

What the Crown Prosecution Service (CPS) Told the Covid-19 Inquiry

A Public Report Based on Official CPS Witness Testimony on National Policing and Legal Coordination

1. Purpose of this report

This report is based entirely on official witness testimony provided by the Crown Prosecution Service (CPS) to the UK Covid-19 Public Inquiry, together with contemporaneous policing documents which align with that testimony.

Its purpose is simple:

To explain, in plain terms, what the CPS itself has confirmed about Operation Talla and why that evidence raises serious questions about accountability, judicial oversight and the rule of law.

This report does not rely on speculation, leaked material, or anonymous sources.

It relies on formal evidence given to a statutory public inquiry.

2. What the CPS told the Covid-19 Inquiry about Operation Talla

In its official witness statement, the CPS confirmed that Operation Talla was:

- the national policing response to Covid-19;
- a multi-agency coordination framework, not limited to operational policing.

A structure involving:

- the CPS (including senior legal leadership),
- the National Police Chiefs' Council (NPCC),

- the National Police Coordination Centre (NPoCC),
- the College of Policing,
- and the Director of Legal Services for the Metropolitan Police Service.

This matters because it establishes that legal decision-making was embedded within Operation Talla and not separate from it.

3. Operation Talla was a legal-policy coordination system

According to the CPS testimony:

- legal advice, enforcement guidance and operational practice were developed together;
- draft regulations and guidance were circulated rapidly, often by email;
- feedback windows were short, sometimes hours;
- there were no formal terms of reference for key legal coordination groups;
- much of this work occurred outside formal minutes or auditable records.

In effect:

Operation Talla functioned as a rapid national legal-policy coordination system capable of shaping how the law would be applied in practice.

4. National consistency was prioritised

The CPS evidence makes clear that a key concern within Operation Talla was to:

- avoid regional variation,
- ensure consistent policing responses across forces,
- prevent divergence in enforcement or legal interpretation.

This meant that once a national legal position was settled, police forces were expected to align with it.

That approach may be defensible when enforcing rules against individuals.

It becomes dangerous however, when applied to allegations against the state itself.

5. What the CPS evidence does not describe

The CPS testimony is detailed and extensive, but it is notable for what it does not address.

It contains no articulated mechanism for:

- handling allegations of criminal wrongdoing by public authorities;
- ensuring such allegations reach independent investigators or courts;
- safeguarding judicial oversight where the state itself is accused.

This omission is critical.

It reveals a structural gap:

- Operation Talla was designed for enforcement, not accountability.

6. The problem with “reviews” replacing investigations

In practice, allegations against public bodies were often:

- received,
- subjected to a senior legal “review”,
- assessed internally for whether offences were disclosed,
- and treated as settled administratively.

However, in law:

Assessing evidence to determine whether criminal offences may have been committed is investigative activity.

Calling it a “review” does not remove:

- statutory duties,
- disclosure obligations,
- or the need for judicial scrutiny.

The CPS testimony confirms that legal judgment occurred inside the system, instead of being tested in the courts.

7. Courts were structurally bypassed

The combined effect of Operation Talla's structure, as described by the CPS, was that:

- legal questions were resolved internally,
- positions were settled nationally,
- guidance was disseminated to police forces,
- and allegations were filtered out before courts were ever asked to rule.

This is the central constitutional concern.

Courts exist to decide legality.

When systems are designed so courts are never engaged, the rule of law is weakened.

8. Why this matters beyond Covid-19

This report is not about hindsight or emergency pressure. It is about precedent.

If the state can internally determine that allegations against itself will not reach a court, then legal accountability becomes optional and that is incompatible with constitutional democracy.

9. What the CPS testimony therefore reveals

Based on the CPS's own evidence to the Inquiry, we now know that:

- Operation Talla embedded legal leadership into national policing decisions;

- legal positions could be settled rapidly and informally;
- national consistency was prioritised over local discretion;
- no safeguard is described for allegations against the state;
- and courts were not placed at the centre of resolving such allegations.

These are not allegations. They are consequences of the CPS's own account.

10. What must now be addressed

If public confidence and constitutional integrity are to be restored, then the following must be confronted openly:

- How legal positions were formed within Operation Talla;
- Why allegations against the state were resolved internally;
- Why courts were not asked to determine legality;
- How judicial oversight can be guaranteed in future emergencies.

11. Final observation

The CPS testimony to the Covid-19 Inquiry provides an unprecedented window into how law, policy and policing were coordinated nationally.

It also exposes a fundamental weakness:

A system capable of enforcing the law at speed, but not of holding itself to account.

That is the issue this report brings into the open.

Note:

The CPS Witness Testimony Document is below, annexed to this report

Ian Clayton

11 December 2025

Witness Name: Gregor McGill
Statement No.: 1
Exhibits: 3
Dated: 12.05.23

THE UK COVID 19 PUBLIC INQUIRY

Witness Statement of Gregor McGill

I, Gregor McGill will say as follows:

1. I provide this statement on behalf of the Crown Prosecution Service ('CPS') in response to a request received on 22 November 2022 under Rule 9 of the Inquiry Rules 2006 to understand the role the CPS played in the enforcement, by way of prosecution, of the Covid Regulations and our actions during the Covid-19 pandemic ('the pandemic').

Authority of Witness

2. I have been the Director of Legal Services (DLS) at the CPS since 1 January 2016. I joined CPS London as a crown prosecutor in 1991 before progressing to the position of Branch Crown Prosecutor in 2001. In 2002 I left the CPS to join HM Customs and Excise. In 2005 I transferred to the newly formed Revenue and Customs Prosecutions Office (RCPO) and I set up and headed the Serious Organised Crime Division at RCPO in late 2005/early 2006. Following the merger of RCPO and CPS, I was appointed Head of the Fraud Prosecution Division at the CPS before taking on the role of Legal Director for CPS London in 2010. From 2012 until the end of 2015 I was the Head of the Organised Crime Division at the CPS.
3. At the time of the pandemic, I was one of two DLS's, and between us we had responsibility for line management of all Chief Crown Prosecutors ('CCP's') nationally and have ultimate responsibility for casework quality.

Overview of the CPS

4. The CPS is the independent Government Department responsible for prosecuting criminal cases investigated by the Police and other law enforcement agencies in England and Wales.
5. The CPS was created by the Prosecution of Offences Act 1985 and is headed by the Director of Public Prosecutions (DPP). As the principal prosecuting authority in England and Wales, the CPS is responsible for:
 - a) advising the Police and other law enforcement agencies on cases for possible prosecution;
 - b) reviewing cases submitted by the Police;
 - c) determining any charges in all but minor cases;
 - d) preparing cases for court, and
 - e) presenting cases at court.
6. The CPS operates across England and Wales, with 14 regional teams prosecuting cases locally ('CPS Areas'). Each of these 14 CPS Areas is headed by a CCP who is responsible for the day-to-day operation of their Area, working closely with local police forces and other criminal justice partners. CPS Direct (CPSD) is a 'virtual' 15th CPS Area, operating nationally to provide 'out of hours' charging advice to the police and other investigators. It is also headed by a CCP. Finally, we have three Central Casework Division that operate with national remit to cover specific casework such as counter-terrorism and organised crime; these are led by Heads of Division (equivalent to CCPs).
7. Areas are supported by a central headquarters team which includes our Operations, Digital, Strategy and Policy, Finance, Human Resources and Communications Directorates and the DPP's Private Office.
8. During the pandemic the CPS' role and structure remained unchanged. We continued to be responsible for the prosecution of criminal cases referred to us. However, the nature of the offences which were being investigated and referred to the CPS changed as new offences were created (see below).

Charging decisions

The Code

9. All criminal prosecutions brought by the CPS are governed by the Code for Crown Prosecutors ('the Code'). This is a public document which is laid before Parliament. The current version was issued in 2018.
10. The Code provides guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. Prosecutors may only commence a prosecution when the case satisfies the Full Code Test. The test is set out in Chapter 4 of the Code. It has two stages: the first is the requirement of evidential sufficiency and the second involves consideration of the public interest.
11. To satisfy the first stage, a prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. This means that an objective, impartial and reasonable jury (or bench of magistrates or judge sitting alone), properly directed and acting in accordance with the law, needs to be more likely than not to convict the defendant. It is an objective test based upon the prosecutor's assessment of the evidence (including any information that he or she has about the defence). If the case does not pass the evidential stage, then consideration of the public interest does not arise.
12. Only once a case has passed the evidential stage may the prosecutor go on to consider whether a prosecution is required in the public interest. It has never been the rule that a prosecution will automatically take place once the evidential stage is satisfied. However, a prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those in favour.
13. The Code sets out some common public interest factors tending for and against prosecution. However, assessing the public interest is not an arithmetical exercise involving the addition of the number of factors on each side and then making a decision according to which side has the greater number. Rather, each case must be considered on its own facts and its own merits. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. Even where there may be a number of public interest factors which tend against prosecution in a particular case, the prosecutor should consider whether the case should go ahead but with those factors being drawn to the court's attention so that they can be reflected in the sentence passed.

14. Prosecutors are supported in their decision making by centrally produced Legal Guidance, which is publicly available on our CPS website. Prosecutors should have regard to applicable policies and guidance when making their decision on charge.

Director's Guidance

15. Since 2004 the CPS has been responsible for providing authority to charge in all but minor cases, where the police can make the decision to charge. The DPP can issue guidance to the police in respect of the making of charging decisions. The first such Guidance, known as the Directors Guidance on Charging, was issued in May 2004 and explained how and in what circumstances the CPS would provide charging advice. The current Guidance (the 6th Edition) was issued in December 2020. The guidance sets out the roles and responsibilities of the police and prosecutors when seeking charging advice and details the type of charging decisions which the police can make themselves without the need for CPS authority. It sets out how and when advice can be sought from a prosecutor, and the material to be submitted in order to seek that advice.
16. During the pandemic, the new covid related offences which were developed were "summary only" offences. This means that, in line with the Director's Guidance on Charging (the fifth edition applied until 31 December 2020), the police were authorised to charge all offences under the Regulations without CPS involvement (further details below).

Legal Guidance

17. A large number of new criminal offences were introduced as part of the Government's response to the pandemic. These are contained in the Coronavirus Act 2020 ('the Act') and various Coronavirus Regulations ('the Regulations'), with separate Regulations for England, Wales and local areas.
18. The CPS produces legal guidance to support prosecutors to make fair, consistent charging decisions. The CPS produced extensive legal guidance in relation to all of the new criminal offences, save for those contained in Regulations covering specific local areas, and some of those which would be prosecuted only by local authorities. The development of this guidance was carried out at far greater speed than usual, due to the changing nature of the pandemic and the Government response in laying new and amended Regulations. This is discussed in more detail, below.

Corporate response

Criminal Justice System Strategic Command (CJSSC)

19. During the pandemic, the main CPS engagement in cross-government co-ordination was through the Criminal Justice System Strategic Command (CJSSC). The CJSSC was set up by the Ministry of Justice (MOJ) Departmental Operations Centre.
20. The role of CJSSC was to “take overall responsibility for the multi-agency management of an incident or crisis, establish a common policy and strategic framework within which each contributing agencies command function will operate.” The CJSSC was to feed directly into the General Public Services Committee, chaired by the Chancellor of the Duchy of Lancaster.
21. CJSSC ‘Gold Group’ included representatives from across CJS departments, including representatives from Public Health England. The CPS was represented by the Chief Executive Officer (CEO), though executive Directors attended when the CEO was unavailable. I attended on occasion.
22. CJSSC was formally initiated on 16 March 2020 with regular (daily) meetings to start with that moved to less frequent (around 3 times / week from mid-April), then to weekly meetings from early July. CJSSC was stood down from 12 August 2020 until 30 September 2020, when the re-emergence of the virus and variants required it to be stood-up again. Thereafter it met in a weekly rhythm until well into 2021. Around September 2021 CPS representation was delegated down to Deputy Director level by the CEO. It ceased in around February 2022.
23. The group established ‘silver’ and ‘bronze’ sub-groups who provided regular strategic updates from each department represented. The CPS provided key updates relating to
 - Demand management – for example, the volume of staff not at work (abstraction rate)
 - Communications and Data – for example, the number of cases with the CPS, whether increasing or decreasing and any geographical pressures

- Progress on Silver group activities – generally from the Legal Decision-Making group, Technology Enabled group, Custody Time Limits group, Legal practitioners group and Victims and Witnesses group.
24. At 'Silver group' level a number of working groups were set up, including the following:
- **Legal Decision Making** - To ensure that mechanisms for taking legal decisions are maintained by reducing resource requirements, widening the pool of individuals that can take these decisions, delaying/reducing the need for legal decisions.
 - **Technology Enabled/ Video Enabled Justice** - To ensure that use of video hearings is maximised as far as possible by:
 - ensuring that all partners are aware of the video capability available in each court region (covering police, court and prison capability)
 - maximising the capacity of video court hearing technology within HMCTS
 - maximising the use of video hearing capacity within police, HMCTS, HMPPS
 - identify other operational tasks that could be undertaken remotely eg criminal court resulting (HMCTS)
 - **Custody Time Limits** - To identify key limits where flexibility will prevent individuals breaching requirements for reasons outside their controls; enable workload peaks to be reduced.
 - **Legal Practitioners** - To bring together views, concerns & issues from legal practitioners and to work through them as well as two-way information sharing to ensure the CJS operates as smoothly as possible.
25. I chaired the Custody Time Limits Silver Group and my fellow DLS chaired the Legal Decision-Making Silver Group. The groups started meeting on/around 23 March 2020; the work of the groups was largely done via email and telephone conferences. After an initial flurry of activity, the work of the groups became more ad hoc. The key value of these groups was to get senior stakeholders from across CJS departments together to make strategic decisions and share information. Over time, the groups naturally changed or spurred new working groups depending upon the priorities at the time.

26. It was within this Silver Group structure that the CPS made decisions which resulted in the publication of the Interim Charging Protocol and Case Review Guidance (for which see below).

General Public Services Ministerial Implementation Group (GPS-MIG)

27. The DPP was invited to attend GPSMIG meetings on an ad hoc when the topic was relevant to CPS. The DPP first joined one of these calls on 31 March 2020. The CPS provided headline statistics or flagged operational issues identified from daily internal management calls.

Covid-19 Operations Committee Meeting (Covid-O)

28. The CEO was invited to Join the Covid-O meeting on 15 January 2021. This meeting focussed on the Court System (compliance and enforcement). The purpose of the discussion was for Ministers to understand the extent of the backlog in the courts system and agree how cases related to breaches of Covid rules could be expedited. The Agenda included papers from the Home Office and Ministry of Justice. One outcome of that meeting was that the Attorney General agreed to specify further covid-related offences to use the Single Justice Procedure (for which, see below).

National Economy and Recovery Taskforce

29. Later in 2021, the CPS were also engaged in the National Economy and Recovery Taskforce (NERT) Public Service (PS) meetings on different topics on occasion. The DPP and/or CEO were involved in/contributed to NERT meetings on CJS backlogs, CJS recovery and RASSO in March 2021.

Interim Charging Protocol [INQ000084078]

30. At the beginning of the pandemic, we held regular calls with our CCPs to cascade information and identify issues and pressures across CPS Areas. On 17 March, the Lord Chief Justice announced that all Crown Court cases due to last three days or more, starting before the end of April 2020, would be adjourned and on 23 March 2020 that no new jury trials would start. We discussed the impact of this on a CCP call that same day and it was agreed that a small group of CCPs would meet to look at how we could assist

by way of charging prioritisation. I oversaw this work reporting in to the Legal Decision Making Silver group.

31. It was immediately apparent that the pandemic would prevent cases from progressing through the courts, in the normal way. It was equally apparent that criminal activity would not cease, although some aspects would inevitably reduce. There was particular concern amongst all engaged in criminal justice (police, CPS, HMCTS and judiciary) that forcing everyone to stay at home would pose a significant threat of an increase in domestic abuse. There would also be threats posed by those who wished to take advantage of the crisis, particularly in on-line activity.
32. The CPS could have simply continued to charge cases that were already in the system, waiting to be charged, using the existing agreed timescales. However, that would have contributed to a greater blockage in the court system than had existed previously. With bailed defendants, witnesses, advocates, courts staff, judiciary and jurors all potentially experiencing difficulty in attending court, the potential for delay was immense.
33. We decided that a Protocol ought to be developed to categorise cases as high, medium and low priority (based on a risk/harm approach) for charging decisions to ease the pressures at Court and ensure that high priority cases were able to get to Court quickly and to enable all agencies to effectively deploy resources.
34. The Protocol devised three categories of cases, based on risk to the public and set timescales for directing those cases into court. The rationale for choosing cases in each category is explained in the protocol itself and includes case examples. The choice of cases for each category was based upon the collective knowledge and experience of senior prosecutors and police officers who all had input into the final document. It focused attention on high-risk, high-harm cases and ensured they were prioritised. It was, in our view, a logical and sensible approach to mitigate the risk posed.
35. A Draft Interim Charging Protocol was drafted, and underwent a series of amendments and changes, as it was considered by those in the working group and also following discussions with other agencies, including the NPCC lead on charging and the NPCC lead on Criminal Justice. It was also shared with colleagues from MOJ and HMCTS and discussed at the Silver meeting on 27 March 2020. It was shared with the CJSSC Gold Group and the NPCC Gold Command on 30 March.

36. On 31 March 2020 we published the **Covid 19 Interim Charging Protocol** on the CPS website, it became operational on 1 April. It provided that all 'coronavirus-related' cases would be dealt with by the CPS as 'immediate' Category A cases for the purpose of obtaining a charging decision, whether suspects are to be kept in custody or released on bail. Examples of 'coronavirus-related' cases are provided in the protocol and include assaults on emergency workers as well as coronavirus-related dishonesty and fraud. This ensured those offences with coronavirus-related aggravated features were in the highest category for priority charging decisions, alongside those where the police or other investigators were seeking a charging decision followed by a remand in custody.
37. Ahead of the launch the police developed a power point presentation for dissemination to all Forces to highlight the key changes. The Protocol was available on the CPS website, was sent directly to all CCPs and was sent to all Chief Constables and Criminal Justice leads by the NPCC Charging lead. It was also shared with all members of the Criminal Justice Board on 31 March.

Interim CPS Case Review Guidance [INQ000084077]

38. As set out above, the Code sets out how prosecutors make charging decisions. It also explains that the CPS has a duty of continuing review. This means that circumstances may change throughout the life of the case which impact on the application of the Code test. One aspect of the public interest test is that prosecutors should consider whether prosecution is a proportionate response
39. Shortly after the Interim Charging Protocol was published, we decided that it was also necessary to have some legal guidance on the application of the Code to draw prosecutor's attention to the type of public interest factors which may be applicable when reviewing cases in light of the impact of the pandemic.
40. In developing this guidance, the CPS consulted with/ sought the views of AGO, NPCC portfolio leads and the College of Policing. We also informed HMCTS, Judicial Office and the CJSSC Silver command. The Guidance was ultimately approved by the DPP.
41. The Interim Case Review Guidance was published on 14 April 2020. It was publicly available on our CPS website. A notification was sent to all prosecutors by email on the day of publication. We also shared directly with key stakeholders and parliamentarians.

42. The Case Review Guidance clarified that when reviewing a case and considering the public interest, prosecutors should note:
- *The crisis is producing an expanding pipeline of cases waiting to be heard.*
 - *Criminal proceedings and case progression are likely to be delayed. Significant delay may impact adversely on victims, witnesses and defendants, in some cases, may reduce the likelihood of a conviction.*
 - *Each case that is introduced into the system, or kept in the system, will contribute to the expanding pipeline and delay.*
43. By applying these factors, prosecutors were encouraged to consider whether there may be other courses which could be taken, such as an out-of-court disposal; and whether it may be appropriate to accept a guilty plea to some, but not all charges, or to a less serious offence.
44. We advised that the proportionality factor must be weighed with all other relevant public interest factors, such as the seriousness of the offence and the circumstances of and the harm caused to the victim, to form an overall assessment of the public interest (in accordance with the Code). The guidance cautioned that: *In the majority of cases, there will be no impact at all, and the public interest will lie with continuing the prosecution.*

Covid Act and Regulations

45. On 18 March, our policy team were informed, via MOJ, that a Coronavirus Bill was due to be introduced to Parliament on 19 March. On 23 March 2020 the first National lockdown began and the CJSSC silver meetings started.
46. On around 24 March, my legal support team (the DLS team) started to engage with the staff officer to the NPCC lead for Charging about the new criminal offences which were due to commence with a view to ensuring we were ready to develop guidance once we had copies of the new laws.

Coronavirus Act

47. The Coronavirus Act came into force on 25 March 2020. Its stated aim was to introduce new laws to protect public health, increase NHS capacity, strengthen social care and support the public to take the right action at the right time.

48. In accordance with the Act's sunset clause at section 89, many of the Act's provisions expired on 25 March 2022. These included the provisions relating to the main criminal offences in the Act. These offences related to:
- Potentially infectious persons being required to undergo screening (section 51 and schedule 21).
 - Secretary of State declarations and directions in relation to prohibitions, requirements and restrictions on events, gatherings and premises (section 52 and schedule 22). It should be noted that these are distinct from subsequent Covid Regulations that placed restrictions on gatherings and businesses.
 - Secretary of State directions in relation to the power to suspend the operation and management of an airport, seaport or an international rail terminal (section 50 and schedule 20).
49. The Act also included a number of provisions relating to Court hearings (e.g. enabling the use of live links for court hearings so parties could attend remotely).

Coronavirus Regulations [see schedule below for URNs].

50. Separate Regulations were created for all four jurisdictions of the United Kingdom. The CPS functions relate to the jurisdictions of England and Wales. The Regulations contain a number of summary-only criminal offences that relate to breaches or contraventions of a large number of restrictions, prohibitions, instructions and requirements imposed by the Coronavirus Regulations. These cover, for example, movement outside the home, gatherings, restrictions on businesses and services, face coverings, hospitality, self-isolation and international travel.
51. The Regulations were passed as emergency legislation under powers conferred by the Public Health (Control of Disease) Act 1984.

The Coronavirus Regulations – England

52. The following is a summary of the various types of Coronavirus Regulations that applied to England and contained criminal offences. It sets out the date of introduction and revocation, the number of Amendment Regulations, and the main requirements or

prohibitions, breach of which could amount to a criminal offence. Where reference is made to the revocation of Regulations, this will usually relate to the majority but not necessarily all of the restrictions, as particular restrictions were sometimes revoked on different dates.

Lockdown laws - Regulations containing restrictions on movement, gatherings and businesses

- **The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020**

53. The first set of Regulations came into force on 26 March 2020, imposing the first national lockdown. They were amended on 5 occasions and revoked on 4 July 2020.
54. The main restrictions that were imposed formed the template for all subsequent lockdown Regulations, although they became far more complex. The restrictions related to:
 - *Restriction on movement*
 - *Restriction on gathering*
 - *Requirement to close businesses and premises*
 - *Restrictions on certain business activities*
55. It should be noted that some of the restrictions (e.g. those relating to business activities) were enforced and prosecuted by Local Authorities, not the CPS.
56. The Regulations contained enforcement powers for the police, such as directing a person to return to the place where they live and directing a gathering to disperse. The Regulations created new summary offences, where a person: contravened the requirements of stated Regulations without a reasonable excuse; obstructed a person carrying out a function under the Regulations without a reasonable excuse; or contravened a prohibition notice or direction or reasonable instruction given to a person without reasonable excuse. The offences are punishable by a fine. The police were given the power to arrest in relation to these offences.
57. An authorised person, such as a constable, was given power to issue a fixed penalty notice (FPN) if they reasonably believed that an offence had been committed by an offender aged 18 or over. A FPN provides an offender with the opportunity to discharge

any liability for the offence by paying a fine. If an offender accepts a FPN but does not comply with its terms, then after 28 days criminal proceedings can be instituted by the police. An individual does not have to accept a FPN and if they do not do so the police can issue criminal proceedings for the offence instead. It should be noted that FPNs are not automatic. The police can take the decision that the offence is so serious that they can charge straightaway, for example where there have been multiple offences.

58. The Regulations provided that the CPS may bring proceedings for an offence under the Regulations.

- **The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020**

59. These Regulations came into force on 4 July 2020 and were mostly revoked on 14 October 2020. They were amended on 20 occasions.

60. The restrictions that were imposed were: a requirement to close businesses and premises; restrictions on gatherings, initially in relation to more than 30 persons in specific places, such as a private dwelling and certain indoor places; and a Secretary of State power to issue a direction to restrict access to a specific public outdoor space.

61. The restrictions on gatherings were by now quite complex and subject to regular amendment, such as introducing restrictions on organising or facilitating specific gatherings, and “the rule of 6”, whereby indoor and outdoor gatherings of up to 6 persons was allowed, and the prohibition in excess of that number subject to exceptions. Amendments also introduced the concept of participating in specific types of gatherings (relating to businesses, charities etc) as a member of a “qualifying group”, and the related concept of “mingling”, which was prohibited in relation to persons who were not a member of the same qualifying group.

- **The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020**

62. These Regulations came into force from 18 July 2020, were amended on 20 occasions, and were revoked on 24 February 2022.

63. As these relate to Local Authority (LA) powers regarding premises, events and outdoor places, the CPS did not produce guidance for these Regulations.

- **The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Restrictions Regulations 2020 (Tier 1 Regulations)**
- **The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020 (Tier 2 Regulations)**
- **The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 (Tier 3 Regulations)**

64. The “3 Tier” Regulations came into force on 14 October 2020, replacing the No.2 Regulations. They were amended on 3, 7 and 6 occasions respectively (Tiers 1, 2 and 3). Most provisions in the Regulations were revoked on 5 November.

65. They formed a new 3 Tier system, whereby every area of England was subject to restrictions on gatherings and businesses. The restrictions depended on which Tier that Area was placed in. Every Area was by default a Tier 1 Area (where the local COVID-19 alert level was assessed as being medium), unless they were excluded from the Tier 1 Area, by being identified as a Tier 2 Area (high alert level) or a Tier 3 Area (very high alert level).

66. The Tier 1 Regulations imposed restrictions on gatherings and businesses in the Tier 1 Area. The Tier 2 and Tier 3 Regulations imposed restrictions on gatherings and businesses in the relevant Tier Area and on gatherings elsewhere by persons living in the relevant Tier Area.

67. The system of tiers added a further layer of complexity for the police and prosecutors, as they needed to determine which tier a place was in at a particular time, and therefore which restrictions applied, before they could assess whether an offence may have been committed.

- **The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020**

68. These Regulations came into force on 5 November 2020, imposing the second national lockdown. They were amended twice before being revoked on 2 December 2020.

69. Broadly, although complex, the Regulations imposed the usual restrictions on leaving home and indoor and outdoor gatherings; and required a number of businesses to close, whilst imposing restrictions on other businesses.

- **The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020**

70. Following the second national lockdown, a modified tier system (“All Tiers”) was introduced. The All Tiers Regulations came into force on 2 December 2020. They were amended on 10 occasions and were revoked on 29 March 2021.
71. Every area of England was subject to restrictions, depending on which Tier that area was placed in. Initially, there were 3 Tiers but on 20 December 2020 a fourth Tier with more severe restrictions was introduced. Measures to allow people to socialise over Christmas were introduced, although these did not apply to Tier 4. On 6 January 2021 all of England was put into Tier 4, to enforce the third and final national lockdown.

- **The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021**

72. The Steps Regulations came into force on 29 March 2021, at the end of the third national lockdown in England. They were amended on 3 occasions and revoked on 18 July 2021.
73. The Regulations provided a framework for the easing of the lockdown restrictions, via the three Step Areas; Step 1 being the most severe restrictions, and Step 3 the least severe. The intention was to keep all locations in England within the same Step and set of restrictions, starting with Step 1, then moving all locations at the same time from Step 1 to Step 2, and then to Step 3. Police and prosecutors needed to ensure that charging decisions were based on the Regulations in force in a particular Step area at the time the alleged breach was committed.
74. The Steps Regulations imposed restrictions on gatherings and businesses in England, and also a prohibition on leaving the UK without a reasonable excuse.

Local lockdown Regulations

75. Between 4 July 2020 and 14 October 2020, the Government imposed a number of restrictions for certain local areas, via standalone Regulations. The rules differed in each area and were subject to a number of amendments. The local lockdown Regulations were revoked on 14 October 2020, to be replaced by the 3 Tier system.
76. The CPS did not produce national guidance in relation to these restrictions, as they applied only to specified protected areas.

International Travel Regulations

- **The Health Protection (Coronavirus, International Travel) (England) Regulations 2020**

77. These Regulations came into force on 8 June 2020, were amended on 57 occasions and were revoked on 17 May 2021.
78. When introduced, the main requirements were: on arrival in England from outside “the common travel area” (the UK, the Channel Islands, the Isle of Man, and the Republic of Ireland), to provide passenger information on a Passenger Locator Form; and to self-isolate (usually at home) for 14 days or until departure from England. The schedules to the Regulations contained lists of persons exempt from the requirements.
79. Amendments to the Regulations made them increasingly complex, introducing for instance: a list of exempt countries and territories in relation to the requirement to self-isolate; reduction of the self-isolation period to 10 days; a requirement to possess notification of a negative test result; a requirement that individuals travelling from specified countries have a managed self-isolation package; and a requirement that individuals arriving in England in certain circumstances book and undertake mandatory tests. By the time the Regulations were revoked they had become highly complex, requiring a large amount of cross-referencing between the various regulations and schedules, including numerous exemptions, in order to ascertain the exact requirements on a particular person arriving in England on a specified date.

- **The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021**

80. These Regulations came into force on 17 May 2021, were amended on 43 occasions and were revoked on 18 March 2022. They replaced the 2020 International Travel Regulations.
81. The 2021 Regulations imposed requirements on certain categories of person to provide information upon arrival in England, to take coronavirus tests before and after arrival, and to self-isolate. They also imposed obligations on operators to ensure that passengers received information and complied with the requirements.
82. The structure of these Regulations were changed a number of times by the various Amendments, which included the introduction of new Parts and Regulations, moving some of the Parts and Regulations to a different place within the Regulations, and re-titling some of the Parts and Regulations. The Regulations also introduced, and sometimes later omitted, different categories of traveller, such as “eligible category 2 arrival” and “eligible traveller”, and changed the requirements imposed on such travellers, in line with the Government’s response to the changing nature of the pandemic.

Self-isolation Regulations

- **The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020**

83. The Regulations came into force on 28 September 2020, were amended on 16 occasions and were revoked on 24 February 2022.
84. The Regulations:
- Imposed self-isolation requirements in relation to people who had tested positive for coronavirus and their contacts.
 - Prohibited an employer from allowing a worker who was required to self-isolate from attending any place for any purpose connected with their employment. It also required a self-isolating worker to inform their employer of the requirement on them to self-isolate.
85. Amendments made to these Regulations included: numerous changes to the period of self-isolation and how it is calculated; creation of new exceptions to the requirement to

self-isolate; relaxation of the requirement to self-isolate, by exempting certain contacts, such as children or vaccinated persons (this exemption was reversed in respect of the Omicron variant on 30 November 2021, requiring such contacts to self-isolate, but then re-applied in respect of the Omicron variant just 2 weeks later, on 14 December 2021).

86. Assessing whether a person had complied with the Regulations was not always straightforward. For example, calculating the dates on which a contact was required to self-isolate could be difficult, due to the definitions of the start and end date of the period of self-isolation.

Face coverings Regulations

- **The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020**

87. The Regulations came into force on 15 June 2020, were amended on 5 occasions and were revoked on 18 July 2021.
88. They required members of the public to wear face coverings whilst using public transport (such as buses, trains, aircraft, the London Underground, water taxis and trams), unless they had a reasonable excuse not to do so. A number of persons were exempt from the requirement, including children under the age of 11, employees of the relevant transport service, police and emergency responders. A non-exhaustive list of reasonable excuses was provided in the Regulations, such as any physical or mental illness or impairment, or disability that prevented a person from complying, the need to eat or drink, and to take medication.

- **The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020**

89. The Regulations came into force on 24 July 2020, were amended on 8 occasions and were revoked on 18 July 2021.
90. They required members of the public to wear face coverings whilst inside a relevant place, unless they had a reasonable excuse not to do so. A number of persons were exempt from the requirement and a non-exhaustive list of reasonable excuses was provided in the Regulations – these provisions were similar to those in the Regulations

on wearing face coverings on public transport. Schedule 1 contained a list of relevant places where face coverings must be worn. This included a shop (but not pubs, bars and restaurants), a transport hub, banks and post offices. Schedule 2 contained a list of places that were exempt from the definition of “shop”, where face coverings did not need to be worn, such as libraries, doctors’ surgeries, dentists’, theatres and cinema. The definition of a “relevant place” was amended on a number of occasions.

- **The Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021**

91. These Regulations came into force on 30 November 2021, were amended on 2 occasions and were revoked on 27 January 2022.
92. The Regulations required members of the public to wear face coverings whilst inside a relevant place specified in the Regulations, or whilst using public transport (such as buses, trains, the London Underground, trams, aircraft and water taxis), unless they had a reasonable excuse not to do so. They also required businesses in places where wearing a face covering is required to display notices giving information about that requirement, and prohibited persons carrying on business in specified locations from preventing anyone from wearing a face covering, except in limited circumstances. As with the 2020 Regulations, these Regulations contained a list of persons exempted from the requirements, and a list of non-exhaustive reasonable excuses.

Hospitality Regulations

- **The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020**

93. These Regulations came into force on 18 September 2020, were amended on 10 occasions and were revoked on 18 July 2021.
94. They related to pubs, cafés, restaurants and other relevant businesses and required measures to be taken to restrict group bookings and admissions to 6 persons, subject to exemptions, to prevent mingling of persons in qualifying group, and to maintain an appropriate distance between tables occupied by different qualifying groups.

- **The Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) Regulations 2021**

95. These Regulations mostly came into force on 15 December 2021, were amended on 2 occasions and were revoked on 27 April 2022.
96. They imposed obligations on certain events organisers and managers of certain venues to take reasonable measures to ensure that they did not admit any person (subject to exceptions such as persons under 18 years of age) to such events or venues, unless the person concerned had been fully vaccinated or had tested negative for coronavirus within the previous 48 hours, or met another listed criteria. A number of other related obligations were imposed on responsible persons. Local authorities were given powers to enforce these obligations.

CPS actions in respect of legislative developments

97. The CPS does not formulate Government policy, nor is it responsible for legislation. However, it is common practice, when new criminal offences are created, for the CPS to be consulted by the relevant Government department and to advise on how potential offences and legislation may work best in practice. Legislation will often be developed over many months or years, including its passage through Parliament, allowing the CPS adequate time to provide meaningful input.
98. The imminent threat posed by the pandemic necessitated emergency legislation at short notice. In these circumstances, it was not possible for the CPS to have the same level of input into the legislation before it was laid before Parliament. However, despite the speed with which the various Regulations were introduced, the CPS ensured that it worked as closely as possible with Government departments and the police to aid our understanding of the policy intent behind the Regulations and to raise any practical difficulties we encountered in enforcing them.
99. Prior to the first Health Protection Regulations coming into force in March 2020, the CPS viewed and commented on a number of draft Regulations, helping to clarify the text and identifying any perceived problems. Since this text served as the basis for a number of subsequent lockdown Regulations, CPS involvement ensured that we were able to readily understand most of the provisions, to assist the police by way of advice, and to enforce them through prosecutions.

100. The CPS continued to support the police and government departments by providing feedback on new draft Regulations and Amendments via a legal working group set up under the NPCC Operation Talla response (see below).
101. We provided ongoing feedback on any statutory provisions that we considered could be clarified or may have been difficult to enforce in practice. At times, such provisions were amended in subsequent Regulations.
102. The CPS also provided feedback on police operational guidance on enforcing the Regulations, which aimed to ensure a consistent interpretation and enforcement of the Regulations by the CPS and the police.

CPS Legal Guidance - England

103. As a result of this close working relationship with the police and other Government departments, the CPS was able to produce and publish guidance on the Coronavirus Act and Regulations at the same time, or shortly after, any new legislation was brought into force. CPS prosecutors, the police and the public therefore had the benefit of this guidance from a very early stage, which was necessary given the frequency with which the Regulations were amended. However, the scale of this task should not be underestimated.
104. The legal guidance published by the CPS relates to those Coronavirus Regulations that applied in England and contained criminal offences. These can be found on the prosecution guidance page of the CPS website. [See schedule below]
105. At the start of the pandemic, we could not have foreseen the number of amendments that would be made to the Regulations. Our initial guidance provided detailed summaries of the new laws, to assist prosecutors to understand them. However, the complexity and frequency of amendments to the Regulations caused difficulties in drafting and revising the guidance in such a way as to make it clear and accessible to prosecutors, and to ensure it was up to date. A good example of this is the number of Amendment Regulations and resulting complexity of the International Travel Regulations: the 2020 Regulations were amended 57 times and the 2021 Regulations were amended 43 times. In January 2021 it was therefore decided to revise all of the Coronavirus Regulations guidance, to remove much of the detail, providing prosecutors with a clearer, high-level summary of the main provisions in the Regulations, incorporating only key amendments.

Prosecutors were reminded that they would need to refer to the timeline on the legislation website to determine which provisions were in force at the time of an alleged breach.

106. The speed with which legislation was developed and implemented meant there was little time to properly analyse the drafting of the legislation or to ensure our prosecutors were properly equipped to review cases charged under these new offences. This meant prosecutors were learning as they went along, and our guidance was constantly evolving to reflect our learning. Over time, the sheer volume of different iterations of the Regulations inevitably meant cases were charged under the wrong version of the Regulations (i.e. those which had been revoked and replaced by new Regulations) and we had to take steps to ensure additional oversight of these cases (see below).

The Coronavirus Regulations – Wales

107. CPS Cymru–Wales produced guidance on the Welsh Coronavirus Regulations, accessible to all CPS Cymru–Wales prosecutors.
108. The Wales Covid Regulations were issued by the Wales Government using devolved powers, principally under the Public Health (Control of Disease) Act 1984. In total some 216 Statutory Instruments were passed, covering a wide variety of topics including education, health service, local authority meetings, access to footpaths, payments to farmers, police and crime commissioner elections & meetings, etc.
109. The Welsh government developed Covid legislation independently to that introduced by the government in England. The Wales Regulations initially introduced in March 2020 contained very similar restrictions to those introduced in England during the first ‘lockdown’ period, albeit the Welsh government decided not to ‘mirror’ the English guidance. However, very quickly the Welsh government took a different view of the nature and extent of regulations required. Consequently, over time there were often marked differences between the nature and extent of restrictions in force in Wales as compared to England.
110. Following 2 sets of precursor Regulations published on 18 and 21 March 2020, the first set of Principal Regulations (The Health Protection (Coronavirus, Restrictions) (Wales) Regulations 2020) came into effect on 26 March 2020. There were 7 sets of Amendment Regulations.

111. The first set of Principal Regulations, which reflected the first 'lockdown' on 26 March 2020, provided for individuals not to leave their place of residence without reasonable excuse, or for 2 or more people to participate in a gathering, subject to exceptions. The definition of 'reasonable excuse' was clarified over time, e.g. to allow for exercise.
112. Breach of the Regulations constituted a summary only offence for which an FPN could be issued (the amount of fine varied over time depending on the number of FPNs issued to an individual). Upon a conviction, the maximum sentence a court could impose was a financial penalty.
113. Over time, the Regulations moved from full lockdown to provide for local lockdowns, and tiered levels of restrictions, which could apply in different geographical areas. A 'firebreak' lockdown was imposed from 23 October 2020, and the restrictions were then progressively relaxed throughout 2021-2022.
114. The behaviour criminalised was generally in respect of requirements imposed under the Health Protection Regulations.
115. The CPS also produced legal guidance for prosecutors covering the Wales Regulations, though these were not published externally, rather they were shared within CPS Wales and with our charging team at CPS Direct. The legal guidance focused on the Wales Health Protection Regulations. However, legal guidance was also introduced to signpost requirements set out in the Wales International Travel Regulations.
116. The guidance documents contained a chronological list of the Regulations, their implementation dates, and hyperlinks to the Regulations. Where possible, short commentary was also included to signpost the main changes when a new set of Regulations was issued. This was updated as the Regulations were published.
117. Between 2020-2022, 40 versions of the Wales Health Protection Regulations legal guidance were published, and 20 versions of the Wales International Travel Regulations guidance to reflect the continued amendments and updates to the legislation.
118. The prosecutor guidance for Wales was published internally via the Cymru-Wales All-Staff MS Teams page, to enable all staff in Wales to access the guidance. From September 2020 it was also available on the National legal guidance page, but only

available internally. It was not published externally because it was not quality assured to publication standard.

Engagement with Welsh Government

119. Early in the pandemic, the Welsh Government introduced a 'Warning and Information Group' chaired by the First Minister's communications manager and attended by a representative from the CPS. This primarily focussed on intelligence sharing from the Welsh Government and the police about upcoming changes and was an informal meeting.
120. The Criminal Justice Sub-Group for Covid 19 was set up on 25 March 2020, chaired by the Head of Justice Services for South Wales Police and reporting into the Wales Criminal Justice Board. It was a weekly pan-Wales meeting attended by Welsh police force leads, CPS, HMCTS, probation service and others. This was primarily an information sharing meeting where agencies provided updates as to the impact of the pandemic on their services in order to keep the CJS moving. For example, the police would provide updates on the number of fixed penalty notices issued so that the likely impact upon the courts could be considered.

Engagement on the development of the England Regulations

121. Operation Talla was the name given to the national policing response to the Covid pandemic. It had a number of strands, one of which was criminal justice.
122. On around 24 March 2020 the Home Office shared an initial draft of the first Regulations with Op Talla. This was shared via emails with various parties as advanced notice and over time an informal network developed. This included representatives from the CPS DLS team, the Home Office Legislation Lead, the National Police Chiefs' Council ('NPCC') (which included representatives from the NPCC Charging portfolio, Operation Talla and the National Police Coordination Centre ('NPoCC')), the College of Policing, and the Director of Legal Services for the Metropolitan Police. The group would consider the draft Regulations with a view to developing consistent operational guidance for policing.
123. The Home Office shared proposed amendments to the Regulations with the Op Talla Network for early feedback. The process was conducted almost entirely by email, with

Home Office leads circulating the proposed drafts to the points of contact, including the CPS, and providing a short time for feedback (often within hours). The comments of the CPS were directed towards any amendments that might impact on prosecutions, or to clarify the policy intent behind certain provisions, but there were no substantive issues raised on the contents.

124. One of the early topics of discussion was around how the measures would be enforced and how to mitigate the risk of regional variation. The police proposed a four-step escalation principle; Engage, Explain, Encourage, Enforce (which became known as 'the 4 E's'). This approach ensured that enforcement of the powers in the Regulations were focused on punishing the most egregious breaches of the Regulations, and encouraged the police to make use of 'soft' powers (e.g. to ask people why they are out and direct them home) to create a heightened level of deterrence, as opposed to seeking immediate enforcement. This approach was reflected in the operational guidance and briefing to Chief Constables that was sent by the NPCC Charging Portfolio on 25 March
125. The CPS subsequently mirrored this in our published guidance on the Regulations, making clear that the issuing of criminal proceedings are likely to have been a matter of last resort. (eg see Charging Practice section in INQ000084003)
126. This process of sharing early drafts of Regulations for police and prosecutor feedback continued intermittently throughout the pandemic period.
127. Following the first draft of the Regulations, Operation Talla also set up a Police Powers Working Group to respond to questions posed by Forces. This group consisted of representatives from CPS, force solicitors, the Met DLS and the College of Policing. There were no formal terms of reference for the group, but it was engaged in responding to questions on police powers regarding the new legislation. As part of this group, the CPS provided feedback on drafts of operational guidance prepared by the College of Policing under the Coronavirus Act and the Regulations. This feedback was largely confined to checking the guidance was legally accurate.
128. Through this process the leads in each agency became known to each other and the sharing of information and provision of feedback generally occurred informally as and when issues arose, or new Regulations or Amendments were proposed.
129. Early on an issue emerged around differences between the advice issued by the government in the media and in the televised daily briefings as to the restrictions on

individuals, and what was actually prohibited by the Regulations. This was causing some confusion and was evident from the lists of questions which were being escalated to the Police Powers Working Group. For example, Regulation 6 of the Regulations (S.I. 2020/350) provided that 'no person may leave the place where they live without a reasonable excuse' and it was evident that there was particular confusion as to what may amount to a 'reasonable excuse' for these purposes.

130. On 3 April 2020, the group were provided with a document drafted by South Yorkshire Police and Humberside Police legal services which set out scenarios by way of guidance to frontline officers as to what may amount to a reasonable excuse. The CPS adapted that document and produced a quick reference guide table to provide internal guidance for CPS prosecutors which set out that which was government guidance and that which was capable of amounting to a breach. The College of Policing and NPCC Charging Portfolio took the view that this would also be a helpful guide for forces and included the table in their guidance document '*What constitutes a reasonable excuse to leave the place where you live*' that was published by the College of Policing and disseminated to forces on 10 April 2020 (**Ex GM/1 – INQ000101253**).
131. This process continued on an ad hoc basis as new Regulations were developed and new Guidance was produced by the NPCC, College of Policing and CPS.
132. The CPS also worked with the Ministry of Justice and the Police National Legal Database (PNLD) to create new National Standard Offence Wordings, for charging purposes, for new offences under the Coronavirus Regulations. These were placed on the PLND database for access by the police, CPS and HM Courts and Tribunal Service, to provide accurate and consistent wording of charges in a complex area of law.

Enforcement process

133. Breaches of the Coronavirus Regulations could be dealt with either by way of a fixed penalty notice (FPN) or the prosecution of the offence. If an FPN was issued and not paid within the stipulated time period – 28 days – a prosecution may follow.
134. ACRO, the national body dealing with criminal records, oversaw the FPN collection process for Forces but they were not responsible for charging cases if the FPN was contested or not paid. This required ACRO to return information to Forces about unpaid FPNs so that they could then issue proceedings against the suspects. On around 22

April, the NPCC Charging portfolio became aware of the large volume of unpaid FPNs which would be returned back to Forces to institute proceedings. This led to discussions about how these cases would be managed. The volume of potential prosecutions that could follow in consequence presented a significant challenge for the CPS and for HMCTS.

135. The first individuals who failed to pay a Fixed Penalty Notice became liable for prosecution on 22 May 2020. Informal telephone meetings were set up by the NPCC Charging portfolio to discuss these and related issues. In due course, a proposal emerged around utilising the Single Justice Procedure to prosecute these cases.
136. The Single Justice Procedure (SJP) was introduced in April 2015 as a more efficient and streamlined method of handling the large volume of low-level offending processed by magistrates' courts. The procedure is outlined in section 16A of the Magistrates' Court Act 1980. It applies solely to summary only, non-imprisonable offences. A defendant must be 18 years or over when charged. SJP allows suspects to plead guilty by post and a single justice will determine the level of fine on the papers without a traditional court hearing. The CPS only become involved in the SJP if and when a defendant pleads not guilty, at which point the case will be passed to the CPS to prosecute.
137. On 7 May 2020, a joint request was made to the Attorney General (AG) by the NPCC Charging portfolio, the CPS and HMCTS to specify the Covid Regulations to allow for the SJP to be utilised (**Ex GM/2 – INQ000101254**). Offences dealt with through the SJP process would alleviate court capacity pressures and allow the CPS and HMCTS to focus on higher harm case work. If the SJP had not been able to be utilised for these offences they would have been listed in normal court lists, on which there was unprecedented demand, and would mean individuals needing to physically attend court buildings. This request was acceded to and the statutory instrument laid before Parliament on 2 June.
138. Initially, only offences under two sets of Coronavirus Regulations were specified: these were the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, which came into force on 26 March 2020 and were revoked on 4 July 2020 and 11 July 2020 respectively.

139. As new Regulations were developed, the earlier specification by the Attorney General did not cover those new offences. As a result, on 23 July 2020 the Attorney General was asked by the CPS, HMCTS and the NPCC to specify offences under the new Regulations (**Ex GM/3 - INQ000101255**). However, this was not acceded to at the time as the Attorney was not persuaded that the case for further Order was made out on the evidence provided. As such, the CPS would retain conduct of the cases not eligible for SJP and they would be listed in Court in the usual way.
140. In early January 2021, there was a meeting of Covid-O on Compliance and Enforcement (as above). The purpose was to understand the extent of the backlog in the court system and agree how cases related to breaches of Covid rules could be expedited. Shortly thereafter, the AG confirmed that all subsequent Covid Regulations would be specified so that they could utilise SJP.
141. Subsequently, on 8 February 2021, further offences were specified, under 25 sets of Regulations, so that the SJP could be used for all existing Coronavirus Regulations offences.
142. This meant that, in general, prosecution for breaches following unpaid FPNs were commenced using the SJP route. Where suspects declined to use the SJP or indicated a not-guilty plea, the case was then passed to the CPS to prosecute in the usual way.
143. Offences under the Coronavirus Act 2020 were not specified and were therefore subject to CPS prosecution (after police charge), regardless of plea.

Prosecutions Review

144. When a case passes to the CPS to prosecute, a CPS prosecutor will review the evidence to determine whether there is sufficient evidence of an offence and whether the alleged offending merits a prosecution and, if so, whether the correct charge has been applied to the offending.
145. In early April 2020, following media reporting of cases which were incorrectly charged and convicted under the Act and/or Regulation we conducted an internal dip-sampling exercise on finalised cases. As a result, on 14 April 2020, we decided to launch a

wholesale review of all finalised cases¹ charged under the Coronavirus Act 2020 and the Health Protection (Coronavirus Restrictions) Regulations. This Review was conducted by our Compliance & Assurance Team (CAT) in the Operations Directorate. It aimed to address the public, ministerial and media concerns regarding the risk of miscarriages of justice occurring due to the confusion caused by the speed of implementation of the Act and the Regulations.

146. On a weekly basis from April 2020 until March 2022, CAT lawyers were provided with a list of all finalised cases charged under the Regulations or the Act. These cases were extracted from the CPS Management Information System (MIS). The lawyers manually reviewed every case to ensure the correct offences had been charged and prosecuted.
147. Where an error was identified in a case where the defendant had pleaded guilty or was found guilty, the case was referred back to the local CPS Area to take remedial action. This was to ensure the case was re-opened and re-listed in court so that the error can be corrected (either by way of amending the charge or withdrawing the charge entirely).
148. The CPS published the results of these monthly reviews on its website every quarter and shared the information with the NPCC Charging lead.
149. Errors included:
 - Offending in England charged under Welsh Regulations (or vice versa)
 - Evidential issues, such as the charging of homeless people being outside without a reasonable excuse
 - Offences charged under s51/sch21 of the Coronavirus Act where there was no evidence that the defendant was potentially infectious (every case charged under the Act was charged in error)
 - Offences prosecuted under the wrong iteration of the Regulations (e.g. using repealed Regulations).
150. When the CPS began its monthly review of charges, a strong onus was placed on the police to put supervising officers in charge of decision-making at police stations and elsewhere, as any errors in the charging of Coronavirus offences under the Regulations or the Act are made initially at this point in the prosecution process.

¹ Finalised cases are cases where a prosecution has either been stopped or concluded with the defendant being found guilty, or where a guilty plea is entered and accepted.

151.

152. To mitigate the risk of incorrectly charged cases reaching court, the CPS put in place an internal safeguard: a 'triage check' which was carried out by a supervising lawyer (known as the Covid SPOC) on all charged cases before the first court appearance. This helped to ensure that any errors were identified immediately and amended. Using a supervising lawyer for this role allowed them to build up an understanding of the Regulations and common errors so that they can be easily identified and rectified.
153. Our data² indicates that the CPS prosecuted 2607 cases under the various Regulations and 311 cases under the Act. It should be noted that this does not include cases which were finalised using the SJP.
154. Of the 311 cases under the Act, every case was charged incorrectly. This was usually because the wrong legislation had been used; in many cases the conduct would have been an offence under one of the Regulations. Most of these errors were identified at Court and the offence was withdrawn, however, 53 cases were convicted in error and the case had to be returned back to the CPS Area to reopen and withdraw or amend.
155. In respect of the Regulations, 532 of 2607 cases were charged incorrectly. 425 were identified at Court and were withdrawn, 76 were identified upon review and had to be returned to Area. 12 resulted in not guilty pleas and 19 were miscellaneous, for example, the case was administratively finalised or a warrant was issued.
156. Our checks indicate the majority of the covid offences were charged by the Police, as per the Directors Guidance on Charging (see above).

² CPS management information is derived from the CPS case management system, and as with any large-scale recording system, data are subject to possible errors in entry and processing. The figures were provisional and subject to change as more information is recorded and quality assured by the CPS. This means that cumulative figures may not always match the sum of historic monthly published figures.

Our data covers the number of offences rather than individual defendants. Official criminal justice outcome statistics are kept by the Ministry of Justice.

England & Wales combined total

Number of cases finalised (April 2020 to March 2022)	Number of cases charged by		Number of cases incorrectly charged by
Health Protection (Coronavirus Restrictions) Regulations	Police	2,514	520
	CPS	93	12
	Total	2,607	532
Coronavirus Act 2020	Police	298	298
	CPS	13	13
	Total	311	311

All other CPS Areas

Number of cases finalised (April 2020 to March 2022)	Number of cases charged by		Number of cases incorrectly charged by
Health Protection (Coronavirus Restrictions) Regulations	Police	2,283	469
	CPS	89	12
	Total	2,372	481
Coronavirus Act 2020	Police	272	272
	CPS	12	12
	Total	284	284

CPS Cymru Wales

Number of cases finalised (April 2020 to March 2022)	Number of cases charged by		Number of cases incorrectly charged by
Health Protection (Coronavirus Restrictions) Regulations	Police	231	51
	CPS	4	0
	Total	235	51
Coronavirus Act 2020	Police	26	26
	CPS	1	1
	Total	27	27

157. Inevitably this was a resource intensive review process but given the volume of errors we were identifying – reflective of the complex legal landscape which emerged due to the volume of legislative amendments which occurred during the pandemic – it was a necessary action to maintain confidence in the criminal justice system.

Finance

158. CPS expenditure is financed from centrally agreed multi-year budgets, administered by the Treasury, which are set through the Spending Review process. Each year the CPS seeks legal authority to consume resources and spend cash for the financial year ahead through the Estimates process. The CPS has discretion as to how it distributes its budget allocations, subject to any restrictions that Treasury may place upon it. The CPS is expected to operate within its funding allocation for each financial year over a spending review period.
159. The CPS costing methodology is based on each stage of the prosecution process (e.g. charging, case preparation, trial) and court type (e.g. magistrates/Crown Court), not the specific offences charged. The principal driver of the cost estimation process is the amount of time it takes our staff to deliver at each stage of our operating process. All cases (regardless of the offence category) follow the same basic processes through the court system.
160. The CPS is a demand-led organisation and during the pandemic the type of offences being committed changed, given the restrictions which were being imposed. Some crime types increased whilst others reduced. The CPS' financial model meant we did not have to bid for additional resource to manage the changing nature of crime. It is therefore not possible to identify the cost of prosecuting during the pandemic.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed:

PD

Dated: 12.05.23

Annex: Schedule of legal guidance

English Legal Guidance	
OPS-LG001 Coronavirus Self-Isolation Regulations - version 1 29.09.2020.pdf	INQ0000 84003
OPS-LG002 Coronavirus Self-Isolation Regulations - version 2 17.02.2021.pdf	INQ0000 84004
OPS-LG003 Administrative Update to 12 Chapters of Covid Legal Guidance on 22 January 2021.pdf	INQ0000 84005
OPS-LG004 Coronavirus Self-Isolation Regulations - version 3 05.02.2021.pdf	INQ0000 84006
OPS-LG005 Coronavirus Self-Isolation Regulations - version 4 30.03.2021.pdf	INQ0000 84007
OPS-LG006 Coronavirus Self-Isolation Regulations - version 5 07.09.2021.pdf	INQ0000 84008
OPS-LG007 Coronavirus Self-Isolation Regulations - version 6 30.11.2021.pdf	INQ0000 84009
OPS-LG008 Coronavirus Self-Isolation Regulations - version 7 22.06.2022.pdf	INQ0000 84010
OPS-LG009 Coronavirus Self-Isolation Regulations - version 8 25.08.2022.pdf	INQ0000 84011
OPS-LG010 Coronavirus Act 2020 - version 1 26.03.2020.pdf	INQ0000 84012
OPS-LG011 Coronavirus Act 2020 - version 2 08.04.2021.pdf	INQ0000 84013
OPS-LG012 Coronavirus Act 2020 - version 3 13.10.2021.pdf	INQ0000 84014
OPS-LG013 Coronavirus Act 2020 - version 4 18.07.2022.pdf	INQ0000 84015
OPS-LG014 Local Coronavirus Regulations Tier 1 - version 1 16.10.2020.pdf	INQ0000 84016
OPS-LG015 Local Coronavirus Regulations Tier 1 - version 2 06.11.2020.pdf	INQ0000 84017
OPS-LG016 Administrative Update to 11 Chapters of Covid Legal Guidance on 25 November 2020.pdf	INQ0000 84018
OPS-LG017 Local Coronavirus Regulations Tier 1 - version 3 22.06.2022.pdf	INQ0000 84019
OPS-LG018 Local Coronavirus Regulations Tier 2 - version 1 16.10.2020.pdf	INQ0000 84020
OPS-LG019 Local Coronavirus Regulations Tier 2 - version 2 06.11.2020.pdf	INQ0000 84021
OPS-LG020 Local Coronavirus Regulations Tier 2 - version 3 22.06.2022.pdf	INQ0000 84022
OPS-LG021 Local Coronavirus Regulations Tier 3 - version 1 16.10.2020.pdf	INQ0000 84023
OPS-LG022 Local Coronavirus Regulations Tier 3 - version 2 06.11.2020.pdf	INQ0000 84024
OPS-LG023 Local Coronavirus Regulations Tier 3 - version 3 22.06.2022.pdf	INQ0000 84025
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