

Rt Hon. Matt Hancock MP
Secretary of State, Department of Health and Social Care
39 Victoria Street
Westminster
London
SW1H 0EU

By email only

29 May 2020

Dear Secretary of State,

We – a diverse coalition of human rights, racial equality, community, faith and health organisations – write in advance of the next phase of easing the lockdown restrictions.

We are acutely concerned by evidence that the impact of the police powers granted to enforce lockdown has not been evenly felt. They are disproportionately impacting people of colour, which undermines trust in the authorities and harms communities squeezed between the pandemic and the Government's response.

We urge you to take immediate steps to amend these powers to address these ethnic disparities and to ensure that any measures the Government seeks to implement during the next phase of lockdown do not discriminate against communities of colour.

Protecting public health

The pandemic is, first and foremost, a public health crisis, exacerbated by deep-rooted inequalities. The Health Protection (Coronavirus Restrictions) Regulations 2020 (the Regulations) establish dramatic restrictions on our human rights and civil liberties, affording the police sweeping powers to monitor and restrict our daily activities. However, they were made under legislation that allows the Secretary of State to make laws for the purpose of providing a public health response to the spread of disease – not policing public order.¹

We are concerned that the Regulations have embedded an unequal and heavy-handed approach, which may come at the expense of public health. It risks reducing trust in the authorities – trust that the authorities rely on to sustain compliance with the lockdown.

As a letter from 800 public health and legal experts in the US made clear, “voluntary self-isolation measures are more likely to induce cooperation and protect public trust than coercive measures and are more likely to prevent attempts to avoid contact with the healthcare system.”²

¹ Section 45C Public Health (Control of Disease) Act 1984.

² Gregg S. Gonsalves et al., (2 March 2020), *Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States*, https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid19_letter_from_public_health_and_legal_experts.pdf

As the country gradually exits lockdown, we assume that many of these coercive powers will remain in force. Indeed, as the Government has started to ease restrictions – and the rules made so broad as to be effectively unenforceable – the police’s enforcement powers have been ramped up.³ The combination of increasingly vague police powers and heightened fines may pose an even more pernicious combination for people of colour and public health.

Coronavirus police powers

When the Regulations came into effect, many of the undersigned organisations warned that, in the absence of meaningful safeguards, powers of this nature would be disproportionately deployed against already over-policed communities. This was confirmed earlier this week in an investigation by Liberty Investigates and the Guardian, which revealed that people of colour in England are 54% more likely to be fined under the Regulations than white people.⁴

The apparent ethnic disproportionality of the fines issued under the Regulations calls into question whether the enforcement powers under the Regulations have been fairly used.⁵ A review of charges under the Regulations conducted by the Crown Prosecution Service revealed that a number of cases were wrongly charged.⁶ And, as the Chair of the Joint Committee on Human Rights has noted, the incidence of wrongly issuing of fines under the Regulations is likely to be higher, given they have fewer safeguards and do not require the involvement of a prosecutor or a judge.⁷

These ethnic disparities are cause for profound concern. The Regulations are expansive in nature and suffer from a number of concerning omissions, which pose particular risks to black or ethnic minority children and young people,⁸ homeless people,⁹ migrants,¹⁰ and people experiencing mental health problems.¹¹

The over-policing of marginalised communities is not a new development. This country has a long history of disproportionately using punitive powers against communities of colour. While overall rates of stop and search have decreased since 2014, race disproportionality has risen. According to the latest Government statistics, racial disparities in the use of stop and

³ The maximum level of fines that may be imposed for purported breaches of the Regulations have increased by over 300%, from £960 to £3,200. Section 2 (4) The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020.

⁴ Mirren Gidda and Mattha Busby, (26 May 2020), *BAME people fined more than white population under coronavirus laws*, available at <https://www.theguardian.com/world/2020/may/26/bame-people-fined-more-than-white-population-under-coronavirus-laws>

⁵ All told, 14,244 fines have been issued since the powers came into force. BBC, (15 May 2020), *Coronavirus: 14,000 lockdown-breach fines imposed* <https://www.bbc.co.uk/news/uk-52674192>

⁶ The review concluded that 6% of charges under the Health Protection Regulations (the Regulations) and every single charge under the Coronavirus Act 2020, were unlawful. See <https://www.cps.gov.uk/cps/news/cps-announces-review-findings-first-200-cases-under-coronavirus-laws>

⁷ Joint Committee on Human Rights (2020), Chair’s Briefing on Health Protection (Coronavirus Restrictions) 2020, <https://committees.parliament.uk/writtenevidence/5454/default/>

⁸ Young people have been disproportionately issued with fines under the Regulations. While children cannot be issued with fines, they are not exempt from criminal sanction under the Regulations. There have been reported cases of children as young as 13 being arrested for failing to disclose their personal details.

⁹ While homeless people are excluded from the prohibition on leaving home, “homeless” is not defined in the Regulations. Moreover, homeless people are not excluded from the prohibition on gatherings, which leaves them open to criminalisation.

¹⁰ The Regulations may be used in conjunction with immigration enforcement powers. This may deter people from accessing healthcare and other essential public services, posing serious risks to public health. See Liberty, (2018), *Care Don’t Share*, available at <https://www.libertyhumanrights.org.uk/issue/care-dont-share/>

¹¹ It is a criminal offence to fail to follow a reasonable instruction the police make under the Regulations. We are concerned that this may lead to people with mental health needs being fined or criminalised in circumstances where they do not understand the directions given by a police officer and therefore fail to comply.

search are at their highest in over 20 years.¹² Indeed, evidence attests that people of colour experience worse outcomes at every juncture of the criminal justice system.¹³

We recognise that the Government has a pressing obligation to protect the lives of people within its jurisdiction during a pandemic and wholeheartedly support this aim. Nevertheless, we are concerned that the Government and the police failed to take steps to assess, address or mitigate these impacts when the Regulations were made or as they have been implemented. In fact, the National Police Chiefs' Council (NPCC) relied on the same statistics to initially claim that fines issued had been "proportionate" – a conclusion they reached by implicitly assuming that anyone who did not declare their ethnicity when issued with a fine was white and without examining the break-down of fines by individual forces.¹⁴

Overpoliced and under-protected

This failing is even more stark given evidence that communities of colour are bearing the brunt of coronavirus, in addition to the Government's response.

A recent study found that from the beginning of February to the end of April, black people in England were 71% more likely than white people to die from coronavirus, while Asian people were 62% more likely.¹⁵ People of colour are more likely to be in insecure or precarious work and unable to reap the benefits of Government schemes to support workers,¹⁶ to live in high density areas or overcrowded households where the disease may spread more rapidly,¹⁷ and to work in the healthcare and care sectors and be exposed to shortages of Personal Protective Equipment.¹⁸

Moreover, despite a dramatic drop in people being outdoors during lockdown, use of stop and search in London surged to its highest in over seven years.¹⁹ This is particularly concerning in the midst of a public health crisis, as searches, arrest and detention may put people at risk of infection.

During the biggest public health crisis in a generation, communities of colour are both over-policed and under-protected.

Recommendations

In the interests of public health, fairness and equality, as we enter the next phase of lock down, we urge you to address race disparities in the use of coronavirus powers. In particular, we recommend that you:

- Amend the Regulations to narrow the power to give instructions, make breach of any restriction a criminal offence only where a person knowingly causes another person

¹² <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>

¹³ StopWatch, The International Drug Policy Unit, and Release, (2018), *The Colour of Injustice*, available at http://www.stop-watch.org/uploads/documents/The_Colour_of_Injustice.pdf

¹⁴ NPCC, (15 April 2020), *Covid-19 FPN data, and chiefs urge public to keep reporting crime*, <https://news.npcc.police.uk/releases/police-chiefs-keep-reporting-crime-to-us-during-coronavirus-outbreak-we-are-still-here-for-you>

¹⁵ OpenSAFELY, (2020) *Factors associated with COVID-19-related hospital death in the linked electronic health records of 17 million adult NHS patients*, available at <https://www.medrxiv.org/content/10.1101/2020.05.06.20092999v1.full.pdf>

¹⁶ TUC, (2019), *Insecure Work*, available at <https://www.tuc.org.uk/research-analysis/reports/insecure-work>

¹⁷ <https://www.ethnicity-facts-figures.service.gov.uk/housing/housing-conditions/overcrowded-households/latest>

¹⁸ Equality and Human Rights Commission, (2020), *Evidence to the Women and Equalities Committee*, available at <https://www.equalityhumanrights.com/en/legal-responses/consultation-responses>

¹⁹ Fiona Hamilton, (15 May 2020) *Sharp increase in stop and search as arrest rate falls*, Times, <https://www.thetimes.co.uk/article/sharp-increase-in-stop-and-search-as-arrest-rate-falls-xj5r6jd0t>

immediate harm, exclude children from criminal sanction entirely, and exclude all homeless people, broadly defined, from the Regulations entirely;

- Publish disaggregated data for each police force on the use of the powers under the Regulations;
- Establish a uniform right to appeal against any fine issued under the Regulations and request that the police review all fines issued to date; and
- Publish a rigorous Equality Impact Assessment for any future measures that the Government seeks to implement, in particular plans to impose restrictions targeted to geographic areas the Government deems “high risk”.²⁰

We would welcome the opportunity to discuss the recommendations laid out above in more detail.

We have copied this letter to the Minister for Cabinet Office, Secretary of State for the Home Department, and the Chairs of the National Police Chiefs’ Council, Joint Committee on Human Rights, Women and Equalities Committee and Advisory Group to the Race Disparity Audit.

Yours sincerely,

Martha Spurrier, Director, Liberty

Katrina Ffrench, Chief Executive, StopWatch

Rebekah Delsol, Programme Manager, Open Society Justice Initiative

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Sophie Neuburg, Executive Director, Medact

Yvonne MacNamara, CEO, The Traveller Movement

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²⁰ The roadmap for easing lockdown notes that the Government may adjust restrictions in some regions before others. HM Government (11 May 2020) *Our Plan to Rebuild*, at p.22 available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884760/Our_plan_to_rebuild_The_UK_Government_s_COVID-19_recovery_strategy.pdf

Donna Murray-Turner, Lead Practitioner, ANOS (Another Night of Sisterhood)

Oliver Robertson, General Secretary, Quaker Peace & Social Witness

Enver Solomon, CEO, Just for Kids

CC:

Rt Hon Michael Gove, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office

Rt Hon Priti Patel MP, Secretary of State for the Home Department

Martin Hewitt, National Police Chiefs' Council

Rt Hon Harriet Harman MP, Joint Committee on Human Rights

Rt Hon Caroline Noakes MP, Women and Equalities Committee

Lord Wooley, Advisory Group to the Race Disparity Audit