

COVID-19: Assessing the value of an Enforcement based approach to Covid.

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Context and purpose

On Sunday 20th September the U.K. Government announced it was introducing a more powerful framework of punishment for those breaching coronavirus regulations. The new legal duty requires people to self-isolate if they test positive for coronavirus or are traced as a close contact. Fines will initially start at £1,000 rising to £10,000 for repeat offenders, and for the most egregious breaches. This signals a significant shift toward enforcement on the part of Government and police. This paper seeks to evaluate the theory and evidence relating to police enforcement to address two general questions.

1. How does enforcement impact on the likelihood of people adopting the behaviours required to control transmission? What evidence is there for regulation and enforcement delivering positive health outcomes elsewhere?
2. What can behavioural understanding tell us about how enforcement can be targeted to be most effective, whilst protecting equity and social cohesion? Is it more likely that police enforcement or other kinds of enforcement would be most effective, and how would this vary in different settings?

Background research and theory: the importance of legitimacy and norms

Evidence from other types of public health emergency intervention - CBRN mass decontamination - suggests that coercion can have a 'backfire effect', leading to resistance rather than public adherence and engagement.¹ Research on compliance with public health guidance during this pandemic suggests adherence is better predicted by a sense of '*we're all in it together*' rather than a fear of punishment. Indeed, while police enforcement clearly has deterrent effects, research suggests that this is chiefly because it sends important 'normative' signals to the public about expected behaviours, who subsequently adhere through self-regulation because they identify with what they see as legitimate and shared goals².

Far from a lack of willingness to adhere to guidance, the factors known to be associated with non-adherence have included decreased perceived effectiveness of government 'lockdown' measures, decreased perceived severity of COVID-19 (in terms of case fatality rates) and decreased estimates of how many other people are following lockdown rules. Moreover, receiving help and assistance was associated with better adherence.³ A systematic review of evidence suggests that the main factors which influenced or were associated with adherence to the regulations have been the knowledge people possess about the nature of the disease and the surrounding quarantine procedure, their understanding of social norms, the perceived benefits of quarantine in relationship to the perceived risk of the disease, as well as practical issues such as running out of supplies or the financial consequences of being out of work.⁴

Research on the deterrence effect of enforcement relating to general crime is highly relevant. It is important to recognise the contrast between instrumental compliance – generated through applying punishments – and normative compliance – generated through creating underlying

¹ <https://www.emerald.com/insight/content/doi/10.1108/JES-06-2012-0026/full/html>;
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6558061/>

² <https://blogs.lse.ac.uk/politicsandpolicy/lockdown-social-norms/> and <https://blogs.lse.ac.uk/covid19/2020/05/01/what-makes-britons-trust-police-to-enforce-the-lockdown-fairly/>

³ <https://www.sciencedirect.com/science/article/pii/S003335062030319X>

⁴ <https://www.sciencedirect.com/science/article/pii/S0033350620300718?via%3Dihub>

motivation to comply with the law because the regulations are perceived by individuals and groups to be legitimate. There is also ‘habitual compliance’ – breaking the law is simply not part of one’s daily routine – and ‘situational compliance’ – conforming to the law because of physical barriers. It is largely understood that ‘enforcement’ focuses predominantly on instrumental compliance, whereas the research evidence and theory would suggest that situational factors and legitimacy beliefs have the strongest effects on compliance behaviours.⁵

In terms of absolute and general deterrence,ⁱ research suggests that it is the speed and certainty of enforcement that has a greater effect than does its severity. For example, speed cameras tend to change behaviour – albeit temporarily – because enforcement is automatic.⁶ While evidence on focused deterrence interventions suggest a ‘carrot and stick’ approach, can be effective, this is when they targeted at prolific offenders⁷. Indeed, research demonstrates the deterrent (or instrumental) effect of policing has a weaker effect than self-regulation and peer associations⁸. As a historical example, the large shift towards pro-social public behaviour in relationship to drink driving was brought about predominantly by a combination of a change in societal norms and emergent self-regulation. Policing was important but because it supported these background drivers through additional but targeted enforcement from the police in violation hotspots.⁹

Contemporary research evidence: national and international comparisons.

Contemporary data on the issue of police enforcement if Covid-related regulations is very limited at present. Nonetheless, the Institute of Criminology at the University of Cambridge is currently leading a global collaborative survey of police enforcement. Whilst this analysis is not yet complete or published, preliminary analysis suggests there is no relationship between enforcement levels and health outcomes. Rather, the nature and severity of police enforcement and their supporting regulation models seem to be a product of national culture rather than a rational targeted response to health risks. This pattern even seems evident at local levels within the UK. It is worth highlighting that NPCC data¹⁰ shows that some police forces that used FPNs in high rates to enforce the national lockdown have since had local lockdowns introduced (e.g. Lancashire), which also suggests that enforcement is not central to preventing transmission.

In addition, the WHO have recently begun an interview-based study with senior police officers across the globe (but chiefly in Europe, Africa and South America) and with Interpol, to help assess the impact of police enforcement on Covid-19 transmission rates. Again, this research has not yet been published, but preliminary analysis by Professor Karl Roberts - Consultant in Health Security and Policing at the WHO – suggests that high levels of enforcement and high regulation strategies effect little if any reduction upon transmission rates. Instead, their data suggests that rather than enforcing compliance, the primary route to reduced transmission is through generating public adherence. This is best achieved through a) generating trust

⁵ <http://www.justicereparatrice.org/www.restorativejustice.org/articlesdb/articles/1170> & https://www.researchgate.net/publication/327657446_Procedural_justice_perceptions_legitimacy_beliefs_and_compliance_with_the_law_a_meta-analysis

⁶ <https://whatworks.college.police.uk/About/News/Pages/Speed-cameras.aspx>

⁷ <https://onlinelibrary.wiley.com/doi/full/10.1002/cl2.1051>

⁸ <https://whatworks.college.police.uk/Research/overview/Pages/best.aspx>

⁹ <https://whatworks.college.police.uk/toolkit/Pages/Intervention.aspx?InterventionID=11>

¹⁰ <https://cdn.prgloo.com/media/download/608327f7e62a4432a59ce05c5c1554bc>

and legitimacy in government and other institutions such as the police and b) promoting willingness within local communities to work together in the common good. The WHO data also suggests that public adherence can be undermined for a variety of reasons but most commonly by excessively draconian enforcement approaches. This results in certain groups being scapegoated or overpoliced and regimes of over-regulation that are perceived to be unfair. Moreover, where there is procedural injustice and widespread mistrust between police and the public, compliance with Covid-19 regulations has been low and that adherence has been harder to achieve within individually focussed cultures where issues of 'personal liberty' override any sense of community. In conclusion, it is suggested that rather than focusing on enforcement, police-work should be locally nuanced, supportive of communities, and prepared to negotiate or 'co-produce' health outcomes with community members.¹¹

Quantitative data on health outcomes in European countries tends to support this analysis. Indeed, some countries which have taken a strict enforcement approach have seen very poor outcomes. While most European countries are experiencing an upturn in cases, the picture varies widely. In Spain, the cumulative average for the 14 days prior to 19 September was 300.5 per 100,000 population and in France 178.4. Both countries have taken a stringent approach to enforcement. By contrast, in Germany, which has a medium approach to enforcement (varying considerably between states), the cumulative average is 25.4 cases; in Sweden, which has taken the most liberal approach, the figure is 31 per 100,000.¹²

The lack of any clear relationship between enforcement and outcomes can also be seen by examining trends within a particular country. In France, for example, the recent upsurge in Covid-19 cases has been steep despite tightening of restrictions and strong enforcement. In mid-August, the French government made face-masks mandatory in many workplaces, farmers' markets and some neighbourhoods, in addition to existing regulations for inside all public buildings and public transport. On 16 August, French riot-police were deployed in Marseille to help enforce the new regulations in the wake of a significant public backlash.¹³ At the end of August, in Paris and surrounding areas, the wearing of facemasks was made compulsory in all public areas, including out of doors.¹⁴

However, strong enforcement made little impact on the spread of the disease in France. On 13 September, France recorded its biggest daily rise since the pandemic began (over 10,000 cases) and the figure is now in excess of 13,000 (19 September) – nearly twice as high as the peak in early April.¹⁵ In Marseille, admissions to hospital with Covid-19 are said to be close to saturation point.¹⁶

The most striking differences exist not between countries with different approaches to enforcement, but between those that implemented mass testing and contact tracing early and effectively and those which did not. The epidemiological situation in Germany provides a useful illustration of this. There, the trend in cases following the easing of lockdown has been very gentle and undulating. This stands in stark contrast to the epidemiological profiles of France and Spain, where the rise in cases has been sharp and on par with or exceeding the first peak of the pandemic. The latter countries were relatively late in adopting mass testing.

¹¹ <https://www.who.int/news-room/facts-in-pictures/detail/women-join-hands-to-oust-ebola-from-drc>

¹² <https://www.ecdc.europa.eu/en/cases-2019-ncov-eueea>

¹³ <https://www.euronews.com/2020/08/17/coronavirus-france-sends-in-riot-police-to-enforce-face-mask-rules-in-marseille>

¹⁴ <https://www.bbc.co.uk/news/world-europe-53934952>

¹⁵ <https://news.sky.com/story/coronavirus-france-reports-highest-number-of-daily-covid-cases-since-pandemic-began-12070399>

¹⁶ <https://www.bbc.co.uk/news/world-europe-54151281>

The key distinction appears to be not the proportion of tests within the population (broadly similar in France and Germany) but the rapidity with which results are known (an average of two and a half days in Germany; in France, 70% of tests miss the 36-hour target).¹⁷

It is also important to note that other behaviours which may contribute to controlling Covid-19 are not necessarily related to enforcement. For example, ICJU data indicates that wearing of facemasks has increased substantially in all countries in which the wearing of masks was rare prior to the pandemic, regardless of the level of enforcement.¹⁸ In other words, positive behavioural change does not require enforcement.

Conclusions and recommendations

How does enforcement impact on the likelihood of people adopting the behaviours required to control transmission? What evidence is there for regulation and enforcement delivering positive health outcomes elsewhere?

- Research shows that there is little if any evidence that enforcement improves health outcomes in relation to Covid-19. Instead, it appears that the relationship between enforcement and health outcomes is highly complex, being affected by a variety of factors including public perceptions of the legitimacy of existing relationships between the public and police and levels of trust in government. It also suggests that more effective mechanisms to promote adherence are through empowering forms of community-based support. Most historical studies of epidemics draw the same conclusion.
- Evidence seems to suggest that test and trace is the most powerful weapon in controlling transmission. Therefore, one particular problem with an increasing emphasis on enforcement is that it could undermine people's willingness to seek out a test if they become symptomatic. This is because it could subsequently lead them to be fined for a violation that they can otherwise avoid (i.e. if it has not been confirmed by testing that they are actually carrying the virus). People may also be more reluctant to share contact information because of fear that this will expose others in their community to similar harsh punishments.
- The management of Covid-19 is a long-term problem, so it is vital to maintain public support, particularly among those communities most exposed to the virus (e.g. poor and ethnically mixed). Throughout the period of this pandemic there will be a cumulative set of increasingly difficult circumstances that emerge such as high unemployment, economic decline and likely disruptions to food and other supplies from EU exit and wider world shortages.
- Both research and theory suggest that community perceptions of the legitimacy of control measures and their enforcement is vital to maintaining public support. Legitimacy is also necessary in securing the social cohesion, community support and stability which research has shown to be linked to effective outcomes.

What can behavioural understanding tell us about how enforcement can be targeted to be most effective, whilst protecting equity and social cohesion? Is it more likely that police enforcement or other kinds of enforcement would be most effective, and how would this vary in different settings?

- Research suggests that more targeted and sustained enforcement would be required to have any deterrent effect on repeat offenders, but there are questions about the

¹⁷ <https://www.bbc.co.uk/news/54181291>

¹⁸ ICJU, 'Communication of and compliance with non-pharmaceutical interventions, 18 September 2020, ICJU(20)101, p.19.

capacity of the police to enforce the law to a level that would affect repeat offenders' risk perceptions.

- It is unclear how such enforcement would be applied other than in an intervention analogous to stop-and-search. Research on stop-and-search indicates it has little effect and can amplify serious conflict (e.g. English riots, 2011). This is especially likely to occur in areas that already have high levels of stop-and-search or where there is perceived ethnic discrimination in policing. At the same time, if regulations are not enforced to a sufficient extent, there is evidence that offenders are more likely to reoffend if they 'get away with it' the first time around.¹⁹ This will diminish public confidence in the police and in the approach taken to deal with the epidemic. In other words, enforcement is a high stakes game.
- A punitive enforcement-centred approach to controlling Covid-19 could be counter-productive, particularly when it is targeted at some communities and not others, because it risks aggravating already negative relationships between the police and the public. Certain populations already feel that they are unfairly discriminated against; or they may perceive partiality or weakness in the ways in which police enforce the law in other communities. In other words, placing more emphasis on enforcement serves to highlight and aggravate inconsistencies which may already be apparent. The same may be true at a national level if the public perceive inconsistencies in respect of enforcement; e.g. between the enforcement of Covid-19 and other types of regulation.²⁰
- While enforcement is inevitably part of a comprehensive framework of measures there needs to be a nuanced and harm-based approach to targeting. For example, where there are high-level harms (infected people with a positive test refusing to abide by quarantine rules), public support for enforcement is likely to be strong (e.g. deliberate spreading of Covid-19 by church members in South Korea; the recent case of the 'super-spreader' pub crawl in Bolton). In contrast, where there are low-level harms (e.g. two groups of 6 stopping for a distanced conversation between friends), enforcement is likely to be unpopular and counterproductive. We therefore propose that a harm-based protocol for enforcement of breaches of Covid-19 regulations be developed. The Security and Policing sub-group could assist with this.

Increased enforcement raises the obvious question of "to what end?". How many times would a significant escalation of national (or even local) enforcement of restrictions be tolerated once it becomes widely understood that such measures cannot actually be enforced and have no more than a temporary effect. An even more serious problem could arise from the perceived failure of such measures in the short term. In other words, if a significant escalation of nationwide restrictions combined with draconian enforcement did not arrest transmission, even temporarily, would the public lose faith in the government's approach entirely? What measures would then command public support? A significant escalation in national enforcement focused restrictions may be a card that can only be played once.

Research and theory on enforcement indicate that to improve public support the emphasis should be less on enforcement and more on scaffolding locally based public health outcomes²¹. Where locally focused restrictions are required, officials should provide a timely and

¹⁹https://www.researchgate.net/publication/322807848_Does_Stop_and_Search_Deter_Crime_Evidence_from_Ten_Years_of_London-Wide_Data

²⁰ <https://www.dailymail.co.uk/news/article-8744229/Birmingham-police-cruise-Covid-car-snare-social-distance-flouters-zero.html>

²¹ Lucas TCD, Davis EL, Ayabina D, Borlase A, Crellen T, Pi L, Medley GF, Yardley L, Klepac P, Gog J, Hollingsworth TD. Engagement and adherence trade-offs for SARS-CoV-2 contact tracing. MedRxiv. doi.org/10.1101/2020.08.20.20178558

clear rationale for quarantine and information about protocols; emphasise social norms to encourage altruistic behaviour; increase the perceived benefit that engaging in quarantine will have on public health; and ensure that sufficient supplies of food, medication and other essentials are provided.

ⁱ This body of work distinguishes between general deterrence (which affects the general public regardless of their offending propensity) and specific deterrence (which affects prior offenders). Covid related regulations are designed to relate primarily to the former. Moreover, there are differences in effects between absolute deterrence – the existence of the police and criminal justice system - and marginal deterrence – which results from specific changes to policing and enforcement (e.g. more or fewer FPNs issued).