

cjm

update

Una Padel reviews recent developments in criminal justice.

Fixed Penalty Notices for Disorder

On the spot penalties for punishing disorder offences were introduced by the *Criminal Justice and Police Act 2001* to provide a speedier way for the police to deal with low-level disorder offences and reduce the workload of the courts. The penalties are fixed level fines of £40 or £80 payable within 21 days of the issue of a penalty notice for disorder (PND). The scheme was piloted in four police areas starting in August 2002, and the pilots covered 11 disorder offences and related to people over the age of 18.

During the 12 month pilot:

- 6043 penalty notices for disorder were issued. Nine out of ten of them were for either "causing harassment, alarm or distress" (49%) or "disorderly behaviour while drunk" (42%).
- 51% of the penalties were paid within the statutory 21 days. If the penalty is not paid in that time a fine is registered and this happened in 46% of the cases. 39% of the fines were subsequently paid, making an overall payment rate of under 70%. Default rates were higher for £80 than for £40 penalties.
- Evidence from two of the pilot areas suggests that only between a quarter and a half of the PNDs were issued where an offender would otherwise have been cautioned or prosecuted. This suggests net-widening, with many who would not otherwise have had any formal involvement receiving PNDs.
- Issuing a PND saved between 1.5 and 2.5 hours of police time compared with a caution or prosecution. Fewer than 2% of recipients requested a court hearing. This saving presumably has to be set against the fact that time was spent issuing PNDs to people who would not have been cautioned or prosecuted.
- Police officers in the pilot areas were in favour of extending the range of minor offences for which PNDs might be used.
- 8% of recipients received more than one PND, and only 25 individuals out of 5,800 PND recipients in the pilot, received three or more PNDs.

Since the pilot the use of PNDs has been introduced nationally, and their use has been extended to 16 and 17 year olds under powers in the *Anti-Social Behaviour Act 2003*. The Act provides for the age to be lowered to 10 years and pilots for their use with under-16s will take place later this year.

Community Sentences – draft guidance from the Sentencing Guidelines Council

While the Sentencing Guidelines Council's draft guidance on reduction in sentence for a guilty plea – particularly in relation to tariffs for life sentence prisoners – received widespread publicity, the guidelines on principles on seriousness and on the use of the new community sentences slipped out at the same time with far less attention.

The Criminal Justice Act 2003 creates a single community sentence (or youth community sentences for under-16s) the ingredients of which are various conditions (largely the requirements of existing community sentences) which can be added to the sentence and combined as the court sees fit. They are likely to be introduced in April 2005. The 'cafeteria' approach involved has the danger that courts may wish to be over-inclusive to cover all needs. The Sentencing Guidelines Council considered how it would be possible to develop consistency of approach and decided that adopting three ranges within the community sentencing band would be helpful. The decision about striking the right balance between proportionality and suitability will be left to the sentencer. The three sentencing ranges (low, medium and high), will be based upon offence seriousness. The decision on the nature and severity of the requirements to be included in a community sentence will be guided by:

1. the assessment of offence seriousness (low, medium or high)
2. the purpose(s) of sentencing the court wishes to achieve
3. the risk of reoffending
4. the ability of the offender to comply
5. the availability of requirements in the local area

They further state that the resulting restriction on liberty must be a proportionate response to the offence that was committed. The guidelines go on to describe examples of requirements that might be appropriate in the three sentencing ranges.

There has been some concern among practitioners and commentators that the 'cafeteria' of sentencing options may lead sentencers to impose sentences which cover all eventualities, but are difficult for offenders to comply with. In relation to offenders returned to court in breach of the requirements of the order the SGC points out that the court must either increase the severity of the existing sentence or revoke the existing sentence and proceed as though sentencing for the original offence. The Council makes it clear that having decided a community sentence is commensurate with the seriousness of the offence, the primary objective when sentencing for breach of requirements is to ensure that those requirements are completed. The Council makes it clear that custody should be a last resort reserved for those cases of deliberate and repeated breach where all reasonable efforts to ensure compliance have failed, and that before increasing the onerousness of requirements sentencers should take account of the offender's ability to comply and avoid overloading the offender with too many or conflicting requirements.

The Draft Guidelines are available to read in full on the Sentencing Guidelines Council's website www.sentencing-guidelines.gov.uk