

SCRUTINY OF POLICE POWERS PANEL

Covid-19 Regulation related cases. November 2020 Remote Panel reviews

This Review Report covers the 5th Panel member review and feedback on Covid-19 Regulation related cases, some requiring Police Officer words of advice and some resulting in Fixed Penalty Notices (FPNs) being served. The cases selected are from two date ranges:

1: 16th October to 4th November 2020, relating to the 'Rule of 6' regulations for no more than 6 people gathering together (14/9/2020 commencement) also certain hospitality establishments closing at 10pm (24/9/2020 commencement), and self-isolation requirements (28/9/2020 commencement).

2: 5th to 15th November 2020, during the second lockdown (5/11/2020 start).
See Appendix A below.

The guidance to Police Officers is to **Engage, Explain and Encourage – the '3 Es'** – and Words of Advice (WOA) but more recently a more robust action to Enforce – the 4th 'E', serving a Fixed Penalty Notice (FPN) for the Covid-19 current Regulations breach.

Summary of feedback:

Members' Covid-19 positive feedback includes:

- Excellent introductory narrative by Officers before attending the scene;
- Officers remarkably patient in difficult circumstances, listening and explaining the Covid-19 law; Excellent engagement and rapport with members of the public;
- Exemplary Officer calm management and taking control and de-escalating the situation;
- Officers speaking at a level understood by the people; wise officer decisions; and full BWV footage of the incidents;
- Officers dealt with an upsetting situation as best they could.
- Officers amicably dealt with situations; well managed; courteous and firm but fair.

Covid-19 negative feedback and concerns include:

- An Officer removed their mask and talked close-up to a crowd of people;
- An incident of maybe too many Police Officers trying to explain a point to members of the public;
- During one case review, on occasions the Officer appears rather heavy handed, using threats of arrest to obtain ID details, which were freely given anyway;
- Officers appearing unsure of the Covid regulations breach Fixed Penalty fine amount.

Note: The 7 questions within each Panel member feedback form are omitted in this Report if they are all answered positively. The questions are:

1. Did the Police Officer Engage, Explain, Encourage?
2. Was enforcement necessary and proportionate to ensure compliance?
3. Were the instructions and/or directions reasonable?
4. If force was used to remove a person to where they live, was it reasonable force?
5. If an individual contravenes a request, direction, instruction or prohibition notice, did he/she have a reasonable excuse?
6. If a Fixed Penalty Notice (FPN) is issued, did the officer reasonably believe a person committed an offence under the Regulations?
7. Was the police behaviour free from demonstrable discriminatory behaviour?

Case reviews:

The Case numbering is part of the full quarterly Panel meeting case reviewing of Taser and Stop and Search. Therefore the **11 cases** are referenced from 41 to 51, based on **37 feedback forms**.

1. Covid-19 related cases (xx body worn videos were reviewed for 11 cases)

Case 41: 16/10/2020. COVID-19 breach at Flat ... University of the West of England (UWE)

Note: See Case 50 for 17/10/2020 incident the following day.

BWV database summary: 7 People (4 resident students and 3 male visitors from different addresses in Devon at student address. Loud music, drinking and trying to avoid Police Detection. FPNs issued to all 7 in the gathering.

Member feedback: On the positive side, an excellent introductory narrative by the Police Officer before attending the scene, with context and including thoughts. The incident is dealt with in a firm but fair way. However, the BWV runs out at 40 minutes recording time, which is before the end of the incident (where the Officer is recording details for the FPN).

Member feedback form responses to 2 or the 7 questions is highlighted:

Did the Police Officer Engage, Explain, Encourage? **No**. The Officer did not perform the '3 Es' (Engage, Explain and Encourage) but instead referred to earlier warnings to students and explained that previous communications through UWE had been issued and this was a breach of the 'rule of 6'.

Was enforcement necessary and proportionate to ensure compliance? **Yes**. This is entirely appropriate. There were 3 non-residents in the UWE accommodation/household. A blatant breach by students in the University flat, who initially lied and tried to hide.

Constabulary response: Thank you for the panel comments and feedback which are noted, including the narrative by the officer which is pleasing to see.

Case 42: 18/10/2020 at 04:07hrs. West Street, Bristol

Officers outside unlicensed premises, not being allowed entry to premises, playing loud music. A large group of people are inside.

4th BWV: 16 in total being told to leave the premises. Others had left already. Officers also speak to 2 members of staff behind the bar.

4 BWVs reviewed by Panel members for this incident.

A gathering of 46 people on enclosed premises. The Organiser/owner argues about the effect of the Covid-19 Regulations.

Positive member feedback:

The Officer patiently listens to the owner's explanation of why there has been no Covid-19 regulation breach and then the Officer explains why there is a breach. The Officers very patient explain the law to this person who did not want to take responsibility.

The Police Officers do Engage, Explain and Encourage, but the owner/organiser is not listening and a Panel member suggests that maybe there are too many Officers trying to explain.

A Fixed Penalty Notice enforcement/fine is considered entirely necessary and proportionate to ensure compliance.

Constabulary response: The panel positive comments are noted with thanks.

Case 43: 15/11/2020 at 14:42hrs. Chard, Reported for a FPN

Young person spoken to by Police Office. The youth had previously attended gatherings and had already been warned several times.

A companionable exchange where the Officer explains the difference between exercise (which is OK) and gatherings (which is not OK). The Officers are very patient, explaining the law to the person who does not want to take responsibility.

The Police Officer did the '3Es' to Engage, Explain and Encourage, and also referred to previous warnings.

Constabulary response: Thank you for the panel comments including good communication by the officers which has been fed back.

Case 44: 15/11/2020 at 14:29hrs. Stapleton Road, Bristol. Words of advice

A group of PCSOs are being challenged by a member of the public. A Police Officer intervenes and issues a Covid-19 breach warning. An explanation is given that should there be any further breaches then a FPN will be issued.

Positive feedback:

Officer excellent engagement, showed concern for his disability and able to joke about both being red headed. Also compliments for full BWV.

Noted: There might have been an opportunity to clearly state the latest Regulations. i.e. do not leave home without a legal reason.

Constabulary response: The panel comments are noted with thanks including positive feedback for the officer involved – the panel comments have been fed back to the officer.

Case 45: 14/11/2020 at 16:27hrs. Filton, Bristol

BWV footage of a telephone call from Police Officer to a member of the public who is cautioned and has a FPN issued over the phone.

Good to have full BWV.

Noted: This was a caution by phone to say FPN is to be issued. However the previous circumstances are not known as Panel members don't have the previous BWV of the breach or what '3Es' were given.

It seems as if the woman is on her own and depressed. It isn't known whether she had been advised of the opportunity to 'link' with another household.

1. Did the Police Officer Engage, Explain, Encourage? **Unsure (2)**
2. Was enforcement necessary and proportionate to ensure compliance? **Unsure (2)**
3. Were the instructions and/or directions reasonable? N/A (1), Yes (1)
4. If force was used to remove a person to where they live, was it reasonable force? N/A (2)
5. If an individual contravenes a request, direction, instruction or prohibition notice, did he/she have a reasonable excuse? N/A (1), No (1)
6. If a Fixed Penalty Notice (FPN) is issued, did the officer reasonably believe a person committed an offence under the Regulations? **Unsure (1)**, Yes (1)
7. Was the police behaviour free from demonstrable discriminatory behaviour? Yes (2)

Constabulary response: The panel comments are noted in relation to full details being unavailable due to the footage only showing part of the incident. This will be considered in the preparation of future panel cases for review.

Case 46: 17/10/2020 Trowbridge Road, Southmead, Bristol

Officers are called to a House Party which is breaching Covid-19 guidelines. While gathering details of one person on the premises, he was arrested as wanted for recall to prison.

4 BWVs provided for Panel member review of this incident.

BWV1: Positive feedback: Remarkable and great patience by Police Officers, handling a very difficult situation in the face of considerable provocation, abuse, noise and general mayhem. The fact that one person was on a warrant made it much more difficult.

The Officer instructions and directions are given under very difficult circumstances.

Officers tried hard to explain but there were too many adults and children shouting and being abusive.

A wise decision by the Officer (at the end) to remove themselves rather than cause any further disruption (there were many Officers present).

Of concern: The officer did not handle the Covid-19 breach situation well. As a result, when the warrant issue was raised the situation escalated quickly.

Questions:

1. Officers entered house through open front door. They were asked if they had the right to do so and didn't reply. Were they?
2. Was the use of PARVA appropriate?
3. There was a long discussion about the number of people allowed in the house. Mostly it was said to be 6 (once it was 10) but at no time was it explained that it is the household of any number plus any linked household. Every case is different but the Panel member wonders if possible the first step should be to work out who is a member of the household + linked household to establish who is in breach.

BWV2: Of concern: The female Officer removed her mask and is talking closely within the crowd. She is also beginning to show frustration. There is more confusion by officers whether to handcuff or not which led to several people including an Officer being PAVA sprayed incorrectly. The Officer outside the property took more time to `engage` with the home owner which is good. This should have been the approach from the start.

BWV3: The Police Officer Engaged, Explained and Encouraged, all very well indeed. The female Officer was exemplary, managing to de-escalate the situation on several occasions, taking control where necessary yet remaining very calm and collected at all times.

The female Officer who first entered the property tried to explain to the homeowner the reason for entry, but as the situation escalated it appears that her male colleague was losing control.

1. Did the Police Officer Engage, Explain, Encourage? Yes (2), **but not all Officers**
2. Was enforcement necessary and proportionate to ensure compliance? Yes (2)
3. Were the instructions and/or directions reasonable? Yes (2) **but poorly executed**
4. If force was used to remove a person, was it reasonable force? Yes (2) **but poorly executed**

Constabulary response: The panel comments and feedback are noted with thanks. Having reviewed the Body Worn Video, this is an extremely challenging incident for the officers to manage with a number of people in the property, along with raised voices. There are differing views from the panel members around the officers' handling of this incident and this is reflective of the difficulties facing officers at the incident.

In answer to the panel questions about entering the house through the open door, officers were responding to the report of a party which had got out of control. Due to the disturbance at the address, there would be an expectation for officers to ensure the wellbeing of those present.

In relation to the use of PAVA, this is an option available to officers – on this occasion, the male was arrested for the warrant and due to his demeanour was handcuffed, however, was non-complaint.

As mentioned the PAVA spray affected officers present also. A discussion did take place regarding the number of people allowed into the house, however, it was difficult to communicate with those present due to the number of people present, and raised voices towards the officers.

The panel comments have been fed back to the officers' supervisor for consideration.

Case 47: 08/11/2020 Glastonbury

The householder is witnessed taking part in a protest of more than 2 people a few days earlier.

Positive feedback:

Relaxed approach, happy to be filmed and provided details of how to complain. Officer delivering caution re issue of FPN for breach 3 days previous.

Noted: The breach was on the 5th Nov 2020, i.e. the first day of No 4 Covid regulations. Also from the BWV alone it is not known what '3 Es' took place or how the breach occurred.

Also, the Officer's instructions seemed, to a Panel member, to have a degree of confusion when issuing the ticket/FPN, for example, the Officers seem unsure of what the fine will be, advising the female to google it. There appears to be a general lack of knowledge and confidence of the correct procedures.

1. Did the Police Officer Engage, Explain, Encourage? **No (2)**, Yes (1)
2. Was enforcement necessary and proportionate to ensure compliance? **Unsure (1)**, Yes (2)
3. Were the instructions/ directions reasonable? Yes(1), N/A(1), **Unsure(1) FPN issue confusion.**
4. If force was used to remove a person to where they live, was it reasonable force? N/A (3)
5. If an individual contravenes a request, direction, instruction or prohibition notice, did he/she have a reasonable excuse? **Unsure (1)**, No (1), N/A (1).
6. If a Fixed Penalty Notice (FPN) is issued, did the officer reasonably believe a person committed an offence under the Regulations? Yes (3)
7. Was the police behaviour free from demonstrable discriminatory behaviour? Yes (3).

Constabulary response: Thank you for the panel comments which are noted. The Body Worn Video only shows the issuing of the ticket as the breach relates to the female's presence at a protest. The panel have raised some confusion about the issuing of the ticket along with the fine amount. This has been fed back to the officers' supervisor for training and development purposes.

Case 48: 11/11/2020 Bridgwater

Group of 6 girls have been riding the bikes into Angel Place shopping centre and gathering, with no respect to current legislation for COVID 19 and causing Anti-Social Behaviour. [A F] had been issued with a written warning a few days previously but continued to breach guidelines. Mum is issued with the FPN as [A F] is a juvenile.

Positive feedback:

Police officers are calm, understanding the parents situation and supportive.

The officers dealt with an upsetting situation as best they could.

It appears that because the child was repeatedly failing to comply with a direction not to gather with others a formal direction was given to the mother under Part5 19(8) of No4 Regulations. So the mother has "as far as reasonably practical" to ensure child complies. The Police may only do this if they consider it "necessary and proportionate means of ensuring compliance with (in this case) daughter not gathering outside (19(9)). The mother only commits an offence under R20 if "without reasonable excuse" she fails to comply with the notice under R19. The mother says that she has done all she can to keep her daughter at home by a curfew, bribing her, locking the front door, pleading with her but nothing works. The fact that the ASB team are involved seems to confirm what she says.

Questions:

1. In relation to the formal direction:

1a: Was the issue of the direction appropriate?

1b: What factors were taken into account when deciding to issue the direction and what were the reasons to support the decision that the direction was a "necessary and proportionate means of ensuring compliance" by the daughter?

2. In relation to the FPN:

2a: What factors and enquiries of the mother were considered before deciding that the mother had committed a breach of the direction?

2b: Why was her assertion that she had done all she could to keep her daughter at home not considered to be a "reasonable excuse" for not complying with the direction.

Member feedback form responses to the 7 questions:

All positive responses, except one member is unsure in answer to two of the questions:

2: Was enforcement necessary and proportionate to ensure compliance: **Unsure (1)**, Yes (3)

6: Did the officer believe there was a Covid offence that needed the FPN? **Unsure (1)**, Yes (3)

Constabulary response: The panel comments and feedback are noted with thanks. The direction followed warnings to the parent regarding COVID breaches by her daughter. This was followed up by a letter to the parent warning that future breaches would result on the issuing of a fine due to her parental responsibilities. Due to the further breach it was deemed appropriate to issue the fine. This was considered to be proportionate due to the impact that the group were having from both an anti-social behaviour, and public health perspective at the height of the pandemic, particularly around the shopping centre. This action appears to have been effective in that no further breaches have been issued.

Case 49: 05/11/2020 Horfield, Bristol. 3 FPNs. Others reported.

Police Officers arrive at a property and are unable to gain access regarding a house party taking place in breach of Covid-19 regulations. 6 people are in the garden and more in the house, with an estimated of 10 others already left.

Member feedback: A relaxed, chatty Police Officer approach after tracking down the 3 males. The Covid-19 regulation breach is dealt with amicably by the Officer.

Noted: The Officers refer to a breach because of the indoors gathering of more than 6. Actually the Regulations had changed at midnight so no one other than the household should have been present. Attending the party was not a reasonable excuse to leave their home.

The police acted on the information they first received but there was a lot of confusion. It took a long time to sort the situation out mainly due to the people from the household making the matters worse. Member comment:

Constabulary response: The panel comments are noted with thanks.

Case 50: 17/11/2020 Student flat, UWE Frenchay. 14 FPNs

BWV database narrative: Officer attendance to issue a warning to one student for a previous breach the night before [See Case 41 above], to find 14 people in the accommodation from 8 different households. Four people were non UWE students from ANDOVER and SUSSEX. An illegal gathering.

Note: Case 41 on 16/10/2020 is the incident the previous day.
2 BWVs reviewed by Panel members of this incident.

Positive feedback:

A mass breach dealt with courteously and firmly. Good introduction narrative by the Officer on their BWV. The Police Officer is patient as 5 UWE student residents become a total of 14, with 3 visitors from outside Bristol.

On occasions the Officer seems rather heavy handed, using threats of arrest to obtain ID details, which were freely given anyway.

Did the Police Officer Engage, Explain, Encourage? **No (2)**, Yes (2)

Noted: This incident relies on the '3 Es' previously communicated by the University.

Constabulary response: Thank you for the panel comments and feedback. The positive feedback regarding the officer's patient approach is noted, along with good narrative. One panel members felt the officer was heavy handed on occasions – the officer was alone dealing with 14 people, some of whom were deliberately frustrating his efforts. This did require some robust communication and was a challenging incident to deal with.

Case 51: 12/11/2020. Fishponds Road, Bristol.

Car stopped with 4 males in the car. Driver had previously been issued a FPN.

Well handled. Compliments to the Police for the way the Officer spoke and dealt with the offenders on a level and in a way they understood. The Officer kept things almost streetwise and conversed to reflect the way he was spoken to.

Did the Police Officer Engage, Explain, Encourage? **No (1), Yes (1).**

The '3 Es' is not seen by Officers on this BWV but all the people had previously been issued FPNs.

Constabulary response: Thank you for the panel comments which are noted, along with the officers' positive communication.

SCRUTINY OF POLICE POWERS PANEL GUIDE

THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (No 2) (ENGLAND) REGULATIONS 2020 **In force 30/07/2020**

As amended by **THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (No2) (ENGLAND) (AMENDMENT) (NO4) REGULATIONS 2020** **In force 14/09/2020 until the 2nd lockdown starting on 5/11/2020**

‘THE RULE OF 6’

A: THE STARTING POINT

No person may participate in a **gathering** indoors or outdoors which consists of more than 6 people.
A ‘**gathering**’ R5 (6) is:

‘When 2 or more people are present together in the same place in order to engage in any form of social interaction with each other or to undertake any other activity with each other’.

An example.

Jordon and Joe live together with 15 year old stepson Adam, 12 year old stepdaughter Roxanne and their newly born twins, Daisy and Skye. As this household totals 6 persons, they cannot invite anyone to visit them, if all of their household is at home.

B: EXCEPTIONS

1 Household exception

If you live in a household with more than 6 people, you can all still gather together, whether you are indoors or outdoors. Reg 5(1) (a).

2 Linked household exception

If you are a linked household, you may gather in numbers greater than 6.

A ‘linked household’ (sometimes called a support bubble) is defined in Reg 5ZA, as follows:

Where the first household comprises one adult (with or without children), the adult may link with a second household. The two households may gather together indoors or outdoors, even if they total more than 6.

An example:

The first household comprises Jane, an adult, Natasha (17), Jason (15) and Abbie (2), a total of 4 persons. They link with a second household, comprising George (37), Kylie (36), their children, Raquel (14), Shawn (12), Jayne (10), together with Grandma Joan and lodger Mark, a total of 7 persons.

For these 2 households, the rule of 6 becomes a rule of 11.

Note that the regulation refers to ‘persons’, not adults, so a baby is one of the maximum of 6 persons.

3 Work, education and activity exceptions

These exceptions are set out at Reg 5(3)

- For work
- For provision of voluntary and charitable services
- For education, training, registered childcare and activities for children
- To provide emergency assistance
- To provide care or assistance to a vulnerable person
- To enable child contact, where parents live apart
- To fulfil a legal obligation
- For ‘elite sports’ Reg 1(5) and 1(6)
- To enable formally organised ‘support groups’ (Reg 5 (5A))

4 Weddings, births, protests exceptions

These exceptions are set out at Reg 5(3)

In some cases, the organiser has to carry out a formal risk assessment (Reg 5 (5G) (a))

Included are:

- Weddings/civil partnerships to a maximum of 30 persons
- Weddings/civil partnerships receptions, not in a private dwelling, to a maximum of 30 persons
- Attending a birth
- Organised protests
- In criminal justice accommodation, eg bail hostels.

5 Significant event exceptions Reg 5 B&C

Gatherings of up to 30 persons are permitted for significant events, namely

- To mark a milestone in accordance with religion or belief, other than a birthday
- To mark a death, e.g. funeral.

The event must take place run by a business, institution or public body OR be in a public outdoor place.

The guidance suggests that wakes are not included.

6 Business, charitable and public body premises and gatherings in public outdoor places, exceptions.

A person may participate in a gathering in excess of 6 people, where

- It is operated by a business etc and is somewhere other than a private dwelling
- The person is alone or a member of a 'qualifying group' and does not, become a member of another group, or 'mingle'.

NB: A member of a qualifying group Reg5(2B) is a member of a group of not more than 6 people OR members of the same household OR 2 linked households.

NB: these provisions appear to permit groups of 6 people to join larger gatherings, as long as there is no 'mingling' with other groups.

NB: This is the first time the word 'mingle' has ever been used in UK legislation.

7 Gatherings in public outdoor spaces Exceptions Reg 5 (1)(b), Reg 5 (2A) & Reg 5 (2B)

Gatherings may take place in excess of 6 people, where:

- It is in a public outdoor space and
- The gathering has been organised by a business, public body etc and
- The organiser takes Reg 5G measures

As in 6 above, no 'mingling'.

8 Sports gatherings and fitness activities exceptions Reg 5(5)(D)

- May exceed 6 persons, if the gathering is organised for non elite people to take part in sport or fitness and
- Must be organised by a business, public body etc. and
- Take place in relevant premises or outdoors and
- The organiser takes Reg 5G measures

N:B Informal sport or fitness activities with friends or family is not within this exception.

9 Licensed outdoor physical activity gatherings exceptions Reg 5(5)(F)

These are official licensed 5G compliant activities

C: INDOOR RAVES

- No person may participate in a gathering of more than 6 persons at an indoor rave Reg 5(4).
- No person may hold or be involved in the holding of an indoor rave consisting of more than 30 person, Reg 5A.

NB: The fixed penalty for a breach of Reg 5A is £10,000.

D: PRIVATE DWELLING GATHERINGS REG5B

No person may hold or be involved in holding a gathering which:

- Consists of more than 30 persons and
- Takes place in a private dwelling or a public outdoor space and
- Is not an indoor rave and

- Is not an excepted gathering Reg 5(B)(3A)

NB: The fixed penalty for breach of Reg 5B is £10,000.

E: POWER TO RESTRICT ACCESS TO PUBLIC PLACES REG6

- The Secretary of State may restrict access to a specified public outdoor place for specified dates and times. A review must take place every 7 days.
- No-one may enter a restricted area without a reasonable excuse.

F: ENFORCEMENT REG7

Enforcement is by giving directions and removing people. Reasonable force may be used.

G: OFFENCES AND PENALTIES REG8

Anyone, who without reasonable excuse contravenes a requirement in the regulations commits an offence, which is punishable by a fine.

H: FIXED PENALTY NOTICES REG9

These can be issued at £100, reduced to £50, if paid within 14 days. A second FPN is £200, rising to £3,200 for the 6th notice.

NB: The fine for indoor raves Reg5A and private dwelling gatherings of more than 30 persons, Reg5B is £10,000.

David Woodward – Panel Chair - 19/09/2020