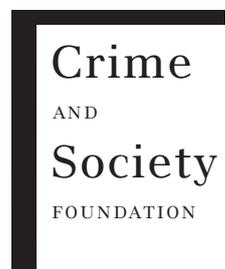


Punishment before justice?

Understanding Penalty Notices for Disorder

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The Crime and Society Foundation is an independent think-tank for progressive crime policy based at the Centre for Crime and Justice Studies at King's College London.

The Foundation stimulates debate about the role and limits of the criminal justice system and aims to deepen public understanding of the social, economic and political foundations of a safer society.

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Introduction

Tony Blair first raised the idea of on-the-spot fines for minor acts of disorder in a speech to the Global Ethics Foundation in Tübingen, Germany on June 30, 2000. 'On Monday', he told his audience, 'I meet some of our senior policemen and I want to put to them the idea that their officers get the power to levy on-the-spot fines for drunken, noisy, loutish and anti-social behaviour.' He continued:

A thug might think twice about kicking your gate, throwing traffic cones around your street, hurling abuse into the night sky if he thought he might get picked up by the police, taken to a cash point and asked to pay an on-the-spot fine of, for example, £100 (Blair 2000).

The proposal was quickly dismissed as unworkable by the police, and was widely ridiculed in the media. 'To me, a cashpoint is a monetary facility not a penal colony', *The Times* columnist Simon Jenkins remarked, elegantly summing up Fleet Street opinion (Jenkins 2000).

But the principle behind the Prime Minister's proposals – that 'thugs' and 'loutish' troublemakers should receive 'summary justice' – remained. As he told the House of Commons just a few days later:

The essence of the proposal is that there should be summary justice for disorderly conduct and that there should be... on-the-spot fines for those people who engage in disorderly conduct. It is correct that it may be better to do that by fixed penalty notice, but summary justice, on the spot, is the essence of the proposal (*Hansard* July 5, 2000, Column 323).

The result was the 'Penalty Notice for Disorder' (PND), brought into law by the 2001 *Criminal Justice and Police Act* and rolled out nationally across England and Wales in April 2004. To date there has been limited debate about the desirability of PNDs. This briefing aims to contribute towards encouraging a broader public discussion about the benefits and drawbacks of such a scheme.

The briefing highlights concerns arising from the expansion of financial penalties to tackle 'disorderly behaviour' and issues relating to the operation of the scheme. The growth of the use of fines in this area reflects the ongoing extension of criminal justice powers with little protection afforded to the vulnerable or innocent. Section one explains what PNDs are, how they work and how they have operated to date. Section two critiques their operation. PNDs, the briefing argues, unjustly subject recipients to punishment. They also create a new class of the semi-criminal, who face being put on the fast-track to arrest, prosecution and punishment.

Section 1: About Penalty Notices for Disorder

What is a Penalty Notice for Disorder?

A PND is a form of on-the-spot fine that can be issued for 'disorderly behaviour'. This covers a wide range of offences, including behaviour likely to cause harassment, alarm or distress, alcohol-related disorder and, since September 2004, theft and criminal damage. A PND can be issued by police officers, some community support officers and a limited number of 'accredited persons' such as neighbourhood wardens and security staff.

The official aims of the PND scheme include 'reducing the amount of time spent on paperwork and attending court, while simultaneously reducing the burden on the courts' and delivering 'swift, simple, effective justice, that carries a deterrent effect' (Home Office 2002).

PNDs are designed to be handed out on the street with minimal paperwork. However, there are occasions, for example if an individual is drunk, when PNDs cannot be issued on the street. In these cases a PND must be issued at a police station. Police operational guidance requires recipients to be compliant, able to understand what is going on and not under the influence of alcohol or drugs.

For those aged 16 and above, fines can be issued for £50 or £80, depending upon the offence. Young people aged 16 and 17 must be issued PNDs for recordable offences (*see Table 1*) whilst 'in custody where fingerprints and DNA will be taken and the PND recorded on the Police National Computer' (Home Office 2004a). For all other non-recordable offences, PNDs can be issued on the street without supervision or involvement of a guardian or 'appropriate adult'. The young person's parent or guardian remains legally liable for payment of a PND in all cases. Lower payment tiers of £30 and £40 apply to children aged 10-15. Pilot schemes for this age group began in December 2004.

Payment of the fine formally implies no admission of guilt. If the individual concerned pays the fine within 21 days, he or she cannot be tried for the offence and will not acquire a criminal record. If the fine is unpaid within 21 days, the amount increases by 50 percent and is registered at the magistrates' court as a fine. If the recipient of a PND wishes to contest it he or she has to go to court for the case to be tried on the original offence, risking a criminal conviction if the PND is upheld.

TABLE 1: PND-ELIGIBLE OFFENCES AS OF DECEMBER 2004

TIER 1: £80 FINE

- Throwing fireworks in a thoroughfare
- Knowingly giving a false alarm to a fire brigade †
- Sale of alcohol to a person under 18
- Buying or attempting to buy alcohol for a person under 18
- Delivery of alcohol to a person under 18 or allowing such delivery
- Wasting police time or giving a false report †
- Disorderly behaviour while drunk in a public place †
- Theft (retail and commercial thefts value under £200 but not normally over £100) *
- Destroying or damaging property (damage up to £500 but not usually more than £300) *
- Behaviour likely to cause harassment, alarm or distress *
- Using a public electronic communications network in order to cause annoyance, inconvenience or needless anxiety †

- Contravention of a prohibition or failure to comply with a requirement imposed by or under fireworks regulations or making false statements
- Knowingly giving a false alarm to a person acting on behalf of a fire and rescue authority †

TIER 2: £50 FINE

- Being drunk in a highway, other public place or licensed premises †
- Trespassing on a railway
- Throwing stones etc. at trains or other things on railways
- Consumption of alcohol by a person under 18 or allowing such consumption
- Depositing and leaving litter
- Consumption of alcohol in a designated public place

† Recordable offences

* Recordable and notifiable offences (i.e. contributes to offences brought to justice targets)

Source: Adapted from 'Statutory Instrument 2004 No. 2468: The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment No.2) Order 2004' and Home Office 2004b.

How have PNDs operated to date?

Little information is publicly available on the operational usage of PNDs or their impact on promoting safety and tackling minor disorder. Home Office minister Hazel Blears told the House of Commons in February 2005 that an estimated 57,607 PNDs were issued during 2004 (*Hansard* February 8, 2005, Column 1418). In addition to this information, two brief research papers on the PND pilot phase have been published by the Home Office. A press release with supplementary information on the first six months of the national roll-out is also in the public domain. But overall, a lack of in-depth, publicly available, research makes it difficult to establish how well PNDs have operated to date.

PNDs were initially piloted by four police forces between August 2002 and March 2003. The Home Office published an evaluation of their operation in two brief publications of four and six pages (Spicer and Kilsby 2004; Halligan-Davis and Spicer 2004). The research gives figures of PNDs issued, provides selected quotes from interviews with police staff and offers brief analyses and recommendations.

The researchers concluded that 'on the whole the PND project has been a success' (Halligan-Davis and Spicer 2004). Particular areas of success referred to are savings in police time and payment rates. In the words of one officer:

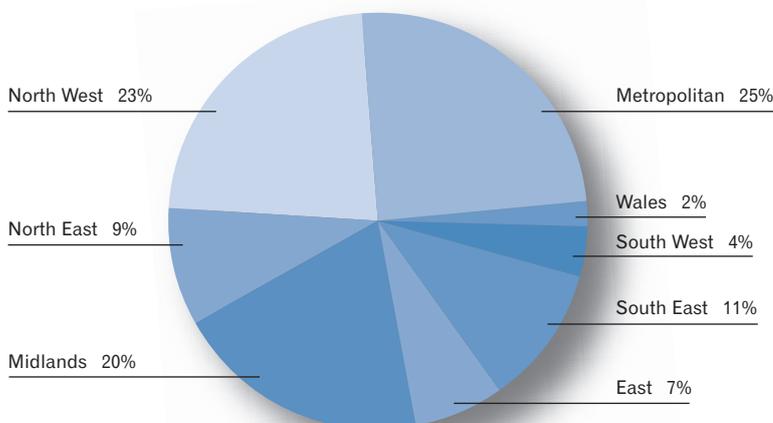
I cannot think of any other change in working practice which has reduced the workload of officers and still been effective. This is the best thing to happen to the police for a long time (Halligan-Davis and Spicer 2004).

Significantly, the researchers offer no evidence of the impact of PNDs in deterring or reducing disorder.

During the six month pilot period 6,043 PNDs were issued, in most cases for just two offences: 'behaviour likely to cause harassment, alarm and distress' and 'disorderly behaviour while drunk'. There was an overall payment rate of nearly 70 percent with less than two percent of PND recipients requesting a court hearing. 51 percent of PNDs were paid within 21 days. Of the unpaid fines 39 percent were eventually paid after registration at the court.

The Home Office press release gives a breakdown of the 21,478 PNDs issued by region during the first six months of national roll-out between April and September 2004 (Home Office 2004c). During this period PNDs again were mostly issued for the two offences of 'behaviour likely to cause harassment, alarm or distress' and 'disorderly behaviour while drunk'. These figures also show significant regional disparities in implementation (*Figure 1*).

FIGURE 1: PROPORTION OF PNDs ISSUED BY REGION BETWEEN APRIL AND SEPTEMBER 2004



Source: Home Office 2004c

TABLE 2: PROPORTION OF PENALTY NOTICES ISSUED FOR SAMPLE OFFENCES DURING THE PILOT PERIOD AND FOR THE FIRST SIX MONTHS OF NATIONAL ROLL-OUT

	Pilot phase	National roll-out
Causing harassment alarm or distress	49%	39%
Disorderly behaviour while drunk	42%	49.7%

Source: Halligan-Davis and Spicer 2004; Home Office 2004c

TABLE 3: CHRONOLOGY OF SELECTED DEVELOPMENTS

JUNE 2000 Tony Blair's speech to Global Ethics Foundation, Germany - On-the-spot fines for 'nuisance drunken behaviour' first proposed.

SEPTEMBER 2000 'Reducing public disorder, the role of Fixed Penalty Notices: A consultation paper' - Outlines aims of PNDs.

MAY 2001 Criminal Justice and Police Act - Introduces PNDs for ten offences.

JULY 2002 Police Reform Act - Gives chief police officers powers to delegate responsibility to issue PNDs to community support officers and other accredited persons.

JULY 2002 Statutory Instrument No. 1837 - Lays out the penalty offence schedule for the ten offences set out in the Criminal Justice and Police Act. 'Behaviour likely to cause harassment, alarm or distress' included as an offence, bringing the total up to 11 offences.

SEPTEMBER 2002 Policing Bureaucracy Taskforce Report - Advocates wider use of Fixed Penalty Notices for disorderly behaviour.

NOVEMBER 2003 Antisocial Behaviour Act - Extends use of PNDs to 16 and 17 year olds from January 2004 and gives powers for Secretary of State to extend to 10 year olds.

FEBRUARY 2004 Statutory Instrument No. 316 - Increases penalty for 'throwing fireworks' from £40 up to £80 and amends the Telecoms Act offence.

SEPTEMBER 2004 Statutory Instrument No. 2468 - Increases the number of offences to 19 to include theft and criminal damage.

NOVEMBER 2004 White Paper on policing: 'Building communities, beating crime' - Proposes the strengthening of powers for CSOs to issue PNDs and giving them power to detain.

DECEMBER 2004 Statutory Instrument No.3166 - Reduces minimum age for eligibility for a PND to 10 year olds.

DECEMBER 2004 Statutory Instrument No.3167 - Sets out fine tiers for under 16s at £30 and £40.

DECEMBER 2004 Statutory Instrument No. 3169 - Provides for new forms for issuing PNDs to under 16s.

Section 2: Analysis

Many police officers appear to welcome PNDs as a means to reduce bureaucracy and paperwork. For government ministers, under pressure over the performance of the criminal justice system, PNDs are a quick win development. Those issued for behaviour likely to cause harassment, alarm or distress, criminal damage or theft will contribute directly to the government's self-imposed target to bring more offences to justice.

What criticism there has been of PNDs has tended to focus on the complaint that they are a 'soft option'. Rather than bringing offenders to court, critics argue, PNDs let them off with a token fine. They are, on this view, the administrative equivalent of a clip round the ear.

In this section we argue that far from being a soft option, PNDs contribute to the creation of a new class of semi-criminal who face being put on the fast-track to arrest, prosecution and punishment in, what is effectively, a justice-free zone.

Questions of justice

Superficially, PNDs could be considered a progressive and positive development. Individuals are dealt with quickly, without going through the rigmarole of prosecution and a court appearance. Payment of the fine implies no admission of guilt. No criminal record is acquired.

But if payment of a fine implies no admission of

guilt, for what is the individual being punished? In the twilight world of the PND, an 'offender' is punished for an 'offence' he or she does not have to admit to doing and for which he or she has not formally been convicted.

Why might recipients pay a PND in such circumstances? The risk of acquiring a criminal record in the event of an unsuccessful challenge in court is an obvious incentive. So are financial considerations. For an individual on a low-income an £80 PND is a significant penalty; for a stockbroker it may be equivalent to loose change. The implications for justice by income are obvious. Wealthier individuals will be in a far stronger position to buy their way out of prosecution than poorer people. It is also unclear what impact PNDs will have on vulnerable children and families who may be unable to pay them, and what the subsequent consequences of non-payment might be. This flat-rate element of the PND could lead to significant injustices. It also runs counter to the government's expressed desire to link the level of fines issued through the full criminal justice process more clearly to income.

There are, then, questions to be asked about whether PNDs are necessary, appropriate, proportionate and effective. In addition to this, PNDs operate outside the traditional realms of criminal justice, thus bypassing key protections afforded to members of the public accused of an offence. As such, PNDs erode justice in the name of speedier punishment.

Widening the criminal justice dragnet

Evidence from the pilot phase suggests that PNDs have proved more effective in extending the reach of the criminal justice system than they have in keeping individuals out of it.

A striking feature of PNDs during the pilot phase was their widespread imposition in cases that otherwise would not have led to a criminal justice response. Overall, PNDs enabled the police to extend their policing of minor disorder, and not simply to do more effectively what they already had been doing. As the Home Office researchers observed:

The larger number of PNDs indicates a net widening to recipients who would not otherwise have been dealt with by caution or prosecution... Cautions and prosecutions have decreased for PND offences... but there are a greater number of PNDs, including many cases that would not otherwise have been dealt with (Spicer and Kilsby 2004).

The follow-up study estimated that 'between a half and three-quarters of PNDs issued for disorderly behaviour while drunk and behaviour likely to cause harassment, alarm or distress were "new business"' in two of the pilot areas (Halligan-Davis and Spicer 2004).

Some of this 'new business' may have been individuals who would previously have received an informal warning. This would be in keeping with one of the government's intentions for PNDs. As Home Office minister Hazel Blears put it in October 2004, '[p]eople committing these offences will no longer be let off with a verbal warning. From today, they will face immediate punishment and court action if they refuse to pay' (Home Office 2004c).

Evidence from the pilot areas also suggests that PNDs have been issued in place of cautions. Home Office findings present figures from two of the four pilot areas, indicating that a reduction in the number of cautions and prosecutions for some offences followed the introduction of PNDs (Table 4).

TABLE 4: COMPARISON OF PND NUMBERS WITH CHANGES IN PROSECUTIONS AND CAUTIONS

	Year before pilot	Pilot year
Causing harassment, alarm or distress		
Cautions and prosecutions		
Essex	902	659
West Midlands	3,309	2,372
Disorderly behaviour while drunk		
Cautions and prosecutions		
Essex	776	396
West Midlands	817	504

Source: Halligan-Davis and Spicer 2004

PNDs also have the potential to draw more young people into the criminal justice system. The offence of 'behaviour likely to cause harassment, alarm or distress' is ambiguous and subjective. One person's nuisance is someone else's kick around in the street. In practice it will be difficult for children to be clear about what kinds of behaviour are permissible, and what might lead to PNDs.

Arguably the most concerning aspect of PNDs is the scope they offer to fast-track selected individuals towards arrest, prosecution and punishment. A comment by one police officer to Home Office researchers suggests that in at least some circumstances PNDs may result in an escalation of criminal justice interventions, not a diversion from them:

I can see no value in knowingly issuing large numbers of PNDs without using discretion. The rule of thumb I use is, if they haven't responded to having received two PNDs it is time to raise the stakes and take them to court (Halligan-Davis and Spicer 2004).

Individual discretion by police officers and others may well lead to inconsistencies in application at a force and regional level. But more significant than this is the function PNDs perform in building up information on a new class of the semi-criminal.

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Even though payment of a PND formally implies no admission of guilt, the police can record details of those issued with a PND for a recordable offence (see *Table 1*). DNA, fingerprints and photographs can be taken and the details added to the Police National Computer. Although this will not be a formal criminal record, the reason for retaining this information is to identify repeat 'offenders'. The implication here is that the police will view the recipient as guilty of the offence for which a PND is issued. This conflicts with the Home Office claim that payment of a fine implies 'no admission of guilt and removes the possibility of the creation of a record of criminal conviction and the possibility of its issue being produced as evidence in any subsequent hearing' (Home Office 2002).

The creation of such a quasi-criminal record raises an important question about what assumptions might be drawn about the patterns of behaviour of some individuals based on their PND history. The *Criminal Justice Act 2003* allows information of this nature to be used to provide proof of 'bad character'. Facing trial at a later date on an unrelated matter, an individual who paid a PND on the understanding that this implied no admission of guilt could find such a payment being used as evidence of misconduct or a disposition towards misconduct.

Conclusion

PNDs are likely to prove popular with the police as a means to reduce what they might perceive as unnecessary paperwork. For government ministers, under pressure over the performance of the criminal justice system, PNDs have obvious attractions. As David Blunkett said in May 2003:

There is no point in the police fighting crime if they then find they also have to fight the criminal justice system. That is why I am reforming the whole system, from charging and disclosure through to effective sentencing . . . The Government's focus is now on what I call the three Ps – paperwork, powers and prosecutions (Home Office 2003).

But as this briefing has shown, there remain key questions about the underlying assumptions behind PNDs and about their implementation.

There are also indications of a move to link PNDs to Anti-Social Behaviour Orders (ASBOs). The Policing Bureaucracy Taskforce in 2002, for instance, made recommendations that a history of receiving penalty notices should be used in ASBO proceedings. The operational guidance for 10 to 15 year olds confirms that the issue of a PND can be used:

The fact that a PND has been issued can be disclosed in an ASBO civil court hearing as this goes towards establishing a pattern of behaviour (Home Office 2004b).

In addition, the government has confirmed that where PNDs are issued for criminal damage or theft, the aggrieved party will be able to pursue the case through the civil courts for compensation and 'he would be able to cite the issue of a penalty notice for the offence as evidence and the police would provide details of the offence and offender to facilitate this process' (*Hansard*, November 16, 2004, Column 1455).

It is worth emphasising, again, that all of this will unfold in circumstances in which the individual who has paid a PND has not been required formally to admit any guilt for the offence.

Are PNDs an effective way of addressing disorder? Can it be right that a person should be punished for an 'offence' for which he or she has neither admitted guilt nor gone through an appropriate legal process? Do PNDs risk imposing a new form of justice by income, in which those with the financial means can buy themselves freedom from prosecution, a freedom denied their poorer peers? In what way can it be just and appropriate to make assumptions about an individual's character from their PND reception or payment history when the issue or payment of a PND supposedly implies no such admission of guilt?

Are PNDs contributing to the creation of a justice-free zone in which extra punishment and expanded police powers take precedence over socially just solutions?