To consider

Criminal conduct, convictions and determinations, Fixed Penalty Notices and Penalty Notices for Disorder

Issue

1. Our approach to reporting, investigating and requesting information from the police about Fixed Penalty Notices and Penalty Notices for Disorder, as well as the presumption of referral of criminal convictions with non-custodial sentences directly to panel, and the Registrar’s discretion to refer these cases to a medical and lay Case Examiner.

Recommendations

2. The Strategy and Policy Board is asked to approve:

   a. Changes to our Reporting Guidance to require doctors to report when they are summoned to court for a road traffic offence.

   b. Changes to our Triage Guidance so that Fixed Penalty Notices for minor driving offences will not be promoted to Stream 1 (unless there are aggravating features).


   d. The criteria that would inform the Registrar’s decision on which non-custodial convictions to refer to Case Examiners, at paragraphs 21 and 22.
Criminal conduct, convictions & determinations, Fixed Penalty Notices and Penalty Notices for Disorder

Issue

3 As a result of the outcome of legal challenges against the sharing of information by the Police (which instigated the Home Office Review of the Notifiable Occupations Scheme), the Police have introduced a more cautious approach to the sharing of information about criminal conduct. In light of this, we have reviewed our approach to seeking information from the Police and introduced a more targeted and proportionate approach to requesting information in order to avoid undermining our credibility and reducing our effectiveness in obtaining information about more serious matters.

4 As part of this work we have reviewed the Police’s use of Fixed Penalty Notices (FPNs) for minor motoring offences, including those involving elements of probity.

5 In the course of the review we also identified improvements to our guidance on dealing with convictions with non-custodial sentences in order to more clearly reflect the Fitness to Practise Rules.

Minor motoring offences, Fixed Penalty Notices and Penalty Notices for Disorder

Fixed Penalty Notices

6 FPNs are used for many different types of offences, including a range of minor road traffic offences. Since the introduction of the Fixed Penalty Offences Order 2013*, the Police are using FPNs for a much wider range of minor road traffic matters. These include minor motoring offences with elements of probity e.g. driving without tax, insurance or an MOT (currently offences not covered by our Reporting Guidance). If, however, we receive information about such a FPN from the doctor or a third party we have, in the past, attempted to investigate. If we are to continue to investigate such matters we should require doctors to report them by updating our Reporting Guidance.

7 The number of minor motoring offences, with elements of probity, where a FPN can be issued is relatively small. However, it is important to understand the inherent difficulties in investigating such offences when considering this issue.

* The Fixed Penalty Offences Order 2013 came into effect from 16 August 2013
A FPN is usually issued at the scene of the offence. It is completed manually in triplicate*. No computerised records are kept relating to the issue of a FPN. If we request information relating to an FPN offence it would require a manual search by the Police of all hard copy records of FPNs held by them. Only records of FPNs issued by a fixed or mobile speed camera or an automated number plate recognition device (ANPR) are easily retrievable.

Pursuing such information from the Police is unlikely to be successful or productive, could damage our credibility and impact upon our ability to obtain information about more serious offences, particularly given the changes to the Notifiable Occupations Scheme (NOS). In light of the difficulty in obtaining the necessary information we have reviewed whether or not FPNs for minor road traffic offences are likely to raise questions about a doctor’s fitness to practise. More serious driving offences such as dangerous driving, driving whilst under the influence of alcohol or drugs, disqualified driving, etc., do not fall into the category of offences where a FPN would be issued as they are offences which can attract a custodial sentence. Such offences would only be dealt with by summons to appear at court or by formal charge at which stage the offence will become one which should require reporting. Circumstances where a FPN can be issued are at Annex A.

When the Police deal with minor motoring offences with elements of probity such as driving without tax, insurance or an MOT, even at the roadside, they will undertake a check with the DVLA to clarify if the individual has any prior record that would indicate that the conduct may be more than an administrative oversight. FPNs will only be issued for these offences where there is nothing on the doctor’s DVLA record to indicate that the matter is more than administrative oversight. Where there is evidence of a probity issue, e.g. there is a pattern of conduct, the Police will issue a summons.

Our Reporting Guidance states that a doctor should report any ‘criminal caution’, ‘charge’ or ‘conviction’. It does not include ‘summonses’. Our guidance should include reporting when a doctor had been issued with a summons. This would mean more serious driving offences would not slip through the net and would trigger the doctor to report the matter and that minor motoring offences which may involve matters of probity would be picked up. It would also clarify which road traffic offences a doctor is required to report and would avoid the current confusion for doctors about when they need to report attendance at court (i.e. under a ‘summons’ or under ‘charge’).

Given that the police will issue a summons where they find evidence that a minor motoring offence of driving without insurance or MOT involves probity issues (and the lack of evidence the police hold in relation to FPNs), we propose that doctors should

* A hard copy is sent to the officer’s line manager for filing; a hard copy retained by the issuing officer; and final copy given to the driver.
no longer be asked to report minor road traffic offences where a FPN has been issued and that such matters if reported should not be promoted to Stream 1 (unless there are aggravating features).

Penalty Notices for Disorder and Fixed Penalty Notices for anti-social behaviour (Scotland)

13 From 24 June 2014, a Penalty Notice for Disorder (PND) can be issued for various public order and anti-social behaviour offences. A similar scheme has been in force in Scotland since 2004 where an FPN can be issued under the Anti-Social Behaviour (Scotland) Act 2004, (ASB(S)A 2004)*.

14 PNDs (and FPNs in Scotland) are a simple and swift way for the police to deal with low level, anti-social and nuisance behaviour, such as theft (shoplifting), possession of cannabis, wasting police time, and drunk and disorderly. The notices are either given to the offender at the scene or in some cases when they are in custody. It can also be given weeks after the event if appropriate. Penalty notices are divided into lower and upper tier offences depending on the seriousness of the offence and attract penalties of £60 and £90 respectively.

15 No criminal conviction or admission of guilt is associated with payment of the penalty. If the offender fails to pay the PND (or a FPN for anti-social behaviour), then the fine will be increased and eventually a warrant will be issued. If a PND is refused by the offender, then the case will proceed as normal to the courts. If found guilty the offence will be recorded as a criminal conviction. Circumstances when a PND or FPN for anti-social behaviour can be issued are outlined at Annex B.

16 Unlike FPNs for motoring offences, a PND, or FPN for anti-social behaviour in Scotland, involves many offences which could be relevant to a doctor’s fitness to practise. In addition, they are recorded by the police and are easily retrievable. Therefore, requesting such information should be straightforward.

17 In accordance with Part V of the Police Act 1997 an enhanced criminal records certificate issued by the Disclosure and Barring Service (DBS) may give details of a PND given to a person if the information is reasonably believed to be relevant.

18 The most relevant offences resulting in the issue of a PND (and FPNs under the ASB(S)A 2004) are set out in Annex C. Although PNDs can be used for a wide variety of anti-social and nuisance behaviour, the offences listed in Annex C may be indicative of underlying issues affecting a doctor and as such, will require investigation into his/her fitness to practise. Our Reporting Guidance should be clear

* PNDs are issued under the Criminal Justice and Police Act 2001. FPNs issued for disorder under the ASB(S)A 2004 should not be confused with Fixed Penalty Notices issued under the Offences under the Road Traffic Regulation Act 1984 (c. 27) and the Road Traffic Offenders Act 1988 (c. 52).
about which PND matters are required to be reported by doctors and we propose that a list of specified PND offences which require reporting be set out in an Annex to the Reporting Guidance.

Convictions with non-custodial sentences

Our current approach

Currently our guidance on convictions, cautions and determinations defines the non-custodial convictions to be referred directly to Panel. These are offences that are: racially motivated; drug-related; include elements of dishonesty; or are defined as serious arrestable offences (replaced by DBS autobar offences and violent or sexual offences*). Our review has highlighted that in order to more clearly reflect the Fitness to Practise Rules our guidance should define the criteria that the Registrar should apply when exercising the discretion to refer to Case Examiners (CEs) rather than, as currently drafted, defining the non-custodial convictions that should go to Panel.

Proposed criteria for referral to Case Examiners

The following criteria have been informed by the approach taken by the courts when sentencing and the approach taken by the probation service in preparing pre-sentence reports†. Reference has also been made to the OASys (Offender Assessment System) used by probation and prison services. A non-exhaustive list of relevant criteria would include a consideration of:

a. The type and nature of the offence.

b. The seriousness of the offence‡ (i.e. less serious offences being referred to CEs).

c. Whether there is a significant risk to members of the public of serious harm occasioned by the commission by the doctor of further specified offences§.

d. The type of sentence imposed.

e. Any other information available.

† Pre-sentence reports help to inform the court’s determination of which sentence to impose and, where relevant, the threshold for deciding whether to impose a custodial sentence of not.
‡ Section 224(2) of The Criminal Justice Act 2003 defines ‘seriousness’ as specified offences that are punishable with either life imprisonment or with imprisonment for 10 years or more (for specified offences see para. 8(b) above). Sections 13 to 18 of the Criminal Justice and Immigration Act 2008 define a ‘serious’ offence as one which merits at least two years of actual time served in custody.
§ R v Lang [2005] EWCA Crim 2864. The Court of Appeal held that ‘significant’ means noteworthy, of considerable amount or importance. Risk must be to members of the public. This can include the offender, particular groups of members of the public and individuals.
Supporting information

How this issue relates to the corporate strategy and business plan

21 Strategic aim 1: to make the best use of Intelligence about doctors and the healthcare environment to ensure good standards and identify risks to patients; and Strategic aim 5: to work better together to improve our overall effectiveness, our responsiveness and the delivery of our regulatory functions.

What equality and diversity considerations relate to this issue

22 In relation to the change in threshold for reporting minor motoring offences and FPNs, the data for minor motoring offences between 2008 and 2012 has proved difficult to analyse as up until April 2013 careless driving offences and other minor motoring offences were recorded under the single heading of “dangerous driving”, which is a much more serious offence (it is not proposed we change the threshold for investigating offences of dangerous driving).

23 The threshold for reporting PNDs for upper tier offences remains the same. However, fewer offences are required to be reported and would be clearly set out for ease of reference for doctors.

If you have any questions about this paper please contact: Anna Rowland, Assistant Director - Policy and Planning, arowland@gmc-uk.org, 020 7189 5077.
Fixed Penalty Notices for minor road traffic offences

Is a Fixed Penalty Notice appropriate?

1. This annex sets out in what circumstances a Fixed Penalty Notice can be issued for a minor road traffic offence.
A fixed penalty notice is a conditional offer which allows a driver to accept guilt for a minor driving offence.

Is it a minor road traffic offence suitable for an FPN?

- Yes
  - Is the driving offence one where the FPN provisions apply?
    - Yes: The offence is suitable for an FPN
      - If the driver accepts the conditional offer, he/she pays a financial penalty and can accept penalty points on their licence* thereby avoiding a court appearance**. A driver can reject the offer in which case they will be summonsed to appear in court.
        *A Fixed Penalty Notice may be either (i) endorsable – issued by the police at the time of the offence requiring the surrender of a licence and resulting in the imposition of penalty points; or (ii) non-endorsable – where no penalty points are issued and a lower financial penalty imposed
        ** Where a driver has more than 8 points on their licence when they commit a further offence suitable for an FPN, a notice cannot be issued or accepted. In those circumstances the driver must be summoned to court as disqualification for 6 months is mandatory under s.31 Road Traffic Offenders Act 1988 (the ‘totting up’ provision).
    - No: The offence is NOT suitable for an FPN
      - FPN’s are not issued for more serious road traffic offences where the offence can attract a custodial sentence e.g. Dangerous Driving, Drink/Drug Driving, Disqualified Driving, etc.
      - An FPN will not be issued where the offence forms part of a history of driving related offences, e.g. repeated failures to insure, tax or MOT a vehicle. In such cases the driver will be summonsed to appear before the court or arrested and charged with an offence.
  - No: Is there a history of similar motoring offending?
    - Yes: The police have access to the Police National Computer and DVLA and Insurance databases which allows them to make roadside checks to determine whether there is a history of Road Traffic related offences recorded against the individual or the vehicle.
    - No: FPN's are not issued for more serious road traffic offences where the offence can attract a custodial sentence e.g. Dangerous Driving, Drink/Drug Driving, Disqualified Driving, etc.
Penalty Notices for Disorder

When will a Penalty Notice for Disorder be issued?

1. This annex sets out in what circumstances a Penalty Notice for Disorder can be issued for minor public order and anti-social behaviour offences.
When is a Penalty Notice for Disorder issued?

Is the offence one covered by the Penalty Notices for Disorder provisions set out Criminal Justice and Police Act 2001?

Yes (PND issued)
- Upper tier £90
- Lower tier £60

No

Are the following conditions met?
1. The offender is over 18
2. There is sufficient evidence to support a successful prosecution*
3. The offender agrees to have the matter disposed of by a PND

* The evidence should be capable of satisfying the evidential and public interest tests of the CPS's Code for Crown Prosecutors.

Yes (PND issued)

No

Do any of the following conditions apply?
1. Custody or a sentence more serious than a fine would be expected if the case were to be tried at court.
2. There has been an injury to any person or any realistic threat or risk of injury;
3. There has been substantial financial or material loss to private property of an individual;
4. The penalty offence is committed in association with another offence, including a penalty offence;
5. The offence involves domestic violence; or
6. The provisions of the Protection from Harassment 1997 apply.

Yes (PND issued)

No

Is the offence one which would ordinarily be suitable for a caution, conditional caution, etc.?

Yes

No

Is the offence at the lower end of the spectrum in terms of seriousness?

Yes

No

PND not available

PND issued

Upper tier £90
Lower tier £60
List of specified Penalty Notice for Disorder offences and Fixed Penalty Notices for Disorder

Offences which require reporting by doctors

1. This annex sets out the list of specified offences which doctors would be required to report if issued with a Penalty Notice for Disorder or Fixed Penalty Notice for disorder (Scotland).
Penalty Notices for Disorder at the upper tier penalty level

### Upper Tier - £90 for 16 year olds and over (£40 for 10-15 year olds)

<table>
<thead>
<tr>
<th>Offence</th>
<th>Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wasting police time or giving false reports</td>
<td>s5(2) of the Criminal Law Act 1967</td>
</tr>
<tr>
<td>Disorderly behaviour while drunk in a public place</td>
<td>s91 of the Criminal Justice Act 1967</td>
</tr>
<tr>
<td>Theft (under £200 retail/commercial only)</td>
<td>s1 of the Theft Act 1968</td>
</tr>
<tr>
<td>Destroying or damaging property (limited to damage under £500)</td>
<td>s1(1) of the Criminal Damage Act 1971</td>
</tr>
<tr>
<td>Behaviour likely to cause harassment, alarm or distress</td>
<td>s5 of the Public Order Act 1986</td>
</tr>
<tr>
<td>Possess a controlled drug of Class B (cannabis/cannabis resin or Khat)</td>
<td>Misuse of Drugs Act 1971 Possess a controlled drug of Class B s.5(2) &amp; Sch. 2</td>
</tr>
</tbody>
</table>

List of offences set out in Part 11 of the Anti-Social Behaviour etc. (Scotland) Act 2004

2 For the purposes of this Part “fixed penalty offence” means:

- an offence under an enactment mentioned in the first column in Part 1 of the following table and described, in general terms, in the second column in that Part;

- an offence created in subordinate legislation made under an enactment mentioned in the first column in Part 2 of the table which is of the general description mentioned in the second column in that Part; and

- a common law offence mentioned in Part 3 of the table.

### PART 1

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Description of offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 78 of the Licensing (Scotland) Act 1976 (c. 66)</td>
<td>Riotous behaviour while drunk in licensed premises</td>
</tr>
<tr>
<td>Section 79 of the Licensing (Scotland) Act 1976 (c. 66)</td>
<td>Refusing to leave licensed premises on being requested to do so</td>
</tr>
<tr>
<td>Section 47 of the Civic Government (Scotland) Act 1982 (c. 45)</td>
<td>Urinating or defecating in circumstances causing annoyance to others</td>
</tr>
<tr>
<td>Section 50(1) of the Civic Government (Scotland) Act 1982 (c. 45)</td>
<td>Being drunk and incapable in a public place</td>
</tr>
<tr>
<td>Enactment</td>
<td>Description of offence</td>
</tr>
<tr>
<td>-----------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Section 50(2) of the Civic Government (Scotland) Act 1982 (c. 45)</td>
<td>Being drunk in a public place in charge of a child</td>
</tr>
<tr>
<td>Section 54(1) of the Civic Government (Scotland) Act 1982 (c. 45)</td>
<td>Persisting, to annoyance of others, in playing musical instruments, singing, playing radios etc. on being required to stop</td>
</tr>
<tr>
<td>Section 52(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)</td>
<td>Vandalism</td>
</tr>
</tbody>
</table>

**PART 2**

**Enactment**

- Sections 201 and 203 of the Local Government (Scotland) Act 1973 (c. 65)

**Description of offence**

- Consuming alcoholic liquor in a public place

**PART 3**

- Common law offence.
- Breach of the peace.
- Malicious mischief.