



# **PENALTY NOTICES FOR DISORDER**

## **REVIEW OF PRACTICE ACROSS SELECTED POLICE FORCES**

### **Executive Summary**

Identifying opportunities for police forces to maximise the appropriate use of Penalty Notices for Disorder (PNDs) by identifying good practice, developing consistency, better management and control of the scheme and maximise opportunities to bring more offences to justice.

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## 1. Introduction

Following successful trials of Penalty Notices for Disorder (PNDs) in 4 pilot sites, during 2002/03, national rollout commenced throughout 2003/04, with all police forces having now introduced PND schemes into their local operational policing practices. The numbers of PNDs being issued across all offences is growing (64,000 in 2004 to 124,000 by November 2005) and they now make an important contribution to the PSA target to bring 1.25m offences to justice by 2007/08. Police forces are widening the scope of their local schemes, however, the application and the extent of their use varies significantly from police force to police force.

The aim of the review was to:

- Identify best practice in the use of PNDs.
- Develop consistency, better management and control of the PND scheme.
- Build confidence and reassurance in the use of PNDs as a disposal.
- Maximise the opportunities for increasing the numbers of OBTJ.

The review was informed by national quantitative analysis and practitioner interviews within ten participating forces. This provided an indication of PND usage in general but specifically against the 3 recordable and notifiable offences:

- Section 5 of the Public Order Act 1986.
- Section 1 Theft Act 1968 (retail theft).
- Section 1(1) Criminal Damage Act 1971.

The apparent correlation between increases in use of Section 5 in preference to the offences of drunk and disorderly and urinating in a public place (local byelaw) was also subject of review.

The Review of PND Practice report has been written for the Office for Criminal Justice Reform (OCJR), the Sentencing Policy and Penalties Unit (SPPU), which has policy responsibility for PNDs, and interested stakeholders including Association of Chief Police Officers (ACPO), Association of Police Authorities (APA) and the Crown Prosecution Service (CPS).

The review concludes that at the national level, there is a need to secure the foundations on which the PND scheme has been built by providing:

- A national standard operating procedure to be included as part of the Police Operational Guidance to establish common PND procedures in all police forces to increase the appropriate use of PNDs.
- Clear and unequivocal guidance as to PNC entry requirements for recordable and notifiable offences.
- An effective solution to the Section 5, drunk and disorderly and byelaw debate.

At the local level, the need is for police forces to:

- Realise the opportunities to 'mainstream' PNDs as part of everyday business.
- Establish robust and rigorous performance management practices.

## 2. The value of PNDs to Police Forces & Criminal justice System

The review found that there were many benefits to using PNDs. These reinforced the rationale on which the scheme was originally based, i.e. efficiency, effectiveness, officer visibility and reduced bureaucracy. The vast majority of front-line operational staff welcomed PNDs for these reasons. However the level of acceptance was measured by their knowledge of the scheme, the ability to issue PNDs and the administrative arrangements that underpinned it. As a consequence many opportunities for using PNDs are being missed.

Appropriate use of PNDs offers benefits not only to police forces but to the wider criminal justice system in terms of meeting national PSA targets for OBTJ and public confidence. PNDs keep low level offences out of the courts, thereby saving unnecessary costs and court hearings. From an offender perspective, PNDs have the ability to deal swiftly and appropriately with low levels of offending and do not carry with them any continuing stigma or burden of a criminal conviction.

The review found that there is considerable scope to increase the appropriate use of PNDs within police operational environments. However, whilst local schemes are being developed and extended, e.g. by including the offences of criminal damage and theft for adults and 16/17 year old offenders or increasing on-street issue, there is no case for setting a target on the contribution PNDs should make towards either sanction detection or OBTJ targets.

## 3. PNDs as 'normal business'

The review identified a number of factors which impacted on local practice and procedure and which prevented or inhibited more rapid expansion of local PND schemes. PNDs are still a relatively new and an innovative disposal for the offences listed (especially the notifiable offences) and some police forces and staff were cautious about fully embracing PNDs for a number of reasons both local and national. These sometimes significant issues affect the ability to manage the scheme effectively. However, it is worth acknowledging that PNDs have a statutory basis and the three recordable and notifiable offences listed count as positive disposals for sanction detections and OBTJ purposes. By increasing the appropriate use of PNDs, longer term improvements in tackling low level offending without recourse to the courts can be maximised.

### The main issues to address:

- **Need for complementary and supporting national operating standards:**
  - The numbers of PNDs that should be issued for recordable (and notifiable) offences.
  - PNC entry – PND subject standards of proof.
  - Data protection and disclosure.
  - Standard operating procedures concerning level of investigation and PND ticket completion.
  - Common training package(s).
  - Revision of the Home Office Police Operational Guidance.
  - Widening the scope on PND issue to 16/17 year olds for recordable and notifiable offences.
- **Managing PNDs:**
  - Personal (and audited) issue of PND tickets.
  - Good training structure and accessibility to force procedural documents and team champions.
  - Better performance management with involvement of front-line supervisors.

- Accessibility to PND data at force, and team levels.
- **Counting Rules:**
  - Reconciling the numbers of sanction detections and OBTJ, where a decision has been made to remove sanction detection. This will become a significant issue if or when the scheme is extended to include additional recordable and notifiable offences.
  - Ensuring that all recordable and notifiable PND offences are recorded as sanction detections and OBTJ, with the correct 'conversion rate'.
  - Developing Home Office Counting Rules or Police Operational Guidance to ensure crimes are reclassified appropriately.
- **Legislative Changes**
  - The ability for all constables to issue PNDs whether in uniform or not.
  - The ability to authorise Custody and Detention staff to issue PNDs once evidential sections of the ticket have been completed.
- **Legislation and Operational Practice**
  - There is legitimate use being made of Section 5 as a discrete offence and as an alternative to drunk and disorderly and urinating in a public place where the Section 5 criteria are met, i.e. that the offence is likely to cause harassment, alarm or distress. However, whilst there appears to be an incentive to increase sanction detections and OBTJ by this means it also has the potential to raise violent crime levels. The apparent shift in operational practice to utilise Section 5 places additional evidential burdens on officers and may lead to inappropriate use, where front-line staff are unaware or fail to capture the additional evidence.

These issues are explored in detail in the full report.

#### 4. Next Steps

For the PND scheme to work effectively and efficiently; maximise its full potential and retain its credibility and the confidence of those operating it, there are a number of key recommendations to be taken forward or developed in parallel with any growth in the scheme at national and local levels.

##### 4.1 Key recommendations

###### 4.1.1 National:

	Context	Lead Agency/Unit	Recommendations
1.	<b><u>Revision to the Police Operational &amp; Supplementary Guidance.</u></b>		
1.1	Maximising the appropriate and ethical use of PNDs.	PSU	Provide for inclusion in the Police Operational Guidance document a national standard operating procedure in relation to PND evidential requirements, completion and minimum standards of investigation issues. This would increase consistency in the application of the scheme.
1.2	Provide clarity on the	SPPU	Provide clear advice or a national framework within the

	numbers of PNDs that should be issued.		Police Operational Guidance on the number and frequency that PNDs for recordable offences should be issued to an individual, so as to provide a consistent approach.
1.3	Provide clarity on the term compliance.	SPPU	Remove the term compliant, paragraph 7 in the Police Operational Guidance due to the level of confusion it causes.
1.4	PNC Entry.	SPPU	Reinforce in the Police Operational Guidance the requirement to log recordable and notifiable PND offences on the PNC.
1.5	Section 5/drunken & disorderly.	SPPU	Ensure that national policy provides explicit advice/guidance on the use of Section 5 as an alternative to drunk and disorderly behaviour and urinating in a public place.
1.6	16/17 year olds.	YJCU	Remove from the Supplementary Guidance for 16/17 year olds references to: The restriction on only 1 PND that can be issued for a recordable offence and place in the context of a national framework mentioned at paragraph 3.4.2, to enable greater flexibility.
1.7	Clarify role of CPS in respect of PNDs and Statutory Charging Schemes	SPPU	Amend the Police Operational Guidance to clarify the role of the CPS in relation to the initial issue of a PND.
2.	<b><u>Section 5/Legal &amp; Counting Rules</u></b>		
2.1	Clarifying legal issues between drunk & disorderly and Section 5.	SPPU	To resolve the ambiguity in the use of Section 5 as an alternative to drunk and disorderly and urinating in a public place offences, seek legal advice to determine the appropriate approach and consider options to:
2.2	Reclassifying Section 5	JEU	<ul style="list-style-type: none"> <li>○ Remove Section 5 from the list of violent crime offences, as this would remove the anomaly of PNDs being used for low level incidents and resolve the conflict arising from the impact on violent crime. This recommendation is timely given the current review of crime statistics being undertaken by the Statistics Commission.</li> <li>○ Include the offence of drunk and disorderly as a recordable and notifiable offence.</li> </ul>
2.3	Drunk & Disorderly as a recordable & notifiable offence.	JEU	
2.4	Resolution of HO Counting Rules issues.	Home Office (RDS)	Consider the necessity to change the counting rules in order to reconcile the numbers of sanction detections and OBTJ where decisions have been made to remove a sanction detection.
2.5	Crime Recording – Section 4 POA 1986 offences.	SPPU	Subject to any decision to include Section 4 within the list of PND offences, amend paragraph 6.4 of the Police Operational Guidance to resolve crime recording issues.

2.6	DNA Profiling.	PLPU	Amend SOCA to include the requirement for a DNA sample outside of the police station environment.
2.7	Inclusion of additional authorised staff.	SPPU	Widen the extent of the scheme to include authorised Custody and Detention Officers/Staff to issue from custody and to include the provisions for on-street issue to all non-uniformed constables in order to further reduce bureaucracy and save police officer time.
3.	<b><u>ACPO Policy on PNC Entry requirements &amp; Retention Guidelines</u></b>	ACPO	Whilst police forces should retain the opportunity and discretion to obtain fingerprints and DNA samples from suspects for the relevant offences, there is a need to: <ul style="list-style-type: none"> <li>○ Clarify the standard of proof required in relation to a subject's identity for PND recording purposes.</li> <li>○ Introduce the new ACPO Retention Guidelines.</li> </ul>
3.1			
3.2			
4.	<b><u>PND Ticket Template Revision</u></b>	SPPU	Revise the national PND ticket template. Details could include Yes/No answers in respect of the check for and retention of CCTV evidence, the retention and location of stolen property, whether the victim was consulted, damage and value of the property in question and already in use in some police forces mobile and home telephone numbers for intelligence and enforcement purposes.
5.	<b><u>Training/Advice</u></b>		
5.1	Information.	SPPU	Design innovative ways to assist police forces in raising awareness of staff to the existence, extent and benefits of the PND scheme. These should take cognisance of legislative and technological developments and be responsive to police force needs.
5.2	Good Practice.	SPPU	Disseminate examples of good practice through the PND National Operational Working Group.
5.3	Training.	ACPO	Raise the issue of 'Learning' for PNDs through the relevant ACPO Business Area and commission training providers, e.g., CENTREX to develop standardised training package(s) for new and existing police officers and staff.
6.	<b><u>Extending the PND scheme</u></b>		
6.1	Increasing the numbers of recordable & notifiable offences.	SPPU/ACPO	Develop resilient, rigorous and consistent application of the PND scheme alongside the extension of it for more recordable and notifiable offences. This will ensure the PND scheme retains credibility in the short, medium and long terms.
6.2	Technological development to PND scheme.	SPPU	Develop the viability of a technological solution in respect of PND issue, to further reduce bureaucracy and support the administration process. There are suppliers looking to enter this market and the viability of this could be tested in the short to medium terms.

**4.1.2 Local:**

	<b>Context</b>	<b>Recommendations for Police Forces</b>
<b>1.</b>	<b><u>Maximising sanction detection and OBTJ opportunities.</u></b>	
<b>1.1</b>	Adult offenders.	Whilst maintaining integrity, review local policy and procedure to ensure PNDs are issued in appropriate circumstances and that their use is maximised for both on-street and custody issue in respect of adult offenders.
<b>1.2</b>	16/17 year old offenders	Extend local policy and procedure to include 16 and 17 year olds for the full list of offences, including Section 5, theft and criminal damage for on-street and custody issue.
<b>1.3</b>	Use of PNDs as an alternative to other disposals.	Provide greater clarity to the ethical and appropriate use of PNDs as an alternative to NFA and DNP to ensure consistency in the approach to PNDs.
<b>2.</b>	<b><u>PNC Entry.</u></b>	
<b>2.1</b>		Ensure PND entries are made against all recordable and notifiable PND offences.
<b>3.</b>	<b><u>Crime Recording &amp; Reporting.</u></b>	
<b>3.1</b>	Crime Recording.	Introduce robust systems, procedures and supervision to ensure that PNDs are issued for the listed offences and that the initial recording of the crime is correct and can be substantiated.
<b>3.2</b>	Role of the DDM.	Ensure that processes and procedures are in place to enable contested cases to be referred to the Dedicated Decision maker (DDM) and Crime Registrar when a decision has been made not to proceed and to follow these through to outcome to enable training needs and trends to be identified

<p><b>4.</b> <b>4.1</b></p>	<p><b><u>Performance Management.</u></b> Local Framework.</p>	<p>Ensure that robust performance management structures consistent with those described in the Managing Police Performance document are in place to inform staff on policing priorities, specifically to:</p> <ul style="list-style-type: none"> <li>○ Disaggregate sanctions detection disposals by type at force and BCU levels.</li> <li>○ Ensure that performance management structures support force priorities and identify opportunities to widen the scope of the local scheme.</li> <li>○ PNDs should be included in any BCU/team wider sanction detection targets.</li> <li>○ Feedback mechanisms – ensuring operational staff receive performance information.</li> </ul>
<p><b>4.2</b></p>	<p>Establishing Policy owning Dept.</p>	<p>Ensure clear ownership of PND policy and procedure within the Criminal Justice portfolio to enable performance management within the right framework.</p>
<p><b>4.3</b></p>	<p>Local Audits.</p>	<p>Establish through local audits whether and to what extent, local PND procedures facilitate the appropriate and ethical use of PNDs and the accurate recording of offences.</p>
<p><b>4.4</b></p>	<p>PND Personal Issue.</p>	<p>Make personal issue of PND tickets for both tariffs standard practice. The process should identify the PND ticket numbers and to whom issued.</p>
<p><b>4.5</b></p>	<p>Quality checks &amp; role of supervisors.</p>	<p>Ensure supervisory staff quality check or dip sample completed PND tickets to support performance management and identify training issues and other trends.</p>
<p><b>5.</b> <b>5.1</b></p>	<p><b><u>Local Training.</u></b></p>	<p>Given the exponential significance of PNDs as a sanction detection and OBTJ, review current training methodologies in the light of the incremental growth and use of the scheme and plan training accordingly:</p> <ul style="list-style-type: none"> <li>○ Ensure relevant and progressive training as the scheme is rolled-out and developed.</li> <li>○ Put in place team champions that colleagues can approach for further guidance.</li> <li>○ Record the level of training and to whom given.</li> <li>○ Ensure access to PND reference documentation.</li> </ul>