

**Swift, simple, effective  
justice?**

**Examining the use and  
impact of penalty notices  
for disorder**

**A thesis submitted in partial fulfilment of the  
requirements of the University of Sheffield for the  
degree of Doctor of Philosophy**

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**To Jamie, who I love, and cherish as well**

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## **THESIS ABSTRACT**

This thesis examines the use and impact of penalty notices for disorder (PNDs). Introduced under the Criminal Justice and Police Act 2001, these police-issued fines (of £60 or £90) have become part of the mainstay of the criminal justice system. Over 1.25 million PNDs have been issued, yet despite their widespread application, little is known about their use. The overarching aim of this research is therefore to shed light on this under-researched police power and examine *how* PNDs are used (in what circumstances and against whom).

The organising structure for the research derives from an inductive analysis of the relevant parliamentary debates, consultation papers and White Papers on PNDs. This provides a thematic framework (detailing the aims of, and the concerns regarding, PNDs) to assess the use and impact of this power. The empirical research adopted a mixed-methods approach. Police observations and an analysis of PND tickets explored how PNDs were used in practice in one police force whereas surveys and interviews with PND recipients examined their perceptions and experiences of this power.

The findings confirm concerns that PNDs disproportionately impact upon certain groups and offer the potential for police officers to punish people who challenge their authority. This questions the legitimacy of this power. The findings also question the adequacy of the defence that recipients' rights are protected by their retention of the right to request a trial. A 'right' many view as an ineffective means to challenge (what they often saw as officers' unfair) decisions to issue them with a PND.

This research provides a much-needed insight into the use of PNDs that is of value to the police, policy makers and academics. The thesis concludes by proposing amendments to the PND system to address some of the concerns raised by this power, and indeed by this research.

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## LIST OF ABBREVIATIONS

<b>ACPO</b>	Association of Chief Police Officers
<b>ASB</b>	Anti-social behaviour
<b>ASBO</b>	Anti-social behaviour order
<b>ASBFPN</b>	Anti-social behaviour fixed penalty notice (Scotland)
<b>CANIN</b>	Cannabis infringement notice (Western Australia)
<b>CEN</b>	Cannabis expiation notice (South Australia)
<b>CIN</b>	Criminal infringement notice (New South Wales)
<b>CIR</b>	Cannabis intervention requirement (Western Australia)
<b>CJPA</b>	Criminal Justice and Police Act 2001
<b>CTO</b>	Central Ticket Office
<b>DAAT</b>	Drug and Alcohol Action Team
<b>DCCSP</b>	Derby City Community Safety Partnership
<b>ECHR</b>	European Convention on Human Rights
<b>HMCPSI</b>	Her Majesty's Crown Prosecution Service Inspectorate
<b>HMIC</b>	Her Majesty's Inspectorate of Constabulary
<b>LAPSO</b>	Legal Aid, Punishment and Sentencing of Offenders Act 2012
<b>NPM</b>	New public management
<b>NSW</b>	New South Wales
<b>NTE</b>	Night time economy
<b>OBJT</b>	Offences brought to justice
<b>OCJR</b>	Office for Criminal Justice Reform
<b>OOCD</b>	Out-of-court disposal
<b>PCSO</b>	Police Community Support Officer
<b>PND</b>	Penalty notice for disorder
<b>PRA</b>	Police Reform Act 2002
<b>QUIN</b>	Infringement notice (Queensland)
<b>s5</b>	Section 5 of the Public Order Act 1986: behaviour likely to cause harassment, alarm or distress
<b>SNT</b>	Safer Neighbourhood Team
<b>SPOC</b>	Single point of contact
<b>VIN</b>	Infringement notice (Victoria)



## CHAPTER 1: INTRODUCTION

### **1.1 Introduction**

Introduced under Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 (CJPA), penalty notices for disorder (PNDs) are police-issued<sup>1</sup> fines (of £60 or £90) which may be issued to persons aged 18 or over if an officer has ‘reason to believe’ they have committed a ‘penalty offence’ (those offences which may be disposed of via PND). Penalty notices for disorder should be distinguished from fixed penalty notices, which have existed in England and Wales since the 1950s (Fox 1995). Unlike their counterparts, which are focused on traffic, environmental and other regulatory offences, PNDs reach “firmly into the mainstream of criminal behaviour” (Young 2008, p.169). Since its introduction the remit of the PND scheme has been hugely extended. Whilst they are overwhelmingly police-issued fines, amendments to the CJPA have seen the power to issue PNDs (at the discretion of Chief Constables) extended to police community support officers, accredited persons (so ‘accredited’ under the Community Accreditation Scheme<sup>2</sup>) and weights and measures inspectors. In the 12 years since the CJPA received Royal Assent the number of offences included within the PND system has almost trebled. Initially focused on minor incidents of adult disorder, subsequent amendments have seen the number of penalty offences rise from 10 to 29. Notable additions include offences against s5 of the Public Order Act 1986 (behaviour likely to cause harassment alarm or distress; s5 hereafter), theft, criminal damage and possession of cannabis.

The use of PNDs peaked in 2007 when 207,544 such notices were issued. However, whilst the use of this power has fallen dramatically in recent years, they continue to form part of the mainstay of the criminal justice system (Ministry of Justice 2013c, Table Q2.1). In 2012, 106,205 PNDs were issued (Ministry of Justice 2013c, Table Q2.1). Indeed, in 2011 far greater numbers of people received PNDs for drunk and disorderly behaviour and s5 than were proceeded against at the magistrates’ court for these offences<sup>3</sup>. Since their introduction over 1.25 million PNDs have been issued and yet little is known about how these notices are used in practice. There is a paucity of research in this field and that which does exist is largely

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<sup>1</sup> The term ‘police-issued fine’ is used here as, to pre-empt the findings (see Section 5.4), although police community support officers, accredited persons and weights and measures inspectors may be empowered to issue PNDs, in practice PNDs are overwhelmingly a ‘police power’. In 2010, 99.4% of all PNDs were issued by the police (see Chapter 5 Appendix, Table A5.2).

<sup>2</sup> The Community Safety Accreditation Scheme was introduced under the Police Reform Act 2002 and allows Chief Constables to accredit people employed in community safety roles (such as neighbourhood wardens and private security staff) with limited law enforcement powers.

<sup>3</sup> In 2010 37,119 PNDs were issued for drunk and disorderly and 32,317 for s5; this is compared to 20,581 and 22,848 cases respectively which were proceeded against in the Magistrates Court (Ministry of Justice 2011b, Table Q2.1; Ministry of Justice 2012c).

dominated by the police perspective on the system and managerialist evaluations as to the resource implications of penalty notices and payment rates. Indeed, none of the existing research has considered the perceptions of adult PND recipients. As Young has noted, the absence of available data leaves “researchers studying PNDs ... unable to say anything of value” (2010, p.48). Whilst he made this comment with regard to the inadequate ethnic monitoring of PND use (and the concomitant inability to make informed comments about disproportionality in the use of this power), the same is true about all aspects of the PND system. We cannot have an informed debate about the use of PNDs if we do not know how this power is used or whom it is used against.

The idea for this research was first imagined in the spring of 2006 when, as an undergraduate, I wrote an essay on whether the rights of the accused were sufficiently (or indeed excessively) protected during pre-trial procedures. At the time PNDs had been in (national) use for just two years and I became fascinated and frustrated by this power in equal measure. Here we had a power where a person, who had neither admitted guilt, nor been found guilty, could be issued with a financial penalty because a police officer had ‘reason to believe’ they had committed a criminal offence. This is a power which in Tony Blair’s words “bluntly reversed the burden of proof” (Blair 2006) and where the only protection of the rights of the accused was that they could refuse to pay and instead request a court hearing. But who would request a court hearing given the range of incentives to simply accept the PND? Going to court meant risking a more severe sentence and a criminal record and so PND recipients might be pressurised into accepting the decision of the officer at the scene, who was ‘judge, jury and executioner’. That was the fascination, then came the frustration. As all good undergraduates (and indeed all good researchers) do, I set out in search of some sources desperate to know how this power was being used; it felt like I was staring into a black hole<sup>4</sup>. Whilst I could express my concerns about this (then) new police power, I had no means of knowing whether or not those concerns were well-founded. And so it was to satisfy that curiosity that I embarked upon this research, with the broad aim to simply ‘shed light’ on the use of penalty notices for disorder. I wanted to understand how PNDs are used and what the impact of this power has been.

The research provides an in-depth case study of the use of PNDs in one police force area based on an analysis of 250 PND tickets and over 130 hours of police observations. This case study is considered against (the limited) national data on the use of PNDs. The perceptions and

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<sup>4</sup> At the time I wrote that essay the only empirical research on PNDs was the pilot study which (over two publications) was a mere 10 pages (Spicer and Kilsby 2004; Halligan-Davis and Spicer 2004). Whilst since that time there have been a small number of empirical studies which have examined the use of PNDs (see Section 3.3), it remains still a hugely under-researched area.

experiences of PND recipients are also examined, providing the first account of adult PND recipients' views of the system. These data are then analysed within a thematic framework (set out in Chapter 2) to consider the *impact* of PNDs: whether they have achieved their aims and/or whether the concerns raised regarding the use of this power have materialised in practice (see Chapter 8). It is my aim that this study will inform policy (and academic) debate as well as aiding the development of best practice in the use of PNDs. However, it is also recognised that the use of PNDs (in terms of the number/type of notices issued) varies greatly across the country. As such, whilst the case study used in this research provides a basis for debate, it is just that, a basis. It is hoped this study will provide the grounding for future research on the use and impact of PNDs.

In this chapter I will first outline the development of the PND system. The introduction (and extension) of PNDs will then be considered in a broader policy context. I will argue that PNDs cannot be placed squarely in the context of anti-social behaviour (ASB) policy but instead stand outside, and indeed contradict, the communitarian, multi-agency approach that has otherwise been propagated by both the Labour and Coalition Governments (Crawford 2007; Ministry of Justice 2010c). Finally, I will briefly discuss the research questions and methods and outline the structure of the remainder of this thesis.

## **1.2 The PND process**

PNDs can only be issued for offences detailed in the CIPA (see Table 1.1). However, their use in any individual case is a matter of police discretion (the exercise of which has been shown to be influenced by a range of (more and less legitimate) factors (see Section 3.4.3)); it remains open to officers to use alternative (formal or informal) disposals when faced with a penalty offence. There are two tiers of penalty offence. Those on the lower tier incur a £60 fine and those on the higher tier, £90. Whilst often referred to as 'on-the-spot fines', for a number of reasons this is a misnomer. Firstly, PNDs may be issued either on-the-spot or (as approximately half of all PNDs are) in custody following arrest (Ministry of Justice 2013a, Table 1). Secondly, it is not an 'on-the-spot fine' as (despite the original suggestion that offenders be marched to a cash-point by the police) PND recipients have 21 days to take action. That action might be to pay the notice, but could (instead) involve requesting a court hearing or (in force areas, and for offences, where a PND waiver scheme is available) requesting to partake in an education

course. On completion of that course their ticket would be cancelled<sup>5</sup>.

Once issued, the administration of PNDs is managed by the police force's Central Ticket Office (CTO). If a notice is unpaid and a hearing (or, where available, an education option) is not requested, after 21 days it will usually be registered as a fine (for one and a half times the value of the original penalty) at the magistrates' court. This will be enforced as would any other fine. As such non-payment of a PND may result in arrest or the seizure of property by bailiffs; however a conviction would not be recorded.

If the notice is unpaid after 21 days, rather than registering a fine, the decision may be taken to prosecute the offender for the original offence. Prosecution for the original offence should only occur in exceptional circumstances, such as where additional evidence has emerged as to the seriousness of the offence or the recipient's offending history becomes known (Home Office 2005a; Ministry of Justice 2013b). The onus rests with the issuing officer to monitor the progress of the PND; the CTO do not alert the police regarding non-payment of PNDs (Home Office 2005a).

Where the recipient requests a hearing the CTO will return the PND to the issuing officer who, with the CPS if necessary, will take the decision as to whether there is sufficient evidence to prosecute. Where the decision is taken to prosecute, a summons file is completed and issued, otherwise a letter is sent to the recipient stating that no further action will be taken.

In practice, the majority of PNDs are paid. In 2011 the Ministry of Justice reported that 54% of PNDs were paid, 37% were registered as a fine, 4% resulted in potential prosecution, 4% were cancelled<sup>6</sup>, in 1% of cases<sup>3</sup> the recipient requested a court hearing and in 1% the outcome was unknown (Ministry of Justice 2012a, Table 3.11c)<sup>7</sup>. The 2011, rather than the (most recent) 2012 data are reported here as in 2012 14% of tickets were recorded by the Ministry of Justice as being 'outcome unknown'.

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<sup>5</sup> Whilst relatively new in legislative/policy terms, in practice the first of these schemes appeared in 2007 in Hertfordshire and by December 2012 (pre the legislation that 'introduced' these schemes) almost half of all forces offered to waive PNDs if the recipient attended an education session. Most forces charge a fee of £40 to attend such courses.

<sup>6</sup> The Ministry of Justice data do not distinguish between tickets cancelled because the person attended an education session (or 'waiver scheme') – and thus cancellation resulting from 'compliance' – and other reasons for cancellation.

<sup>7</sup> In practice these proportions are likely to be closer to: 54% paid; 40% registered as a fine, 4% cancelled, 1% potential prosecution, 1% court hearing requested and 1% outcome unknown. The Ministry of Justice data for 2009-11 appears to have reported the number of tickets resulting in potential prosecution in the 'fine registered' column and vice versa for three forces (Kent, Sussex and West Yorkshire). The percentages provided in this note therefore exclude those three forces.

### 1.3 The penalty offences

PNDs can be issued by police officers, PCSOs and other accredited persons for the following offences:

<b>Table 1.1: The penalty offences</b>			
<b>Upper Tier Offences (£90)</b>			
<b>Offence</b>	<b>Notice</b>	<b>Year Offence Added</b>	<b>Persons able to issue</b>
Throwing fireworks	s80 of the Explosives Act 1875	Original <sup>8</sup>	All
Wasting police time or giving a false report	s5(2) of the Criminal Law Act 1967	Original <sup>9</sup>	All
Disorderly behaviour while drunk in a public place	s91 of the Criminal Justice Act 1967	Original <sup>9</sup>	Police/ PCSOs
Knowingly give a false alarm to a person acting on behalf of a fire and rescue authority	s49 of the Fire and Rescue Services Act 2004 (formerly s31 of the Fire Services Act 1947)	Original <sup>9</sup>	All
Buys or attempts to buy alcohol for consumption on relevant premises by person under 18	s149(4) of the Licensing Act 2003	Original <sup>9</sup>	All
Send false message/ use a public electronic communications network to cause annoyance, inconvenience or needless anxiety	s127(2) of the Communications Act 2003	Original <sup>10</sup>	All
Behaviour likely to cause harassment, alarm or distress	s5 of the Public Order Act 1986	2002 <sup>11</sup>	All
Breach of fireworks curfew (11pm-7am)	Regulations under Fireworks Act 2003	2004 <sup>12</sup>	All
Possession of a category 4 firework (public display fireworks) by anyone other than a firework professional	Regulations under Fireworks Act 2003	2004 <sup>13</sup>	All
Possession by a person under 18 of an adult firework	Regulations under Fireworks Act 2003	2004 <sup>13</sup>	All
Theft (under £100 retail/commercial only)	s1 of the Theft Act 1968	2004 <sup>13</sup>	Police only
Destroying or damaging property (limited to damage under £300)	s1(1) of the Criminal Damage Act 1971	2004 <sup>13</sup>	Police/ PCSOs
Sale of alcohol anywhere to a person under 18	s146(1) of the Licensing Act 2003	2004 <sup>13</sup>	All
Supply of alcohol by or on behalf of a club to a person aged under 18	s146(3) of the Licensing Act 2003	2005	All

<sup>8</sup> Original penalty offence included in Criminal Justice and Police Act 2001

<sup>9</sup> Original penalty offence included in Criminal Justice and Police Act 2001 under Section 169C(3) of the Licensing Act 1964

<sup>10</sup> Original penalty offence included in Criminal Justice and Police Act 2001 under Section 43(1)(b) of the Telecommunications Act 1984

<sup>11</sup> Entry inserted by Criminal Justice and Police Act 2001 (Amendment) Order 2002/1934

<sup>12</sup> Entry inserted by Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004/2540

<sup>13</sup> Entry inserted by Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004/2540. Original offences under Section 169 of the Licensing Act 1964

<b>Upper Tier Offences (£90)</b>			
<b>Offence</b>	<b>Notice</b>	<b>Year Offence Added</b>	<b>Persons able to issue</b>
Buys or attempts to buy alcohol on behalf of a person under 18	s149(3) of the Licensing Act 2003	2004 <sup>14</sup>	All
Sells or attempts to sell alcohol to a person who is drunk	s141 of the Licensing Act 2003	2005 <sup>14</sup>	All
Delivery of alcohol to person under 18 or allowing such delivery	s151 of the Licensing Act 2003	2004 <sup>14</sup>	All
Possession of cannabis/cannabis resin	s.5(2) and Sch 4 Misuse of Drugs Act 1971	2009 <sup>15</sup>	All <sup>16</sup>
<b>Lower Tier Offences (£60)</b>			
Being drunk in a highway, public place or licensed premises	s12 of the Licensing Act 1872	Original <sup>9</sup>	Police/PCSOs
Trespassing on a railway	s55 of the British Transport Commission Act 1949	Original <sup>9</sup>	All
Throwing stones, etc. at a train	s56 of the British Transport Commission Act 1949	Original <sup>9</sup>	All
Consumption of alcohol in a designated public place	s12 of the Criminal Justice and Police Act 2001	Original <sup>9</sup>	All
Buying or attempting to buy alcohol by a person under 18	s149(1) of the Licensing Act 2003	2005 <sup>16</sup>	All
Leave/deposit litter	s87(1) and (5) of the Environmental Protection Act 1990	2004 <sup>13</sup>	Police only
Consumption of alcohol by a person under 18 on relevant premises	s150(1) of the Licensing Act 2003	2004 <sup>14</sup>	All
Allowing consumption of alcohol by a person under 18 on relevant premises	s150(2) of the Licensing Act 2003	2004 <sup>14</sup>	All
Drop / leave litter / refuse except in a receptacle provided for the purpose in a Royal Park or other open space	Regulation 3(3) of the Royal Parks and Other Open Spaces Regulations 1997	2012 <sup>17</sup>	All
Use pedal cycle / skates / blade / board / foot-propelled device in a Royal Park or other open spaces	Regulation 3(4) of the Royal Parks and Other Open Spaces Regulations 1997	2012 <sup>19</sup>	All
Unless the person is registered blind, failing to immediately remove animal faeces from a Royal Park or other open space	Regulation 3(6) of the Royal Parks and Other Open Spaces Regulations 1997	2012 <sup>19</sup>	All

There have always been two levels of penalty offence, each incurring a different fee. Those on the lower tier incur a £60 fine and those on the higher tier, £90. The Secretary of State retains the right to vary the level of fine for individual penalty offences and set this at anything up to

<sup>14</sup> Entry inserted by Criminal Justice and Police Act 2001 (Amendment) Order 2005/1090

<sup>15</sup> Entry inserted by Criminal Justice and Police Act 2001 (Amendment) Order 2009/110

<sup>16</sup> Whilst accredited persons are not prevented from issuing notices for cannabis possession by statute, the 2013 PND guidance states that accredited persons are not empowered to seize cannabis and thus they should not issue PNDs for this offence (Ministry of Justice 2013b). The previous guidance (Home Office 2005a, as amended by Ministry of Justice 2009b) made no mention of accredited persons' powers (or lack thereof) to issue PNDs for this offence.

<sup>17</sup> Entry inserted by Criminal Justice and Police Act 2001 (Amendment) Order 2012/1430

one quarter of the maximum fine which a person would be liable to pay on conviction for that offence. Indeed, since PNDs were introduced the fee for lower tier offences has risen from £40 (to £50 and, more recently) to £60 and in July 2013 the fee for higher tier offences rose from £80 to £90<sup>18</sup>. When PNDs were first introduced the focus was on disorderly behaviour by adults. Whilst the scheme continues to focus on adult offending – the PND scheme was initially extended to youth offenders (in all areas for 16-17 year olds and in 7 pilot forces for 10-15 year olds), however the use of PNDs was restricted to over 18s in April 2013 – the remit of the system has been vastly extended since its inception. Initially the system was ‘bottom heavy’: there were three upper tier offences and seven lower tier offences. Today there are eighteen offences which attract a £90 fine whilst only eleven attract a £60 fine. This reflects the changing focus of the system from minor disorder to more serious offending; a trend most clearly seen through the addition (in 2004) of theft and criminal damage to the list of penalty offences. The inclusion of these offences “radically altered” the nature of the penalty notice system from one which was focused on minor disorder to criminal behaviour (Young 2008, p. 169). To pre-empt Chapter 3 (see Section 3.4) it is worth noting here that this emphasis on more serious offending is evidenced through the use of penalty notices in practice. PNDs for theft, s5, drunk and disorderly, possession of cannabis and criminal damage formed 92% of all PNDs issued in 2012 (Ministry of Justice 2013c, Table Q.2c).

#### **1.4 The history of PNDs**

Table 1.2 below provides an overview of the key developments in the PND system in the twelve years since they were introduced. For an in-depth account of the political and legal development of the PND system, from its introduction to date, please refer to Chapter 1 Appendix 1, Table A.1. Two key points should be noted from Table 1.2: firstly, the introduction (and extension) of the PND system was characterised by a lack of consultation. The Labour Government allowed just 30 days for public consultation on the proposals to introduce PNDs, which appeared on the statute book less than 12 months after Tony Blair (then Prime Minister) first voiced the idea of marching ‘louts’ to the cash-point and ordering them to pay £100 for their drunken and anti-social behaviour. Many of the subsequent additions to the list of penalty offences were not subject to consultation and were often introduced with little public or parliamentary scrutiny. Whilst in November 2013 the Coalition Government launched a consultation on the use of out-of-court-disposals (OOCs), the purpose was very much focused on improving the effectiveness, simplicity, consistency and transparency of such powers with a

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<sup>18</sup> A £10 victim surcharge was added to both upper and lower tier PNDs in July 2013 (see Section 2.5.4.2).

view to increasing public confidence in their use. Thus whilst they recognised the potential for OOCs to be misused in cases involving serious and violent offenders, they did not answer Reid's (2013) call for the Government to review the potential for PNDs to be used where there is insufficient evidence of an offence<sup>19</sup>. Secondly, the development of the PND system has largely occurred within a research vacuum. Other than s5 (which was added before the pilot study commenced and thus before PNDs were rolled out nationally) none of the 18 offences added to the list of offences suitable for disposal by PND were piloted before becoming available for use nationally. Similarly, there was no pilot of either the extension of the PND system to include 16-17 year olds or the extension of PND issuing powers to bodies other than the police. The 2006 Office for Criminal Justice Reform (OCJR)<sup>20</sup> review of PNDs was restricted to considering the use of penalty notices for just three offences: theft, criminal damage and s5 (all notifiable offences and thus those which count towards offences brought to justice<sup>21</sup>). The review of out-of-court disposals (OOCs) launched in November 2009 was halted by the incoming Coalition Government and as a result only the initial findings were ever published (Ministry of Justice 2011d)<sup>22</sup>. As such, whilst we can chart the development of the PND scheme, given the relative lack of consultation in that development and the lack of research in this field, we cannot be sure why PNDs have developed in the manner they have. Instead, the justifications for PNDs can be found in the parliamentary debates which are discussed in Chapter 2.

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<sup>19</sup> The Government's response to this consultation had not been published at the time of going to press.

<sup>20</sup> The Office for Criminal Justice Reform was a government department with a trilateral status, working with the Ministry of Justice, Home Office and Attorney General's Office. Its functions have however since been taken over by the Ministry of Justice.

<sup>21</sup> Offences Brought to Justice (OBTJ) are an outcome measure published by the Ministry of Justice. Offences are counted as having been 'brought to justice' when a 'notifiable offence' results in an offender being convicted or cautioned, issued with a penalty notice for disorder or cannabis warning, or having an offence taken into consideration at court. There are currently four notifiable offences covered by the PND scheme: s5, criminal damage, possession of cannabis and theft.

<sup>22</sup> Although when the OCJR (2010) review was published, it was reported (Ministry of Justice 2011d) that those findings had informed the Breaking the Cycle White Paper (Ministry of Justice 2010c).

<b>Table 1.2: The history of PNDs</b>	
<b>Date</b>	<b>Development</b>
<b>PNDs under the Labour Government</b>	
June 2000	Tony Blair (2000) proposed the idea of on-the-spot fines for drunken, noisy, loutish and anti-social behaviour in a speech to the Global Ethics Foundation where he proposed that offenders would be marched to a cash-point and ordered to pay £100 for such behaviour.
September 2000	The Home Office (2000) released a four-page document 'Reducing Public Disorder, the Role of Fixed Penalty Notices: A Consultation Paper'. 30 days after it opened, the consultation on the introduction of PNDs closed.
January 2001	The Criminal Justice and Police Bill was introduced to the House of Commons.
May 2001	The Criminal Justice and Police Act 2001 received Royal Assent, introducing PNDs for ten offences (see Table 1.1).
July 2002	The Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002/1837 set an £80 fee for upper tier offences and £40 for lower tier offences.
July 2002	Section 5 of the Public Order Act 1986 (behaviour likely to cause harassment, alarm or distress) was added to list of penalty offences under the Criminal Justice and Police Act 2001 (Amendment) Order 2002/1934.
December 2002	The Police Reform Act 2002 (PRA) came into force giving Chief Constables the power to delegate responsibility for issuing PNDs to PCSOs.
January 2004	Section 87 of the Anti-social Behaviour Act 2003 came into force extending the use of PNDs to 16 – 17 year olds, with a power for the Secretary of State to reduce this to 10 year olds. Section 89(5) of that Act also extended the power to issue PNDs (for all offences other than drunk and disorderly and being drunk in a highway) to accredited persons.
March 2004	Early results from the pilot PND project were published, presenting the results from the first 8 months of the pilot (Spicer and Kilsby 2004).
April 2004	The PND scheme was fully rolled out across all forces in England and Wales.
September 2004	The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment No.2) Order 2004/2468 raised the penalty for lower tier offences from £40 to £50 and raised drunk and disorderly from a lower tier to an upper tier offence.
September 2004	Final results from the pilot were published, covering the whole 12 month pilot period (Halligan-Davis and Spicer 2004).
November 2004	The Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004/2540 came into force introducing theft, criminal damage, a number of offences related to the purchase/supply of alcohol and littering to the list of penalty offences (see Table 1.1).
December 2004	The Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004/3166 reduced the minimum age for PND recipients to 10. Notices issued to 10-15 year olds were to be paid by the parent or guardian of the recipient.
March 2005	The Home Office (2005a) published operational guidance for the use of PNDs.
July 2005	Sections 122 (3)(a) and 5(b) of the Serious Organised Crime Act 2005 amended Schedules 4 and 5 of the PRA, prohibiting PCSOs from issuing PNDs for theft or littering, and accredited persons from issuing PNDs for: drunk in a highway; drunk and disorderly; theft; criminal damage, and/or littering.
March 2006	Office for Criminal Justice Reform published 'Penalty Notices for Disorder: Review of practice across police forces' (Krains and Carroll 2006).
April 2007	Section 15 of the Police and Justice Act 2006 came into force, amending Police Reform Act 2002 to allow Chief Constables to delegate the power to issue PNDs to weights and measures inspectors.
November 2008	The results from the youth PND pilot scheme (for 10-15 year olds) were published (Amadi 2008).

January 2009	Criminal Justice and Police Act 2001 (Amendment) Order 2009/110 added possession of cannabis to the list of penalty offences; this was laid before Parliament on 22 <sup>nd</sup> January 2009 and came into force just six days later.
July 2009	The Court of Appeal held in <i>R v. Gore and Maher</i> [2009] EWCA Crim 1424 that receipt of a PND would not preclude the subsequent prosecution of a person for a different (more serious offence) arising out of the same facts.
July 2009	Ministry of Justice Circular 2009/04 amended the guidance: PNDs for 'retail theft' should only be issued for theft from a shop; only one PND should ever be issued to a person for this offence; the value of goods stolen should not exceed £100 (previously £200) and for criminal damage to £300 (previously £500); people suspected of having a substance abuse problem <i>should not</i> be issued with a theft/criminal damage PND (Ministry of Justice 2009a).
July 2009	Ministry of Justice Circular 2009/05 provided officers with guidance on issuing possession of cannabis PNDs: this notice was restricted to over 18s and only one PND should ever be issued for this offence. Unless there are aggravating circumstances, cannabis PNDs should be the second stage in a three-step enforcement process (first offences should receive a cannabis warning, third offences should be charged) (Ministry of Justice 2009b).
November 2009	Jack Straw launched a review of out-of-court disposals (OOCs) following concerns raised in the media about their improper use (Travis 2009).
<b>PNDs under the Coalition Government</b>	
August 2010	The Court of Appeal ruled in <i>R v. Hamer</i> [2011] 1 W.L.R. 528 that payment of a PND did not impugn the good character of the recipient as it was not an admission of any offence. As such, receipt of a PND had no effect on an individual's entitlement to a good character direction.
December 2010	The Ministry of Justice (2010c, p.64) released the 'Breaking the Cycle' Green Paper which included proposals to introduce an education option for PNDs whereby suspects would pay to attend an appropriate educational course rather than paying the usual financial penalty.
June 2011	Initial findings from the OJRC review of out-of-court disposals were published. The review was halted by the new Government before completion.
January 2012	The Ministry of Justice (2012b) published 'Getting it right for victims and witnesses', which proposed to add a £10 victim surcharge to all PNDs.
March 2012	The Government's Alcohol Strategy suggested empowering hospital security staff (via the Community Safety Accreditation Scheme) to issue s5 and consumption of alcohol PNDs to people "whose drunken behaviour is likely to cause harassment, alarm or distress" (Home Office 2012b, p.13).
July 2012	The White Paper 'Swift and Sure Justice' was published (Ministry of Justice 2012d) which included proposals to introduce a 'justice test' – which was not defined – to try and address concerns that OOCs were being issued inappropriately and to promote their fair and consistent use.
April 2013	The Legal Aid, Punishment and Sentencing of Offenders Act 2012 came into force. Schedule 23 excluded under 18s from the PND scheme and introduced a power for Chief Constables (at their discretion) to establish PND education/waiver schemes, the cost of these courses being (according to LAPSO) dictated by regulations. However, subsequent guidance allows Chief Constables to set the course fee (Ministry of Justice 2013b, p.23).
April 2013	The Ministry of Justice (2013b) published new guidance on the use of PNDs. This largely served to consolidate the previous amendments made via Ministry of Justice Circulars; however there are some notable differences between this and the previous PND guidance (Home Office 2005a): namely (as PNDs no longer need to be issued using the prescribed form) officers are no longer directed that they <i>must</i> complete a witness statement in all cases. Although the views of victims should still be sought, their views are no longer decisive in any cases (previously PNDs could not be issued for theft/criminal damage where the victim was non-compliant). Officers are now urged to tell PND recipients of the consequences of accepting a PND.
July 2013	Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2013/1165 increased the amount payable in respect of penalty notices by £10. Thus lower tier offences attract a £60 fine and upper tier offences £90.
November 2013	The Ministry of Justice (2013l) launched a consultation on the use of OOCs which aimed to ensure their effectiveness, simplicity and transparency.

## **1.5 The policy context**

Table 1.2 details the development of the PND system over the last twelve years. PNDs were very much ‘Blair’s baby’ but, as shown in Table 1.2 (and Chapter 1 Appendix, Table A1.1), they have continued to develop under the Coalition Government. The historical overview given above lists the introduction and extension of PNDs in isolation from the broader policy on anti-social behaviour (ASB) and alcohol-related crime. This section will explore PNDs in the context of crime reduction policy, arguing that whilst penalty notices for *disorder* are (as the name suggests) manifestly an ASB-oriented power, they are actually quite contrary to the contractual and multi-agency approach otherwise espoused to manage ASB and alcohol-related crime.

### **1.5.1 The Tories tackle anti-social behaviour**

Whilst ASB was a central policy concern for the Labour Government, legislation addressing ASB was initially grounded in the context of Conservative policies on social housing management (Flint 2004). The Housing Act 1996 strengthened measures for dealing with nuisance behaviour caused by people in social housing. For example, it was no longer necessary to prove a nuisance was ongoing, past conduct would suffice and evidence from third parties (including professionals) who were not victims became accepted. Any breach of an injunction against anti-social behaviour could result in arrest of the perpetrator without a warrant. The Noise Act 1996 gave local authorities added powers to deal with noise from dwellings, including the power to issue warning notices to perpetrators specifying a time period during which noise levels must not be exceeded. If breached, the perpetrator may be prosecuted and, if convicted, liable for a fine of up to £1,000. Powers to tackle ASB were further extended under the Protection from Harassment Act 1997, under which it is an offence to pursue a course of conduct which, on more than one occasion, causes alarm, harassment or distress to another person (Sections 1-7). That Act provided for an individual to apply for a civil injunction against such harassment, breach of which constitutes a criminal offence punishable by up to five years imprisonment (Burney 2002; Nixon and Hunter 2004; Feinberg 2007).

### **1.5.2 ‘Tough on crime, tough on the causes of crime’: Labour’s ‘third way’ responses to anti-social behaviour**

The phrase ‘tough on crime, tough on the causes of crime’ has become synonymous with (New) Labour’s criminal justice policy. First used by (then Shadow Home Secretary) Tony Blair in 1993, this slogan reflected a move away from traditional Left discourses which saw society

as responsible for crime. Yet nor was it an acceptance of the traditional Right view that crime was purely the individual's responsibility. Instead it signalled Labour's commitment to take crime and the victims of crime seriously. It was the beginning of Labour's 'responsibilisation' agenda (Feinberg 2007). This slogan signalled a clear break with Old Labour politics. There were to be no rights without responsibilities; communities would be empowered to fight crime in their area, but in turn there was an onus upon communities and individuals to take responsibility for crime reduction (Crawford 2001). There was a shift in emphasis "from a rights-based discourse to one that emphasise[d] social responsibilities and conditionality" (Crawford 2009, p.815).

Labour's focus on ASB was first evidenced in their paper 'A Quiet Life: Tough Actions on Criminal Neighbours' (*cited in*, Burney 2006) and it was this type of behaviour that was cited when justifying the introduction of the proposed community safety order (which later became the anti-social behaviour order (ASBO)). The Crime and Disorder Act 1998 introduced the ASBO, a civil order targeting 'behaviour likely to cause harassment, alarm or distress' that could be applied for by the police or local authorities (and later social landlords under the Police Reform Act 2002). Under the Anti-social Behaviour Act 2003 local authorities and registered social landlords could also seek an anti-social behaviour injunction prohibiting individuals from engaging in specified anti-social behaviours. Breach of such an injunction could result in prosecution for contempt of court and, if convicted, a prison sentence.

The concern was predominantly about youth anti-social behaviour and disorder in neighbourhoods, rather than the adult offending in town and city centres which is the focus of the PND system. This is further highlighted by the Respect Action Plan (Home Office 2006a, p.6) which, despite accepting that ASB is propagated as much by adults as by young people, only discussed adult offending within the context of 'problem families' and substance misuse. PNDs were mentioned only 7 times in the entire 44 page Action Plan: appearing in the foreword and introduction to outline the power and their use, and within the chapter on enforcement and community justice<sup>23</sup>. The Respect Action Plan contained no references to binge drinking or drunk and disorderly behaviour and the only reference to town centre disorder was with regard to how PNDs had been used to provide a "swift response" (Home Office 2006a, 32) to such behaviour. All of this suggests that PNDs were, to a certain extent,

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<sup>23</sup> Despite only receiving a brief mention in the Respect Action Plan it was proposed that the fee associated with PNDs should be increased to £100 and their use should be extended to more offences (Home Office 2006a).

being seen as separate from the 'Respect Agenda' which was more concerned with remoralisation of problem families and youths (Garrett 2007).

Labour's ASB policy promoted, on the one hand, responsabilisation of individuals, but on the other, the responsabilisation of communities and the devolution of responsibility for crime prevention from the police to incorporate a broader range of public/private bodies. This was evidenced particularly through the Crime and Disorder Act 1998 which placed a duty on the police and local councils (a duty that was later extended to police authorities, fire authorities, primary care trusts and probation services) to work together (in Crime and Disorder Reduction Partnerships) with other public, private and voluntary organisations to implement strategies to reduce crime and disorder (Crawford 2007).

However, PNDs do not fit the responsabilisation agenda that characterised the broader crime and anti-social behaviour policy of the time. Firstly, there are no conditions attached to PNDs, thus the contractual approach evidenced in ASBOs or dispersal orders for example (breach of which are criminal offences) is lacking<sup>24</sup>. The person must pay a fine, but in payment of that fine they are discharging their liability for the offence. As such, rather than encouraging recipients to take responsibility for their actions, PNDs expressly allow people to avoid liability. PNDs do not attempt to 'remoralise' the offender. Indeed, in accepting the notice they avoid conviction and thereby the 'offender' label. Secondly, whilst Labour espoused partnership approaches to tackling crime and disorder, this link between communities, local agencies and the criminal justice system is entirely absent in the PND system. Thus, whilst on the one hand the Government sought to increase community safety and tackle the underlying causes of community disorder through active citizenry and multi-agency working, on the other, through the introduction of PNDs they provided a system which allowed individual police officers to identify and punish disorder without reference to any other agency.

Feinberg (2007) highlights that one of the platforms upon which New Labour ran in the 1997 election, under their banner of being "tough on crime and tough on the causes of crime", was that they would address the constraints which had been placed on the police which (they argued) prevented them from meeting their crime control (and reduction) remit. As we shall

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<sup>24</sup> In 2006, the Government did propose introducing a 'conditional' element to the PND scheme. In the 'Strengthening Powers to Tackle Anti-social Behaviour' consultation paper it was proposed that a new type of PND, the 'deferred penalty notice' should be introduced (Home Office 2006b). Such deferred PNDs would give the recipient the option to meet a set of conditions (much like an anti-social behaviour contract) rather than pay the penalty notice fee. If they met the conditions of the agreement (which would last for 3 to 6 months) their ticket would be cancelled, if not they would be subject to a higher fine (see Chapter 1 Appendix 1, Table A1.1). However, these proposals were never implemented.

see from the parliamentary debates discussed in Chapter 2, this managerialist drive to unencumber the police and reduce bureaucracy is certainly evident in the PND system. PNDs allow the police to act in isolation from other criminal justice agencies and local organisations. I would argue therefore that the introduction of PNDs reflected a fundamentally different approach to tackling disorder to that espoused by Labour in their original (and subsequent) ASB policy. This conclusion is seemingly supported by Labour themselves. In their 2010 manifesto, despite having a section in which they outlined the powers they had introduced to tackle ASB – ASBOs, parenting orders, dispersal orders and strengthened police and council powers to close down problem pubs and clubs (Labour party 2010, p.38) – they made no mention of PNDs. This is despite the fact that, in terms of use, PNDs were by far their most successful ASB power. Whilst they might be described as an ASB power, PNDs were introduced to target, and punish, the “drunken, noisy, loutish and anti-social behaviour ... which causes offence and misery in too many towns and cities on too many *Friday and Saturday nights*” (*emphasis added*, Blair 2000, no pagination). The focus was therefore on one-off acts of criminal or anti-social behaviour in towns and cities rather than the usual target of ASB policy: patterns of offensive behaviour in residential neighbourhoods.

### **1.5.3 PNDs and the alcohol agenda**

Whilst the initial focus of the ASB agenda had been on disorder in residential communities, it became apparent that much of the concern with disorder regarded offences occurring in town and city centres. Indeed, following the first round of crime audits undertaken by (the newly established) Crime and Disorder Reduction Partnerships, over 70% of audit documents mentioned alcohol as an issue, with 60% relating public disorder to alcohol (Deehan and Saville 2000). Burney (2005) argued that alcohol-related crime was largely omitted from the early ASB agenda as to acknowledge this as a problem would undermine Labour’s licensing policies which encouraged the proliferation of bars and clubs in towns and cities. Indeed, “[i]t would dilute the message about an anti-social minority if it were to be acknowledged that routine misbehaviour was an equally serious matter” (Burney 2005, p.39). Yet PNDs (introduced in 2001) did target this ‘routine’ alcohol-related nuisance. However, rather than appearing in the ASB agenda, concerns with crime in the night time economy were addressed by an almost entirely separate ‘alcohol agenda’ which focused primarily on violent crime rather than disorder. Whilst in Opposition Jack Straw (then Shadow Home Secretary) criticised the Conservatives for failing to take a zero-tolerance approach to such behaviour:

Every year, there are almost 1 million victims of violent attacks committed by people under the influence of drink. Every weekend, people avoid their town and city centres for fear that they will be attacked or intimidated by drunken youths .... [Arguing that] this cannot continue. The public are crying out for effective action ... [the Conservatives] may be willing to accept declining standards of behaviour on our streets and public areas with a shrug of [their] shoulders as if nothing can be done. I am not (Straw 1997, no pagination).

In 2000 the Home Office published the consultation document 'Tackling Alcohol-Related Crime, Disorder and Nuisance' which estimated that 40% of violent crime, 78% of assaults and 88% of criminal damage cases were committed while the offender was under the influence of alcohol, and that binge drinking was "inextricably linked to disorder around pubs and clubs" (*cited in*, House of Commons 2001). Furthermore, it was argued that fear of alcohol-related violence or harassment may encourage women and the elderly to avoid city centres on Friday and Saturday nights. That consultation was thus largely concerned with addressing violent crime which is outside the scope of the penalty notice system.

'Tackling Alcohol-Related Crime, Disorder and Nuisance' did consider the potential to use PNDs to tackle alcohol-related nuisance, arguing that such a disposal provided "for an effective and speedy, on-the-spot, response to minor offences of public drunkenness" (*cited in*, House of Commons 2001, p.10). This was further highlighted in the later Alcohol Harm Reduction Strategy for England which argued that:

alcohol misuse by a small minority is causing two major, and largely distinct, problems: on the one hand crime and anti-social behaviour in town and city centres, and on the other harm to health as a result of binge- and chronic drinking (Prime Minister's Strategy Unit 2004, p.2).

However, they went on to argue that to minimise such harms required a partnership approach, including the Government, local authorities, the police, the drinks industry and the public. Thus, as with the drive to tackle neighbourhood and youth disorder, a multi-agency approach was seen as the only effective means to address alcohol-related crime (Deehan and Saville 2000). Indeed, just as communities were urged to take a stand against ASB in their neighbourhoods, they were urged to take ownership of, and enforce, social norms which challenged the acceptability of drinking as an end in itself (Prime Minister's Strategy Unit 2004). Yet despite this, PNDs adopt a single-agency (police) approach targeted simply at punishing alcohol-related disorder with no regard for minimising the harms associated with binge drinking.

The Labour ASB agenda focused on finding 'new ways' to deal with 'new problems', the implication being that those offences which are now defined as ASB did not previously exist, whereas of course, in practice, they existed but were generally dealt with informally (Crawford 2009). All those offences covered by the PND policy can be (and are) punished through existing laws and prosecution processes. It was not the case that such offences could not be punished for lack of sufficient evidence (as was argued in the justification for ASBOs (Feinberg 2007)); there was no need to resort to quasi-criminal measures to address the behaviour covered by the PND scheme beyond the fact that existing methods of punishment required a lengthy and costly court process and the ongoing support of victims and witnesses. Whilst the wider ASB agenda, including measures to reduce alcohol-related crime, saw tackling disorder as a necessary pre-emptive action in the prevention of more serious offending, it linked such behaviour to wider social problems such as education, parenting and informal social control. The means to address such issues were therefore seen as outside the control of any one organisation, instead requiring a multi-agency approach which engages and responsabilises individuals and communities; an approach which is manifestly lacking in the PND system.

#### **1.6 A change of government, a change of direction?**

Coalition policies on anti-social behaviour and alcohol-related crime have, in spirit at least, adopted a similar approach to Labour. Whilst the Coalition Government have criticised the sheer volume of anti-social behaviour powers introduced by Labour, they proposed to consolidate rather than fundamentally change the nature of the powers available to the police and local agencies in dealing with crime and disorder. Furthermore, whilst they proposed a more rehabilitative approach, recognising the need for individualised support to tackle the causes of crime, they have continued to adopt the contractual/conditional approach taken by Labour (Home Office 2011; 2012a). Like the Casey Report before it, the Newlove Report also continued to promote, not just the responsabilisation of individuals, but the responsabilisation of communities (Casey 2008; Newlove 2011). Communities should be empowered to tackle crime and anti-social behaviour in their neighbourhood, "confident they will be supported by their neighbours, police, landlords, local council, ward councillors and their local MP" (Newlove 2011, p.4). Thus we see not just a multi-agency response, but a *partnership* approach promoted to deal with crime and ASB including local people as well as local agencies. However, again, all this stands apart from the single-agency approach promoted by PNDs.

As with Labour before them, alcohol-related disorder has continued to receive largely separate treatment from ‘anti-social behaviour’ which continues to focus on youth and neighbourhood disorder. Indeed, the Newlove report (2011) focused on underage drinking, and the Coalition Government’s review of the ASB toolkit rarely mentioned the alcohol-related crime that is the focus of so many PNDs (Home Office 2011). Whilst the Coalition Government’s 2012 Alcohol Strategy recognised the impact of binge drinking on crime and ASB (and health) they too gave a particular focus to the “scourge of violence caused by binge drinking” which is beyond the scope of the PND scheme (Home Office 2012b, p.2). Whilst PNDs were mentioned only briefly in the review of the ASB toolkit (Home Office 2011)<sup>25</sup>, their use was propagated in the 2012 Alcohol Strategy (Home Office 2012b, p.13) where it was suggested that:

hospital security staff [be] empowered through the Community Safety Accreditation Scheme ... to issue Penalty Notices for Disorder (£80 fines) to those individuals whose drunken behaviour is likely to cause harassment, alarm or distress.

As an aside, it should first be noted that the use of PNDs in this fashion entirely contradicts the guidance that PNDs should not be issued to persons who are intoxicated and undermines the spirit of the legislation which prohibits accredited persons from issuing PNDs for drunk and disorderly behaviour or being drunk in a highway. With regards to how this proposal relates to the broader ASB and alcohol-related crime policy, again we can see the promotion of a single-agency approach (through the use of PNDs) where elsewhere the Government were espousing the virtues of multi-agency working:

Community groups, local residents, the police, health workers, retailers and educationalists are absolutely integral to identifying the problems, and delivering the solutions [to the problems caused by binge and underage drinking] (Home Office 2012a p.34).

PNDs propagate a single-agency approach which allows the police to punish (both alcohol and non-alcohol related) disorder, without regard for the underlying causes of the problem. Unlike Labour, the Coalition Government has made some attempt to use PNDs as a tool to engage offenders in education which might address the (health and social) harms associated with binge drinking (Ministry of Justice 2010c). However, their attempt to make PNDs more rehabilitative by introducing a ‘PND with education’ option does not truly embrace a commitment, through partnership working, to tackle the causes of crime. Such courses are ‘opt-in’, it is up to individual Chief Constables to decide whether to run such programmes (and

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<sup>25</sup> Indeed PNDs were not mentioned directly at all in the subsequent White Paper (Home Office 2012a). Although the use of fixed penalties is proposed as a means of punishing breach of the new Community Protection Notices/Community Protection Orders it is not stated whether such notices would be incorporated into the PND system specifically.

for what offences) and it is up to individual recipients to decide whether they want to take part.

Whilst PNDs address many of the same behaviours which both the Labour and Coalition Governments have targeted through their wider ASB and alcohol agendas, in relation to PNDs the method and approach to address such disorder are quite distinct from that otherwise being espoused. Whilst PNDs seek to punish and deter adult (often alcohol-related) offending through the imposition of a financial sanction, alternative ASB strategies take a regulatory approach, using civil orders to address youth and neighbourhood disorder and imposing conditions on behaviour with severe sanctions for breach (Crawford 2009). In general, ASB strategies reflect a move from government to governance – a move which continues to be promoted by the incumbent Government – tasking numerous institutions with the responsibility for dealing with disorder (Hughes and Follett 2006), whilst PNDs remain the sole domain of the police.

The lack of (political) recognition for the role of PNDs in tackling disorder is particularly interesting given that the need to reduce bureaucracy was a key theme of the 2010 electoral campaign (BBC 2010). Yet despite having a tool in place which could be used to reduce police paperwork and free up police time, no party has (openly) promoted greater use of PNDs. Indeed, in trying to place PNDs into the broader policy context it would seem that, whilst PNDs appear in both the ASB and alcohol harm-reduction agendas, they (at best) appear under ‘any other business’.

### **1.7 The research questions and methods**

Whilst a full account of the research questions and methods is provided in Chapter 4, by way of introduction to the research, the research aims, and the approaches taken to address those aims, are outlined here.

The empirical research sought to answer two main research questions:

1. How are penalty notices for disorder used in practice?
2. How do PND recipients perceive and experience the penalty notice system?

Within research question 1, the specific aims were to examine:

- a. The number and type of PNDs issued, the socio-demographic profile of PND recipients and the proportion of notices which are paid, challenged or cancelled.

- b. The circumstances in which PNDs are issued; when, where and why PNDs are used, and the social context of offending; the severity of the offence and who the victims of these offence are.
- c. How PNDs are processed and enforced.

Within research question 2, the specific aims were to examine PND recipients’:

- a. Perceptions of the PND process, particularly if/why they thought the process was fair.
- b. Perceptions of the right to trial, and why this option was/was not taken.
- c. Reasons for paying (or not paying) the notice.
- d. Perceptions of the influence of PNDs on offending behaviour.

To address these aims a mixed-methods approach was adopted. The use of these various sources sought to balance and address the limitations of each individual method:

1. The national data: In addition to data on PNDs published annually by the Ministry of Justice, national data were obtained which examined (inter alia) where PNDs were issued, who they were issued by (police/PCSOs/accredited persons) and how this varied across the country.
2. A case study of one force’s use of PNDs:
  - a. A review of a systematic sample of 250 PNDs issued at the research site which provided information as to: the time, date and location of the offence; the offender’s gender, age, ethnicity and employment status, as well as the issuing officer’s witness statement.
  - b. Twenty-six police observations (totalling over 130 hours) conducted on Friday and Saturday nights, to examine the circumstances in which PNDs are (and are not) used. These observations also provided an opportunity for informal interviews with officers.
  - c. A small number of interviews conducted with CTO and Enforcement Unit staff at the local magistrates’ court to provide a holistic picture of how PNDs are processed and enforced.
3. The recipients: An online survey and postal questionnaire conducted with 73 PND recipients and follow-up semi-structured interviews conducted with 11 of these.

It was noted at the beginning of this chapter that the broad aim of this research was to shed light on the use of PNDs. Indeed, the breadth of that aim is evident in the two research questions and indeed the subtitle of the thesis ‘examining the use and impact of PNDs’.

However, with such broad aims, some parameters needed to be set for the analysis. As such two (related) preliminary research questions were set:

- i. What were the theoretical and policy reasons for introducing and subsequently extending the remit of penalty notices for disorder?
- ii. What concerns were raised about the introduction and subsequent extension of penalty notices for disorder?

These questions were answered through an in-depth inductive analysis of the relevant parliamentary debates, consultation papers and White Papers on PNDs (see Chapter 2). This analysis provided a thematic framework within which the use of this power, as set out in Chapters 5-6, could be assessed (see Chapter 8). It was recognised however that such an approach might privilege the official (and indeed the officials') account of PNDs and as such it was vital to consider recipients' views. The results presented in Chapter 7, examining recipients' perceptions of PNDs, are therefore also analysed within that thematic framework to consider whether the aims/concerns regarding PNDs have been realised in practice (see Chapter 8).

## **1.8 Thesis structure**

Chapter 2 presents an analysis of the relevant parliamentary debates on PNDs and provides a thematic framework for the subsequent analysis of the use of PNDs, highlighting the key issues raised by this power. In Chapter 3 we turn to consider what we know about the use of PNDs in practice. Given the already noted dearth of empirical research in this field, this chapter draws on the international literature on the use of 'on-the-spot' fines for disorder as well as the broader policing literature. In Chapter 4 the research questions and methodology are outlined. This chapter also considers the ethical issues raised by this research and how those were addressed, as well as the difficulties faced in gaining (and maintaining) access to the 'closed' research setting of the police to conduct the research. Throughout that chapter I reflect upon the limitations of the various data sources and the means adopted to try and address some of those limitations. In Chapter 5 a – largely quantitative – account of the use of PNDs is presented. Drawing on the ticket analysis data I examine the 'what, where and when' questions surrounding PND use, as well as considering the outcomes of PND cases. Chapter 6 uses data drawn from 26 police observations and the (both quantitative and qualitative) analysis of the evidence provided on PND tickets, to present an in-depth insight into the circumstances in which PNDs were issued. Chapter 7 presents the findings from surveys and

interviews with PND recipients to consider how the people subject to this power experienced the process. Finally, in Chapter 8 I return to the thematic framework set out in Chapter 2 and consider the findings presented in Chapters 5-7 in the light of that framework to explore the impact of PNDs.

## **CHAPTER 2: PARLIAMENTARY DEBATES ON PENALTY NOTICES FOR DISORDER**

### **2.1 Introduction**

In the previous chapter, the introduction and extension of PNDs was shown to stand largely outside the broader anti-social behaviour agenda of the time (with its focus on multi-agency working and community engagement), as well as being distinct from the alcohol strategy which focused on violent offences outside the scope of the PND system. So what is (and was) the purpose of PNDs? In order to consider the impact of penalty notices for disorder, it is necessary to understand what their impact was supposed to be. Why were PNDs introduced and what were they aiming to achieve?

Whether PNDs can be deemed to be achieving their aims depends upon the parameters set for 'achievement'. It is insufficient however to present a critique of penalty notices for disorder which only references their aims. The introduction of on-the-spot fines for criminal offences was a huge extension of policing powers<sup>26</sup>. If we are to assess the impact of this "quiet revolution" that is the growth of summary justice (Morgan 2009, p.5), and specifically the rise of the penalty notice for disorder, then it is necessary to consider them not only in the context of their aims but also in the context of the concerns that have been raised about this power. This chapter discusses the methods adopted to address research questions i. and ii. (exploring the theoretical and policy justifications for the introduction and extension of PNDs and the concerns regarding this power) and presents the findings of an extensive document analysis (MacDonald 2008) of the relevant parliamentary debates, consultation papers and White Papers on PNDs, providing a thematic framework within which to understand and assess the use of PNDs (as described in the following chapters).

### **2.2 Methods**

The analysis was based on a qualitative document analysis examining the arguments posed in favour of, and against, the penalty notice system in the initial consultation document (Home Office 2000); the debates put forward in the Committee Stage of the Bill; and the debates held in both Houses of Parliament during the passage of all relevant legislation (including secondary legislation) (see Table 2.1). Where ministers referred to views put forward by external bodies in response to the consultation, original copies of those responses were sought so that

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<sup>26</sup> I use the term 'policing' rather than 'police' as these powers extend beyond warranted police officers to others in the policing family: PCSOs and other 'accredited persons'.

arguments could be understood in context. References for the documents reviewed during this analysis are detailed in Table 2.1.

<b>House of Commons Debates</b>	<b>House of Lords Debates</b>	<b>Standing Committee Debates/Select Committee Reports</b>	<b>Policy Documents/White Papers</b>
HC Deb (2000-1) 361	HL Deb (2000-1) 624	Joint Committee on Human Rights – First Report (2001)	Reducing public disorder: The role of fixed penalties (Home Office 2000)
HC Deb (2000-1) 362	HL Deb (2000-1) 625	Stg Com Deb (2000-1)	Respect and responsibility: Taking a stand against anti-social behaviour (Home Office 2003a)
HC Deb (2000-1) 364	HL Deb (2000-1) 635	Co F Criminal Justice and Police Bill	RESPECT Action Plan (Home Office 2006a)
HC Deb (2000-1) 365	HL Deb (2000-1) 636	Stg Com Deb (2001-2)	Strengthening powers to tackle anti-social behaviour (Home Office 2006b)
HC Deb (2000-1) 368	HL Deb (2003-4) 664	<i>Third Delegated Legislation Committee, 18/06/02</i>	More effective responses to anti-social behaviour (Home Office 2011)
HC Deb (2008-9) 489	HL Deb (2004-5) 670	Stg Co Deb (2003-4)	Breaking the cycle (Ministry of Justice 2012b)
HC Deb (2008-9) 494, <i>written answers</i>	HL Deb (2008-9) 707	<i>Second Delegated Legislation Committee, 08/09/04</i>	
HC Deb (2008-9) 498, <i>written answers</i>		Stg Co Deb (2003-4)	
		<i>Fourth Delegated Legislation Committee, 14/09/04</i>	
		Stg Com Deb (2004-5)	
		<i>Twelfth Delegated Legislation Committee, 09/03/05</i>	
		Stg Co Deb (2008-9)	
		<i>Third Delegated Legislation Committee, 22/01/09</i>	
		Stg Com Deb (2011-12)	
		<i>Public Bill Committee, 13/10/11</i>	

The documents detailed in Table 2.1 were printed and subject to a latent content analysis (Tashakkori and Teddlie 1998). The initial review was comprehensive; any mention (in the above debates) of penalty notices was coded and included in the analysis. This initial analysis provided segments (of varying length) from each debate which expressly discussed PNDs. No hierarchy was used for the inclusion of arguments, so the seniority of the person making a point was not considered. However, I did consider which political parties supported different arguments. The data were repeatedly reviewed and coded. Through this coding process a

number of key themes were identified and categorised. The process was both inductive and deductive, moving between theory and data in an iterative fashion, exploring links between the theoretical categories (Silverman 2010). These themes fell broadly within two groups (or what Lincoln and Guba would call 'core categories' (Bryman 2012): those arguments in favour of the scheme, the aims of/justifications for PNDs; and the arguments against, and concerns regarding, this power. I categorised those arguments put forward in favour of PNDs as: *managerialism*, *crime reduction*, *punishment* and (most recently) *rehabilitation*<sup>27</sup>. These category headings were chosen to reflect those policy aims outlined in the consultation (Home Office 2000) rather than any explicit use of such terminology within the debate. For example, arguments grouped within the 'crime reduction' category represent discussions on 'deterrence' and 'freeing up police time so they can patrol the streets'.

The main arguments against PNDs were coded as: *police discretion and subjectivity*, *human rights and due process* (including burden of proof and right to a fair trial) and *equality of impact*. These three categories (which are discussed in detail below) were the main arguments put forward against PNDs. During the process of analysis some concerns – particularly those regarding the *severity* of offences to which the system should apply – were subsumed into broader categories. There were a number of other concerns raised during the various parliamentary debates, relating to the *age* of PND recipients, recipients' *ability to understand* and the *rights of victims* in PND cases (see Section 2.5.4). However, these concerns, whilst highlighting potential issues with the PND system, had a negligible impact on the overall debate and, when raised, were either dismissed or ignored by the Government.

### **2.3 Policy aims of the penalty notice system**

In the opening paragraph of the consultation document which preceded the introduction of PNDs ('Reducing Crime and Disorder: The Role of Fixed Penalties'), the 'disorderly behaviour' to which the penalty system would apply was defined as:

[covering] a range of practices ranging from offences which might at present attract a fine to behaviour which, while recognisable as an offence, might at present be dealt with by means of an informal warning. It encompasses, for example, incidents of abusive or insulting behaviour, drunkenness, and of criminal damage such as spray-painting graffiti (Home Office 2000, p.1).

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<sup>27</sup> Whilst under the Labour Government little mention was made of any rehabilitative aims of the PND scheme, more recently the Coalition Government have suggested such purposes may be achieved through the introduction of a PND waiver scheme.

The overarching aim stated in the consultation paper when introducing PNDs was to more effectively address the disorderly behaviour which undermines individuals' and communities' quality of life; and through the use of PNDs, treat such behaviour "seriously". Four specific aims were outlined (Home Office 2000, p.1) (*emphasis added*):

- To enable the police to put an *immediate* stop to misbehaviour
- To provide a *swift* punishment
- To provide a 'real practical deterrent' which "[takes] up as little *police time* as possible"
- To reduce *police time* spent on paperwork and court appearances

These aims can loosely be grouped under the following headings: *managerialist* (related to improved efficiency), *crime reduction* (freeing up police time and deterring offenders) and *punishment*. Whilst the Labour Government therefore sought PNDs to stop disorderly behaviour, punish offenders and reduce crime, the consistent aim within all of the above was that of saving police time. Yet despite this, PNDs were to be available both for offences which would (prior to their introduction) attract a court fine and behaviour which might previously have attracted an informal warning. Thus from the outset there was confusion as to the purpose of the penalty notice system and the seriousness of offences to which the system would apply: PNDs would supposedly simultaneously divert cases from court *and* punish cases that would not previously have reached the courts. It was unclear therefore whether the Government was upgrading their response to disorder or downgrading the response to crime, although the inclusion of offences such as theft and criminal damage suggests the latter (Young 2008).

Whilst these core aims (of managerialism, crime reduction and punishment) have remained throughout the development of the penalty notice system, other aims have been added to this list as the scheme has developed. In 2004, the then Home Secretary, Hazel Blears added 'reassuring the public' to the list when introducing secondary legislation to extend the list of penalty offences (Stg Co Deb (2003-4) *Fourth Delegated Legislation Committee*, 14<sup>th</sup> September 2004, col. 003). This was further reported in the 2006 consultation, 'Strengthening Powers to Tackle Anti-social Behaviour' which suggested that PNDs offer "visible punishment ... [sending] a signal to the wider community that the behaviour is being tackled and not tolerated" (Home Office 2006b, p.6). This theme continues under the Coalition Government: the Home Office describe the "proper use of PNDs as an effective disposal for low-level offending [as] key to ensuring ... public confidence (Home Office 2012c). Whilst it seems

plausible that PNDs, as an on-the-spot remedy, can provide *visible* punishment which reassures the public, this would only apply to those notices actually issued on the street. Even then, the achievement of this aim relies on a member of the public being in the vicinity of the recipient throughout the 15 minute issuing process (Kraina and Carroll 2006). It seems unlikely therefore that many members of the public would ever see a PND being issued, and even if they did, the Government are presuming that they would translate the use of PNDs as such behaviour being ‘tackled’, and thus be reassured<sup>28</sup>.

The policy aims of PNDs were further expanded by the Coalition Government who introduced the notion that PNDs might also serve to *rehabilitate* offenders (Ministry of Justice 2010c). In the Breaking the Cycle Green Paper the Government briefly outlined plans to introduce a diversion scheme for PND recipients whereby, rather than paying the full penalty notice fee, recipients could instead pay a reduced fee to attend an educational course that would address their offending behaviour. This plan was subsequently introduced under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Whilst arguably the Government should be concerned as to whether the PND scheme meets its policy aims, these aims are actually quite ambiguous and at times appear contradictory. Seeking to formally *punish* low-level offences suggests a necessary net-widening impact, whereby people who would previously have been dealt with informally are drawn into the criminal justice system through the receipt of a PND. Indeed it was accepted in the 2000 consultation that this would be a legitimate side-effect of the system (Young 2008, p.172)<sup>29</sup>. However, this conflicts with the *managerialist* aim of reducing police paperwork and improving efficiency. If more people are being dealt with formally where previously the situation would have been diffused or dealt with informally, then the PND system is likely to increase, rather than decrease, paperwork for the police. Whilst there may be less paperwork involved in issuing a PND than that for a caution or prosecution, it is certainly a greater burden than that which is imposed by the informal handling of such cases. It is insufficient therefore to consider the impact of penalty notices on the criminal justice system with reference to police officer

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<sup>28</sup> Arguably, whether members of the public actually see PNDs being issued is unimportant; the Government may still relay their message (that crime and disorder is being tackled) through advertising the use of PNDs. Any such advertising or promotion of penalty notices is however lacking. As discussed in Section 1.5.2, PNDs were barely mentioned in the Respect Action Plan; a core Labour Government policy document on ASB or indeed in the Coalition Government’s consultation on reforming the anti-social behaviour toolkit (Home Office 2011). Whilst public awareness could be raised through media and political focus on PNDs, this too has been lacking, with little mention of PNDs in the media (see Section 2.4.2).

<sup>29</sup> A side-effect which, according to the evaluation studies, has been realised in practice (Halligan-Davis and Spicer 2004).

workloads alone, given that the payment of PNDs must be processed by police forces and unpaid PNDs must be enforced by the courts<sup>30</sup>. The arguments based on *crime reduction*, that PNDs allow officers to spend more time on the beat (catching serious offenders), are also undermined given that PNDs do not have to be issued on-the-spot<sup>31</sup>.

The following sections will consider how the introduction and extension of the PND system has been justified by politicians during the debates on the relevant legislation, as well as the concerns that have been raised. Whilst public reassurance is noted as an aim of the PND system on the Home Office website and has previously been mentioned when describing the purpose of PNDs during debates on the extension of the penalty notice scheme, it has not been widely discussed or considered by Parliament. As such, as we move to consider the justifications for penalty notices, this aim has not been considered as it did not impact upon the parliamentary debates and has not been used to support the extension of the PND system.

#### **2.4 Justifications for the introduction and extension of penalty notices for disorder**

The debate regarding the introduction of penalty notices was dominated by arguments in favour of the system; all parties supported a PND system in theory. Where concerns were raised this was with regards to specifics, such as, to what offences it should apply and in what cases it was acceptable to use this disposal. The core justifications which emerged through the debate were those based on *managerialism* which not only dominated in terms of the time/space afforded to this argument, but also had the greatest impact in terms of how influential each argument was. Managerialist assertions were often used to overrule suggested amendments to the Criminal Justice and Police Bill, particularly with regard to the extension of the system to include more offences. Of the concerns raised, subjectivity<sup>32</sup> and the seriousness of offences to which the system should apply were the most dominant, and indeed were the subject of amendments to the original Bill. Conversely human rights and equality of impact arguments had little influence on the overall debate. Human rights debates centred upon

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<sup>30</sup> Indeed, penalty notices are also likely to increase work for the courts who have to deal with those penalties which are ultimately registered as fines (which constitute approximately 40% of all PNDs issued). The penalties for some of these offences would not previously have reached the courts due to their informal disposal. It also increases the workload of Central Ticket Offices within police forces which were suddenly faced with a new genre of fixed penalty notices which they must process.

<sup>31</sup> Furthermore, it should be noted that half of all PNDs issued in 2010 were issued at the police station following arrest (Ministry of Justice 2013a, Table 1). Whilst this is a reduction from the 62% issued in custody in 2006 (HC Deb (2008-9) 494, col.59w), it still represents a huge proportion of PNDs, with a correspondingly large impact on police resources.

<sup>32</sup> Concerns regarding the subjectivity of offences referred to the context-specific nature of disorder offences such as s5 of the Public Order Act 1986 (behaviour likely to cause harassment, alarm or distress) and 'drunk and disorderly' whereby whether an act can be considered 'criminal' depends largely on situational factors such as the time of day, location, the presence and composition of the 'audience' etc.

concerns regarding the blurring of criminal and civil procedure and the lower burden of proof required to issue a PND. Equality of impact arguments were concentrated in discussions regarding the level at which penalty notices should be set and whether this should be standardised. The former were dismissed on the basis that PNDs were not (in the Government's eyes) a coercive power and thus presented no threat to human rights. The latter were dismissed as it was seen as unworkable (a managerialist concern) for the police to make assessments as to an individual's means when issuing these notices on-the-spot. At no point was there any genuine debate as to whether this power was legitimate; rather all parties agreed with the introduction of PNDs in principle. Where disagreement occurred it was with regard to the severity of offences that could/should be disposed of in this manner (see Section 2.4.3 below).

Before examining debates regarding the introduction and extension of the penalty notice system, a number of key points should be noted. Firstly, Young (2008) has argued that the ambiguity in the aims of the PND scheme are a reflection of the fact that the Criminal Justice and Police Bill was rushed through Parliament with minimal scrutiny, receiving Royal Assent less than a year after the Prime Minister first advocated the use of on-the-spot fines for disorder offences (see Chapter 1 Appendix, Table A1.1). Indeed, contrary to the usual practice of allowing a minimum 12 week consultation period on government policy (Better Regulation Executive 2008)<sup>33</sup>, the consultation period following the release of 'Reducing Public Disorder, the Role of Fixed Penalty Notices' (Home Office 2000) was only one month. Secondly, between the time when Tony Blair (then Prime Minister) first mentioned the concept of 'on-the-spot' fines in June 2000 and the release of the subsequent consultation document in September of that year, the Prime Minister was heavily criticised and ridiculed in the press for the idea which was seen as entirely unworkable. Thirdly, 'behaviour likely to cause harassment, alarm or distress' was added to the list of penalty notices via secondary legislation before the pilot scheme began (having been removed from the original Bill to secure passage through the House of Lords) and the age limit for PND recipients was reduced to 16 before any results from the pilot were published. Furthermore, the scheme was rolled out nationally five months before the final results from the pilot scheme were available. Finally, when those results were published, it was in the form of a six-page evaluation which failed to take into consideration

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<sup>33</sup> The first Code of Practice stating the standard minimum consultation period as 12 weeks was however released in November 2000 (Cabinet Office 2000), two months after the 'Reducing Public Disorder, the Role of Fixed Penalty Notices' consultation paper was released.

the views of recipients<sup>34</sup>. The focus was instead on the views of police officers and the efficiency savings generated by the new system in terms of saving police time (Halligan-Davis and Spicer 2004), a focus which is mirrored in parliamentary debates (see below). Furthermore, the proposed introduction of 21 new offences in January 2009 (under SI 2008/3297), which would have almost doubled the number of penalty offences, was only repealed following heavy criticism that the Government had not undertaken any consultation on the need for, and impact of, including such offences (this was particularly with regard to the inclusion of byelaws as penalty offences).

The penalty notice system has thus been characterised by a lack of consultation and a failure to fully evaluate the impact of PNDs on anyone other than the police (the recipients and the courts being notably absent from the debate) and a complete failure to consider the legitimacy of empowering the police to issue financial punishments. We shall turn now to consider the parliamentary debates regarding penalty offences, as well as exploring those arguments posed against the introduction of penalty notices and the Government's defences to those concerns.

#### **2.4.1 Managerialism**

One of the main arguments put forward in favour of the PND system, supported by all political parties and raised in relation to both the introduction and the extension of the system, was that PNDs would save police time, both with regards to reduced paperwork and court appearances (Home Office 2000). Indeed, "the main object, of course, is to speed up the whole process of bringing offenders to justice and to save bureaucracy" (Lord Cope (Con), HL Deb (2000-1) 624 col. 661). Whilst the dominant aim of the penalty notice for disorder system might well be managerialism, the competing and (to my mind at times) contradictory aims of punishment, crime reduction and rehabilitation undermine the ability of penalty notices to provide an efficient means of 'bringing offenders to justice'. If PNDs are used to punish offenders who previously avoided formal punishment, can they save time? I would argue that the realisation of these managerialist aims is dependent on a number of factors: firstly, that the time and cost associated with issuing a PND compares favourably to other (formal and informal) disposals; secondly, that PNDs are issued on-the-spot; thirdly, that PNDs are used to divert cases from court rather than bring cases into the criminal justice system; and finally, that PNDs are paid promptly.

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<sup>34</sup> This can be contrasted with the publications resulting from the piloting of similar schemes in New South Wales and Queensland, both of which total over 200 pages of in-depth analysis (NSW Ombudsman 2005; Mazerolle et al. 2010).

A number of concerns were raised with regards to the potential threat posed by on-the-spot fines to due process (see Section 2.5.2). Indeed, Geoffrey Clifton-Brown (Con) described them as a move towards “arbitrary sentencing without proof” and queried whether PNDs allowed “more people [to] be innocently caught up than if there were proper due process?” (Stg Co Deb (2004-5) *Twelfth Delegated Legislation Committee*, 9<sup>th</sup> March 2005, col. 005). PNDs were thought to blur criminal and civil procedures and threaten due process, however the potential benefits of reduced bureaucracy ultimately defeated these human rights concerns. Indeed Lord Renton argued “I, too, have doubts about the whole principle of on-the-spot fines. However, we must realise that the proposal will save public money because it will save the time of the courts” (Lord Renton (Con), HL Deb (2000-1) 625 col. 482). This justification rests on the presumption that PNDs would be used to divert cases from court. In practice however, not only have PNDs created a lot of ‘new business’ for the police (see Section 3.4.1) but, as a result of this, they have also increased the workload of the courts since a large proportion of PNDs are ultimately registered as fines (37% in 2010, Ministry of Justice 2011b, Table A2.1).

This drive for reducing bureaucracy was evident throughout, such that even arguments surrounding the appropriateness of dealing with intoxicated offenders on-the-spot were framed not within the context of offender welfare, (do officers not have a duty to take drunk offenders into custody, and thus into care?), but instead with regards to how recipients’ intoxication may impact upon the efficiency of the scheme. If people are too inebriated to understand the consequences of the PND (which one would assume they must be if they are to be issued with such a notice) the ticket must be issued in the station, thereby reducing the potential efficiency savings. Furthermore, it was argued that people issued with notices when drunk may discard or lose their PND (Lord Dholakia (Lib Dem) HL Deb (2000-1) 624 col. 698)), therefore leaving it unpaid, resulting in the notice being registered as a court fine and increasing the pressure on the magistrates’ court and reducing any administrative savings.

#### **2.4.2 Crime Reduction**

When penalty notices were first proposed two arguments based on crime reduction were put forward in favour of such a system; firstly that PNDs, in and of themselves, would act as a deterrent and secondly, that in saving police time, PNDs would free up officers to deter, and tackle, other offences (and offenders). The first crime reduction aim was twofold: PNDs were thought to serve as a deterrent both to individual recipients, who would seek to avoid further fines, and to the general public who, when seeing such notices being issued in the street, would be made aware that the police will punish such behaviour (Caroline Flint (Lab) Stg Com

Deb (2004-5) *Twelfth Delegated Legislation Committee*, Wednesday 9 March 2005, col. 16). However, the ability of PNDs to achieve this general deterrent aim is reliant on public awareness of the scheme. This may arise if people see PNDs being issued (as suggested by Caroline Flint) or, more likely, via individuals' indirect experiences of penalty notices through the media or perhaps where tickets are issued to friends or family members. Yet there has been little political or media focus on the use of PNDs. Indeed, with the exception of the occasional article on celebrity recipients, PNDs are rarely mentioned in the media. Discussion of this power is limited, and greatly over-shadowed by reporting on ASBOs. Indeed since 2001 there have been only 886 mentions of 'penalty notices for disorder' or non-motoring 'on-the-spot fines' across all the major national and local newspapers in England and Wales<sup>35</sup>, compared to 17,230 references to anti-social behaviour orders<sup>36</sup>. The achievement of any general deterrent effect is therefore questionable.

The notion of fixed penalty notices for disorder was first voiced by (the then Prime Minister) Tony Blair in June 2000:

On Monday 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 .... A thug might think twice about kicking in your gate, throwing traffic cones around your street or 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).

Thus the system was initially construed as a means of deterring anti-social behaviour and reducing crime. Indeed it was argued that even if a person were to run from a police officer rather than waiting to receive a penalty notice, the approach and threat of a PND might be sufficient to stop them committing an offence (Dominic Grieve (Con) Stg Com Deb (2001-2) *Third Delegated Legislation Committee*, 18<sup>th</sup> June 2002 col. 5). When PNDs were proposed in the Criminal Justice and Police Bill (and when later offences were added through secondary legislation) the support of ACPO was crucial in gaining cross-party backing for the scheme. The police saw the initiative as potentially aiding them in their operational duties and believed it would act as a deterrent to offending. The view that PNDs would act as a deterrent to minor offences was supported by both Houses, "showing that the law will bite without delay if people are intent upon disorderly and anti-social behaviour" (Baroness Buscombe (Con), HL

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<sup>35</sup> References to PNDs were based on a search of all English and Welsh newspapers on the Newsbank database conducted in August 2013 using the following search terms: "penalty notice for disorder" or "on the spot fine", NOT 'motor\*', NOT 'driv\*', NOT 'park\*', NOT 'speed\*'.

<sup>36</sup> References to ASBOs were based on a search of all UK newspapers on the Newsbank database conducted in August 2013 using the following search terms: "ASBO" or "anti-social behaviour order" or "anti social behaviour order" or "antisocial behaviour order".

Deb (2000-1) 625 col. 503). Concerns were raised however with regards to reducing the age limit; it was thought that if a parent (or social services) were to pay the fine, this would not have any deterrent effect on the child (David Heath (Lib Dem), Stg Co Deb (2003-4) *Second Delegated Legislation Committee*, 8<sup>th</sup> September 2004, col. 013).

The deterrent effect of PNDs was thought to be largely associated with the financial means of the recipient. Those who are well off would be less likely to be deterred from future offending or indeed view the fine as a punishment at all (Simon Hughes (Lib Dem), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). It was seen to be of central importance therefore that the fine be set at a level that was not so high as to make collection problematic but, equally, not so low as to be deemed an inadequate punishment<sup>37</sup>. The penalties were thus set at £40 and £80 (the lower tier penalty was raised to £50 in 2004 and in 2013 the penalties were raised to £60 and £90 respectively). Further concerns were raised specifically with regard to the deterrent function of PNDs with regards to offences with a financial motive, on the basis that recipients/perpetrators “might simply seek to recoup the cost of the penalty through increased activity elsewhere” (Lord Bassam, (Lab) HL Deb (2000-1) 625 col. 488). Despite this concern, raised by the Government itself during the passage of the Criminal Justice and Police Bill, retail theft was introduced as a penalty offence in 2004.

It was also argued that if the legal consequences of a PND were less than for a conviction, then it would be harder to identify any deterrent effect (Criminal Bar Association 2000, *cited in*, UK Parliament 2001, Annex D). Indeed, it was highlighted that under the fixed penalty system in Amsterdam, non-payment of a notice is punishable by an automatic 3 day custodial sentence. It was argued that whilst such a severe response may be deemed draconian, rigorous enforcement was required to ensure that PNDs were an effective deterrent (Crispin Blunt (Con), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). Conservative MPs drew comparison with the fixed penalty system for road traffic offences where it was argued that fixed penalties for such offences did not deter people from parking illegally or speeding. In fact, it was argued that some people consider such fines to be part of their monthly expenses (Nick Hawkins (Con), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). However this, rather sweeping statement, ignores the differential impact of fines based on individuals’ means (on which see Section 2.5.3).

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<sup>37</sup> Indeed, the recent consultation on the use of out-of-court disposals queried whether the level of punishment associated with OOCs was “sufficiently robust to act as a deterrent to others or to prevent reoffending” and queried whether, with this in mind, there should be more severe consequences for failing to adhere to the terms of any disposal (Ministry of Justice 2013, p.19).

The 2000 consultation paper stated that the swift punishment provided by PNDs would serve as a greater deterrent than a court appearance at some point in the future (Home Office 2000, p.2). However, under the PND system recipients have 21 days to pay the notice before it is registered as a fine; yet since the introduction of the so-called 'Narey Courts'<sup>38</sup>, offenders could appear in court within days of committing an offence (Lord Windlesham (Con), HL Deb (2000-1) 635 col. 481). During the 2004 debate regarding the reduction of the age limit for PND recipients the Liberal Democrats argued that the low payment rate reported in the pilot studies (50%) suggested that penalty notices do not work as an initial deterrent (David Heath (Lib Dem), Stg Co Deb (2003-4) *Second Delegated Legislation Committee*, 8<sup>th</sup> September 2004, col. 014). The Labour party argued that success should be measured according to whether the behaviour desists, not according to the payment rate (Clive Efford (Lab), Stg Co Deb (2003-4) *Second Delegated Legislation Committee*, 8<sup>th</sup> September 2004, col. 014). However, the evaluation studies have not monitored re-offending rates, and therefore success is not actually measured on these grounds. Furthermore, the Government argued that the low percentage of people who contest the penalty notices in court (approximately 1%) reflected the success of the scheme in reducing offending: "clearly, the short, sharp shock seems to be having some impact and effect" (Caroline Flint (Lab), Stg Com Deb (2004-5) *Twelfth Delegated Legislation Committee*, Wednesday 9 March 2005, col. 15). However, it is likely that the low contest rate reflects recipients' perceptions of the notice itself and their ability to successfully challenge PNDs in court, rather than representing a high rate of deterrence (see Section 7.4.3).

The second crime reduction aim – that PNDs would serve as an indirect deterrent (freeing-up officers' time to tackle other offences) – is an extension of the managerialist aims described above. It was thought that the associated savings in police time (both through reduced paperwork and reduced court appearances) would aid crime reduction:

the scheme is welcomed by police officers on the front line. They are free to spend more time on the streets, deterring crime and dealing with other offenders who might otherwise not be apprehended if the police were constantly tied up dealing with low-level offenders (Hazel Blears (Lab), Stg Co Deb (2003-4) *Fourth Delegated Legislation Committee*, 14<sup>th</sup> September 2004, col. 003).

The overarching managerialist justifications for the use of PNDs are apparent in this second crime reduction aim. However, this argument moves beyond the suggestion that PNDs would improve efficiency to consider how those time savings may be used. Thus, through the use of

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<sup>38</sup> Since 1999 'Narey Courts' have existed in every magistrates' court. They provide a fast track system of case management, using lay rather than professional prosecutors to review files and deal with straightforward guilty pleas with a view to allowing professional prosecutors to be able to deal with more complex cases.

PNDs, the police may focus on, and reduce, not only those low-level offences to which PNDs apply but also more serious offences.

### 2.4.3 Punishment

The PND system sought to provide an immediate punishment for low-level offending and disorderly behaviour. The Government argued that anti-social behaviour increases fear of crime and as such it was important that such behaviour be dealt with and punished (Jack Straw (Lab) HC Deb (2000-1) 362 col. 34). It was recognised however that such behaviour was ‘low-level’ and therefore needed to be dealt with in a manner that punished the perpetrator and reassured the public that action was being taken, yet did not take up a disproportionate amount of police or court time. Penalty notices were seen as a good means of balancing these competing aims, providing a relatively low-resource measure to punish offenders. It was also argued that such a mechanism would ensure that behaviour which (due to resource constraints on the police) may otherwise fall through the net, would not avoid punishment (Hazel Blears (Lab), Stg Co Deb (2003-4) *Second Delegated Legislation Committee*, 8<sup>th</sup> September 2004, col. 005). It was felt that the PND provided a means to punish low-level and first-time offending, recognising that it was wrong, whilst not criminalising what may be a “one-off piece of foolishness” (Baroness Scotland of Asthal (Lab), HL Deb (2003-4) 664 col. 988).

During the debate on the Criminal Justice and Police Bill a number of arguments were put forward which suggested that the proposed penalty offences were too serious to be dealt with via an on-the-spot fine. Such a disposal was seen to downgrade offences, allowing the perpetrators to escape punishment. The Liberal Democrats argued that 49% of people (based on a BBC online poll of 1,000 people conducted in January 2001) did not think that fixed penalty notices were an appropriate punishment (Simon Hughes (Lib Dem), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). The Conservatives also argued that PNDs were not a ‘tough disposal’:

For several reasons, it is softer than being sentenced in court by a magistrate. It does not lead to a criminal record; it is convenient to the offender; and it does not involve public knowledge of the offence. We should not think, ‘Gosh, we have these tough new fixed penalty notices’. They are useful for marking offences, but they are not suitable for dealing with serious offences (Oliver Heald (Con), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination).

This question of whether PNDs are a serious response to disorder was raised in both Houses of Parliament. Where would PNDs fall within the hierarchy of potential responses to offending?

There was confusion within the Government as to the answer to this question. Whilst Charles Clarke (at the Committee Stage) stated that PNDs were less serious than cautions (as PND recipients would not acquire a criminal record), Jack Straw (then Home Secretary) was quoted as saying that they came between a caution and a prosecution (Lord Cope of Berkley (Con), HL Deb (2000-1) 625 col. 523). This later model is evident in the case of PNDs for possession of cannabis where a cannabis warning is given for a first offence, a PND for a second offence and finally prosecution for a third offence (Maria Eagle (Lab), Stg Co Deb (2008-9) *Third Delegated Legislation Committee*, 22<sup>nd</sup> January 2009, col. 16). This model however was not proposed for other offences, where the decision as to whether to caution, issue a PND or charge an individual rests with the police. In the House of Lords it was argued that regardless of whether it was used instead of a prosecution or a caution, the PND was still a soft option; in the former case the individual avoids a criminal prosecution and in the latter case they avoid a criminal record. Thus, whilst “financially it is not a soft option ... in legal terms the position is a little more confused” (Baroness Buscombe (Con), HL Deb (2000-1) 625 col. 523).

Concerns were raised particularly with regard to the inclusion of s5 of the Public Order Act 1986 (behaviour likely to cause, harassment, alarm or distress) and criminal damage. The Conservatives questioned whether it was appropriate that the perpetrators of such offences, which can have serious effects on victims’ and communities’ sense of public safety, should avoid arrest and conviction: “There are a range of circumstances in which the two offences can occur, but they are often serious offences, with serious consequences” (Oliver Heald (Con), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination).

Indeed, the Association of Chief Officers of Probation remarked: “As threatening abusive or insulting words or behaviour may include some serious incidents ... we would have doubts about their inclusion” (*cited by*, Oliver Heald (Con), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). Due to pressure from the House of Lords, both s5 and criminal damage were removed from the list of penalty offences included in the original Bill (both were however later reintroduced through secondary legislation). Charles Clarke agreed that, in the case of criminal damage, there might be some ambiguity as to how serious the criminal damage could be whilst still attracting only a penalty notice and thus evading “the full possibility of higher level criminal sanctions” (HC Deb (2000-1) 368 col. 288) and criminal damage was removed on this basis. When agreeing to remove s5, Charles Clarke gave the reason that a record of who was involved in such offences should be kept (as stated by the

Opposition), yet he ignored the Opposition's (repeated) arguments that s5 should not be included due to the subjectivity involved in defining such offences (see Section 2.5.1).

Both the Conservatives and the Liberal Democrats (who quoted support from ACPO) argued in favour of the inclusion of illegal street trading as a penalty offence, yet the (governing) Labour party would not agree to this amendment on the basis that offences with a financial element were not suitable for disposal by penalty notice:

it is not appropriate to bring offences with a financial motive of any kind into the scope of the penalty notice scheme. Unlawful street trading ... is hardly an offence of disorder (Lord Bassam (Lab), HL Deb (2000-1) 625 col. 488).

However, just three years later, Labour added theft to the list of penalty offences through secondary legislation (SI 2004/2540). During the debate on that legislation the Conservatives queried whether it was appropriate that such offenders would not receive a criminal record "[t]heft is potentially a serious offence .... The offence relates essentially to a person's honesty, so is very important" (Humphrey Malins (Con), Stg Co Deb (2003-4) *Fourth Delegated Legislation Committee*, 14<sup>th</sup> September 2004, col. 007). The Government however argued that the penalty notice would provide a means of dealing with cases of low-level shop-lifting which "at the moment go unpunished far too often because of the length of time that it takes ... to process" (Hazel Blears (Lab), Stg Co Deb (2003-4) *Fourth Delegated Legislation Committee*, 14<sup>th</sup> September 2004, col. 005). They argued that by adding theft to the penalty notice scheme they could ensure "that there is some punishment and some recognition that an offence has been committed" (Hazel Blears (Lab), Stg Co Deb (2003-4) *Fourth Delegated Legislation Committee*, 14<sup>th</sup> September 2004, col. 013). This argument suggests that the Government sought to use the PND to 'up-tariff' such offences, ensuring that these offences would be punished (Young 2008). Throughout the debate the Government used the example of a child stealing sweets from a shop as a situation where a penalty notice might be appropriate. This argument is however undermined by the fact that the level of theft for which PNDs may be used was at the time £200. It is hard to imagine a child stealing £200 worth of sweets (or indeed £100, the current maximum value of any retail theft which may be disposed of via PND). Instead the level of theft covered by the PND system suggests a down-grading of this offence, which would otherwise be tried in court with a potential custodial sentence.

Concern was also raised when cannabis possession was added to the list of penalty offences. It was argued that the PND system was introduced to tackle low-level anti-social behaviour, and that gradually it was being "extended beyond its original remit and purpose ... [with the effect

of] dumbing down of justice with the inclusion of offences that should be prosecuted”(David Burrowes (Con), Stg Com Deb (2008-9) *Third Delegated Legislation Committee*, 22<sup>nd</sup> January 2009, col. 6). Indeed, as Baroness Buscombe argued during the debate on the original Bill: “[i]t is awfully tempting to make a pun with the byline, “crime pays”, when all that one will have to do to make up for one’s misdemeanours is pay up” (Baroness Buscombe (Con), HL Deb (2000-1) 624 col. 702). Despite such concerns, since the scheme’s inception the number of penalty offences has almost tripled and there has been a shift in emphasis from disorder to crime. Yet despite this (or perhaps because of this), over the years there has been a notable change in how PNDs are presented. Whilst PNDs were originally referred to as an ‘administrative sanction’, by 2009 they were referred to as a ‘criminal sanction’ (Hazel Blears (Lab) Stg Co Deb (2003-4) *Second Delegated Legislation Committee*, 8th September 2004, col. 014; Maria Eagle (Lab), Stg Co Deb (2008-9) *Third Delegated Legislation Committee*, 22<sup>nd</sup> January 2009, col. 3).

The Conservatives argued against proposals in the Bill that provided for the Secretary of State to set the level of penalties as half the maximum possible court fine for the given offence (meaning that, in theory, notices could be issued for £2,500). They argued that only the most serious examples of any particular offence would attract such high fines, but that to allow them to be disposed of via a police-issued fine would trivialise such offences. The Conservatives instead proposed an amendment that the maximum penalty be one quarter of the maximum fine. Whilst Charles Clarke agreed with this in principle and the Bill was duly amended, the same argument could be made of those amended provisions which in theory allow for penalty notices up to the value of £1,250. Thus although, at present, the maximum fines are for £90, in principle the Home Secretary reserves the right to vastly increase the level of penalty notices. When discussing the level at which to set PNDs it was argued that if they were too low it would “diminish the punishment effect” (Oliver Heald (Con), Stg Com Deb (2000-1) *Co F Criminal Justice and Police Act*, no pagination), but if they were too high they might not be paid.

A review of the parliamentary debates found that all parties agreed that for low-level offending PNDs were an attractive proposal, as they can “ensure that people pay their dues to society” (Simon Hughes (Lib Dem), Stg Com Deb (2000-1) *Co F Criminal Justice and Police Bill*, no pagination) whilst lightening the burden on the police and the courts. Thus, whilst all parties supported the use of PNDs as a punishment for ‘low-level offending’, disputes arose as to what constituted ‘low-level offending’. As the PND scheme has developed this term has come to incorporate a growing range of ‘truly criminal’ offences.

#### 2.4.4 Rehabilitation

Whilst the Labour vision of PNDs was focused on efficiency and punishment, the Coalition Government have sought to add a rehabilitative element to PNDs. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) enables Chief Constables to set up educational programmes which “reduce the likelihood of those who take the course committing the penalty offence[s] ... to which the course relates” (LASPO Schedule 23). PND recipients would then have the option of attending such a course as an alternative to paying the penalty notice fee. As the decision to establish such programmes is discretionary it will not be available for all PND recipients and, even where it is available, the content and duration of sessions may vary. Furthermore, the recipient must ‘opt-in’ to the scheme and thus to ‘opt-in’ to rehabilitation.

Rather than addressing these issues, the brief debate on this proposal was dominated by managerialist concerns as to whether, in a climate of public spending cuts, the police have the resources to establish such schemes:

At a time when the police are under pressure to manage their resources very tightly, Ministers are suggesting a whole new area of activity. I appreciate that the proposal is that people pay for the courses; nevertheless, given issues such as the amount of time required to set up these things, up-front investment will be required. I am not confident that the range of skills required to do that successfully are available to police forces at the moment ... we have questions about the efficacy of the police running education courses (Helen Goodman (Lab), Stg Com Deb (2011-12) *Public Bill Committee*, 13<sup>th</sup> October 2011, col. 783).

Such concerns were dismissed by the Government as Chief Constables would only establish such schemes if they would cover their costs. However, it is difficult to see how they can break-even given that the course fee is to be less than the maximum £90 PND fine. Issuing a PND costs anywhere between £5 and £350 (OCJR 2010) and the educational programmes piloted for the Alcohol Arrest Referral schemes cost between £62 and £826 per intervention (Blakeborough and Richardson 2012). Whilst any costs may, in theory, later be recouped through crime reduction, given that the Home Office evaluation of Alcohol Arrest Referral schemes found that brief alcohol interventions did not reduce re-arrest rates it seems unlikely that PND education courses will achieve their aim (Blakeborough and Richardson 2012).

Whilst this rehabilitative aim is relatively new to the penalty notice scheme, the issue of rehabilitation, and more specifically the fact that PNDs prevented people from being diverted to rehabilitative services, was raised in earlier debates on the introduction and extension of the penalty notice system. However, such concerns were only raised on a handful of occasions and only with regard to the appropriateness of issuing PNDs to people with substance

addiction problems, it being argued that prosecution would be more appropriate as, on conviction, the individual could receive a Drug Treatment and Testing Order and gain help to tackle their addiction from local agencies. This argument was only raised once at the Committee Stage and was not addressed by the Government. It was however raised by both the Liberal Democrats and the Conservatives in the debate on the secondary legislation to introduce theft to the list of penalty offences (SI 2004/2540). However, both parties were simply pressing for guidance to be issued stating that a PND would not be an appropriate disposal for people with an alcohol or drug dependency problem; a matter on which the Government agreed.

In 2009 the Magistrates' Association were cited (with regards to a proposal to reduce the value of property for which PNDs for theft could apply to £100) as saying that the low payment rate for PNDs reflected an inability of such notices to address the underlying causes of offending; PNDs do not contribute to reducing offending behaviour (*cited by*, Anne Macintosh (Con) HC Deb (2008-9) 489, col. 298). Similar concerns were raised in earlier debates, particularly with regards to alcohol-related offences and theft. In the former case it was argued that: "Dealing with a bloke curled up with his cans of lager by giving him a fixed penalty notice would be barmy. One needs to deal with his alcohol problem, not give him a fine" (Simon Hughes (Lib Dem), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). With regards to theft, it was felt that a large proportion of offenders commit theft to fund a drug habit:

if a person is charged and brought before the court, the intervention of outside agencies comes into play; the probation service can intervene or the court can make a drug treatment and testing order (Humphrey Malins (Con), Stg Co Deb (2003-4) *Fourth Delegated Legislation Committee*, 14<sup>th</sup> September 2004, col. 008).

However, with a PND the individual would not get the necessary treatment to address their addiction and would be likely to commit further offences to pay for the notice. The original police guidance on this issue contained an interesting anomaly whereby theft or criminal damage PNDs could not be issued to persons who were suspected to have a substance addiction problem, yet for all other penalty offences the police only needed to take their addiction into consideration when deciding on the most appropriate course of action (Ministry of Justice 2009a; Home Office 2005a). This latter approach was particularly incongruous when one considers that there was no reference to the need to consider substance misuse when deciding whether to issue a PND for possession of cannabis. The 2013 guidance has however addressed this, stating that (all) PNDs are inappropriate for known substance misusers (Ministry of Justice 2013b)

The fact that a substance misuser could previously receive a PND for any penalty offence except criminal damage or theft suggests less of a concern with rehabilitation, as was originally argued in Parliament, but instead an attempt at crime reduction and a drive to ensure that recipients were not encouraged to commit further offences to pay for their notice. Furthermore, whilst a number of forces have been operating the kind of education programmes which LAPSO promotes, the majority of these are targeted at alcohol-related disorder with some forces also offering schemes for people found in possession of cannabis. The focus is therefore on binge drinking and low-level drug offences. None address the more serious alcohol and drug addictions discussed in Parliament.

## **2.5 Concerns raised regarding penalty notices for disorder**

Although, in principle at least, all parties supported the introduction and extension of the PND scheme, its development was not entirely uncontroversial. Particular concerns were raised regarding: *police discretion and subjectivity*; *human rights*; and *equality of impact*. The following sections consider these arguments, however, it should be noted from the outset that these concerns did not have any overt impact on the introduction or expansion of the PND scheme.

### **2.5.1 Police discretion and subjectivity**

The PND system allows the officer at the scene to decide how to dispose of cases and thus, where the decision is taken to issue a PND, the officer is 'judge and jury'. It was argued during the passage of the Bill that this would lead to similar behaviour being disposed of differentially, with some people receiving a PND and others being prosecuted. When the Criminal Justice and Police Bill was debated in the House of Lords it was argued that crime and disorder:

are separate concepts with different sanctions attached to each. Whereas most crimes are specifically defined in legislation, often with stated penalties, disorder has no precise legal definition. In general terms it can be described as human conduct which disturbs others (Lord Windlesham (Con), HL Deb (2000-1) 624 col. 676).

The PND system thus allows individual officers to punish offences which are necessarily subjective; whether an act is 'disorderly' depends entirely on the context. This issue was thought to be further compounded by the fact that the decision to issue a PND requires a lower standard of proof than that required to prosecute (see Section 2.5.2.1).

Concerns relating to the exercise of police discretion were raised particularly with regards to s5 due to the subjective nature of this offence:

The reality is that officers often do not know which one of a gang used certain words, what is disorderly or what is abusive. What might be abusive to someone who has lived in refined circumstances might not be abusive to people like me who have lived on the Old Kent Road for half their life. What is disorderly among a group of six pensioners aged 70 might not be disorderly among a group of 19-year-olds. It is entirely subjective. In a different way, what causes harassment, alarm or distress is also subjective and, for those reasons, this approach is wrong. The police should not have the power; it will give them all the cards and will give none to the citizen, and is a sign of an imbalance that could lead to more severe problems (Simon Hughes (Lib Dem), Stg Com Deb, (2000-1) Co F Criminal Justice and Police Bill, no pagination).

It was further argued that it would be difficult to prove a s5 offence on a Saturday night in a city centre, as people frequenting such areas know what to expect. "Nobody is likely to be 'caused harassment, alarm or distress' because they would not be there if they expected a quiet journey home" (Simon Hughes (Lib Dem), Stg Com Deb, (2000-1) Co F Criminal Justice and Police Bill, no pagination). Indeed this idea was supported by Charles Clarke who said that it may be inappropriate to use s5 PNDs to manage drunken behaviour in city centres on weekends, but rather that he envisaged it being used in residential areas (Charles Clarke (Lab), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). The rule of law dictates that the law should be prospective, giving fair warning of the prohibited act and associated punishment (Simester and Sullivan 2007), yet s5 is so vague in its description the potential for uncertainty and injustice is high, particularly given the lack of independent oversight of PNDs.

To ensure passage through the House of Lords s5 was removed from the list of penalty offences included in the Criminal Justice and Police Act 2001. However it was later reintroduced through secondary legislation. During the debate on that legislation it was stated that ACPO wished to include this offence as it was used operationally to deal with (the existing penalty offence) drunk and disorderly behaviour. Despite voicing some ongoing concerns, ultimately the Opposition in both Houses were swayed by the fact that ACPO supported the measure (Dominic Grieve (Con) Stg Com Deb (2001-2) *Third Delegated Legislation Committee*, 18<sup>th</sup> June 2002, col. 5, Viscount Bridgeman (Con), *HL Deb (2000-1) 636 col. 1030*). This is despite the fact that it was admitted that "in general, section 5 would be used in response to disorderly behaviour on the street, particularly on Friday or Saturday nights" (Mr Wills (Lab) Stg Com Deb (2001-2) *Third Delegated Legislation Committee*, 18<sup>th</sup> June 2002, col. 4), a notable change in approach to that discussed under the original Bill.

The penalty notice system allows individual officers to make these subjective judgements without any outside corroboration. It was argued with regards to s5 that "the degree to which

someone can be abusive is far from being clear-cut” (Baroness Buscombe (Con), HL Deb (2000-1) 625 col. 479). Concerns were raised both with regard to how officers would decide whether the behaviour occurred in a ‘public place’ and whether it would be sufficient that the police officer was caused offence without any other ‘victim’ being present. Indeed the Conservatives argued that such an offence could be used against individuals who were rude to a police officer; such cases, they argued, should not be subject to criminal sanction (HC Deb (2001-2) 368 col. 290). However, s5 is drawn so widely that it allows officers to issue PNDs to those in ‘contempt of cop’. Indeed past research has shown that s5 offences are used for exactly this purpose (Brown and Ellis 1994). Such concerns were also raised by the Law Society who asked “is it right that a police constable should make a judgment, often under pressure .... Such a situation is clearly amenable to serious misjudgment or abuse” (*cited by*, Lord Bassam (Lab), HL Deb (2000-1) 625 col. 476).

The Opposition expressed concerns that the decision to issue a PND may be taken, or be deemed to be taken, on prejudicial grounds (Oliver Heald (Con), Stg Com Deb (2000-1) Co F Criminal Justice and Police Act, no pagination). Liberty, who were cited by Lord Bassam, raised concerns that penalty notices would “allow the police to pick on those who are already socially maladapted or socially vulnerable” (Lord Bassam (Lab), HL Deb (2000-1) 625 col. 477). It was also argued that officers may use PNDs disproportionately against vulnerable people who are less likely to run away or dispute the case:

The system lends itself to abuse and contains the risk that police would regularly target people if they did not like them. Most police officers are brilliant, but some are not, and I would be cautious about giving the police powers that allow them to pick on the same people all the time, without allowing those people the possibility of a fair hearing (Simon Hughes (Lib Dem), Stg Com Deb (2000-1) Co F Criminal Justice and Police Act, no pagination).

Whilst the Government argued that there was no evidence that the police would use the powers in this discriminatory fashion, this is to ignore everything we know about police culture and the evidence with regards to, for example, disproportionate use of stop and search powers against ethnic minorities (Equality and Human Rights Commission 2010; Young 2010).

In particular, the Opposition sought an assurance from the Government that the use of PNDs would be ethnically monitored and such information be published (Lord Dholakia (Lib) HL Deb (2000-1) 625 col. 699). No such assurance was given, however it was stated that the matter “would be dealt with in the guidance” (Lord Bassam (Lab) HL Deb (2000-1) 625 col. 714). It should be noted that whilst the original guidance did indeed state that PND recipients’ self-

defined ethnicity *must* be recorded in all cases (Home Office 2005a), in 2012 19% of tickets failed to record this information (Ministry of Justice, 2013c). Furthermore, the Labour Government's commitment to ethnic monitoring of the use of PNDs was undermined by the fact that they did not publish any information as to the ethnicity of PND recipients until 2010 (Ministry of Justice 2010a)<sup>39</sup>. The Coalition Government seem no more committed to monitoring the use of PNDs; the guidance issued by the Ministry of Justice in 2013 (which replaced the 2005 guidance) removed the requirement that officers record the ethnicity of PND recipients. The removal of such a requirement (whilst seemingly a result of the deletion of all sections detailing how PND tickets should be completed)<sup>40</sup> suggests an implicit endorsement of officers' previous failure to record such information.

The Government criticised the Opposition for suggesting that the police might abuse the power to issue PNDs: "Giving police officers the right to issue fixed penalty notices where appropriate does not suggest that they will do so where it is inappropriate" (David Lock (Lab), Stg Com Deb, (2000-1) Co F Criminal Justice and Police Bill, no pagination). They argued that we must trust the police, not least because the recipient of a PND retains the right to challenge the facts underlying the notice and have the case tried if they dispute the facts:

The discretion exercised by the police officer to offer the defendant the choice of a fixed penalty notice, or to have his day in court and take the punishment if he is found guilty or walk away if found not guilty in no way diminishes the defendant's rights (David Lock (Lab), Stg Com Deb, (2000-1) Co F Criminal Justice and Police Bill, no pagination)

the right to trial remains completely without qualification; the fixed penalty notice is not a coercive power (Charles Clarke (Lab), Stg Com Deb, (2000-1) Co F Criminal Justice and Police Bill, no pagination).

Whilst the right to trial remains in theory, in practice, recipients may view the system as coercive and their right to trial as untenable. Indeed Lord Renton (Con) argued that police officers may even say to offenders "[i]f you don't pay this, you will be brought to trial and it will cost you much more" (HL Deb (2000-1) 624 col. 490). However regardless of whether the police are explicit in this warning, the consideration that election for trial may result in more serious punishment may be sufficient to pressurise some individuals into accepting the penalty

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<sup>39</sup> This was despite their annual publication of various other data relevant to the use of PNDs (such as the gender of PND recipients, the payment rates and the use of this power by different forces).

<sup>40</sup> Under the Legislative Reform (Revocation of Proscribed Form of Penalty Notice for Disorderly Behaviour) Order 2010/64, forces are no longer required to use a standard template for their PND tickets, but rather can design the form to suit their own requirements. Subsequent guidance on the use of PNDs (Ministry of Justice 2013b) therefore omitted sections from the previous guidance (Home Office 2005a) which concerned how to completed the (then standard) PND ticket.

regardless of their guilt. Justifications for a lower standard of proof based on the recipient's right to trial are therefore unsatisfactory (see Section 2.5.2.2).

### 2.5.2 Human rights and due process

One of the main concerns raised with regards to PNDs was that they mixed criminal and civil sanctions (Liberty 2001, p.2). Indeed Liberty argued that "the Government continues to confuse being tough on crime with being tough on civil liberties and human rights" (*cited by*, Lord Mc Nally (Lib Dem), HL Deb (2000-1) 624 col. 699). Furthermore Lord Dholakia (Lib Dem) asked:

Is there not a danger that [PNDs] will lead to a mix of criminal and civil law procedures? ... even if a criminal conviction is not envisaged, the relevant behaviour can be by definition criminal and lead to a criminal conviction if a penalty is not accepted. The blurring of the boundary between criminal and civil law is to be regretted (HL Deb (2000-1) 624 col. 698).

Police officers would thus be empowered to issue the notices for offences which are by definition 'criminal' and could be pursued by the magistrates' courts and yet the standard of proof required to issue such notices would be lower than even the civil standard. This was thought to create "a new hybrid category of offences which are part criminal and part civil" (Lord Bassam (Lab), HL Deb (2000-1) 625, col. 476)<sup>41</sup>. The Government dismissed this, stating there was no such blurring between civil and criminal conduct as fixed penalties were not a new sanction (having long-existed for road traffic offences) and individuals' rights were protected as they reserved the right to elect for a trial, where the offence must be proven to the criminal standard of proof. However, these points do not address the Opposition's concerns. The fact that penalty notices exist for traffic offences does not mean that their introduction for a range of criminal offences is not blurring the lines between the criminal and civil justice. Similarly, that these cases, if appealed, must be proven in court to the criminal standard does not detract from the fact that officers only need 'reason to believe' an individual has committed an offence to issue them with a PND.

A number of concerns were raised with regard to the impact of PNDs on the human rights of recipients and the due process safeguards usually afforded by the criminal justice system:

The Bill seeks to reduce the burden of proof, remove the safeguards of the court process and impose penalties on an individual who is thought to be committing or to have

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<sup>41</sup> Indeed, many of the new ASB regulatory tools introduced by the Labour government have been accused of blurring the lines between civil and criminal interventions, thus allowing the circumvention of the higher evidentiary standards required in criminal proceedings and providing a short-cut to punishment (see for example Burney 2005; Crawford 2009).

committed those offences simply on a constable's belief. That is a dangerous principle to bring into the criminal law of this country. All the safeguards which surround the conviction of offences are absent in a situation such as that (Lord Thomas of Gresford (Lib Dem), HL Deb (2000-1) 625, col. 482).

One notable safeguard excluded are the PACE provisions which, when PNDs are issued on-the-spot, are not applicable.

### **2.5.2.1 Burden of proof**

Before considering this argument, as debated with regards to PNDs, it is first necessary to distinguish between two different types of 'burden': legal and evidential. The legal burden, sometimes referred to as the 'onus of proof', regards the duty on a party (either the prosecution or the defence) to prove a case to a trier of fact (Munday 2003). This is usually a judge or jury, but in the present case the 'trier' is the officer at the scene. The standard to which the case has to be proven depends upon where the case is heard and with whom the legal burden rests. When the legal burden rests with the accused the case must be proven on the balance of probabilities regardless of whether it is heard in a criminal or civil court. Where the legal burden rests with the claimant or prosecution the standard is 'on the balance of probabilities' in civil cases and 'beyond reasonable doubt' in criminal cases. The evidential burden however is the burden upon the defence or the prosecution to adduce sufficient evidence to establish the facts (Doak and McGourlay 2009).

Lord Windlesham (Con) argued that the burden of proof is a "golden thread in our criminal jurisprudence" (HL Deb (2000-1) 625, col. 496) and as such it must be maintained when new, and untested, forms of penal sanction are introduced. Despite this Tony Blair (then Prime Minister) proudly proclaimed that PNDs "bluntly reverse the burden of proof" (Blair 2006). This relates to both the legal and evidential burden. The onus is on the recipient to request a hearing<sup>42</sup>, otherwise the issuing officer need only satisfy themselves that there was 'reason to believe' the individual committed an offence. Arguably therefore, PNDs do not so much reverse as remove the burden of proof, for, unless the recipient challenges the notice, the issuing officer only has to satisfy themselves that there is sufficient evidence that an individual has committed a penalty offence. In all but the small minority of cases where recipients request a court hearing (1%, Ministry of Justice 2011c, Table A2.1) the police officer at the

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<sup>42</sup> Whilst in such cases the onus is on the prosecution to establish their guilt 'beyond reasonable doubt', in practice, if the recipient is unable to provide independent evidence of their innocence it may be very difficult for the defence to successfully challenge the officers' account of the event. Indeed, such issues were highlighted by the use of (now repealed) 'Sus' charges under s4 of the Vagrancy Act 1824 (see Section 3.4.3.3)

scene is the trier of fact and thus has no-one to whom they must discharge the burden of proof but themselves. This is further compounded by the fact that in making such decisions: “a police officer has only to believe that someone is guilty rather than having to demonstrate why he came to that belief on the basis of objective evidence” (Oliver Heald (Con), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). The officer must only have ‘reason to believe’ that a penalty offence had occurred, which is itself a subjective test. Whilst the Opposition proposed to amend this standard to ‘reasonable grounds to believe’; thereby seeking to ensure that the test applied was objective (i.e. based on whether a reasonable person would believe an offence had occurred), the Government refused to accept this amendment. The justification for rejecting the proposed amendment was that there was no criminal conviction or admission of guilt. As was argued in the House of Lords at the time: “this is all thin ice in terms of criminal procedure” (Lord Windlesham (Con), HL Deb (2000-1) 624 col. 677). Indeed, these arguments were subsequently further undermined by the Criminal Justice Act 2003, which allowed PNDs to be used as evidence of bad character.

Lord Bassam (Lab) argued that this lower standard was appropriate as these were lower order offences, and he agreed that “sometimes the test will be applied in a subjective way. That is the way in which policing is conducted” (HL Deb (2000-1) 625 col. 497). He further argued that:

[i]f we were to apply the higher burden of proof, the test that a matter is “beyond reasonable doubt”, I suspect that an argument might be made that fixed penalty notices were being used for more serious offences (HL Deb (2000-1) 625 col. 499).

However, these offences may still be disposed of through means other than the PND, they are not exclusively ‘penalty offences’ and thus it remains open to the police to arrest and charge the perpetrators, after which the higher standard of proof would be applied. Furthermore, were the recipient to request a court hearing the higher standard of proof would apply. Thus it is difficult to accept the argument that the lower standard of proof reflects the fact that these are less serious offences. Indeed it was argued in the House of Lords that individual officers would be “acting as judge and jury, deciding for him or herself whether the alleged offence took place and whether it was of a minor nature” (Baroness Buscombe (Con), HL Deb (2000-1) 625 col. 494) and as such, given the lack of police resources, officers may issue PNDs even in serious circumstances.

#### **2.5.2.2 Right to trial**

The lower standard of proof was ultimately defended on the basis that the PND system allows the recipient to contest the notice and elect for a trial (where the ‘beyond reasonable doubt’

test would be applied), and the proposed amendment was withdrawn on this basis. Charles Clarke argued that the 'reason to believe' test was appropriate as it was the same test used for the fixed penalty system relating to road traffic offences. It was further argued that the PND system was based on consent because the recipient retains the right to challenge the PND in court and as such the system:

has no impact on the fundamental rights of the individual ... the new penalty notice scheme ... contains no coercive powers ... the individual's right to request trial is not jeopardised by the process. The scheme merely offers an offender a way of discharging liability to conviction by paying a penalty. The offender's rights are completely preserved: he is as free to have his case heard by a court as he would have been had the scheme not existed (Charles Clarke (Lab), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination).

It is questionable whether PND recipients perceive the system to be based on consent, or whether they feel compelled to accept the notice: "The point of the fixed penalty notice is that it is an agreement between the giver of the notice and the receiver that payment would be made rather than an alternative legal course being taken" (Charles Clarke (Lab) Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). However, when debating how much a PND should be, it was stated that "The sum must clearly not be ... so high that most people would prefer to go to court in the hope of receiving a lower penalty there" (Home Office 2000, p.3). This seems to give credence to the idea that people are essentially pressurised into accepting the notice. The level of the fine is specifically seeking to avoid people going to the courts.

The Liberal Democrats argued that the pressure to accept the PND may be disproportionately felt across different groups in society. Those who were less well educated for example would be:

less likely to know what the law is and to understand that they can contest things, and that it may be helpful for them to do so .... What we are discussing is much more likely to be contested outside a gentleman's club in Chelsea than outside a bar in Peckham" (Simon Hughes (Lib Dem), Stg Com Deb (2001-2) *Third Delegated Legislation Committee*, 18<sup>th</sup> June 2002, col. 9).

Furthermore, Lord Thomas of Gresford (Lib Dem) argued that the police may encourage people to accept the notice on the basis that that they could be charged with a lesser offence, for which they were likely to be convicted, receiving a more severe sentence and a criminal record (HL Deb (2000-1) 625 col. 500). Further concerns were raised that the right to trial would be undermined as receipt of a PND "has the immediate implication that they have been judged and found wanting" (Dominic Grieve (Con), Stg Com Deb (2001-2) *Third Delegated*

*Legislation Committee*, 18<sup>th</sup> June 2002, col. 6), which may discourage recipients from seeking advice about their legal rights. It was thought that this would be particularly true of the most vulnerable recipients, further compounding the potential for injustice.

Whilst the Criminal Justice and Police Act 2001 protects the individual's right to elect for a trial, in practice, David Heath (Lib Dem) highlighted (when debating whether to reduce the age limit for issuing PNDs to 10 years old) that it would be difficult for people to successfully challenge the notice in court:

how on earth can anyone challenge the ticket in a court of law? The court will have a child's uncorroborated evidence as the sole argument against that of an officer of the law who takes notes at the time. The child will not have the benefit of any legal advice .... That person will then have a ticket that becomes a fine, which becomes a criminal record, if the fine is not paid (David Heath (Lib Dem), Stg Co Deb (2003-4) *Second Delegated Legislation Committee*, 8<sup>th</sup> September 2004, col. 15).

His arguments are equally true of the adult system. The PND system suggests a reversal of a presumption of innocence in favour of a presumption of guilt, a concern that was highlighted by Liberty following the 2000 consultation.

This implicit presumption of guilt (despite the explicit statement that a PND simply offers people a chance to discharge their liability) was evidenced in the Criminal Justice Act 2003. Section 101 provides for PNDs to be used as evidence of bad character or to establish a pattern of bad behaviour in a court hearing. Interestingly, this issue was debated during the passage of the Criminal Justice and Police Act 2001 with a number of MPs stating that as the system allows people to discharge any liability they could not support the order if any record, official or otherwise, were kept of PNDs. Indeed payment of the PND should ensure a 'clean slate':

In the case of a fixed penalty notice, people are not accepting that they have committed an offence. It is designed, in effect, to short-circuit the system so that, rather than put the state to the inconvenience of a trial and the expense of exposing people to such a trial, people can discharge that obligation by paying a fine ... people who have not admitted the offence but have accepted a fixed penalty notice in preference to standing trial should not have an unofficial police record lurking about for future reference (Crispin Blunt (Con), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination).

In response to this Charles Clarke reported that:

it will not be evidence of previous guilt in a future trial, and there will be no unofficial criminal record .... It will not be used in other court hearings, it will not be on the record in any sense and it will not be an unofficial record. The meaning of clause 2(4) ... is absolutely explicit. I reinforce the point that there is no finding of guilt if the payment is made ... there is no admission of guilt and no official or unofficial criminal record

(Charles Clarke (Lab) Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination).

Despite these assurances just two years later the Criminal Justice Act 2003 was passed allowing PNDs to be used as evidence of bad character<sup>43</sup>.

### 2.5.3 Equality of impact

One of the main concerns regarding the fixed penalty system is that it could discriminate against the most vulnerable people in society. Liberty argued that:

The types of behaviour these notice [sic] are likely to attach to, e.g. drunkenness, are also likely to be committed to a large extent by vulnerable members of society who are unlikely to be able to pay fixed penalties ... this provision has the potential to further marginalise those members of society already suffering from social exclusion (Liberty 2001, p.2).

People on low incomes, those who survive on benefits, asylum seekers and the homeless were all cited as being less likely to be able to pay a fixed penalty and as such have a fine registered against them. Non-payment of any resulting fines may result in imprisonment for what originally (by virtue of its disposal by PND) was a minor offence.

It was highlighted both at the Committee Stage and in the House of Lords that a fixed penalty would affect people differentially according to their means. "It would be unjust, culpable though people who engage in misbehaviour are, if someone from a poorer area was faced with the same penalty as someone from a more affluent background" (Lord Brennan (Lab), HL Deb (2000-1) 625 col. 525). The Government argued that it is a necessary consequence of a fixed penalty system that the penalty be standardised and that this was the existing practice in the case of road traffic offences. Lord Brennan argued that the system for road traffic offences was not comparable as, by virtue of those offences, the offenders in traffic cases at least have the means to run a car and thus should also have the means to pay the fine. This is not true of the disorder offences to which penalty notices would apply. To adopt a standardised penalty for disorder offences would therefore lead to potential injustice (Lord Brennan (Lab), HL Deb (2000-1) 625 col. 525).

The Government rejected these arguments saying that there was flexibility in the system as, when an unpaid penalty was registered as a fine, the court has the discretion to allow payment by instalment, thereby ensuring "that no one goes to prison because he cannot afford to pay

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<sup>43</sup> It is notable that the courts have not supported this view, ruling (in *R v Hamer* [2010] EWCA Crim 2053) that, as payment of a PND was not an admission of any offence, a PND did not impugn the good character of the recipient and as such had no effect on their entitlement to a good character direction.

the fine arising out of an unpaid fixed penalty” (Charles Clarke (Lab) Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). However, this ignores the fact that once registered as a fine, the value of the penalty is increased by 50% and, as such, those who could not afford to pay the initial amount are further penalised for the privilege of paying by instalment. This argument was however rejected by the Government as “people can avoid being placed in that position by not accepting the fixed penalty notice and going to court directly” (Charles Clarke (Lab) Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). Thus, if a person cannot afford to pay the penalty they have two options: to contest the PND and risk being convicted in court, or to leave the PND unpaid (after which it will be registered as a fine for one and half times the amount) and hope that the court exercise their discretion to allow them to pay the fine by instalments:

The system would break up England and Wales even more into two societies: the well-heeled and intelligent and the less competent and well-off. If people do not have the money and cannot pay within the time limit, the only way out is to challenge the case, which poorer people are less likely to do (Simon Hughes (Lib Dem), Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination).

The Government further argued that the police would exercise their discretion when deciding whether to issue PNDs and may resort to other options if people were deemed to be of limited means. However, this creates two levels of justice: those deemed able to afford to pay the penalty will get off with a PND and, provided that it is paid in 21 days, no criminal record, whereas those who are deemed to be of limited means will be prosecuted.

#### **2.5.4 Other**

The following concerns raised about PNDs were either subsumed into broader categories or excluded from the in-depth analysis presented above on the basis that these issues were dismissed during the course of the debate, were not addressed by the Government and were not followed up or pressed by the speaker.

##### **2.5.4.1 Seriousness of offences to be included**

This issue arose throughout the passage of the Bill and subsequent secondary legislation extending the penalty system to add new offences. However, where they did appear, concerns as to the seriousness of penalty offences were raised in the context of debates regarding police discretion and subjectivity and whether a PND could be considered a sufficient punishment for such offences. As such, concerns regarding the seriousness of penalty offences

have been considered in the context of the debate on these wider issues (see Sections 2.4.3 and 2.5.1 above).

#### **2.5.4.2 Victim concerns**

Some concerns were raised in both Houses regarding the impact of PNDs on victims and their right to claim compensation. It was accepted however that this matter could be overcome by including in the police guidance a statement to the effect that the police must have regard to the wishes of the victim when deciding whether or not a PND was appropriate. The subsequent Home Office guidance stated that the “PND disposal will not be appropriate where the victim is non-compliant” (Home Office 2005a, p.17)<sup>44</sup>. However, given that PNDs may be issued ‘on-the-spot’, the implication is that victims would be engaged in a street-side interview as to their views of the disposal. This seems wholly impractical, especially given that, by their nature, many penalty offences could have numerous potential victims. For example, where an individual breaches a firework curfew (an upper tier penalty offence) their actions may affect numerous local residents. Should the police knock on all their doors to ascertain their views before exercising their discretion to issue a PND? Indeed, the fact that most penalty offences are either victimless or have numerous potential victims appears to be overlooked in the guidance which makes repeated references to ‘the victim’ in the singular (Home Office 2005a; Ministry of Justice 2013b).

More recently the role of victims in PND cases has been emphasised by the addition of a ‘victim surcharge’ of £10 to all PNDs. The Government argued that they “do not believe it right that people who receive PNDs should escape responsibility for contributing to the cost of victim support services” (Ministry of Justice 2012b, p.45). However, there was no debate on whether this was appropriate given that, unlike others subject to the victim surcharge, PND recipients have neither admitted guilt, nor been found guilty, of any offence, and, as noted above, penalty offences may not have an identifiable victim. Yet even the (notoriously anti-PND) Magistrates Association seemed untroubled by this, replying with a simple ‘yes’ to consultation questions of: Should PNDs be increased by £10? Should that £10 fund victim services? And, should it apply to upper and lower tier offences? (Magistrates Association 2012)

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<sup>44</sup> However no guidance was provided as to how victims’ ‘compliance’ or ‘non-compliance’ would be ascertained, or indeed who is classed as a ‘victim’. More recently, the guidance has been amended to state that whilst the victim’s views are “important” they should not be “conclusive” (Ministry of Justice 2013b).

### **2.5.4.3 Recipients' ability to understand the process**

This argument was raised on a handful of occasions, however, where it appeared it was with regard to: managerialist concerns relating to the practicalities of issuing a penalty notice to a person who, for example, may be too drunk to fully understand the process; or else, in relation to discussions of recipients' right to trial. As such, concerns regarding understanding have been considered in the context of these wider issues.

### **2.5.4.4 Age limit**

Debates regarding the age limit for PNDs occurred both during the passage of the Bill, where the Opposition felt that given the nature of the proposed penalty offences the system should apply to youth offenders, and later during the passage of SI 2004/3166 which reduced the age limit to 10. Here the concern was that the system should be piloted and the results of that pilot considered before this reduced age limit was rolled out nationally (a matter that the Opposition and the Government agreed on). Some concerns regarding the age of the recipients were raised with regards to the right to a fair trial and the deterrent effect of PNDs and these are considered in the relevant sections above. Under the Legal Aid Punishment and Sentencing of Offenders Act 2012 the minimum age of penalty notice recipients has risen from 10 to 18; however these provisions were not discussed during the debate on that Act.

## **2.6 Conclusion**

As noted in Section 2.4, all parties agreed that, in principle, PNDs were a useful tool. Whilst the introduction and extension of this power was not entirely uncontroversial, Labour (who throughout their time in government held a sizeable majority) faced little serious opposition to the development of the PND scheme. Indeed, whilst the inclusion of s5 was initially resisted, when it was later reintroduced through secondary legislation only Simon Hughes of the Liberal Democrats voted against it with Dominic Grieve of the Conservatives (whilst voicing ongoing concerns) stating: "We shall not stand in the Government's way" (Stg Co Deb (2001-2) *Third Standing Committee on Delegated Legislation*, 18<sup>th</sup> June 2002, col. 006). Indeed, when in 2004 the Government sought to add seven new offences to the scheme, including theft and criminal damage, no party voted against the legislation and David Heath of the Liberal Democrats commented that they could "find little to quarrel with the Minister about in respect of the offences being added to the list today" (David Heath (Lib), Stg Co Deb (2003-4) *Fourth Standing Committee on Delegated Legislation*, 14<sup>th</sup> September 2004, col. 009).

The above analysis highlights that the arguments used to justify the introduction of PNDs were muddled and inconsistent. The managerialist arguments to save police time contradict the desire to increase the number of offences brought to justice. Aims based on the deterrent effect of punishments appear unrealistic given that the literature suggests that the severity of the potential punishment has little deterrent effect (Young 2008). Furthermore, any deterrent purpose (or effect) is undermined given that the Government placed no statutory limit on the number of PNDs which a person may receive (with the exception of theft and cannabis cases). The absence of research into the impact of PNDs on re-offending leaves the attainability of such aims in question; it is difficult therefore to justify the system based on such unproven objectives. This thesis aims to address this and provide some insight into how PNDs are working in practice. It should also be noted that the concerns raised (set out in Section 2.5) had a negligible impact on the debate, particularly those concerns regarding equality of impact and human rights, neither of which resulted in any amendment to the proposed system. Whilst these concerns may not have influenced the political debate, they do point to potential problems with the PND system which need to be assessed to gain an understanding of the use and impact of PNDs on the recipients of these notices. Despite some initial success regarding concerns over the exercise of police discretion, which resulted in the removal of s5 from the Criminal Justice and Police Bill, this was later added to the list of penalty offences through the affirmative procedure. However those initial concerns regarding s5 remain relevant particularly given that this offence accounted for 20% of PNDs issued in 2012 (Ministry of Justice 2013c, Table, Q2.1). Examination of the circumstances in which PNDs were issued (via the ticket and analysis and police observations) and offenders' experiences of the penalty notice system are therefore key to understanding whether the concerns raised regarding PNDs were well-founded and, if so, how we might begin to address these issues.

Notably absent from the above analysis was any debate about whether it was appropriate to extend police powers in this manner. Whilst there was debate as to which offences should be included (particularly with regard to subjective offences such as s5), the proposal itself was deemed a sensible one by both the Conservatives and the Labour party. Squires (2008) argues that whilst politicians may express favour for 'evidence-led' policy, in practice ASB initiatives are not selected by virtue of their effectiveness. This is true of PNDs where s5 was added to the list of penalty offences prior to the pilot taking place and less than a year after the offence had been excluded from the remit of the system due to concerns raised in the House of Lords. Furthermore, despite the rapid growth in the types of offences for which PNDs can be applied and the number of such notices issued, there has been little subsequent research into the use

and impact of this measure. Indeed an Office for Criminal Justice Reform (2010) review of the use of out-of-court disposals was stopped by the incoming Coalition Government before it was completed (Ministry of Justice 2011d). The research which does exist was published at such a time as to render it inconsequential to the development of the penalty notice system. Squires (2008, p.302) argues that, knowing practice is not evidence-led, we must turn to look for “those factors responsible for the current policy direction – or, which may be the same thing, the interests served by it”.

In the debates regarding secondary legislation to extend the power to more offences and younger people, ACPO support was often cited in justification of such developments, however, as the Liberal Democrats highlighted:

the police obviously want more powers; generally, they want as many powers as possible. I have never heard police officers saying that they wanted fewer powers. It is the police’s job to have as many powers as possible, so ACPO’s support is not an overwhelmingly objective one (Simon Hughes (Lib Dem) Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination)

The support of ACPO suggests that the interests of the police are served by the introduction and extension of this power. Whilst there is arguably some cost saving offered by PNDs (see Section 3.8) this very much depends upon where tickets are issued (on-the-spot or in custody) and which alternative disposals we draw comparison to. In 2004 the Government pledged that by 2007 they would bring an additional 150,000 crimes to justice every year compared to 2003, a target which was largely satisfied by the rollout and extension of the penalty notices<sup>45</sup>. However, following a change in police performance measures – meaning forces were no longer targeted on ‘offences brought to justice’ – the number of PNDs has fallen such that in 2012 106,205 PNDs were issued, over 100,000 fewer than were issued in 2007. This suggests that reducing bureaucracy and saving police time were not the only driving forces behind ACPO or the Government’s desire to increase the number of offences to which PNDs could be applied.

It is unclear whether the Government sought to ‘up-tariff’ the state response to anti-social behaviour or downgrade their response to crime with the introduction of PNDs (Young 2008). This uncertainty was evident in the consultation paper (Home Office 2000) where it was argued: “[t]he sum must clearly not be so low as to pose no deterrent at all, nor so high that most people will prefer to go to court in the hope of receiving a lower penalty there” (Home

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<sup>45</sup> In 2007 207,544 penalty notices were issued of which 116,816 were ‘offences brought to justice’ for the purposes of police and government statistics and performance measures.

Office 2000, p.3). The Criminal Bar Association highlighted this issue in their response to the consultation:

[it is] unclear (and this may be a politically sensitive issue as well as a legal one) whether the idea is to “criminalise” or “decriminalise” the conduct in question ... *The stated aim* in the Paper is to treat some cases which are resulting in cautions, or small fines, *more seriously*: ... [t]his confuses penalty with conviction (*emphasis in original*, Criminal Bar Association 2000, *cited in*, Joint Committee on Human Rights 2001).

Throughout the debate the system was justified on the basis that it would save police time, both with regards to reduced paperwork and court appearances. Arguably, if the police are to be saved court time, this must mean that penalty notices would be issued in cases which would previously have been prosecuted, thus suggesting that the penalty notice system has down-graded the State response to these offences. Reference to PNDs as ‘on-the-spot *finer*’ (Ministry of Justice 2013h, p.16) and a ‘criminal sanction’ (Maria Eagle (Lab), Stg Co Deb (2008-9) *Third Delegated Legislation Committee*, 22<sup>nd</sup> January 2009, col. 04) further confuses penalties with convictions. This contrasts with the equivalent expiation notice system in South Australia where their Government were at pains to distinguish notices from fines: “Expiation notices are not the same as fines .... It is not an on-the-spot fine for it is not a fine at all” (Second Reading Speech on the Statutes Amendment (Fine Enforcement) Bill, House of Assembly, South Australia, 19 August 1998, at p. 1805, *cited in*, NSW Ombudsman 2005). This distinction was drawn on the basis that the former are issued to people who have not been found guilty of any offence. Whilst in the Anglo-Welsh system payment of the notice is deemed to discharge liability for the offence, the issuance and payment of a PND may later be used as evidence of bad character in civil cases. This presumption of guilt again suggests that, despite the rhetoric, in practice, penalty notices are deemed equivalent to a conviction.

Given this potentially wide-reaching effect of receipt of a PND it is vital that recipients understand such consequences when opting to pay the notice. Throughout the debate individuals’ right to opt for a trial has been cited as justification for the system, yet the research which does exist on the adult PND system has failed to examine whether people understand that right and, if so, why so few people choose to exercise that right. Is it, as the Government suggested, a symbol of the effectiveness of the system and indicative of the consensual nature of penalty notices or, as the Liberal Democrats argued, do people feel coerced into accepting the notice despite their innocence? We need to engage with PND recipients to answer this question.

There is an inherent conflict within the managerialist drive to provide a more time- and cost-efficient means of dealing with, and punishing, low-level offending, given that there are unavoidable resource implications in punishing behaviour that might otherwise be disposed of informally. The time and cost implications of disposing of offending via PND are only likely to increase if the alternative (and again contradictory) strategy of educating and rehabilitating the perpetrators of such offences is pursued. The low payment rate and lengthy enforcement process (see Section 5.6.4) undermine the notion that PNDs provide a swift punishment. The experience of alcohol referral schemes suggests that PND education programmes will struggle to impact upon re-offending rates, and so any rehabilitative aims seem unlikely to be realised. Furthermore, such programmes will be resource intensive, thus undermining the scheme's overall managerialist aims. The practical achievement of crime reduction is questionable given the relative absence of research into the impact of PNDs on re-offending.

Whilst the concerns may not have influenced the political debate on the introduction and extension of PNDs, they do point to potential problems which need to be assessed to gain an understanding of how PNDs are used and their impact on recipients. PNDs were sought as an efficient means to tackle the low-level disorder that impacts upon individuals' and communities' quality of life and confidence in the police. However, are the advantages offered by PNDs sufficient to outweigh the concerns raised? Especially given that negative experiences of contact with the police also impact upon public confidence? The next chapter will outline what the existing research literature tells us about the use of PNDs (and police powers more broadly). These data will then be compared with my own findings in later chapters to consider if (and how) these aims, and concerns, have been realised in practice.

## **CHAPTER 3: WHAT DO WE KNOW ABOUT THE USE OF PENALTY NOTICES FOR DISORDER?**

### **3.1 Introduction**

Fixed penalty notice schemes for traffic, environmental and other regulatory offences are relatively common and have existed in England and Wales since the 1950s (Fox 1995). Such systems are said to divert cases from the criminal courts and provide an administrative means to address offending behaviour. The introduction of PNDs under the Criminal Justice and Police Act 2001 extended this diversionary practice to criminal and anti-social behaviours. This chapter considers the research literature and guidance on the use of penalty notices for disorder, considering how these notices are used as well as recipients' and officers' perceptions of PNDs.

Whilst there has been some (albeit limited) academic discussion on the use of penalty notices for disorder (see for example, Ashworth 2013; Reid 2013; Padfield *et al.* 2012; Young 2010; Morgan 2009; Young 2008; Morgan 2008; Morgan 2007; Roberts and Garside 2005; Roberts 2005), there is little empirical research that directly explores how these tickets are used in practice and so instead we shall turn to police-fine schemes operating outside England and Wales for comparison. This comparative analysis into the efficacy and efficiency of comparable police-fine schemes will aid analysis of PNDs, allowing critical reflection upon their creation, extent and impact (Nelken 2007; Howard *et al.* 2000). Whilst similar systems operate in other countries, the extent and implications of the notices vary (see Tables 3.1 and 3.2). The issue of comparability therefore presents a potential obstacle to such international comparison (Vigderhous 1978). The definition of crime is culturally specific, presenting a further hurdle to comparative research. This is particularly so with regards to penalty offences due to the already blurred distinction between crime and anti-social behaviour (Crawford 2009). This analysis is therefore limited to considering those systems which target the disorderly and criminal behaviours that are deemed 'penalty offences' in the Anglo-Welsh scheme. Penalty notice schemes operating across Australia and in Scotland were selected for comparison as they share, not only similar legal and cultural traditions to England and Wales, but also a common language which aids comparison particularly with regards to offensive behaviour and offensive language cases.

One of the major difficulties confronted by comparative analysis is that the law in writing does not always reflect the law in practice. Indeed, "government control is refracted through structures and ideas [of practitioners] that mould policy" (Holdaway 2003, p.364). Whilst Table

3.1 outlines the key features of the different police-fine systems included in this analysis, it provides only a bare overview of the various schemes, the research literature thus provides a more in-depth account of how these systems work in practice. The following analysis is derived from a review of the relevant academic literature as to the use and impact of various schemes operating in New South Wales (NSW), Queensland, Scotland, South Australia, Western Australia and Victoria. The availability of relevant data is a necessary precursor to the undertaking of comparative study (Liu 2007). Whilst in England and Wales annual data are published regarding the use and outcome of penalty notices, such data are not publicly available in all Australian states. This lack of consistent statistical data prohibits any in-depth quantitative meta-analysis of the use of penalty notices. Instead a more qualitative case-study approach is adopted which allows for greater exploration of the idiosyncrasies of different systems (Howards *et al.* 2000). The lack of up-to-date, state-level data on the use of the various police-fine schemes discussed herein undermines our ability to consider how these systems work in practice. The academic literature may not reflect the operation of these systems today, which may have adapted since the studies discussed below were completed (Nelken 2007). However, in England and Wales the pattern of use has remained largely consistent since the scheme's inception. Furthermore, regardless of any subsequent changes, analysis of the international literature provides a valuable insight into the operation of the various police-fine systems at the time of the research, as well as the efficacy and efficiency of such schemes in general.

<b>Table 3.1: Comparison of penalty notice schemes</b>						
<b>Country /State</b>	<b>Name of Notices</b>	<b>Acronym Used Herein</b>	<b>Year of Rollout</b>	<b>Applicable Penalty Offences</b>	<b>Maximum Penalty</b>	<b>Enforcement period</b>
England and Wales	Penalty Notice for Disorder	PND	2004	Disorderly behaviour while drunk in a public place; behaviour likely to cause harassment, alarm or distress; theft (under £100 retail/commercial only); destroying or damaging property (limited to damage under £300); possession of cannabis/cannabis resin; throwing fireworks; wasting police time or giving false report; knowingly give a false alarm to a person acting on behalf of a fire and rescue authority; buys or attempts to buy alcohol for consumption on relevant premises by person under 18; making false alarm calls; breach of fireworks curfew (11pm-7am); possession of a category 4 firework; possession by a person under 18 of an adult firework; sale of alcohol anywhere to a person under 18; supply of alcohol by or on behalf of a club to a person aged under 18; buys or attempts to buy alcohol on behalf of a person under 18; sells or attempts to sell alcohol to a person who is drunk; delivery of alcohol to person under 18 or allowing such delivery; being drunk in a highway, public place or licensed premises; trespassing on a railway; throwing stones, etc. at a train; consumption of alcohol in a designated public place; buying or attempting to buy alcohol by a person under 18; leave/deposit litter; consumption of alcohol by a person under 18 on relevant premises; allowing consumption of alcohol by a person under 18 on relevant premises; and the following offences occurring in Royal Parks: dropping or leaving litter or refuse; illegal cycling; dog fouling.	£90	21 days
Scotland	ASB Fixed Penalty Notice	ASBFPN	2007	Riotous behaviour while drunk in licensed premises; refusing to leave licensed premises on being requested to do so; urinating or defecating in circumstances causing annoyance to others; being drunk and incapable in a public place; being drunk in a public place in charge of a child; persisting, to the annoyance of others, in playing musical instruments, singing, playing radios etc. on being required to stop; vandalism; drinking alcohol where it breaks a bye-law; breach of the peace; malicious mischief (destroying or damaging property).	£50	28 Days
Queensland	Infringement Notice	QUIN	2010	Public nuisance - disorderly behaviour; public nuisance - offensive behaviour; public nuisance – threatening behaviour; public nuisance - violent behaviour; public nuisance - language only; public urination; obstructing a police officer in the performance of his/her duties, (in relation to a public nuisance or public urination offence); and failing to give one’s correct name and address.	\$300	28 Days
New South Wales <sub>2</sub>	Criminal Infringement Notice	CIN	2007	Stealing (less than \$300); offensive language; offensive behaviour; unlawful entry of a vehicle/boat; continuation of intoxicated and disorderly behaviour following move on direction; obtain benefit by deception; goods in custody.	\$350	21 Days
Victoria <sub>3</sub>	Infringement Notice	VIN	2008	Shop theft (up to \$600); wilful damage of property (up to \$500); indecent or obscene language; offensive behaviour; consuming or supplying liquor on unlicensed premises; failure to leave licensed premises when requested; failure by a person who is drunk, violent or quarrelsome, to leave licensed premises when requested; and careless driving by a full licence holder. In 2011 the following offences were added: possessing, carrying or using a controlled weapon without lawful excuse; purchase by a child of a controlled weapon; possessing, carrying or using a controlled weapon in licensed premises or in a public place that is in the immediate vicinity of licensed premises without lawful excuse.	\$2000	28 Days
South Australia	Cannabis Expiation Notice	CEN	1987	Possession of cannabis (up to 100g); possession of cannabis resin (up to 20g); smoking or consumption of cannabis or cannabis resin in a private place; possession of equipment for smoking or consumption of cannabis or cannabis resin; cultivation of 1 cannabis plant (not being artificially enhanced cultivation).	\$300	30 Days
Western Australia	Cannabis Infringement Notice/ Cannabis Intervention Requirement	CANIN CIR	2004 2011	CANINs applied to: possession by an adult of cannabis (up to 30g); possession by an adult of no more than two cannabis plants; possession by an adult of implements for use in smoking cannabis on which there are detectable traces of cannabis. CANINs were repealed in 2011, and replaced with the Cannabis Intervention Requirement, which applies to: using/possession (by a person aged 14 years or over) of no more than 10g of cannabis, and/or a smoking implement containing detectable traces of cannabis.	CANIN: \$200 CIRs: No Charge	28 Days

<b>Country/ State</b>	<b>Name of Notices</b>	<b>Any alternative to paying the fee in full?</b>	<b>How enforced?</b>	<b>How challenged?</b>	<b>Limits on the use of notices</b>
England and Wales	Penalty Notice for Disorder	Since April 2013 Chief Constables have had the power to establish education sessions (charged at less than the price of the PND) which recipients may attend as an alternative to paying the notice. Nineteen forces already operate such schemes <sup>1</sup> . These are mainly for alcohol-related offending, however some forces also offer a cannabis education session.	Unpaid/challenged PNDs are sent to the Enforcement Unit at the magistrates' court after 35 days. A collection notice is then sent for 1 ½ times the original value. If after 28 days this is unpaid, the Enforcement Unit will either automatically deduct the fine from the recipient's benefits (where applicable) or they will write to their employer to attach a deduction from their earnings. If there is no available information as to their employment/benefit status a distress warrant is issued. Initially bailiffs will send a letter (incurring an additional administration fee of £85 <sup>2</sup> ). If the notice is still unpaid the bailiffs will attend (at an extra cost of £215) and may remove property (incurring additional costs). If all enforcement fails, after 6 months, an arrest warrant will be issued by the court (enforced by court enforcement officers). They will seek to set up a payment plan. If this is not adhered to the person will be arrested. In court the person may be subject to further payment terms for the fine, the fine may be attached to earnings/benefits, the person may be sentenced to prison, or else the fine might be written off for time served.	Court hearing.	A person can only receive one theft or cannabis PND. There are no other statutory limits, however only one ticket can be issued at any one time.
Scotland	Anti-social Behaviour Fixed Penalty Notice	No.	If an anti-social behaviour FPN is unpaid after 28 days, a fine for £75 is registered for enforcement at the magistrates' court.	Court hearing.	No.
Queensland	Infringement Notice	People in receipt of an infringement notice that is \$200 or more can apply to pay by instalments. An initial instalment of at least \$60 must be paid within 28 days. The notice is then registered with the State Penalties Enforcement Registry who send an Instalment Plan Notice outlining payment for the balance.	People who fail to pay within 28 days, or who do not maintain their instalment payment plan, are issued with an Enforcement Order by SPER (this incurs an additional fee). Non-payment may result in the seizure of property, fine collection notices (for payroll deductions and deductions from bank accounts), licence suspensions, or even arrest and imprisonment.	Court hearing.	No.

Country/ State	Name of Notices	Any alternative to paying the fee in full?	How enforced?	How challenged?	Limits on the use of notices
New South Wales <sub>3</sub>	Criminal Infringement Notice	People who are unable to pay the notice in full in a single payment may pay in instalments (of \$20+) over 2 months, without incurring additional costs. People in receipt of government benefit can apply to pay by instalment from their benefit.	Unpaid CINs are recovered by the State Debt Recovery Office (SDRO). Initially, a reminder letter allowing another 28 days to pay is sent, after which an enforcement order is issued (at an additional cost of \$65). If the order remains unpaid after 28 days, the SDRO have the power to suspend the recipient's driving licence, make deductions from their wages, and seize goods. Additional administrative costs are also applied for each sanction issued.	Recipients can apply for an internal review of the reason to issue a notice where they believe that there has been a case of mistaken identity or they have special circumstances (such as a mental disability). Whilst the State Debt Recovery Office will consider reviews made on those grounds, requests made on the basis that the recipient disputes the offence or seeks leniency are referred back to the police for consideration. Alternatively, the individual can request a court hearing.	No.
Victoria	Infringement Notice	Recipients can apply for a payment plan or for an extension in the time allowed to pay their notice. People in receipt of certain benefits are automatically entitled to pay by instalment/receive extra time. However for all other people this decision is discretionary and based on the offender's ability to pay.	Unpaid notices are enforced by the Infringements Court (a division of the magistrates' court). Initially the recipient is sent a penalty reminder notice (at an additional cost of \$22.60). This must be paid in 28 days, after which an enforcement notice is issued (at an extra cost of \$75.20). If that notice is not paid within 28 days a warrant will be issued (at an additional cost of \$55.10). This may result in property seizure, suspension of the recipient's driving licence, deduction from wages or arrest.	Recipients can apply for an internal review of the reason to issue a notice where they believe there was a defect or mistake in issuing the notice, a case of mistaken identity, exceptional circumstances surrounding their case, or they have special circumstances (such as a mental disability, addiction or homelessness). Alternatively, the individual can request a court hearing.	No.
South Australia	Cannabis Expiation Notice	Recipients can apply to pay by instalments or to complete community service in lieu of paying the fine.	Initially a reminder notice (which incurs an additional fee) is sent. If the fee is still unpaid it is registered as a fine at the magistrates' court and the offender is taken to have been convicted.	Court hearing.	No.

Country/ State	Name of Notices	Any alternative to paying the fee in full?	How enforced?	How challenged?	Limits on the use of notices
Western Australia	Cannabis Infringement Notice Cannabis Intervention Requirement	CANINs recipients could elect to attend a cannabis education session (at no cost) rather than pay the notice. Offenders were required to pay their penalty in full within 28 days, or complete a specified cannabis education session within the same period. Those who failed to do this incurred a debt to the state and were dealt with by the Fines Enforcement Registry whereby they may have had their driver's licence suspended.	CANIN: Unpaid CANINs were recovered from the Fines Enforcement Registry CIR: If the person has not completed a Cannabis Intervention Session within the enforcement period, they will be prosecuted for the offence.	CANIN: Court hearing. CIR: Court hearing.	CANIN: If a person received more than two CANINs in three years they were no longer eligible for the fine and had to attend an education session or go to court. CIR: Adults can only receive 1 CIR; under 18s can receive 2.

<sup>1</sup> All forces in England and Wales were contacted in December 2012 to enquire whether they were running a PND waiver scheme. Of the 40 forces that replied 19 were running a PND waiver scheme for alcohol-related offences. In addition five of these forces offered a waiver scheme for persons in receipt of a possession of cannabis PND. Six forces offered the waiver scheme as a free alternative to paying the notice, whereas in the other force areas there was a fee (of between £30 and £40) to attend the education course.

<sup>2</sup> The fees quoted here refer to those applied in the force area reviewed during the empirical research. However, as different courts use different companies to enforce fines the exact costs may vary.

<sup>3</sup> Whilst infringement notices have been available in Victoria since 1966, these were largely for administrative, traffic and environmental offences. Whilst some offences covering liquor licensing were included within this framework in 1998, it was not until the Infringements and Other Acts Amendment Act 2008 was passed that the VIN system was extended to include the offences listed, and the scheme became more akin to that operating in England and Wales.

<sup>4</sup> Introduced under the Crime Legislation Amendment (Penalty Notice Offences) Act 2002 the New South Wales CIN system was piloted in 12 areas between September 2002 and August 2003 before state wide rollout. The scheme continued to run in those areas before being rolled out nationally on 1<sup>st</sup> November 2007. The pilot also provided for infringement notices to be used in cases of common assault; however, this was removed from the list of penalty offences prior to national rollout as it was found to have been used in cases which warranted more serious action.

Table 3.1 outlines the key features of the penalty notice systems operating in the UK and Australia. The English system is not only far more extensive than any other penalty notice scheme considered in Table 3.1 (including more than twice as many offences) but it also offers the shortest time period for repayment before enforcement action is undertaken. Whilst the longest established (Australian) systems relate only to cannabis offences, increasingly states are adopting English-style penalty schemes which cover a wide range of low-level criminal and disorderly behaviours<sup>46</sup>. Those operating in Scotland, Victoria, New South Wales and Queensland are most akin to the English system, including similar offences relating to low-level theft, criminal damage and public nuisance/offensive behaviour.

All of the penalty notice systems considered entail police-issued fines which may be issued on-the-spot or following arrest<sup>47</sup>. The majority of systems considered apply only to adult offenders<sup>48</sup>. Whilst the value of the fine varies across the different schemes, all offer recipients the alternative of requesting a court hearing (see Table 3.2). None require the recipient to admit guilt, no conviction is recorded and the person does not receive a criminal record. However during the NSW CINs trial it was found that officers were appending details of CINs to criminal records presented in court for criminal proceedings (NSW Ombudsman 2005). The Ombudsman recommended that safeguards be established to guard against CINs being used as evidence of bad character (NSW Ombudsman 2005). This recommendation can be contrasted with the English scheme where PNDs can be used in that manner (despite neither CINs nor PNDs requiring an admission of guilt). Under section 101 of the Criminal Justice Act 2003 receipt of a PND may be used as evidence of bad character in civil cases<sup>49</sup>. Furthermore receipt of a PND can be divulged in a criminal records check if it is deemed relevant to the post applied

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<sup>46</sup> A PND for cannabis possession is comparable to the various cannabis infringement/expiation notices operating across Australia. All schemes make a distinction between private users and dealers. Notices are applicable only to those thought to be carrying (or in the Australian cases growing) cannabis for their own personal use. There are however some notable differences between the schemes in each state. The remit of the South Australian CENs scheme and the (now defunct) CANINs system in Western Australia are slightly wider than the English cannabis PNDs, including the cultivation of one or two cannabis plants respectively. However, the South Australian scheme excludes cases where the person has been caught smoking cannabis in public whereas in England and Wales the police may exercise their discretion in such cases and proceed by way of PND if they see fit (Legal Services Commission of South Australia 2009; ACPO 2009).

<sup>47</sup> Under the new Western Australian cannabis intervention requirement scheme people aged 14 or over may be issued with a CIR. However, whilst (for the sake of completeness) details of this measure are included in Table 3.2, comparison is not drawn between this and PNDs in the remainder of the chapter as a CIR does not involve the payment of a fine and as such is a qualitatively different mechanism to the others described.

<sup>48</sup> In Scotland people aged over 16 may receive an Anti-Social Behaviour Fixed Penalty Notice, and in Victoria people aged 16 or over may receive an Infringement Notice for purchase, by a child, of a controlled weapon.

<sup>49</sup> The courts held in *R v Hamer* [2011] 1 W.L.R. 528 that receipt of a PND should not preclude a person from a good character direction. However, this would not preclude PNDs from being used as evidence of bad character in civil proceedings.

for. This implies guilt and leads to what may be termed a “quasi-criminal record” (Roberts and Garside 2006, p.6). Whilst a PND does not constitute an official ‘criminal record’, all PNDs issued for recordable offences should be entered onto the Police National Database. Officers may then use this information to decide how to exercise their discretion and whether to issue a PND in a subsequent case. However, none of the police-fine schemes have a *statutory* limit on the number of notices a person may receive<sup>50</sup>.

In England and Wales, under sections 9 and 10 of the Criminal Justice Act 2003 officers may, following arrest, take DNA, fingerprint and photographic evidence without the individual’s consent. As such these data could be gathered from offenders issued with PNDs in custody. Under section 8 of the Protections of Freedoms Act 2012 PND recipients’ fingerprint and DNA data may be kept for two years<sup>51</sup>. Furthermore under s.116(2)(1B)(d) of the Serious Organised Crime and Police Act 2005 people issued with an on-the-spot PND may be photographed without consent by the issuing officer, PCSO or accredited person. Section 117 of that Act provides for police constables to take fingerprint evidence on the street without consent for the purposes of identification. Officers may also take fingerprint evidence on the street with the consent of the individual for the purposes of identification<sup>52</sup>. Despite the legal innocence of PND recipients their data are held on the PNC even after they have paid the notice<sup>53</sup>. Conversely, in NSW the law provides for the removal of such data following the payment of the notice. However, officers in NSW expressed frustration that this information must be destroyed, believing it would prove useful in identifying offenders (NSW Ombudsman 2005). This suggests an underlying presumption that CIN recipients are not only guilty of the offence in question, but are persistent offenders. This contradicts the rhetoric that

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<sup>50</sup> Indeed, any ceiling on the number of notices that an individual may receive appears to contradict the fact that PNDs require no overt admittance of guilt and do not amount to a criminal conviction. However, the new cannabis intervention requirement system in Western Australia only allows people to attend one Cannabis Intervention Session, after which they would be prosecuted for any future cannabis offences. Under the previous cannabis infringement notice scheme people could only receive two CANINs in three years, after which they were no longer eligible for the fine and had to attend an education session or go to court. In England and Wales, people may only receive one theft or one cannabis PND before being prosecuted for *that* offence, but that does not preclude them from receiving PNDs for other offences. However, when the scheme was available for under 18s, they were only allowed to receive one PND for a recordable offence before alternative action should be taken. In practice, Kraina and Carroll (2006) found there to be great geographical inconsistency within England and Wales in whether individual forces had a policy of capping the number of PNDs that could be issued to an individual, and where there was such a limit, what this was and whether there was a timeframe for which the restriction applied.

<sup>51</sup> There was previously no limit on how long PND recipients’ data could be retained.

<sup>52</sup> Indeed, to facilitate this process Lancashire police amended the PND form to provide space for a single fingerprint and issued officers with a small ink-pad: offenders must however consent to this process or else be arrested (Kraina and Carroll 2006).

<sup>53</sup> Under section 8 of the Protection of Freedoms Act 2012 (not in force at the time of going to press) PND recipients’ data may be held on the Police National Database for 2 years. There is currently no limit on how long this data can be held.

penalty/infringement notices do not require an admission of guilt and do not amount to a conviction.

As in England and Wales, the (now defunct) cannabis infringement notice (CANIN) scheme in Western Australia offered recipients the opportunity to attend an education session rather than pay the penalty notice<sup>54</sup>. However, unlike the English and Scottish penalty notice schemes, their Australian counterparts offer recipients the opportunity to apply to pay their notice by instalments. Penalty notices are enforced in a similar manner in all the systems discussed: recipients are given a few weeks to pay the fine before enforcement action is taken. However whilst NSW and (when CANINs were still available) Western Australia, operate administrative enforcement processes via state debt recovery agencies<sup>55</sup>, in all other systems unpaid notices are registered with a court. Thus whilst enforcement action in Western Australia was limited to suspension of the recipient's driving licence, and in NSW to taking payments from the individual's wages/state benefits, in all the other systems described non-payment could ultimately result in arrest and imprisonment.

Whilst the right to trial is protected (in England and Wales and elsewhere) people who choose to exercise that right are disadvantaged as they are tried for the *original offence*. It is not therefore a direct challenge to the penalty notice itself (i.e. whether or not the ticket should be upheld). The consequences of being found guilty will therefore be more serious than if the individual had paid the notice, in that the offender will obtain a criminal record. However, it may or may not be more serious with regards to the punishment received. Following recommendations from the NSW Ombudsman (2005)<sup>56</sup>, CIN recipients can request an internal review of their infringement notice. In Victoria a similar, but more limited, internal review mechanism operates. In both states notices may be challenged where the recipient claims there are special circumstances (such as a mental disability) involved in their case which mean their ticket should be cancelled. In NSW recipients may also seek review of their case to request leniency or dispute the offence. In both states, the option to request a court hearing also remains available<sup>57</sup>.

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<sup>54</sup> Indeed this was replaced with a scheme which only offers an educational, rather than financial, means of expiating the offence.

<sup>55</sup> Under the new Cannabis Intervention Requirement scheme, if the person has not completed the Cannabis Intervention Session or applied to have their case heard in court within 28 days of receiving the notice, they will be prosecuted for the offence.

<sup>56</sup> The NSW Ombudsman (2005) argued that the absence of an internal review process would contravene administrative law principles which require, or encourage, internal review mechanisms before external adjudication.

<sup>57</sup> There is no formal mechanism to review the decision to issue a PND in England and Wales, other than to request a court hearing. However, even in areas where no waiver scheme operates, a small

### 3.2 Police operational guidance on the use of PNDs

PNDs may be issued by officers who have reason to believe an individual has committed a penalty offence. Chief Constables may designate this power to PCSOs (Police Reform Act 2002 Schedule 4) and other accredited persons (Anti-social Behaviour Act 2003 Part 9, s.89(5))<sup>58</sup>. Notices can be issued on-the-spot or at the station<sup>59</sup>. Officers retain the discretion to proceed by existing means, such as arrest or caution. The operational guidance (updated in April 2013) states that the following conditions must be met before a PND can be issued (Home Office 2005a, p.11; Ministry of Justice 2013b<sup>60</sup>):

- The officer must have reason to believe a person has committed a penalty offence and have sufficient evidence to support a successful prosecution;
- The offence is not too serious and is of a nature suitable for being dealt with by a penalty notice;
- The suspect is suitable, compliant and able to understand what is going on;
- A second or subsequent offence, which is known, does not overlap with the penalty notice offence;
- The offence(s) involve(s) no one below the age of 18<sup>61</sup>;
- Sufficient evidence as to the suspect's age, identity and place of residence exists. The recipient must be resident in England and Wales<sup>62</sup>.

The first point to note about these conditions is that officers only need 'reason to believe' that an individual has committed a penalty offence to issue a PND. As noted in the previous chapter, the Government intended this to be a lower standard of proof than 'reasonable suspicion' (see Section 2.5.2.1). If that were the case, a PND could be issued to a person at lower standard of proof than that which would apply if they were to be arrested (as half of all PND recipients are) or prosecuted (as may occur were they to request a court hearing). However, if it was the intention that PNDs may be issued on a lower standard of proof, then that intention appears to be undermined by the guidance which states that they need both a

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proportion of tickets are cancelled every year which suggests that some form of unofficial/informal review mechanism operates.

<sup>58</sup> PCSOs cannot issue PNDs in cases of theft or littering. Accredited persons cannot issue PNDs for any of the following offences: being drunk in a highway; drunk and disorderly; theft; criminal damage; and littering.

<sup>59</sup> Prior to the Legal Aid, Punishment and Sentencing of Offenders Act 2012 only uniformed officers were able to issue PNDs on-the-spot, and officers had to be authorised to issue PNDs at the station.

<sup>60</sup> In April 2013 the Ministry of Justice issued updated guidance on the use of PNDs. These same conditions appear in the new guidance (see Ministry of Justice 2013b, pp. 9-10 and 14-15).

<sup>61</sup> Until April 2013 PNDs could be issued to persons aged 16 and 17.

<sup>62</sup> The 2012 guidance states that PNDs may only be issued to people resident in England and Wales, whereas, under the 2005 guidance PNDs could be issued to any person resident in the British Isles (Home Office 2005a; Ministry of Justice 2013b). During the youth pilot there was an additional requirement that officers ensure that there was no welfare need that would make the issuing of a PND unsuitable. When 16-17 year olds were included in the scheme, there was an additional requirement that they had not have previously received a PND for a recordable offence.

“reason to believe that a person ... has committed a penalty offence and sufficient evidence to support a successful prosecution” (*emphasis in original*, Ministry of Justice 2013b, p.8). Indeed, “the evidence should be capable of satisfying the evidential and public interest tests of the CPS’s Code for Crown Prosecutors” (Home Office 2005a, p.12; Ministry of Justice 2013b, p.8)<sup>63</sup>. On the one hand, the ‘reason to believe’ condition appears largely redundant; if there is sufficient evidence for a prosecution then the officer surely has a (well-supported) ‘reason to believe’ an offence has been committed. Alternatively, these separate requirements may be seen to be complementary, suggesting that officers must reach an independent judgement as to whether an offence has occurred (and whether to issue a PND) based on their assessment of the evidence. The original guidance stated that officers did not have to directly witness the offence, but could instead base their decision on “reliable witness testimony” (Home Office 2005a, p.12). There is also no requirement (in either the 2005 or the 2013 guidance) that officers interview offenders before issuing a PND. Officers’ assessment of the evidence is not therefore required to consider the recipient perspective and recipients are not necessarily afforded any right to challenge witnesses’ (or the police) version of events.

Whilst in Parliament it was suggested that the ‘reason to believe’ test would be a lower standard of proof than ‘reasonable grounds’ to believe, it is unknown whether officers consider these to be different evidential standards. Certainly the College of Policing suggests they are equivalent. In their overview of out-of-court disposals they state that to issue a PND “the officer must have *reasonable suspicion* that a penalty offence has been committed and that sufficient evidence *can be obtained* to support a successful prosecution” (*emphasis added*, College of Policing 2013, no pagination). Officers’ understanding of the concept of ‘reasonable suspicion’ has been found to vary widely (Quinton *et al.* 2000). As such, it is likely that, for penalty offences too, officers’ views on what amounts to a ‘reason to believe’ a person has committed an offence will vary and may, as in some stop and search cases, not be fulfilled (Quinton *et al.* 2000).

Cases which are ‘too serious’ are not suitable for disposal by PND. However, whilst there are clear ‘seriousness’ criteria for theft and criminal damage cases (the value of these offences should not exceed £100 or £300 respectively) it is less clear what is too ‘disorderly’ to be disposed of via PND. Cases involving a pattern of intimidation or harassment, domestic violence or football-related disorder are expressly excluded, so too however are cases

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<sup>63</sup> The 2005 guidance additionally required that this “be fit for use as evidence in court” (Home Office 2005a, p.12).

involving any injury or a realistic threat of injury. This raises certain questions: What is a 'realistic' threat of injury? Does this encompass cases involving verbal threats or aggressive body language, where the police intervene to try and prevent the situation from escalating and becoming violent? If so, might this not exclude many of the drunk and disorderly cases that the scheme is intended to address? Notably, the wording of the guidance appears to dichotomise 'offenders' and 'victims' without addressing how the police should proceed in cases which involve two people/groups fighting one another. Nor is the appropriateness of using PNDs to deal with cases where offenders are abusive towards the police considered<sup>64</sup>.

The requirement that there must not be any second or subsequent offence which 'overlaps' with the penalty offence is another measure of the seriousness of the case. Examples are given in the guidance to indicate when it will, or will not, be appropriate to dispose of a case via PND. A PND cannot, for example, be issued to a person suspected of drunk and disorderly behaviour, who, as a result of their intoxication, commits criminal damage. Whilst each individual offence is suitable for disposal by PND, in conjunction they are not. Conversely, a person arrested for drunk and disorderly who, when searched, was found to be in possession of stolen credit cards, may receive a PND for the former offence and be charged separately for the latter (Home Office 2005a; Ministry of Justice 2013b). The guidance does not however address the issue of whether a person can receive two PNDs for offences which do not overlap (Home Office 2005a; Ministry of Justice 2013b). For example, if a person who was arrested for criminal damage was found (upon their arrest) to be in possession of cannabis, could they (simultaneously) receive two separate PNDs?

Penalty notice recipients must be suitable, compliant and able to understand the procedure. A person who is "impaired by the influence of drugs or alcohol" cannot therefore be issued with a PND (Home Office 2005a, p.20; Ministry of Justice 2013b, p.15)<sup>65</sup>. This restriction on the use of PNDs appears at odds with the list of penalty offences, which are dominated by alcohol-related crime. It also questions whether PNDs for drunk and disorderly or being drunk in a

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<sup>64</sup> When issuing notices for s5 the 2005 guidance explicitly stated that officers must have regard for the statutory defence for that offence (Home Office 2005a, p.14). The CPS charging standards expect officers to have a higher tolerance for abuse than members of the public; and thus abuse directed at officers *may* not be sufficient to meet this criteria. The 2005 guidance did not however address this expressly. The 2013 guidance does not make reference to officers' need to consider the applicability of the statutory defence to s5 of the Public Order Act 1986 (Ministry of Justice 2013b).

<sup>65</sup> Kraina and Carroll (2006) found that the use of the term 'compliant' created some confusion and was interpreted by some as including an admission of guilt; where this was not forthcoming officers would proceed by another means. Whilst the 2005 guidance noted that payment of a PND discharged the individual's liability for the offence and involved no admission of guilt, the 2013 guidance expressly states that "no admission of guilt is required to give a PND" (Home Office 2005a; Ministry of Justice 2013b, p.5).

highway should ever be issued on-the-spot. To issue a PND the recipient must be able to understand the process. But if they are able to understand the process, are they sufficiently intoxicated to be deemed 'drunk'? Neither s12 of the Licensing Act 1872 nor s91 of the Criminal Justice Act 1967 define 'drunkenness'. Whilst subsequent case law has left the term relatively open to police interpretation, the following case (regarding 'drunk and disorderly') offers some guidance on the issue. In *Neale v. R. M. J. E. (a minor)* (1985) 80 Cr. App. R. 20 Goff M.J. gave two definitions of the term, which he argued, were interchangeable: a person is drunk where they have consumed intoxicating liquor to an extent which affects their steady self-control or they are "intoxicated with alcohol to the extent of losing control over normal physical and mental functions". Of particular interest here are the terms 'self-control' and loss of 'mental functions'. If one is able to receive a penalty notice on-the-spot (as opposed to being arrested and later being issued with a PND in custody) then it seems likely that the individual was able to maintain 'steady self-control' for the duration of the process, and if they are to understand the process (as the guidance dictates they must) they must not have lost control of their mental functions. It would therefore seem that to issue an on-the-spot PND for being either 'drunk in a highway' or 'drunk and disorderly' is either contrary to the guidance, as the person is too drunk to understand the process, or it is outside the scope of the offence as the person is sufficiently in control as to not be classed as 'drunk'.

Sweeney J highlighted three elements that needed to be proven when deciding guilt in drunk and disorderly cases: (1) the defendant was drunk; (2) he was in a public place; and (3) he was guilty of disorderly behaviour (*Carroll v. DPP* [2009] EWHC 554 (Admin)). Whether behaviour was to be deemed 'disorderly' was to be given its ordinary meaning and therefore was a 'simple' matter of fact in each case. PNDs therefore afford individual officers at the scene total discretion to decide both whether a person is drunk and whether their behaviour is disorderly. To say that such behaviour is a simple case of fact ignores the social construction of disorder based on individual and community tolerance, as well as contextual factors such as the time and place an incident occurs.

A review of the guidance suggests that some of the limits placed on officers' use of PNDs are at odds with both the list of penalty offences and the purpose of the scheme: to promote the swift disposal of low-level offences by providing for officers to issue on-the-spot punishments (see Chapter 2). For example, the restriction on the use of tickets in cases where the offence is 'too serious' due there having been 'a realistic threat of injury' seemingly precludes a large number of cases occurring in the night time economy (NTE) from disposal via PND.

Furthermore, in theory, officers cannot issue a person with a PND if that person reacts abusively towards police. Such a reaction may be a 'secondary offence' which 'overlaps' with the first incident. If officers are to issue PNDs within the confines of the operational guidance, the need for recipients to be compliant and able to understand what is being offered, and the specific exclusion of intoxicated people, queries the extent to which PNDs could/should be used as an 'on-the-spot' fining system. The application and desirability of these guidelines in practice will be discussed in more detail in Chapter 8.

### **3.3 PND research**

There is a dearth of empirical research into the use of penalty notices for disorder in England and Wales. That which exists consists of the pilot studies for the adult and youth penalty notice schemes (Spicer and Kilsby 2004; Halligan-Davis and Spicer 2004<sup>66</sup>; Amadi 2008), an Office for Criminal Justice Reform review of the use of s5, theft and criminal damage PNDs in ten police force areas (Krains and Carroll 2006) and an academic study examining officers' decision making when issuing s5 and drunk and disorderly PNDs (Coates *et al.* 2009). Some other studies, whilst not exclusively focused on PNDs, provide some insight into their use. Reviews undertaken by the Office for Criminal Justice Reform (OCJR), Her Majesty's Inspectorate of Constabulary (HMIC) and a Criminal Justice Joint Inspection by HMIC and Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) examined the use of out-of-court disposals (including PNDs) generally (OCJR 2010; HMIC/HMCPPI 2011; HMIC 2010). Also relevant is research undertaken by Hadfield and others exploring law enforcement and the regulation of the sale and consumption of alcohol, which included interviews with the police regarding their use of PNDs (Hadfield *et al.* 2009; Hadfield and Newton 2010; Hadfield and Measham 2011).

Prior to the national rollout of PNDs for adult offenders a year-long pilot study was conducted in four areas evaluating the viability of a penalty notice system, examining police perceptions of the scheme and the use of penalty notices. The evaluation included a quantitative assessment of the number of PNDs issued and an examination of officer views as reported in surveys conducted with 100 officers (all of whom were involved in the pilot) and on the intranet sites at two pilot sites. One force issued their own questionnaire during training

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<sup>66</sup> The Spicer and Kilsby (2004) study, published prior to the national roll-out of the PND scheme, reported the results of the first nine months of the year-long pilot. Halligan-Davis and Spicer (2004) later published the final results from the pilot.

sessions<sup>67</sup>. Home Office Court Proceedings data from two forces were analysed to assess the fine recovery rate for PNDs as well as any diversionary and/or net-widening impact of the scheme. Qualitative data regarding officers' perceptions of the system were gathered through in-pilot meetings and discussions<sup>68</sup>. Offender, victim and community views were omitted from the study, yet no justification was given for the exclusion of these groups.

A PND scheme for youth offenders (10-15 year olds) was also piloted in six areas (Amadi 2008)<sup>69</sup>. As with the adult pilot there was a quantitative assessment of the use of PNDs as well as a qualitative assessment of officer perceptions of the scheme. Using an opportunity sample, 180 officers were surveyed. Whilst the youth pilot scheme was never rolled out (and indeed the power to issue PNDs to 16 and 17 year olds has since been rescinded<sup>70</sup>), the ongoing contribution of this study is that it remains the only research which has explored the perceptions of PND recipients.

The 2006 OCJR review of the use of s5, criminal damage and theft notices was based upon a quantitative assessment of the national use of PNDs, visits to the ten research areas and interviews with police officers in those forces (Kraina and Carroll 2006)<sup>71</sup>. As with the adult pilot study, the 2006 OCJR review was concerned with the use of PNDs and officer perceptions of the power (Spicer and Kilsby 2004; Halligan-Davis and Spicer 2004; Kraina and Carroll 2006). The OCJR review sought to maximise the use of PNDs to increase the number of offences brought to justice<sup>72</sup>, thereby implicitly disregarding any debate as to the legitimacy of this power (Kraina and Carroll 2006).

Coates *et al.* (2009) conducted a multivariate analysis of the factors which affected officers' decisions to issue s5 and drunk and disorderly PNDs on-the-spot or in custody based on an

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<sup>67</sup> It is presumed that these training sessions regarded penalty notices and included only officers involved in the pilot; however, the evaluation does not make this clear.

<sup>68</sup> Whilst it would therefore appear that the pilot study was relatively comprehensive, the two resulting publications were only four and six pages in length.

<sup>69</sup> However the final report only included findings from five of the six pilot forces as the sixth area only issued four PNDs during the course of the pilot and its contribution was not significantly different from zero (Amadi 2008)

<sup>70</sup> Section 132 of the Legal Aid, Punishment and Sentencing of Offenders Act 2012 amends the Criminal Justice and Police Act 2001, raising the minimum age of PND recipients from 10 to 18. Only those forces included in the youth PND pilot study were ever eligible to issue PNDs to under 16s. However, all forces had previously been able to issue tickets to 16-17 year olds.

<sup>71</sup> The forces included in the evaluation were: Essex, Lancashire, Merseyside, the Metropolitan Police Service, Norfolk, Northumbria, Surrey, South Yorkshire, South Wales and West Yorkshire.

<sup>72</sup> At the time of the 2006 OCJR review there were three notifiable offences included in the PND scheme: theft, criminal damage and s5. As such a PND for any of these offences would count towards the number of OBJ in the area. From 2004 (when PNDs were rolled out nationally) until March 2008 the criminal justice system had a public service agreement to increase the number of offences brought to justice.

archive analysis of PND tickets. They also undertook an experiment to examine officers' decision making. Officers were asked to review 16 scenarios depicting typical disorder offences and comment on whether they would issue a PND or arrest the individual in each case. The two data sources were therefore not directly comparable: in the experiment officers were choosing *between* arrest and PND, whereas in the ticket analysis all cases ultimately resulted in a PND. Furthermore, the ticket analysis reviewed decisions that were actually taken rather than hypothetical situations. In neither instance was the decision between issuing a PND and taking less formal action reviewed.

### **3.4 Use of penalty notices for disorder**

#### **3.4.1 Number and type of notices issued**

The use of PNDs is incredibly skewed. In 2012 92% PNDs were issued for just five (of the twenty-nine) penalty offences: theft, criminal damage, possession of cannabis, s5 and drunk and disorderly, with the latter two alone accounting for 47% of PNDs that year (Ministry of Justice 2013c, Table Q2.1). Interestingly, despite differences in the offences eligible for disposal by penalty or infringement notice across different countries/states, their use in practice is largely similar. In NSW, 90% of all CINs issued in the financial year 2012-3 were issued for offensive behaviour (42%), offensive language (18%) and shoplifting (30%) and during the first twelve months of the Victorian Infringement Notice trial 89% of VINs were issued for careless driving, offensive behaviour and shop theft (NSW Government 2013; Victoria Department of Justice 2010). During the Queensland pilot project 88% of QUINs were issued for public urination, disorderly behaviour, violent behaviour and offensive behaviour (Mazerolle *et al.* 2010). In Scotland between April 2007 and March 2009 breach of the peace, drinking in public and urinating/defecating in public accounted for 94% of all tickets issued (Cavanagh 2009). On the one hand, this concentrated use of penalty notices might suggest that alcohol-related disorder (in particular) presents a problem for police in western societies, and that these offences are deemed by officers to be particularly suitable for disposal in this manner. Alternatively, the fact that a large volume of on-the-spot fines are issued for offences involving "subjective victimisation" (Burney 2006, p.7), raises concerns that such powers enable officers to more readily criminalise these behaviours in order to, for example, achieve administrative targets (see Section 3.4.3.6) or discipline the recalcitrant (see Section 3.4.3.4.1).

This focus on s5 and drunk and disorderly reflects (in part) the intentions of the Anglo-Welsh scheme which was designed to deal with alcohol-related nuisance (Home Office 2000).

However, despite the inclusion of a number of licensing offences, in practice PNDs are targeted at individual perpetrators of *disorder* rather than the illegal sale, supply, purchase or consumption of alcohol. Only 2% of PNDs issued in 2012 were for either consumption of alcohol in a designated public place, being drunk in a highway or sale of alcohol to a person aged under 18. Furthermore, the remaining eight licensing offences covered by the PND scheme together accounted for only 0.37% of PNDs issued in 2012 (Ministry of Justice 2013c, Table Q2.1). Hadfield *et al.* (2009) offer some explanation for the low use of PNDs for licensing offences. In their study, officers reported being reluctant to issue notices for selling alcohol to a drunken person<sup>73</sup>, believing that the use of PNDs in these cases may drive a wedge between the police and otherwise cooperative licensees. Indeed, in one of their research sites, Pubwatch<sup>74</sup> members were forewarned of the timing of any blanket enforcement of this offence as a reward for previous cooperation (Hadfield *et al.* 2009).

Kraina and Carroll (2006) found wide variation in the use of PNDs both within and between the ten forces they reviewed. This was reflected throughout the pilot studies and continues to be apparent in the annual PND figures. For example, in 2012, 495 PNDs were issued in Bedfordshire compared to 4,764 in neighbouring Thames Valley (Ministry of Justice 2013c, Table Q2b). Furthermore, whilst s5 and drunk and disorderly notices accounted for 47% of tickets issued nationally, this ranged from a low of 22% of the PNDs issued in Gwent to 85% of PNDs issued by the City of London Police (Ministry of Justice 2013d, Table 3.10(e)). Kraina and Carroll (2006) found that officers tended to view s5 and drunk and disorderly notices interchangeably. However, when considering the proportionate use of s5 and drunk and disorderly PNDs, the national data suggest that whilst some forces have a relatively even distribution of the two notices, others appear to clearly favour the use of one or the other. Thus for example, whilst 55% of PNDs issued in 2012 in both Bedfordshire and Sussex were for s5 and drunk and disorderly, in Bedfordshire the relative proportions were 27% and 28% whilst in Sussex this was 11% and 44% (Ministry of Justice 2013d, Table 3.10(e)). This geographical variation in the use of PNDs also extends to where PNDs are issued. In 2008 49% of PNDs issued by the Metropolitan Police Service were issued on-the-spot, compared to only 10% of tickets issued in West Yorkshire (HMIC/HMCPSI 2011).

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<sup>73</sup> In 2012 just 94 notices were issued for this offence (Ministry of Justice 2013c, Table Q2.1).

<sup>74</sup> Pubwatch is a similar scheme to Neighbourhood Watch; local licensees together work in partnership with the police and local authority to tackle crime and anti-social behaviour.

### 3.4.2 PND recipients

Men are overrepresented in the PND recipient population. In 2012, 76% of PNDs were issued to men, and when those notices issued for theft were removed this figure increased to 85% (Ministry of Justice 2013c, Table Q2a)<sup>75</sup>. This overrepresentation of male offenders is also reflected in the international literature. For example, in South Australia men received 85-86% of CENs issued each year between 1997 and 2000 (Hunter 2001). Whilst there are gender differences in the cannabis user population (11.6% of Australian men and 6.6% of Australian women reported using cannabis in the last year) (Australian Institute of Health and Welfare 2008), this does not entirely explain the disproportionate use of CENs. However, self-report studies only tell us whether people use drugs, not where or when they use drugs, or whether they carry cannabis in public. Thus, the differential issuing of CENs to men and women may reflect differences in where drug use takes place.

The ethnic profile of PND recipients was not reported in any of the English research, with both Amadi (2008) and Coates *et al.* (2009) commenting that whilst such analysis had been attempted, this information was not recorded on a sufficient number of notices to allow for analysis. Despite the annual publication of PND data since 2005, information as to the ethnic profile of PND recipients has only been published since 2010. As Young (2010) noted (prior to the publication of this data) the lack of available data on this issue hinders any effective debate on the disproportionate use of PNDs. In 2012 19% of PNDs had not recorded the recipient's ethnicity (Ministry of Justice 2013c, Table Q2c). This is despite the fact that Home Office guidance in place at the time stated that the individual's self-defined ethnic origin "*must be completed in all cases*" (2005a, p.30)<sup>76</sup>. The majority (85%) of PND recipients in 2012 were white, 8% were Asian, 3% were black and 5% were described as 'other' (Ministry of Justice 2013c, Table Q2c). Whilst overall the proportion of tickets issued to persons of different ethnic origins was broadly reflective of their representation in the general population, this masks variable use of PNDs for different offences (as well as possible regional variations) (Ministry of Justice 2013c, Table Q2c and Office for National Statistics 2012a). For example, 72% of

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<sup>75</sup> In the youth pilot study, notices were evenly distributed between the sexes, despite the fact that men are overrepresented in the offending population (Amadi 2008, p.iii). These findings were however skewed by one area where women received around two-thirds of the notices issued and another where the distribution was relatively even between the sexes (women receiving 47% of the notices, men 53%). In the remaining three pilot areas men received over 70% of the notices which is more reflective of the adult system (Amadi 2008).

<sup>76</sup> This requirement no longer appears in the PND guidance (see Ministry of Justice 2013b). The removal of this condition is likely to be a consequence of the exclusion from the guidance of those sections which explained how to complete PND forms. These sections were presumably removed as the Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2010/64 no longer requires forces to use a standardised PND form.

possession of cannabis PNDs were issued to white people, compared to 93% of drunk and disorderly PNDs (Ministry of Justice 2013c, Table Q2c). The international literature highlights the potential for on-the-spot fines to be used disproportionately: in New South Wales for example, people from the Aboriginal and Torres Strait Islander (ATSI) populations were overrepresented in the infringement notice recipient population by 245% as compared to their representation in the general population (NSW Ombudsman 2005).

Central Home Office data do not detail the age of PND recipients, distinguishing only between those persons aged 16-17 and those aged 18+<sup>77</sup>. This does not therefore allow us to see whether PNDs in general, or indeed PNDs for particular offences, are disproportionately targeted at certain age groups. In South Australia the majority of CENs were issued to people aged 18-24 (Hunter 2001). Young people were also the primary focus of the NSW scheme, with those aged under 25 receiving 45% of CINs despite representing less than 13.5% of the population (NSW Ombudsman 2005). Similarly, during the Scottish pilot 43.9% of notices were issued to people aged 16-21 and 76.7% to people aged 30 and under (Eberst and Staines 2006).

The potential for PNDs to target marginal groups in society was highlighted by South Australian data which show that the unemployed and people with existing criminal records were overrepresented among CENs recipients (Hunter 2001). In the UK neither employment status nor offending history are centrally monitored, and have not been reviewed in any of the studies examining the adult PND scheme. The only data available regarding the offending profile of PND recipients are from the youth pilot study, where 67% of respondents stated that they were first-time offenders (Amadi 2008). However there may be differences between the offending profiles of adult and youth PND recipients. Furthermore, as offending history in Amadi's (2008) study was self-reported, recipients may have underestimated their involvement in crime and disorder, particularly given that questionnaires were sent to the recipients' parents. This, coupled with the low response rate in the Amadi (2008) research, means that these findings must be treated with caution, particularly when considering adult PND recipients.

The national data tell us *how* PNDs are used in practice, however there is little research which considers *why* officers issue PNDs. Indeed, the research undertaken by Coates *et al.* (2009) is the only study to explore police decision making in the context of PNDs. As such, we now turn

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<sup>77</sup> Although (since April 2013) 16-17 year olds are no longer be eligible to receive PNDs.

to consider the broader police literature to explore the factors which may affect officers' decision making when dealing with penalty offences.

### **3.4.3 Police officer discretion and decision making**

Selective law enforcement is not only routine, but necessary to the functioning of the police and the criminal justice system as a whole (Goldstein 1960). Officers require discretion to execute their duties, as "even the most precisely worded rule of law requires interpretation in concrete situations" (Reiner 2000, p.169). If it is accepted that discretion is necessary, concern then turns to how discretion is exercised and controlled (Freeman 1980). "[I]t is the rare exception that the law is invoked merely because the specifications of the law are met" (Bittner 1967, p.710). Rather, the law can be used to justify actions taken for other (more or less legitimate) reasons. The law is a resource, one of a range of options available to officers in the maintenance of public order (Reiner 2010). To say that a case has not resulted in arrest does not dictate that no coercive action has been taken, yet much of the existing police officer decision making literature falsely dichotomises officers' decisions between arrest and non-arrest, failing to consider the alternatives available when an officer decides not to make an arrest (Terrill and Paoline 2007; Schafer and Mastrofski 2005).

Officers in England and Wales have a menu of options to select from when faced with penalty offences: they might take no action; informal action; formal action on-the-spot; or formal action following arrest. Officers' formal on-the-spot powers include: issuing a formal direction to leave (s27 notice)<sup>78</sup>; street bailing the individual<sup>79</sup>; issuing a PND; and arrest. Where an arrest is made this is not the end of the decision making process: the person may later be released without charge; cautioned; issued with a PND; or bailed until a later date. But how do officers choose between these different actions?

Schafer and Mastrofski (2005) describe four decision making stages that officers negotiated when dealing with traffic violations in one police force in Michigan USA, which may be relevant to the present context. Firstly, on observing the offence, officers have to decide whether to intervene. Secondly, if they decide to intervene, officers must then decide whether to take informal or formal action, and what that action will be. Thirdly, they must decide whether to deliver 'the lecture' (a stern and relatively standardised speech highlighting the nature of the

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<sup>78</sup> Officers' dispersal powers under s27 of the Violent Crime Reduction Act 2006 allow them to issue a person with a formal direction to leave a locality and not return for a stated period (not exceeding 48 hours). Failure to adhere to this is, on conviction, punishable by a fine of up to £2,500.

<sup>79</sup> Powers of street bail allow officers to bail a person to appear at the police station at a later date (rather than arresting them and taking them into custody immediately) thereby giving officers time to investigate the offence.

offence, why it is wrong and why it is important to comply with community norms). Finally, officers decide whether to deliver the 'sales pitch', whereby they highlight that the person could have received a more severe sanction than that which was issued<sup>80</sup>.

#### **3.4.3.1 What informs officers' use of discretion?**

Since the 'discovery' that the police do not engage in full enforcement of the law, concerns have been raised regarding the potential for discretion to lead to discrimination in the exercise of police powers (Reiner 1985). In particular, concerns have been raised regarding discrimination in the first two stages of decision making (according to Schafer and Mastrofski's (2005) model). When and why do officers choose to intervene? Do the police disproportionately target their attention on certain groups? And are those same groups more likely to be subject to formal action?

Ericson (1981, p.85) highlights that discretionary decisions are informed by both legal and non-legal rules; officers' decisions are influenced both by the informal 'recipe rules' of how policing is 'done' and "the criminal rules which may be helpful in the process". Smith and Gray (1983, p.169-171) distinguish between three types of rules which govern officers' conduct. 'Working rules' are internalised; they are the guiding principles which direct officers' behaviour. Conversely, 'inhibitory rules', whilst taken into account when officers make decisions, will only have a restraining effect on officers' conduct where the potential consequences of non-compliance are thought (in the given case) to outweigh the perceived benefits of breaching the rule in question. Finally, 'presentational rules', which may or may not have a restraining effect on police behaviour, serve to present an acceptable image of the police (and policing) to the public. In practice a single rule may serve more than one of these functions or serve different functions at different times. Here we consider the role of informal working rules on officers' decision making, the influence (or lack thereof) of formal rules on officers' use of discretion will be discussed further below (see Section 3.4.3.7).

Police practice is shaped by police culture, that is, "the values, norms, perspectives and craft rules" of the police (Reiner 1985, p.86), the 'rules of thumb' which develop through officers' collective wisdom about how to deal with the situational exigencies of the job (Shearing 1981). Police officers (in particular rank and file officers) have developed "distinctive cognitive and behavioural responses ... a working personality" (which is expressed – more or less – through

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<sup>80</sup> Whether PNDs are 'sold' to recipients on this basis has been hitherto unknown, however the current study will examine officer and offender behaviour during PND encounters.

the actions of individual officers) to manage the combination of danger, authority and a pressure to produce results that are inherent to police work (Skolnick, 1966, p.42). The police hold a unique position in society; they are both “representative of the moral order and a part of it” (Van Maanen 1978, *Reprinted in*: Newburn 2005, p.285). They are in the unusual situation of being a service-oriented organisation, whose function is to discipline those whom they serve (Westley 1953). Police officers’ position of authority over their fellow citizens leaves them isolated from the (non-police) public, who may seek to deny their authority (notably for our purposes, this is particularly so when enforcing laws of morality such as those against public drunkenness (Skolnick 1966)) and from whom they face criticism and hostility (Westley 1953). Danger and uncertainty are characteristic of police work and as such the police must be constantly alert to any threat of violence (Skolnick 1966).

Whilst experiences of violence are rare, the notion of violence and the perceived threat thereof, are central to officers’ concept of their role (Smith and Gray 1983). Both direct and indirect experiences of violent offenders (and confronting and restoring order in those cases) form part of the folklore of policing which is used to justify officers’ own use of violence (Westley 1953) and the exercise of their coercive powers (Cain 1971, *cited in*, Freeman 1980). This threat of violence encourages the cultivation of “‘symbolic assailants’: the police learn to be suspicious of these as objects of danger” (Skolnick 1966, p.59). The nature of police work breeds an attitude of suspicion which is not easily switched off. The development and existence of stereotypes is a crucial aspect of police work which allows officers to interpret their environment and manage potential danger. However such stereotypes are arguably based on prejudicial attitudes which reflect, and reinforce, power structures in society (Reiner, 2000).

#### **3.4.3.2 Discretion and discrimination**

Since the earliest writing on the – then unformulated – labelling theory it has been recognised that people who are subject to arrest are merely a subset of the offending population, and that those with the least power are disproportionately the subject of police attention, and subject to police sanction (see for example, Tannenbaum (1938)). However, the extent to which this reflects differential involvement in offending and/or discriminatory practices by the police (and other agents of criminal justice) is contested. Bennett (1979) distinguishes between *proactive* discrimination based on prejudiced stereotypes about the delinquency of particular groups (who might be termed ‘police property’ (Lee 1981)) and a more passive *reactive*

discrimination which emerges through the relative ability of different groups to negotiate a non-delinquent identity when subject to police attention.

Reiner (1985) draws on Banton's (1964) distinction between *categorical* and *statistical* discrimination. *Categorical* discrimination would suggest officers take action against people purely on the basis of their (actual or perceived) membership of a particular group. Conversely *statistical* discrimination refers to disproportionate focusing on some groups based on a belief that they are more likely to be involved in crime. Reiner (1985) adds to these: *transmitted*, *interactional* and *institutionalised* discrimination. *Transmitted* discrimination rests on the notion that the police, acting on information from the public, reflect community prejudices. Thus for example, if the public perceive groups of young people (rather than middle-aged people) gathering together as problematic, then the police will necessarily focus their attention more on young people and, correspondingly, young people will be more likely to form part of the 'suspect population'. *Interactional* discrimination is akin to Bennett's (1979) reactive discrimination; here, differential treatment would result as officers react to the behaviour of the suspect during an interaction (such as their demeanour). *Institutionalised* discrimination refers to the unequal impact of "universalistically-framed enforcement policies or procedures" (Reiner 1985, p.126), such that police attention is more likely to fall upon the least powerful groups in society. For example, areas with high crime rates are subject to more intensive policing and the residents in such areas (who are typically the most disadvantaged) are more likely to be stopped, searched and arrested.

These different forms of discrimination interact, making it difficult to assess and unravel the relative influence on police decision making of categorical discrimination (and the racial and class prejudice inherent to police culture) from the interactional context of offending and the wider structures of both policing itself and race and class disadvantage. Whilst officers may target their attention on certain groups based on stereotypical assumptions about their relative propensity to offend (statistical discrimination), they also exercise their discretion in response to the situational exigencies they face (interactional and transmitted discrimination), and the national and local policies which direct officers' attention toward certain offences and (therefore inevitably) offenders (institutionalised discrimination) (Reiner 1985).

#### **3.4.3.3 Individual influences on decision making**

Police attention is known to fall disproportionately on 'police property': young, black, working-class, men are more likely to be stopped, searched and arrested (Reiner 2010, p.165).

However, as discussed above, the extent to which this differential treatment results from the unauthorised exercise of police discretion (based on legally irrelevant factors) is unclear as different forms of discrimination – more or less influenced by individual police prejudice – interact. Furthermore, regardless of the actual reasons why the police intervene, their position of authority affords officers the power to define the event, and their decisions, within the parameters of legally permissible criteria (McConville *et al.* 1991), a point which we shall return to below (see Section 3.4.3.7).

Police ethnographic research suggests that officers (particularly in inner-city areas) view their role as that of a ‘thin blue line’ between the general public and ‘lawless elements’ (Reiner 2010). This culture reproduces the dominant social order; the police role is to protect the ‘respectable’ public from the ‘unrespectable’ and ‘unproductive’ (Smith and Gray 1983; Ericson 1981, Lee 1981). It is for the police to control the ‘rubbish’, ‘slag’, ‘scum’ or ‘scrotes’ (Loftus, 2007; Smith and Gray 1983; Shearing 1981). Indeed, any “category of citizens who lack power in the major institutions of their society (institutions in the economy, polity, education, media etc.) are liable to become police property”<sup>81</sup> (Lee 1981, p.53). Such people are more likely to be subject to police attention. Indeed, as early as 1964 Piliavin and Briar noted (with regards to policing in America) that officers were more likely to take formal action against those they deemed to be ‘true delinquents’ and that such assessments were informed by individual characteristics such as “group affiliations, age, race, grooming, dress” (1964, p.210)<sup>82</sup>. Similarly, in the UK context, police powers have been found to disproportionately impact upon young black males (see for example, Smith and Gray 1983; Bridges 1983; Willis 1983; Stevens and Willis 1979; Demuth 1978). However, whilst Smith and Gray (1983, p.109) note the widespread use of racist language and found racial prejudice to be “prominent and pervasive” they conclude that this did not appear to affect officers’ treatment of ethnic minorities during interactions. Indeed, Waddington (1999) highlights that officers’ ‘canteen culture’, that is the manner in which they talk about the job, serves the function of relieving tension but does not necessarily translate into racially prejudiced behaviour. Just as officers exaggerate the danger and violence associated with police work, they too exaggerate the extent of hostility between

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<sup>81</sup> The notion of some groups being the ‘property’ of the police is important; the police feel a sense of ownership over such groups and as such resent and resist any attempts to deny their right to control these people (such as through civil rights movements) (Lee 1981). Thus, Brogden (1981) suggests that the police reacted to the repeal of the so-called ‘Sus’ powers – which afforded officers broad powers to arrest people suspected of loitering with intent to commit an arrestable offence and were widely criticised for their disproportionate impact on young black males – by simply exercising their powers of stop and search instead. Discrimination was thus ‘shifted back’ from the courts to the police, who found alternative means to continue to exert their control over the urban poor (Brogden 1981).

<sup>82</sup> However, these individual factors interacted with suspect demeanour, which was seen to be dominant in officers’ decision making (see Section 3.4.3.4.1).

the police and ethnic minorities (Smith and Gray 1983). Racist talk “is itself a pattern of behaviour that satisfies certain individual psychological needs and serves the needs of the group – it helps to reinforce the identity, security and solidarity of the group against a clearly perceived external threat” (Smith and Gray 1983, p.125). However, during interactions officers face a different set of needs; they are faced with a person who may require support or manipulation and must manage the situation at hand.

Whilst factors such as offence seriousness and transmitted discrimination (that is, the disproportionate reporting of offences involving some groups) might help account for the fact that those who are young, working class and/or black are disproportionately subject to police attention (and sanction) there remains evidence of discrimination. This is supported when one considers that the racial disparity in the use of police powers is greatest for those “offences which allow particular scope for selective perception by police officers” (Reiner, 2010, p.168). This was evidenced by Demuth (1978) in her study of the – now repealed – ‘Sus’ powers. ‘Sus’ was the “shorthand” for the charge of being suspected of loitering with intent to commit an arrestable offence (Demuth 1978, p.3). The burden of proof in such cases was extremely low, simply requiring two officers to provide corroborative statements that they had observed the individual behaving suspiciously on two separate occasions (which may have occurred within minutes of one another (Demuth 1978)) (Greaves 1984). Prosecutions rarely relied on any independent witnesses. Whilst officers justified this on the basis that the potential victim of a ‘Sus’ offence would often be unaware of their ‘brush with crime’ and that there were operational difficulties to arresting the suspect whilst holding witnesses, Demuth (1978, p.16) suggested that in fact independent witnesses might disadvantage the police case “and bring unnecessary inconsistencies into their evidence.” Even where there were independent witnesses speaking for the defendant this was no guarantee of an acquittal<sup>83</sup>. ‘Sus’ charges – like PNDs (see Sections 3.4.1 and 3.4.2) – were concentrated both geographically and racially: between 1977 and 1979 approximately three quarters of all ‘Sus’ charges were against black people (Greaves 1984) and in 1976 74% of ‘Sus’ charges were brought for offences occurring in the Metropolitan Police District, Manchester and Merseyside (Demuth 1978). Use of these powers also varied within forces, thus Greaves (1984) noted that in London, there was a

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<sup>83</sup> Demuth (1978, p.18) cites one notable case where four youths were charged with ‘Sus’ (for loitering with intent to steal) apparently having been seen jostling women on an escalator and putting their hands in the bag of a middle aged woman. An independent witness – who had intervened following the boys’ arrest telling officers to either charge or release them – stated that there was no middle-aged woman on the escalator and that the boys had not been behaving suspiciously. In court, the magistrate told the officers he hoped they had told her to “mind her own business” and commented that he did not approve of people interfering in such a manner. The boys were convicted.

concentrated use of 'Sus' charges in Lambeth. Similarly the concentration of policing in 'Liverpool 8' was summed up by one interviewee in Brogden's (1981, p. 44) study who reported that "round here it's a crime to be young and black".

More recently – fifteen years after Macpherson (1999, Para 46.1) noted the racial disparity in the use of stop and search powers – current data continue to highlight the potential for the police to disproportionately target their powers at ethnic minorities (Sanders *et al.* 2010). Indeed, in 2010-11 black and Asian people continued to be disproportionately affected by police stop and search powers. Notably, the disproportionate use of these powers was greatest when officers did not require any individualised suspicion. Thus whilst black people were six times more likely than white people to be stopped and searched under s1 of the Police and Criminal Evidence Act 1984 (PACE) – which requires officers to have 'reasonable suspicion' that the individual has committed an offence<sup>84</sup> – black people were approximately 29 times more likely than white people to be stopped and searched under s60 of the Criminal Justice and Public Order Act 1994, for which officers need only have a generalised suspicion that violent crime is likely to occur in the area, rather than a specific suspicion regarding the individual searched<sup>85</sup> (Hurrell 2013). Asian people were also disproportionately subject to stop and search powers, and were respectively twice and six times more likely to be stopped and searched than white people under s1 of PACE and s60 of the Criminal Justice and Public Order Act 1994. Unsurprisingly, stops which did not require officers to have 'reasonable suspicion' that the individual has committed an offence were less likely to be 'successful'. Only 3% of s60 searches resulted in arrest, compared to (the still very low) 9% of s1 searches (Home Office 2013b, Table SS.08).

This apparent racial disparity in the use of stop and search (and indeed other police) powers is inherently related to issues of class. The (statistical) discrimination of black people is linked to officers' belief that they are "rootless, alienated, poor ... and deviant in various ways" (Smith and Gray 1983, p.111). Thus it is their designation as 'police property' which is crucial and such

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<sup>84</sup> Section 1 of PACE authorises officers to stop and search a person or vehicle where the officer has 'reasonable suspicion' that the individual is in possession of stolen or prohibited articles. Prohibited articles fall into two main groups: offensive weapons and articles which might be used in the commission of crime.

<sup>85</sup> Section 60 of the Criminal Justice and Public Order Act 1994 provides that senior officers can authorise officers to search anyone present in a public place where it is reasonably anticipated that incidents involving serious violence may take place. The police are able to stop any person or vehicle in that area regardless of whether they have reasonable suspicion that that individual is in possession of an offensive weapon or are intent on committing violent behaviour. These powers are limited in that they must be authorised by an Inspector and ratified by a Superintendent, and they can only apply (in the first instance) for 24 hours, subject to an extension of 24 hours. However, despite these limitations, the break with the PACE requirement for reasonable suspicion shows a clear broadening of police powers to stop and search.

designations are associated with class. Officers were not however seen to be actively discriminating based on class per se, but rather class was incidental to some other factor which was deemed relevant (Bennett 1979), such as the perceived propensity of different groups to (re)offend. As Lee (1981) notes, “The “class or race?” debate ... is probably a futile contest. Social power is not one-dimensional” and more important is the recognition that police attention typically falls on the least powerful in society. Whilst the poor have always been disproportionately targeted by the police (O’Neill and Loftus 2013), Loftus (2007) highlights that one side-effect of the diversity agenda is that, contrary to the organisational emphasis on equity and the need to eliminate the discriminatory practices, the white working class ‘scrote’ has become the (seemingly legitimate) focus of police attention; class-contempt remains unchallenged.

In addition to ethnicity and class, individual factors such as age and gender have been shown to influence police decision making (Smith and Visser 1981, Moyer 1981). Moyer (1981) found that women were less likely to be arrested than men. Skolnick (1966) also noted male officers’ reluctance to arrest women (except prostitutes), he suggests that this is because:

It is degrading for a man to exert coercion upon a woman, especially in public view. A woman who resists arrest by shouting or screaming is inevitably an embarrassment to a police officer, and the problem of controlling her through physical force could become awkward (Skolnick 1966, p.85).

Similarly, Deehan *et al.* (2002) found that officers reported being reluctant to arrest women in their review of the processing of intoxicated offenders in two English custody suites.

With regards to officers’ PND-related decision making, Coates *et al.* (2009) found that neither age nor gender were significant in officers’ decisions to issue a PND on-the-spot (rather than following arrest). Due to the nature of their analysis, it remains unclear as to whether such factors affect whether offenders are more likely to be subject to formal/informal action. Coates *et al.* (2009) were unable to consider the impact of offenders’ ethnicity on the use of PNDs, however, as noted above (see Section 3.4.2) there is an apparent disparity in the use of PNDs against different ethnic groups with Asian persons seemingly disproportionately issued with possession of cannabis PNDs. This, coupled with the evident disproportionate impact of stop and search powers on ethnic minorities, highlights the potential for discrimination in the use of PNDs.

#### **3.4.3.4 Situational influences on decision making**

Penalty offences are by their nature relatively minor, thus when faced with such situations formal intervention may not be required to secure order and/or encourage deterrence. The police must therefore attempt to identify those for whom formal action is required to enforce compliance. Such decisions may be influenced by a range of situational factors such as demeanour, intoxication and offence severity.

##### **3.4.3.4.1 'Contempt of cop' and the importance of demeanour**

The influence of suspect demeanour on police decision making has been discussed since the earliest police observational research, as characterised by Van Maanen's (1978 *In: Newburn 2005*) 'asshole'; and Westley's (1953; 1970) 'wise guy': "the fellow who thinks he knows more than they do, the fellow who talks back, the fellow who insults the policemen" (Westley 1970, p.123). The impact of demeanour has variously been discussed in terms of a negative attitude, disrespect, hostile behaviour and a lack of cooperation or deference, and has been shown to increase the likelihood of arrest in all but the most serious of cases (Dunham and Alpert 2009). Police officers' isolation from the public (from whom they face criticism and hostility) promotes a "collective emphasis on [the need to] coerce respect from the public" (Westley 1953, p.35). Indeed, officers of all ranks have an acute sense of citizen contempt and hostility toward the police (Wilson 1964, *Cited by*, Skolnick 1966). Thus the attitude test serves as "a way of maintaining police authority and punishing those who would defy it ... [However, it is also] an indirect way of determining whether an informal action will sufficiently deter future behaviour rather than a formal action" (Brown 1981, p.196, *cited in*, Worden *et al.* 1996, p.326). 'Disrespect' may therefore be evidenced not only through verbally or physically aggressive behaviour, but also through a lack of deference to officers' authority<sup>86</sup>. Indeed, in the context of policing 'skid row', Bittner (1967) noted that officers did not expect or demand terms of deference or respect from the public. However, whilst they would allow (what might otherwise be deemed) offensive or disrespectful language to pass without comment, this was only where people had conceded to officers' authority with regards to, for example, answering questions as to their identity, address, actions etc. People who 'answer back' challenge the officer's authority, their control of the situation and their definition of events (Van Maanen 1978, *In: Newburn 2005*,).

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<sup>86</sup> Conversely, Smith and Gray (1983) note that those who are deemed to be too servile are seen as 'snivelling'.

The display of a deferent demeanour may be particularly important when officers are dealing with those who might typically be thought of as 'police property'. Lee (1981) suggests that officers' felt need to exert control over their 'property' is particularly acute when these groups are 'out of place' or 'out of line'; that is, where such people fail the 'attitude test' and challenge officers' authority. Piliavin and Briar's (1964) observational research of officers' contact with young offenders in one American police force highlights this interaction between a suspect's attitude and their designation as 'police property'. They found that black youths in particular (and others whose appearance, grooming and style were consistent with the 'delinquent stereotype') were more frequently subject to police attention, and were also, following intervention, subject to more severe dispositions than their white counterparts. This reflects the impact of, and interaction between, (what Reiner (1985) would term) *categorical*, *statistical* and *interactional* discrimination. That is, officers were acting both on their own prejudices about black youths and their perception (supported by their job-related experiences) that black youths were more likely to demonstrate the "recalcitrant demeanor which police construed as a sign of the confirmed delinquent" (Piliavin and Briar 1964, p. 212). Thus officers believed they were justified in focusing their attention on those people they thought were most likely to offend, and felt vindicated in that decision when black youths displayed a negative demeanour.

Disrespect to a police officer is disrespect for the uniform, and officers will rarely let such 'wise guys' escape unpunished (Van Maanen 1978, *In*: Newburn 2005; Skolnick 1966; Westley 1953). In particular, the police expect not just civility, but deference from their 'property'. When faced with someone who 'answered back', officers in Westley's study (1970, p.124-5) noted that whilst they could "take a man on a disorderly conduct charge ... you can practically never make it stick" instead they would 'egg him on' "until he makes a remark where you can justifiably slap him and then if he resists you can call it resisting arrest". What is particularly notable about this example for our purposes is that officers now have the opportunity to punish people for 'failing the attitude test' under the guise that they have committed a disorder offence; a PND will almost certainly 'stick' (only 1% are challenged in court) (see Section 3.4.4.3).

Van Maanen (1978, *In*: Newburn 2005) found that officers would respond in one of four ways when faced with an 'affront' (a challenge to their authority) depending on the extent to which the person was deemed to be culpable for their behaviour and whether or not the challenge was seen as intentional. People who are not thought to have acted intentionally and are not

deemed responsible for their actions will be *isolated*. The police may therefore manage a person who is extremely drunk and swearing by calling the ambulance service rather than arresting the individual. A person will be *ignored* if it is thought that individual, whilst meaning to cause offence, should not be held responsible due to some extenuating circumstances. Thus for example a victim of crime may be disrespectful to officers but they may choose to overlook this affront in recognition of the victim's distress. A person who is deemed to have ignorantly caused affront, knowing their behaviour was offensive, but unaware of the potential consequences, must be *taught* that the police are in control. Such 'lessons' may adopt more or less legitimate means, it may involve the "morally-toned lecture" or "ridicule, threats and harassment" and possible even 'street justice'. Officers may therefore use verbal or physical abuse to reassert their control. The true 'asshole' however is one deemed to be fully aware of the offensiveness of their behaviour, who has shown a "flagrant (inexcusable) disregard for the sentiments of the police" (Van Maanen 1978, *In*: Newburn 2005, p.229) and who must therefore be *castigated*. Such people will not only be subject to 'street justice', but they will also be arrested so as to provide a *post facto* legally defensible account of the officer's use of force. The officer therefore arrests the person so as to 'cover his ass'. Broadly defined offences, such as disorderly conduct, thus allow officers to "use the law as a control device ... to secure broader objectives: the imposition of order, the assertion of authority, the acquisition of information" (McConville *et al.* 1991, p.16) (we shall return to this point below, see Section 3.4.3.7).

Tedeschi and Felson's (1994) social interactionist perspective is useful in considering both why people are disrespectful towards the police and why the police may respond to such disrespect by arresting the perpetrator. They argue that people take 'coercive action'<sup>87</sup> in order to: influence others and gain some benefit; assert or defend their social identity and 'save face'; express a grievance; punish another person for a perceived injustice; or some combination of these factors. Individuals' decisions to behave coercively depend upon the perceived costs and benefits of that behaviour and whether they believe they could achieve the same ends through other, non-coercive means. The police may therefore use their coercive powers of arrest, and/or, (as is our concern) their ability to issue a PND, to reassert themselves when faced with 'contempt of cop'.

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<sup>87</sup> Coercive action includes any behaviour intended to cause either physical or social harm or enforce compliance and thus might define both an offender's disrespectful behaviour towards the police and an officer's decision to sanction an individual.

This view is supported by Choongh (1998) who, during an ethnographic study of police station procedures in the UK, found that for a significant minority of cases, officers effected arrests not to further criminal investigation but rather as an exercise of police coercion aimed at punishing or humiliating the individual, demonstrating their absolute power to those amongst the 'policed' who sought to challenge officers' authority. Choongh's (1998) social disciplinary model suggests that a substantive purpose of policing is not law enforcement but rather the achievement of social control. Policing is a communicative practice sending a message to the policed about their relational (subordinate) position to the police. In these cases, arrest decisions are therefore not concerned with the legal or factual guilt of the offender (as there is never any intention of trying to further a criminal investigation), instead the police are concerned with furthering their own objectives:

reproducing social control, maintaining authority by extracting deference and inflicting summary punishment ... the objective is to punish or humiliate the individual, or to communicate police contempt ... or to demonstrate that the police have absolute control over those who challenge the right of the police to define and enforce 'normality' (Choongh 1998, p.625-6).

Similarly Loftus (2010) found that in seeking to maintain control and extract deference from the public, officers would take more or less formal action depending upon whether individuals passed the 'attitude' test. Notably for our purposes, she found that arrests made for 'failing the attitude test' most commonly occurred in the context of the night time economy (NTE), when intoxicated persons 'answered-back' to officers (Loftus 2010).

Indeed Deehan *et al.* (2002) found that officers regarded binge drinkers as generally respectable, they were employed and often had never had contact with the police before (they were not therefore the typical 'police property'). However, their lack of previous experience with the police was cited as a reason why they might decide to 'answer back' and they would, as a result of their attitude, get arrested. As such, arrest might be used to 'teach' such people that it is not acceptable to be disrespectful to the police (Van Maanen 1978, *In: Newburn 2005*). As one officer commented:

someone urinating on the pavement, we wouldn't normally arrest for that unless they start giving you grief ... why should we have to put up with that (Deehan *et al.* 2002, p.34).

This quote highlights that whilst officers may sanction people for 'contempt of cop' those arrests can often be justified on the basis of the individual's (original) action, in this instance public urination. The combination of widely drawn criminal offences, officers' ability to use their discretion to interpret and enforce those laws, and a lack of effective oversight means

that not only are such disrespectful suspects less likely to “avoid justifiable arrest or to receive the benefit of an evidentiary doubt” (Skogan and Frydl 2004, p.118) they are also more likely to be provoked into committing an offence. Indeed, Loftus (2010, p.11) found that, on occasion, officers purposely “sought to wind people up in order to create an explosive situation which could potentially result in an arrest”. Cain (1971, *cited in*, Freeman 1980) too noted that officers may resort to provoking an arrest where they were bored, and similarly Smith and Gray (1983) highlighted that people on the streets at 5am were liable to be stopped simply as officers were seeking to pass the time.

Demeanour may be seen as an indicator of future behaviour. People who are rude to the police may appear relatively uncontrollable and thus be arrested as a result (Tedeschi and Felson 1994). In their survey of Australian officers, Findlay *et al.* (2000) found that officers’ assessments of whether intoxicated offenders would become aggressive were based on factors such as the language they used and their tone of voice. Officers may therefore view a hostile demeanour as indicative of potential aggression, thus increasing the likelihood of arrest. Conversely, an apologetic demeanour might ameliorate the negative impact of offending and reduce the likelihood of a formal sanction (Tedeschi and Felson, 1994). Thus whilst officers may first seek non-coercive means of compliance (such as by delivering a ‘lecture’) if these are unsuccessful they may then resort to coercive means such as arrest.

Klinger (1994) argued that the relationship between ‘demeanour’ and arrest has been exaggerated in the literature as the measurement of ‘demeanour’ has often included potentially illegal behaviours (such as aggression). The role of demeanour may therefore be overestimated as it in fact relates to the legality of the behaviour in question. To dichotomise legal/illegal demeanours however ignores the interactive nature of police encounters and assumes that where demeanour and offence severity overlap, officers’ decisions are based on the latter alone (Worden *et al.* 1996). Indeed, when controlling for interaction-phase crime (that is, offences occurring after the officer intervened), there was still a significant relationship between demeanour and arrest (although the impact of demeanour was less than where interaction-phase crime was not controlled) (Worden *et al.* 1996). Dunham and Alpert (2009) found that the demeanour of both suspects and officers varied during encounters in response to one another. Similarly, Hough (2013, p.188) recognised that “the dynamic of an interaction can be shaped not only by the officers but by those with whom they are dealing”. Officers can encourage compliance by engaging positively with suspects, offering explanations

for their actions and acting in (what would now be termed) a ‘procedurally fair’ manner (Hough 2013).

The relevance of suspect demeanour has also been evidenced in officers’ use of penalty notices. Coates *et al.* (2009) found that officers were four times more likely to arrest actively disrespectful offenders (those who used abusive words or gestures towards officers)<sup>88</sup>. Moyer (1981) found that the influence of demeanour varied according to offence: in possession of cannabis cases, demeanour explained only 1% of the variance in officers’ dispositions, as compared to 41% for public drunkenness. This may reflect the fact that the latter is a far more subjective offence. Whether a person’s actions can be deemed to be *disorderly* or *likely to cause harassment, alarm or distress*, is dependent upon the context of their behaviour and the (actual or anticipated) reactions of an ‘audience’. In such cases officers are therefore afforded far greater flexibility in determining and defining the circumstances in question as an ‘offence’. The influence of demeanour may therefore be greater in some penalty notice cases than others.

#### **3.4.3.4.2 Intoxication**

Excessive alcohol consumption is another aspect of the “cult of masculinity” promoted by police culture (Skolnick 1966, p.87). As such it is unsurprising that the police are generally indulgent of what might be termed the ‘respectable inebriate’, that is those who contribute to the night time economy, as opposed to the ‘unrespectable’ alcoholic. Whilst intoxication increases the likelihood of arrest (see for example Brown and Frank, 2005), Engel *et al.* (2000) suggest that the impact of intoxication is in fact filtered through suspect demeanour. Officers in Deehan *et al.*’s (2002) supported this view, reporting that although they were generally lenient when faced with drunken behaviour, the offender’s attitude was important in their decisions to arrest. Intoxication increases the likelihood of both disorderly behaviour in the first instance and non-compliance and disrespectful behaviour towards the police if/when officers intervene. Indeed, Deehan *et al.* (2002) who found that intoxicated arrestees were far more likely to display signs of non-compliance and aggression during processing into custody. Similarly, Reisig *et al.* (2004), in their research in twelve police beats in the US, found that intoxicated offenders were 3.7 times more likely to behave disrespectfully. Alcohol serves as a

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<sup>88</sup> With regards to their ticket analysis data, the authors do not mention *when* recipients became abusive or disrespectful. If demeanour was not measured *before* the arrest decision, rather than being a predictor of arrest, it may reflect the offender’s reaction to being arrested. However, their officer experiment – which by nature dictates that the offender’s demeanour was apparent *before* the decision to arrest was made – also found a significant relationship between demeanour and arrest (Coates *et al.* 2009).

'disinhibitor', reducing rationality and thus making people less susceptible to police attempts to calm situations through verbal reasoning (Tedeschi and Felson 1994).

Whilst the role of intoxication may be related to demeanour, it may have an independent affect if people are inebriated to the extent that they are deemed vulnerable to either physical or criminal harm (Deehan *et al.* 2002). Notably, Deehan *et al.* (2002) found that women brought into custody were more likely to be intoxicated than male arrestees. It is plausible therefore that intoxicated women may be more likely to be arrested, rather than dealt with on-the-spot, for their own safety. Thus a more severe response to similar behaviour (when perpetrated by women) may reflect 'chivalrous' attitudes within the police (Newburn and Reiner 2012).

In the context of PND decision making, Coates *et al.*'s (2009) archive analysis found that whilst officers were twice as likely to arrest intoxicated people, the impact of intoxication was only significant where the offender was also abusive towards the officer. Similarly, their experiment examining officers' decision making found that intoxication was a significant predictor of arrest; however, intoxication also interacted with both seriousness and abusiveness to increase the likelihood of arrest and its independent impact was less than that of either offence seriousness or offender abusiveness alone (Coates *et al.* 2009)<sup>89</sup>. They suggested that inebriated people may be more likely to be arrested as they exhibit lower self-control and therefore may have been perceived as presenting more of a risk of re-offending. It was thought therefore that offenders were detained in custody to allow them to 'sober up' and thus regain some self-control (and potentially even show some remorse for their actions) (Coates *et al.* 2009).

#### **3.4.3.4.3 Offence severity**

As noted above, the first stage in officers' decision making is whether or not to intervene, and when faced with minor offences officers may choose not to act (Schafer and Mastrofski 2005). However, where officers have decided to intervene they will not necessarily take formal action, but rather will consider whether such action is necessary to achieve other ends, such as deterrence (Schafer and Mastrofski 2005) or else to manage disorder, assert authority or elicit information (McConville *et al.* 1991). Officers may decide against arrest even where there is

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<sup>89</sup> It should however be noted that the experimental data are not directly comparable to the PND archive data as in the latter case the individual was, following arrest, issued with a PND. However when asked what course of action they would take in different scenarios during the experiment officers were presented only with the choice between issuing a PND *or* arresting the person, the implication being that they would not later receive a notice.

clear evidence of an offence. Indeed, Terrill and Paoline's (2007) review of over 2,400 non-traffic/non-warrant cases in the USA found that even when faced with strong evidence of an offence (such as officers having witnessed the offence and the suspect having confessed) officers would only resort to arrest in approximately one in four cases. Piliavin and Briar (1964) found that for minor offences, officers' decisions as to how to dispose of the case were based on their perception of the character of the suspect rather than the offence they committed. Thus if officers believed that the individual was a 'true delinquent' (even though their offence was minor) then an arrest would be deemed necessary.

Coates *et al.* (2009) found that levels of aggression affected officers' decisions as to where to issue PNDs. Specifically, their ticket analysis found that officers were three times more likely to arrest at the scene (later issuing a PND at the station) when there was a high level of aggression towards the public. They coded offence severity based on the level of verbal and physical aggression displayed by the PND recipient towards the public (as opposed to being directed at the officer personally)<sup>90</sup>. Low severity cases involved verbal arguments, abuse or threats, whereas high severity included mild physical force or aggression. However, although the offences which they classed as 'severe' were more likely to result in arrest, the nature of the ticket analysis means that these cases were, subsequently, disposed of via PND. This undermines the relevant guidance which states that PNDs are not appropriate for cases there has been "any injury ... or any realistic threat or risk of injury" (Ministry of Justice 2013b, p.10; Home Office 2005a, p.14)<sup>91</sup>; any case involving (even mild) physical aggression would arguably present at least a *risk* of injury and thus should not be disposed of in this manner.

Offence history may also influence officers' perceptions of the offender, the severity of the offence and the efficacy of different (formal or informal) sanctions. Thus when dealing with young people, officers on both sides of the Atlantic have been shown to use a criminal record as an indication that a suspect is a 'delinquent' who requires more severe dispositions to manage their offending (Landau and Nathan 1983; Landau 1981; Piliavin and Briar 1964). Similarly, Schafer and Mastrofski's (2005) review of traffic violations in the USA found that officers were more likely to deal formally with people who had previous infractions than those with a clean record: the presumption being that someone with a clean record would be

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<sup>90</sup> Offence severity was coded by the authors based on the accounts given by issuing officers as detailed in the evidence section of penalty notice tickets.

<sup>91</sup> The guidance states that PNDs should not be issued for cases that are *too serious*, and that the ACPO gravity factors should be considered when deciding this (Home Office 2005a, p.13; Ministry of Justice 2013b, p.10). For drunk and disorderly cases, behaving in a threatening manner is an aggravating factor. Also, for s5, any perceived risk that the situation might escalate (which may be the case when offenders are being verbally or physically aggressive) is deemed to be an aggravating factor.

deterred by a 'stern talking to', whereas a person with a criminal history was thought to require a more formal intervention to be deterred. Thus differential outcomes were pursued to achieve the same deterrent ends (Schafer and Mastrofski 2005).

#### **3.4.3.4.4 Other situational influences on decision making**

Situational factors such as whether victims/witnesses were present and compliant, the presence of bystanders and the location of the offence (i.e. whether it was in a public or private area) have been found to influence arrest decisions (Smith and Visser 1981). Indeed, Coates *et al.* (2009) found that incidents reported by a third party (a member of the public, a colleague or via a radio report) were over three times more likely to result in arrest than cases which officers came across during their patrols. Whilst s5 and drunk and disorderly PNDs will often result from officer-initiated encounters, in situations such as shoplifting, false alarm calls, fireworks offences and potentially criminal damage it is likely that police would become aware of the offence from a third party. Third-party reports may increase the perceived severity of an offence, especially with regards to s5 offences as, by reporting the incident, the third party may be deemed to evidence their distress at the offender's behaviour. However, mere public awareness did not affect decision making. The presence of bystanders did not have a significant impact on where PNDs were issued (Coates *et al.* 2009).

Whilst Coates *et al.*'s (2009) PND ticket analysis found that arrest was less likely when cell space was limited, it was unknown whether officers were aware of that when making decisions. Indeed, cell availability had no independent effect on officers' decisions in their experiment (Coates *et al.* 2009). However, Deehan *et al.* (2002) did find that officers reported considering the availability of cells when making arrest decisions regarding intoxicated offenders, especially where the offence in question was minor. Coates *et al.* (2009) found that arrest decisions were not significantly affected by the level of demand, suggesting that practical concerns, such as the desire to remain on the beat, do not have a direct influence on decision making. Such factors may however interact to aggravate the decision towards arrest. For example, significant interaction effects were found between cell space and abuse: when abuse was low the likelihood of arrest decreased when cell space was limited, however, where abuse was high the rate of arrest remained constant despite any variations in cell availability (Coates *et al.* 2009).

#### **3.4.3.5 Community influences on decision making**

Police resources are finite and thus as capacity is stretched the certainty of punishment reduces. In areas where there were high levels of crime and disorder only the more serious cases received police attention (Klinger 1997). However, even in 'low-level' cases, officers were likely to intervene and take vigorous action where a citizen's actions endangered the police, "the police always view themselves as deserving victims" (Klinger 1997, p.295). The level of perceived disorder within an area affects both officers' and communities' perceptions of deviance, which in turn affects the police mandate to regulate that deviance; negotiations take place within the structural context of the area which is being policed. However, how such community factors might affect the use of PNDs is unclear as this depends upon whether PNDs are considered a vigorous or lenient approach to enforcement. Certainly the roll-out of neighbourhood policing across England and Wales in 2008 has required forces to focus on local priorities, and such organisational imperatives may lead to 'crack downs' on certain types of anti-social behaviour which may affect the use of PNDs. Indeed, Kraina and Carroll (2006) found that some forces increased their use of PNDs as part of specific order maintenance campaigns targeted at reducing alcohol-related disorder<sup>92</sup>.

#### **3.4.3.6 Organisational influences on decision making**

The goals of the police (and policing) are difficult to define; the police function is to enforce the law, however it has long been accepted that this does not equate to 'full enforcement' of the law (Goldstein 1960). The police must set priorities for the allocation of their limited resources; those offences that receive police attention will thus be influenced both by "police initiative and the values of the police organisation" (Freeman 1980, p.57). However, if policing might legitimately involve the non-enforcement of the law, how can we measure 'success'?

Since the 1980s, and particularly under New Labour, there has been a growing move towards principles of new public management (NPM) in the organisation and governance of policing (Fleming 2008; Loveday 2006). NPM is characterised by the application of private sector working practices to public sector organisations (Heslop 2011). There is no single definition of NPM (McLaughlin *et al.* 2001), however key features are usually agreed to include an emphasis on: developing performance indicators to measure 'results'; publishing league tables to compare performance; ensuring 'best value'; identifying core competencies and out-sourcing

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<sup>92</sup> It is also likely that the policy of issuing PNDs to people who swear in public in Barnsley town centre (which received national media attention in 2011 (BBC 2011)) and, more recently, the policy adopted by a number of councils (working with local police forces) to promote the use of on-the-spot fines to manage spitting in public (see for example: Ealing Council 2014) will impact on officers' use of PNDs.

non-essential activities; the promotion of inter-agency working; and, decentralised decision making (Golding and Savage 2008; McLaughlin *et. al* 2001). For our purposes, it is the proliferation of (quantitative) performance indicators, and the impact of this on police activity, which is of particular relevance. Performance indicators convert organisational policies into tangible objectives which can be quantified and measured so as to provide a (theoretically) objective indicator of 'success' (Fleming 2008). However, 'success' in policing (and indeed in the public sector generally) is not easily defined; "public sector goals are ambiguous, multiple, complex and frequently in conflict with one another" (Jackson 2011, p.15).

Performance measures are further criticised for failing to incorporate the full range of policing activities, instead focusing on the (rather narrow) enforcement element of the job (Gorby 2013). Performance criteria which simply count 'outputs' (such as the number of PNDs issued) fail to assess outcomes, that is, what is being achieved by different police actions (Cockroft and Beattie 2009). Whilst the use of such performance indicators has been criticised as a means of measuring effective police performance, our concern is with whether, and how, such performance measures influence police behaviour. Over forty years ago it was recognised that the use of clearance rates as a measure of police efficiency "leads to practices that in turn attenuate the validity of the criteria themselves as measures of quality control" (Skolnick 1966, p.168). Performance indicators encourage a focus on the measurable over the immeasurable (Jackson 2011). This creates perverse incentives which distort decision making and encourage 'gaming' behaviours (Guilfoyle 2012) and, at both the organisational and individual level, a focus on "what can be counted, audited and easily targeted" (McLaughlin *et al.* 2001).

Of particular relevance to the use of penalty notices was the impact of the national police target – introduced in 2002<sup>93</sup>, and subsequently removed in April 2008 – to bring more offenders to justice (OBTJ)<sup>94</sup>. PNDs for recordable offences<sup>95</sup> contributed towards the OBTJ figure, thereby creating a strong incentive to dispose of such cases in this manner (OCJR 2010; Loveday 2008). Indeed, the 2006 Office for Criminal Justice Reform (OCJR) review of the use of PNDs had the express aim of identifying means to maximise the potential for PNDs to increase the number of offenders brought to justice as measured by clearing up offences (Kraina and

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<sup>93</sup> In April 2002 the target was set for 1.2 million offences to be brought to justice, this was increased to 1.25 million in April 2004 (Sosa 2012; Morgan 2008).

<sup>94</sup> An offence would be said to be 'brought to justice' if a notifiable offence "results in an offender being convicted, cautioned, issued with a Penalty Notice for Disorder (PND) or a cannabis warning, or having an offence taken into consideration at court" (Ministry of Justice 2012f, p.61).

<sup>95</sup> At the time this target was in place, criminal damage, theft and s5 PNDs counted toward this target. Subsequently, possession of cannabis has been added to the list of offences which might be 'brought to justice' through the issuing of a PND.

Carroll 2006). The overt aim was to ‘close the justice gap’ and punish those who were offending with impunity, however the counter-claim was that such a measure would rather result in (undue) net-widening and the criminalisation of people (and offences) which could be better managed informally (Morgan 2008). The Magistrates Association (in particular) raised concerns “that targets can lead to the wrong cases – more serious cases – being kept from court” (Chairman of the Magistrates’ Association, *Cited by*, Morgan 2008, p.20). However, conversely, we should be equally concerned about the potential for targets to encourage officers to issue a PND where there is insufficient evidence of an offence<sup>96</sup>.

The drive for efficiency and the pressure to produce ‘results’ has always been a key feature of policing (Skolnick 1966). However, this drive for efficiency, coupled with specific targets encourages officers to focus on the ‘low-hanging fruit’ (Morgan 2007). Performance indicators disempower the police and decrease discretion (Cockroft 2014), undermining constabulary independence by creating “an arbitrary system that prioritises certain types of police actions over others” (Cockroft and Beattie 2009, p.533). Indeed, the then vice-president of the Police Superintendents Association, Chief Superintendent Derek Barnett (*Cited by*, Morgan 2008, p.19) suggested that officers’ use of PNDs was “corrupted” by the OBTJ target, such that “some individual officers are choosing not to use their discretion perhaps because they feel it is a way of fulfilling the Government’s target”. Similarly, a Sergeant interviewed by Cockroft and Beattie (2009) stated that officers were arresting young people for affray where previously cases would have been dealt with informally, simply to meet their arrest targets.

Penalty offences such as s5 and drunk and disorderly (in particular) provide officers with the opportunity to (mis-)use their discretion in order to meet targets. McConville *et al.* (1991, p.107) highlighted that whilst drunks would usually not be arrested officers might resort to arrest “just to get the ‘figures’”. Organisational imperatives encouraging enforcement of the law do not however act in isolation of other police ‘working rules’ (Smith and Gray 1983). The combination of an organisational objective to ‘bring more offences to justice’, the availability of a power – PNDs – which enabled officers to deliver that objective with little (if any) oversight, coupled with a working rule that encouraged officers to respond coercively to those who challenge their authority (see Section 3.4.3.4.1) raises real concerns that PNDs might have resulted in a surge in punishment for ‘contempt of cop’.

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<sup>96</sup> Whilst unrelated to the OBTJ target, it is worth noting that this same concern, regarding the ‘down-grading’ of offences, was the focus of recent Government reviews of out-of-court disposals (Ministry of Justice 2013; HMIC/HMCPSP 2011) rather than any concern that PNDs (and other out-of-court disposals) might be used where there is no offence.

The use of PNDs has fallen rapidly in recent years. This may, in part, be explained by the removal of the top-down performance measure to 'bring more offences to justice'. Certainly the Ministry of Justice (2013l) noted that the rise (and fall) in the use of PNDs and other out-of-court disposals coincided with the introduction and removal of the OBTJ target, suggesting that they see this as responsible for the falling use of these powers. However, just as PNDs offered an easy means of achieving that national target, their non-use aids the achievement of the only top-down performance measure issued by the Coalition Government; "to cut crime. No more, and no less" (May 2010, no pagination). Four of the penalty offences (criminal damage, theft, possession of cannabis and s5) are 'notifiable' and thus count toward police recorded crime. The falling use of PNDs for these offences (which between March 2008 and June 2013 fell by 57% from 136,792 to 58,606 (Ministry of Justice 2012e and 2013k, Table Q1.3)) has thus contributed to falling recorded crime rates.

The HMIC/HMCPSP (2011) review of the use of out-of-court disposals did not find any force (in 2009, and thus after the removal of the OBTJ performance measure) had an overt policy to increase their use of summary justice tools (such as PNDs). However, there was evidence that those areas with a greater use of out-of-court disposals placed "a strong emphasis on achieving targets associated with improving performance in the level of offences brought to justice" (HMIC/HMCPSP 2011, p.5). This highlights that whilst the national target to 'bring more offences to justice' may have been removed, officers continue to be targeted on their use of powers such as PNDs, which inevitably affects police practice. Targets may not simply affect whether PNDs are issued, but also *how* PNDs are used. Thus for example, Kraina and Carroll (2006) found that where performance criteria included monitoring the number of arrests officers made, officers reported that they would not consider issuing PNDs on-the-spot. Police managers should be mindful that such targets may adversely affect police-community relations if the consequence of achieving "high outputs" is "due process infringement" or where enforcement may "bring discredit to the organization" (Gorby 2013, p.394). Recipients' views of the PND process and in particular, the relationship between citizens' perceptions of whether officers have treated them in a procedurally fair manner and their willingness to comply with the police is considered further below (see Sections 3.6, 7.3.2 and 7.5).

Whilst here we are concerned with the influence of organisational policies and performance management on police decision making, performance indicators are just one element of NPM. New public management is more broadly concerned with improving efficiency in the public sector; in this context, such concerns were evidenced in the managerialist aims – of saving

police time and resources – which were central to introduction of PNDs (see Chapter 2). Whether PNDs have achieved their desired efficiency savings will be considered further below (see Section 3.8)

#### **3.4.3.7 Controlling discretion**

Officers' street-level decision making is relatively invisible to their managers and can therefore, particularly in the case of informal disposals, be difficult to monitor or control (Foster 2003). Both within and without the police force there is a view that police behaviour is directed by rules, policies and procedures (both written and unwritten) which aim to reduce "individual initiative" and "reduce the chance that things are done badly or wrongly, or not at all" (Smith and Gray, 1983, p.169). Rules however are open to interpretation, and officers are prone to support their colleagues and their (rule-conforming) description of events (see further below). Skolnick (1966) distinguishes between delegated discretion and unauthorised discretion – that is discretion which officers have been legitimately afforded, and that which they exercise without any legitimate authority. Even where discretion is delegated this is not to say its exercise can never be perceived to be unjust, or indeed that the parameters of that discretion or the criteria to be applied in making decisions will be clearly defined (Skolnick 1966). Freeman (1980) notes that discretion can be *confined* through clearly defined legislation which dictates what is, and is not, criminal and *structured* through the creation of administrative rules, policies or legislation which place limits on police discretion. However, in practice officers must interpret legislation in any given situation and officers' discretion affords them the opportunity to circumvent policies – such as the operational guidance on the use of PNDs discussed above (see Section 3.2) – which purport to guide officers' behaviour (Rowe 2007). This is particularly so given that policies are often worded in a manner that 'enables' rather than inhibits officers' discretion (Sanders and Young 2008). Thus for example, officers are permitted to issue PNDs where they have 'reason to believe' an individual has committed a penalty offence. However, the literature on the use of stop and search, and the (since repealed) 'Sus' powers discussed above (see Section 3.4.3.3) indicates the ineffectiveness of 'reasonable suspicion' in constraining police discretion. Such restrictions are at best 'inhibitory' and arguably mere 'presentational rules' (Smith and Gray 1985). Officers have 'account ability'; they are enabled to provide an account of the circumstances of offences which conform with the limits placed on their discretion and which are difficult for outsiders to challenge (Ericson 1995; 2007).

The police have a wide-ranging power to validate their actions through their control of written records – their account becomes definitive, suppressing any alternative versions of the events (McConville *et al.* 1991). Ericson (2007, p.367) highlights that officers are able to provide “routinized” accounts of the circumstances of an offence and their actions in response to that offence by using “formulaic phrases that not only justify the decisions taken but also serve as a form of rhetoric to persuade police audiences—in particular, prosecutors, defense lawyers and judges—to ratify these decisions”. This is also evidenced in officers’ use of PNDs. Coates *et al.* (2009, p.411) note that officers’ evidence on PND tickets “can be formulaic, using similar descriptions and phrases”. Furthermore, they suggest that such standardised accounts are used “in order that officers may prove specific evidential points or justify their course of action” (Coates *et al.* 2009, p.411)<sup>97</sup>. However, whilst they do not explore why officers might need to resort to stock phrases to ‘justify’ their actions, we need to consider that the literature on the disproportionate use of police powers against ‘police property’ and castigating those who ‘fail the attitude test’ suggests that this standardised evidence might serve to cover the illegitimate use of penalty notices.

Smith and Gray (1983) found that the practice of ‘gilding the lily’ – that is, where evidence was adjusted or ‘improved’ to make it more conclusive – was commonplace amongst officers. Indeed, they noted that officers’ statements were, on occasion, written to make it appear as though a different officer had made an arrest. In such cases the officers did not see the difference between the account given and the reality of the arrest as being significant (and the changes they made were not central to the case). However, such practices promote a view that evidence is:

to some extent flexible and negotiable ... and if officers are used to making what they regard as innocuous adjustments to evidence, it is only a small step for them to take before they make adjustments that affect the essence of the case (Smith and Gray 1983, p.209).

In other instances noted by Smith and Gray (1983) officers’ descriptions were leading or were embellished to add weight to a particular view of the case. Regardless of whether officers have consciously ‘gilded the lily’, their accounts are “problematic, selective renderings of complex realities” (McConville *et al.* 1991, p.7). The ‘facts’ of the case, as described and experienced by officers, reflect just one version of reality, however their account of the event becomes dominant as all other actors in the criminal justice process must react to, and make decisions

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<sup>97</sup> However, whilst they highlight the limitations this presents for their archive analysis of PND tickets, they do not develop their argument that officers may use such phrases to justify their actions *post hoc* or the implications of this for the legitimacy of officers’ use of PNDs.

that are based on, that initial police construction of the case (Ericson 1981). The construction of reality is overlooked in officers' official accounts which adopt simple (and often dichotomous) forms which deny the ambiguities of the case and present their evidence as though it is fact. However the language officers choose to use in their statements has a huge impact on the presentation of the case and others' understanding of the events; McConville *et al.* (1991) note that 'A hit B' conjures a very different image to 'A viciously hit B'. Evidence can also be manipulated by omitting key contextual phrases when writing up statements or writing statements as though they were said by the witness/suspect, whereas in fact officers had put a statement to the witness/suspect to which they had agreed (Smith and Gray 1983). At the extreme, officers might attribute statements to offenders which they have not said (McConville *et al.* 1991). Whilst measures such as tape-recording interviews might attempt to address such manipulation (and fabrication) of evidence, these measures are not applicable in PND cases. PND recipients do not need to be interviewed and they do not have access to the issuing officer's statement nor are they afforded the opportunity to make a statement of their own.

Demuth (1978) notes with regards to prosecutions brought for 'Sus', that officers' position of authority means that it is difficult to effectively challenge their evidence, and magistrates are likely to accept the police account of events. This is particularly so in the context of offending occurring in the night-time economy (which concerns the majority of PNDs) as once a person has been labelled 'drunk' by a police officer it is difficult for them to challenge that label as "the label itself delegitimizes their arguments about those very labels" (McConville *et al.* 1991, p.13). In cases where people challenge officers' evidence "the burden of proof is therefore effectively on the defendant to prove his innocence" (Demuth 1978, p.54). However, of course, in the context of PND decision making officers are rarely called to give account of their actions; only 1% of cases were appealed and there is no requirement for senior officers to review constables' use of PNDs. The police are thus empowered to make their account the definitive account of the case; it is unilaterally constructed and not subject to any external review. There is little, if any, attempt to confine or structure officers' use of PNDs; this research therefore provides a much-needed insight in how, and why, in the context of that relative freedom to act, officers exercise their discretion. The law which (theoretically) confines officers' discretion in the use of PNDs – requiring them to have 'reason to believe' the individual has committed a penalty offence – is sufficiently vague as to be malleable by the police. As such their use of PNDs, whilst potentially exercised according to police 'working

rules', rather than legal criteria, may well be within the law and, regardless, can be defined as such by the police.

#### **3.4.3.8 Officer decision making summary**

The police need discretion; they are expected to be “‘fair’ as well as ‘just’” and as such they need to be able to interpret the law in light of the situational exigencies of a given case. Concerns are raised however with regards to how officers exercise that discretion and the potential for this to lead to discrimination (Freeman 1980, p.57). Attempts to confine and structure officers’ discretionary use of PND by stating that tickets may only be used where officers have ‘reason to believe’ a person has committed an offence whilst potentially ‘inhibiting’ officers use of this power, might easily be ignored as it is so rare that their decisions to issue PNDs will be reviewed (and thus any malpractice revealed). PNDs are a self-referential power: officers must only convince themselves that an individual has committed an offence; they complete the evidence on the ticket; there is no requirement that recipients are interviewed or even that they sign the PND; nor is there any requirement that individual PNDs be reviewed by senior officers. Officers are therefore free to define the event in their own (favourable) terms. Those issues raised above regarding the use of ‘Sus’ powers and officers’ widely reported manipulation of their legal powers to arrest and punish those who ‘fail the attitude test’ raise real concerns about how, and to whom, PNDs are issued. Whilst demeanour and other situational variables which affect officers’ perceptions of the efficacy of different measures may be valid considerations when deciding whether (and where) to take formal action (Reiner 1985), the above discussion raises concerns that officers may use PNDs as a form of social disciplining, providing officers with a means to reassert their authority when faced with ‘contempt of cop’. The existing policing literature also highlights the disproportionate impact of police powers on the least powerful in society. When examining the use of PNDs we must therefore ask how (and why) officers use their discretion, when (and against whom) they apply the law, and whether this results in discrimination.

The above discussion highlights that there are various individual, situational, organisational and community factors which influence officers’ decision making. The applicability of the police research – which has highlighted specifically the importance of (and interaction between) suspect demeanour, intoxication and offence severity – to the PND context has been evidenced by Coates *et al.* (2009). However, that study was limited to considering the decision to arrest or issue a penalty notice in s5 and drunk and disorderly cases. The current study not only broadens our understanding by considering the use of PNDs across the whole gamut of

penalty offences, it also (through observational data) considers police decision making in practice (rather than relying on post-hoc rationalisations) and thus allows us to consider not only why officers *do* issue PNDs, but also why they *do not* use their formal powers.

#### 3.4.4 Outcome of PND cases

When a PND is issued there are seven potential outcomes. In the first instance the recipient may:

1. Pay the PND within the statutory enforcement period of 21 days.
2. Pay the PND outside 21 days, but before 35 days (after which option 4 applies)<sup>98</sup>.
3. Request a court hearing.

If none of these actions are taken the ticket may:

4. Be registered as a court fine (the usual course of action).
5. Be rescinded and the recipient prosecuted for the original offence (this should only happen in exceptional circumstances).
6. Be cancelled (this may happen where for example a ticket was issued in error or following a request for a court hearing).

A further option is available and (as of spring 2013) was offered by nineteen forces<sup>99</sup>, in those areas, the recipient may:

7. Request to participate in the PND waiver scheme (involving attendance at 1-2 education sessions relating to the offence concerned)<sup>100</sup> and complete said course within 21 days. Successful completion results in the PND being cancelled (option 6), otherwise the PND is registered as a court fine (option 4).

Table 3.3 details the outcome of PND cases since their inception. It should be noted however that in 2012 14% of tickets were recorded by the Ministry of Justice as being 'outcome

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<sup>98</sup> It should be noted that recipients are not made aware of the fact that they have 35 days to pay the notice before enforcement action is taken, all information recipients are given regarding the PNDs refers to the 21 day enforcement period.

<sup>99</sup> These forces were all offering the waiver scheme before such education programmes were 'introduced' under s132 of the Legal Aid, Punishment and Sentencing of Offenders Act 2012 (indeed, some offered a waiver scheme before these were proposed by the Breaking the Cycle Green Paper (Ministry of Justice 2010c)). Given that there is now a statutory basis for these education programmes more forces may now follow suit.

<sup>100</sup> Of the 40 forces who responded to a request for information on PND waiver schemes, this course was offered by 19. Of these, 12 charged a fee of £30-40 (although given the increase in the fine for upper tier offences in July 2013, there is likely to be a corresponding increase in the course fee to £45) and 6 offered the waiver scheme as a free alternative to the penalty notice. One force did not respond to the question regarding the cost of attending the education session.

	Total Paid	Paid within 21 days	Paid outside 21 days	Registered as a fine	Court Hearing Requested	Cancelled	Potential Prosecution	Outcome Unknown	Total Issued
<b>2012</b>	56,784 (53%)	23,972 (23%)	32,812 <sup>101</sup> (31%)	28,366 (27%)	233 (0%)	4,616 (4%)	1,391 (1%)	14,815 (14%)	106,205 (100%)
<b>2011</b>	63,222 (54%)	48,553 (41%)	14,669 (12%)	46,725 (40%)	765 (1%)	4,684 (4%)	1,717 (1%)	943 (1%)	118,056 <sup>102</sup> (100%)
<b>2010</b>	70,744 (55%)	56,350 (44%)	14,394 (11%)	51,845 (40%)	727 (1%)	4,372 (3%)	1,229 (1%)	1,229 (0%)	129,467 <sup>103</sup> (100%)
<b>2009</b>	82,286 (53%)	63,848 (41%)	18,438 (12%)	66,810 (43%)	865 (1%)	3,975 (3%)	1,753 (1%)	291 (0%)	155,980 <sup>104</sup> (100%)
<b>2008</b>	91,289 (52%)	71,244 (40%)	20,045 (11%)	76,155 (43%)	1,062 (1%)	4,089 (2%)	3,514 (2%)	55 (0%)	176,164 (100%)
<b>2007</b>	106,925 (52%)	82,133 (40%)	24,792 (12%)	90,057 (43%)	1,253 (1%)	5,249 (3%)	3,980 (2%)	80 (0%)	207,544 (100%)
<b>2006</b>	104,546 (52%)	76,591 (38%)	27,955 (14%)	87,796 (44%)	1,480 (1%)	4,268 (2%)	2,710 (1%)	397 (0%)	201,197 (100%)
<b>2005</b>	77,247 (53%)	56,823 (39%)	20,424 (14%)	62,179 (42%)	1,588 (1%)	2,437 (2%)	1,805 (1%)	1,225 (1%)	146,481 (100%)

Source: Adapted from Ministry of Justice 2013c, Table Q2.2 and Ministry of Justice 2010b; 2011a and 2012a, Table 3.11c

unknown<sup>105</sup>. As such, in this section, when drawing comparisons, the 2011 figures are treated as the most recent (reliable) data. Furthermore, Table 3.3. excludes the outcome data from three forces in 2009-11 due to apparent errors in the Ministry of Justice publication<sup>106</sup>.

<sup>101</sup> The 2012 publication includes a new category 'paid, timing unknown'. Of the 32,812 listed here, 9,812 were paid outside 21 days, the timing of the remaining 23,000 payments is unknown (Ministry of Justice 2013c).

<sup>102</sup> 2011 outcomes including all forces: Paid 54%; Fine Registered 37%; Court Hearing 1%; Cancelled 4%; Potential Prosecution 4%; Outcome Unknown 1%. Total PNDs issued: 127,530.

<sup>103</sup> 2010 outcomes including all forces: Paid 55%; Fine Registered 37%; Court Hearing 1%; Cancelled 3%; Potential Prosecution 4%; Outcome Unknown: 0%. Total PNDs issued: 140,769.

<sup>104</sup> 2009 outcomes including all forces: Paid 53%; Fine Registered 40%; Court Hearing 1%; Cancelled 2%; Potential Prosecution 4%; Outcome Unknown: 0%. Total PNDs issued: 170,393.

<sup>105</sup> With regards to the surge in the proportion of cases where the outcome was unknown, the Ministry of Justice explained this was the result of a change in how forces report PND data which had resulted in a "backlog". Whilst the matter was under review by Ministry of Justice statisticians, the updated data were not available at the time of going to press (Ministry of Justice, 2013f).

<sup>106</sup> The figures reported here exclude the outcomes reported in three forces (Kent, Sussex and West Yorkshire) for 2009-11. As noted in Chapter 1 (see note 6), the Ministry of Justice data for 2009-11 appear to have misreported the outcome data for these three forces, such that the number of tickets reportedly resulting in potential prosecution in these areas were actually the proportion which were registered as a fine. In 2011, the reported proportion of cases resulting in potential prosecution was 43%, 33% and 32% in Kent, Sussex and West Yorkshire respectively (compared to a national average, excluding these areas, of 1%) whereas the proportion resulting in a fine was 5%, 5% and 3% respectively (compared to a national average of 40% excluding these areas). Having contacted these forces, none

#### 3.4.4.1 Payment

Between 52% and 55% of PNDs are paid each year (see Table 3.3). Whilst this does not compare favourably to the 86% of court-issued fines which were paid in 2009-10 (Ministry of Justice 2010d), PND payment rates are higher than those reported in the Australian fixed penalty schemes. In the Queensland and NSW infringement notice trials approximately one third and 43% of tickets were paid respectively (Mazerolle *et al.* 2010; NSW Ombudsman 2005). However, during the Scottish pilot 63% of notices were paid (Eberst and Staines 2006). Such geographical variance is also evident *within* England and Wales. During the English pilot study lower payment rates were found in metropolitan areas (Croydon and West Midlands) (Halligan-Davis and Spicer 2004). Yet since the national rollout, whilst the Metropolitan Police Force has continued to have one of the lowest payment rates (between 40 and 45% since 2005), in Greater Manchester the payment rate has consistently been above the national average. This suggests that payment rates are not merely a reflection of the “specific difficulties” of policing metropolitan areas (as was suggested in the pilot study (Halligan-Davis and Spicer 2004, p.2)). Payment rates also vary within areas over time. For example, in Leicestershire there was a 13% decrease in the proportion of PNDs paid between 2011 and 2010 (based on data from Ministry of Justice 2012a, Table 3.11(c) and Ministry of Justice 2011a, Table 3.11(c)).

There is considerable variation in the outcome of PNDs based on offence. Only 16% of PNDs issued for consumption of alcohol in a public place were paid in 2011, compared to 85% of tickets issued for sale of alcohol to a person aged under 18 (Ministry of Justice 2012a, Table 3.12(c)). Similarly, during the NSW trial it was reported that 47% of offensive behaviour tickets were paid as compared to 32% of offensive language CINs (NSW Ombudsman 2005). In South Australia higher expiation rates were found for cannabis offences associated with cultivation (54%) than for possession of cannabis (38%) (Hunter 2001). It is unknown whether there are any systematic differences in the offender profiles of different PND recipients which might explain these differential payment rates.

Fox (2003) found that non-payment of traffic infringement notices in Victoria was associated with an inability to pay rather than a mere disinclination. However, perceptions of unfairness

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operate a policy of prosecuting people who fail to pay their PND (which might have explained these figures). The proportion reportedly resulting in potential prosecution was also unusually high in Dyfed Powys and Surrey (in 2011, 11% and 7% respectively) however these forces whilst reporting low levels of fine registration (20% and 27%) were not entirely out of keeping with other forces. As such, Dyfed Powys and Surrey have not been removed from Table 3.3. Given these inconsistencies, the outcome data must be treated with caution.

with regards to: the circumstances of the offence, enforcement procedures and the level of the penalty, were all considered to contribute to non-payment. In Scotland in 2008-9, the payment rate was much higher than in England and Wales, 69% compared to 52-53% (Cavanagh 2009). However, the higher payment rate cannot be explained simply by the lower value of notices in Scotland (£50) as, if this were the case, we would expect lower tier notices in England and Wales to be paid at approximately the same rate as notices issued north of the border. In fact, in 2011, 45% of all lower tier PNDs were paid compared to the 55% of tickets issued for higher tier offences (Ministry of Justice 2012a, Table 3.12(c)). This suggests that there may be factors other than the level of the fine which influence compliance.

The NSW Ombudsman (2005) highlighted that the lower payment rate for CINs as compared to traffic infringement notices may be because, in the latter case, people associate non-payment of the fine with loss of their licence or vehicle, whereas CINs recipients may be less cognisant of the consequences of non-payment. Indeed, the low payment rate of CENs in South Australia was thought to be associated with a lack of awareness among recipients of the consequences of non-payment as well as recipients' inability to pay (Hunter 2001). To address the potential inequality of impact associated with infringement notices, the South Australian system was amended in 1996 to allow recipients to apply to the court for relief (to either pay by instalment or complete community service in lieu of payment). However, only 11.3% of recipients utilised this option and overall expiation rates remained extremely low (Hunter 2001). Similarly, in Western Australia, although CANINs recipients could attend an education session rather than pay the notice this did not result in higher overall compliance rates. Indeed, 31% of people who received a CANIN between March 2004 and March 2007 opted to attend a Cannabis Education Session rather than pay a fine, yet the overall rate of compliance (including payment and waiver) was only 43% (Swensen and Crofts 2010). Similarly, there has been no great reduction in the proportion of cases resulting in a fine in England and Wales despite a growing number of forces offering a waiver scheme. Again, this suggests that ability to pay is not the only factor influencing compliance.

#### **3.4.4.2 Fine registration**

In recent years the proportion of PNDs registered as a fine has fallen (see Table 3.3), yet it is not known how many of these fines are subsequently paid as the courts do not have a means of distinguishing unpaid PNDs from other fines. However, during the pilot, each area set up mechanisms to monitor the outcome of these fine-registered PNDs (Halligan-Davis and Spicer 2004); 39% were paid by the end of the evaluation period making the overall payment and

recovery rate almost 70%<sup>107</sup>. Almost a quarter resulted in either a warrant or distress warrant being issued (9% and 15% respectively) and a further 15% were amalgamated with existing fines (thus questioning the rhetoric that PNDs are for first-time offenders). The differential impact of PNDs was highlighted in that 10% of unpaid notices resulted in the fine being written off with the individual serving time in custody in lieu of payment. Whilst this might be a low proportion, given the vast numbers of PNDs issued each year, this would amount to over 50,000 people serving time in custody for non-payment of a PND since 2004. The courts withdrew 5% of notices, however the reasons for this were not reported. A further 3% were reduced because of the offender's income, and 2% were undergoing means testing. Finally, 1% were transferred to other courts and 1% resulted in no action. It is notable that of this variety of outcomes less than half of fine-registered PNDs were paid, yet the resource implications of the ongoing nature of enforcement action is not considered in the extant literature.

#### **3.4.4.3 Court hearing**

Only 2% of adult PND recipients requested a trial during the pilot period. Following the national rollout of penalty notices this reduced to 1% and has remained steady each year since (Halligan-Davis and Spicer 2004; see Table 3.3). However, as with payment of PNDs, there is some geographical variance in recipients' exercise of the right to a hearing. Whilst some areas report that they have never had a person request a court hearing (Bedfordshire, Kent, Lincolnshire, North Yorkshire, South Yorkshire)<sup>108</sup>, others, such as Lancashire have consistently had a higher proportion of people request a hearing than the national average (between 2 and 4% each year since 2005). There is however no difference in the proportion of people requesting a court hearing based on offence (based on data from Ministry of Justice 2007a; 2008a; 2009c; 2010b; 2011a; 2012a Table 3.12(c)). These figures are comparable to the international literature: in the NSW trial only 2.6% of infringement notices were challenged.

Whilst in England and Wales central records are kept of the proportion of notices challenged each year, there is no means of tracking the outcome of these cases. In the NSW trial, 41 CIN recipients challenged their notice (NSW Ombudsman 2005). The outcome was known in 18 of these cases, of which, three were dismissed under the section 10 dismissal procedure<sup>109</sup> and one resulted in the imposition of a bond. Furthermore, the two people found guilty for

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<sup>107</sup> Although more may have been paid subsequent to the completion of the pilot study.

<sup>108</sup> This however is likely to be an artefact of the data – where court hearing requests are made but coded in some forces as being either 'cancelled' (as they have not actually proceeded to court) or 'potential prosecution'.

<sup>109</sup> Under this procedure when a person pleads (or is found) guilty, the case is discharged with no conviction recorded against the offender (Crimes (Sentencing Procedure) Act 1999).

offensive language and offensive behaviour both received a lower fine than that associated with the CIN. Conversely, the average fine for people challenging larceny and common assault CINs was greater than the value of the original notice. Approximately half of all first-time offenders who were convicted in the courts in the year before the CIN pilot received a lesser punishment than that associated with the relevant infringement notice (NSW Ombudsman 2005). The low percentage of people who challenge CINS, and on-the-spot fines more generally, is therefore particularly interesting when one considers that the NSW data suggest that most first-time offenders would have received a more lenient sentence had they appeared in court. Whilst this suggests that it may be beneficial for recipients to elect for a court hearing, in practice very few people exercise this right. Yet as the extant PND literature has largely omitted offender perceptions we are not sure of the reasons why a person might choose to contest (or accept) a notice. The present study seeks to address this. However, it is noted that the small proportion of people that request a court hearing may limit the opportunity to access such persons.

#### **3.4.4.4 Potential prosecution**

If the statutory enforcement period (21 days) has passed with no action by the recipient (payment, challenge or participation in a waiver scheme) officers may rescind the PND and pursue a prosecution. Since 2005 only 1-2% of PNDs each year have resulted in potential prosecution (see Table 3.3). This is in keeping with the national guidance which stresses that prosecution should only be sought in exceptional cases, such as where the further evidence as to the severity of the offence or the offender's criminal history becomes known (Home Office 2005a; Ministry of Justice 2013b).

#### **3.4.4.5 Cancelled**

The only circumstance outlined in the national guidance which provides for PNDs to be cancelled is where a ticket is issued to a person who is underage (Home Office 2005a; Ministry of Justice 2013b). However, tickets might also be cancelled where the recipient requests a court hearing but the case is dropped, or else where they successfully complete a waiver scheme. Whilst nationally only 2-4% of tickets have been cancelled between 2005 and 2011 (see Table 3.3), there is some geographical variation in the proportion of tickets cancelled. For example, Cleveland cancelled 23% of tickets issued in 2010 which is a reflection of the thriving PND waiver scheme that operates for drunk and disorderly PND recipients in that area (which

accounted for 58% of all tickets issued in Cleveland in 2010 (Ministry of Justice 2013a, Table 4)).

#### **3.4.4.6 Outcome summary**

The national data provide an insight into *what* the outcomes of PND cases were, but not *why* recipients choose to comply (or not) with their PND. The efficiency of penalty notice schemes is reliant upon high rates of compliance, research therefore needs to examine the reasons given by penalty notice recipients for non-payment so that these may be addressed and levels of compliance improved. Surveys and interviews with PND recipients will consider their reasons for paying (or not paying) the notice (see Chapter 7). Together with an analysis of the employment status of PND recipients (see Chapter 5), this will provide for some consideration of whether the low compliance rates are related to ability to pay, or whether there are other factors influencing the payment rate. As the courts do not have a means of distinguishing unpaid PNDs from other fines, the ultimate outcome of unpaid notices cannot be considered by this research.

### **3.5 Officer perceptions**

The vast majority (82%) of officers involved in the adult pilot were 'very' or 'fairly' satisfied with the scheme, with many reporting that they would like to see PNDs extended to a wider variety of offences (Spicer and Halligan 2004). Some officers favoured the addition of common assault to the list of penalty offences, others however thought that victims might see this as an inappropriate and lenient disposal, which may negatively impact upon public confidence (Kraina and Carroll 2006). Indeed, common assault was removed from the list of penalty offences following the CIN trial in NSW for these reasons (NSW Ombudsman 2005). Officers in England and Wales also supported an extension of the list of penalty offences to include s4 of the Public Order Act 1986 and all volume crime types in appropriate circumstances, such as low value and first offences (Kraina and Carroll 2006). It was thought that such an extension of the system would provide an appropriate and effective response to offending whilst reducing bureaucracy and saving resources, ensuring that officers could remain on the beat. The rights of the offender were thought to be adequately protected as they retain the right to contest the notice and request a trial (Kraina and Carroll 2006).

Critics of the system queried the deterrent value of PNDs generally, however, for others, it was specifically the ability to issue multiple notices to a single individual which undermined their deterrent value (Halligan-Davis and Spicer 2004). Kraina and Carroll (2006) also found that

officers supported a ceiling on the number of PNDs a person could receive (so as to protect their deterrent function and allow officers to identify repeat offenders). However, officers also supported a flexible approach that allowed them to exercise their discretion, with some arguing that the cumulative impact of multiple PNDs would ultimately serve as a deterrent. During the youth pilot, many officers commented that PNDs were a particular deterrent for first-time offenders (Amadi 2008). Many officers in the adult pilot believed that the deterrent value of the PND could be strengthened by increasing the value of the associated penalty, however others felt that any increase in the value of penalties may further reduce recovery rates (Halligan-Davis and Spicer 2004).

Whilst officers during the pilot reported favourable views on the impact of PNDs on their workload, Halligan-Davis and Spicer (2004) noted that any time-saving was reduced by both the net-widening associated with the scheme and the proportion of PNDs issued in custody. Some officers interviewed in the youth pilot raised concerns that the decision to issue a PND may start to be based on considerations regarding time rather than the circumstances of the case (Amadi 2008). Officers' perceptions of the need for training varied between the adult and youth pilot studies: whilst in the youth pilot officers thought that formal training was required, officers in the adult pilot study saw little need for this (although they did report wanting more guidance on the use of multiple PNDs) (Halligan-Davis and Spicer 2004; Amadi 2008). Officers' views on the need to collect DNA and fingerprint data from offenders also differed between the adult and youth pilot. Whilst officers in the adult pilot study mostly welcomed the opportunity for this, in the youth pilot concerns were raised as to the impact of this on the efficiency of the system and the appropriateness of gathering such data given that the scheme was targeted on first-time and minor offenders.

### **3.6 Offender perceptions**

The views of adult PND recipients have not been directly examined in the literature, either in the UK or abroad. Instead offenders' views were filtered through accounts given by officers. The youth pilot can provide some insight into recipients' experiences of the PND process (Amadi 2008). Whilst 74% of survey respondents felt penalised for their behaviour, both offenders and their parents were generally pleased that in paying a PND they would avoid a criminal record. Indeed 6% of recipients thought they had 'got away lightly'. Some notable differences between the adult and youth system (not least that it is not the recipient, but their parent(s), who pay the notice in the youth scheme) question the transferability of these findings to adult recipients' experiences of the PND scheme. Indeed, some children stated that

the decision as to whether to challenge the notice was their parents' and not their own (Amadi 2008). Thus children (even more so than adults) may feel pressured into accepting a notice despite maintaining their innocence.

The NSW Ombudsman (2005) suggested that the low proportion (2.6%) of recipients challenging CINs might be an indication of the scheme's acceptance among recipients. Such a conclusion is questionable however given the absence of data regarding recipients' reasons for accepting the notice. Offenders may indeed pay a PND as they support the scheme and accept responsibility for the offence, however they may feel pressured into paying as they fear being found guilty and receiving a criminal record. Going to court may be deemed futile as it is the word of the recipient against the word of the officer, or they may simply wish to avoid the stigma and inconvenience of appearing in court. Indeed there are any number of reasons why people may choose not to challenge penalty notices in court. Only through canvassing offenders' views can we ascertain whether the low proportion of recipients who challenge the notice is a reflection of the recipient's acceptance of their PND or a manifestation of their discontent.

In both the English and NSW pilots officers reported that offenders generally accepted the notice, and in the latter case were reported as responding in a generally positive manner (Spicer and Kilsby 2004; NSW Ombudsman 2005). However in NSW, the following factors were thought to have encouraged this positive response: not being taken to the police station, not being charged or having to appear in court, not acquiring a criminal record for the offence and being reassured that the fingerprint data taken would be destroyed upon payment of the notice (NSW Ombudsman 2005, p.63)<sup>110</sup>. It is notable therefore that in the English system a large proportion of notices are issued at the station following arrest and that any DNA or fingerprint data taken remain on the police database<sup>111</sup>. Furthermore, whilst neither PND nor CIN recipients receive a criminal record, unlike CINs, PNDs may be used as evidence of bad character in future civil proceedings and may appear on an enhanced criminal records certificate. As such, many of those factors which encourage positive perceptions of CINs among recipients in NSW are lacking in England and Wales.

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<sup>110</sup> Indeed NSW officers reported presenting such benefits over arrest and charge when encouraging acceptance of CINs. It is questionable whether the police should be presenting CINs in this manner, as it runs the risk of coercing people to accept notices, particularly with regards to cases such as offensive language, where they may be legally innocent. This undermines the individual's right to a fair trial.

<sup>111</sup> Section 8 of the Protection of Freedoms Act 2012 provides for PND recipients' fingerprint and DNA data to be held for two years.

Coates *et al.* (2009) classed 45% of recipients as being 'non-compliant'<sup>112</sup> and 43% of recipients as being abusive towards the issuing officer. This challenges the rhetoric that PNDs are consensual in nature and suggests a large proportion of PND recipients are not 'generally accepting' of the PND, and neither are they 'suitable and compliant' (as per the operational PND guidance (Home Office 2005a; Ministry of Justice 2013b)). Furthermore, displaying abuse towards the police suggests a discontent with the process which may influence subsequent compliance (see further below). Gaining consensus may be key to recipients' perceptions of the legitimacy of the scheme and their compliance, both with the issuing officer and with the notice itself (Tyler 2006a). Whilst there is no research which explores adult PND recipients' views directly, the procedural justice literature can provide some insight into how offenders respond to police interaction and how officers can encourage compliance.

### **3.6.1 Police legitimacy, procedural justice and compliance**

People who view the police as legitimate are more likely to cooperate with officers and obey the law (Sunshine and Tyler 2003). Whilst challenges to the legitimacy of the police as an institution are rare, at the level of interpersonal encounters legitimacy is far more contested (Jackson and Bradford 2010). Each interaction with the police will either enhance or diminish their perceived legitimacy (Tyler 2003), with negative encounters having a greater impact than positive encounters (Skogan 2006). Police legitimacy is influenced by perceptions of fairness. Tyler (2006b) distinguishes between distributive fairness and procedural fairness and contrasts these notions of 'fairness' with outcome favourability. An instrumental model would suggest that people would be satisfied with any outcome that favours them, distributive fairness however is a normative assessment of equitability, which suggests that people will be satisfied if they receive the outcome they feel they deserve. Conversely, assessments of procedural justice refer to the fairness of the process by which a decision was reached (rather than the fairness of the outcome). The procedural justice literature consistently suggests that compliance with the law is not solely based on instrumental decisions regarding reward and punishment. Instead, assessments of authorities' procedural fairness affect perceptions of (in our case, police) legitimacy, which in turn affect compliance (Tyler 2003).

Police legitimacy encompasses both a sense that the police have the authority to exert power to enforce law (and therefore a corresponding 'felt obligation' to obey police decisions) and a sense that that power is justified as the police share and reflect one's own moral values

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<sup>112</sup> Non-compliance included failure to obey an order, such as to desist from offending behaviour or stop swearing (Coates *et al.* 2009, p.409).

(Jackson *et al.* 2012; 2013). Perceived moral alignment with the police encourages a sense of shared purpose and interest in producing social order. When the police are viewed as legitimate people are more likely to regulate their own behaviour so that compliance flows from internal motivations. Such normative compliance is a more efficient route to social order than resort to repressive sanctions (Hough *et al.* 2010).

Perceptions of distributive and procedural justice are correlated and both influence police legitimacy; however the latter has a far greater influence on police legitimacy and thereby compliance (Murphy and Gaylor 2010; Tyler and Huo 2002; Tyler and Folger 1980). Indeed people are 15% more likely to accept decisions which they believe to be favourable (as compared to unfavourable decisions), but they are 70% more likely to accept decisions which they perceive to be fairly (rather than unfairly) made (Tyler and Huo, 2002). The procedural justice literature outlines various antecedents to procedural fairness (Goodman-Delahunty 2010; Tyler 2007; Tyler 2006a; Tyler and Wakslak 2004). Early procedural justice models suggested that people judge the procedural fairness of a process based on three interrelated elements: *quality of decision making*, which includes neutrality and consistency; *quality of treatment*, which includes having one's rights acknowledged and being treated with dignity and respect; and *trustworthiness*, the belief that authorities are acting benevolently (Tyler and Wakslak 2004; Tyler and Lind 1992). Blader and Tyler (2003) however incorporated notions of police trustworthiness within quality of interpersonal treatment. Conversely, Tyler and Huo (2002) treated perceptions of police trustworthiness as a consequence, rather than an aspect, of quality treatment and decision making.

More recently, four antecedents of procedural justice have been identified (Mazerolle *et al.* 2013a; Mazerolle *et al.* 2012; Goodman-Delahunty 2010; Tyler 2006a; Tyler 2004):

- Participation (or 'voice'): allowing people the opportunity to give their account of events and have their views considered.
- Neutrality: demonstrating that decisions have been made in an unbiased manner, based on the facts of the case.
- Trustworthiness: demonstrating that they are acting in a benevolent and even-handed manner.
- Respect: treating people with dignity and respect.

'Voice' and 'neutrality' are aspects of fair decision making, whereas 'trustworthiness' and 'respect' relate to fair treatment (Tyler 2009). Gau (2012, p.334) highlights the importance of

fair interpersonal treatment when dealing with offenders: “[i]n regulating public spaces, officers ... draw a dividing line that designates certain persons as ‘orderly’ and others as ‘disorderly’”. Thus, officers’ decisions communicate to people that they are either within, or without, the ‘in group’. In treating people with dignity and respect officers are recognising the person’s status as a member of the societal group, thereby mediating any negative connotations arising from police intervention and encouraging normative compliance. Giving people an opportunity to voice their opinion influences perceptions of neutrality, trustworthiness and respect (Tyler 2007). Essentially, what this highlights is that whilst the antecedents of procedural justice may be interrelated and difficult to define, the research consistently finds that when people believe the police act in a procedurally fair manner, they are more likely to view the police as legitimate, accept their decisions and obey the law.

Despite differences in age, gender, race, income, education and political belief, people share similar views as to what a fair procedure entails (Mazerolle *et al.* 2013b; Tyler and Huo 2002). Tyler and Huo (2002) found that people were more likely to view the quality of treatment and decision making as being high if they were given an opportunity to make representations and explain their perspective. This promotes a sense of neutrality which is suggestive of more objective decision making. “This opportunity to present evidence should occur *before* the police make decisions about what to do” (*emphasis added*, Tyler and Fagan 2012, p.32). The discretionary nature of PNDs (as well as the subjectivity surrounding penalty offences such as s5 and drunk and disorderly) promote inconsistency, with officers able to proceed by a variety of more or less formal means when presented with similar circumstances<sup>113</sup>. Blader and Tyler (2003) found that informal decision making (i.e. the application of rules in practice) was more influential on people’s perceptions of procedural fairness (and thus compliance) than formal decision making (i.e. the rules themselves). Therefore in the current context, whilst people may be aware of their ability to request a court hearing, the availability of this formal appeals mechanism may be less influential in their perceptions of the PND system than the ability to state their case to the issuing officer.

Bottoms (2001) outlines four principal mechanisms which underline compliance with community sanctions:

- Instrumental/Prudential Compliance: people make rational decisions, complying where the rewards/incentives outweigh the risks/disincentives.

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<sup>113</sup> Indeed, as noted above, there is somewhat of a ‘postcode lottery’ with regard to different forces’ use of PNDs.

- Normative Compliance: people comply as they feel some moral alignment with the belief or value in question, they accept the legitimacy of the law and/or (in this context) the police authority to enforce that law.
- Constraint-Based Compliance: compliance is enforced through physical or environmental restrictions (which may occur naturally or be imposed) or else coerced through unequal power relationships.
- Habitual Compliance: Such compliance generally occurs unthinkingly, out of habit or routine, without necessarily questioning the law concerned.

Instrumental thinking underpins the penalty notice system; there are incentives to accept the notice (such as not getting a criminal record or having to appear in court) and disincentives (an increased fine) to delaying payment beyond the 21-day enforcement period. However, the success of the instrumental model is questionable given the low payment rate (see Table 3.3). PNDs are not designed to encourage normative compliance. Paying a PND does not require an admission of guilt and payment absolves any liability for the offence. However, normative compliance may still have an impact. People may comply when they believe the police have the legitimate authority to issue PNDs, even if they do not believe the act itself to be wrong. Whilst both normative and instrumental compliance suggest some conscious willingness to accept a rule or decision, constraint-based compliance is enforced or coerced. In the context of PNDs, the unequal power relationship between the officer and the offender may coerce compliance. On the street people may fear arrest, in custody they may fear being held for a longer period or receiving a more severe sanction<sup>114</sup>. Habitual compliance is unquestioning, thus a person may accept and pay a penalty notice due to an unthinking acceptance of officers' authority to issue such fines. These various mechanisms of compliance are not mutually exclusive and may operate differently in different contexts (Bottoms 2001). A person may, for example, accept a PND at the scene through constraint-based compliance, but later pay the notice as they feel a sense of normative compliance, that they *should* pay the PND.

With regards to compliance with tax regimes Braithwaite (2003a) describes motivational postures which characterise individuals' views of the legitimacy of regulators and concomitant enforcement strategies (see Table 3.4). People may either have attitudes of deference or defiance. However, even those who accept the decisions of authorities may do so either willingly (*commitment*) or unwillingly (*capitulation*). Defiant attitudes include: *resistance*, where the individual doubts the intentions of the regulator; and *disengagement*, where the individual is disenchanted with the system, believing there to be no point in challenging

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<sup>114</sup> Indeed, this unequal relationship may also discourage people from requesting a court hearing as they may feel constrained by their relative, subordinate, position to the officer.

authority<sup>115</sup>. A disengaged posture could therefore be reflective of a perceived lack of legitimacy (in Tyler’s terms) and a concomitant defiance of the decisions of the authority. In the context of PNDs we need to consider whether acceptance at the scene, followed by later non-payment, reflects capitulation (or unwilling acceptance) in the face of coercive police power at the time of issue and later disengagement. The recipient is *deferent* in that they accepted the notice and did not request a hearing, however they are also *defiant* as the PND is unpaid (displaying their *disengagement*)<sup>116</sup>. People who are disengaged view confronting the authorities as a futile exercise. By acting in a procedurally fair manner (through allowing recipients the opportunity to voice their case, explaining the decision to issue the PND and recipients’ right to trial) the police can challenge such perceptions.

**Table 3.4: Braithwaite’s (2003a) model of compliance**

	<b>Motivational Posture</b>	<b>Enforcement Strategy</b>
<b>Deference</b>	<b>Commitment</b> – willing acceptance of the decision maker’s authority	Self-regulation
	<b>Capitulation</b> – unwilling acceptance of the decision maker’s authority	Enforced self-regulation
<b>Defiance</b>	<b>Resistance</b> – mistrusts the motives of the decision maker and thus challenges their authority	Discretionary use of regulations
	<b>Disengagement</b> – disenchanting, mistrusts the decision maker’s motives, but sees no point in challenging their authority	Non-discretionary use of regulations

The difficulty for officers at the scene is deciding which of these motivational postures apply to the person in question. Braithwaite (2003b) would suggest that issuing a notice to a person who is committed to obeying the law without first seeking informal means of addressing the situation may encourage later non-compliance. Thus it would seem prudent to take a cautious

<sup>115</sup> Braithwaite (2003a) also notes a fifth motivational posture which is not as relevant in this context and is thus excluded from Table 3.4. *Game playing* involves sticking to the letter of the law, but undermining its spirit/intention i.e. tax avoidance.

<sup>116</sup> In the context of policing disorder through the use of PNDs I would argue that this model could apply as follows: A person who is engaging in behaviour that is deemed likely to cause ‘harassment, alarm or distress’ may be committed to obeying the law and unaware that their behaviour may be deemed as such. With such a ‘committed’ individual an informal request to desist in behaviour may be sufficient to address the situation whilst maintaining positive relations with, and perceptions of, the police. Capitulation may however require a more formal direction to leave under section 27 of the Violent Crime Reduction Act 2006. I would suggest therefore that whilst it might be appropriate to deal with resistance through a PND it is important to remember that such persons are mistrustful of the intentions of the regulator, so imposing a financial penalty, which may be seen as revenue-raising, may not be appropriate. Certainly such persons need to be fully engaged in the process and the PND needs to be deemed as consensual so as to encourage compliance.

approach whereby all persons are viewed as potentially committed, only seeking more formal means of enforcement where informal directions are ineffective.

These motivational postures relate to the perceived legitimacy of authorities; people who perceive the police as more legitimate are more likely to comply. Bottoms (2001) distinguishes between short-term compliance with the requirements of the imposed penalty and long term compliance with the law. Similarly, the procedural justice literature considers short-term measures such as acceptance of officers' decisions/actions (e.g. Tyler and Huo 2002, Hough 2013) and more long-term measures of compliant behaviour such as likelihood of engaging in offending behaviour (e.g. Jackson *et al.* 2012). Tyler (2003) terms these different stages of compliance as immediate compliance (decision acceptance in the presence of officers), long-term compliance (ongoing acceptance of, and compliance with, that decision when law enforcement agencies are no longer present) and everyday law abiding behavior (compliance with the law more generally). Within the context of PNDs it may however be more useful to think of short, mid and long-term compliance. The efficient issue of a PND requires: compliance with the officer at the scene, allowing the notice to be issued on-the-spot (short-term compliance); compliance with the PND itself and payment within the 21 day enforcement period (mid-term compliance); and compliance with the law in future and desistance from offending (long-term compliance). Defiance at any stage hinders the efficiency and effectiveness of the system. Coates *et al.* (2009) deemed 45% of recipients to be non-compliant when issued with a PND and over a third of all PNDs are not paid within the statutory enforcement period (Ministry of Justice 2012a, Table 3.11c), suggesting that both short and mid-term compliance with PNDs is low. Whether the notices have any impact on long-term compliance is unknown<sup>117</sup>.

One key point to note about the procedural justice and compliance research is that this has mostly been undertaken outside the Anglo-Welsh context<sup>118</sup> and it does not directly relate to PNDs. Thus whilst the above models are suggestive, in the absence of relevant empirical research, they cannot be presumed to transfer into the present study. Furthermore, whilst the research details factors which influence notions of justice (and thereby compliance) Tyler and Wakslak (2004) highlight that research needs to explore what 'respect', 'neutrality' and 'fairness' actually mean in the context of police-citizen encounters. Thus, if we are to promote compliance through increasing procedural fairness, research examining offender perspectives

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<sup>117</sup> Although the youth pilot study suggested that PNDs have some impact on desistance from offending (Amadi 2008).

<sup>118</sup> More recently UK scholars have explored procedural justice in the context of policing in the UK (e.g. Hough 2013, Jackson *et al.* 2012; Jackson *et al.* 2013; Hough *et al.* 2010).

of penalty notices will be key to developing our understanding of what (in that police-led, relatively informal context) is 'procedurally fair'. Indeed, with regards to traffic offences in England and Wales, Jackson *et al.* (2012) found, contrary to the procedural justice literature, perceptions of police legitimacy did not affect compliance. This was thought to reflect the fact that many people do not view traffic offences as 'truly criminal' and such offences do not therefore invoke a sense of moral alignment with the police. Indeed people's personal morality and the perceived risk of being caught were the only predictors of compliance. It needs to be considered whether, given the contested nature of 'order' in the night time economy, penalty offences such as drunk and disorderly and s5 might also (as with traffic offences) present a 'special case' with regards to the influence of procedural justice on police legitimacy and compliance.

To date the penalty notice literature has largely failed to examine recipient perceptions of the process of being issued with a PND. That which is available concerns the youth PND pilot which, although not seeking to measure notions of procedural justice per se, does provide some insight into the perceived fairness of the scheme (Amadi 2008). Of those who responded to the questionnaire almost half (45%) felt that the notice had been issued unfairly. Yet 67% of notices in that study were paid. This suggests that compliance with PNDs may be unwilling or achieved through capitulation (to use Braithwaite's (2003a) term). Thus, recipients may feel pressurised into accepting the PND and/or be unwilling or unable to challenge the notice (or indeed the authority of the police). However, as the procedural justice literature highlights, such experiences may undermine police legitimacy and thereby future compliance with the police. The PND system is designed with instrumental compliance mechanisms in mind. However, consideration needs to be given to how normative mechanisms may improve compliance. The procedural justice literature is largely based on survey research exploring *perceived fairness* rather than objective measures police behaviour (Dai *et al.* 2011). What is key therefore is improving the *subjective fairness* of the procedure (thereby improving perceived legitimacy and thus compliance). As such we need to assess offenders' views as to what is or is not fair about the PND system and address any concerns. The omission of offender views from the extant PND literature is therefore a serious oversight.

### **3.7 Victim and community perceptions**

The views of victims and communities have largely been omitted from the Anglo-Welsh PND literature. One Ipsos-MORI (2006) study commissioned by the OCJR has considered both the general public's and crime victims' perceptions of summary justice measures (including PNDs).

However these findings have not been considered by later UK PND research, nor are they cited in any of the policy debates. The Ipsos-MORI (2006) research suggested that the public do not view PNDs favourably. Only 24% of people thought that a PND was an appropriate means to deal with an adult who had committed a minor offence and who had never previously been in trouble with the police. This fell to 13% where the person had previously received a PND or police warning. When asked to comment on how specific offences should be dealt with only 23% of people thought that a PND was an appropriate disposal for a first-time offender who had been caught stealing cigarettes from a corner shop, with 35% favouring a caution and 21% stating that the individual should be taken to court. Furthermore, only 17% of people thought that a PND was the most appropriate means to deal with a first-time offender who broke a person's window whilst drunk. There was also limited support for the use of PNDs in cases involving fighting (theoretically an offence which is outside the PND scheme as they cannot be used where there is injury or a realistic threat of injury). When asked how best to deal with first-time offenders who had admitted punching someone once in a pub following an argument, only 10% of people thought a PND was an appropriate response. This suggests that there is lukewarm support for the existing list of penalty offences as well as any additions to that list.

Victims' views are also largely absent from the international literature. In Western Australia however some academic research has explored public perceptions of cannabis infringement notices. Prior to the introduction of the CANINs system the vast majority of residents favoured the introduction of such a scheme (79%), seeing it as unlikely to affect cannabis use or the ease of availability of the drug within the state (Fetherston and Lenton 2005). However, following their introduction, approval ratings for CANINs fell and there was a rise in the proportion of people who believed cannabis laws were 'too soft' (from 19% to 29%) (Fetherston and Lenton 2007). However, Fetherston and Lenton (2007) argued that, given unfavourable media representations of the CANINs scheme, levels of support were still high. The NSW pilot reports victims' views indirectly, considering police accounts of public reactions to CINs. The majority of victims were thought to be satisfied with the scheme and appreciated that CINs provided a prompt and final disposal which did not require them to have any further involvement with the police or courts (NSW Ombudsman 2005). The consistency and weighting of the penalty (which, in NSW, is set at the median court-issued fine for that offence), the retention of police discretion to proceed with arrest and charge for repeat offenders and the knowledge that officers were able to promptly return to patrol were all thought to encourage victim satisfaction. Officers also reported that whilst victims initially viewed notices as lenient they

were generally supportive when they were told that the fine was often greater than that which would be imposed by the court (NSW Ombudsman 2005).

The lack of consideration for victims' views appears to extend beyond the research into the practice of issuing PNDs. Although the original PND operational guidance stated that theft and criminal damage cases could not be disposed of by PND unless the victim was compliant (Home Office 2005a, p.17), victims' views were rarely recorded on the notice. Kraina and Carroll (2006) found that officers in Merseyside recorded that information most frequently, yet even there only 36% of the tickets evaluated contained details as to the victims' views. Police observational research has highlighted that officers differentiate between 'deserving' and 'non-deserving' victims; however, even 'deserving victims' may fall prey to police culture which favours crime-fighting over support and care (Foster 2003). Thus in the context of PNDs, victims' wishes may be dismissed or manipulated to allow officers to deal promptly with a situation via a PND and seek out more serious crimes. This seems particularly likely in view of the NSW data which suggest that officers encourage victim compliance with notices (NSW Ombudsman 2005). Whilst victim views are not being canvassed in the current research, the analysis will consider who the victims of penalty offences are.

### **3.8 Efficiency savings**

PNDs were intended to offer a more cost and time-efficient means of dealing with anti-social behaviour (see Chapter 2). Officers reported that issuing a PND saved between 1 ½ and 2 ½ hours as compared to caution or prosecution (Halligan-Davis and Spicer 2004). However, the extent of savings depends upon where PNDs are issued. Indeed, a recent review of the use of out-of-court disposals found that whilst street-issued PNDs took an average of 3 hours and 14 minutes of police time, this rose to 6 hours 14 minutes for custody-issued PNDs<sup>119</sup> (HMIC/HMCPSP 2011). The cost also varies greatly depending upon where PNDs are issued. The cost of issuing an on-the-spot PND was between £5 and £40, compared to between £250 and £350 for notices issued in custody (OCJR 2010). Furthermore, whilst the cost of issuing a PND was less than that of issuing a caution or pursuing a prosecution (£300-£450 and £400-£1400 respectively) (OCJR 2010), it is questionable whether such comparisons are fair given that

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<sup>119</sup> This joint review, conducted by Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate, explored five forces' use of out-of-court disposals. The times cited here include all the time taken by the issuing officer to process the case, including any investigation, interviews, transporting of the offender(s) and any associated written work. They do not however include the time spent by supervisors or custody staff for example, or other criminal justice agencies in dealing with the case. Thus the time spent by the CTO in processing tickets, or the by courts in enforcing tickets, (which, as discussed in Chapter 5, can be a lengthy and resource-intensive process) is seemingly excluded.

between half and three-quarters of all s5 and drunk and disorderly notices were 'new business' (Halligan-Davis and Spicer 2004). Indeed, an examination of the number of prosecutions for penalty offences since PNDs were rolled out suggests that not only is there a large volume of 'new business' but that PNDs are also failing to divert cases from court. There were 32,909 s5 and drunk and disorderly cases proceeded against in the magistrates' court in 2003 (the year before PNDs were introduced). Whilst numbers fell to a low of 18,634 in 2004 (PNDs were rolled out in April that year) the figure has since remained fairly constant at between 21,034 and 24,986 between 2007 and 2010 (Ministry of Justice 2012c). This contrasts with the view presented by magistrates, namely, that PNDs are "directly attributable" for a reduction in their workload (Staffordshire Justices' Clerk 2008, *cited in*, Knapton 2008). Indeed, rather than being a diversionary measure, the introduction of PNDs has brought over 600,000 s5 and drunk and disorderly cases into the criminal justice system.

Net-widening appears endemic in penalty notice systems. During the Scottish pilot it was estimated that approximately 1,300 ASBFPNs were issued in lieu of a warning or no action, the remaining 2,000 diverting people from potential prosecution (Eberst and Staines 2006). In NSW there was a 40% increase in the number of offensive conduct cases in the trial areas (as compared to a state-wide increase of 17%), and a 16% increase in offensive language cases (compared to a state-wide decrease of 9%). However, these same net-widening impacts were not found for theft – which only saw a 0.34% increase in trial sites (as compared to a 7% increase in the state) – or possession of stolen goods, which reduced by 21% in the trial sites and 20% in the state (NSW Ombudsman 2005). This suggests that infringement notices for subjective offences such as 'offensive behaviour' are more likely to result in net-widening. However, an analysis of the use of offensive language CINs found that the diversionary impact of CINs varied across different sites. In some trial sites there was a reduction in the number of offensive language cases following the introduction of CINs, whereas in others there was an increase. The potential for net-widening, and indeed the ability for officers to realise the efficiency savings offered by 'on-the-spot' fines, therefore varies across different forces and even different beats.

In Queensland there was a 21% increase in public nuisance offences following the introduction of infringement notices. When asked whether they agreed that QUINs had enabled them to respond to more incidents of public nuisance than previously, 70% of officers in one trial site and half the officers in the other site agreed. However, fewer officers agreed when the question was reframed as "I am taking more formal action for more public nuisance offences

than before” (43% in the first site and 27% officers in the second) (Mazerolle *et al.* 2010). This highlights that the net-widening associated with penalty notices may reflect officers’ new found ability to intervene in cases which were previously ignored due to resource constraints. Thus officers were able to deal with more cases in the same time. Indeed, officers in the Scottish pilot commented that whilst they might previously have had to consider whether an offence was sufficiently serious as to justify the disruption to their on-street presence were they to arrest the person (with a view to charge and later prosecution), now they were able to assess cases on their own merits (Eberst and Staines 2006).

Whilst some English forces did report efficiency savings following the introduction of PNDs (Lancashire Constabulary estimated a potential efficiency savings of £384,000 for the first 6 months of the financial year 2005/06 (Kraina and Carroll 2006)), these savings do not consider the resource implications for the court in having to follow-up unpaid fines or contested notices<sup>120</sup>. Furthermore, Kraina and Carroll’s (2006) review relied largely upon anecdotal evidence provided by forces and failed to consider the resource implications of net-widening or how differential use of PNDs (both with regards to the number issued each year and the proportion issued on-the-spot) impacted upon the efficiency savings realised by different forces. It was estimated that during the Scottish pilot Tayside police saved 1,300 man hours as a result of ASBFPNs, even accounting for those cases which would previously have been dealt with via a warning. Since the scheme has been rolled out nationally it has been estimated to save 22,000 police man-hours per year (Cavanagh 2009). However, it should be noted that 79% of notices were issued on-the-spot during the Scottish pilot (Eberst and Staines 2006), whereas during the English pilot notices for s5 and drunk and disorderly were “invariably issued at a police station” (Spicer and Kilsby 2004, p.4) and, in their review of five forces’ use of out-of-court disposals, HMIC/HMCPSI (2011) found that 51% of PNDs were issued in custody.

Any potential efficiency savings offered by penalty notices are reduced when tickets are issued in custody. Deehan *et al.* (2002) found that arresting and processing an intoxicated offender could remove two officers (more if the individual was violent) from the street for up to two hours. The resource implications of arresting intoxicated offenders are therefore restrictive, discouraging arrest. However, as stated, intoxicated people cannot (within the guidelines) be issued with a PND on-the-spot. In NSW some officers overcame this by mailing CINs to intoxicated persons’ home addresses rather than issuing tickets on-the-spot. This was however contrary to the legislation which stated that notices must be issued personally. Following the

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<sup>120</sup> In 2010 over 50,000 PNDs were registered as a fine, over 5,000 resulted in potential prosecution and almost 750 resulted in a court hearing request (Ministry of Justice 2011b, Table A2.1).

NSW pilot it was recommended that whilst serving CINs to the offender personally should remain the preferable option, the legislation should be amended to allow delivery by mail when the issuing officer deems this reasonable. However, this ignores any consideration as to whether persons considered too intoxicated to receive a notice might also be unfit to be issued with a direction to return home and might actually need medical assistance or a place of safety to sober up.

The efficiency savings offered by PNDs are also affected by the amount of evidence gathered. Indeed, in the youth pilot project, whilst the majority of officers thought PNDs saved time, others commented that there was no time saving as evidence still had to be gathered (Amadi 2008). Kraina and Carroll (2006) found that whilst some forces were obtaining a substantial amount of evidence prior to issuing a PND others did not physically obtain evidence at the time. Instead they would secure evidence if the notice was contested and the individual prosecuted. Similarly, in Western Australia officers favoured issuing CANINs in custody (rather than issuing notices on-the-spot as had been intended by the scheme's architects) as this allowed them to interview offenders and weigh the cannabis (Sutton and Hawks 2005). The weighing of cannabis in front of offenders at the station was seen as vital to avoiding any perceptions of corruption or accusation that officers had stolen some of the cannabis seized that may emerge from an (albeit innocent) overestimation of the weight when issuing on-the-spot. This is not an issue for forces in England and Wales where there is no legal limit on the weight of cannabis included in the scheme. Despite the fact that notices were not being issued on-the-spot it was still thought that they yielded efficiency savings due to the reduction in the time spent preparing briefs and attending court (Sutton and Hawks 2005). Indeed, in the NSW pilot it was commented that all efficiency savings should be post-investigation, the notion being that whilst CINs divert cases from prosecution, (as with the PND scheme) officers still needed sufficient evidence to prosecute *before* the CIN could be issued.

The existing research suggests that whilst PNDs (and on-the-spot fines generally) do offer some efficiency savings, these are somewhat reduced by the high proportion of tickets issued in custody and the net-widening associated with PNDs. Whilst PNDs were intended to reduce police paperwork this is not itself a reason for issuing PNDs. Saving police and court time should not "take precedence over the interests of justice" (Shopfront Legal Services, *cited in*, NSW Ombudsman 2005). Indeed, officers in the youth PND pilot study raised concerns that the decision to issue a PND would start to be based on considerations regarding time rather than the circumstances of the case (Amadi 2008, p.21).

### 3.9 Impact on offending

The reduction of crime was a key justification for the introduction and subsequent extension of PNDs throughout the parliamentary debate (see Chapter 2). The achievement of this aim remains largely unknown<sup>121</sup>, however the broader deterrence literature would suggest that the (general and individual) deterrent aims of the PND scheme were ambitious. As Tonry (2004, p34) notes:

Every serious review of the deterrent effects of punishment has concluded that there is no evidence to support the belief that incremental changes or differences in punishment in individual cases, or in general, have measurable effects.

Variations in sentencing have been found to have little effect on (re)offending; it is the certainty, rather than the severity, of punishment which increases compliance with the law (*cf.* Pogarsky, 2002; Antunes and Hunt 1973; Chambliss 1966).

Given that we know PNDs have resulted in net-widening it would be difficult to centrally monitor any impact of PNDs on crime rates. There are no national data on the re-offending rates of PND recipients. The recent OCJR review (2010) of out-of-court disposals suggested that PNDs do have an impact on offending: re-offending rates were lower for PND recipients (25%) than for people who were released from custody or commenced a court order (39%), but higher than for those who had been cautioned (18%)<sup>122</sup>. Whilst, the OCJR recognised that such differences may reflect the offending profile of people who receive different disposals and their propensity to re-offend (urging readers to treat these findings with caution), in the absence of any comparative data these findings are largely meaningless. Indeed, given the low-level nature of penalty offences and officers' discretion to choose whether to take formal action, it would be difficult to assess the impact of receiving a PND on reoffending. Rather than comparing PND recipients to people released from prison, any such assessment would more aptly consider the relative impact of receiving a PND on reoffending as compared to less formal sanctions (such as restorative justice disposals or a s27 notice). The OCJR (2010) findings are further undermined as their definition of 'reoffending' does not include receipt of a subsequent PND, yet during the year-long pilot study 8% of PNDs were issued to persons who had already received at least one notice (Halligan Davis and Spicer 2004) and it is likely

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<sup>121</sup> In the youth pilot study 74% of survey respondents agreed that receiving the PND had stopped them offending and 7 (of 13) parents believed that the PND had stopped their child re-offending (Amadi 2008).

<sup>122</sup> However, the OCJR recognise that such differences may reflect the offending profile of people who receive different disposals and their propensity to re-offend and as such these results should be treated with caution.

that over a longer follow-up period there may be a greater proportion of repeat 'PND offenders'.

When cannabis expiation notices were introduced in South Australia it was feared that use of cannabis among the population (and particularly young people) would increase. Whilst there was some increase in self-reported usage, the same was true elsewhere in the country where no such schemes were in operation, suggesting that there was no causal link between the introduction of CENs and cannabis use (Hunter 2001). This view was supported by regular cannabis users in Western Australia, 85% of whom (prior to the introduction of CANINs) reported that the introduction of an infringement notice system would have little impact on their use of the drug (Chanteloup *et al.* 2005). Furthermore, concerns that, if CANINs were introduced, this perceived softening of drugs law enforcement may (despite their exclusion from the CEN scheme) indirectly influence adolescents' use of, and attitudes towards, cannabis (thus undermining drugs education programmes in schools) did not appear to be well-founded (Lenton and Farrington 2005). Indeed, 71% of schoolchildren who had never tried the drug stated that they would not do so if an infringement notice scheme was introduced, with only 5% saying that they would try it, which is crucially fewer than the 11% of non-users who said they would try the drug if it were legalised (Lenton and Farrington 2005, p.342).

Whilst in the absence of pre-test data we cannot be certain of the impact of PNDs on crime, surveys and interviews with adult PND recipients will provide some insight into whether PNDs can be used as an effective deterrent to reduce crime and disorder. However it is noted that the validity of self-report data is affected by the honesty with which respondents report their offending behaviour as well as their ability to recall such events. In the present context this latter point may be of particular significance as many of the behaviours with which we are concerned regard alcohol-related offending. Whilst it is noted that adult respondents are generally more eager to present a pro-social image, they are also more likely to admit to committing low-level offences, which is the nature of the penalty offences with which we are concerned (Junger-Tas and Marshall 1999).

### **3.10 Implications for the current research**

When modern professional policing was first introduced in Britain in the 19<sup>th</sup> Century it was feared that the police would act as a tool for public oppression, the public were therefore assured that the police "would act within the confines of the rule of law ... and ... would have no powers over and above the power of all citizens to apprehend offenders" (Choongh 2002,

p45). However, as discussed above (see Section 3.4.3) officers do not “adhere mechanistically to the rule of law” (Newburn and Reiner 2012, p.809), but rather exercise discretion in the application of their powers and thus, the law. However, PNDs extended police powers further, such that they may now exercise their discretion to financially punish (suspected) offenders for criminal offences (the power to financially punish those suspected of committing driving or ‘administrative’ offences having already been granted). We therefore need to consider whether such ‘pseudo-prosecution’ is a legitimate use of police power. The above discussion highlights the lack of empirical research as to the impact and effects of the introduction of penalty notices for disorder. Whilst Halligan-Davis and Spicer (2004) state that the pilot project of the adult scheme was a success, they do not define the parameters by which they are measuring or defining ‘success’. Indeed, very few PNDs are issued for a large number of penalty offences, making tickets for those offences effectively obsolete. There is a large geographical variation in the use of notices, which questions the consistency with which PNDs are issued and may have an impact on the perceived procedural justice of the scheme, thereby affecting compliance. The payment rate has remained stable at approximately 50% thereby creating additional work for the courts in enforcing these notices and undermining the efficiency savings they are thought to offer. Furthermore, given the evidence of mass net-widening, PNDs have actually created *more* administration for the police whilst achieving a negligible reduction in prosecutions. Interviews with CTO and magistrates’ court staff will allow for consideration of the nature of enforcement activity, giving some insight into how PNDs affect the wider criminal justice system.

The police literature highlights the impact of extra-legal factors on police decision making, however the majority of this literature is concerned with arrest decisions and so is not directly transferable to the present context. Whilst Coates *et al.* (2009) have shown that factors such as demeanour can affect police decisions as to where to issue PNDs, this fails to consider what factors affect the police decision to issue a PND as opposed to taking no formal action. Given the evidence of net-widening, the omission of such data greatly undermines our understanding of the circumstances in which PNDs are issued. Police discretion is a vital element of policing, allowing officers to respond to the situational exigencies faced during patrols (Mastrofski 2004). Thus police decision making will inevitably be influenced by situational variables. However, given the fact that PNDs are largely exempt from independent oversight, research is necessary to understand whether such decisions are equitable or whether they allow officers to expose citizens to ‘police justice’ (Choongh 1998; Riksheim and Chermak 1993). Whilst the existing research provides some insight into the use of PNDs there

remain serious gaps in our knowledge of how PNDs work in practice. Given that both the adult and youth pilot schemes found evidence of net-widening, examination of the factors which influence the decision to issue a PND rather than proceed with informal action is key to our understanding of the use and impact of penalty notices

Observational research will allow for consideration of police responses to disorderly behaviour without falsely dichotomising the available options into simple 'arrest' and 'non-arrest' categories, instead considering the range of both formal and informal options available. Indeed Waddington (1994) argues that the decision not to arrest is as much an expression of police power as the decision to arrest. It is vital therefore that we understand whether, when and why the police choose to exercise this power. Smith and Visser (1981) highlight that whilst criminal justice research often highlights bias at a certain stage of the criminal justice process it must be borne in mind that the sample of people is biased from the outset. Those who are arrested are a subsample of the offender population. This is further highlighted by the police literature which suggests that the police target their attention on the lowest strata of society: the homeless, the unemployed and the young are all 'police property' or 'dross' upon whom police attention is unequally distributed (see Sections 3.4.3.3 and 3.4.3.4.1). Thus when one considers that PNDs create an inequality of impact this may relate not only to the relative inability of some persons to pay a £90 fine but to the PND system as a whole, with those people who are least likely to be able to pay being more likely to be subject to a PND in the first place.

The omission of offender perceptions is a key oversight in the penalty notice literature, which the current study will address. As discussed above, understanding offenders' perceptions of the procedural fairness of their encounter with the police may be central to understanding PND recipients' compliance. Given the low payment rate of PNDs and the low proportion of people who challenge their notice in court, recipient views must be explored to examine both why payment rates are so low (and potentially how these can be improved) and whether recipients feel coerced into accepting notices or whether the low rate of challenge reflects an acceptance of responsibility. Furthermore, whilst on a practical level the omission of offender views from the PND research is understandable (indeed Amadi (2008) highlighted the difficulty in engaging PND recipients in research), recipients' views are central to our understanding of the success and impact of PNDs. When introducing PNDs it was hoped that they would provide a swift punishment and deter future offending. However, without analysis of recipients'

experiences of penalty notices and the impact they have (or have not) had on individuals' offending we cannot judge whether PNDs are meeting this aim.

The above discussion has highlighted the key issues raised by the use of PNDs. The following chapter outlines the research questions addressed by the current research (as informed by our existing knowledge on the use of PNDs) as well as describing the research methods and the context in which the research was undertaken.

## CHAPTER 4 – METHODOLOGY

### **4.1 Introduction**

The broad aim of this research was to shed light on the use of PNDs, a much used but (as noted in the previous chapter) under-researched police power. Given the breadth of that aim and the two main research questions (how are PNDs used in practice and how are they perceived by the recipients), two preliminary research questions were set:

- i. What were the theoretical and policy reasons for introducing and subsequently extending the remit of penalty notices for disorder?
- ii. What concerns were raised about the introduction and subsequent extension of penalty notices for disorder?

These are inherently interpretivist concerns regarding the meaning of the PND system; how were PNDs intended, and not intended, to be used? As described in Section 2.2, to answer these questions an inductive analysis of the relevant parliamentary debates, policy documents and White Papers was conducted. That analysis provided a thematic framework (set out in Chapter 2) describing the aims of, and concerns regarding, PNDs. The aims were categorised as *managerialism* (improving efficiency in dealing with low-level crime), *crime reduction* (detering offenders), *punishment*, and *rehabilitation*. Concerns centred around the use of *police discretion and subjectivity* of offences, *human rights and due process* and the potential for PNDs to have an *unequal impact*. These aims and concerns provided key areas of interest which informed the development of the subsequent research aims, methods and data collection tools which are discussed in this chapter.

To address the research questions a mixed-methods approach was adopted. This triangulation of data provided a comprehensive insight into the use of PNDs and how they are experienced by the recipients of these notices. This approach capitalised on the differing strengths of each method whilst also balancing and addressing the limitations of each of the various data sources (McCracken 1988). This chapter will firstly outline the overall research design and methodology before considering the specific methods adopted to address each research question. Finally, the ethical implications of the research and how these were addressed will be discussed.

### **4.2 The methodology**

Epistemological purity doesn't get research done (Miles and Huberman 1984, p. 21).

Mixed methods research is associated with pragmatism (Teddlie and Tashakkori 2009), which rejects the notion that quantitative and qualitative methods (or indeed interpretivist and positivist approaches) are incompatible, and instead urges researchers to adopt a 'what works' approach to research design. This is not to say that in mixed-methods research 'anything goes' (Denscombe 2008, p.274). Instead, rather than dwelling on the epistemological and ontological tensions between these divergent approaches, mixed methodologists recognise the strengths in both as well as promoting the application of both deductive and inductive logic to address the research questions. Indeed, in the current study the utility of the mixed-methods approach lies in this ability to address both exploratory and confirmatory questions. Thus, as the first in-depth analysis of the use of PNDs, this study sought to explore how and why these tickets are used and how their use is experienced by the recipients of these notices. However, by firstly examining the intentions of the PND scheme and the concerns raised by this power, this research also sought to confirm whether PNDs are achieving their intended (and unintended) impact. So the thematic analysis presented in Chapter 2 adopted an inductive analytic strategy to identify the key aims of, and concerns regarding, the introduction and extension of the PND system. This framework provided a number of key areas of interest to consider with regard to the use and impact of PNDs. However, when answering the two main research questions – how are PNDs used, and how are they perceived by the recipients? – a mixed-methods (and pragmatic) strategy was employed which applied both deductive and inductive reasoning.

In the pragmatist tradition the analytic strategy adopted in this research was highly iterative, moving between quantitative and qualitative analysis, not just 'triangulating' data to find points of convergence but using the alternative data sources to elaborate on, explain and understand the various findings. As well as using different methods to answer each question, in the final chapter the results from the two questions are drawn together and considered with regard to the thematic framework set out in Chapter 2 to draw meta-inferences on the impact of PNDs.

Campbell *et al.* (2011, p.377) highlight the utility of mixed-methods approaches in examining "complex phenomena in real-world settings whereby the use of one single method would be unlikely to reveal a complete picture". The manner in which officers exercise their powers to issue PNDs is largely unknown. Whilst national data highlight the number/type of tickets issued by different forces they provide no insight into the contextual circumstances of offending and as such we remain ignorant of the situations in which PNDs are used. As discussed in Chapter 3

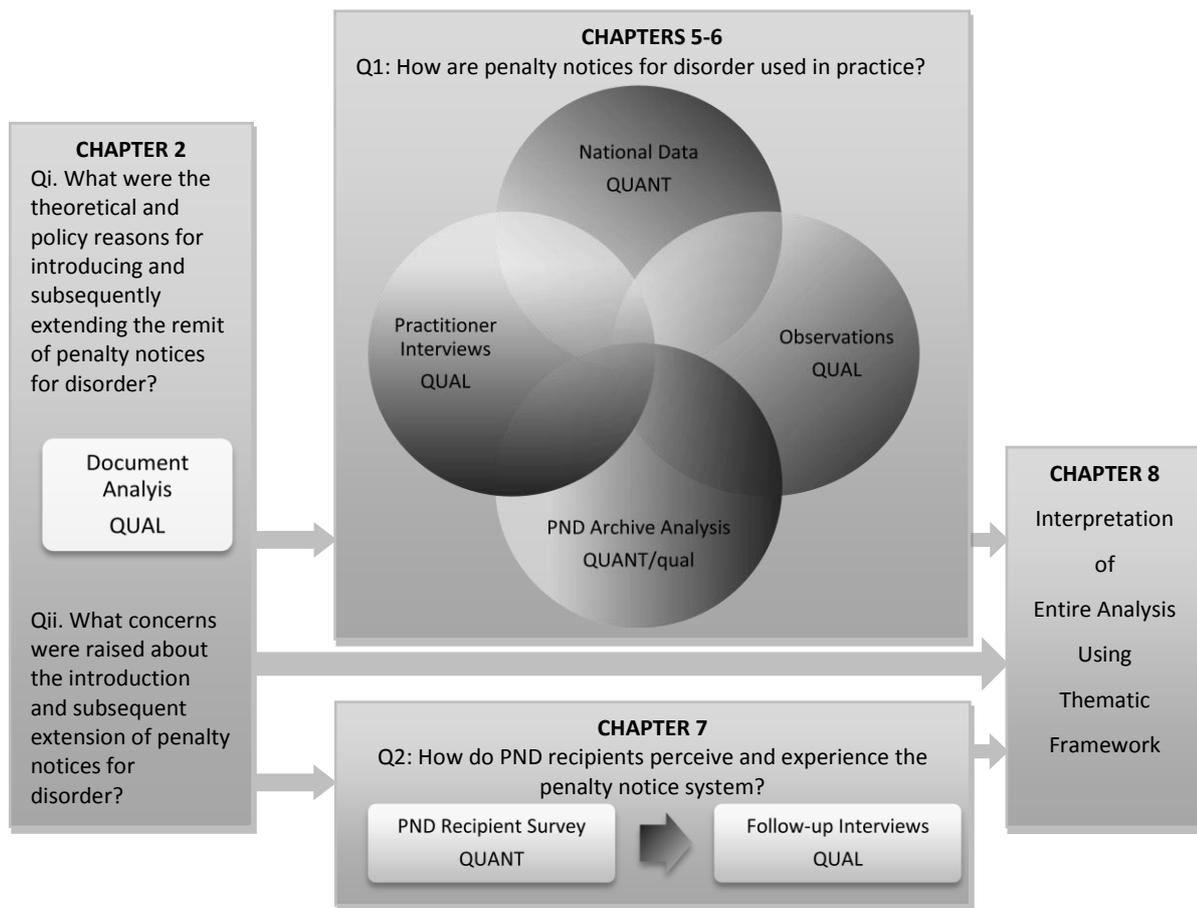
the (little) existing empirical research on PNDs has tended to focus on the police perspective on the system and managerialist evaluations as to the resource implications of the scheme and PND payment rates (Office for Criminal Justice Reform 2011; Hadfield and Measham 2011; Hadfield *et al.* 2009; Coates et al 2009; Amadi 2008; Kraina and Carroll 2006; Halligan-Davis and Spicer 2004; Spicer and Kilsby 2004). Whilst Coates *et al.* (2009) were able to shed light on some of the contextual factors which influence officers' decision making (when deciding *where* to issue PNDs) their entirely quantitative analysis failed to take into account the social context of PND offences. A mixed-methods approach can therefore provide a more comprehensive picture of the manner in which this power is exercised and thus address the research questions:

1. How are penalty notices for disorder used in practice?
2. How do PND recipients perceive and experience the penalty notice system?

These questions suggest different epistemological positions. Question 1 regards how PNDs are used and, implicitly, a positivist concern with whether the manner in which they are used achieves the intended aims of the system (as set out in the thematic framework presented in Chapter 2). Question 2 however asks how the recipients feel about the use of this power and as such is interpretivist in orientation. However, as will be seen below, the specific aims within each of these questions include both a positivist testing of whether PNDs are used, and are experienced by recipients as being used, in a manner which achieves the intended aims and/or realises the concerns highlighted by the thematic framework. Both questions also incorporate interpretivist concerns with the meaning of actions (Crow and Semmens 2008): Why do the police issue PNDs? Why do PND recipients accept or challenge their PND?

The overall strategy adopted in this research was a mixed-methods sequential design as illustrated by Figure 4.1 below.

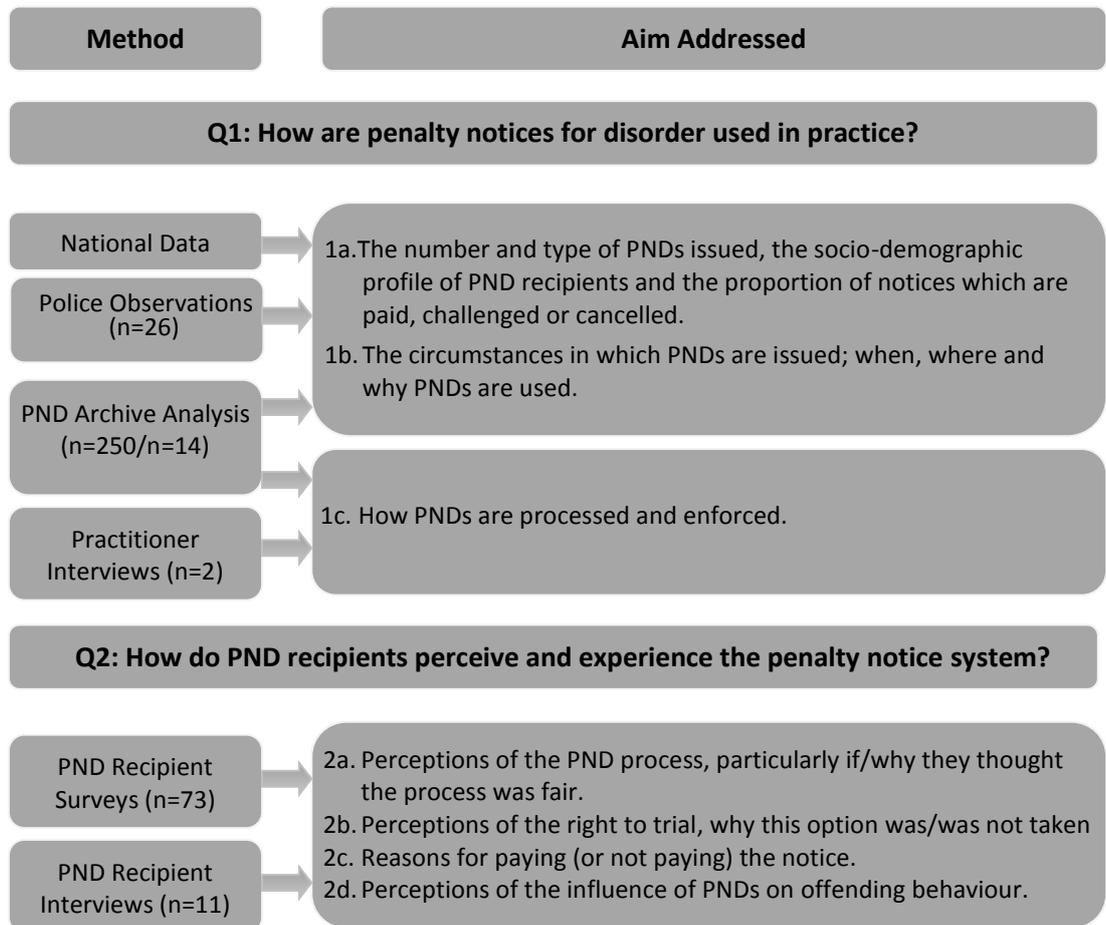
**Figure 4.1: Research design**



As can be noted from Figure 4.1, whilst the overall approach was sequential, the strategy adopted to answer each question was slightly different. To address question 1, a parallel mixed/concurrent triangulation strategy was adopted whereby both quantitative and qualitative data were collected and compared to confirm/disconfirm, cross-validate and corroborate the findings (Teddlie and Tashakkori 1994; Creswell 2009). Quantitative data were drawn from national PND statistics (obtained from the Ministry of Justice) and a sample of 250 PND tickets issued by one police force. Qualitative data were drawn from police observations, officers' witness statements (as provided on the sampled PND tickets) and 14 case studies examining the correspondence between PND recipients and CTO when the former sought to challenge their PND. To address question 2 a sequential design was adopted. This approach uses the results of the first phase of the research (in this case, the survey) to design components for the next stage (in this case, the interview schedule) with inferences being drawn from both aspects of the study (Teddlie and Tashakkori 2009). In conducting follow-up interviews with 11 survey respondents I was able to provide further explanation of recipients' experiences of the PND process.

Figure 4.2 details how the various research methods relate to the specific aims of the study:

**Figure 4.2: Research methods and aims**



This use of a variety of methods provided for *triangulation* (converging results from a variety of data sources and methods). However, the purposes of these two data sources were different and their utility extends beyond simple reference to their counterpart. The mixed-methods approach allowed for *complementarity* (elaborating and clarifying results using alternative methods) and *development* (using the results from one method to inform the use of another method) (Onwuegbuzie and Teddlie 2003, cited in, Schulenberg 2007) and thus stronger inferences may be drawn from the data (Teddlie and Tashakkori 2009).

Before moving on to address each question and method, it seems pertinent to clarify that although (as part of the ‘mixed-methods’) some observations were conducted (thus drawing on the ethnographic tradition) what follows is not an ethnography. In ethnographic research, the researcher (*emphasis added*, Bryman 2012, p.432):

- Is immersed in the *social setting* for an extended period of time
- Makes regular observations of the behaviour of members of that setting
- Listens to and engages in conversations
- Interviews informants on issues that are not directly amenable to observation or that the ethnographer is unclear about (or indeed for other possible reasons)
- Collects documents about the group
- Develops an understanding of the *culture of the groups* and *people's behaviour within the context of that culture*
- And writes up a *detailed account of that setting*

Furthermore, ethnography is both the method of research *and* the written product of that research process (Hammersley and Atkinson 1995). Whilst some of the above characteristics are present in the current study – I did spend an extended period of time observing officers policing the night time economy, I engaged in conversations with them which at times merged into informal interviews and I collected (and analysed) documents on them – crucially, I was not ‘immersed’ in the social setting. As such, I was not able to understand officers’ behaviour (and specifically their use of PNDs) in the context of their culture. This is not to say police culture(s) does not influence officers’ use of PNDs. In fact it follows that as police culture(s) influences officers’ use of discretion (Cockroft 2013) it will certainly affect how officers use (and do not use) PNDs. However, the limits of current data do not allow for a consideration of *how* police culture affects the use of PNDs. This is for two reasons. Firstly, as will be explained further below, I observed a large number of different officers working on different teams. I saw enough to understand firsthand that police culture is not “monolithic” (Reiner, 2010, p. 132); however I did not spend nearly enough time with individual officers or teams to begin to unpick what were differences in culture, what were individual differences and what were ‘observer effects’. Secondly, this is not a study of police *powers* (or police power) it is a study of the use of *one* specific police power: PNDs, and to explore that power not only from the perspective of the police but from the perspective of the recipients. Thus, in keeping with the pragmatic tradition where the research question is ‘king’, a mixed-methods approach was deemed the most appropriate means to address these concurrent aims.

#### **4.3 Research question 1: How are penalty notices for disorder used in practice?**

Within research question 1, the specific aims were to examine:

- 1a. The number and type of PNDs issued, the socio-demographic profile of PND recipients and the proportion of notices which are paid, challenged or cancelled.

- 1b. The circumstances in which PNDs are issued; when, where and why PNDs are used, and the social context of offending; the severity of the offence and who the victims of these offence are.
- 1c. How PNDs are processed and enforced.

As noted in Figures 4.1 and 4.2 a variety of methods and data sources were utilised to address these aims: a review of the national data, an archive analysis of PND tickets, street-level police observations and interviews with practitioners. These methods will each be considered in turn.

#### 4.3.1 The national data

The following data are published annually by the Ministry of Justice<sup>123</sup>:

Main Tables (include some longitudinal data<sup>124</sup>):

- PNDs categorised by offence and age<sup>125</sup> (2005 to date)
- Total PNDs categorised by outcome and age (2005 to date)
- PNDs categorised by offence, age and gender (for the preceding 12 months)
- Total PNDs categorised by police force area (2005 to date)
- PNDs categorised by offence and ethnicity (for the preceding 12 months)

Additional Tables (relate to the year in question only)<sup>126</sup>:

- Total PNDs categorised by police force area, month and age
- PNDs categorised by offence, police force area, age and gender
- Total PNDs categorised by outcome, police force area and age
- PNDs categorised by outcome, offence and age

The national data, whilst useful, can only address the research questions to a limited extent. They provide an indication of the use of PNDs with regards to the number and type of tickets issued, the gender and ethnicity of PND recipients and the outcome of PND cases. Whilst these data contribute to addressing aim 1a, the socio-demographic characteristics of PND recipients remain largely unknown. For example, whilst the data are categorised by the age of the recipient, this is limited to a comparison between over and under 18s. The employment status of PND recipients is also not reported. Furthermore, the outcome of PND cases is only categorised according to age (over or under 18), offence and police force area. As such we are unable to see whether there is any variability in the outcome of PND cases according to factors such as gender, employment status and ethnicity. Given the concerns raised in Parliament

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<sup>123</sup> These data are published as part of the Criminal Justice Statistics Quarterly series.

<sup>124</sup> These tables are updated and published on a quarterly basis. Tables which compare the use of PNDs over time use the 12 months preceding March/June/September 2006 as the baseline.

<sup>125</sup> Only compares under 18s and over 18s.

<sup>126</sup> These supplementary tables are published on an annual basis in Volume 3 of the Criminal Justice Statistics series.

(discussed in Chapter 2) regarding the potential for PNDs to impact unequally upon different groups, this lack of comparative data leaves us unable to consider whether such concerns have been realised in practice. Similarly, with regards to aim 1b, the national data can only inform us as to any regional variation in PND use<sup>127</sup>. We remain unaware of, for example, any intra-force differences in the use of penalty notices. There is also very little detail as to *when* PNDs are issued (the national data state the month of issue only) and no information as to *who* issues PNDs. Given the limits to the publicly available national data, additional information was sought from the Ministry of Justice regarding the use of PNDs in 2010<sup>128</sup>. This year was selected to aid comparison with the ticket analysis data (see Section 4.3.2.1 below) which were drawn from 2010 (Ministry of Justice 2012c; 2013a; 2013i):

- PNDs categorised by offence, police force area and where the ticket was issued<sup>129</sup>
- PNDs categorised by police force area and recipient ethnicity
- Total PNDs categorised by outcome and recipient ethnicity
- PNDs categorised by offence, police force area and outcome
- PNDs categorised by offence and who the ticket was issued by<sup>130</sup>
- Total PNDs categorised by police force area and who the ticket was issued by
- Number of defendants proceeded against at magistrates' courts in England and Wales, 2003-2010 for s5, drunk and disorderly, possession of cannabis, criminal damage, and being drunk in a highway
- The number of offenders (over 16) who were cautioned, issued with a PND or proceeded against in the magistrates' court for s5 or drunk and disorderly between 1995 and 2011

In addition, all police forces were contacted and asked whether they ran a waiver scheme for PND recipients and, if so: how long this had been running; the offences to which it applied; whether there was an attendance fee (and what this was); what the nature of the education programme was (i.e. number of sessions, whether they were group sessions/one-to-one); and whether they had any information regarding the success of such schemes. Replies were received from 40 police forces. Of these 19 ran a waiver scheme and six stated that they had data regarding the success of the programme, five of whom sent me the findings of the evaluation they had performed. These data are discussed in Chapter 8 (see Section 8.2.4).

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<sup>127</sup> This regional-level data did however provide a means to check the validity of the sampled tickets.

<sup>128</sup> Emails were sent to the Ministry of Justice requesting this additional information on the use of PNDs, which they provided.

<sup>129</sup> Location was categorised as either in custody or elsewhere (on-the-spot).

<sup>130</sup> Police officer, PCSO or accredited person.

This additional information allowed for a more nuanced account of how PNDs are used, the outcome of PND cases and the circumstances in which they were issued i.e. where PNDs were issued and who issued those notices, thereby addressing research aims 1a and 1b. This national overview is important as it allowed for consideration of the extent to which this power is exercised i.e. the number and type of notices issued (aim 1a) and compliance with this power (aim 1a) as well as how this has changed over time. However, there remain limits in this data. The national data could not tell us of the social circumstances in which PNDs were used, or the nature of the offences; who the victim(s) of these offences were; or why tickets were issued in custody rather than on-the-spot. Such issues are important not only for our understanding of how PNDs are used but also to assess the extent to which the concerns raised in Parliament regarding the subjectivity and severity of penalty offences have been realised in practice. In order to address these issues, an in-depth case study of the use of PNDs in one force area was developed.

#### **4.3.2 The case study**

The empirical research was conducted with one urban English police force. This force was an 'instrumental case study': as a 'high use' force<sup>131</sup> whose proportionate use of PNDs for different offences is comparable to the national average, as are the compliance rates with PNDs, this area was thought to provide a good insight into the use of PNDs more generally (Punch 2005). This case study approach complements the use of mixed-methods. As Yin (1994, p.13) highlights: "case study inquiry ... relies on multiple sources of evidence, with data needing to converge in a triangulating fashion, and as [a] result ... benefits from the prior development of theoretical propositions to guide data collection and analysis." Indeed, in the current study the data collection tools were informed by the thematic framework (discussed in Chapter 2) which highlighted particular areas of interest to be considered when examining the use of PNDs in practice. Whilst case studies may be criticised as they lack generalisability this "should not necessarily be the objective of all research projects, whether case studies or not" (Punch 2005, p.146). However, generalisable results may be achievable through conceptualising or developing propositions (Punch 2005). Thus, rather than beginning with hypotheses, the hypotheses are the output of the case study. In the current study, Chapters 5-7 set out how PNDs were used in one area (and where possible considers this against the national use of this power) and how they were perceived by PND recipients. In the final chapter these data are drawn together and applied to the thematic framework set out in

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<sup>131</sup> In a 'league table' of total PND use by all forces, the force area reviewed consistently appears in the top half of the table.

Chapter 2 thus allowing inferences to be drawn about the use and impact of PNDs which may then, through future research, be assessed for their transferability to other forces/recipients.

#### 4.3.2.1 The ticket analysis

To address the limitations of the national data noted above (and aims 1a and 1b) a review was conducted of a systematic sample of 250 PNDs issued at the research site, selecting every 4<sup>th</sup> ticket issued between October and November 2010. Penalty notice tickets include information as to: the time, date and location of the offence; the offender's gender, age, ethnicity and employment status, as well as including an evidence section for the issuing/arresting officer to write a statement<sup>132</sup>. There is no set place on a PND ticket to record the outcome of the case (although this information was recorded on many tickets on an ad hoc basis). As such, to address aim 1a, all PNDs sampled were compared against CTO data to confirm the outcome of the ticket. A document analysis of PND tickets therefore provided an insight into the demographic profile of PND recipients, where tickets were issued and the outcome of PND cases, as well as the circumstances in which PNDs were issued (addressing aims 1a and 1b).

The data drawn from parts 1-6a of the ticket (see Chapter 4 Appendix 1) easily lent themselves to quantitative coding (as these aspects of the PND ticket simply require officers to tick a box or provide a specific detail about the offence/the offender which were coded into nominal categories). Conversely, part 6b – the issuing officer's witness statement – was coded following

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<sup>132</sup> Penalty notice tickets are double-sided and consist of six sections over six pages (see Chapter 4 Appendix 1 for an example). The first page includes part 1 and part 2. Part 1 details the offender's name, address and date of birth as well as the date, time and location of the offence, the date the ticket was issued, the offence particulars (e.g. "you were drunk and disorderly in a public place"), the Act which the offence was 'contrary to', the place the ticket was issued (i.e. on the street or in custody), the details and signature of the issuing officer and the recipient's signature. Part 2 is a form to be returned to the magistrates' court if/when paying the PND and includes space for the recipient to write their name, address, card details and signature. On the reverse of page 1, part 2a provides an explanation of how to pay or challenge the ticket as well as information as to the consequences of doing neither within 21 days. Part 3 is a form to be returned to the Central Ticket Office if the recipient wishes to request a court hearing; it includes space for the recipient's name, address and signature as well as the date the form is returned. Parts 4 and 5 (pages three and four) are copies of part 1 (one for the CTO and one for the magistrates' court). At the bottom of the page is a section which includes additional details of the recipient: their gender, ethnicity and occupation as well as details about the processing of the case; whether third party witnesses' particulars have been obtained, whether the offender's photograph, fingerprints and DNA have been taken, what the ID number for the case is on the PND, the district code the offence took place in and the A/S number (an arrest/summons report number is created for recordable offences to allow cross-checking with subsequent fingerprint/DNA entries). Part 6a (page five) provides additional identity information about the recipient: their height, build, eye and hair colour and whether they wear glasses or have any marks/features such as tattoos, scars or piercings. The recipient's reply to caution and the date and time of caution, as well as any ID checks which were undertaken, are also noted in this section. There is also a space for the details of the officer corroborating the evidence: their name, collar number, signature and the date. Finally, there are six lines for any additional notes. Two thirds of page six (section 6b) is allocated to evidence, with the remainder allocated to the officer's details (name, age and occupation, district/unit, rank, signature and date) and a statement to the effect that the evidence is true to the officer's knowledge and that they are liable to prosecution if they tender any evidence which they know to be false.

manifest content analysis (Tashakkori and Teddlie 1998). Data were coded according to pre-defined categories informed by the existing literature (namely Coates *et al.* 2009) and the review of the parliamentary debates on the introduction and extension of PNDs (see Chapter 2). This process of transforming (or 'quantifying') the officers' witness statements into nominal and ordinal categories allowed for comparison between the existing data and (where applicable) the national data and/or the existing PND literature (Tashakkori and Teddlie 1998).

Given the focus in research aim 1a and aim 1c on compliance with PNDs and the manner in which PNDs are enforced, an additional sample of all cases between October and November 2010 where respondents corresponded with the CTO was reviewed to gain an insight into the reasons people may challenge a PND, and the reasons why tickets may be cancelled. This sample totalled 14 cases<sup>133</sup>. The tickets and associated correspondence in these cases were subject to a thematic analysis to ascertain the reasons why people challenge their PNDs.

Whilst the ticket analysis provided an in-depth insight into the use of PNDs and addressed some of the limitations of the national data, there are also limits to this data. Scott (1990, *cited in*, Macdonald 2008) proposes four criteria for assessing the quality of documents; *authenticity*, which relates to whether or not the document is genuine; *credibility*, which relates to any error or distortion in the document; *representativeness*, which concerns the extent to which the document can be said to be typical of its kind; and finally, *meaning*, which regards the clarity and comprehensibility of information presented. In the current study, there were particular concerns regarding the completeness, accuracy and credibility of the information provided by officers on the tickets (and indeed on all PND tickets).

In addressing research aim 1b, the analysis was largely reliant on the 'quantified' data drawn from officers' witness statements. However, the evidence section (6b) was only (properly) completed on 64% of the tickets sampled (N=250)<sup>134</sup>. On 5% of tickets, although the evidence section was completed, the content referred to the issuing of the ticket rather than the event for which the ticket was issued<sup>135</sup>. Part 6b was not attached to 4% of the tickets and on a further 28%, part 6b was attached but not completed. Even where the evidence section was completed, the extent of evidence given varied widely; on 19% of tickets, 50% or less of the evidence sheet was completed, yet 16% of tickets included not only a fully completed evidence

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<sup>133</sup> This included three cases that were in the main sample, and a booster sample of eleven cases.

<sup>134</sup> There was no significant difference between the offences as to whether or not the evidence section was completed, however the extent of evidence given did vary significantly according to offence (see further below).

<sup>135</sup> i.e. 'arrived at custody suite at 5am and issued a ticket to [name, date of birth of recipient]' rather than '[name, date of birth of recipient] seen shouting and swearing in the street'

section, but had also attached additional evidence forms (N=172)<sup>136</sup>. This variability in the extent of any description of the circumstances of penalty offences limits our understanding of the use of PNDs. This is particularly so with regards to those tickets which failed to include any evidence as it is unknown whether the circumstances of offending in those instances was qualitatively different to the cases which did provide evidence on/attached evidence to, the ticket<sup>137</sup>.

Even where the evidence was completed, the accuracy and credibility of the information that can be drawn from the officers' witness statements cannot be assumed. These accounts inevitably privilege the police perspective of the offence, a perspective which is necessarily partial. The limited space afforded on the ticket for evidence encourages officers to give only a brief overview of the offence, an overview which they can define in their own (favourable) terms, a matter which is compounded by the fact that recipients do not give their own statement nor do they have access to the officer's statements<sup>138</sup>. The police have what Ericson (1995) terms 'account ability'; they are able to provide written accounts of their actions which then become the definitive version of events. They can record events in a manner that presents their actions in a "rule conforming manner" (Ericson 2007, p.377). Waddington (2007) recounts a situation where an officer reported that they would need to do some 'creative writing' to justify their actions during the policing of an earlier protest. What this highlights for the present purposes is that the nature of the PND allows the police to define the event in their own terms and ensure there is no 'in the job' trouble. McConville *et al.* (1991, p.) note that:

The police have, at a most fundamental level, the ability to select facts, to reject facts, to not seek facts, to evaluate facts and to generate facts. Facts, in this sense, are not

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<sup>136</sup> There was a significant difference between the amount of evidence completed for s5 and drunk and disorderly offences as compared to other offences ( $\chi^2= 9.470$ , d.f.= 3,  $p=0.024$ ). Whilst on the one hand s5 and drunk and disorderly cases were more likely to have no evidence attached/completed (35% were blank (N=144) compared to 26% of PNDs for other offences (N=106)), they were also more likely to have additional evidence attached to the ticket. In 15% of s5 and drunk and disorderly cases there was additional evidence attached, compared to 7% of other offences.

<sup>137</sup> It should be noted that the guidance in place at the time of the research clearly stated that the evidence section of *the ticket* "should be completed in all cases" (Home Office 2005a, p.31) by the officer who witnessed the offence so as "to ensure the integrity and legality of the disposal" (Home Office 2005a, p.30). Whilst the absence of this data on the tickets sampled does not suggest that such evidence did not exist in other formats (indeed, officers may have recorded the event in their pocket notebook/directly onto the police national database) it does highlight that officers were not adhering to the practice of completing section 6b in all cases as directed. This issue is not limited to the force area reviewed. Previous research has noted the inconsistency in the completion of officer witness statements in PND cases (HMIC/HMCPSI 2011; Kraina and Carroll 2006).

<sup>138</sup> Whilst PND recipients are asked to sign their PND, their signature simply provides evidence that the ticket was received. It is not taken to imply acceptance of guilt/the facts of the case as stated in section 6b (the officer's statement). Indeed, section 6b is not shared with PND recipients who therefore remains ignorant as to the issuing officer's statement, and thus the evidence against them.

objective entities which exist independently of the social actors but are *created* by them.

We must be conscious therefore that the ticket analysis provides an account of the event that is inevitably limited, presenting the ‘police-constructed’ version of the event.

Finally, with regards to the meaning of the data, given the partial nature of officers’ witness statement, certain assumptions were made in coding the data. Factors were only coded as being present if the evidence made *specific* reference to that issue. For example, unless the evidence stated that the offender was intoxicated it was assumed that they were not. This is problematic as the absence of written evidence on a particular factor in no way equates to the absence of that factor in the context of the offence. What the ticket analysis can provide however is an insight into those factors the issuing officer (when reflecting upon and writing-up the PND) thought were (or at least recorded as being) pertinent to their decision to issue a PND and what they decided to report. However (as in other areas of police work) officers have “considerable scope for making their accounts of incidents the authoritative one” (Reiner 2000, p.219). Whilst the ticket analysis provided access to a large volume of data on the use of PNDs, these are not comprehensive or objective records of the contexts in which PNDs are used. Participant observation therefore sought to penetrate these police accounts and analyse how PNDs are used in practice.

#### **4.3.2.2 The observations**

Twenty-six police observations were conducted on Friday and Saturday nights between January and July 2011. Observations consisted of shadowing officers working in the city centre and thus in Gold’s (1958) terms I was an *observer-as-participant*. Observations were scheduled for this time/location to maximise the likelihood that I would see PNDs being issued<sup>139</sup>. However, this led to a natural focus on only two of the twenty-nine penalty offences: s5 and drunk and disorderly. Over the course of twenty-six observations I saw fifteen PNDs being issued<sup>140</sup>, eight of which were observed from the first point of police intervention through to arrest/PND issue. The circumstances viewed during observations and those cases read during the ticket analysis were extremely similar, which supports both the external validity of the two

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<sup>139</sup> Given that the majority of PNDs are issued for drunk and disorderly and s5 it followed that this tool was largely used in the policing of the NTE and as such weekend evenings were thought to offer the most fruitful prospect for ‘successful’ observations.

<sup>140</sup> Three of these PNDs were only observed from the point of arrest however the events leading to those arrests were subsequently reviewed on CCTV. Two tickets were seen from the point of arrest and during the transfer of offenders to custody. Two were only seen as they were issued in custody (the event having occurred before the start of the observation session); whilst providing an opportunity to engage officers in discussion about PNDs, these two penalty notices are not considered as part of the ‘Observation Case Studies’ reviewed in Chapter 6.

data sources and the choice of these two methods which, in conjunction, provide a more in-depth view of the use of PNDs in practice.

Two types of police team were observed: local neighbourhood police officers and response teams. The former consisted largely of vehicle-based patrols with two officers, whereas the latter involved a larger team of officers and combined vehicle-based patrols with a 'steady post', whereby officers were designated to patrol a central street for a set period(s) during the shift. Thousands of people were observed enjoying the "seductive hedonism" of the night time economy (NTE) and thus the use of PNDs was understood in this context of policing disorder (Hall and Winlow 2006, p.96). This allowed for some consideration of when (and why) PNDs were *not* used to manage disorder, a matter which (by nature) the ticket analysis could not address. Observations also provided an opportunity for informal interviews with officers, considering their perceptions and experiences of the PND system. During observations jotted notes were made either in a small note pad or on my mobile phone<sup>141</sup> and at the end of each observation session full notes were written up by hand. These notes were later transcribed onto a Word document to facilitate analysis. The analytical strategy adopted to address question 1 is discussed below (see Section 4.3.3). At this juncture it is necessary to explore how I gained access to the police, as that process of gaining (and maintaining) access has important implications for the data drawn from the observations.

#### **4.3.2.3 Gaining and maintaining access to the police**

Issues regarding intrusion and mistrust are particularly acute when studying the police due to the "highly charged nature of its secrets" (Reiner 2000, p.218). To gain access to this closed research setting therefore required the cooperation of a 'gatekeeper'. Such people have the power to grant or withhold access to the people and situations of interest and may influence the research by limiting or providing selective access (Reiner 2000; Broadhead and Rist 1974). There are often multiple sites of entry into research settings and, indeed, multiple gatekeepers. Gaining access is therefore not a 'one off' process but rather requires ongoing negotiation (Hughes 2000). This was particularly true in the current study where different aspects of the research were undertaken with different departments and teams. Access to PND tickets for the archive analysis and to PND recipients for the survey required the

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<sup>141</sup> Notes written in my notebook related directly to the tickets that were issued and included brief details of the offence. These notes were made with officers' awareness. Notes taken on my phone (where it appeared as though I was sending a text message) related to observations/conversations etc. and served as an aide memoire. These notes were taken surreptitiously, highlighting the sometimes blurred line between overt and covert research.

cooperation of the CTO, whereas the observations required access to policing teams within the city centre<sup>142</sup>.

Fox and Lundman (1974) suggest that the hierarchical nature of the police force necessitates that researchers must gain passage through two 'gates'. Firstly, formal access must be granted by police managers and secondly access must be sought separately from the actual officers one seeks to research. This might also be defined as the difference between physical access (making contact with the research group) and social access (gaining acceptance from the research subjects) (Clark 2010). My experience however was of a tripartite access process: the senior management; the middle management; and the police officers/staff. Senior managers granted a promise of physical access, middle managers provided physical access to the setting but social access could only be offered by the officers and staff themselves.

#### **4.3.2.3.1 The first gate**

Reiner (2010, p.222) highlights that "the potential researcher will have to make a case out in terms of the contribution of the work not only to academic understanding but in policy terms (however indirect)". In the current project the material benefits of the study for the police were emphasised when trying to gain access: it would allow them to identify best practice. Following a letter sent in May 2010 I was granted access (three weeks later) to the police force in question by the Chief Superintendent in charge of the relevant division<sup>143</sup>. He assigned a single point of contact (SPOC) to facilitate the research and thus (it seemed) the gate was promptly opened.

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<sup>142</sup> Of course in theory, I could have observed tickets issued on-the-spot without the cooperation of the police as such notices are issued in a public/open setting. However the interaction is a closed setting and as such it would be inappropriate to adopt a 'complete observer' role (Gold 1958). Furthermore, to properly see, hear and understand the process of issuing a penalty notice necessitates interaction with officers (and offenders). Therefore official endorsement of the research and cooperation from the police was required.

<sup>143</sup> Fox and Lundman (1978) highlight that existing relations may facilitate this process of gaining initial access to the police; indeed this was case in the current project. Having previously undertaken a postgraduate research project supervised by the Chief Superintendent in question, I was able to informally discuss my PhD proposal and suggest the possibility of undertaking future research in the same force. Reiner (2000) highlights that a record as an established researcher (or the backing of one) is particularly important when seeking access to the police as an 'outside outsider'. Furthermore, Macmillan and Scott (2003) highlight that existing research experience may give a postgraduate researcher more credibility. Indeed, when I wrote to the Chief Superintendent to request permission to undertake my doctoral research at the force, his responding letter commented that based on my previous research he had 'no hesitation in doing whatever we can to support your research on this occasion'.

#### 4.3.2.3.2 The second gate

Whilst the research promptly gained the endorsement of senior management, this did not equate to gaining access; middle management controlled physical access to police officers and the CTO<sup>144</sup>. So whilst the first gate was ‘promptly opened’, negotiating the second gate was more time consuming. Hughes (2000) distinguishes between proceduralised and personalised modes of access. Evidence of the former was reflected in the current study through use of a research agreement (outlining the research, the data required, the research outputs, data protection requirements etc.) which the SPOC requested that I sign in August 2010<sup>145</sup>. The process of amending and signing this agreement delayed the start of the research for some months<sup>146</sup>. There was also evidence of personalised modes of access, the SPOC was “a designated ‘chaperone’ [who escorted me] ... down the metaphorical ‘corridors’ of the research process” (Hughes 2000, p.240). However, whilst the SPOC remained a key contact throughout the research, in practice there were many ‘gatekeepers’. From the outset the SPOC assigned a member of police staff to help facilitate the project (and particularly access to the CTO) and a member of the city centre Safer Neighbourhood Team (SNT) to coordinate the police observations. Through contacts made via this officer (and during observations) I was able to make contact with a number of inspectors/sergeants and used a snowball sampling method (Bryman 2012) to organise further observations with a variety of officers working on response teams in the city centre. Given the distinct issues faced in gaining access for the purposes of observations and gaining access to the CTO, these two groups will be considered in turn.

#### 4.3.2.3.3 The third gate – the police officers

Whilst the process of gaining physical access was time consuming, the achievement of the ‘social access’ brought its own difficulties. Firstly, it was necessary to gain officers’ trust. However, “trust is not built overnight”, researchers need to spend long periods in the field so as to ‘normalise’ the research (Van Maanen 1981 p.473; Reiner 2000). By targeting the observations at weekend evenings, whilst I maximised the likelihood of seeing PNDs being

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<sup>144</sup> To circumvent him and go directly to these teams would not have been appropriate as this could have soured the positive working relationship built with the SPOC. Furthermore, allowing him to make the initial introductions ensured that the project was seen to have the backing of higher management.

<sup>145</sup> Such agreements are relatively common in observational police research as potentially the researcher will be exposed to behaviour and practices which, if published, would be damaging to the police (Reiner 2000; Fox and Lundman 1974).

<sup>146</sup> Passing this second ‘gate’ was not a one-off process; three years into the research I was asked to sign a new data processing agreement ‘in line with new force policy’ and was asked to re-undertake force vetting procedures (having first undertaken such vetting four years previously).

issued, I minimised the opportunity to develop any kind of long-term relationship with officers (such that I might be able to normalise my presence and gain their trust)<sup>147</sup>. This need to build trust was evidenced within minutes of the first observation:

the officers were joking ... about the Jamaican female ... character on the programme 'come fly with me' ... affecting Jamaican accents, one then stopped laughing and said to me "that's not racist, I'm not being racist", and then said to a colleague "she's writing everything down" ... I laughed ... offering another quote from the show (Field Notes, Page 2).

This incident highlights officers' keen awareness of my presence as an 'outsider' and suspicion of my motivations. To try and assuage this, from the outset I only ever took paper notes<sup>148</sup> when officers were themselves filling out PND paperwork, always asking 'do you mind if I just make a few notes?' and explaining that I would not record any identifying details before writing anything down. Furthermore, whilst the observations offered opportunities to question officers about their use of PNDs, often I waited for officers to offer their opinions rather than questioning them directly. Knowing that I was interested in PNDs many officers volunteered their views providing me with an 'opening' for discussion.

There were times when I sensed that officers were reluctant to share information with me, for example following the issuing of one PND I asked to look at the ticket:

I was only able to briefly skim-read the evidence as [the officer] seemed reluctant to let me read it, telling me not to tell anyone .... I told him that I had read others ... [and] that I was doing a ticket analysis at the CTO which seemed to appease him however ... he talked to me whilst I was trying to read it which was distracting, which on reflection was probably the intention (Field Notes, Page 40).

In such cases I was conscious that I did not have time to build up a relationship with each officer and so I was careful not to push them when they seemed reluctant to answer my questions or share information. Knowing that officers may discuss me/my research with their colleagues, pushing too hard to gain access in one session could have hindered (both my physical and social) access in later observations. Furthermore, as access to each shift was provided by the relevant sergeant/inspector, individual officers had little opportunity to give their consent to participating in the research. As such, any perceived unwillingness to participate was respected. Whilst I may not have built up strong relationships with individual

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<sup>147</sup> Indeed, it is for this reason that whilst I use ethnographic techniques I cannot describe the current research as an ethnography. I shadowed numerous different officers over the course of 6 months and whilst I shadowed most on at least two separate occasions, I rarely went out with the same officers more than twice.

<sup>148</sup> Some jotted notes were taken on my phone; however such notes were kept to a minimum and when taken simply appeared as though I was sending a text message.

officers, I did, over six months, become a relatively familiar face around the police station. Indeed, this familiarity enabled me to organise further observations suggesting a certain level of acceptance.

I was aware that officers may wish to keep particular practices hidden (Francis 2000) and I was concerned that officers may amend their behaviour, meaning I would not gain a 'true' picture of the use of PNDs. Officers appeared, for the most part, candid and I was able to observe PNDs being issued both within and outside the parameters of the national guidance, suggesting a certain sincerity in officers' use of this power. In one such case three people were issued with PNDs following a fight that resulted in one person losing a tooth:

As they were writing up their notes one said that ... they could go and collect [the CCTV footage], another ... commented that the CCTV would show the girl he had arrested punching two people and so a s5 [PND] wouldn't be appropriate .... Another officer ... looked a little concerned as this conversation unfolded, he seemed concerned that I had heard this. He said to me that really they should deal with these things by affray, however in these situations where they all know each other, it was better for the offenders and better for the officers (as it saves both groups time and having to go to court) to just deal with it by a PND (Field Notes, Page 93).

Indeed, when I later went with officers to collect the CCTV footage one commented:

that it shouldn't really be a s5 [PND] but that to deal with it that way was referred to as 'bobbin' this seemed to imply a downgrading of offences because it's considered easier to deal with. The sergeant interrupted here to stress the fact that where the people are all known to each other a penalty notice was a better way to deal with it for them [i.e. the offender]. As before he seemed concerned to ensure that I was given the 'party line' (Field Notes, Page 95).

Whilst in qualitative research there are always difficulties in assessing (or assuming) the validity of the data, the cases I saw during observations were reflective of the cases reviewed in the ticket analysis, suggesting that these were fairly typical 'penalty notice cases'.

In gaining trust, the policing literature also highlights that "the fieldworker must demonstrate that [s]he is a likeable character, one who is worthy of another's friendship and respect" (Van Maanen 1981, p.475). In seeking to promote this respect and friendship, where I had been out with officers previously I would try to recall particularly interesting/amusing cases from that shift in an attempt to build my rapport with individual officers and the team, I would laugh at their jokes and offer my own. However, as the following extract from my field notes highlights, this need to demonstrate that I was a 'likeable character' was made all the more difficult by the fact that the observations covered so many different officers and frequently began at a late hour:

The team were all fairly quiet, it seems that following the changeover<sup>149</sup> officers are generally just a bit tired and less chatty as it is often the case that in the 2<sup>nd</sup> half of the shift they're less chatty with me and each other regardless of whether or not I was out with them in the 1<sup>st</sup> half of the shift or how chatty they were then, so I think it's the time of night rather than a response to my being there (Field Notes, Page 71).

Indeed, I noted above that I would tend to wait for officers to show some interest in the research before engaging them in discussion. I quickly sensed that (particularly in the early hours of the morning) demonstrating I was 'likeable' amounted to keeping quiet. In practice, whilst I tried to minimise social distance between myself and the officers (Van Maanen 1981), as a young, female researcher, my inability to blend in may well have served to foster trust in a manner that time did not afford me.

The police occupational culture promotes masculinity and "the denigration of women is a central part of this culture" (Horn 1997, p.298; Reiner 2010). Whilst being a young female therefore almost certainly affected the level of social access I was afforded, this was not necessarily a hindrance. Indeed, research access can be facilitated by such factors: women and/or those of a perceived low social status (such as a student) may be viewed as non-threatening and thus may be more likely to be exposed to questionable practices (McKeganey and Bloor 1991). It is worth noting at this stage that though I undertook the observations whilst I was aged 27, I was (and still am), the size of the average 12 year old. My diminutive stature was only emphasised by the fact that throughout the observations I had to wear a XXXL men's high visibility 'observer jacket'<sup>150</sup>. This jacket, which I wore over my coat, came down to my knees and the sleeves had to be folded back numerous times so that my hands could be seen. This all combined to give me the appearance of a child who was wearing her father's coat. It is my firm belief that the combination of my size, gender, student status and my (frankly ridiculous) appearance in the observer jacket all helped to create an image of me as a non-threatening presence on the various shifts I observed:

A man on the other team asked me about my research, I explained what my PhD was about after which he asked me "wouldn't it be easier to just write about what you did in your school holidays" I laughed (Field Notes, Page 4).

This (rather patronising) dismissal of my research suggests a complete lack of concern as to my presence and research but also suggests that that lack of concern was directly linked to a view

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<sup>149</sup> Many of the response teams I would observe would divide the time spent patrolling the steady post between the team, with one half patrolling from (approximately) 10pm-1am and the other from 1am-3am. Officers were often quieter during the second half of the shift. Indeed, I noted in my diary that one team who switched over every 30 minutes seemed generally more 'upbeat' than others.

<sup>150</sup> This was a high-visibility coat with the word 'observer' emblazoned across the back.

of me as being akin to a child. Whilst officers appeared to be relatively comfortable in my company, often exchanges were laced with paternalistic concerns as to my sensibilities:

some of the officers were laughing and joking about another officer, they were swearing ... the sergeant said he just wanted to “remind you that we have a guest”. One of the officers replied “a guest that’s laughing” and another said “she heard much worse than this when she was out with us last time” and I laughed. The sergeant said he just thought he should remind them and that they could go back to ignoring him and they laughed (Field Notes, Page 108).

As noted in the description above, when officers engaged in what may be deemed ‘masculine’ humour I would laugh along, and when officers apologised for swearing I would tell them that I had three brothers and had heard a lot worse. There are two other points that should be noted from the quote above. Firstly, that regardless of any level of acceptance, officers were keenly aware of my ‘outsider’ status throughout. Secondly, that officers’ behaviour towards me was often paternalistic. Such paternalism has also been noted by other female researchers. Horn (1997), for example, noted officers limited her access to situations which were thought to be too risky or unpleasant. In the case above the sergeant seemed to wish to protect me from (unpleasant) bad language but on other occasions officers seemed to exclude me from situations which were deemed to be too risky or from people who were thought to be “nasty business” (Field Notes, Page 48). Indeed, on a number of occasions officers told me to ‘stay in the van’. Notably, this protection was not only afforded by male officers. Indeed, after attending a nightclub following a report of knife crime, the female sergeant “turned around to me and told me to stay close to her, and as we walked upstairs ... she kept turning back to check I was behind her” (Field Notes, Pages 88-89). Whether this was because I was a civilian observer or because of my gender/size is unknown. Indeed, it is likely that all three of these traits influenced officers’ behaviour towards (and around) me. However, given the low-level nature of offending that I was interested in, such protection was not thought to have adversely affected the research. Whilst I may never have been truly accepted by the officers, I was able to see a number of PNDs being issued.

#### **4.3.2.3.4 The third gate – the Central Ticket Office**

Penalty notice tickets are held by the CTO, who also hold the details of PND recipients within the area. PND recipients are not an easily identifiable/locatable group within society and thus whilst they may be (and were) sought through other means (see Section 4.4.1), the only way to effectively target such people was to directly contact persons known to have received a PND via the CTO. Access to the CTO was therefore sought to “bridge the gap to research

participants” and provide both a more efficient and effective means of locating PND recipients (Clark 2010, p.3). Access to this data was initially facilitated by the member of police staff assigned by the SPOC to assist in the project. Indeed, she retrieved all the PNDs issued during the relevant timeframe, transferred them to her office and provided me with a desk where I completed the data collection. She also (via the CTO) accessed PND recipients’ address details, provided pre-paid return envelopes and organised the mailing of the questionnaires. Following ‘e-introductions’ via this gatekeeper I was also able to interview a member of staff at the CTO regarding how PNDs are processed and enforced.

Whilst, via this ‘gatekeeper’, the CTO were initially cooperative, subsequent attempts to gain access to the CTO were rejected. I requested access to the PND tickets which were issued during the observation sessions<sup>151</sup>, however, following a number of emails (where I was told that the CTO would get back to me with a time when I could access these tickets) four months after the initial request I received an email stating that “due to changes within our vetting procedures I’m unable to provide any further info at this time”. Whilst further vetting forms were completed and a new research agreement was signed (which took another 2 months) I was unable (in the time available) to set up any further review of PND tickets.

#### **4.3.2.3.5 Gaining and maintaining access - a conclusion**

Throughout the above discussion I have emphasised the need to gain social access, however conversely there is a risk when undertaking observational research of becoming so immersed in the social setting that you ‘go native’. That is, you develop an ‘over-rapport’ with research subjects such that you are no longer able to problematise their behaviour (Hammersley and Atkinson 1995). Certainly, reading back over my field notes I start to use the officers’ lingo – I refer to ‘shouting up’ for ‘jobs’ on the radio and describe what ‘we’ rather than ‘they’ did. Just as the police culture literature had told me that the police were ‘action-oriented’ (Reiner 2010), I found myself longing for ‘action’. I became increasingly frustrated by the sessions where I did not observe any PNDs being issued (at times seemingly forgetting that the non-use of PNDs was also important). However, whilst I certainly began to empathise with officers, when writing up my field notes after each session I tried to be objective. I wrote everything down, such that even when ‘nothing’ had happened I spent hours describing exactly what ‘nothing’ was.

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<sup>151</sup> This would have allowed for consideration of the officers’ account of the events, as compared to my own, as well as enabling me to ascertain whether any cases which I observed, where the disposal was uncertain at the time, later resulted in a PND.

Gaining access was not a 'one-off' process. Having been granted initial access in June 2010, following various delays in meetings with the SPOC and the SNT, the empirical research only started in January 2011. Whilst access on paper was relatively easy to achieve, actually navigating the middle management to gain access to the officers and tickets I wished to observe was more time consuming. As for gaining social access, it is questionable whether I was ever fully accepted but I was able to gather the data I needed.

#### **4.3.2.4 Interviews with practitioners**

Returning to the research questions, the final aim within research question 1 was to understand how PNDs are processed and enforced. The purpose of including this aim (and conducting the associated interviews) was to ensure I had a clear understanding of how PNDs were used from the point of issue onwards. This aim was addressed via two interviews with criminal justice practitioners. One interview was conducted with a member of CTO staff and a joint interview was conducted with two members of the Enforcement Unit at the local magistrates' court. Questions to the CTO and Enforcement Unit examined how PNDs are processed from the point of issue through to enforcement. These processes are described in Section 5.4.4. Access to the Enforcement Unit was facilitated by my lead PhD supervisor who had an existing relationship with senior staff at the local magistrates' court. Following an initial meeting with the Chair of the local magistrates' bench and the Legal Team Manager, they were able to facilitate access to the Enforcement Unit. Access was also sought to the local CPS<sup>152</sup>. Having approached them directly I was contacted by staff at the CPS Headquarters and informed that I would need to complete a formal research application. However, after submitting a formal request, I was denied access<sup>153</sup>.

#### **4.3.3 The analytical strategy for research question 1**

The various methods adopted to address question 1 generated a wealth of data. In order to analyse this mass of data an approach was adopted that is best described as 'progressive focusing' (Wolcott 1994). Whilst progressive focusing is a term usually adopted to describe the analysis of purely qualitative data, I use this term rather than 'parallel mixed analysis' (more common in mixed methods research) (Teddlie and Tashakkori 1994) as the latter term implies a separation of analysis which is not evident in the current study. Parallel mixed data analysis consists of separately analysing quantitative and qualitative data (and often presenting these

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<sup>152</sup> Access was sought to interview CPS staff to ascertain if/what impact PNDs had on their workload and how cases where PND recipients request a court hearing are processed.

<sup>153</sup> I was informed that as the research did not have a clear and identifiable benefit for the CPS, they were unable to spare the resources to facilitate the interviews.

findings in separate chapters) only drawing together the analyses at the end of the study to make meta-inferences (Teddlie and Tashakkori 2009). The process in the current study was more iterative than that definition implies; each stage of analysis involved constantly moving between the different data sets as the analysis of one informed the analysis of another. The process was thus both deductive and inductive.

In addressing question 1, initially the 'quantified' ticket data were analysed using descriptive and inferential statistics (Teddlie and Tashakkori 1994). These data were (where available) compared against national data to indicate the transferability of the findings beyond the immediate research context. The analysis of aim 1a was based almost exclusively on this quantitative analysis and is presented in Chapter 5. In that Chapter we see a progressive focusing from the national to the local use of PNDs which explores those aspects of the PND process that can be easily quantified. In Chapter 6 however we move to considering the social circumstances of PND offences. Here, national data are not available and so rather than moving between a national and local focus, the focus shifts between a statistical presentation of the broad circumstances of PND offending in general (the people involved in PND cases, the severity of PND cases, where penalty offences occur etc.) to the specific circumstances of offending in cases observed and cases read in the ticket analysis. Whilst Chapter 5 has an almost exclusively quantitative in focus, Chapter 6, draws heavily on the qualitative analysis. This reflects the differences in the research aims 1a and 1b. When asking how PNDs are used (with regard to when, where and against whom) quantitative data can provide a more comprehensive answer. However, in trying to explore the circumstances of offending and why PNDs are issued, to rely solely on quantitative analysis would strip the data from its social context and thus would fail to address the question.

The analysis of the various data sources mirrors the presentation of the findings in the following chapters. The process was fully integrated. Whilst I began with the statistical analysis, this led the data analysis of qualitative ticket data and observation data in two different ways. Firstly, with regard to the ticket analysis, where the quantitative data highlighted significant relationships, tickets were re-read and subjected to a latent content analysis (Teddlie and Tashakkori 1994). This triangulation provided a more comprehensive insight into the manner in which the PNDs sampled were used. Secondly, with regard to the observation data, field notes were reviewed in their entirety before being broken into

segments<sup>154</sup> (or 'unitised') (Schulenberg 2007) and I initially conducted an *a priori* thematic analysis of all those segments which described a PND being issued. This explored the themes addressed by quantitative analysis. The initial analysis in Chapter 6 is largely descriptive, explaining the common themes in penalty offences: where they occur; how many people are involved; how serious the case was and who the victim(s) are etc. The second half of the chapter however draws these issues together to examine the factors which affected officers' decisions to issue PNDs. Again, the quantitative analysis formed the backdrop of the analysis, providing a broad focus on how issues such as offence severity, intoxication, and offender demeanour influenced officers' decisions to issue PNDs on-the-spot or following arrest.

However, following that initial quantitative analysis, field notes were reviewed again (this time to include those segments which did not directly relate to issuing PNDs). The qualitative PND ticket data was then subject to a process of 'pattern matching' whereby I looked for cases which conveyed similar circumstances to those seen during observations (whether or not the observation case had resulted in a PND) to try and draw inferences about why officers may, or may not, choose to use PNDs. The structure Chapter 6 therefore again reflects this process of analysis, progressively moving the focus from the statistical data to the context of *those* data (as provided by qualitative ticket data) and then to the context of offending as viewed during observations, considering both points of convergence and divergence in the various data sources to present an overall picture of how PNDs were used and the factors which may affect their use. The findings from the various sources are therefore integrated, with statistical data presented alongside excerpts from officers' witness statements and field notes. This process of triangulating the data enabled elaboration and elucidation but also confirmation and contradiction of the statistical data, providing a more in-depth account of not only *how* PNDs are used in practice, but *why* they might (or might not) be used.

#### **4.4 Research question 2: How do PND recipients perceive and experience the penalty notice system?**

Within research question 2, the specific aims were to examine PND recipients':

- 2a. Perceptions of the PND process, particularly if/why they thought the process was fair.
- 2b. Perceptions of the right to trial, and why this option was/was not taken.
- 2c. Reasons for paying (or not paying) the notice.

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<sup>154</sup> These segments varied in length and related to different 'events' which occurred over the entire period of observation. This included the fifteen cases where PNDs were issued but also conversations and other instances of crime/disorder whether or not they resulted in formal action.

## 2d. Perceptions of the influence of PNDs on offending behaviour.

Whilst the observations allowed me to view individuals' reaction to being arrested and receiving a PND I was not able to engage with recipients about their experience<sup>155</sup>. Thus to address the above aims surveys and interviews were conducted with PND recipients.

### 4.4.1 Recipient survey

As noted above, PND recipients are not an easily identifiable/accessible group. Access to known PND recipients was therefore sought via the CTO. The questionnaire was posted to all persons aged over 18 who had received a PND in June, July, October or November 2010 (except those who were liable for potential prosecution). Having anticipated a low response rate – the survey conducted as part of the youth PND pilot study had a response rate of just 5% (Amadi 2008) – an e-questionnaire was developed using the online survey tool 'Survey Monkey'<sup>156</sup>. An email was sent to all students at the University of Sheffield which included the details of the study and a link to the e-questionnaire. In addition, details of the survey were posted on various online forums. The resulting sample of PND recipients drawn from these two selection methods is best described as a convenience/self-selecting sample (Semmens 2011). The response rate to the paper survey was extremely low (3%)<sup>157</sup>, 1,700 questionnaires were posted and 53 people responded. The e-survey yielded a further 20 responses<sup>158</sup>. The vast majority (90%) of respondents received their most recent PND from the force area reviewed and most (72%) reported that they had received their most recent PND within the 12 months prior to completing the questionnaire. The survey respondents were not representative of the population of PND recipients. Furthermore, recipients were questioned months (and in some cases years) after their first PND. Those people who completed the questionnaire may therefore have had a particularly strong reaction to the process. Whilst the sample may not be

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<sup>155</sup> Indeed, whilst one of the gatekeepers suggested that I might talk to PND recipients in custody and even request that they complete the questionnaire at that stage, it was felt that to do so might compromise recipients' ability to give informed consent as they may feel that they had to participate or risk a longer period of incarceration. Conducting a survey in custody would also have prevented analysis of whether or not people paid/challenged their PND and the reasons for that, which was a key aim of the research.

<sup>156</sup> As well as providing a pre-paid envelope for respondents to return the questionnaire, the URL to the e-survey was included in a covering letter to make it as easy as possible for people to participate in the research.

<sup>157</sup> Whilst this is an extremely low response rate it is comparable with the 5% response rate reported by Amadi (2008) in her survey of youth PND recipients. Indeed, Reid (2013) reported being unable to conduct his planned empirical research on recipients' experiences of the PND system having received only 14 responses in seven and a half months.

<sup>158</sup> Overall, 73% of respondents were accessed via the postal survey (n=53), 11% were sourced via the email sent to students at the University of Sheffield (n=8), 11% responded to a posting on a social network sites (n=8) and 6% did not report where they heard about the survey (n=4).

generalisable to the broader PND recipient population, it does provide an important (and indeed the first) insight into adult recipients' perceptions and experiences of the PND system.

A copy of the questionnaire can be reviewed in Chapter 4 Appendix 2. The paper survey was piloted with two persons known to myself who had previously received a PND<sup>159</sup> to confirm that the questionnaire was easy to read/follow<sup>160</sup>. The questions were informed by the thematic framework (as outlined in Chapter 2) as well as the procedural justice and compliance literature, namely Braithwaite (2003b) and Tyler and Wakslak (2004). The questionnaires examined the socio-demographic characteristics of PND recipients such as their age, race, gender, employment status and income<sup>161</sup>. Respondents were asked about their own experiences of the PND system and whether this was viewed as fair using a series of Likert scales. They were asked whether they had paid/challenged their PND and their reasons for this as well as the perceived impact of receiving a PND on their offending. They were also asked to comment on their perceptions of the system more generally (rather than in relation to their own PND). These data were analysed using descriptive and inferential statistics. Whilst the questionnaire consisted largely of closed questions, some questions included an open-ended 'other' option and a comment box at the end of the questionnaire, asked respondents to note any additional views on PNDs/their experience. Overall, 64% of the returned questionnaires included some additional comments/qualitative data. The extent of such comments varied from just a few words offering additional contextual details (such as the location of the offence) to lengthy descriptions of the circumstances of the offence and the respondent's perception of the fairness of the PND system. In keeping with the pragmatic tradition, these additional data – which offered further insight, not only into recipients' experiences of the PND system, but also into their understanding of key concepts (such as procedural and distributive fairness) which the survey sought to measure (Feilzer 2010) – were subject to thematic analysis. These comments are integrated into the analysis presented in Chapter 7.

#### **4.4.2 Recipient interviews**

At the end of the questionnaire respondents were asked whether they were willing to be interviewed and, if so, to provide their contact details. Ultimately 11 semi-structured

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<sup>159</sup> Pilot interviews were also conducted with these people.

<sup>160</sup> The questions for the online survey were identical, so I piloted this simply to confirm that the question logic was correct and that respondents would be directed to the relevant questions according to the responses they gave.

<sup>161</sup> Whilst it is recognised that the sample may not be comparable to the broader population, the inclusion of these factors allowed for consideration of how these personal characteristics may interact with whether or not PNDs were paid.

interviews were conducted, of which 9 were recruited via the survey and two of which were conducted with people known to myself who had received a PND<sup>162</sup>. Interviews yield “rich insights into people’s experiences, opinions, aspirations, attitudes and feelings” (May 1997, p.109). Semi-structured interviews were undertaken so as to unpick the issues raised by the survey, allowing the interviewee to discuss and define the issues in their own terms (Denscombe 2003). Whilst the interview schedule defined 18 broad questions to be discussed (see Chapter 4 Appendix 3), in practice this was a fluid process. As recommended by Gray (2004) questions were not always asked in order and additional questions were asked in response to the interviewees’ accounts. The majority of interviews were conducted over the phone. The reasons for this were largely due to expediency, however it must be noted that telephone interviews do not allow the researcher to observe the interviewees’ body language and as such “important nuances may be lost” (Fielding and Thomas 2008, p.258). Three interviews (including the two pilot interviews) were conducted face to face. All interviews were recorded and transcribed and analysed using the Computer-Assisted Qualitative Data Analysis software NVivo. In coding the data, broad categories were developed *a priori* based on the quantitative data. However, this was not an entirely deductive process, codes also emerged from the data and further statistical tests were performed on the survey data based on the findings from the interviews.

## **4.5 Ethics**

There is considerable agreement between research ethics frameworks as to the key principles of ethical research, (Denscombe 2003); *privacy, informed consent, protection from harm and avoidance of deception* (Bryman 2008). Each of these issues, and their relevance to the various methods adopted in the current study are discussed below. However, firstly it should be noted that prior to conducting the empirical research I obtained ethics approval from the University of Sheffield School of Law Ethics Committee.

### **4.5.1 Informed consent/avoidance of deception**

Participants must have adequate information regarding the purpose of the project, benefits, risks, timescale, sponsors etc to decide whether they wish to be involved. This was relatively easy to achieve with regards to the recipient questionnaire and the practitioner and recipient interviews. The first page of the questionnaire (both the on-line and paper versions) was headed with a clear statement about the research. This included not only information as to the

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<sup>162</sup> These latter two interviewees also piloted the survey. These interviews served as pilot studies.

purpose of the study but also provided contact details for myself and my supervisor<sup>163</sup>. Interviewees (both practitioners and PND recipients) who participated in face-to-face interviews were provided with an information sheet before the interview began. All participants were given the opportunity to ask any questions they might have about the research before deciding whether to take part. Those persons who were interviewed in person were asked to sign a consent form which was stored in a locked filing cabinet (alongside recordings/interview transcripts (see Section 4.5.2)). PND recipient interviews were all recorded, interviewees were asked in advance whether they were happy for me to record the interview and it was explained that the recording would be deleted once transcribed and that their responses would be anonymised. The information sheet, consent form and 'interview script' highlighted that participation was voluntary and that participants were free to withdraw at any time.

The observations raised some specific challenges to gaining informed consent. Whilst it was important that the public were aware of my status as a non-police researcher it would have been impractical to issue consent forms and it would also hinder the police process were I to seek verbal consent from all members of the public observed. In the event, during observations I was required by the force to wear a high-visibility overcoat emblazoned with the word 'observer'<sup>164</sup>. When members of the public did ask who I was/what I was doing I explained that I was a university student doing research on policing. Consent also needed to be sought from the officers I was observing. Whilst formal (and informed) consent (and access) was sought from senior officers at the research site, I also sought informal, but informed, consent from individual officers ensuring that I explained the project and the fact that the results would be anonymous. Access was provided to each observation session by gatekeepers and as such individual officers had little say in whether or not they wished to participate in the research. With this in mind, as discussed above, where officers seemed reluctant to talk to me/share information I was careful not to try and push them into taking part.

Given its relationship with informed consent it seems prudent to address the avoidance of deception here. Whilst on the one hand it seems that if I gained informed consent then I did

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<sup>163</sup> Recipients were not however offered the opportunity to consent to being contacted in the first place. Indeed, this led to a small number of complaints from survey respondents. These complaints were managed in the first instance by myself and my Lead Supervisor. Complainants were then directed to the SPOC at the police force. After explanations, no respondent remained aggrieved.

<sup>164</sup> Indeed, as might be assumed from the description given above, my appearance in this jacket ensured there was little risk of anyone mistaking me for a police officer. This was neatly summed up by one member of the public I overheard during the observations: "as we were running I overheard someone say to their friend, 'look it's the police', and then as I went by, 'and a little observer'" (Field Notes, Page 79).

not deceive the participants, in practice the lines are a little more blurred. Survey respondents and interviewees were clearly informed of the nature of the research, the same may not be said of people observed. Although I would describe the research as overt, I informed all officers of the fact I was a PhD student interested in the use of PNDs and my bright yellow observer jacket made it quite clear to officers that I was there to observe, in reality overt and covert research exist on “a moral continuum, where the boundaries can become blurred in the doing” (Calvey 2008, p.908). Thus, whilst I explained the research to officers I tended to emphasise my interest in people’s reactions to receiving PNDs rather than officers’ decisions to issue them. If that was a little deceptive, I would not go so far as to say it was unethical; I never lied about the research. Officers knew why I was there, I just didn’t keep reminding them.

#### **4.5.2 Privacy**

The right to privacy is central to research ethics frameworks yet in practice getting participants to ‘open-up’ is central to quality research and the furtherance of knowledge (Homan 1992). However, participants’ privacy can be protected though ensuring the confidentiality of data collected and by protecting participants’ anonymity. Both individual participants and the force reviewed have been anonymised in the current report. Furthermore, data protection measures were put in place to ensure the confidentiality of all personal data collected. Tapes were deleted once transcribed and transcriptions were anonymised. Word/Excel files were password protected and all electronic data were stored on a data-stick. This data-stick (and a back-up) as well as all paper records and interview tapes were stored in a locked filing cabinet when not in my personal possession.

#### **4.5.3 Protection from harm**

There were two distinct issues regarding potential harm to participants. The first regards potential harm to officers (with regard to disciplinary procedures etc.) based on the findings. To avoid this, all data were anonymised<sup>165</sup>. The second was potential harm to the public. I noted above that I was worried officers would limit their use of PNDs if I was observing. In practice however, I became more concerned that officers might increase their use of PNDs in an attempt to facilitate my research. Officers often asked how many PNDs I had seen being issued before assuring me that they would ‘get me some tickets’. Indeed this ‘helpfulness’ is clearly highlighted by the following extract from my field notes which details how an inspector introduced me to the team:

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<sup>165</sup> Having said this, it is doubtful whether even those PNDs observed/reviewed in the ticket analysis which were issued outside the parameters of the guidance would result in disciplinary action.

[He said] I was looking at penalty notices so to try and get me some ... “obviously don’t start issuing them unlawfully, but if you’re dealing with something that you think ‘this could be a penalty notice’ then maybe think about issuing one” .... I was concerned that people would feel they had to give out the notice so joked it was fine if they didn’t use any as it meant I didn’t have to stay up and write about it so it was less work, and once I got in the van said how I didn’t always see them and that you know you won’t always see them but you can’t tell at the beginning of the night whether or not you’ll see them so you have to go out anyway (Field Notes, Page 69-70)<sup>166</sup>.

The potential for harm here is that, as a specific result of *my* behaviour (rather than the offenders), officers would arrest/issue a PND to a person who might otherwise have been dealt with informally/ignored. Thus, throughout the observations I was careful not to direct officers’ attention towards incidents which they appeared to have either not seen or appeared to have chosen not to take any action. However in one case officers appeared not to have noticed a young woman (who was relatively concealed from the road) lying on the pathway. When I noticed her I told them to drive back as I thought I had seen someone lying on the floor. From their reaction it appeared that they had not seen her, rather than that they had chosen (prior to my intervention) to ignore her. In telling the officers to intervene I was guiding their actions which, depending on how the situation unfolded, could have led to a PND or other criminal sanction. Ultimately however the vulnerability of the person in question outweighs any such concerns. I say ‘outweighs’ rather than ‘outweighed’ as at the time there was no such ‘ethical balancing act’, I simply saw a person on the floor and suggested officers intervene out of concern. It had not occurred to me that she might be arrested. However, given that it was 0°C and the woman was alone, semi-conscious and covered in her own vomit, had she been arrested I would rather have that than her hypothermia/assault/robbery on my conscience. Ultimately, when making decisions about ethics in the field, it is the researcher that has to make the decisions and live with the consequences (Holdaway 1983). In that instance, suggesting the officers intervene *was* protecting the woman from harm.

#### **4.6 The thesis structure**

The following two Chapters (5 and 6) address research question 1. Chapter 5 addresses aims 1a and 1c. Drawing exclusively on the quantitative data, Chapter 5 outlines the ‘Offences, Offenders and Outcomes’. Chapter 6 addresses aim 1b, introducing the qualitative data to present a more nuanced account of the use of PNDs which considers the social circumstances of penalty offences. Chapter 7 addresses research question 2 presenting recipients’

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<sup>166</sup> This was my standard response to any suggestion that officers should/would give out PNDs because I was there, to laugh and say that I knew I would not always get to see PNDs and that was fine, but that I had to go out anyway as I did not know which nights they might be used. Fortunately on that shift no PNDs were issued.

perceptions of the PND system. Finally, in Chapter 8, the findings from the Chapters 5-7 are drawn together and considered in light of the thematic framework set out in Chapter 2 to consider the impact of PNDs.

## **CHAPTER 5: OFFENCES, OFFENDERS AND OUTCOMES**

### **5.1 Introduction**

This chapter examines those sections of the penalty notice ticket which provide details of the offence and the offender (parts 1-6a, see Chapter 4 Appendix 1)<sup>167</sup>. These sections of the ticket offer little space for description and as such what follows is a largely quantitative assessment of the circumstances of penalty offences. The type of offences PNDs were issued for, the people whom they were issued to, as well as the situational circumstances of penalty offences, (that is, when and where offences occurred and where tickets were issued) is discussed. This chapter also considers the outcome of PND cases (whether tickets were paid/challenged), as well as the factors which influenced whether or not PNDs were paid. Such analysis is vital if we are to understand whether (and how) PNDs achieve their managerialist aims. Where available, comparison is drawn to national and force-level data thereby providing a more in-depth account of the use of PNDs. In order to enforce penalty notices it is essential that PND recipients are identifiable. As such, this chapter also considers whether (and what) ID checks were performed on PND recipients, as well as examining the type of evidence gathered. Such evidence is necessary to pursue a prosecution where the recipient requests a court hearing, as well as providing a record of the event which may be used to hold officers to account.

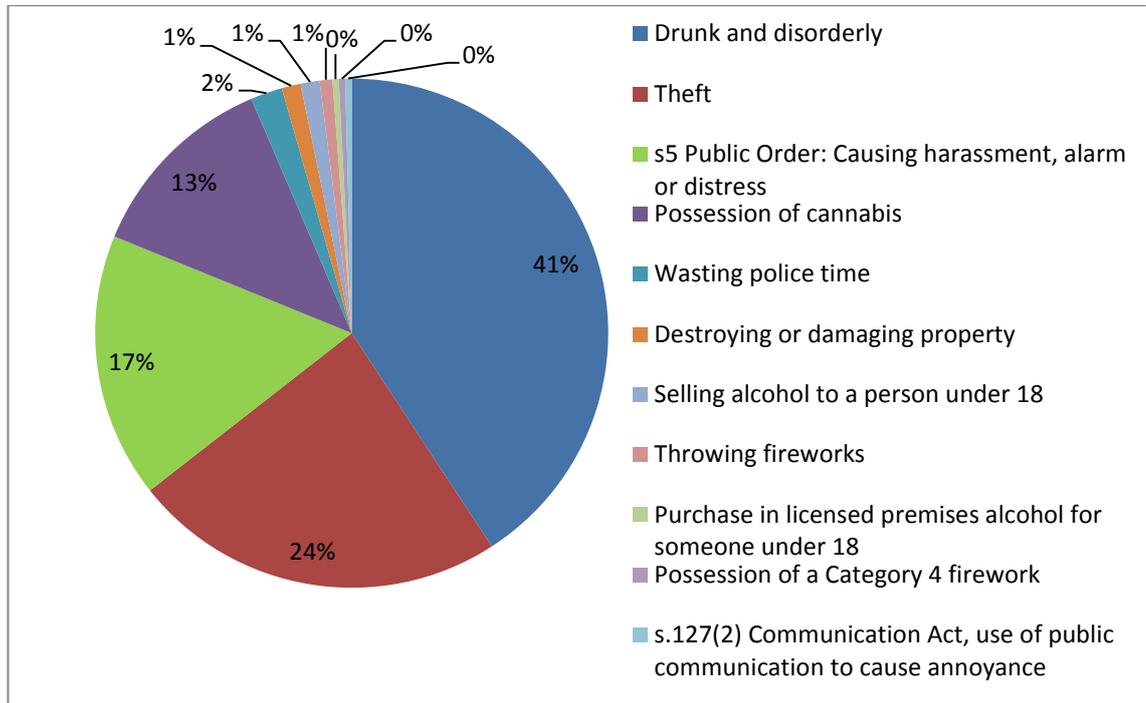
Whilst there are twenty-nine penalty offences, in practice the use of PNDs has always been concentrated on a small number of higher-tier offences (Ministry of Justice 2013c, Table Q2.1). This skewed use of penalty notices was reflected in the tickets sampled in the current study, the majority of which were for: drunk and disorderly (41%), retail theft (24%), behaviour likely to cause harassment, alarm or distress (s5 of the Public Order Act 1986, s5 hereafter) (17%) and possession of cannabis (12%) (N=250). The remaining 6% of tickets sampled were issued for (in descending order of use): wasting police time; selling alcohol to a person under 18; destroying or damaging property; throwing fireworks; purchase, in licensed premises, alcohol for someone under 18; possession of a Category 4 firework; and use of a public communications network to cause annoyance, inconvenience or needless anxiety (see Figure 5.1). The sample was therefore broadly reflective of the use of tickets in the force area in 2010 (see Table 5.1)

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<sup>167</sup> Qualitative data from the main ticket analysis are referred to by the (assigned) case number which refers to the order in which tickets were reviewed i.e. 'Ticket Analysis Case *n*' (1-250). Those tickets included in the booster sample (which focused on the tickets which were challenged) are similarly numbered 'Ticket Analysis Booster Sample Case *n*' (1-11). Throughout this chapter 'N' indicates the size of the sample included in any given analyses, whereas '*n*' refers to the subset of the sample in question.

## 5.2 What offences were PND's issued for?

**Figure 5.1: Which offences were PND's included in the ticket analysis issued for?**



When analysing only the four main offences<sup>168</sup> there was no significant difference between the relative proportion of tickets sampled and their use in the force area in 2010. This was despite an overrepresentation of drunk and disorderly and possession of cannabis tickets in the sample, as compared to the force area: 41% of the tickets sampled were for drunk and disorderly and 12% for possession of cannabis (N=250), compared to 35% and 9% respectively of all tickets issued in the force area in 2010 (N=5,734). Criminal damage cases were slightly underrepresented. For all other offences, the proportion of sampled tickets is within 2% of the proportion of tickets issued for that offence in the force area in 2010 (see Table 5.1).

Whilst the sample was representative of the force's use of PND's, there was a statistically significant difference between the proportionate use of tickets for different offences in the force area as compared to their use nationally ( $\chi^2=289.34$ , d.f=4.  $p<0.001$ ). This appeared to be largely influenced by a difference in the use of drunk and disorderly and s5 tickets (see Table 5.1). However, even when those offence groups were combined there remained a significant difference between the use of PND's in the force area and the national use of PND's ( $\chi=25.02$ , d.f=3.  $p<0.001$ ). The force area issued a slightly lower proportion of theft tickets

<sup>168</sup> The four main offences, in the sample, the force area and nationally were: s5, drunk and disorderly, retail theft and possession of cannabis.

**Table 5.1<sup>169</sup>: What were the PNDs included in the ticket analysis issued for as compared to those issued in force area and in England and Wales in 2010**

Area Offence	Ticket Analysis	Number (%) Force Area	England and Wales
Drunk and disorderly	102 (41%)	2,034 (35%)	37,119 (26%)
Theft	59 (24%)	1,512 (26%)	40,170 (29%)
Causing harassment, alarm or distress (s5)	42 (17%)	946 (16%)	32,317 (23%)
Possession of cannabis	31 (12%)	505 (9%)	13,916 (10%)
Wasting police time	5 (2%)	156 (3%)	2,852 (2%)
Destroying or damaging property	3 (1%)	217 (4%)	6,253 (4%)
Selling alcohol to a person under 18	3 (1%)	174 (3%)	2,098 (1%)
Throwing Fireworks	2 (1%)	21 (0%)	340 (0%)
Purchase in a licensed premises alcohol for someone under 18	1 (0%)	4 (0%)	33 (0%)
Possession of a Category 4 firework	1 (0%)	2 (0%)	61 (0%)
s.127(2) Communication Act, use of public communication to cause annoyance	1 (0%)	24 (0%)	696 (0%)
Other Offences (Force/England and Wales Only)	- -	139 (2%)	4,914 (3%)
<b>Total</b>	<b>250 (100%)</b>	<b>5,734 (100%)</b>	<b>140,769 (100%)</b>

than those issued nationally (26% vs. 29%) and slightly more for selling alcohol to a person aged under 18 (3% vs. 1%) (see Table 5.1). Whilst only representing a small percentage of the force's overall use of PNDs, their proportionately greater use of selling alcohol to an underage person PNDs as compared to other forces is still notable. Hadfield *et al.* (2009) found that the officers in their research were reluctant to resort to coercive powers (such as issuing PNDs) to enforce licensing laws. Within the ticket analysis, the PNDs issued for this offence were

<sup>169</sup> It should be noted that in this, and other tables presented herein, percentages may not add up to 100% due to rounding.

seemingly all part of planned test-purchasing operations<sup>170</sup>. As such, the greater use of these tickets in the force area reviewed may reflect that force's use of such operations over and above other forces. Indeed they undertook 1,252 test-purchases in 2010 (Force Area 2011<sup>171</sup>).

Whilst there were some differences between both the overall and proportionate use of PNDs for different offences between different forces, this analysis provides the first in-depth insight into the circumstances in which PNDs are issued. Thus whilst the sample may only be directly comparable to the use of PNDs in the force from which it was drawn, it may also be indicative of practice in other police forces. Indeed, the majority of tickets in the sample, the force area and nationally were issued for the same four offences: drunk and disorderly, theft, s5 and possession of cannabis. The differences in the offender profile for these offences are therefore considered below.

### **5.3 Who were PNDs issued to?**

#### **5.3.1 Age**

National data on the use of PNDs only distinguish between the proportion of PND recipients aged 16-17 and those aged 18 or over. Penalty notice tickets do however record the recipient's date of birth. The ticket analysis therefore provided a valuable insight into the age profile of penalty notice recipients. The majority of PND recipients were young. Over half of all PNDs were issued to persons aged 25 or under, with 34% being issued to persons aged 18-21 (N=250) (see Table 5.2). Whilst in general there was no significant relationship between age and offence, there was a significant difference between the age of theft PND recipients and the recipients of all other notices, (U=4481.000, p=0.018 (two-tailed)). The mean age of s5, drunk and disorderly, and possession of cannabis PND recipients was 26 (the median was slightly lower, 22 for s5 and drunk and disorderly and 23 for possession of cannabis PND recipients), but for theft offences the mean age was 31 (median 27).

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<sup>170</sup> Test purchase operations involve the police employing young people, aged 15-16, to visit licensed premises including bars, public houses and off-licences to attempt to purchase alcohol. A premise fails if they serve the underage customer.

<sup>171</sup> A full reference is omitted here to protect the identity of the force area reviewed.

Age Group Offence	16-17	18-21	22-25	26-30	31-40	41-50	51+	Total
All Offences	<b>20</b> <b>(8%)</b>	<b>85</b> <b>(34%)</b>	<b>39</b> <b>(15%)</b>	<b>35</b> <b>(14%)</b>	<b>37</b> <b>(15%)</b>	<b>21</b> <b>(8%)</b>	<b>13</b> <b>(5%)</b>	<b>250</b> <b>(100%)</b>
Drunk and Disorderly	8 (8%)	41 (40%)	13 (13%)	14 (14%)	14 (14%)	11 (11%)	1 (1%)	102 (100%)
Retail Theft	5 (9%)	12 (20%)	8 (14%)	11 (19%)	9 (15%)	7 (12%)	7 (12%)	59 (100%)
s5 Public Order	4 (10%)	15 (36%)	9 (21%)	4 (10%)	7 (17%)	1 (2%)	2 (5%)	42 (100%)
Possession of Cannabis	1 (3%)	11 (36%)	7 (23%)	6 (19%)	5 (16%)	0 (0%)	1 (3%)	31 (100%)
Other Offences	2 (13%)	6 (38%)	2 (13%)	0 (0%)	2 (13%)	2 (13%)	2 (13%)	16 (100%)

N=250

This disproportionate use of PNDs against younger people is evidenced when the use of PNDs is considered against the population data for the force area (see Table 5.3). Whilst 56% of PNDs were issued to persons aged 24 or under (N=250), only 17% of the area population fell within that category. The difference was most marked when examining the 18-21 age group, which despite forming only 7% of the area population comprised 34% of PND recipients (and 40% of the drunk and disorderly recipient sample) (N=250). Whilst arguably this may be a reflection of the age profile of the offending population (as opposed to the general population), even when comparing the age of self-reported cannabis users with those PND recipients issued with a cannabis notice, younger people were still overrepresented (see Table 5.4). Again, people aged under 25 were the most overrepresented, 39% of cannabis PND recipients were aged 20-24 (N=31)<sup>172</sup>, compared to 21% of the self-reported user population.

<sup>172</sup> These findings should however be treated with caution as they are based on a small sample of cannabis PND recipients.

	Percentage of 16-74 year olds in area population	Percentage of Ticket Analysis Sample
16-17	3%	8%
18-19	4%	20%
20-24	11%	28%
25-29	9%	14%
30-44	27%	22%
45-59	26%	7%
60+	20%	1%
Total % (N)	100% (990,245)	100% (250)

Source: Adapted from, Office for National Statistics (2012b)<sup>173</sup>

	Percentage of possession of cannabis recipient sample	Percentage of self-reported cannabis users in England and Wales in 2010
16-19	23%	19%
20-24	39%	21%
25-29	19%	18%
30-34	3%	12%
35-44	13%	17%
45-54	3%	9%
55-59	0%	3%
Total (N)	100% (31)	100% (1,534)

Source: Adapted from, Smith and Flatley (2011)<sup>174</sup>

### 5.3.2 Gender

In 2010 men received three quarters of all PNDs issued nationally, however the gendered distribution of PNDs varied according to offence. Men received 95% of all possession of cannabis tickets and 86% and 83% respectively of all s5 and drunk and disorderly tickets (see Table 5.5). Women however received almost half of all theft tickets (49%) issued in England and Wales. Whilst the force area (and sample) were broadly reflective of the gendered use of tickets seen nationally, a larger proportion of theft tickets were issued to women in the force area as compared to the national distribution of tickets for this offence ( $\chi^2=14.032$ , d.f.=1,  $p<0.001$ )<sup>175</sup>. Men were significantly overrepresented<sup>175</sup> in the ticket sample as compared to their proportion in the area population ( $\chi^2=51.114$ , d.f.=1,  $p<0.001$ ). However, this would be

<sup>173</sup> As licensed under the Open Government Licence, population data was adapted from the Office for National Statistics (2012b) *2011 Census: Age structure, local authorities in England and Wales Table KS102EW*, London: Office for National Statistics, [Online], Available From: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcms%3A77-286262> [Accessed at: 20<sup>th</sup> July 2013].

<sup>174</sup> As licensed under the Open Government Licence, self-reported cannabis user population data was adapted from Smith and Flatley (2011) *Drug Misuse Declared: Findings from the 2010/11 British Crime Survey, Table 2.9*, London: Home Office

<sup>175</sup> Drunk and disorderly, s5, retail theft and possession of cannabis.

expected based on the gendered differences in the (known) offender population (Walklate 2004). When we compare the gendered use of PNDs to other forms of punishment we see that nationally there was a statistically significant difference between the proportionate use of PNDs against men and women and the number of men and women proceeded against in the magistrates' court for comparable offences<sup>176</sup> ( $\chi^2=375.583$ , d.f=1,  $p<0.001$ )<sup>177</sup>. Nationally, the proportion of women dealt with via PND in 2010 was slightly higher than the proportion of women proceeded against in the magistrates' court (25% vs. 22%) (Ministry of Justice 2011b, Table Q2a; Ministry of Justice 2011c, Table Q3a). This suggests that women may be more likely than expected (by their proportion in the offender population) to be dealt with by PND. This issue will be considered in more detail in Section 6.5.5.

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<sup>176</sup> Theft from shops, possession of a class B drug, offences against public order, simple drunkenness and disorderly behaviour.

<sup>177</sup> Whilst there was a significant relationship when comparing the national use of PNDs and the number of men and women proceeded against nationally in the magistrates' court, this relationship was not supported by the ticket sample.

**Table 5.5: What was the gender of the PND recipients included in the ticket analysis as compared to all tickets issued in the force area, and nationally in 2010?**

	Male			Female			Total		
	Ticket Analysis	All tickets issued by the force in 2010	All tickets issued in England and Wales in 2010	Ticket Analysis	All tickets issued by the force in 2010	All tickets issued in England and Wales in 2010	Ticket Analysis	All tickets issued by the force in 2010	All tickets issued in England and Wales in 2010
All Offences Total	<b>180</b> <b>(72%)</b>	<b>4240</b> <b>(74%)</b>	<b>106,219</b> <b>(75%)</b>	<b>70</b> <b>(28%)</b>	<b>1494</b> <b>(26%)</b>	<b>34,550</b> <b>(25%)</b>	<b>250</b> <b>(100%)</b>	<b>5,734</b> <b>(100%)</b>	<b>140,769</b> <b>(100%)</b>
Drunk and Disorderly	80 (78%)	1,710 (84%)	30,808 (83%)	22 (22%)	324 (16%)	6,311 (17%)	102 (100%)	2,034 (100%)	37,119 (100%)
Retail Theft	23 (39%)	706 (47%)	20,680 (51%)	36 (61%)	806 (53%)	19,490 (49%)	59 (100%)	1,512 (100%)	40,170 (100%)
S5 Public Order	36 (86%)	812 (86%)	27,890 (86%)	6 (14%)	134 (14%)	4,427 (14%)	42 (100%)	946 (100%)	32,317 (100%)
Possession of Cannabis	28 (90%)	478 (95%)	13,239 (95%)	3 (10%)	27 (5%)	677 (5%)	31 (100%)	505 (100%)	13,916 (100%)
Other Offences	13 (81%)	534 (72%)	13,602 (79%)	3 (19%)	203 (28%)	3,645 (21%)	16 (100%)	737 (100%)	17,247 (100%)

Source: Ministry of Justice (2011b)

### 5.3.3 Ethnicity

As noted in Section 3.4.2, despite clear directions that officers must record PND recipients' self-defined ethnicity "in all cases" (*emphasis in original*, Home Office 2005a, p.30), ethnicity was not recorded on 15% of all tickets issued nationally in 2010 (Ministry of Justice 2011b, Table Q2.2)<sup>178</sup>. The proportion of tickets where the ethnicity of the recipient was not recorded was even higher in the ticket sample (24%, N=250) and higher still in the force area (34%) (Ministry of Justice 2013a, Table 2). There is uncertainty as to whether officers may be more or less likely to record offenders' ethnicity when they are dealing with ethnic minorities. Fitzgerald and Sibbitt (1997) found that officers were more likely to record ethnicity when stopping and searching ethnic minorities as they were more conscious of the need to be seen to follow procedures. Conversely, some officers in their study, who were "wary of having the finger of discrimination pointed at them", reported that they were less likely to record searches which were performed on ethnic minorities (Fitzgerald and Sibbitt 1997, p.63). Similarly, Sanders *et al.* (2010, p.102) argue that "oppressive or unnecessary" searches may be less likely to be recorded; officers are less likely to fear any 'come back' when they exercise their powers against 'police property' and as such are less likely to feel the need to 'cover their back' by recording the encounter (in rule-conforming terms). Thus whilst we will turn to consider the available data on the ethnicity of PND recipients, these data should be treated with caution as it is unknown whether there are any systematic differences between those cases where ethnicity is, or is not, recorded.

Based on the available data, the majority of PND recipients – in the ticket sample (89%, N=179), force area (90%) and nationally (86%) – were white and the proportion of tickets issued to people of different ethnic origins was broadly reflective of the population (see Tables 5.6 and 5.7)<sup>179</sup>. However, a comparison of the rates at which people from different ethnic backgrounds were issued with PNDs suggests a disproportionate use of this power<sup>180</sup>. Whilst overall in 2010, in those cases where the ethnicity of the recipient was known, approximately 3.09 PNDs were

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<sup>178</sup> It should be noted that 2010 saw the greatest number of PNDs where the ethnicity of the recipient was recorded, the proportion without this information reported rose to 19% in 2012 (Ministry of Justice 2013c, Table Q2c).

<sup>179</sup> At the national level Asian and black people were slightly underrepresented in the PND recipient population, whereas people whose ethnic origin was described as 'other' were overrepresented. Asian and black people received 6% and 2% of all PNDs issued in 2010 respectively, whereas 7% and 4% of the national population fell within these ethnic groups. Those whose ethnic origin was described as 'other' received 5% of all PNDs whilst forming 2% of the population.

<sup>180</sup> Rates were calculated from the number of PNDs issued in 2010 divided by the resident population (aged 16+) in that ethnic group according to the 2011 census data.

issued per 1,000 people, the rate for people of 'other'<sup>181</sup> ethnic backgrounds was 6.41. The rate for white<sup>182</sup> people was 2.59 per 1,000 and for Asian<sup>183</sup> people 2.51 per 1,000. Black<sup>184</sup> people were the least likely to be issued with a PND, receiving 1.51 tickets per 1,000 people. Thus whilst the Equality and Human Rights Commission (2010; 2012) have focused on the disparity between black and Asian persons' likelihood of being stopped and searched as compared to white persons, these data suggest that, with regard to PNDs, it was people of other ethnic backgrounds who were most likely to be (disproportionately) subjected to this police power.

There were also some notable regional differences in the use of PNDs which could not be explained by differences in area population. Table 5.6 outlines the ethnicity of PND recipients included in the ticket sample and shows that Asian people were overrepresented (as compared to the area population) whereas white people were underrepresented.

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<sup>181</sup> 'Other' includes: Arab; Chinese; other mixed background; and 'other ethnic group'.

<sup>182</sup> White includes: white British; white Irish; white Gypsy or Irish traveller; and 'other white'.

<sup>183</sup> Asian includes: Indian; Pakistani; Bangladeshi; Asian and white; and 'other Asian'.

<sup>184</sup> Black includes: black Caribbean; black African; black Caribbean and white; black African and white; and 'other black'.

<b>Table 5.6: What was the ethnicity of PND recipients in the ticket sample as compared to the force area population?</b>							
	% in Area Population	% of Ticket Analysis Sample	% All Drunk and Disorderly PND Recipients in 2010	% All Theft PND Recipients in 2010	% All s5 PND Recipients in 2010	% All Possession of Cannabis PND Recipients in 2010	%All Other PND Recipients in 2010
White	<b>91%</b>	<b>89%</b>	96%	81%	89%	100%	69%
Black/Black British	<b>3%</b>	<b>3%</b>	3%	6%	4%	0%	0%
Asian/Asian British	<b>4%</b>	<b>6%</b>	0%	9%	7%	0%	31%
Other	<b>2%</b>	<b>2%</b>	2%	4%	0%	0%	0%
Total (N)	100% (1,343,601)	100% (179)	100% (68)	100% (47)	100% (28)	100% (23)	100% (13)

Source: Area population data: Adapted from, Office for National Statistics (2012a)<sup>185</sup>

<b>Table 5.7: What was the ethnicity of all PND recipients in England and Wales as compared to their proportion in the national population?</b>							
	% National Population	% All PND Recipients in 2010	% All Drunk and Disorderly PND Recipients in 2010	% All Theft PND Recipients in 2010	% All s5 PND Recipients in 2010	% All Possession of Cannabis PND Recipients in 2010	%All Other PND Recipients in 2010
White	<b>86%</b>	<b>86%</b>	95%	86%	85%	71%	85%
Black/Black British	<b>4%</b>	<b>2%</b>	1%	3%	2%	3%	2%
Asian/Asian British	<b>7%</b>	<b>6%</b>	2%	7%	8%	14%	5%
Other	<b>2%</b>	<b>5%</b>	2%	5%	5%	11%	7%
Total (N)	<b>100%</b> <b>(56,075,912)</b>	<b>100%</b> <b>(119,617)</b>	100% (31,688)	100% (34,411)	100% (27,008)	100% (11,887)	100% (14,623)

Source: PND Recipient Data: Ministry of Justice (2011b, Table Q2.2). Source Population Data: Adapted from, Office for National Statistics (2012a)<sup>173</sup>

<sup>185</sup> Population data was adapted from data from the Office for National Statistics licensed under the Open Government Licence, Office for National Statistics (2012a) *2011 Census: Ethnic group, local authorities in England and Wales Table KS201EW*, London: Office for National Statistics, [Online], Available From: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcM%3A77-286262> [Accessed at: 20<sup>th</sup> July 2013]

Table 5.6 reports the proportionate use of PNDs against people of different ethnic backgrounds in the ticket sample as compared to the area population for different offences. Data provided by the Ministry of Justice (2013, Table 2) describes the overall use of PNDs against people of different ethnic backgrounds for all forces. Whilst most forces issued PNDs in a manner that was proportionate across the area population (i.e. the area population and the PND recipient population were within 2% of one another), there were some notable exceptions. Thus for example, according to the 2011 census 60% of the population in London were white, 16% were black, 18% were Asian and 6% were from other ethnic backgrounds. However, if we compare these figures to the 2010 PND data for the Metropolitan Police Service we find that whilst people from white or black ethnic backgrounds were underrepresented (receiving 53% and 6% of PNDs respectively), Asian and 'other' persons were overrepresented (receiving 24% and 17% of all PNDs issued that year)<sup>186</sup>. People from 'other' ethnic backgrounds were also overrepresented in the 2010 PND recipient population in the West Midlands, Thames Valley, West Yorkshire and Greater Manchester. Notably these forces were all criticised by the Equality and Human Rights Commission (2010) for carrying out excessive stop and searches on Asian and black people.

Further concerns regarding the potential for PNDs to be issued disproportionately against people from different ethnic backgrounds are raised when we examine the use of PNDs for different offences. White persons were generally underrepresented as compared to both the national and force population for all offences except drunk and disorderly (see Table 5.6 and Table 5.7). This was particularly so for possession of cannabis cases. In 2010 only 71% of possession of cannabis PNDs were issued to white people (compared to 86% of the population). Asian people and those whose ethnic origin was defined as 'other', whilst only forming 7% and 4% of the national population, received 14% and 11% respectively of all cannabis PNDs issued in 2010 (see Table 5.7). Tickets for s5 were also disproportionately issued to Asian and 'other' persons (although to a lesser extent than with cannabis tickets) (see Table 5.7). White people were however far more likely to receive drunk and disorderly PNDs. Indeed, 96% of all tickets sampled, and 95% of all PNDs issued in 2010, were issued to white people (see Tables 5.6 and 5.7).

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<sup>186</sup> These data were adapted from Office for National Statistics (2012a) and data received from the Ministry of Justice (2013a, Table 2). The census data do not report population data according to police force areas, as such it must be recognised that the force-level population data given here are indicative only and must therefore be treated with caution.

Although overall black people were underrepresented in the PND recipient population this was not the case for lower tier offences; in those cases 5% of tickets were issued to black people (compared to 4% of the population) (see Chapter 5 Appendix 1, Table A5.1). Thus, with the exception of drunk and disorderly tickets, PNDs were disproportionately issued to Asian and ‘other’ people and, in the case of lower tier offences, black people<sup>187</sup>. These data are comparable to figures on the use of stop and search powers which show that, since the terrorist attacks in the US in 2001 and London in 2005, increasingly Asian persons have been subject to police attention (Sanders *et al.* 2010). However, those data also find that black people are overrepresented in the stop and search data which, for the vast majority of penalty offences, appears contrary to the use of PNDs. These data highlight important nuances in the use of PNDs, both by offence and region, which suggest the need for further research to examine the potential for this power to be used disproportionately.

#### 5.3.4 Employment status

The recipients’ occupation “*must be completed in all cases*” (*emphasis in original*, Home Office 2005a, p.30). As with ethnicity however, despite this clear guidance, the recipient’s occupation was omitted on 22% of tickets sampled (N=250). However, these data, whilst partial, do provide the first insight into the occupation of PND recipients<sup>188</sup>. Whilst we cannot compare the ticket sample directly to the broader PND recipient population, it is possible to compare levels of employment within the sample with those in the force area population (see Table 5.8). Indeed, such analysis indicated that there was a significant difference in rates of unemployment amongst PND recipients – 51% of whom were unemployed (N=196) – as compared to the area population (17%) ( $\chi^2= 118.363$ , d.f=1,  $p<0.001$ )<sup>189</sup>. Students were also overrepresented (for all offences except possession of cannabis) in the PND recipient sample as compared to their proportion in the area population (see Table 5.8). Retired persons were underrepresented comprising only 1% of the sample (N=196), compared to 15% of the resident population. This is a reflection of the age profile of PND recipients (and indeed the offender population).

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<sup>187</sup> It should however be noted that tickets for lower tier offences are issued far less frequently than notices for higher tier offences. Thus in 2010, only 3% of all PNDs were issued for lower tier offences, of which, 161 (5% of cases where recipient ethnicity was known) were issued to black/black British people. However, 720 lower-tier tickets (17%) did not record the ethnicity of the recipient (Ministry of Justice 2011b, Table Q2.2).

<sup>188</sup> The employment status of PND recipients is not reported in the national PND data, nor has this issue been considered by the existing penalty notice research (Ministry of Justice, 2013c; Ministry of Justice 2013d; OCJR 2010; Kraina and Carroll 2006; Coates *et al.* 2009; Spicer and Kilsby 2004; Halligan-Davis and Spicer 2004).

<sup>189</sup> These findings only include people classed as either employed or unemployed (N=170), students and retirees are thus excluded.

<b>Table 5.8: How did the employment status of PND recipients compare to employment rates in the area population?</b>							
	Area population <sup>190</sup>	Total Ticket Analysis sample	Drunk and Disorderly recipient sample	Retail Theft recipient sample	S5 Public Order recipient sample	Possession of Cannabis recipient sample	Other Offences recipient sample
Unemployed <sup>191</sup>	<b>171,130</b> <b>(17%)</b>	<b>99</b> <b>(51%)</b>	26 (38%)	36 (66%)	17 (52%)	15 (60%)	5 (36%)
Employed <sup>192</sup>	<b>570,563</b> <b>(58%)</b>	<b>71</b> <b>(36%)</b>	34 (49%)	12 (22%)	11 (33%)	9 (36%)	5 (36%)
Student <sup>193</sup>	<b>102,376</b> <b>(10%)</b>	<b>24</b> <b>(12%)</b>	9 (13%)	6 (11%)	4 (12%)	1 (4%)	4 (29%)
Retired <sup>194</sup>	<b>146,176</b> <b>(15%)</b>	<b>2</b> <b>(1%)</b>	0 (0%)	1 (2%)	1 (3%)	0 (0%)	14 (0%)
Total	<b>99,245</b> <b>(100%)</b>	<b>196</b> <b>(100%)</b>	69 (100%)	55 (100%)	33 (100%)	25 (100%)	14 (100%)

Whilst the majority of PND recipients were unemployed, the extent of this overrepresentation varied according to offence (see Table 5.8). Indeed when considering some penalty offences, such as selling alcohol to a minor, the nature of the offence dictates that the recipient must be employed. When excluding those (two) persons who were retired, there was a statistically significant association between offence and employment status ( $\chi^2=12.784$ , d.f.=6,  $p=0.047$ )<sup>195</sup>. Theft and possession of cannabis tickets were significantly more likely to be issued to unemployed persons (66% and 60% respectively) than drunk and disorderly or s5 tickets (38% and 36% respectively) ( $\chi^2=7.887$ , d.f.=1,  $p=0.006$ ). However, whilst it appears, for example, that fewer drunk and disorderly tickets were issued to unemployed persons and that the use of these tickets better reflected employment rates in the area population, employment status was not recorded on 54 of the PNDs sampled. Of these, 33 tickets were issued for drunk and

<sup>190</sup> These data were adapted from Office for National Statistics (2012c) as licensed under the Open Government Licence: Office for National Statistics (2012c) 2011 Census: Economic activity, local authorities in England and Wales Table KS601EW, London: Office for National Statistics, [Online], Available From: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-286262> [Accessed at: 20<sup>th</sup> July 2013]. The census data do not report population data according to police force areas, as such it must be recognised that the force-level population data given here are indicative only and must therefore be treated with caution.

<sup>191</sup> Including economically active (unemployed) and economically inactive (permanently sick/disabled; looking after home/family and 'other') as a proportion of all people 16-74 in the area.

<sup>192</sup> Including employed and self-employed (full/part time) as a proportion of all people 16-74 in the area.

<sup>193</sup> Including economically active and inactive students as a proportion of all people 16-74 in the area.

<sup>194</sup> All those classed as retired as a proportion of all people 16-74 in the area.

<sup>195</sup> This was based on an analysis of the four main offences (drunk and disorderly, s5, theft and possession of cannabis) (N=180).

disorderly. These findings should therefore be treated with caution as we cannot be sure whether there were any systematic differences in those cases where employment status was not recorded.

#### **5.4 Who were PNDs issued by?**

It was noted in Chapter 1 that the power to issue PNDs was extended to PCSOs and accredited persons under the Police Reform Act 2002 (as amended by the Anti-Social Behaviour Act 2003)<sup>196</sup>. However, the powers of these members of the 'police family' are not universal. Whether the power to issue PNDs is designated to PCSOs and/or accredited persons is at the discretion of individual Chief Constables. As such, whether such persons can issue PNDs (and for which offences) varies geographically and may change over time. In the force area reviewed, at the time the empirical research was undertaken, accredited persons were not able to issue PNDs<sup>197</sup>. PCSOs were empowered to issue most PNDs (subject to the restrictions of the Police Reform Act 2002, preventing them from issuing PNDs for theft/littering). However they were not able to issue PNDs for criminal damage, possession of cannabis or some licensing/fireworks offences<sup>198</sup>.

The ticket analysis found that PNDs were overwhelmingly issued by police officers (who issued 96% of all tickets (N=249)) (See Chapter 5 Appendix 1, Table A5.2). PCSOs and Police Community Support Supervisors issued only 4% of the tickets reviewed (n=11). However, worryingly, this included a one theft PND issued by a PCSO which contravenes the Police Reform Act 2002. Such misuse of PNDs was also found at the national level. Data from the Ministry of Justice (2013a, Table 5) suggests that whilst, in 2010, PNDs were overwhelmingly issued by the police (99% of all tickets), a very small number of theft (n=4) and littering (n=2) PNDs were issued by PCSOs (See Chapter 5 Appendix 1, Table A5.2). More worryingly, accredited persons were said to have issued 189 drunk and disorderly tickets and 33 theft PNDs as well as a small number of criminal damage notices (n=3)<sup>199</sup>. The national data also

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<sup>196</sup> Schedule 4 of the Police Reform Act prohibits PCSOs from issuing PNDs for theft or littering offences and Schedule 5 of that same Act prohibits accredited persons from issuing PNDs for: drunk and disorderly; drunk in a highway; theft; criminal damage; and littering.

<sup>197</sup> Subsequently, the power to issue PNDs for the offence of throwing fireworks in a thoroughfare was extended to accredited persons.

<sup>198</sup> At the time of the empirical research PCSOs were prohibited from issuing tickets for the following offences: theft; possession by a person under 18 of an adult firework; breach of fireworks curfew (11pm-7am); leaving/depositing litter; supply of alcohol by or on behalf of a club to a person aged under 18; buying or attempting to buy alcohol on behalf of a person under 18; possession of cannabis; and criminal damage. However, subsequent to the completion of the empirical data collection, PCSOs were designated the power to issue criminal damage PNDs.

<sup>199</sup> It should be noted that these data may underestimate the use of PNDs by PCSOs/accredited persons. According to the Ministry of Justice data no PNDs were issued by PCSOs in the force area reviewed in

highlight huge geographical variation in the use of PNDs by persons other than police officers. According to the Ministry of Justice (2013a, Table 6) the 523 PNDs issued by PCSOs in 2010 were issued by officers working in just seven police force areas and 70% of these tickets were issued in Humberside. Accredited persons issued 289 PNDs in 2010<sup>200</sup>. The use of PNDs by accredited persons was concentrated in four force areas, yet the vast majority (87%) were issued in Cleveland. Whilst PNDs were therefore overwhelmingly issued by police officers, where they were used by PCSOs and accredited persons this was concentrated in a small number of police forces and was seemingly not always in keeping with the statutory limits placed on the use of this power by people other than police officers.

## **5.5 When and where were penalty offences committed, and where were tickets issued?**

The national data on penalty notices only detail the number of notices issued for each offence in different force areas and the overall number of notices issued by different forces each month. As such, the locations and times when individual offences occur are unknown. The ticket analysis and observation data therefore provide an insight into the types of situation in which PNDs were used. The following section will outline the location and times penalty offences were committed and where tickets were issued. A more detailed analysis of the social circumstances surrounding penalty offences, as reported in the evidence provided by officers on PND tickets and viewed during police observations, is provided in Chapter 6.

### **5.4.1 On which day(s) of the week were penalty offences committed, and tickets issued?**

Despite being thought of as ‘on-the-spot fines’, PNDs are not necessarily issued on the same day that the offence in question occurs. Thus for example, whilst 58% of penalty offences were *committed* on Friday-Sunday (N=249), a slightly lower proportion (56%) of tickets were *issued* on these days (N=242) (see Table 5.9). This is a reflection of the fact that a large proportion of recipients spent an over-night period in custody before being issued with a PND. Indeed, 22% of offenders were ‘cautioned’ (i.e. ‘read their rights’) between 3 and 24 hours after the noted

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2010 (Ministry of Justice 2013a, Table 5) however, the current study found that during the two-month review period in 2010, 11 PNDs were issued by PCSOs in that area.

<sup>200</sup> Following freedom of information requests to all police authorities requesting details of their accredited persons scheme, the Manifesto Club (Appleton 2013) found that, of 154 accredited agencies, 34 had been empowered to issue PNDs (however it is unclear whether all police authorities responded to the Manifesto Club’s request and thus whether this includes all such schemes). Of those 34, 19 accredited agencies responded to a request regarding their use of PNDs in the year 2011-12. It was found that 18 PNDs were issued by five organisations. Twelve were issued for selling alcohol to a person aged under 18, six were issued for offences against s5 of the Public Order Act 1986 and one was issued for drinking in a designated area.

offence time (N=166)<sup>201</sup>. Furthermore, a small number of recipients were only identified as the perpetrator of a penalty offence after a period of investigation; 8% of offenders were read their rights days/weeks after the offence occurred (n=11)<sup>202</sup>.

**Table 5.9: When were penalty offences committed and tickets issued?**

Day of the week Offence	Day Offence Committed			Day PND Issued		
	Monday- Thursday	Friday- Sunday	Total	Monday- Thursday	Friday- Sunday	Total
<b>All Offences</b>	<b>105 (42%)</b>	<b>144 (58%)</b>	<b>249 (100%)</b>	<b>107 (44%)</b>	<b>135 (56%)</b>	<b>242 (100%)</b>
Drunk and Disorderly	17 (17%)	84 (83%)	101 (100%)	18 (19%)	79 (81%)	97 (100%)
Retail Theft	40 (68%)	19 (32%)	59 (100%)	41 (71%)	17 (29%)	58 (100%)
s5 Public Order	21 (50%)	21 (50%)	42 (100%)	19 (46%)	22 (54%)	41 (100%)
Possession of Cannabis	18 (58%)	13 (42%)	31 (100%)	19 (63%)	11 (38%)	30 (100%)
Other Offences	9 (56%)	7 (44%)	16 (100%)	10 (63%)	6 (38%)	16 (100%)

N=249 N=242

There was a statistically significant relationship between offence type and both when the offence was committed and when the ticket was issued (day offence committed:  $\chi^2=48.047$  d.f.=4 p<0.001; day ticket issued:  $\chi^2=49.062$ , d.f.=4, p<0.001). The majority (58%) of penalty offences were committed at the weekend (see Table 5.9), with most offences being committed on Saturdays and Sundays (21% each day) (N=249). However, this was largely influenced by the

<sup>201</sup>In the context of PNDs, the reference to ‘cautioning’ offenders refers to the need for officers to inform arrestees of their right to remain silent (rather than the individual receiving a formal police caution) (PACE Code G, 2012). Whilst the time of the offence and the time the individual was cautioned are recorded on PNDs, the exact time tickets are issued is not noted (only the issue date is recorded). However, where individuals were read their rights some time after the offence we can presume that the ticket was also issued around that time. People should be read their rights at the time of their arrest or as soon as is practicable after that time (PACE Code G, 2012). Presumably those people who were informed of their right to remain silent hours/days after their offence/arrest would also have been cautioned at the time of their arrest (although this may not be the case where their behaviour or condition rendered this impracticable at the time). Indeed, whilst there is no formal means to record multiple such ‘cautions’ on the penalty notice form, a review of the evidence found that of the 19 tickets issued in custody, where the caution time was detailed as being an hour or more after the offence time (and for which relevant evidence had been completed i.e. the evidence given related to the events of the original offence rather than just recording discussions at the time of issuing the ticket) all but three commented that the person was cautioned at the time of their arrest.

<sup>202</sup> Of all the tickets issued: 3% of recipients were read their rights 1-3 days after the offence and 5% four or more days after the offence. Of which, three people were cautioned over 25 days after the offence occurred.

commission of drunk and disorderly offences, 83% of which occurred on Friday – Sunday (N=101). Retail theft offences were least likely to be committed at the weekend, 68% being committed on Monday – Thursday (N=59) (See Table 5.9).

### 5.5.2 What time of day were penalty offences committed?

The majority (53%) of penalty offences were committed between 10pm and 9.59am (N=249). However, this was influenced by the relative distribution of tickets for different offences and the nature of those offences (see Table 5.10). Thus, 73% of retail theft offences were committed between 10am and 3.59pm (N=59) (which reflects when the majority of shops are open), whereas drunk and disorderly and s5 tickets were most likely to be committed in the evening or at night. Indeed, 99% of drunk and disorderly offences occurred between 4pm and 10am (N=102), as did 83% of s5 offences (N=41).

Time Offence	10.00pm- 3.59am	4.00am- 9.59am	10.00am- 3.59pm	4.00pm- 9.59pm	Total
<b>All Offences</b>	<b>123</b> <b>(49%)</b>	<b>11</b> <b>(4%)</b>	<b>62</b> <b>(25%)</b>	<b>53</b> <b>(21%)</b>	<b>249</b> <b>(100%)</b>
Drunk and Disorderly	86 (84%)	6 (6%)	1 (1%)	9 (9%)	102 (100%)
Retail Theft	2 (3%)	0 (0%)	43 (73%)	14 (24%)	59 (100%)
s5 Public Order	21 (51%)	1 (2%)	7 (17%)	12 (29%)	41 (100%)
Possession of Cannabis	10 (32%)	3 (10%)	9 (29%)	9 (29%)	31 (100%)
Other Offences	4 (25%)	1 (6%)	2 (13%)	9 (56%)	16 (100%)

N=249

There was a particular concentration of alcohol-related disorder between 12am and 1.59am with 36% of drunk and disorderly offences (n=36) and 32% of s5 offences (n=13) occurring between those times (See Chapter 5 Appendix 1, Table A5.3). There were however some differences between when the two offences were committed: 22% of s5 offences occurred between 7pm and 9.59pm (n=10), compared to only 7% of drunk and disorderly offences. Furthermore, whilst 17% of s5 offences were committed between 10am and 3.59pm (n=7),

only 1% of drunk and disorderly offences were committed during those times (n=1). Cannabis tickets were relatively evenly distributed throughout the day, which may reflect the fact that possession of cannabis offences are often detected when the police use their powers of stop and search during routine patrols (Sanders *et al.* 2010). Indeed, only three cannabis tickets were issued between 4am and 9.59am, of which, in two cases, the cannabis was discovered when responding to a call about a noisy house party and in the third, during a vehicle stop and search.

### 5.5.3 Where were penalty offences committed?

Penalty notice tickets include a section to record the offence location. This information was provided on all the tickets sampled. The 250 tickets sampled were issued for offences occurring in 181 different locations suggesting that, just as there are crime hotspots, there are hotspots for penalty offences and thus the use of PNDs. The 59 retail theft PNDs were issued for offences which occurred in 39 stores of which two stores were victimised four times. There were 70 separate offence locations for the 102 drunk and disorderly PNDs with one location being the site of 10 penalty offences. The force area reviewed covered four districts, in three of which there were clear hotspots for night time disorder, with one street in each of these districts being the site of five or more penalty offences<sup>203</sup>. The 42 s5 offences occurred across 36 separate locations, with one location being the site for four penalty offences. This same area was also a hotspot for drunk and disorderly offences. Cannabis offences were however dispersed across different areas, with every ticket sampled detailing a different offence location<sup>204</sup>.

In the current study the districts have been numbered according to size, district 1 being the largest. As would be expected district 1 had the highest use of PNDs (48% of all tickets sampled were for offences committed in that area (N=244)). However, the lowest use was not found in the district with the smallest population (see Table 5.11). There was a significant difference in the proportionate use of PNDs for different offences across the four districts within the force

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<sup>203</sup> In the district where the observations were conducted, there were a number of 'steady posts' (particular streets/locations) where officers were stationed for long periods on Friday and Saturday nights. It is also likely that there were similar steady posts in the other districts across the force area. The fact that one such steady post was the location of seven penalty offences is thus likely to reflect the socially constructed nature of crime statistics as much as identifying particular 'crime-prone' areas.

<sup>204</sup> It should be noted however that this may in part be a reflection of the sampling method. In selecting every fourth ticket where PNDs were issued to a group of people it is likely that those tickets would be stored together and thus potentially overlooked when selecting every fourth ticket.

area ( $\chi^2=22.033$ , d.f.=9,  $p=0.009$ )<sup>205</sup>. Thus whilst 74% of tickets issued in district 4 were for either s5 or drunk and disorderly (N=47), this compared to 51% of the tickets issued in district 1 (N=118). Thus alongside the geographical variation seen between forces in the use of PNDs, practice within forces also varied (see Section 3.4.1).

<b>Table 5.11: How were PNDs used across the force area?</b>				
Location <sup>206</sup>	District 1	District 2	District 3	District 4
<b>All Offences</b>	<b>118</b> <b>(48%)</b>	<b>53</b> <b>(22%)</b>	<b>26</b> <b>(11%)</b>	<b>47</b> <b>(19%)</b>
Drunk and Disorderly	37 (31%)	30 (57%)	9 (35%)	24 (51%)
Retail Theft	36 (31%)	8 (15%)	9 (35%)	4 (9%)
s5 Public Order	23 (20%)	5 (9%)	2 (8%)	11 (23%)
Possession of Cannabis	14 (12%)	6 (11%)	3 (12%)	7 (15%)
Other Offences	8 (7%)	4 (8%)	3 (12%)	1 (2%)
<b>Total</b>	<b>118</b> <b>(100%)</b>	<b>53</b> <b>(100%)</b>	<b>26</b> <b>(100%)</b>	<b>47</b> <b>(100%)</b>

N=244

To explore the variable use of PNDs between different teams within the force, the offence location was further coded according to the Safer Neighbourhood Team<sup>207</sup> (SNT) which covered the offence location. However it should be noted that tickets were not necessarily issued by officers working for those teams. Instead this classification is used to provide an insight into different policing contexts where penalty offences occurred. When the research was conducted there were fifty-seven SNTs in the force area. The ticket sample included PNDs issued for offences occurring in forty-nine of these areas. The different SNTs covered areas which were classified by the researcher as: 'residential', 'city/town centre' and 'shopping

<sup>205</sup> This is based on an analysis of s5, drunk and disorderly, theft and cannabis tickets. All other offences were excluded (N=228).

<sup>206</sup> Cases which occurred on district borders are excluded. Districts are numbered according to the population of the area covered by the district, 1 being the largest.

<sup>207</sup> Since April 2008 every neighbourhood in the UK has had a dedicated neighbourhood policing team or 'Safer Neighbourhood Team' (SNT) (Mason 2009).

centre'<sup>208</sup>. Almost half (43%) of all the PNDs issued were for offences occurring in just three SNT areas (N=244). Those SNTs covered the town/city centre in districts 1, 2 and 4, and were respectively the site of 20%, 13% and 10% of all tickets issued (N=244). Table 5.12 details the type of SNT area where penalty offences occurred. There was a significant difference between the use of penalty notices in SNTs covering city/town centres as compared to those in residential areas ( $\chi^2=34.309$ , d.f.=4,  $p<0.001$ )<sup>209</sup>.

<b>Table 5.12: What type of Safer Neighbourhood Area were offences committed in?</b>				
Location	Shopping Centre			Total
Offence	City Centre	Residential	Shopping Centre	Total
<b>All Offences</b>	<b>112</b> <b>(46%)</b>	<b>118</b> <b>(48%)</b>	<b>14</b> <b>(6%)</b>	<b>244</b> <b>(100%)</b>
Drunk and Disorderly	67 (67%)	33 (33%)	0 (0%)	100 (100%)
Retail Theft	22 (39%)	23 (40%)	12 (21%)	57 (100%)
s5 Public Order	15 (37%)	24 (59%)	2 (5%)	41 (100%)
Possession of Cannabis	7 (23%)	23 (77%)	0 (0%)	30 (100%)
Other Offences	1 (6%)	15 (94%)	0 (0%)	16 (100%)

N=244

Overall, the use of penalty notices was fairly evenly distributed between offences occurring in (the four) town/city centre SNT areas and offences occurring in the (many) SNTs covering residential areas (46% and 48% were issued in these areas respectively (N=244)). This indicates the dominance of the use of PNDs in a very small number of city/town centre areas. This was largely driven by the use of drunk and disorderly tickets, 67% of which were committed in city/town centre locations (N=100). A large proportion of drunk and disorderly offences were therefore associated with the night time economy (NTE) and specifically the consumption of

<sup>208</sup> It should be noted however that SNTs covering 'residential areas' will not exclusively contain dwellings. Equally, whilst city/town centre SNTs will have a higher concentration of businesses they too include residences.

<sup>209</sup> Offences occurring in shopping centres were excluded from this analysis (N=230).

alcohol in town and city centres. Given that the purpose of PNDs was to tackle this kind of alcohol-related disorder (see Chapter 2) this disproportionate use of PNDs in the NTE is to be expected.

#### **5.5.4 Where were penalty notices issued?**

Penalty notices were introduced as a tool that allowed the police to deal with low-level offending on-the-spot, thereby reducing the time and cost associated with arrest (see Chapter 2). Despite this, less than half (46%) of the tickets sampled were issued on the street (n=113) (see Table 5.13). This was comparable to the proportion of tickets issued on-the-spot in 2010 both nationally (50%) and in the force area reviewed (47%) (Ministry of Justice 2013a, Table 1). The location in which PNDs were issued was significantly related to offence ( $\chi^2=114.418$ , d.f.=4,  $p<0.001$ ). The large proportion of tickets which were issued in custody appeared to be driven by the use of drunk and disorderly tickets, 93% of which were issued in custody (N=99). Whilst half of all s5 tickets were issued in custody (N=42), theft and possession of cannabis tickets were more likely to be issued on the street. This variation in where tickets were issued appears to reflect the circumstances and severity of different offences as well as the offender's willingness to comply with officers (see Chapter 6).

Ticket Analysis Data			Force Level Data 2010			National Data 2010			
Location Offence	On the street	In custody	Total	On the street	In custody	Total	On the street	In custody	Total
<b>All Offences</b>	<b>113</b> <b>(46%)</b>	<b>132</b> <b>(54%)</b>	<b>245</b> <b>(100%)</b>	<b>3014</b> <b>(53%)</b>	<b>2,720</b> <b>(47%)</b>	<b>5,734</b> <b>(100%)</b>	<b>70,429</b> <b>(100%)</b>	<b>70,340</b> <b>(100%)</b>	<b>140,769</b> <b>(100%)</b>
Drunk and Disorderly	7 (7%)	92 (93%)	99 (100%)	369 (18%)	1,665 (82%)	2,034 (100%)	3,738 (10%)	33,381 (90%)	37,119 (100%)
Retail Theft	46 (79%)	12 (21%)	58 (100%)	1,332 (82%)	280 (19%)	1,512 (100%)	31,179 (78%)	8,891 (22%)	40,170 (100%)
s5 Public Order	21 (50%)	21 (50%)	42 (100%)	427 (45%)	519 (55%)	946 (100%)	14,148 (44%)	18,169 (56%)	32,317 (100%)
Possession of Cannabis	26 (84%)	5 (16%)	31 (100%)	413 (82%)	82 (18%)	505 (100%)	9,639 (69%)	4,227 (31%)	13,916 (100%)
Other Offences	13 (87%)	2 (13%)	15 (100%)	573 (78%)	164 (22%)	737 (100%)	11,725 (68%)	5,522 (32%)	17,247 (100%)

Source: Data for the force area and England and Wales are taken from Ministry of Justice 2013a, Table 1

## 5.6 What was the outcome of penalty notices?

There are various potential outcomes following the issue of a PND: payment, a court hearing request, cancellation, fine registration or potential prosecution. PND recipients have 21 days to either pay the fee or request a court hearing or, where available, partake in a waiver scheme. If none of these actions are taken, the PND will usually be registered as a fine (for one and a half times the original amount) at the magistrates' court. However, in exceptional circumstances (such as where further evidence has emerged), the recipient may be prosecuted for the original offence. Tickets may also be cancelled. This may occur if a PND was issued in error (such as where a ticket was issued to a person who was ineligible for a PND by virtue of their age), the individual attended a waiver scheme or, following a request for a court hearing, if the decision was taken not to charge the individual.

National data do not distinguish between the various reasons for cancellation. Furthermore, whilst Ministry of Justice data note the proportion of recipients who request a court hearing, it is unclear whether those data include both those cases which proceed to court and those which are cancelled without charge. It is also unclear whether cases resulting in 'potential prosecution' (as coded in the Ministry of Justice data) refer only to those cases which the issuing officer has him/herself (in light of additional evidence) decided to prosecute, or whether this in fact includes persons who, having requested a court hearing, are then proceeded against by their own volition<sup>210</sup>. Indeed the Ministry of Justice were unable to clarify which data are included in their categories for 'cancelled', 'potential prosecution' and 'court hearing requested' (Ministry of Justice 2013e and 2013f, personal correspondence). Thus it is unclear how cases where the issuing officer decided (after 21 days) to pursue a prosecution (rather than allow an unpaid/unchallenged ticket be registered as a fine) were recorded. What this highlights is that there are some serious limitations in the national data on the use of PNDs, and that these are likely to be affected by variations in local recording practices. For the purposes of this study, the tickets sampled were cross-referenced against the local CTO data and coded as being either paid, registered as a fine, cancelled (completed waiver), cancelled (other) or having requested a court hearing.

Table 5.14 provides a comparison of the outcome of PNDs found in the ticket sample, the force area and nationally in 2010. In the ticket sample, there was a relatively even distribution

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<sup>210</sup> Certainly in the force area reviewed, the Ministry of Justice data suggest that there have never been any court hearing requests (Ministry of Justice 2007a; 2008a; 2009c; 2010b; 2011a; 2012a; 2013d, Table 3.11c) yet this is contradicted by my sample.

between those PNDs which were paid (46%) and those which resulted in a fine (44%) (N=242). A further 10% were cancelled (of which, all except one case was cancelled as a result of the recipient partaking in a waiver scheme). This is contrary to both the force-level and national data. A much lower proportion of tickets sampled were paid than those in either the force area or nationally that year (46% vs. 54% and 55% respectively) and a greater proportion of the sampled tickets were registered as a fine (44% compared to 41% in the force and 40% nationally). The difference between the sample and the force was not significant ( $\chi^2= 3.05$ , d.f.=1,  $p>0.05$ ), however payment rates were significantly different in the sampled tickets as compared to the national payment rates ( $\chi^2= 6.62$ , d.f.=1,  $p<0.05$ )<sup>211</sup>. This, coupled with the (already noted) limitations of the Ministry of Justice data, means that we need to be cautious of generalising the following analysis beyond the sample. However, despite these limitations, the ticket analysis data were insightful, providing valuable information as what happens after PNDs were issued, and the factors which affect payment of PNDs.

The introduction and extension of PNDs was justified on the basis that recipients retained the right to elect for a court hearing (see Chapter 2). However, this right was rarely exercised. Only two of the sampled tickets (1%) resulted in a court hearing request. Whilst in the police force area reviewed court hearing requests were coded as ‘potential prosecution’ (see Table 5.14), none of the tickets sampled resulted in police-initiated court proceedings. Indeed, such an outcome would be unlikely to occur regularly given that the onus would rest with the issuing officer to follow up such cases with the CTO and confirm that a ticket was unpaid before pursuing that course of action. Furthermore, the Home Office guidance states that prosecution should only occur in “exceptional circumstances” (Home Office 2005a, p.9). The figures reported for court hearing requests in the ticket sample are comparable to the proportion of tickets resulting in a court hearing request recorded nationally. This suggests that any variation in recording practices between ‘potential prosecution’ and ‘court hearing requested’ are not hugely underestimating the number of PND recipients exercising this right as, according to the current study, few people request such hearings.

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<sup>211</sup> This is based on a chi-square test comparing the number of tickets paid with those registered as a fine. All other outcomes were excluded.

<b>Table 5.14: What was the outcome of tickets? A comparison across sources<sup>212</sup></b>							
		<b>All Offences</b>	<b>Drunk and Disorderly</b>	<b>Retail Theft</b>	<b>S5 Public Order</b>	<b>Possession of Cannabis</b>	<b>All Other Offences</b>
Paid	Ticket Analysis	<b>46%</b>	43%	49%	50%	36%	56%
	Tickets issued in force area in 2010	<b>54%</b>	55%	57%	51%	46%	55%
	Tickets issued in E+W in 2010	<b>55%</b>	57%	55%	54%	47%	58%
Fine	Ticket Analysis	<b>44%</b>	36%	49%	45%	58%	44%
	Tickets issued in force area in 2010	<b>41%</b>	37%	42%	42%	52%	41%
	Tickets issued in E+W in 2010	<b>40%</b>	36%	42%	40%	49%	37%
Cancelled	Ticket Analysis	<b>10%</b>	21%	2%	5%	0%	0%
	Tickets issued in force area in 2010	<b>3%</b>	6%	1%	4%	1%	3%
	Tickets issued in E+W in 2010	<b>3%</b>	5%	2%	3%	3%	3%
Requested a Court Hearing	Ticket Analysis	<b>1%</b>	0%	0%	0%	7%	0%
	Tickets issued in force area in 2010	<b>0%</b>	0%	0%	0%	0%	0%
	Tickets issued in E+W in 2010	<b>1%</b>	1%	0%	1%	0%	1%
Potential Prosecution	Ticket Analysis	<b>0%</b>	0%	0%	0%	0%	0%
	Tickets issued in force area in 2010	<b>2%</b>	2%	0%	3%	1%	2%
	Tickets issued in E+W in 2010	<b>1%</b>	1%	1%	2%	1%	1%
Total	Ticket Analysis	<b>100%</b> <b>(N=242)</b>	100% (N=98)	100% (N=57)	100% (N=40)	100% (N=31)	100% (N=16)
	Tickets issued in force area in 2010	<b>100%</b> <b>(N=5,708)</b>	100% (N=2,013)	100% (N=1,510)	100% (N=944)	100% (N=505)	100% (N=736)
	Tickets issued in E+W in 2010	<b>100%</b> <b>(N=128,917)</b>	100% (N=33,363)	100% (N=36,412)	100% (N=30,488)	100% (N=13,000)	100% (N=15,654)

Source: Data for the force area and England and Wales are taken from Ministry of Justice 2013a, Table 4.

<sup>212</sup> As noted in Section 3.4.4 there were apparent errors relating to the reported number of 'potential prosecution' cases in Kent, Sussex and West Yorkshire. As such the figures reported here exclude those three forces. The above table excludes all cases where the outcome was unknown (0% of all tickets issued nationally (n=628), and 0% of tickets issued in the force area (n=26)).

### 5.6.1 The disputed cases

As discussed above, only two of the sampled tickets resulted in a court hearing request and only one was cancelled for a reason other than the completion of a waiver scheme. As such, an additional sample of all cases where respondents corresponded with the Central Ticket Office (the department in the police force responsible for processing PNDs) was reviewed to gain an insight into the reasons people may challenge a PND and the reasons why tickets may be cancelled. This additional sample totalled 11 of the 1,001 cases disposed of via PND during the two month review period. Across both this and the main sample there were 14 disputed cases. In eight cases the recipient requested a court hearing, one of which was cancelled, one resulted in the ticket being registered as a fine and the others all seemingly resulted in a court hearing. Whether a court hearing was held in those cases is however unknown as, whilst the files included requests from the CTO to the issuing officer that they process files for a prosecution, whether this was pursued by officers was not noted. There were two cases where the ticket was cancelled. Both were issued to males aged 17 for possession of cannabis (such tickets should only be issued to those aged 18 and over). In these cases their mothers wrote to the CTO to confirm that they had spoken to an officer and understood that the ticket should not have been issued (as their child was too young to receive such a ticket) and as such that it would be cancelled. It would seem that no alternative action was taken in these cases. In the final four cases sampled the recipients did not formally request a court hearing but rather sought what might be termed 'alternative' routes to challenging their penalty notice.

In the first such 'alternative challenge' case (Ticket Analysis Booster Sample, Case 1), the individual did in fact send payment for the notice but included a letter which stated that they were doing so "under protest" as they believed the ticket had been "inappropriately issued". The ticket was issued for s5 following an incident where the recipient was shouting at officers and ambulance staff who were trying to deal with the two victims of a violent offence. The nature of the relationship between the recipient and the injured parties is unclear, however according to the issuing officer's evidence, he was "shouting at officers "WHATS HAPPENING, I WANT YOUR NUMBER" and despite repeated requests to leave "he continued to shout and vie for officers [sic] attention" (*emphasis in original*, Ticket Analysis Booster Sample, Case 1). This situation therefore arose out of some discontent with the officers. The man (albeit drunkenly) asked officers what they were doing and, evidently dissatisfied, asked for their number (suggesting he wished to pursue a complaint). It is worth noting that his resulting arrest and

the ongoing distraction he caused was likely to be more resource intensive than simply explaining to him what was happening in the first place.

Following this incident the recipient did not wish to request a court hearing as, if they were to be convicted, it may prevent them from working with children or travelling abroad in the future. They also expressed concern as to their ability to challenge the notice in court “as there were five police officers present at the time of issue” (Ticket Analysis Booster Sample, Case 1). This highlights that PND recipients may not view the right to request a court hearing as a viable appeals mechanism, and suggests that the instrumental incentives to comply with PNDs are effective, leaving recipients feeling pressurised into accepting notices even where these are thought to be underserved. In this case, the recipient requested that consideration be given to rescinding their ticket. However, in their reply, the CTO simply stated that, as a processing centre, they were unable to accept any mitigation and as such the payment had been accepted. Whilst it is true that the CTO are charged with processing PNDs, they are not *merely* a processing centre, they are part of the police force and, indeed, in their refusal to accept any mitigation in this case they were making a decision which affected the outcome of the case. Whilst it may be appropriate that the CTO do not accept mitigation, that such evidence is not considered by anyone within the police force is questionable as it allows officers’ use of this power to go unchecked. Indeed, their refusal to even consider such mitigation may have further undermined the perceived legitimacy of the PND system, and the police, in the eyes of the recipient who, having received a PND for challenging police officers, then had his concerns regarding the police dismissed.

In the second ‘alternative challenge’ the recipient sent a series of letters attempting to challenge the right of the police to issue such fines (Ticket Analysis Booster Sample, Case 11). All three of the letters used a standard letter template (downloaded from the internet) which attempted to avoid payment of such on-the-spot fines by refusing to accept the authority of the police to issue such tickets, rather than seeking to challenge the PND on any grounds related to their own case. The initial letter made various demands which included that the CTO prove the recipient was “a ‘person’ and not a human being ... [and] a member of the society whose statutes and subsisting regulations you are enforcing”. Subsequent letters, sent after the PND was registered as a fine, included claims such as “[if] you are attempting to collect funds from me in this matter, you would be engaging in “extortion” and therefore violating the law” and that the CTO “have as much ‘authority’ over me as any other PRIVATE COMPANY (actively trading for profit) .... *I do not wish to trade with your company.*” They then set out a

fee schedule of the rates they would charge the CTO if they wished to engage in any further communication on the matter, including £400 for “every hour or part thereof” telephone conversation and £200 per letter or email.

In the third ‘alternative challenge’ case the PND recipient was successful in gaining a refund from the magistrates’ court (Ticket Analysis Booster Sample, Case 10). Following receipt of a Collection Order from the magistrates’ court the PND recipient wrote to the CTO and stated that they had received a PND for which they “may not be responsible”. They requested that the CTO provide proof that they were the perpetrator of the offence (listing various forms of ID that they would have had on them at the time). They were informed by the CTO that the “issuing officer [had] confirmed that the fixed penalty notice was issued to you”<sup>213</sup> and notified that they had 10 days to either request a court hearing, or pay the PND, before it would be registered as a fine (*emphasis in original*, Ticket Analysis Booster Sample, Case 10). This ignores the fact that the PND had *already* been registered as a fine for which the recipient had received a Collection Order. The fine was then paid but was later refunded by the court and the account was written off<sup>214</sup>. Despite receiving a refund (and acknowledging receipt thereof) the recipient sent three further letters to the CTO in which they refused to make any further payments until they had received evidence from the CTO that the ticket had been issued to them. Yet the court had written off the case and they were not making any further demands for money. The confusion may have arisen as, even after the money had been refunded, the CTO’s replies to the offender all stated that the fine was properly issued and should be enforced, ignoring the fact that the account had been written off, and thus was not, and would not be, enforced.

In the final ‘alternative challenge’ case the theft PND recipient asked if they could pay a reduced fee (of £60) over three instalments instead of the full £80<sup>215</sup>, stating that they had never committed an offence before and that their reason for stealing was that they were finding it difficult to ‘make ends meet’. They were “not trying to avoid responsibility [they] simply [did] not have enough money” (Ticket Analysis Booster Sample, Case 7). The CTO replied explaining that they had no facility to extend the date for payment or to allow for payment by instalment. The recipient was informed that the next stage would be for the fine to be registered with the court, whereby it would increase by 50%, and that the court would

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<sup>213</sup> The issuing officer confirmed with the CTO that the recipient’s ID had been checked when the ticket was issued. The offender’s driving licence number was recorded.

<sup>214</sup> There was no further correspondence included in the file other than the letter from the CTO (stating that he must pay or challenge the PND) and the refund being sent from the court. As such it was unclear how the recipient managed to secure this refund.

<sup>215</sup> The upper tier penalty notice fee at the time of the empirical research.

(on receipt of evidence as to their financial situation) be able to provide for payment by instalment. However, given their already difficult financial situation they should give careful consideration to this. Their PND was ultimately registered as a fine.

Whilst in that case the recipient did not formally request a court hearing, in two of the eight court hearing request cases the person sent a letter, alongside their court request slip, stating that they were unable to pay the fine as they were living on income support/disability benefits. In the first case (Ticket Analysis Case 23) the CTO reply stated that there was no facility to pay by instalment and the “the next stage” would be for a fine (which may be paid by instalment) to be registered at the local court. This suggests that both the fine and the court hearing were still an option, however the recipient was given no guidance as to how to rescind their court hearing request (if they wished to do this). The case was ultimately recorded as being ‘potential prosecution’. In the second case where a hearing was requested for financial reasons, the person was told that they had missed the deadline and as such the ticket had been registered as a fine<sup>216</sup>. However, on closer inspection, whilst the *offence date* was two months before the court request slip was received by the CTO, the ticket *issue date* was over a month after the offence and as such the court request was made within the timeframe<sup>217</sup>.

The other six court hearing requests did not include any correspondence from the recipient explaining their reasons for requesting a hearing, and in two of those, there was also no evidence from the issuing officer as to the circumstances of the offence. Notably, in three of the cases where there was some evidence, the police might be deemed to have been the victim of the offence. One was issued for drunk and disorderly and another for s5. In both cases the recipient had repeatedly sworn at officers. In the latter case, the offender had initially approached officers to complain that he had been assaulted but became abusive when officers told him that they would not take a statement from him whilst he was drunk. In the third case the person was issued with a ticket for wasting police time. In the final court hearing request case, the ticket was issued after a “minute” amount of cannabis was found following an “extensive search” of the recipient’s vehicle by a police dog handler (Ticket Analysis Case 39). In the internal correspondence on this the officer stated that the recipient was initially reluctant to take part in the PND scheme and denied any knowledge of the drug. On that basis the decision was taken not to proceed with a court hearing and instead the ticket was cancelled. One concerning point to note about that case was that the reply to caution was

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<sup>216</sup> This case is coded as ‘fine registered’ in Table 5.14 as that was the ultimate outcome of the case.

<sup>217</sup> No evidence was completed/attached to the ticket and as such it is unclear why this ticket (issued for possession of cannabis) was issued so long after the offence.

written as “you’ve got me this time” whilst there was a note (signed by the issuing officer) above this stating that it had been entered in error, this does question the reliability of the evidence given by officers in PND cases.

### **5.6.2 Was the outcome related to the offence?**

There was some variation in the payment rate between tickets issued for different offences, however these differences were not significant. Across all data sources, tickets issued for drunk and disorderly were least likely to be registered as a fine (see Table 5.14). Of the tickets sampled, 36% of drunk and disorderly tickets were registered as a fine (N=98), compared to 37% of those issued in the force area and 33% of tickets issued for that offence nationally. This can be compared to the cannabis PNDs sampled, 58% of which resulted in a fine. The differences between payment rates according to offence may reflect differences in the socio-demographic characteristics of the recipients of different notices. For example, the high rate of payment for drunk and disorderly notices may be influenced by the fact that recipients of these notices were more likely to be employed (see Table 5.15). Indeed people in receipt of tickets for possession of cannabis (N=31) were least likely to pay (36%), and were also more likely to be unemployed (see further below for the influence of employment on payment of PNDs, see Table 5.15).

The lower proportion of drunk and disorderly tickets registered as a fine may also, in part, reflect the fact that in 2010 across England and Wales four forces were offering recipients of these (and other alcohol related PNDs) the opportunity to attend alcohol awareness sessions<sup>218</sup>, either in lieu of paying the fine or for half the cost of the penalty notice. One force also offered a waiver scheme for possession of cannabis PNDs. Such education programmes offer PND recipients an alternative to paying the PND. At the time of the ticket analysis a waiver scheme was in operation in part of the force area reviewed. Of those recipients who received notices for s5 or drunk and disorderly in the areas covered by the waiver scheme (N=81), 28% completed the programme and duly had their PND cancelled. Indeed, of the 24 cases sampled which resulted in the ticket being cancelled, all except one was cancelled because the person had completed the waiver scheme. The proportion of tickets cancelled (10%) was greater in the ticket sample (N=242) than in either the force area (3%) or nationally for 2010 (3%). However, this is likely to reflect the fact that the waiver scheme was not operational throughout the year. Indeed, the national figure masks huge variation between

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<sup>218</sup> Subsequently, by 2012, 19 forces offered a waiver scheme for alcohol-related offending. Five also offered a waiver scheme for people in receipt of a possession of cannabis PND (see Section 8.2.4).

areas. For example, whilst only 3% of cannabis tickets were cancelled nationally in 2010, in Hertfordshire (one of the few forces which offered a waiver scheme for cannabis offence) 23% of cannabis tickets were cancelled (Ministry of Justice 2013a, Table 4).

### **5.6.3 Was outcome related to the characteristics of the offenders or the offence?**

The achievement of the managerialist aims of the PND scheme is (in part) reliant on a high rate of compliance (see Section 2.4.1). Payment rates have however been consistently low since the scheme was introduced, peaking at 55% in 2010 (Ministry of Justice 2011b, Table A2.1). Yet despite this, little attempt has been made by government to consider the reasons for such low compliance rates. In Chapter 7 we shall explore the reasons given by PND recipients for either paying or not paying their PND. For now however we shall consider whether there were any common factors amongst the people that paid or did not pay their PND.

There was no significant relationship between whether or not a person paid their PND and either the recipient's age or their gender (see Table 5.15). The average age of PND recipients was comparable between those who paid the notice (mean = 28, median = 23) and those where the PND was registered as a fine (mean = 27, median = 24). There was no variation in payment rates based on gender. Approximately half of all men and women paid their PND. In the ticket sample there was some variation in the outcome of PNDs based on ethnicity (for example, 70% of Asian recipients (N=10) paid their notice, compared to: 53% of white recipients (N=137); 33% of black recipients (N=6); and 100% of 'other' recipients (N=3)) however, this was based on extremely small sample sizes (89% of PND recipients in the sample were white (N=179)) (see Table 5.6). Nationally there was a significant relationship between the ethnicity of PND recipients and whether or not they paid their PND ( $\chi^2= 738.377$ , d.f.=3,  $p<0.001$ ). People whose ethnic origin was described as 'other' were most likely to pay their PND (61%), this was followed by white people (55%) black people (48%) and Asian people (42%) (Ministry of Justice 2013a, Table 3).

<b>Table 5.15: Outcome of penalty notices for disorder – Offenders' characteristics</b>		
	Paid	Fine Registered
<b>Employment Status N=162</b>		
Employed	42 (68%)	20 (32%)
Unemployed	29 (33%)	58 (67%)
Student	17 (77%)	5 (23%)
Retired	1 (100%)	0 (0%)
<b>Ethnicity N = 156</b>		
White	72 (53%)	65 (47%)
Black	2 (33%)	4 (67%)
Asian	7 (70%)	3 (30%)
Other	3 (100%)	0 (0%)
<b>Age Group N=170</b>		
16-17	10 (77%)	3 (23%)
18-21	24 (42%)	33 (58%)
22-30	26 (51%)	27 (49%)
31-40	12 (50%)	12 (50%)
41-50	9 (69%)	4 (31%)
51+	7 (70%)	3 (30%)
<b>Gender N=216</b>		
Male	80 (51%)	75 (49%)
Female	29 (50%)	28 (50%)

The only socio-demographic factor in the ticket sample data which was significantly related to whether or not a person paid their PND was whether or not they were employed. Whilst 68% of employed people paid their PND (N=62), only 33% of unemployed people paid the ticket

(N=87) ( $\chi^2=23.893$ , d.f.=2,  $p<0.001$ )<sup>219</sup>. This would suggest therefore that a key determinant of whether people comply with penalty notices is whether they can afford to comply. Those that could not (easily) afford to pay were much more likely to have a fine registered against them in the magistrates' court and therefore, despite their already relatively disadvantaged position, were subject to a greater fine. However, whilst it might be expected that people who cannot afford to pay a PND may opt instead to complete a free education course (where this is available), unemployed people were no more likely to take this option. Of the 16 people who completed a waiver scheme and whose employment status was known, half were employed, two were students and six were unemployed. These employment rates are comparable to those reported by Derbyshire and Hertfordshire Police Forces, where only 29% and 15% (respectively) of participants in their PND waiver schemes were unemployed (DCCSP *et al.* 2011; Druglink 2008). This suggests that whilst ability to pay may be significantly linked to whether or not a PND recipient pays their notice, there may be additional influences on compliance.

There were no significant relationships between the various situational characteristics of the offence (the location, the place the ticket was issued, the time/day the offence occurred) and the outcome of the ticket. There were also no significant differences based on the social circumstances of the offence, that is, whether the person was abusive towards officers, complied with officers' requests or displayed any aggression towards the public and whether or not they paid their ticket<sup>220</sup>. Whilst the nature of the offence did not appear to influence compliance with the ticket, it may have affected people's willingness to comply with officers at the time the ticket was issued. These issues will be considered in more detail in Chapter 6.

#### **5.6.4 How are penalty notices for disorder enforced?**

The above discussion outlines the outcome of PND cases. However, in order to understand the resource implications of PNDs it is important to consider *how* penalty notices are enforced. To ascertain how PNDs were processed and enforced, staff at the Central Ticket Office and the local magistrates' court were interviewed. The CTO described their role in the processing of PNDs as follows: All tickets issued were sent by the issuing officer to the CTO and were logged

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<sup>219</sup> These results were based on a chi-square test comparing tickets which were paid or registered as a fine for people who were either employed, unemployed or students (N=171). Retirees and those tickets which were challenged or cancelled were excluded from this analysis.

<sup>220</sup> However, it was notable that 7 of the 10 people who were physically abusive towards the public paid their notice compared to 40% of those people who were not aggressive towards to public (N=102). Whilst the sample is too small to be indicative, it may reflect a desire amongst the recipients of such notices to 'get away with it'.

on their electronic database. Whilst officially recipients have 21 days to pay the notice or request a court hearing, in practice they were allowed 35 days to pay the ticket before it was registered as a fine. Court hearing requests however must have been received within 21 days. If the ticket was paid, this was registered electronically on the CTO system and no further action was taken. If a court hearing request was made, this was registered on the system and the CTO prepared a file (including the original PND, the court request slip and any correspondence received from the offender) which was sent back to the issuing officer. Copies of these documents would be retained by the CTO. The case would then be registered by the CTO as 'potential prosecution'. There would be no further CTO involvement and it would be for the issuing officer to decide whether or not to proceed with the case. If there was insufficient evidence the decision may be taken to cancel the notice. If the issuing officer decided to pursue the case, the file would be sent to the Criminal Justice Unit and the CPS would decide whether or not to proceed. If there was sufficient evidence, and it was deemed to be in the public interest, the CPS would issue a summons.

In s5 and drunk and disorderly cases, where the recipient is offered the opportunity to take part in the PND waiver scheme, the person has 21 days to complete this. In practice, as with payment, the CTO reported that they allowed 35 days before they would initiate any enforcement action. The CTO would be notified by the course providers if a person had completed the education sessions and the system would then be updated, cancelling the PND. If the course was not completed, and neither payment nor a court hearing request was received, the ticket would be registered as a fine.

Tickets which were unpaid after 35 days would be updated on the CTO system as 'fine registration' and Part 5 of the PND (which includes the offence and offender details) would be sent to the magistrates' court Enforcement Unit who would then proceed with enforcement action. There would be no further CTO involvement except in rare cases where, following a fine registration, the recipient claimed they had sent a court hearing request which was not acted upon by the CTO. In such circumstances the CTO would then decide whether to uphold the court fine or to rescind the fine and proceed with the court hearing request.

The magistrates' court Enforcement Unit reported that the details of unpaid tickets were downloaded and the accounts checked by control officers. A Notice of Fine and Collection Order would then be posted to the offender, explaining that their PND had been registered as a fine, the value of that fine (50% greater than the original PND) and that they had 28 days to pay the fine in full. Offenders were also informed of the consequences of failure to pay, such

as the fine being increased by 50% or money being deducted from their earnings/benefits. Contact details are provided where they can contact the Fines Officer to request additional time to pay. To pay by instalment, offenders would therefore have to contact the court to arrange this.

If, 28 days after the Notice of Fine and Collection Order was sent, the fine remained unpaid, the Enforcement Unit would then take further action. The individual's details would be checked against Department of Work and Pensions (DWP) data. If the person was in receipt of state benefits, an order would automatically attach to that income and regular payments (usually £20 per month) would be deducted. A letter would then be sent to the offender notifying them of this. If the offender was not in receipt of benefits an Experian (credit reference) check would be conducted to ascertain if they were in work and, if so, where. Their employer would then be contacted and informed that an attachment must be made to the individual's earnings to deduct the fine (through instalments) from their salary. Staff at the Enforcement Unit reported that each of these checks took approximately 10 minutes per ticket.

Where the person was apparently neither on benefits nor in employment, a distress warrant would be sent. The fine would then be enforced by private bailiffs. Initially they would send a letter and, if this was not acted upon, they would seek to recover goods from the offender. The bailiffs would charge the PND recipient additional fees for any enforcement action. For example, there was an £85 administration fee for sending the letter and a £215 fee if bailiffs attended the property (to, for example, recover goods to pay the fine). Monies owed to the court would be collected first, followed by any additional bailiffs' fees. The bailiffs could agree payment terms with the offender, however full payment must be received within six months. If after six months the fine had not been recovered the ticket would return to the Enforcement Unit. At this stage any fees charged by the bailiffs would no longer be applicable. The bailiffs did not charge the court for fines which remain unpaid after six months.

Staff at the Enforcement Unit reported that if fines were returned to them for enforcement action they would initially conduct further DWP and Experian checks to see whether the individual's circumstances had changed so that an attachment order could be made. If not, an arrest warrant would be issued which was executed by court enforcement officers. These officers had the power to agree a payment plan with offenders, although they would seek

payment in full<sup>221</sup>. If the individual reneged on their payment plan, or made only ad hoc payments, they would be arrested.

Enforcement Unit staff explained that, once arrested, the individual would be kept in the cells until the next listing of the court. If they were arrested in the morning they would be likely to be seen that day, otherwise they would be kept in the cells overnight. There were various options available to magistrates in processing the case. Further payment terms could be set, the fine could be remitted (written off), the person could be sent to prison or the fine could be written off in light of the time the individual had already spent in custody awaiting their appearance in court. If further payment terms were set and the individual defaulted on those payments the enforcement process would begin again; further DWP and Experian checks would be made and a distress warrant could be issued.

The interviews with the CTO and court Enforcement Unit staff highlight that the large proportion of PNDs which are registered as a fine each year undergo a resource-intensive and potentially lengthy enforcement process. Enforcement could take up to 12 months and could result in people who had received a PND being held in custody and potentially even being sent to prison. All of which costs time and money for the police and the courts. This enforcement process is hindered where the offender's details are incorrect. The Enforcement Unit commented that many PNDs were written off as the offender's name or date of birth was inaccurate. It is vital therefore that such information be confirmed by officers when issuing the PND.

#### **5.6.4.1 What identity checks were made?**

In order to enforce PNDs it is necessary that the CTO and the courts have accurate contact details for the offender. All tickets include a section where officers can detail the ID checks that they perform. Yet, of the various forms of ID that may be used to check a person's identity before issuing a PND, only their passport or asylum identity card (IND/ARC), or driving licence are likely to confirm both the offender's name and their date of birth (the information required for enforcement). Indeed address details will only be provided by the latter two documents. Table 5.16 details the identity checks performed for the sampled tickets<sup>222</sup>. Worryingly, in 36% of cases no ID checks were recorded as being made (N=241). This was even

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<sup>221</sup> If the person cannot be traced, they will go on a 'hard to trace' file which is checked again after 6 months. After 12 months the fine is written off.

<sup>222</sup> The forms of ID included on the table are those listed on the penalty notice ticket. Officers tick to say which identity checks were performed.

higher in drunk and disorderly cases where 48% of tickets were issued to people who seemingly had not provided any confirmation of their identity (N=102).

Across all the main offences the most common ID check was the PNC (performed in 65% of cases (N=155)). Whilst this allows officers to check individuals' offending history, and may be the easiest identity check for them to perform first, it is notable that in 25% of all cases this was the only check made (N=250). If we presume that in such cases the offender was identified on the PNC, this suggests that PND recipients may not be the first-time offenders whom the scheme was originally targeted at. It also questions the accuracy of offender data, as if this was the only check performed, any errors on the PNC would be repeated again when issuing the ticket therefore hindering enforcement. Of the 78 cases where the driver's licence or passport was checked, in only 11 (14%) was the number written down. However, whether such information is necessary is questionable given that the Enforcement Unit reported that they did not have access to either DVLA or passport office data and thus could not use that information to aid the enforcement of PNDs.

<b>Table 5.16 What identity checks were performed on PND recipients?<sup>223</sup></b>									
ID Checks made Offences	PNC	Driver's licence	Other	Bank/credit card	Travel/photo- card	Passport	Radio	National insurance number	IND card
<b>All Offences</b>	<b>100</b> <b>(65%)</b>	<b>34</b> <b>(22%)</b>	<b>29</b> <b>(19%)</b>	<b>26</b> <b>(17%)</b>	<b>12</b> <b>(8%)</b>	<b>9</b> <b>(6%)</b>	<b>4</b> <b>(3%)</b>	<b>1</b> <b>(1%)</b>	<b>0</b> <b>(0%)</b>
s5 Public Order	21 (75%)	5 (18%)	3 (11%)	4 (14%)	3 (11%)	0 (0%)	1 (4%)	1 (4%)	0 (0%)
Drunk and Disorderly	37 (70%)	15 (28%)	6 (11%)	9 (17%)	2 (4%)	1 (2%)	0 (0%)	0 (0%)	0 (0%)
Theft	22 (51%)	8 (19%)	14 (33%)	12 (28%)	6 (14%)	6 (14%)	2 (5%)	0 (0%)	0 (0%)
Possession of Cannabis	15 (71%)	4 (19%)	2 (10%)	0 (0%)	1 (5%)	1 (5%)	1 (5%)	0 (0%)	0 (0%)
All other offences	5 (50%)	2 (20%)	4 (40%)	1 (10%)	0 (0%)	1 (10%)	0 (0%)	0 (0%)	0 (0%)

<sup>223</sup> Note that totals do not add up to 100% as in some cases more than one ID check was performed.

#### 5.6.4.2 The evidence

In cases where the PND recipient requests a court hearing, in order for the case to proceed there needs to be sufficient evidence to support a prosecution. Furthermore, the guidance states that in order to issue a PND there must be sufficient evidence to support a successful prosecution. This suggests that such evidence should be gathered contemporaneously (as would be necessary for a court hearing) and should be recorded on, or attached to, the PND. As noted in Chapter 4, 31% of the tickets sampled had no evidence recorded on/attached to the PND, and in a further 5% of cases the evidence section only made reference to the issuing of, rather than the events leading to, the PND i.e. 'arrived at custody suite at 5am and issued a ticket to [name, date of birth of recipient]' rather than '[name, date of birth of recipient] seen shouting and swearing in the street' (N=250). This is in keeping with previous research undertaken by the Office for Criminal Justice Reform which found that "statements had either been written in the space provided or statements in other forms (i.e. MG11/Incident Record Book or equivalent) were attached to the ticket on average between 50% to 100% of occasions in several areas" and that statements would sometimes refer to the "issuing of the notice rather than the evidential elements of the offence" (Krains and Carroll 2006, p.27-8). The ticket analysis found no relationship between whether the evidence section was completed and the offence for which the ticket was issued. Where evidence was completed the length of this varied widely (See Section 4.3.2.1).

Of the 158 cases where some (relevant) evidence was noted, in 66% of cases the officers mentioned some form of physical evidence i.e. CCTV footage, a photograph of the offence taken by the officer, cannabis or stolen goods. This varied according to offence. Thus, physical evidence was mentioned in all of the cannabis cases (N=24) and 55% of theft cases (N=42) whereas only 9% of drunk and disorderly cases (N=59) mentioned physical evidence and no 55 cases mentioned this (N=24). This reflects the fact that for some offences physical evidence will be more obviously apparent/readily available. In 40% of cases where physical evidence was mentioned, that evidence was retained (N=38). Where the stolen items were recovered these were, in all cases, returned to the shop and thus not retained as evidence. In those theft cases where it was not stated that items stolen had been recovered, the police appear to have been informed by security staff that a person was caught shoplifting but the evidence does not mention that the police themselves saw the items stolen/CCTV footage of the theft.

In order to pursue a successful prosecution there must be sufficient evidence that an offence was committed. However, as well as huge variation in the completion (and extent) of officers'

statements and the collection of physical evidence, practice also varied widely with regards to whether witnesses' details were obtained. Third party witness particulars were only obtained in 28% of all cases (N=163). There was a significant relationship between whether these details were collected and the offence for which the ticket was issued ( $\chi^2=16.038$ , d.f.=4,  $p=0.003$ ). For example, in 35% of s5 cases (N=29) witnesses' details were obtained compared to 14% of drunk and disorderly cases (N=56) and 45% of theft cases (N=47). In the absence of such data, it may be difficult to secure a prosecution.

Only 45% of tickets were countersigned by a corroborating officer (N=227). This indicates that there was minimal scrutiny of PND cases. There was a significant relationship between the offence the ticket was issued for and whether it was signed by a corroborating officer ( $\chi^2=9.769$ , d.f.=4,  $p=0.045$ ). Thus whilst the evidence on drunk and disorderly tickets was only reviewed and confirmed by a corroborating officer in 34% of drunk and disorderly cases (N=93) and 44% of s5 cases (N=39), this is compared to 61% of theft cases (N=49). It is therefore the most subjective offences – those context-specific offences which are reliant on the perceptions of an 'audience' (s5 and drunk and disorderly) – which were least likely to be reviewed by anyone other than the issuing officer.

## 5.7 Chapter summary

The ticket analysis has shown that the use of penalty notices was concentrated on a small number of upper tier offences. Whilst there was some variance across different forces, in all areas the vast majority of tickets were issued for drunk and disorderly, retail theft, s5 and possession of cannabis. Penalty notices were mostly issued to young, white males although the offender profile did vary according to offence. Thus for example, theft tickets were as likely to be issued to men or women but the recipients of those notices were significantly older than people issued with notices for other offences. Whilst overall, people whose ethnic background was described as 'other' were disproportionately issued with PNDs, white people were overrepresented with regards to drunk and disorderly offences. With regards to the disproportionate use of PNDs against ethnic minorities, one of the most notable findings was that a large volume of tickets did not record ethnicity information (n=66). This is despite clear Home Office (2005a) guidance in place at the time that such information *must* be recorded. Employment data should also be completed in all cases. However, again, this information was omitted on a sizeable minority of tickets (n=47). PND recipients were significantly more likely to be unemployed than the area population, however the extent of this disproportionality

varied according to offence. Thus whilst almost two thirds of theft and cannabis PND recipients were unemployed, this was closer to a third for s5 and drunk and disorderly cases.

Whilst PNDs are billed as 'on-the-spot' fines, many were issued following arrest after the person had spent a period in custody. Indeed, 11 offenders were cautioned days/weeks after the offence occurred following a period of investigation. Whilst approximately half of all tickets were issued in custody, this was largely driven by the use of PNDs for drunk and disorderly offences, 93% of which were issued in custody (N=99). The nature of the offences included in the PND system therefore undermines the suggestion that they can afford officers the opportunity to deal with low-level offending on-the-spot. The following chapter will consider how intoxication influences offender compliance and thus the ability (or inability) of officers to manage such cases without resorting to arrest.

As might be expected, s5 and drunk and disorderly offences most commonly occurred on weekend evenings. Indeed almost three-quarters of these offences were committed Friday – Sunday (n=105), with approximately one third of these offences occurring between 12.00am and 1.59am (n=50). The use of PNDs was not only concentrated on particular times/days but also in particular locations. A third of all theft cases happened in stores where at least one other PND had been issued over the two month review period. Furthermore, three of the four districts in the police force area had 'disorder hotspots' with a central street being the site of five or more s5 or drunk and disorderly offences. Just as there was geographical difference in the use of PNDs nationally, there was intra-force variation in the use of PNDs with the proportionate use of tickets for different offences varying both between and within the four districts in the force area. Indeed almost half of all tickets were issued in areas covered by just three Safer Neighbourhood Teams.

The outcomes of the PNDs sampled varied slightly from both force and national data. However, across all sources approximately half of all tickets were paid and over a third resulted in a fine being registered against the recipient. Whilst there was no significant difference in the outcome of PNDs issued for different offences, tickets issued for drunk and disorderly were least likely to be registered as fines. This is likely to reflect the fact that drunk and disorderly tickets were most commonly issued to employed people, who were significantly more likely to pay their PND. Indeed, employment was significantly related to whether or not PNDs were paid: 68% of employed people paid their PND (N=62) compared to only 33% of unemployed people (N=87). It would seem therefore that concerns regarding the inequality of the impact of PNDs (discussed in Chapter 2) have been realised in practice. This is the first study on the use

of PNDs that has considered the employment status of PND recipients and these worrying results highlight the need for further research on the use of penalty notices for disorder.

The increasing number of PNDs being cancelled (10% in the sample (n=24)) reflected the growing popularity of PND waiver schemes which afford recipients the opportunity to have their ticket rescinded if they attend alcohol/cannabis awareness courses. A very small proportion of tickets resulted in a court hearing request (n=2). It was notable however that the ability to proceed in such cases may be undermined by the lack of evidence recorded in penalty notice cases. Almost a third of tickets had no evidence recorded on them and in a further 5% the evidence section referred to the issuing of, rather than the events leading to, the PND (N=250). Physical evidence was rarely mentioned and even less commonly retained and witness details were often omitted. Not only would this make it difficult to secure a prosecution, it also contradicts the guidance on issuing PNDs.

Whilst PNDs were rarely challenged (either formally or informally), recipients could, and did, seek to register their discontent or avoid having to pay their PND (for whatever reason), by writing to the CTO. A review of the so-called 'disputed cases' found that challenges were brought in some instances purely for financial reasons, and in other cases appeared to be influenced by a perception that the police had unfairly targeted the individual, such as where the person had been issued with a ticket for swearing at officers. Indeed, in that case, the recipient paid "under protest" and his letter to the CTO suggested that the right to trial may not be viewed as an effective appeals mechanism by PND recipients (Ticket Analysis Booster Sample, Case 1). The dismissal of such concerns by the CTO (who have no means or authority to scrutinise PNDs) may undermine the system in the eyes of the recipients suggesting that officers will not be held to account for their decisions to issue penalty notices. This may question the legitimacy both of the particular notice and the police more broadly. Indeed, in that case whilst the offender's (alcohol-fuelled) discontent may have been both misplaced and distracting from the matter at hand, it appeared to be a reaction to officers' failure to listen to his concerns (instead they had tried to 'shoo him away' and ultimately he was arrested). This incident, and that PND recipient's resulting letter to the CTO, indicated a concern with the actions, and legitimacy, of the police, concerns which were unlikely to have been assuaged by being told there was no means for mitigation to be considered (these issues will be considered in more detail in the following chapters).

The review of the 'disputed cases' highlighted some inconsistencies between the information provided to PND recipients on the ticket and that provided by the CTO. For example, when

people contacted the CTO they were told they had 28 (rather than 21) days to pay or challenge the notice. Furthermore, the emphasis given by the CTO in all their correspondence about the implications of non-payment meant that people who had requested a court hearing might be misled into believing that their ticket would be registered as a fine.

The extent of correspondence in these cases highlights that the processing of PNDs can be resource-intensive, a matter which was further confirmed by those (much more regularly occurring) cases which were registered as a fine. Whilst the processing of each ticket may only take a few minutes, when one starts to consider the fact that over 1.25 million PNDs have been issued since 2004 you can see that these minutes soon add up. Furthermore, of those tickets, over a third were registered as a fine and were therefore subject to a resource-intensive enforcement process that can take as long as 12 months and involve numerous different people. This seriously starts to question the time saving benefits afforded by PNDs. Ultimately some fines are written off because of insufficient offender data. Indeed in 36% of all cases (and 48% of drunk and disorderly cases (N=102)) officers made no identity checks before issuing the PND (N=242). This all costs time and money for the courts. Yet PND policy and debate has consistently focused on the impact of PNDs on police officers with no regard for how they affect the wider criminal justice system (see Chapter 2).

The above analysis provides a unique, and much needed, insight into the circumstances of penalty offences, however it also highlights some worrying inconsistencies in the national data (see Section 5.6). Cases where the recipient requested a hearing and those where the issuing officer decided (in light of additional evidence, and only after the 21 day enforcement period) to prosecute the person appear to overlap. Thus in the force area reviewed both these cases were recorded as 'potential prosecution', leaving the total number of hearing requests unknown. Such inconsistencies in the data, coupled with the inability to track the outcome of such court hearings, undermine our ability to hold officers to account for their use of this power. This is particularly concerning given that, as already noted, officers are rarely held to account through recipients exercising their right to a court hearing or through any internal monitoring of PNDs. Overall only 45% of tickets were countersigned by a corroborating officer (N=227), and this figure fell to 34% in the case of drunk and disorderly cases (N=93). This lack of corroboration is not limited to the current sample. The OCJR found that there "was no systematic review or quality assessment of issued PNDs by supervisory staff" (Kraina and Carroll 2006, p.28). This is despite the fact that the Home Office (2005, p.31) guidance states that it is "good practice" for the issuing officer's statement to be corroborated by a colleague.

This chapter has outlined the core characteristics of penalty offences and offenders. Most tickets were issued to young white males for offences occurring in the night time economy (NTE) and half resulted in the individual being arrested. But what are the circumstances of the offence? How serious are penalty notice cases? Why is it that some people are arrested and others are not? The following chapter draws both on the evidence provided by officers on penalty notice tickets and my own observations of policing in the NTE to present a more nuanced account of penalty notice cases which addresses these questions.

## **CHAPTER 6: CIRCUMSTANCES AND DECISION MAKING**

### **6.1 Introduction**

The previous chapter addressed research aims 1a and 1c, examining how PNDs are used and enforced with a specific focus on the individual and situational circumstances of penalty offences. It was highlighted that PND recipients were mostly young, male, unemployed and white and that PNDs were issued for theft, drunk and disorderly, s5 and possession of cannabis and that a high proportion of these tickets were unpaid. In the previous chapter, we began to consider the circumstances in which PNDs were used, however, that analysis was based largely on data drawn from parts 1-6a of the ticket (see Chapter 4 Appendix 1). That categorical data, coupled with the national data, whilst providing a comprehensive overview of the use of PNDs, only offers a bare quantitative insight into the use of PNDs in different force areas. In this chapter therefore we move to consider research aim 1b, and the social circumstances of offending in penalty notice cases. Drawing on the written evidence recorded on the penalty notice tickets sampled (section 6b of the ticket, see Chapter 4 Appendix 1), as well as field notes from the 26 police observations undertaken, this chapter explores how many people were involved in the offences, whether there were any bystanders, the severity of offending and who the victims of penalty offences were<sup>224</sup>. Building on the discussion in the previous chapter, which showed that half of all PNDs issued in 2010 were issued in custody, this chapter considers the factors which influence officers' decisions as to where to issue penalty notices, or indeed whether to take any formal action at all.

### **6.2 How many perpetrators were involved in penalty offences?**

There is no set means to record the number of perpetrators involved in the offence on penalty notice tickets. Such data are not therefore available at the national level. The evidence provided on the tickets sampled does however provide some insight on this matter (see Table 6.1)<sup>225</sup>.

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<sup>224</sup> As in Chapter 5, all ticket analysis cases referred to herein are referenced according to their (assigned) case number i.e. 'Ticket Analysis Case *n*' (1-250). This refers to the order in which tickets were reviewed. PNDs that were issued during observations are presented as descriptive case studies in Table 6.5. These cases are referred to as 'Observation Case *n*' (1-13). Throughout this chapter, sample sizes are provided to give the reader an indication of the number of cases included in the various analyses: 'N' indicates the size of the entire sample, whereas 'n' is used to refer to the subset of the sample in question.

<sup>225</sup> The number of offenders involved in each case was coded by the researcher based on the evidence given. Thus for example, where the evidence described two people fighting, two perpetrators were noted, whereas where the evidence described one person shouting at another only one perpetrator was recorded.

<b>Table 6.1: How many perpetrators were involved in penalty offences?</b>				
Number of People Offence	1 person	2-3 people	4+ people/ "group"	Total
<b>All Offences</b>	<b>106</b> <b>(68%)</b>	<b>30</b> <b>(19%)</b>	<b>20</b> <b>(13%)</b>	<b>156</b> <b>(100%)</b>
Drunk and Disorderly	33 (57%)	11 (19%)	14 (24%)	58 (100%)
Retail Theft	37 (82%)	8 (18%)	0 (0%)	45 (100%)
s5 Public Order	9 (43%)	7 (33%)	5 (24%)	21 (100%)
Possession of Cannabis	21 (88%)	2 (8%)	1 (4%)	24 (100%)
Other Offences	6 (75%)	2 (25%)	0 (0%)	8 (100%)

N=156

There was a significant difference between the number of offenders involved in s5 and drunk and disorderly offences and the number of people involved in all other offences ( $\chi^2=22.597$ , d.f.=2,  $p < 0.001$ ). Theft, cannabis and 'other' offences were more likely to involve only one perpetrator (83% of cases (N=77)), whereas in 47% of s5 and drunk and disorderly cases there were two or more perpetrators (N=79). In only 50% of cases where there was more than one perpetrator did the other person(s) involved also receive a penalty notice (N=46). We shall be returning to this below when considering officers' decision making when issuing PNDs (see Section 6.6).

### **6.3 Were there any bystanders?**

As with other situational factors surrounding penalty offences, there is no formal means to record whether there were any bystanders present during the offence. It does not equate that bystanders were not (actually) present simply because they were not mentioned in the officers' statement of evidence. Rather, it may be that such information was not deemed pertinent. This is highlighted particularly given that, according to the evidence, no bystanders were present in 81% of drunk and disorderly cases (N=59). Yet the majority of such offences occurred on Friday and Saturday nights in town/city centre streets (where the presence of large numbers of people may be assumed). Whilst the presence of bystanders may not be (legally) relevant in some cases, s5 requires that there was someone in the vicinity who *may* have been caused harassment, alarm or distress by the actions of the offender. This was a

matter which, during observations, officers reported affected their decision to issue drunk and disorderly rather than s5 tickets, particularly with regard to public urination offences. Indeed all those s5 tickets sampled which were issued for public urination noted that the individual was clearly visible to members of the public (n=3)<sup>226</sup>. Whilst bystanders were mentioned in half of all s5 cases (N=24), they were less commonly (19%) cited as the primary victim (N=21)<sup>227</sup> (see Section 6.5).

#### **6.4 What was the level of offence severity in PND cases?**

There are clear parameters for the use of retail theft and criminal damage tickets: a financial limit (of £100 and £300 respectively) dictates the severity of such cases which may be disposed of via PND (Home Office 2005a; Ministry of Justice 2013b). However, the circumstances in which s5, drunk and disorderly and cannabis tickets may be issued are less clear. In the latter instance, officers must use their discretion to decide whether the amount of cannabis held is for personal use (ACPO 2009). The evidence on cannabis tickets largely referred to people being found in possession of ‘a small bag’ of the drug, or else being caught in the process of smoking it. This suggests that, in line with the guidance, cannabis tickets were only being issued to people in possession of quantities of the drug which were consistent with personal use. However as the drug was not weighed, ‘severity’ in cannabis cases remains difficult to define and measure. Officers’ witness statements did however provide an insight into the severity of theft, s5 and drunk and disorderly cases disposed of via PND.

##### **6.4.1 Theft**

The value of goods stolen was not detailed on 32% of theft tickets (N=59)<sup>228</sup>. Where the value was stated, 53% of theft tickets were issued to people who stole goods valued at less than £20 (N=40) (see Table 6.2). It would appear therefore that the police were not using tickets for more serious cases of theft, indeed the mean value of the goods stolen was £28.27, and the median £15.72. Based on those cases where officers detailed the item(s) stolen but not their value, there was no indication that the absence of this financial data related to more serious

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<sup>226</sup> However, as noted in Section 3.4.3.7, officers’ ‘account ability’ allows them to define events in their own (favourable and rule-conforming) terms (Ericson 1995). By noting the presence of bystanders, officers therefore ensure that they satisfy the requirement that there were people in the vicinity who were likely to be distressed by such behaviour.

<sup>227</sup> In three cases it was unclear from the evidence who the primary victim was; the evidence made reference to the recipient behaving in an abusive manner but not to whom this abuse was directed.

<sup>228</sup> In these cases the value of goods was neither recorded in the evidence section (Part 6b) nor on the offence particulars (part 1, retained by the offender).

instances of theft<sup>229</sup>. In only one case was there a clear indication that the value of goods stolen was over £100<sup>230</sup>.

<b>Table 6.2: What was the value of goods stolen in theft cases?</b>	
	N (%)
Under £10.00	13 (33%)
£10.00-£19.99	8 (20%)
£20.00-£29.99	3 (8%)
£30.00-£39.99	6 (15%)
£40.00+	10 (25%)

N=40

Whilst in 25% of theft cases the items stolen were valued at more than £40 only a small proportion exceeded £80 (8%) (N=40). Thus although the value of goods covered by the retail theft penalty notice scheme was reduced from £250 to £100 in July 2009, it appears that officers concentrated the use of these tickets on much lower-level offending.

#### **6.4.2 Section 5 and drunk and disorderly**

In s5 and drunk and disorderly cases offence severity was initially assessed using two (identical) six point scales for verbal and physical aggression<sup>231</sup>. The first concerned aggression directed at

<sup>229</sup> In the majority of those cases where the value of goods was not detailed, the goods stolen were described and as such the value of goods may be estimated (n=13). In the remaining 6 cases where the value of goods was not recorded, no evidence was completed for the ticket as such the value of goods is unknown (N=19).

<sup>230</sup> In that case the evidence stated that two ticket(s) had been issued to two women for theft of goods that, in total, were valued at £250. Therefore either one, or both, of the women stole goods worth over £100. In a further case the item stolen was a 'Radley' handbag, however as that designer's bags are sold for between £79 and £300 it is not clear whether or not the item in question fell outside the official remit of the PND scheme.

<sup>231</sup> Aggression was only considered with regards to tickets issued for s5 and drunk and disorderly. No other tickets noted any level of aggression towards the public and in only one other case (regarding breach of s.127(2) of the Communications Act 2003) did offenders display aggression towards the police.

the police, the second, aggression towards the public<sup>232</sup>. The scale was based on the measure used by Deehan et al (2002) that was also used (with regards to aggression towards the public) in Coates *et al.*'s (2009) study of officer decision making in PND cases<sup>233</sup>. Aggression was a useful means of categorising the severity of offences as, despite the (supposed) low-level nature of penalty offences, only five s5/drunk and disorderly tickets were issued to people who did not display any aggression to either the public or the police (see Table 6.4).

<b>Table 6.3: Scale of verbal and physical aggression</b>
<p><b>0. Not aggressive</b></p> <p><b>1. One-sided provocative behaviour – i.e. not directed at anyone specifically</b> - Offensive, annoying, threatening, provocative behaviour, might include goading and offensive language.</p> <p><b>2. Verbal arguments/disputes and threats – i.e. directed at a specific person</b> - Any expression of anger or conflict between two or more people, as well as verbal hostility and/or threats. This includes refusal to pay a taxi fare.</p> <p><b>3. Mild physical force or aggression – directed at a specific person</b> Incidents in which some physical contact was made as part of verbal aggression, but where the physical contact was aggressive by itself.</p> <p><b>4. Medium physical force or aggression – directed at a specific person</b> Includes physical aggression involving pushing, shoving, grabbing, restraining and slapping. This includes cases where the recipient physically resisted arrest, but not those where 'resistance' included punching/kicking.</p> <p><b>5. Severe physical aggression and brawls</b> Involves punching, kicking, head-butting, wrestling, use of a weapon, or many people involved in a physical altercation.</p>

All cases were coded on a scale of 0 – 5 for aggression towards the police and aggression towards the public (as per Table 6.3). A 'total aggression' score of between 0 and 10 (combining these two) was also calculated. These scales recorded aggression whenever it occurred. However, it should be noted that whilst aggression towards the public did, in all cases (according to officers' statements), cease (at the latest) when the person was arrested/issued with a PND, aggression towards the police often continued, or even escalated in response to arrest. Whilst this post-arrest aggression may contribute to the overall severity of the offence, it cannot (of course) explain officers' decisions to arrest. As such, a second

<sup>232</sup> 'The public' included security and non-security professionals such as taxi drivers, food outlet staff and ambulance staff, as well as any other person involved in a dispute with/subject to abuse from the PND recipient.

<sup>233</sup> Coates et al. (2009) only coded their data on points 1 – 3 of the above scale, stating that as s5 does not cover more severe forms of aggression, cases involving level 4-5 aggression would not qualify for a PND and therefore do "not appear in [their] data" (Coates et al. 2009, p.407). Ultimately, Coates et al. (2009) reported aggression using a dichotomous variable of low/high aggression the latter including mild physical violence and the former one-sided or directed verbal aggression. There was no measure on their scale for no aggression.

measure of *abuse* towards officers was used. This recorded whether people were directly verbally or physically aggressive towards officers *before* their arrest/being issued with a PND on-the-spot<sup>234</sup>.

The overall level of aggression was higher in drunk and disorderly cases than s5 cases; the median total aggression score for each offence was 4 and 2 respectively (on a scale of 0-10), however this difference was not significant. These low overall aggression scores indicate that verbal aggression was more commonly experienced than physical aggression. However these averages also mask the variety of circumstances in which penalty notices were issued, and the, at times, quite serious levels of violence (both towards the police and the public) that were reported. As such, aggression towards the public and towards the police will be considered separately below. Firstly however, it should be noted that the national guidance states that cases where there is any injury or realistic threat of injury (such as where people have been physically violent and potentially where people have been verbally threatening) should not be disposed of via PND (Home Office 2005a; Ministry of Justice 2013b). As such, those cases measured 3 – 5 on either aggression scale should be outside the remit of the penalty notice scheme. Yet in 15% of tickets sampled the level of aggression towards the public was coded as 3 or more (N=79). This rose to 32% when considering the level of aggression towards the police (N=79).

Secondly, the overall severity of cases varied significantly depending upon whether or not we treat those people who displayed ‘one-sided provocative behaviour’ as being ‘aggressive’, or whether we only include people who are directly abusive within this category. As shown in Table 6.4, when we include those people who displayed one-sided provocative behaviour, 94% of offenders displayed some aggression (N=78) and almost half of all s5 (N=21) and drunk and disorderly (N=57) offenders were abusive to both the public and the police (48% and 49% respectively). However, if we treat people who only displayed one-sided provocative behaviour as being ‘not directly aggressive’ a different picture emerges: 14% of PND recipients were not *directly* aggressive to anyone and there was a significant variation between whom these directly ‘aggressive offenders’<sup>235</sup> targeted their aggression at (N=78) ( $\chi^2=7.944$ , d.f.=2,

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<sup>234</sup> This therefore excluded cases where people only displayed one-sided provocative behaviour towards the police and where aggression (whether verbal or physical) only occurred as people were being arrested/after their arrest (such as during their conveyance to custody). Cases were coded as 0=not abusive and 1=abusive. Another variable also considered whether that abuse was verbal, physical or both.

<sup>235</sup> These results are based on comparing people who were either not aggressive at all, or only displayed one-sided provocative behaviour towards the public and/or police with people who were *directly* verbally or physically aggressive to the police and/or the public.

p=0.047). Most *directly* aggressive offenders in s5 cases directed their aggression at the public (n=9), whereas in drunk and disorderly cases they were aggressive either solely to the police (37%) or to both the police and the public (39%) (N=51). The interactive nature of aggression towards the public and the police (and the particular importance of the latter) will be discussed further below when considering the factors which affected where tickets were issued and who the victims of penalty offences were.

Who is aggression targeted at? Offence	Not aggressive	Public only	Police only	Both	Total
<b>All Offences<sup>237</sup></b>	<b>5</b> <b>(6%)</b>	<b>12</b> <b>(15%)</b>	<b>23</b> <b>(30%)</b>	<b>38</b> <b>(49%)</b>	<b>78</b> <b>(100%)</b>
Drunk and Disorderly	3 (5%)	7 (12%)	19 (33%)	28 (49%)	57 (100%)
S5 Public Order	2 (10%)	5 (24%)	4 (19%)	10 (48%)	21 (100%)

N=78

Finally, it should be noted that all five PNDs issued to non-aggressive persons concerned public urination. Similarly, only three PNDs viewed during police observations did not involve any (directed) aggression at either the police or the public (Observation Cases 2, 3 and 5), two of which were issued for public urination. For clarity, the observation cases will be briefly detailed here, however the circumstances surrounding these cases will be discussed in more depth in the relevant sections below (see Table 6.5).

Observation Case	Overview of the circumstances	Place of issue
1	The recipient's friend was being held by doormen outside a city centre bar. The recipient challenged officers as they were arresting his friend, touching one on the arm and telling them his friend had not done anything wrong. The recipient had PAVA <sup>239</sup> spray used against him and was arrested for drunk and disorderly.	Custody

<sup>236</sup> This table includes those people who only targeted one-sided provocative behaviour at the public and/or the police.

<sup>237</sup> S5 and drunk and disorderly only.

<sup>238</sup> In addition to these 13 cases, two penalty notices were observed at the point of being issued in custody. Whilst those cases provided an opportunity to engage officers in discussion about PNDs, as the circumstances of the offence, arrest and transfer/ admission to custody were not observed, those cases are not discussed in detail here.

<sup>239</sup> PAVA is an irritant sprayed from an aerosol canister into the eyes of offenders. It causes the eyes to close and is severely painful. When sprayed into the eyes the effects are usually instantaneous and last for 15-20 minutes (ACPO 2010).

Observation Case	Overview of the circumstances	Place of issue
2	The recipient was seen urinating against a lamppost on a city centre street. He was issued with a PND for drunk and disorderly.	On-the-spot
3	The recipient was seen urinating against the doorway of a block of city-centre flats. He was issued with a PND for drunk and disorderly.	On-the-spot
4	Officers were called by security staff at a city centre bar to deal with a man found flushing a small bag of (what appeared, and was assumed by officers, to be) cocaine down the toilet. He was arrested for drunk and disorderly.	Custody
5	The recipient was seen by officers to place a number of bread baskets (taken from a nearby fast food outlet) on a city centre road (obstructing the traffic). The man was issued with a PND for drunk and disorderly and a s27 notice <sup>240</sup> .	On-the-spot
6	Officers were called to deal with an assault on a doorman at a city centre bar. The recipient had slapped a doorman after he ejected her from the bar. She was initially issued with a s27 direction to leave, and was then issued with a PND for drunk and disorderly behaviour.	On-the-spot
7	Officers were called to deal with a woman outside a city centre bar who, following her ejection, was refusing to leave and was stood on the pavement immediately outside. She became verbally abusive towards officers. She received a number of warnings to desist in her behaviour, and was ultimately arrested for drunk and disorderly. She violently resisted her arrest.	Custody
8	Following his friend's arrest, the recipient was outside the police van and, reportedly, was shouting into the van asking officers if his friend was in the van, subsequently becoming abusive towards officers. The man was arrested but, on arrival at the custody suite it was decided that he seemed sober enough to be dealt with on-the-spot and thus was de-arrested and taken back to the police van to be issued with a PND for drunk and disorderly <sup>241</sup> .	On-the-spot
9	The recipient was arrested for drunk and disorderly following his questioning/criticism of an officer in the aftermath of his friend being knifed in a city centre nightclub <sup>242</sup> .	Custody
10	These three tickets were all issued for offences arising out of the same event. A small group of men were fighting, the recipient in Case 10 was the initial instigator of the argument that prompted the subsequent fight. The man in Case 10 lost a tooth as a result of that fight. The man in Case 11 was (at the time) suspected of being the person who had knocked out the other man's tooth, he was arrested for s5. The recipient in Case 12 was the girlfriend of the (toothless) man in Case 10. After the first fight was broken up by officers, she proceeded to hit the girlfriends of some of the other men in the group. She was arrested for s5. The man in Case 10 was arrested under s5 after (aggressively) trying to intervene in his girlfriend's arrest. None of the other parties to the fight were subject to formal action <sup>243</sup> .	Custody
11		
12		
13	A man was seen arguing with his girlfriend, officers intervened and told him to calm down. He tensed up and hit himself in the throat a few times. He had PAVA used against him and was arrested for drunk and disorderly.	On-the-spot

<sup>240</sup> This is a direction to leave an area and not return for (up to) 48 hours, under s27 of the Violent Crime Reduction Act 2006.

<sup>241</sup> This case was only observed after the man was arrested, however I was present in the immediate aftermath and when the ticket was issued.

<sup>242</sup> This case was only observed after the man was arrested, however I was present in the immediate aftermath of the offence and whilst the offender was transferred to custody.

<sup>243</sup> Whilst I only observed these cases from the point of arrest, the CCTV footage of the fight was later reviewed.

### 6.4.2.1 Aggression towards the public

Table 6.6 below details the level of aggression towards the public displayed in s5 and drunk and disorderly tickets sampled. There was no significant difference between the level of aggression towards the public displayed in s5 and drunk and disorderly cases. This would support some officers' contention that the only distinction between these offences was the element of intoxication<sup>244</sup>. With the exception of 7 public urination cases, all s5 and drunk and disorderly PND recipients who were not abusive towards the public were abusive towards the police.

<b>Table 6.6: What was the level of aggression displayed towards the public in s5 and drunk and disorderly cases?</b>					
Level of aggression Offence	Not aggressive	One-sided provocative behaviour	Directed verbal abuse/threats	Physically aggressive <sup>245</sup>	Total
<b>All Offences</b>	<b>28</b> <b>(35%)</b>	<b>6</b> <b>(8%)</b>	<b>33</b> <b>(42%)</b>	<b>12</b> <b>(15%)</b>	<b>79</b> <b>(100%)</b>
Drunk and Disorderly	22 (39%)	3 (5%)	23 (40%)	9 (16%)	57 (100%)
S5 Public Order	6 (27%)	3 (14%)	10 (46%)	3 (14%)	22 (100%)

N=79

The cases in which the PND recipient displayed one-sided provocative behaviour all involved the perpetrator shouting and swearing in the street. However, this swearing was in a manner of emphasising a point during an argument (rather than to insult a specific individual) or else

<sup>244</sup> Whilst during observations officers suggested that the two offences were, but for the element of intoxication, largely interchangeable, there was some evidence from the cases observed (which is not supported by the ticket analysis) that s5 may be reserved for more serious offences and thus (as a recordable offence) was deemed to be a more severe sanction. Thus for example, in Observation Cases 10-12 (which involved a severe level of aggression) a s5 disposal was chosen as it was believed that such cases were excluded from the PND waiver scheme; the issuing officer believed the education option would be an insufficient punishment given the level of violence shown by the offenders in this case. Similarly, the following extract from my field notes suggests s5 tickets may be reserved for (especially) violent offences: "As we were waiting another man was being booked in [to the custody suite] he ... had been arrested for assault and I commented that I was pleased I hadn't missed a d+d PND whilst we'd been in [the custody suite, dealing with a non-penalty offence]. The officer said it wouldn't be a d+d ticket, if anything it would be a s5. The custody sergeant then said it might not be anything as there was no complaint. The man who had been arrested [had] apparently punched a man who had tried to steal his phone ... [The custody sergeant] said it might be self-defence "well at least the first punch, maybe not the third or fourth"" (Field Notes, Page 110). Thus their decision was informed by whether there was a complaint/whether the officers decided to define the man's actions as 'self-defence'. If it was classed as an offence, rather than making any reference as to whether or not the offender was intoxicated, the decision as to whether the case should be classed as s5 or drunk and disorderly seemingly rested on the level of violence shown.

<sup>245</sup> As the majority of cases concerned verbal abuse, all physical aggression has been collapsed into a single category.

they were swearing but at no-one in particular. To the contrary, directed verbal aggression involved swearing/being verbally abusive towards a specific individual. Observation Case 4 is worthy of note here. In that case the man was arrested for drunk and disorderly, accused of being aggressive towards door-staff:

The door-staff ushered us into a side corridor saying they were holding a man who they suspected of possessing drugs. They had caught him trying to flush it down the toilet .... Another doorman came downstairs with some loo roll in his hand and a small bag, in the bag there was a small amount of white powder – I presumed this was cocaine. The man who was being held said it wasn't his but two doormen confirmed that they'd seen him flush it .... When we got to the charge office ... [the officer] told the custody sergeant that the man had been arrested for drunk and disorderly ... for swearing at the door-staff and to prevent any injury. This struck me as odd as the man hadn't been very physically aggressive. No mention was made of the cocaine being found ... [on the PND the officer] detailed that he had been stopped by door-staff who saw him flush cocaine down the toilet (Field Notes, Pages 39-40)<sup>246</sup>.

The officer later stated that in cases such as this the man would have just argued that the cocaine was not his and thus it would be difficult to prove. What this case highlights is that PNDs, and particularly the broad 'disorder' offences of s5 and drunk and disorderly are sufficiently vague to include a myriad of (quite serious) behaviours within the PND scheme. This is also true when we consider the use of PNDs where offenders have displayed physical violence.

Of the twelve cases where there was some form of physical abuse towards the public, one involved mild physical aggression, one medium physical aggression and ten severe physical aggression. Severe physical aggression included groups of people involved in a physical altercation, people head-butting, punching or kicking someone, as well as two cases involving the use of a weapon. In one a man threw bottles inside a nightclub and in another a man used his belt to lash out at another group during a fight outside a nightclub. Despite the serious levels of aggression recorded, only two cases noted any injury resulting from that aggression – a doorman was left with a "red mark under his left eye" after a woman head-butted him as she was ejected from a bar (Ticket Analysis Case 133), and a man was left with "facial injuries" after being "jumped" by another man (Ticket Analysis Case 32). Whilst it was uncommon for the evidence to mention any injury, 18% of s5 and drunk and disorderly cases did note that

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<sup>246</sup> I was unable to recall later whether the ticket had stated that the drug was retrieved. This was the case noted in Chapter 4 where the officer was reluctant to let me read the ticket and as such I was only able to skim-read the evidence as the officer spoke to me.

threats were made (N=51). This would appear to contradict the guidance on the use of PNDs which prohibits their use where there is any injury, or threat of injury.

Of the PND cases viewed during police observations a number involved physical aggression towards the public. Three recipients were involved in a fight that involved various members of a mixed-sex group of about ten people, during which all three PND recipients (amongst others) were seen to throw punches and one man lost a tooth (Observation Cases 10-12). Another case involved a woman who reportedly slapped a bouncer when being ejected from a bar (Observation Case 6). The final case observed where there was some level of physical aggression towards the public involved a man who was seen in the street shouting at his girlfriend. She appeared to be trying to calm him down, however he became increasingly agitated and looked as though he would become physically aggressive; he was tensing his arms and breathing heavily through his nose. A woman (seemingly a friend of his girlfriend's) walked past the couple and seemed to try and intervene in the argument. At this point the man made a movement towards her as though he was going to push/hit her. The police then intervened and handcuffed him. It took four officers and the use of PAVA incapacitant spray to restrain the man (Observation Case 13).

In over a third of s5 and drunk and disorderly cases there was no aggression towards the public. However where such aggression was displayed it was often the reason for police intervention. This intervention was often met with aggression towards the police and, through the process of that interaction, an escalation of the overall severity of the offence. Indeed, in 42% of cases aggression towards the public, whilst ceasing upon police intervention/the individual's arrest, moved towards the police (N=50).

#### **6.4.2.2 Aggression towards the police**

Two measures were used for aggression towards the police. The first concerns whether or not people were *directly* abusive towards officers before their arrest/being issued with an on-the-spot PND, the second considers the peak level of aggression displayed by the offender regardless of whether this occurred before or after arrest. Whilst the first measure is important when considering which factors affect officers' decisions as to where to issue PNDs, post-arrest aggression is also relevant to the overall severity of the incident. All people who were aggressive towards the police displayed that aggression prior to being sanctioned,

although a quarter were only displaying one-sided provocative behaviour (N=62)<sup>247</sup>. Nobody only displayed aggression towards the police after they were arrested/issued with a PND. There was a significant difference between whether or not people were *directly* aggressive towards officers and whether they received a s5 or drunk and disorderly ticket ( $\chi^2=8.317$ , d.f.=1, p=0.006)<sup>248</sup>. Thus whilst 69% of drunk and disorderly PND recipients were directly abusive prior to their arrest (N=58), this compared with 32% of s5 recipients (N=19). Table 6.7 below details how aggression varied over the course of the interaction. Whilst almost half of all recipients stopped behaving aggressively towards officers once they were arrested, in over a quarter of cases aggression towards the police actually got worse as/after the individual was arrested. Overall 51% of *directly aggressive* offenders offered some physical resistance against arrest (N=43).

Table 6.7: How did aggression towards the police vary over the course of the interaction?					
When did aggression occur? Offence	Stopped when issued with a PND/arrested	Got better when arrested <sup>249</sup>	Got worse when arrested <sup>250</sup>	Stayed the same throughout <sup>251</sup>	Total
<b>All Offences</b>	<b>27 (47%)</b>	<b>4 (7%)</b>	<b>16 (28%)</b>	<b>10 (18%)</b>	<b>57 (100%)</b>
Drunk and Disorderly	21 (47%)	3 (7%)	13 (29%)	8 (8%)	45 (100%)
S5 Public Order	6 (50%)	1 (8%)	3 (25%)	2 (17%)	12 (100%)

N=57

Table 6.8 outlines the overall level of aggression displayed towards police in s5 and drunk and disorderly cases (regardless of when during the encounter it occurred). Offenders were significantly less aggressive towards the police in s5 cases than in drunk and disorderly cases (U=435.000, p=0.048). This is notable as it might have been expected that officers would view s5 (a recordable offence) as being more serious than drunk and disorderly and would thus be more likely to categorise more aggressive offenders as 's5'. In practice, however the reverse was true. Whilst the majority of s5 PND recipients were either not aggressive towards the police, or only displayed one-sided provocative behaviour (N=21), most drunk and disorderly PND recipients were directly abusive to the police, either verbally (35%) or physically (35%)

<sup>247</sup> Of the 14 people who displayed one-sided provocative behaviour toward the police (pre-sanction), 10 stopped being abusive after they were sanctioned.

<sup>248</sup> This excludes people who only displayed one-sided provocative behaviour (N=77).

<sup>249</sup> All people whose aggression improved but continued were issued with a ticket in custody.

<sup>250</sup> All people whose aggression got worse were issued with a ticket in custody.

<sup>251</sup> Only one of these tickets was issued to a person on-the-spot, the individual displayed one-sided verbal aggression.

(N=58). The fact that offenders who were directly aggressive toward the police were less likely to be issued with s5 PNDs perhaps reflects officers' awareness of the need to meet additional evidential criteria in these cases (which demands that police officers should have a higher tolerance for abuse (*DPP v. Orum* [1989] 1 W.L.R. 88)).

<b>Table 6.8: What was the peak level of aggression displayed towards the police in s5 and drunk and disorderly cases? (inc. post-arrest aggression)</b>					
Level of aggression Offence	Not aggressive	One-sided provocative behaviour	Directed verbal abuse/threats	Physically aggressive	Total
<b>All Offences</b>	<b>17 (22%)</b>	<b>15 (19%)</b>	<b>22 (28%)</b>	<b>25 (32%)</b>	<b>79 (100%)</b>
Drunk and Disorderly	10 (17%)	8 (14%)	20 (35%)	20 (35%)	58 (100%)
S5 Public Order	7 (33%)	7 (33%)	2 (10%)	5 (24%)	21 (100%)

N=79

In those cases where the individual displayed one-sided provocative behaviour, the offender was swearing either in the presence of, or in conversation with, the police. For example, one woman responded to being cautioned saying "it's those fuckers, not me" (Ticket Analysis Case 218). The swearing was not therefore directed *at* officers in an overtly insulting manner, but rather was an expression of anger/frustration. The offender was directly verbally abusive towards the police in twenty-two cases. This included two cases where the offender threatened the officer. In one, a female offender (whilst prodding the officer in the chest) shouted "fucking arrest me then, I'll fucking head-butt you in [sic] fucking face" (Ticket Analysis Case 52). The other case involved a man shouting at an officer "I'll smash your face in" before taking (what the evidence on the ticket described as) a "fighting stance" (Ticket Analysis Case 67). Where offenders were directly abusive to officers they were less likely to receive a warning before being arrested/issued with a ticket than where they had only displayed one-sided provocative behaviour. In the vast majority of cases where the offender displayed one-sided provocative behaviour towards the police, they displayed at least the same level of aggression (if not more) towards the public. However, almost half of the cases sampled where recipients were directly verbally abusive towards the police did not involve any aggression towards the public (N=22). Similarly, in Observation Cases 1, 8 and 9 people were arrested solely for their (perceived) abusive behaviour towards the police.

Of the cases where the offender displayed physical aggression towards the police, three concerned mild aggression, seventeen medium aggression and five severe aggression. Mild aggression included incidents such as where an offender swung their arm out at an officer but seemingly made no contact. Fourteen of the seventeen cases involving medium-level aggression concerned people physically resisting arrest<sup>252</sup>. This violent resistance to arrest was viewed during observations, with officers resorting to the use of PAVA incapacitant spray to control some offenders. Of the five cases involving severe physical aggression towards the police, one involved a man throwing bottles at police staff during a drugs search at a pub, another involved the offender spitting at the officer as he was being arrested. The other three cases involved people punching out and kicking officers as they were being arrested, the most extreme example of which resulted in a detention officer breaking his finger whilst trying to restrain the woman<sup>253</sup> (Ticket Analysis Case 133, see Section 6.5.2.3 below).

The level of aggression towards the police was significantly higher in those s5 and drunk and disorderly cases where there were two or more offenders (N=79) (U=608.000, p=0.045 (one-tailed)). Only 19% of cases involving only one perpetrator involved some level of physical abuse towards the police (N=42), compared to 46% of cases involving more than one perpetrator (N=37). This is in keeping with Tedeschi and Felson's (1994) finding that people may be more likely to engage in aggressive behaviour when in the presence of others so as to appear strong/brave in front of their friends, family and/or any bystanders.

As mentioned above, aggression towards the police often occurred within the context of an ongoing situation, whereby the individual reacted aggressively to some police intervention caused by their verbal/physical aggression towards a member of the public. The overall offence severity therefore escalated during the event. This interaction between the police officer as both 'law enforcer' and 'victim' will be considered further below.

## **6.5 Who were the victims of penalty offences?**

National data do not report who the victims of penalty offences are. The ticket analysis therefore provides a useful insight into this matter (see Table 6.9 below). There is no defined section on PNDs to record who the victim(s) of the offence was. As such, officers' statements were researcher-coded in a sequential manner noting any victim(s) in the order they

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<sup>252</sup> In the other three cases sampled in the ticket analysis where there was a medium level of aggression it appears that the physical violence was the trigger for arrest (rather than a reaction to being arrested). After being verbally abusive to officers, offenders pushed officers and were then arrested.

<sup>253</sup> Although it is not clear that her direct actions caused the detention officer's injury, the evidence states that the woman was then also arrested for assaulting a police officer. No further mention is made of this incident.

appeared<sup>254</sup>. This sequential method was adopted to avoid subjective judgements as to the perceived importance of the victim in the event/decision to issue a penalty notice. However, when reviewing the narrative of the evidence given it is often apparent that offenders were arrested/issued with notices for behaviour directed at secondary/tertiary victims rather than for their initial action alone. This was clearly highlighted by Observation Case 7:

[the] officers were dealing with a girl outside [a city centre bar] .... The girl was refusing to leave (she had been thrown out of [the bar]) saying she wanted to speak to the doorman. She said she wasn't doing anything wrong and she wasn't going anywhere. She was told she needed to go home or she would be arrested. The two officers then crossed the road and waited on the other side to see if she'd leave ... the girl started yelling at the police [across the street] swearing and calling them "fucking idiots". One of the officers commented that she was starting to get on his nerves, but they didn't respond to her. Her friend ... was having to drag her as [she] continued to yell at the police. The officers commented "we're gonna have to lock her up in a minute" and that she looked like she was going to "clock her friend" who was dragging her by the arm ... she sat down on the window ledge of the bar – after she had been there for a couple of minutes – still shouting – they said "we're gonna have to lock her up" and walked over to speak to her ... the officers told her she needed to go home or she was going to be arrested .... The officers again told her that she needed to leave ... she got up and started to leave however she tried to turn around, [her friends] began to drag her away, but she turned around and started yelling at the police saying they were "fucking idiots". One of the officers said "we're going to have to lock her up" and they ran after her ... officers tried to restrain her on the floor but she kept wriggling and trying to kick them ... she continued to kick out and lift her feet so they were lifting her rather than her walking .... As they were trying to get her in the van she locked her legs so they wouldn't bend – ultimately an officer had to go inside the van and open the cell from the other side and bring her legs in by passing them through to him. The whole time she was screaming "get off me" and "I have human rights" .... When we arrived at [the custody suite] ... the girl started screaming again. She refused to get out of the van .... She was, after a few minutes, lifted out of the van and into the station. As before she continued to kick and at one point wrapped her legs around one of the officer's legs – she was trying forcibly to stop them getting her into the holding cell. When she was eventually placed in the holding cell she stuck her leg in the doorway to stop them shutting the door .... It quickly became clear that she wasn't going to calm down and she was taken through to the cell with the help of about four officers (Field Notes, Pages 53-54).

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<sup>254</sup> Thus, if a person was thrown out of a bar for assaulting a member of the public that person would be the first victim. If they then became abusive towards the security staff, the security staff would be the second victim. If, following their intervention, the person then became abusive towards the police, the police would be the third victim.

As can be seen, in this case the recipient was initially ejected from a bar (although for what was unclear) and was abusive towards door-staff causing officers to intervene. However, it was her subsequent behaviour towards officers that led to her arrest<sup>255</sup>.

Table 6.9 displays the *first* victim mentioned in the evidence section of the ticket, however it should be noted that 43% of s5 and drunk and disorderly cases involved more than one victim (N=79)<sup>256</sup>. Of those cases with more than one victim, the second victim was most commonly the police (71%) although generic references to 'members of the public' were also noted (20%) as were security officers (9%) (N=34). Only four cases noted a third victim, three referred to the police and one to on-looking members of the public.

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<sup>255</sup> This case also highlights the fact that once the police have threatened to arrest someone they put themselves in a position where that threat must, as in this case, be carried out in the face of non-compliance. This issue will be considered further below (see Section 6.6.4).

<sup>256</sup> Only s5 and drunk and disorderly offences had more than one victim.

<b>Table 6.9: Who was the first victim of the offence?</b>									
	Shop	No victim	Police	Known/ involved person(s)	Non-security professionals	Security	Seemingly unknown person(s)	Alludes to public, but no specific victim	Total
<b>All Offences</b>	<b>46</b> <b>(30%)</b>	<b>30</b> <b>(20%)</b>	<b>23</b> <b>(15%)</b>	<b>21</b> <b>(14%)</b>	<b>14</b> <b>(9%)</b>	<b>9</b> <b>(6%)</b>	<b>5</b> <b>(3%)</b>	<b>6</b> <b>(4%)</b>	<b>154</b> <b>(100%)</b>
Drunk and Disorderly	0 (0%)	2 (4%)	16 (29%)	15 (27%)	13 (23%)	7 (13%)	1 (2%)	2 (4%)	56 (100%)
Theft	45 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	45 (100%)
s5 Public Order	0 (0%)	0 (0%)	5 (24%)	5 (24%)	1 (5%)	2 (10%)	4 (19%)	4 (19%)	21 (100%)
Possession of Cannabis	0 (0%)	24 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	24 (100%)
All other offences	1 (13%)	4 (50%)	2 (25%)	1 (13%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	8 (0%)

N=154

### 6.5.1 Theft

As would be expected the victims of all retail theft penalty offences were shops. It is notable however that all those shops were chain-stores (supermarkets, clothes retailers, budget home-ware stores or department stores) which had security staff. This pattern of victimisation may simply reflect the fact that larger retailers (those with more than 50 employees) are more likely to be a victim of theft from customers<sup>257</sup> (Shury *et al.* 2005), however, it may also be indicative of the value of goods stolen from different types of shop. The British Retail Consortium's (BRC) crime survey found that in 2009-10 between 21 and 47 per cent of retail thefts occurred in supermarkets and department stores with the average value of goods stolen being £70.44. However, the value of each incident of theft was greater in "other non-food retailers, jewellers and mixed retailers" (BRC 2010, p.12). As only thefts valued at less than £100 may be dealt with via penalty notice, there may be a small proportion of thefts occurring in non-chain stores which fall outside the remit of the PND scheme. Equally however, such stores may not have the resources, or inclination, to detect (and report) low-level thefts. Only three of the theft PNDs sampled<sup>258</sup> were issued hours/days after the offence was committed<sup>259</sup>. In all other cases the offender was held (by security staff) at the shop until the police arrived. Smaller retailers may not have the resources to identify, or hold shoplifters. Furthermore, they may be reluctant to report (particularly low-level) theft offences as: they do not deem the offence to be serious; they lack evidence; they do not believe the police would take action (Taylor 2004); or, they believe that such occurrences are "just part of business life" (Tilley and Hopkins 1998, p.7). The nature of the ticket analysis data means it remains unclear whether thefts occurring in non-chain stores were not reported to the police or, were reported, but fell outside the remit of the PND system. The ticket analysis does however show that thefts in such locations were, for whatever reason, not being dealt with by way of penalty notice.

### 6.5.2 Section 5 and drunk and disorderly

S5 and drunk and disorderly cases will be reviewed together as there were some similarities in the groups that were victimised in those cases. 'Victimisation' in s5 and drunk and disorderly cases related to verbal and/or physical abuse directed at one or more of the following groups:

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<sup>257</sup> 58% of retailers with 50-250 employees had experienced customer theft, compared to 36% of retailers with 1-9 employees (Shury *et al.* 2005).

<sup>258</sup> Of those forty-five theft cases where the evidence section of the penalty notice had been completed.

<sup>259</sup> The offender either being street-bailed (i.e. bailed by an officer to appear at the police station at a later date/time), or else identified at a later point by CCTV.

the police; security staff; persons known to, or involved in a (verbal or physical) fight with the PND recipient; persons seemingly unknown to the recipient; and non-security professionals (taxi and bus drivers, ambulance staff, food-outlet staff and a referee). All except one of the s5 and drunk and disorderly cases which were 'victimless' or alluded to the general public as the victim, regarded public urination<sup>260</sup>.

#### 6.5.2.1 The police

The police formed the largest proportion of initial victims in both s5 (N=21) and drunk and disorderly (N=56) cases (24% and 29% respectively). Six such cases involved people who became aggressive towards the police following the arrest of one of their friends. This appeared to be a relatively common phenomenon, indeed, two people were arrested (and later issued with a PND) during police observations following their reaction to the arrest of a friend (Observation Cases 1 and 8). This situation is highlighted by the following extract regarding Observation Case 1:

Just after 2am we responded to a call about a problem at [a city centre bar] ... there was a man being held on the floor by a bouncer, his face was pressed against the concrete and his arm was twisted behind him, his shoes had come off and he was kicking his legs. His friends were stood around him saying "he hasn't done anything wrong!" ... one of his friends touched [an officer] on the arm, trying to get him to turn and face him ... and said "he hasn't done anything". [The officer] said "don't touch me, I'm a police officer" he tried to speak to him again and at this point [the officer] turned to restrain him, alongside another bouncer they got him to the floor .... I smelt something and realised he'd been gassed [had PAVA used on him] ... he was cuffed in front of himself and kept saying "I haven't done anything, I haven't fucking done anything" his voice was raised but he sounded largely incredulous/pleading (Field Notes, Page 5).

In this instance the person had appeared to be trying to engage with the officer to plead his friend's case. Whilst they were heard to be swearing this was not (initially at least) directed at officers<sup>261</sup>. However in similar cases reviewed in the ticket analysis, it was reported that the person had been directly verbally/physically aggressive when their friend was arrested. This compares to Observation Case 8, during which the recipient was calling into the police van asking officers if his friend had been arrested. After being told to move on he reportedly<sup>262</sup> became insulting towards officers – "yelling into the van that one of the officers should eat a

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<sup>260</sup> That one s5 ticket related to a man swearing in the street during the afternoon and alluded to the public as the victim.

<sup>261</sup> The arresting officer in this case wrote in the evidence that the man had grabbed his arm and, when told not to do this, had become aggressive saying "come on you cunt" (Field Notes, Page 7). Whilst the man was seen to touch the officer on the arm whilst trying to get the officer's attention, he was not heard to swear at the officer in this manner and so the officer's evidence cannot be verified.

<sup>262</sup> The actions of this individual were not observed however I was present in the immediate aftermath of the offence whilst officers discussed the case, and during the issuing of the ticket when the officer discussed the matter with the offender.

salad, presumably ... insulting [them] about [their] weight (Field Notes, Page 58) – before himself being arrested. The importance of suspect demeanour in officers' arrest decisions will be considered further below (see Section 6.6.4).

A further six cases sampled involving the police as the first victim, concerned people who reacted negatively to some police intervention. Thus for example, in Observation Case 3 (discussed further below) the recipient was issued with a drunk and disorderly PND for public urination after his unreceptive reaction to their 'lecture' on his wrongdoing. In Ticket Analysis Case 168 a man, who was stood next to a police officer, was told to stop shouting to friends across the street. He had apparently done this next to the police officer's ear "causing a ringing". After moving to the officer's other side he again shouted to his friends, once more causing the officer's ears to ring. The officer then pushed the man who responded saying "who do you think you are? Don't fucking push me". The officer pushed the man again. He continued to swear, accusing the officer of assault and was told that if he did not stop swearing and leave the area he would be arrested. He swore again and was arrested for drunk and disorderly. It should be noted here that the man did not appear to intentionally shout *into* the officer's ear, and only became aggressive after being pushed by the officer. The officer therefore initiated the aggression in this case and the overall level of violence escalated as a result. Aggression in s5 and drunk and disorderly cases was often interactive and reactive. In both the ticket analysis and observations, offenders were seen to move from verbal to physical aggression in response to the actions of the police. Only three ticket analysis cases<sup>263</sup> where people were aggressive towards the police involved perpetrators who were entirely 'unprovoked', becoming aggressive despite no previous interaction between themselves and the officer<sup>264</sup>. Instead, the overall severity of the offence typically increased as a result of the actions of the police. As officers moved to take a person's arm (perhaps to execute an arrest) the offender would struggle to get away, as they were 'taken to the floor' they would kick out their legs etc.

Indeed, in three cases where the police were the first victim<sup>265</sup>, the PND recipient had initially contacted/approached the police themselves to (albeit drunkenly) report another incident, of which they were the victim. In Ticket Analysis Case 12 a woman approached police (shouting and swearing) saying that she wanted them to speak to a taxi driver. She was warned about her behaviour and language, but replied "I haven't done anything wrong, he called me bad

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<sup>263</sup> Two drunk and disorderly cases and a s5 offence.

<sup>264</sup> These cases involved persons sticking their fingers up at officers, or swearing at them as they walked past.

<sup>265</sup> This included the following cases: two s5, one drunk and disorderly and a wasting police time offence.

things, the cunt". She was again warned to calm down, at which point she swung out her arm. The officer took hold of her wrist and arrested her. During the police observations there were a number of incidents which resulted in threats of arrest where people (unprompted) approached the police to complain about door-staff or, in one instance, another member of the public, assaulting them. In that case a man came out of a nightclub and told an officer that he had just been assaulted. The officer (who was dealing with another incident) told him to "go away", when he complained again (saying he had just been slapped) he was told to "grow-up and go home" (Field Notes, Page 116). Observation Case 9 also resulted from an offender-initiated encounter when a man was arrested (and later issued with a PND) after "shouting and swearing" at an officer following his friend being knifed in a city-centre nightclub (Field Notes, Page 89). These cases evidence the applicability of Van Maanen's (1978, *In: Newburn 2005*) fourfold typology of officers' reactions to an affront (see Section 3.4.3.4.1). Those who challenge officers' authority might be 'taught' not to answer back to the police by being ridiculed and their complaints dismissed, or else they might be 'castigated' and thus arrested.

As noted above, Table 6.9 only refers to the first victim of the offence, yet in 43% of s5 and drunk and disorderly cases there was more than one victim (N=79). The police were identified as at least one of the victims in 38% of s5 cases (N=21) and 68% of drunk and disorderly cases (N=57). Officers often intervened in situations where a person was being verbally or physically aggressive to a third party, however that aggression would often then turn towards the police.

#### **6.5.2.2 Known/involved persons**

The first victim was either seemingly known to, or was involved in a fight with, the PND recipient in approximately a quarter of all s5 (n=5) and drunk and disorderly (n=15) cases (see Table 6.9). Fourteen<sup>266</sup> involved intoxicated people engaged in verbal and/or physical fights with one or more other person(s)<sup>267</sup>. Ticket Analysis Cases 34 and 35 in particular highlight the typical circumstances of such offences. Two groups of women were seen shouting and swearing at each other across the street. After repeated warnings about their behaviour and language one woman broke away from her group and started to approach the other side yelling "come on then you fucking slag". She was warned again, but persisted in shouting and swearing and was arrested for drunk and disorderly. A woman from the other group, who was seemingly yelling back at the first woman, was also arrested. However this second arrest was under s5. Both women subsequently received a PND. This case highlights the apparent

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<sup>266</sup> Eleven drunk and disorderly and three s5 cases.

<sup>267</sup> The other six cases included four domestic incidents disposed of via drunk and disorderly PND and two neighbour disputes which were disposed of via s5. These cases are discussed further below.

'interchangeability' of s5 and drunk and disorderly tickets that was noted by Kraina and Carroll (2006) in their research on PNDs. It also highlights the blurred distinction between victims and perpetrators in penalty offences. Rather than being a passive 'victim', in a quarter of all s5 and drunk and disorderly cases the 'victim' was actively involved in an altercation with the 'offender' (N=77). The factors which may affect how people come to be defined as victim/perpetrator and the particular impact of suspects' demeanour and compliance on officers' arrest decisions are considered further below (see Section 6.6.4). Observation Cases 10-12<sup>268</sup> was a typical example of a situation where the PND recipients and the 'victims' were involved in a fight:

The footage showed a couple arguing (the [first] man who had lost his tooth and his girlfriend) as they're arguing the [second, shaven headed] man ... walks past, everyone quickly piles in whilst the [not yet] toothless man's friends try and restrain him the shaven headed man, amongst others try and hit the [first] man, the shaven headed man doesn't get much contact and immediately backs off, the toothless man is fighting back, a 3rd man knocks out his tooth and then walks off – the toothless man is being aggressive throughout this and it's all a bit of a mêlée ... the police break it up, the toothless man points up the road (presumably pointing out his attacker) and two officers walk off (presumably to get him). It seems the [second man] arrested was the person they thought [the first man] had pointed out. The arguing continues and you can see the girl shouting at people before going off screen [officers later told me that she then punched two of the other women], you then see her boyfriend run forward .... (Field Notes, Pages 94-5).

Officers told me that at this point the first man had become aggressive towards them and was himself arrested. Thus three people were arrested, the (toothless) man who started the argument (Observation Case 10), his girlfriend (Case 11) and one of the men who tried to punch him<sup>269</sup>. All of the arrested parties were acting in ways that could be considered to 'cause harassment, alarm or distress' and indeed the level of violence displayed arguably goes far beyond this, however, the three PND recipients were not the only people in the group acting in an aggressive manner. Indeed the person who actually knocked out the man's tooth was not arrested. These cases would seem to breach the guidance which states that PNDs should not be used where there is any injury or threat of injury (Home Office 2005a, Ministry of Justice 2013b).

Further ticket analysis cases involving victims who were known to the offender, and which appeared to be *ultra vires*, arose out of situations where the police were called to deal with a

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<sup>268</sup> These s5 cases were viewed, in person, from the point of arrest. The original incident was later viewed on CCTV.

<sup>269</sup> At the time of this man's arrest (although not at the time the ticket was issued), he was thought to be the person who had knocked out the first man's tooth.

domestic incident<sup>270</sup>. In Ticket Analysis Case 67, the officer arrived at the house to hear shouting inside, the door flew open and the man (who was intoxicated) stood in the doorway and yelled at the officer. The man was refusing to leave the address without his child. When the officer asked him to come outside he “responded by looking directly at [the officer], with an aggressive look on his face and he formed a fighting stance by raising his fists to his chest.” When the officer threatened to use PAVA against the man he lowered his hands and was arrested for breach of the peace. Whilst the officer reportedly offered to take the man to some other address he failed to respond, but instead he continued to swear and “rambled drunkenly”. The man was warned that if he continued to swear he would be arrested and when he did so was arrested for drunk and disorderly. In a similar fashion, Ticket Analysis Case 114 involved the police being called to an incident regarding a drunken male shouting and swearing outside a premises. The man was arrested for drunk and disorderly for repeatedly swearing, saying “fucking her in there, I’m going nowhere [sic]”. In Ticket Analysis Case 136 having received a report of a domestic incident and information stating that the man was carrying a knuckle-duster, the officer sought to stop and search the offender. As the officer approached him, the offender swore at him, telling him to leave him alone. He was then arrested (which he physically resisted). He was searched but not found to be in possession of a knuckle-duster, but was arrested for drunk and disorderly behaviour.

In the final domestic violence case (Ticket Analysis Case 198) police were called following reports of a domestic incident inside a block of flats. It was alleged that, following this, there was a group of people outside the building in possession of knives. When the police arrived there were two males and a female in the street, one of the males was yelling “you fucking bitch. This is how you want to play it!” The man was warned to calm down by officers, but continued in his aggressive behaviour, “[letting] out what can only be described as a roar”, clenching his fists and head-butting a car. He then “shouted at the block of flats ‘you fucking bitch! Look what you’ve done! ... fuck this, I don’t care, I’m fucking going up!’”. As he moved to enter the building he was arrested for drunk and disorderly behaviour, to which he replied “She’s fucking had it now! Fucking bitch!” A similar case (discussed above) was viewed during police observations when, following the officers’ intervention in an argument between a man and his girlfriend, the man was PAVA’d and arrested after displaying barely contained rage

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<sup>270</sup> The Home Office (2005a, p.15) guidance in place at the time of the research stated that “[a] penalty notice *will not* be appropriate for any offence *related to* domestic violence” (*emphasis added*). The more recent Ministry of Justice (2013b, p.10) guidance amends this slightly to any off that “*involves* domestic violence” (*emphasis added*).

during which he “punched himself in the throat a few times” (Field Notes, Page 104) (Observation Case 13).

In none of these cases was there any mention of an additional disposal for the initial domestic incident<sup>271</sup>. Furthermore, even if the offender was charged separately for the domestic incident, in addition to being issued with a drunk and disorderly PND (for their behaviour towards the police), this would arguably still breach the Home Office guidance which state that PNDs are not appropriate where “a second or subsequent offence, which is known ... overlap[s] with the penalty notice offence” (Home Office 2005, p.21; Ministry of Justice 2013b, p.14). This point is considered further in Chapter 8 (see Section 8.4.1.1).

### **6.5.2.3 Seemingly unknown persons**

Whilst more common in s5 (n=4) than drunk and disorderly cases (n=1), it was rare for tickets to be issued for offences where the victim was seemingly unknown to the offender. Unlike the cases discussed above, the victims in these five incidents did not appear to be involved in an argument/fight with the PND recipient where both parties were being abusive. Instead the PND recipient appeared to verbally/physically attack another person. For example, in Ticket Analysis Case 32 the victim was “jumped” by the offender who was caught “straddling [the victim] in the middle of the road”. The victim suffered “facial injuries” as a result of the attack, for which the offender received an on-the-spot s5 PND. Of the five cases where the first victim was seemingly unknown to the perpetrator, three did not note any further victims, and one only alluded to bystanders as the secondary victim. In Ticket Analysis Case 133 the perpetrator was ejected from a bar having “attacked” a woman inside, the police were called after she “head-butted” a doorman as she was being ejected causing “a red mark under his left eye”. The woman, who was described as being “extremely unsteady where if we had let go she would have fallen down [and could] ... hardly speak ... her speech was extremely slurred”, became abusive towards the police and was arrested. She became physically aggressive after her arrest “kicking-out” and throwing her stiletto-heeled shoe at the arresting officer<sup>272</sup>. As noted above, this case resulted in a detention officer breaking his/her finger whilst trying to restrain the woman. The events detailed here were remarkably similar to those viewed in Observation Case 7 (discussed above, see Section 6.5) and, in all likelihood, better reflect the

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<sup>271</sup> This is worrying given the level of aggression shown towards the victim in some of the ticket analysis cases. Indeed, none of these cases make any mention of the victim’s views or whether they felt that a PND was an appropriate disposal. This is despite clear guidance, in force at the time, that the disposition of the victim will be relevant where a PND is used for offences which may have otherwise resulted in a caution or charge (Home Office 2005a, p.14).

<sup>272</sup> The evidence stated that no injury was caused by this.

full circumstances of those cases where security guards were noted as the first victim which often failed to explain why people were ejected/refused entry to a premises.

#### **6.5.2.4 Non-security professionals**

In 23% of drunk and disorderly tickets sampled (N=56) and one s5 case the first victim was a 'non-security' professional. This group included taxi and bus drivers, ambulance staff, food-outlet staff and a referee. In all but one case (where a person was drunk and disorderly on a bus, refusing to get off despite the driver's requests that he leave) there was more than one victim. Furthermore, in only two cases was the second victim not a police officer. The victim in half of these cases was a taxi driver. In at least one of the cities covered by the force area reviewed, the local taxi firms had an agreed stopping point (outside the main police station) where taxi drivers could pull up to gain police assistance if they had a problem with a passenger. Such problems related to disputes regarding the taxi fare or soilage fee as well as people being abusive towards drivers and in one instance smoking in the back of the taxi. Where the dispute related to unpaid fares the police would often encourage the person to settle the fare, which they did (including one where two women were driven by officers to an ATM (Ticket Analysis Case 103)) however they would then become abusive towards the officers. Indeed, wherever a taxi driver was the first victim the police were noted as the secondary victim. These cases mirror situations viewed during observations, where the police walked a person to an ATM so they could get the money to pay a soilage charge and convinced a taxi driver to take a lone female home despite her being unwell. However, in neither of these cases was the person abusive towards the police, nor was any formal action taken.

#### **6.5.2.5 Security**

Security guards were the first victim in nine of the cases sampled. In these cases the PND recipient became verbally or physically aggressive towards security staff after either being ejected from, or refused entry to a venue<sup>273</sup>. In four of those cases the person was arrested solely for their behaviour towards door-staff, whereas in the remaining five, the offender was initially verbally/physically abusive to door-staff, but was only arrested when they became aggressive towards the police. Such circumstances were echoed in Observation Case 6. In that instance, the police were called to deal with an assault on a doorman; a woman had slapped a bouncer after being ejected from a bar. She was initially issued with a s27 direction to leave the city centre, however she was only issued with a (drunk and disorderly) PND after making

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<sup>273</sup> Evidence in these cases did not however refer to the event causing the ejection/any prior victim.

continued complaints to the police (this case will be discussed further below when considering the factors which affect police decision making see Section 6.6.4). Security officers were noted as the second victim in three cases where following some initial act of violence (perpetrated by the PND recipient) directed at a third party security officers were assaulted in the course of their intervention.

#### **6.5.2.6 The victims of section 5 and drunk and disorderly penalty offences: A summary**

The above discussion highlights that, whilst the victims in s5 and drunk and disorderly cases are many and varied, cases where the first victim was a police officer followed a similar pattern. The police intervened in some disorderly behaviour and the PND recipient then became verbally and/or physically abusive towards the police<sup>274</sup>. The perpetrator was then arrested or issued with a penalty notice on-the-spot following their aggression towards the police. There were however some differences between s5 and drunk and disorderly cases where someone other than the police was the first victim. In almost half of drunk and disorderly cases where the police were not the first victim, perpetrators were involved in some argument or altercation with a third party and became aggressive towards the police when officers intervened. In s5 cases the evidence was less likely to report some later abuse towards officers. Offenders in these cases were more typically issued with a PND (either on-the-spot or following arrest) for their original behaviour. This pattern in victimisation is important when considering how officers decided whether, and where, to issue PNDs.

### **6.6 Officer decision making**

When faced with a penalty offence officers have range of options to select from including: taking no action, taking informal action (such as giving a verbal warning), taking formal action on-the-spot, or arresting the offender. Formal disposal of offences on-the-spot can include issuing a s27 direction to leave and/or PND, or street bailing the person to appear at the station at a later date (allowing the officer time to investigate the case). Alternatively they might decide to proceed by way of community resolution/restorative justice. Where offenders are arrested, the options of issuing a PND or resorting to a community resolution/restorative justice remain available, however alternatively the person might be charged, cautioned or subject to no further action. Officers therefore have a relative *smorgasbord* to choose from, but what factors influence their decision making? The ticket analysis allows us to consider what factors affect the decision to issue a penalty notice on-the-spot or in custody, however it

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<sup>274</sup> This is similar in those cases involving security officers; who intervened in some initial disorder only to be abused themselves, except in those cases the police may also have been tertiary victims.

cannot offer any insight into why the decision to issue a penalty notice was taken in the first place (as opposed to some more/less formal intervention). Drawing on observation data however provides some insight into the factors which affect whether any formal intervention is made in various alcohol-related offences<sup>275</sup>. Within this section therefore the focus is on the use of s5 and drunk and disorderly PNDs specifically.

Whilst tickets for theft and cannabis offences were much more likely to be issued on-the-spot (see Section 5.5.4), there appeared to be no qualitative differences between cases dealt with on-the-spot and those which resulted in arrest. All theft and cannabis PND recipients were fully compliant in the process, and none were aggressive towards the police (or the public) (N=69). There was no indication that cases resulting in arrest were more serious, in fact the mean value of goods stolen in cases which resulted in arrest was actually lower than those disposed of on-the-spot (£24.32 vs. £27.72, although this difference was not significant). Similarly, it did not appear that people arrested in cannabis cases were in possession of any greater quantities of the drug than those disposed of on-the-spot. Furthermore, although two women arrested for theft required an interpreter there was no indication that people were generally being arrested to ensure their understanding of the process or to confirm the offender's identity.

In Chapter 5 it was noted that 93% of drunk and disorderly tickets (N=99), and 50% of s5 tickets (N=42) were issued following arrest. Because of the small number of cases which included a completed evidence section the current data do not support the use of multivariate statistics. Thus whilst intoxication, offence severity, demeanour and compliance were all found to significantly relate to where PNDs were issued the precise (statistical) contribution of these variables cannot be calculated. Similarly, whilst these factors are discussed in turn below (as well as considering the influence of offenders' gender and the limits to officers' discretion), in practice officers do not make decisions in a vacuum; penalty offences occurred within the context of dynamic interactions between the offender, the victim and the police, and it is that context we shall now consider, exploring whether, where and why officers decide to issue PNDs.

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<sup>275</sup> Due to the time/location of observations only s5 and drunk and disorderly penalty offences were observed. As observations took place on Friday and Saturday evenings a variety of alcohol-related incidents were observed, some of which resulted in no action or informal action, others in a s27 direction to leave the city centre, some were disposed of via PND and others arrest and charge.

### 6.6.1 Intoxication

Whilst, as would be expected, all (N=58) drunk and disorderly PND recipients were intoxicated, only 17% of s5 PND recipients were reported as being so (N=24) ( $\chi^2=63.925$ , d.f.=1,  $p<0.001$ ). Intoxicated offenders were significantly more likely to be issued with a PND in custody ( $\chi^2=14.477$ , d.f.=1,  $p<0.001$ )<sup>276</sup>. Tedeschi and Felson (1994) suggest that aggression is associated with intoxication which could explain the increased likelihood of arrest in these cases. However, in the current study intoxication was not related to whether or not people displayed aggression (either towards the public or the police) or the level of aggression they displayed. One explanation for this difference may be that, in the current study, all these cases occurred in the NTE and thus tickets may have been issued to people who, whilst not described in officers' evidence as being intoxicated, had consumed alcohol or were at least engaging with others who had done so. Another explanation might be that officers' decisions were influenced by the Home Office guidance which prohibits the issuing of PNDs to people who are, at that time, intoxicated (Home Office 2005a; Ministry of Justice 2013b). However, despite that guidance, in 16% of cases where the offender was intoxicated the PND was issued on-the-spot (N=61). As the following extract (regarding Observation Case 3) highlights, this raises concerns that, contrary to the guidance, people issued with penalty notices on-the-spot might, on occasion at least, be too drunk to understand the process.

There was a young man urinating in the doorway .... The man was obviously very drunk, he was staggering and struggling to do up his belt ... his words were very slurred and confused. [An officer] told him that he'd been stopped because he was urinating in someone's doorway and asked him how he'd feel if someone did that at his house, he drunkenly agreed he was out of order. He said could they just take him home now? [Another officer] said something like 'take you home?! Is that what you think happens when you piss in someone's doorway?' [The man] was asked his name and address and [the first officer] took these down. [The officers] then had a whispered discussion about what to do with him and agreed he was too drunk for a ticket and instead they'd let him go. [The first officer] then started to explain to him what he'd done wrong and [told him he] could get an £80 fine for being drunk and disorderly, he seemed to think he was getting the fine and said "fine, give me the ticket then" in a resigned manner (slurring still). [The first officer] ... said "well I was about to say as you'd been alright we were going to let you go, but if you want a ticket we'll give you one". [The officers] both seemed really angry which surprised me as it hadn't struck me that the guy was trying to be rude/aggressive only that he hadn't understood what was being said to him. [The second officer] took a ticket out and started completing it. The man was ... saying "I

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<sup>276</sup> This only includes recipients of s5 and drunk and disorderly PND recipients. However this in part reflects the fact that 93% of drunk and disorderly tickets (where intoxication is an element of the offence) were issued in custody.

haven't told you to p-off or f-off"<sup>277</sup>. "I've been alright". [That officer] then got really annoyed and turned around ... saying something like 'do you think that there's a threshold for you to be rude to me and my colleague and that's OK' he still kept saying "but I haven't told you to p-off or f-off" and [the second officer] told him that's why he was only getting a ticket and not being arrested ... [that officer] cautioned him [to which he replied by asking] ... whether you could walk to [another area of the city] in 20 minutes .... When [that officer] got out of the van the lad started saying "why's he arresting me?" [The first officer] told him to get out and that he wasn't being arrested. When [the second officer] opened the door he held up his hands and said "I know you're arresting me". [That officer] told him he wasn't being arrested but he needed to sign the ticket, he still seemed to think he was being arrested. [That officer] said "just sign this to say I'm letting you go" the lad signed it. [That officer then] said "I'm not going to explain this to you now because you're too drunk to understand, but put it in your pocket and read through it in the morning." The lad then walked off. (Field Notes, Page 25).

In this case it was apparent that the person was not only 'drunk' but was so drunk as to not understand the process, a matter which the officers initially respected, only deciding to issue a PND after he failed to accept their lecture. Thus, in Van Maanen's terms (1978, *In: Newburn 2005*), the officers initially sought to 'teach' the individual using a 'morally-loaded lecture', but when the offender failed to respond to this lecture in an appropriately contrite manner they castigated him by issuing a PND. This clear breach of the guidance was not unwitting, indeed the issuing officer told me that, as the man had not really understood what was happening, he could later (probably successfully) challenge the notice on that basis. He said that if he did challenge it the man would probably "get off" but they (the police) were willing to take that risk (Field Notes, Page 26). This suggests that the guidance acts only as an 'inhibitory rule'; the officers had regard to the guidance against issuing PNDs to intoxicated people, but ultimately, knowing any future challenge was unlikely, decided to punish the offender as he failed the 'attitude test' (Smith and Gray 1983). This issue is discussed further below (see Section 6.6.6).

Whilst people may be more likely to be arrested (and later issued with a penalty notice) when they are intoxicated, it did not seem that the police were *intervening* as a result of the person's intoxication. Instead, it appeared that intoxication was an aggravating factor increasing the likelihood of arrest. This is supported by Coates *et al.* (2009) whose final logistic regression model found intoxication alone was not a significant predictor of arrest, but that people who were both intoxicated and abusive towards officers were 4.65 times more likely to be arrested (significant at the 0.10 level). As discussed in Section 3.4.3, Schafer and Mastrofski (2005) found that the first stage in officer decision making was whether or not to take action, and thus where a violation was minor officers may choose not to act. Deehan *et al.* (2002)

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<sup>277</sup> To be clear, the man specifically said "p-off" etc. rather than the actual swear words.

commented that to arrest all people who were 'drunk in a highway' would amount to arresting huge swathes of people who are otherwise causing no problems. Thus where people are drunk, but orderly, officers may choose not to act. Indeed, nationally only 758 tickets were issued for 'drunk in a highway' in 2010 compared to 37,119 drunk and disorderly PNDs (Ministry of Justice 2011b, Table Q2.1).

During the observations officers encountered countless intoxicated people, however the fact of intoxication alone (even severe intoxication) would not necessarily lead to police intervention. Instead, officers only intervened on the (extremely rare) occasions that people were pointed out to them as being so drunk that they were thought to be a risk to themselves. In one instance two people (a male and female) were pointed out to officers after being spotted by two city centre ambassadors<sup>278</sup> who had seen the young woman fall backwards and hit her head on the pavement. The man was sat on a bench and the young woman on the floor in front of him. They were both obviously drunk. Despite their apparent youth (the young woman looked to be 15-16, the man in his late teens/early twenties) and their obvious intoxication (the male rambled incoherently and was sick repeatedly, the young woman needed to be held up by an officer as every time they let go of her shoulder she fell backwards) the officers did not arrest the pair for being drunk in a highway. Instead, they attempted to flag a taxi for them however, given that the man was being sick on the pavement, after a few minutes the officers gave up on this, accepting the no taxi driver would pick them up whilst the man was being sick. After half-heartedly mooting the idea of calling the paramedics<sup>279</sup> the officers decided to leave the pair to sober up, saying they would ask the city centre CCTV team to keep an eye on them.

The officers decided to get the pair to sit on the floor against a shop building as there was less chance they would fall and hit their heads (again). As two officers walked the young woman towards the shop another pointed out that her skirt was hitched up so high that she was showing the lower part of her buttocks, the officers then pulled her skirt straight, covering her. Throughout this the young woman appeared oblivious to what was happening. As she was helped to sit down she again lost her balance and hit her head on the window. One of the officers then put their hand behind her head as they helped her sit down. The pair were then left in front of the shop. I did not hear anyone ask the CCTV team to look over them and we did

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<sup>278</sup> City centre ambassadors are employed by the local council to patrol the city centre, they provide a multifaceted service which includes tourist information, crime prevention and dealing with low-level environmental crime such as littering and graffiti.

<sup>279</sup> This did not appear to be a genuine suggestion, instead it was said with a tone of 'palming her off' onto the paramedics. An officer had checked the girl's head when they arrived, and there was no bump.

not drive past the spot again for the rest of the shift. I joked with one of the officers as we walked away “don’t you ever give tickets out for drunk and incapable?!” She laughed and said “they wouldn’t understand anything” (Field Notes, Page 103). The officer’s response therefore assumes that such a ticket would be issued on-the-spot (which they could not do as the people would not understand); people are not arrested simply for being drunk.

In another case viewed during observations, whilst driving through the city centre, I spotted a woman lying on the floor next to a roundabout, and told officers to pull over<sup>280</sup>:

a girl [had] passed-out on the floor, with her skirt up and a pile of sick by her leg and down her – her shoes had come off and her tights were ripped she was lying on the mud with her head on the pavement. We tried to sit her up but she fell back down so we propped her forward and [an officer] kept [their] hand on her back to keep her from falling back (Field Notes, Page 21).

It was the end of January and the temperature was 0°C. Whenever the officers tried to speak to the woman she just said she wanted to go home. The officers called the paramedics, whilst we waited she “was sick on herself a few times” (Field Notes, Page 21). It was suggested that once the paramedics had come and checked her over the officers could take her home, but it was agreed that this would not be safe as she was too drunk to be able hold herself up in the back of the van. After the paramedics arrived an ambulance was called, the woman could not stand and she had to be lifted onto a stretcher and taken to hospital.

Despite the apparent drunkenness of the parties in these two examples officers did not consider arresting the people. Indeed, whilst there is a penalty offence of being ‘drunk in a highway’ officers seem to view PNDs very much as a tool to manage antisocial behaviour rather than simple drunkenness. Applying Schafer and Mastrofski’s (2005) decision-making model therefore, at the first stage it was decided that the violation was minor and thus no action was taken. In neither of these cases were the people causing any harm (other than to themselves). This can be contrasted with Ticket Analysis Case 110. An ambulance crew had been called to deal with a woman who, as a result of her intoxication, had collapsed in the street. She was found to have no physical injuries and thus required no further attention. The woman was “being generally uncooperative and aggressive” and as the police tried to walk her over to their van she “began to struggle and swung her arms and fists” whilst shouting and

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<sup>280</sup> As discussed in Chapter 4, on this occasion I breached my usual observer-as-participant role and directed officers’ attention towards this incident. Officers appeared not to have noticed the woman (who was relatively concealed from the roundabout) and so when I spotted her I told them to drive back around as I thought I had seen someone lying on the floor. Whilst in telling the officers to intervene I was guiding their actions, which could have led to a PND or other criminal sanction, the vulnerability of the person in question was thought to outweigh any such concerns.

swearing at officers. She was then arrested for drunk and disorderly at which point she became more violent, kicking out at officers. Whilst the people in these cases all came to the attention of the police as a result of their intoxication, it was only in the latter case (where the woman reacted aggressively to the police intervention) that any formal action was taken. Thus, rather than the simple fact of intoxication, the decision to take formal action appears to be strongly influenced by the level of aggression displayed towards the police (see Section 6.6.4).

### **6.6.2 Non-aggressive disorder, public urination, and the decision not to act**

Just as intoxication was rarely a cause for police intervention, it was also uncommon for officers to intervene, or take formal action, in cases which did not involve directly aggressive behaviour. It was noted in Section 6.3.2 that only five of the s5 and drunk and disorderly PNDs sampled did not involve any level of aggression (to either the public or the police) (N=70), and that all of those tickets were for public urination. All five were issued on-the-spot. Overall, only 14% of people issued with PNDs for s5 and drunk and disorderly were not *directly* abusive towards either the public or the police (N=78). Of these 11 cases, seven were issued on-the-spot, six of which were for public urination. The seventh (Ticket Analysis Case 74) concerned a man who “shouted “fucking watch out” as he turned around behind him. He held 3 golf clubs, clenching both fists as he said it.” It did not appear he was shouting this at anyone in particular however there were “between 30-40 children walking past”. When the officer stopped him he “continued to swear, say [sic] “fuck sake” [sic]”. The man was then cautioned and issued with an on-the-spot s5 PND. His reaction to police intervention displayed one-sided provocative behaviour; the other four recipients who reacted to police intervention in this manner were arrested.

Similarly, when we compare these ticket analysis cases to those PNDs viewed during observations, the recipient in Observation Case 2 – involving a PND for public urination – did not display any aggression. The recipients in Observation Cases 3 and 5 displayed ‘one-sided provocative behaviour’ towards the police (which would best be described as ‘annoying’ rather than ‘abusive’). In Observation Case 3 the man was expressly told the only reason he was getting a ticket on-the-spot (and not being arrested) was that he had not sworn directly at officers. Indeed, if the man had kept quiet he would not have been punished at all. Whilst the PND could be justified based on his original action, in reality officers only decided to issue a PND when the offender was unresponsive to their informal ‘lecture’. After being caught placing bread baskets in the road, the recipient in Observation Case 5 was told “that stunt just cost you £80”, the officer then started explaining what a PND was and why the man was

receiving one. The recipient interrupted this 'lecture' saying "alright, alright just give it to me", thus irritating the officer who told him "let's get something straight. I'm in charge, don't try to speed this up" and he was warned he would be arrested if he tried to do so (Field Notes, Page 47).

Whilst eight of the sampled tickets were issued for public urination and two of the PND cases seen during observations were issued for this same offence, in practice (as with intoxication) officers often saw people engaging in this behaviour but tended not to intervene and rarely took formal action. Many officers reported that as long as people were discreet in their choice of location, they would not take formal action in such cases:

We drove [beside] ... the Town Hall and saw two people who appeared to have just urinated against the building. Both of them were patting their trousers, they appeared to have urinated on themselves a little. The officers commented that this was punishment enough (Field Notes, Page 108).

When officers did intervene, the individual officer's perception of the offence and the attitude of the offender (as Observation Case 3 in particular highlights) were key. Thus both of the tickets issued for public urination during the observations were issued by the same officer, who, along with another officer was described by another colleague as "always [giving] them out for public urination" (Field Notes, Page 45).

The importance of attitude (or at least officers' assessment of an individual's attitude) was already noted above (with regards to Observation Case 3). However the following extract highlights how, conversely, a positive demeanour can help people evade punishment. In one of the few instances when officers did intervene in a public urination case, the officer told the offender "that he could get an £80 fine for urinating in public, but that he appreciated him being discreet and coming down a side road and that his attitude had been 'spot-on' so he'd let it go this time, but if he saw him again he'd be in trouble" (Field Notes, Page 45). It must be noted here however that the manner in which offenders reacted to the police, and thus whether or not they can be said to have 'spot on' attitude was affected by the officer's own attitude. This was most clearly evidenced in a case, which was not observed directly, but which was reported to other officers (and myself) as follows:

As we were sat in the writing-up room, [an officer] came in and sat down at one of the computers. He said he'd just taken someone into [custody], but that he didn't want them to get a ticket as he didn't like them. He said that as he was driving he saw a man taking a wee against the side of a skip and so pulled over. He said something along the lines of that he decided he was going to 'play' with the person, and so when he got out of the car he said to the man he could either have an £80 fine or take off his T-shirt and

wipe up the wee – the other officers laughed at this – the man apparently then said that he wasn't going to wipe it up and so was told to take a seat in the [police] car, [the officer] then spoke to the man's girlfriend and was saying to her that she should calm her boyfriend down and that if she didn't he was going to end up spending the night in a cell. The man then started hitting the side of the car and so was arrested and taken to [custody] (Field Notes, Page 94).

If this case did transpire as described, the officer was himself being highly antagonistic. His suggestion that the offender use his T-shirt to wipe up the urine meant (as I noted in my diary at the time), "it was almost inevitable that the situation would escalate to an arrest" (Field Notes, Page 94). Such antagonism from the officer is unlikely to engender the (desired) contrite reaction from the offender which allows officers to dispose of such cases on-the-spot. However, it should be noted that whilst officers may expect deference from the public they do not always seek this contrition, but rather may purposely, as appears to be the case here, provoke a situation so as to generate the excitement of an arrest (Loftus 2010; Cain 1971, *cited in*, Freeman 1980).

As with intoxication, when we apply Schafer and Mastrofski's (2005) decision-making model, public urination (and other non-violent disorder) was seen very much as low-level offending and as such, at the first stage, officers often decided not to intervene. However, if they did intervene, they typically took informal action. This did however appear to be influenced by the location/offender's demeanour/individual officer sensibilities. When officers did intervene – regardless of whether or not formal action was taken – the person was given 'the lecture' (that what they were doing was wrong) and perhaps even the 'sales pitch'. McConville *et al.* (1991) suggest that, in their interactions with suspects, the police are not concerned with convincing people of the reasonableness of their decisions, as they know that often their reasons may be unreasonable, and so instead they aim to make it appear inevitable or comparably lenient. People will then submit (rather than truly consenting) to police intervention as they seek to avoid a more severe sanction. Indeed, those two officers who were apparently 'always' issuing PNDs for public urination were described by colleagues as doing so "in such a manner that the individual is thanking them for it as they leave' i.e. they're just happy not to be arrested" (Field Notes, Page 45). Another officer commented that if people reacted negatively to the news they were getting a PND for this offence they would tell them they could have been arrested for indecent exposure and been put on the Sex Offenders' Register; the PND therefore being presented as a 'comparatively positive' outcome. This also highlights the breadth of officers' discretion, and indeed how their variable responses to similar behaviour can have very different consequences for offenders.

### 6.6.3 Offence severity: Aggression towards the public

Whilst intoxication and public urination were unlikely to lead to police intervention, officers were more likely to intervene (although not necessarily take formal action) when faced with aggressive offenders. Offences involving abuse towards the public most commonly occurred within the context of two people or groups arguing and/or displaying some low-level physical aggression towards one another (such as pushing or displaying aggressive body language). Otherwise, they had been pointed out to officers as having previously been involved in a fight which had, by the time officers approached, already broken up. Police intervention in such cases ranged from simply driving slowly past the group and waiting for them to disperse, or physically separating the parties and telling them to “put it down to a bad night” and go home (Field Notes, Page 11), through to more formal action i.e. a s27 notice, on-the-spot PND or arrest. In all those cases where the police dealt with public aggression informally the suspects were relatively cooperative with officers and any ongoing aggressive behaviour was largely non-directed i.e. they were swearing and showing signs of frustration but were still adhering to officers’ requests.

When officers did resort to formal action, the ticket analysis suggests that their decision as to where/when to issue s5 and drunk and disorderly PNDs (following arrest or on-the-spot) was influenced by offence severity. Aggression towards the public was statistically significantly linked to place of issue regardless of whether or not one-sided aggression was included ( $\chi^2=6.703$ , d.f.=2,  $p=0.035$  (excluding one-sided aggression);  $\chi^2=5.901$ , d.f.=2,  $p=0.052$  (including one-sided aggression))<sup>281</sup>. However, as shown in Table 6.10, over half of all people who were physically aggressive were issued with their ticket on-the-spot (N=11). Thus whilst any aggression toward the public increased the likelihood of arrest, cases involving higher levels of aggression were no more likely to result in arrest (U=597.500,  $p=0.731$ ).

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<sup>281</sup> This was based on a chi-square test comparing the level of aggression (in s5 and drunk and disorderly cases) and where PNDs were issued. In the first of these tests one-sided aggression was excluded and all physical aggression categories were collapsed into a single group. In the latter of these tests aggression was coded as not aggressive, verbally aggressive (one-sided and directed), and, physically aggressive. One-sided and directed verbal aggression were merged so as to ensure that less than 20% of cells had an expected count of less than 5.

<b>Table 6.10: Was the level of aggression towards the public in s5 and drunk and disorderly cases related to where tickets were issued?</b>				
Aggression towards the public Place	Not aggressive	One-sided verbal aggression	Direct verbal aggression	Physical aggression
On-the-spot	8 (29%)	2 (33%)	5 (15%)	6 (55%)
In custody	20 (71%)	4 (67%)	28 (85%)	5 (46%)
Total	28 (100%)	6 (100%)	33 (100%)	11 (100%)

N=78

As Table 6.10 shows people who displayed no aggression towards the public were actually more likely to be arrested than people who were physically aggressive. Those displaying direct verbal aggression were most likely to face arrest (85% of whom were issued with a PND in custody (N=33)). This contradicts Coates *et al.*'s (2009) finding that offence severity (aggression towards the public) was a significant predictor of arrest in s5 and drunk and disorderly cases. In their analysis, despite measuring aggression on a five point scale, Coates *et al.* (2009) only distinguished between high and low aggression towards the public. 'Low' aggression in their study incorporated one-sided provocative behaviour and directed verbal aggression and 'high' aggression incorporated physical force. Seemingly none of the cases they examined included 'no aggression'<sup>282</sup>. Thus, in both Coates *et al.*'s (2009) research and in the current study, aggression towards the public was related to where tickets were issued. However, in their study people who were verbally aggressive were less likely to be arrested than people who were physically aggressive, in the current study the opposite was true.

Why was it that in the current study people displaying high levels of physical aggression – all six of these cases involved level 5 aggression, including punching, kicking, spitting and using a belt to lash out – were not arrested? An examination of the circumstances in which the six on-the-spot tickets involving physical aggression were issued suggests that, although the circumstances of the offence were serious, the situation had either calmed down by the time the police were involved, or else the police were able to gain control of the situation following their intervention. Thus for example, in Ticket Analysis Cases 48 and 49 officers were called to deal with a fight at a nightclub. However, the fight had been broken up by the time the police arrived and on reviewing the CCTV footage it was noted that “no group stood out as offering

<sup>282</sup> All of the 150 cases they reviewed were classified within either high (42%) or low (58%) aggression groups.

more [aggression] than the other". Two of the three people held by the security staff following this fight were issued with a PND<sup>283</sup>. Similarly in Observation Case 6 discussed above, although the woman was accused of slapping a doorman she stopped being (directly) abusive towards him after the police intervened (although she did complain about him to officers). Conversely in Observation Cases 10-12 despite the police breaking up the initial fight two of the arrested parties (the toothless man and his girlfriend) continued to be aggressive. The importance of compliance will be considered further below (see Section 6.6.4).

As well as sharing the common feature that the violence had ceased upon police intervention, in all but one of those six ticket analysis cases – which, despite involving physical aggression towards the public, were disposed of on-the-spot – the level of aggression towards the police was either none, or one-sided provocative behaviour (i.e. aggression was not directed *at* officers). Furthermore, the one exception to this was Ticket Analysis Case 219 (noted above) where a man used his belt to lash out at another group. After using PAVA against the man he was arrested (which he 'struggled against'), but was later street-bailed and issued with an on-the-spot PND. Thus whilst this offender had displayed quite serious aggression by using his belt against a group of people, as well as physically resisting arrest, the officer was able to incapacitate the offender and thereby regain control through the use of PAVA. Conversely, four of the five cases involving physical aggression towards the public which resulted in custody-issued PNDs involved some form of direct aggression towards the police. In the fifth case the woman was arrested as she continued to shout obscenities at door-staff after police had 'taken hold of her' to move her on, she failed to heed their warnings to cease in the verbal abuse and was arrested (Ticket Analysis Case 218). Again, this suggests that officers may decide to resort to arrest once they have lost their powers of non-coercive control.

As noted above, aggression, even physical aggression, towards (or between) members of the public would not necessarily lead to police intervention/formal action. Numerous occasions were observed where people engaged in verbal and/or physical fights which either broke up as the police approached or else were quickly dispersed following officer intervention. Whilst it is unclear why in some instances the police will issue a PND on-the-spot and in others they will take no formal action at all, such scenarios do support the view that people were only arrested where the situation had escalated beyond that which the officers could control on the street. Whilst aggression towards the police may be one indication of this, it was not necessarily

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<sup>283</sup> It is unclear why all three were not disposed of in this manner, or whether the alternative disposal for the third person was formal or informal.

determinative. For example, in Observation Case 13 the man was shouting at his girlfriend and becoming increasingly agitated. He appeared to be tensing-up his arms and he was breathing heavily through his nose as if 'gearing himself up' for a fight. When he made a move towards another woman in the street officers tried to restrain him, however due to his size (the man was about 5ft 11 and extremely muscular – to give the reader an indication of his size, officers later compared him to the “Incredible Hulk” (Field Notes, Page 105)) the officers struggled to bring his hands behind his back. Indeed at one point he was able to break free and punch his own chest. An officer then used PAVA spray on him. Despite this it still took four officers some time to restrain the man and handcuff him. The man continued to shout out and after officers managed to put one of his hands into handcuffs he refused to bring his other arm round yelling “let me do it in my own time” (Field Notes, Page 105). Later the sergeant on shift praised the female officer for using PAVA saying that, due to his size, they would have struggled to arrest the man without it. Indeed he commented that he could have tried to use his baton against the offender, but the man would have been able to “[snap] it in half and [wrap] it around [his] neck in a bow!” (Field Notes, Page 105).

This situation highlights that offence severity, both with regards to abuse towards the public and the police, is not alone driving the decision towards arrest/issue on-the-spot. Rather the decision often seems to be related to whether or not the officers can control the situation on the street. Here, the man was verbally abusive to the public, but was not abusive towards the police, he was arrested however as officers were unable to calm him on the street<sup>284</sup>. This can be contrasted with Ticket Analysis Case 219 where a man used his belt to lash out at another group. In that case the officer initially used PAVA and arrested the man, but once the offender had calmed down he was de-arrested and street-bailed.

It would seem therefore that offence severity and compliance interact to influence where PNDs are issued, but why are such serious cases of aggression resulting PNDs at all? Certainly, all those cases involving physical aggression should (according to the guidance) fall outside the

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<sup>284</sup> As this man was being arrested his girlfriend began to cry and said he had just returned from Afghanistan (the implication being that he was in the Armed Forces). The man appeared to be either suffering from some mental illness (possibly PTSD) or under the influence of drugs (although he strenuously denied this saying he had never taken drugs). He was too agitated to be taken to a cell and had to be monitored by three police officers in the exercise yard for over an hour. During that time he repeatedly called out to a person who was not there, he was extremely jumpy throughout and made violent threats against the female officer who had used PAVA against him (although she was not present). Officers commented on this saying they thought he may have PTSD however he was still considered eligible for a PND. This is despite the fact that the national guidance states that a PND is not appropriate where a person may be unable to understand what is being offered to them, such as where they have a mental disorder (Home Office 2005a).

remit of the PND scheme. During observations officers commented that in those circumstances where two (or more) people are fighting it is often better to issue them all with a PND, so as to send the message that such behaviour is not tolerated and that in these situations where they all know each other, it was better for the offenders and better for the officers (as it saves both groups time/having to go to court) to just deal with it by a PND. As one officer described it, there was 'no point' charging the perpetrators in such cases as they would not give evidence against one another. Whilst this may help to explain why officers issued tickets even where the level of violence was seemingly high, in taking such action, the officers are acting as 'judge and jury' and may fail to take into account the views of victims. Indeed, in Observation Case 10 (described above) the man who had lost a tooth was told that if he made a complaint about being attacked 'the other side' would make a complaint against his girlfriend (who was also arrested) and as such it would be better if instead they all accepted a PND for their role in the fight. Thus rather than using a PND because the victim (who was also a perpetrator) did not want to make a complaint, officers were actively discouraging such complaints. This 'down-grading' of offences and dismissal of victims' views is facilitated through the use of PNDs which allow officers to define events in their own terms, acting as 'judge and jury' with little, if any, oversight.

This dual role of the police officer as 'judge' was also highlighted by the fact that all three parties in Observation Cases 10-12 were arrested for s5 (as opposed to a drunk and disorderly) because the arresting officer had believed that s5 was outside the remit of the PND waiver scheme<sup>285</sup>. The officer chose a s5 arrest as he believed a fine was the appropriate punishment in the circumstances (although he continued with the ticketing process after the custody sergeant suggested they might be eligible for the waiver scheme). Many officers expressed similarly sceptical views about the utility of the waiver scheme, which seemed to reflect their view that the benefit of the PND was that people were being punished for their behaviour which might act as a deterrent, especially as when "charged and sent to court they often got a lesser punishment" (Field Notes, Page 56).

Whilst aggression towards the public was significantly related to where penalty notices were issued, this masks the fact that although the police may initially have intervened because of some aggression towards the public, formal action was often only taken following some abuse towards the police or else where the individual is non-compliant (although in practice these

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<sup>285</sup> The waiver scheme offers recipients of s5 and drunk and disorderly tickets the opportunity to attend two alcohol awareness sessions (which are free) rather than pay their penalty notice. Once both sessions have been completed the ticket is cancelled.

matters were often related). Regardless of the original offence severity, provided the matter could be dealt with (whether formally or informally) on-the-spot, the police only resorted to arrest where the individual was otherwise uncooperative.

#### **6.6.4 Offence severity: Aggression towards, and compliance with, the police**

The theory outlined above, that officers will be more likely to arrest people when they become abusive towards the police (as opposed to when abuse is directed at the public alone), is supported when we examine where tickets were issued in those cases where people were aggressive towards the police. As noted above, the police were at least one of the victims in 60% of all s5 and drunk and disorderly tickets sampled (N=78)<sup>286</sup>. Cases in which the police were one of the victims were significantly more likely to result in arrest ( $\chi^2=19.134$ , d.f.=1,  $p<0.001$ ). Furthermore, an analysis of the evidence describing the circumstances of these offences highlights that, in the context of the offending situation, it was the abuse towards officers (rather than the public) which was the driving factor in the decision to arrest. This is in keeping with existing ethnographic police research which highlights officers' unwillingness to accept any challenge to their authority (see Section 3.4.3.4.1). Indeed, 94% of s5 and drunk and disorderly cases where the police were the only victim resulted in arrest (N=17)<sup>287</sup>.

As noted in Section 6.3.2 above, aggression towards the police was measured throughout the process, however when considering where officers choose to issue PNDs it is people's pre-arrest aggression we are concerned with. Table 6.11 outlines where PNDs were issued to those people who were directly abusive towards officers' pre-sanction.

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<sup>286</sup> In addition to these s5 and drunk and disorderly cases, the police were also the victim of four wasting police time cases (only one of which had a completed evidence section) – these cases were disposed of on-the-spot (Ticket Analysis Cases 41, 145, 195, 203 and 246) - and one case regarding a breach of s.127(2) the Communication Act 2003. That ticket was issued in custody (Ticket Analysis Case 202).

<sup>287</sup> The one s5 case where the police were the only victim of the offence which did not result in arrest related to a man who had thrown bottles at police staff whilst inside a pub. The man had calmed down by the time the issuing officer arrived and the ticket was issued on-the-spot (Ticket Analysis Case 211).

<b>Table 6.11: What was the level of pre-sanction aggression displayed towards the police in s5 and drunk and disorderly cases?</b>				
Level of aggression	Not	One-sided	Directed	
Offence	aggressive	provocative	verbal	Physically
		behaviour	abuse/threats	aggressive
On-the-spot	11 (65%)	5 (33%)	2 (5%)	2 (22%)
In custody	6 (35%)	10 (67%)	35 (95%)	7 (78%)
Total	17 (100%)	15 (100%)	37 (100%)	9 (100%)

N=78

There was a statistically significant relationship between the level of (pre-sanction) aggression displayed towards officers and where tickets were issued ( $U=264.00$ ,  $p<0.001$ ). The median level of aggression was 0 for those cases disposed of on-the-spot ( $N=20$ ) vs. 2 (direct verbal aggression) for those disposed of in custody ( $N=58$ ). Only four people who were directly abusive (whether verbally or physically) towards officers before being sanctioned were issued with a PND on-the-spot, as compared to two-thirds of people who were not aggressive towards the police ( $N=17$ ). Furthermore, one of the two cases involving physical aggression towards the police was Ticket Analysis Case 219 (discussed above) where a man was arrested for lashing out using a belt. Here the only aggression the man displayed towards the police was as he was resisting his arrest. He was later issued with a PND on-the-spot. The second case involved a man throwing bottles at police staff during a drugs search at a pub (Ticket Analysis Case 211). The officer issuing the notice in that case was not the person at whom the bottles were thrown and the perpetrator appeared to have calmed down by the time the ticket was issued. There was also no mention of any injury caused by the offender's actions. Thus again compliance appeared to be key.

The importance of suspect demeanour was highlighted by a number of cases viewed during observations. In particular, in Observation Case 9 a man was arrested (and later issued with a PND) after shouting at an officer following the stabbing of his friend in a city centre nightclub. Whilst I did not see the actions of this man (I was with officers inside the club at the time), this extract from my field notes outlines the reasons given by the officer for the man's arrest:

When we got outside .... One of the officers ... asked how long we were going to be, as he already had a person in the back of the van who'd been there for about 20 minutes. When they asked him what [he had been arrested] for he made a hand gesture to indicate talking .... The man in the back of the van asked what was going to happen and said he hadn't done anything wrong. He was told he shouldn't have sworn at a police

officer ... one of the officers asked [the arresting officer] what the man in the back had done, he said he's been shouting and swearing, and that he'd warned him 3 times to stop, another said "I heard, you said 'you and me are going to fall out in a minute'" .... [The man] was let out of the van and again started saying that he hadn't done anything and didn't need to be taken to a cell, the officer again reminded him that he had shouted at an officer, he said he knew that he shouldn't have done, but that his friend was covered in blood and his friend's girlfriend had been crying in his arms and that he'd just been worked up, but that he hadn't done anything. To which the officer replied "you're doing it now". The man was then quiet for a short while and then again began his explanation saying he shouldn't have been arrested and that he was worked up seeing his friend covered in blood. The officer told him to stop dramatising the situation, and that the way he was painting it made it seemed like his injuries were far more serious than they actually were (the victim, I was later told, had a cut to his face and hand, where he had tried to get the knife off him), and that he and his friends should stop trying to decide everything by committee .... When I later asked the officer what the man had done to get arrested he said "well, you saw what he was like". He said the man had been shouting and waving his finger in the officer's face as he went into [the nightclub]. (Field Notes, Pages 89-90).

Thus after initially approaching the police to complain about what had happened to his friend, and ask what was going to happen to the perpetrator, as a result of the manner in which he did this, he was himself arrested and issued with a PND for drunk and disorderly. As discussed above Observation Case 1 also arose after a man tried to intervene in his friend's arrest telling the officer "he hasn't done anything" (Field Notes, Page 5) (see Section 6.4.2.1). The (toothless) man in Observation Case 10 was also arrested for intervening in his girlfriend's arrest. Similarly, in Observation Case 8 the man was arrested (and issued with a drunk and disorderly PND) for insulting a police officer, telling him he needed to eat a salad; officers later told me "the rationale there was, that 'if you keep yelping, you'll get a ticket'" (Field Notes, Page 58). Similarly, in Observation Case 6 officers had been "umming and arrhing" about whether or not to issue a PND but decided to issue a drunk and disorderly PND as the woman "had 'pissed him off' whilst the s27 [for assaulting a doorman] had been issued" (Field Notes, Page 49). The suspect's demeanour was decisive in Observation Case 2; officers changed their mind about letting him off with an informal warning (about not urinating in public) after they took offence at the man's attitude. In Observation Case 7 (see Section 6.5) the woman was arrested for repeatedly hurling abuse at officers – including calling across the street to them that they were "fucking idiots" (Field Notes, Page 53) – indeed whatever the reason for her ejection from the bar she was stood outside, it was her language and actions towards the police that caused them to arrest her.

Given the small number of PNDs that were seen issued during observations, this is quite a litany of cases where the offenders' demeanour appeared to play a role in officers' decisions as

to whether (and where) to issue the PND. This supports the existing literature (see Section 3.4.3.4.1) which highlights that those who fail the 'attitude test' may face 'social disciplining' and be subject to sanction as officers seek to (re)exert their authority when confronted with disrespect. An examination of the circumstances of individual cases suggests that the importance of demeanour extends beyond abuse, and instead regards respect (and thus compliance), it was officers' need to gain (and maintain) control, and thus offenders' compliance that was driving the decision. Take for example, Observation Case 6: the police were called to deal with a woman who had hit a bouncer who was ejecting her from a bar. She was spoken to by officers, who began completing a s27 notice. Whilst she freely admitted that she had slapped the doorman, she refused to accept that she was at fault or the officer's 'lecture' as to her wrongdoing. Yes the ticket was issued because the woman had "pissed him off", but crucially she was not being *directly* abusive towards the officer, she was being disrespectful/non-compliant by not listening to the officer. Both his lecture and the s27 notice were ineffective, so he resorted to a PND.

Thus, rather than offence severity alone (either with regards to aggression towards the police or aggression towards the public) driving officers' decisions as to where to issue PNDs, instead severity interacted with compliance. Officers resorted to arrest where this was necessary to control the situation. Where a person repeatedly ignored warnings to desist in their offending behaviour and indeed, perhaps became more aggressive during the course of their interaction with the police, officers may have felt that arrest was the only means to address the situation. However, as highlighted in particular in Observation Case 7 (see Section 6.5), when officers threaten arrest as a means to try and engender compliance they leave themselves little choice but to take that action if their requests are not complied with. Thus in Observation Case 7, officers repeatedly told the woman if she did not go home she would be arrested. In the face of her ongoing verbal abuse (which was both one-sided and directed at officers) she was eventually arrested; officers needed to (re)exert their authority and gain control of the situation. However, had they instead (at least initially) threatened her with a s27 notice (a direction to leave the area) they could have potentially managed the situation without 'losing face' but also, without having to resort to a (resource-intensive) arrest.

A non-compliant offender cannot feasibly be issued with a notice on-the-spot<sup>288</sup>. This is further supported when we consider that there was a statistically significant link between the place of issue and whether or not the individual was compliant (see Table 6.12)<sup>289</sup>:

<b>Table 6.12: Was recipient compliance related to where s5 and drunk and disorderly PNDs were issued?</b>		
Compliance Place	Non-compliant	Fully compliant
On-the-spot	3 (6%)	10 (83%)
In custody	46 (94%)	2 (17%)
Total	49 (100%)	12 (100%)

N=61

There was a statistically significant relationship between compliance<sup>290</sup> and place of issue, with compliant persons being more likely to be issued with a ticket on-the-spot ( $\chi^2=34.267$ , d.f.=2,  $p<0.001$ )<sup>291</sup>. Whilst in the present study, both non-compliance and abuse towards officers were significantly associated with decisions to arrest (rather than issue a penalty notice on-the-spot) Coates *et al.* (2009) found only the latter increased the likelihood of arrest. In their study, passive non-compliance did not increase the risk of arrest. Furthermore they suggest that rather than being motivated to arrest people because they are being abusive towards them, officers actually only arrest people because members of the public saw that abuse and would find it 'distressing' to see/hear such language/behaviour regardless of the fact it was directed at officers and not themselves<sup>292</sup>. They argued that, "if disrespect towards the officer

<sup>288</sup> Issuing penalty notices to persons who are non-compliant breaches the national guidance on the use of penalty notice (Home Office 2005a) however it is also likely to be impractical as a person who is unwilling to comply with warnings to desist in their offending behaviour is also unlikely to comply in the process of completing the notice (such as giving the name, date of birth, address etc).

<sup>289</sup> Compliance was measured on a scale of 0 (non-compliant) to 5 (fully compliant). This was adapted from a similar scale used in Deehan *et al.* (2002). However as only five recipients were recorded as being 'partially' or 'largely' compliant, only those people who were fully compliant or non-compliant are considered here. The 11 people who were not warned/not given the opportunity to comply with officers were also excluded from this analysis.

<sup>290</sup> 'Compliance' relates to whether the recipient cooperated with the police, such as in following directions to cease offending/stop swearing.

<sup>291</sup> This result should however be treated with caution as one cell (25%) had an expected count of less than 5. Of the three cases where people were non-compliant but issued with a ticket on-the-spot, in two, the offender was seemingly initially arrested but later de-arrested and issued with a ticket on-the-spot (Ticket Analysis Cases 34 and 84). In the third case the woman was not compliant with PCSOs at the time of the offence but was seemingly compliant when they returned the next day to issue her with a notice (Ticket Analysis Case 5).

<sup>292</sup> They suggest it is this, rather than a blatant disregard of the CPS charging standards which require officers' to have a higher tolerance for abuse, that leads officers to punish people in such cases.

was a driving factor behind the arrest decision, non-compliance [as well as abuse towards officers] should also wield significant influence over the decision" (Coates *et al.* 2009, p.420). The first point to note here is that, in this study, non-compliance *did* affect decision making. But arguably, even if it did not, to equate (passive) non-compliance as being equivalent to disrespect fails to recognise that, whilst in practice the two are often related (see further below), failure to comply with a request to, for example, stop swearing at another member of the public is far less disrespectful than failure to comply with a request to stop swearing at the officer themselves. And, as noted, whilst I cannot speak for Coates *et al.*'s (2009) data<sup>293</sup>, in practice I found that abuse and non-compliance cannot be easily distinguished. Of the fifty s5 and drunk and disorderly cases reviewed where recipients were non-compliant, in only four cases did the offender display no aggression toward the police<sup>294</sup>. In a further eight cases they displayed one-sided provocative behaviour (i.e. swearing was not directed *at* officers). Thus, in the current study, 76% of non-compliant offenders expressed their 'non-compliance' by being verbally (32%) or physically (44%) abusive towards officers (N=50).

So, offenders who displayed pre-sanction (that is, pre-arrest or pre being issued with an on-the-spot PND) disrespect (both with regards to abuse and compliance) were more likely to be issued with a PND in custody, and indeed, these factors appeared to affect officers' decisions as to whether to take any formal action at all. However, as noted at the outset of this section, the *overall* severity of the offence includes any aggression shown post-arrest. Table 6.8 (see Section 6.4.2) notes the peak level of aggression shown in s5 and drunk and disorderly cases. Overall 32% of PND recipients were physically aggressive towards the police (N=79), of whom 70% only displayed physical aggression upon arrest; their aggression thus being a reaction to, rather than the impetus for, arrest (N=23). The overall severity of the case therefore often increased *after* the officer's initial decision to arrest the individual. Why therefore, in these cases where there was at least a 'realistic threat of injury', did officers still decide to proceed by way of PND?

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<sup>293</sup> Although non-compliance did not in their study have any significant impact on officers' decisions, they do note elsewhere that in one of the later models non-compliance was kept constant as it "was inferable in the description of offender's behaviour included within the variable 'abusive'" (Coates *et al.* 2009, p.414). Indeed, although any statistical relationship between these two variables is not reported, it is notable that the proportions of people described as abusive are highly similar to those reported as being non-compliant (42.7% and 44.7% respectively). Thus suggesting that (just as in the current research) the two variables are not mutually exclusive.

<sup>294</sup> In those four cases the person continued in their aggressive behaviour towards the public despite warnings from the officer.

In Observation Case 7, after the woman was (finally) placed in the holding cell in the back of the police van after a lengthy period of forcible resistance, one of the officers said ““we’ve thought about it and that’s not going to be a ticket.” We all laughed at this and it seemed clear that no-one thought this case fell within the realms of ticket-able D+D [drunk and disorderly]” (Field Notes, Page 54). Indeed, this comment was made before we had arrived at the custody suite, where, such was the level of her forcible resistance to arrest (during which she continually kicked out at officers) she had to be placed directly in a cell without being booked in by the custody sergeant. Once she was in a cell, one of the officers “asked me whether I would still be able to use that data (the girl being arrested) the implication being ‘even though she’s not getting a ticket’” (Field Notes, Page 54). Despite this, “the custody sergeant said that she had had a PND four years ago and a caution in 2010 for D+D [sic], but that neither of these made her ineligible for a ticket and as such she would get a PND for drunk and disorderly” (Field Notes, Pages 54-55). The following evening, some of the officers commented that this woman should have been charged:

I asked, given that they had all expected the girl last night to be charged, who makes the decision as to how to dispose of a case i.e. charge or PND – the police officer at the scene or the custody sergeant, and whether they could challenge the custody sergeant’s decision ... the custody sergeant may make the initial decision, but would consider the views of the police officer. Thus if a police officer wanted it to be charged rather than a PND it most likely would be. [Indeed, one of the officers gave an example of a case which, given the resources required to manage one disorderly offender (who had to be monitored throughout his time in custody by an officer as he was placed on suicide watch), he had insisted was charged] .... [However with this case] no-one had challenged the decision of the custody sergeant, and there was no discussion between [arresting officer] and the custody sergeant as to the best means to dispose of the case – the later simply said that it would be a ticket. As such, whilst it seems that the custody sergeants are receptive to the officers’ desires when these are voiced, officers will not necessarily disagree with the custody sergeant even where they feel a PND is inappropriate. So in some ways the custody sergeant provides a measure of independence/neutrality in the decision making process – however this is both unofficial and tenuous. (Field Notes, Page 56-7).

#### **6.6.5 The role of gender**

The ticket analysis data indicated that PNDs were overwhelmingly issued to men, but that when comparing the proportion of women issued with PNDs with those proceeded against in the magistrates’ court women were overrepresented in the PND recipient population (see Section 5.3.2). The police literature would suggest that patriarchal approaches to policing may encourage officers to either respond more leniently towards female offenders (as a result of ‘chivalry’), or subject women to more punitive responses where they are thought to have acted outside their expected gender role (Newburn and Reiner 2012; Gibbs 2012). Thus for

example, if women do not display the expected level of deference this may be more likely to result in arrest. Whilst the role of chivalry was unclear in the ticket analysis, during observations there were instances where women, who did respond to police intervention in the expected apologetic and deferent manner, were seemingly treated leniently as a result of this paternalism. This was most clearly evidenced in a case involving a young woman who had got stuck after driving up a road which was clearly marked as no entry:

we responded to a call about a woman who had driven up [an area marked 'no entry'] ... she could not safely get her car out .... The woman, who was young – in her 20s – and pretty was very apologetic, she said she hadn't been drinking – this was confirmed by the breath test – [the officers] guided her out and she was told there would be no further action – they seemed to accept she had made a genuine mistake – although they pointed out that she must have gone past the 'no entry' signs (Field Notes, Page 31).

This can be contrasted with a similar situation involving a male offender:

we saw a guy go the wrong way up a one-way street – it was fairly quiet on the roads at the time – The man was pulled over, we waited for a breathalyser test – he was breathalysed and given a [traffic] ticket – he was fairly quiet during the process .... The issuing officer mentioned later that he didn't like it when people said their past offences were 'spent' (it appeared that when asked this man had admitted that he'd previously been in trouble with the police but that offence was now spent) he said that the same wasn't true for the victim of crime [who] might have to deal with the fear of leaving her house after being burgled for the rest of her life, although he said (unprompted) that that wasn't why he'd given the guy a ticket (Field Notes, Page 33).

The paternalism influencing the exercise of police discretion seemed therefore to be evident on occasions in that, whilst both people behaved deferentially, and their actions were equally dangerous, the female (with no previous convictions) was offered assistance whereas the male was issued with a traffic ticket.

But what if women do not behave in the expected deferential manner? In Observation Case 7 (the women who yelled abuse at officers across the street) was given many chances to heed officers' warnings, arguably far more than would have been afforded a male in the same situation. Deehan *et al.* (2002, p.38) reported that officers in their study thought that female arrestees could be more problematic than males and that this was likely to reflect the fact that officers would "arrest only the worst female offenders". Similarly in the current study, officers admitted "with women you do tend to give them more chances" and that "it wasn't nice having to arrest and handcuff women" (Field Notes, Page 55) but that when they did resort to arrest sometimes "the women could be worse!" (Field Notes, Page 73). This statement highlights the perception that women are expected to respond with deference towards officers (as compared to men) and thus for them to behave more aggressively than men is

shocking. There was no significant difference in level of aggression towards the public or the police based on gender. Women were also no more/less likely to be directly abusive towards officers, and whilst a higher proportion of women were non-compliant than men, this difference was not significant<sup>295</sup>. A review of the evidence also suggests that women were, contrary to officers' comments, seemingly no more/less likely to be warned about their behaviour (and thus 'given chances') before being arrested/issued with a PND.

Officers' paternalism towards women may encourage punitive responses (such as arrest) not only as a form of punishment, but also, in some instances, as a means of protection. Whilst this was not directly observed (either in the ticket analysis or the observations)<sup>296</sup>, it was mentioned by a senior police officer when organising the fieldwork for the current research. The officer said that women tended not to be issued with PNDs as they were more likely to listen to an officer's orders whereas men tended to see them as a challenge. Furthermore, he said officers may use their powers of arrest, particularly with women, where they were thought to be so drunk that they may come to some later harm (examples included being robbed, raped or run over) if left alone (see Section 6.6.1 above).

Whilst officers' comments may not be supported by the ticket data this may simply reflect the fact that they are less likely to take *any* formal action in cases involving women. In one incident reviewed during the observations the police van pulled up outside a nightclub to speak to door-staff. The security officers reported that a group of women had been ejected from a nightclub for fighting in the toilets, they continued to squabble on the pavement (although they weren't physically fighting) in full view of officers. Yet despite this the officers, slowing slightly as they drove past did not stop or speak to any of the women. This can be contrast with a similar case involving men earlier in the evening. In that case following a fight in a city centre bar the perpetrators had run off (this was reported to officers by the door-staff at the venue). Officers managed to catch up with one of the perpetrators and, despite confirming that no complaint had been made regarding the original fight, issued the man with a s27 notice.

#### **6.6.6 The limits to officers' discretion**

Whilst officers have relatively unfettered discretion to decide how to proceed when faced with disorder there are certain legal and organisational influences (and constraints) which may affect how they choose to use that discretion and whether (and where) they choose to issue

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<sup>295</sup> Of 79 male PND recipients, 79% were classed as non-compliant as compared to 87% of the 15 female PND recipients.

<sup>296</sup> Indeed drunkenness alone was rarely the basis for either police intervention or formal police action (see Section 6.6.1).

PNDs. With regards to the legal constraints, s5 of the Public Order Act 1986 requires that there are people in sight or hearing distance of the recipient who were likely to be caused harassment, alarm or distress by their behaviour. Furthermore, following the ruling in *DPP v. Orum* [1989] 1 W.L.R. 88, police officers are presumed to have a higher threshold for abuse and as such a s5 case may be harder to prove where a police officer was the only victim/witness. It is a statutory defence to s5 that the individual had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress. Officers showed an awareness of these 'evidential hurdles'<sup>297</sup>, commenting, particularly with regard to public urination, that drunk and disorderly PNDs would be favoured over s5 notices (if anything) as it would be "difficult to prove that someone had been caused harassment" unless someone had, for example, pointed it out to them (Field Notes, Page 11). However, as discussed above (see Section 3.4.3.7), officers are easily able to overcome these 'evidential hurdles' by writing their statement in a manner that legitimises the action taken.

As noted in section 3.2, there is a tension between the legal definition of drunkenness and the ability for officers to issue PNDs on-the-spot. If we assume that all tickets were issued to people who understood the process (and thus had not lost control of their mental faculties) then officers did not meet the evidential requirement for *drunk* and disorderly when issuing such tickets on-the-spot. Yet, if (as in Observation Case 3) the individual did not understand, then officers were breaching the guidance. This leads us to some of the organisational influences on the use of PNDs, and specifically the influence of force policy. It was noted in Section 3.4.3.6 that officers' use of discretion was influenced by organisational factors and performance indicators which may encourage (or discourage) the use of PNDs as officers (and forces) seek to meet their targets and that force policies may influence not just whether, but how, officers exercise their powers. This view was supported by officers in the current study who noted that the extent and manner in which PNDs were used had changed over the years in response to changing force policy.

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<sup>297</sup> Indeed, of the four s5 tickets issued for public urination, three mentioned the presence of bystanders in the evidence section. On the fourth ticket the evidence section was not completed however the offence particulars stated that the recipient "caused harassment, alarm and distress, urinated in the street" (Ticket Analysis Case 141). Thus all four tickets suggest some awareness of the need to meet these additional evidential requirements. However, whilst these additional evidential criteria do not apply in drunk and disorderly cases, of the four such tickets issued for public urination, two mentioned the presence of bystanders and the other two mentioned the location (road-side and beside a nightclub) which at least suggest the possibility of others seeing this behaviour. Thus it does not appear that drunk and disorderly tickets were used for public urination to avoid the additional evidential requirements of s5, but rather that individual officers appeared to favour the use of one or other.

In the force area review, as with all forces, the use of PNDs fell dramatically following (and seemingly in response to) the removal of the national target to bring more offences to justice (see Section 3.4.3.6). I discussed the falling use of PNDs with many officers during observations:

I wondered why PNDs weren't being used as much as they used to. I told them that nationally their use had fallen in 2009 and ... that it appeared like they would have fallen again between 2009 and 2010. One of the officers said it was probably performance measures. I asked why. He said as they weren't being measured on it anymore people were probably using them less. He then laughed and said "that's the official voice of the police talking" (Field Notes, Page 75).

I commented that the use of PNDs had fallen a lot over the last couple of years and she said that officers were no longer targeted on them and that was probably why they'd dropped (Field Notes, Page 74).

He told me that he thought the biggest problem with the police was that they'd become too politicised ... and that the Home Office shouldn't be able to dictate tactics to the police .... He said it was starting to get better now there was less focus on targets beyond simply reducing crime. I asked whether the change in focus from targets was why the use of penalty notices had fallen. He said he thought it might be – he said previously officers were measured against certain targets every month and that they no longer were so there may be less pressure to issue them (Field Notes, Page 63).

These quotes indicate that officers were seemingly influenced by the introduction and removal of the OBTJ target. However, others noted that the city centre, and as a result the police, were far less busy now than it/they had been in previous years. Thus whilst officers may be influenced by targets, such targets do not exist in an operational vacuum, but rather interact with the situational and social context as well as other working, inhibitory and presentational rules (Smith and Gray 1983).

Many officers reported that when PNDs were first introduced they were discouraged from issuing notices on the street to intoxicated people as if that person were to later come to some harm (such as being run over or robbed), the officer might be judged to have breached their duty of care to that person<sup>298</sup>. Yet, more recently, they reported, the policy had changed and they had been encouraged to issue PNDs on-the-spot so as to realise the full efficiency savings offered by this power. Such perceptions could however lead officers to feel a certain pressure not to take people to custody even where they were clearly too drunk to understand what was being offered to them (as in Observation Case 3).

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<sup>298</sup> Officers' concerns appeared to reflect a desire to 'cover their ass' (in Van Maanen's (1973) terms). Rather than reflecting a genuine concern for the vulnerability of intoxicated people, it was a concern that *they* could be seen to have failed in their duty of care to people they could be shown to have sanctioned. Indeed, this same concern was seemingly not afforded to intoxicated people whom the officers did not sanction, such as the couple left in front of the shop window.

As well as influencing where PNDs were issued, the influence of force policy on which PNDs were issued was evident in officers' responses to my queries as to why the force had seemingly, over the years, moved from issuing s5 to drunk and disorderly notices:

[the officer replied] "statistics" when asked why they didn't use s5 – he then elaborated to say whilst at first they had been pushing s5 notices it was a recordable offence and counted as a violent offence and so they realised this and became reluctant to use them (Field Notes, Page 11).

Whilst there was therefore a concern regarding the impact of PNDs on (recorded) violent crime this was not preventing the use, at times, of PNDs for offences involving quite serious levels of violence. Again the use of PNDs in these cases appeared to be influenced by force-level policy:

I asked whether they ever charge people for D+D [drunk and disorderly] – saying I had seen some cases that were pretty serious but still only got a PND and wondered when a PND wouldn't be appropriate anymore and a person would be charged ... [the officer] said that they use PNDs unless the person isn't eligible i.e. they've had too many before or they've previously been to prison (Field Notes, Page 73).

Indeed, when tickets were issued following arrest the custody sergeant would always comment on the individual's (rather than the offence's) eligibility<sup>299</sup>. These different force policies interact to affect officers' use of PNDs. Thus whilst officers might no longer be routinely monitored on the number of PNDs they issue they were encouraged to use PNDs in a certain manner; issuing PNDs for drunk and disorderly and on-the-spot wherever possible. However, as Waddington (1999) has noted, policing is relatively unmanageable; the police role is largely reactive, making it unamenable to directives which aim to guide police behaviour *in advance* of any situation. Thus whilst officers might have regard to the organisational policies on the use of PNDs, they were not averse to issuing tickets (following arrest or for s5) in a manner which was contrary to force policy. Such organisational imperatives might be least likely to affect police decision making where this conflicts with other police 'working rules' (see Sections 3.4.3.1, 3.4.3.4.1 and 3.4.3.7). This can be seen in Observation Cases 8 and 9 where people were arrested for drunk and disorderly following their (perceived) disrespectful behaviour toward officers<sup>300</sup>.

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<sup>299</sup> Given that these people were all arrested for s5/drunk and disorderly to assess the appropriateness of a PND based on the individuals' eligibility may be reasonable, however, as already noted, in practice these offences cover a myriad of behaviours which extend far beyond that which is (according to the guidance at least) within the PND scheme.

<sup>300</sup> In Observation Case 8 the man was subsequently de-arrested on arrival at the station and issued with a PND on-the-spot.

One final comment regarding (unofficial) force policy on PNDs is worthy of note as it highlights the insufficiency of the 'safety net' provided by individuals' right to request a court hearing:

[he said] often officers give them out on a punt (not his words) they guess they won't be challenged so they just give them out, you might lose a few but not many ... he commented that if one of my friends got one I should get them to challenge it as it probably wouldn't go to court – he said he shouldn't tell me this but it is force policy - they know people don't challenge them (Field Notes, Page 7).

Officers were therefore well aware that few people ever challenge their PND and might on occasion use that knowledge to their advantage.

As well as these official (and unofficial) policy influences there are certain practical constraints on officers' use of discretion. For example, on a number of occasions, when the local custody suite was under renovation and thus (for a short period) operating at a reduced capacity, a call came through on the radio to say that the cells were almost full and so for the remainder of the shift only violent offenders should be brought in. This is supported by Coates *et al.* (2009) whose ticket analysis found low cell capacity was significantly related to on-the-spot issuing of PNDs<sup>301</sup>. Coates *et al.* (2009) also found that cases reported by a third party were more likely to result in arrest. In the current study an officer noted that "there was more discretion with drunk and disorderly [as opposed to theft cases] as they're not generally logged as an incident, so may just use words of advice rather than issuing a ticket/arresting". Of all tickets issued, 90% of cases which came to officers' attention as the result of a police report resulted in arrest<sup>302</sup>.

The above examples highlight some of the legal and organisational influences on officers' discretion when dealing with penalty offences. As noted throughout the chapter however, the national guidance does not appear to be an effective control on officers' use of this power, which, given the insufficiency of offenders' right to request a trial as a control mechanism on the use of this power is of real concern (a point I shall return to in Chapter 8).

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<sup>301</sup> However, this finding was not supported by an experiment undertaken by Coates et al (2009) where officers were asked to comment on a number of different case studies and state whether they would arrest a person or issue a penalty on-the-spot. There, cell availability had no independent effect on decision making. Yet, there was a significant interaction effect between abusiveness towards the police and cell space. If offenders were abusive they were more likely to be arrested even where cell space was very limited.

<sup>302</sup> When examining the use of PNDs for all offences, there was an apparent relationship between who reported an incident and where a ticket was issued; 61% of all cases which the police came across in the course of their duties resulted in an on-the-spot PND (N=59), as did 70% of cases which were reported by security officers (including shop and bar security, CCTV operators and trading standards) (N=50). Five of the nine cases which were reported by members of the public were disposed of on the spot. Cases which were reported via the police radio, which arose out of the offender trying to make a complaint and cases reported by taxi drivers were least likely to result in arrest. Only two of 19 such cases were disposed of on the spot. Too many cells (50%) had an expected count of < 5 to perform any statistical analysis on these data.

## 6.7 Offenders' reactions

As noted in Chapter 4, the observations were intended to address research question 1 (examining how PNDs are used) however, they did allow me to see first-hand how people react to receiving PNDs and as such it is prudent to, at least briefly, consider these data in light of research question 2 (examining recipients' experiences), before moving on to the recipient-centred data in Chapter 7. The key point that stands out is that many of the recipients expressed incredulity at being arrested/issued with a PND and that this was particularly so in those cases (noted above) where the recipient was seemingly arrested/issued with a PND as a result of their disrespectful behaviour towards the police or else where the person themselves felt victimised/justified in their behaviour (such as Observation Cases 6 and 10-12). 'I haven't done anything' was essentially the rallying call for PND recipients, however, as will be seen in the following chapter, this was not an outright denial of any wrongdoing but rather a perception that the officers' reaction to their behaviour was disproportionately harsh. Some officers were successful in 'selling' (particularly public urination) PNDs. Similarly in those cases observed where people believed they had 'got off lightly' – such as the man who was issued with a drunk and disorderly PND for alleged possession of cocaine (Observation Case 4) – people were far more receptive to officers' lectures than when they felt 'hard done by'.

As with demeanour, offenders' perceptions of their treatment evolved through the process of *interaction* between officers and offenders. The offenders' reaction to their arrest/PND was as much about the officers' demeanour, *how* they were talking (and whether they were listening<sup>303</sup>) to the offender as what they were actually saying as this final extract shows:

[The officer] handed [the PND] over and told the man that he'd left his burger [which he'd asked the officer hold whilst he was collecting up the bread baskets from the road] on the floor. The man laughed and said he was hungry. [The officer] then said "Thank you for using [the] Police" the man laughed and said "thank you for *using* [the] Police,

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<sup>303</sup> As noted above where people came to the attention of the police because they were seeking to make a complaint they often reacted aggressively where they felt their concerns were being dismissed. There was a marked difference between the man who was told to "grow-up and go home" after reporting to an officer that he had been slapped and the girl who was told (by the same officer) to "put it down to a bad night" and "go home" after being punched (Field Notes, Pages 116 and 12). Whilst in the former case the man was given no opportunity to explain what had happened, in the latter the girl got to 'tell her story'. Indeed, the officer sympathised with her before explaining that, as the alleged perpetrator was saying that it was this girl who had in fact started the fight, if they were going to pursue the matter they would need to arrest everyone. The girl remained upset but was comforted by her boyfriend who said "it's not the police's fault and that there was nothing they could do in these situations" (although the bruise on his head, which I noted meant "it looked as though he had head-butted someone" meant he probably had his own reasons to be thankful the police weren't investigating) (Field Notes, Page 12). It's doubtful that the man told to "grow up" shared this view that the police cannot (rather than choose not) to act.

like I text you and said 'I'm being a dick, come and get me'" (*emphasis in original*, Field Notes, Page 48).

This comment was made after what had actually been a surprisingly jovial exchange, after initially telling off the man for trying to speed up the process of being issued with a PND the recipient had been far more contrite, and had joked with the officer, who later told him "I'm starting to like you now". As I noted in my diary at the time the manner in which he delivered the PND "could have been quite antagonistic, but [that officer seemed] put people at ease, and in making the man laugh he actually left in quite a positive mood" (Field Notes, Page 48)<sup>304</sup>. Officers' demeanour can therefore, as this case shows, influence offenders' behaviour and compliance at the scene.

## 6.8 Chapter summary

The circumstances in which PNDs were issued were many and varied, but there were some common characteristics. Theft cases usually involved only one person and the value of goods stolen was, in most cases, less than £40. Equally, cannabis tickets were issued in circumstances which were in keeping with the 'personal use' threshold set down by the guidance. Thus both theft and cannabis cases were used mainly for low-level incidents of these offences. Offence severity was however more varied in s5 and drunk and disorderly cases. Over a third of such cases involved no aggression towards the public, and half involved only verbal abuse (50%) (N=79). However in 15% of s5 and drunk and disorderly cases PND recipients were physically abusive towards the public, and 32% of recipients directed physical abuse towards the police (N=79). Whilst only two cases noted some injury to a member of the public<sup>305</sup>, fifteen cases involved 'severe'<sup>306</sup> physical aggression which suggests that (whilst the evidence may not state that any injury was caused) there was certainly the potential for injury. These findings suggest that officers were not always issuing tickets in accordance with the limits placed on the use of this power by the national guidance (Home Office 2005a; Ministry of Justice 2013b). Further breaches of the national guidance were noted in the use of PNDs to deal with domestic incidents. In these cases particularly, the absence of any consideration of the victim's views in

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<sup>304</sup> This kind of banter appeared effective at diffusing potential aggression. In Observation Case 11 (the man wrongly thought to have knocked out the tooth of the man in Case 10), the recipient commented that PAVA was "really good stuff" but that it should/need not have been used against him as he had "just been stood there". Ignoring that latter comment, "one of the officers joked with him that he'd look ten years younger the next day and that the PAVA was like a man's chemical peel, 'is it L'Oreal? No it's [the] police!'" (Field Notes, Page 92). The man laughed at this, and seemed more resigned than angry" (Field Notes, Page 92).

<sup>305</sup> Ticket Analysis Cases 32 and 133 discussed above (see Section 6.4.2.1).

<sup>306</sup> 'Severe' aggression included: punching, kicking, head-butting, wrestling, use of a weapon or many people involved in a physical altercation. In ten cases this aggression was directed towards the public and in five towards the police.

officers' decisions to issue a PND is concerning, and questions not only whether PNDs are being issued appropriately, but what 'appropriate' use of this out-of-court disposal should be. These issues will be considered further in Chapter 8.

The level of offence severity (with regards to both aggression towards the public and the police) was higher in those cases where there was more than one perpetrator. Despite this, in such cases, tickets were not issued to all parties to the argument, instead factors such as how people reacted to police intervention appeared to be influential in police decision making. Indeed, in only six of 12 cases where the 'victim' was involved in an argument/fight with the offender, did both parties receive a PND. People appeared to be punished only if they reacted aggressively towards the police, rather than as a result of their original role in the fight. Indeed, in 71% of cases which reported more than one victim, the second victim was a police officer (N=34). It must however be borne in mind that aggression towards the police occurred in the context of an ongoing *interaction* between the offender and the officer and that offenders' aggressive behaviour often increased in severity as a reaction to some word or action of the police. The police officer was found to be both 'law enforcer' and 'victim', yet this analysis suggests it is the latter status which drove officers' decision to issue a PND following arrest rather than on-the-spot. Whilst there were some clear examples of people being arrested for so-called 'contempt of cop' – Observation Cases 8 and 9 (people being effectively arrested for criticising officers particularly stand out here) – in practice, the decision to arrest appeared to be influenced by offenders' compliance rather than their demeanour<sup>307</sup>. Once officers had lost their powers of non-coercive control (such as where the offender was verbally abusive towards officers and non-compliant) they resorted to arrest to regain control of the situation. A PND would then be issued in custody at a later point (once the offender has calmed down). However, again, the role of the police in engendering that (non-)compliance should not be underestimated.

When PNDs were first introduced it was thought that they would largely be used to deal with alcohol-related nuisance (see Chapter 2). Whilst subsequent extensions to the remit of the scheme have seen a large proportion of retail theft and possession of cannabis offences being disposed of via PND, through the use of s5 and drunk and disorderly notices the system is still concentrated on alcohol-related offending in the night time economy. However, the fact of intoxication alone did not appear to drive the use of PNDs. Rather, even where people were severely intoxicated, officers appeared reluctant to issue notices for 'being drunk in a highway';

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<sup>307</sup> Although this may be influential in the initial decision as to whether or not to take *any* formal action.

only taking formal action where individuals were uncooperative and behaving in a disorderly manner. Whilst officers were more likely to issue PNDs in custody (rather than on-the-spot) if the offender was intoxicated, this decision appeared to be influenced by the offender's willingness to comply. Thus, such as in Observation Case 2, people who were drunk but 'orderly' were disposed of on-the-spot despite any concerns as to their ability to understand the procedure. This raises serious concerns as to whether intoxicated offenders are able to comprehend what it is that is being offered to them when they are issued with PNDs on-the-spot, and indeed whether they understand that it is an *offer* which they have the right to challenge. These factors will be considered in the following chapter which explores recipients' thoughts and experiences of the PND scheme.

The preceding two chapters have addressed research question 1 and considered: who the recipients of penalty notices were; where, when and in what circumstances penalty offences occurred; and the factors which influenced officers' decisions to issue PNDs on-the-spot or in custody, or indeed, to take formal action at all. However, the findings from the ticket analysis are necessarily reflective of the police view of the offence. Although the observations provide a fuller picture of the circumstances of the offence (and thus allow for a more objective view), cases were only viewed from the point of police intervention and so the recipient's perspective of the offence, and of the police intervention, remain largely unknown (except where these views were probed by the officers at the time, or volunteered by the recipient). For example, the observations highlighted that officers (particularly when issuing notices on-the-spot) would 'sell' the PND to the recipient, making it appear to be a 'comparatively positive' outcome when considered against the potential that the individual could have been arrested and charged. But do recipients view PNDs in this manner? Do they perceive the process to be fair? And do those perceptions influence their willingness to comply? The following chapter therefore addresses research question 2 and, drawing on data from the survey and interviews undertaken with PND recipients, considers how the system is perceived and experienced by the people in receipt these of notices.

## **CHAPTER 7: EXPLORING RECIPIENTS' PERCEPTIONS AND EXPERIENCES OF THE PND SCHEME**

### **7.1 Introduction**

The previous two chapters outlined the individual and situational aspects of penalty offences as well as the circumstances in which tickets were issued and how officers came to decide whether (and where) to issue a penalty notice. Thus far, the focus has been on the police perspective of PNDs, drawn from the evidence they provided on penalty notice tickets and the police observations. In this chapter, the discussion moves to consider the recipients' experiences of penalty notices, as reported in the survey and during interviews with PND recipients<sup>308</sup>. Initially PND recipients' perceptions of the fairness of the PND scheme are considered. The outcome of respondents' PNDs is then discussed (whether recipients paid their PND, requested a court hearing or whether it was registered as a fine). In Chapter 2 the importance of protecting the right to trial was highlighted as a key driver in the introduction and extension of the penalty notice scheme (see Section 2.5.2), however this is a right which PND recipients rarely exercise (see Section 3.4.4.3). Drawing on survey and interview data this chapter asks whether PND recipients see their right to trial as a genuine right and, if so, why it is that so few choose to exercise that right. Crime reduction was a further goal of the PND scheme; receipt of a PND was thought to deter recipients from future offending. Whether it has achieved these aims is however unknown. This chapter therefore considers PND recipients' views on the deterrent function of PNDs and whether receipt of the notice influenced their behaviour.

### **7.2 The sample**

As noted in Chapter 4 (see Section 4.4.1), questionnaires were completed by 73 PND recipients and interviews were conducted with 11 of these survey respondents<sup>309</sup>. It must be noted that this represents a tiny proportion of the PND recipient population, and thus the sample is not representative. However, given the exclusion of recipients' views from the existing literature

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<sup>308</sup> A copy of the questionnaire can be found in Chapter 4 Appendix 2.

<sup>309</sup> The questionnaire included a section where respondents could volunteer their own comments about their experience; quotes from the survey are presented below to highlight key themes which emerged through both the survey and interviews. References for survey respondents are given; the prefix 'ON' denotes people who completed the e-questionnaire, whereas 'SN' refers to those persons who completed the paper questionnaire. The 11 interviews are numbered as case studies in this chapter, an overview of the circumstances of the case, the recipients' overall attitude to the PND and whether or not they paid the notice can be reviewed in Chapter 7 Appendix 1. Quotes from both the survey and the interviews are reported in this chapter. Where a survey respondent was also interviewed, comments that they made during interviews are indicated by a reference to the relevant case study (as well as the survey number), whereas comments made on the questionnaire are only referenced by the questionnaire number and brief details of the case (i.e. where the ticket was issued, the offence and whether the ticket was paid) only.

(see Section 3.6), the current study provides a useful insight into how recipients experience the PND process. Throughout this chapter sample sizes are provided to give the reader an indication of the (small) number of respondents, 'N' indicates the size of the entire sample that provided an answer to the question(s) discussed, whereas 'n' is used to refer to the subset of the sample in question. Whilst any statistically significant relationships between variables which emerged through the data analysis are indicated below, given the sample size, all such results should be treated with caution and as indicating areas for further research, rather than presenting a definitive statement of PND recipients' views of the penalty notice scheme.

The skewed use of penalty notices seen both nationally and at force level was reflected in the survey sample. The majority of respondents received tickets for: drunk and disorderly (n=38); retail theft (n=14); behaviour likely to cause harassment alarm or distress (s5 of the Public Order Act 1986, s5 hereafter) (n=10); and possession of cannabis (n=8). In addition, four respondents reported that they received a ticket for urinating in public. Whilst this is not a discrete penalty offence, PNDs may be issued for public urination either under drunk and disorderly or s5. The remaining nine respondents received PNDs for (in descending order of use): destroying or damaging property; selling alcohol to a person under 18, depositing or leaving litter or consuming alcohol in a public place. The survey sample was reflective both of the use of tickets in the force area in 2010 and in the ticket analysis (see Chapter 7 Appendix 2, Table A7.1)<sup>310</sup>. There was a significant difference between the offences committed by survey respondents and the proportion of tickets issued for different offences nationally ( $\chi^2=9.360$ , d.f.=3,  $p<0.05$ ). However, this reflects the fact that there was a significant difference in the use of PNDs in the force area studied (and thus the area from which most of the survey respondents were drawn) as compared to their national use.

There were no significant differences between the gender or ethnicity of survey respondents and that of the PND recipients in the ticket analysis, the force area or nationally in 2010 (See Chapter 7 Appendix 2 Tables A7.2 and A7.3). There were also no significant differences in age or employment status of survey respondents and those reported in the ticket analysis (see Chapter 7 Appendix 2 Tables A7.4 and A7.5). As with the ticket analysis, the survey respondents were mostly white, male, aged under 30 and unemployed. The survey also provided additional data regarding the financial circumstances of PND recipients; the majority reported that their personal income at the time they received the PND was less than £10,000

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<sup>310</sup> There was no significant difference between the relative proportion of tickets issued in the force area in 2010, or sampled in the ticket analysis, for the four main penalty offences – drunk and disorderly, s5, theft and possession of cannabis – and those committed by survey respondents.

per year (n=40). A further 17 reported that their income was between £10,000 and £19,999. Only six respondents had an annual income of more than £20,000 (N=63).

The only significant difference between the survey respondents and the other sources was the outcome of the PND<sup>311</sup>. Indeed, over three quarters of survey respondents (n=57) paid their PND compared to 54% of recipients in the force area in 2010 and 53% nationally that year (Ministry of Justice 2011a, Table 3.11(c)). This is likely to reflect a lack of willingness to participate in the survey by those PND recipients who have an outstanding debt.

### **7.3 Did PND recipients view the PND system as being fair?**

The following section discusses recipients' experiences of the PND system and whether they perceived their PND, and the process by which it was issued, to be fair. 'Fairness' can be assessed using different measures; both distributive fairness (related to the equitability of treatment and outcomes) and procedural fairness (related to the process by which decisions are made and the manner in which the decision maker treats the person subject to their decision) are considered. Whilst these distinctions are made it should be noted that they are not entirely discrete concepts; notions of procedural justice affect perceptions of distributive justice and vice versa, and both affect perceptions of the legitimacy of the decision maker (for a full discussion of procedural and distributive fairness readers are referred to Section 3.6.1). Whilst (for ease of presentation) the antecedents of procedural and distributive justice are discussed separately here, the link between these different elements of fairness was evident in the current study and overlapped in interviewees' and survey respondents' accounts of their PND. This inter-relationship between different elements of fairness – which is discussed further below (see Section 7.3.2) – was also supported by the survey data. Recipients' views on whether the decision to issue them with a PND was fairly reached (a measure of procedural justice) were correlated with measures of both distributive fairness and outcome favourability (see Chapter 7 Appendix 2, Table A5.6 for the full correlation matrix).

#### **7.3.1 Distributive fairness**

Distributive justice is often equated in the literature with outcome favourability. These are however, distinct (but related) concepts (Skitka *et al.* 2003). Outcome fairness is assessed

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<sup>311</sup> A comparison of the proportion of tickets paid and those registered as a fine between the survey and other data sources elicited the following results: ticket analysis,  $\chi^2=15.080$ , d.f.=1,  $p<0.001$ ; force level data,  $\chi^2=17.549$ , d.f.=1,  $p<0.001$ ; and, national data  $\chi^2=14.836$ , d.f.=1,  $p<0.001$ . Tickets which were cancelled, where the recipient requested a hearing or which were potentially subject to a prosecution were excluded as these form a very small proportion of all tickets issued, and as such it was not possible to perform a chi-square test as the number of cells with an expected count of less than 5 exceeded 20%.

based on notions of equity: whether people feel they have received similar treatment to others. Assessments of outcome favourability require no such comparison, reflecting the individual's satisfaction with the outcome and whether it is viewed as a positive or negative resolution. Outcome fairness is a stronger predictor of notions of procedural justice than outcome favourability, however outcome favourability and outcome fairness predicted similar amounts of variance in decision acceptance (Skitka *et al.* 2003). Thus, if applied to the current context, whilst perceptions of outcome fairness might be expected to be a stronger predictor of perceptions as to whether the decision to issue the PND was reached fairly, there should be no difference between favourability and fairness on recipients' willingness to accept the decision.

The survey measured perceived distributive/outcome fairness via four questions asking respondents to rate their agreement with the following statements (see Q8d, Q20d and Q21b-d) (see Chapter 4 Appendix 2):

- a. The officer did a good job of handling the situation
- b. Being given a penalty notice was what I deserved in the circumstances
- c. In the circumstance a penalty notice was a disproportionately harsh response to my behaviour
- d. I was treated the same as anyone else would be in the same circumstances<sup>312</sup>

Outcome favourability was measured based on agreement with the following statement (see Q21a) (see Chapter 4 Appendix 2):

- a. I was relieved to receive a penalty notice rather than a more severe punishment

In the current research, some measures of outcome fairness – agreeing that one deserved the PND, that they received the same treatment as others in similar situations and that the officer did a good job of handling the situation – were significantly linked to both believing that the decision to issue the PND was fairly reached<sup>313</sup> (procedural fairness) and willingness to accept

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<sup>312</sup> Following Tyler and Wakslak (2004) this is used as a measure of procedural fairness as it relates to the neutrality and consistency of the decision. However it is also used as a measure of distributive justice as it relates to the equity of the outcome and similarly worded statements (e.g. 'the police treat everyone equally regardless of their race') are used in the extant literature (such as Tyler and Sunshine (2003)) to measure distributive justice.

<sup>313</sup> Chi-square results for agreeing that the decision to issue the PND was fairly reached: 'The officer did a good job of handling the situation':  $\chi^2=31.755$ , d.f.=1,  $p<0.001$ .

the decision<sup>314</sup> (compliance). However, one measure of outcome fairness – disagreeing that the PND was disproportionately harsh – whilst significantly associated with assessments of procedural fairness<sup>315</sup>, had no relationship with compliance. Conversely, outcome favourability – agreeing that they were relieved to receive a PND rather than a more severe punishment – was significantly linked to both assessments of procedural fairness<sup>316</sup> and willingness to accept the decision<sup>317</sup>.

In both the comments made on questionnaires and during the interviews, recipients framed their discussions on outcome fairness and favourability in terms of the deservedness and proportionality of the punishment. Notions of deservedness (or ‘undeservedness’ as was more often the case) were largely tied up with whether or not the individual accepted ‘guilt’<sup>318</sup> and agreed that what they were doing was wrong. Such perceptions however appeared to relate to the proportionality of the police response (issuing a PND) rather than the appropriateness of police intervention per se. Many appeared to fully accept that they had undertaken the behaviour for which they received the PND but simply felt that to issue them with an £80 fine (or any punishment) for that behaviour was excessive. Thus, whilst in theory, PNDs allow the recipient to absolve themselves of guilt (payment of the PND discharging their liability for the offence), in practice, the fairness of the PND appeared largely related to recipients’ subjective assessments of whether they were guilty of what they saw of as an ‘offence’. In possession of cannabis and public urination cases, the PND was often viewed as undeserved because the offence was not seen as truly ‘criminal’, and as such the punishment was seen as excessive (see below Section 7.3.1). In cases which involved some form of dispute, even where recipients fully admitted they had committed the behaviour for which they received the PND, recipients who believed their actions were a reasonable response to the circumstances, or felt they had been provoked, did not accept that their PND was deserved.

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‘Being given a penalty notice was what I deserved in the circumstances’:  $\chi^2=29.445$ , d.f.=1,  $p<0.001$ .

‘I was treated the same as anyone else would be in the same situation’:  $\chi^2=27.867$ , d.f.=1,  $p<0.001$ .

<sup>314</sup> Chi-square results for agreeing that they willingly accepted the decision:

‘The officer did a good job of handling the situation’:  $\chi^2=18.624$ , d.f.=1,  $p<0.001$

‘Being given a penalty notice was what I deserved in the circumstances’:  $\chi^2=7.875$ , d.f.=1,  $p=0.005$ .

‘In the circumstances, a penalty notice was a disproportionately harsh response to my behaviour’:  $\chi^2=583$ , d.f.=1,  $p=0.567$ .

‘I was treated the same as anyone else would be in the same situation’:  $\chi^2=12.011$ , d.f.=1,  $p=0.001$ .

<sup>315</sup>  $\chi^2=10.971$ , d.f.=1,  $p=0.002$ .

<sup>316</sup>  $\chi^2=13.824$ , d.f.=1,  $p<0.001$ .

<sup>317</sup>  $\chi^2=6.352$ , d.f.=1,  $p=0.017$ , this result must however be treated with caution as one cell (25%) had an expected count of < 5.

<sup>318</sup> Whilst payment of a PND allows the recipient to discharge their liability for the offence, the majority of interviewees believed that the PND was an accusation (and finding) of ‘guilt’. Only two interviewees were aware that a PND does not require an admission of guilt.

This tension between, on the one hand accepting the wrongdoing, but on the other rejecting the punishment, was summed up by one interviewee: “like I say I were in wrong I shn’t have done what I did but, to me I were in right [sic]” (SN2, in custody, drunk and disorderly (taxi jumping/hitting police officer) paid). The ‘but’ in this statement loomed large in many interviewees’ accounts of the PND and was related to a sense that officers had not allowed them the opportunity to voice their case, or else that their voice was not heard. These issues are discussed further below with regards to whether recipients felt they were able to voice their concerns to officers, and their perceptions of the police as trustworthy/biased (see Sections 7.3.2.1 and 7.3.2.3). Interviewees’ notions of the proportionality of their PND related to the perceived severity of the punishment (whether the PND was viewed as being harsh/lenient) and the equitability of the punishment (both with regards to whether they felt they had been treated the same as others who had committed similar offences and/or had similar offending histories). Finally, the proportionality (and thus fairness) of the punishment was discussed with regards to the variable impact of the fine according to the recipients’ income.

#### **7.3.1.1 Severity of punishment**

Over half of all survey respondents felt that the PND was a disproportionately harsh response to their behaviour (n=36). Whilst only 18 respondents agreed that a PND was what they deserved in the circumstances (N=69), such views were more commonly held by those who had received a PND for theft<sup>319</sup>. This was supported both by comments recorded on questionnaires, and during interviews; cannabis and theft PND recipients appeared to assess the proportionality of the ticket differently to those who received PNDs for s5 or drunk and disorderly.

The vast majority of theft recipients were relieved to receive a PND rather than a more severe punishment (N=14). This sense that they had ‘got off lightly’ was expressed in particular by one respondent who noted:

I deserved the fine, in fact I shouldn’t have received a fixed penalty notice. I was on licence from prison and should of [sic] therefore been recalled back to prison, so I was

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<sup>319</sup> Theft recipients were significantly more likely than the recipients of other notices to agree that they deserved their PND ( $\chi^2=5.501$ , d.f.=1,  $p=0.033$ ) and to disagree that the PND was a harsh response to their behaviour ( $\chi^2=4.870$ , d.f.=1,  $p=0.037$ ). However, these results must be treated with caution as the sample size was extremely small (overall, just 14 respondents received theft PNDs) and in each chi-square test, 1 cell (25%) had an expected count of less than 5. Only three (of 11) theft PND recipients believed the PND was a disproportionately harsh response to their behaviour, compared to 57% (n=33) of respondents who received PNDs for all other offences.

glad of the 'fine', and glad the officers didn't check me through their radio as they should! (SN21, on-the-spot, theft, fine registered).

For cannabis recipients, the proportionality of the PND was not assessed according to the circumstances of their case, but rather was related to whether they believed possession of cannabis should be a punishable offence *per se*:

I think the law needs looking at concerning cannabis ... [under the statement 'the officer made the decision based on the facts' the respondent wrote] I still think the law is wrong (SN39, on-the-spot, possession of cannabis, fine registered).

Was only a bit a weed. Well outta [sic] proportion. Dint do owt [sic] (ON5, on-the-spot, possession of cannabis, paid).

It doesn't solve anything other than annoying people, I got caught with a spliff and got fined £40 I think it was, you have £5 worth of cannabis on you and you get fined 8x [times] as much! (ON23, on-the-spot, possession of cannabis, paid).

Case Study 1 highlights the influence of outcome favourability on recipients' satisfaction with the PND. The man in question was pulled over for speeding. When questioned, he admitted to officers that he was in possession of cannabis. He had purchased an ounce of the drug for himself and his friends to smoke at an upcoming festival. He was the only cannabis PND recipient surveyed who did not think that the PND was a disproportionately harsh response to their behaviour. During the interview he reported feeling relieved that he had *only* received a PND as he felt that the quantity of the drug in his possession and the fact that (as he admitted to officers) he had not only bought the drug for his own use, meant that he may have fallen outside the parameters of the 'personal use' criteria which allows such cases to be disposed of via a PND. Arguably, theft PNDs may be distinguished from cannabis (and other) offences as people may expect to be punished in some manner if they are caught stealing and, unlike cannabis notices, there is unlikely to be any dispute as to whether or not the offence is a 'crime'.

Conversely, the four respondents who received a PND for public urination thought this was a disproportionately harsh response to their behaviour. Three of these respondents volunteered comments which elaborated upon their experience of receiving a PND, expressing indignation at being punished for (what they saw as) a minor offence:

Police officers ... spend their time dealing with petty 'crimes' [like] weeing in the street (which is natural) instead of more serious crimes (SN5, on-the-spot, public urination, paid).

[the force who issued me with the ticket] need to spend more time catching proper criminals, and not people who pee in the street (SN20, on-the-spot, urinating in public, paid).

I was treated like the scum of the earth. I'm 34 I've worked my whole adult life in public services. I've never treated anyone so disrespectfully over something so trivial (ON8, on-the-spot, urinating in public, paid).

Recipients of s5 and drunk and disorderly notices generally gave much more subjective assessments as to whether their ticket was proportionate and assessed proportionality based on the perceived level of harm caused, whether there was a dispute (and the outcome of that dispute) and the perceived procedural fairness of the PND process. Such views, as the above quote shows, were affected by officers' attitudes and, in particular, whether the officer was thought to have provoked or inflamed the situation. These issues will be considered in further detail below (see Section 7.3.2.2 and 7.3.2.3).

### **7.3.1.2 Equitability of treatment**

Respondents' assessments of the distributive fairness and proportionality of their punishment related to not only the perceived severity of the offence *per se* but of *their* offence (as indicated by those cannabis PND recipients quoted above who felt the fine was unduly harsh given the small amount of the drug they were found in possession of). PNDs were seen as inequitable where recipients felt, due to the circumstances of their case, that they either should not have been punished or that their punishment should have been less than the standard (at the time), £80 or £50, fine.

You get court [sic] with a quarter of weed you get £80 fine, you get court [sic] with 1 joint same fine £80 not fair (SN50, on-the-spot, possession of cannabis, paid).

In particular, those who received PNDs for public urination (noted above), and (more broadly) many of those who received a PND for drunk and disorderly behaviour, felt that such behaviour was commonplace and, as such, they felt personally penalised, believing others would go unpunished:

The amount of £80 was very harsh for what I did. Speeding offences are not as much! (SN20, on-the-spot, urinating in public, paid).

My most recent penalty notice was for being drunk and disorderly down town on a Friday night, tell me who isn't [sic] drunk when they go clubbing down town the fine system is a joke (SN44, in custody, drunk and disorderly, unpaid).

I went for a wee down an alley while drunk. I did not damage any property or disrespect a war memorial! A police [car] reversed into the alley and as this happened two days after a similar front page story in the Sun involving drunk students and War Memorials ... I felt a warning would have been sufficient I didn't harm anyone or anything ... had I done the same thing 3 days (as I had many many times before ... for nearly 20 years) earlier before the story in the Sun [about a person who urinated on a city centre war memorial] I wouldn't have even been fined and perhaps not even been spoken to at all.

But the police were criticised by the media. And as a result I was treated as a criminal ... fixed penalty notices are ok if the punishment fits the crime!!! ... I felt I was very harshly treated and the victim of politics (ON8, on-the-spot, urinating in public, paid).

This notion that the standardised fine did not ensure that the punishment 'fitted the crime' was expressed in Case Study 7 (discussed further below):

Well I think for some of it, you can get done for urinating in the street and I think it's a bit unfair to be given an £80 penalty for that, but then some of 'em that is the right amount .... I think there should be different fines for different things what you've done [pauses], like something like shoplifting, if you've stole like £100 worth of stuff and you're only getting fined £80 .... I think you should get fined appropriate to the offence you've done (Case Study 7, SN46, in custody, drunk and disorderly (swore at officer), paid).

However, one interviewee highlighted that whilst the standard fine may be deemed excessive, any ability to vary such a fine should not be the domain of the police who, he argued, should not have the power to make judgements as to the seriousness of the offence.

### **7.3.1.3 Equitability of offending history**

When discussing the proportionality of PNDs many interviewees seemed to make a distinction between whether PNDs were an appropriate punishment in general and whether their own PND was appropriate. Thus their sense of inequity was linked to notions that such punishments were for 'criminals', not for 'people like them'. Interviewees sought to distinguish themselves from these 'criminals' who they believed, unlike themselves, might deserve a PND.

Well, to be honest with yer, how they [treated] me, I don't think it were very fair at all, I mean people, people do go out and get drunk and disorderly I mean then they do deserve to be penalised, d'you know what I mean? When they're causing trouble, but I mean, I didn't do a thing wrong that night (Case Study 3, SN2, in custody, drunk and disorderly (taxi jumping/hitting police officer) paid).

Notably, one interviewee who believed he deserved his PND questioned whether such a punishment was appropriate for other, more persistent, offenders who he thought might not be deterred by a PND:

I think the fixed penalty is fair enough for normal, like, say like decent, I don't know whether they're 'decent citizens', but decent people, you know like, not scallies and that, that don't give a, they don't care anyway do they really? (Case Study 1, SN38, in custody, possession of cannabis, paid).

Thus, regardless of whether people thought their own PND was deserved, they assessed their treatment with regards to, not just how others behaving in a similar fashion were thought to be treated, but specifically, how other 'people like them' were thought to be treated. These

recipients were therefore rejecting the label of 'offender' even if they accepted they had, in that instance, committed an offence. This can be contrasted with those cannabis PND recipients discussed above and those people who felt provoked (discussed in Section 7.3.2.3.3 below), who not only rejected the label of 'offender' but also rejected the notion that they had committed an 'offence' worthy of punishment.

#### **7.3.1.4 Equitability of impact**

Finally, interviewees' perceptions of the distributive fairness of PNDs were discussed in terms of the differential impact of an £80 fine. Only a quarter of survey respondents agreed that the cost of PNDs was fair (N=70) (Q24e). Many perceived such standard fines to be inequitable due to recipients' respective (in)ability to pay:

it's too much for some people and it's nothing up to others (Case Study 4, SN36, in custody, criminal damage (broke friend's wing mirror), paid).

80 quid's a lot of money, especially if you're a student it's like four weeks food (Case Study 5, ON13, on-the-spot, drunk and disorderly (fighting in the city centre), paid).

The so called 'fine' is too excessive when your [sic] receiving state benefits (SN21, on-the-spot, theft, fine registered).

One respondent, who received a PND for theft, attached a letter to the returned questionnaire in which they stressed the need for officers to explore why people have committed the offence, noting that they may have drug/alcohol issues, have been let down by the benefit system or be unable to provide for their family. The respondent stated that if people are fined when they could not afford to pay, their fine would increase, making it more "difficult for them then theyle [sic] go out and break the law again" (SN40, on-the-spot, theft, fine registered). Indeed, the inequity of PNDs was, for many, related both to the limited time available to pay the PND and the speed with which the fine increased if an individual was initially unable to pay.

#### **7.3.2 Procedural fairness**

The survey assessed respondents' overall perceptions of the procedural fairness of their PND through a five-point Likert scale measuring agreement with the statement 'the decision to issue me with a penalty notice was reached fairly'. Approximately half of all survey respondents disagreed with this (n=36) and just ten believed the officer's decision was fair<sup>320</sup>.

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<sup>320</sup> A further 13 respondents answered 'neither agree nor disagree' to this question.

Following the existing procedural justice literature, respondents were also asked to comment specifically on various aspects of procedural justice and thus how much they agreed or disagreed with the following statements (Q20a-b, d-e, g-l and Q21d):

- a. Participation:
  - i. I understand why I was issued with a penalty notice
  - ii. The officer who issued me with a penalty notice considered my views
- b. Neutrality
  - i. I was treated the same as anyone else would be in the same situation
  - ii. The officer made the decision to issue me with a penalty notice based on the facts
- c. Respect
  - i. The officer who issued me with a penalty notice treated me with respect
  - ii. The officer who issued me with a penalty notice spoke to me politely
- d. Trustworthiness
  - i. The officer who issued me with the penalty notice explained why I was being issued with the notice
  - ii. The officer who issued me with the notice tried to do the right thing by me

The procedural justice literature highlights the importance of participation, being treated with respect, police neutrality, and trustworthiness in perceptions of procedural fairness (Tyler 2006) (see Section 3.6.1 for a full discussion of procedural justice). These same factors were all found to be significantly associated with whether PND recipients believed that the decision to issue them with a PND was fairly reached (see Chapter 7 Appendix 2, Table A7.6)<sup>321</sup>. These antecedents to assessments of 'fairness' were also mirrored in the accounts given by interviewees and comments volunteered by survey respondents. As might be expected, negative experiences appeared to have a far greater impact (Skogan 2006); those interviewees who thought the PND was unfair discussed these factors in more depth, and more frequently, than those who thought the PND was fair<sup>322</sup>.

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<sup>321</sup> There were no differences in perceptions of fairness based on age, gender, ethnicity, employment status or income. As with perceptions of distributive justice, theft PND recipients were significantly more likely than recipients of all other notices to agree that the decision to issue them with a PND was fairly reached ( $\chi^2=17.124$ , d.f.=1,  $p<0.001$ ), however, this finding must be treated with caution as one cell (25%) had an expected count of less than 5.

<sup>322</sup> Although it should be borne in mind that only 11 interviews were conducted.

Before moving to consider interviewees' and survey respondents' accounts of their PND, it is worth noting that whilst the existing literature outlines four antecedents of procedural justice (participation, neutrality, respect and trustworthiness) in the current study, there appeared to be little distinction between perceptions of procedural justice, or indeed between procedural and distributive justice and/or outcome favourability. Whilst, given the small sample size, we must be cautious of making generalisations, it is notable that a principal components analysis<sup>323</sup> of the thirteen items used to measure procedural justice, outcome fairness (distributive justice) and outcome favourability<sup>324</sup> revealed that all these items loaded onto a single factor (see Chapter 7 Appendix 2, Table A7.7), and there was a clear break after one component (see Chapter 7 Appendix 3, Figure A7.1). Indeed, only perceptions of how harsh the PND was (as a response to their behaviour) loaded onto the second factor<sup>325</sup>. The apparent overlap between the different elements of procedural justice (as well as between assessments of procedural and distributive justice) was further evidenced by the high multicollinearity between variables which measured (theoretically) distinct antecedents of procedural and distributive fairness (see Chapter 7 Appendix 2, Table A7.8). These findings highlight the need for further research to explore how notions of fairness are defined by people in their interactions with the police. These data, coupled with the qualitative data discussed below suggest that – at least in the context of PNDs – there may be one overall factor which relates to how 'fair' the individual believed their PND was (as encapsulated by their discussion on being given a voice) and a separate factor for perceptions of 'harshness' (which is perhaps

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<sup>323</sup> The suitability of the data for principal components analysis was confirmed; the Kaiser-Meyer-Okin value was 0.902 ('superb' according to Field, 2009) and the KMO values for individual variables were all >0.63 and thus greater than the acceptable limit of 0.5 (Field, 2009). Bartlett's Test of Sphericity indicated that the correlations between the items are sufficient for principal component analysis ( $\chi^2=724.765$ , d.f=78,  $p<0.001$ ).

<sup>324</sup> Procedural justice, distributive justice and outcome favourability were measured using a 5-point Likert scale (strongly disagree, disagree, neither agree nor disagree, agree, strongly agree), assessing agreement with a series of statements.

*Procedural justice:* 'I understand why I was issued with a penalty notice'; 'The officer who issued me with a penalty notice considered my views'; 'I was treated the same as anyone else would be in the same situation'; 'The officer made the decision to issue me with a penalty notice based on the facts'; 'The officer who issued me with a penalty notice treated me with respect'; 'The officer who issued me with a penalty notice spoke to me politely'; 'The officer who issued me with the penalty notice explained why I was being issued with the notice'; 'The officer who issued me with the notice tried to do the right thing by me'; and 'The decision to issue me with a penalty notice was fairly reached'.

*Distributive justice:* 'The officer did a good job of handling the situation'; 'Being given a penalty notice was what I deserved in the circumstances'; 'In the circumstances a penalty notice was a disproportionately harsh response to my behaviour'; and 'I was treated the same as anyone else would be in the same circumstances'.

*Outcome favourability:* 'I was relieved to receive a penalty notice rather than a more severe punishment'.

<sup>325</sup> Given the small sample size, a cut off value of 0.6 was used to indicate significant factor loadings (Stevens 2002). All variables except whether the PND was viewed as harsh (harsh), and whether the person was relieved to receive a PND rather than a more severe sanction (relief) loaded significantly onto factor one. The factor loading for relief onto factor one was 0.512. Other than 'harsh' none of the variables loaded significantly onto factor two.

more of a relative assessment of the police/the punishment). However, these issues need to be explored with a larger sample to consider their applicability beyond the present context.

The difficulty in defining the various factors associated with different components of procedural justice is evident in the literature which variously describes the role of explaining why decisions were made as being inherent to perceptions of trustworthiness (Tyler 2004, p.9) and neutrality (Tyler 2007, p.30). Furthermore, McCarthy (2012) highlights that by explaining the reasons for a decision (in that instance the decision to stop a person), the officer is encouraged to treat the individual respectfully. Thus respect can be operationalised through engaging with offenders. In the current study, the four components of procedural justice; participation, neutrality, respect and trustworthiness were linked. This was borne out both in the statistical analysis of survey data and in interviewees' accounts of their PND and thus, whilst for ease of presentation, the following discussion is organised under the headings of, 'being given a voice', 'neutrality and trustworthiness' and 'quality of interpersonal treatment', it is important to remember that these various elements all fell within the overarching theme of fair decisions being those where the individual was given a 'voice' and was listened to by officers. Unfair decisions were those where respondents felt they were not given an opportunity to voice their concerns or where they felt that their concerns were ignored.

### **7.3.2.1 Being given a voice**

Overall, whilst survey respondents who agreed that the issuing officer had considered their views were in the minority (n=18), views varied significantly according to offence<sup>326</sup>. Indeed, only one theft PND recipient thought their views had not been considered, as compared to almost two-thirds of s5 and drunk and disorderly PND recipients (n=26). People were extremely unlikely to agree that the decision to issue them with a PND was fair if they did not believe the issuing officer had considered their views, or if they did not understand why the ticket had been issued (Chapter 7 Appendix 2, Table A7.6). The importance of having one's voice heard was most evident in those s5 and drunk and disorderly cases that involved some form of dispute. Where the PND recipient felt they were themselves *the* (or at least *a*) victim, their sense of injustice at being punished appeared to be compounded by a belief that the police had not listened to their side of the story and had either uncritically accepted the other person's account of events or else had imposed their own interpretation of the facts (seemingly) without proper investigation.

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<sup>326</sup>  $\chi^2=10.478$ , d.f=1, p=0.001 (based on an analysis of s5 and drunk and disorderly PND recipients vs recipients of all other notices).

This sense of frustration was evident in a number of the case studies reviewed. In Case Study 2, the interviewee reported attending a health centre where his community psychiatric nurse (CPN) worked to make a complaint that she had, without consulting him, written to his parents to tell them that he was using cannabis. He attended the health centre to try and find out why the CPN had done this; it had caused problems between him and his parents and he saw this as a breach of confidentiality. He was not allowed to meet with the health worker in question and instead met with the manager in the presence of a security person. Frustrated at their lack of apology he stormed out of the building saying “I’m gonna wait for her after work and I’m gonna find out of her why’s she done it”. In the event (he claimed) he did not wait for her. He was accused of threatening the health worker and it was alleged he told her manager that he was “gonna smash her face in”. The police arrested him in his home a few days after the incident. He reported his frustration that:

They basically based their decision on what they were told by [NAME OF COMMUNITY HEALTH CENTRE] [pauses], they didn’t listen to what I was telling ‘em, they basically took their word as gospel, basically, and didn’t really erm, take on board what I was saying to them (Case Study 2, ON6, in custody, s5 (threatening health worker), paid).

He vehemently denied threatening the health worker and felt that the police should have been taking seriously his claims that they had breached his confidentiality, rather than punish him for complaining about it. Whilst he accepted that he had been abusive, he felt anyone would have reacted the same way in the circumstances. This sense that the PND was an ‘unreasonable’ response to ‘reasonable’ behaviour/reaction was evident in other drunk and disorderly and s5 cases. One survey respondent reported:

It’s better than receiving a criminal record but I didn’t deserve the penalty notice, they didn’t do enough investigating, whilst drunk another woman started hitting me, I defended myself, I wasn’t given option to speak (SN49, in custody, drunk and disorderly, paid).

The inability to voice one’s case therefore adds to the sense of injustice:

The police didn’t take any notice in any think [sic] I had to say. They just pushed me in a police car and locked me up all night and gave me a fine the next morning that was it (SN2, in custody, drunk and disorderly, paid).

This respondent elaborated on their case in an interview (Case Study 3), during which the importance of being listened to (or not being listened to) was a recurring theme. The female interviewee explained that she had caught a taxi home with her son following a night out. They were driven by a taxi driver back into town following (what she claimed was) a misunderstanding with the driver, who believed that she was refusing to pay. Without

stopping at her destination, the driver returned to the city centre and pulled up in front of a group of officers. The woman explained her situation as follows:

[the taxi driver told the police] that we tried to jump [i.e. leave without paying for the] taxi, so as we've opened the door of the taxi, to get out, the police have jumped straight on my son and started beating him up, and he'd done nowt wrong at all him, so obviously, I've tried to hit them, d'you know what I mean?... Which is mother's instinct, d'you know? I says he's done nothing wrong, he's just got out that taxi, he's done naff all wrong .... So that were it, and they started beating my son up, so automatically, you know, cos it were a woman copper, I hit her like, and that were it, we were handcuffed, chucked in van, took to police station .... I thought it were disgusting, they were bang out of order, they should of at least listened to what we had to say .... I didn't do a thing wrong that night, well I did like, well I did do something wrong because they started beating my son up for absolutely nothing! (Case Study 3, SN2, in custody, drunk and disorderly (taxi jumping/hitting police officer), paid).

Thus, despite accepting that she had hit a police officer (a more serious offence than that for which she was punished) she thought the PND (and indeed *any* punishment) was unjustified and *unreasonable* as she believed that her reaction was a *reasonable* response to the police's actions towards her son. This was reported in another case where the male PND recipient, whilst accepting that he had committed criminal damage, felt the circumstances of the case and the views of the victim (who did not want the police to take action) were not sufficiently considered (Case Study 4):

In my case I weren't completely innocent, but then again, it was a personal thing between me and my friend .... I'd been out for the night, and I wasn't particularly drunk, but I'd had er, I had four pints, it's the only reason well, he owed me a lot of money, a lot of money and er, and er, it just made me angry and I'd sort of bottled up inside, and I just, well I went round to see him ... he didn't answer the door, he might not have been there, he might have been, but er I felt, y'know, very betrayed really cos he owed me quite a lot of money. And er, so I went past his van and I hit it, I hit his mirror and then er, started walking home, and then er, about two cop cars and all vans they piled into me and put handcuffs on me and took me to the police station ... [but] they haven't taken it into account the fact that this, that me mate, didn't want me doing. Clear as that ... if he'd said 'yeah do him' then yeah I'd have accepted it, but he didn't he said 'it's my fault as much as owt' (Case Study 4, SN36, in custody, criminal damage (broken friend's wing mirror), paid).

Given that (by his account) his friend (the victim of the offence) did not want him to be punished, he felt that the police should only have given him a warning and that in issuing him with a PND, the police had imposed their view of the offence ignoring the feelings of his friend (the victim) and the circumstances of the case. Indeed, this potential for PNDs to be used without (or instead of) a proper investigation was voiced even by some participants who were satisfied with their PND:

Although the penalty was probably deserved, I would imagine from the attitude of the officers that they are often given out as an alternative to investigating crimes in full (ON13, on-the-spot, drunk and disorderly, paid).

The above cases can be contrasted with Case Study 1 (discussed above). There, the man felt the decision to issue him with a PND for possession (of an ounce) of cannabis was fair, believing that as he had been 'alright' (cooperative) with the officers, they had been lenient on him. A similar assessment was provided in Case Study 5, where the man received a drunk and disorderly PND on-the-spot for fighting in the street. He had himself been hit in a nightclub and on seeing the perpetrator outside the club he "lost it a bit and sort of, went over to him and er, got into a bit of a fight, and then the police came whilst we were still fighting on the floor and then arrested us both". During the interview the man made numerous references to the fact that officers had listened to his version of events and punished both himself (who from the police's view was the instigator) and his victim (who he reported had hit him whilst inside a nightclub). In both Case Studies 1 and 5, their assessments of the fairness of the process emphasised the fact that the police had given them an opportunity to voice their account of events. However, it should also be noted that both also believed that these conversations with officers had enabled them to evade a more serious punishment<sup>327</sup>. What these cases highlight is that the police, through their interactions with PND recipients, play a role in generating this sense of relief at 'only' receiving a PND.

### **7.3.2.2 Quality of interpersonal treatment**

Almost half of all survey respondents agreed that the officer had spoken to them politely (n=34) and agreed that they had been treated with respect (n=30) (N=70). During interviews, both these factors contributed to recipients' assessments of the procedural fairness (and to a lesser extent distributive fairness) of the PND. Thus, to return to Case Study 5, the man's positive perception of the PND he received for fighting in the city centre was largely driven by the manner in which officers spoke (and listened) to him:

So they were, they were pretty nice about it to be honest. When I was in the back of the van they weren't, they weren't aggressive or, they gave me a bit of a telling off ... er, basically just saying like, 'you're an idiot' but sort of like, on a level-headed basis, so not talking down to you, and they were saying like, saying like 'you're a student you don't want to be' sort of like 'messing up your career or whatever and getting a criminal record der der der' ... they ask me sort of what had happened before it all and everything ... there was one sort of walking around who was a bit er, shirty, but he was alright ... he was a bit, er, I don't know, he was a bit more formal than the others,

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<sup>327</sup> Indeed, as discussed above, survey respondents who agreed that they were relieved to receive a PND rather than a more serious punishment were significantly more likely to agree that the decision to issue them with a PND was reached fairly ( $\chi^2=13.824$ , d.f.=1,  $p<0.001$ ).

walking around with his hands in his jacket, being a bit snappy and sort of talking down, whereas the others were a bit more level headed (Case Study 5, ON13, on-the-spot, drunk and disorderly (fighting in the city centre), paid).

This case highlights the importance of 'positive engagement'. However 'engaging' with offenders goes beyond simple politeness, which was not necessarily experienced positively:

he was very, again, *aggressively* polite ... they're always, I find, very keen to put you on the back foot in any encounter (Case Study 6, ON18, on-the-spot, s5 (public urination), paid).

In Case Study 6 the man received a PND for public urination. Whilst he accepted that he had committed the offence, he expressed frustration that the ticket – issued for s5 – stated that his behaviour was likely to cause harassment, alarm or distress, on the basis that (other than the officers) no-one was around to see his actions. Indeed, he believed that the ticket had been issued as a result of his (sarcastic) reaction to the officers rather than for the offence itself. Whilst the officers in this case were being polite, the formality with which they spoke was deemed to be aggressive rather than respectful. Indeed Case Studies 5 and 6 (which both involved young males) suggest that where the police are seen as being *overly* formal, such formality may be viewed as an unnecessary assertion of authority and therefore disrespectful. These perceptions of the police can be related to Braithwaite's (2003a) typology of the motivational postures which characterise individuals' views of the legitimacy of regulators. People may have either attitudes of deference or defiance. Where they are non-compliant, the police (in this instance) need to consider the reasons for misbehaviour and respond accordingly. Heavy-handed enforcement may adversely affect the perceived legitimacy of the authority in question, which in turn may affect compliance, especially among those who have generally deferent attitudes towards the police. Indeed in Case Study 6, the interviewee reported responding to the officer's 'aggressive politeness' in a similar fashion:

that's kind of a choice I made. I could have been much more contrite had I, er chosen to ... I'm sure it's very *useful* for them, but it actually if anything makes you feel, er, again aggressively polite is exactly how, cos you feel aggressively, super-polite back, you're like oh, and then and then, like if you throw any sarcasm into it then you've been out-polited, er so erm ... when he came over to speak to me it was 'are you *aware* of what you're doing?' and things like that, and it, it was not *conversational* it was very formal ... calling me er, sir, and then things like that. It wasn't, it wasn't a conversation about what I'd done, it seemed that he was more kind of trying to, I don't know, it was like he trying to get me to say something that, er, I didn't, or I shouldn't or didn't want to say, but not in any overt way, it was very, it was just that, and his tone was very direct and aggressive, where as much as just a conversation saying 'look come on, it's 1am, you shouldn't be doing that' I'd be like 'oh, right, ok' (Case Study 6, ON18, on-the-spot, s5 (public urination), paid).

This highlights that where the police are not thought to have engaged positively and respectfully with offenders, they may be more likely to mistrust the intentions of the officer and thus perceive the penalty notice as unfair<sup>328</sup>. In Case Study 5 the more formal officer was described as less “level-headed” than the other officers, and in Case Study 6 the man thought the officer had issued the ticket not for his actions but because he had “rubbed them up the wrong way” (Case Study 6). The impact of officers’ perceived bias, and indeed their provocation of offenders, is discussed further below (see Section 7.3.2.3). For now however, it is important to note, that whilst officers may not be perceived as being respectful, they are reacting to the behaviour of the offender; thus in Case Study 3 the interviewee reported:

they basically tret me like a criminal, basically, erm, rather than talking to me, just shouting at me and basically telling me, *cos I wasn't very cooperative to be honest*, but, but, I still to this day believe that I didn't do anything wrong so obviously I was going to be a bit aggrieved (*emphasis added*, Case Study 3, SN2, in custody, drunk and disorderly (taxi jumping/hitting police officer) paid).

Thus the woman felt the officers were being rude and aggressive in their interaction with her but by her own admission she was not being cooperative. The reciprocal nature of respect was highlighted in Case Study 1, where the cannabis PND recipient reported that officers:

were alright yeah, but I think that's cos I was alright with them ... if I'd been arsey with them they'd have been arsey with me, it's just human nature isn't it? ... I find with the police if you try and mess them about, they'll just make things harder for you won't they? They're gonna find it [the cannabis] anyway .... So if they have to get more squad cars, and mess about, it just makes their job harder and they'll be harder on you I think (Case Study 1, SN38, in custody, possession of cannabis, paid).

This again highlights the dynamic nature of cooperation discussed in Chapter 6 regarding offender compliance, as observed in the observations and ticket analysis. The police respond to uncooperative offenders by being more verbally or physically coercive which can result in the overall level of aggression increasing as the offender responds in a similar fashion.

### **7.3.2.3 Neutrality and trustworthiness**

These two aspects of procedural fairness overlapped in interviewees’ accounts of their PND. People perceived decisions to be neutral if they were thought to be consistent and officers were not thought to be prejudiced; thus the PND was thought to be fair if decisions were made based on the facts, rather than on personal factors. Only a third of respondents agreed with

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<sup>328</sup> Indeed, in some cases, the individual might well be right to mistrust the officers’ intentions. As noted in section 3.4.3.4.1, officers may seek to provoke a negative reaction from those they apprehend so as to generate the excitement of an arrest. Whilst the man in this case may well have been punished for urinating in public regardless of his demeanour, the policing literature suggests it is equally likely that (as he suspected) it was his sarcastic reaction to the officer’s ‘lecture’ that cost him £80.

the statement 'the officer who issued me with the penalty notice tried to do the right thing by me' (n=22), yet such views were significantly related to respondents' assessments as to whether the decision to issue them with a PND was fair (see Chapter 7 Appendix 2, Table A7.6). The manner in which officers can display that their decision making is fair is the same whether they are evidencing their neutrality or their trustworthiness; they must explain their decisions (Tyler 2007). This also requires the officer to consider the views of the individual and, where relevant, be seen to consider both sides of the argument and thus, as with other antecedents of procedural justice, neutrality and trustworthiness were expressed by giving PND recipients a voice.

#### **7.3.2.3.1 The role of understanding and explanation**

In both the survey and the interviews, the importance of officers having explained their decision making process when issuing PNDs to recipients' subsequent perceptions of fairness was apparent. For example, only one person who claimed not to understand why they were issued with a penalty notice thought that the decision to issue them with a PND was fairly reached (see Chapter 7 Appendix 2, Table A7.6). Similarly, only one person who disagreed that the officer had explained why they were being issued with a PND thought that the decision to issue them with that PND was fairly reached. Understanding why a decision has been made increased the sense that the decision maker was acting in a neutral, unbiased manner.

In Case Study 5, the man (issued with a PND for fighting) commented that officers had carefully explained the process, talking slowly so as to ensure that (although he was intoxicated at the time) he was able to understand what was happening. However, others remained uncertain as to why they received the PND, or the implications of receiving a penalty notice. Indeed, the most extreme example of this was reported in Case Study 7. The woman received a PND in custody for drunk and disorderly. She reported having woken up in a police cell with absolutely no memory of how she had got there. The little she knew about the circumstances of her arrest were only explained to her *after* she had been given the penalty notice:

[the issuing officer] didn't really say much to be honest. He just gave me my stuff back and just said 'here's your penalty notice, do you need a lift home .... I've got absolutely no idea what happened .... Er, one of the women that escorted me out the police station said that someone had called them out cos I was wandering down the street upset or something and I'd told 'em to f-off and leave me alone. And that's all I've ever been told (Case Study 7, SN46, in custody, drunk and disorderly (swore at officer), paid).

The issuing officer explained what a PND was, and how to pay it, however the recipient remained unclear as to the circumstances surrounding her arrest. What was notable in this case was that, despite the fact she had no memory of the events leading up to her arrest, the interviewee was confident that she deserved the notice and had no desire to challenge the PND. She believed that the officers would not have arrested her had she not done something seriously wrong. This highlights that where people have a strong sense of police legitimacy and believe the police to be inherently trustworthy, they may be more likely to accept police decisions even where those decisions have not been explained. Whilst in that case the recipient willingly accepted the PND, the notion that PND recipients may be ignorant of the circumstances of their offending raises issues that may affect other PND recipients (and which may adversely affect their perception of the fairness of the PND system). The need to ensure that PND recipients understand why they have been issued with the notice is particularly pertinent in cases where the recipient is drunk at the time of the offence<sup>329</sup> and (if issued on-the-spot) potentially at the time of issue. Indeed, people who received a drunk and disorderly PND were significantly less likely to agree that they understood why they were issued with a PND or that the officer explained why they were issued with a PND<sup>330</sup>. If severely intoxicated recipients are not made aware of the circumstances of their arrest and are uncertain of the process by which they can contest the notice, their right to challenge the PND is seriously undermined as they cannot make an informed decision as to whether or not they wish to take that course of action<sup>331</sup>.

With regard to recipients' understanding of the PND process, it is also worth noting that 8 (of the 11) interviewees reported that they had believed they were being found/admitting they were guilty when they were issued with the penalty notice. Furthermore, three interviewees volunteered comments suggesting they were unaware that a PND could appear on a criminal records check, with one commenting that the officer had told him "nothing's going to go on your criminal record it's just a fine ... [he therefore was not worried about the PND as] if [he went] for a job or something they're not gonna know, it's not gonna be there" (Case 7). This is not the case, a PND may be disclosed on an enhanced DBS check; that these interviewees were

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<sup>329</sup> As is the case in all drunk and disorderly cases and in four of the 24 s5 cases reviewed in the ticket analysis.

<sup>330</sup> Understood why the PND was issued:  $\chi^2=6.153$  d.f.=1,  $p=0.024$  (n=48). The officer explained why they were getting at PND:  $\chi^2=7.991$ , d.f.=1,  $p=0.007$  (n=52) (1 cell had an expected count of <5). These results are based on chi-square tests comparing recipients of drunk and disorderly PNDs with all other respondents. Respondents who received a PND for s5 and public urination were excluded from the analysis as intoxication is not a necessary element of those offences. However, as such tickets are associated with disorder in the night time economy their sobriety could not be assumed.

<sup>331</sup> The section of the PND ticket which is given to the recipient only details the offence (e.g. 'drunk and disorderly') and location, rather than the circumstances surrounding the offence.

unaware of that fact is extremely concerning. It not only questions whether PND recipients are making informed decisions as to whether to accept the notice, but also the manner in which PNDs are being 'sold' to recipients. These findings suggest that PND recipients may be unaware of the consequences and thus unaware of what it is they are accepting.

### 7.3.2.3.2 Perceptions of bias

As noted above, the perceived neutrality of decision making was significantly related to assessments of fairness (see Chapter 7 Appendix 2, Table A7.6)<sup>332</sup>. During the interviews there were various aspects to this designation of PND decision making as being neutral/biased; whether the individual felt they were treated the same as other people in similar cases, whether they were listened to, whether the decision was based on the facts of the case (as the interviewee saw them) and how officers reacted to the offender (this latter point relates to issues of provocation and officers' attitude towards offenders).

The consistency of decision making can be difficult for offenders to assess (particularly those for whom the PND was their first contact with the police). Whilst many survey respondents thought they had been treated the same as others in similar circumstances (n=30), fundamentally they were unlikely to be aware of how other such cases are dealt with. It is vital therefore that the police engage with PND recipients and explain what the offence is and why they have been issued with a PND. For example, some interviewees expressed concern that the offence for which they received the ticket was not the one they were arrested for, or the offence they committed. This was highlighted in Case Study 8 where a man was arrested for assault. By his account he was wrongly arrested whilst waiting for a taxi, he believed he may have been misidentified by the police and was adamant that he had not been involved in any fights. Following his arrest, there was insufficient evidence to bring a charge of assault and four weeks later he received a PND for drunk and disorderly which frustrated him as that was not what he was arrested for:

they give me an on-the-spot fine for drunk and disorderly, if I was drunk and disorderly, why didn't they charge me with drunk and disorderly on the night? That's why I don't think it's fair cos ... they had me in there for something I hadn't done and then they just say I were drunk, but why did they not say that on the night? Never mentioned I were drunk and disorderly (Case Study 8, SN1, in custody, drunk and disorderly (accused of assault), fine registered).

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<sup>332</sup> None of the respondents who disagreed with the following statements agreed that the decision to issue them with a PND was reached fairly: 'I was treated the same as anyone else would be in the same situation' ( $\chi^2=29.673$ , d.f.=1,  $p<0.001$ ), 'the officer made the decision to issue me with a penalty notice based on the facts' ( $\chi^2=30.769$ , d.f.=1,  $p<0.001$ ).

Whilst the ticket may have been issued for his subsequent behaviour (for example, the man in the above case commented that he had urinated in the police van following his arrest) this was not explained to him and as such he felt frustrated that he had been punished despite being innocent of the assault for which he was arrested. This is comparable to Case Study 6 (discussed above) where the interviewee expressed frustration at receiving a s5 PND for public urination: “it says ‘likely to cause distress’, there was *no-one*. No-one could see me, so that was my issue with it” (Case Study 6, ON18, s5 (public urination), paid). Others who received PNDs for public urination expressed similar frustration. As noted above (see Section 7.3.1.2), given the widespread nature of the offence on Friday and Saturday nights in town and city centres survey, respondents expressed views that a PND was excessive and that they had been singled out.

Perceptions of police bias were discussed with regards to the attitude of the officer(s) and the manner in which they treated the PND recipient (see Section 7.3.2.2). In Case Study 9 the recipient received a PND on-the-spot for drunk and disorderly. Following a “police raid” on a house party he attended he left and met up with two other people outside the venue and decided to go on to another place. As they were walking they cut through a university residence and saw a large industrial bin which they pushed down the road to “use ... as a barricade against the police”. After pushing the bin for a short distance the police started to chase them. The man attempted to run off but was arrested. He felt that the police response to his behaviour was excessive. He reported feeling that when the police had arrived to break up a house party:

[they] had basically put themselves ... in opposition with everybody outside ... [and] decided that they’re going to arrest en masse ... regardless of, whether or not ... they’re actually er, committing serious offences or any offences, or whether or not they’re arguing (Case Study 9, ON4, on-the-spot, drunk and disorderly (pushing a bin down a road), court hearing).

Thus the police were seen to be biased as they had gone into the situation with the (perceived) intention of arresting people. Despite admitting that he had pushed a bin down the street (which could be deemed ‘disorderly’ as per his PND) the officer’s attitude led him to feel it was the situation rather than his own actions that had caused his punishment. Similarly, a survey respondent reported feeling personally targeted by the issuing officer due to a previous negative encounter:

the same officer had accused me the day before for throwing a can of beer out of a window at a party which wasn’t me and that’s actually why he fined me the next day .... It’s fair enough if you’re getting fined for doing something that

does breach the peace or for what the fine states it is for though it may be easy for the police to fall into using the fines flamboyantly merely to fulfil a misplaced grudge based on unreliable evidence or what should actually be called a hunch in my opinion. On my occasion one of my friends threw a can of beer out of his window at a party in his halls and the policeman saw this and initiated an argument with me after entering the party stating that he saw that the person who throw the beer was wearing a chequered shirt, like I was and like three other people in the party were. So he decided it was me out of the three others for some reason but couldn't prove it and then the next day I was walking down [the high street] with my girlfriend and a beer in my hand and after pulling over the same police officer asked me to throw the beer away which I did though I still got fined for drinking in a public area. Considering that public area is lined with licensed bars and off licences I was slightly surprised at this but just took the fine and paid it and hope I don't meet that officer again (ON11, on-the-spot, drinking alcohol in a public place, paid).

In that instance, although the man accepted that he had been drinking in a public place, he felt that the officer issuing him with a ticket did so not because of his offence but as a personal attack. Others commented that they felt the police were prejudiced against them because of their personal circumstances. Indeed in Case Study 2 (discussed above) the man thought that officers had not listened to his version of events as they saw him as subordinate to the health worker who had made a complaint against him:

they didn't believe what I said, they wasn't listening to what I said, they just automatically believed someone who had a job over me, because I, I'm unemployed and on benefits, the treat you like a second class citizen, and, and, it's just not fair at all but it's the way it is and it's never going to change (Case Study 2, ON6, in custody, s5 (threatening health worker), paid).

Police officers are arseholes and treat certain individuals extremely unfairly and the majority of the time are on power trips (SN5, on-the-spot, public urination, paid).

There is a sense therefore amongst some PND recipients that they received their PND not for their behaviour but as a personal attack; whether this be because of their social status or because of some negative interaction with the officer in question. Either way, such views can undermine the legitimacy of the police and add to the sense of injustice. Whilst we are concerned here with PND recipients' *perceptions* of their treatment, it is notable that the police culture literature suggests that the police will target people – deemed 'police property' – on these very bases (see Section 3.4.3.3). Indeed, a number of survey respondents' accounts of their PND would suggest that they believed they were being punished for finding themselves in 'contempt of cop':

I was walking after a night out with my mates when a police officer pull up and said come ear [sic] but I just wanted to go home so I carrid [sic] on walkin [sic] and I got

arrested for not going to him and got £80 fine (SN24, in custody, drunk and disorderly, paid).

When I got a fixed ticket I was at a pre-season football match ... A police officer kicked me in the back. So I asked his colleague for his badge number. Was told to go to nearest police station and arrested. Is this a crime[?] to me it is NOT (SN8, in custody, drunk and disorderly, paid).

Of course, as these respondents described it, they had not committed any offence. However the PND system allows officers to punish people for 'answering back', providing a tool for 'social disciplining' which is very difficult for the offender to challenge.

### **7.3.2.3.3 Police aggression and provocation**

The issue of police provocation arose in numerous interviewees' and survey respondents' accounts of the penalty notice. Perceptions of provocation permeated PND recipients' discussions of the proportionality/severity of their punishment, the issuing officer's attitude during the encounter and perceptions of police bias (these issues have been discussed respectively in the sections 7.3.1, 7.3.2.2 and 7.3.2.3.2 above). Provocation also impacted upon perceptions of police trustworthiness. Where people felt they had been provoked into offending by the officer, they did not trust police motives, thus undermining the legitimacy of both the police and the punishment.

This was most starkly highlighted in Case Study 10. In that case the man received a PND for drunk and disorderly when he was aged 16. Following a night out drinking (underage) he and his friends were taken off the bus by the police and asked whether they were involved in a graffiti incident that had been reported earlier in the evening. They were asked to wait whilst a car drove past to identify them. They had not committed the offence and this was discovered after the car had driven past. However, during this process his friend started talking back to officers, one of whom reacted by going "up to his [friend's] face and like put[ting] his head against his face". In reaction to this the PND recipient took out his phone and repeatedly told officers "I'm recording this". One of the officers tried to push him back but he did not move and instead continued to say "I'm recording this". He reported that he was then "slammed ... against the bus shelter and arrested". The interviewee reported feeling that the PND was unfair as, although he had not heeded officers' warnings to move away, this was because "what the police were doing was completely unjustified and [he] felt like, [he would] not ... let that happen and walk away when [his] friend's getting ... head-butted in the face virtually". The behaviour of the officers at the scene therefore created a sense of injustice:

the fact that the police officer had acted in certain way, which *forced me* to act like this in terms of so, he should be dealt with in way rather than me. So he's the person more guilty than I am (*emphasis added*, Case Study 10, SN4, in custody, drunk and disorderly (filming officers), paid).

The use of the word "forced" in this case highlights the sense that, in the circumstances, he felt he had no alternative but to behave the way he did. A number of survey respondents and interviewees commented that the police were physically provocative in their interactions:

The police officer who arrested me on the night was unfair and pushed me to behave the way I did he spat on me and treated me unfairly, to push me to get the penalty (SN22, in custody, drunk and disorderly, paid).

As noted in Section 3.4.3 PNDs afford officers relatively unfettered discretion to punish offenders with little oversight (it should be recalled that on less than half of all s5 and drunk and disorderly tickets was the issuing officer's evidence corroborated by a colleague, see Section 5.5.1.2). Arguably, given this lack of oversight (particularly for tickets issued on-the-spot), PNDs offer unscrupulous officers, such as those described by Loftus (2010) (see Section 3.4.3.4.1), an even greater opportunity to provoke offending and punish the perpetrators than would be the case if offenders were disposed of via caution/charge (such decisions being reviewed by a senior/custody officer or the CPS (PACE Code C; CPS 2013)).

This sense of injustice felt by PND recipients who thought that their notice was unfair because they (believed they) were provoked by officers was further compounded by the perception that there was no effective means to challenge the police. This was most starkly highlighted in Case Study 3:

They'd made a right mess of my arm, they'd cut it all, and bruised it all .... He says don't try and sue us, because you'll not get away with it, because we'll just blame your medication you're on<sup>333</sup> (Case Study 3, SN2, in custody, drunk and disorderly (taxi jumping/hitting police officer) paid).

Indeed, people who agreed that there was 'no point challenging a penalty notice in court as the magistrates will not believe a member of the public over a police officer'<sup>334</sup> and/or disagreed that the rights of people caught for penalty offences are well protected<sup>335</sup>, were significantly less likely to believe that the decision to issue them with a PND was fairly reached.

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<sup>333</sup> The interviewee was on medication for Crohn's disease.

<sup>334</sup>  $\chi^2=13.089$ , d.f.=1,  $p<0.001$ , however 1 cell (25%) had an expected count of < 5 so this finding must be treated with caution.

<sup>335</sup>  $\chi^2=21.097$ , d.f.=1  $p<0.001$ , however 1 cell (25%) had an expected count of < 5 so this finding must be treated with caution.

## 7.4 Why recipients did, or did not, pay or challenge their PND

There are seven potential outcomes when a person receives a PND: it may be paid within the 21 day statutory enforcement period; paid within 35 days; left unpaid, and thus registered as a fine; the recipient may partake in a waiver scheme (where this is available); the recipient may request a court hearing; the ticket may be cancelled with no further action taken<sup>336</sup> or else the ticket may be rescinded and the recipient may be prosecuted for the original offence. The efficiency of the PND scheme is (in part) reliant on a high rate of compliance, yet payment rates have been consistently low since the scheme was introduced. Even at their peak in 2010 only 55% of PNDs were paid nationally and between 52% and 53% were paid each year between 2005 and 2009 (Ministry of Justice 2011b, Table A2.1).

	<b>Survey respondents</b>	<b>Ticket analysis</b>	<b>Force area (2010)<sup>1</sup></b>	<b>National (2010)<sup>1</sup></b>
Paid	57 (78%)	110 (46%)	3,091 (54%)	70,744 (55%)
Fine registered	13 (18%)	106 (44%)	2,338 (41%)	51,845 (40%)
Court hearing requested <sup>2</sup>	2 (3%)	2 (1%)	0 (0%)	727 (1%)
Cancelled <sup>3</sup>	1 (1%)	24 (10%)	190 (3%)	4,372 (3%)
Potential prosecution	0 (0%)	0 (0%)	89 (2%)	1,229 (1%)
<b>Total</b>	<b>73 (100%)</b>	<b>242 (100%)</b>	<b>5,708 (100%)</b>	<b>128,917 (100%)</b>

<sup>1</sup> Source: Ministry of Justice 2011a, Table 3.11c, these figures exclude cases where the outcome was unknown, as well as three forces where there were apparent errors in the Ministry of Justice data.

<sup>2</sup> One survey respondent who requested a court hearing had their ticket cancelled before the case reached the court.

<sup>3</sup> In the force area where the ticket analysis was undertaken a PND waiver scheme operates whereby recipients of s5 and drunk and disorderly notices may have their PND waived if they attend two alcohol awareness sessions. One survey respondent reported that they had undertaken this education programme. In the ticket analysis 23 of the 24 cancelled tickets were cancelled for this reason. These tickets therefore represent compliance with the notice.

<sup>336</sup> This may happen where, for example, the recipient requested a court hearing but rather than be charged with the offence the case is dropped, where a person completes a PND waiver scheme (where these are available) or where a ticket was issued in error (such as where a PND for cannabis possession is issued to a person aged under 18).

Table 7.1 presents a comparison of the outcome of PND cases across the various data sources. As noted above, a far greater proportion of survey respondents paid their penalty notice than those which were paid either within the force area (54%) or nationally (55%) in 2010 (Ministry of Justice 2011a, Table 3.11(c)). Nationally, 3% of tickets were cancelled in 2010. In the force area reviewed a waiver scheme operated for s5 and drunk and disorderly offences whereby people who attended two alcohol awareness sessions would have their PND cancelled<sup>337</sup>. One of the survey respondents completed the waiver scheme and another, who requested a court hearing, had their ticket cancelled before reaching the court. Where a ticket is unpaid and a court hearing has not been requested within 21 days of a PND being issued the recipients may be prosecuted for the original offence. This however should only occur in exceptional circumstances, with the national guidelines stating that such occurrences should not be common (Home Office 2005a). Indeed, following the national rollout of PNDs only 1% of notices were liable for potential prosecution in 2005 (Ministry of Justice 2011b, Table A2.1)<sup>338</sup>. The introduction and extension of PNDs was justified on the basis that recipients retained the right to elect for a trial, however this right is rarely exercised. Indeed, since the scheme was rolled out nationally, only 1% of PND recipients have requested a court hearing each year (Ministry of Justice 2011b, Table A2.1). This low rate of challenge is reflected in the survey data; two respondents requested a court hearing.

Whilst we must be conscious that the survey sample represents a tiny proportion of the PND recipient population and, as already noted, this sample over-represents people who pay their PND, the survey data do provide an opportunity (in conjunction with the ticket analysis data) to gain some insight into the reasons why people do, or do not, pay or challenge, their PND. In particular, it offers an opportunity to consider the impact of recipients' financial circumstances on their decision as to whether or not to pay the PND; a matter which has hitherto been ignored by the broader literature. Indeed, as with the ticket analysis, the recipients' ability to pay was the only factor associated with whether the PND was paid or registered as a fine. People who were unemployed, whose income was less than £10,000 per annum and/or described their financial situation as 'getting into difficulties' were all less likely to pay their PND. What was notable however was that many of those who did pay their penalty notice stated that their income was less than £10,000. This further supports the notion that PNDs may be disproportionately issued against people who are most vulnerable. However it also

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<sup>337</sup> In spring 2013 19 forces offered such waiver schemes and the enactment of the Legal Aid, Punishment and Sentencing of Offenders Act 2012 (which encouraged Chief Constables to set up such schemes) means it is likely that an increasing proportion of PNDs will be disposed of in this manner.

<sup>338</sup> People who were subject to potential prosecution were not asked to participate in the study as their case may be ongoing.

suggests that income is not the sole driving factor in whether or not PND recipients pay their notice.

The following two sections examine the survey and interview data to explore the reasons PND recipients gave for paying or not paying their PND. First however, it must be noted that, in keeping with the findings from the ticket analysis (see Section 5.6.3), there was no significant relationship between whether or not respondents paid their PND and the offence for which they were issued with the notice, the recipient's age, their gender, ethnicity or the place where the ticket was issued.

#### **7.4.1 Reasons given for non-payment of the PND**

Only 15 survey respondents reported that they had not paid their PND; 13 allowed their notice to lapse and become registered as a fine and two requested a court hearing<sup>339</sup>. Of those who allowed their PND to lapse, 12 gave their inability to pay as the reason for this. Notably, none gave the reason that they forgot to pay; thus people appear not to be inadvertently allowing the statutory timeframe for paying pass, but instead are making a conscious decision not to pay the notice. This decision appears to be largely financially motivated, with other reasons given for non-payment including that the cost was too high (n=3) and that there was not enough time to pay (n=3). Indeed, one respondent commented that he had not received any income for some time and thus had no means to pay. Another commented that the fine quickly increased to £120 and so they thought "fair enough I will do a few days in prison" (SN32, in custody, theft, unpaid). This starkly highlights the disproportionate impact of PNDs; here an unemployed person who had received a PND for shoplifting (which due to the nature of the PND scheme must have been valued less than £100) was unable to pay and thus potentially facing a period in prison, where others would pay an £80 fine.

Whilst some respondents showed concern for the process of receiving a PND stating that the procedure is unfair (n=2) and that they refused to pay on principle (n=3), those people who gave these reasons also stated that they could not afford to pay the PND. Furthermore, of the three people that said they did not commit the offence, only one gave this as their sole reason for not paying. The other two also noted their inability to pay and their refusal to pay on principle, with one reporting that there was insufficient time to pay. It is notable that the reasons given for non-payment are mainly financial, this suggests that decisions as to whether or not to comply with a PND are not especially influenced by perceptions of procedural justice

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<sup>339</sup> Respondents who did not pay the PND were asked to list the reasons for this in Q12.

(or injustice as you might expect for non-payment). Tyler (2006) found that perceptions of procedural fairness influenced perceptions of police legitimacy, which in turn affected compliance with police (and other authorities') decisions. However, whether this is influential in decisions as to whether or not to comply with a PND is questionable given the range of incentives to comply (if the recipient requests a hearing they risk being found guilty and if they do not pay their PND will be registered with the magistrates' court and they will be liable for a greater fine). In the current study there was no significant relationship between whether the recipient thought the decision to issue them with a PND was fairly reached and whether the individual paid their PND. There was also no significant relationship between any of the antecedents of procedural justice (participation, respect, neutrality or trustworthiness) and outcome (see Chapter 7 Appendix 2, Table A7.9). Neither outcome fairness nor outcome favourability were associated with payment (see Chapter 7 Appendix 2, Table A7.10). Most notably, even respondents who appeared to have a strong sense of normative compliance and agreed with the statement 'I always try to obey the law, even if I think it is unreasonable'<sup>340</sup> (Q24c) were no more likely to pay their PND. Furthermore, people who agreed 'if you receive a penalty notice paying it on time is the right thing to do'<sup>341</sup> (Q24a) were no more likely to pay. Thus, even people who would be inclined to pay the PND did not do so. The evidence from this survey suggested that their reason for this was simply an inability to pay. The system is therefore forcing people into non-compliance even where they would be inclined to comply.

#### **7.4.2 Reasons given for paying the PND**

The majority of respondents paid their PND (n=57). The most commonly reported reason for paying the notice on time<sup>342</sup> was that they did not want to be charged more for late payment (n=38) and that they did not want to appear in court (n=31) (N=57). The scheme is designed to incentivise compliance on these very bases: recipients do not have to admit guilt, they do not get a criminal record and they do not have to appear in court. Indeed one respondent wrote on the survey that the reason they paid the notice was that they feared getting a criminal record (ON9, on-the-spot, s5, paid)<sup>343</sup>. Another, who had paid their PND, wrote "I believe the penalty notice system is a way of paying not to have a criminal record. Keeping the wealthy out of trouble (SN25, in custody, s5, paid)<sup>344</sup>.

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<sup>340</sup> U=181.000, p=0.732.

<sup>341</sup> U=153.500, p=0.237.

<sup>342</sup> Respondents who paid the PND were asked to list the reasons for this in Q11.

<sup>343</sup> This comment was made in response to Q11, under the 'other' section.

<sup>344</sup> This comment was made in the comments section of the questionnaire (Q25) rather than directly in response to Q11.

There are also disincentives to delaying payment as, after 21 days, the fee increases by 50% and is registered as a fine at the magistrates' court. Instrumental thinking underpins the penalty notice system. However, such instrumental mechanisms of compliance are flawed, as compliance can only be ensured through surveillance or some coercive pressure to comply (Bottoms 2001). However, such is the strength of the incentives to comply with PNDs, it appears that people will still pay the notice even where it is felt that the punishment was undeserved.

Only 11 people reported that they paid the notice because they believed they deserved the PND. More commonly, both in the survey and interviews, people reported that they felt they *had* to pay the PND, despite feeling that it was *undeserved*. Indeed, the drunk and disorderly PND recipient mentioned above who commented that "the police officer ... was unfair and pushed me to behave the way I did" paid his ticket despite this sense of injustice, giving the reason that he "paid it cause [sic] [he] at [sic] to pay it" (SN22, in custody, drunk and disorderly, paid). Thus, despite feeling that he had been provoked and mistreated by the officer, he did not feel able to challenge the PND. Similarly, another survey respondent who received a PND from a plain clothed police officer for selling alcohol to a person aged under 18 commented that they "had no choice [but to pay the PND] .... I didn't deserve the fine, I was at work doing my job ... it was one big set up" (SN27, on-the-spot, sale of alcohol to a person under 18, paid). The incentives to pay the PND, and pay it on time, may therefore encourage compliance even where recipients believe that their PND was undeserved. Indeed, such is the pressure exerted by these incentives, the recipient may be left, as in this case, with a sense that they 'have no choice'. This is particularly notable as it questions whether PND recipients see their right to trial as a genuine option.

Eleven respondents reported that they had paid the PND due to embarrassment. This was also noted in Case Study 6: "it was worth my money to pay for the lack of embarrassment. It also has a lot less social stigma attached to it" (ON18, on-the-spot, s5 (public urination), paid). Thus receipt of a PND and the ability to deal with the case outside of the court system encouraged compliance. This was also reported in Case Study 5 where the ability to avoid court was linked to the ease of paying a PND (which 16 respondents gave as a reason they paid their PND):

I'm glad they existed rather than me going to court ... it makes the whole experience, it's very quick ... you just get given the notice, you pay the fine, you don't talk to anyone it's just an electronic system ... so it's much nicer than sort of, well presumably much nicer than dealing with everything through a court system (Case Study 5, ON13, on-the-spot, drunk and disorderly (fighting in the city centre), paid).

The fact that the payment process is administrative<sup>345</sup> rather than judicial therefore seems to encourage compliance and improve recipients' experience of the scheme.

A further 15 respondents stated that they had paid as this was the 'right thing to do'. This might suggest that some recipients were influenced by a sense of normative compliance (Bottoms 2001), and thus complied with the PND (as they would any police decision) as they believe that the police have the proper authority to make such decisions/issue these punishments. However, when asked why they paid their PND, the two interviewees who had reported in the survey that they paid as this was the 'right thing to do' gave a very different account of their reasons for paying the notice during the interview:

if I didn't pay it I would've had to go to prison .... I was scared of losing my job ... it's kinda like, well 'if you don't take it this is what's going to happen' and, and I just went to my dad, I went, you know 'pay it out of your bank, I'll give you the money' and he was like 'well what you gonna do?' I were like 'I can't do anything I can't argue it, I can't go against what they've done' (Case Study 11, SN3, on-the-spot, s5, paid).

Indeed, even in Case Study 10, where the interviewee submitted a written complaint about his experience of being issued with a PND, when asked why he paid the notice he replied:

there's no point risking not paying it because, like, because they can still pursue it even more ... there's was always a chance I could get even more of a fine ... I might as well just pay it, cos I will have to eventually cos they're not just gonna sort of rescind it (Case Study 10, SN4, in custody, drunk and disorderly (filming officers), paid).

Thus, rather than any felt need to comply with the police, or the law, when asked why they paid their penalty notice, both of these interviewees stressed their (perceived) inability to challenge the police's authority, particularly given the threat of a more severe sanction. It is unclear therefore how respondents defined 'the right thing to do' and whether the underlying drivers for this are normative, instrumental or constraint-based (Bottoms 2001). The above quotes suggest that people's assessments of whether paying a PND is 'the right thing to do' reflects more of an instrumental weighing of the costs and benefits of challenging the police, and even a sense of constraint-based compliance; recipients may feel coerced into paying their PND and, given their relative (subordinate) position to the police that there is little choice but to pay the ticket. Either way, believing that paying a PND is the 'right thing to do' may have a limited impact on compliance in practice; regardless of whether people believe (for whatever

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<sup>345</sup> To pay a PND the recipient completes a slip attached to the bottom of the ticket and posts this with a cheque, postal order or their debit/credit card details to the magistrates' court, or else they can ring the court and pay over the phone.

reason) that they should pay, people will not pay if they cannot afford to<sup>346</sup>. Indeed, the majority of those who did not pay their own penalty notice, agreed that, in principle, paying was the 'right thing to do' (n=7).

#### **7.4.3 Reasons given for requesting, or not requesting, a court hearing**

In order to request a court hearing, recipients must first be aware that this is an option. Although there is a notice to this effect on the PND ticket, 23 survey respondents reported that they were unaware of they could request a trial rather than pay the penalty notice (N=71)<sup>347</sup>. This is extremely concerning as the introduction and extension of PNDs was justified on the basis that it did not qualify the right to trial, a notion which is seriously undermined if a third of all PND recipients are unaware of that right. However, it is also worth noting that people who were aware that recipients have the right to request a court hearing were no more likely to agree that the rights of PND recipients are well protected. This suggests that the right to request a court hearing is not considered an adequate appeals mechanism, a view which was supported by a number of comments volunteered by survey respondents and interviewees:

you're supposed to get a right to fair trial and a police officer arresting me under what he perceives to be erm, an offence, there's no sort of right to a trial. I mean there obviously *is* it says there that you can go to court, but there was no way I was going to jeopardise sort of my career ... by going to court and then getting a criminal record, because at the end of the day, who are they going to believe a 16 year old kid who was with a load of youths or a police officer? (Case Study 10, SN4, in custody, drunk and disorderly (filming officers), paid).

Doesn't seem to comply with the 'right to a fair trial' - police base their decision on facts at a given time and it is extremely hard to argue against that in court (SN4, on-the-spot, drunk and disorderly, paid).

However, another interviewee felt that whilst the PND process might not protect the rights of recipients, if "you've committed an offence, it's an on-the spot fine, you've kind of forfeited the rights by committing the offence in the first place" (Case Study 6 ON18, on-the-spot, s5 PND (public urination), paid). Whilst this interviewee may feel that offenders forfeit their rights, this is not (in theory at least) the case. PND recipients' rights are protected by their ability to request a court hearing. The following sections consider respondents' perceptions

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<sup>346</sup> Indeed, of the seven people who did not pay their PND, despite agreeing with the statement 'if you receive a penalty notice, paying it on time is the right thing to do', six were unemployed and one was a student. All reported that their annual personal income was less than £10,000 (six stating it was less than £5,000) and six reported that they were 'getting into difficulties' at the time they received the PND.

<sup>347</sup> However, only 15 respondents gave their lack of awareness of their ability to request a court hearing (in lieu of paying the PND) as one of the reasons that they did not challenge their one (N=68) (Q19).

(and in two cases, experiences) of the court hearing as an appeals mechanism, considering why it is that so few PND recipients ever exercise that right.

#### 7.4.3.1 Reasons given for not requesting a court hearing

The overwhelming majority of survey respondents (n=70) (and indeed the vast majority of all PND recipients) did not request a court hearing (N=72). The most common reason given for not requesting a hearing<sup>348</sup> was that the respondent did not want the hassle of going to court (n=36). This point was highlighted by a number of interview respondents:

I didn't want the hassle of entering into a long-term legal dispute with the police, I had no desire to ... elongate in any way ... it wasn't worth it ... whatever outcome would come from it wasn't worth the time, so a £60<sup>349</sup> fine, the *hours* that I would have had to put into challenging it, it would've outweighed, I could've earned £60 from working in that period, so it was ... simply a case of it not weighing ... up as a sensible option (Case Study 6, ON18, on-the-spot, s5 PND (public urination), paid).

A large proportion of recipients stated that they had not challenged the notice as they did not want to risk getting a more severe sentence (n=28) and many noted that they did not want to risk getting a criminal record (n=26). One interviewee commented "if you go to court, you've got to pay for all the costs and plus the fine, that's gonna be going to be a sum like £500, £5-600. So ... who's gonna risk that?" (Case Study 4, SN36, in custody, criminal damage (broke friend's wing mirror), paid). The lure of not receiving a criminal record was evident, with one interviewee commenting:

maybe if I were looking at five years in prison, I might of tried to get away with it cos I don't want to spend five years in prison but for an £80 fine it's not worth it, it's not worth it is it? ... Maybe if, if I got caught again, like a second time I'd get a criminal record then I'd probably think about contesting it then just cos it's worth a shot isn't it? With a criminal record if you can try and get away with it [laughs] (Case Study 1, SN38, in custody, possession of cannabis PND, paid).

However, whilst that survey respondent felt they deserved their PND, a survey respondent who did not feel their PND was deserved noted "if my work wasn't subject to CRB [criminal record] checks I would have refused to pay and gone to court. But also I didn't want my life destroyed for a silly drunken mistake" (ON8, on-the-spot, urinating in public, paid). This suggests that for some, even where the ticket is thought to be underserved, the risk of acquiring a criminal record if convicted acts as an (instrumental) disincentive to appeal the

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<sup>348</sup> Respondents who did not request a court hearing were asked to list their reasons for this in Q19.

<sup>349</sup> This interviewee received an £80 fine for public urination (s5 PND). However, during the interview they made reference to the fine (which they received 3 years prior to the interview) having been only £60. This misconception suggests that receiving a PND did not leave a long-lasting impression on the recipient and highlights the point (made by this and other interviewees) discussed above that for some recipients the value of the notice is largely irrelevant.

PND.

The notion that going to court was a 'risk' was one that came up frequently in the interviews. It is notable however that six interviewees reported feeling pressurised by the issuing officer into accepting the PND on these bases (that they would avoid a more severe sanction and criminal record). This was most evident in Case Study 11. The female interviewee received an on-the-spot PND for s5, which she paid. Following a heated exchange of text messages with a female friend, during which the respondent reported that her friend had "called [her] all the names under the sun", and which culminated in the interviewee "getting more riled up", texting her friend to say if she continued (trying to split up her brother's relationship/being abusive) she would burn her house down. The interviewee reported that the girl had responded to this saying "thanks for that text it's all I needed .... I'm going to ring the police now" which she did. The police arrived at the interviewee's workplace and asked her if she knew why they were there. When she replied "I think so" she was told, "it's £80, or these" and the officer waved a pair of handcuffs at her. She was told that if she did not accept the PND she would be taken into the cells for a couple of days before appearing in court but that at court it "was not guaranteed that ... [she'd] get away with it". As such, she said she "felt a little bit of pressure so I just took it ... I would've had to go to prison, if I didn't pay I would've had to go to prison and that's what I was scared of" (Case Study 11, SN3, on-the-spot, s5, paid). Whilst some interviewees reported that officers had told them if they were to challenge the ticket they were unlikely to win, this was not necessarily viewed as unfair or undue pressure. Indeed, the recipient in Case Study 5 (who received a PND for fighting) appeared grateful for the advice:

when I spoke to the police officers afterwards, and I was a bit like, upset about it, and I was like, 'I don't really wanna pay it' and they were like 'just pay it' like 'you won't win in court' ... they said that I'd end up with court fines, they said that I wouldn't win in court anyway in the circumstances of what had happened ... not definitively like 'we'll make sure you don't!' but they were like 'you won't, people don't generally' ... it was just, more the fact that it was *so obvious* that it was a bad idea in his opinion and he was being fairly frank with me, and, sort of built up a bit of rapport or whatever and I was, he was just like [adopts advisory/warning tone] 'don't go to court, cos you won't win it', and I was like 'ok yeah, good idea' (Case Study 5, ON13, on-the-spot, drunk and disorderly PND, paid)<sup>350</sup>.

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<sup>350</sup> In this case the recipient was seen fighting another man on the floor outside a nightclub. The interviewee had earlier been hit by that man whilst inside the nightclub and, seeing him outside, had gone over to him and in his own words 'lost it'. His description of the fight suggests that both his earlier victimisation and their later fight resulted in some injury to both parties. He reported that he had some swelling on his face from his original victimisation and that he had some blood on him following the subsequent fight for which he received the PND.

Whilst some appeared to appreciate the advice given by officers regarding their chances of success in court, for others, including Case Study 11, this appeared to compound their sense of injustice at what they saw as an underserved punishment. When told by an officer that she wasn't guaranteed to 'get away with' the offence were she to go to court, she reported "thinking there's nothing to get away with!".

Many of respondents reported that they had not requested a court hearing as they felt they would not get a fair hearing (n=21). Indeed, when asked their opinions of the PND system more broadly, few respondents agreed with the statement 'people who go to court to challenge their penalty notice get a fair hearing' (n=6) and only 16 agreed that when a person receives a PND their rights are well protected (Q24h and g). Furthermore, most respondents agreed with the statement 'there's no point challenging a penalty notice in court as the magistrates will not believe a member of the public over a police officer' (n=46) (Q24i). This was highlighted by a number of interviewees who believed that magistrates would be more likely to believe the police account of events over their own:

I wouldn't bother cos, chances are courts would lean on the side of the police than not, than you (Case Study 1, SN38, in custody, possession of cannabis, paid).

it's not fair at all the court system, how they're on the police's side and they're supposed to be independent (Case Study 2, ON6, in custody, s5 (threatening health worker), paid).

if you go into a magistrates' court, *you're guilty* ... it's a police court, and the police ... run it .... The odds are against yer (Case Study 4, SN36, in custody, criminal damage (broke friend's wing mirror), paid).

people have got the right, but perhaps not the means to protest against receiving [PNDs] (Case Study 6, ON18, on-the-spot, s5 (public urination), paid).

Well they're gonna listen to the police aren't they, cos they're just gonna turn around and say 'well you were drunk 'y'know (Case Study 7, SN46, in custody, drunk and disorderly (swore at officer), paid).

they're not gonna listen to someone whose had four pints of lager on a Friday night (Case Study 8, SN1, in custody, drunk and disorderly (accused of assault), fine registered).

I think the courts, especially the courts lower down are often more minded to accept the police's word rather than that of the ... individual concerned ... with my particular offence ... you would have struggled to find ... anybody else to actually give any kind of evidence in court, and so it would have been effectively my word against the police officer's (Case Study 9, ON4, on-the-spot, drunk and disorderly (pushing a bin down a road), court hearing).

It was my word against 4 police officers (ON8, on-the-spot, urinating in public, paid).

Whilst the majority of respondents questioned their ability to effectively challenge the PND, a sizeable minority reported that they had not requested a court hearing as they deserved the PND (n=19). Some interviewees were similarly accepting of their ticket:

I didn't have anything to challenge. I think if I've done something that wrong that I've ended up in a cell for the night I think I probably did deserve to pay £80 (Case Study 7 , SN46, in custody, drunk and disorderly (swore at officer), paid).

Well me I've got possession of cannabis, I had cannabis in my hand, I mean there's no point trying to say 'I didn't do it officer' I've got it in my hand (Case Study 1, SN38, in custody, possession of cannabis, paid).

Others however, (despite accepting that they had undertaken the behaviour for which they received the ticket), felt that the PND was undeserved. For these respondents, their sense of injustice at receiving the PND was compounded by the sense that there was no genuine right of appeal. The hassle, risk of gaining a criminal record and/or an increased punishment if they challenged the notice, as well as a perception of the court system as being unfairly skewed towards police officers, all compounded to discourage recipients from exercising their right to trial.

#### **7.4.3.2 Reasons given for requesting a court hearing**

Only two respondents requested a court hearing. In the survey both gave their reason for challenging the notice as being that they did not deserve the PND<sup>351</sup>. One also stated that they did not commit the offence, that they thought they would be found not guilty and that they had requested the hearing as "the police were engaging in gross and violent provocation, and issuing the penalty notice was hypocritical" (ON4, on-the-spot, drunk and disorderly (pushing a bin down a road), court hearing). This was expanded upon during an interview where the respondent reported feeling that his PND was undeserved as there are "plenty worse things that go on, on a Friday or Saturday night" (Case Study 9). Thus despite accepting that he *had* committed the behaviour for which he received the ticket, he believed it was undeserved as it was a disproportionate response (a matter which was frequently reported in both the survey and during interviews, as discussed in Section 7.3.1.1 above). His reasons for requesting a court hearing were based on principle; he disagreed with the PND system generally believing that allowing the police this power was "overstepping the mark that should exist between them and the court. [PNDs] are indicative of a culture which is increasingly privileging efficiency over legal rights" (ON4, drunk and disorderly (pushing a bin down a road), court

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<sup>351</sup> Respondents who did request a court hearing were asked to list their reasons for this in Q17 and the outcome of the case in Q18.

hearing). When he appeared in court he agreed to be bound over to keep the peace<sup>352</sup>. The other respondent who requested a court hearing reported that the case was discontinued before reaching the courts.

These same perceptions – that the PND was underserved, that it was a disproportionate response to their behaviour and that the system is unfair – were also voiced by people who did not request a hearing. So why is it that some people do choose to act on these feelings of injustice, when so many do not? Too few people requested a hearing to form any clear judgement on this matter. However, it was notable that the man in Case Study 9 was relatively confident that he would be found not guilty, he was also familiar with the court process (having been bound over previously) and was a human rights activist. As such he not only had previous experience of coming into conflict with the police but was also adamant that he would challenge the PND on the basis that he disagreed with the system.

### **7.5 Was fairness related to compliance?**

The above analysis would suggest that perceptions of fairness are of little relevance to people's decisions to pay a PND; such decisions were instrumentally motivated and were not related to perceptions of either procedural or distributive justice. However, in the context of PNDs there are various stages during which a PND recipient may comply with/defy the police decision. Firstly, in the short-term, compliance relates to accepting the decision of the officer at the scene; compliance at this stage will facilitate on-the-spot issue and improve police effectiveness. In the current context this was measured according to respondents' agreement with the statement 'I willingly accepted the decision of the officer'<sup>353</sup>. Secondly, in the mid-term, compliance relates to payment of the PND; compliance at this stage avoids the need to enact enforcement proceedings and therefore saves court time. Finally, in the long-term, compliance involves desistance from offending. Long-term compliance was measured using a self-report measure of offending (respondents were asked whether they had engaged in similar behaviour since receiving the PND). This will be considered in Section 7.6.

Indeed, whilst 'compliance' with regards to payment of the PND was not associated with notions of fairness, when we consider the extant literature, the expected impact of fairness on compliance is actually based on measures of short and long-term compliance (or, to use Tyler's

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<sup>352</sup> It is notable that although this is more serious outcome than a PND (which allows the recipient to discharge their liability) he was satisfied with this outcome and saw it as preferable to the PND.

<sup>353</sup> Whilst this is a measure commonly used in the procedural justice literature to assess short-term/immediate compliance, it must be recognised that this is a retrospective measure of respondents' self-reported compliance at the scene rather than an objective measure of citizen compliance at the time of the offence.

(2003) terms, immediate compliance and everyday law-abiding behaviour). For example, Tyler and Huo (2002) considered the influence of procedural fairness on people's reported "willingness to accept" police and court decisions, whereas Jackson *et al.* (2012; 2013) considered long-term compliance as measured via self-reported offending behaviour.

Tyler (1990) has found that decisions which are perceived to be procedurally fair are more likely to be complied with even where those decisions are unfavourable. Whilst procedural justice may encourage decision acceptance in personal encounters (Tyler and Huo 2002), its influence on everyday law abiding behaviour is largely mediated through police legitimacy (Jackson *et al.* 2012). Thus, procedural justice encourages people to view the police as legitimate and that legitimacy increases (long-term) compliance with the law. In the current study legitimacy was measured using two questions which indicated respondents' felt obligation to obey the law (a proxy for legitimacy commonly used in the procedural justice literature)<sup>354</sup>. Respondents were asked whether they agreed/disagreed with the following statements (Q24f and Q24c):

- a. I don't care if I'm committing a penalty notice offence as long as I don't get caught
- b. I always try to obey the law, even if I think it is unreasonable

Neither of these measures were significantly associated with short or mid-term compliance, that is, whether the respondent reported that they willingly accepted the officer's decision to issue them with a PND or whether they paid the notice. They were however both significantly related to long-term compliance, that is, whether the respondent had, subsequent to receiving the PND, committed a similar act<sup>355</sup>. Contrary to the existing literature, which suggests that if the police are viewed as being procedurally fair people are more likely to view them as being legitimate, in the current study, neither procedural or distributive justice, nor outcome favourability were associated with perceptions of legitimacy. This may reflect the manner in which legitimacy was measured. The questions regarding legitimacy (noted above) measure what might be termed 'legal' rather than police legitimacy. Jackson *et al.* (2012) suggest that, particularly in the Anglo-Welsh context, police and legal legitimacy are distinct concepts and that the former includes not just a recognition of officers' authority and a corresponding felt

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<sup>354</sup> A third question, regarding whether people believed that, on receipt of a penalty notice, paying the fee was 'the right thing to do' has been excluded (Q24a). The above discussion (see Section 7.4.2) highlights that responses to this question may in fact reflect more of an assessment of one's options when faced with a PND (and the perceived inability to challenge such notices), rather than reflecting any perceived moral alignment with the law (with which this question is concerned). Thus the 'right' thing may be assessed as the best course of action, rather than the 'morally right' thing.

<sup>355</sup> I don't care if I'm committing a penalty notice offence:  $U=114.500$   $p<0.001$ ,  $n=58$ ; I always try to obey the law:  $U=155.500$ ,  $p<0.001$ ,  $n=59$ .

duty to obey the decisions of the police, but also a sense of moral alignment with the police.

In the current study, not only were notions of procedural and distributive justice and outcome favourability not associated with perceptions of (legal) legitimacy, they were also not *directly* associated with payment of the PND or desistance from offending (mid or long-term compliance)<sup>356</sup>. These factors were however all directly (and significantly) associated with short-term compliance. People who agreed that the decision to dispose of their case via a PND was: fairly reached (procedural justice); was what they deserved in the circumstances (distributive justice); or was a relief (outcome favourability), were significantly more likely to agree that they had willingly accepted the officer's decision to issue them with a PND<sup>357</sup>. This is also supported by the case studies which indicated that people's reactions to the police were affected by whether they felt they were treated fairly. Thus for example, in Case Study 5, the man willingly accepted the officers' decision to issue him with a PND and from the description of his case he appeared to have complied with officers at the scene. However his positive reaction was influenced by the fact that officers were thought to have listened to his version of events and punished the other perpetrator to the dispute, as well as a sense that in receiving a PND for drunk and disorderly (for actions which could have been deemed assault) he had 'got away (relatively) lightly'. The woman who was accused of jumping a taxi in Case Study 3 did not comply with officers at the scene; she felt they had not treated her fairly and had uncritically accepted the taxi driver's version of events. Similarly, in Case Study 10, the man only started filming officers – and thus engaging in (short-term) 'non-compliant behaviour' – following the mistreatment of his friend. These cases highlight that officers can encourage short-term compliance by engaging positively with the public.

Whilst perceptions of fairness may not influence the outcome of a PND directly, they can impact upon people's willingness to accept officers' decisions. This has important implications for the police as through encouraging such perceptions of fairness, they might also encourage people to comply at the scene (thereby facilitating the more efficient, on-the-spot issue of penalty notices). However, there are two caveats to this statement. Firstly, both the above analysis and much of the procedural justice literature are based on survey-based research which examines respondents' self-reported compliance, which is both a retrospective and subjective measure. By employing observational methods, scholars such as Hough (2013) and

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<sup>356</sup> Indeed, the interviews highlighted that people's decisions to pay were instrumentally motivated and largely driven by whether or not they were able to pay (See Section 7.4.2).

<sup>357</sup> Decision fair:  $\chi^2=11.665$ , d.f.=1,  $p<0.001$ , N=47; deserved PND:  $\chi^2=9.507$ , d.f.=1,  $p=0.003$ , N=50; and, relieved to receive PND:  $\chi^2=6.352$ , d.f.=1,  $p=0.017$ , N=41 (however, this result must be treated with caution as one cell (25%) had an expected count of < 5).

Dai *et al.* (2011) have explored the impact of procedural fairness *in situ* and, whilst confirming its importance in encouraging positive (and compliant) behaviour from offenders, have noted the dynamic and interactive nature of compliance (see also Section 6.5). Just as interviewees in the current study stressed the importance of being listened to by officers, Dai *et al.* (2011) found that in practice only one aspect of procedural justice – voice – had a significant impact on compliance; interpersonal treatment had no significant on compliance. They also found that intoxicated offenders were 2.7 times more likely to be non-compliant. Thus it is important to remember the social context in which policing occurs and therefore the limits of both measuring the impact of procedural fairness through citizen surveys and of procedurally fair treatment on citizen behaviour. The second (and key) point to note is that procedurally fair policing has inherent value and should be pursued regardless of whether there is any ancillary benefit to the police (Tankebe 2009).

## 7.6 The impact of PNDs on offending behaviour

One of the key aims of the penalty notice system was that it would act as a deterrent, both for the recipients and for the wider public. However, whether PNDs achieve their deterrent aim has not been considered in the literature. The survey findings present a mixed picture of the impact of receiving a PND on future offending behaviour. When asked to comment generally on whether they thought PNDs put people off breaking the law again, only a minority agreed (n=17) (Q24j). Furthermore, when considering their own behaviour, many respondents agreed that if they were in a similar situation again they would behave the same way (n=30)<sup>358</sup>.

Indeed, a notable minority of recipients admitted that they *had* committed a similar behaviour since receiving the PND (n=20)<sup>359</sup> and reported that they had received more than one PND (n=14). Many respondents reported that they were more wary of being caught breaking the law (n=28) and agreed they were more wary of what they do since receiving the PND (n=29). This suggests that whilst there is some concern for being *caught* breaking the law, receiving a PND has a more limited impact on offending behaviour. This tension between PNDs on the one hand, providing an awareness of the possibility of being punished, whilst on the other, not necessarily affecting behaviour was highlighted in Case Study 6:

I haven't done it again, I er, that's a lie [sounds incredulous, as though he's surprised at himself] I have done it again, I'm just really careful to look out for police officers beforehand ... it's affected me in as much as I'm now aware, but to be honest ... it's not

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<sup>358</sup> Respondents were asked to comment on their behaviour since receiving the PND in Q22 and Q23.

<sup>359</sup> Whilst the majority (n=39) reported that they had not committed the same behaviour again, five answered 'prefer not to say' and four 'don't know' (N=68).

something that I worry about (Case Study 6, ON18, on-the-spot, s5 (public urination), paid).

A number of interviewees were particularly sceptical of the deterrent impact of PNDs for alcohol related offending/fighting, believing such offences to happen in the heat of the moment when the offender is unlikely to be concerned for the consequences. Indeed, in Case Study 5, whilst on the one hand the man thought he was more cautious since receiving the PND and would now be more likely to walk away if he were hit (rather than seeking revenge), he also commented that his drinking behaviour had remained unchanged and that in a similar situation, in the heat of the moment, he would be unlikely to be thinking of the consequences. Indeed, this was supported to some extent by the survey findings; a greater proportion of people who received a PND for s5 or drunk and disorderly reported that they had committed a similar behaviour again than those who received a PND for theft<sup>360</sup>. However, none of the cannabis PND recipients appeared deterred<sup>361</sup>.

It was notable that whilst the value of PNDs was purposely set at such a level as to deter offenders, interviewees volunteered conflicting views as to whether the monetary value of PNDs acted as a deterrent. Whilst some noted that the value would put people (including themselves) off committing offences again, others suggested: “the amount is essentially irrelevant. You’re either gonna pay a fine no matter what it is or you’re gonna think twice” (Case Study 1 (ON18, s5 (public urination), paid). The threat of increased punishment for future offending however appeared to be a more effective deterrent:

I think getting threatened with getting done again is more of a deterrent than the money to be honest, it were neither here nor there when I paid the money, well my fine when I paid it, I were like ‘I’ll pay it’ but the thing that’ll stop me doing it again were that if it happens again it’ll be more severe next time. The money weren’t part of it, it wouldn’t have made a difference if it were £100, £80, whatever, it were more like if I get done again than the cash (Case Study 1, SN38, in custody, possession of cannabis, paid).

Indeed one survey respondent noted:

getting a penalty notice didn’t stop me shoplifting, getting caught again with court appearance (and conditional discharge) did stop this (SN7, on-the-spot, shoplifting, paid).

However, a number of interviewees commented that they did not think PNDs were an effective deterrent for repeat offenders:

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<sup>360</sup> However these findings are based on a small sample and as such should be treated with caution.

<sup>361</sup> Five admitted that they had subsequently committed the same offence and the remaining three respondents answered either ‘don’t know’ or ‘prefer not to say’.

If you're a persistent offender, you're a persistent offender and you're gonna keep doing things and try and get away with it, for me I mean like, it was just a one-off thing and whether I got the £80 fine or not, like even if I'd just got a slap on the wrist and say 'go away' like, I would of like made sure I didn't doing anything might constitute some kind of er, offence, so, for me it didn't really deter me, I just knew that I'd never get in a situation like I did again (Case Study 10, SN4, in custody, drunk and disorderly (filming officers), paid).

It seems therefore that whilst PNDs may act as a deterrent for some, they are unlikely to achieve their intended crime reduction aims. This is particularly so for alcohol-related offences and possession of cannabis.

## **7.7 Chapter summary**

The above analysis provides the first insight into adult PND recipients' perceptions and experiences of the PND system. Throughout both the quantitative and qualitative analysis the interrelated nature of the antecedents of procedural and distributive justice was apparent. Whilst there may be theoretical distinctions between outcome fairness, outcome favourability and procedural fairness, in the current study these various aspects of 'fairness' overlapped in people's experiences and perceptions of the PND system. This highlights the need for further research exploring how people define a 'fair' interaction with the police. Interviewees who felt the officer had not listened to their side of the story viewed the PND as disproportionate *because* it was not issued with (what was perceived as) a full view of the facts. To perceive a decision to issue them with a PND as procedurally just, the individual must feel they have "at least" been listened to and their views considered. In this process of engaging with PND recipients the police are able to express their respect for the individual, their neutrality and trustworthiness. Through explaining their ultimate decision the police are again able to express the neutrality of their decision and thus the trustworthiness of their motives in making that decision. This helps to inform the individual's assessment of both the fairness and the favourability of the outcome. To feel relieved that one received a PND rather than a more serious sanction one must be aware that a more serious outcome was an option. Otherwise one is left to assume that, but for the decision (and behaviour) of the individual officer at the scene, one would actually have received no punishment for their actions and were therefore left feeling 'hard done by'; both the process and the outcome were seen as unfair. The procedure was seen as unfair because (given the low-level and often subjective nature of PND offences) a different officer may have made a different decision and the outcome was seen as

unfair as it was assumed that that any alternative decision would have been more lenient<sup>362</sup>.

Most recipients believed that the decision to issue them with a PND was unfairly reached (n=36). However, perceptions of the PND as being 'fair' varied according to offence. Whilst in theft and cannabis cases assessments were influenced by the perceived 'criminality' of the conduct, in s5 and drunk and disorderly cases people made more subjective assessments based on the circumstances of their case. Assessments of fairness in these cases were particularly influenced by officers' behaviour and attitudes, whether officers had listened to them and whether they were thought to have been even-handed or confrontational.

The case studies highlighted that the inability to voice one's case added to a sense of injustice. This is comparable to the results of the youth pilot study which found that 45% of recipients thought the PND was unfair, often reporting that officers had not taken the circumstances of the offence (especially where groups were involved) into consideration when deciding to issue them with a PND (Amadi 2008). In the current study, notions of the PND as inequitable were also expressed with regard to their prior good behaviour. Thus PNDs were seen to be for 'criminals' and not 'people like them'. This is comparable to research conducted regarding the perceived procedural fairness of speeding tickets issued to people caught by speed-cameras (as opposed to a police officer) (Wells 2008). In that study people felt issuing *them* with a speeding ticket was unfair (despite the consistency with which 'techno-fixes' such as speed cameras are applied) as it failed to account for their (perceived) superior driving ability and previous unblemished record.

Perceptions of (legal) legitimacy were not related to short or mid-term compliance. However, legitimacy was associated with long-term law abiding behaviour<sup>363</sup>. Furthermore, assessments of procedural justice were not associated with perceived legitimacy. Whilst this could suggest that the current data do not support the extant procedural justice literature, instead this appeared to reflect a difference in how 'legitimacy' was measured, such that in the current study, measures of legitimacy reflected perceptions of the legitimacy of the law rather than the police specifically. Whilst procedural and distributive fairness and outcome favourability all promoted short-term compliance<sup>364</sup>, none were directly associated with mid or long-term

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<sup>362</sup> It is notable here that during observations officers appeared to recognise (particularly with regards to public urination PNDs) the need to 'sell' PNDs in this fashion, with some commenting that they would inform non-compliant recipients that if they did not accept the PND they would be charged with indecent exposure and, if found guilty, would be placed on the Sex Offenders' Register.

<sup>363</sup> As measured according to respondents' agreement with the statements 'I don't care if I'm committing a penalty offence, as long as I don't get caught' and 'I always try and obey the law, even if I think it's unreasonable'.

<sup>364</sup> However, outcome favourability was not related to payment.

compliance (payment of the PND and self-reported offending). On the one hand this suggests that, in engaging with offenders in a procedurally fair manner, officers might encourage short-term compliance and thus the more efficient (on-the-spot) use of PNDs<sup>365</sup>. On the other hand, this raises broader questions regarding the procedural justice model and about how we think about the influence of legitimacy and procedural fairness on ‘compliance’, as the current data suggests that procedural fairness may impact differentially on offenders’ behaviour (and thus compliance) in different contexts and at different stages in the criminal justice process. Further research is necessary to consider how offenders experience procedural fairness and how they define ‘fairness’ in their own terms as well as the impact of such fair treatment in practice.

As with the ticket analysis, the survey found that recipients’ ability to pay was the only factor associated with whether the PND was paid or registered as a fine. Indeed, 92% of people whose PND was registered as a fine gave their inability to pay as the reason for this. This suggests that concerns raised in Parliament that PNDs would disproportionately impact upon the vulnerable have been realised, with those who are least able to pay having their notices registered as a fine (for one and a half times the original amount) with the magistrates’ court. Most respondents did however pay their PND and most gave their reasons for this as being instrumental; they did not want to be charged more for late payment or have to appear in court. Notably, over two thirds of people who did not pay their PND agreed with the statement ‘if you receive a penalty notice, paying it on time is the right thing to do’. This suggests that people’s decisions to pay are based largely on their *ability* to do so; those that can do, those that can’t breach. The PND system, as currently designed, therefore forces people into a situation where they cannot comply even if they want to. The system needs to be addressed to make it easier for people to pay – such as through instalments – to ensure that the scheme does not disproportionately impact upon people on low incomes.

That perceptions of fairness (both procedural and distributive) were not associated with payment of the PND, suggests that the incentives to pay the PND and indeed pay it on time, may encourage compliance even where recipients believe that their PND was undeserved. What was particularly concerning was that people may be left with a sense that they have ‘no choice’ but to accept the PND even where they believe they are innocent. This was further evidenced by the fact that only six people agreed that PND recipients who request a trial get a fair hearing, yet 46 agreed that ‘there’s no point challenging a penalty notice in court as the

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<sup>365</sup> A suggestion which is supported by data from Chapter 6 where it was highlighted that offenders who complied with officers were more likely to receive a notice on-the-spot (rather than in custody, following arrest).

magistrates will not believe a member of the public over a police officer'; a notion that was strongly supported in the case studies. These findings suggest that the low proportion of people who request a court hearing may (in part) reflect a perception amongst PND recipients that they cannot effectively challenge the police.

The introduction and extension of PNDs was justified on the basis that recipients retain their right to trial. However, a large proportion of respondents were not aware that they could request a court hearing and 9 of the 11 interviewees believed that being issued with a PND meant that they had been found 'guilty'. This seriously undermines people's ability to effectively challenge PNDs and more needs to be done to ensure that PND recipients are aware of their rights. Furthermore, the ability to challenge one's PND is dependent on an awareness of what that case is. A sizeable minority of respondents reported that they did not understand why they were issued with a PND and the officer had not explained why they were being issued with a PND. Indeed, in Case Study 7, the woman had absolutely no recollection of the events leading up to her arrest. If people are ignorant of the case against them, they cannot make an informed decision as to whether or not to challenge their notice.

This chapter has highlighted that a large proportion of PND recipients do not believe the decision to issue them with a ticket was fair or that they deserved the notice. This was largely influenced by the manner in which tickets were issued and whether officers considered the views of the recipient and explained their decision. However, officers who were deemed to be overly formal might be seen to be 'aggressively polite' and unnecessarily asserting their authority, which in turn may encourage disrespectful behaviour from offenders. Whilst perceptions of fairness affected short-term compliance (at the scene) they did not influence whether people paid the notice. Instead, reasons for payment were largely pragmatic; people sought to avoid a more severe punishment and would pay if they had the means to. Furthermore, the deterrent impact of PNDs was questioned. Almost a third of the respondents (and all those who received a ticket for cannabis possession) admitted they had committed a similar act again since receiving the PND. Few people request a court hearing and whilst, in part, this simply reflects their desire to avoid the court system, there was also evidence that people believed they would not get a fair hearing and would be unable to effectively challenge a police officer in court.

The following chapter will draw together the findings from the survey and interviews, as well as the ticket analysis and observation data considered in the preceding chapters, to consider how PNDs are used in practice and how officers' behaviour influences offenders' perceptions

of the fairness of PNDs and thereby their willingness to comply with officers. The PND system was designed to offer 'swift, simple, effective' justice; however its ability to achieve these aims are undermined when people believe the police are behaving unfairly as, in such circumstances, people are more likely to respond to police intervention in an aggressive and uncooperative manner. Concerns regarding the unequal impact of PNDs appear to have been realised in practice and the defence that people's rights are protected through their ability to request a court hearing is undermined when we consider that so few people view this right as genuine.

This chapter has reported PND recipients' perceptions of the penalty notice system, whether or not they perceived the PND to be fair and their reasons for paying (or not paying) the notice. The issues they raised highlight genuine inequities in the objective (and not simply the subjective) distributive and procedural fairness of PND system which need to be addressed and are considered in the following chapter.

## CHAPTER 8: DISCUSSION AND CONCLUDING COMMENTS

### 8.1 Introduction

The overarching goal of this research was to shine a light on an under-researched police power: penalty notices for disorder. This exploratory study sought to understand the use and impact of PNDs in practice. Within this, 'impact' was framed with regards to the intended aims of the penalty notice system, as well as the concerns raised in Parliament regarding this power. Analysis of penalty notice tickets, observations of the circumstances in which PNDs were issued, informal interviews with police officers and formal interviews with relevant criminal justice practitioners have provided an insight into how penalty notices were used in one force area. Throughout, comparisons have been drawn with the national data on penalty notices to consider the extent to which local practice represented national use of PNDs. Additionally, a survey of, and interviews with, penalty notice recipients have provided a much needed insight into how people who were subjected to this power experienced the process, and thus provided an alternative view of the impact of PNDs.

In this chapter we return to the thematic framework set out in Chapter 2, applying the results presented in the preceding chapters to consider whether (and to what extent) the aims/concerns regarding PNDs have been realised in practice, and thus the impact of penalty notices for disorder. To reiterate, the aims of the PND scheme were categorised by the author as: *managerialism, crime reduction, punishment and rehabilitation*. The concerns regarding PNDs related to *police discretion and subjectivity, human rights and due process, and (in)equality of impact*. Although the concerns will be considered in more depth below, it should be noted from the outset that the issues which have been raised in the preceding chapters were all, to some extent, highlighted in the debates over the introduction and extension of PNDs. As such, when we consider the concerns regarding PNDs it must be recognised that whilst these may be unintended consequences of the penalty notice system, they were certainly not unanticipated. During the parliamentary debates these concerns were dismissed and/or thought to be avoidable through the production of guidance. But has the guidance been effective in preventing/reducing the manifestation of these concerns in practice? Adherence to the guidance and the extent to which this has served to ameliorate the concerns raised by PNDs will be examined<sup>366</sup>, as well as making proposals for amending the

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<sup>366</sup> McConville *et al.* (1991) suggest that using guidelines (or law) as a benchmark against which to measure officers' behaviour is a flawed (positivist) approach; it assumes that formal/organisational rules are clear and ignores the social rules which influence officers' behaviour. However, the following discussion seeks to highlight the inconsistencies and ambiguities in the guidance as well as drawing on

system to better address some of the concerns raised by the use of penalty notices for disorder.

## **8.2 Are PNDs achieving their aims?**

There were various aims outlined in the parliamentary debates on penalty notices for disorder. The Government introduced (and extended the use of) PNDs to stop disorderly behaviour, punish offenders and reduce crime (and latterly to rehabilitate offenders). Consistent in all those aims was a desire to save police time. Yet despite this, PNDs may be used both for offences which would (prior to their introduction) have attracted a court fine, and behaviour which might previously have attracted an informal warning. From the outset therefore the purposes of PNDs were muddled and inconsistent: PNDs would supposedly simultaneously divert cases from court and punish cases that would not previously have reached the courts. It was unclear therefore whether the Government wanted to ‘upgrade’ the response to disorder or ‘downgrade’ the response to crime (although the inclusion of offences such as theft suggests the latter).

### **8.2.1 Managerialism**

The overarching justifications for the introduction and extension of the penalty notice scheme were managerialist. PNDs were thought to offer a more time- and cost-efficient means of dealing with low-level disorder (particularly alcohol-related disorder) that would allow officers to spend more time ‘on the beat’. In Chapter 2 I argued that the realisation of these managerialist aims would be dependent on a number of factors: firstly, that the time and cost associated with issuing a PND compared favourably to other disposals; secondly, that PNDs were issued on-the-spot; thirdly, that PNDs were used to divert cases from court rather than bring cases into the criminal justice system; and finally, that PNDs were paid promptly. These issues will be considered in turn.

#### **8.2.1.1 Does the time and cost associated with issuing PNDs compare favourably with other disposals?**

The time taken to issue PNDs was not directly measured in the current study. The existing PND research can however provide some insight. Whilst early research suggested that a PND can be issued in as little as 30 minutes (Stg Co Deb (2004-5) *Twelfth Delegated Legislation Committee*, Wednesday 9 March 2005, col. 16) – a time which has continued to be quoted by the Home

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the findings from the preceding chapters which examine the social circumstances of officers’ decision making.

Office (2012c) – more recently it was found that, in total, the average (police) time taken to issue an on-the-spot PND was 3 hours and 14 minutes (HMIC/HMCPSI 2011)<sup>367</sup>. This rose to 6 hours 14 minutes for custody-issued PNDs. However, the time taken to issue penalty notices compared favourably with either cautions (7 hours 11 minutes), conditional cautions (8 hours 12 minutes) or charge (8 hours 45 minutes) (HMIC/HMCPSI 2011). In that study, whilst the time spent issuing PNDs was compared to restorative justice disposals (which took on average 5 hours 1 minute, and thus compared favourably to street-issued notices but not custody-issued PNDs), their use was not compared against the use of s27 notices (a formal direction to leave an area)<sup>368</sup> which, particularly for alcohol-related offending, may be a more appropriate comparator. Based on these findings, it would seem that PNDs, particularly street-issued PNDs, can offer a time-efficient alternative to other disposals. But are they a cost-effective solution to low-level offending?

The cost (to the police) associated with issuing PNDs varies greatly depending upon where PNDs are issued. Street-issued PNDs cost between £5 and £40 compared to the £250-£350 associated with a custody-issued PND (OCJR 2010). Whether the cost of issuing a PND compares favourably to issuing a caution (£300-£450) may therefore depend upon where the PND is issued (OCJR 2010). Regardless of where PNDs are issued, they are a cheaper option than pursuing a prosecution (which costs between £400-£1400 (OCJR 2010)). However, it is questionable whether such comparisons (between PNDs and prosecutions, and even cautions) are fair given that PND cases may not have previously resulted in any formal action. Indeed, the PND pilot study found that between half and three-quarters of all s5 and drunk and disorderly notices were ‘new business’ (Halligan-Davis and Spicer 2004). This was further supported by the recent OCJR (2010) review of out-of-court disposals. Thus, whilst the cost of street-issued PNDs compares favourably with ‘other’ disposals, this is only when we make (a perhaps unfair) comparison to what might be termed ‘more serious’ disposals (caution or prosecution). The cost of a custody-issued PND is however similar to that of issuing a caution. Whether PNDs are more time- and cost-efficient than other street-disposals (arguably a more apt comparator) is largely unknown. The 2010 OCJR review noted that a street issued cannabis

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<sup>367</sup> This was based on a review of five forces’ use of out-of-court disposals. The times cited only include time spent by the issuing officer in processing the cases. Time spent by supervisors and custody staff for example, or other criminal justice agencies in dealing with the case were excluded. This therefore fails to account for the time spent by the CTO and courts in administering and enforcing PNDs which, as noted in Chapter 5, can be a lengthy and resource-intensive process.

<sup>368</sup> Introduced under s27 of the Violent Crime Reduction Act 2006, the so-called ‘s27 notice’ is a formal direction to leave a locality and not return for a stated period (not exceeding 48 hours). Failure to adhere to this is, on conviction, punishable by a fine of up to £2,500.

warning cost between £10 and £20, but no mention was made of the cost associated with street bail, s27 notices or informal disposals.

Taking the lowest estimates provided by the OCJR (2010) (discussed above) we can calculate the cost of issuing PNDs<sup>369</sup> in 2010 as £17,937,145 (98% of which was associated with custody-issued PNDs). This rose to £27,436,160 if the upper estimates of the cost of issuing PNDs are used. If we assume an overall recovery rate of 70% (as found in the pilot study, Halligan-Davis and Spicer 2004), in 2010 only £7,794,297 was recovered through the payment of notices/fines, creating a deficit of between 10 and 20 million pounds! Conversely, had all PNDs been issued on-the-spot (as the scheme's architects intended) penalty notices would (on either estimate) have been income-generating<sup>370</sup>. Whilst this is not to suggest that PNDs could or should be used as a means to raise funds, it does raise serious questions about the ability of PNDs to achieve their (supposed) time and cost saving benefits in practice.

It is important to note that the times and costs quoted above are averages. In practice the time (and resources) taken to issue a PND will vary greatly based not only on where the ticket is issued but the amount of evidence officers provide (and thus the amount of time officers spent providing evidence) on the ticket, which in practice varied greatly. Indeed, whilst 31% of tickets sampled in the current study had no completed evidence section, 11% had not only filled out the entire evidence section, but had also attached additional evidence sheets (N=250). The additional time spent on administration in such cases undermines the notion that PNDs offer a 'swift' response to offending. Whether PNDs are more time- and cost-efficient than other disposals therefore depends upon the disposals chosen for comparison, where PNDs are issued and how much evidence is provided on the ticket. It is questionable therefore whether PNDs meet the first criterion for the achievement of their managerialist aims.

#### **8.2.1.2 Are PNDs issued on-the-spot?**

The second criterion in the achievement of the managerialist aims of PNDs is that PNDs must be issued on-the-spot. The reasons for this are twofold. Firstly, (as discussed above) the time and cost associated with issuing a PND rises greatly when comparing tickets issued on-the-spot with those issued following arrest. Secondly, officers are only 'kept on the beat' (and thus able to achieve PNDs' associated crime reduction aims) if they issue tickets on-the-spot. Nationally, half of all PNDs issued in 2010 were issued in custody, however this varied according to

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<sup>369</sup> £5-40 for street-issued notices and £250-350 for custody-issued notices (OCJR 2010)

<sup>370</sup> At a cost of £5 per ticket, we can calculate that, had all the PNDs issued in 2010 been issued on-the-spot, this would have cost £703,845. Yet if each ticket cost £40 to issue, this figure would rise to £5,630,760.

offence; 90% of drunk and disorderly PNDs were issued in custody compared to only 22% of retail theft tickets (see Table 5.13). However, there is huge geographical variation in the use of PNDs, both between forces and, as this research has shown, within forces (see Section 5.5.4). Thus, whilst the current research can provide some indication of factors which may influence the decision to issue a PND on-the-spot or in custody, more research is necessary to assess the applicability of these findings beyond the force area.

The ticket analysis found that theft and cannabis PNDs were much more likely to be issued on-the-spot (see Sections 5.4.4 and 6.5). However, it was unclear why those theft and cannabis cases which resulted in arrest were not disposed of on-the-spot. Indeed, all theft and cannabis PND recipients were (seemingly) compliant, were not abusive towards officers (or the public) and there was no indication that those cases resulting in arrest were more serious. Indeed, the mean value of goods stolen was actually found to be lower in those theft cases resulting in arrest. Furthermore, there was no indication that people were arrested to ensure their understanding of the process or to confirm the offender's identity. Given the much greater cost associated with custody-issued PNDs, there needs to be more research to explore the reasons for this as well as guidance which encourages officers, where appropriate, to issue such PNDs on-the-spot i.e. where offenders are able to understand what is being offered to them.

Ticket analysis and observation data in the current study were insightful with regards to the reason why so many s5 and drunk and disorderly cases result in arrest. Whilst the system may have been intended to aid the 'on-the-spot' punishment of alcohol-related nuisance, a review of the circumstances in which penalty offences occurred suggested that such offences (and offenders) may be unsuitable for on-the-spot disposals. In keeping with the existing literature, suspect demeanour and intoxication were significantly related to more punitive responses (Reisig *et al.* 2004; Engel *et al.* 2000; Smith and Visser 1981). However, the role of intoxication appeared to be mediated through offenders' compliance, which itself was linked to offenders' abusiveness towards officers. Intoxicated people were significantly more likely to display verbal and physical aggression towards officers and were less likely to comply with officers' requests. As noted in previous policing research (see Section 3.4.3.4.1), people who were abusive towards officers and/or non-compliant were significantly more likely to be arrested. Furthermore, whilst aggression towards the public was associated with an increased likelihood of arrest, offenders displaying higher levels of aggression (physical rather than verbal abuse) were no more likely to be arrested. Again, an examination of the circumstances in these cases

suggested that officers' decisions were largely influenced by offenders' compliance. Regardless of the severity of the original offence, officers would only resort to arrest if they were unable to gain (and maintain) control at the scene<sup>371</sup>.

This research suggests that offender compliance is the key determinant in officers' decisions as to *where* to issue PNDs. Thus, if officers are to promote the on-the-spot use of PNDs, they need to also promote compliance. But how can they achieve this? Both the existing literature and the current research suggest that people may be less willing to accept officers' decisions if officers behave in a procedurally unfair manner (see Sections 3.6.1 and 7.5). The importance of procedural justice for the effective, and fair, functioning of the PND system will be considered in more detail below (see Section 8.3).

The full realisation of the managerialist aims of the PND scheme demands that tickets are issued on-the-spot wherever possible. This 'wherever possible' caveat is however no small hurdle. Indeed, the nature of much of the alcohol-related offending (and intoxicated offenders) at which PNDs are targeted makes the on-the-spot disposal of such cases problematic. Indeed, it must be accepted that given the nature of offending in the NTE, and the influence of intoxication on offenders' ability to understand the PND process and their willingness to comply with officers, there will be a limit to the number of such cases which will be suitable for on-the-spot disposal.

### **8.2.1.3 Are PNDs used to divert cases from court or do they bring cases into the criminal justice system?**

The third criterion that I argue needs to be met if PNDs are to achieve their managerialist aims is that they must be used as a diversionary measure. It was a stated aim of the PND scheme that these notices should save police time in court appearances (Home Office 2000). However, they can only do that if they are used to divert cases from prosecution. Alternatively, PNDs may save police time (albeit not in court appearances) if, whilst not diverting cases from court, they are diverting cases from other *more* resource-intensive sanctions. A review of the five main penalty offences (drunk and disorderly, theft, s5, possession of cannabis and criminal damage) found that the introduction of PNDs did not appear to have had any great effect on the number of cases appearing before the magistrates' court. Between 2003 and 2005 (the first full year PNDs were in use) the number of such cases heard in the magistrates' court fell

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<sup>371</sup> This can be contrasted with Coates et al.'s (2009) research which found that people who were physically aggressive towards the public were more likely to be arrested. This difference highlights the need for further research into the use of PNDs and the factors which affect officers' decision making in their use of this power.

from 213,737 to 165,924 (Chapter 8 Appendix 1, Table A8.1). However, after an initial decline any diversionary effect brought about by the introduction of penalty notices appears to have reached a plateau. By 2010 192,786 such cases appeared before the magistrates' court (Chapter 8 Appendix 1, Table A8.1). Furthermore, any diversionary effect has been vastly outweighed by the use of penalty notices. Thus, whilst in 2003 213,737 drunk and disorderly, theft, s5, possession of cannabis and criminal damage cases were heard in the magistrates' court, by 2010 322,561 such cases were disposed of either by the courts or through penalty notices for disorder (Chapter 8 Appendix 1, Table A8.1). Thus, whilst PNDs offer the opportunity to divert cases from the courts, in practice they have brought cases into the criminal justice system.

If PNDs are to serve as a diversionary measure then such cases must at least be *capable* of appearing before court. There must be sufficient evidence that an offence has occurred and it must be in the public interest to pursue that case. If officers decide to use this power in the absence of such evidence, or such public interest, rather than deciding to divert the case from the courts they are making the, very different, decision to punish an offender where they believe a charge would not otherwise be brought. They are therefore deciding whether or not to criminalise the behaviour in question. If we consider the circumstances in which – particularly s5 and drunk and disorderly tickets – were issued, it is questionable whether, based on the evidence recorded, such cases would ever appear in court (See Section 8.4.1.2).

Whilst PNDs may not be saving the police time by diverting cases from court, might they be diverting cases from other (more resource intensive) disposals? On the available evidence, it would seem not. The use of PNDs appears to have had little effect on the use of cautions. Between 2003 and 2011 the number of s5 and drunk and disorderly cases resulting in a caution fell from 26,796 to 11,825 (Ministry of Justice 2013i). However, this reduction was outweighed by the 61,576 PNDs issued for those offences in 2011 (Ministry of Justice 2013i). This, coupled with the limited diversion from court proceedings, suggests that rather than being used as a diversionary measure, the number of s5 and drunk and disorderly cases formally processed by the criminal justice system almost doubled following the introduction of PNDs. It would seem therefore that the introduction of PNDs has resulted in mass net-widening. Such a conclusion is supported by the pilot study which suggested that between 50% and 75% of s5 and drunk and disorderly tickets were 'new business' (Halligan-Davis and Spicer 2004). But is it fair to describe this net-widening as 'new business'?

The term 'new business' suggests that these were cases which the police would previously not have dealt with, however, the assessments of net-widening are based on comparisons between various formal disposals of penalty offences pre and post the introduction of PNDs. Whilst it might be the case that these offences would not previously have received a formal sanction, this is not the same as saying they would not previously have involved any police intervention or indeed any formal police action. Indeed, the Metropolitan Police Service (MPS) (2011) have suggested that the introduction of PNDs may have been responsible for a reduction in the number of drunk and disorderly arrests. The number of drunk and disorderly arrests in that area fell from 20,096 in 2003 to 9,149 in 2005 (the first full year following the national rollout of PNDs). The number of drunk and disorderly arrests fell further following the introduction of s27 notices, but has since remained stable, at approximately 5,500 arrests each year (MPS 2011). However, to suggest that PNDs may be responsible for this fall in arrest rates appears curious given that, in 2010, only 12% of PNDs issued for drunk and disorderly by the MPS were issued on-the-spot (and thus in lieu of arrest) (Ministry of Justice 2013a, Table 1). There may however be some move from drunk and disorderly arrests to on-the-spot s5 PNDs (3,968 s5 PNDs were issued on-the-spot by the MPS in 2010, 54% of notices issued for that offence by the MPS that year). Further research is necessary to examine how PNDs have influenced arrest rates (for all penalty offences) if we are to truly understand the extent of any diversionary impact of PNDs.

Whilst there is some evidence of net-widening following the introduction of PNDs, with more people receiving formal sanctions, this does not necessarily equate to the creation of 'new business' for the police. This increase in cases formally disposed of may be viewed positively, reflecting officers' (new found) ability to deal with cases which (prior to the introduction of PNDs) were 'falling through the net' (Hazel Blears (Lab), Stg Co Deb (2003-4) *Second Delegated Legislation Committee*, 8<sup>th</sup> September 2004, col. 005). However, it cannot be argued that PNDs are *saving* police time. Rather than reducing police paperwork, PNDs have created more opportunities for formal punishment (with all the associated administration for both the police and the courts).

#### **8.2.1.4 Are PNDs paid promptly?**

The prompt payment of PNDs is the final criterion that must be met for the achievement of the managerialist aims of PNDs. Given the net-widening discussed above the efficiency of the system rests upon people not exercising their right to a court hearing and paying the PND within the 21 day enforcement period. As noted in Chapter 5, the enforcement of PNDs is a

resource-intensive and potentially lengthy process. This process is often hindered by a lack of sufficient offender data. Indeed, despite national guidance which clearly states that tickets should only be issued when there is sufficient evidence as to the suspect's age, identity and place of residence (Home Office 2005a; Ministry of Justice 2013b) the current research found that 36% of tickets were issued despite no ID checks being performed on the offender (N=241)<sup>372</sup>. There was also a significant difference between the offences as to whether or not any ID checks were performed (see Table 5.18). Indeed, even where identity checks were performed, often checks were made using forms of identification (such as bank cards) which would not confirm either the individual's age or their address. To enforce PNDs the courts, at a minimum, need an accurate name and date of birth for the offender. As such, officers need to ensure that, at the very least, any ID checks they perform can confirm that information; accurate address details would also expedite the process of enforcement.

Given the resource-intensive process required to enforce unpaid PNDs, if penalty notices are to achieve their managerialist aims they must be paid during the statutory enforcement period. However, each year since their inception, over a third of PNDs have been registered as a fine (see Section 3.4.4). The proportion of tickets which were unpaid have varied according to offence. For example, nationally 57% of drunk and disorderly PNDs issued in 2010 were paid compared to 47% of possession of cannabis PNDs issued that year (See Table 5.16). Such a large volume of unpaid notices undermines any potential savings offered by the PND system. Thus, whilst the courts have to deal with more than 45,000 unpaid PNDs per year, this is not matched in a reduction in prosecutions based on disorder offences (see Section 8.2.1.3). But why do so many PND recipients fail to pay their notice? At the national level, the PND outcome was related to the recipient's ethnicity<sup>373</sup>. In the current study, the key factor in determining whether or not PND recipients paid their notice was their ability to pay<sup>374</sup>. In both the ticket analysis and survey those who were unemployed were significantly less likely to pay their PND and, according to the survey data, all those people who did not pay their PND were on an income of less than £10,000 per year. The majority of those survey respondents who did not pay their penalty notice (N=13) gave their reason for this as that they could not afford to pay (n=8). Such was the impact of ability to pay on whether or not survey respondents complied

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<sup>372</sup> Whether or not ID checks were made has been coded based on which (if any) ID checks were recorded on the PND ticket. Section 6a provides a tick box for officers to record what ID checks were made and a few lines on which to write any other information (such as licence numbers).

<sup>373</sup> It should however be recalled that in 2010 15% of PNDs failed to record the recipient's ethnicity (see Section 5.3.3). As such this finding should be treated with caution.

<sup>374</sup> The offence for which the ticket was issued was also related to whether or not the PND was paid, however offence was also significantly related to employment status.

with the PND, even respondents who (for whatever reason) agreed that paying a PND on time is the 'right thing to do', were no more likely to pay their penalty notice (see Section 7.4.2). People were therefore, through their inability to pay, being forced to allow their PND to lapse and were then subject to a greater fine than their wealthier counterparts.

Regardless of the unfairness created by this inequality of impact (which will be considered further below, Section 8.3.3), the impact of this non-compliance on the efficiency of the PND system needs to be addressed<sup>375</sup>. Whilst the official payment period is 21 days, in practice forces allow 35 days before tickets are sent to the magistrates' court for enforcement. Indeed, in 2010, 11% of tickets were paid after the 21-day enforcement period but before the ticket was registered as a fine (see Table 3.3). Given the relationship between whether people pay their PND and their ability to pay the notice, it needs to be considered whether payment rates might be improved if recipients were able, from the outset, to pay by instalment (rather than having to request this from the court following the registration of their PND as a fine). In doing this, and thereby retaining control of PNDs in one agency (the CTO), the resources associated with enforcing PNDs may be reduced. Tickets would then only fall to the courts for enforcement if tickets were unpaid after a longer period. Such systems already operate in a number of Australian penalty notice systems (see Table 3.2). However, given that such opportunities to pay by instalment did not improve overall compliance rates in South Australia (Hunter 2001), such a programme would need to be carefully piloted and evaluated to ensure that it was cost efficient. Alternatively, Lancashire Constabulary found they were able to improve payment rates by 10% by sending a reminder letter to people after 10 days (HMIC/HMCPSI 2011). Whilst this research has highlighted some of the reasons PND recipients have given for not paying their PND this was based on a very small sample. Ultimately, if more PNDs are to be paid promptly, and the efficiency of the penalty notice system is to be improved, more research is necessary to ascertain *why* so many penalty notices are unpaid, and *how* payment rates can be increased.

#### **8.2.1.5 Summary: Are PNDs achieving their managerialist aims?**

Rather than reducing police paperwork, PNDs have created more opportunities for *formal* punishment (with the associated administration costs for the police, the CTO and the courts). Whilst PNDs may have diverted some cases from arrest, in many instances it appears that PNDs are issued alongside, rather than in lieu of, arrest and certainly there has been no great

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<sup>375</sup> The cost of this enforcement process has not been considered either by the current study or the existing PND research (Spicer and Kilsby 2004; Halligan-Davis and Spicer 2004; Kraina and Carroll 2006; Coates et al. 2009; OJCR 2010; HMIC/HMCPSI 2011).

diversion from either police cautions or prosecution. Potential efficiency savings are undermined by the net-widening associated with PNDs, the high proportion of tickets issued in custody and the low payment rate. The high proportion of tickets issued in custody is in part a reflection of the offences which PNDs are targeted at. Whilst it may be possible to deal with cannabis possession and theft (for example) on-the-spot, the nature of much offending (and offenders) in the NTE does not easily lend itself to on-the-spot disposal.

### **8.2.2 Crime Reduction**

The justifications for the introduction and extension of PNDs which were based on the notion this power would aid crime reduction were twofold: firstly, PNDs were thought to provide a quicker means of dealing with low-level offending and as such ensure officers could spend more time on the beat dealing with more serious offences. This aim is therefore an extension of the managerialist arguments discussed above, however it moves beyond attempts to improve police efficiency to suggest how those efficiency savings might be applied. Secondly, PNDs were thought to provide a deterrent, both to individual offenders and the wider population. The notion that PNDs allow officers to spend more time on the streets is however undermined by both the net-widening associated with the PND scheme and the high proportion of notices issued in custody (see Section 8.2.1.2 above). It is questionable whether any savings that could be made in police time by using PNDs would allow officers to focus on 'more serious' offending. Indeed, the OCJR (2010) noted that whilst out-of-court disposals had allowed the magistrates' court to deal with more serious cases (the proportion of defendants proceeded against for indictable offences rose from 18% to 20% between 2003 and 2008), there was "no evidence that the detected crime mix has increased in seriousness" (OCJR 2010, p.47). Therefore, contrary to expectations, police officers themselves were not detecting more serious offending as a result of introducing PNDs.

Secondly, it was argued that PNDs would facilitate crime reduction as they would act as a deterrent. Awareness of this new disposal would act as a *general* deterrent and the *individuals* who received a notice would themselves be deterred from future offending. Any general deterrent effect however was questioned in Chapter 2 (see Section 2.4.2) as it relies upon the assumption that people are aware of this power. This general deterrent function is reliant on people having indirect experience of penalty notices. Whilst this may occur, such as where a ticket is issued to a person's friends/family, people are highly unlikely to become aware of the power by seeing a PND being issued and both media and political focus on PNDs (which might

help raise awareness of PNDs) has been lacking. As such, the notion that PNDs can offer a general deterrent to offending is unconvincing.

The current research also questions the individual deterrent impact of PNDs; many survey respondents agreed that if they were in a similar situation again they would behave in the same manner. PNDs seemed, in particular, to have little effect on people's perceptions of cannabis offences and, in the case of disorder in the NTE, many interviewees commented that such offences occurred in a (drunken) social context where they were unlikely to be thinking of the potential consequences of their actions. Indeed, a sizeable minority of survey respondents had received more than one PND and/or reported that since receiving their last PND they had behaved in the same manner again. Such repeated receipt of PNDs questions the deterrent value of this power, however to make an informed judgement about the impact of PNDs on reoffending we would need large-scale (and relevant) comparative data for people who are subject to other more/less formal sanctions, the likes of which are currently unavailable<sup>376</sup>.

Where PNDs did appear to have a deterrent effect, this appeared to result from the threat of increased punishment for future offending, rather than the monetary value of the PND itself. This is supported by the Derbyshire Constabulary who, in their review of an alcohol diversion scheme for PND recipients, found that before attending the programme (an alternative to paying the PND) many people viewed their penalty notice "as inconsequential as a parking ticket" (DCCSP *et al.* 2011, p.5). This suggests that if PNDs are to better serve as a deterrent to future offending, all recipients need to be made aware of the consequences of future offending. However, the consequences are not actually clear. There is no statutory limit on the number of PNDs a person can receive, and the Ministry of Justice guidance only restricts the repeat use of PNDs for theft and cannabis offences (Ministry of Justice 2013b). As such, the 98% of attendees at the Derbyshire Alcohol Diversion Scheme who (following attendance at the course) believed that they would receive a conviction, and possibly even a custodial sentence for any subsequent alcohol-related offending, might well have been mistaken in that belief (DCCSP *et al.* 2011).

Whilst PND recipients may express concern about the risk of (increased) future punishment, whether or not this translates to their actual deterrence is a different matter. As discussed in

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<sup>376</sup> It was noted in Section 3.9 that the OCJR (2010) have published some data on reoffending rates for PND recipients as compared to people in receipt of a caution or who have been released from prison. However, without matching PND recipients with, for example, people who have committed a penalty offence or whose offending history matches a 'typical' PND offender, and by failing to include the subsequent receipt of a PND in definitions of 'reoffending', the OCJR (2010) data fail to enlighten us about the impact of PNDs on reoffending.

Section 3.9, certainty of punishment is a greater predictor of deterrence than the severity of the possible sanction. Jacobs (2010, p.420) distinguishes between deterrence and 'deterrability':

If deterrence denotes the perceptual process by which would-be offenders weigh risks against rewards to determine whether to offend, then deterrability describes the capacity or willingness of the would-be offender to engage in this calculation.

Similarly, Pogarsky (2002) highlights that people may be more or less 'detrable' (i.e. some people are more responsive to sanction threats) and that the proportion of the population who are deterrable may vary according to offence. I would question the deterrability of, in particular, drunk and disorderly and s5 offences. The subjective nature of disorder offences means that whether or not a particular behaviour is 'criminal' can often only be determined after the fact i.e. once it has been labelled as such by the police. This questions the extent to which people can be aware of the possibility, let alone the severity, of any possible punishment. Thus regardless of their personal propensity to offend, an individual cannot assess (and react to) the risk of sanction if the parameters of the offence are unclear. Indeed, many interviewees issued with drunk and disorderly and s5 tickets did not think that had engaged in 'offensive' behaviour, but rather, thought they had responded reasonably to some (unreasonable) provocation (see Section 7.3.2.1).

The very concept of deterrence is based on a rational-actor model which is arguably inapplicable to the majority of (intoxicated) offenders in the NTE. Jacobs (2010) questions the validity of deterrence research where participants are asked to assess their likelihood of offending in hypothetical scenarios as people may be inclined to over-emphasise their propensity to offend, or else under-estimate their offending and assume a "pseudorationality" that would not be present in reality. This may be particularly true in cases involving drunk offenders. As noted in Section 7.6 even if, when sober, people are more cognisant of the risks of offending this may not translate to any change in their actual behaviour when drunk. Thus for example, in Case Study 7, the interviewee reported that, having received an £80 fine, in future he would avoid getting into fights. Yet he went on to say that his drinking behaviour had not changed since receiving the penalty notice and that in the same circumstances he would be unlikely to be thinking of the consequences of his actions.

In placing no statutory limit on the number of PNDs which may be issued, the notion that PNDs would serve as a deterrent to offending for 'first-time offenders' is undermined. However, we need to question whether their use should be limited to first-time-offenders.

Given the low-level nature of these offences is it necessary that the perpetrators of such behaviours receive escalating penalties for any subsequent offences? Certainly, in many of the Australian systems discussed there is no cap on the number of tickets people can receive, and indeed in NSW people may receive more than one CIN for offences arising out of a single event (NSW Ombudsman 2005).

Repeated receipt of PNDs could be taken as an indicator that the individual's behaviour has, at least, not worsened, and thus PNDs may be said to have some deterrent impact. Equally, repeated issuing of penalty notices might tell us more about officers' reactions to 'confirmed offenders' than it does about any individual's propensity to reoffend. Once people have received one such notice, regardless of the relative severity of their behaviour, they may be more likely to receive a formal punishment (such as a PND) in any subsequent police intervention as, once they have a PND recorded against them on the police national computer, officers may feel that informal action would be insufficient for a 'repeat offender' (Schafer and Mastrofski 2005).

### **8.2.3 Punishment**

Throughout their brief history PNDs have been promoted as a means of providing a swift punishment for low-level and first-time offending, which ensures that offensive behaviour, which might otherwise (due to resource constraints on the police) fall through the net, does not avoid punishment (see Section 2.4.3). The potential net-widening impacts of PNDs discussed above were therefore not only recognised but actively promoted. Where concerns were raised, it was with regards to whether offences that might be 'too serious' to evade prosecution should be disposed of via these police-issued fines. This matter of the severity of penalty offences will be considered in further detail below (see Section 8.4.1.1).

At a time when there was (and is) growing concern with anti-social behaviour, PNDs offered a (potentially) cost and time-efficient means of punishing offenders. However, to be deemed to have been 'punished' the offender must actually *pay* the penalty notice or at least, in the event of non-payment, the fine must be enforced by the courts. In practice however (as discussed above) payment rates are relatively low, peaking at 55% in 2010 (see Table 3.3). The extent of enforcement for unpaid PNDs is unknown as court data make no distinction between these and court-issued fines. The pilot project however found that ultimately there was an overall payment rate of 70% (including those paid within 21 days of issue and those enforced

by the courts). This suggests that up to 30% of people do not have their notice enforced and are not therefore ‘punished’ as the system dictates (Halligan Davis and Spicer 2004).

The extent to which the fee associated with PNDs can be said to achieve the intended punishment aim is therefore limited. Where PNDs may be thought to act as a punishment is through the – unintended – experience of being ‘socially disciplined’ as a result of the PND issuing process (Choongh 1998). Indeed, many survey respondents reported that the police officer had not treated them with respect and a number of interviewees reported feeling unduly targeted by police officers (see Section 7.3.2.3.3). This feeling of being ‘socially disciplined’ was, for example, clearly iterated in Case Study 6 where the interviewee felt he had received the PND, not as a result of his behaviour (urinating in public), but rather as a result of the sarcastic manner in which he spoke to the police, a manner which he felt the police officer had purposely elicited from him. Indeed, during observations, officers arrested a man who had ‘spoken back’ to them (Observation Case 9). This use, on occasion, of PNDs as a form of social disciplining, whilst unsurprising given the policing literature (see Section 3.4.3.4.1), is a worrying extension of the ‘punishment’ aims of PNDs. This will be considered further below (see Section 8.4.1.2). Conversely, it should also be noted that receipt of a PND may not necessarily be viewed or experienced as a meaningful punishment, as 42% of survey respondents reported feeling relieved that they had received a PND (rather than a more severe punishment) with some making comments to the effect that they had ‘got off lightly’ (N=69). It is questionable therefore whether the use of PNDs does convey the message that “the law will bite without delay” (Baroness Buscombe (Con), HL Deb (2000-1) 625 col. 503) as intended.

#### **8.2.4 Rehabilitation**

As noted in Chapter 2, the aim for PNDs to serve as a gateway to rehabilitation services is, relatively new to the penalty notice scheme. The Legal Aid, Punishment and Sentencing of Offenders Act 2012 (LASPO) provided for Chief Constables to set up educational programmes which “reduce the likelihood of those who take the course committing the penalty offence[s] ... to which the course relates” (LASPO Schedule 23). The decision to establish such courses however remains at the discretion of the Chief Constable. Furthermore, even where such courses are available, the PND recipient is under no obligation to attend. The options to pay the PND or request a court hearing remain available. Whilst the inclusion of a rehabilitative element to the PND scheme may be relatively new in legislative terms, in practice many forces operated so-called waiver schemes prior to this Act. Indeed the first such scheme appears to

have been established by Hertfordshire Constabulary in 2007. Today, approximately half of all forces offer PND waiver schemes for alcohol-related offending, and five forces offer similar schemes for people in receipt of possession of cannabis PNDs.

Whether PNDs are having their intended rehabilitative impact was not directly assessed by the current study. However, enquiries were made to all forces as to whether they were running a waiver scheme and, if so, *inter alia* whether they had any information as to the success of the scheme, yet few forces running such programmes appeared to have evaluated the course. A Ministry of Justice review of eight alcohol arrest referral schemes (rather than specifically PND referral schemes) found that such programmes did not result in the necessary reductions in arrest to allow such schemes to break-even (Blakeborough and Richardson 2012). However, it was noted that the cost/benefits with regards to improved health (for example) were not included in this assessment.

At the local level, few forces appeared to consider the costs/benefits of running such waiver schemes. Indeed, in five force areas alcohol diversion schemes were offered as a free alternative to paying the PND. Whilst most areas charged between £30 and £40, issuing a PND costs anywhere between £5 and £350 (OCJR 2010) and the educational programmes piloted for the Alcohol Arrest Referral schemes cost between £62 and £826 per intervention, suggesting it would be difficult for such courses to break-even (Blakeborough and Richardson 2012). Indeed, Durham Constabulary reported that they had ceased running their own in-house education programme as an evaluation found that it was not cost effective. However, they were in the process of outsourcing the programme to Druglink (Durham Constabulary 2012). In Derbyshire however, following some initial start-up funding (the amount of which was not noted) provided by the Derby City Community Safety Partnership (DCCSP) and Derbyshire City Council, their PND diversion scheme was self-funding “with only a small amount of administration work required from the police” (although, again the cost of this is not noted) (DCCSP *et al.* 2011, p.3). The scheme was therefore entirely funded by the £40 attendance fee, which was paid directly to Druglink by the PND recipients. Druglink also noted in their evaluation of the Hertfordshire scheme that following the initial £14,000 start-up funding (provided by the Dacorum Community Safety Partnership and Hertfordshire Constabulary) the courses were now financially self-sustaining (Druglink 2009). There is some evidence therefore that these schemes can at least cover their own costs. However, it should be noted that this money could, if the recipient had paid their PND, have been used to recoup some of the costs of issuing these notices in the first place.

This concern for the cost-effectiveness of any waiver scheme was noted in the parliamentary debates. However, whether such spending is 'effective' depends upon whether these courses achieve their aims. There is some evidence that alcohol awareness sessions can impact upon drinking behaviour. Blakeborough and Richardson (2012) found that, following attendance at a brief alcohol intervention session, attendees reported a significant reduction in alcohol consumption. Of those local schemes that had monitored the success of the alcohol diversion programme through post-course follow-up interviews, all reported reduced consumption of alcohol (Druglink 2009; DCCSP *et al.* 2011; Devon and Cornwall Police *et al.* 2012)<sup>377</sup>. It was also noted in some areas that hospital admissions had reduced greatly amongst course attendees (Druglink 2009; Devon and Cornwall Police *et al.* 2012)<sup>378</sup>. Furthermore, 96% of people reported that they understood the link between their alcohol consumption and offending, and 98% reported that the course had made them more aware of the harms and dangers of binge drinking (DCCSP *et al.* 2011). There is some suggestion therefore that education schemes can influence attitudes towards alcohol and drinking behaviour, but can they influence offending behaviour?

Evaluations of the waiver schemes operating in Devon and Cornwall and Derbyshire measured self-reported reoffending 6-12 months after the course (Devon and Cornwall Police *et al.* 2012; DCCSP *et al.* 2011). In both areas the number of people who reported having instigated a fight when under the influence of alcohol fell to zero following attendance at the alcohol diversion programme<sup>379</sup>. In Devon the proportion who had been a victim of alcohol-related violence fell from 86% to 2%, in Derbyshire nobody reported being a victim of alcohol-related violence following their participation in the alcohol diversion scheme. However, neither Devon and Cornwall nor Derbyshire considered police data. Ministry of Justice research examining the success of alcohol arrest referral schemes found that re-arrest rates were not significantly different 6 months after the intervention between people who had attended the alcohol awareness course and a matched comparison group (Blakeborough and Richardson 2012). Specific PND waiver scheme evaluations performed by local forces were equally unresponsive of any rehabilitative benefits of such education programmes. For example, in Hertfordshire, whilst nobody who had attended the course received another PND in the 6-9 months following

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<sup>377</sup> Yet none of these schemes collected data from people who did not attend the course, and as such we must treat these findings with caution.

<sup>378</sup> However, rather than limiting the timeframe for comparison to, for example, the year before the course, these measures were based on comparisons between *any* alcohol-related accident and emergency admissions pre-course and those in the 6-12 months post-course.

<sup>379</sup> Pre-course, 42% of people in Devon and Cornwall and 66% of people in Derbyshire had instigated a fight (Devon and Cornwall Police *et al.* 2012; DCCSP 2011).

the waiver scheme, only 1.31% of people who did not attend received another PND<sup>380</sup>. In Birmingham, the Drug and Alcohol Action Team (DAAT) cite the introduction of a PND waiver scheme for alcohol-related offending as being responsible for a fall in crime, stating that (of the 45 offenders sampled) 76% of course attendees did not reoffend in the monitoring period of 9 months after referral (DAAT Birmingham 2011). However, such low rates of reoffending are unremarkable when compared to the reported reoffending rates found in the current study; a third of respondents said they had committed a similar behaviour since receiving the PND (N=59) and 14 had received more than one PND (N=64). The low reoffending rates for people who take part in alcohol diversion schemes therefore appear to be a reflection of the offender (and offending) profile of the people who receive PNDs. If these are (mostly) first-time and low-level offenders, would we expect them to reoffend anyway?<sup>381</sup> Based on the available research, the ability of PNDs to achieve their rehabilitative aims appears questionable.

### **8.2.5 Summary: Are PNDs achieving their aims?**

The extent to which PNDs can be said to be achieving their managerialist, crime reduction, punishment and rehabilitative aims is questionable. In large part, this is a reflection of the inherent conflict between the managerialist drive to provide a more time- and cost-efficient means of dealing with, *and punishing*, low-level offending due to the necessary time and cost implications of *punishing* such behaviour. Whilst PNDs offer a cheaper and quicker alternative to cautioning or prosecuting offenders, this is still greater than the resources required to manage such behaviour informally. The net-widening associated with the scheme and the large proportion of tickets issued in custody further undermine potential savings. The achievement of those aims based on PNDs' potential to aid crime reduction are questioned by the current research which suggests that whilst PND recipients were more aware of the risks of being caught offending, this did not necessarily translate to changes in their offending behaviour. The low payment rate undermines the notion that PNDs provide a swift *punishment*. The experience of alcohol referral schemes suggests that PND education programmes will struggle to impact upon reoffending rates and so any rehabilitative aims seem unlikely to be realised. Furthermore, such programmes are resource intensive, thus

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<sup>380</sup> Based on the figures reported in the Hertfordshire study it was calculated that there was no significant difference between attendees and non-attendees in their subsequent receipt of further PNDs ( $\chi^2= 1.43$  d.f.=1  $p>0.05$ ) (Druglink 2009, p.20)

<sup>381</sup> Indeed, when we explore the Birmingham data in more detail, the reoffending rate was much lower for people for whom the PND was their first 'conviction': 12% vs. 47% of people who had previously been subject to police or court action (DAAT Birmingham 2011).

undermining the scheme's overall managerialist aims. Indeed, the discord between all the aims of the penalty notice system makes their mutual achievement impossible.

### **8.3 A note on legitimacy, procedural justice and compliance**

The preceding chapters have highlighted the importance of procedural fairness to recipients' perceptions of the PND system and the ability of the PND system to achieve its aims. As such, although the topic was not addressed in the parliamentary debates regarding penalty notices it warrants some discussion here. Given the relationship between fairness and compliance, the procedurally fair use of penalty notices should be pursued to aid the achievement of PNDs' managerialist and crime reduction aims. Conversely, the absence of procedural fairness is also important, not only for its concomitant affect on compliance, but because the legality (as well as the legitimacy) of this power is called into question if it is not used in an unbiased and procedurally fair manner (see Section 8.4.2.3).

The procedural justice literature outlines various antecedents to procedural fairness (Tyler 2012; Goodman-Delahunty 2010; Tyler 2004; Tyler 2006a);

- Participation (or 'voice'): allowing people the opportunity to give their account of events and have their views considered.
- Neutrality: demonstrating that decisions have been made in an unbiased manner, based on the facts of the case.
- Trustworthiness: demonstrating that they are acting in a benevolent and even-handed manner.
- Respect: treating people with dignity and respect.

Whilst all these factors were associated with survey respondents' (N=73) and interviewees' (N=11) assessments of whether the officer's decision was procedurally fair, the overarching driver in their assessments of fairness was participation. PND recipients stressed the importance of having the opportunity to explain their version of events and being listened to in their assessments of: the police, the fairness of the penalty notice, and their willingness to accept the officer's decision<sup>382</sup>. Indeed, their interpretation of whether officers were respectful, trustworthy and neutral were inherently linked to whether officers were thought to have engaged positively with the offender and whether they felt they had been listened to. This was clearly summed up in Case Study 6 where the interviewee described the officer as

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<sup>382</sup> Although it is recognised that such a retrospective measure of compliance is flawed as it relies upon the respondent's assessment of their behaviour at the time of issue.

being “aggressively polite”; respect is not just expressed through (polite) words but through body language and tone of voice and most importantly by listening to the individual and explaining why they are being issued with a PND. Such positive engagement operationalised officers’ respect for the offender, the neutrality of their decision making and their trustworthiness. These findings are supported by McCarthy (2012) who argued that by explaining the reasons for a decision (in that instance stopping a person), officers would be encouraged to treat individuals respectfully.

The efficient use of a PND requires offenders to comply at various stages: in the short-term, compliance at the scene facilitates the on-the-spot issuing of PNDs; in the mid-term, payment of the PND itself avoids the resource-intensive enforcement process; and, in the long-term, compliance links to desistance from offending. Defiance at any stage hinders the efficiency and effectiveness of the system. This research has considered how procedural fairness can encourage compliance at every stage of the process.

Perceptions of fairness were significantly related to short-term compliance with the police (decision acceptance). By behaving in a procedurally fair manner the police may therefore facilitate (the less resource intensive) on-the-spot issuing of PNDs<sup>383</sup>. Some interviewees believed that their conversations with officers had enabled them to evade a more serious punishment. Such ‘selling’ of officer decision making was also reported by Schafer and Mastofksi (2005) who found that officers encouraged offenders to accept their decisions by comparing the sanction issued to a more severe sanction that could have been issued for similar behaviour. This serves to make the sanction given appear reasonable and lenient and thereby encourages offenders to view the encounter more positively and thus be less likely to challenge the officer. However, we must also be cautious that PNDs are not ‘mis-sold’; some interviewees noted feeling pressurised by officers into accepting PNDs which they did not believe they deserved, such as when the interviewee in Case Study 11 was told “it’s £80, or these” whilst officers waved a pair of handcuffs at her. This was particularly problematic as it not only undermined the legitimacy of the disposal but also served to create the impression that appealing their PND would be futile.

Braithwaite’s (2003a) model of compliance was outlined in Chapter 3 (see Table 3.4). It was noted that people may comply with the authorities for a variety of reasons and that compliance may be willing (*commitment*) or unwilling (*capitulation*). According to Braithwaite

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<sup>383</sup> However it must be noted that a large proportion of survey respondents received their PND in custody (n=28) and as such when reporting that they ‘willingly accepted the officer’s decision to issue them with a PND’ this would refer to the decision taken in custody.

(2003a) the *disengaged* person is disenchanted with the system, believing there to be no point in challenging authority. Such views were widespread amongst survey respondents (N=70), the majority of whom believed there was no point in challenging a PND as magistrates were unlikely to believe them over a police officer (n=46). However, whilst such disengagement is traditionally associated with defiance, in the case of PNDs such views were not associated with whether or not people paid their penalty notice<sup>384</sup>. The findings support the view postulated in Chapter 3 that acceptance at the scene may reflect *capitulation* (unwilling acceptance) in the face of coercive police power at the time of issue. Indeed only 32 respondents willingly accepted the officer's decision to issue the PND (N=71) and the majority reported feeling that the PND was undeserved in the circumstances (n=41)<sup>385</sup>. However, the idea that this capitulation may be related to defiance and non-payment of the PND was not supported; people who did not willingly accept the officer's decision were no less likely to pay their PND. Indeed, procedural fairness had no impact on whether or not people actually fulfilled the requirement of the penalty notice and paid the associated fee (mid-term compliance). Legitimacy, distributive justice, outcome favourability: none of these factors were associated with whether or not people paid their penalty notice. Instead, this 'mid-term' compliance was driven by instrumental factors related to individuals' ability to pay the notice<sup>386</sup>. During interviews, many recipients also stressed their desire to avoid further sanction and their belief that they could not effectively challenge the PND when explaining why they paid their PND (see Section 7.4.2).

In keeping with the existing literature, procedural fairness was associated with short-term compliance and legitimacy was associated with long-term compliance (see for example Tyler and Huo 2002; Tyler 2003). However, contrary to the prevailing view, procedural fairness and legitimacy were not significantly related to each other. As such, procedural justice could not be said, in the current study, to indirectly – via its impact on legitimacy – influence long-term compliance (or 'everyday law abiding behaviour' in Tyler's terms). Legitimacy was measured

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<sup>384</sup> The influence of such disengaged postures on PND recipients' decisions to request/not request a court hearing is unknown. Whilst many respondents reported that they did not request a court hearing as they did not think they would get a fair hearing, too few respondents challenged their PND to consider whether those who do challenge their penalty notice are less likely to hold such 'disengaged' perceptions of the justice system.

<sup>385</sup> People who were issued with PNDs for s5 and drunk and disorderly were significantly less likely to willingly accept the decision as compared to recipients of theft or cannabis notices which may reflect the more subjective definition of those 'disorder' offences.

<sup>386</sup> At a national level there was also a relationship between recipients' ethnicity and whether or not a PND was paid. Further research is necessary to consider the nature of this relationship and whether this is also a reflection of the relative ability to pay of PND recipients from different ethnic backgrounds or whether there is some other factor discouraging ethnic minorities from paying their penalty notice.

using two questions which assessed, what might be termed, 'legal legitimacy'<sup>387</sup>, that is, respondents' 'felt obligation' to obey the law (Jackson *et al.* 2012). However, the questions were directed at respondents' obligation to obey the law rather than the police per se. This distinction, coupled with the small number of people sampled in the current study, may explain why legitimacy was not, in this research, related to either short-term compliance (i.e. compliance with the police) or respondents' perceptions of the procedural fairness of officers' actions.

It has been argued that in the UK context police legitimacy is displayed not just through the recognition of officers' authority to exert power but also through the justification of that power through a sense of moral alignment *with* the police (Jackson *et al.* 2012; Jackson *et al.* 2013; Hough 2013), that is, the belief that the police share one's own moral values and thereby have a shared purpose in enforcing social order. By engaging positively with offenders, listening to what they have to say, explaining their decisions and pursuing procedurally fair mechanisms of social control, the police can generate a sense of trust and moral alignment. Whilst moral alignment was not measured in the current study, this recent UK-based procedural justice literature may explain some of the differences (discussed above) between the findings of the current research and those of the existing (mostly US-focused) procedural justice literature.

With regards to traffic offences in England and Wales Jackson *et al.* (2012) found, contrary to the procedural justice literature, perceptions of police legitimacy did not affect (what I would term long-term) compliance with the law. In that study, the authors suggested that traffic offences may present a 'special case' as few people view such offences as 'truly criminal'; their enforcement does not therefore invoke a sense of moral alignment with the police. Instead individual's personal morality and the perceived risk of being caught were the only predictors of compliance. It may be that PNDs present a similarly 'special case', thus for example cannabis PND recipients suggested they did not see this as an 'offence' (and thus were not deterred). So too with s5 and drunk and disorderly offences, interviewees reported either not viewing their behaviour as offensive and/or (when intoxicated) not thinking about the potential consequences of their actions.

Further research is necessary to consider how offenders experience the PND system, whether (and why) it is (or is not) perceived as 'fair' and what 'fairness' means to offenders. Of

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<sup>387</sup> Legitimacy was measured using two Likert scales measuring agreement with the following statements: 'I don't care if I'm committing a penalty notice offence as long as I don't get caught', and 'I always try to obey the law, even if I think it is unreasonable'.

particular interest is the potential for procedurally fair treatment to affect short-term compliance and thus facilitate the (less resource-intensive) on-the-spot disposal of offences (whether through PNDs or other formal/informal means). Such normative compliance is a more efficient route to social order than resort to repressive sanctions (Hough *et al.* 2010). By promoting the procedurally fair use of PNDs officers might therefore also promote the achievement of the scheme's managerialist and crime reduction aims.

#### **8.4 Have the concerns raised regarding PNDs been realised in practice?**

It was noted in Chapter 2 that the concerns raised regarding the introduction and extension of the PND scheme had little impact on either the development of, or the parliamentary debates regarding, penalty notices for disorder. Furthermore, as highlighted in Chapter 3, the little research that has been undertaken on the use of PNDs has been largely focused on whether the scheme achieves its managerialist aims (see Section 3.3) and has sought to develop and promote the use of PNDs as a means of increasing the number of offences brought to justice (Kraina and Carroll 2006). Indeed, the only study which expressly set out to consider the (potential) misuse of out-of-court disposals (including PNDs) in cases which may be deemed to be too serious to escape prosecution was halted by the incoming Coalition Government (Ministry of Justice 2011d; OCJR 2010)<sup>388</sup>. This research provides the first in-depth review of the circumstances in which PNDs are used and thus the first opportunity to consider whether these concerns (regarding police discretion and subjectivity; human rights and due process; and inequality of impact) are being realised in practice. These issues will each be considered in turn. However, it is first worth underlining the point that *all* of the concerns raised by the current project regarding the use (and potential for – actual or perceived – misuse) of PNDs were considered, and disregarded, by Parliament which argued that citizens' rights would be adequately protected by the production of guidance regarding the use of this power and their residual right to request a trial.

It was noted in Chapter 3 that the existing guidance often restricts the use of PNDs in a manner which is at odds with both the list of penalty offences and the purpose of the scheme: to promote the swift, on-the-spot, disposal of low-level offences (see Chapter 2). It is perhaps for this reason that a review of the circumstances in which PNDs were used in the preceding chapters highlighted frequent flouting of these rules. The national guidance in place at the

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<sup>388</sup> Although the Ministry of Justice (2013l) subsequently launched a consultation on the use of out-of-court disposals (OOCs) – which aimed, *inter alia*, to consider the possible impact of using OOCs for serious offences on public confidence in criminal justice system – there has been no subsequent/associated empirical research into the use of these powers.

time of the research set out six pre-conditions which must be met before a PND can be issued (Home Office 2005a; see Section 3.2)<sup>389</sup>. Briefly, those conditions dictate that, provided they have sufficient evidence as to the perpetrator's identity and place of residence and that the perpetrator is lucid and compliant, officers may issue a PND to any person aged over 18 if they have reason to believe that that person has committed a penalty offence which is not too serious and which does not overlap with any other offence. Adherence to these guidelines will be considered in turn alongside the concerns raised by the use of this power.

#### **8.4.1 Police discretion and subjectivity**

PNDs are a discretionary power, one which officers exercise with minimal oversight. PNDs are rarely challenged in court, nor is there any internal review mechanism. There is no requirement that the recipient is interviewed and often the evidence given by the issuing officer is not corroborated by anyone else<sup>390</sup>. The PND system therefore operates in relative obscurity, with officers' decisions to use this power rarely reviewed. Concerns were raised in Parliament about the appropriateness of the police having the power to decide whether or not to punish people in what could be potentially serious cases and thus which ought to be prosecuted in court. It was also questioned whether the police should have the discretion to issue punishments for 'subjective' offences<sup>391</sup>. This would allow the officer at the scene to act as 'judge and jury' and was therefore open to abuse (see Section 2.5.1).

These issues are not unique to the use of penalty notices. Indeed, these concerns are borne out in the policing literature which suggests that the police can, and do, use their discretion to target 'police property', using arrest as a means to control the 'dross' in society and to punish those who challenge their authority (see Sections 3.4.3.3 and 3.4.3.4.1). PNDs have the potential to exacerbate that process; offering the police a means to dispense financial punishments alongside 'police justice'. The Government were quick to dismiss these concerns, stating that there was no evidence that the police would use their powers in a discriminatory fashion (and thus ignoring the evidence with regards to, for example, the disproportionate use of stop and search powers (see for example, EHRC 2010)). The disproportionate use of PNDs

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<sup>389</sup> It should be noted that whilst the more recent Ministry of Justice (2013b) guidance no longer clearly sets out these conditions within a single section, all are referred to in some form within the new guidance.

<sup>390</sup> In the current study, this was found to be particularly true of 'high discretion' PNDs, such as drunk and disorderly and s5 (see Section 5.6.4.2).

<sup>391</sup> Concerns were focused on s5 offences, however drunk and disorderly is equally subjective in its definition given that what is 'disorderly' will depend entirely on the context. Indeed, given that (unlike s5) there is no statutory defence to drunk and disorderly, its definition is arguably even more subjective than s5 and its parameters more vague.

will be considered further below (see Section 8.4.3), for now, we will consider how officers exercise their discretion to issue PNDs. It was argued in Parliament that creating guidance on the use of PNDs (see Section 3.2 for details) would ensure that officers did not use this power in cases that were ‘too serious’. However, this presumption was not always borne out in the current research.

#### **8.4.1.1 Offence severity**

Concerns were raised in Parliament that PNDs might be used to ‘downgrade’ the response to criminal behaviour (see Section 2.4.3)<sup>392</sup>. It was concluded however that the production of guidance on the appropriate use of PNDs would be sufficient to ensure they were not (mis)used in cases that were ‘too serious’. But is this an effective means of controlling police discretion? Officers have clear guidance on the use of theft and criminal damage PNDs, limiting their use to cases where the goods stolen/damaged do not exceed £100 or £300 respectively. Only three criminal damage tickets were sampled (only one of which provided any evidence). As such, it is unclear whether officers in the force area reviewed were adhering to the guidance in these cases. The ticket analysis did however suggest that, in theft cases at least, PNDs were issued as per the guidance; in only one case did the value of goods stolen exceed £100 (see Section 6.4.1). Similarly, the cannabis tickets sampled were all issued (in keeping with the guidance) to people found in possession of quantities of the drug that could be deemed to be for their personal use<sup>393</sup>. However (in keeping with research undertaken by Kraina and Carroll 2006), officers often failed to record any evidence, or else gave such brief descriptions as to be unable to ascertain the severity of the offence (see Section 4.3.2.1). Whilst there is no requirement that officers record such information (either in the statute or the guidance), the absence of this information undermines our ability to hold officers to account for their use of penalty notices.

Whilst adherence to the guidance in theft and possession of cannabis cases was high, the results were less clear in s5 and drunk and disorderly cases. This is in part a reflection of the subjective definition of these offences, the parameters of which are sufficiently vague to cover

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<sup>392</sup> The inclusion of s5 and criminal damage were particularly controversial for this reason. However, given the level of concern regarding criminal damage PNDs, it is notable that the use of these tickets has fallen greatly in recent years (relative to tickets for other offences). Nationally the use of criminal damage PNDs has fallen from a peak of 20,620 in 2006 to a low of 3,633 in 2012 (Ministry of Justice 2013d, Table Q.1). This is likely to reflect a change in performance measures for the police (see Sections 3.4.3.6 and 6.6.6).

<sup>393</sup> One interviewee did however report that he had been issued with a PND after being found in possession of a large quantity of cannabis which he had bought for both himself and his friends (Case Study 1).

a myriad of behaviours. One clear restriction however is that PNDs should not be used where this is “any injury or realistic threat or risk of injury” (Home Office 2005a, p.14, Ministry of Justice 2013b, p.10). Yet despite this, in both the ticket analysis and police observations, cases were reviewed where offenders displayed a severe level of physical aggression to the public and/or the police (although in the latter case, this aggression was often a response to, rather than the reason for, arrest/issuing a PND). In those ticket analysis cases which involved severe physical aggression towards the public, offenders were described as having punched, kicked, head-butted or used a weapon against a person<sup>394</sup>. Such violence was further reflected in five cases viewed during observations. For example, in Observation Cases 10-12 three people were seen throwing punches resulting in one losing a tooth<sup>395</sup>. However, whilst the use of PNDs in such cases may breach the guidelines, to criticise the police for using a PND where there was a ‘realistic threat of injury’ makes the false assumption that otherwise some more serious action would (and should) have been taken. The observations suggested that this was not the case. The police often used their discretion to deal informally with such violence. Indeed, police intervention in such cases ranged from simply driving slowly past the group and waiting for them to disperse or physically separating the parties and telling them to go home, through to more formal action, such as issuing a s27 notice or PND or arresting the person<sup>396</sup>.

PNDs should not be used where there was any injury or a realistic threat of injury. But is this a realistic or reasonable restriction on the use of PNDs in the NTE? Arguably, cases where a person has been injured could (and should) fall outside the remit of the PND scheme. In such cases there is a clear harm to the individual, but should that harm be criminalised? The ticket analysis revealed that the ‘victims’ in several s5 and drunk and disorderly cases (24% and 26% respectively) were persons who were either seemingly known to, or involved in a fight with, the PND recipient (N=24 and N=58). During observations, officers commented that in such circumstances, where two (or more) people were fighting, PNDs were a useful disposal as

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<sup>394</sup> Given that 15% of tickets sampled involved physical aggression towards the public, if similar levels of violence were displayed in other force areas this would equal over 10,000 violent offences being dealt with by PND each year!

<sup>395</sup> It should be remembered that in this case one of the men was arrested as he was thought to have knocked out another man’s tooth. Whilst the CCTV footage showed that he was not the perpetrator, he (along with many others who were not arrested) was seen to throw punches. The man who lost his tooth was also arrested (and issued with a PND), as was his girlfriend, both of whom were seen to throw punches (Observation Cases 10-12).

<sup>396</sup> What is notable about those cases where no formal action was taken is that officers were able to disperse the groups, and maintain order, simply through approaching them or suggesting that they in one officer’s words “put it down to a bad night” and go home (Field Notes, Page 11). In all those cases where the police dealt with public aggression informally the suspects were relatively cooperative with officers and any ongoing aggressive behaviour was largely non-directed i.e. they were swearing and showing signs of frustration but were still adhering to officers’ requests. As discussed above (see Section 8.2.1.2), this highlights the importance of cooperation and compliance in officers’ decisions as to whether to take formal action and if, and where, to issue PNDs.

there was no point charging the perpetrators as they were unlikely to give evidence against one another. A PND, they argued, sent the message that such behaviour was not tolerated and ensured the perpetrators of that behaviour were punished. Whilst this seems to be a pragmatic solution, cases were noted in the observations where the parties to violence were effectively persuaded by officers not to make a complaint about their own victimisation as otherwise they might be charged themselves. Furthermore, whilst it *may* be fair to issue PNDs to the two (or more) parties to a fight, in practice they were not used in that ‘even-handed’ manner. It was often only one/some of the perpetrators who were punished. Indeed, whilst almost half of all s5 and drunk and disorderly tickets sampled involved groups of people who were arguing/fighting, in only half of those cases did the other person(s) involved also receive a penalty notice. Such inconsistency undermines the fairness of the scheme and leaves the police open to accusations of bias<sup>397</sup>. It is for these reasons that, if PNDs are to be used in s5 and drunk and disorderly cases, the views of the victim(s) may be important and should be recorded. Whilst officers may be right to issue PNDs where they believe neither party to a fight would want to make a complaint, the same cannot be said of those cases where the victim’s views were not sought, or else, where they actively wanted to make a complaint but were told nothing could be done. That officers would only be responsive to victims’ views when these accord with policing goals is not surprising, victims have long been recognised as “forgotten actors” in the criminal justice process (Sanders 2002, p.200); their involvement contingent on the extent to which they are perceived to be able to facilitate a successful, and ‘desirable’ prosecution. Indeed, Smith and Gray (1983) noted that officers would be reluctant to respond proactively to offences reported by (so-called) ‘slag’; these ‘unrespectable’ victims elicited little sympathy.

A further restriction on the use of PNDs is that they should not be used where the offender has also committed a second/subsequent offence (which is known) that “*overlap[s] with*” or “*associated with*” the penalty offence (*emphasis added* Home Office 2005a, p.21; Ministry of Justice 2013b, p.14). However, whilst theft, criminal damage and cannabis cases might easily be classed as a ‘single incident’, the circumstances in which drunk and disorderly and s5 offences occurred were often cumulative, involving more than one victim. Whilst it may be argued that when an offender is *verbally* aggressive to the public and then the police, perhaps also physically resisting arrest, that those incidents are all part of one *ongoing* case of drunk

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<sup>397</sup> Although it should be recalled that abuse towards the police was not significantly related to whether or not the other people involved in the dispute received a PND, the *perception* of bias may however be sufficient to warrant the decision to issue PNDs against only some parties to a dispute as unlawful (see Section 8.4.2.3.1 below).

and disorderly, the same cannot be said of cases where the offender is physically aggressive towards the public. Whilst the later abuse towards police may be thought to be 'drunk and disorderly', that behaviour only emerged (and thus is *associated with*) the original assault. Equally, those offenders who used severe physical aggression (such as kicking) to resist their arrest may be thought to have also committed an offence either under s.38 of the Offences Against the Person Act 1861 (assault with intent to resist arrest) or s.89(2) of the Police Act 1996 (obstructing a police officer)<sup>398</sup>. However, as with the restriction on the use of PNDs where there is any injury or threat of injury, this restriction on the use of PNDs seems curiously at odds with the realities of disorder in the NTE. A PND is not appropriate where a second or subsequent offence which overlaps with the penalty offence is *known* to have taken place. However, the guidance does not make any allowance for where a second offence is *known* but officers have decided not to pursue that case.

The severity criteria also prohibit the use of PNDs in cases "*related to domestic violence*" (*emphasis added* Home Office 2005a, p.15)<sup>399</sup>. Yet in four ticket analysis cases, PNDs were issued in circumstances which initially arose out of police calls to deal with a domestic incident. However, even if these tickets were issued, not for the original domestic incident, but for the later disorderly behaviour, this still breached the guidance as that behaviour was a subsequent offence associated with the domestic incident. The people in these cases would not have had the opportunity to become abusive towards the police were it not for their being called to the location to deal with the original incident.

A further direction (given in both the 2005 and 2013 guidance) is that a PND may be appropriate in cases which would normally result in a charge. However, the 2005 guidance stated that in such circumstances the disposition of the victim would be relevant. The 2005 guidance also stated that "officers *may* seek the views of any potential victim before making a decision on the most appropriate course of action" in cases where there had been an injury/realistic threat of injury (*emphasis in original*, Home Office 2005a, p.14), thus suggesting that, whilst such a disposal would be generally inappropriate in cases involving violence or

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<sup>398</sup> The most extreme example of this was Ticket Analysis Case 133. In that case the woman was originally arrested for drunk and disorderly. However, such was the level of aggression she displayed following her arrest, the detention officer's finger was broken as she resisted being placed in a cell. This would be 'associated with' the original drunk and disorderly behaviour for which she was arrested as the later assault would not have emerged were it not for her detention. In that case it was not stated whether the woman was charged for assaulting a police officer or whether no further action was taken with regards to that offence. However, regardless of whether or not it was pursued, the second/subsequent offence of assault *overlapped* with the original drunk and disorderly case and thus a PND should not have been issued.

<sup>399</sup> The 2013 guidance amends this requirement slightly to state that a PND will not be appropriate "where the offence involves domestic violence" (Ministry of Justice 2013, p.10)

where a charge would normally be brought, it may not be so where the victim favours this course of action. Contrary to the prevailing trends, which encourage officers to allow victims to have a (limited) say in how low-level offending (and offenders) are dealt with (Home Office 2013a), the views of the victim are less central in the 2013 PND guidance which states that “the views of the victim are important but cannot be conclusive” (Ministry of Justice 2013b, p.16)<sup>400</sup>. However, when trying to define subjective offences of ‘disorder’ the views of the victim may be central. In any case involving a dispute between parties the views of the victim should not only be sought but, I would argue, they should be recorded. Such recording, coupled with effective supervisory review, would promote accountability in the use of PNDs.

#### **8.4.1.2 Defining disorder; can the police be victims?**

Whilst this research has highlighted instances where officers seemingly exceeded their discretionary powers to use PNDs in cases which were ‘too serious’, conversely there were cases where the behaviour in question might be insufficiently serious to meet the offence criteria. Penalty offences such as theft, criminal damage and possession of cannabis may easily be defined as there is likely to be some tangible evidence of an offence. This cannot be said of s5 and drunk and disorderly cases which involve “subjective victimisation” (Burney 2006, p.7). Whether a person’s actions can be deemed to be *disorderly* or *likely to cause harassment, alarm or distress*, is dependent upon the context of their behaviour and the (actual or anticipated) reactions of an ‘audience’. As such, when officers decide to issue a PND in these cases (rather than take informal action) they are defining the behaviour in question as ‘criminal’. During the parliamentary debates it was noted that the definition of ‘disorder’ is subjective and may be difficult to prove, particularly in the context of the NTE where patrons know what to expect. Whilst the courts have provided guidance as to the meaning of ‘drunkenness’, as discussed in Section 3.2, arguably (as officers cannot issue PNDs to people who are “impaired” by alcohol) this offence criterion is not met when people are issued with drunk and disorderly PNDs on-the-spot. This issue is considered in more detail below, (see Section 8.4.4). Furthermore, whether such ‘disorderly behaviour’ might fall within the parameters of s5 depends upon the facts of the case in question; s5 does not simply penalise disorder but rather abusive, threatening or disorderly behaviour which occurs “within the hearing or sight of a person likely to be caused harassment, alarm or distress” (Public Order

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<sup>400</sup> This contrasts the approach taken in the 2005 guidance particularly with regard to theft and criminal damage cases where previously it was stated that a PND would not be appropriate in such cases if the victim was non-compliant (Home Office 2005a, p.17).

Act 1986, s.5(1))<sup>401</sup>. The presence of potential ‘victims’ is therefore legally relevant and whilst that ‘victim’ may be a police officer, police officers are deemed to have a higher tolerance for such abuse (*DPP v. Orum* [1989] 1 W.L.R. 88).

The issue of whether it would be appropriate for the police to issue tickets in cases where they were the victim (an important contextual factor in the definition of s5) was only mentioned on a handful of occasions in Parliament. Members of the Opposition did however query whether swearing at a police officer would be an arrestable offence, and noted that they would not be happy if a person were to receive a PND for telling a police officer to “something off” (HC Deb (2001-2) 368 col. 290). Yet the current research highlights that often tickets were issued in exactly these circumstances.

Although the police may initially *intervene* because of some verbal/physical abuse towards a third party, arrest (and the issuing of a PND) usually arose as a result of the person’s abusive behaviour towards the police. Indeed, as mentioned above, s5 and drunk and disorderly offences were often cumulative; 43% of these cases involved more than one victim (n=34). Typically, officers would be called to intervene because the offender was being abusive towards a member of the public, a security guard, taxi driver etc, but the person would then become aggressive towards the police. They would then be arrested<sup>402</sup> and later issued with a PND in custody. Indeed, in 60% of drunk and disorderly and s5 cases the issuing police officer was at least one of the victims (N=78)<sup>403</sup>. Furthermore, it was not uncommon for the police to be the sole victim of the offence (22% of all s5 and drunk and disorderly cases)<sup>404</sup>. Such findings are unsurprising based on the existing research on the use of s5 charges. Brown and Ellis (1994, p.40-1) found that the police were the victims in 28% of all cases<sup>405</sup>, arguing that s5 charges provided a “vehicle for asserting police authority”. The fact that (compared to Brown and Ellis’ research (1994)) more than twice as many s5 and drunk and disorderly cases in the current study involved the police as victims suggests that PNDs may provide even greater

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<sup>401</sup> At the time the empirical research was completed it was sufficient for this behaviour to be ‘insulting’ rather than threatening or abusive, however the term ‘insulting’ was removed from s5 of the Public Order Act 1986 by s.57 of the Crime and Courts Act 2013.

<sup>402</sup> Indeed, only four cases involving people who were directly abusive towards the police were disposed of on-the-spot (see Section 6.6.4).

<sup>403</sup> The police were one of the victims in 38% of s5 cases and 68% of drunk and disorderly cases.

<sup>404</sup> Of these, only three tickets were issued for s5, the remaining 14 were issued for drunk and disorderly. However, given the higher threshold for abuse expected of police officers noted above, arguably the offence criteria were not met in these three s5 cases.

<sup>405</sup> In that study, where the police were victims of the offence, officers often made references to bystanders/members of the public (who may have been caused offence by the offender’s behaviour). However, it was noted that that “was a useful way of justifying police intervention in situations where the primary objective was probably to preserve respect for the police” (Brown and Ellis 1994, p.37).

potential for the police to use this power to assert their authority<sup>406</sup>. There is a long history of police research which shows that officers will use their powers (and their power) to punish those who 'fail the attitude test' (see Section 3.4.3.4.1). It was therefore (disappointingly) predictable that this research found PNDs to be used, on occasion, to facilitate the process of 'social disciplining' (Choongh 1998) and punish those who found themselves in 'contempt of cop'.

#### **8.4.1.3 Summary: Police discretion and subjectivity**

In Parliament it was argued that the introduction of PNDs was a "move towards decriminalisation" (Nick Hawkins (Con) Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). On the contrary, I would argue that officers' relatively unfettered discretion to choose between a range of formal and informal actions (including the decision to issue a PND) allows them to choose whether or not to define the behaviour in question as 'criminal'. This is particularly so in s5 and drunk and disorderly cases due to the subjective definition of such offences. Whilst it is relatively simple to place limits on the use of PNDs for offences such as criminal damage and theft – and to monitor adherence to those limits – disorder is such an elastic concept that it is difficult to restrain officers' discretionary use of this power. Indeed, where attempts have been made to do this (through restricting their use when there is an injury or threat thereof, and where there is a subsequent offence) the restrictions appear at odds with the realities of disorder in the NTE, thus questioning the utility of PNDs in these circumstances.

PNDs allow the officer at the scene to define the parameters of 'criminal' and 'non-criminal' disorder, deciding which offences (and offenders) should be drawn into the criminal justice system with little oversight and often in circumstances where they were one of the victims of the offence. Whilst it was extremely rare for tickets to be issued in situations where the offender had, unprompted, been abusive towards an officer, often police intervention into some offensive/offending behaviour towards the public resulted in offenders becoming abusive towards the police and the police then arresting that person. The need for officers to be able to gain compliance from offenders (and the difficulties of achieving such compliance when dealing with intoxicated persons) were noted above with reference to the high proportion of tickets issued in custody (see Section 8.2.1.2). With regard to police discretion

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<sup>406</sup> With regards to s5 PNDs specifically, this may result in PNDs being issued in circumstances which fail to meet the offence criteria and in all such instances, leave the police open to accusations of bias (see Section 8.4.2.3.1).

and subjectivity however, the key point to note is that whilst arrest may be necessary for officers to gain control of escalating disorder, to then allow them the discretion to punish the offender after order has been restored leaves them open to accusations of bias. The lack of oversight in the use of PNDs allows them to be used as a tool to discipline the recalcitrant offender for 'contempt of cop'. There were clear examples of this in the observations and, based on the wider literature, it is unlikely that this is an issue which is restricted to the force area reviewed.

#### **8.4.2 Human rights and due process**

The concerns raised in Parliament regarding implications of PNDs for human rights and due process were broadly categorised as those relating to the burden of proof and those relating to the right to a fair trial. The current research has raised additional due process concerns in regard to the (actual and perceived) procedural fairness of the PND system. These issues will be considered in turn, as well as proposing means to address these concerns.

##### **8.4.2.1 Burden of proof**

It was noted in Chapter 2 that the legal burden, or 'onus of proof', is effectively removed by penalty notices which only require officers to have 'reason to believe' that the individual has committed a penalty offence and do not require officers to justify this 'reason' to anyone other than themselves. Arguably, the same is true of the evidential burden as whilst the guidance states that officers must have "sufficient evidence to support a successful prosecution", this evidence is not reviewed by anyone other than the issuing officer (Home Office 2005a, p.11; Ministry of Justice 2013b, p.9). Both the current study and the existing PND research suggest that this evidential burden is not being met in practice. A third of tickets sampled failed to record any evidence and 5% reported the process of issuing the ticket rather than the offence leading to the ticket (N=250) (see Section 5.6.4.2). This absence of recorded evidence was also found by Kraina and Carroll (2006) in their review of ten forces' use of s5, theft and criminal damage PNDs. Additionally, the joint inspection of out-of-court disposals undertaken by HMIC and HMCPSI (2011) noted that "the quality of evidence provided by the police was generally poor". Officers may however have recorded this elsewhere (such as in their pocket notebook/directly onto the police national computer). Indeed, the lack of evidence recorded on the ticket does not suggest there was a lack of evidence (at the scene) as to whether a crime had been committed. However, the guidance in place at the time of the research clearly stated that the evidence section *of the ticket* "should be completed in all cases" (Home Office

2005a, p.31) by the officer who witnessed the offence so as “to ensure the integrity and legality of the disposal” (Home Office 2005a, p.30). That guidance also stated that it was “good practice” for the issuing officer to have their witness statement corroborated by another officer (Home Office 2005a, p.31). Yet only 45% of the tickets reviewed were signed by another officer to corroborate the evidence given (n=101).

Recent amendments to the guidance on issuing PNDs mean there is no longer a requirement that officers record their evidence on the ticket. This reflects a change in the legislation which means that there is no longer a standardised template for PNDs, instead forces can adapt the ticket to their own needs (including electronic issuing of PNDs) (Ministry of Justice 2013b). Whilst the 2013 guidance continues to state that PNDs should only be issued where officers have sufficient evidence to satisfy the evidential and public interest tests of the CPS Code for Crown Prosecutors<sup>407</sup>, there is no specific direction as to *where* that evidence should be recorded and, worryingly, there is no longer any explicit requirement that officers provide a witness statement (Ministry of Justice 2013b). There is also no suggestion that officers’ evidence be corroborated by a colleague. It is unclear whether the removal of these requirements from the PND guidance was deliberate or whether it was a consequence of the exclusion of sections relating to how to complete PND forms (which presumably are no longer included as the forms are no longer standardised). Regardless, the notion that officers are no longer *required* to provide a witness statement to justify why they issued a PND is extremely concerning. If we are to be able to hold officers to account for their use of PNDs then the evidence they are basing their decision upon *must* be recorded, and that information should be recorded in a standardised format, so that the evidence can be accessed and reviewed. This is necessary not only to facilitate prosecution in cases where the individual requests a court hearing<sup>408</sup> but also to facilitate the supervision of PND use.

#### **8.4.2.2 Right to trial**

The Government defence of the PND system rested on the notion that people retain the right to request a court hearing. The PND scheme was based on consent. The recipient would either consent to receiving the notice and pay the PND or elect to go to court. This was not, they argued, a coercive power. The right to trial was in no way qualified. Whilst PND recipients

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<sup>407</sup> It should be noted that this is a curious restriction on the use of PNDs. If the officers have sufficient evidence to support a successful prosecution and it is in the public interest to prosecute then why is the individual being issued with a PND and not being prosecuted?

<sup>408</sup> Indeed, it was noted in the HMIC/HMCPSI (2011, p.35) joint review of out-of-court disposals that PND cases where the recipient requested a court hearing were often discontinued as they “lacked the evidential care and detailed investigation that is needed to prove cases in court”.

retain the right to a trial, in practice very few ever exercise this right. Indeed, the efficiency of the system relies on people not exercising that right and people are therefore presented with a series of financial and social inducements to accept the penalty notice (see Section 8.2.1.4).

These inducements appear to be effective, with only 1% of people challenging their PND each year (see Table 3.3). But why is it that so few people challenge their PND? Far from being a reflection of recipients' consent in the process, many survey and interview respondents reported that they felt they "had to pay" the PND. Furthermore, some interviewees noted that officers' explanations of the process of challenging PNDs discouraged any such attempt on the basis that they would be unlikely to succeed. Whilst some people appreciated what they saw as honest advice from officers, for others this 'advice' added to the perceived unfairness of the disposal and left them feeling they had no choice but to accept the penalty notice regardless of whether they felt it was deserved.

The most commonly given reason for not requesting a court hearing was that the person 'did not want the hassle of going to court', followed by not wanting to 'risk receiving a more severe sentence' or 'criminal record'. This suggests that people are cognisant of the potentially serious consequences of taking their case to court, and as a result choose not to 'risk' requesting a court hearing. Indeed, going to court was very much viewed as a 'risk' by survey respondents, one third of whom reported that they had not requested a court hearing as they did not think they would get a fair hearing. Furthermore, two-thirds of respondents believed that there was 'no point challenging a penalty notice in court as the magistrates will not believe a member of the public over a police officer'. The idea that the PND system is one based on consent is thus hugely undermined by the current study which suggests that PND recipients do not see their 'right to trial' as an effective appeals mechanism.

#### **8.4.2.3 Due process and the need for procedural fairness**

There are two distinct literatures on 'procedural fairness' which are relevant to the debate on penalty notices for disorder. The first relates to public law concepts of natural justice and the need for executive decision making to adhere to principles of legality, proportionality and reasonableness (Elliott and Thomas 2011). The second (discussed above, see Sections 3.6.1, 7.3.2 and 8.3) is drawn from social-psychological literature on procedural justice which concerns the influence of individuals' perceptions of a process as being either fair/unfair and the impact of such assessments on the perceived legitimacy of the decision maker and the individual's compliance with that body. This distinction is akin to Hirsch's (2008) distinction

between *normative* and *empirical* legitimacy. Normative conceptions of legitimacy are concerned with adherence to objective criteria. Objectivity in this sense does not suggest that there is one set of universally accepted criteria which define a 'legitimate' authority, but rather that legitimacy can be assessed by evaluating whether that authority "meets certain substantive requirements ... and, in particular, requirements of justice and rationality" (Hinsch 2008, p.41). Conversely, empirical legitimacy is subjective, it is concerned with whether the people subject to a rule or authority believe it to be legitimate and thus *voluntarily* comply (Hinsch 2008). Thus "compliance arises not because of external sanctions but because it is seen to be the correct standard" (Jackson *et al.* 2013, p.43); compliance is, to use Bottoms' (2001) terms, normative rather than instrumental. In public law there are various substantive criteria which must be met in order for the decision of a public body to be 'legitimate'. Whilst the psycho-social procedural justice literature also outlines various antecedents of 'legitimacy' these criteria regard people's (subjective) assessment of an authority's legitimacy, rather than measuring whether or not, in practice, those criteria are met. The overlap between these two literatures is clear; the same principles which define a 'fair procedure' in public law (a *normative* conception of legitimacy) are those which the social-psychological literature (an *empirical* conception of legitimacy) suggests individuals consider when making assessments as to the fairness of decisions which affect them. These arguments will be addressed in turn before considering how the PND system might be developed to improve both the natural and procedural justice of penalty notices.

#### **8.4.2.3.1 Natural justice**

As noted above, few people ever exercise their right to request a hearing; the survey and interviews with PND recipients suggest that this in part reflects a perception that requesting a trial is not an effective appeals mechanism. Arguably, this is because it is not an *appeals* mechanism at all. During the parliamentary debates on PNDs, it was queried whether the Government were not "worried that such a decision [to issue a PND] could be subject to judicial review?" Noting that if the officer could not prove that the decision to issue a PND "was taken for good reason" it could be alleged, in those cases, that the ticket was issued on discriminatory grounds and thus would be justiciable under the Human Rights Act 1998 (Oliver Heald (Con) Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination). The Government called this argument a "red herring" stating that the defendant's rights were unchanged by the introduction of PNDs as they still had the right to challenge the facts of the case by requesting a court hearing (David Lock (Lab) Stg Com Deb (2000-1) Co F Criminal

Justice and Police Bill, no pagination). On the contrary, I would argue, it is the Government's response that is the 'red herring' here. The fact that PND recipients can request a court hearing is an entirely separate issue to the justiciability of any individual officer's decision to issue a penalty notice. Judicial review is concerned with the process of decision making (in our case, the officer's decision to issue a PND) whether it is illegal, irrational and/or procedurally improper (Ellittott and Thomas 2011). The right to request a trial in lieu of payment of a PND is not a right of *appeal* against any unfairness/impropriety in the issuing of the penalty notice. The individual is not requesting a review of the decision to issue them with a PND, they are requesting to be tried for the offence<sup>409</sup>. This is an important distinction as if a PND recipient is tried for the offence, in that instance the court is deciding whether or not the individual is guilty of the original offence, not whether the PND was properly issued or whether the ticket should be upheld. Indeed, upon making the decision to request a court hearing the PND is cancelled as such, the court would be unaware as to this initial disposal during any subsequent hearing. Throughout this, the appropriateness of the officer's decision to issue a PND remains unchallenged. Indeed in cases where people wrote to the CTO to challenge the circumstances in which the PND was issued, they were told that the CTO had no means to accept mitigation (see Section 5.6.1). But surely there should be some means to question the appropriateness of officers' decisions to issue PNDs?

Whilst there may be no internal review mechanism, there are various grounds on which judicial review may be brought. These are traditionally categorised as: illegality, irrationality and procedural impropriety (see *Council of Civil Service Unions v. Minister for Civil Service* [1985] AC 374 (HL)). These are not however mutually exclusive and thus there may be more than one ground. Of particular relevance to the current research is the third of these

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<sup>409</sup> In many ways this can be considered an appeal *de novo*, a complete rehearing of the case and, indeed, throughout the parliamentary debates it was presented as such. However, this does not reflect the reality of the (supposed) appeals mechanism in the PND system. Firstly, whilst the (requested) hearing would focus on the facts of the original case, it is not an appeal against a conviction; a PND recipient has not been convicted, a PND is neither an admission nor a finding of 'guilt'. Neither is it an appeal against their sentence as when a person requests a court hearing their PND is cancelled. The courts have no power to issue PNDs and thus it is not within the magistrates' courts power to determine that the original 'sentence' was appropriate and that the individual should receive a PND. Instead, much like the ability of the Crown Court to (on appeal) increase an individual's sentence (Gillespie 2007), when a person appeals their PND they may be convicted (itself a more severe sanction) and may or may not be subject to a 'harsher' punishment. Indeed, as Ashworth and Redmayne (2005) noted with regards to defendants' right of appeal from the magistrates' court to the Crown Court, this *ability* to impose a more severe sanction is likely to act as a disincentive against appeal. Secondly, it is not a true appeal *de novo* as the appeal is not being tried at the same standard of proof as the original case. To issue the PND the officer only had to have 'reason to believe' that the individual had committed an offence, in court the case must be proven beyond reasonable doubt. Whilst this should work in the recipients' favour, it is questionable, given the small proportion of people who request a court hearing, whether PND recipients are aware of this distinction. Certainly in this study, many questioned whether their right to trial was an effective mechanism of appeal (see Section 7.4.3).

grounds<sup>410</sup>, procedural impropriety, which encompasses natural justice. Natural justice dictates that people have the right to a fair hearing and that decisions – in our case, officers’ decisions to issue penalty notices – should be free from bias (a point I shall return to below). PND recipients may also have grounds for judicial review under the Human Rights Act 1998. Article 6(1) of the European Convention on Human Rights (ECHR) provides that:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal

Whether a PND can be said to be a ‘criminal charge’ is debatable. The recipient does not accept guilt for the offence and as such receipt of a PND does not impugn a person’s character, or affect their right to a good character reference (*R v. Hamer* [2011] 1 W.L.R 528). The Court of Appeal has described the penalty notice system as one which punishes *suspected* offending, “the person has not admitted a crime nor on an analysis of the scheme has a crime been committed” (*R v. Hamer* [2011] 1 W.L.R 528 [532]). Whilst this would suggest that a PND is not a ‘criminal charge’ for the purposes of the ECHR, the Joint Committee on Human Rights (2001, c.9) suggested that fixed penalty offences may be “serious enough to amount to a ‘criminal charge’” but that even if this were the case the rights of the recipient were adequately protected. Regardless of whether or not a PND is a ‘criminal charge’ it is plainly a means of sanctioning offenders and thereby determining, at the very least, their civil rights. Indeed, the receipt, and payment, of a PND is not without consequences. A PND can appear on an enhanced criminal records certificate<sup>411</sup> and may be used as evidence of bad character in civil proceedings (such as in an ASBO hearing) (Ministry of Justice 2013b). As such, the decision to issue a PND plainly engages the right to a fair trial in Article 6(1).

In making a declaration of compatibility with the ECHR the Joint Committee on Human Rights (*emphasis added*, 2001, c.9) stated that “the right to *request* trial is adequately protected” by the PND system. However, Article 6(1) of the ECHR gives all citizens the right to a fair hearing in the “determination of their civil rights”, not simply the right to request such a hearing. To say that PNDs do not qualify the recipients’ right to a fair trial as they can later request a court hearing ignores the fact that the initial decision to issue a PND (itself a ‘determination’ of the

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<sup>410</sup> Illegality (or *ultra vires*) refers to making decisions which are beyond the decision maker’s authority (such as for example where PCSOs/accredited persons issued PNDs for offences which were outside the scope of their powers (see section 5.4)). Decisions may be *ultra vires* if they are made based on irrelevant considerations, or they fail to take relevant considerations into account. Irrationality relates to the (*Wednesbury*) reasonableness of the decision See *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 K.B. 223. An ‘unreasonable’ decision is one that is so unreasonable that no reasonable authority *could* have come to that decision.

<sup>411</sup> This may affect the recipient’s ability to work with children or vulnerable people, or to travel abroad.

recipients' civil rights) must be compatible with Article 6(1). The individual is therefore entitled to a fair and impartial hearing. A 'fair hearing' does not however equate to a court hearing. Indeed the manner (and extent) of any hearing will vary depending on the rights in question (Elliott and Thomas 2011). A fair hearing does however have certain characteristics: individuals should know the case against them, and be given the opportunity to present their defence (Elliott and Thomas 2011). It is concerning therefore that whilst almost all theft PND recipients (n=8) agreed that the officer had considered their views, less than a quarter of s5 and drunk and disorderly PND recipients felt this way (n=7). Furthermore, whilst there is no general (administrative law) requirement that decision makers give reasons for their decisions, reasons should be given where "a right of appeal is valueless without it ... [and/or] if a decision in the absence of explanation may appear arbitrary, harsh, mistaken or unreasonable" (Bradley and Ewing 2003, p.721). Yet a sizeable minority of survey respondents who received s5 and drunk and disorderly PNDs, felt that the officer had not explained their decision to issue a PND (n=23). Furthermore, as in Case Study 7, offenders (and particularly intoxicated offenders) may be unable to remember the circumstances of the offence, or else they may be later unable to recall officers' explanations. A balance must be struck between the rights of the individual and the need for an efficient and effective justice system (Elliott and Thomas 2011; Padfield *et al.* 2012). In the context of PNDs it may therefore be sufficient for a 'fair hearing' that officers conduct a brief interview with recipients before deciding whether to issue a penalty; that hearing must however be impartial.

It is this requirement for *impartiality* (in human rights terms) or freedom from *bias* (in administrative law terms) which presents the greatest challenge to the use of PNDs in practice. "A man may not be a judge in his own cause" (*R v. Bow Street Metropolitan Stipendiary Magistrates, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119). The decision maker cannot therefore be a party to the dispute. Whether a penalty notice has been issued unfairly will depend on the circumstances of the case in question and whether a 'fair minded and informed observer, having considered the relevant facts, would conclude that there was a *real possibility* that the tribunal was biased' (*emphasis added, Porter v. Magill* [2002] 2 AC 357 (HL)). Thus the threshold is not so high as to need to prove the officer was biased in their decision to issue a penalty notice, only that there was a 'real possibility' of bias. If we consider that in 60% of drunk and disorderly and s5 tickets sampled the issuing officer was one of the victims of the

offence and in 22%<sup>412</sup> of those cases they were the sole victim (N=78), the possibility of bias is clearly evident, and a cause for grave concern.

#### **8.4.2.4 How could the PND system be reformulated to address the concerns regarding human rights and due process?**

The possibility for bias in penalty notice cases is in part a reflection of the system which is designed to allow the officer at the scene to determine not only whether an offence has occurred, but whether the offender should be punished. This allows officers to issue tickets in cases where they may be the victim, thereby undermining the legitimacy of the penalty notice scheme and indeed of the police themselves (see Section 8.4.1.2). If the system is to continue to operate but avoid accusations of bias there is a pressing need to reassess the manner in which the system operates, the offences to which it applies and crucially, a need to introduce some effective external oversight into the use of this power. Firstly – in light of the findings of the current research, which show that the police are at least one of the victims in 60% of s5 and drunk and disorderly cases – at a minimum, the guidance should be amended to include a direction that, in the interests of justice, officers cannot issue tickets to people who have been abusive towards them<sup>413</sup>. Secondly, I would suggest that the guidance be amended to dictate that PNDs should not be issued on-the-spot for any s5 or drunk and disorderly offences. In such cases, where the offence can be managed at the scene, alternative disposals should be pursued<sup>414</sup>. Thirdly, I would recommend that, in cases where a person has been arrested (and in particular, in those cases where a person has been abusive toward a police officer) the decision to issue a penalty notice should be taken by a custody officer rather than the arresting (and often the victimised) constable<sup>415</sup>.

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<sup>412</sup> If the cases sampled are comparable to the broader (national) use of penalty notices this would amount to over 15,000 people in 2010 being issued with a PND where their only offence was being abusive towards the police and over 40,000 cases where abuse towards the police was a contributing factor!

<sup>413</sup> It is suggested that a stipulation to this effect is included in the guidance as the current omission of any guidance on how officers should proceed where they are the victim of the offence is a serious oversight. Yet it is also recognised that, given officers' 'account ability' (Ericson 1995) it would be easy for them to ensure that, on paper at least, their practice conformed with the guidance. For this reason – and given that officers have a range of other powers to deal with offending in the NTE – it needs to be considered whether s5 and drunk and disorderly should be removed from the penalty notice system entirely.

<sup>414</sup> In particular, when dealing with disorder in the NTE, s27 notices would offer a far less-resource intensive means of dealing with those engaged in anti-social behaviour.

<sup>415</sup> However, it should be noted that the courts ruled (in a majority decision only) in *R v. Abdroikov* [2007] 1 W.L.R. 2679 that a conviction should be overturned where the evidence of a police officer (who was a witness for the prosecution) was in dispute and one of the jurors (also a police officer) worked in the same force area as that witness. It was held that, even if the officers were not known directly to one another, such a situation could give rise to the real possibility of bias. Arguably, the same may be said of a custody officer who would inevitably work with the police officer. However, given the unique role of

As noted above (see Section see Sections 6.6.4 and 6.6.6), in the force area reviewed, custody officers already played an (unofficial) role in the decision to issue PNDs. This role should be formalised and extended. Whilst at present custody officers' decisions were seemingly based solely on whether the offender was eligible for a PND, they should also consider the eligibility of the offence. As such, their decisions should be based not only on the evidence of the officer but the evidence of the suspect also<sup>416</sup>. It is recognised that such an approach may only offer limited protection for offenders. Custody officers' independence from operational police officers is questionable (Sanders *et al.* 2010; Maguire 2002), with research suggesting that they are largely unquestioning in their endorsement of their colleagues' arrest decisions (see for example McConville *et al.* 1991). However, given that at present there is absolutely no independent oversight of officers' use of PNDs, and that in recent times there has been a move away from CPS oversight of police cautioning decisions, this proposal offers a pragmatic solution to the problem of the perceived bias in the use of PNDs.

Fourthly, I would recommend that the current guidance – that PNDs should be subject to quality checks to ensure they are completed to the “requisite standard” (to facilitate enforcement) – should be amended so that all forces must introduce a quality review procedure for penalty notices. Tickets could be dip sampled by senior officers, or (as is already occurring in some force areas) by magistrates, to ensure both the accurate completion and, more importantly, the appropriate (and legal) use of PNDs. In recent times there have been moves towards introducing judicial oversight of the PND system. In June 2013 the Senior Presiding Judge for England and Wales published guidance for magistrates involved in the scrutiny of out-of-court disposals (OOCs) (Gross LJ 2013). These scrutiny arrangements have no legislative (or national policy) standing, but rather have been arranged by individual forces on an ad hoc basis. Their purpose is to “enhance consistency, transparency, and public confidence” (Gross LJ 2013, p.1). Such scrutiny arrangements should involve the review of a sample of anonymised cases, thus providing an opportunity for magistrates to offer “generalised feedback” as to whether forces' use of such disposals appears to be consistent and appropriate (Gross LJ 2013, p.1). This feedback may then be used to inform any changes in policy or guidance and/or to identify training needs. Importantly, such scrutiny “will always be

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the custody officer – to ensure officers' arrest decisions are compliant with PACE – the circumstances in penalty notice cases may be distinguishable.

<sup>416</sup> The extension of the custody officer role in the proposed fashion would likely require some legislative change; s36(5) of PACE prevents custody officers from securing evidence from suspects (Sanders *et al.* 2010, p.198), and the rules on interviewing would make it difficult for a custody officer to “hear a suspect's story” (Sanders *et al.* 2010, p.379)

retrospective and will not involve magistrates endorsing, rescinding, or otherwise changing individual out-of-court disposals in any way” (Gross LJ 2013, p.1)<sup>417</sup>.

More recently, the Policy Exchange think tank have proposed a more radical role for magistrates in oversight of OOCs, calling for magistrates to be located in police stations in new ‘Police Courts’ (Chambers *et al.* 2014). Magistrates’ presence in the police station would (*inter alia*) allow them to provide (more or less) direct oversight of officers’ decisions to issue PNDs. Policy Exchange suggested that the form of any scrutiny arrangements could be locally determined and, depending on the availability of magistrates could vary from direct oversight of decisions in individual cases to periodic reviews (akin to those outlined by Gross LJ (2013) discussed above). Similarly, in the recent consultation on the use of OOCs, the Ministry of Justice (2013, p.23), whilst calling for greater accountability in the use of these powers, noted that they had “not been prescriptive about how these [scrutiny] arrangements should work ... because we want them to be able to respond to local needs”. I however would argue that any oversight of officers’ use of PNDs needs to be standardised; the current suggestion would endorse a geographical inconsistency in access to justice in these cases.

Whilst I recommend the extension (and standardisation) of magistrates’ scrutiny of the overall use of PNDs (and other OOCs), I would be cautious of supporting the Policy Exchange’s suggestion that magistrates might authorise/administer individual PNDs (Chambers *et al.* 2014). Although such a practice might serve to counter some of the concerns raised above regarding the potential for bias in the use of penalty notices, this suggestion, and in particular, the suggestion that such oversight could occur *in the police station* has the potential to undermine (at least public perceptions of) the separation of powers between the police and the courts. In such circumstances, offenders may be inclined to admit to the offence simply so as to be released from custody. As the plea bargaining literature suggests (see for example: McConville 2002), when faced with the offer of a lesser sentence – here the potential to receive an out-of-court disposal rather than be prosecuted – people may ‘succumb to pressure’ and accept a PND, even if it is thought to be undeserved<sup>418</sup>. Furthermore, in light of the research on the processing of ‘Sus’ cases by the magistrates’ court (see Sections 3.4.3.3 and

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<sup>417</sup> Whilst these provisions provide (welcome) external oversight in the PND system, they fall short of ensuring the impartial use of PNDs in any given case. As such, these proposals should be viewed as complementary (rather than supplementary) to the proposal that custody officers – who are independent from the case – should authorise the use of all PNDs issued following arrest.

<sup>418</sup> Indeed, with regards to their general proposal to place magistrates in police stations (as opposed to their more specific recommendations regarding out-of-court disposals) they envision that: “Additional incentives could be offered to offenders to plead guilty and receive sentence on the day” (Chambers *et al.* 2014, p.33).

3.4.3.7), I would be cautious of recommending that magistrates be tasked with overseeing individual PND cases regardless of their location. Given the lower standard of proof which applies when issuing a PND and the fact that magistrates would be reliant on officers' (socially constructed) account of the events, such a practice could result (as was evidenced when 'Sus' charges were brought before the courts) in (a largely unquestioning) endorsement of officers' use of PNDs. Furthermore, were magistrates to be responsible for administering or authorising the issuing of individual PNDs (as Policy Exchange suggest) this would (further) undermine the current appeals process.

My final recommendation to address the due process concerns raised by the use of PNDs (as evidenced in this research) is that there is a need to introduce an *effective* appeals process. As discussed, the current mechanism of allowing PND recipients to 'challenge' their PND is not really a mechanism to challenge PNDs at all; the subsequent court case relates to the original offence *not* the issuing of the penalty notice. Whilst judicial review would provide such an opportunity to review officers' decision making this is not particularly accessible<sup>419</sup>. Instead, it is suggested that the legislation be amended so that the right to appeal is amended to be just that: an appeal of the decision to issue the PND. The argument against such an amendment to the system is that this may result in a large volume of frivolous claims, however, the same suggestion was made of the existing right to request a hearing. It was feared that the higher standard of proof applied in court would result in large volumes of people challenging their PND, a fear which has evidently not been realised in practice.

What is crucial to the procedural fairness (in both its guises) of the PND system is that offenders are given the opportunity to provide their own account of the event, and that that account is taken into consideration when deciding how to proceed. Whilst magistrates could play a useful role in the (independent) oversight of penalty notice cases, any such arrangements would need to be carefully piloted and must offer recipients a 'right to reply' to officers' accounts of events. Given that there are, in some forces, existing arrangements for periodic review of the use of penalty notices (and other out-of-court disposals) it would seem prudent to extend these arrangements to ensure their provision across the country. Rather than administering (or authorising the issuing of individual) PNDs I would suggest that magistrates would be better placed to provide generalised feedback on the overall use of this power (of the type outlined by Gross LJ (2013)) as well as scrutinising their use in individual

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<sup>419</sup> This is particularly so given the reduced availability of legal aid.

cases through a revised appeals mechanism whereby the PND would either be upheld (incurring an additional administrative fee) or withdrawn.

#### **8.4.2.3.3 Procedural justice**

It is worth noting that whilst natural justice dictates that decisions should be free from bias and that people have the right to a fair hearing, the procedural justice literature and the current research highlight similar concerns as being central to the perceived fairness of officer decision making. Participation (which is central to perceptions of procedural fairness) is akin to the fair hearing requirements of natural justice, whereas trustworthiness and neutrality are relevant to assessments of bias. Assessments of procedural fairness were also related to recipients' accounts of their short-term compliance (i.e. their willingness to accept the officer's decision to issue a PND). In pursuing the procedurally fair use of penalty notices, officers would therefore not only ensure that they are meeting their obligations under Article 6(1) of the ECHR but could also maximise their ability to manage disorder through (less resource intensive) on-the-spot disposals (see Section 8.2.1.2).

#### **8.4.2.3.4 Summary: Human rights and due process**

When the introduction of penalty notices was debated in Parliament this extension of police power was justified on the basis that recipients retained the right to trial. However, since, as I have argued, Convention rights are engaged during the process of issuing a penalty notice, then such justifications are flawed. Officers need to ensure that they are affording offenders the opportunity to state their case and that they consider that case before they decide whether or not to issue a PND. Where the case involves a dispute between two (or more) parties they should also consider the views of any victim(s). Indeed, if they fail to do this they would not only breach the individual's right to a fair hearing, but could also be accused of making the decision based on illegal (or *ultra vires*) grounds as they would have failed to take into account relevant considerations (Elliott and Thomas 2011). When, following this 'hearing' they do decide to issue a PND, they should explain their reasons for this. Such fair treatment may also prove beneficial to officers themselves as the fair treatment of offenders can facilitate on-the-spot compliance.

#### **8.4.3 Inequality of impact**

One of the main concerns regarding the introduction of PNDs was that the use of a standard fine would impact unequally upon people of different means, and thus the poorest and most vulnerable would be disproportionately affected by receipt of a penalty notice. Within the

debates on police discretion and subjectivity another concern regarding the (in)equality of PNDs was raised: their potential to be disproportionately used against certain groups in society, particularly ethnic minorities. The Government assured the Opposition that it was “not their intention ... [that the PND system] would be abused in that way” (Lord Bassam (Lab) HL Deb (2000-1) 625 col. 714) and that the guidance would deal with matters such as ethnic monitoring of the use of PNDs. Whilst it is reassuring to know that the Government did not intend for the system to be disproportionately targeted at ethnic minorities, that they thought such matters could be avoided through the creation of guidance suggests a naivety that borders on the absurd. Indeed, the validity of concerns regarding potential inequality in the use and impact of PNDs was supported by the current research which found that PNDs were disproportionately issued to ethnic minorities and the unemployed (see Sections 5.3 and 5.4) and that those people were also significantly less likely to pay their PND and were therefore more likely to be subject to enforcement action (see Sections 5.6.3 and 8.4.3). And alas, it does not appear that the requirement within the guidance that the ethnic origin of the recipient be recorded in “all cases” was any great incentive to ensure the proportionate use of this power (Home Office 2005a, p.30).

In 2010 15% of all PNDs issued nationally failed to record the ethnicity of the recipient. However, that figure looks comparatively reasonable when considered against the performance in the force area reviewed where a third of all tickets failed to record this information (Ministry of Justice 2013a, Table 2). The lack of available data on the ethnicity of PND recipients has “stunted debate” (Young 2010, p.47), as in the absence of this information “there is nothing solid to prompt the kind of in-depth research that evidence of disproportionality tends to generate” (Young 2010, p.48). The current study provides that evidence of disproportionality. Overall, those whose ethnic origin was described as ‘other’ were particularly overrepresented in the PND recipient population as compared to the national population. Whilst the proportion of *all* tickets issued to Asian and black people was reflective of the population, this masked the variable use of PNDs for different offences (see Section 5.3.3).

Ethnic minorities were not however the only people disproportionately issued with PNDs. Men, young people and, most notably, the unemployed were all overrepresented in the ticket sample data (as compared to their proportion in the force area population)<sup>420</sup>. As with recipients’ ethnicity, their occupation “*must be completed in all cases*” (*emphasis in original*,

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<sup>420</sup> It should be noted that these same groups have previously been highlighted as being disproportionately subject to police powers (see Section 3.4.3.3)

Home Office 2005, p.30)<sup>421</sup>. However, unlike recipients' , ethnicity, the employment status of PND recipients has not been reported in the national data and the disproportionate use of PNDs against the unemployed has not been considered by the existing penalty notice research (OCJR 2010; Kraina and Carroll 2006; Coates *et al.* 2009; Spicer and Kilsby 2004; Halligan-Davis and Spicer 2004). As with ethnicity, the extent to which PNDs were disproportionately issued to unemployed persons varied according to offence and was most marked for theft cases, where two-thirds of tickets were issued to people who were unemployed (see Section 5.3.4). However, the survey data highlighted that employment status was not necessarily an indication of affluence. Thus, even where PNDs were issued to people who were employed, for the most part they continued to target the poorest. Indeed, most survey respondents earned less than £10,000 per year (n=40) and described their financial situation at the time they received the penalty notice as either 'just getting by' (n=32) or 'getting into difficulties' (n=16) (N=63) (see Section 7.2). This suggests that PNDs are disproportionately being issued against people on low incomes.

However, as noted above, it is not only the disproportionate *issuing* but the disproportionate *impact* of PNDs which is of concern. At a national level, ethnicity was significantly related to the outcome of PNDs. Asian and black people were least likely to pay their PND and thus were more likely to have enforcement action taken against them. Whilst employment status was not reported nationally, in both the ticket sample and the survey, people who were unemployed and/or were on a low income (less than £10,000 per annum) were significantly less likely to pay. The people who were therefore least able to pay were most likely to be subject to an increased fine. However, as noted in Section 5.4.4, the extent of enforcement can and does move beyond the imposition of an increased fine and can involve bailiffs or even the individual spending a period in custody if they are unable to pay the court fine. Thus, despite assurances from the Government that "that no one [would go] to prison because he cannot afford to pay the fine arising out of an unpaid fixed penalty" (Charles Clarke (Lab) Stg Com Deb (2000-1) Co F Criminal Justice and Police Bill, no pagination), people are being detained as a result of non-payment of a PND. Indeed, as noted in Chapter 3, this could amount to as many as 50,000 people serving time in custody for non-payment of a PND since 2004.

To be clear, this would be 50,000 people who have been imprisoned for not paying a police-issued fine for an offence which they have never been found guilty of and which no one other than the issuing officer has ever investigated. This is a highly questionable practice. I would

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<sup>421</sup> As with ethnicity however, despite clear guidance that all tickets should record the employment status of the recipient, this information was omitted in 22% of tickets sampled (N=250).

suggest that, to try and address the inequality this creates, the PND system be amended in line with that operating in New South Wales where non-payment of a CIN cannot result in imprisonment. It was also suggested above (see Section 8.2.1.4) that, to promote the efficient enforcement of PNDs, the system should be amended to allow payment by instalment from the outset. Allowing people to pay PNDs via instalment from the outset (rather than having a court fine registered against them) might also ameliorate some of the inequality of impact inherent within such a standardised penalty system.

There is a need for more research into the use of PNDs against different groups, particularly people on low incomes as it seems that such people were not only more likely to receive such notices but were also least likely to pay. The most vulnerable were therefore more likely to be subject to enforcement action which at best resulted in an increased fine and at worst in a person spending a period in custody to expiate their unpaid fine. The recent removal of the requirement for officers to report offenders' ethnicity and employment status from the PND guidance is particularly concerning in light of the findings of the current research. It is absolutely imperative that offenders' ethnicity and employment status are not only recorded by officers, but that these data are published, if we are to have any kind of debate on the use of PNDs.

#### **8.4.4 Recipients' ability to understand the process**

Within the parliamentary debates concerns regarding recipients' (especially drunk recipients') ability to understand the PND process were raised on a handful of occasions. Whilst in Chapter 2 (as in the debates themselves) these concerns were subsumed within arguments regarding the ability of PNDs to achieve their managerialist aims, the findings presented in the preceding chapters suggest that this issue requires a lengthier discussion here. The need for PND recipients to understand both why they were issued with the PND and how they can challenge their notice is imperative if recipients' right to request a hearing is to be effective. However, the current study found that almost a third of PND recipients claimed to be unaware that challenging their PND was even an option<sup>422</sup>. Yet all PND tickets include details as to the recipients' right to request a trial (Section 3(3) Criminal Justice and Police Act 2001). This suggests firstly, that statements as to offenders' right to a court hearing need to be made more clearly on the PND forms, and secondly, that officers need to ensure that they are fully explaining the PND process and confirming the recipients' understanding before the penalty

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<sup>422</sup> Respondents' lack of awareness could reflect levels of literacy amongst PND recipients, a matter which should be considered when deciding the wording of any written statements on PND tickets.

notice is issued<sup>423</sup>. The PND guidance expressly prohibits the use of PNDs where the “suspect is unable to understand what is being offered to them” (Home Office 2005a, p.19). Yet, in the current study, several people who received s5 and drunk and disorderly PNDs reported that the officer had not explained why they had been issued with a PND (n=12) and that they did not understand why they had received the ticket (n=11) (N=41). Interviews undertaken with PND recipients for the current research suggest that recipients do not fully understand the implications of being issued with a PND, indeed 9 of the 11 interviewees believed that in being issued with a PND they had been found guilty and many expressed surprise that a PND could be used as evidence of bad character.

Such findings are however unsurprising given that there is no requirement in the guidance (and indeed, in the 2005 guidance no comment whatsoever) that PND tickets include information as to the consequences of accepting a PND<sup>424</sup> (Ministry of Justice 2013b; Home Office 2005a). It is questionable therefore how PND recipients can understand what it being offered to them if this information is not expressly provided. Whilst the 2005 guidance merely stated that “good practice suggests that officers should explain what is happening to the suspect, what powers are being exercised and what for” the 2013 guidance has an entire section on explaining the PND (Home Office 2005a, p.29):

It is important to fully explain the implications of receiving a PND (or penalty notice with an education option). It is not appropriate to suggest to a person that there are no further implications if the penalty is paid .... If a PND is given for a recordable offence then a person must be told that an entry may be made on the Police National Computer (Ministry of Justice 2013b, p.18)

However, with regards to revealing that PNDs may appear on an enhanced criminal record certificate, whilst the 2013 guidance does comment on this issue it is only to ‘urge’ officers to inform PND recipients that a PND could be revealed as part of an enhanced criminal record check and suggest that “chief officers of police ... *consider* providing this information on the penalty notice” (*emphasis added*, Ministry of Justice 2013b, p.19). These weak sentiments are further undermined by the express statement that the Criminal Justice and Police Act 2001 does not require such information to be provided on the ticket (Ministry of Justice 2013b, p.19). The procedural fairness of the PND system (in both natural and procedural justice senses) requires that PND recipients understand the implications of accepting a PND, as well as the means by which they can challenge their PND.

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<sup>423</sup> However, as noted above, any such explanations should not include any opinions as to the likely success of such a challenge.

<sup>424</sup> That a PND may be revealed in an enhanced criminal records certificate, or that it could be used as evidence of bad character in civil proceedings.

Whilst officers should make greater efforts to (impartially) explain the PND, their ability to do this is hampered when dealing with intoxicated offenders. The guidance specifically prohibits the use of PNDs where a person is “*impaired* by the influence of drugs or alcohol” (*emphasis added*, Home Office 2005a, p.20; Ministry of Justice 2013b, p.15). Despite this, officers at the research site commented that they were encouraged to issue drunk and disorderly/s5 tickets to people on-the-spot wherever possible i.e. in circumstances where people were under the influence of alcohol, but not so intoxicated that they are unable to understand the process. Indeed, 16% of tickets sampled were issued on-the-spot to persons who were intoxicated. Officers reported intoxication in a relatively standardised format on the PND ticket, listing some combination of: ‘the offender was’ ... unsteady on their feet, their breath smelt of intoxicants, their speech was slurred and their eyes were glazed, often ending with the statement “he/she was drunk”. The use of such formulaic templates for evidence (as discussed in Section 3.4.3.7) highlights officers’ ‘account ability’, that is their awareness (and ability) to record and define their actions in a manner that conforms with the ‘presentational rules’ which set out the evidential requirements of the offence (Ericson 1995; Smith and Gray 1983). If they were displaying these visible signs of drunkenness it is unlikely that they would not also be *impaired* by their intoxication. Equally, if (contrary to the evidence given) they were not displaying all those signs of drunkenness, then arguably they were not (legally) ‘drunk’ and as such could not have committed the offence of ‘drunk and disorderly’<sup>425</sup> and thus should not be issued a PND for that offence (although their disorder may fall within some other penalty/non-penalty offence).

The conflict officers face is clear, on the one hand they have been given a power to dispose of alcohol-related offending ‘on-the-spot’ and on the other they have been forbidden from using that power if the person is drunk. Indeed, it appears a curious restriction on the use of PNDs, given that so many penalty offences are alcohol-related, that they cannot be issued to people who are ‘impaired’ by intoxication. However, it is an important restriction on their use. PND recipients need to understand why they have received a PND, the implications of that notice and how they might challenge it. Intoxication *should* therefore influence officers’ decisions as to where to issue PNDs. Whilst statistically intoxication was related to where PNDs were issued, in practice offenders’ intoxication appeared to have little independent impact on officers’ decisions to use PNDs (instead its influence was filtered through offenders’ non-compliance and abuse towards officers (see Section 6.6.1)). The lack of any independent

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<sup>425</sup> The legal definition of ‘drunkenness’ requires a person to be “intoxicated...to the extent of losing control over normal physical and mental functions” (Goff L.J. in *Neale v. R. M. J. E. (a minor)* (1985) 80 Cr. App. R. 20) (See Section 3.2).

impact was particularly apparent in the public urination case discussed in Chapter 6 (Observation Case 3) where officers issued an on-the-spot PND to a person whom they had initially decided to take no formal action against as he was thought to be *too drunk*. Indeed, such was the man's level of intoxication that when he signed the PND he believed he was signing a form to say he could be released from the police van. Whilst only one such case was observed it raises serious questions as to the appropriateness of dealing with drunken offenders on-the-spot through formal sanctions such as PNDs.

Recipients' ability to effectively challenge their PND is questioned considering that a high proportion did not understand why they were issued with the penalty notice and in many cases officers seemingly did not explain their decision. How can anybody challenge their penalty notice if they do not know why they received it? The system is currently designed to incentivise acceptance and encourage the view amongst recipients that a PND is "as inconsequential as a parking ticket" as people are not made aware of the consequences (DCCSP 2011, p.5). Whilst forces are free to design their own PND forms, there are certain details which must be included<sup>426</sup>. It has already been highlighted that officers' descriptions of PNDs could be misleading and discouraged recipients from appealing their notice (see Section 8.4.2.2). Although it is important to try and address that issue, given that this is a low-visibility exercise of police power, the only way to ensure that all PND recipients receive relevant and impartial information about penalty notices is to amend the 2001 Act to state that such information must be included on the ticket. I would also suggest that the guidance be amended to state that drunk and disorderly PNDs should never be issued to people on-the-spot as, if they are (legally) drunk, their understanding cannot be assumed (and they should therefore not be issued with any (on-the-spot) penalty notice) and, if they are not (legally) drunk, they cannot be accused of being *drunk* and disorderly. When faced with such circumstances alternative remedies (such as informal action, a s27 notice or arrest) should be pursued.

#### **8.4.5 Summary: Have the concerns regarding PNDs been realised in practice?**

The current research suggests that PNDs are being used disproportionately against certain groups in society, namely men, young people, ethnic minorities and the unemployed. The

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<sup>426</sup> A penalty notice ticket must include the following information: state the alleged offence; give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it; specify the suspended enforcement period and explain its effect; state the amount of the penalty; state the [designated officer for a local justice area] to whom, and the address at which, the penalty may be paid; and inform the person to whom it is given of his right to ask to be tried for the alleged offence and explain how that right may be exercised.

disproportionate use of on-the-spot fines against certain groups appears endemic to these police-fine systems. Indeed, these same groups were noted to be targeted by similar schemes operating in Australia (see Section 3.4.2). Yet such findings are unsurprising, in fact PNDs were used disproportionately against the very groups that we might expect to be disproportionately affected by police powers (see Section 3.4.4.3). This disproportionate use of PNDs is of particular concern when we consider the subjectivity involved in defining s5 and drunk and disorderly offences, which amount to approximately half of all PNDs issued each year. The current research raises serious questions about the legitimacy of allowing the police to issue fines in cases where they are both the victim and the decision maker. The inequity of this power is further exacerbated given that recipients in the current study reported feeling that they were unable to challenge the PND even where it was felt that the ticket was undeserved.

It was initially envisaged that PNDs would provide a means for officers to deal with offending on-the-spot, however, the cases reviewed suggest that, in practice, this is often not an option for officers dealing with alcohol-related offending. Intoxicated offenders were less likely to be compliant and as such officers resorted to arrest and subsequently the issuing of a PND in custody. Whilst Engel *et al.* (2000) argue that the role of suspect intoxication in officer decision making is filtered through offenders' demeanour, the cases reviewed in the current paper suggest that demeanour is further filtered through offender compliance and officers' ability to gain control of the situation through non-coercive means. However, even where offenders are compliant, the appropriateness of sanctioning intoxicated people on-the-spot is questionable given the risk that they may not understand the process. Whilst officers may be criticised for issuing tickets in circumstances which are (according to the guidance) outside the scope of the PND scheme, on the other hand, the guidance must be criticised for creating a power to target disorder in the NTE and then restricting the use of the power where the offenders are drunk/abusive and thus precluding the use of PNDs in the very circumstances they were created to address. The specific exclusion of people "impaired by alcohol" (Home Office 2005a, p.20; Ministry of Justice 2013b, p.15) queries the extent to which officers could/should issue PNDs on-the-spot for offending in the NTE.

Whilst in Parliament these concerns were dismissed on the basis that PND recipients retain the right to request a trial, this defence is insufficient. Officers have a legal duty to ensure that when issuing PNDs their decisions are free from bias and the offender is afforded a 'fair hearing' *before* the ticket is issued. The procedurally fair treatment of PND recipients would not only ensure that officers are meeting this legal obligation but might also go some way to

encouraging compliance amongst offenders and, as such, would actually aid officers in the execution of their duties.

## 8.5 Concluding comments

It was never the intention of this research to decide whether PNDs were a 'good' or 'bad' tool. Indeed, such is the variety of offences for which this power can be used, and thus the variety of circumstances in which PNDs are issued, it would be far too simplistic to commend or condemn their use entirely. What I have sought to do is to provide an insight into what those circumstances are and, in providing that insight, offer the basis for a debate on the use of penalty notices. The benefit of this power is that it allows anti-social behaviour to be disposed of quickly or, more specifically, to be disposed of more quickly than if officers were to caution or charge the individual. This is not only of benefit to the police but to the recipients who, whilst faced with a (£60 or £90) fine, are able to escape the stigma and hassle of a court appearance. These are benefits which recipients in the current study welcomed. However, these benefits, both for the police and the recipients, are contingent on the notion that PNDs are being used in lieu of a more serious disposal. In practice however this does not appear to be the case, and herein the difficulty lies. The introduction of penalty notices has been associated with mass net-widening, particularly in s5 and drunk and disorderly cases.

This study has called into question the use of PNDs – particularly on-the-spot PNDs – with regards to offending in the NTE. The breadth of these offences is too wide for such tickets to be issued consistently and using these tickets in cases where the individual was abusive towards the police leaves officers open to accusations of bias. This is not to say that the police officers observed were abusing their powers – certainly, in all those cases where the offence was observed from the outset, officers could justify their use of a PND based on the offender's behaviour – however it is the *possibility* of bias which is of concern. If PNDs are to be a legitimate disposal for the police it is imperative that officers are not enabled, or *seen to be enabled*, to use this as a means of punishing people who are abusive towards them. The system as currently designed does nothing to prevent this potential abuse of power.

Whilst a police officer may be deemed to be a fair arbiter in disputes regarding theft, criminal damage, sale of alcohol to a person aged under 18 and many other penalty offences, it is highly questionable whether they can be said to be so in any case where they are themselves the victim. Officers do need to gain control of disorder and may need to resort to arrest in some circumstances. However, that they can then, once the situation (and the offender) has

calmed down, *punish* the perpetrator(s) offends notions of natural justice and questions the legality of the use of PNDs in those circumstances. The legitimacy of affording officers the power to (financially) punish offenders for behaviour which is necessarily subjective is particularly questionable given the discretion afforded to officers in making that decision. I suggested that to overcome such concerns an external party, such as the custody sergeant, should review the evidence in such circumstances and that the recipient should be allowed to present their version of events *before* that third party makes the decision as to whether a PND is appropriate<sup>427</sup>. However, given the large volume of cases in which an ‘officer is victim’, it needs to be considered whether these offences should be penalty offences at all or whether the possibility for bias is just too great. If achieving *order*, rather than *punishment*, is the goal then in practice both informal warnings and s27 notices would be more appropriate responses for managing drunk, but compliant, offenders. For those whose offence is sufficiently serious to warrant arrest alternative options are available (caution, conditional caution, restorative justice or charge).

Throughout the development of the PND scheme, the concerns raised by this power were dismissed on the basis that recipients retain the right to trial. This defence is insufficient for two reasons. Firstly, as I have argued, the right to request a trial has been used to deny people the right to a fair hearing at the time of issue and allows officers to issue PNDs without questioning the offender or explaining their own reasoning, thereby denying the recipient the very information required to effectively challenge the notice. Secondly, the abject failure of PND recipients to exercise this right (despite large volumes of people not paying their PND) questions the extent to which PND recipients see this as a viable option. Indeed, the current study found that a large proportion of PND recipients do not think that magistrates would believe them were they to challenge their penalty notice even where they feel this is undeserved. The new guidance, whilst stating that officers should explain their decision, falls short of ensuring that offenders are offered the opportunity to voice their case (Ministry of Justice 2013b). Given the importance of this for both the natural and procedural justice of the scheme (and in the latter case the relationship between that and compliance), I have suggested that the guidance be amended to ensure all offenders are interviewed.

The original contribution of this thesis has been to provide a much-needed insight into how PNDs are used in practice. The observational data and analysis of PND tickets in particular

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<sup>427</sup> It must however be recognised that previous research has questioned custody officers’ independence from operational officers and as such this is a pragmatic, but limited, solution to the lack of oversight in officers’ use of PNDs (see Section 8.2.4.2).

provide an insight into the circumstances in which PNDs are used, who the recipients are and proportion of notices which are paid, challenged or cancelled. The survey and interview data provide the first account of adult PND recipients' views and experiences of the PND process. These insights are of value to the police, the Government and academics alike. However, the current research is limited. The empirical research was confined to one police force area, yet we know that the use of PNDs varies both within and between forces. Morgan (2009) described the rise of out-of-court disposals as a "quiet revolution" but the rise (and fall) in the use of PNDs has been practically silent. In the ten years since PNDs were first piloted there has been little academic, political or public debate on the use of this power. It is hoped that this study will provide the basis for further research addressing if (and how) the aims of the PND scheme can be realised, whilst minimising their unequal impact and promoting the equitable use of this power and the recipient's right to a fair hearing.

PNDs were a new weapon in the police armoury in the 'fight against crime', one that sought an efficient means of tackling the low-level disorder that impacts upon individuals' and communities' quality of life and confidence in the police. However, the current research questions whether the advantages offered by PNDs are sufficient to outweigh the concerns raised. So do PNDs offer 'swift, simple, effective justice?' Well, they are a (comparatively) swift and simple response to (not always) 'low-level' offending, but they cannot be 'effective' as long as they are sought to pursue divergent aims. As for whether they offer 'justice', the system's current design does not encourage either natural or procedural justice, which, given the impact of fairness on compliance, is something that should concern the police as much as offenders.

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## APPENDICES

### CHAPTER 1: APPENDIX 1 - TABLE

<b>Table A1.1: Full history of PNDs</b>	
<b>Date</b>	<b>Development</b>
<b>PNDs under the Labour Government</b>	
June 2000	Tony Blair proposed the idea of on-the-spot fines for drunken, noisy, loud and anti-social behaviour in a speech to the Global Ethics Foundation in Germany. He suggested that offenders should be marched to a cash-point and ordered to pay £100 for such behaviour.
July 2000	Reports were published in the press that the Prime Minister had held a summit with senior police officers; who were reported as being broadly in favour of the idea of fixed penalties for disorderly behaviour but had criticised the PM's 'cash-point' idea as unworkable (Young 2008, p.171).
August 2000	The Home Office (2000) published an action plan: 'Tackling Alcohol-Related Crime, Disorder and Nuisance'. Reference was made in this document to the potential for fixed penalties to be used to "allow for an effective and speedy, on-the-spot, response to minor offences of public drunkenness, in particular to deal with breaches of local byelaws to restrict alcohol consumption in public places" ( <i>cited in</i> , House of Commons 2001, p.9). It was proposed that a power to detain offenders may also be necessary to issue fixed penalties to those who were too drunk to give their details at the time of the offence.
September 2000	The Home Office (2000) released a four-sided document 'Reducing Public Disorder, the Role of Fixed Penalty Notices: A Consultation Paper'.
October 2000	30 days after it opened, the consultation on the introduction of PNDs closed.
January 2001	The Criminal Justice and Police Bill was introduced to the House of Commons.
May 2001	The Criminal Justice and Police Act 2001 received Royal Assent, introducing PNDs for ten offences: throwing fireworks; wasting police time or giving false report; disorderly behaviour while drunk in a public place; knowingly give a false alarm to a person acting on behalf of a fire and rescue authority; buying or attempting to buy alcohol for consumption on relevant premises by person under 18; making false alarm calls; being drunk in the highway, public place or licensed premises; trespassing on a railway; throwing stones, etc. at a train; consumption of alcohol in a designated public place.
July 2002	The Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002/1837 set the value of the PND for upper tier offences at £80 and lower tier offences £40.
July 2002	The Penalties for Disorderly Behaviour (Form of Penalty Notice) Regulations 2002/1838 prescribed the form which forces must use as a template for PND tickets.
July 2002	Section 5 of the Public Order Act 1986 (behaviour likely to cause harassment, alarm or distress) was added to list of penalty offences under the Criminal Justice and Police Act 2001 (Amendment) Order 2002/1934.
August 2002	The 12 month PND pilot was launched in West Midlands, Essex, Metropolitan Police (piloted in Croydon), North Wales (initially only in the Central division, later force-wide from April 2003).
September 2002	The Policing Bureaucracy Taskforce advocated wider use of PNDs (Roberts and Garside 2005).
October 2002	The Home Office published operational guidance on the use of PNDs and made this accessible to all forces (Krains and Carroll 2006).

December 2002	The Police Reform Act 2002 came into force giving Chief Constables the power to delegate responsibility for issuing PNDs to PCSOs.
March 2003	The 'Respect and Responsibility' White Paper was released stating that PNDs would be extended to 16-17 year olds as well as low-level cases of criminal damage (Home Office 2003a).
November 2003	The Home Office published supplementary guidance for the use of PNDs by PCSOs (Home Office 2003b).
January 2004	Section 87 of the Anti-social Behaviour Act 2003 came into force extending the use of PNDs to 16 – 17 year olds, with a power for the Secretary of State to reduce this to 10 year olds. Section 89(5) of that Act also extended the power to issue PNDs to accredited persons (so 'accredited' via the Community Accreditation Scheme introduced under the Police Reform Act 2002). However, accredited persons were prevented from issuing PNDs in cases of drunk and disorderly or being drunk in a highway.
February 2004	Under the Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2004/316 the penalty for the offence of throwing fireworks in a thoroughfare (in breach of section 80 of the Explosives Act 1875) was raised from £40 to £80, moving it to an upper tier offence.
March 2004	Early results from the pilot PND project were published, presenting an interim evaluation from the first 8 months of the pilot (Spicer and Kilsby 2004).
March 2004	The Alcohol Harm Reduction Strategy is published, in which – despite the fact that PNDs had yet to be rolled-out nationally and the final results of the pilot study were yet to be published – the Government advocated the greater use of PNDs (Prime Minister's Strategy Unit 2004).
April 2004	The PND scheme was fully rolled-out across all forces in England and Wales.
July 2004	The Home Office published supplementary guidance for the use of PNDs by accredited persons (Home Office 2004)
September 2004	The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment No.2) Order 2004/2468 raised the penalty for lower tier offences from £40 to £50 and raised drunk and disorderly from a lower tier to an upper tier offence.
September 2004	Final results from the pilot were published, covering the whole 12 month pilot period (Halligan-Davis and Spicer 2004).
November 2004	Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004/2540 came into force introducing theft, criminal damage, littering and a number of offences related to the purchase/supply of alcohol to the list of penalty offences (see Table 1.1).
December 2004	Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004/3166 reduced the minimum age at which a person could be eligible to receive a PND to 10. Notices issued to 10-15 year olds were to be paid by the parent or guardian of the recipient who would have 21 days from when they were notified that their child had been issued with a PND to pay the notice (rather than 21 days from when the PND was issued as per the adult PND scheme).
December 2004	Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment No. 4) Order 2004/3371 amended Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002/1837 to provide that a lower fee was payable with respect to PNDs issued to persons aged under 16. NB: in practice this lower amount was payable by the parent or guardian of the recipient see SI 2004/3166 above.
December 2004	The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment No. 3) Order 2004/3167 set out the PND fees for tickets issued to under 16s as £40 for an upper tier offence and £30 for a lower tier offence.
December 2004	The Penalties for Disorderly Behaviour (Form of Penalty Notice) (Amendment) Regulations 2004/3169 provided for new forms to be used when issuing PNDs to under 16s.
March 2005	The Home Office (2005a) published revised operational guidance for the use of PNDs.

March 2005	The Penalties for Disorderly Behaviour (Form of Penalty Notice) (Amendment) Regulations 2005/630 amended the Penalties for Disorderly Behaviour (Form of Penalty Notice) Regulations 2002/1838 (as amended by SI 2004/3169) prescribing a new form that should be used when issuing PNDs to under 16s (this made corrections to a previous form outlined in SI 1004/3169, see above).
April 2005	Criminal Justice and Police Act 2001 (Amendment) Order 2005/1090 added sale of alcohol to a drunken person and buying or attempting to buy alcohol by a person under 18 to the list of penalty offences.
April 2005	Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2005/581 designated selling alcohol to a drunken person as a higher tier offence, and buying or attempting to buy alcohol by a person under 18 as a lower tier offence.
July 2005	Six months after the power to issue PNDs was extended to 16-17 year olds, supplementary guidance was issued regarding the issuing of PNDs to people in this age group (Home Office 2005b).
July 2005	Sections 122 (3)(a) and 5(b) of the Serious Organised Crime Act 2005 amended Schedules 4 and 5 of the Police Reform Act 2002. This prohibited PCSOs from issuing PNDs in cases of theft or littering and prohibited accredited persons from issuing PNDs for any of the following offences: being drunk in a highway; drunk and disorderly; theft; criminal damage, and, littering.
October 2005	Additional guidance is published on the use of PNDs for 10-15 year olds (Home Office 2005c), this guidance stated that the power to issue PNDs to under 16s was restricted to those forces where the power was being piloted and that PCSOs were not empowered to issue PNDs to 10-15 year olds.
November 2005	The Licensing Act 2003 (Consequential Amendments) Order 2005/3048 substituted a number of previous penalty offences under the Licensing Act 1964 and added supply of alcohol by or on behalf of a club to a person aged under 18.
January 2006	Respect Action Plan was launched (Home Office 2006a). This stated that level of fine for upper tier offences would be raised to £100 (this was proposal never implemented).
March 2006	The Office for Criminal Justice Reform published 'Penalty Notices for Disorder: Review of practice across police forces' (Kraina and Carroll 2006) with a view to identifying and developing best practice in the PND scheme.
November 2006	The Government released the 'Strengthening Powers to Tackle Anti-social Behaviour' consultation paper (Home Office 2006b). This proposed the introduction of deferred penalty notices. Such deferred PNDs would give the recipient the option meet a set of conditions (much like an anti-social behaviour contract) rather than pay their PND. The agreement would last for 3 to 6 months. If the recipient kept to the conditions (at the end of that period) the PND would be discharged. If they breached the conditions they would have to pay the original notice. It was suggested that rather than the normal enforcement process (whereby the individual has 21 days to pay before the notice is registered as a fine) recipients would have only 7 days to pay the PND after which the notice would be doubled and, after 14 days, trebled. The consultation paper also proposed moving two offences (throwing stones at a train and consumption of alcohol by a person under 18) from lower tier to upper tier offences. It also reiterated proposals from the Respect Action Plan (Home Office 2006a) to increase the penalty for upper tier PNDs to £100. Neither of these proposals were implemented.
April 2007	Section 15 of the Police and Justice Act 2006 came into force. This amended the Police Reform Act 2002 to allow Chief Constables to delegate the power to issue PNDs to weights and measures inspectors.
November 2008	The results from the youth PND pilot scheme (for 10-15 year olds) were published (Amadi 2008).

January 2009	Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2008/3297 proposed the addition of a 21 new penalty offences including: sale of tobacco to persons under 18; threatening to destroy or damage property; making off without payment; possession of cannabis, touting for hire car service; a number of alcohol related offences contrary to sections 142, 143 and 145 of the Licensing Act 2003; and certain railway byelaw offences under the London Regional Transport Railways Byelaws 2000 and Framework Railway Byelaws 2005. This order was laid before Parliament on 2 <sup>nd</sup> January 2009 and was due to come into force on 26 <sup>th</sup> January 2009; however it was revoked on 23 <sup>rd</sup> January 2009 by SI 2009/83 (see below).
January 2009	Criminal Justice and Police Act 2001 (Amendment) Order 2009/110 added possession of cannabis to the list of penalty offences; this was laid before Parliament on 27 <sup>th</sup> January 2009 and came into force the following day.
January 2009	The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2009/83 set the fine for possession of cannabis as £80. This also revoked SI 2008/3297 (above) which proposed the inclusion of 21 new penalty offences.
March 2009	The Private Members Bill: Theft from Shops (Use of Penalty Notices for Disorder) was laid before Parliament. This Bill contained the following proposed amendments to the police guidance on issuing PNDs: PNDs could only be used in cases where the value of property stolen was £100 or less (rather than £200); PNDs for theft should only be given to people aged 16+; the perpetrator should have no previous convictions; the property must have been returned in an undamaged state; the victim (shop owner/manager) must consent to the use of a PND and such notices must be issued in a police station. It was also proposed that the sentencing guidelines be amended so that persistent offenders (defined as people who had been found guilty of, or issued with a PND for, two or more theft offences in the last two years) should be subject to a fine of not less that level 3 on the standard scale, or a community sentence; and that the details of persons in receipt of a PND should be entered onto the Police National Computer within 24 hours of the offence taking place. This Bill was dropped by its sponsor before its second reading. Amendments to the guidance relating to the value of property were however made in July 2009 (Ministry of Justice 2009a; 2009b).
July 2009	The Court of Appeal held in <i>R v. Gore and Maher</i> [2009] EWCA Crim 1424 that receipt of a PND would not preclude the subsequent prosecution of a person for a different (more serious offence) arising out of the same facts. This is despite an express prohibition in the Criminal Justice and Police Act 2001 from bringing any proceedings for the offence “to which a penalty notice relates” within the 21 day enforcement period (see CIPA s5(1)). As well as a direction that “no proceedings may be brought for the offence” if the PND is paid within 21 days (see CIPA s5(2)). In this case, Gore and Maher were issued with PNDs for s5/drunk and disorderly however it later emerged that the PNDs were inappropriately issued as the victim had fractured their elbow. They were both subsequently convicted of grievous bodily harm. The Court of Appeal held that this revocation of the PND was not an abuse of process as, whilst they emerged out of the same events, the PND was not issued for the offence of grievous bodily harm (which was not known at the time of issue) and as such to prosecute them for the more serious offence did not breach s5 of the CIPA 2001.
July 2009	The Ministry of Justice Circular 2009/04 made the following amendments to the police guidance on issuing PNDs: clarified earlier guidance to state that PNDs for ‘retail theft’ could only be issued for theft from a shop; introduced a limit (of one) on the number of PNDs a person could receive for retail theft; reduced the value of goods for which a PND for theft could be issued (from £200 to £100); reduced the value of damage caused for which a PND for criminal damage could be issued (from £500 to £300); amended guidance regarding theft and criminal damage PNDs to state that people suspected of having a substance abuse problem <i>should not</i> be issued in those circumstances (Ministry of Justice 2009a). Earlier guidance had stated it <i>may not</i> be appropriate to issue PNDs in such circumstances. Interestingly however, the ‘may not’ rule continued to apply to PNDs issued for other offences until April 2013 (Home Office 2005a; Ministry of Justice 2013b).

July 2009	The Ministry of Justice Circular 2009/05 provided officers with guidance on issuing of PNDs (for the new penalty offence of) possession of cannabis. Unlike other PNDs, the use of this PND was restricted to over 18s and only one PND should ever be issued for this offence. It was proposed that, unless there were aggravating circumstances, cannabis PNDs should be the second stage in a three-step enforcement process for this offence. First-time offenders should receive a cannabis warning, second offences should be dealt with via PND and any subsequent offences should be charged.
November 2009	Following the revelation (in the BBC Panorama programme 'Assault on Justice') that over 40,000 assault cases result in a caution (then Minister for Justice), Jack Straw launched a review of out-of-court disposals which would include a review of the use of PNDs (Travis 2009).
December 2009	Jack Straw set out the terms of reference for the OJIR review of out-of-court-disposals: examining the evidence on both the use and enforcement of out-of-court disposals; compliance with the legislation and guidance on the use of out-of-court disposals; and identifying any issues with operational practices. The objective was to have a "proper understanding of the operation of the existing out-of-court disposals framework" (Jack Straw (Lab) HC Deb (2009-10), written answers col. 60WS). To that end, it would explore: national trends in the use of out-of-court disposals as well as geographical variation in practice (including the impact of performance management frameworks on this); whether out-of-court disposals were used "for serious offences, and the consultation with victims in such cases"; and whether they were 'effective'. Included within the consideration of 'effectiveness' was: whether out-of-court disposals were issued to repeat offenders; compliance with and enforcement of these disposals; the impact of their use on public confidence; and their efficiency i.e. the costs and benefits of these various disposals to criminal justice agencies. It should be noted that the subsequent review was not extensive as this proposal suggests (see Section 3.3).
January 2010	Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2010/64 repealed the requirement that PNDs must be in a form prescribed by regulations made by the Secretary of State (this applied to both the adult and juvenile schemes). This allowed individual forces to re-design the form to meet their own requirements. However, in accordance with s.3(3)(b)-(g) of the Criminal Justice and Police Act 2001 the notice must continue to include the following details: the alleged offence; such particulars of the circumstances as are needed to provide reasonable information about the offence; an explanation of the 21 day suspended enforcement period; the amount of the penalty; where and to whom payment may be made; and an explanation of recipients' right to request a trial.
<b>PNDs under the Coalition Government</b>	
August 2010	The Court of Appeal ruled in <i>R v. Hamer</i> [2011] 1 W.L.R. 528 that payment of a PND did not impugn good character of the recipient as it was not an admission of any offence. As such, receipt of a PND had no effect on an individual's entitlement to a good-character direction.
December 2010	The Ministry of Justice (2010c) released the Green Paper 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders'. This included proposals to amend the PND scheme to allow suspects to pay to attend appropriate educational courses rather than paying the usual financial penalty. No mention was made of the fact that a number of forces already operated such 'waiver schemes'. The paper also proposed to extend PNDs to "certain minor disorder offences, including those committed in Royal Parks" (Ministry of Justice 2010c, p.64), however it did not disclose what offences this might include.
February 2011	The Home Office (2011) published a consultation 'More Effective Responses to Anti-Social Behaviour'. This document reiterated proposals to introduce a PND education option as outlined in the 'Breaking the Cycle' Green Paper (Ministry of Justice 2010c).

June 2011	The initial findings from the OCJR Review of out-of-court disposals were published (OCJR 2010). It was noted when this report was published that, following the change of Government in May 2010, the review had been terminated (hence only the 'initial findings' were ever published), but that these findings had informed the proposals contained in the 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders' Green Paper (Ministry of Justice 2011d).
January 2012	The Ministry of Justice (2012b) published a consultation document 'Getting it right for victims and witnesses' which included proposals to add a £10 victim surcharge to all PNDs.
March 2012	The Government released their Alcohol Strategy (Home Office 2012b) which stated that they would support local police forces to tackle alcohol-related disorder and violence occurring in hospital accident and emergency departments. They suggested empowering hospital security staff (via the Community Safety Accreditation Scheme) to issue s5 PNDs "to those individuals whose drunken behaviour is likely to cause harassment, alarm or distress. They can also take action against the consumption of alcohol in a designated public place" (Home Office 2012b, p.13). The use of PNDs in that manner would not only <i>directly contradict</i> the guidance which states that PNDs cannot be issued to people who are impaired by alcohol, but it also appears to go against the spirit of the legislation which has always (and would continue under these proposals to) prevent accredited persons from issuing PNDs for drunk and disorderly or being drunk in a highway.
July 2012	The Government Published the White Paper 'Swift and Sure Justice' (Ministry of Justice 2012d) which included proposals to introduce a 'justice test' to try and address concerns that PNDs (and other out-of court disposals) were being issued inappropriately. This test would promote the fair and consistent use of all out-of-court sanctions. A subsequent update, on this and other White Papers – including one on community sentences which proposed the introduction of fixed penalties, to be issued by offender managers, to deal with offenders who breach the conditions of their community order – did not make any mention of the so-called 'justice test' (Ministry of Justice 2013g). In that update it was reported that a full strategy would be published by May 2013, however this had not been published by June 2013. These proposals had not been implemented at the time of publication.
July 2012	Criminal Justice and Police Act 2001 (Amendment) Order 2012/1430 added the following offences (occurring in Royal Parks), to the list of lower tier penalty offences: dropping or leaving litter or refuse except in a receptacle provided for the purpose; using a pedal cycle, a roller blade etc except on a park road or in a designated area; and failing to remove immediately any faeces deposited by an animal of which that person is in charge.
April 2013	Section 132 and Schedule 23 of the Legal Aid, Punishment and Sentencing of Offenders Act 2012 came into force. This Act excluded young people from the PND scheme, raising the minimum age to 18. It also introduced a 'penalty notice with an education option' whereby Chief Constables could (at their discretion) establish education programmes which PND recipients could attend. Following completion of the course their PND would be cancelled. Although the legislation states that the cost of the course may not be more (or less) than the fee stated in the regulations, the subsequent guidance provides for Chief Constables to "determine an appropriate course fee to cover running costs" (Ministry of Justice 2013, p.23).
April 2013	New guidance on the use of PNDs was released by the Ministry of Justice (2013b). This largely served to consolidate the previous amendments made via Ministry of Justice Circulars however there are some notable differences between this and the previous PND guidance (Home Office 2005a). Namely (as PNDs no longer need to be issued using the prescribed form) officers are no longer directed that they must complete a witness statement in all cases. Although the views of victims should still be sought, their views are no longer decisive in any cases (previously PNDs could not be issued for theft/criminal damage where the victim was 'non-compliant' (Home Office 2005a)). Officers are now urged to tell PND recipients of the consequences of accepting a PND, however it is also stated that the legislation does not dictate that such information be included on the PND ticket.

June 2013	The Senior Presiding Judge for England and Wales published 'Guidance for Magistrates involved in the scrutiny of out-of-court disposals' (Gross LJ 2013). This guidance states that whilst magistrates may engage in oversight in the use of these powers – so as to promote consistency and transparency – they must maintain the separation of powers between the police and judiciary and as such scrutiny arrangements should be retrospective. The purpose is to provide generalised feedback rather than to endorse or rescind disposals issued in individual cases.
July 2013	The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2013/1165 increased the amount payable in respect of penalty notices by £10. Thus lower tier offences attract a £60 fine and upper tier offences £90. This increase served to implement government proposals, outlined in the 'Getting it right for Victims and Witnesses' consultation (Ministry of Justice 2012b) to extend the victim surcharge scheme beyond offenders sentenced to a fine in court to include a broader range of sentences and offenders. The additional revenue will be allocated to victim services. Schedule 23 also removed the requirement that an officer must be in uniform to issue a PND and that PNDs issued in custody must be issued by an authorised officer.
September 2013	Following a review of the simple caution, the Ministry of Justice (2013j) announced that they would launch a consultation on the use of out-of-court disposals the use of which was thought to be inconsistent and confusing, causing a lack of public confidence in these powers.
October 2013	Section 8 of the Protections of Freedoms Act 2012 came into force. This provides for PND recipients' fingerprint and DNA data to be retained for two years. There was previously no limit on how long PND recipients' data could be retained.
November 2013	The Ministry of Justice (2013l) – in partnership with: the police, the Home Office, the Attorney General's Office and the Crown Prosecution Service – launched a consultation on the use of out-of-court disposals (including PNDs). In light of the ad hoc development of the OOC landscape, and in recognition of the potential for the perceived misuse of such powers (for serious and violent offences) to damage public confidence in out-of-court disposals, the consultation sought to draw together expertise on OOCs with a view to ensuring their effectiveness, simplicity and transparency.

## **CHAPTER 4 APPENDICES**

### **Appendix 1: The PND ticket**

These images are copied from Schedules 1 and 2 of the (now revoked) Penalties for Disorderly Behaviour (Form of Penalty Notice) Regulations 2002<sup>428</sup>. Schedule 1 details the proscribed form for the adult PND scheme, however only sections 1-3 of the ticket are included in the regulations. As such, although the research is focused on the adult PND scheme, sections 4-6 of the PND ticket for the youth scheme are included here. The layout of these two tickets is broadly representative of the manner in which PNDs were formatted in the force area reviewed; however, in the force area reviewed the 'additional details' (shown here in part 6a), appeared underneath part 4. Also the section for the details of the corroborating officer appeared in part 6a, rather than 6b (as below). Finally, the tickets reviewed included a few lines for additional evidence at the bottom of part 6a and rather than having space for a description of the recipients' appearance (as below) there were instead a series of ticket boxes.

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<sup>428</sup> The reproduction of these images is licensed under the under the Open Government Licence v2.0.

**POLICE  
PENALTY NOTICE  
PENALTY AMOUNT £XX**

IMPORTANT - READ THE NOTES ON THE BACK OF THIS FORM

**PART 1 RECIPIENT COPY** PN No.

TITLE  SURNAME

FORENAMES

DATE OF BIRTH (ddmm/yyyy)  ADDRESS

POST CODE  AT  HRS.

DATE OF ISSUE  OFFENCE DATE

AT (LOCATION)

OFFENCE CODE

YOU (offence particulars) .....

.....

.....

CONTRARY TO (Act containing offence) .....

.....

PLACE OF ISSUE: Street  Custody

I acknowledge receipt of this Penalty Notice  
Signature .....

ISSUED BY: 

Surname	Signature
---------	-----------

Warrant No.  Division

Rank

**PART 2 COMPLETE ONE SIDE ONLY**

Send Part 2 and payment of £XX to:  
The Justices' Chief Executive, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXX  
Telephone No. XXX XXXX XXXX

I enclose the sum of £XX as payment in respect of the offence mentioned in PART 1 of this notice.

NAME .....

ADDRESS (BLOCK LETTERS) .....

..... POST CODE

Or, you may phone the Tel. No. above or complete the following section and pay by credit/debit card.  
I authorise the Justices' Chief Executive to debit my Mastercard, VISA, Switch or Solo account with the sum of £XX.  
Card Holder's Signature .....

Expiry Date  Today's date

Credit/Debit Card No.

Issue No.



**XXXXXXXXXX POLICE  
JUVENILE PENALTY NOTICE  
PENALTY AMOUNT £**

**PART 4 CTO COPY**                      PN No.

**DETAILS OF JUVENILE: SURNAME**

**FORENAMES**

**DATE OF BIRTH (ddmm/yyyy)**                      **ADDRESS**

**POST CODE**

**OFFENCE TIME**                                      **OFFENCE DATE**  
 **HRS**                                     

**AT (LOCATION)**

**OFFENCE CODE**

**YOU (offence particulars)** .....

.....

.....

**CONTRARY TO (Act containing offence)**

.....

**PLACE OF ISSUE:**                      Street                       Custody

**I acknowledge receipt of this Penalty Notice**  
Signature .....

**ISSUED BY:**                      Surname                      Signature

**Warrant No.**                       **Division**

**Rank**

Part 5 was an exact replica of Part 4 (itself a replica of Part 1) except where part 4 states 'CTO copy' part 5 states 'court copy'.

**XXXXXXXXXX POLICE  
JUVENILE PENALTY NOTICE  
PENALTY AMOUNT £  
DETAILS OF JUVENILE**

PART 6A

PN No.

**MUST BE COMPLETED**

**ADDITIONAL DETAILS OF JUVENILE**

Gender: M  F  IC Code  SD Code

Notice Issue Date (CTO only)

3rd Party Witness Statement: Particulars Obtained?

Y  N

Notebook No.

Local Authority Code

Custody (Pic) No.

**IMPORTANT INFORMATION:**

**ANY STATEMENT OFFERED BY THE SUSPECT OR A 3RD PARTY  
WITNESS SHOULD BE RECORDED IN YOUR POCKET NOTEBOOK**

HEIGHT:  ft.   in. BUILD .....

COMPLEXION .....

DESCRIPTION and/or VISIBLE DISTINCTIVE MARKS AND FEATURES

.....

.....

.....

.....

.....

.....

.....

REPLY TO CAUTION

.....

.....

.....

AT [time]  ON [date]

I/D CHECKS MADE AT POINT OF ISSUE {e.g. documents seen}

ID Card  Passport  Bank/Credit Card  Bus Pass

Travel/Photo Card  IND Card  PNC  Radio  Other

Specify Other.....

Details (e.g. card/passport no.).....

Fingerprints taken  Photograph taken  DNA taken



## **Appendix 2: The questionnaire**

**Please note that whilst the wording of questions has not been altered, the formatting has been amended to complement the thesis.**

### **The Research**

You are being invited to take part in a research project examining the use of on-the-spot fines for non-motoring offences (also known as Penalty Notices for Disorder). Before you decide whether to take part it is important that you understand why the research is being done and what it will involve. Please read the following information carefully and discuss it with others if you wish. Please contact me at the address below if there is anything that is not clear or if you would like more information:

Mail: School of Law, University of Sheffield, Bartolomé House, Winter St., Sheffield, S3 7ND

E-mail:

[Lwp09skm@sheffield.ac.uk](mailto:Lwp09skm@sheffield.ac.uk)

Tel: 07581259950

### **The Purpose of the Research**

This is a student research project being undertaken in pursuit of a PhD at the University of Sheffield. This project aims to examine the use of on-the-spot fines and their impact and effect on the people given such notices. You have been asked to take part in this project because you have been issued with an on-the-spot fine. You will be asked to discuss the

circumstances in which the on-the-spot fine was issued, whether you contested or accepted the Notice, whether you paid the Notice within the 21 day limit, as well as your reasons for payment/non-payment of the notice and the impact the Notice had on you.

### **Participation**

It is up to you to decide whether or not to take part. If there are any questions you do not wish to answer you may decline and you are free to withdraw from the research at any time

Whilst there are no immediate benefits for those people participating in the project it will give you an opportunity to voice your opinion about your experience of receiving an on-the-spot fine.

If you decide to take part you should complete the questionnaire (which will take approximately 5-10 minutes to complete) below and return in the attached envelope.

### **Confidentiality**

All the information collected about you during the course of the research will be kept strictly confidential. [NAME OMITTED] Police have sent you this survey but you should return it directly to the

University. All data collected will be anonymised i.e. you will not be identified identifiable, to the police or anyone else or in any reports or in publications.

### **Research Results and Publication**

The results of the research will be published as a PhD thesis when completed. Anonymised data collected may be used in future research on penalty notices undertaken by the researcher and may be published. You will not be identified in any publications.

### **Ethics**

This project has received ethical approval from the University of Sheffield, School of Law Ethics Review Board.

### **Complaints**

If you have any complaints about this research, or wish to raise any concerns you should contact my PhD supervisor, Professor Joanna Shapland at the School of Law, University of Sheffield, Bartolomé House, Winter Street, Sheffield, S3 7ND, or e-mail: [j.m.shapland@sheffield.ac.uk](mailto:j.m.shapland@sheffield.ac.uk)

This survey relates to penalty notices for disorder, when answering the following questions please consider only notices received for disorderly behaviour not motoring/speeding offences

Q1. Have you ever received a penalty notice for disorder? Yes  No

Q2. How many penalty notices for disorder have you received? \_\_\_\_\_

Q3. What was your most recent penalty notice for?

Possession of cannabis/cannabis resin  Theft  Urinating in public

Drunk and Disorderly  Behaviour likely to cause harassment, alarm or distress

Criminal Damage  Other (SPECIFY THE TYPE OF OFFENCE) \_\_\_\_\_

#### About the penalty notice for disorder

Q4. When did you receive your most recent penalty notice? (MONTH/YEAR) \_\_\_\_\_

Q5. What was the name of the police force who issued you with your most recent penalty notice for disorder? E.g. [NAME OMITTED] Police \_\_\_\_\_

Q6. Who was your most recent penalty notice issued by?

Police Officer

Police Community Support Officer

Don't Know

Other (SPECIFY)

Q7. Where did you receive your most recent penalty notice for disorder?

On the street

At the police station

Other (SPECIFY)

Q8. The following statements relate to your perceptions of the officer who issued you with your last penalty notice. Indicate how much you agree or disagree with the following statements by ticking one box for each question to indicate your opinion.

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
a. I willingly accepted the decision of the officer					
b. The officer did a good job of handling the situation					

Q9. How much was your most recent penalty notice for disorder? £50 £80 Don't Know

Q10. Did you pay the penalty notice on time? (i.e. before it was registered as a fine at the magistrates' court)

Yes – Please go to Q11.

No – Please go to Q12

**Q11. Why did you pay the penalty notice on time? Please tick all that apply**

I didn't want to be charged more for late payment

I didn't want to appear in court

Embarrassment

Paying on time is the right thing to do

I deserved the penalty

Ease of paying

Other (PLEASE SPECIFY)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Please go to Q15.**

**Q12. Why didn't you pay the penalty notice on time? Please tick all that apply**

I couldn't afford to pay

I refused to pay on principle

I refused to pay because the cost of penalty notices is too much

I didn't commit the offence

I refused to pay because the procedure for issuing penalty notices is not fair

I forgot to pay

I requested a court hearing

There wasn't enough time to pay

Other (PLEASE SPECIFY)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Q13. Was your penalty notice registered as a fine in the magistrates' court?**

Yes  No

**Q14. Have you paid the fine issued by the magistrates' court?**

Yes  No  Not applicable

**Please go to Q15**

**Q15. Were you aware that you can refuse to pay a penalty notice and instead request to have your case heard in court?**

Yes  No

**Q16. Did you request to have a court hearing?**

Yes – Please go to Q17.  No – Please go to Q19

<p><b>Q17. What were your reasons for requesting a court hearing? Please <u>tick all that apply</u></b></p> <p><input type="checkbox"/> I didn't commit the offence</p> <p><input type="checkbox"/> I didn't think I deserved the notice</p> <p><input type="checkbox"/> I thought I would get a less severe sentence</p> <p><input type="checkbox"/> I thought I would be found not guilty</p> <p><input type="checkbox"/> Other (PLEASE SPECIFY) _____</p> <p><b>Q.18 What was the outcome of your court hearing?</b></p> <p><input type="checkbox"/> Case discontinued before getting to court</p> <p><input type="checkbox"/> Found not guilty</p> <p><input type="checkbox"/> Found guilty. Fined £ <u>    </u> (insert amount)</p> <p><input type="checkbox"/> Found guilty. Sentenced to community service/ community payback</p> <p><input type="checkbox"/> Other</p>	<p><b>Q19. What were your reasons for <u>not</u> requesting a court hearing? Please <u>tick all that apply</u></b></p> <p><input type="checkbox"/> I thought I deserved the notice</p> <p><input type="checkbox"/> I didn't think I would get a fair hearing</p> <p><input type="checkbox"/> I didn't want to risk getting a more severe sentence</p> <p><input type="checkbox"/> I didn't want the hassle of going to court</p> <p><input type="checkbox"/> I didn't know you could request a court hearing</p> <p><input type="checkbox"/> I didn't want to risk getting a criminal record</p> <p><input type="checkbox"/> Other (PLEASE SPECIFY)</p> <p>_____</p> <p>_____</p>
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**Q20. The following questions relate to your experience of being issued with a penalty notice**  
**Please indicate how much you agree or disagree with the following statements about the last penalty notice you received. Please tick one box for each question to indicate your opinion.**

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
a. I understand why I was issued with a penalty notice					
b. The officer who issued me with the penalty notice considered my views					
c. Since I received the penalty notice I am more suspicious of the police					
d. I was treated the same as anyone else would be in the same situation					
e. The officer made the decision to issue me with a penalty notice based on the facts					
f. The decision to issue me with a penalty notice was reached fairly					
g. The officer who issued me with the penalty notice treated me with respect					
h. The officer who issued the penalty notice spoke to me politely					
i. The officer who issued me with the penalty notice explained why I was being issued with the notice					

**Q21. The following questions relate to your reaction to receiving a penalty notice**  
**Please indicate how much you agree or disagree with the following statements about the last penalty notice you received. Please tick one box for each question to indicate your opinion.**

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
a. I was relieved to receive a penalty notice rather than a more severe punishment					
b. Being given a penalty notice was what I deserved in the circumstances					
c. In the circumstances, a penalty notice was a disproportionately harsh response to my behaviour					
d. The officer who issued me with the notice tried to do the right thing by me					

**Q22. The following questions relate to your behaviour since receiving the penalty notice**  
**Please indicate how much you agree or disagree with the following statements about the last penalty you received. Please tick one box for each question to indicate your opinion.**

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
a. I am more wary of being caught breaking the law since I received the penalty notice					
b. Receiving a penalty notice has had a big effect on what I do					
c. If I was in a similar situation again I would behave the same way					
d. I am more wary of what I do since I received the penalty notice					

**Q23. Since you received the penalty notice have you committed a similar behaviour again?**

Yes

No

Don't Know

Prefer not to say

**Q24. The following questions relate to your perceptions of the penalty notice system generally**

**Please indicate how much you agree or disagree with the following statements about your penalty notice. *Please tick one box for each question to indicate your opinion.***

	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
a. If you receive a penalty notice paying it on time is the right thing to do					
b. If you cooperate with the police they are likely to cooperate with you					
c. I always try to obey the law, even if I think it is unreasonable					
d. If you don't cooperate with the police they will get tough with you					
e. The cost of penalty notices (in £s) is fair					
f. I don't care if I'm committing a penalty notice offence as long as I don't get caught					
g. When people are caught for offences that result in a penalty notice their rights are well protected					
h. People who go to court to challenge their penalty notice get a fair hearing					
i. There's no point challenging a penalty notice in court as the magistrates will not believe a member of the public over a police officer					
j. Receiving a penalty notice puts people off breaking the law again					

**Q25. In the box below please write any comments you would like to make about the penalty notice system and your experience of being issued with a penalty notice.**

The following questions are about your personal characteristics. This information is needed in order to categorise the responses and people's ability to pay. All information given is confidential. Please enter your details as they were at the time you received your most recent penalty notice for disorder

Q26. How old were you when you received your last penalty notice? \_\_\_\_\_ Years Old

Q27. What is your gender?  Male  Female

Q28. What was your overall annual PERSONAL income from all sources at the time you received your last penalty notice? This includes earnings from employment or self-employment, income from benefits and pensions, and income from other sources such as interest from savings. Please tick one

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Under £2,500      | <input type="checkbox"/> £2,500 - £4,999   | <input type="checkbox"/> £5,000 - £9,999   |
| <input type="checkbox"/> £10,000 - £14,999 | <input type="checkbox"/> £15,000 - £19,999 | <input type="checkbox"/> £20,000 - £24,999 |
| <input type="checkbox"/> £25,000 - £29,999 | <input type="checkbox"/> £30,000 - £34,999 | <input type="checkbox"/> £35,000 - £39,999 |
| <input type="checkbox"/> £40,000 - £44,999 | <input type="checkbox"/> £45,000 - £49,999 | <input type="checkbox"/> £50,000 or more   |

Q29. Which of the following best describes your financial circumstances at the time you were issued with your most recent penalty notice?

- |  |  |
|--|--|
| <input type="checkbox"/> Managing quite well, able to save or spend on leisure | <input type="checkbox"/> Getting into difficulties |
| <input type="checkbox"/> Just getting by, unable to save if wanted to          | <input type="checkbox"/> Don't know                |

Q30. To which of these ethnic groups do you consider yourself to belong? *Please tick one*

- |   |   |
|---|---|
| <input type="checkbox"/> Asian or Asian British | <input type="checkbox"/> Mixed – White and Asian            |
| <input type="checkbox"/> Black or Black British | <input type="checkbox"/> Mixed – White and Black Caribbean  |
| <input type="checkbox"/> Chinese                | <input type="checkbox"/> Mixed – White and Black African    |
| <input type="checkbox"/> White – British        | <input type="checkbox"/> Mixed – Any Other Mixed Background |
| <input type="checkbox"/> Other _____            | <input type="checkbox"/> White – Other White Background     |

Q31. Which of the following best describes your employment status at the time you received your most recent penalty notice?

- |  |  |
|--|--|
| <input type="checkbox"/> Working full-time (30+ hours per week)  | <input type="checkbox"/> Retired                   |
| <input type="checkbox"/> Working part-time (8-29 hours per week) | <input type="checkbox"/> Unemployed                |
| <input type="checkbox"/> In education full-time (school/student) | <input type="checkbox"/> Looking after family/home |
| <input type="checkbox"/> Other (PLEASE SPECIFY)                  |  |

Q32. What were the first four digits of your postcode when you received the penalty notice? \_\_\_\_\_

I am seeking volunteers to take part in interviews about penalty notices for disorder, the interviews may be either face-to-face or over the phone. Whilst the above survey is entirely anonymous I will require your contact details. If you would like to be interviewed please provide these in the space below, if you do not want to be interviewed leave this space blank.

If you would like any more information about the research please contact me on: [OMITTED]

**Thank you for taking the time to complete this survey. Please return in the envelope**

### Appendix 3: PND recipient interview schedule

**Key: BOLD = SAME FOR ALL**

*Italics = vary according to survey findings*

#### Info/Consent

Just to remind you about the research, I am doing this research as part of my PhD which I'm doing at the University of Sheffield. I'm looking at the use and impact of on-the-spot fines and how they are perceived by people who have received these notices. The interview is completely voluntary so if you want to stop at any point or if there are any questions you don't want to answer then that's fine – just let me know. All your responses will be confidential, so you won't be identified in any reports. Are you happy for me to record the interview? And, before we start, do you have any questions about the research project?

#### General Perceptions of the PND Process

- Q1. Ok, so before we talk about your penalty notice I just wanted to get your opinion on penalty notices more generally. So if I tell you they can be issued for a range of offences, things like, drunk and disorderly, possession of cannabis, shop theft, criminal damage and dropping litter. And, that for each of those offences, it's a standard fine of either £50 or £80. Do you think that's fair?
- Q2a. Do you think that penalty notices are a good way of dealing with those sorts of offences?
- Q2b. Do you think there's a better way to deal with those kinds of offences?
- Q3. In the survey you said that you *did/didn't* think the cost of penalty notices, £50 or £80, is fair? Why is that?
- Q4. In the survey you said that you *did/didn't* think that penalty notices put people off breaking the law again, why is that?
- Q5. When you receive a penalty notice, if you don't want to pay it, or you don't agree with it, you have the option to request a court hearing. So instead of paying the notice you can be tried for the original offence. In the survey you said that you *thought/ didn't think/ weren't sure* whether people who go to court to challenge their penalty notice would get a fair hearing. Why is that?

*Probe re magistrates not believing them*

*Ask whether they think that might affect whether people decide to challenge penalty notices*

#### Their PND

- Q7. So, moving on to consider the penalty notice you received ...

**Confirm details of their PND**

**Where, when, issued by, what for**

**Q8. So, can you just describe the circumstances of what happened when you received the penalty notice?**

*If more than one person involved, ask what happened to the others – did they also get PNDs?*

**Q8a. How satisfied were you with the attitude of the officers at the scene/who issued you with the notice?**

**Q8b. Were they arrested? If so, ask:**

*You said in the survey that the officer who issued you with the notice was/wasn't polite and treated you with respect – was this the officer at the station or the officers who arrested you?*

*How did the officers at the station treat you?*

*How did you feel being kept in a cell?*

*How long were you held for?*

*Did you get any legal advice?*

*If so, why? If not, why?*

*Did you have your fingerprint or DNA data taken?*

*If so, how did you feel about this?*

*When did you become aware that they were going to offer you a penalty notice?*

**Q9. In the survey you said that you *did think /didn't think /weren't sure* if the officer's decision to issue you with a penalty notice was fairly reached, why do you think it *was/wasn't* fair?**

**Q10. How do you feel about the police having the discretion to decide when to issue a penalty notice?**

**Q11a. In the survey you said that you *did/didn't think* that that you deserved the penalty notice, why is that?**

**Q11b. *If they thought it was disproportionately harsh/other people aren't treated the same:***

*In the survey you said that you thought the penalty notice was disproportionately harsh and that you didn't think other people in the same situation would be treated the way you were.*

*What do you think would have been a better way to deal with your case?*

*How do you think the police deal with other people who commit similar offences?*

**Q12. How did you feel about being issued with a penalty notice?**

**Q13. Confirm details re *payment/non-payment of PND/challenge of PND***

***If they paid the notice:***

*You said in the survey that you did pay the penalty notice, why did you decide to pay?*

***If they didn't pay the notice***

*You said in the survey that you didn't pay the penalty notice, why did you decide not to pay?*

***If they challenged the notice:***

*You said in the survey that you didn't pay the penalty notice and that you requested a court hearing, is that right? How did you do this?*

*Why was it that you decided to challenge the penalty notice?*

**Q13a. *If they didn't challenge the notice: Did you ever consider challenging the notice?***

*If so, why?*

*If not, why?*

**Q14. Do you think that receiving a penalty notice has had an effect on your behaviour at all?**

**Q15. When you pay a penalty notice you don't have to admit that you're guilty of the offence did you know that?**

**Q16. The fact that a person has received a penalty notice can be used as evidence of bad character against them if they appear in court in future, how do you feel about that?**

**Q17. Has receiving a penalty notice changed your view of the police at all?**

**Q18. Is there anything else you want to add about your experience of receiving a penalty notice?**

**Thank you for your time.**

**CHAPTER 5: APPENDIX 1 - TABLES**

<b>Table A5.1 - Number of Penalty Notices for Disorder issued to offenders age 16 and over by ethnicity, 2010 Excluding cases where ethnicity is coded as 'NOT STATED'</b>										
Offence/Ethnicity	White		Black		Asian		Other		Total	
<b>Higher Tier Offences (£80)</b>										
Wasting police time	1,985	81%	45	2%	141	6%	267	11%	2,438	100%
Misuse of public telecommunications system	573	94%	7	1%	12	2%	16	3%	608	100%
Giving false alarm to fire and rescue authority	45	94%	-	0%	1	2%	2	4%	48	100%
Causing Harassment, alarm or distress	22,962	85%	588	2%	2,050	8%	1,408	5%	27,008	100%
Throwing fireworks	226	79%	4	1%	14	5%	41	14%	285	100%
Drunk and disorderly	30,036	95%	275	1%	766	2%	611	2%	31,688	100%
Criminal Damage (under £500)	4,867	91%	87	2%	224	4%	159	3%	5,337	100%
Theft (retail under £200)	29,585	86%	952	3%	2,292	7%	1,582	5%	34,411	100%
Breach of fireworks curfew	17	81%	-	0%	3	14%	1	5%	21	100%
Possession of category 4 firework	15	83%	-	0%	2	11%	1	6%	18	100%
Possession by a person under 18 of adult firework	37	71%	-	0%	9	17%	6	12%	52	100%
Sale of alcohol to drunken person	41	63%	2	3%	7	11%	15	23%	65	100%
Supply of alcohol to a person under 18	44	94%	1	2%	1	2%	1	2%	47	100%
Sale of alcohol to a person under 18	1,134	64%	31	2%	203	11%	414	23%	1,782	100%
Purchasing alcohol for a person under 18	279	98%	-	0%	2	1%	4	1%	285	100%
Purchasing alcohol for a person under 18 for consumption on the premises	24	100%	-	0%	-	0%	-	0%	24	100%
Delivery of alcohol to a person under 18 or allowing such delivery	103	97%	2	2%	-	0%	1	1%	106	100%
Possession of Cannabis	8,470	71%	389	3%	1,664	14%	1,364	11%	11,887	100%
<b>Lower Tier Offences (£50)</b>										
Trespassing on a railway	963	87%	67	6%	63	6%	12	1%	1,105	100%
Throwing stones at a train / railway	9	82%	1	9%	1	9%	-	0%	11	100%
Drunk in a highway	554	90%	15	2%	23	4%	22	4%	614	100%
Consumption of alcohol in a designated public place	750	79%	55	6%	71	7%	71	7%	947	100%
Depositing and leaving litter	681	88%	21	3%	25	3%	44	6%	771	100%
Consumption of alcohol by a person under 18 on relevant premises	10	83%	1	8%	1	8%	-	0%	12	100%
Allowing consumption of alcohol by a person under 18 on relevant premises	2	100%	-	0%	-	0%	-	0%	2	100%
Buying or Attempting to buy alcohol by a person under 18	44	98%	1	2%	-	0%	-	0%	45	100%
<b>Totals</b>										
Total Higher Tier Offences	100,443	87%	2,383	2%	7,391	6%	5,893	5%	116,110	100%
Total Lower Tier Offences	3,013	86%	161	5%	184	5%	149	4%	3,507	100%
<b>Total all offences</b>	103,456	86%	2,544	2%	7,575	6%	6,042	5%	119,617	100%

Source: Ministry of Justice 2011b

<b>Ticket Analysis</b>					<b>National Data<sup>429</sup></b>				
Issued By Offence	Constable/ Special Constable	PCSO or PCSO Supervisor	Police Manager - Rank Sergeant or above	Total	Issued By Offence	Police	PCSO or PCSO Supervisor	Accredited Person	Total
<b>All Offences</b>	<b>224</b> <b>(90%)</b>	<b>11</b> <b>(4%)</b>	<b>14</b> <b>(6%)</b>	<b>249</b> <b>(100%)</b>	<b>All Offences</b>	<b>139,957</b> <b>(99%)</b>	<b>523</b> <b>(0%)</b>	<b>289</b> <b>(0%)</b>	<b>140,769</b> <b>(100%)</b>
Drunk and Disorderly	91 (90%)	9 (1%)	1 (9%)	101 (100%)	Drunk and Disorderly	36,905 (99%)	25 (0%)	189 (1%)	37,119 (100%)
Retail Theft	58 (98%)	1 (2%)	0 (0%)	59 (100%)	Retail Theft	40,133 (100%)	4 (0%)	33 (0%)	40,170 (100%)
s5 Public Order	34 (81%)	6 (14%)	2 (5%)	42 (100%)	s5 Public Order	31,996 (99%)	279 (1%)	42 (0%)	32,317 (100%)
Possession of Cannabis	29 (94%)	0 (0%)	2 (7%)	31 (100%)	Possession of Cannabis	13,900 (100%)	2 (0%)	14 (0%)	13,916 (100%)
Other Offences	12 (75%)	3 (19%)	1 (6%)	16 (100%)	Other Offences	17,023 (99%)	213 (1%)	11 (0%)	17,247 (100%)

N=249

<sup>429</sup> Adapted from Ministry of Justice 2013a (Table 5).

<b>Appendix Table A5.3: What time did different penalty offences occur?</b>						
<b>Offence Time</b>	<b>Drunk and Disorderly</b>	<b>Retail Theft</b>	<b>S5 Public Order</b>	<b>Possession of Cannabis</b>	<b>Other</b>	<b>Total</b>
12.00-	16	1	5	3	0	<b>25</b>
12.59am	(16%)	(2%)	(12%)	(10%)	(0%)	<b>(10%)</b>
1.00am-	21	0	8	2	0	<b>31</b>
1.59am	(21%)	(0%)	(20%)	(7%)	(0%)	<b>(12%)</b>
2.00am-	17	1	1	0	1	<b>20</b>
2.59am	(17%)	(2%)	(2%)	(0%)	(6%)	<b>(8%)</b>
3.00am-	11	0	1	1	0	<b>13</b>
3.59am	(11%)	(0%)	(2%)	(3%)	(0%)	<b>(5%)</b>
4.00am-	5	0	0	0	0	<b>5</b>
4.59am	(5%)	(0%)	(0%)	(0%)	(0%)	<b>(2%)</b>
5.00am-	1	0	1	0	1	<b>3</b>
5.59am	(1%)	(0%)	(2%)	(0%)	(6%)	<b>(1%)</b>
6.00am-	0	0	0	1	0	<b>1</b>
6.59am	(0%)	(0%)	(0%)	(3%)	(0%)	<b>(0%)</b>
7.00am-	0	0	0	1	0	<b>1</b>
7.59am	(0%)	(0%)	(0%)	(3%)	(0%)	<b>(0%)</b>
8.00am-	0	0	0	0	0	<b>0</b>
8.59am	(0%)	(0%)	(0%)	(0%)	(0%)	<b>(0%)</b>
9.00am-	0	0	0	1	0	<b>1</b>
9.59am	(0%)	(0%)	(0%)	(3%)	(0%)	<b>(0%)</b>
10.00am-	0	3	0	1	0	<b>4</b>
10.59am	(0%)	(5%)	(0%)	(3%)	(0%)	<b>(2%)</b>
11.00am-	1	3	2	1	0	<b>7</b>
11.59am	(1%)	(5%)	(5%)	(3%)	(0%)	<b>(3%)</b>
12.00pm-	0	10	1	3	1	<b>15</b>
12.59pm	(0%)	(17%)	(2%)	(10%)	(6%)	<b>(6%)</b>
1.00pm-	0	10	0	2	0	<b>12</b>
1.59pm	(0%)	(17%)	(0%)	(7%)	(0%)	<b>(5%)</b>
2.00pm-	0	7	1	1	0	<b>9</b>
2.59pm	(0%)	(12%)	(2%)	(3%)	(0%)	<b>(4%)</b>
3.00pm-	0	10	3	1	1	<b>15</b>
3.59pm	(0%)	(17%)	(7%)	(3%)	(6%)	<b>(6%)</b>
4.00pm-	0	7	1	1	1	<b>10</b>
4.59pm	(0%)	(12%)	(2%)	(3%)	(6%)	<b>(4%)</b>
5.00pm-	0	1	0	1	0	<b>2</b>
5.59pm	(0%)	(2%)	(0%)	(3%)	(0%)	<b>(1%)</b>
6.00pm-	2	4	2	0	4	<b>12</b>
6.59pm	(2%)	(7%)	(5%)	(0%)	(25%)	<b>(5%)</b>
7.00pm-	2	2	4	3	0	<b>11</b>
7.59pm	(2%)	(3%)	(10%)	(10%)	(0%)	<b>(4%)</b>
8.00pm-	1	0	3	2	2	<b>8</b>
8.59pm	(1%)	(0%)	(7%)	(7%)	(13%)	<b>(3%)</b>
9.00pm-	4	0	2	2	2	<b>10</b>
9.59pm	(4%)	(0%)	(5%)	(7%)	(13%)	<b>(4%)</b>
10.00pm-	10	0	4	2	2	<b>19</b>
10.59pm	(10%)	(0%)	(10%)	(7%)	(13%)	<b>(8%)</b>
11.00pm-	11	0	2	1	1	<b>15</b>
11.59pm	(11%)	(0%)	(5%)	(3%)	(6%)	<b>(6%)</b>
<b>Total</b>	<b>102</b>	<b>59</b>	<b>41</b>	<b>31</b>	<b>16</b>	<b>249</b>
	<b>(100%)</b>	<b>(100%)</b>	<b>(100%)</b>	<b>(100%)</b>	<b>(100%)</b>	<b>(100%)</b>

N=249

## CHAPTER 7 APPENDICES

### Appendix 1: PND recipient interviews – Case studies

#### **Case Study 1 (SN38)**

Male, in his twenties, received a custody-issued PND for possession of cannabis, which he paid. Following a vehicle search he admitted to officers he was in possession of cannabis and was arrested. As he described it:

I were driving home and I got pulled, from a er, friend's [house] and we were going to a festival, yeah we were going away for the week-end for this festival thing and I'd been the one to go and pick up some cannabis for the week-end, and I were just driving home from my friend's [house] and er, got pulled up for speeding and er, when they searched the car they found cannabis in it ... they could smell cannabis on me and they asked for it, 'have I got any?' and I said 'yeah it's in't car' ... there's no point, if you've got it on you, they're gonna find it anyway.

The man felt he had been relatively fortunate to receive a PND given the quantity of the drug in his possession, and as such he paid the ticket as he thought there would be no point trying to challenge the ticket as it was "bang to rights" the drug had been found in his possession, in his car. However the relatively low value of the penalty influenced this, and he commented that were a prison sentence or criminal record likely then it would be "worth a shot" to try and contest the notice (despite his – admitted – guilt).

#### **Case Study 2 (ON6)**

Male, in his twenties, issued with a s5 notice in custody for threatening a health worker. The ticket was paid. The man had informed his mental health worker that he had been smoking cannabis, she then wrote to his parents to inform them of this which the man reported had caused him a lot of problems for the man. He went to a meeting at the health centre to complain about what he saw as a breach of his confidentiality. The meeting was held with the team manager and a security guard. He described the circumstances of the offence as follows:

they got this absolutely *huge* guy to come in, which I felt intimidated by, so it, it got me on defensive straight away ... [the team manager] was saying that there was nothing that they could do, that [the health worker had] ... done nothing wrong, and I said well, it's a breach of patient doctor confidentiality rights and they were saying that is wasn't, so I said that I was gonna go to my solicitor and they started to like, not be aggressive but, quite, their tone of voice changed and I, I felt like they were attacking me so so, I flared up a bit and er, started shouting, then I said 'I'm, I'm not gonna do this, I'm not gonna argue w'yer', I said 'I'm gonna wait for her after work and I'm gonna find out of her why she done it'. And er, I stormed out of the room, with amount of power that I pushed automatic doors open and it actually jammed the automatic doors.

A few days later, eight police officers arrived at his home to arrest him and take him to custody. He was accused of threatening to hit the health worker, which he vehemently denied. He also stated that he had not followed through on his threat to wait for the health worker. He did not think the

decision to issue him with a PND was fair, as the officers had not interviewed him and as such he felt they had not listened to his side of the story. He believed his actions were reasonable in the circumstances. Despite this he paid the notice as he felt that, had he gone to court, he would have been found guilty as the magistrates would (also) have taken the side of the health worker and he would then be liable for additional costs.

### **Case Study 3 (SN2)**

Female, in her forties, issued with a PND for drunk and disorderly after reacting aggressively when officers intervened after a taxi driver accused her of attempting to make off without payment. The ticket was issued in custody and was paid. She described the circumstances of the offence as follows:

I just said to [the taxi driver] 'I hope this isn't more than 4 quid, or else I'm not paying yer' having a laff like, and we were just practically outside our house, and he says 'if you don't shut up I'll take you t'police station', I said 'ooh then you'll have to take me to police station then, I can't afford it', and he spun taxi round and took us back to town ... and [having pulled up beside some police officers on patrol in the city centre] told 'em that we tried to jump taxi, so as we've opened the door of the taxi, to get out, the police have jumped straight on my son and started beating him up, and he'd done nowt wrong at all him, so obviously, I've tried to hit them .... Which is mother's instinct, d'you know? I says he's done nothing wrong, he's just got out that taxi, he's done naff all wrong, next thing we were just handcuffed, thrown in a van, took to police station and locked up all night, and then just let us go next morning, with an £80 fine each.

Whilst she fully accepted that she had hit a police officer, she believed that her behaviour was justified in the circumstances and, as such, that the decision to issue her with a PND was unfair. She felt that officers had failed to listen to her, or let her (or her son) explain the circumstances before their aggressive intervention and that she should not therefore have been issued with a PND. However she paid both her own and her son's PND as "if I didn't pay it I'd be back in there! And I weren't going back round there, I weren't going back there! So I just panicked like and got it paid."

### **Case Study 4 (SN36)**

Male, in his fifties, received a criminal damage PND for breaking his friend's wing mirror. The ticket was issued in custody and was paid. He described the case as follows:

it were a wing mirror on [my friend's] van, well, I'd been out for the night, and I wasn't particularly drunk, but I'd had er, I had four pints, it's the only reason well, he owed me a lot of money, a lot of money and er, and er, it just made me angry and I'd sort of bottled up inside, and I just, well I went round to see him ... and I don't, he didn't answer the door, he might not have been there, he might have been, but er I felt, y'know, very betrayed really cos he owed me quite a lot of money. And er, so I went past his van and I hit it, I hit his mirror and then er, started walking home, and then er, about two cop cars and all vans they piled into me and put handcuffs on me and took me to the police station ... they held me in for the night, and er, oh yeah, they had to take me to hospital cos I, I had a stroke [laughs]

The man did not have a stroke the night he was arrested, but had taken ill and was taken to the hospital, but was released later that night. He felt that the officers had mistreated him, saying that

one “was booting the bed that I was on!... his leg kept twitching and he kept booting me bed” and that, on his release from hospital, the officers had put his handcuffs on too tightly such that he was “scarred for a week or two” and had told him to “shut up” when he had asked them to put his seatbelt on for him.

He was taken back to the police station and kept in overnight, however the next day it was found that he was wanted for a traffic offence in another city. He was taken to the police station there, however that force did not wish to charge him. He was then taken back to the first city and interviewed for the criminal damage offence before being released. He was bailed and when he returned to the police station some days later he was told he could accept the PND or he would be charged. He was particularly frustrated that he was issued with the ticket as “they went to see me mate and he were like ‘no, I don’t want him doing it were my fault as much as owt’”. Thus given that, as he understood it, his friend (the victim) did not wish to pursue the case he did not feel that he should be punished. Despite saying that, on reflection he should have gone to court and had his friend as a witness he commented:

but then again it’s the magistrates’ court in’t it?... they’re not gonna take me there and not do anything are they? How many people do you know that’ve been let off from the magistrates’ court?!

So despite feeling he had been mistreated by the officers and had been issued with a notice that was undeserved he paid the ticket as he thought that if he went to court he would risk being convicted.

### **Case Study 5 (ON13)**

Male, in his twenties, received a drunk and disorderly PND for fighting in the city centre. The ticket was issued on-the-spot (in the back of a police van) and was paid. The man described the circumstances surrounding the offence as follows:

I was in a club and then I got er, I don’t know, I don’t know how it came about, but some guy ended up hitting me, and then he got thrown out and then I went outside anyway cos I had a bit of swelling on my face, so I decided to go home, and I saw him outside and lost it a bit and sort of, went over to him and er, got into a bit of a fight, and then the police came whilst we were still fighting on the floor and then arrested us both ... They put me in the van, I think the other guy was er, kicking off a bit and they arrested [him] ... I had a bit of blood on me so I was cleaning myself up and they was just giving me a talking to ... it wasn’t my blood I was washing off [laughs nervously] it was someone else’s, well a bit of mine, but er, no it, it was just like cuts and that from hitting the floor, I don’t know, I think drunk and disorderly was probably about right, like it wasn’t, too bad. I guess it could’ve got done under assault but I don’t, I didn’t think there was probably a need for it. It was just being drunk, it wasn’t like I decided to attack this guy for, I just decided to attack him cos I was smashed and stuff.

Whilst the man said he would ideally “like to see [the other party to the fight] done for assault” he appreciated that from the officers’ perspective it would have appeared as though he had instigated the fight and that to go to court for a “drunken scuffle” would be “a waste of everyone’s time”. As such, he was grateful that the officers had allowed him to explain his side of the story and had decided to dispose of the case by issuing both men with a drunk and disorderly PND. He also

expressed relief that he had not been arrested for assault. Although he felt the other man had been in the wrong, he paid the PND as officers had advised him against requesting a court hearing (telling him he would not succeed in court). He thought that this was fair “because you can’t go fighting in the street” but also commented that he “[didn’t] really think *not paying’s* an option”.

### **Case Study 6 (ON18)**

Male, in his twenties, received a s5 PND on-the-spot for public urination. The ticket was issued in the early hours of the morning as he was leaving a town centre nightclub. The ticket was paid. As he described it:

it was a *very* quiet night, there was no one outside, or anything like that and I, having been drinking, I wasn’t overly drunk or anything, I was under the influence but I wasn’t too drunk I thought, oh, they wouldn’t let me back into the club to go to the toilet, which is a common problem once you leave a nightclub, you can’t return into it, and so they had door-staff on the door, erm, and so I thought, in my mind I thought, I’m not gonna have a conversation with the bouncers at 1am, cos that’s just never a good idea. So I popped to the nearest concealed corner, and I er, went to the loo, and I heard a voice behind me said ‘hello’ [laughs] and I thought, ‘oh’ erm, it was a police officer and he, er decided to issue me an on-the spot fine.

Whilst the man accepted the notice, and paid the ticket within 21 days during the interview he did query whether he had committed a s5 offence “when it says ‘likely to cause distress’, there was *no-one*. No-one could see me, so that was my issue with it.” He also believed that the decision to issue him with a PND was unfairly reached and believing the decision was based on his *reaction* to the officer rather than being issued simply because of his *action*. Despite these concerns he decided not to request a court hearing. His reasons for this were pragmatic; he was going on holiday in the next few days and simply wanted the matter dealt with. He also commented that the time he would have to put in to a court hearing was simply not worth his time, and that the fine was worth paying for that reason.

### **Case Study 7 (SN46)**

Female, in her late teens, issued with a drunk and disorderly PND in custody which she paid. She could not remember the circumstances leading up to her arrest, but described the case as follows:

I’ve got absolutely no idea what happened. Er, one of the women that escorted me out the police station said that someone had called them out cos I was wondering down the street upset or something and I’d told ‘em to f-off and leave me alone. And that’s all I’ve ever been told.

Notably however, despite not being able to remember her arrest, she not only accepted the officer’s account, but believed to have been arrested she “obviously must’ve done more than that” and as such, was relieved to have received a PND rather than a more severe punishment. She paid the PND (although finding the £80 fee in 21 days was “a bit of a stretch”) as she didn’t want to “get in any further bother.”

### Case Study 8 (SN1)

Male, in his forties, received a PND in custody for drunk and disorderly, after initially being accused of an assault. The ticket was not paid. The man described the circumstances of the offence as follows:

I was ... waiting outside the pub, ready to go home, waiting for a taxi and the police come over and grab me, whether it's by description I don't know .... I was arrested ... for suspicion of assault, and I was released from the police station to attend on that date .... I attended that day, and that's when they said we've got absolutely no evidence [that he had committed the assault] ... what we're gonna do is, you're gonna have an £80 on-the-spot fine for drunk and disorderly.

The man expressed anger regarding this, and thought the decision to issue him with a PND was unfair as he believed he was misidentified with regards to the original assault case and that he should not have been issued with a drunk and disorderly PND, as he was not accused of that offence on the night. However, he accepted the ticket at the time of issue as he believed, due to his past record, he would otherwise have to appear in court and might be "locked up over it". At a later date he attended the magistrates' court to challenge the notice, however he was told that as he had signed the notice he had admitted guilt (which is not the case, signature simply denotes receipt of the PND). As he was unable to pay the notice with the 21 day limit it was registered as a fine.

### Case Study 9 (ON4)

Male, in his twenties, received an on-the-spot PND for drunk and disorderly. He requested a court hearing (at which he was bound over to keep the peace). He described the circumstances of the offence as follows:

the police had raided a house party, erm, quite a big party, erm, I was attending it ... there was loads of police around, loads of dogs around, dogs around, lots and lots of people getting arrested, erm, for what I consider to be pretty, er little. Pretty much what I did was keep my mouth shut, just be quiet and just waited for my friends ... when we went off [to another party we] basically [cut] through a university residence, the other two I was with saw erm, saw a skip that was un, basically unsecured and they decided to get it, and take it, and push it down the road [laughs] and use it as a barricade against the police .... I went along and, we didn't push it far but they just saw us and started chasing after us as stuff. I ran away and the others, then I got pointed out by a member of the public.

The man was arrested, along with the other people involved. He was taken to a police van and an officer began filling out a PND. He reported that they were disrespectful to him calling him a "dick-head" and telling him he was "wasting their time". He said that he "didn't get told initially that [he] could contest [the PND]" but instead "had to ask another officer" whether he was able to contest the ticket. He was told that he could do so, but that if he did "it [was] liable to increase". He decided to contest the notice as he felt his own ticket was undeserved and that the police (as he saw it), in their aggressive breaking-up of the house party, had provoked the disorder. He also disagreed with PNDs generally and could not afford the £80 fine. As such he was "*always going to contest it*" (*emphasis in original*).

### Case Study 10 (SN4)

Male, 16 at the time he received a drunk and disorderly PND after attempting to film officers on his mobile phone. The ticket, which he paid, was issued in custody. He described the circumstances as follows:

me and my mates ... we come out the pub and we're going home and then well, we got taken off a bus and asked about whether we'd committed this certain crime, which we hadn't .... They were asking about vandalism that was caused in [the town], which we ... knew nothing of ... the bus got pulled over ... we were told that some people were gonna drive past to try and identify us, it turns out that it wasn't us and then a police officer like ... one of my friends was you know giving it a bit of this [make gesture to show talking], like a 16 year old would, and, er, like this one police officer just went up, went up to his face and like put his head against his face, and it was, like you know, completely unjustified what he did, and then I, you know, I'd had a few to drink and I was just like 'I'm recording this' [holds hands in front of him as if holding a phone], like I got my phone out and pretended to record it, even though I wasn't .... And I said 'I'm recording this, I can see what you're doing, and some police officer like tried to push me back, and I sort of, didn't go back, but I said 'I'm recording this, I'm recording what you're doing', and he, he obviously had maybe got worried and ... slammed me against the bus shelter and arrested me.

The man felt that the decision to issue him with a PND (or indeed arrest him) was unfair as he believed he had been provoked by the behaviour of the officer towards his friend. However he paid the notice as he felt he had no choice, his father (a solicitor) advised him that "it's not really worthwhile going to court against a police officer, cos more times than not, you're not going to win".

### Case Study 11 (SN3)

Female, in her twenties, received a s5 PND for sending abusive text messages to another woman. She describes the case as follows:

we were really good friends ... she started contacting my brother ... [who] had a girlfriend and he were just texting her, just as a friend, and then she started wanting more ... and he was like 'you best tell [her] to stop texting me, I've text her to stop texting me and she's threatening to tell [his girlfriend]' ... so I text her saying 'look, can you not text him anymore, he's with someone', you know, 'it's not fair' this that and the other, I was being so friendly with her at, at the start. And then she were, she sent a really nasty, vulgar text message, oh 'f this and f that, it's got nothing to do with you' .... And I couldn't believe it, so I text her saying ' look, you're texting the wrong person' you know, cos I'm, I'm not one to stand for anything, you know what I mean? If something riles me then I will fight back ... she was like 'oh well, it's got nothing to do with you, I'm telling [her brother's girlfriend]'. So obviously I text her saying 'If you tell [her]' you know 'I'm gonna, kick your head in' this that and the other, 'it's not fair you haven't, he hasn't done anything wrong, why you being like this?' She were just, she were really being, she was calling me all names under the sun, slag, whore, everything. So obviously I'm getting more riled up, I'm going 'if you carry on I'm gonna burn your house down' and this that and other, and, you know, I was getting *really* frustrated with it all. Never thought of any police getting involved, cos obviously you don't it's just a heated text.

But the other woman did contact the police, who arrived the next day at her workplace to issue her with a PND for s5. She was frustrated at receiving the notice, especially as it was issued at her workplace, however she accepted the notice as she was told "if you don't pay it we're nicking yer". She had deleted the messages she received and so could not prove what the other woman had sent to her. Whilst she accepted the notice, she was annoyed that the officers had not checked the other woman's phone and felt the decision to issue her with a notice was unfair. However she paid the notice as she did not think it would be "worth the hassle" to go to court.

## Appendix 2: Tables

<b>Table A7.1: What was most recent offence that survey respondents received a PND for as compared to those reviewed in the ticket analysis and those issued in force area and in England and Wales in 2010</b>				
Area Offence	Number (%)			
	Survey <sup>430</sup>	Ticket Analysis	Force Area	England and Wales
Drunk and disorderly	28 (38%)	102 (41%)	2,034 (35%)	37,119 (26%)
Theft	14 (19%)	59 (24%)	1,512 (26%)	40,170 (29%)
Causing harassment, alarm or distress (s5)	10 (14%)	42 (17%)	946 (16%)	32,317 (23%)
Possession of cannabis	8 (11%)	31 (12%)	505 (9%)	13,916 (10%)
Destroying or damaging property	3 (4%)	3 (1%)	217 (4%)	6,253 (4%)
Selling alcohol to a person under 18	3 (4%)	3 (1%)	174 (3%)	2,098 (1%)
Depositing and leaving litter	2 (3%)	0 (0%)	47 (1%)	903 (1%)
Consuming Alcohol in a public place	1 (1%)	0 (0%)	29 (1%)	1,036 (1%)
Urinating in Public <sup>431</sup>	4 (6%)	N/A	N/A	N/A

<sup>430</sup> These results include all surveys, including the 8 which were issued outside the force area reviewed in the ticket analysis.

<sup>431</sup> There is no penalty offence of 'urinating in public' persons who received notices for this offence would either have been issued with a S5 or a drunk and disorderly notice.

**Table A7.2: What is the gender of the PND recipients included in the survey and ticket analysis as compared to all tickets issued by the force area, and nationally in 2010?**

	Male				Female				Total			
	Survey Findings	Ticket Analysis	All tickets issued by force in 2010	All tickets issued in England and Wales in 2010	Survey Findings	Ticket Analysis	All tickets issued by force in 2010	All tickets issued in England and Wales in 2010	Survey Findings	Ticket Analysis	All tickets issued by force in 2010	All tickets issued in England and Wales in 2010
All Offences Total	<b>50</b> <b>(74%)</b>	<b>180</b> <b>(72%)</b>	<b>4240</b> <b>(74%)</b>	<b>106,219</b> <b>(75%)</b>	<b>18</b> <b>(27%)</b>	<b>70</b> <b>(28%)</b>	<b>1494</b> <b>(26%)</b>	<b>34,550</b> <b>(25%)</b>	<b>68</b> <b>(100%)</b>	<b>250</b> <b>(100%)</b>	<b>5,734</b> <b>(100%)</b>	<b>140,769</b> <b>(100%)</b>
Drunk and Disorderly	22 (82%)	80 (78%)	1,710 (84%)	30,808 (83%)	5 (19%)	22 (22%)	324 (16%)	6,311 (17%)	27 (100%)	102 (100%)	2,034 (100%)	37,119 (100%)
Retail Theft	4 (36%)	23 (39%)	706 (47%)	20,680 (51%)	7 (64%)	36 (61%)	806 (53%)	19,490 (49%)	11 (100%)	59 (100%)	1,512 (100%)	40,170 (100%)
S5 Public Order	7 (78%)	36 (86%)	812 (86%)	27,890 (86%)	2 (22%)	6 (14%)	134 (14%)	4,427 (14%)	9 (100%)	42 (100%)	946 (100%)	32,317 (100%)
Possession of Cannabis	7 (88%)	28 (90%)	478 (95%)	13,239 (95%)	1 (13%)	3 (10%)	27 (5%)	677 (5%)	8 (100%)	31 (100%)	505 (100%)	13,916 (100%)
Public Urination	4 (100%)	N/A	N/A	N/A	0 (0%)	N/A	N/A	N/A	4 (100%)	N/A	N/A	N/A
Other Offences	6 (67%)	13 (81%)	534 (72%)	13,602 (79%)	3 (33%)	3 (19%)	203 (28%)	3,645 (21%)	9 (100%)	16 (100%)	737 (100%)	17,247 (100%)

Source: Ministry of Justice (2011b) Criminal Justice Statistics in England and Wales: Out-of-Court Disposals: Table Q2a, London: Home Office, [Online], Available From: <http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/criminal-justice-statistics.htm> [Accessed at: 10<sup>th</sup> October 2011]

	White			Black			Asian			Other			Totals		
	Survey Findings	Ticket Analysis	National Statistics	Survey Findings	Ticket Analysis	National Statistics	Survey Findings	Ticket Analysis	National Statistics	Survey Findings	Ticket Analysis	National Statistics	Survey Findings	Ticket Analysis	National Statistics
All Offences Total	<b>60</b> (88%)	<b>160</b> (90%)	<b>103,456</b> (86%)	<b>1</b> (2%)	<b>5</b> (3%)	<b>2,544</b> (2%)	<b>5</b> (7%)	<b>8</b> (5%)	<b>7,575</b> (6%)	<b>2</b> (3%)	<b>5</b> (3%)	<b>6,042</b> (5%)	<b>68</b> (100%)	<b>178</b> (100%)	<b>119,617</b> (100%)
Drunk and Disorderly	27 (100%)	65 (96%)	30,036 (95%)	0 (0%)	2 (3%)	275 (1%)	0 (0%)	0 (0%)	766 (2%)	0 (0%)	1 (2%)	611 (2%)	27 (100%)	68 (100%)	31,688 (100%)
Retail Theft	9 (82%)	38 (83%)	29,585 (86%)	0 (0%)	2 (4%)	952 (3%)	1 (9%)	3 (7%)	2,292 (7%)	1 (9%)	3 (7%)	1,582 (5%)	11 (100%)	46 (100%)	34,411 (100%)
S5 Public Order	6 (67%)	25 (89%)	22,962 (85%)	1 (11%)	1 (4%)	588 (2%)	2 (22%)	1 (4%)	2,050 (8%)	0 (0%)	1 (4%)	1,408 (5%)	9 (100%)	28 (100%)	27,008 (100%)
Possession of Cannabis	6 (75%)	23 (100%)	8,470 (71%)	0 (0%)	0 (0%)	389 (3%)	1 (13%)	0 (0%)	1,664 (14%)	1 (13%)	0 (0%)	1,364 (11%)	7 (100%)	23 (100%)	11,887 (100%)
Public Urination <sup>432</sup>	4 (100%)	N/A	N/A	0 (0%)	N/A	N/A	0 (0%)	N/A	N/A	0 (0%)	N/A	N/A	4 (100%)	N/A	N/A
Other Offences	8 (89%)	9 (69%)	12,403 (85%)	0 (0%)	0 (0%)	340 (2%)	1 (11%)	4 (31%)	803 (5%)	0 (0%)	0 (0%)	1,077 (7%)	9 (100%)	13 (100%)	14,623 (100%)

Source: Ministry of Justice (2011b) Criminal Justice Statistics in England and Wales: Out-of-Court Disposals: Table Q2.2, London: Home Office, [Online], Available From: <http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/criminal-justice-statistics.htm> [Accessed at: 10<sup>th</sup> October 2011]

<sup>432</sup> Public urination is not a discrete penalty offence, but may be disposed of via either a drunk and disorderly or s5 PND.

<b>Table A7.4: How old were the survey respondents as compared to the ticket analysis?</b>																
Age Group	16-17		18-21		22-25		26-30		31-40		41-50		51+		Totals	
Offence	Survey	Ticket Analysis	Survey	Ticket Analysis	Survey	Ticket Analysis	Survey	Ticket Analysis	Survey	Ticket Analysis	Survey	Ticket Analysis	Survey	Ticket Analysis	Survey	Ticket Analysis
All Offences	<b>3</b> <b>(4%)</b>	<b>20</b> <b>(8%)</b>	<b>23</b> <b>(34%)</b>	<b>85</b> <b>(34%)</b>	<b>10</b> <b>(15%)</b>	<b>39</b> <b>(15%)</b>	<b>5</b> <b>(7%)</b>	<b>35</b> <b>(14%)</b>	<b>14</b> <b>(21%)</b>	<b>37</b> <b>(15%)</b>	<b>5</b> <b>(7%)</b>	<b>21</b> <b>(8%)</b>	<b>8</b> <b>(12%)</b>	<b>13</b> <b>(5%)</b>	<b>68</b> <b>(100%)</b>	<b>250</b> <b>(100%)</b>
Drunk and Disorderly	2 (7%)	8 (8%)	12 (44%)	41 (40%)	3 (11%)	13 (13%)	1 (4%)	14 (14%)	2 (7%)	14 (14%)	4 (15%)	11 (11%)	3 (11%)	1 (7%)	<b>27</b> <b>(100%)</b>	<b>102</b> <b>(100%)</b>
Retail Theft	0 (0%)	5 (9%)	2 (18%)	12 (20%)	1 (9%)	8 (14%)	2 (18%)	11 (19%)	2 (18%)	9 (15%)	1 (9%)	7 (12%)	3 (27%)	7 (12%)	<b>11</b> <b>(100%)</b>	<b>59</b> <b>(100%)</b>
s5 Public Order	1 (11%)	4 (10%)	1 (11%)	15 (36%)	3 (33%)	9 (21%)	0 (0%)	4 (10%)	3 (33%)	7 (917%)	0 (0%)	1 (2%)	1 (11%)	2 (5%)	<b>9</b> <b>(100%)</b>	<b>42</b> <b>(100%)</b>
Possession of Cannabis	0 (0%)	1 (3%)	2 (25%)	11 (36%)	2 (25%)	7 (23%)	2 (25%)	6 (19%)	2 (25%)	5 (16%)	0 (0%)	0 (0%)	0 (0%)	1 (3%)	<b>8</b> <b>(100%)</b>	<b>31</b> <b>(100%)</b>
Public Urination	0 (0%)	N/A	1 (25%)	N/A	1 (25%)	N/A	0 (0%)	N/A	2 (50%)	N/A	0 (0%)	N/A	0 (0%)	N/A	<b>4</b> <b>(100%)</b>	<b>N/A</b>
Other Offences	0 (0%)	2 (13%)	5 (56%)	6 (38%)	0 (0%)	2 (13%)	0 (0%)	0 (0%)	3 (33%)	2 (13%)	0 (0%)	2 (13%)	1 (11%)	2 (13%)	<b>9</b> <b>(100%)</b>	<b>16</b> <b>(100%)</b>

Employment Status	Employed <sup>433</sup>		Unemployed <sup>434</sup>		Student		Retired		Totals	
Offence	Survey Findings	Ticket Analysis	Survey Findings	Ticket Analysis	Survey Findings	Ticket Analysis	Survey Findings	Ticket Analysis	Survey Findings	Ticket Analysis
All Offences	<b>29</b> <b>(34%)</b>	<b>71</b> <b>(36%)</b>	<b>22</b> <b>(45%)</b>	<b>99</b> <b>(51%)</b>	<b>12</b> <b>(19%)</b>	<b>24</b> <b>(12%)</b>	<b>2</b> <b>(3%)</b>	<b>2</b> <b>(1%)</b>	<b>65</b> <b>(100%)</b>	<b>196</b> <b>(100%)</b>
Drunk and Disorderly	10 (39%)	34 (49%)	13 (50%)	26 (38%)	3 (12%)	9 (13%)	0 (0%)	0 (0%)	26 (100%)	69 (100%)
Retail Theft	4 (40%)	12 (22%)	1 (10%)	36 (66%)	3 (30%)	6 (11%)	2 (20%)	1 (2%)	10 (100%)	55 (100%)
s5 Public Order	3 (38%)	11 (33%)	3 (38%)	17 (52%)	2 (25%)	4 (12%)	0 (0%)	1 (3%)	8 (100%)	33 (100%)
Possession of Cannabis	4 (50%)	9 (36%)	4 (50%)	15 (60%)	0 (0%)	1 (4%)	0 (0%)	0 (0%)	8 (100%)	25 (100%)
Public Urination	4 (100%)	N/A	0 (0%)	N/A	0 (0%)	N/A	0 (0%)	N/A	4 (100%)	N/A
Other Offences	4 (44%)	5 (36%)	1 (11%)	5 (36%)	4 (44%)	4 (29%)	0 (0%)	0 (0%)	9 (100%)	14 (100%)

<sup>433</sup> Including employed and self-employed (full and part time).

<sup>434</sup> Including Unemployed, permanently sick/disabled, looking after home/family.

<b>Table A7.6: Concepts significantly related to whether the respondent agreed that the decision to issue them with a PND was fairly reached</b>				
		<b>'The decision to issue me with a PND was fairly reached'</b>		
		<b>Disagree</b>	<b>Agree</b>	<b>Total</b>
<b>Participation</b>				
I understand why I was issued with a penalty notice (N=47) ( $\chi^2= 11.367$ , d.f.=1, p=0.001)	Disagree	13 (93%)	1 (7%)	14 (100%)
	Agree	13 (39%)	20 (61%)	33 (100%)
The officer who issued me with a penalty notice considered my views (N=48) ( $\chi^2= 28.510$ , d.f.=1, p<0.001)	Disagree	30 (97%)	1 (3%)	31 (100%)
	Agree	4 (24%)	13 (77%)	17 (100%)
<b>Neutrality</b>				
I was treated the same as anyone else would be in the same situation (N=46) ( $\chi^2= 29.673$ , d.f.=1, p<0.001)	Disagree	22 (100%)	0 (0%)	22 (100%)
	Agree	5 (21%)	19 (79%)	24 (100%)
The officer made the decision to issue me with a penalty notice based on the facts (N=50) ( $\chi^2= 30.769$ , d.f.=1, p<0.001)	Disagree	24 (100%)	0 (0%)	24 (100%)
	Agree	6 (23%)	20 (77%)	26 (100%)
<b>Respect</b>				
The officer who issued me with a penalty notice treated me with respect (N=51) ( $\chi^2= 31.295$ d.f.=1, p<0.001)	Disagree	27 (100%)	0 (0%)	27 (100%)
	Agree	6 (25%)	18 (75%)	24 (100%)
The officer who issued me with a penalty notice spoke to me politely (N=52) ( $\chi^2= 24.159$ , d.f.=1, p<0.001)	Disagree	24 (96%)	1 (4%)	25 (100%)
	Agree	8 (30%)	19 (70%)	27 (100%)
<b>Trustworthiness</b>				
The officer who issued me with the PND explained why I was being issued with the notice (N=51) ( $\chi^2= 5.961$ , d.f.=1, p=0.017* 1 cell expected count <5)	Disagree	10 (91%)	1 (9%)	11 (100%)
	Agree	20 (50%)	20 (50%)	40 (100%)
The officer who issued me with the notice tried to do the right thing by me (N=52) ( $\chi^2= 29.740$ , d.f.=1, p<0.001)	Disagree	29 (91%)	3 (9%)	32 (100%)
	Agree	3 (15%)	17 (85%)	20 (100%)

	<b>Component</b>	
	<b>1</b>	<b>2</b>
The decision to issue me with a PND was reached fairly	<b>0.914</b>	0.015
The officer who issued me with the PND tried to do the right thing by me	<b>0.903</b>	0.149
The officer who issued the PND treated me with respect	<b>0.873</b>	-0.011
The officer who issued the PND spoke to me politely	<b>0.863</b>	-0.047
The officer who issued me with the PND considered my views	<b>0.845</b>	0.097
The officer made the decision to issue me with a PND based on the facts	<b>0.840</b>	-0.110
The officer did a good job of handling the situation	<b>0.839</b>	-0.121
I was treated the same as anyone else would be in the same situation	<b>0.809</b>	-0.153
Being given a PND was what I deserved in the circumstances	<b>0.745</b>	0.244
I understood why I was issued with a PND	<b>0.713</b>	-0.361
The officer who issued me with the PND explained why I was being issued with the notice	<b>0.660</b>	-0.214
I was relieved to receive a PND rather than a more severe sentence	<b>0.592</b>	0.165
PND a harsh response to behaviour (reverse coded)	0.288	<b>0.889</b>
<b>Eigenvalues</b>	7.870	1.137
<b>% of Variance</b>	60.535	8.748

**Table A7.8: Procedural and distributive justice, correlation matrix**

		I understood why I was issued with a PND	The officer who issued me with the PND considered my views	I was treated the same as anyone else would be in the same situation	The officer made the decision to issue me with a PND based on the facts	The decision to issue me with a PND was reached fairly	The officer who issued the PND treated me with respect	The officer who issued the PND spoke to me politely	The officer who issued me with the PND explained why I was being issued with the notice	I was relieved to receive a PND rather than a more severe sentence	Being given a PND was what I deserved in the circumstances	In the circumstances, a PND was a disproportionately harsh response to my behaviour	I willingly accepted the decision of the officer	The officer did a good job of handling the situation	The officer who issued me with the PND tried to do the right thing by me
I understood why I was issued with a PND	Coefficient Sig. (2-tailed) N	1.000 .000 71	.580 .000 70	.596 .000 70	.626 .000 69	.700 .000 70	.517 .000 70	.582 .000 70	.567 .000 71	.389 .001 69	.538 .000 69	-.045 .718 68	.585 .000 69	.617 .000 69	.589 .000 68
The officer who issued me with the PND considered my views	Coefficient Sig. (2-tailed) N	.580 .000 70	1.000 .000 70	.660 .000 70	.638 .000 69	.735 .000 70	.673 .000 70	.641 .000 69	.511 .000 70	.480 .000 69	.617 .000 68	-.268 .028 67	.585 .000 69	.715 .000 69	.812 .000 68
I was treated the same as anyone else would be in the same situation	Coefficient Sig. (2-tailed) N	.596 .000 70	.660 .000 70	1.000 .000 70	.621 .000 69	.723 .000 70	.652 .000 70	.615 .000 69	.478 .000 70	.556 .000 69	.587 .000 68	-.036 .772 67	.534 .000 69	.684 .000 69	.710 .000 68
The officer made the decision to issue me with a PND based on the facts	Coefficient Sig. (2-tailed) N	.626 .000 69	.638 .000 69	.621 .000 69	1.000 .000 69	.773 .000 69	.728 .000 69	.740 .000 68	.677 .000 69	.478 .000 68	.559 .000 67	-.158 .206 66	.488 .000 68	.621 .000 68	.661 .000 67
The decision to issue me with a PND was reached fairly	Coefficient Sig. (2-tailed) N	.700 .000 70	.735 .000 70	.723 .000 70	.773 .000 69	1.000 .000 70	.754 .000 70	.730 .000 69	.589 .000 70	.543 .000 69	.682 .000 68	-.220 .073 67	.550 .000 69	.762 .000 69	.771 .000 68
The officer who issued the PND treated me with respect	Coefficient Sig. (2-tailed) N	.517 .000 70	.673 .000 70	.652 .000 70	.728 .000 69	.754 .000 70	1.000 .000 70	.924 .000 69	.735 .000 70	.436 .000 69	.440 .000 68	-.258 .035 67	.494 .000 69	.709 .000 69	.786 .000 68
The officer who issued the PND spoke to me politely	Coefficient Sig. (2-tailed) N	.582 .000 70	.641 .000 69	.615 .000 69	.740 .000 68	.730 .000 69	.924 .000 69	1.000 .000 70	.701 .000 70	.396 .001 68	.453 .000 68	-.238 .053 67	.539 .000 68	.733 .000 68	.791 .000 67
The officer who issued me with the PND explained why I was being issued with the notice	Coefficient Sig. (2-tailed) N	.567 .000 71	.511 .000 70	.478 .000 70	.677 .000 69	.589 .000 70	.735 .000 70	.701 .000 70	1.000 .000 72	.340 .004 69	.402 .001 69	-.198 .102 69	.386 .001 70	.488 .000 69	.550 .000 68
I was relieved to receive a PND rather than a more severe sentence	Coefficient Sig. (2-tailed) N	.389 .001 69	.480 .000 69	.556 .000 69	.478 .000 68	.543 .000 69	.436 .000 69	.396 .001 68	.340 .004 69	1.000 .000 69	.440 .000 68	-.167 .180 66	.451 .000 68	.382 .001 68	.524 .000 68
Being given a PND was what I deserved in the circumstances	Coefficient Sig. (2-tailed) N	.538 .000 69	.617 .000 68	.587 .000 68	.559 .000 67	.682 .000 68	.440 .000 68	.453 .000 68	.402 .001 69	.440 .000 68	1.000 .000 69	-.326 .007 67	.523 .000 67	.600 .000 67	.632 .000 68
In the circumstances, a PND was a disproportionately harsh response to my behaviour	Coefficient Sig. (2-tailed) N	-.045 .718 68	-.268 .028 67	-.036 .772 67	-.158 .206 66	-.220 .073 67	-.258 .035 67	-.238 .053 67	-.198 .102 69	-.167 .180 66	-.326 .007 67	1.000 .000 69	-.148 .229 68	-.088 .483 66	-.337 .006 66

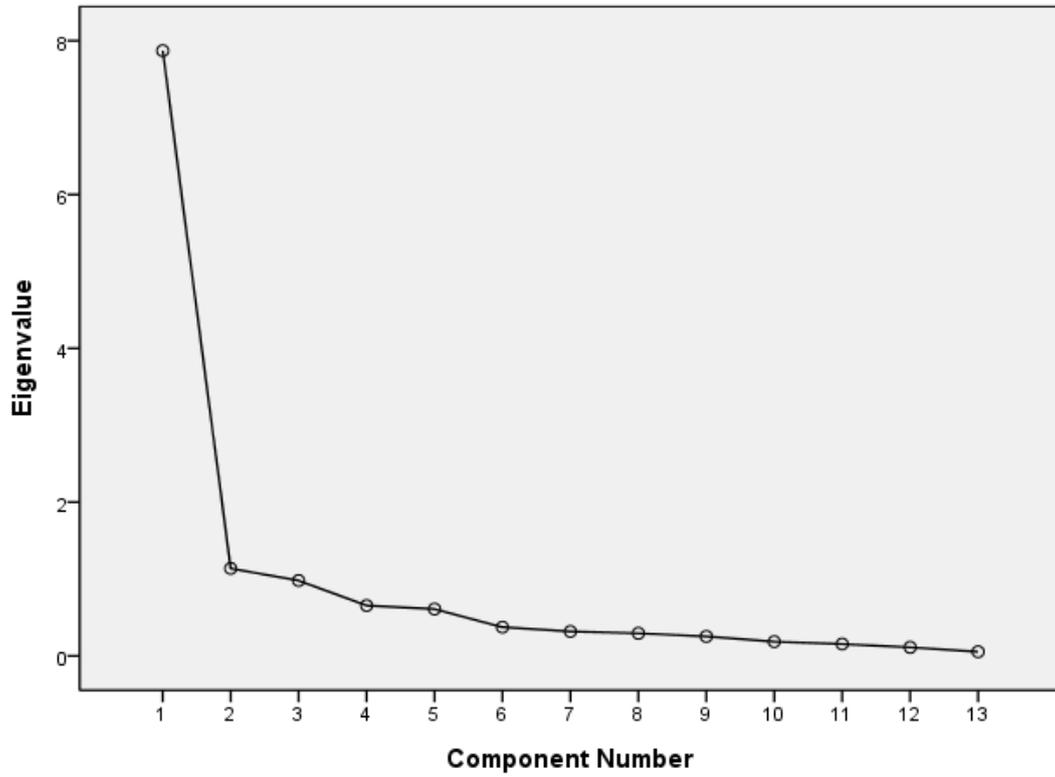
		understood why I was issued with a PND	The officer who issued me with the PND considered my views	I was treated the same as anyone else would be in the same situation	The officer made the decision to issue me with a PND based on the facts	The decision to issue me with a PND was reached fairly	The officer who issued the PND treated me with respect	The officer who issued the PND spoke to me politely	The officer who issued me with the PND explained why I was being issued with the notice	I was relieved to receive a PND rather than a more severe sentence	Being given a PND was what I deserved in the circumstances	In the circumstances a PND was a disproportionately harsh response to my behaviour	I willingly accepted the decision of the officer	The officer did a good job of handling the situation	The officer who issued me with the PND tried to do the right thing by me
I willingly accepted the decision of the officer	Coefficient Sig. (2-tailed) N	.585 .000 69	.585 .000 69	.534 .000 69	.488 .000 68	.550 .000 69	.494 .000 69	.539 .000 68	.386 .001 70	.451 .000 68	.523 .000 67	-.148 .229 68	1.000 .000 71	.655 .000 69	.604 .000 67
The officer did a good job of handling the situation	Coefficient Sig. (2-tailed) N	.617 .000 69	.715 .000 69	.684 .000 69	.621 .000 68	.762 .000 69	.709 .000 69	.733 .000 68	.488 .000 69	.382 .001 68	.600 .000 67	-.088 .483 66	.655 .000 69	1.000 .000 70	.751 .000 67
The officer who issued me with the PND tried to do the right thing by me	Coefficient Sig. (2-tailed) N	.589 .000 68	.812 .000 68	.710 .000 68	.661 .000 67	.771 .000 68	.786 .000 68	.791 .000 67	.550 .000 68	.524 .000 68	.632 .000 68	-.337 .006 66	.604 .000 67	.751 .000 67	1.000 .000 68

<b>Table A7.9: The relationship between procedural fairness and PND outcome</b>				
		What was the outcome of the PND?		
		Fine	Paid	Total
<b>Overall</b>				
The decision to issue me with a penalty notice was reached fairly reached (n=54) ( $\chi^2=.784$ , d.f.=1, p=0.497) * 1 cell expected count <5	Disagree	8 (24%)	25 (75%)	33 (100%)
	Agree	3 (14%)	18 (86%)	21 (100%)
<b>Participation</b>				
I understand why I was issued with a penalty notice (n=56) ( $\chi^2= .877$ , d.f.=1, p=0.443) * 1 cell expected count <5	Disagree	4 (31%)	9 (69%)	13 (100%)
	Agree	8 (19%)	35 (81%)	43 (100%)
The officer who issued me with a penalty notice considered my views (n=51) ( $\chi^2= .403$ , d.f.=1, p=0.726) * 1 cell expected count <5	Disagree	6 (19%)	26 (81%)	32 (100%)
	Agree	5 (26%)	14 (74%)	19 (100%)
<b>Neutrality</b>				
I was treated the same as anyone else would be in the same situation (n=54) ( $\chi^2=.006$ , d.f.=1, p=1.000) * 1 cell expected count <5	Disagree	5 (21%)	19 (79%)	24 (100%)
	Agree	6 (20%)	24 (80%)	30 (100%)
The officer made the decision to issue me with a penalty notice based on the facts (n=53) ( $\chi^2= .555$ , d.f.=1, p=0.492) * 1 cell expected count <5	Disagree	5 (24%)	16 (76%)	21 (100%)
	Agree	5 (84%)	27 (84%)	32 (100%)
<b>Respect</b>				
The officer who issued me with a penalty notice treated me with respect (n=58) ( $\chi^2= .043$ , d.f.=1, p=1.000)	Disagree	5 (18%)	23 (82%)	28 (100%)
	Agree	6 (20%)	24 (80%)	30 (100%)
The officer who issued me with a penalty notice spoke to me politely (n=60) ( $\chi^2= .160$ , d.f.=1, p<0.760)	Disagree	5 (19%)	21 (81%)	26 (100%)
	Agree	8 (24%)	26 (77%)	34 (100%)
<b>Trustworthiness</b>				
The officer who issued me with the penalty notice explained why I was being issued with the notice (n=61) ( $\chi^2= 2.366$ , d.f.=1, p=0.203 * 1 cell expected count <5	Disagree	4 (33%)	8 (67%)	12 (100%)
	Agree	7 (14%)	42 (86%)	49 (100%)
The officer who issued me with the notice tried to do the right thing by me (n=52) ( $\chi^2=0.057$ , d.f.=1, p=1.000)	Disagree	6 (20%)	24 (80%)	30 (100%)
	Agree	5 (23%)	17 (77%)	22 (100%)

<b>Table A7.10: The relationship between distributive fairness and PND outcome</b>				
		What was the outcome of the PND?		
		Fine	Paid	Total
<b>Outcome Favourability</b>				
I was relieved to receive a penalty notice rather than a more severe punishment (n=47) ( $\chi^2=.559$ , d.f.=1, p=0.692) * 2 cell expected count <5	Disagree	4 (22%)	14 (78%)	18 (100%)
	Agree	4 (14%)	25 (86%)	29 (100%)
<b>Outcome Fairness</b>				
Being given a penalty notice was what I deserved in the circumstances (n=56) ( $\chi^2= .149$ , d.f.=1, p=1.000) * 1 cell expected count <5	Disagree	8 (21%)	30 (79%)	38 (100%)
	Agree	3 (17%)	15 (83%)	18 (100%)
In the circumstances, a penalty notice was a disproportionately harsh response to my behaviour (n=56) ( $\chi^2= .125$ , d.f.=1, p=1.000) * 1 cell expected count <5	Disagree	4 (17%)	19 (83%)	23 (100%)
	Agree	7 (21%)	26 (79%)	33 (100%)

**Appendix 3: Figures**

**FIGURE A7.1: PRINCIPAL COMPONENTS ANALYSIS - SCREE PLOT**



**CHAPTER 8: APPENDIX 1 – TABLE**

<b>Table A8.1: Comparison of cases proceeded against in the magistrates court and disposed of via PND</b>								
<b>Year</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Offence</b>	<b>Proceeded against in the magistrates court<sup>1</sup></b>							
Possession of cannabis	27,871	14,646	13,040	13,450	14,824	18,702	22,443	26,452
Criminal Damage, value £5,000 or less	43,209	42,819	41,008	38,634	39,417	39,610	39,647	38,981
s5 Public Order	25,225	25,007	24,684	26,406	27,684	24,871	22,787	22,848
Drunk and disorderly	31,343	22,601	16,342	16,143	17,911	19,447	20,601	20,581
Theft from shops <sup>1</sup>	86,089	78,241	70,850	64,401	64,401	72,609	77,421	83,924
<b>Total</b>	<b>213,737</b>	<b>183,314</b>	<b>165,924</b>	<b>159,034</b>	<b>164,237</b>	<b>175,239</b>	<b>182,899</b>	<b>192,786</b>
<b>Year</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Offence</b>	<b>Disposed of via PND<sup>2</sup></b>							
Possession of cannabis	*	*	*	*	*	*	11,491	13,916
Criminal Damage	*	1,190	12,168	20,620	19,946	13,427	10,145	6,253
s5 Public Order	*	28,790	64,007	82,235	77,827	57,773	43,338	32,317
Drunk and disorderly	*	26,609	37,038	43,556	46,996	44,411	43,570	37,119
Retail Theft (less than £200/£100)	*	2,072	21,997	38,772	45,146	45,616	48,161	40,170
<b>Total</b>								
<b>Year</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Offence</b>	<b>Total</b>							
Possession of cannabis	27,871	14,646	13,040	13,450	14,824	18,702	33,934	40,368
Criminal Damage	43,209	44,009	53,176	59,254	59,363	53,037	49,792	45,234
s5 Public Order	25,225	53,797	88,691	108,641	105,511	82,644	66,125	55,165
Drunk and disorderly	31,343	49,210	53,380	59,699	64,907	63,858	64,171	57,700
Theft <sup>3</sup>	86,089	80,313	92,847	103,173	109,547	118,225	125,582	124,094
<b>Total</b>	<b>213,737</b>	<b>241,975</b>	<b>301,134</b>	<b>344,217</b>	<b>354,152</b>	<b>336,466</b>	<b>339,604</b>	<b>322,561</b>
<sup>1</sup> Source: Ministry of Justice 2004;2005; 2006; 2007b; 2008b; 2009d; 2010e, 2011e, Source for all other offences proceeded against in the magistrates: Ministry of Justice 2012c								
<sup>2</sup> Source: Ministry of Justice 2011b								
<sup>3</sup> It should be noted that cases disposed of via PND are not directly comparable to those proceeded against in the court as the latter may be of a far higher value.								