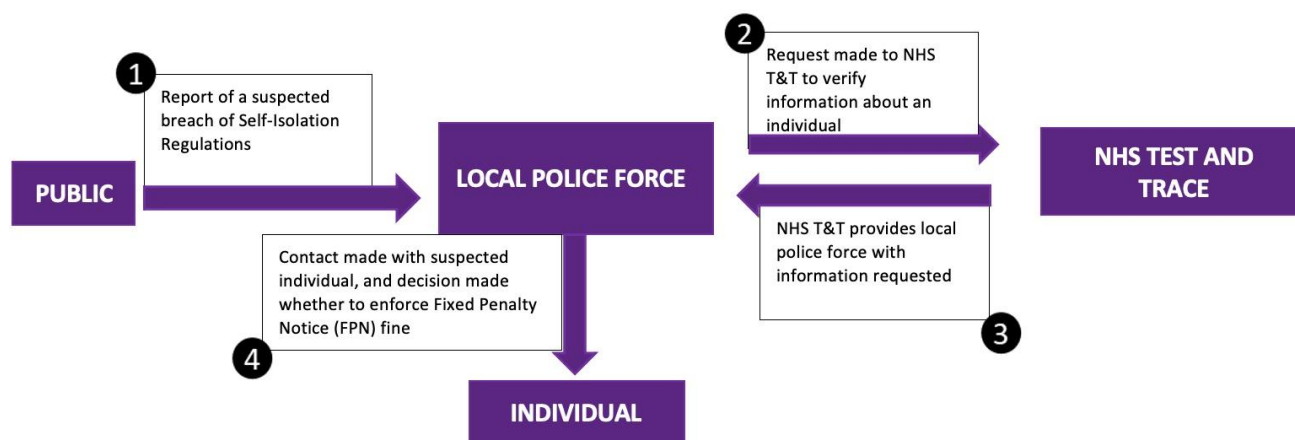
⁴ Charlie Duffield, iNews, 'Police given access to NHS data on people told to self-isolate', October 18 2020, Available at: <https://inews.co.uk/news/uk/police-access-nhs-data-people-told-self-isolate-729083>; Vincent Wood, The Independent, 'Coronavirus: Handing track-and-trace data to police 'disastrous' for public trust, government warned', 18 October 2020, Available at: <https://www.independent.co.uk/news/uk/politics/coronavirus-track-and-trace-app-data-privacy-security-police-fine-self-isolation-b1136777.html>

⁵ See: <https://www.legislation.gov.uk/ukSI/2021/97/memorandum/contents>

⁶ Ibid.

⁷ Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021, debated on March 1 2021, Lords Chamber.

HOW IT WORKS



The limited public material suggests that the individual-level data given to police during this process can only be used to investigate a specific self-isolation offence and not any other offence if alleged. The data itself is held in accordance with the MoPI guidelines⁸ and must be removed once it is no longer needed.⁹ However, without an inspectable MoU, it is unclear what ‘no longer needed’ means in practice and how this is determined or monitored. The MoU between the NPCC and DHSC is due to be rescinded in September 2021 – if an extension is to be proposed, parliamentary scrutiny will be necessary.

BENEFITS

Creating a permissive regime for information disclosure during a pandemic can serve as the foundation for a coherent emergency response. Ultimately, this case study is the culmination of an increased desire at a policy level to improve levels of compliance in the face of an increasingly unpredictable pandemic. Given that the emphasis on enforcement has been markedly higher since January 2021, it was seen by the government as a reasonable step for the police (via the NPCC) to request more detailed information in order to live up to the increased expectations placed upon them.

This data was intended to improve the evidentiary chain so that the police could have confidence that they are identifying and investigating the correct individuals; that those individuals are aware of their legal requirement to self-isolate; and that they have actually breached that legal requirement. While this information disclosure undoubtedly helped prevent cases of mistaken identity, it did not necessarily help in proving whether a breach had actually taken place, thereby significantly limiting its usefulness in practice.

RISKS & CHALLENGES

Fears over the impact of this policy boil down to the possibility that allowing police access to this data has the effect of deterring certain parts of the population from getting tested, thereby making the public

⁸ MoPI is a set of guidelines issued by the College of Policing outlining how the police should store and retain data.

⁹ Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021, debated on March 1 2021, Lords Chamber.

health risk more acute.¹⁰ Concerns that the data could theoretically be used for other policing purposes once acquired further compounded that fear. It is not currently known whether legal consequences for breaking self-isolation increases self-isolation rates, with further research needed before this complex issue can be understood.¹¹ A member of the Government's Scientific Pandemic Insights Group on Behaviours, however, claimed 'it's one more in a series of decisions that goes against what scientists have advised and which is potentially disastrous',¹² while the office of Chief Medical Officer Chris Whitty was said to have significant reservations, fearing it would discourage people from getting tested.¹³

Based on interviews with policing stakeholders, it was clear that the practical reality of enforcing lockdown and self-isolation requirements was not straightforward and paved the way for differing approaches across the country. In the event of a police home visit, an individual may open the door (in which case there is seemingly no breach) or there may be no answer (which is not necessarily a sufficient basis to enforce against as there are a number of 'reasonable excuses' for this). For the police to investigate why the individual was away from their address – taking statements, conducting interviews, checking CCTV – requires a large amount of resourcing and may be disproportionate to the FPN sum eventually issued.¹⁴

Away from the practical challenges, a great deal of uncertainty and concern has shrouded the data-sharing MoU that was initially agreed between DHSC and the NPCC in October 2020. At the time of writing, the MoU is yet to be published. The government has maintained this will happen, but feedback from the Information Commissioner's Office has meant that extra work has been required. The nature of the Information Commissioner's intervention is unclear, as well as the possible issues that could require over seven months to address. Despite the permissive disclosure regime set out in regulations mentioned above, the value of the MoU is in setting out the details of how the information is accessed, handled, used, and retained.

One interviewee emphasised that an MoU is one of the only feasible ways of knowing the fields of data that are being exchanged between one organisation and another. The passing of what the NHS calls 'demographic detail' that is gathered in a medical context to a body like the police may theoretically permit linkage with or reference to entirely different records.¹⁵ Despite government assurances to the contrary, the lingering uncertainty around the MoU and what information the police can access is likely to continue. Also relevant in this regard are the mechanisms through which NHS data collected by the police is actively segregated from other data in police systems.

¹⁰ On this issue, government ministers have said that, 'we are very alive to this danger... (but) this has not been our experience to date'. See: Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021, debated on March 1 2021, Lords Chamber.

¹¹ However, a study by UCL in January 2021 revealed that 38% of respondents said they were not isolating for the recommended number of days when they had developed symptoms, with 13% not isolating at all. See: <https://www.ucl.ac.uk/news/2021/jan/lockdown-compliance-improving-low-take-covid-tests-worrying>

¹² Anna Gross and George Parker, Financial Times, 'Experts decry move to share Covid test and trace data with police', October 18 2020. Available at: <https://www.ft.com/content/d508d917-065c-448e-8232-416510592dd1>

¹³ Alastair McLellan, 'Exclusive: Police given access to Test and Trace data on those told to self-isolate', Health Service Journal, 17 October 2020. Available at: <https://www.hsj.co.uk/news/exclusive-police-given-access-to-test-and-trace-data-on-those-told-to-self-isolate/7028653.article>

¹⁴ Interview with L11.

¹⁵ Interview with D10.

LAW, REGULATION & GOVERNANCE

Part 3 of the Data Protection Act 2018 governs processing by competent authorities of personal data for law enforcement purposes. 'Competent authorities' includes those persons detailed at s30/Sch 7 DPA 2018 and any other person who has statutory functions/public powers for law enforcement purposes (Sch 7 covers police). In this case, 'police forces in England' are 'data controllers' for health information when using it to investigate and enforce non-compliance with mandated self-isolation periods.¹⁶ Processing must be in compliance with the six data protection principles at s35-s40 DPA 2018, which require processing to be lawful and fair, the purposes of processing to be specified, explicit and legitimate, and personal data to be accurate and up to date, kept for no longer than necessary and processed in a secure manner.

If an individual is required to self-isolate this arguably raises issues relating to their health, and particularly the risk they pose to others' health. This is relevant because health data is highly sensitive and a special category of data under GDPR. An extremely relevant question in the context of this case study, therefore, is whether disclosure of this sensitive data is proportionate to the problem that was initially encountered. S35 DPA 2018 specifies that where the processing is 'sensitive', which would apply where the police process data concerning health, it is permitted only in two cases. The first case is where the data subject has given consent to the processing and the police have an appropriate policy document in place in accordance with s42. The second case is where processing is strictly necessary for law enforcement purposes, it meets a sch 8 condition and at the time of processing the police have the appropriate policy document in place.

The question of proportionality is also pertinent to Article 8 ECHR 'right to private life'. The fact that Regulation 4(4) of the Self-Isolation Regulations limits the use of the shared information to 'the prevention, investigation, detection or prosecution of offences under' the self-isolation regulations, is said by the Department of Health and Social Care to show proportionality and alignment with Article 8 ECHR and DPA 2018.¹⁷ However, the issues raised in the 'Risks and Challenges' section may suggest otherwise.

Human rights

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) affords a right to respect for private life. Art. 8 covers information which individuals can legitimately expect not to be gathered, published, stored or used without their consent, including medical data (*Z v Finland* (1988) 25 EHRR 371); and personal data more generally (*Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland App no 931/13*). Art. 8 is a qualified right with which the state may interfere in certain circumstances where necessary in a democratic society and in accordance with the law. This includes in the interests of public safety, the protection of health or morals, and for the protection of the rights and freedoms of others. The requirement that interference is necessary entails a test of proportionality; interference must be no more than necessary to meet the stated aim.

¹⁶ Department for Health and Social Care, Testing for coronavirus: privacy information. Available at: <https://www.gov.uk/government/publications/coronavirus-covid-19-testing-privacy-information/testing-for-coronavirus-privacy-information--2#purposes-your-data-will-be-used-for>

¹⁷ See: <https://www.legislation.gov.uk/uksi/2021/97/memorandum/contents>

Separately, there has been concern from a governance perspective around the speed with which this regulation was brought about and Parliament's inability to scrutinise it in advance.¹⁸ It is hard to quantify the effect of this on public trust, but Baroness Tyler of Enfield summarised the issue when saying:

*'We all understand the urgency of responding to the pandemic, but democratic accountability should not suffer in the process. When considering these issues, we must surely remember that we are first and foremost dealing with a public health crisis, not a public order crisis, and our responses should be viewed through that lens.'*¹⁹

LESSONS LEARNED

- **Lesson 1:** the speed with which the pandemic evolved meant policy and legislation faced an uphill battle to respond in tandem. **The Coronavirus Regulations have changed at least 65 times since March 2020** and the Prime Minister himself has acknowledged that, 'over time, the (coronavirus) rules have become quite complicated and confusing'. The decision to permit sharing of NHS Test and Trace data appears to have been made **without a clear evidence base** on what the impact would be on compliance and the public's willingness to be tested for Covid-19. **Further research is needed to fill this gap and should be reported to the public as a matter of priority.**
- **Lesson 2:** uncertainty persists regarding the **status of public health data received by the police in relation to other police databases**, the mechanisms in place to ensure it is **only used for the purpose for which it was obtained**, and **how long it is retained for**. The **failure to provide assurances via the MoU** agreed between the NPCC and DHSC may have created an environment where the public feel disinclined to observe the Self-Isolation Regulations.
- **Lesson 3:** There was not a full appreciation of the **enforceability of the Self-Isolation Regulations** in the context of **competing force priorities**, the **resourcing required** to obtain an outcome, and the **need to maintain community relations** during a tense period. This led to the Regulations being **applied inconsistently across forces**. Without additional tools such as powers of entry or a burden of responsibility on the individual to prove their whereabouts, **current expectations are unsustainable.**

¹⁸ The Explanatory Memorandum to the Instrument stated that 'this instrument is made without a draft having been laid and approved by a resolution of each House of Parliament. It is the opinion of the Secretary of State that, by reason of urgency, it is necessary to make this instrument without a draft being so laid and approved.' This is despite the Secretary of State stating on 30 September 2020 that for significant national measures (...) votes would be held before such regulations come into force (Hansard cols. 288-289).

¹⁹ Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021, debated on March 1 2021, Lords Chamber.

CASE STUDY 2

MONITORING OF CRIME AND ENFORCEMENT TRENDS

HEADLINE FINDINGS

- There has been a **'thirst for information'** amongst senior policing stakeholders and policymakers on **how the police are responding to the pandemic, the nature of their interventions, and levels of public compliance.**
- This has often been experienced as an **'overload of information' for frontline officers** required to process constant updates from government, national policing bodies and senior force management.
- While there were centralised mechanisms for monitoring crime and enforcement trends in England and Wales, the **43-force model has not been conducive to establishing a system such as Police Scotland's Coronavirus Intervention System (CVI) that could collate and disseminate real-time trends.**
- Although the CVI is not a suitable basis for a comprehensive analysis of disproportionality in policing, it has been **useful in alerting police to the risk of over-policing at a basic level.**

CASE STUDY OVERVIEW

Police forces in the UK have been expected to take on a new set of powers and responsibilities in response to the Covid-19 pandemic. This has necessitated the evaluation of how police forces monitor crime and enforcement trends in their respective regions, and specifically how their officers have managed unlawful violations of restrictions during this period. In response to the introduction of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 and Coronavirus Act 2020, Police Scotland developed the 'Coronavirus Interventions' (CVI) recording system, allowing them to record and process police activity in relation to their Covid-19 powers, including dispersal, fines and arrests. The range of police activity captured by this system is said to be unique amongst similar data-driven responses attempted in the rest of the UK, and thus will merit closer attention in this case study.

AIMS & OBJECTIVES

Public health emergencies require a realigning of police priorities and new strategic approaches. This was evidenced by the outlining of the '4 E's' approach early in the pandemic which forces all over the UK were encouraged to follow: engage; explain; encourage; and enforce (as a last resort).²⁰ It became important, therefore, to test the strategic response with data. The effect of enforcement of FPNs on community-police dynamics was said by one interviewee to be one of the biggest legacies of the

²⁰ College of Policing, 'Understanding the law'. Available at: <https://www.college.police.uk/guidance/covid-19/understanding-law>.

pandemic – underlining the importance of scrutinising the frequency and distribution of tickets compared to other policing approaches.²¹

While in England and Wales data has tended to focus on the use of FPNs, in Scotland, the creation of the CVI has ensured not only up-to-date information on enforcement trends, but information on wider policing practice in relation to the first three E's of engagement with communities, explanation, and encouragement to return home.²² The system is used only to collect information on Covid-related interventions, and data from the CVI has been made available to academics on which to conduct analysis. Raw CVI data has also been made available via the Police Scotland website.²³

HOW IT WORKS

The CVI is a manual system where officers input relevant data following an intervention carried out in line with pandemic guidance or legislation, including the cooperation level they experienced with member/s of the public.²⁴ This data is collected via a central system and then rekeyed in the CVI, meaning that the CVI sits outside of mainstream systems. The CVI is a 'home-grown' system in that it was created in-house by augmenting existing systems operating on Microsoft Excel and Access.²⁵

Whilst the CVI is a manual input system, it is intended to be as intuitive as possible. Most of what the system asks for are numbers of people involved, dates, times, the type of interaction, and whether it was in a public or private setting. This is partly a function of the fact that before October 2020, there was no mobile mechanism for officers to input this information as incidents happened; they were only able to do it in bulk at the end of the working day where fatigue and other factors may have impaired data quality.²⁶ This is why the data published by the CVI should be treated as indicative of trends only.

There are five main types of policing intervention dealing with individual non-compliance with coronavirus-related regulations: dispersal of a gathering after providing information; dispersal of a gathering after providing explicit instruction; forcible removal to a home address; issue of FPN; and arrest. CVI data collected was able to show that between 27th March to 17th June 2020, 92.8% of these interactions involved dispersal, 74.2% of which came after being informed of public health risks, and 18.6% of which came after being explicitly told to disperse. FPN issuances made up 6.1%, and 0.5% involved arrest powers, with the remaining 0.6% involving forcible removal.²⁷ These trends can also be monitored over time: as the first lockdown in Scotland continued, CVI data was able to show that police officers relied increasingly on informal measures of engaging with the public. Finally, a comparison between the number of FPNs recorded on CVI system and those on the court ticketing system found that the CVI System has provided an accurate record of activity over time.²⁸

²¹ Interview with L5.

²² Justice Sub-Committee On Policing 11th Meeting 2020, Session 5.

²³ See: <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/>

²⁴ Justice Sub-Committee On Policing: Policing During The Coronavirus Pandemic: Written Submission From Police Scotland.

²⁵ Interview with L9.

²⁶ Interview with L12.

²⁷ Susan McVie et.al, 'Interim report on data for the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis', 28 June 2020, page 10.

²⁸ Ibid.

BENEFITS

The CVI has proven to be a very useful tool for quantifying the policing response to the pandemic, while shedding light on how this has evolved over time. Rather than just counting ‘enforcement’ via FPNs, the CVI has helped to provide a more nuanced, contextual understanding of policing activity by being able to see how many forced entries, permitted entries, student parties, actual breaches vs no further actions have been recorded over 24-hour, 48-hour, or weekly periods.²⁹ It provides an immediate indicative picture of the situation on the ground (without a time lag) which can be used as a foundation for further analysis and debate. Given that the Joint Committee on Human Rights recently cast serious doubt on the validity of FPNs issued during the pandemic, the inadequacy of the review and appeal process, the size of the penalties and the criminalisation of those who cannot afford to pay,³⁰ there is clear value in having a tool which quantifies the enforcement occurring relative to other interventions.

A related concern in terms of excessive enforcement has been the policing of protests during the pandemic³¹ - as the CVI records types of incident, it may be able to help identify what enforcement action was taken against activities which may be classed as legitimate freedom of expression.

The four main benefits of the CVI were described by one interviewee as:

- 1) Providing a framework for the operational management of enforcing the Coronavirus Act.
- 2) Maintaining public confidence by ensuring that the Force is adhering to policing by consent and in an equitable and proportionate manner.
- 3) Allowing public scrutiny of how the police have managed the response to the pandemic.
- 4) Allowing for transparent and progressive conversations between policing stakeholders and policymakers through the dissemination of daily and weekly updates.³²

The ‘public scrutiny’ aspect highlighted in 3) has largely been achieved through supporting advice mechanisms established alongside the CVI, such as the Independent Advisory Group (IAG)³³. The IAG has studied CVI data as well as separate FPN-specific data, with the latter yielding some important insights around the proportionality of enforcement across demographics in Scotland.³⁴ One such insight was that between March 27 and May 31 2020, the likelihood of being issued with an FPN was twelve times higher for those living in the 10% most deprived parts of Scotland compared to those in the 10% least deprived areas.³⁵ Making this publicly information available via an independent mechanism is an important way for the police to establish a level of transparency over their activity during the pandemic. However, this should not take away from the need to have formalised governance and oversight procedures in place at the same time.

²⁹ Interview with L12.

³⁰ See: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/154842/joint-committee-on-human-rights-every-fixed-penalty-notice-issued-under-coronavirus-regulations-must-be-reviewed/>

³¹ See <https://www.bbc.co.uk/news/uk-england-birmingham-56416663>; <https://www.judiciary.uk/wp-content/uploads/2021/03/Leigh-Ors-v-The-Commissioner-of-the-Police-of-the-Metropolis-12.03.21JUD-1.pdf>; <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/inspection-of-mps-policing-vigil-commemoration-sarah-everard-clapham-common.pdf>

³² Interview with L9.

³³ Members include representatives from government, civic society and academia. The IAG also has an ongoing relationship with the Justice Sub-Committee on Policing.

³⁴ Susan McVie et al, ‘Data report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland’, August 2020.

³⁵ Ibid, p.6.

Otherwise, CVI numbers have proven to be a very useful tool in briefing senior policymakers on levels of compliance among the public and very recent trends that have been noticed in the course of data analysis: ‘there might be a meeting between the cabinet secretary and one of our executive officers and they want information quickly so they can speak meaningfully with members of government about what the police have been doing over the last 24 hours or the weekend. That is a switch, we’ve never been able to get that out before.’³⁶

According to one interviewee, this is especially relevant to periods of legislative change involving further restrictions on public movement, in terms of how the public have received the change and whether they are complying with it.³⁷ These insights then feed into preparations for future changes in legislation, how commanders instruct their officers around effective engagement with the public, and also reassure the public that the police have anticipated certain behaviours and are adequately prepared.

RISKS & CHALLENGES

For some of the useful insights that can be gleaned from CVI data, there remain limitations to the detail that it can provide in certain areas. Due to those limitations, for the IAG’s second report in August 2020, a bespoke dataset had to be created by Police Scotland’s Operation Talla Information Collation, Assurance and Liaison (OpTICAL) Group³⁸. As previously mentioned, there are data quality issues linked to officers completing their data input at the end of their shift.³⁹ The mobile option for uploading data was implemented in October 2020 yet uptake of this option stands at 25% compared to 75% for desktop.⁴⁰ There is no clear way of discerning between differences in data quality between mobile and desktop uploads; in any case the most persistent issue has been where officers have not properly read the instructions and double counted an interaction (for example by recording an escalation from a request to disperse, to an escorting away and then an FPN as three interactions rather than one).

More broadly, longstanding problems with legacy police data systems persist, and this was said to be no different with the CVI case study. It is an ongoing challenge in Police Scotland (and other UK forces) to ensure data collection conforms to Part 3 DPA and other requirements, especially in relation to collection of protected characteristics.⁴¹ A written submission from Amnesty International to the Justice Sub-Committee on Policing referenced the ‘inability of the CVI to provide disaggregated data on policing of under 18 year-olds, and the ongoing use of the Police Scotland interim Vulnerable Persons Database for all ‘vulnerable’ children, young people and adults who come into contact with police during the pandemic.’⁴² Although there have been logical reasons for constraining what the CVI is able to collect, this shines a light on potential missed opportunities.

³⁶ Interview with L12.

³⁷ Ibid.

³⁸ Part of the OpTICAL Group’s role is to conduct data analysis (at Divisional level) to check powers are being used equally and equitably and that no social group or geographical area is being unfairly impacted. These insights are then submitted to the IAG for consideration.

³⁹ Justice Sub-Committee On Policing 11th Meeting 2020, Session 5.

⁴⁰ Interview with L12.

⁴¹ Justice Sub-Committee On Policing 11th Meeting 2020, Session 5.

⁴² Justice Sub-Committee On Policing: Policing During The Coronavirus Pandemic: Written Submission From Amnesty International.

LAW, REGULATION & GOVERNANCE

Personal data is not intended to be recorded in the CVI. It excludes data such as names, contact details and health status. It was said that on the rare occasion that an officer includes an address in their submission, this is later removed by the OpTICAL team when sifting through the data. Even though personal data is not intended to be recorded, there remains the limited possibility that depending on what other data is in the police system, someone could theoretically be identified after having an interaction recorded on the CVI. This means that proper personal data handling and governance procedures (such as anonymisation procedures) are still essential. This is particularly important when these datasets are disclosed to third parties, for example to academics attempting to understand more about the police response, as the general processing regime at Part 2 DPA 2018 would then apply. Ensuring that the development of these datasets is linked with a Data Protection Impact Assessment (DPIA) and the handling requirements in the MoPI guidelines is therefore crucial.

The IAG identified three priority areas for which data was required for the Coronavirus response: police application of the powers; public acceptability of the powers and policing response; and public compliance with the powers. Part of the IAG's terms of reference was 'to ensure that use of powers by Police Scotland is compliant - both in application and spirit – with human rights principles and legal obligations, including those set out in the Human Rights Act 1998 and the Scotland Act 1998.'⁴³ Furthermore, they found that, 'Police Scotland continues to have very good awareness of the human rights aspects of the emergency powers, and to pay due regard to them and to Police Scotland's values.'⁴⁴ The IAG already has the responsibility to, 'pay particular attention to any use of powers involving children, young people, or persons within disadvantaged communities including those with protected characteristics under the Equality Act 2010'.⁴⁵ If there is an appetite to improve the robustness of the data produced by the CVI, perhaps by constructing statistical models or expanding the range of data that is collected, then the Equality Act will be a particularly relevant reference point.

Equality

The Equality Act 2010 sets out the public sector equality duty (s.149) which requires, amongst other things, that public authorities have due regard to the need to advance equality of opportunity between people who share a protected characteristic and those who do not. The protected characteristics (s.4) are: age; disability; gender reassignment; pregnancy or maternity; being married or in a civil partnership; race; religion or belief; sex; or sexual orientation. In particular, in relation to people with protected characteristics, public authorities must take steps to remove or minimise disadvantage; meet the specific needs where they differ from the needs of other people; and encourage participation in public life/activities where participation is disproportionately low. The Act also prohibits direct and indirect discrimination by providers of services to the public based on a protected characteristic.

⁴³ Susan McVie et.al, 'Interim report on data for the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis', 28 June 2020.

⁴⁴ Justice Sub-Committee On Policing 11th Meeting 2020, Session 5.

⁴⁵ See IAG Terms of Reference here: <https://www.spa.police.uk/spa-media/5gxhinni/tor-final-27-4-20.pdf>

LESSONS LEARNED

- **Lesson 1:** the ‘thirst for information’ across policing and government during the pandemic has led to the creation of **new datasets with varying levels of data reliability**. There have been concerns that datasets like the CVI risk standing in opposition to official police statistics that go through multiple rounds of verification. The case of Police Scotland and the CVI suggests that through suitable caveats and public dialogue, this confusion can be mitigated. **Police forces should be proactive in publishing indicative data designed to improve transparency and public understanding of police work.**
- **Lesson 2:** tools such as the CVI have set a **new precedent in Scotland in terms of what policymakers and the public expect by way of data-driven policing**. Retreating from this baseline now may not be desirable for all concerned. As a result, there should be a concerted effort to **continually improve the quality of data entering the CVI**, for example by using standardised labelling and terminology, and improve the robustness of outputs. To assist with this, the **IAG should be made permanent with a remit covering a wider range of issues.**
- **Lesson 3:** the more decentralised tradition of policing in England and Wales with **43 individual forces increases the difficulty of implementing real-time monitoring tools such as the CVI on a wider scale**, as well as implementing structures like the IAG designed to provide guidance for extended police powers during the pandemic. As policing stakeholders in England and Wales reflect on the past year, priority should be given to considering **how similar models might be created and how robust governance processes can continue alongside emergency and fast-moving implementations.**

CASE STUDY 3

MONITORING OF POLICE RESOURCING AND WELLBEING

HEADLINE FINDINGS

- There has been both a local and national-level response to monitoring police resourcing and wellbeing in England and Wales. Both brought important benefits, such as **monitoring absence levels, predicting bottlenecks in certain force divisions, and coordinating the supply of PPE**, although it was **not always clear how localised data-driven responses fed into national efforts**.
- **Acquiring data from local forces and the quality of data when it was submitted to central bodies** were the two key challenges to accurate understandings of police resourcing and wellbeing.
- Interview data from this research indicates that **data-driven approaches to resourcing and wellbeing were important in ensuring better support and working conditions for employees**. However, formal means of ongoing monitoring are needed to build employee feedback into the system and provide more tailored services.

CASE STUDY OVERVIEW

Policing during a pandemic is multi-faceted in the sense that there are external duties to protect the wider public from harm and ensure that regulations are adhered to, but also internal duties to protect staff from the effects of the pandemic and deal with changing resourcing requirements. Given the unpredictable nature of the Covid-19 pandemic and uncertainties around how much of policing capability was at risk, methods had to be established to monitor absence levels, predict bottlenecks, and coordinate a reliable supply of PPE to forces across the country.

AIMS & OBJECTIVES

According to 2020 Home Office data, 92% of police officers in England and Wales are in frontline roles.⁴⁶ This leaves a significant number of people in the service who are more likely to be exposed to or contract the virus, increasing the risk that many officers would be required to self-isolate at the same time. As a result, establishing data-driven approaches which could foresee that risk and provide a platform for action was integral to maintaining public confidence in policing. A public health crisis demands a reassessment of police priorities in the short-to-medium term, hence the need to know what to 'dial up and dial down' in the collective response.⁴⁷

If this reassessment is not carried out effectively, the police risk not only undermining their rapport with their communities, but risk giving an edge to those looking to exploit new avenues for criminal

⁴⁶ Home Office, 'Police Workforce, England and Wales, as at 31 March 2020 second edition', 30 July 2020, p.20.

⁴⁷ Interview with L3. Interview with L4.

gain. With changing crime patterns may come increased stress on specific units, such as cybercrime or domestic violence units, at the same time as greater expectation to perform tasks like crowd control, securing healthcare facilities, and protecting critical goods like vaccine stockpiles.⁴⁸

With greater pressure on these roles, the police need to pay closer attention to well documented disaster and emergency risks of police officers and other first responders suffering from PTSD, acute stress disorder, psychological distress, anxiety and depression, and substance misuse.⁴⁹ These may be exacerbated by longer hours and increased workloads, fear of being exposed to the virus and spreading it amongst their families (hence the importance of the PPE distribution process), and lack of personnel due to absenteeism and illness.⁵⁰

HOW IT WORKS

One of the police forces interviewed for this research gave details of their force's data-driven response to forecasting sickness and absence. They developed a predictive model which forecast the number of people self-isolating, infected or on leave as a result of Covid-19 for up to a 40-day period.⁵¹ This forecast is coupled with additional factors or areas of interest for certain departments. This information is presented by way of a dashboard, with data displayed in relative terms to show what proportion of resources are being affected. It is combined with pre-existing departmental data to provide a level of 'criticality' and determine whether there is a risk of having a significant proportion of resources unavailable.⁵² Personnel data from internal HR systems is fed into the dashboard, covering information about who is off sick and who has declared a need to self-isolate. The data is also matched against a skills matrix which accounts for factors such as rank and experience so that suitable resources can be drawn up from across the force as and when needed.⁵³

As well as internal data-matching, the modelling considers publicly available data about the progression of the disease. Analyses are applied to this to make it more applicable for the force area and the various departments, with custody and force response deemed to have a higher probability of catching Covid-19 due to their more direct interactions with the public. Finally, the performance of the model is actively monitored, with measures produced of how well the model is working and how accurate predictions have proved to be.

BENEFITS

The type of modelling described in this case study has improved this force's confidence in their ability to manage the pandemic, in turn providing a better service to the public at large. In Her Majesty's Inspectorate of Constabulary and Fire & Rescue Service's (HMICFRS) April 2021 report on policing during the pandemic, effective contingency planning was praised in four main areas: identification of critical service areas and ranking them in priority order; creating trigger points for action when staffing

⁴⁸ Jeff Rojek and Michael R. Smith, 'Law enforcement lessons learned from Hurricane Katrina', 2007, pp.589-608; US Department of Justice, Office of Justice Programs, Bureau of Justice, 'The Role of Law Enforcement in Public Health Emergencies: Special Considerations for an All-Hazards Approach', 2006.

⁴⁹ Julian Laufs and Zoha Waseem, 'Policing in pandemics: A systematic review and best practices for police response to COVID-19', August 2020.

⁵⁰ Ibid.

⁵¹ Interview with L6.

⁵² Ibid.

⁵³ Ibid.

levels were critical; using realistic assumptions about the pandemic to maintain priority services; and having a daily overview of the availability of trained specialists.⁵⁴

The upshot of this modelling data was to allow 'Covid Command Groups' to identify where and when potential pinch points may arise.⁵⁵ While the mass movement of staff between departments was rarely if ever needed (the 'pre-critical' point) the modelling done by the force interviewed for this report did give a grade of 'low' at one point, which allowed for the identification of resources and prompted refresher training for some personnel.⁵⁶ Furthermore, it has resulted in the collection of information on skills distribution within the force that was previously uncoordinated.

For the National Police Coordination Centre (NPoCC) the data that has been collected around sickness and absence has been important in understanding where risks lie geographically and by role. When various requests were being sent to local forces, they were able to recognise which forces to avoid due to higher than usual absence rates, while identifying which areas had the right level of expertise for a specific request, and putting them on standby.⁵⁷ The ability to pre-empt which roles and functions are most at risk could prove extremely valuable in the event of future pandemics.

RISKS & CHALLENGES

In line with the main findings of this Snapshot Report, data acquisition and data quality were the two main challenges faced in this case study. Some police forces recently inspected by HMICFRS were found to have IT systems which 'limited their ability to fully understand their demand and the resources available to meet it.'⁵⁸ When data was extracted, those responsible for piecing it together quickly understood that, 'the data is only as good as what is submitted to you'. These frustrations were borne out by experience:

*'There was a force submitting sickness data showing they had a high sickness rate. I wanted to approach them to do pilot testing, but they hadn't realised they were submitting the wrong data. We had expected quality assurance to happen in-force (...) but that internal governance of data is not always tight (...) so we had to go back and reinforce our messaging that we are actually using this data in important decision-making (...) Forces may also collect their sickness data in different ways – for example some forces weren't distinguishing between working-from-home and actual sickness, they couldn't return that granularity of data.'*⁵⁹

These data quality issues bring out a statistical challenge: how to properly capture uncertainty arising from the input data (force-level data, data on death counts and estimation of the reproduction number 'R') in the forecasting model so that uncertainty is incorporated into the forecasts. This 'propagation of uncertainty'⁶⁰ can make data interpretation a harder task. Moreover, the continual changing of definitions and measurements of the number of deaths or infections attributed to Covid-19, and

⁵⁴ HMICFRS, 'Policing in the pandemic - The police response to the coronavirus pandemic during 2020', April 20 2021, p.16.

⁵⁵ Interview with L8.

⁵⁶ Interview with L6.

⁵⁷ Interview with L8.

⁵⁸ HMICFRS, 'Policing in the pandemic - The police response to the coronavirus pandemic during 2020', April 20 2021, p.23.

⁵⁹ Interview with L10.

⁶⁰ Propagation of Uncertainty is defined as the effects on a function by a variable's uncertainty. It is a statistical calculation designed to combine uncertainties from multiple variables, in order to provide an accurate measurement of uncertainty.

changes in testing regimes, impacted on estimations of the 'R' level, and thereby led to quite significant variations in what the data actually meant.⁶¹

LAW, REGULATION & GOVERNANCE

From a data protection point of view, Part 2 DPA 2018 applies where a police force processes personal data for HR purposes (rather than law enforcement purposes). In this instance, since the main types of data used are personnel data about who is off sick and has booked annual leave, together with information from individuals who have declared they are self-isolating and potentially have Covid-19, it is categorised as special category personal data and subject to the DPA 2018.

Such personal data should therefore be processed in accordance with the seven UK GDPR principles (Art 5 UKGDPR).⁶² Any consent must be explicit, and where explicit consent cannot be obtained alternative justifications (article 9 UKGDPR and Sch 1 DPA 2018) may include: processing necessary for reasons of substantial public interest which is proportionate to the aim pursued and affords suitable, specific measures to safeguard the data subject's rights; processing necessary for health or social care including for the assessment of the working capacity of an employee. In addition, under Sch1 DPA 2018 processing of special category data may be permitted where processing is necessary for the purposes of identifying or keeping under review the existence or absence of equality of opportunity or treatment between groups of people with different states of physical or mental health or people of different racial or ethnic origin.

This is clearly an initiative which is suited to the use of a DPIA.⁶³ Article 35 explicitly envisages the use of a DPIA in such a case stating that 'Where a type of processing ... is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.'⁶⁴

While these considerations would usually feed into an ethical review process, more comprehensive independent review and advice mechanisms for data-driven approaches are vital. This remains true in the instance where approaches are reviewed after the event due to the exigencies of a pandemic. The upshot of this could be for police handling of employees' sensitive health data or status to be under constant review by the NPCC (with the guidance of the ICO) and uniformly codified so that there is a consistent policy across forces.

⁶¹ Interview with L10.

⁶² See seven UKGDPR principles: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/>

⁶³ A DPIA is a process to help a data controller identify and minimise the data protection risks of a project. See: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-impact-assessments/>

⁶⁴ Art 35 UKGDPR.

LESSONS LEARNED

- **Lesson 1:** this case study has shown the value of **ready, instant access to information** and the ability to filter for certain results to **'see' rather than 'guess' potential outcomes**. Having an **effective national hub** for this purpose is increasingly seen as integral. In the case of PPE distribution, this helped identify which areas were worst affected by the pandemic, adjusting PPE supplies to them accordingly, and later identifying the forces going through a gradual dip in usage due to 'PPE fatigue' over summer 2020.
- **Lesson 2:** despite an increased appetite for data-driven initiatives in policing since the pandemic, this is not necessarily reflected amongst the public. **Led by the NPCC, there should be an increased drive to inform the public of the benefits and challenges that data-driven responses have brought to policing during the pandemic.**
- **Lesson 3:** with the continued expectation of localised virus outbreaks and uncertainties around the impact of 'Long Covid', there is an **important place for sophisticated monitoring of police resourcing and wellbeing beyond the current pandemic**. In recognition of the common data-driven challenges that forces face, **best practice from across forces should be collated by NPoCC** to ensure that data-driven approaches in areas such as PPE distribution and sickness forecasting can be used to **streamline other areas of policing moving forward.**