

# From ASBOs to Covid Marshals

Are councils becoming too much like the police?

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A Manifesto Club Report

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# Executive summary

1. The traditional role of the modern local authority lay in the representation and improvement of the local area. Over the past 20 years, local authorities have moved to taking a more police-like role, issuing an increasing number of penalties, carrying out patrols, and issuing new legal orders. This trend has been furthered under covid, with new powers and funding to issue legal orders and penalties, and a new patrolling role for covid marshals. Over time, local authorities have been increasingly released from legal and governmental checks on how powers are used.
2. Local authorities' use of financial penalties has grown significantly in the past 20 years. In 1997, local authorities issued only 727 fixed penalty notices (FPNs) for littering, and 292 for dog fouling. Today, local authorities issue a larger number of penalties for a larger number of offences. Annual penalties have reached: 250,000 penalties for littering, 4.7 million for parking, 1 million for 'moving traffic offences', and 10,000 for 'anti-social behaviour' offences. There are also new penalties for handing out leaflets without a licence, putting items in the wrong bin, and for violating legal orders issued by the local authority. Worryingly, local authorities retain fines income (unlike the police), creating a potential for corruption and 'fines harvesting' to become a business. This is expressed in the growth in the number of local authorities employing private companies to issue penalties.
3. Data collected for this report shows that covid measures have extended local authorities' enforcement roles. In total, local authorities told us that they issued 1,201 penalties to businesses for violating covid business restrictions, to a value of £1,076,820. Three London councils (Redbridge, Hounslow, and Newham) issued over £300,000 in fines between them (Newham issued 242 penalties and Redbridge issued 137). This included penalties for failing to prevent mingling, for violations of the rule of six, and for people dining in mixed-household groups. In addition, new covid road closures starting in July 2020 led to 222,702 penalties by the end of 2020. These large numbers of

penalties undermine local authorities' role as supporting the public during this unprecedented health crisis.

4. Local authorities' power to issue legal orders has also grown steadily over the past two decades. Previously, local authorities issued legal orders through byelaws, which had to be signed off by central government. In the 2000s, they gained powers to restrict public drinking, dogs, and leafleting, and the powers to issue anti-social behaviour orders (ASBOs) through a court. In 2014, they gained the powers to issue personal legal orders to individuals (Community Protection Notices and Warnings, CPNs and CPWs), as well as public legal orders (Public Spaces Protection Orders, or PSPOs), without going through a court or any formal democratic/legal procedures. 32,170 CPNs and CPWs were issued in 2019-20, and there are now hundreds of PSPOs.<sup>1</sup> Under covid measures, councils also gained funding to restrict car traffic without public consultation (low-traffic neighbourhoods, or LTNs), and powers to issue covid legal orders to businesses.
5. Local authorities have also moved into a community policing role, a process beginning with neighbourhood wardens schemes funded by central government starting in 2000. Data collected for this report found that councils currently employ 898 neighbourhood wardens, who issue penalty notices, carry out patrols, and pass on intelligence to police and council officers for enforcement. In addition, there are now 1,867 covid marshals currently on patrol, some of whom are wearing body cameras and reporting incidents to the council/police for enforcement.
6. This report finds that the move into enforcement risks undermining the unique public role of the local authority, blurring councils' distinction from the police and taking them into areas of law-making and enforcement for which they are ill-equipped. The report finds that local authorities' expanded enforcement is lower in quality, lacking public legibility, due process, and proportionality, and also varies greatly from area to area. The report recommends that local authorities' enforcement role is limited to specific areas, and that enforcement

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<sup>1</sup> 595 PSPOs were issued by January 2019, and these are being issued at a rate of around 15 a month. In addition, there were 712 alcohol zones that were migrated to PSPOs, as well as dog control orders.

is subject to greater legal and governmental controls to ensure that public legal powers, and the public funding used to finance them, are directed in the public interest.

# Introduction

During 2020, local authorities gained powers to restrict access to any premises or public space, and to prohibit any public gathering.<sup>2</sup> A £250 million funding pot was created for local authorities to introduce measures such as closing roads to traffic, without prior public consultation. Local authority officers issued fines starting at £1000 to businesses who were failing to comply with social distancing rules, for example serving drinks without a ‘substantial meal’ or allowing customers to ‘mingle’. Councils provided hundreds of ‘covid marshals’ to patrol streets and ensure that the latest guidance was being complied with. They also gained the power to issue ‘Coronavirus Improvement Notices’ and ‘Coronavirus Restriction Notices’, specific instructions for how a premises must change their operations, and to issue fixed penalties of £2000 and £4000 for businesses who in their view had failed to comply.<sup>3</sup>

These are merely the latest steps in a long development that has stretched back a couple of decades, with local authorities gaining powers of enforcement and punishment that have fundamentally changed their role and relation to the public. A relatively lowly local authority officer (a technical officer, say, or an enforcement officer) now has in some respects greater powers over the lives of some British citizens than the head of a police force or even the prime minister. A local authority officer has the power to issue an on-the-spot legal order prohibiting a person from certain actions or requiring certain actions, as well as to write a legal order that bans or requires specific acts of members of the public in a particular locality. These officers need not go through elected council members, or a court, and need not even carry out a public consultation.

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<sup>2</sup> Local authority powers to impose restrictions: Health Protection (Coronavirus, Restrictions) (England) (No 3) Regulations 2020, Department of Health and Social Care: <https://www.gov.uk/government/publications/local-authority-powers-to-impose-restrictions-under-coronavirus-regulations/local-authority-powers-to-impose-restrictions-health-protection-coronavirus-restrictions-england-no3-regulations-2020>

<sup>3</sup> COVID-19 enforcement powers for local authorities, Department of Health and Social Care: <https://www.gov.uk/government/publications/additional-covid-19-local-authority-enforcement-powers/additional-covid-19-local-authority-enforcement-powers>

Over the past 20 years, local authorities gained the power to issue on-the-spot fines for an increasing number of offences, and the way in which they do so has become increasingly detached from the courts and from central government. Until the late 1980s, only the police could deal with parking offences: now, councils issue millions of on-the-spot parking fines annually through their own officers or private contractors. The local authority used to have to ask the secretary of state if they wanted to introduce a byelaw, for example banning dogs from a local area: now, they can bring in a Public Spaces Protection Order banning *any* activity, which can be authored by a single council officer and enacted as soon as they please. Central government doesn't even collect data on the numbers or subjects of these orders.

When the modern local authority developed in the nineteenth century, its role was one of provision of local amenities, such as gas lighting, sewage or rubbish collection. They were financed and elected by propertied ratepayers, then by all residents. In 1873, the mayor of Birmingham Joseph Chamberlain promised the city would be 'parked, paved, assized, marketed, gas & watered and "improved"; he purchased and reorganised gas and water supplies, cleared slums, and instigated a building programme of schools, swimming pools and libraries. The role of the local authority developed as something quite distinct from the newly emerging police forces, who had responsibility for enforcing law and order.

Now, with local authorities issuing as many if not more on-the-spot penalties than the police, an important shift has taken place. One critique of these developments is to see councils as populated by power-hungry and parasitic officers, who seek to boss around or profit from local residents. Yet this is unsatisfactory as an explanation. Looking at the origin of these powers, it is striking how many of them have been driven by central government; it was central government that created powers and encouraged councils to use them, often providing funding pots as incentives. Councils have also come under pressure from their residents to play more of an enforcement role. In fact, the shifts in council enforcement reflects broader shifts within the state, politics, and society.

We also need some balance. In some ways, we can see councils as resisting these pressures as much as driving them. Central government was continually disappointed with the low take-up of the Anti-Social Behaviour Order (ASBO), which was never issued at the hoped-for levels. And it is striking how many of these open-ended powers have been relatively little used. In the FOI survey carried out for this report, we found that 228 councils issued fewer than 10 FPNs for the violation of a PSPO in 2020, and 156 of these issued no penalties at all.<sup>4</sup> These are orders that can be written at will, fines issued at will, and the monies maintained. If these councils were really all power crazed and pecuniary, fines would be in the hundreds of thousands or even millions. The shift of local authorities towards enforcement has gone a long way, but it could have gone a lot further under existing powers.

The aim of this report is to identify the key shifts within local authorities towards enforcement, documenting councils' increasing recourse to punishment, and their increasing powers of policing and law making. The report draws on new FOI data, obtained from requests issued to all England and Wales councils about their enforcement activities in 2020, including PSPOs, CPNs, litter fines, and covid measures such as covid fixed penalty notices, covid marshals, and low-traffic neighbourhoods.<sup>5</sup> The report critically assesses councils' new enforcement powers, and asks whether this is a role they are equipped to perform. Finally, the report makes recommendations for how the public service role of the local authority might be safeguarded for the future.

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<sup>4</sup> Enforcement in 2020, Table 1: <http://manifestoclub.info/data-tables-enforcement-in-2020/>

<sup>5</sup> Enforcement in 2020: <http://manifestoclub.info/data-tables-enforcement-in-2020/>



# 1. Local authorities and punishment - the rise of on-the-spot fines

## The rise of fines

Perhaps the most striking indication of the change in role of the local authority has been the dramatic rise in the number and range of penalties issued by councils. Twenty years ago, local authority fixed penalty notices (FPNs) were relatively rare and applied only for a limited range of offences. Now penalties have grown in number and are also issued for a wider range of offences.

For example, in 1997-8, local authorities issued only 727 FPNs for littering, and 292 for dog fouling.<sup>6</sup> Three years later, in 2000-1, they issued 2247 for litter and 1817 for dog fouling. In 2006-7, they issued 52,049 fines for all environmental offences, including 42,058 for litter.<sup>7</sup> Waste receptacle offences (bin fines) went up from 999 in 2006-7,<sup>8</sup> to 2,734 in 2011-12.<sup>9</sup> By 2018, there were 250,676 fines for littering alone.<sup>10</sup>

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<sup>6</sup> Fixed penalty notice 1997- 2005 summary, Defra <https://data.gov.uk/dataset/d0956ff5-87fb-41ef-b603-25726d2c28d6/fixed-penalty-notice-overview>

<sup>7</sup> FPNs 2006-7 overview, Defra: <https://data.gov.uk/dataset/d0956ff5-87fb-41ef-b603-25726d2c28d6/fixed-penalty-notice-overview>

<sup>8</sup> FPNs 2006-7 Waste receptacles, Defra: <https://data.gov.uk/dataset/939ae7ff-c6e9-4e12-9299-83b7314b4c4c/fixed-penalty-notice-waste>

<sup>9</sup> Pavement Injustice, Manifesto Club, March 2013, p57: <http://manifestoclub.info/wp-content/uploads/2015/07/mc-report-pavement-injustice.pdf>

<sup>10</sup> Corruption of Punishment, Manifesto Club, August 2019 <https://manifestoclub.info/corruption-of-punishment-over-200000-litter-fines-issued-by-private-security-guards-in-2018/>

There has also been an increase in the offences for which local authorities can issue fixed penalties. Local authorities could issue penalties for dog control offences from 2006 (including walking more than a certain number of dogs, walking a dog in a no-dog zone, and failing to have a dog on a lead): FPNs increased from 109 in 2006-7, to 1,306 in 2008-9.<sup>11</sup> From 2007, there were new penalties for smokefree offences, such as smoking in a work vehicle or a smokefree public place. From 2005, local authorities could issue penalties to people for handing out leaflets without a licence, and there were 1122 of these penalties in the years between 2006-7 and 2011-12.<sup>12</sup>

A major shift occurred in 2014 when local authorities gained the power to punish violation of anti-social behaviour offences (CPNs and PSPOs) with £100 FPNs. FPNs for PSPOs, for example, rose from 470 in 2015 to 10,413 in 2019.<sup>13</sup> In 2019, these penalties included fines for loitering, begging, for failing to disperse when asked to by council officers, for congregating in a group to cause annoyance, for spitting, swearing, for idling engines, and for being under the influence of alcohol or drugs. This shows councils moving into issuing fines for public order issues that previously would have been the terrain for the police, as well as an expansion of the area of activity deemed criminal.

The move towards enforcement has even reached local education authorities, with a sevenfold rise in local education authority fines for truancy in only eight years, from 25,657 in 2009-10, to 260,877 in 2017-18.<sup>14</sup> (In 2017-18, 85.4 per cent of these penalties were issued for unauthorised family holiday absence).

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<sup>11</sup> FPNs Dog Control Orders, Defra - <https://data.gov.uk/dataset/cf48ccab-bb8c-4a8d-bb37-5af359bfb86a/fixed-penalty-notice-dogs>

<sup>12</sup> Fixed penalty notice - distribution of literature, Defra, <https://data.gov.uk/dataset/6444ff92-88ce-4444-85d2-d420dc1a2a3a/fixed-penalty-notice-distribution-of-literature>

<sup>13</sup> CPNs and PSPOs: the use of 'busybody' powers, Manifesto Club, September 2020: <http://manifestoclub.info/cpns-and-pspos-the-use-of-busybody-powers-in-2019/>

<sup>14</sup> Parental Responsibility Measures in England: 2017 to 2018, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/787632/2019\\_PRMA\\_text.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/787632/2019_PRMA_text.pdf)

The greatest number of local authority fines are issued for transport related offences. Parking was the first area to be shifted from the police to councils, which occurred first in London in the late 1980s and later moved to the rest of the country. Councils' income from parking fines has now reached £454 million in 2018-19, up from £340 million in 2013-14.<sup>15</sup> FOI research by the company Compare the Market found that 204 councils between them issued 4,681,822 parking penalties in the year up to July 2020.<sup>16</sup> Newham Council issued 239,000 parking fines in the year up to July 2020<sup>17</sup>, and the 20 biggest fining councils were issuing an average of 307 tickets a day.<sup>18</sup>

There is the further development of giving local authorities power to fine for moving traffic offences (such as doing a prohibited u-turn, or blocking a yellow box), which so far has occurred in London and Cardiff but which is due to be rolled out to councils across England.<sup>19</sup> Local governments in London and Cardiff together issued 1,007,405 PCNs for moving traffic contraventions in 2018-19, up 34 percent from 2016-17.<sup>20</sup> Councils are also requesting a raise in the level of fines for parking offences, and the borough association London Councils is even lobbying to gain powers to issue fines for speeding violations. Many councils have

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<sup>15</sup> Council parking revenue in England 2018-19, RAC, 16 November 2019: <https://www.racfoundation.org/research/mobility/council-parking-revenue-in-england-2018-19>

<sup>16</sup> Parking Profits, Compare the Market, 19 January 2021: <https://www.comparethemarket.com/media-centre/news/parking-profits-the-councils-parking-fines/>. Exact figure obtained from personal communication with Compare the Market PR team.

<sup>17</sup> London borough of Newham tops UK parking fines table, Guardian, 18 January 2021: <https://www.theguardian.com/society/2021/jan/18/london-borough-of-newham-tops-uk-parking-fines-table>

<sup>18</sup> Councils making the most cash from parking fines named - is yours on the list?, Mirror, 16 January 2021: <https://www.mirror.co.uk/news/uk-news/councils-making-most-cash-parking-23331672>

<sup>19</sup> Councils to get new powers to issue fines for traffic offences, Auto Express, 18 January 2021: <https://www.autoexpress.co.uk/consumer-news/106929/councils-get-new-powers-issue-fines-traffic-offences>

<sup>20</sup> Authorities in London and Cardiff rake in £58.2m from drivers committing moving traffic offences in just one year, RAC press release, 19 August 2020: <https://media.rac.co.uk/pressreleases/authorities-in-london-and-cardiff-rake-in-ps58-dot-2m-from-drivers-committing-moving-traffic-offences-in-just-one-year-3027023>

invested in speed check cameras to increase penalties for speeding<sup>21</sup>: Transport for London expressed a wish to increase annual speeding fines from 160,000 a year to 1 million a year. There are also demands for the income from speeding fines to be retained by councils and local police forces, rather than passing to the exchequer as they currently do.<sup>22</sup>

All this means that councils' income from road traffic penalties is likely to rise substantially in the years ahead. Crucially, while police speeding fines go to the exchequer, councils retain transport penalties for transport budgets, which means a long-term dependence upon fines income. This dependence was shown by the fall in penalty income during the first lockdown, when councils lost 40 million over summer 2020 as a result of the fall in parking fines.<sup>23</sup>

Data collected for this report show that FPNs fell in 2020 compared to 2019, but these remain extremely high given that the public were asked to remain in their homes for a significant part of the year.<sup>24</sup> Litter fines in 2020 were 147,955, a drop from 2018 but still double that of 2011-12.<sup>25</sup>

Meanwhile, 5,491 FPNs were issued for violating PSPOs in 2020.<sup>26</sup> The highest issuers of fines were Brent (659 penalties, mainly for public drinking), North East Lincolnshire (461 penalties, for cycling through Grimsby town centre and for dogs on the prohibited area of Cleethorpes beach), and Greenwich (440 penalties, mainly for street drinking).<sup>27</sup> Derby Council issued 8 penalties for begging and 10

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<sup>21</sup> Black Country councils invest in average speed cameras, TfL spends to boost speed limited enforcement, Local Transport Today, 25 October 2019;

<sup>22</sup> Retain speeding fines locally - West Mids, Local Transport Today, 25 October 2019

<sup>23</sup> Cities suffer a £40m Covid-19 parking fine black hole, This is Money, 12 September 2020: <https://www.thisismoney.co.uk/money/cars/article-8723313/City-councils-suffer-40million-Covid-19-parking-fine-black-hole.html>

<sup>24</sup> Data tables: Enforcement in 2020: <http://manifestoclub.info/data-tables-enforcement-in-2020/>

<sup>25</sup> Data table 3: Enforcement in 2020: <http://manifestoclub.info/data-tables-enforcement-in-2020/>

<sup>26</sup> Data table 1: Enforcement in 2020: <http://manifestoclub.info/data-tables-enforcement-in-2020/>

<sup>27</sup> Data table 1: Enforcement in 2020: <http://manifestoclub.info/data-tables-enforcement-in-2020/>

for loitering, while Bolton issued FPNs for fundraising and the use of amplifiers. Doncaster issued FPNs for loitering (6), congregating (3), and for breach of a 24-hour dispersal order (7). Thanet issued a fine for the use of foul language, and Richmond issued FPNs for fireworks in parks, causing nuisance to other park users, and bicycles chained to trees. Lambeth Council issued 14 penalties for street gambling, while Hamberton issued a penalty for 'sleeping or otherwise remaining in any vehicle within the Restricted Area for any period of time between the hours of 19:00hr and 07:00hr'.

In total, 11 authorities issued FPNs for begging, and three issued penalties for loitering. Southend issued FPNs for sleeping in a public place, Cornwall fined people for dogs on the beach, and Redcar and Cleveland fined people for leaving their bin out after collection day. Dacorum issued fines for cycling and skateboarding, and Rochdale for 'anti-social parking'. East Staffordshire, Boston, Caerphilly and Hartlepool councils issued penalties to people not able to provide a receptacle to pick up dog mess. Middlesbrough issued penalties for begging, drinking, and being in a group of three or more causing harassment, alarm and distress to others.

Four councils used PSPOs to enforce dispersal orders, with Denbighshire dispersing 14 individuals from an area for drinking alcohol, Doncaster fining seven people for 'breach of 24 hour dispersal', Mansfield issuing 63 'direction to leave notices', and Newport City council issuing penalties for 'failure to disperse'. Kensington and Chelsea issued penalties for busking, and Breckland council issued penalties for spitting. In total, 42 councils issued penalties to dog owners for the offences of walking a dog in a no-dog zone, dogs off the leads, walking multiple dogs, or failing to provide a means to pick up dog poo.

We also found that some councils issued high levels of fines for other environmental offences. Nottingham City Council issued 552 FPNs for people violating a 'bins on street' CPN order, while Cardiff issued 555 to people for 'waste receptacle' offences (such as putting bins in the wrong place or failing to recycle properly). In total, 222,702 PCNs were issued by the 13 councils who said they had introduced new Low-Traffic Neighbourhoods that restrict access for cars.

Therefore, in summary, we can identify a process that began in the late 1990s/early 2000s, with the creation by central government of new fining powers for local authorities: local authorities were allowed to issue on-the-spot fines for new offences, and the numbers of fines issued for existing offences also grew. This means that local authorities now issue FPNs at a comparable rate to the police, who issued 20,400 Penalty Notices for Disorder (PNDs, on-the-spot fines for criminal offences) in 2019<sup>28</sup>, 2.1 million speeding tickets in 2018<sup>29</sup>, and 2747 FPNs for minor motoring offences in 2017.<sup>30</sup>

## Covid penalties

Local authorities' role in enforcing penalties for the violation of coronavirus restrictions has grown over the course of the pandemic, as the result of changing government legislation that dramatically increased the size of the penalties and the offences for which they could be issued. The initial lockdown legislation on 26 March 2020 specified only a £60 pound fine for the offence of remaining open during lockdown.<sup>31</sup> Statutory instruments created after 18 September 2020 imposed an on-the-spot penalty of £1000 for far lesser offences, including a requirement for a 2-metre gap between tables, no bookings of more than six people, and no 'mingling' between groups.<sup>32</sup> Also on 18 September, the collecting

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<sup>28</sup>Criminal Justice Statistics quarterly, England and Wales, October 2018 to September 2019, Ministry of Justice, P3: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/867102/criminal-justice-statistics-quarterly-september-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/867102/criminal-justice-statistics-quarterly-september-2019.pdf)

<sup>29</sup>Speeding tickets reach record level in 2018, October 2019, Fleet News <https://www.fleetnews.co.uk/news/latest-fleet-news/2019/10/25/speeding-tickets-in-2018-show-year-on-year-rise>

<sup>30</sup> Fixed penalties for motoring offences data tables, National Statistics, Home Office: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2018>

<sup>31</sup> The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, Regs 4 and 10: <https://www.legislation.gov.uk/uksi/2020/350/regulation/10/made>

<sup>32</sup> The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020, Reg 2, 18 September 2020 <https://www.legislation.gov.uk/uksi/2020/1008/regulation/2/2020-09-18>

of customer details that had previously existed on a voluntary basis now became mandated by law.<sup>33</sup>

This provided the pattern for all subsequent 'business restriction' legislation that local authorities were asked to enforce, including Tier restrictions that came in from October, including a 10pm curfew,<sup>34</sup> and requirements that customers must only consume food and drink while seated.<sup>35</sup>

The penalty for any offence under these statutory instruments was a fixed penalty notice of £1000 for the first offence, £2000 for the second, £4000 for the third, and £10,000 for any subsequent offences. These statutory instruments - issued without prior parliamentary discussion or approval - placed local authorities in the unusual position of summarily issuing very large fines, without court or legal proceedings.

We issued FOI requests to all 341 England and Wales local authorities, asking about their issuing of fixed penalty notices to enforce covid restrictions.<sup>36</sup> In total, 296 councils were able to provide this information. 135 councils issued at least one penalty, yet councils issued dramatically varying numbers of penalties, with 160 councils issuing no penalties, and three London councils (Redbridge, Hounslow, and Newham) between them issuing over £300,000 in fines (Newham issued 242 penalties and Redbridge issued 137).

The dramatic change in the level of penalties meant that within a few weeks businesses were given very different penalties for the same or a lesser offence. A

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<sup>33</sup> Maintaining records of staff, customers and visitors to support NHS Test and Trace, Department of Health and Social Care: <https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace#failure-to-comply>

<sup>34</sup> The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020: <https://www.legislation.gov.uk/uksi/2020/1104/schedule/1/paragraph/15/made>

<sup>35</sup> The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020: <https://www.legislation.gov.uk/uksi/2020/1104/schedule/1/paragraph/17/made>

<sup>36</sup> The FOI request was issued in January 2021; most responses were received between February and March 2021, with some received up to May 2021. Because the request asked for total fines to date, responses will therefore address different periods of time. However, this discrepancy is limited by the fact that most hospitality businesses were closed in early 2021; the bulk of penalties were issued in autumn/winter 2020, which would be registered in this dataset.

business that failed to close in early 2020 received a £60 or £100 penalty; yet a business that failed to prevent household groups from ‘mingling’ in autumn would receive a penalty of £1000. For example, Derby Council on 2 June 2020 issued a £100 fine for operating, while in February 2021 it issued a £1000 fine for the same offence. Kirklees issued one penalty of £50, for an early violation, and then six more recent penalties that totalled £17,000. Ceredigion issued one FPN for £60, and another for £1000 - for the same offence of trading after the curfew.

Local authorities appear to have been aware of the dangers presented by these large fixed penalty notices, with many telling us that they only issued fines as a last resort, after many attempts at persuasion. Some also attempted to create systems for the appeal of fixed penalties, although this of necessity remained internal to the local authority and so lacked the independence and impartiality of a genuine appeals system. Southend Council, for example, created a system by which FPN appeals could be considered first by a regulatory services manager, and then by a senior manager not previously involved in the issuing of the notice.<sup>37</sup>

Here is a selection of penalties issued:<sup>38</sup>

**Hillingdon** - £1000 penalties for failure to maintain distance between tables, and failure to prevent household mixing (total of 22 penalties at £32,000);

**North Norfolk** - FPN for failing to ensure that persons remained seated;

**Torbay** - penalty for failing to collect contact details (no QR code), and for serving alcohol without a meal (total of 24 penalties at £25,000);

**Durham** - FPNs for business open after 10pm, failure to provide table service, wedding reception above permitted limits, failure to display QR code (23 penalties to value of £35,000);

**North Devon** - fine for not maintaining appropriate distance between the tables;

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<sup>37</sup>Complaints Procedure: Coronavirus, Business and Venues Closures and Restrictions, Southend Council: <https://www.southend.gov.uk/downloads/file/6683/complaints-procedure---coronavirus-business-and-venues-closures-and-restrictions-v2>

<sup>38</sup> Data table 2.: Enforcement in 2020: <http://manifestoclub.info/data-tables-enforcement-in-2020/>  
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**Havering** - £1000 penalties for failing to take reasonable measures to stop dancing on the premises, failure to ensure customers remained seated;

**Newham** - penalties for failing to display QR code, not operating click and collect, operating a restricted business, breaking curfew, letting customers eat in (total of 242 penalties at £100,350);

**Hammersmith and Fulham** - customer allowed to browse and make purchase inside shop (£1000 penalty); party taking place with music and dancing (£2000 penalty);

**Hounslow** - penalties for no social distancing, no face coverings (58 penalties to value of £58,000);

**St Albans** - penalty for manager who served alcohol without a table meal;

**Mid Sussex** - failed to take all reasonable measures to ensure that no persons are admitted to the premises in a group of two or more persons (£500);

**Leeds** - failure to display QR code (£4000 penalty);

**Brentwood** - penalty for having mixed households on the premises;

**Middlesbrough** - £17,000 penalty for carrying on restricted business; £1000 for serving alcohol to customers not seated, or restricted business selling by other than permitted methods (15 penalties totalling £31,000);

**Barking and Dagenham** - large gathering in a premises ignoring covid rules and regulations within bars and pubs, £10,000 penalty (in total 17 penalties to value of £26,000);

**Wirral** - £1000 penalties for alcohol served to customers who were not seated/failing to ensure people remained seated, and failure to take reasonable measures to prevent groups of customers joining other groups; £10,000 penalty for failing to cease carrying on a business (6 penalties to value of £15,000);

**Kettering** - one offence of allowing a customer into a takeaway business to buy food on the premises (£1000); gathering of 13 people in pub (£1000); allowing group booking of 25 people in a restaurant (£2000);

**Great Yarmouth** - £1000 penalties for mingling, permitting customers inside;

**Wakefield** - breaching rule of 6, lack of test and trace information for seated customers;

**Liverpool** - customers not seated, serving after curfew, failure to display QR code (17 penalties totalling £48,000);

**BCP (Bournemouth, Christchurch and Poole)** - £1000 penalties for failure to take all reasonable measures to prevent mingling, and for allowing people on to business premises who are not required to carry on the business.

These penalties are very large and, in many cases, disproportionate to the offence (such as a £1000 fine for allowing a single customer inside a shop or for serving alcohol without a meal). But these penalties were not decided upon by local authorities, or even parliament, but rather by statutory instruments made by the health secretary; local authorities had no choice but to enact the specified penalties.

Fixed penalties were also issued for the violation of local authority legal orders issued to businesses, such as prohibition notices, which bar a business from trading. For example, Liverpool Council issued three penalties for £10,000 to one business for the violation of a prohibition notice, and Barking and Dagenham issued a £1000 penalty to a car wash for breaching a prohibition notice.

However, it must be recognised that penalties could have been far higher, and that many local authorities told us that they avoided penalising wherever possible. It is significant that 160 local authorities - over half of respondents - issued no financial covid penalties to businesses at all. Given the broad nature of the punishable regulations it is unlikely that no offences of this kind occurred in these areas, but rather that local authorities employed a warning system which meant that penalisation occurred only as a last resort.

## Financial incentives to issue fines

There is a surprising lack of oversight of the number of local authority penalties issued. Defra has not collected data on environmental offences since 2008-9, while the Home Office does not collect data on the issuing of FPNs for CPNs or PSPOs. There is no national data on parking penalties, and no public reporting or scrutiny of local authorities' use of on-the-spot penalties issued under covid powers. By comparison, annual data is collected on the police use of on-the-spot penalties such

as PNDs, and the police use of covid penalties has been subject to constant reporting and scrutiny.

Another distinction is that local authorities are allowed to keep the money raised from penalty notices, whereas the income from police-issued speeding fines or PNDs passes to the treasury. Penalty income supplements that raised from central government and ratepayers, and can form a significant part of budgets, particularly for transport and environmental departments. The president of the motoring association the AA criticised 'council reliance on parking charges and fines... emissions penalties, and bus lane and moving traffic offences'.<sup>39</sup> The retaining of income creates a danger that local authorities will start to play an extractive role, issuing penalties either to pay for public services or to pay the salaries of council staff. This can become a circular economy, whereby council officers must issue fines in order to cover their department's income (and their salaries). For example, when questioned as to how his department used the income from litter fines, the head of Trafford Council's Community Safety Patrol Team said: 'We employ 16 people, these are part-funded by the receipts from fixed penalties'.<sup>40</sup>

## Private companies and incentives

Another difference from the police is that local authorities are allowed to designate private companies to issue penalties on their behalf. This began with parking fines and now has moved on to litter, fines for smoking in a smoke-free space, and even fines for anti-social behaviour offences. Manifesto Club research found that 22 councils employed private companies to issue FPNs for PSPOs in 2019.<sup>41</sup>

Private companies are 'professionals' in the business of issuing penalties, and are generally able to issue fines at a much greater rate than local authority staff. A person's chance of being fined is far greater if their local authority has contracted a

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<sup>39</sup> Local Transport Today cover story, 14 December 2018

<sup>40</sup> The Corruption of Punishment, Manifesto Club, October 2012: <http://manifestoclub.info/wp-content/uploads/2015/07/corruptionofpunishment.pdf>

<sup>41</sup> CPNs and PSPOs: the use of 'busybody' powers, Manifesto Club, 17 September 2020: <http://manifestoclub.info/cpns-and-pspos-the-use-of-busybody-powers-in-2019/>

private company. In 2018, 214,648 litter fines were issued by the 73 councils employing private companies, out of a total of 250,676 fines for all councils, meaning that 85% of litter fines were issued by private contractors.<sup>42</sup> A report by the London Borough of Barnet reviewing options for penalty charge notices (PCNs) for parking and moving traffic contraventions observed that only private companies (in this case NSL) have the capacity to issue penalties at scale, due to their technical capacity systems used for several boroughs. The report concluded that bringing the service back in house would result in a loss of PCN income, and noted that only 9 out of 33 London boroughs issued parking and traffic PCNs in-house.<sup>43</sup> Private companies often offer local authorities a 'risk-free' service, with the private company taking a portion of fixed penalty notice income rather than an hourly or fixed rate. Such 'enforcement services' cost the local authority nothing, and involve no resource or infrastructure commitment, yet supply a steady income stream.

Incentives for private wardens to issue penalties are not overt, or agreed with the local authority, however these have long been claimed by whistleblowers, and were confirmed by a *Panorama* undercover documentary that found that private officers received a bonus for all penalties issued above a daily target.<sup>44</sup> Defra statutory guidance cautions against the use of incentives, but this guidance is not legally enforceable.<sup>45</sup> In any case, 'expectations' about the number of fines to be issued are generally part of the discussion in agreeing a contract, and these indirect incentives can be equally effective in encouraging high levels of fines.

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<sup>42</sup> Corruption of Punishment: Over 200,000 litter fines issued by private security guards in 2018, Manifesto Club, 19 August 2019: <https://manifestoclub.info/corruption-of-punishment-over-200000-litter-fines-issued-by-private-security-guards-in-2018/>

<sup>43</sup> Parking Enforcement Contract Re-commissioning – In-house service provision as a comparison, Barnet Council, 11 January 2018: <https://barnet.moderngov.co.uk/documents/s44235/Parking%20Enforcement%20Contract%20Re-commissioning.pdf>

<sup>44</sup> 'Litter police' get bonuses to target public, *Panorama* finds, 15 May 2017: <https://www.bbc.com/news/uk-39882434>

<sup>45</sup> Modification to the Code of Practice on Litter and Refuse: Guidance on effective enforcement, Defra, April 2018: [https://consult.defra.gov.uk/environment/reducing-litter-proportionate-enforcement/supporting\\_documents/Consultation%20%20Reducing%20litter](https://consult.defra.gov.uk/environment/reducing-litter-proportionate-enforcement/supporting_documents/Consultation%20%20Reducing%20litter). Statement about it not being legally enforceable is obtained from telephone interview with Defra policy representatives.

When fining becomes a business, the local authority seems to operate less like a representative body, and more like a private rights holder, with certain rights of extraction that are enacted in order to preserve its own finances. Council documents often discuss the issuing of penalties as a 'service' or 'performance', rather than as a punishment and a loss, which is how it would be experienced by members of the public. The London Borough of Barnet's report on outsourced parking fines considered that:

'To date the council's commissioned model working with an outsourced provider has allowed effective delivery of the expectations of the service as articulated in sections 2.5 to 2.7 of this report. During the lifespan of the contract service levels have been generally met and the service scope and size has grown to meet the council and residents' expectations. On street enforcement PCNs have risen from 120,000 a year to circa 150,000 a year since the enforcement service was outsourced. In 2015/16 Moving Traffic Contravention (MTC) enforcement was adopted seeing a growth of PCN levels of 56,000.'<sup>46</sup>

The privatised mentality within councils is also indicated by East Hampshire Council forming a private company for the issuing of fines (EH Commercial Services), which operates within the borough and also contracts to neighbouring local authorities.

## Fall of standards and due process in issuing of penalties

This rapid rise in penalties appears to have been associated with a declining standard of due process and proportionality in the issuing of the fines. Of course, it is difficult to know the proportion of fixed penalties that are wrongly or unfairly issued, since appeal systems are inadequate or non-existent and people may

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<sup>46</sup> Parking Enforcement Contract Re-commissioning – In-house service provision as a comparison, Barnet Council, 11 January 2018: <https://barnet.moderngov.co.uk/documents/s44235/Parking%20Enforcement%20Contract%20Re-commissioning.pdf>

therefore choose to pay the fine rather than face the costs and difficulties of a court hearing.

Yet cases of unscrupulous or unnecessary FPNs regularly reach public attention, including people who dropped items by accident (such as a piece of orange peel<sup>47</sup> or even a strand of cotton from a glove<sup>48</sup>). There have been a series of reported 'littering' fines for people feeding the birds,<sup>49</sup> and several 'commercial waste' fines for people placing a work envelope or box in their domestic rubbish.<sup>50</sup>

In some cases, the fine is withdrawn when a person decides to contest it, which either suggests that the penalty was issued in error, or more worryingly that penalties are knowingly issued illegitimately. A resident of Enfield recently contacted us to recount such an incident:

'I was served with a £150 fixed penalty notice on behalf of Enfield Council for littering in mid-October 2020 (the enforcement had been outsourced to Kingdom Services). They photographed a pile of full bin bags left outside the flats where I live. On top of the pile was an empty Amazon delivery envelope with my name and address on it. I have no idea how it got there. I told them I was not guilty and was willing to fight it in court. Then on 24 November they told me that "after investigating" they had decided to drop the charge.'<sup>51</sup>

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<sup>47</sup> 'Litter police' get bonuses to target public, Panorama finds, BBC News, 15 May 2017: <https://www.bbc.com/news/uk-39882434>

<sup>48</sup> Grandmother fined £75 for littering after dropping just A STRAND of cotton from one of her gloves, Daily Mail, 1 March 2012: <https://www.dailymail.co.uk/news/article-2108777/Grandmother-fined-75-littering-dropping-strand-cotton-gloves.html>

<sup>49</sup> Bird feeding cases include: <https://www.express.co.uk/news/uk/1105628/man-fined-feeding-seagulls-mcdonalds-mcmuffin-nottingham-car-park-council>; <https://www.dailymail.co.uk/news/article-8589429/Custom-support-worker-22-given-120-littering-fine-feeding-pigeons-crumbs.html>; <https://www.somersetlive.co.uk/news/somerset-news/bath-litter-police-stand-150-2997046>

<sup>50</sup> 'Commercial waste' fines include: <https://www.theargus.co.uk/news/15912539.businesswomans-anger-fined-600-recycling-cardboard-box/>; <https://www.telegraph.co.uk/news/politics/9544179/Thousands-hit-by-bin-fines-despite-Coalition-pledges.html>

<sup>51</sup> Communication from Enfield resident, Daniel Ben-Ami

Such cases have led to a growing public cynicism about council enforcement, and influenced Defra's guidance on litter and bin fines, which states:

'in no circumstances should enforcement be considered a means to raise revenue. Any perception that enforcement activity is being used intentionally to generate income is likely to undermine the legitimacy of the enforcement regime in the eyes of the local community, which in turn may diminish the deterrent effect.... In order to maintain public trust in the legitimacy of enforcement action against littering, fixed penalties for littering should only be issued where there is evidence of an intent to drop litter.'<sup>52</sup>

'Fining for profit' represents a return to practices that have been banned from law-enforcement since the beginnings of the modern police. Prior to the modern police in the mid-nineteenth century, it was common for punishment to be linked to profit, with private 'thief takers' paid for successful arrests or recovered property, and customs officials and gamekeepers paid from tariffs or fines. The corruption of these officials was legendary - particularly the 'thief takers', who turned out to be in cahoots with the thieves or even to be thieves themselves. The prohibition of stipendiary practices was one of the defining elements of the professional public police force, who were paid a public salary for a public service.

There is an additional potential source of corruption that comes from councils' new law-making powers (discussed in the next section), such that councils now have the power to create new criminal offences and then to retain penalties for enforcement. The fact that councils can profit from the creation of an offence undermines the principle of the separation of powers, and means that law-making as well as punishment could become biased and subject to financial incentives.

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<sup>52</sup> Modification to the Code of Practice on Litter and Refuse: Guidance on effective enforcement, Defra, April 2018: [https://consult.defra.gov.uk/environment/reducing-litter-proportionate-enforcement/supporting\\_documents/Consultation%20%20Reducing%20litter](https://consult.defra.gov.uk/environment/reducing-litter-proportionate-enforcement/supporting_documents/Consultation%20%20Reducing%20litter)

## 2. Councils making the law - the increase in law-making powers

Traditionally, local authorities had only very limited law-making powers. They had recognised powers to make laws in relation to specific localities, namely byelaws made under the Local Government Act 1972. However, byelaws generally had to follow one of a number of government-provided templates, and also be sanctioned by the secretary of state (anybody objecting to the byelaw could make representations to the secretary of state). A byelaw should not treat any subject already covered by existing law. A Home Office Circular from 1996 stated that if a council wanted to introduce a new byelaw it must show that the 'nuisance' was sufficiently serious to 'merit criminal sanctions'<sup>53</sup>, and it was also required that byelaws were 'not partial or unequal in...application', and that they did not '[interfere] with the rights of those whom they affect'. The difficulty of creating new offences was shown by Enfield Council's battle to gain a byelaw prohibiting spitting.<sup>54</sup>

However, beginning in 1997, there was a period of what the legal academic Adam Crawford calls 'policy hyperinnovation', with the creation of 'novel regulatory tools' of a kind that are 'almost unique' in England's legal and constitutional history.<sup>55</sup> Many of these powers were given to local councils.

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<sup>53</sup> Home Office Circular 25/1996: Arrangements for Confirmation of Local Authority Byelaws, 3 June 1996: <https://webarchive.nationalarchives.gov.uk/+https://www.nationalarchives.gov.uk/ERORecords/HO/421/2/P2/circulars/1996/hoc9625a.htm>

<sup>54</sup> Enfield council could impose £80 fine for spitting in public, Guardian, 10 February 2012: <https://www.theguardian.com/politics/2012/feb/10/enfield-council-fine-spitting-public>

<sup>55</sup> Crawford, A., Lewis, S. & Traynor, P. "It ain't (just) what you do, it's (also) the way that you do it": The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People. *Eur J Crim Policy Res* 23, 9–26 (2017). <https://link.springer.com/article/10.1007/s10610-016-9318-x#Fn1>



## Personal legal orders: exerting control over individual conduct

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### ASBOs (1998)

The first personal legal order was the Anti-Social Behaviour Order (ASBO) in 1998. While the ASBO reached a peak of 4100 in 2005,<sup>56</sup> and there were much-publicised cases of bizarre restrictions (for example, people banned from singing or feeding birds<sup>57</sup>), the ASBO was actually relatively limited as a law-making power compared to those that have come subsequently. The legal test was for conduct causing ‘harassment, alarm or distress’; the ASBO could only be gained through a magistrate’s court at which the defendant had a right to legal aid. High numbers of ASBOs were only achieved as the result of an energetic central government drive, and most of these were subsequent to prosecution for another criminal offence and not a stand-alone legal order. In 2013, for example, 65 per cent of ASBOs were issued following conviction for a criminal offence.<sup>58</sup> Even in 2005 there were fewer than 1,400 ASBOs issued as stand-alone orders, and for most years between 2002 and 2013 there were fewer than 800 stand-alone orders, even falling below 500 a year in 2012 and 2013.<sup>59</sup>

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<sup>56</sup> Crawford, A., Lewis, S. & Traynor, P. “It ain’t (just) what you do, it’s (also) the way that you do it”: The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People. *Eur J Crim Policy Res* 23, 9–26 (2017). <https://link.springer.com/article/10.1007/s10610-016-9318-x#Fn1>

<sup>57</sup> Britain's most bizarre Asbos as bad gardeners are threatened with anti-social behaviour orders, *Mirror*, 19 November 2014: <https://www.mirror.co.uk/news/uk-news/britains-most-bizarre-asbos-bad-4655291>

<sup>58</sup> Crawford, A., Lewis, S. & Traynor, P. “It ain’t (just) what you do, it’s (also) the way that you do it”: The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People. *Eur J Crim Policy Res* 23, 9–26 (2017). <https://link.springer.com/article/10.1007/s10610-016-9318-x#Fn1>

<sup>59</sup> Statistical notice on anti-social behaviour order statistics, 18 September 2014 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/355103/anti-social-behaviour-order-statistical-notice-2013.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/355103/anti-social-behaviour-order-statistical-notice-2013.pdf) p2

## Early 2000s: parenting contracts and acceptable behaviour contracts

More legal innovations came in the early 2000s, with the creation of a series of legal mechanisms that gave local authorities power to control the conduct of individuals. These included parenting contracts and orders, housing injunctions, and acceptable behaviour contracts (ABCs), each of which allowed an individual's conduct to be controlled in a particular manner. Many of these legal mechanisms remain in place: Tower Hamlets Council names no fewer than 16 legal mechanisms under its 'Enforcement tools & support options', including 'individual support orders' (to require a person to attend support sessions) and 'noise abatement notices'.<sup>60</sup>

Over time, more of these powers to order were created, and there was also a lowering of the threshold at which an order could be issued. For example, parenting orders were first applied only upon conviction for an offence, or when a child was excluded from school, but from 2007 they could be issued when a child was 'at risk' of exclusion from school.<sup>61</sup> The most-used orders were those pre-legal notices and contracts that were issued directly by the local authority without a court. These included parenting contracts, which were applied to the parents of badly behaving children, and reached 19,200 in 2017-18 (by comparison, court-issued parenting orders were a mere 153 that year).<sup>62</sup> Meanwhile, acceptable behaviour contracts - which Adam Crawford notes could be very broadly applied, including for children for throwing snowballs - reached 13,000 in 2005-6.<sup>63</sup> This showed that local authorities were moving into the area of providing semi-legal

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<sup>60</sup> Tower Hamlets Council, 'Enforcement tools and support options': [https://www.towerhamlets.gov.uk/lgnl/community\\_and\\_living/community\\_safety\\_crime\\_preve/anti-social\\_behaviour/enforcement\\_tools\\_support.aspx#individualsupportorders](https://www.towerhamlets.gov.uk/lgnl/community_and_living/community_safety_crime_preve/anti-social_behaviour/enforcement_tools_support.aspx#individualsupportorders)

<sup>61</sup>The Use of Parenting Contracts and Parenting Orders by Local Authorities and Registered Social Landlords, Home Office and Department for Children and Families, 2007, p7

<sup>62</sup>Parental Responsibility Measures in England: 2017 to 2018, Department for Education, 21 March 2019, p4: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/787632/2019\\_PRMA\\_text.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/787632/2019_PRMA_text.pdf)

<sup>63</sup> Crawford, A., Lewis, S. & Traynor, P. "It ain't (just) what you do, it's (also) the way that you do it": The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People. *Eur J Crim Policy Res* 23, 9–26 (2017). <https://doi.org/10.1007/s10610-016-9318-x>. ABC statistics in Figure 2, <https://link.springer.com/article/10.1007/s10610-016-9318-x/figures/2>

instructions for conduct, which Crawford notes ‘frequently undermine established legal principles of due process (and) proportionality’.<sup>64</sup>

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## CPNs

This growth of local authorities’ power to order culminated in the 2014 Anti-Social Behaviour, Crime and Policing Act, which included civil injunctions and Community Protection Notices (CPNs). Civil injunctions had been intended to be called ‘injunctions to prevent nuisance and annoyance’, but a public campaign led to a change of the legal test from ‘annoyance’ to the ‘harassment, alarm and distress’ test of the ASBO<sup>65</sup> (although the ‘nuisance and annoyance’ test was retained for civil injunctions in a housing context). A person defending a civil injunction has a right to legal aid.<sup>66</sup> Surprisingly, there are no national statistics available on the number or use of this power.<sup>67</sup>

The CPN can be issued on the much lower threshold of someone’s conduct having a ‘detrimental effect’ on the ‘quality of life’ of those in the locality. It can be issued by *any* officer designated by the local authority, with no requirement for application to a court, nor even for any requirement to establish the truth of allegations or consider the recipient’s side of the case. These orders rose from 3,943 in the first year of November 2014-October 2015, to 8,760 in the same period in 2018-19.<sup>68</sup>

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<sup>64</sup> Crawford, A., Lewis, S. & Traynor, P. “It ain’t (just) what you do, it’s (also) the way that you do it”: The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People. *Eur J Crim Policy Res* 23, 9–26 (2017). <https://doi.org/10.1007/s10610-016-9318-x>.

<sup>65</sup> ‘Nuisance and annoyance’ injunctions abandoned after Lords defeat, *Guardian*, 23 January 2014: <https://www.theguardian.com/law/2014/jan/23/nuisance-and-annoyance-injunctions-abandoned-lords-defeat>

<sup>66</sup> Anti-social behaviour and the courts, Civil Justice Council, July 2020, p55: <https://www.judiciary.uk/wp-content/uploads/2020/10/ASBI-final-accessible.pdf>

<sup>67</sup> Anti-social behaviour and the courts, Civil Justice Council, July 2020, p92: <https://www.judiciary.uk/wp-content/uploads/2020/10/ASBI-final-accessible.pdf>

<sup>68</sup> CPNs and PSPOs: the use of ‘busybody’ powers, 17 September 2020: <http://manifestoclub.info/cpns-and-pspos-the-use-of-busybody-powers-in-2019/>

Data collected for this report shows that these orders fell somewhat in the year November 2019-October 2020, to 7,437,<sup>69</sup> yet this is still a high number compared to ASBOs and also considering the confinement of the population for much of the year. Nottingham City Council issued the greatest number of CPNs in 2019-20 (1,289) while the London Borough of Redbridge issued 950 and Durham issued 701. Our data also shows that Community Protection Warnings (CPWs) have more than doubled since their initial level of 9,546 CPWs in 2014-15,<sup>70</sup> now expanding to 24,733 orders issued in 2019-20.

It is noteworthy that CPWs cannot be appealed, and have formal legal status only as a precursor to a subsequent CPN. And yet, as with acceptable behaviour contracts, CPWs have legal implications, not only in allowing the issuing of a CPN but also for tenancy or other legal cases. For members of the public, CPWs *look* like legal documents, and so recipients of CPWs will often be shaken and worried, unable to appeal the CPW but left in the position of trying to tread carefully in order to avoid further legal orders or sanctions.

In the past, CPNs and CPWs have been issued for a very wide range of normally private activities, including ordering people to cut their grass, or not to feed the birds in their garden, not to sleep rough or enter a town centre, or even not to look at their neighbour's house.<sup>71</sup>

Research carried out for this report found that in 2020 CPN powers were widely used to enforce social distancing requirements. The use of anti-social behaviour powers to enforce public health requirements shows the flexibility of these powers and the broad definition of the 'detrimental effect' test.

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<sup>69</sup> Data table 1: Enforcement in 2020: <http://manifestoclub.info/data-tables-enforcement-in-2020/>

<sup>70</sup> CPNs: the crime of crying in your own home, Manifesto Club, 31 October 2016: <http://manifestoclub.info/cpns-report/>

<sup>71</sup> The couple banned from staring through neighbours' windows, BBC News, 27 June 2018: <https://www.bbc.com/news/uk-44302496>

Councils using CPNs and CPWs to enforce covid restrictions included Crawley, which issued a CPW preventing customers from sitting in a cafe, while Pembrokeshire banned congregations in temporary housing, and South Tyneside issued 10 orders for 'enforcement of social distancing' to businesses including a takeaway outlet and window cleaner. Anglesey and Medway Council issued orders for 'breach of covid regulations', Great Yarmouth for 'covid breaches', and Bolsover for 'gatherings contrary to social distancing'. Newcastle-Under-Lyme ordered someone to 'stop allowing visitors to your property during this covid-19 (Coronavirus) "lockdown"'. Other councils using CPNs and CPWs for enforcing covid measures included Corby, Sevenoaks, Dartford, Wyre, Conwy and Barnet. Barnet ordered someone to 'NOT socialise with anyone outside your household and comply with HM government legislation in respect of covid-19 lockdown and socialising requirements'. In total, at least 14 councils used CPNs or CPWs for enforcing social distancing/lockdown requirements, in many cases sanctioning members of the public rather than businesses.

Other uses of CPN powers in the year November 2019-October 2020 included several restrictions upon the homeless. Harlow ordered that someone must not beg or appear to be homeless, must not be a group of three or more persons, and must adhere to the terms of the PSPO. Cheshire West banned someone from asking passersby for money and sleeping on the steps, as well as prohibited shouting and swearing. Barnet ordered someone that 'you are not to sleep rough on the land owned and falling under the control of the council.... You are not to solicit alms directly or indirectly in the London Borough of Barnet'.

North Somerset Council used CPN powers to stop a crowing cockerel, while Brighton used them to target buskers. North Devon prohibited 'rodent possession in the town centre' and smoke from a domestic wood burner, while Mid Sussex used the powers to deal with 'horse issues'. Dacorum Council issued a CPW to someone for 'allowing shouting/swearing from son while playing console'. Bassetlaw prohibited someone from playing music in a caravan, while Windsor and Maidenhead prohibited 'excessive bird feeding'. Tonbridge and Malling used CPN powers to target someone for 'being in ownership of two exotic birds that continuously leave owner's land and disturb others in the community'. Newcastle-

Under-Lyme specified that someone must 'cut back vegetation on the premises to a height of 30cm or less'.

Meanwhile, Barnet issued several orders telling people 'not to enter the London borough of Barnet without the written permission of the Metropolitan Police or Barnet Council' and to 'ensure that your vehicle does not enter the London borough of Barnet' (vehicles will be picked up on automatic numberplate recognition system and 'should this notice be breached your vehicle may be seized'). Another notice ordered someone 'not to enter the London Borough of Barnet unless accompanied by your legal guardian'. Here CPNs - with a very low threshold for issuing - are being used to impose major restrictions upon individuals' movement.

Such serious restrictions should only be sought through the civil injunction, argues Rebecca Brown, director of the organisation ASB Help:

'We have heard that some local authorities are using CPNs by the back door. They put terms on CPNs that are very serious and that are effectively terms you would have on a civil injunction - such as "You must not go into the town centre". But there is no judge to test the evidence. When it comes to restricting someone's liberty, this isn't right, it needs to be tested by a court.'<sup>72</sup>

The standard for issuing a CPN is considerably lower than that required for any court order. There is no requirement for evidence gathering, which means that people can receive CPNs for on the basis of ill-founded or malicious accusations. Local authorities do not have the resources or structures necessary to properly investigate allegations, or to weigh up the different sides of a dispute. Manifesto Club research found that CPNs were being issued by single council officials, often merely by filling in a pre-printed form. In total, 3,686 council officers have been empowered to issue CPNs, and to issue fines for perceived non-compliance, including county park guardians, community officers, street scene officers, community safety officers, environmental health officers, consumer services

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<sup>72</sup> Telephone interview, Rebecca Brown

officers, community wellbeing service officers, neighbourhood pride managers, streetscene managers, town centre wardens, neighbourhood problem solving advisors, and early help and wellbeing officers.<sup>73</sup>

Research carried out by Sheffield Hallam University has documented the lack of due process and proportionality in the issuing of CPNs: the majority of councils lacked policies governing their use of CPNs; council officers issuing CPNs had variable and often minimal training; and councils applied different thresholds for issuing CPNs. Researchers Isabela Dima and Dr Vicky Heap concluded that ‘the threshold for issuing a CPN is not equal across the citizenry’ and that ‘people undertaking the same behaviours have the potential to be sanctioned differently based on where they live’.<sup>74</sup>

Other Sheffield Hallam University research into the experience of CPN recipients found that in many cases, council officials did not attempt to discuss an issue with a person first, but merely delivered a legal order through the letter box.<sup>75</sup> The majority of interviewees detailed difficulties when attempting to communicate with the issuing authority to discuss the contents of the notice after it had been issued. There were accounts of phone calls, emails and letters left unanswered, as well as reports of feeling that they were being pushed from one authority to another. CPN recipients were often unaware of the evidence presented against them and said that no evidence was provided when they were issued with their CPW/CPN.

CPN recipients also detailed difficulties in appealing the notices in court. One woman, who received a CPN in relation to a neighbour dispute, says that the work required to defend her CPN in court was equivalent to that carried out for her Masters degree dissertation. Another CPN recipient said that he withdrew his

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<sup>73</sup>CPNs: 20,000 new ‘busybody ASBOs’ issued in past 4 years, Manifesto Club, 21 June 2019: <http://manifestoclub.info/cpns-20000-new-busybody-asbos-issued-in-past-4-years/>

<sup>74</sup> ‘How do local councils administer Community Protection Notices?’, Isabela Dima and Dr Vicky Heap, co-published by Sheffield Hallam University and the Manifesto Club, June 2020, available from: <http://manifestoclub.info/postcode-lottery-in-councils-use-of-new-asb-powers/>

<sup>75</sup> ‘What is it like to be issued with a Community Protection Notice?’, by Dr Vicky Heap, Dr Alex Black, and Zoe Rogers, June 2020, available from: <http://manifestoclub.info/postcode-lottery-in-councils-use-of-new-asb-powers/>

appeal for fear of the council's 'very expensive lawyers' and the potentially very high court costs he would have to pay if he lost the case.

It is because of these difficulties that only a very small number of CPNs are appealed. In total, there were only 179 legal appeals of CPNs between November 2014 and October 2019, of which 40 were successful.<sup>76</sup> These 40 successful appeals were out of 29,043<sup>77</sup> CPNs issued in that period. It is unlikely that there is another legal power for which successful appeals are so low, which is especially concerning given the low-quality and ill-founded nature of many of the CPNs that have come to public attention.

Once an order has passed the 21-day appeal deadline, a person can be prosecuted for violating the order even if it was unjustly issued. For example, if a person is issued with a CPN prohibiting them from entering the town centre, a subsequent prosecution would merely have to show that they were found in the town centre, not that the original prohibition was justified. This outcome was the substance of a judgement in the High Court, where a person banned from Reading town centre was subsequently found in the area and prosecuted for its violation: the court found that an order could not be appealed at a case for its prosecution.<sup>78</sup>

In such cases, courts no longer perform the public role of ensuring the proportionality of legal orders; rather, they merely enforce legal orders that have not been subject to scrutiny. In the year November 2018-October 2019, 1,425 people were prosecuted for violating a CPN, of which 1,114 were successful.<sup>79</sup> Once a person has been convicted for violating a CPN, they can be issued with a Criminal Behaviour Order (CBO), the violation of which is an imprisonable

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<sup>76</sup>MOJ FOI response, 21 September 2020

<sup>77</sup>CPNs and PSPOs: the use of 'busybody' powers, Manifesto Club, 17 September 2020: <http://manifestoclub.info/cpns-and-pspos-the-use-of-busybody-powers-in-2019/>

<sup>78</sup> Stannard v the Crown Prosecution Service, 23 January 2019: <https://www.casemine.com/judgement/uk/5c4ec6ae2c94e00269b0ff2c>

<sup>79</sup> Ministry of Justice FOI response, 21 September 2020



offence, and there are cases of homeless people sent to prison for violating a CBO prohibiting them from begging.<sup>80</sup>

The low standards associated with the issuing of a CPN create a grave risk of injustice. There is also a question about whether legal remedies are effective in dealing with social and behavioural problems of vulnerable people, such as the homeless or those with mental illness. Luke Gittos, a solicitor who has acted for several recipients of council-issued CPNs, says:

‘My experience with CPNs is that they frequently result in the criminalisation of the vulnerable. We have acted for defendants in these cases who have complex learning difficulties, or long-standing issues with socialising. Rather than resolve these issues in a community setting, these people end up having to defend complex legal allegations in court. These can have huge cost consequences, given that the local authority can claim back costs from anyone who unsuccessfully challenges a CPN. They create a parallel legal system, where certain people can be criminalised for behaviour which is perfectly legal for others. It leads to petty and unnecessary interactions with the criminal justice system.’

## Public orders

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### Alcohol and dog orders

As stated above, the original power for councils enacting restrictions in public spaces was the byelaw. From the early 2000s, the byelaw was supplemented by a series of legal powers that allowed local authorities to place additional restrictions on public spaces. There was no requirement for these orders to be approved by central government, and they could generally be punished by a FPN issued by the local authority rather than by prosecution in Magistrates’ Courts.

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<sup>80</sup>Hundreds of homeless people fined and imprisoned in England and Wales, Guardian, 20 May 2018: <https://www.theguardian.com/society/2018/may/20/homeless-people-fined-imprisoned-pspo-england-wales>

Designated Public Place Orders (DPPOs), introduced by the 2001 Criminal Justice and Police Act, were areas designated by the local authority that allowed police officers to confiscate alcohol from members of the public and to issue penalties for non-compliance. By 2009, there were 712 DPPOs across the country.<sup>81</sup> Statistics for penalties and confiscations are patchy, but data shows that there were 1,544 FPNs in 2007 for the offence of failing to hand over alcohol on request,<sup>82</sup> and in the two months of July and August 2004 more than 9,500 people had their alcohol confiscated.<sup>83</sup>

Another specific power was Dog Control Orders (in the 2005 Clean Neighbourhoods and Environment Act), which allowed councils to specify areas within which dogs were banned, dogs had to be on leads, or there were restrictions on the number of dogs to be walked at one time. Dog Control Orders had to be consulted upon, but the consultation requirements were less than was required for a byelaw.

Also in the 2005 Clean Neighbourhoods and Environment Act came powers for councils to designate areas within which people needed a licence to hand out leaflets (a 'free literature distribution consent'). To date, 44 councils have enacted the powers in this Act in order to restrict leafleting,<sup>84</sup> and an additional 43 councils have imposed some other form of control upon leafleting.

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## PSPOs

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<sup>81</sup> Robbed by the Police, Manifesto Club., August 2009: <http://manifestoclub.info/wp-content/uploads/Robbedbythepolice.pdf>

<sup>82</sup> Data obtained from Hansard, 20 Mar 2008 Column 1275W; and 2 Jun 2009 Column 310W

<sup>83</sup> Robbed by the Police, Manifesto Club., August 2009: <http://manifestoclub.info/wp-content/uploads/Robbedbythepolice.pdf>. Data reported in Blitz on boozy jobs is hailed a huge success, Argus, 17 September 2004: <https://www.theargus.co.uk/news/5088582.blitz-on-boozy-jobs-is-hailed-a-huge-success/>

<sup>84</sup> FOI data obtained for The Silencing of Public Space, Manifesto Club, 24 November 2019: <https://manifestoclub.info/the-silencing-of-public-space/>

In 2014, government created Public Spaces Protection Orders (PSPOs), which allowed a local authority to place any restriction or requirement upon a public space if in its view activities in the space were having a 'detrimental effect on the quality of life'.<sup>85</sup> This has led to hundreds of legal orders banning a broad range of activities, including noisy remote control cars,<sup>86</sup> standing in groups, loitering, swearing, even covering the head.<sup>87</sup> PSPOs came with perhaps the lowest ever legal standard for the imposing of restrictions upon public freedoms. There is no requirement for public consultation, and no requirement for the order to pass through any legal or democratic process.

Indeed, the Manifesto Club found that half of PSPOs issued by local authorities in 2015 were signed off by a single council officer, often an unelected council officer, without going through cabinet or full council.<sup>88</sup> The broad categories of behaviour sometimes targeted - such as blanket restrictions on standing in groups - suggests that these orders may function more as a 'tool' to be applied at the discretion of officers, rather than as a precise law intended to be systematically enforced. Enforcement is therefore released from checks to ensure that it is enacted in the public interest.

The standards of PSPO public consultations were variable, with some councils employing leading questions or carrying out consultations with only a handful of responses. However, it is notable that some councils did go beyond what was required by law, and made a significant effort to consult widely and to develop a PSPO that was reasonable and necessary. Ed Hayes from the Kennel Club, which has engaged in PSPO consultations for the past 7 years, said:

'Some councils are really good - some contact us in advance and seek input before consultation, and they want to listen to you, consult openly and

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<sup>85</sup> Anti-Social Behaviour, Crime and Policing Act 2014: <https://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/crossheading/public-spaces-protection-orders/enacted>

<sup>86</sup> In the London borough of Hillingdon

<sup>87</sup> In Sefton

<sup>88</sup> PSPOs: A Busybodies' Charter, 29 February 2016, section 2: <http://manifestoclub.info/psposreport/#section2.1>

widely, to take on the views of the population. In other places, on the back of two residents complaining it is enough to ban dogs from the local park. An order can even be driven by a single person who is also a councillor.’

While the byelaw was perhaps overly restrictive, with central government keeping a firm hand on regulations in local areas, the pendulum has now swung in the opposite direction, with powers so under-specified that it is left to individual councils’ goodwill to ensure that they are used in the public interest.

We found that there were 595 PSPOs issued by January 2019, and that these were being issued at a rate of around 15 a month.<sup>89</sup> Previously existing dog control and alcohol zones have now migrated to PSPOs, often with the addition of new restrictions. This suggests a total number of PSPOs in the low thousands.

It is notable that some councils issue ‘PSPO warnings’, a semi-legal formal instruction to individuals to change their conduct. In 2020, Middlesbrough issued 824 PSPO warnings for offences under its PSPO restrictions.

One significant limitation of PSPOs is the difficulty of legal challenge. Rosie Brighthouse, a solicitor from Liberty, explains:

‘PSPOs are extremely difficult to challenge. Even if a local person wants to take on the terrifying task of suing their council in the High Court, six weeks is an extraordinarily short period of time for that person to gather the necessary evidence, instruct lawyers to prepare a case and find some way to fund the enormous costs involved, which amount to tens of thousands of pounds. Legal aid is unavailable. Liberty’s lawyers have been working on unjust, unfair and unlawful PSPOs for nearly six years and in that time have only managed to bring one appeal.’<sup>90</sup>

The lack of legal appeal means that the interpretation of broad PSPO requirements has been almost entirely left to the discretion of council officers.

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<sup>89</sup> CPNs and PSPOs: the use of ‘busybody’ powers, 17 September 2020: <http://manifestoclub.info/cpns-and-pspos-the-use-of-busybody-powers-in-2019/>

<sup>90</sup> Email communication with Rosie Brighthouse

## Covid orders

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### Covid 'directions' and improvement notices

Local authorities also gained powers to issue legal orders and notices in relation to covid-19. On 18 July 2020, local authorities gained powers to issue 'directions' to restrict access to public spaces, individual premises, or events.<sup>91</sup> Our FOI request to the Department of Health and Social Care revealed that there have been 295 directions issued by local authorities to restrict access to spaces, premises or events, between 18 July 2020 and 9 April 2021.<sup>92</sup> Unfortunately, the department was unable to specify the content of these directions.

Other new local authority powers included Coronavirus Improvement Notices, Coronavirus Restriction Notices, and Coronavirus Immediate Restriction Notices, introduced on 4 December 2020.<sup>93</sup> These used the template of 'improvement notices' issued under health and safety legislation, and allowed local authorities to specify changes that needed to be made to a premises in order to comply with covid regulations. Violation of these notices is punished with fixed penalty notices of £2000 and £4000.

Many Welsh authorities have made the content of these notices available, which gives an indication of the scale of their current use. By the end of May 2021, 316 notices were issued by three Welsh authorities (Bridgend, Cardiff, and the Vale of

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<sup>91</sup> Local authority powers to impose restrictions: Health Protection (Coronavirus, Restrictions) (England) (No 3) Regulations 2020, Department of Health and Social Care: <https://www.gov.uk/government/publications/local-authority-powers-to-impose-restrictions-under-coronavirus-regulations/local-authority-powers-to-impose-restrictions-health-protection-coronavirus-restrictions-england-no3-regulations-2020>

<sup>92</sup> FOI response from Department of Health and Social Care, 9 April 2021

<sup>93</sup> COVID-19 enforcement powers for local authorities, guidance from Department of Health and Social Care: <https://www.gov.uk/government/publications/additional-covid-19-local-authority-enforcement-powers/additional-covid-19-local-authority-enforcement-powers>

Glamorgan)<sup>94</sup>, including requiring a hairdresser to take bookings only by appointment, requiring a kebab shop to ensure people stood 2m apart, and requiring a cafe to collect contact information; notices were also issued to a post office and a pharmacy. Meanwhile, an improvement notice was issued to a north Cumbria village pub, when the council enforcement officer witnessed three men standing at the bar ‘very close together’.<sup>95</sup> Another targeted a Cwmbran doctor’s surgery, for failing to undertake a coronavirus specific risk assessment.<sup>96</sup> Meanwhile, Tenby sailing club in Wales was issued with a notice on 20 March 2021, for failing to ensure that a 2m distance is maintained between people on the premises.<sup>97</sup>

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## Low-traffic neighbourhoods (LTNs)

Councils were also encouraged to issue orders to deliver low-traffic neighbourhoods (LTNs), and other measures to promote walking and cycling, with funding from the Department for Transport’s £250 million Emergency Active Travel Fund<sup>98</sup> (EATF), and in London under the umbrella of Transport for London’s London Street Space Programme.<sup>99</sup> Councils were encouraged to implement schemes using Experimental Traffic Orders that do not require prior

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<sup>94</sup>Improvement and Closure Notices Served, Shared Regulatory Services <https://www.srs.wales/en/Coronavirus/Improvement-Notices-Served.aspx>

<sup>95</sup>Pub director loses appeal over improvement notice imposed over COVID breaches, 11 February 2021: <https://cumbriacrack.com/2021/02/11/pub-director-loses-appeal-over-improvement-notice-imposed-over-covid-breaches/>

<sup>96</sup>News in brief: Doctors surgery handed Covid-19 improvement notice, 2 February 2021: <https://nation.cymru/news/news-in-brief-doctors-surgery-handed-covid-19-improvement-notice/>

<sup>97</sup>Covid Improvement and Closure Notices, Pembrokeshire Council: <https://www.pembrokeshire.gov.uk/coronavirus-advice-and-guidance/covid-improvement-and-closure-notices>

<sup>98</sup> £2 billion package to create new era for cycling and walking, Government press release, 9 May 2020: <https://www.gov.uk/government/news/2-billion-package-to-create-new-era-for-cycling-and-walking>

<sup>99</sup> Streetspace for London, TfL website: <https://tfl.gov.uk/travel-information/improvements-and-projects/streetspace-for-london>

public consultation. The funding time restrictions for the first tranche of grant effectively prevented local authorities from consulting, with a deadline of four weeks from receipt of funds to begin works, and eight weeks for scheme completion. Many councils introduced LTNs to reduce or eliminate road traffic on streets, blocking streets with bollards or prohibiting through traffic with CCTV monitoring.

Although opinions vary on low-traffic neighbourhoods as a policy, and on the success or failure of particular initiatives, it is now clear that the lack of consultation was ill-advised and led to significant disruption and unintended consequences. These consequences included major traffic problems on main roads, problems for access for emergency services and taxis, and an irrational use of road space (for example with large but little-used cycle lanes). There have been public petitions and protests against the schemes in areas such as Hackney and Islington (the group Horrendous Hackney Road Closures is launching a judicial review against council LTNs).<sup>100</sup> In January 2021, a high court judgement quashed Transport for London's Streetspace Plan and its accompanying guidance, judging that they were 'an ill-considered response that sought to take advantage of the pandemic to push through, on an emergency basis without consultation, "radical changes"'.<sup>101</sup>

Several councils were forced to drop the orders, including Redbridge, Sutton, Harrow and Wandsworth, after complaints from residents as well as from emergency services. Wandsworth found that its LTNs had generated 'unprecedented large numbers of concerns' and 'serious and continuing traffic problems', as well as problems accessing hospitals by emergency vehicles.<sup>102</sup> When

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<sup>100</sup> Anti-LTN campaigners' appeal triumph paves way for judicial review, Hackney Gazette, 30 March 2021: <https://www.hackneygazette.co.uk/news/anti-ltn-campaigners-to-argue-case-in-court-7861958>

<sup>101</sup> Local Transport Today, 22 January-4 February 2021

<sup>102</sup> 'Borough suspended LTNs after emergency services criticisms', Local Transport Today, 2-15 October 2020

Harrow consulted on its LTNs, opposition was between 82 and 73 per cent.<sup>103</sup> Kent County Council implemented 24 traffic schemes but six were swiftly removed due to adverse comments from local people.<sup>104</sup> In Scotland, where a similar grant scheme operated, one West Lothian councillor said that its programme of active travel measures were ‘the most disliked and negatively commented on council policy that I have ever experienced, not only in my 15 years in frontline politics, but in all my life’.<sup>105</sup>

In England the government blamed councils for bringing through ‘poorly implemented schemes’ that were ‘frankly nowhere near good enough’.<sup>106</sup> And yet many councils have pointed out that they were asked to bring through the schemes on a timescale that prevented consultation. When Kingston-Upon-Thames Council dropped some of its planned LTNs, a ward councillor responded:

‘We recognise the unsatisfactory way in which people were informed, and we apologise. The consultation method is designed by TfL (Transport for London) and the government and is unlike anything we usually do.’<sup>107</sup>

Several councils - including Kent County Council, and Brighton and Hove - have resolved to consult on future schemes delivered with an Emergency Active Travel Fund grant.<sup>108</sup> In distributing the second tranche of the grant, now renamed simply the Active Travel Fund, the government emphasised that all councils should consult before schemes are implemented.

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<sup>103</sup> ‘Public backlash spells end for Harrow’s LTNs and cycle lanes’, Local Transport Today, 4 May 2021

<sup>104</sup> ‘We must consult on active travel schemes, Kent tells DfT’, Local Transport Today, 19 October 2020

<sup>105</sup> ‘West Lothian scraps bus stop boarders after driver backlash’, Local Transport Today

<sup>106</sup> Cover story, Local Transport Today, 30 October-12 November 2020, issue 810

<sup>107</sup> Controversial Low Traffic Neighbourhood scheme in Chessington will not go ahead, My London, 4 September: <https://www.mylondon.news/news/west-london-news/traffic-drivers-fines-parking-travel-18877829>

<sup>108</sup> ‘We must consult on active travel schemes, Kent tells DfT’, Local Transport Today, 19 October 2020



In our FOI survey, 30 local authorities said that they had implemented a LTN in 2020, and none of these had carried out a public consultation prior to implementing the order. (The total number of LTNs introduced in 2020 is likely to be higher, since many were introduced at a county council level. Government documents state that 10 combined authorities and 65 local authorities received active travel grants, for initiatives including LTNs).<sup>109</sup>

In response to our FOI, many councils cited funding deadlines as the reason for their lack of consultation. Buckinghamshire said that ‘The schemes were implemented under the government’s Emergency Active Travel Fund which has short, centrally-set, timescales. Due to this, a public consultation was not possible prior to implementation.’ Meanwhile, Lewisham said: ‘We were urged to implement the emergency Covid-19 Streetspace response schemes in a “matter of weeks” by government and this meant that there wasn’t time to consult and engage with people as would normally be the case.’

It appears to be the intention of central government that these measures would lead to a permanent change in road use, with transport secretary Grant Shapps describing a ‘once in a generation opportunity to deliver a lasting transformative change in how we make short journeys in our towns and cities’.<sup>110</sup> This episode shows the way in which councils have been encouraged to use emergency powers to make summary orders that deliver central government policy, rather than to respond to the needs and wishes of their populations. Consultation appeared to be an afterthought, to rubber stamp or adjust a scheme already in place, rather than part of the process of policy formation.

However, the rapid reallocation of road space through LTNs also coincides with a certain ethos within local government transport policy. West Midlands’ LTN document was clear that the aim was to use the pandemic in order to change the way people travelled: ‘Swift action was required to ensure that we were able to

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<sup>109</sup> Active travel fund: final allocations, 13 November 2020: <https://www.gov.uk/government/publications/emergency-active-travel-fund-local-transport-authority-allocations/emergency-active-travel-fund-total-indicative-allocations>

<sup>110</sup> Cover story, Local Transport Today, 22 January-4 February 2021

profit from the summer season to maximise our chances of embedding long term behaviour change.’<sup>111</sup>

Andrew Forster, editor of *Local Transport Today* magazine between 2001 and 2021, describes the climate currently existing within local authority transport policy:

‘Many councils now see changing travel behaviour – reducing road traffic – as supporting their objectives in matters such as placemaking, health, air quality and climate. Moreover, many of today’s transport policymakers and practitioners are pro-bike, pro-walking and want to see less car use – they are reform-minded people. Changing travel behaviour involves not only improving conditions for pedestrians, cyclists and public transport, but also making driving less attractive through, for instance, traffic restrictions, lower speed limits, reallocating road space, and pricing.’<sup>112</sup>

This signifies a shift within local government from representing people’s needs, to delivering on certain predetermined reform agendas.

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<sup>111</sup> EATF, Transport for West Midlands, accessed 13 May 2021: <https://www.tfwm.org.uk/media/69325/eatf-report.pdf>

<sup>112</sup> Telephone interview with Andrew Forster

## 3. Local authorities on patrol - the rise of local authority policing

### Neighbourhood wardens

Another development has been the shift of local authorities into providing a 'policing presence' for local areas. This began with the central government financing of council neighbourhood warden schemes: between 2000/1 and 2005/6, 91.5 million was provided in grant funding for neighbourhood warden programmes.<sup>113</sup> These schemes had various aims: to represent the community and community concerns to the council; to identify criminal acts and to inform the council/police for enforcement; to deal with low-level anti-social behaviour and environmental offences (such as abandoned cars or graffiti); and there was also an element of community participation, such as taking part in community events, visiting the elderly, and so on.<sup>114</sup>

In 2003, it was estimated that there were around 700 wardens in schemes across the country.<sup>115</sup> Today, although central government funding has been wound down, many neighbourhood warden programmes persist. Data collected for this report found that councils currently employ 898 neighbourhood wardens (or wardens with a community policing/patrolling role) across the country.<sup>116</sup> This

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<sup>113</sup>Neighbourhood Wardens: More than the 'Eyes and Ears' of Communities?, Research report 60, Sheffield Hallam University, November 2004: <https://extra.shu.ac.uk/ndc/downloads/reports/RR60.pdf>

<sup>114</sup>Neighbourhood Wardens: More than the 'Eyes and Ears' of Communities?, Research report 60, Sheffield Hallam University, November 2004, p2

<sup>115</sup> Street Wardens, Hansard, Volume 388: debated on Wednesday 10 July 2002: <https://hansard.parliament.uk/Commons/2002-07-10/debates/5b73eb61-99c9-4d0d-97c5-0f9b5e261b31/StreetWardens>

<sup>116</sup> Table 3, Enforcement in 2020: [www.manifestoclub.info/data-tables-enforcement-in-2020/](http://www.manifestoclub.info/data-tables-enforcement-in-2020/)  
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includes: Nottingham City Council employs 80 wardens, Durham Council employs 52, and Bradford employs 42 wardens.

Another step towards councils taking on police powers came with the Community Safety Accreditation Scheme (CSAS), under the Police Reform Act 2002, which allowed for non-police organisations to attain police powers. These schemes involved some council officials being given police powers, such as the power to issue Penalty Notices for Disorder (on-the-spot penalty notices for criminal offences, PNDs), to confiscate alcohol, or to demand names and addresses. A Manifesto Club survey in 2012 found that there were 2,617 accredited persons across the country, including many council officials.<sup>117</sup> For example, Ipswich street rangers gained the power to issue PNDs, while Durham County Council street wardens and Gwent Council community-safety wardens also received police powers.<sup>118</sup> In Nottingham, the neighbourhood warden/accredited persons scheme led to the development of a de facto council police: the city employs 80-100 Community Protection Officers who are accredited with police powers, and which form a highly visible patrolling and enforcing force. This comes in the context of increasing collaboration between council and police forces, with the creation of collaborative organs such as Crime and Disorder Partnerships (later becoming Community Safety Partnerships).

Our FOI research asked councils about the role of their community warden programme. Some councils seemed to see the programme as one of engaging with or representing communities: for example, Cheshire West said that wardens were 'engaging with communities to make their surroundings cleaner and safer', Breckland said that its wardens 'promote social cohesion and inclusion', and Chichester said that its wardens are 'a link between the community and the district council and other partners including Sussex Police'.

However, the majority of councils emphasised the enforcement/intelligence gathering role of these wardens. Caerphilly said that they 'act as the eyes and ears

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<sup>117</sup>Should private security guards have police powers?, Manifesto Club, 2012: <http://manifestoclub.info/wp-content/uploads/AccreditedPersonsBriefing.pdf>

<sup>118</sup> Manifesto Club unpublished survey, 2019

of the council by spotting, investigating and reporting incidents'; while Warwick, which uses a private company to provide street marshals, says that these 'assist the police to provide a high visibility presence to deter crime and disorder, and provide detailed reports of incidents'. Cherwell Council said that its marshals 'gather community intelligence and report incidents to the appropriate agency', while Welwyn Hatfield said that the wardens provide a visible presence and report 'suspicious behaviour'. Tower Hamlets said that its 'enforcement officers' were police accredited and provide a 'high impact and visible uniformed service'. In many councils, wardens were empowered to issue penalties for environmental offences, and to issue CPNs and FPNs for PSPOs or CPNs.

Therefore, neighbourhood wardens are in effect semi-police: they have a community/public function, and also a policing function. This dual role also appears with covid marshals.

## Covid marshals

The establishment of covid marshals in response to the covid pandemic extends many of the developments described above in terms of the move of local authorities into enforcement. Covid marshals take local authorities further into a public policing role, and increase the formation of a 'policing complex' with the police and private companies. The covid marshal programme therefore should not be seen as an isolated response to a pandemic, but rather as a policy emerging from previous developments such as neighbourhood wardens. Indeed, this continuity is indicated by the fact that many councils reassigned neighbourhood wardens or other enforcement officers into covid marshal roles.

The covid marshal programme was initially financed with £30 million government money, beginning in October 2020.<sup>119</sup> The government has now allocated local authorities a £400 million Contain Outbreak Management Fund, which includes funding for continued enforcement and explanation of covid guidelines in the

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<sup>119</sup> Guidance to support local authority compliance and enforcement activity, including COVID-19 secure marshals or equivalents, Ministry of Housing, Communities and Local Government: <https://www.gov.uk/government/publications/covid-19-local-authority-compliance-and-enforcement-grant/guidance-to-support-local-authority-compliance-and-enforcement-activity-including-covid-19-secure-marshals-or-equivalents>

2021-22 financial year, a role that the government says will remain 'equally important'.<sup>120</sup> It is for this reason that local authorities are advertising for covid marshal roles that continue late into 2021 and even 2022, when pandemic measures are scheduled to have ended.<sup>121</sup>

Our FOI request found that responding local authorities have employed a total of 1,867 covid marshals.<sup>122</sup> Out of 302 responses, 279 local authorities were able to answer this question: the remainder said that the number of marshals varies, or they were unable to specify a number. The numbers of marshals employed ranged widely: Newham and Bradford councils employed 100 marshals, Camden employed 80, Hammersmith and Fulham employed 50, while 71 councils did not employ marshals at all, and 101 councils employed between 1 and 5 marshals. This wide variation suggests that covid enforcement varies significantly between geographical areas.

The covid marshal guidance states that marshals should not themselves have enforcement powers. Instead, their role should be to 'promote and encourage, educate and explain' the latest government regulations to businesses and the general public. The guidance states:

'The role of COVID-19 secure marshals or equivalents such as wardens, stewards and ambassadors is not to enforce COVID-19 regulations, or have any enforcement powers, which should remain the remit of the police and designated local authority compliance and enforcement officers. COVID-19

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<sup>120</sup> Guidance to support local authority compliance and enforcement activity, including COVID-19 secure marshals or equivalents, Ministry of Housing, Communities and Local Government: <https://www.gov.uk/government/publications/covid-19-local-authority-compliance-and-enforcement-grant/guidance-to-support-local-authority-compliance-and-enforcement-activity-including-covid-19-secure-marshals-or-equivalents>

<sup>121</sup> Army of Covid marshals recruited for roles that could last until 2023, Daily Telegraph, 27 April 2021: <https://www.telegraph.co.uk/news/2021/04/27/army-covid-marshals-recruited-roles-could-last-2023/>

<sup>122</sup> Data table 2: Enforcement in 2020: <http://manifestoclub.info/data-tables-enforcement-in-2020/>

secure marshals or equivalents should engage, explain and encourage best practice and national COVID-19 secure guidance.<sup>123</sup>

And yet, the guidance also indicates that these marshals should be trained in ‘escalation’ of events to the appropriate enforcement agencies (police and local authority), and it provides model case studies that show these wardens patrolling alongside police and wearing body cameras, reporting not only covid violations but also other offences such as anti-social behaviour:

‘(Charnwood Borough Council) On the first weekend 2 mobile teams were also in operation. These stewards had body cameras and one of the stewards teamed up with a member of the police and travelled from pub to pub in a police car.... The observations of the stewards both mobile and on foot were shared with a council officer on duty at the end of the evening. Anything of a serious nature such as anti-social behaviour was reported in real time to the police.’<sup>124</sup>

When we asked councils about the role of covid marshals, some seemed to employ covid marshals primarily as enforcement officers, and in these cases the marshals were empowered to issue FPNs and to issue improvement notices and use other legal powers. Councils taking this approach included Torfaen, Nottingham and Pembrokeshire. But the majority of councils employed marshals that did not have a straightforward enforcement role; they said that marshals also provided education, encouragement, information, or that they were there to support the public.

The different aspects of the covid marshal role were expressed by the very different terms used to describe them. Some councils called covid marshals ‘Covid

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<sup>125</sup>Guidance to support local authority compliance and enforcement activity, including COVID-19 secure marshals or equivalents, Ministry of Housing, Communities and Local Government: <https://www.gov.uk/government/publications/covid-19-local-authority-compliance-and-enforcement-grant/guidance-to-support-local-authority-compliance-and-enforcement-activity-including-covid-19-secure-marshals-or-equivalents>

<sup>124</sup>Guidance to support local authority compliance and enforcement activity, including COVID-19 secure marshals or equivalents, Ministry of Housing, Communities and Local Government: <https://www.gov.uk/government/publications/covid-19-local-authority-compliance-and-enforcement-grant/guidance-to-support-local-authority-compliance-and-enforcement-activity-including-covid-19-secure-marshals-or-equivalents>

Compliance Officers' (Hastings), or 'Covid Enforcement Officers' (councils including Ceredigion, Newport, Pembrokeshire and Torfaen). On the other hand, Canterbury City Council called its marshals 'Town Centre Support Stewards', while Sevenoaks had 'Town Centre Ambassadors', South Gloucestershire had 'Support Marshals' or 'Street Marshals', Exeter 'Safer City Ambassadors', and North Devon called its marshals 'Place Makers'. Charnwood and Rushcliffe councils employed 'High Street Ambassadors', and Medway employed 'Greeters', while a number of councils had 'Covid Support' officers or advisors. New Forest District Council employed 'Covid Safe Ambassadors', North Lincolnshire had 'Covid Prevention Assistants', and South Kesteven had 'Covid Champions', while Wrexham employed 'Social Distancing Champions'.

When we asked about covid marshals' role in enforcement, it became clear that even the most innocuously described warden also had an enforcement role. For example, Norwich said that the marshals 'do not enforce the rules, they are there for education, encouragement and information' - yet it stated that non-compliance is reported to management for enforcement. Hart Council said that marshal duties are 'to politely observe and advise if they believe that there is infringement of the coronavirus regulations' - but 'if there is a serious breach then they will ask offenders to disperse. If this fails then the police are contacted'. Derby City Council said that marshals' role was 'to promote and encourage in a friendly non-confrontational manner with the public', 'identifying problematic businesses and offering support to assist them with following the guidelines' - yet they have radios to liaise with council officers and the police, and they give businesses green, amber or red report sheets ('The Red ones get passed to enforcement officers for them to either follow up or pass onto the police as appropriate').

Indeed, many councils described covid marshals as networked with the police as well as council enforcers, and in effect playing the role of informers. Arun Council said that its marshals report breaches directly to the police, and provide daily reports to the council on patrol days, while Folkestone's covid officers carried out joint patrols with the police, and served warning letters to businesses, and Pembrokeshire's covid marshals also carried out joint patrols with the police. Rhondda Taff said the marshals liaised with and provided intelligence to South Wales Police, while Scarborough Council said that the wardens were the 'eyes and



ears' in relation to compliance, and 'act as professional witnesses, gather evidence and report breaches'. Warwick Council marshals are in radio contact with the local CCTV control room, and can liaise with the police, while Luton marshals are 'linked in with the environmental health team and the police' and have 'radios, bodycams, phones and use an app to capture data for analysis'. This covert surveillance role means that there is a duplicitous element to the covid warden, who claims to be there for 'advice', but actually is working as a police/council informer. Such 'pseudo-police' roles undermine clear and fair law enforcement, which must be carried out by publicly visible enforcers with publicly known powers.

The covid marshal scheme has accelerated local authorities' integration with private companies and the police. Of the 209 councils able to specify whether covid marshals were employed by a private company or not, 85 confirmed that the marshals were supplied by private contractors, as indeed was suggested by government guidance. Some councils simply reassigned existing private contractors, for example Barnet redeployed litter wardens from Kingdom Security Ltd, while Oldham redeployed the private contractor used to enforce parking restrictions. Rugby reassigned wardens from Rugby First town centre management company, and Hounslow from the company Safer Business Hounslow. Bolton and Trafford employed marshals from the private enforcement company NSL, while Greenwich used LA Support Ltd (formerly Kingdom Security), and East Hampshire and Havant Councils used EH Commercial services.

This means the formation of a 'policing complex', including local authority officers, private companies, and the police, who share information and collaborate on joint ventures. Several local authorities described the police as 'partners' (e.g. Barnet Council), or said they had 'partnership meetings' with the police. This relationship of collaboration occurred through joint bodies such as a 'covid compliance hub' or 'joint enforcement teams'. This policing complex blurs the distinctions between institutions, such that local authorities become enmeshed in a system of policing and penalisation, and lose their distinctive mission and relationship to the public.

# Conclusion and recommendations

## Should local authorities be enforcing?

Local authorities clearly have a legitimate role in enforcing and policing certain areas of life. There is a category of misdemeanour that is related to local 'quality of life' - such as bin bags in the street, abandoned cars, waste deposits - which is not the job of the police and has always fallen to the local authority. Local authorities also have a long-standing role in regulating some aspects of local businesses, such as waste collection and health and safety. And it is important that local authorities have some recourse to local law-making, for example being able to prohibit locally dangerous activities, or introducing restrictions on dog walking in nature reserves or other necessary areas.

However, the move of local authorities into enforcement over the past two decades has gone way beyond this limited and reasonable role. It has resulted in an explosion of new crimes, and punishments, which represent a low legal standard in terms of public coherence, due process, and proportionality.

One reason for this is the releasing of local authority enforcement from important legal and democratic checks that would ensure that powers are used in the public interest. In effect, local authorities issuing orders such as CPNs and PSPOs are taking on the role of legislator, police, judge and jury - and these complex roles are performed by officers with little more than the status of traffic wardens. This is not a role for which these officers, or local authorities as an institution, can conceivably be equipped, either in terms of available resources or institutional structure.

The second factor is the fact that local authorities are allowed to retain the income from penalties, creating a potential for corruption of the enforcement process. The practices of some private companies employed by local authorities resemble pre-

police 'thief takers' more than they do modern public enforcement, which requires strict standards and impartiality. Low standards of law enforcement - and the suspicion of corruption - brings the local authority, and criminal justice more broadly, into disrepute.

Local authorities are financed by local ratepayers in order to maintain the local area; it is questionable whether they have the right to farm out enforcement to the highest bidder, for the profit of the company and the authority itself. There is a danger that people pay twice for local services: they pay their taxes to the local authority, and then they could pay again when they are fined for an innocuous offence.

The increasing blurring of distinctions between the local authorities, police, and private companies means that the distinctive mission of the local authority - in the provision of local public services and the representation of people locally - is undermined. The conflicted nature of the covid marshal is testimony to the conflicted nature of the current local authority, which has moved substantially towards a new enforcement role and yet retains a claim to representation and public service.

The local authority has a valuable and unique public service mission, to improve local areas and represent the wishes of local people. This mission still exists in many parts of local authorities, which explains the variable nature of the shift into enforcement.

## Recommendations

1. Publish national statistics of local authority enforcement activities. There is surprisingly little government or public scrutiny of local authority enforcement activities, with most areas simply not documented in official statistics. Therefore, we call for a review of the role of the local authority within policy spheres, and for central government to consider the impact of shifts in council enforcement function. We also call for greater transparency and scrutiny of the enforcement role of local authorities, with the publication of national statistics

on local authorities' issuing of penalties and legal orders.

2. Abolish 'pseudo-police' such as covid marshals. Those responsible for enforcing financial or criminal penalties should be publicly recognisable, with clear powers and functions and strict limits on the use of these powers. 'Semi-police', such as covid marshals or neighbourhood wardens, present a risk of duplicity and underhand use of power; they lack defined powers but are integrated into an enforcement complex and act as informers. Therefore, we suggest a redefining of these roles and a clear separation between enforcers and those with a public service or representative role.
3. Send all local authority fines income to the Treasury. There should be no financial incentive for local authorities to issue punishments. Ideally, these fines should go to the exchequer, and the local authority could be paid the costs of enforcement and service provision. Local authorities should not profit from punishment and should never be dependent upon punishment income in order to fund the delivery of key public services.
4. Prohibit the practice of contracting out punishment to private companies. Local authorities should avoid the use of private companies for the issuing of penalties. This restriction should be specified in law, rather than guidance, so it is a matter of legal principle rather than good practice.
5. Reform legal powers such as PSPOs and CPNs. Attempts to limit the use of PSPOs or CPNs with statutory guidance have proven unsuccessful, especially given limited legal appeal systems. Central government should create a proper and fitting legal context within which local authorities can exercise their powers, to ensure that these are exercised in the public interest, and respect long-standing legal principles such as due process and proportionality.
6. Local authorities should respond to the needs of their populations, rather than enacting external policy agendas. Wherever possible, local authorities should seek to represent the needs and wishes of their populations, rather than to enact external policy agendas in order to make the most of central government funding pots, as was the case with LTNs. Policies that affect people's local

environment should be subject to substantial consultation, in order to find the best course of action. It is only by responding to the wishes and needs of a local population that councils will be able to fulfil their public mission and make the best use of the public resources with which they are entrusted.

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## Note on FOI data

FOI requests were submitted to all 341 England and Wales local authorities, asking about enforcement in 2020. This included: CPNs and PSPO FPNs in 2020, LTNs created in 2020 and number of FPNs issued, number of covid wardens and their role, number of neighbourhood wardens and their role, number of FPNs issued to enforce covid business restrictions and their value, number of litter fines. 301 councils replied, although not all councils were able to supply all requested information. Requests were issued in January 2020; responses were received between January and May 2020, with most in February and March (the longer delays than usual were a result of covid pressures). The wide response period is unproblematic for most of the data, which concerns 2020: the only affected area is penalties for business restriction offences, where we asked for penalties 'to date', which means that data will cover different periods of time. However, this discrepancy is lessened by the fact that most penalties concern hospitality venues and were issued in autumn/winter 2020, since these venues were closed in winter/spring 2021.