

Use of Police Powers Community Scrutiny Panel

Chaired by the Police and Crime Commissioner

4 May 2020

Freedom of Information: Open

Devon and Cornwall Police's use of Covid-19 Powers

Overall conclusion of the panel

Based on the information it considered in accordance with the scope of this scrutiny activity, the panel was assured that in general terms Devon and Cornwall Police has used its new Covid-19 powers legitimately, appropriately and proportionally.

Reflections of the panel

Legislation, regulations and guidance

- The Panel heard that the police's new powers had come from the Secretary of State for Health and not the Home Secretary and that the police were called upon to Engage, Explain and Encourage the public, with enforcement being a 'last resort'. The panel recognised that from the public's perspective the police are usually there to prevent and respond to crime, and that these powers were different in that they are needed to protect public health and the National Health Service (NHS).
- The panel considered legislation, regulations, and guidance in relation to Covid-19 powers of the police, and reflected that some national guidance and statements had resulted in confusion, particularly as the role of the police is to enforce law (and associated legal regulations).
- Based on the information considered, the panel better understood the Chief Constable's public stance on the National Police Chiefs Council (NPCC) guidance, and reflected that whilst the national guidance was intended to provide assistance and clarity it had created confusion and potential operational challenges for Devon and Cornwall Police (and other Forces with areas of coastline / outstanding natural beauty). The panel considered this issue specifically in relation to the guidance by the NPCC that 'Driving to countryside and walking (where far more time is spent walking than driving) would be 'likely to be reasonable'.
- In general the panel was not aware that Devon and Cornwall Police had not been alone in its comments relating to the National Police Chief's Council guidance, and it took even further assurance from this information, along with the knowledge that the PCC had supported a complaint to the NPCC by the National Rural Crime Network.
- The panel noted that whilst guidance can be used to help *guide* the public and police officers decision making, 'guidance' is *not* law and as such it is not enforceable by the police. The panel reflected however that if/when there is not a clear understanding between guidance and law, there is a risk that some members of the public will perceive the role of the police to enforce guidance as written. The panel understood this emphasised the role of the police to Engage, Explain and Encourage, and only as a last resort to Enforce. The panel recognised that the need for clear communication was more important in these exceptional circumstances.

The issuing of penalty notices

- The panel considered the number of Covid-19 penalties issued by the Force, and along with other contextual information (including comparisons with other areas), was assured that the overall use of the powers appeared proportionate. The panel considered demographic data for the issuing of penalty notices for younger people and recognised that it was reflective of the national picture.
- The panel recognised that because the use of the police's new powers was happening in 'real time' the extensive range of data that the panel would usually scrutinise to support this type of activity was not

available. The panel noted that national ACRO data showed that the Force had issued more penalty notices than many others, including forces with rural areas or holiday destinations, but considered some of the factors and context associated with that data.

- Based on information reviewed, the panel was assured that there is some level of internal scrutiny within the Force in relation to penalty notices being issued.
- When considering the data the panel sought clarity in terms of the terminology used by the Force in its recording of 'offences' for what would be non-crimes. Whilst the panel understood the assurance given around data recording requirements and IT systems, the panel did reflect this as an issue for the Force to be mindful of.
- The panel observed that the majority of the public are law abiding and during Covid-19, citizens who would never usually have direct contact with the police, are now in some cases being stopped and spoken with, and in some cases fined. The panel recognised that it was natural that this was likely to lead to some tension.
- The panel recognised that officers had training for example on stop and search but Covid-19 legislation was requiring officers to exercise more discretion and judgement (although officers had received some form of training on the new powers). The panel appreciated the difficult task officers had been called upon to do.
- The panel was informed that Police Community Support Officers can issue penalties for breaches of Covid-19 regulations and the commissioner queried whether it was the Chief Constable who delegated those powers or if it was a government delegation, and questioned whether other force areas all had the same approach to PCSOs.

Public perception and communications

- The panel observed that during the pandemic the Force had, in terms of public perception, a difficult task because different people want and expect different things from the police. For some residents they want the police to stop others from outside of Devon, Cornwall and the Isles of Scilly from coming to the area. Others want the police to take enforcement action against neighbours who appear to be leaving their home unnecessarily or 'too often'. The officers the panel spoke with (who are also citizens) were adamant that they wanted the police to protect the NHS and reduce the spread of Covid-19 in our communities. The panel recognised that in amongst that multitude of perceptions and expectations was the police's duty to enforce the law as enacted. The Panel did however agree that it should examine public communications in these exceptional circumstances, and the commissioner undertook to facilitate that exercise.
- The panel considered relevant complaints to the Force (relatively low in number), relevant correspondence to the Police and Crime Commissioner (which had been analysed in detail), a social media poll carried out by the commissioner, and the results of the Force's 'Pulse Survey' to establish a view on the public's perception of the Force's use of its new powers. With respect to those individuals who felt a genuine cause to complain or felt dissatisfied with the Force's approach, based on the information reviewed the panel was assured that current public opinion overwhelmingly supported Devon and Cornwall Police's approach to using the new powers.
- The panel recognise that policing in our society is based on the principle of public consent, and that a fundamental principle of policing is 'that the police are the public and the public are the police'. With this understanding, the panel considered the views of frontline police officers and the public via complaints to the Force during Covid-19 which both referenced how the public perceive the Force when frontline officers are either a) not social distancing and/or b) have no (or perceived to be inadequate) personal protective equipment i.e. facemasks. The panel was informed by police officers that the public look to the police as the 'standard for behaviour' and that police legitimacy comes from a shared and consistent application of the law and, during the pandemic, guidance (i.e. it must not be perceived to be one rule for the police and another for the public).
- The panel recognised that the legitimacy of the police relates to the views and experiences of partner organisations as well as the public, and heard the view expressed by frontline officers that on occasion, NHS staff had prevented officers from entering premises or dealing with an individual because they were wearing insufficient PPE or did not have suitable PPE.

- Due to a range of information considered (including penalties issued and complaints) when compared with a 'chronology of evolution) provided by Ch/Supt Matthew Longman, the panel was assured that the Force's approach to using its new powers and communicating with the public had adapted and evolved throughout the pandemic. The panel recognised that this demonstrated an ability of the Force as an organisation to listen, learn and adapt.
- The panel recognises that the commissioner's online 'poll' and the Force's 'pulse' survey were carried out at pace and under challenging circumstances, so are assured that these activities delivered robust results. The panel's only reflection (and not a criticism) on these surveys is that in future both organisations could explore the use of other techniques (such as Facebook advertising as one example) to encourage an even further representative sample of respondents.
- The panel reflected whether or not the Force may wish to consider exploring 'Explain' further in the next stage of its communications as the public may not fully understand some of the broader reasoning of the 'stay at home' message in protecting the NHS. By this the panel considered not just explaining what the public can and cannot do to reduce the risk of spreading the virus, but for example if a person is out unnecessarily in their car and they have a road traffic collision, that places a significant demand on the NHS and other blue light services.
- When watching the body worn video, officers engaging with the public had been using the phrase 'government guidelines'. The panel reflected that this could make it unclear if the police were going beyond their legal powers and trying to enforce 'guidelines' which could cause confusion and weaken legitimacy, when in fact they were (rightly) enforcing the legal regulations under the Coronavirus Act 2020. The distinction in this type of language is important when engaging with the public.

Officers' views

- The panel completed a workshop with frontline officers. The panel considered the results of the workshop to be both helpful and profound and would encourage the Chief Constable to use the results as he deems appropriate.

Additional panel reflection

- The panel recognised that the pandemic whilst devastating, had created a moment in time where police officers had the capacity to reconnect with their communities. The panel reflected that there was an opportunity for policing to consider whether all previous practices needed to be returned to after the pandemic, or if some things could be done differently.

Information considered by the panel

This panel was established with haste (within approximately 10 working days) to ensure that this issue could be considered in a timely manner which was responsive to a pandemic situation. As such the information considered by the panel was streamlined but included: Policing the Pandemic: the Act, the Regulations and guidance (National Police Chiefs Council and College of Policing); Covid-19 – Policing brief in response to Coronavirus Government Legislation dated 31.03.2020 (National Police Chiefs Council and College of Policing); What constitutes a reasonable excuse to leave the place where you live (National Police Chiefs Council and College of Policing); The health protection (coronavirus, restrictions) regulations 2020 and the lockdown restrictions Joint Committee on Human Rights Chair's Briefing Paper dated 8 April 2020; Home Office preparedness for Covid-19 (Coronavirus): Policing (Home Affairs Select Committee: Published 17 April 2020); Enforcement Performance Dashboard (Devon and Cornwall Police); Thematic analysis of Covid-19 email correspondence to the Office of the Police and Crime Commissioner – April 2020; A brief exploration into the use of fixed penalty notices in England and Wales during Covid-19 (Office of the Police and Crime Commissioner); Frontline Officer Workshop; Analysis of trends relating to Covid-19 enforcement notices issued in England (ACRO 28 April 2020); Sample penalties selected at random (Devon and Cornwall Police); Body Worn Video (audio only); and panel members own individual desk based research.

Thanks to the panel

The panel is recognised as a group of volunteers / members of the public who give their time and commitment to support the commissioner's scrutiny. Our sincere thanks go to each panel member for their energy, commitment and insight.

More about the panel

To find out more about the Use of Police Powers Community Scrutiny Panel and its work please visit the Office of the Police and Crime Commissioner website at www.devonandcornwall-pcc.gov.uk/about-us/scrutiny/scrutiny-meetings-and-documents/.

Thanks to the Force

The panel recognises the work of the Force in working at short notice to ensure that the panel had sufficient information in order to complete this scrutiny activity successfully. The panel also thank all those officers who contributed to the 'frontline officer workshop' for their time and candour.