

Pavement Injustice
How On-the-Spot Fines
are Undermining the
Rule of Law

Josie Appleton

Introduction
Dominic Raab MP

Campaign Against On-the-Spot Fines
manifestoclub.com/pavementinjustice

Pavement Injustice
How On-the-Spot Fines are Undermining
the Rule of Law

Josie Appleton

Introduction
Dominic Raab MP



Campaign Against On-the-Spot Fines
manifestoclub.com/pavementinjustice

Pavement Injustice:
How On-the-Spot Fines are
Undermining the Rule of Law

Published: March 2013
ISBN: 978-0-9561247-4-6

Author: Josie Appleton
Editor: Dolan Cummings
Design: Tom Mower

This report was produced
with financial assistance
from the Joseph Rowntree
Reform Trust Ltd.



THE Joseph Rowntree
REFORM TRUST LTD

Contents

- 4 Introduction
Dominic Raab MP
- 6 Introduction
The Rise of On-the-Spot Fines
- 11 Section 1
Overview of On-the-Spot Fines
- 16 Section 2
Bypassing the Courts
- 22 Section 3
Arbitrary Punishment
- 27 Section 4
The Corruption of Punishment
- 32 Section 5
Criminalising the Innocent
- 36 Section 6
The Privatisation of Punishment
- 41 Section 7
Fining Children
- 47 Section 8
The Personal Costs of On-the-Spot Fines
- 52 **Conclusion**
- 54 **Appendix**

Introduction

Dominic Raab MP

The British tradition of liberty is not merely some antiquated constitutional notion, nor pre-occupied with legal niceties. It is about the quality of life we enjoy as citizens. The debate on freedom often centres around counter-terrorism proposals (like Tony Blair's plan for 90 days pre-charge detention) or law enforcement (as with identity cards). These issues rightly attracted controversy, scrutiny and widespread opposition.

However, there is a more subtle and surreptitious accretion of power at play – at the expense of British citizens – that erodes our bedrock freedoms. This includes myriad state powers to enter the home, the gradual erosion of free speech, and the expansion of summary powers to punish. In this important report, Josie Appleton shines a light on this troubling development, and specifically the growth of the power to issue on-the-spot fines against people.

We should be worried by the expansion of such powers – first to local councils, then to private contractors, often operating according to commission rather than principles of fairness. We should be concerned by the arbitrary abuse of decent people in their daily lives by jobsworth officials or their private sector agents. We should also question what this means for basic principles of British justice.

The growth in the use of on-the-spot fines to deal with violent crimes, drug offences and shoplifting amounts to the imposition of a tax rather than a proper punishment on antisocial behaviour. Yet, for most people, criminal justice is not about raising revenue. It is about making sure those guilty of substantial crimes are properly punished and deterred – while those who are innocent are not swatted like flies by those granted state power to impose criminal penalties without safeguards to prevent abuse.

This is not a zero-sum game. As Appleton spells out with clarity and force, circumventing our justice system does not mean more effective law enforcement. Eroding the basic idea of innocent until proven guilty, and expanding summary powers of punishment, risks promoting a system and culture which, contrary to the fundamental tenets of British justice, is neither firm nor fair.

Dominic Raab Conservative MP, Esher & Walton
author, 'The Assault on Liberty – What went Wrong
with Rights'

Introduction

The Rise of On-the-Spot Fines

Ten years ago, on-the-spot fines were reserved for minor procedural issues such as parking offences. Since 2004, the use of summary fines has been extended to new areas of criminal justice, as well as public services and even schools. Now over 200,000 on-the-spot fines are issued each year, a total of 1.65 million since 2004.

People have received on-the-spot fines for a bizarrely varied range of incidents. Some have received an £80 fine for serious offences that would previously have been tried in a court of law, such as theft or criminal damage. Others have received the same penalty for actions such as putting up a lost cat poster, feeding the ducks, or handing out leaflets, which would not previously have been considered worthy of punishment at all. Finally, on-the-spot fines have been used to deal with social problems such as truancy, which would have been dealt with through school discipline or care rather than a formal penalty.

The rise of on-the-spot fines is the result of substantial shifts within public authorities.

Within criminal justice, on-the-spot fines represent a move away from prosecution and court trial, towards out-of-court and summary penalties. There have been 1,256,089 on-the-spot fines for criminal offences since 2004, an average of 150,000 a year. Now ‘out of court’ punishments make up nearly half of all offences ‘brought to justice’ (these increased from 23% of all offences in 2003, to 40% in 2008).¹ Within police authorities, on-the-spot fines grew as part of a new emphasis on ‘quicker, speedier justice’, backed up by targets.

¹ Exercising Discretion: The Gateway to Justice, HMIC and HMCPS, June 2011, p10

Within local authorities, the growth of fines signifies a shift from public service towards assuming more of a policing and disciplinary role. Additionally, at a time when resources are tight, some authorities are seeking to make money from new fees and fines. There has been a steady growth of fines issued by local authorities for environmental offences, from 13,926 in 2001 to over 72,136 in 2011–12.

Within local education authorities, truanting fines have risen from 3,000 in 2004 to 32,000 in 2010–11. Here, fines supplant ordinary forms of school discipline or pastoral care, as well as communication between the school and parents.

Since on-the-spot fines were created, they have been steadily extended to an increasing numbers of areas, and an increasing number of authorities. Local authorities are constantly proposing to extend the actions for which their residents can be fined, to include messy gardens,² smoking outside,³ swearing,⁴ and spitting.⁵

As both local authorities and the police take a ‘parking-ticket’ approach to their work, they increasingly contract private companies to issue fines. Private agents are being employed to punish in a way that has not occurred since the ‘thief catchers’ of the eighteenth century, when private individuals chased criminals for financial rewards. This privatisation of punishment suggests public authorities are happy to outsource their authority to badged quasi-officials, so long as the ‘results’ keep on coming in.

² Council fines for messy gardens, BBC News, 15 January 2009

³ Smoking ban proposed for Stony Stratford, BBC News, 1 July 2011

⁴ Swearing in Barnsley: Spot fines for potty mouths, BBC News, 30 May 2011

⁵ Enfield council seeks government support for spit ban law, BBC News, 10 February 2012

The result, for justice and for the public, has been dire. With on-the-spot fines, punishment becomes a summary, arbitrary business, with the official acting as judge and jury. Without the checks and openness of a court trial, there is a danger that punishment is driven by the whims or private inducements of officials, rather than the interests of justice or the public good. Increasingly, people are fined because they are the unlucky victim of a ‘fishing expedition’, or to enable the official to meet targets or make a commission. Changes in policy and incentives schemes lead to substantial fluctuations in fines within both police forces and councils.

This bypassing of the court is historically unprecedented. Traditional English justice was defined by the Common Law right to an open and public court trial, which was pointedly contrasted with the closed and summary proceedings often found on the Continent. It is striking that the legal process is now frequently presented as a cost or waste of time, which gets in the way of ‘results’. England, the country with the longest history of the public court trial, has made summary justice an everyday experience.

There is an inherent tendency for on-the-spot fines to punish the innocent, and let the guilty off the hook. Half of on-the-spot fines go unpaid, and it is likely that some who fail to pay will be those who are guilty but who have little respect for law and order. On the other hand, examples abound of innocent members of the public who have been frightened into paying up for things they did not do. Whether people pay up depends more on the firmness of their constitution than on the evidence of their guilt or innocence.

Whenever officials have targets or inducements to issue fines, this always leads to a disproportionate focus on more minor offences, since these are more common and easier to catch. When litter wardens are employed on a commission basis, they issue fines almost

entirely for the most minor litter offences. In a similar way, police forces quickly discovered that fining people for offences such as public urination was the most effective way of meeting their targets. Perversely, the punishment infrastructure becomes focused on the most minor rather than the most serious of offences.

This focus on minor misdemeanour has been aided by the growth of catch-all laws which criminalise broad ranges of behaviour. The vague offence of causing ‘harassment, alarm or distress’ (Section 5 of the 1986 Public Order Act) was for several years the one most frequently punished with a ‘Penalty Notice for Disorder’ (see below), with 84,279 issued in 2006–7, and a total of 414,691 since 2004. When an already vague offence is punished in a summary manner, it is applied even more widely.

New laws enacted between 2002 and 2006 criminalised the everyday activities of drinking in a public place, unlicensed leafleting, or walking your dog in a no-dog zone, and these offences are almost always punished with on-the-spot fines. There were 9,522 fines for public drinking between 2004 and 2012, and 5,867 fines for the offence of ‘misuse of a public telecommunications system’ (such as making hoax or nuisance phone calls).⁶ In the four years of available data between 2006 and 2012, councils issued 1,122 fines for the offence of unlicensed leafleting, 3,065 fines for walking a dog in a no-dog zone, and 5,622 fines for failing to comply with the council’s bin policy.⁷

This matters on principle: such erratic punishments unfairly penalise the innocent, and bring criminal justice into disrepute. It also matters personally for fined individuals: many fines are registered on the Police National Computer and can return on criminal

6 See Appendix A

7 See Appendix B

records checks, debarring people from a wide range of jobs and volunteering roles. A fine that takes minutes to issue can ruin somebody's life.

This report argues that on-the-spot fines are in general a lazy, unjust and predatory penalty, inherently disposed towards perverse effects and the arbitrary punishment of innocent people. This report suggests that vast majority of these 200,000 incidents a year would be better dealt with through a different mechanism, whether it be court trial, public communication, school discipline, or – in the case of innocent duck feeders and leafleteers – not punished at all.

Section 1

Overview of On-the-Spot Fines

On-the-spot fines were created in a series of measures between 2001 and 2005.

Penalty Notices for Disorder (PNDs) are fines for criminal offences, given out by police officers and police community support officers (PCSOs): they were introduced by the Criminal Justice and Police Act 2001, and rolled out to all police forces in 2004.⁸ In 2004, separate measures extended their use to 16- and 17-year olds, and seven police forces also issued fines to 10 to 15-year olds. The majority of PNDs are issued for the offences of ‘drunk and disorderly’ behaviour and behaviour causing ‘harassment, alarm or distress’. Some of these fines were for offences that previously would have been dealt with in a court, such as theft or criminal damage. Others were issued for previously unpunished behaviour, such as drinking in a public place,⁹ underage drinking,¹⁰ or causing annoyance via a public telecommunications system.¹¹ Many of these offences are recordable on the Police National Computer, and can return on criminal records checks.

Penalty Notices for Disorder were further extended by the Police Reform Act 2002, which allowed non-police officials – including private security guards and council workers – to be accredited with police powers. A Manifesto Club Freedom of Information (FOI) request revealed that 34 accredited organisations have the power to issue PNDs, including private security companies, shopping

⁸ Home Office website: www.homeoffice.gov.uk/police/penalty-notice/

⁹ The crime of drinking in a public place was created in the same Criminal Justice and Police Act 2001, which allowed local authorities and police to enact ‘Designated Public Place Orders’, areas within which police could confiscate alcohol.

¹⁰ There are several offences of serving or supplying alcohol to under-18s. Although it has strictly always been an offence for 16 and 17-year-olds to drink in pubs, this was a widely tolerated practice that was rarely punished.

¹¹ Section 127 of the Communications Act 2003

centres and transport companies.¹² PNDs have ranged between 100,000 and 200,000 a year since 2004 (see Appendix A for full statistics).

Fixed Penalty Notices (FPNs) are given out by local authorities for environmental offences such as littering, fly-posting or dog fouling. Local authorities received such fining powers in 1990, but their powers were greatly expanded by the 2005 Clean Neighbourhoods and Environment Act, which made it an offence not to give council officers your name, and also allowed receipts from FPNs to be used on a broader range of functions.¹³ FPNs were also expanded by new laws which criminalised new categories of behaviour, such as walking your dog in a no-dog zone¹⁴ or leafleting without a licence¹⁵. Some councils started to punish actions such as putting up a lost cat poster, or slightly over-filling a rubbish bin, with unprecedented ferocity. Over the past ten years, the number of environmental FPNs issued in England has risen from 13,926 in 2000–1, to 72,136 in 2011–12 (see Appendix B for full statistics). Our FOI request found that there are now 6,368 council officers empowered to issue environmental fines.¹⁶

Truancy: Local authorities and schools were given powers to issue Fixed Penalty Notices for truancy under the Anti-Social Behaviour Act 2003, which was enacted in 2004.¹⁷ The number of fines issued

¹² Should private security guards have police powers?, Manifesto Club briefing document, July 2012: www.manifestoclub.com/files/AccreditedPersonsBriefing.pdf

¹³ The Corruption of Punishment, Josie Appleton, Manifesto Club, November 2012: www.manifestoclub.com/files/corruptionofpunishment.pdf

¹⁴ Enacted by Dog Control Orders Regulations 2006

¹⁵ Enacted by Clean Neighbourhoods and Environment Act 2005

¹⁶ The Corruption of Punishment, Josie Appleton, Manifesto Club, November 2012: www.manifestoclub.com/files/corruptionofpunishment.pdf

¹⁷ Section 23 of the Anti-Social Behaviour Act 2003, www.legislation.gov.uk/ukpga/2003/38/section/23

for truancy rose from 3,483 in 2004–5 to 32,641 in 2010–11.¹⁸ These included both children with serious behavioural or family problems, and also children who were just taken out of school for a family holiday, which would not previously have been punished. This represented the penalising of normal family practices, as well as fining parents of children with serious problems, which would previously have been dealt with through school discipline or social services.

Bylaw offences: The previous government (under provisions in the Local Government and Public Involvement in Health Act 2007) had planned to allow local authorities to create new by-law offences, which could then be punished by fines. This would have meant a dramatic shift of legislative and punishing power to local authorities, unprecedented since the Justices of the Peace of the eighteenth century (who delivered public services as well as assuming a legislative and judicial function). It now appears that local authorities in England will not be allowed this power. Nevertheless, local authorities in Wales will enact the planned reforms, which means that in principle a council could prohibit an activity and then punish violations through fines.¹⁹ It remains to be seen how these powers will be used, but in principle this is a highly significant shift.

In total, the number of on-the-spot fines issued has risen from 13,926 in 2001–2, to 226,640 in 2011–12, as per the table below. Fines have reached a total of 1,651,894 since 2004.

¹⁸ Data from Department for Education website: www.education.gov.uk/schools/pupilsupport/behaviour/parents/a0010302/parental-responsibility-data

¹⁹ Local Government Byelaws (Wales) Act 2012: <http://senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=2413>

On-the-spot fines by year, 2001–2012

	2001–2	2004–5	2008–9	2011–12
PNDs for criminal offences ¹	–	90,754	174,959	121,863
FPNs for environmental offences ²	13,926	28,773	41,682	72,136
FPNs for truancy ³	–	3,483	20,887	32,641
TOTAL	13,926	123,010	237,528	226,640

Total on-the-spot fines, 2004–12

FPNs for environmental offences ⁴	268,071
PNDs for criminal offences ⁵	1,256,089
FPNs for truancy ⁶	127,734
TOTAL	1,651,894

¹ England and Wales, financial year. See Appendix A.

² England, financial year. See appendix B. This figure excludes 2009–10 and 2010–11 (Defra is missing data for these two years).

³ England, academic year. Data from Department for Education website: www.education.gov.uk/schools/pupilsupport/behaviour/parents/a0010302/parental-responsibility-data

⁴ England, April 2004 to March 2012. See appendix B. This figure excludes 2009–10 and 2010–11 (Defra is missing data for these two years).

⁵ England and Wales, April 2004 to March 2012. See Appendix A.

⁶ England, September 2004 to August 2011. Data from Department for Education website: www.education.gov.uk/schools/pupilsupport/behaviour/parents/a0010302/parental-responsibility-data

Section 2

Bypassing the Courts

The purported aim of on-the-spot fines was to deliver ‘swift, simple, effective’ justice for low-level disorderly behaviour,²⁰ freeing up the police to deal with more serious offences.

Indeed, since the 1950s, fines have been used for the enforcement of procedural violations, such as failing to have a train ticket or parking on double yellow lines; it makes sense to avoid tying up court time with such minor and straightforward matters. Yet the new on-the-spot fines represented a significant shift, by applying this procedural penalty to criminal offences, which are both more serious in nature and also involve a greater subjective element of interpretation.

These fines were motivated by a new view of the legal process as a burdensome and time-wasting procedure; officials sought ways of bypassing the courts and achieving ‘results’. There was an idea that punishment could be served instantly, on the pavement – without the bother of going to the police station, filling in forms and summoning lawyers to prove a case in court several months later. Hence then prime minister Tony Blair’s vision of police officers ‘marching jobs to the cash machine’.

This view has worrying implications for civil liberties. Taking the punishment of criminal offences out of the hands of the courts short-circuits the legal process, both in terms of the establishment of fact (did the event actually happen?) and interpretation of law (does the event meet the qualifications for a criminal offence?). The offences of ‘drunk and disorderly behaviour’ and ‘harassment, alarm and distress’²¹ – the most commonly issued PNDs – are extremely subjective in definition. When is drunken behaviour so bad that it is criminal? When does annoyance become harassment?

²⁰ Home Office website: www.homeoffice.gov.uk/police/penalty-notice/

²¹ Behaviour causing ‘harassment, alarm or distress’ is an offence under Section 5 of the Public Order Act 1986

Yet now these offences are ‘brought to justice’ more through summary fines than through a court process.²²

As a result, such offences come to lack systematic legal definition, because the majority of cases are not proven in court, where evidence can be tested and judgments established as precedent. Without such public contestation, the definition of these offences is left to the discretion of officials. The fixed penalty system becomes a shadow justice system, which goes unchecked, untried, and undocumented.

There is great disquiet within the legal profession about the rise of on-the-spot fines. A senior judge professed that he was ‘uneasy’ and ‘troubled’ by the growth of out-of-court penalties,²³ while the head of the Magistrates’ Association warned that, ‘those who are there to enforce the law are effectively put in the position of judges and sentencers.’²⁴ Magistrates cite worrying examples of serial shoplifters or violent offenders receiving a series of on-the-spot fines, which they didn’t even bother to pay; they argue that serious offenders are being ‘let off the hook’ and ‘escaping court’.

The other side of the picture is that on-the-spot fines also lead to the wrongful punishment of innocent people. After all, the court trial is not only a site for punishment, but also has the positive meaning of a place for checking summary power, discovering the truth of events, and protecting the innocent.

Those issued with an on-the-spot fine are strongly discouraged from appealing their case in court. The payment is presented as a

22 In 2011, 17,365 people were convicted of ‘drunkenness with aggravation’ (Hansard, 27 November 2012, www.theyworkforyou.com/wrans/?id=2012-11-27b.129244.h), while 35,090 were given a PND for drunk and disorderly behaviour. In 2009, 18,249 people were convicted of causing ‘harassment, alarm and distress’, while 39,787 received a PND for this offence.

23 Top judge warns over rise in out of court penalties, Daily Telegraph, 7 July 2011

24 Police play judge and jury in too many cases, say magistrates, Daily Telegraph, 6 November 2012

simple matter, like an online shopping purchase – ‘Make your payment by providing us with information in 4 simple steps’²⁵ – and there are even discounts for early payment. By contrast, the court is invoked mainly as a threat:

‘If you fail to pay the full amount of your PND ... the fine will increase by 50% and you may be charged with the offence for which the notice had been issued. If you don’t pay the PND at all ... you may have to pay additional bailiff’s fees or you may be arrested. If you are charged and convicted you will receive a criminal record and may have to pay court costs in addition to any fine imposed. You may also be given a custodial sentence.’²⁶

The fine is offered as a simple, no-risk payment, while the legal process is associated with the threat of much heavier fines, criminal records, even prison sentences. This presentation of the legal process is more familiar in corrupt and under-developed countries, where officials warn: ‘Just pay us and we will make this issue go away. It will be much harder for you if you don’t cooperate...’ For recipients of on-the-spot fines, the legal process is presented not as a means of winning justice, but as a place where the coercive powers of the state will be used against you.

Worryingly, the question of innocence or guilt is detached from punishment. People are told, ‘a PND is not a conviction therefore it will not result in a criminal record’;²⁷ they are also told that accepting a fine is ‘not an admission of guilt’, but rather is an ‘opportunity’ to ‘discharge liability’ for an offence.²⁸

25 British Transport Police website, www.btp.police.uk/passengers/advice_and_information/penalty_notice_for_disorder.aspx#03howcanipaypnd

26 British Transport Police website, ‘Penalty Notice for Disorder’: www.btp.police.uk/advice_and_information/travelling_safely/penalty_notice_for_disorder.aspx#WILLTHE

27 British Transport Police website, ‘Penalty Notice for Disorder’: www.btp.police.uk/advice_and_information/travelling_safely/penalty_notice_for_disorder.aspx#WILLTHE

28 Home Office website: www.homeoffice.gov.uk/police/penalty-notice/offences-procedures/

When people are told a fine is not an admission of guilt, it is small wonder they have paid fines for things they did not do. One woman, a non-smoker, paid a fine for allegedly having thrown a cigarette butt out of her car window, after she was visited and threatened by two council officers. She paid the fine after seeking legal advice, yet her sense of justice was offended: ‘It seems so unfair when you get a fine for something that you haven’t done.’²⁹ Several businesses have paid the fines for posters that somebody else put up, because it was ‘easier to pay the fine than go to court’.³⁰

One key problem is the lack of systematic processes of appeal. The on-the-spot fine is an administrative penalty, but there are no means for appealing it as an administrative penalty: one can only appeal by bringing the incident within the purview of the criminal law. The strong incentive is therefore to pay the fine, whether you are guilty or not.

In practice, public authorities have informal appeal systems. Out of 35,465 litter fines in 2008–9, some 4,988 were cancelled,³¹ and around two percent of PNDs are cancelled. But these appeal systems are very patchy and exist at authorities’ discretion. One man complained:

‘I was stopped by an official who said my dog had fouled a park. I didn’t see it and he refused to show me where my dog had fouled. (I always carry poop bags.) There was no address to appeal to and when I received a Final Warning letter the phone number was an answering machine!’³²

29 ‘Non-smoker fined for “throwing cigarette from car”’, Metro, 20 July 2011

30 ‘I’ll go to jail over £75 fine for sticker – store owner’, Hull Daily Mail, 21 July 2011

31 Data on the Defra website: www.defra.gov.uk/corporate/docs/data

32 Post at: www.opendemocracy.net/ourkingdom/josie-appleton/pavement-injustice-tyranny-of-on-spot-fines

Another man wished to appeal a fine he had received from the private security company, Xfor, employed by Basildon council. The council told him he had to appeal the fine by email with the private security company itself. After 15 days, he received the following barely literate response from the company’s ‘team leader’:

‘You are entitled to take legal advice relating to the Environmental Protection Act and littering. on rear occasions fines can be crushed due to ill health... . A decision will be made on by what the health professional access. If you cannot provide any medical documentation of you ill health then you are legally responsible to pay the FPN notices or be taken to court for refusing to discharge your liability.’³³

This is clearly not a satisfactory forum in which to appeal. The one clear element of this response is the veiled threat of punishment for non-cooperation, with non-payment presented as ‘refusing to discharge your liability’.

In the absence of appeal systems, the most reliable form of appeal tends to be in the local papers, and individuals who have been unfairly fined often go to the press. What generally happens is that the individual appears in the paper, saying how they were fined for putting up lost cat posters or feeding the ducks or indeed for something that they didn’t do – and after this the fine is simply forgotten. Perhaps somebody in the local authority removes the slip from their files, because the issue goes away and the person hears nothing further. But this is an external forum for airing some of the worst cases, rather than a systematic right of appeal within the penalty system itself.

33 Email sent to Manifesto Club, 22 November 2012

Section 3 Arbitrary Punishment

The absence of legal process means the outcome of on-the-spot fines depends partly on the vagaries of official discretion. While prosecutions for criminal offences tend to vary only slightly from area-to-area and year-to-year, the numbers of on-the-spot fines swing wildly up or down in response to shifts in policy or other priorities. Punishment becomes an arbitrary affair, rather than a consistent and predictable logic.

A study by the Crown Prosecution Service found that of those subjected to scrutiny, a third of PNDs were not properly processed: ‘the disposal selected did not meet the standards set out in the existing national and force guidelines.’³⁴ The study also highlighted an unusual degree of variation between police forces, within which out-of-court punishments ranged from 26% to 49% of offences ‘brought to justice’.

Even within a single police force area, PND numbers can fluctuate rapidly. One former head of a police authority told me that at one point their force appeared to be experiencing a rapid rise in violent crime, which turned out to be the result of officers issuing PNDs to people urinating in the street on Friday and Saturday nights.

The very large fluctuations in numbers of PNDs issued since 2004 are largely explained by shifts in policy and targets, rather than criminal events. PNDs started at 90,754 in 2004–5, and rose to a high of 209,373 in 2006–7, before falling back to 121,863 in 2011–12. These fluctuations were primarily caused by the imposition, and then removal, of a ‘sanctions detection target’ for ‘offences brought to justice’ (see section below, ‘The corruption of punishment’). Such policy-led variations are not seen in serious criminal offences prosecuted in a court of law.

³⁴ Exercising Discretion: The Gateway to Justice, Her Majesty’s Inspectorate of Constabulary and the Crown Prosecution Service, June 2011

Between local authorities, litter fines issued vary from none to over 8000 a year, a disparity that results from policy differences rather than variations in the amount of litter dropped. In high-fining authorities, there was generally an identifiable point in the past at which fines increased dramatically. This was the point at which there was a policy change within the council: the department expanded its environmental enforcement department, or employed a private company in a commission arrangement. For example, Blaenau Gwent County Borough Council issued seven litter fines in 2010–11; after contracting a private company on a commission basis in October 2011, its fines shot up to 1147 in six months.

Officials sometimes go on a ‘sweep’, issuing a swathe of fines for offences such as public drinking or walking dogs in a no-dog zone. Such sweeps make it very likely that people will be punished for minor indiscretions. We were contacted by a lady fined by Westminster Council for the offence of ‘commercial waste’, because she had included a single work bank statement in her domestic rubbish.³⁵ Far from being the just consequence of an offence, this fine was the result of the council’s fishing expedition – officials were employed to examine the contents of people’s bins on the look-out for any trivial misdemeanour.

On-the-spot fines give a large role to official discretion, which means people can be fined for arbitrary or even personal reasons. There is guidance for how fines should be issued, but this is non-statutory and not systematically enforced. Summary penalties give officials unprecedented ability to punish those they believe are ‘up to no good’, or towards whom they have taken personal dislike. A Welsh lady fined for dropping a cigarette butt on her own property was given the fine by a council worker with whom she was having

³⁵ Bin Police Work Overtime, Manifesto Club briefing document, 14 September 2012 www.manifestoclub.com/binpolicereport

an argument. She says: ‘He was being rude. While we were arguing, I put my cigarette out on the concrete within my fence, then picked it up and put it in my pocket, and he said, “Why are you littering?” He didn’t say anything about a fine though – it came through the post.’³⁶ Such fines appear to be a matter of personal vindictiveness, rather than a response to a genuine offence.

Summary penalties have an inherent tendency to be used in a discriminatory manner, against particular groups or individuals. One street drinker told me that he received a fine for public drinking on average every two weeks, as a result of Islington Police’s ‘no tolerance’ approach to street drinking.³⁷ While middle-class drinkers are left alone, street drinkers bear the brunt of fines for the offence of ‘drinking in a designated public place’. When penalties are not applied equally there is in effect a new legal discrimination between different groups of people.

A further arbitrary element of this system of punishment is that only half of on-the-spot fines are paid, and few non-payments are prosecuted. Around half of PNDs are not paid, but only around 5% progress to prosecution.³⁸ Around 40% of environmental FPNs are not paid, yet around 10% proceed to court action.³⁹ If anything, it is perhaps the law-abiding who will pay, since they will be most frightened at the prospect of being in trouble with the law. Some report that they have been stressed and unable to sleep after receiving a penalty notice, and it is this anxiety that induces them to pay the fine. Hardened criminals are unlikely to feel similarly troubled. The fact that such a low proportion of penalty notices are paid

³⁶ Telephone interview, Tracy John, April 2012. Mrs John’s case was discussed in ‘Smoker vows to risk jail rather than pay litter fine’, BBC News, 15 November 2011

³⁷ Interview, ‘JC’, Islington homeless shelter, September 2012

³⁸ Data obtained from Ministry of Justice: table on ‘out of court disposals’, www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics

³⁹ Statistics from 2008–9 fines for littering, Defra website: www.defra.gov.uk/corporate/docs/data/

means that the on-the-spot fine cannot be seen as a systematic method of law enforcement.

Finally, as a flat-rate fine, fixed penalties fall unequally upon different social classes. While Magistrates' Court fines are means-tested, flat-rate fines effectively mean different punishments for different groups. As one review outlined: 'For an individual on a low-income an £80 PND is a significant penalty; for a stockbroker it may be equivalent to loose change. The implications for justice by income are obvious. Wealthier individuals will be in a far stronger position to buy their way out of prosecution than poorer people.'⁴⁰ Whereas a court appearance falls equally on everyone, richer individuals will be able to 'discharge liability' for an offence more easily than will the less well off.

⁴⁰ Punishment before Justice? Crime and Society Foundation briefing, March 2005 www.crimeandjustice.org.uk/opus286/briefing1_march05.pdf

Section 4 The Corruption of Punishment

The lack of legal checks and balances makes penalty notices inherently susceptible to influence by extraneous factors, such as targets and commission incentive schemes. We can see these corrupting influences in fines issued by the police and by local authorities.

Between 2004 and 2008, police forces were set ‘sanction detection targets’ for ‘offences brought to justice’. Police officers quickly realised that targets could be most easily met by issuing on-the-spot fines for minor misdemeanours. PNDs rose and fell in concert with the implementation, and subsequent removal, of this target. The sanction detection target was introduced in April 2004, after which fines rose from 90,754 in 2004–5, to 158,006 in 2005–6, to 209,373 in 2006–7. In April 2008, the target was replaced with a different standard, emphasising bringing serious offenders to justice; the latter was removed in May 2010.⁴¹ PNDs fell to 160,000 in 2009–10, and 138,000 the year after (see Appendix A for full statistics). Genuine criminal offences prosecuted in a court of law are not so flexible, and prosecutions varied little over this period.

The fluctuation in PNDs was greatest with respect to the offence of causing ‘harassment, alarm and distress’, which in 2006–7 accounted for nearly half of all PNDs. This extremely vague offence under Section 5 of the Public Order Act was one of three PND offences that counted towards the sanction detections target (the others were theft and criminal damage). A Home Office study found that many police forces were issuing PNDs for Section 5 in lieu of the offences of drunk and disorderly behaviour and public urination, neither of which counted towards the sanctions detection target.⁴²

In 2007 the Police Federation magazine expressed grave concern about cases of ‘children being slapped with a penalty notice for

41 Ministry of Justice statistics: www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics

42 Penalty Notices for Disorder, Office for Criminal Justice Reform, February 2006: www.homeoffice.gov.uk/publications/police/operational-policing/pnd-final-report06?view=Binary

throwing buns at a bus because it counts as a sanction detection and enables a force to hit its target.’ The article summarised the incentive schemes that put pressure on officers to issue PNDs:

‘One North Wales division awards “points” to officers depending on how they deal with a crime. A Penalty Notice for Disorder scores 20 points compared to submitting intelligence for which you receive “nil points”. Sanction detections score five points if accompanied by an arrest and officers must get four a month to reach their target. In Essex, an inspector sets the number of sanction detections they expect their officers, including probationers, to attain each week. In some forces, bonuses are paid to BCU commanders who achieve performance indicators and in one force at least, commanders can financially reward junior officers who achieve the best results.’⁴³

Simon Reed, chairman of the Police Federation’s legislation committee, told the magazine that officers are encouraged to go after easy targets at the expense of more serious offences, and as a result are ‘tied up dealing with the trivia’. Inevitably, incentives to ‘bag’ crimes lead to an inflation of summary penalties for minor misdemeanours.

The link between PNDs and targets is also evident when comparing different police forces with different incentive schemes. A study by the Crown Prosecution Service noted that higher levels of PNDs are associated with force target schemes: ‘Where greater use [of PNDs] is evident, this is linked in some places to a strong emphasis on achieving targets associated with improving performance in the level of offences brought to justice. Target chasing has not been conducive to the effective exercise of discretion.’⁴⁴

43 Police Magazine, March 2007: www.polfed.org/p18_21_policing_by_numbers_0707.pdf

44 Exercising Discretion: The Gateway to Justice, Her Majesty’s Inspectorate of Constabulary and the Crown Prosecution Service, June 2011

Therefore people received very different punishments depending on the commission and incentive schemes in their particular police force. Another government review made the same point:

'The performance culture of a police force is a significant contributory factor to the application and use of PNDs.

The drive to increase the numbers of sanction detections and OBTJ [offences brought to justice] has heralded a change of focus to secure more positive outcomes and this relatively new disposal provides this opportunity.'⁴⁵

The target-induced explosion in PNDs for Section 5 is a great unspoken miscarriage of justice. Judged by the base rate of PNDs for this offence before and after the period of targets (around 20,000), this suggests that at their peak of 80,000 in 2006–7, some 60,000 extra people were given this penalty in order for police forces to meet targets. Therefore, over the period for which targets were operational, several hundred thousand people were given a Section 5 PND as a result of targets and incentive schemes.

A similar distorting effect is now occurring with local authorities' use of litter and other environmental fines, which are currently increasing rapidly. As I outlined in the Manifesto Club report, *The Corruption of Punishment*, in some areas fines are becoming a money-making operation, either for the local authority or for private contractors who are employed to issue fines on a commission basis. Here too, the majority of fines are now given for minor offences, simply because they are most common and easiest to catch.

When punishment becomes detached from the legal process, and subject to targets and incentive schemes, punitive powers become focused on the grey area of misdemeanour. Minor offences

⁴⁵ Penalty Notices for Disorder, Office for Criminal Justice Reform, February 2006: www.homeoffice.gov.uk/publications/police/operational-policing/pnd-final-report06?view=Binary

are punished with a disproportionate ferocity, with the perverse result that councils spend more time punishing people who drop cigarette butts than they do fly tippers. When what matters is the 'result' – the box ticked, or the fine levied – trivial offences will be prioritised over serious ones.

Section 5

Criminalising the Innocent

The initial justification for on-the-spot fines was that they would remove minor offences from the courts, and free up police time to deal with more serious offences. In fact, the opposite has happened: on-the-spot fines have caused an expansion of the criminal law into more trivial areas.

The fact that prosecutions remained broadly stable over the period of introduction of on-the-spot fines suggests that a significant proportion of these penalties are issued for ‘new’ offences, which would not previously have come within the purview of the criminal law. One study found that between a quarter and a half of PNDs went to offenders who would otherwise have been cautioned or prosecuted, meaning that between 50–75% of PNDs are ‘new business’.⁴⁶

The summary nature of the penalty notice meant existing laws with a potentially broad or subjective element could be liberally interpreted, and people punished for more trivial incidents. This particularly affects the offences of ‘drunk and disorderly’ and ‘harrasment, alarm and distress’, which make up the majority of PNDs. Examples abound: a privacy campaigner was given a Section 5 on-the-spot fine for handing out leaflets criticising local CCTV cameras.⁴⁷ A student was fined for ‘drunk and disorderly behaviour’ for a prank which involved him being drunk and naked in a public place.⁴⁸ Notoriously, an Oxford student was issued with a ‘harassment, alarm and distress’ PND for repeatedly asking a police officer if his horse was gay.⁴⁹

46 ‘Piloting ‘on the spot penalties’ for disorder: final results from a one-year pilot’, Gavin Halligan-Davis and Keith Spicer, 2004 <http://library.npia.police.uk/docs/hofindings/r257.pdf>

47 CCTV leaflet protester is fined, BBC News, 7 April 2007

48 Question to UK Police Online, 15 June 2008: www.ukpoliceonline.co.uk/index.php?topic/25169-l80-on-the-spot-fines-and-crpb-police-check/

49 Arrested for ‘gay horse’ jibe, Metro News, 8 June 2005

Section 5 prosecutions remained steady (around 25,000) between 2001 and 2009.⁵⁰ Over the same period, on-the-spot fines for this offence rose from 41,416 in 2004–5 to 84,279 between in 2006–7, suggesting that many of these fines were for incidents which would not have made it into a court.

Within local authorities, there has been a rise in fines for offences such as littering and fly-posting, as a result of a much broader interpretation of these crimes. People have been fined for ‘fly posting’ for such everyday actions as putting up a lost cat poster or coffee morning poster, and fined for ‘littering’ for feeding the ducks, or when their child accidentally dropped a crisp.

Other on-the-spot fines were issued under new laws that criminalised previously acceptable activities. Within police authorities, these new crimes included drinking in a public place (9,522 PNDs between 2004–5 and 2011–12), misuse of a public telecommunications system (5,867 fines in the same period), and a new strict enforcement of under-age drinking laws (24,535 fines in the same period). Within councils, new laws created offences including unlicensed leafleting (1,122 fines in the four years of available data between 2006–7 and 2011–12),⁵¹ walking your dog in a dog control zone (3,065 fines), and the offence of failing to comply with the council’s bin policy (5,622 fines). (See Appendices A and B for full data).

Such new laws criminalised previously normal and otherwise perfectly legal activities. Our FOI research showed that in London there are 435 ‘banned’ zones, within which otherwise legal activities are prohibited, meaning that in these areas it is an offence

⁵⁰ Statistics received from ‘Reform Section 5’ campaign, October 2012

⁵¹ Defra is missing data from years 2009–10 and 10–11

to leaflet, walk your dog, or drink in public.⁵² These areas are often not marked, so people may unwittingly commit an offence. Because of the trivial nature of such ‘offences’, these laws are rarely enforced by the courts and the on-the-spot fine is their primary enforcement mechanism. Therefore on-the-spot fines have enabled a new criminalisation and penalisation of matters so trivial that they would be dismissed immediately from any court of law.

⁵² See the website, ‘Banned in London’: www.bannedinlondon.co.uk

Section 6

The Privatisation of Punishment

As both public authorities and the police take a pragmatic and results-based approach to punishment, they increasingly resort to contracting private companies to issue fines.

Police forces can give certain police powers to private security guards and others under the Community Safety Accreditation Scheme. Our research found there are 2617 of these ‘accredited’ individuals, from 154 organisations. Thirty-four accredited organisations have been given the power to issue PNDs, including the employees of private security companies, shopping companies, and transport companies. Worryingly, we found that 80% of police authorities were not monitoring how accredited organisations used their powers, or the numbers of fines they were issuing. The fact that members of the public must take up complaints with the accredited organisation, rather than the police authority, suggests these officials are not accountable to the constable from whom their powers are derived.⁵³

Local authorities, meanwhile, are increasingly employing private contractors to issue environmental fines, on a commission basis. The main company involved, Xfor,⁵⁴ now works for 15 local authorities, and its agents are responsible for a large portion of litter fines being issued in England and Wales. Xfor receives a certain portion of each £75 fine – normally £45 – a deal that is presented as a no-risk arrangement for the local authority. Our FOI requests to local authorities revealed that in the period up until October 2012, Xfor had issued 43,498 fines, and had been paid £1.6 million.⁵⁵

53 Should private security guards have police powers?, Manifesto Club briefing document, July 2012: www.manifestoclub.com/files/AccreditedPersonsBriefing.pdf

54 Bin Police Work Overtime, Manifesto Club briefing document, 14 September 2012 www.manifestoclub.com/binpolicereport

55 The Corruption of Punishment, Josie Appleton, Manifesto Club, November 2012: www.manifestoclub.com/files/corruptionofpunishment.pdf

Public authorities' willingness to outsource in this way is a sign of a weakening of their institutional ethos, whether criminal justice or public service. When public institutions see their work in terms of the results of fines or statistics, they might as well outsource to a badged contractor who offers to produce these results at cut cost.

Therefore on-the-spot fines are increasingly being handed out by an indistinct type of official, who is not publicly recognisable or subject to lines of public accountability. These new officials are people in uniform-like jackets, or with badges, who claim to have powers to fine or direct you, but you don't know what these powers are, or who these people are. They have been given their powers by a public body, but that public body appears to have washed its hands of the issue and is generally uninterested in complaints about these agents' behaviour.

We have been contacted by several members of the public who were confused about who issued them with a fine. One woman was fined by two officials wearing black fleeces ('They opened their fleece to reveal some sort of name badge'), but when she refused to give her details 'to people wearing no uniforms' they followed her 'yelling that the police were on their way'.⁵⁶ A former prison warden was fined for dropping a cigarette butt by the private security company Xfor, and objected to the fact that these wardens filmed him and also issued him with a police caution:

'I do not believe this firm have the legal right to film us, and certainly do not have the powers of a police constable, and cannot, in my view, issue cautions. I showed him my driver's licence as requested, and he checked it by radio! Unbelievable, that Xfor appear to have such details in their possession.'⁵⁷

⁵⁶ Email to Manifesto Club, 24 October 2012

⁵⁷ Email to Manifesto Club, September 2012

So the shadow criminal justice penalty of on-the-spot fines is increasingly despatched by a shadow police force – unrecognisable officials with unknown powers, who are independent of lines of public accountability.

Because private security guards are motivated by their targets, rather than a public ethos, their behaviour often leaves something to be desired. One lady wrote to her local newspaper describing how she saw 'wardens hiding out of view of elderly smokers at Maidstone bus station, then running to "pounce" on a pensioner when she dropped her cigarette'.⁵⁸ Another man, who denies dropping any litter, said that he was followed onto and off a bus by Xfor officers, who threatened him with arrest and walked behind him making comments such as: 'You're just making an idiot of yourself' and 'You're being a pain in the a***'.⁵⁹

A former contractor for Islington Council describes how private wardens were pressured to issue fines, and the kinds of unscrupulous behaviour this led to:

'They [his employers] started pushing for any sort of ticket. We spent our time stalking people who were smoking cigarettes. We would watch and wait for people to drop their butts, which isn't right – and we were filming them. I have seen colleagues chase behind people to issue tickets, go into shops after people and take them out – you can't do that. I felt it was not right morally.'⁶⁰

Private contractors will tend to view punishment in a more pragmatic and self-interested manner than police or council officers, and will be more overtly 'out to get' people by issuing fines. These officials are a long way from the ideal of the police – as the vis-

⁵⁸ 'More than 1,000 smokers fined in littering clampdown', Kent Messenger, 7 October 2010

⁵⁹ 'Folkestone man misses date because of 'fag butt police'', Folkestone Herald, 28 January

⁶⁰ 'Whistleblower: public misled on Islington's dog squad', Islington Gazette, 24 August 2012

ible, steady representatives of public order and the law. Instead of distinguishable uniforms, contractors often wear fleeces or jackets, with the badges often hidden on the inside. They blend into the crowd while they watch people, or hide around corners or in bushes, leaping out when they spot an ‘offence’.

There is little room for explanations or leniency. One 64-year-old lady, fined for walking her dog in a dog exclusion zone she didn’t know about, said: ‘Two men came out of the bushes and walked towards me. They could easily have given me the benefit of the doubt as there weren’t any warning signs in place. Instead, they made me feel like a common criminal.’ The officers warned her that she was being filmed and said that she had no excuse for not knowing about the zone, because ‘all the information is online’.⁶¹

Ultimately, the aim of these private contractors is not to instil law-abiding behaviour, or achieve a public good such as clean streets, but to issue a certain number of punishments. Whereas the aim of the police is supposed to be reducing crime – and ensuring public order – these new officials require ‘criminal’ events in order to make a living. In this, these private contractors are more akin to the officials of countries without established legal or policing systems, who will behave in an unscrupulous manner in the search for kickbacks.

It is perhaps no surprise that in one Welsh authority commens were posing as litter wardens, issuing people with ‘fines’ and marching offenders to the cash machine.⁶² Xfor urged the public not to fall for these ‘bogus wardens’, but the question is surely whether their own officers are so different from this imitation.

61 Dog walker fined for taking pet into ‘exclusion zone’ in Blaina despite warning signs having been stolen, Gwent Gazette, 12 December

62 Public is warned: ‘Don’t fall for bogus officers’, Glamorgan Gem, 28 September 2012

Section 7 Fining Children

On-the-spot fines were always intended for young people (hence the ‘marching jobs to the cash machine’ scenario). The numbers of PNDs issued to 16- and 17-year olds ranged from 6,146 in 2004–5, to a high of 20,609 fines in 2007. Several police forces additionally issued PNDs to 10- to 15-year olds, which resulted in 4,434 fines being issued to this age group in a one-year pilot in 2005–6.⁶³

Under-18s can also receive FPNs for littering and other environmental offences. Our FOI requests revealed that, in 2011–12, 860 environmental fines were issued to under-18s across the UK.⁶⁴

Finally, on-the-spot fines are issued to young people for truancy, and these particular fines have grown dramatically from 3,483 in 2004–5 to 32,641 in 2010–11.⁶⁵ Recent announcements suggest a further clampdown, with suggestions of automatic fines for parents who take their kids out of school for family holidays, and proposals that truancy fines should be deducted from child benefit.⁶⁶

Of course, these fines are not really for the children – who do not have £80 to spare – but for their parents. On-the-spot fines are supposed to induce parents to take responsibility and exercise more control over their children. Announcing PNDs for 10- to 15-year olds in 2004, the then home secretary said that ‘Parents cannot be spectators, and have to take responsibility for their children.’⁶⁷ A hit in the wallet is seen as the way of making parents face up to their duties.

63 Piloting Penalty Notices for Disorder on 10- to 15-year-olds: results from a one year pilot, Ministry of Justice, November 2008: <http://dera.ioe.ac.uk/9144/1/piloting-penalty-notices.pdf>

64 Manifesto Club FOI requests to all UK local authorities

65 England, September 2004 to August 2011. Data from Department for Education website: www.education.gov.uk/schools/pupilsupport/behaviour/parents/a0010302/parental-responsibility-data

66 Dock truants’ child benefit, ministers urged, BBC News, 16 April 2012

67 Ten-year-olds face instant fines, Guardian, 27 December 2004

On-the-spot fines for young people are particularly problematic and unjust. PNDs have been issued for everyday youthful misdemeanour (such as the ‘throwing buns at a bus’ example highlighted above) particularly using the Section 5 offence of ‘harassment, alarm and distress’, which is sufficiently vague that a young person merely hanging out or being a bit rowdy could cause potential harassment to those nearby. A study of the use of fines for 10- to 15-year olds found that 72% of the 1,277 Section 5 PNDs for were for ‘new business’, which would not otherwise have been punished.⁶⁸ Here it seems that fines are supplanting the everyday adult disciplining of young people for misdemeanour; something that would once have been a matter of a telling off by a parent or other adult becomes subject to formal criminal sanction.

PNDs for young people could also have been influenced by police targets. It is striking that such a high proportion (87%) of fines for 10–15 year olds were issued for offences that counted towards a sanction detection target⁶⁹ (theft, criminal damage and ‘harassment, alarm and distress’). This suggests that PNDs for young people could have been even more distorted by targets than those for adults. It is a troubling notion that 10-year olds could have received a criminal penalty in order that a police force could meet their targets.

At the same time, there is evidence that PNDs were used in cases of more serious youth criminal action, which would otherwise have come before a court. There was a reduction in prosecutions, reprimands, and final warnings of 10- to 15-year olds in the areas

68 Piloting Penalty Notices for Disorder on 10- to 15-year-olds: results from a one year pilot, Ministry of Justice, November 2008: <http://dera.ioe.ac.uk/9144/1/piloting-penalty-notices.pdf>

69 Piloting Penalty Notices for Disorder on 10- to 15-year-olds: results from a one year pilot, Ministry of Justice, November 2008: <http://dera.ioe.ac.uk/9144/1/piloting-penalty-notices.pdf>

issuing PNDs to this age group.⁷⁰ In these cases, offenders were being 'let off' with a fine, but they also missed the disciplining experience of court, and the welfare support of the youth justice system. On-the-spot fines mean that the trivial is criminalised, and the criminal is trivialised.

A similar pattern is evident for truancy fines. On the one hand, an increasing proportion of truancy fines appear to be given for minor incidents, such as parents taking their children for a family holiday in term time. One third of truancy fines issued by Kent local education authority were to parents taking their children out of school for family holidays.⁷¹ These fines criminalise a commonplace practice (one survey found that half of parents had taken their kids out of school for a holiday),⁷² which has long occurred without significant cost to children's education.

Yet at the same time, on-the-spot fines for truancy are issued to children with serious behavioural or family issues, who require more thorough-going forms of discipline or support. One mother of a child with attention deficit hyperactivity disorder (ADHD) recounted her constant efforts to persuade her child to attend school, and her shock at receiving a FPN. 'I received a letter and explained to my son that I would be fined and if I couldn't afford it – which I couldn't – I would go to prison.'⁷³

Again this shows how the on-the-spot fine is a disinterested, lazy penalty, which catches within it a bizarrely varied range of behaviour. If institutions were relating to children, they would deal with

⁷⁰ Piloting Penalty Notices for Disorder on 10- to 15-year-olds: results from a one year pilot, Ministry of Justice, November 2008: <http://dera.ioe.ac.uk/9144/1/piloting-penalty-notices.pdf>, piii

⁷¹ Truancy costs parents £75k, Kent Online, 17 April 2012

⁷² The truancy toll: 60% rise in fines for parents taking kids out of school for cheap holiday, Mirror, 26 April 2012

⁷³ Truant children: Parents in Wales face fines up to £120, BBC News, 27 June 2012

these different categories of behaviour in very different ways. The severely disturbed child would be dealt with differently from the studious child taken out of school for a family holiday. The fine is a catch-all, and a replacement for dealing with problems or distinguishing between different cases and the different responses they require. It is far easier for a school to issue a fine for truancy than properly to discipline the child or attempt to deal with the issues that lie behind their non-attendance. When a school fines pupils in this way it is admitting that it has lost institutional authority.

Truancy fines are likely to have a negligible or counter-productive effect. In cases of term-time holidays, parents are not swayed: they calculate that they save £1000 by taking their holiday off-peak, so even with a £75 fine they are left quids in. A fine is not an argument, or an attempt to persuade parents, and so is easily ignored.

Where there are real problems, on-the-spot fines can only make matters worse. Rather than teaching parents their responsibilities, fines are likely to increase tensions within cash-strapped families and make parents feel resentful towards their children. It is difficult to think of a bad family situation that could not be made worse by the imposition of further financial penalties. Indeed, the government's review of PNDs for 10- to 15-year olds highlighted the fact that these could negatively 'affect the family relationship' and fail to deal with the 'underlying causes for the behaviour'.⁷⁴ Institutions that should be relating to children are issuing them with tickets, as if they were badly parked vehicles.

Finally, on-the-spot fines can actually undermine parental authority. One woman reported that a police community support officer (PCSO) issued her 14-year-old daughter with a £75 fine for

⁷⁴ Piloting Penalty Notices for Disorder on 10- to 15-year-olds: results from a one year pilot, Ministry of Justice, November 2008: <http://dera.ioe.ac.uk/9144/1/piloting-penalty-notices.pdf>

littering; her daughter 'came home very upset and distressed after the PCSO told her she may have to go to court and could have a criminal record.' The woman wondered whether it was permitted to issue such a penalty 'without a parent being present'.⁷⁵ On-the-spot fines bypass parental discipline: they are used in cases where, in the old days, a child would be brought home by the police or another adult and would subsequently get a good telling off by their parents.

Rather than handing the child over for parental discipline, the fine is intended to discipline the parent and punish them. The child witnesses their parent being disciplined; the child is apparently absolved of responsibility for their bad behaviour which appears to be not their fault but their parents'.

There is a particularly strong case for the abolition of fines for under-18s, and the replacement of these penalties with ordinary forms of adult discipline, and the youth justice system in serious cases. There is also a strong case for the abolition of fines for truancy – in spite of their rising popularity with policymakers – which are ineffective at best, and counterproductive at worst.

⁷⁵ Question to Yahoo Answers, 2010 <http://uk.answers.yahoo.com/question/index?qid=20100403184548AAwPCKy>

Section 8

The Personal Costs of On-the-Spot Fines

On-the-spot fines can also have significant effects on the lives of those who receive them, potentially debarring people from certain jobs, or being used as evidence in later court cases. Members of the public are not generally aware of this when they accept the fine.

About half of all offences for which PNDs can be issued are recordable offences, meaning they are recorded on the Police National Computer, and the individual's fingerprints and DNA can be taken.⁷⁶ Others are also notifiable offences, meaning that they are additionally reported to the Home Office, and furthermore are never 'spent', so can be cited in court many years later.⁷⁷ PNDs remain on the Police National Computer for the individual's lifetime, or until they reach 100 years of age.⁷⁸

After protests from the Law Society and others, the police operational guidance was amended to inform people receiving PNDs of the potential implications of accepting these penalties. Many police websites now advise people that: 'Penalty Notices issued for recordable offences, such as retail theft, cannabis possession and being drunk and disorderly, are registered on the Police National Computer and may be disclosed as part of an enhanced criminal records check, if deemed relevant.'⁷⁹

This is some improvement, although this warning is not made sufficiently clear to those receiving PNDs, who are also told that the fine is 'not a conviction' but a means to 'discharge liability for an offence'.

76 Penalty Notices for Disorder offences, on the Home Office website: www.homeoffice.gov.uk/police/penalty-notices/penalty-notice-introduction11

77 The Oxford Handbook of Criminology, (ed) Mike Maguire, Rod Morgan, Robert Reiner, OUP 2007, p963

78 Ministry of Justice Response to written questions, Hansard, September 2009: www.publications.parliament.uk/pa/cm200809/cmselect/cmdereg/1108/110810.htm

79 Avon and Somerset constabulary website: www.avonandsomerset.police.uk/information/infocentre/ItemDetails.aspx?sid=2337

When PNDs are presented like a parking ticket which you can pay over the telephone, it is not surprising that people are unaware of their seriousness. One young man asks:

'I've incurred a couple of £80 on the spot fines for two stupid drunken incidents: being naked, which was described as 'drunk and disorderly'; setting off a fire alarm at a uni halls of residence, which was described as 'criminal damage'. I remember asking at the time if this would show on my record as I wanted to be a teacher in the future and I think they said it would not. I assumed they are just like a parking fine as I rang up the next day and paid by debit card. Now, I'm currently looking into different ways of applying to be a teacher and they are asking for past criminal convictions and that I must disclose everything. I was just wondering...if these £80 on the spot fines will show on my record?'⁸⁰

These fines could indeed show up on his record: any information on the Police National Computer could return on an Enhanced CRB check, if deemed relevant. There are grave problems with registering summary penalties on the Police National Computer. If the penalty is 'not a conviction', what exactly is being registered? As a report by the Centre for Crime and Justice studies asked:

'if payment of a PND implies no admission of guilt, for what is it the individual is being punished? An "offender" is punished for an "offence" he or she does not have to admit to doing and for which he or she has not formally been convicted. The details of those issued with PNDs are recorded on the PNC, and although this is not a formal criminal record, the reason for retaining this data is to identify repeat "offenders". The implication here is that the police will view the recipient as guilty of the offence which conflicts with the

80 Question to UK Police Online, 15 June 2008: www.ukpoliceonline.co.uk/index.php/?topic/25169-l80-on-the-spot-fines-and-crb-police-check/

claim that payment of a PND is no admission of guilt. Under provisions of the Criminal Justice Act 2003, issue of PND can be used to provide evidence of ‘bad character’.”⁸¹

The result is ‘creating a new “semi-criminal” class, those with no formal criminal record yet deemed to be offenders.’⁸² The Oxford law professor Andrew Ashworth concurs that because PNDs are ‘not decided on comparable or consistent basis’, it is therefore wrong that they should be recorded on the Police National Computer.⁸³

It is difficult to tell how many times PNDs have been used as evidence in court. We can, however, confirm that they are returning on enhanced criminal records checks, which are now required for a wide range of employment, including work with children, in health or social care, and for many local authority contracts. Our FOI request revealed that since 2007, over 2000 CRB checks have returned PND information.⁸⁴

Number of enhanced CRB checks including PND information

2007/08	434
2008/09	480
2009/10	519
2010/11	483
2011/12	247
TOTAL	2,163

Whether PND information returns or not depends on the discretion of the police force supplying the information, so it is possible that different CRB checks would yield different results. Part of the

81 Punishment before Justice? Crime and Society Foundation briefing, March 2005: www.crimeandjustice.org.uk/opus330.html

82 Punishment before Justice? Crime and Society Foundation briefing, March 2005 www.crimeandjustice.org.uk/opus286/briefing1_march05.pdf

83 Interview, Andrew Ashworth, July 2012

84 FOI response from the CRB, 17 July 2012

problem is the uncertainty: people do not know, when applying for a job, whether a fine will appear on their record or not. Our concerns should be heightened if we bear in mind that notifiable offences (recorded on the Police National Computer) are also those which counted towards the sanctions detection target, and which were subject to inflation. Therefore, that it is those very offences that were subject to inflation as result of a police target that are recorded on the Police National Computer, with potentially long-standing effects on a person’s career.

Conclusion

The rise in the number of on-the-spot fines issued, to over 200,000 a year, marks one of the most significant shifts in the UK criminal justice system in generations, and a major shift in the way in which justice is delivered. This rise calls into question long-established principles – such as that justice should be done in court, and that punishment should be separated from financial or other incentives.

This report argues that on-the-spot fines tend to let the guilty off, and unfairly penalise the innocent. Fines are ineffective as a law enforcement mechanism, but subject to all the risks of summary and arbitrary power, risks that are inflated when penalties are being given out by a wide range of officials.

This report suggests that vast majority of these 200,000 incidents a year would be better dealt with through a different mechanism. It would be better if some recipients of fines had their case heard in court, where their actions could be given proper interrogation, and – if found guilty – proper punishment. In the cases of children, what was needed was school or adult discipline, rather than to be slapped with a fine that they cannot pay. Finally - in cases such as people fined for duck feeding or leafleting - there are recipients of fines who were entirely innocent, who should simply have been left to get on with their lives.

Appendix A

Number of Penalty Notices for Disorder Issued in England and Wales, 2004–2012

Offence	12 months ending Mar 2005	Mar 2006	Mar 2007	Mar 2008	Mar 2009	Mar 2010	Mar 2011	Mar 2012
Higher Tier Offences (£80)								
Wasting police time	1,604	2,869	4,051	3,836	3,351	3,089	2,843	2,702
Misuse of public telecommunications system	208	499	1,075	1,082	873	714	699	717
Giving false alarm to fire and rescue authority	65	100	105	80	83	75	55	40
Causing Harassment, alarm or distress	41,416	67,184	84,279	73,968	53,840	39,787	30,983	23,234
Throwing fireworks	260	675	669	631	497	340	347	319
Drunk and disorderly	32,872	38,105	44,879	47,299	44,388	41,391	37,139	35,090
Criminal Damage (under £500)	3,541	14,134	21,727	18,297	12,525	8,881	5,962	4,572
Theft (retail under £200)	6,266	26,195	41,784	44,437	47,408	45,657	38,828	33,323
Breach of fireworks curfew	18	36	49	37	22	14	24	9
Possession of category 4 firework	14	16	24	24	57	22	20	24
Possession by a person under 18 of adult firework	22	47	80	102	70	59	57	42
Sale of alcohol to drunken person	1	32	60	82	72	91	62	83
Supply of alcohol to a person under 18	-	12	56	66	93	94	54	42
Sale of alcohol to a person under 18	282	2,536	3,171	3,703	3,010	2,573	2,027	1,447
Purchasing alcohol for a person under 18	102	235	444	596	461	420	297	242
Purchasing alcohol for a person under 18 for consumption on the premises	28	71	67	60	49	35	35	33
Delivery of alcohol to a person under 18 or allowing such delivery	52	247	319	416	252	177	117	94
Possession of Cannabis	*	*	*	*	1,852	13,142	14,426	16,142
Lower Tier Offences (£50)								
Trespassing on a railway	135	280	1,340	1,410	1,599	1,448	1,449	1,274
Throwing stones at a train / railway	73	14	12	32	29	12	11	10
Drunk in a highway	3,004	2,999	2,588	1,961	1,314	915	740	635
Consumption of alcohol in a designated public place	572	729	1,148	1,594	1,829	1,440	1,143	1,067

Offence	12 months ending Mar 2005	Mar 2006	Mar 2007	Mar 2008	Mar 2009	Mar 2010	Mar 2011	Mar 2012
Depositing and leaving litter	186	842	1,252	1,351	1,151	1,112	883	676
Consumption of alcohol by a person under 18 on relevant premises	21	88	78	77	28	24	18	22
Allowing consumption of alcohol by a person under 18 on relevant premises	12	26	14	7	6	3	4	1
Buying or Attempting to buy alcohol by a person under 18	-	35	102	145	100	60	43	23
TOTAL HIGHER TIER OFFENCES	86,751	152,993	202,839	194,716	168,903	156,561	133,975	118,155
TOTAL LOWER TIER OFFENCES	4,003	5,013	6,534	6,577	6,056	5,014	4,291	3,708
TOTAL ALL OFFENCES	90,754	158,006	209,373	201,293	174,959	161,575	138,266	121,863

* Data obtained from Ministry of Justice: table on 'out of court disposals',
www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics

Appendix B Fixed Penalty Notices Issued by English Local Authorities, 2001–2012

	Litter	Graffiti	Fly posting	Dog fouling	Dog control	Leafletting	Waste receptacles	TOTAL
2001–2	11,615	-	-	2,311	-	-	-	13,926
2002–3	12,820	-	-	2,063	-	-	-	14,883
2003–4	7,565	-	-	2,742	-	-	-	10,307
2004–5	25,216	-	-	3,557	-	-	-	28,773
2005–6	33,066	47	886	4,080	-	-	-	38,079
2006–7	42,058	43	1,133	3,434	109	173	999	47,949
2007–8	33,693	138	1,572	2,079	874	358	738	39,452
2008–9	35,465	119	1,257	2,071	1,306	313	1,151	41,682
2011–12	63,883	312	945	3,208	776	278	2,734	72,136
TOTAL	265,381	659	5,793	25,545	3,065	1,122	5,622	

* Data 2001–2009 obtained from Defra, defra.gov.uk/corporate/docs/data/
 Data 2011–12 obtained from Manifesto Club FOI request to all English local authorities



About the Author

Josie Appleton founded and is director of the Manifesto Club. She coordinates the club's campaigns for freedom in everyday civic life – including campaigns against vetting, on-the-spot fines, booze bans and photo bans – and writes many of the club's reports and documents. As a journalist and essayist, she comments frequently on contemporary freedom issues, from the French burqa ban to smoking bans, from free speech to Common Law liberties.

About the Manifesto Club

● MANIFESTO CLUB The Manifesto Club campaigns against the hyper-regulation of everyday life. We support free movement across borders, free expression and free association. We challenge booze bans, photo bans, vetting and speech codes – all new ways in which the state regulates everyday life on the streets, in workplaces and in our private lives. Our rapidly growing membership hails from all political traditions and none, and from all corners of the world. To join this group of free thinkers and campaigners, see: manifestoclub.com/join

The Campaign Against On-the-Spot Fines

Over the past 10 years, public spaces have become increasingly policed by unaccountable officials bearing open-ended powers. On-the-spot fines mean that police and other officials can punish people for a series of offences 'on-the-spot', without legal checks and balances. The result has been arbitrary punishments for perfectly innocent activities, including for feeding the ducks, putting up a lost cat poster, and handing out political leaflets.

The Manifesto Club campaign against 'pavement injustice' takes on unaccountable officials in public spaces – investigating how powers are being used, and calling for their review and limitation. We want to defend the principle that justice is done properly in the courtroom, rather than on-the-spot by a badged busybody. And that law-abiding citizens should be able to use public spaces freely, without risking censure for feeding the ducks.

‘As Appleton spells out with clarity and force, circumventing our justice system does not mean more effective law enforcement. Eroding the basic idea of innocent until proven guilty, and expanding summary powers of punishment, risks promoting a system and culture which, contrary to the fundamental tenets of British justice, is neither firm nor fair.’

Dominic Raab Conservative MP
author, *The Assault on Liberty*

‘The Magistrates’ Association has argued for some time against the inappropriate use of penalty notices and cautions for serious offences, which should be dealt with inside a courtroom. This report highlights that a similar problem seems to exist where relatively trivial offences are concerned. Justice should be seen to be delivered fairly, openly and transparently, no matter what the offence and in such a way as to dispel any thought that it is being motivated by revenue considerations.’

Richard Monkhouse Deputy Chair
Magistrates’ Association