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# Data Report on Police Charges Reported to the Crown Office and Procurator Fiscal Service under the Coronavirus Regulations: March 2020 to June 2021

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## Acknowledgements

The analysis contained in this report was based on data that were provided by the Crown Office and Procurator Fiscal Service (COPFS) to the Scottish Government in June 2021, and were kindly shared with the IAG to support its scrutiny role. Acknowledgements and thanks are extended to Fiona Roberts, Statistician in the Management Information Unit of COPFS, who provided the data and reviewed the contents of the paper for accuracy. While this report was produced to support the scrutiny role of the IAG, the views expressed do not necessarily reflect those of IAG members, and all opinions, interpretations of the data and errors are the responsibility of the author.

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## Executive Summary

- This data report provides information on all charges reported by Police Scotland to the Crown Office and Procurator Fiscal Service (COPFS) under the Coronavirus Regulations between 26 March 2020 and 30 June 2021.
- Police Scotland reported 2,221 charges under the Coronavirus Regulations to the COPFS.
- The vast majority of charges were reported under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 introduced on 27<sup>th</sup> March or the Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 introduced on 2<sup>nd</sup> November.
- Local Regulations started coming into force in August 2020, and from November onwards became the predominant underpinning legislation for all charges.
- The number of charges reported to COPFS equates to an eighth of all police encounters that led to enforcement and represents a very small minority of all policing activity during the pandemic.
- These data suggest that the policing response has been effective in keeping those who did not comply with the Coronavirus Regulations out of the prosecution system.
- The overall pattern of enforcement and charges to COPFS indicates a strong and consistent relationship between police use of enforcement and charges to COPFS over time.
- Just under half of all charges resulted in a decision to take court proceedings, although they were around five times more likely to result in Summary than Solemn proceedings (i.e. they were at the less serious end of the spectrum).
- A third of all charges resulted in a decision to use a non-court disposal and a fifth were still awaiting a decision about how to proceed.
- Summary court cases were far more likely to have actually proceeded compared to Solemn cases, although that may well be due to the complexity and timing of the Solemn cases.
- Very few charges resulted in a decision of no further action, which provides assurance that the vast majority passed the threshold for taking prosecutorial action.
- Where a non-court disposal had been used, the most common was a Fiscal Fine of which the majority had been paid. Where diversion had been used, in most cases this was still ongoing.
- Only one in ten charges resulting in a direct measure (and one in forty of all charges) resulted in a referral to the Children's Reporter, although the age of accused persons was not known.
- Comparing first marking data before and after the start of the pandemic suggested that there was only a slight change in the overall profile of COPFS decision making.
- There was a slight drop in the proportion of accused who were proceeded against in court, which was most likely due to an overall reduction in markings for the Sheriff and JP court.
- Comparing the profile of charges under the Coronavirus Regulations with all first markings over the same period of time also showed only slight differences in the profile of decision making.
- The proportion of charges that resulted in court proceedings was slightly higher than that for the first markings; whereas, the proportion of charges resulting in no action was much lower.
- The overall similarities in the profile of COPFS decision making provides no evidence that different decisions were being taken with regards to Coronavirus-related charges.
- The very small proportion of charges resulting in no action also provides evidence that officers were reporting very few charges that did not meet the threshold for prosecutorial disposal.
- From a human rights perspective, these data provide assurance that efforts were made by Police Scotland to deal in a fair and proportionate way with the majority of people in breach of the Coronavirus legislation and that prosecutorial decision making was broadly in line with expectation.

# 1 Introduction

## 1.1 Content of this report

This data report was produced to assist and inform the deliberations of the Independent Advisory Group ('the IAG') on Police Use of Temporary Powers related to the Coronavirus Crisis. The IAG was established by the Scottish Police Authority in April 2020 to provide scrutiny around the role of policing during the course of the pandemic under the chairmanship of John Scott QC. The report provides information on the number of charges that were reported by Police Scotland to the Crown Office and Procurator Fiscal Service (COPFS) under the Coronavirus Regulations between 26th March 2020 and 30th June 2021. It also summarises the outcome of these charges in terms of whether the charges were dealt with via court or non-court disposals.

Although prosecutorial decision making was not within the Terms of Reference of the IAG<sup>1</sup>, the report contributes to scrutiny around 'proportionality' as it provides information on the extent to which enforcement action taken by the police in relation to breaches of the Coronavirus Regulations went beyond the use of police direct measures (i.e. a Fixed Penalty Notice).

## 1.2 Background context

Under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (hereafter referred to as the Regulations), police officers in Scotland were given the power to enforce the law by means of offering someone a Fixed Penalty Notice (FPN) or by arresting and charging them, in which case they would typically be reported to the Crown Office and Procurator Fiscal Service (COPFS). However, it is important to bear in mind the discretionary nature of police officer decision making when reporting a case to the COPFS. A member of the public may refuse to accept the offer of a police FPN, at which point the officer can decide whether or not to report them to the COPFS. In addition, police officers are subject to guidelines issued by the Lord Advocate in respect of the operation of the FPN scheme.<sup>2</sup> While the Regulations allow for an individual to be issued up to five FPNs (from a starting value of £60, and then doubling each time to a maximum value of £960), the Lord Advocate has stipulated a maximum of four. However, even when an officer gets to the fourth fine, they still have a choice as to whether to issue a FPN or report it to the COPFS. They may choose to report it without issuing a FPN (because they think it is serious enough on its own terms or because the guidelines require it) or they may offer a FPN. Having issued an FPN, they may still have to report it if it is refused.

## 2 Number of charges reported to COPFS by legislative statute

A total of 2,221 charges under the Coronavirus Regulations were reported by Police Scotland to the COPFS between 26<sup>th</sup> March 2020 and 30<sup>th</sup> June 2021. Table 1 provides a breakdown of the number of charges reported to COPFS under the relevant legal statute, by the date of offence.<sup>3</sup>

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<sup>1</sup> For details on the Terms of Reference of the IAG see: <https://www.spa.police.uk/spa-media/5gxhinni/tor-final-27-4-20.pdf>

<sup>2</sup> [Lord Advocates Guidelines on the Operation of the FPN Scheme issued November 2020](#).

<sup>3</sup> Data were also provided by date of report, but it was felt that data of offence was more in keeping with Police Scotland's CVI data.

Table 1: Legal statute for charges reported to the COPFS, March 2020 to June 2021

Legal statute	Date of implementation	Number of charges	Number as a % of total
The Coronavirus Act 2020	25 Mar 2020	48	2.2%
The Health Protection (Coronavirus) (Restrictions)(Scotland) Regulations 2020	27 Mar 2020	847	38.1%
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020	8 Jun 2020	36	1.6%
The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020	5 Aug 2020	1	<0.1%
The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020	28 Aug 2020	168	7.6%
The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020	14 Sept 2020	101	4.5%
The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temp) Regulations 2020	9 Oct 2020	152	6.8%
The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020	2 Nov 2020	868	39.1%
Total		2,221	100

On 25<sup>th</sup> March 2020, the Coronavirus Act received Royal Assent and created the legal basis for the lockdown of people and premises as a result of the pandemic in the UK. Only 2.2% of all charges to the COPFS were reported under the Act. Two days later, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 were laid before the Scottish Parliament and came into force the same day. Almost two in five (38.1%) of all charges were reported to the COPFS under these Regulations. Most (90.0%) charges were in relation to failure to comply with the Regulations as stipulated, while the remainder related to obstructing a person carrying out a function under the Coronavirus Regulations (1.9%) or contravening a direction, instruction or prohibition notice under the Coronavirus Regulations (8.1%).

In June 2020, the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 were introduced placing restrictions on people arriving into Scotland from outside the common travel area. They were subsequently amended to take account of testing requirements, following quarantine restrictions, and staying in designated accommodation. Overall, only 1.6% of all charges to COPFS were under these Regulations.

Following concerns about the spread of the Coronavirus in the City of Aberdeen, the Scottish Government placed the city into lockdown on 5<sup>th</sup> August and introduced the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations. However, only one charge was ever reported to the COPFS under this statute. Later that month, the Scottish Government made provision for all local authorities to take direct measures relating to restrictions on the opening of premises, organisation of events and travel to specific localities. This was legislated through the Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020. In total, 7.6% of all charges were reported under these Regulations.

Rising infection rates in September 2020 led to the introduction of the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 which placed new stricter limits on the size of public and private gatherings (commonly known as the 'rule of six'), use of face coverings within

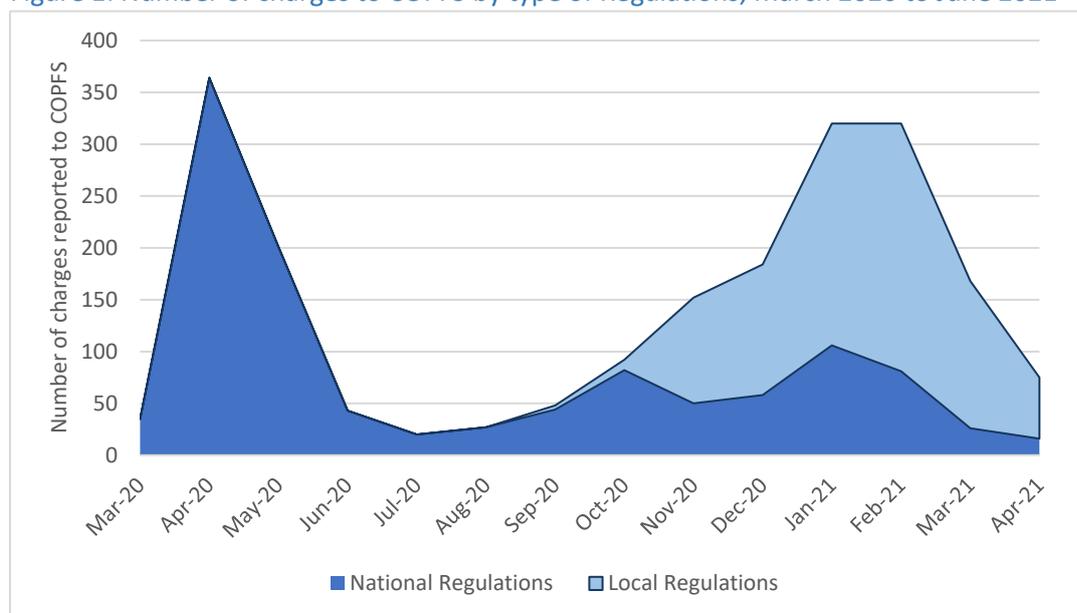
hospitality settings, and attendance at weddings, civil partnerships and funerals. Just under one in twenty (4.5%) of all charges to COPFS was in relation to this legislation.

Further restrictions relating to the timing and provision of hospitality, sports and entertainment services were introduced under the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temp) Regulations 2020. These measures were divided, with stricter restrictions being put in place on 18 Local Authorities within the central belt of Scotland. Just over one in twenty (6.8%) of all charges to COPFS was in relation to this legislation.

Finally, on 2<sup>nd</sup> November the Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 came into force. These implemented a new, more targeted, levels based approach to tackling the spread of the Coronavirus and created five different levels (or tiers) into which different Local Authorities could be placed according to the perceived level of risk. They also required the closure of certain businesses and required hospitality businesses to collect personal information from customers. Around two in five (39.1%) of all charges were recorded under this legislation. The vast majority of these charges (96.3%) were a result of failure to comply with the Regulations, while the remainder were a result of obstructing a person carrying out a function (0.8%) or contravening a direction, instruction or prohibition notice (2.9%).

There legislation implemented in respect of the Coronavirus started with a clear focus on national restrictions, then changed emphasis over time to introduce measures at a more localised level. Figure 1 shows the temporal change in the type of Coronavirus Regulations under which charges were reported to COPFS. There was a peak in charges reported under the national Regulations during the initial lockdown, in April and May 2020. While national Regulations continued to form the basis of some charges, they did so to a lesser extent as time went on. Although local Regulations started coming into force in August, it was not until November that there was an increase in charges under these Regulations. Nevertheless, it is clear that the majority of charges reported for prosecutorial decision making during the second national lockdown was based on these local restrictions.

Figure 1: Number of charges to COPFS by type of Regulations, March 2020 to June 2021<sup>4</sup>



<sup>4</sup> Note that month refers to date of offence and not date of reporting.

### 3 Comparing charges to COPFS with enforcement activity

Data was examined to see whether the pattern of reporting charges to the COPFS aligned with Police Scotland's enforcement activity more generally. This involved comparing the trend in the number of charges reported to the COPFS with the trend in the number of incidents of enforcement (i.e. FPNs issued and arrests) as recorded on the Coronavirus Intervention (CVI) system. The CVI system was introduced by Police Scotland to collect information on encounters with members of the public in relation to the use of the Coronavirus Regulations. As noted in other reports, the CVI system does not provide a completely accurate count of all police activity in relation to the Coronavirus; however, does provide an accurate account of the trends in policing activity (as compared to FPN data).<sup>5</sup>

Between 26<sup>th</sup> March and 30<sup>th</sup> June 2021, there were 17,006 FPNs and 972 arrests recorded on the CVI system. This represents a total of 17,978 interventions across Scotland that involved the use of enforcement under the Regulations. The number of charges reported to COPFS is equivalent to only 12.4% - or one eighth - of the recorded number of enforcements. When account is also taken of the much larger number of non-enforcement interventions recorded by Police Scotland over this period (which totalled just under 130,000), it is clear that the number of cases (and, therefore, individuals) who were charged as a result of breaches of the Coronavirus Act and associated Regulations was extremely small in relative terms. This provides good evidence that Police Scotland's use of the four Es has provided an effective method of keeping most of those who failed to comply with Coronavirus legislation out of the prosecution system.

Despite a large difference in numbers, the overall pattern of enforcement and charges to COPFS was very similar. Figure 2 shows that the monthly trend in the number of enforcements (FPNs and arrests) recorded by Police Scotland on the CVI system was a very close match to the trend in the number of charges reported to COPFS (based on the date of the offence rather than date of report). There were similar peaks in activity in April 2020 and again in January/February 2021, which suggest that increases in police enforcement activity had a proportionate knock-on effect on charges to the COPFS. There was a slight peak in police enforcement in November 2020 that was not reflected in the COPFS data. Police bulletins suggest that this was mainly explained by a spike in cases involving parties and gatherings of younger people in early November (potentially related to Halloween and Bonfire night)<sup>6</sup>, so it is positive to note that this did not result in an increased number of charges to COPFS.

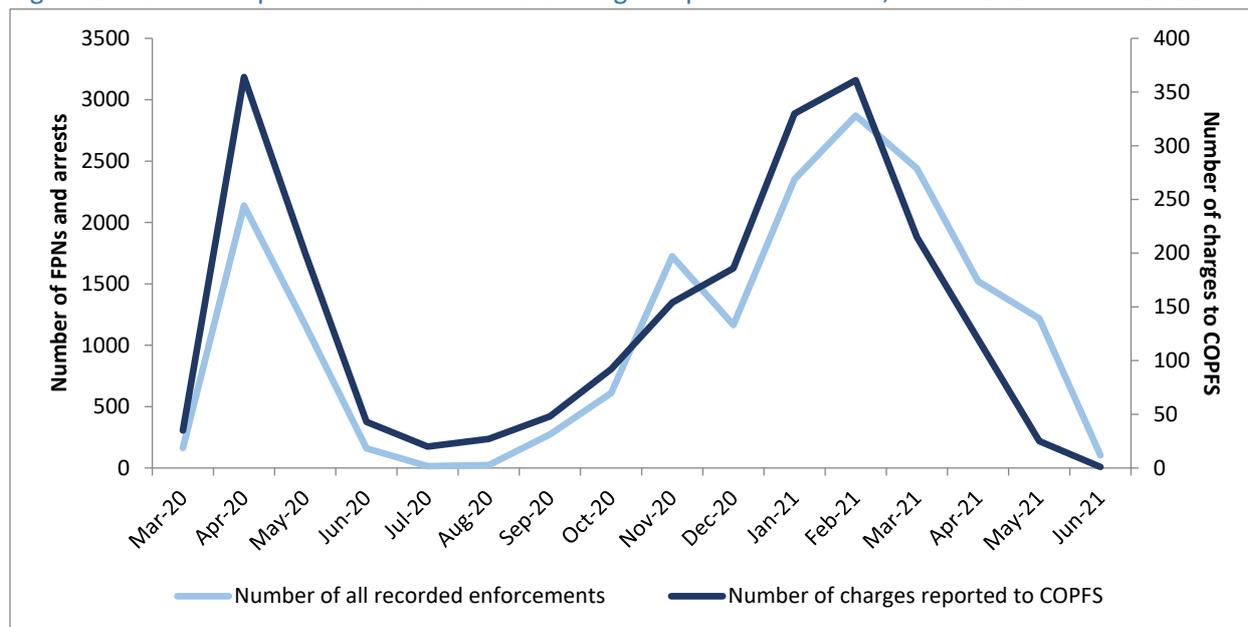
There was a slightly earlier drop off in charges to the COPFS than enforcements recorded by Police Scotland between March and June 2021, which suggests there was a tailing off in the reporting of charges to the COPFS as enforcement was declining (i.e. a lower proportion of all enforcement was resulting in charges). Overall, the trends presented in Figure 2 suggest that there has been a strong and consistent relationship between police use of enforcement and charges to COPFS over time.

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<sup>5</sup> See McVie, S. and Matthews, B. (2021) Third Data Report on Police Use of Fixed penalty Notices under the Coronavirus Regulations in Scotland: March to December 2020.

<sup>6</sup> See Police Scotland Bulletins and Briefings published on the SPA website: <https://www.spa.police.uk/strategy-performance/oversight-of-policing-covid-19/>

Figure 2: Number of police enforcements and charges reported to COPFS, March 2020 to June 2021



## 4 Decisions taken in relation to charges reported to COPFS

Once a charge has been reported to COPFS, a Procurator Fiscal decides how the case should be dealt with. In the majority of cases, it is determined that a case should proceed to court under either Sheriff Summary proceedings (i.e. heard by a Sheriff sitting alone) or under Solemn proceedings (i.e. heard by a jury in either the Sheriff or High Court). The remaining cases are dealt with by means of a non-court disposal. This can include use of a ‘direct measure’ (e.g. a fiscal fine or other financial penalty, some kind of diversion, or a warning letter)<sup>7</sup>; or it may be decided that no formal action should be taken (most commonly because it is determined that further action would be disproportionate or because there is a lack of evidence that a crime occurred).<sup>8</sup>

### 4.1 Overview of decisions taken

Figure 3 shows the decisions taken by COPFS in relation to all charges reported under the Coronavirus legislation as at 30<sup>th</sup> June 2021. The first thing to note is that around a fifth (21.1%) of all charges were still awaiting a decision at that time. Looking at those where a decision had been taken, the majority had been marked for court proceedings, although most (38.7% of the total) were marked for summary proceedings while only 8.0% overall were marked for solemn proceedings. This suggests that the majority of charges reported under the Coronavirus Regulations where court action was considered appropriate were at the lower end of the spectrum in terms of seriousness. Moreover, even in cases that were marked for solemn proceedings, it is not possible to conclude that charges reported under the Coronavirus Regulations were any more serious than those taken forward under Summary proceedings. Indeed, according to COPFS, it is more likely that the Coronavirus charges led in Solemn

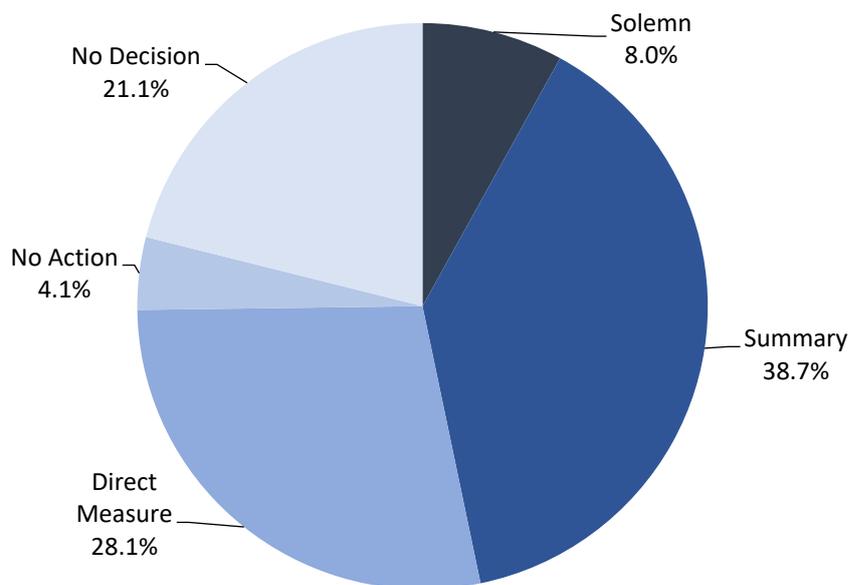
<sup>7</sup> See COPFS response to a FOI request on use of direct measures: <https://www.copfs.gov.uk/foi/responses-we-have-made-to-foi-requests/40-responses2014/817-direct-measures-alternative-to-prosecution>

<sup>8</sup> See COPFS response to a FOI request on use of no action: <https://www.copfs.gov.uk/foi/responses-we-have-made-to-foi-requests/42-responses2012/844-cases-marked-no-action>

court had been rolled together with other serious charges (e.g. spitting at or otherwise assaulting a police officer) that were likely to incur a higher tariff disposal. It is notable, however, that when proceedings were taken in relation to charges reported to COPFS under the Coronavirus Regulations they were five times more likely to result in Sheriff Summary than Solemn proceedings.

For around a third of all charges, a decision was taken to use a non-court disposal. In the majority of these cases (28.1% of the total) a direct measure was used. While only a small proportion (4.1%) of all charges resulted in no formal action being taken.

Figure 3: Decisions made by the COPFS in relation to all charges reported under Coronavirus Regulations, March 2020 to June 2021



#### 4.2 Outcome of court proceedings

For all charges that resulted in court proceedings, Table 2 shows the outcome as at 30<sup>th</sup> June 2021. Of those charges that were marked as solemn cases, 59.6% had actually resulted in the case proceeding to court. This compares to 80.7% of charges that were marked as Summary cases. A large proportion of both Solemn (43.3%) and Summary (49.8%) cases were still ongoing on 30<sup>th</sup> June 2021. Where cases had been resolved, charges marked as Summary cases were more likely than those marked as Solemn to have resulted in a conviction, although this was low for both types of charge (10.8% versus 2.2%, respectively). The proportion of charges that had resulted in no conviction was slightly higher for Summary cases (16.7%) than Solemn cases (12.9%). No further action had been taken in respect of charges that were marked for court proceedings in a very small proportion of cases overall. No further action was taken in relation to only 1.1% of Solemn and 3.4% of Summary charges that proceeded to court. According to COPFS, this provides assurance that the vast majority Coronavirus-related charges ending up in court passed the threshold for taking prosecutorial action.

A small proportion of all cases marked for court proceedings were still awaiting a decision; however, this was proportionately higher for Solemn cases (7.3%) than Summary cases (0.3%). In addition, a higher proportion of charges marked for Solemn than Summary proceedings were recorded as being

‘not separately actioned’ (33.1% versus 19.0%, respectively).<sup>9</sup> It is the view of COPFS that these differences were due to the different nature of Summary and Solemn proceedings and the time involved in preparing cases. Accused in Solemn cases are not immediately proceeded against in court (on indictment). It can take some months for case preparation and investigation to conclude and not all of the charges reported by the police may feature on the indictment.

**Table 2: Outcome of charges proceeded against in Solemn and Summary court, March 2020 to June 2021**

<b>Outcome</b>	<b>Solemn cases</b>		<b>Summary cases</b>	
	<b>Number</b>	<b>% of total</b>	<b>Number</b>	<b>% of total</b>
Proceeded against in court	106	59.6%	694	80.7%
Convicted	4	2.2%	93	10.8%
Not Convicted	23	12.9%	144	16.7%
Ongoing	77	43.3%	428	49.8%
No Further Action	2	1.1%	29	3.4%
No Decision	13	7.3%	3	0.3%
Not Separately Actioned	59	33.1%	163	19.0%
<b>Total</b>	<b>178</b>		<b>860</b>	

### 4.3 Outcome of direct measures

As noted in Figure 3, 28.1% of all charges reported to the COPFS were dealt with by direct measures. Table 3 shows that just over half (54.9%) of these charges resulted in a Fiscal Fine. Most (78.9%) of these fines were successfully paid while a further 17.0% were still ongoing, and the remainder were unpaid but had resulted in no further action.

A further 14.8% of charges resulted in some kind of diversionary measures, of which 21.6% had been successfully completed, 75.0% were still ongoing, and the remainder had not been completed but resulted in no further action. Just over one in ten (11.6%) charges marked for direct measures resulted in a warning letter, while a further one in ten (9.5%) were referred to the Children’s Reporter for disposal. The remaining charges were either not separately actioned or dealt with in some other way (such as a work offer or a fixed penalty).

**Table 3: Outcome of direct measures, March 2020 to June 2021**

<b>Outcome</b>	<b>Number</b>	<b>% of total</b>
Fiscal Fine	342	54.9%
Diversion	88	14.1%
Warning letter	72	11.6%
Referral to Children’s Reporter	59	9.5%
Not separately Actioned	45	7.2%
Other decision	17	2.7%
<b>Total</b>	<b>623</b>	

<sup>9</sup> Not separately actioned – the total number of charges reported will also include charges where action was taken in relation to other charges reported in the case; for example, because the prosecutor took the view that an alternative charge was more appropriate or because details of the charge were included within the body of another charge for evidential reasons.

## 5 Comparing charges reported to COPFS with first markings

The overall profile of decisions made in relation to charges reported under the Coronavirus Regulations was compared to COPFS data on first markings for 2019/20 (prior to the pandemic), and for the whole of 2020/21 and the first four months of 2021/22 (during the pandemic). ‘First marking’ is the description given to the initial substantive decision made by Procurators Fiscal in respect of all charges reported to COPFS.<sup>10</sup> Comparing the profile for the Coronavirus charges to all first markings addresses two questions about the possible impact of the pandemic on COPFS decision making:

- 1) Were there any substantial changes in COPFS decision making during the pandemic when compared to the previous year?
- 2) Was decision making in relation to Coronavirus charges broadly similar to the overall profile of first markings (which includes both Coronavirus and non-Coronavirus cases)?

It is important to note that the data for first markings and the data for charges reported to COPFS differ in three key respects. First, the data for charges reported to COPFS (illustrated in Figure 3) reflect decisions made in relation to individual *charges*, whereas first markings data (which is the standard way of measuring prosecutorial decision making) is by *accused*, and one accused might have more than one charge in the same case. Second, the first markings data include all accused regardless of the nature of the charges against them, whereas the Coronavirus-related charges represent a relatively small proportion of all charges reported (estimated to be less than 1% of all charges received in an average year). And third, the first markings data are reported by financial year, whereas the Coronavirus-related charges are reported for the period from March 2020 to June 2021. Despite these differences, comparing the two data sources does provide some useful information.

Table 4 shows the breakdown of decisions made by the three types of marking options available to COPFS for accused (under first markings) and Coronavirus-related charges reported to COPFS. In relation to the first question posed above, Table 4 shows that the overall profile of first markings for 2019/20 was very similar to that for 2020/21 and the first four months of 2021/22. The proportion of accused with court proceedings was slightly higher in the pre-pandemic year compared to the post-pandemic years, while the proportion of accused receiving direct measures or having no action taken was slightly higher in the post-pandemic years. However, these represent very small substantive differences in the overall profile of first marking decisions.

A report by Scottish Government’s Justice Analytical Services published in June 2021 noted: “the total number of reports received by COPFS decreased substantially at the beginning of lockdown. Numbers increased to pre-pandemic levels before a substantial decrease in February 2021. Reports in March recovered to just under pre-pandemic levels and have remained around that number over the last few months.”<sup>11</sup> Of the three types of marking decision available to Procurators Fiscal, use of direct measures and no action had almost increased to levels equivalent to the previous year by June 2021; however, cases marked for court proceedings were far lower than they had been in 2019/20. The Justice Analytical Report notes that the number of people marked for proceedings in Solemn cases remained at or above pre-pandemic levels throughout 2020/21; however, people marked for Sheriff Summary court had remained below average since April 2020, while markings for the Justice of the Peace court had remained well below average compared to 2019/20. This provides a reasonable explanation for the slight differences observed between first markings shown in Table 4.

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<sup>10</sup> See p18 of Scottish Government (2021) [Coronavirus \(COVID-19\): Justice Analytical Services Data Report - June 2021](#).

<sup>11</sup> Scottish Government (2021). Op cit.

Table 4: Comparison of marking decisions made by COPFS in relation to first marking for accused in 2019/20, 2020/21 & 2021/22, and charges reported under Coronavirus Regulations in 2020/21

	2019/20 First Markings by accused	2020/21 First Markings by accused	2021/22 First Markings by accused (Apr-Jul only)	2020/21 Charges reported under Coronavirus Regulations*
Court proceedings	58.9%	54.8%	53.4%	59.2%
Direct Measures	30.7%	33.8%	34.7%	35.5%
No Action	10.4%	11.3%	11.8%	5.2%

\* This excludes 468 charges for which no decision had been made as at June 2021.

In relation to the second question posed above, Table 4 shows that the proportion of Coronavirus-related charges resulting in court proceedings during 2020/21 was around 4-6% higher than the percentage of all first markings recorded during 2020/21 and the first four months of 2021/22. The proportion of charges that resulted in direct measures was very slightly higher than that for the first markings; whereas, the proportion of charges resulting in no action was less than half of that for the first markings. It is not possible to draw any definitive conclusions from these data, due to the differences in the two data sources noted above. Nevertheless, it is reassuring that the balance of decision making is broadly comparable and does not give rise to any particular concerns about the decisions taken with regards to Coronavirus-related charges when compared with decisions made about all first markings during the pandemic year. If anything, the higher proportion of Coronavirus charges dealt with using court proceedings, and the very small proportion resulting in no action, gives assurance that Police Scotland was submitting very few Coronavirus-related charges to COPFS that did not pass the threshold for some form of prosecutorial disposal.

## 6 Conclusion

The analysis provided in this report provides a useful insight into the number and outcome of charges that were reported by Police Scotland to the COPFS under the Coronavirus legislation between 26 March 2020 and 30 June 2021. There were a number of changes to the Regulatory framework over that period, and it is clear from the pattern of charges reported to the COPFS that police officers were increasingly using the more localised Regulations that were introduced to create different levels of restriction across different Local Authorities. This is interesting in the context of divisional differences in patterns of enforcement (as reported in data reports on the use of FPNs), and provides additional evidence that localised policing approaches became increasingly important as the pandemic progressed.

In total, there were only 2,221 charges reported to the COPFS between March 2020 and June 2021 (i.e. an average of less than 150 per month). This was equivalent to around an eighth of all enforcement encounters recorded by Police Scotland on the CVI system, and represented a tiny fraction of all policing activity in relation to the Coronavirus. Such small numbers provides good evidence that Police Scotland's commitment to a consent-based policing model and use of the Four Es approach has been effective in terms of keeping most of those who did not comply with the Coronavirus legislation out of the prosecution system.

The overall trend in the number of charges reported to COPFS was extremely similar to the trend in the use of FPNs and arrests as recorded by Police Scotland on the CVI system. Overall, the trends suggest that there was a strong and consistent relationship between police enforcement and reporting to

COPFS. It is reassuring that there was no evidence of a relative increase in the reporting of charges to COPFS over time.

Looking at the decisions that had been taken in relation to the charges reported under the Coronavirus legislation, just under half of all charges reported to the COPFS were marked for court proceedings and just over a quarter were dealt with using direct measures, primarily by means of a Fiscal Fine. Of the remaining charges, the majority were still awaiting a decision.

Where a decision had been made to take court proceedings, charges reported under the Coronavirus Regulations were around five times more likely to be marked for Sheriff Summary than Solemn proceedings. This indicates that, even when a court-based disposal was considered appropriate, in most cases it was anticipated that this would be at the lower end of the judicial tariff. Charges that had been marked for Solemn court were considerably less likely than those marked for Summary court to have actually been proceeded against in court by June 2021; however, it is likely that this could be explained by differences in the complexity or timing of the charges. Where court proceedings had progressed, Solemn charges were less likely than Summary charges to have resulted in a conviction; however, since the majority of all cases in both types of court proceedings were ongoing, no conclusion can be drawn about differences in outcome.

Analysis of first markings data was able to address two important questions. The first question was whether there were any differences in COPFS decision making in the period following the pandemic compared to the pre-pandemic year. Data on the three types of decision available to COPFS showed that the profile of first markings for 2020/21 and the first four months of 2021/22 was broadly comparable to that for 2019/20. The proportion of accused with court proceedings was slightly higher in the year before the pandemic, and the proportion of accused receiving direct measures; however, this is most likely to be explained by a slow recovery in the number of people being marked for court proceedings, especially in the Sheriff Summary and JP courts. It could also be explained by a slightly higher use of direct measures in an effort to take pressure off the courts system.

The second question was whether decision making in respect of the Coronavirus charges was broadly similar to the overall profile of first markings. The profile of COPFS decision making in relation to first markings during 2020/21 and the first four months of 2021/22 was compared to that for all charges reported under the Coronavirus Regulations over the same period of time. Despite the fact that differences in the datasets meant they were not directly comparable, the two profiles were very similar overall. Most notably, charges reported under the Coronavirus Regulations were slightly more likely to result in court proceedings, which does provide reassurance that they were likely to be at the 'more serious' end of the spectrum in terms of non-compliance. In addition, charges reported under the Regulations were far less likely to result in a decision of 'no action', which also provides reassurance that the vast majority of charges reported to the COPFS met the appropriate prosecutorial threshold.

Overall, the data presented in this paper suggests that police use of the 4Es has been effective in keeping those who did not comply with the Coronavirus Regulations out of the prosecution system. Moreover, those who did end up in the prosecution system were mainly dealt with through non-court disposals or proceeded against in Summary, rather than Solemn, court. Moreover, there is no evidence that a higher than normal proportion of charges were being reported to the COPFS that did not meet a suitable prosecutorial threshold. From a human rights perspective, these data provide assurance that efforts were made by Police Scotland to deal in a fair and proportionate way with the majority of people in breach of the Coronavirus legislation and that prosecutorial decision making was broadly in line with expectation based on previous years.