

Environmental Audit Committee's enquiry into
ENVIRONMENTAL CRIME

MEMORANDUM submitted by
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Summary

- Northgate welcomes the Environmental Audit Committee investigation into environmental crime and sentencing.
- Northgate believes that the Committee should examine the extended use of penalty notices for tackling minor environmental crime, and that government should carry out a comprehensive review of the applicability of penalty notices to environmental crime.
- Northgate highlights some examples of international practice in relation to environmental crime and occupational safety.
- Northgate believes that any systemic extension of penalty notices must take place as part of a clear education and enforcement programme, with clear standards for the quality of enforcement.

Northgate and community justice

1. Northgate welcomes the Environmental Audit Committee's enquiry into environmental crime. As a leading provider of technology services and enforcement systems to the police, local authorities and emergency services, our particular interest focuses on citizen based service and community justice.
2. For Northgate, community justice encompasses both help and punishment. A safe and secure community promotes social cohesion, economic progress and environmental improvement as the guarantors of sustainable success.
3. If communities are to enjoy a sense of well-being, individual citizens need to be able to access their rights and shape public services according to their needs; healthy communities must educate and inform individuals and organisations about their rights and their responsibilities; and where crimes and misdemeanours are committed the civil and criminal justice systems must enforce the law in a proportionate and equitable fashion.
4. We all of us have a responsibility to protect future generations from environmental harm. Yet all too often "minor" environmental offences go unheeded and unprosecuted. Every time this happens we undermine the serious issue of environmental stewardship and jeopardise the future safety of our nation and its children's children.

Penalty notices and environmental crime

5. Northgate believes that the committee should consider the extended use of penalty notices as:
 - a proportionate means of tackling minor environmental crime carried out by individuals and corporates - which currently goes unchallenged;
 - a tool to support public education programmes which stress the importance of citizens understanding and abiding by their environmental responsibilities;
 - a means by which pressure on the courts could be reduced.

6. Northgate proposes that any extension of the use of penalty notices to tackle environmental crime should be carried out in a comprehensive and consistent fashion to guarantee parity between individuals and organisations; to protect citizens from arbitrary action by public authorities and to enable flexible environmental sentencing to ensure that individual offenders are punished appropriately. We outline some issues relating to best practice below.

Penalty notices – the current position in English law

7. Fixed penalty notices or penalty charges are used increasingly in a wide range of minor criminal and civil matters in English law. Penalty notices can be grouped into four main areas: public disorder offences; minor "environmental" offences such as litter and dog fouling; traffic and parking offences; and those linked with public administration.
8. The Anti-social Behaviour Act has extended the range of environmental offences that can be dealt with through penalty notices. It gives local authorities the power to issue penalty notices for graffiti and fly-posting, other than when the offence is motivated by racial or religious hostility. The power to issue penalty notices for noise nuisance at night will be granted automatically to all local authorities, and the bill removes the onerous duty to supply the full 11pm to 7am service.

Why use them?

9. Community well-being is founded on trust between local citizens and public authorities. Where there is perceived inactivity by public authorities to act on citizens' day to day concerns, local citizens are less likely to trust their ability to deliver fair and efficient public services.
10. Used appropriately, penalty notices can be an effective way of dealing with high-volume low-level crime, environmental and social nuisance and other forms of minor civil infringements of the law which are currently either processed through the courts or where no action is currently undertaken. They give authorities with limited resources an additional means of dealing efficiently with minor offences.
11. A proactive approach to promoting environmental responsibilities backed up by a system of penalty notice administration could help to enhance public trust and improve service delivery. Penalty notices can have a "ripple" effect. Once imposed for particular offences or targeted in particular areas, word of mouth can quickly lead to others improving their performance to avoid paying of similar fines. By integrating them into the educative process, they may assist in changing attitudes, at least, in the short term.

Learning from international experience

12. As penalty notices do not lead to a criminal record, they are a useful tool for dealing with persistent low-level environmental nuisance. In other countries such as New Zealand, Canada and Australia, they have been widely used as a tool to strengthen law enforcement, for example in health and safety law and under Australian environmental legislation where breaches of the law are minor; where the facts are apparently

indisputable; where there is one-off breach and where a penalty notice could act as a deterrent. In Australia a report carried out by the Law Reform Commission in 1992 found that the stigma of court appearances and the misery caused by having a criminal conviction seemed out of proportion to the original offence, particularly for migrant communities. Table A below highlights the use of expiation notices (similar to penalty notices) for environmental offences in South Australia. It demonstrates their widescale use and the fact that a victim levy is imposed on every environmental offence.

Table A: Expiation legislation in South Australia

| Legislation | Offences | Penalty amounts | Victim of crime levy |
|-------------------------------------|--|-----------------|----------------------|
| Environment protection act | Numerous covering contravention of policy, failure to maintain records, contravention of ozone, air quality, burning regulations, machine noise regulations, waste management regulations | \$100-\$300 | Yes |
| Fisheries Act | Numerous including: failure to carry licence, selling exotic fish, engaging in a fishing activity of a prescribed class, failure to keep records, lodge statistical returns | \$50-\$300 | Yes |
| Forestry Act | Numerous including: lighting fires, depositing rubbish, failure to comply with instructions of a forest warden, using abusive behaviour against warden | \$105-\$200 | Yes |
| Harbours and navigation regulations | Numerous including: swimming or skiing in restricted area, parking, speeding, failure to carry safety equipment, failure to report accident | \$55-\$400 | Yes |
| National parks and wildlife act | Numerous including: exporting plants and animals without permission, hunting without permit, failure to pay national parks fees, disorderly behaviour in a reserve, failure to abide by wildlife regulations, kangaroo tag regulations | \$30-\$315 | Yes |
| Waterworks Act | Remain on land without being authorized, failure to comply with authorized conditions | \$315 | Yes |

13. Consideration should be given to extending fixed penalty notices to health and safety, as in Australia and other countries. Currently the Health & Safety Executive and environmental health officers with health and safety duties have no powers to issue penalty notices for low-level offences, yet arguably these could be a powerful tool in preventing escalation, for example if they were issued at the time of a warning to show clear enforcement intent, or after a warning when an infringement has occurred.
14. In New Zealand, health and safety at work legislation provides for a system of 'infringement notices'. An infringement is any failure to comply with the requirements of the Health and Safety in Employment Act. An inspector may issue an infringement notice if they have reasonable grounds to conclude that a person has failed to comply with the provisions of the Act and the person has had prior warning of the offence. Notices are issued where the inspector considers that prosecution is not warranted. Fines of between \$100 and \$3000 may be imposed for any breach of the Act, except for a failure to maintain a hazard identification system where the fine range is higher – between \$800 and \$4000. Companies can decide whether to accept and pay the infringement notice or to go through the courts. An infringement notice does not result in a criminal record, but infringement notices may be taken into account in future prosecutions.
15. Similarly, in Australia infringement notices are a recognized part of the enforcement mechanism in most states. In Queensland, the State Penalties Enforcement Act 1999 provides for infringement notices for a wide range of offences, covering nominated laws, local laws and by-laws. These include health and safety offences. In New South Wales, certain offences have attracted penalty notices for over twenty years. Originally basing its health and safety system on the UK nineteenth century system, the Australian system has focused on regional systems of enforcement including both reactive and proactive inspections based on targeted programmes.
16. Canada adopted the Contraventions Act in 1992. This Act created simplified procedures for dealing with selected federal offences, as an alternative to the summary conviction procedure set out in the Criminal Code. Under the Act, offences can be designated as "contraventions" by regulations.
17. One of the original goals of the Act was to distinguish between more serious criminal offences and other less serious federal offences. The Act was amended in 1996 to allow the use of existing provincial and territorial ticketing schemes to process the less serious federal offences. In addition, the Act allows the federal government to enter into agreements with provinces and territories under which they will administer and enforce the Act.
18. Offences that have been designated as contraventions are in relation to the following acts: the Canada Marine Act; the Canada National Parks Act; the Canada Shipping Act; the Canada Wildlife Act; the Canadian Environmental Protection Act, 1999; the Department of Transport Act; the Government Property Traffic Act; the Migratory Birds Convention Act, 1994; the National Capital Act; the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act; the National Defence Act; the

Non-Smokers' Health Act; the Radiocommunication Act; the Railway Safety Act; the Motor Vehicle Transport Act, 1987; the Navigable Waters Protection Act; and the Tobacco Act.

19. It is arguable that government should conduct a comprehensive and consistent review of existing criminal offences with a view to examining the applicability of penalty notice systems to their enforcement.

How to use them

20. If we are to prevent minor environmental offences in the UK, there has to be a clearly defined education programme which outlines citizens' responsibilities. Penalty notices should be seen as part of the education continuum. If people know what they do is wrong, but continue to do it, enforcement mechanisms should be introduced.
21. In England, the use of penalty notice systems to enforce minor offences against body corporates is slowly developing in relation to the administrative law, but it is arguable that much more could be done in this area. Using penalty notices to target minor offences in the fields of environmental crime and health and safety could, if used as an overall programme of education and enforcement, act as a deterrent to more serious crime breaking.
22. Whilst penalty notices may provide an efficient and cost-effective means of dealing with minor offences, the penalty notice system is only as fair as it is operated. Enforcement systems must be responsive, transparent, accountable, equitable and audited. Enforcement staff must use proportionate methods in issuing penalty notices, so that they issue advice or an informal caution where appropriate. This means that particular attention should be paid to the training and resources of staff who will operate the system – from front line staff who issue the tickets to enforcement managers. Staff should be adequately equipped to understand how human rights and diversity issues impact on service delivery and be able to deal with the public in a courteous, fair, equitable, respectful and consistent fashion.

Preparing the public and preventing unnecessary burdens on the courts

23. In the UK the use of penalty notices, for example to tackle minor disorder, has attracted some controversy. It is therefore essential that any introduction of penalty notices in new areas of law should be clearly communicated to the public. The public should be prepared for new changes in law so that they understand the implications of continuing their actions. In the Australian state of Queensland a moratorium of two months preceded the introduction of penalty notices for new offences relating to environmental nuisance, giving the public a chance to understand the new system and make any modifications to their behaviour.

Ability to pay

24. Unlike court fines, penalty notices are not related to the ability to pay. This means that problems can occur if individuals are allowed to accrue large amounts of unpaid fine. Enforcement systems should monitor their use to avoid cases of multiple issuing to individuals or families.
25. Where penalty notices are not paid, this may lead to the application of fine enforcement measures through the courts. If local authorities are given further powers to issue penalty notices in respect of environmental nuisance, it is advisable that central government consider providing them with additional powers to prevent individuals who clearly are not in a position to pay from appearing before the courts. In addition, local authorities should consider providing time to pay arrangements, particularly where ability to pay is under question, as this will help to increase compliance. Care must be taken to ensure that individuals are not allowed to build up huge debts which act as an incentive to re-offending.
26. We believe that there are strong arguments for minimising the use of the courts to pursue unpaid penalty notice payments and of developing mechanisms for clearly distinguishing between those who can't and those who won't pay.
27. There are two precedents which are worth considering. Firstly, under the Dog Fouling (Scotland) Act 2003 local authorities and the police are able to issue fixed penalties to people who fail to clear up after a dog. Scottish local authorities retain all money received in respect of payment of fixed penalties. Where a fixed penalty is not paid a local authority can recover the amount through civil diligence without applying to the courts. This, in effect, provides civil remedies for tackling criminal penalties. It allows Scottish authorities to pursue action for debt recovery without incurring the additional cost of going to court.
28. In addition, Schedule 5 of the Courts Act 2003 states that an offender with a criminal fine may apply for the payment terms to be varied, or volunteer for an attachment of earnings order or deduction from benefit. Schedule 6 allows an offender to discharge their fine by unpaid work. Consideration could be given to setting up a similar system for unpaid penalty notices, ensuring that those who genuinely can't pay are distinguished between those who can but won't.

Conclusion

29. As the Committee undertakes this important investigation into environmental crime we urge it to consider how best to tackle minor offences. Where minor environmental crime goes unchecked it constitutes a serious issue; yet resources need to be targeted at tackling serious environmental crime. The introduction of penalty notice enforcement systems based on clear principles and guidance could provide a cost effective method of tackling minor environmental offences committed by individuals and corporate bodies. Any systemic extension of penalty notices must take place as part of a clear education and enforcement programme, with clear standards for the quality of enforcement. We would be delighted to share our views further with the Committee.