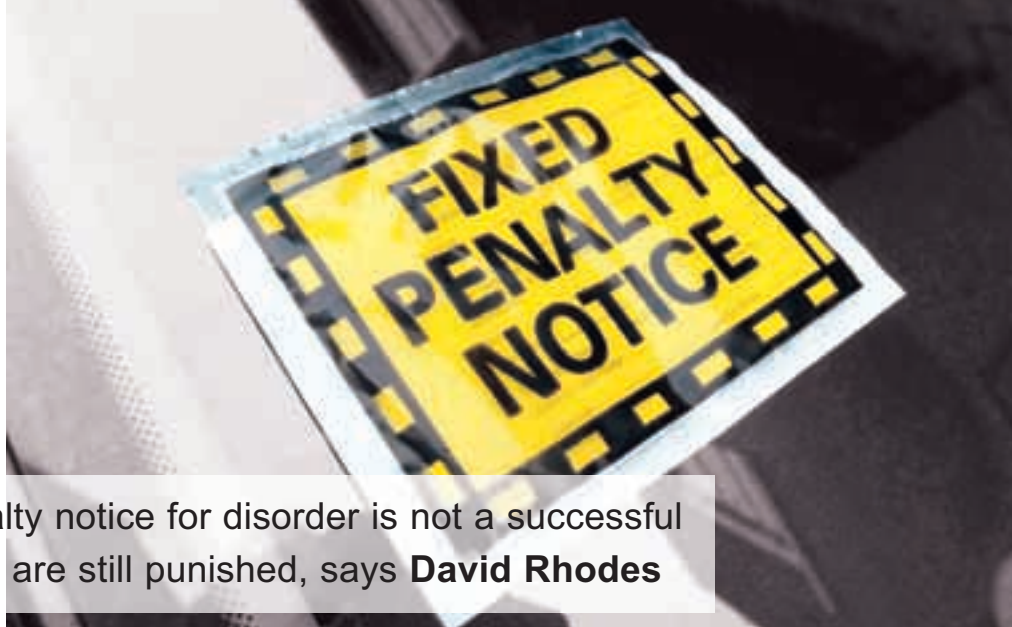


# Penalty kick

With no legal status, a penalty notice for disorder is not a successful deterrent – but the innocent are still punished, says David Rhodes



**WHAT IS THE** point of a fixed penalty notice? That is the question you may be asking after reading *R v Gareth Hamer* [2010] EWCA Crim 2053. The last 13 years of a Labour government saw the proliferation of ASBOs, exclusion zones and fixed penalty notices for minor anti-social behaviour, which at least gave the impression of toughness in the field of criminal justice. Were all these bells and whistles just “sound and fury signifying nothing”?

Mr Hamer was charged with assault occasioning actual bodily harm arising out of an altercation with a taxi driver. At his trial in the Crown Court, both prosecution and defence counsel agreed an admission that Mr Hamer had no previous convictions or cautions recorded against him. Prosecution counsel told the judge that Mr Hamer had recently been issued with a penalty notice for disorder (PND) in relation to a minor public order offence. The judge said the jury should be told about the PND, so that they had the full picture, but that he would direct them to ignore it and treat the defendant as a man of good character. The judge told the jury: “You have heard that he has one very minor matter; the lowest possible rung of the criminal justice system; a fixed penalty for a minor public disorder.”

The defendant was convicted and appealed on the basis that the judge was wrong to admit this fixed penalty notice for disorder before the jury. The Court of Appeal agreed.

## Swift, simple and effective?

The PND scheme under the Criminal Justice and Public Order Act 2001 covers a wide number of ‘penalty offences’ specified in the Act – mainly low-level public order offences. It empowers a police officer, who has reason to believe that an adult has committed a penalty offence, to issue a penalty notice. That person then has 21 days either to pay

the penalty (in which case no proceedings may be brought for the offence) or to challenge the notice.

The secretary of state’s guidance booklet in 2005 stated that the aim of the scheme was to offer “a quick and effective alternative means of dealing with low-level, anti-social and nuisance offending” and “to deliver swift, simple and effective justice that carries a deterrent effect”.

The Court of Appeal analysed the scheme and concluded that while it provides the police with a useful method of punishing those they suspected of low-level offending, and it allowed such cases to be disposed of without the need to go to court, the scheme goes no further than that. If the notice is accepted by the person to whom it has been issued and he pays the penalty, then there is provision that no further action will be taken in respect of the alleged crime; the person has not admitted a crime nor, on an analysis of the scheme, has a crime been committed.

Thomas LJ said: “Although it is claimed that such notices deliver ‘swift, simple and effective justice’, it appears that the use of the term ‘justice’ has produced a confusion, as the delivery of justice implies the admission or determination of guilt and not the mere issuing of a notice of a penalty based on reasonable suspicion.

“It is correct to describe fixed penalty notices and PNDs as punishment for suspected offending, or a deterrent, as they plainly do deter. However, it seems to us to cause confusion, and may well have caused confusion in the present case, by the assumption that the issue of such a notice is some form of ‘swift, simple and effective justice’ which is not in the ordinary sense of these terms.”

He continued: “It is quite clear that the issue of a notice is not a conviction. It is not an admission of guilt, nor any proof that a crime has been committed... It seems therefore

clear... that he was not admitting any offence, not admitting any criminality, and would not have any stain imputed to his character.”

Accordingly, the Court of Appeal held that the trial judge had been wrong to admit this evidence as it was entirely irrelevant to his character and should not have had any effect on his entitlement to a good character direction. Ultimately, however, this did not affect the safety of the conviction.

## Punishment without justice

So, what is the point of a PND? Accepting the penalty notice does not amount to an admission of criminal liability and the matter ought not to count against the person in future court proceedings. It has no legal status. And yet it empowers the police to ‘punish’ those they ‘suspect’ of low-level offending. It raises revenue for the state. It also enables the police to record the offence and disposal, presumably feeding into the all-important ‘clear-up’ rates in a target-driven culture.

The Court of Appeal found that the scheme had proved a successful deterrent – though that seems to have been based on the criminal statistics collected and provided by the state (cynics might regard those as self-serving in this context). As to the deterrent effect, it is difficult to see what deterrent effect the PND holds for the guilty when it has no legal status. And yet it is a ‘punishment’ doled out by a police officer on the basis of mere suspicion and without the need for due process by an independent tribunal. It can be challenged, but at a cost to the defendant and at his insistence. Wrongful punishment of the innocent achieves only resentment not deterrence. PNDs may be full of sound and fury but they do not signify anything. They amount to punishment without justice.

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