

# Putting communities first

## Northgate Information Solutions' response

### GENERAL COMMENTS

#### Introduction

Northgate warmly welcomes the Scottish Executive's consultation document 'Putting communities first'. The right to live free from environmental and social nuisance should be enjoyed and respected by all. It is fundamental to the quality of life and community well-being. This requires a strong and robust system of community justice based on two equal pillars – help and enforcement. Our response makes some general comments about the Scottish Executive approach to tackling anti-social behaviour at a local level, and then focuses on the proposals for penalty notice enforcement and practice.<sup>1</sup>

For Northgate, an effective system of community justice is about both help and punishment. We have to tackle poverty and social deprivation as well as dealing with the crime 'hot spots'. A healthy system promotes social inclusion and a strong sense of solidarity and social responsibility within communities. But it must also enforce the administration of civil and criminal justice. Demoralised communities living in run-down or neglected environments need to know that broader social issues – inequality and social deprivation – will be tackled at the same time as their day to day concerns are dealt with such as poor street lighting, dirty streets, run down public buildings and fear of crime. And when social nuisance or crimes are reported, but nothing done, then the community becomes a victim too.

#### Shared responsibility

The Scottish Executive rightly emphasises joint responsibilities for enhancing the quality of life within local communities. Government's role is to provide clear leadership and communication that environmental and social nuisance will not be tolerated, as well as providing an effective and efficient system of community justice which involves help, education and punishment.

We all of us – individuals, companies, the not for profit sector, government and enforcement bodies – have a responsibility to respect the rights of others. In particular, Northgate welcomes the consultation's emphasis on addressing the anti-social behaviour of parts of the corporate sector. Tackling anti-social behaviour is not only about changing the behaviour of individuals, but also organisational behaviour which may promote individual anti-social behaviour e.g. those who are tolerated as bullies at work may well exhibit the same behaviour out of work. It is the role of all of us to take responsibility to prevent such behaviour happening. However, when it does happen there must be effective enforcement systems in place.

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<sup>1</sup> Northgate is one of the country's leading providers of local community justice solutions. Our approach is to use the local community as focal point for all services and to look back into core services to deliver citizen friendly services which improve the quality of individual's lives. We are the UK's leading provider of penalty notice solutions.

## **Involving communities**

We are pleased that the Scottish Executive acknowledges the central role that local communities need to play in tackling anti-social behaviour. Community engagement and inclusion in developing effective policies is crucial. Citizens are not only users and consumers, they are deliverers and they should be collaborators. So whilst the content of policy is important, so too is the context in which it is delivered. Any effective anti-social behaviour strategy must involve the community both in problem-solving and change management.

## **Effective information change and greater collaboration**

The consultation document rightly points out the pivotal role that the Criminal Justice (Scotland) Act could have in developing strategies to combat anti-social behaviour. In the future, the lines of responsibility and accountability for community justice and well-being will become increasingly blurred and require even greater levels of collaboration between local authorities, the criminal justice system and the community and voluntary sector. This requires greater information sharing between the police and local authorities but much wider collaboration in developing effective practice.

Collaboration is easy to say but often difficult to achieve. Effective delivery is based on establishing an open learning environment where people can experiment with new ideas, learn from experience, assess individual needs, share information and reach conclusions from all these experiences to drive through a programme of continuous improvement and create real public value.

New technology could assist in the process of enhancing collaboration and information sharing and of developing new approaches to problem solving. Of utmost importance is that people and systems are prepared to adapt to the use of new technology; that it is easy to understand and use for employees and public alike. New technology adds value when it enhances relationships between people and is integrated effectively into change management programmes.

We also think that it is crucial to recognise the valuable role that the not-for-profit sector can play in delivering effective local solutions, and that they need to be involved in developing effective anti-social behaviour strategies, particularly when they are involved in delivery.

## **PENALTY NOTICES**

### **Why use them?**

The consultation document proposes extending the powers to issue penalty notices for anti-social behaviour. There are arguments for and against the extended use of penalty notices. On the one hand they can provide administrative convenience, particularly in dealing with high-volume low-level social and economic nuisance and crime which may otherwise carry on unabated. On the other hand, there may be question marks about their use as a preventative tool and whether they violate human rights principles and due process and fairness. The particular context of penalty notices in the Scottish system of law needs to be carefully considered. Under Section 302 of the Criminal Procedure (Scotland) Act 1995, the Procurator Fiscal can make a conditional offer of a fixed penalty in relation to any offence in respect of which an alleged offender could competently be tried before a district court. So in Scotland their use is well established.

Local authorities can issue notices for littering, driving and parking offences, and dog fouling. Giving police and local authorities powers to issue FPNs for further minor offences will mean that the authorities trust them to use the judgment, impartiality and thoroughness currently used by the PF on the severity and alternative actions. Devolving such powers to police and local authorities could ease the pressure on the PF in dealing with low-level offences, but it will be necessary to ensure that there are sufficient safeguards at a local level to ensure their appropriate use. Particular efforts will need to ensure that the Scottish law on corroboration is not undermined.

Penalty notices can have a "ripple" effect. Once imposed on individuals for particular offences, word of mouth quickly leads to other individuals improving their performance in order to avoid paying of similar fines. By integrating them into the educative process, they themselves may assist changing attitudes and behaviour, at least in the short term. Wider use of penalty notices should be part of a co-ordinated policy mix of education, promotion of rights and law enforcement to optimize prevention of low-level, endemic social and environmental nuisance. 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.

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. A proactive approach to encouraging, educating and promoting community well-being, backed up by a system of penalty notice administration where clear and decisive action is taken to tackle individual concerns, could help to enhance public trust and improve service delivery.

## **When is their use appropriate?**

There has been some controversy concerning penalty notices in England and Wales. But 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.

Councils in New Zealand surveyed about penalty notices on the whole thought they provided a useful tool between prosecution and inaction. Penalty notices do not lead to a criminal record. They are therefore useful for dealing with persistent low-level nuisance which affects individual quality of life such as litter, graffiti and noise nuisance. In the Scottish context it would appear that their extension would be most wisely used in those cases where the breach is clearly defined and evidence is hard to dispute.

But they are not an appropriate tool for dealing with serious and consistently repeated crime, where the evidence does not meet the relevant standards for criminal and civil infringements of the law, or where the penalty does not meet the seriousness of the offence.

## **Penalty notice and juveniles**

This is an area that has attracted controversy in England. However, it is generally recognised that children and juveniles are subject to criminal laws. Arguably, the proportionate use of penalty notices against juveniles as part of a policy mix of education, restorative justice and enforcement could assist in diverting young people away from a life of low-level crime leading to higher offences.

## **Preparing the public**

It is also important to ensure that penalty notice enforcement is normally directed at organizations and individuals who knowingly infringe environmental, social and other low-level criminal or civil offences. This means taking measures to inform the public about their responsibilities and rights.

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. Consulting citizens on their perception of the quality of life in their community can highlight those areas in greatest need of improvement and help secure public support.

## **Ability to pay**

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, and enforcement systems should monitor their use. 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 may act as an incentive to re-offend.

### **What are the implications for personnel and resources?**

The Scottish executive is considering extending the power to issue penalty notice for fly-posting and litter to community wardens. Concern has been expressed that this may hinder relationships between communities and their wardens. This need not be the case so long as enforcement is used appropriately and proportionately.

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. 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. Enforcement systems must be responsive, transparent, accountable, equitable and audited.

Some councils in England already employ dedicated teams to tackle litter and dog fouling offences, who will soon be able to issue penalty notices for graffiti and fly-posting. Newcastle City Council is considering employing dedicated ‘street offence officers’ with responsibility for all low-level environmental crime. Sheffield City Council has found that personnel already experienced in enforcement are better placed to take on the power to issue penalty notices, as this minimises training needs. They also suggest that councils consider the resources available for creating a primary penalty notice enforcement role.

Authorities should make particular provision for ensuring that enforcement does not undermine public education or the promotion of community well-being and quality of life issues. Only community wardens who have the necessary training and support should be empowered to issue penalty notices. This means ensuring that enforcement staff use proportionate methods in issuing penalty notices, so that they issue advice or an informal caution where appropriate. Careful consideration should be given to human resources when considering the respective educative and enforcement role of authorities.

### **Tracking penalty notice enforcement**

As with any financial penalty, penalty notices must be effectively enforced to provide both deterrent and reassurance to the public that such issues will be tackled. Authorities will need to consider what systems they have in place to track, enforce and evaluate any scheme they introduce. Working with neighbouring authorities or with regional crime reduction teams could be one way of ensuring an effective system is place, as well as securing the benefit of economies of scale. Crime and anti-social behaviour does not respect local authority boundaries. The sharing of information between all agencies responsible for community well-being is crucial. A collaborative approach, working closely with the police, public authorities and also other Council departments involved in enforcement would appear to deliver the greatest benefit to the community.

## **Fixed penalty notices and health and safety**

In our response to the Health and Safety Executive strategic review, we argued that consideration should be given to extending fixed penalty notices to health and safety, as in Australia and other countries.

Northgate believes that occupational health and safety is an integral part of community well-being. We live in a world of greater uncertainty and increased security risk. Public concerns about community safety, a decline in public standards and increasing fear of crime have placed this issue at the forefront of governments' and individual citizens' concerns across the world.

Yet too often, occupational health and safety is separated from these issues by policy makers at a national and local level. If people feel unsafe, under physical threat or at mental risk at work, their lives at home and within the community are likely to be affected. If anti-social behaviour such as bullying or racial harassment is allowed to go unchecked in the workplace, it may be more difficult to challenge within the community. Drugs, alcohol and other substance misuse impact on the world of work and community at large. Their use at work damages health, causes absenteeism, reduces productivity and increases the risk of accidents. In the community, high volumes of low-level crime involving drugs and alcohol damages the quality of life for local residents and increases the fear of crime.

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.

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.

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.

The use of penalty notice systems to raise the profile of particular issues can act as a powerful deterrent for would-be offenders. In certain cases, they could free up time spent upon dealing with the escalated offence by tackling the offence at a lower level. They also could be used to attract local publicity for non-enforcers.

## **Recommendations**

If it is accepted that penalty notices should be extended within Scotland, and there are considerable arguments in favour in terms of providing an efficient addition to the community justice system, sufficient safeguards should be built into the process. For example, mandatory guidelines on their use and practice could be issued by the Scottish Executive to ensure consistency with the current system operated by the PF.

Any extension would need to be assisted by high profile local publicity campaigns to ensure that the public are aware of their responsibilities, and sufficient guarantees should be built in to ensure that staff issuing penalty notices are sufficiently trained. Consideration should be given to establishing centres of excellence for enforcement and the possible sharing of back office staff between and within local authorities and between local authorities and the police. And to ensure that the system does not fall into disrepute there will be a need for completeness and accuracy on fine enforcement.

Lastly, and outwith the particular remit of this consultation document, we think that there is a strong argument to analyse the use of penalty notice enforcement more widely as an additional administrative means of dealing with minor infringements, as in Australia, and we would ask the Scottish Executive to consider undertaking a more comprehensive and co-ordinated review.