

The Summary Justice Review Committee's
report

Response by
NORTHGATE INFORMATION SOLUTIONS

July 2004

Summary

- Northgate welcomes the Summary Justice Review Committee's report into summary justice in Scotland, and supports its underlying principles that the criminal justice system must be fair, effective, efficient and fast.
- To ensure public value, it is also essential that the criminal justice system is open, transparent, accountable and consistent. Effective information management is crucial to this.
- Northgate's response focuses on the Committee's proposal to extend the use of penalty notices, for more effective fine enforcement and more comprehensive information management. It is based on our experience of providing penalty notice enforcement and information management services within criminal justice systems. It is also based on two pieces of forthcoming research commissioned by Northgate into the law on penalty notices and local authority practice in England.¹
- 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. And that any system should be capable of being analysed and assessed across the board to ensure that its operation is not adversely impacting on various groups in a manner inconsistent with natural justice and the rule of law.

Northgate and community justice

1. Northgate welcomes the Summary Justice Review Committee's enquiry into summary justice. 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.

¹ Northgate has commissioned Fellows' Associates to carry out both pieces of research. The latter piece of research is jointly conducted with IDeA. It is due to be published in the Autumn.

Penalty notices and minor crime

4. The committee has rightly pointed out that a system of justice which fails to dispose of over half of all cases within 6 months of the date of the offence cannot truly be considered to be summary.
5. The committee recommends the extended use of penalty notices to a number of non road traffic offences and suggests that the scope for using penalty notices in regulatory matters should be further considered.
6. Northgate believes that the committee should consider the extended use of penalty notices as:
 - a proportionate means of tackling minor 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 responsibilities;
 - a means by which pressure on the courts could be reduced and the speed of justice improved;
 - an integral part of regulatory law.

Penalty notices – the current position in 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 regulation and administration. A growing number of organisations and agencies are being empowered to issue penalty notices including the police, traffic wardens, community support officers, local authority officers, weights and measures and trading standard officers.
8. Elsewhere worldwide, penalty notices are increasingly being used not only to tackle minor crime but as a significant part of the regulatory system. In federal law in Australia the penalty notice system operates as “*a temporary bar to proceedings*” according to the Australian Law Reform Commission (ALRC) and has been considered to be a form of negotiated penalty.
9. 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 law breaking.

Why use them?

10. 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, people are less likely to trust their ability to deliver fair and efficient public services.
11. 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.
12. 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.
13. Northgate proposes that any extension of the use of penalty notices to tackle minor 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 sentencing to ensure that individual offenders are punished appropriately. We, therefore, support the committee's view that there must be consistency in their use across Scotland. We outline some issues relating to best practice below.

Opting out of the penalty notice system

14. The committee proposes that the individual should have to opt out of the system of penalty notices in line with the proposals contained within the Antisocial behaviour (Scotland) Act and the Anti-social Behaviour Act in England. In England there is no consistency as to whether people opt in or opt out of the system so, for example, whereas those who fail to pay a fixed penalty notice under the Anti-social Behaviour Act have their penalty notice registered as a fine, those who fail to pay penalty notices issued for litter can contest the issue in court.
15. There are clearly arguments for consistency one way or the other. But the problem for Scotland is that inconsistency may arise where penalty notices exist or are introduced under UK law such as Road Traffic law.
16. It is also essential that the penalty notice system not only outlines the rights and obligations of individuals, but clearly sets out the impact of paying a fixed penalty notice as well as a statement alerting people of the need to take individual and impartial advice.

Prosecution following rejection of the penalty notice system

17. We accept that if the credibility of the scheme is to be maintained, that where an offender challenges the FPN, a prosecution should normally follow. However, if FPNs are challenged because people have no resources to pay, continuation of court action would appear to act against the public interest. We recommend particular attention should be paid to the needs of those living on low means (see below).

Disclosure

18. We are concerned that the situation would arise where offenders may fail to accept the offer on the basis that they would be fined a lower amount on conviction by the courts. Penalty notices should be fixed at such a rate that the likelihood is that individuals who go to court would get a larger fine. The typical fixed penalty notice offers the opportunity to discharge a liability for conviction. The person is offered the opportunity to escape a greater penalty or punishment through making a payment without contesting liability.
19. We are also concerned about disclosure to third parties, particularly as no criminal liability is attached to the payment of a fine. We understand where there is a legitimate interest the Crown is generally prepared to disclose the acceptance of a fiscal fine. If it is proposed to continue with such a system, we recommend that before disclosure is granted individuals would have the right to make representations as to why, in their case, there should be non-disclosure.
20. If there is a general assumption that disclosure will be granted where there is a legitimate interest, it is essential that this is clearly set out in the fixed penalty notice.
21. Where there is repeat offending for particular offences, policy guidelines should be in place to ensure that the appropriate enforcement action is taken.

How to use penalty notices

22. If we are to prevent minor crime 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.
23. 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.
24. Enforcement systems must be responsive, transparent, accountable, equitable and audited. Enforcement staff must use proportionate methods when 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 the staff who will operate the system – from those on the front line 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

25. It is 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 modifications to their behaviour.

Fine enforcement and ability to pay

26. 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 fines. Enforcement systems should monitor their use to avoid cases of multiple issuing to individuals or families and to identify repeat offenders.

27. Where penalty notices are not paid, this will lead to the application of fine enforcement measures through the courts. It is advisable that additional consideration should be given to prevent individuals who clearly are not in a position to pay from appearing before the courts.

28. For example, in New Zealand and Australia, time to pay arrangements are commonly in place. This helps 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.

29. 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.

30. 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.

31. 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.

Fines enforcement agency

32. We believe it makes sense both economically and for greater efficiency for Scotland to have its own fine enforcement agency. Most of the Australian federal states have introduced agencies of this nature and they have helped in assisting the level of fines collected or in diverting the individual to pay off the fine by means of community work. In New South Wales the Infringement Processing Bureau is responsible for processing over 2.5 million infringement notices, including working with over 400 commercial clients.
33. Crucial to the effective operation of such an agency would be effective information management systems designed to ensure that Scotland is able to effectively audit the development of the new system. It is our view that human intervention is crucial to securing higher compliance. For example, Belfast City Council found that by hand-delivering reminders concerning penalty notices, compliance was raised.

A new Scottish Act

34. The Committee rightly calls for consistency in the application of penalty notices across Scotland. These need to be carefully and closely integrated into the fiscal fine process. It is likely then that over the years Scotland will see an exponential growth in the issuing of penalty notices.
35. We believe that Scotland should consider introducing a Penalty Notice and Fiscal Fine (Scotland) Act similar to legislation introduced in Canada and some of the Australian states, such as South Australia's Expiation of Offences Act. This would help to bring existing policy and practice together and avoid a fragmented approach to penalty notice legislation.
36. Currently, whenever penalty notices are extended under different pieces of law in the UK, the particulars of the notice must be restated. This could be avoided by an Act which governed the basic principles and procedures for issuing and enforcing penalty notices and for minimum standards of enforcement and best practice. Individual laws could expressly state differences to the Act where these were required.
37. The advantages of this approach are that it would obviate the need to disperse legislative provisions throughout Scottish law and as a result, reduce inconsistency.
38. Where penalty notices are extended to regulators and other public bodies they should be required to develop and publish enforcement guidelines such as the type of action available to the regulator, the principles behind each of the types of action, the criteria involved in the decision to pursue one or more of the actions and the regulator's relationship with other regulators and enforcement agencies and data sharing and information practices.

Conclusion

39. The introduction of penalty notice enforcement systems based on clear principles and guidance could provide a cost effective method of tackling minor criminal and regulatory offences committed by individuals and corporate bodies.
40. 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 Executive.