



NOT PROTECTIVELY MARKED

WEST MIDLANDS POLICE

Force Policy Document

POLICY TITLE:

**PROSECUTION POLICY – PENALTY NOTICES
FOR DISORDER**

POLICY REFERENCE NO:

CJ/14

Executive Summary

The Criminal Justice and Police Act 2001 legislated powers for police officers to issue Penalty Notices for disorder. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 made some minor significant changes:

<http://www.legislation.gov.uk/ukpga/2012/10/schedule/23>

Later in 2013 further changes in legislation will be made to support the use of educational interventions with PNDs. These will be incorporated in policy at that stage. West Midlands Police already run a similar 'waiver' scheme, detail of which can be found in a separate guidance document.

***Any enquiries in relation to this policy should be made be made directly with that of the policy contact / department shown below.*

Intended Policy Audience

All police officers and staff involved with the prosecution of offenders

Current Version And Effective Date.	v 3.1	18/02/2016
Business Area Owner	Central Justice Services	
Department Responsible	Central Justice Services	
Policy Contact	Insp Nicola Lloyd	
Policy Author	Insp Nicola Lloyd	
Approved By	ACC Cann	
Policy Initial Implementation Date	01/09/2010	
Review Date	18/02/2017	
Protective Marking	Not protectively marked	
Suitable For Publication – Freedom Of Information	Yes	

Supporting Documents

See APPENDIX B

Evidence Based Research

See APPENDIX B

Please Note.

PRINTED VERSIONS SHOULD NOT BE RELIED UPON. THE MOST UPTO DATE VERSION OF ANY POLICY OR DIRECTIVE CAN BE FOUND ON THE EQUIP DATABASE ON THE INTRANET.

Force Diversity Vision Statement and Values

“Eliminate unlawful discrimination, harassment and victimisation. Advance equality of opportunity and foster good relations by embedding a culture of equality and respect that puts all of our communities, officers and staff at the heart of everything we do. Working together as one we will strive to make a difference to our service delivery by mainstreaming our organisational values”

“All members of the public and communities we serve, all police officers, special constables and police staff members shall receive equal and fair treatment regardless of, age, disability, sex, race, gender reassignment, religion/belief, sexual orientation, marriage/civil partnership and pregnancy/maternity. If you consider this policy could be improved for any of these groups please raise with the author of the policy without delay.”

Code of Ethics

West Midlands Police is committed to ensuring that the Code of Ethics is not simply another piece of paper, poster or laminate, but is at the heart of every policy, procedure, decision and action in policing.

The Code of Ethics is about self-awareness, ensuring that everyone in policing feels able to always do the right thing and is confident to challenge colleagues irrespective of their rank, role or position

Every single person working in West Midlands Police is expected to adopt and adhere to the principles and standards set out in the Code.

The main purpose of the Code of Ethics is to be a guide to "good" policing, not something to punish "poor" policing.

The Code describes nine principles and ten standards of behaviour that sets and defines the exemplary standards expected of everyone who works in policing.

Please see http://www.college.police.uk/docs/Code_of_Ethics.pdf for further details.

The policy contained in this document seeks to build upon the overarching principles within the Code to further support people in the organization to do the right thing.

CONTENTS

1. INTRODUCTION 5

2. STATED AIMS OF THE SCHEME 5

3. OFFENCES COVERED BY THE SCHEME..... 5

4. PROCEDURE AND GUIDANCE 6

5. POLICE OFFICERS AND STAFF IN RECEIPT OF PNDS..... 9

6. EQUALITY IMPACT ASSESSMENT (EQIA)..... 9

7. HUMAN RIGHTS..... 9

8. FREEDOM OF INFORMATION (FOI)..... 10

9. TRAINING 10

10. PROMOTION / DISTRIBUTION & MARKETING..... 10

11. REVIEW 10

12. VERSION HISTORY..... 11

1. INTRODUCTION

- 1.1 The Criminal Justice and Police Act 2001 legislated powers for police officers to issue Penalty Notices for disorder. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 made some minor significant changes:

<http://www.legislation.gov.uk/ukpga/2012/10/schedule/23>

- 1.2 Later in 2013 further changes in legislation will be made to support the use of educational interventions with PNDs. These will be incorporated in policy at that stage. West Midlands Police already run a similar 'waiver' scheme, detail of which can be found in a separate guidance document.

2. STATED AIMS OF THE SCHEME

- 2.1 The Penalty Notice scheme has been introduced as a response to the need for a speedy and effective alternative means of dealing with low-level, anti-social and nuisance offending, which does not require a court hearing.

- 2.2 The scheme's stated aims are to:

- offer operational officers a new, effective alternative means of dealing with low-level, anti-social and nuisance offending,
- deliver swift, simple and effective justice that carries a deterrent effect reducing the amount of time that police officers spend completing paperwork and attending court, while simultaneously reducing the burden on the courts,
- increase the amount of time officers spend on patrol, enabling them to deal with more serious crime, and to free the courts to deal with more serious offending.

3. OFFENCES COVERED BY THE SCHEME

- 3.1 The list of offences for which a Penalty Notice for Disorder can be issued is regularly updated. The current list is in [Appendix A](#). The offences are split into two levels – an upper tier of more serious offences for which the penalty is currently £90, and a lower tier of least serious offences for which the penalty is currently £60.

3.2 THEFT:

- PND disposal may be used for offences of 'thefts from shop' only, as defined in the National Crime Recording Standards.
- An offender may only be given one PND for shop theft.
- PND disposal will generally only be appropriate where the value of the goods does not exceed £100.

3.3 CRIMINAL DAMAGE:

- PND disposal should generally only be used for criminal damage valued at under £300.
- Arson and threats to commit criminal damage are separate offences and are not included in the schedule of offences for which a PND is available.

4. PROCEDURE AND GUIDANCE

4.1 Appropriate Circumstances

- Penalty Notices can only be issued to suspects aged 18 or over.
- A Penalty Notice should only be issued in relation to simple, straightforward cases.
- There must be sufficient evidence against the suspect to meet the evidential sufficiency criteria and support a prosecution if required.
- The suspect must be compliant and accept the PND.
- There must be a reliable address for enforcement purposes.
- The suspect must fully understand the implications of a PND. (This will include circumstances where offenders are deaf/hard of hearing, are unable to read or write, do not understand English, etc.) Officers should make reasonable efforts to ensure offenders understand the implications of a PND, but where these efforts fail, officers will revert to alternative disposal options. The implications are explained in sections 4.4.5, 4.5.9. and 4.6.1.
- The suspect must be a UK National, resident within the U.K.
- The correct identity of the suspect must be fully established beyond doubt.
- The suspect must be able to pay the penalty: this should be confirmed with them before issue.
- There is no requirement for offenders to admit an offence in order for a PND to be issued. The fact that an offender appears to be intending to contest a case does not necessarily preclude the issuing of a PND, and officers should consider issuing a PND in appropriate cases as offenders may elect to pay a PND fine some time later, having re-considered their situation
- Where an offender clearly refuses to accept a PND, officers should revert to other disposal options.

4.2 Excluded Circumstances

- Offence involves a breach of trust
- Offender has already received a PND
- Offender has already been given a simple or conditional caution.
- Offender is subject of a Community Penalty (other than a fine) e.g. CBO
- Offender is a Class A Drug User
- Offence was jointly committed with person under 18 years.

Compensation

- 4.3 Where the suspects pays their PND there will be no court case and this will remove the possibility of the court awarding compensation in favour of the victim. The victim needs to be made aware of this and the officer needs to take its impact into account when coming to a decision as to the best course of action. However, the victim would retain the right to seek redress through civil litigation, and PND disposal will save the victim from having to attend court to give evidence.

Identification

- 4.4 Issuing officers need to be sure that the identification of the suspect is not in any doubt. Where identification is later contested by the suspect, it will be for them to prove correct identification to the courts. The use of mobile fingerprinting equipment can assist with this

Issuing of the Notice

- 4.5 A PND may be issued by a Constable or Special Constable (there is now no requirement for officers to be in uniform, or separately authorised), if the officer has reason to believe that a person aged 18 years or over has committed a penalty offence and there is sufficient evidence to support a successful prosecution.
- 4.6 Detention Escort Officers (DEOs) are not able to issue PNDs.
- 4.7 Legislation provides for the power to issue PNDs to be given to PCSOs at the discretion of Chief Constables. At present PCSOs within the West Midlands are not empowered to issue PNDs (although they do have the power to issue other types of Fixed Penalty Notice).
- 4.8 Any questioning via interview of the suspect must comply with Code C of P.A.C.E 1984. Short and simple questions after caution should be sufficient when dealing on the street, and a common sense approach needs to be adopted.
- 4.9 In order to gain an ethical sanctioned detection for recordable offences by issuing a PND the suspect must be informed that they will be recorded by police as being responsible for the offence: this is not a criminal conviction
- 4.10 There is nothing to prohibit a PND being issued to a suspect on their return on police bail, or when dealing with them as a 'handover' prisoner that was arrested by another officer.

Documentation

- 4.11 For recordable offences a crime report needs to be completed. PNDs now include this and the detection form as part of the notice itself. Relevant evidence collected (such as a copy of the Pocket Note Book entry, or a statement of a witness) should be physically attached to the PND before it is submitted. Evidence needs to be recorded and preserved in a suitable manner for presentation at court if required.
- 4.12 If a PND is damaged or not used for any reason it should be marked 'VOID' and returned to the Central Ticket Office (CTO). In cases where the original is retained for disclosure purposes then a copy to the CTO will suffice.
- 4.13 The top copy of the PND is to be given to the suspect. There is a section for the suspect to sign to show they accept the ticket – this does not mean they admit the offence and refusal to sign is not an issue so long as they accept the notice.
- 4.14 Where a PND is issued in custody for a recordable offence, fingerprints, photograph and D.N.A. can all be taken according to P.A.C.E. 1984. Where one is issued on the street, there are no powers to obtain such samples. They could be taken by consent of the suspect, either at the police station, or with mobile/handheld equipment if locally available. The suspect should sign a consent form if documentation is done by consent.

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- 4.15 The PND should be checked by a supervisor before the end of the officers' tour of duty, scanned into CrimeScan, and then forwarded to the CTO. It is imperative that the CTO is sent the scanned copy within 24 hours of issue, to allow them to promptly complete relevant tasks.
- 4.16 Where a PND is issued in custody ICIS can record this fact and can be used to register the outcome on PNC. Where the PND is issued on the street it will need registering on PNC within 24 hours. This is achieved by the PND being scanned and E-mailed to the PNC Bureau – this can occur simultaneously to it being E-mailed to the CTO.
- 4.17 See the process chart for an overview of how to submit a completed PND. This includes the correct E-mail addresses for the CTO and PNC Bureau.
- 4.18 If the suspect requests a court hearing the CTO will inform the appropriate CJU who will be responsible for ensuring the issuing officer submits a prosecution file, containing the all the relevant evidence to prove the offence.
- 4.19 The standard retention period for PNDs is 6 years, though the CTO may scan the notice into a data format and destroy the original in a matter of months. If the issuing officer requires the original to be retained for any reason then they must explain this to the CTO.

Action By Suspect

- 4.20 The top copy of the PND is issued to the suspect and explains what action they need to take. They have 21 days to either pay the penalty or request a hearing. If neither is done then the court will register a fine of 150% the value of the penalty, and this will be enforced in the normal manner.

PND Issued in Error

- 4.21 Where a PND is issued and officers subsequently find that a PND disposal was not appropriate, (for example, where fuller details of an offender's criminal history becomes known, or further evidence regarding the seriousness of the offence emerges), a PND can be withdrawn and an offender prosecuted for the offence only in exceptional circumstances. Officers should seek CPS support before taking this step. Officers should contact CTO without delay to ensure that the PND is withdrawn, and submit an appropriate prosecution file for the original offence, including details as to why the PND has been withdrawn.
- 4.22 When a penalty notice is issued and it subsequently comes to light that a more serious or non-penalty offence was committed, exceptionally officers may bring a charge for the subsequent offence. Payment of a penalty discharges the recipient's liability to conviction only for the offence for which the penalty notice was issued. Ultimately it will be for the CPS to determine, based on the facts of the case, whether a prosecution may be brought, in respect of the subsequent offence, and for the courts to decide whether or not to allow such a prosecution.

5. POLICE OFFICERS AND STAFF IN RECEIPT OF PND

- 5.1 This policy ensures compliance with the Criminal Procedure and Investigations Act 1996 obligations between ACPO and the CPS in relation to the revelation to CPS and possible disclosure of “police misconduct”. This also takes into account the requirements of the Disclosure Manual 2005.
- 5.2 The decision making process for the issue of a PND is no different if the dealing officer is aware that the suspect is a police officer or staff.
- 5.3 When a police officer is aware that they have issued a PND to a serving police officer, special constable or member of police staff, from whatever force, they should submit a copy of the papers to their OCU Commander/departmental head who will forward them on to Chief Superintendent Professional Standards Department (PSD). PSD will record the matter and, if the matter relates to an outside Force, refer the matter on to the appropriate authority.
- 5.4 All police officers, special constables or members of police staff issued with a PND whether inside or outside the Force area are required to report the matter immediately, in writing, to their OCU Commander or Head of Department. The OCU Commander/Head of Department will forward the report to Chief Superintendent PSD who will record the matter, review the circumstances and decide whether further misconduct action is appropriate. Each case will be considered on its individual merits. Where a member of police staff has been issued with a PND, Chief Superintendent PSD, will, after recording, forward the relevant report to the Employee Relations’ manager for consideration of further misconduct action to be taken. Each case will be considered on its individual merits.

6. EQUALITY IMPACT ASSESSMENT (EQIA)

- 6.1 The Policy has been reviewed and drafted against all protected characteristics in accordance with the Public Sector Equality Duty embodied in the Equality Act 2010. The policy has therefore been Equality Impact Assessed to show how WMP has evidenced ‘due regard’ to the need to:
- Eliminate discrimination, harassment, and victimisation.
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Supporting documentation in the form of an EQIA has been completed and is available for viewing in conjunction with this Policy.

7. HUMAN RIGHTS

- 7.1 This policy has been implemented and reviewed in accordance with that set out with the European Convention and principles provided by the Human Rights Act 1998. The application of this policy has no differential impact on any of the articles within the Act. However, failure as to its implementation would impact on the core duties and values of WMP (and its partners), to uphold the law and serve/protect all members of its community (and beyond) from harm.

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8. FREEDOM OF INFORMATION (FOI)

- 8.1 Public disclosure of this policy document is determined by the Force Policy Co-ordinator on agreement with its owner. Version 3.1 of this policy has been GPMS marked as Not protectively marked
- 8.2 Public disclosure does not automatically apply to supporting Force policies, directives and associated guidance documents, and in all cases the necessary advice should be sought prior to disclosure to any one of these associated documents.

Which exemptions apply and to which section of the document?	Whole document	Section number
None		

9. TRAINING

10. PROMOTION / DISTRIBUTION & MARKETING

- 10.1. The following methods will be adopted to ensure full knowledge of the Policy:
 - Policy, national guidance and advice will be provided via the CJS force intranet site
 - Recording and audit entry on the Force policy library
 - Intranet marketing via message of the day and Newsbeat

11. REVIEW

- 11.1 The Policy business owner CJS maintain outright ownership of the policy and any other associated documents and in-turn delegate responsibility to the department/unit responsible for its continued monitoring.
- 11.2 The policy should be considered a 'living document' and subject to regular review to reflect upon any Force, Home Office/ACPO, legislative changes, good practice (learning the lessons) both locally and nationally, etc.
- 11.3 A formal review of the Policy document, including that of any other potential impacts i.e. EQIA, will be conducted by the date shown as indicated on the first page.
- 11.4 Any amendments to the Policy will be conducted and evidenced through the Force Policy Co-ordinator and set out within the version control template.
- 11.5 Feedback is always welcomed by that of the author/owner and/or Force Policy Co-ordinator as to the content and layout of the policy document and any potential improvements.



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12. VERSION HISTORY

Version	Date	Reason for Change	Amended/Agreed by.
1.0	3.9.2009	New policy	New Force policy approved by CC Sims
1.1	25.4.2012	Policy amended as follows with included: > policy reference, > signature of CC Sims, > version control.	CI Dave McCrone / Insp Jamie Hobday - CJC
2.0	4.3.2013	Draft produced for internal consultation exercise	2228 Hobday
3.0	28.03.13	Draft amended on feedback from internal consultation	2228 Hobday
3.0	19/08/2013	New version of Policy received. Signed off by ACC Forsyth – Policy has already been signed off by CC Sims.	56408 Couchman
3.1	18/2/2016	Policy updated with exclusions as per HO guidance	Insp. 7046 Lloyd
3.1	18/02/2016	Amended formatting to bring in line with others policies	56408 Parkinson

APPENDIX A**NOT PROTECTIVELY MARKED****Upper Tier Adult Penalty: £90**

PND Offence Code	CCCJS Code	Act	Description	Notifiable/ Recordable
DA01	CL67008	S 5, Criminal Law Act 1967	Causing wasteful use of police time/ wasting police time, Giving false report	Recordable
DA02 ¹	CA03007	s127(2) of the Communications Act 2003	Send false message/persistently use a public electronic communications network in order to cause annoyance, inconvenience or needless anxiety	Recordable
DA03 ²	FS04009	S49 of the Fire and Rescue Services Act 2004	Knowingly give a false alarm to a person acting on behalf of a fire and rescue authority.	Recordable
DA04 ³	PU86107	S 5, Public Order Act 1986	Use words/conduct likely to cause harassment, alarm or distress	Notifiable & recordable
DA05	EP75005	S 80, Explosives Act 1875	Fire/ throw firework(s)	Non-recordable
DA06	CJ67002	S 91, Criminal Justice Act 1967	Drunk & disorderly in a public place	Recordable
DA11 ⁴	CD71040	s1(1) of the Criminal Damage Act 1971	Destroying or damaging property (under £200)	Notifiable & recordable
DA12	TH68010	s1 of the Theft Act 1968	Theft (shop/stores; under £100)	Notifiable & recordable
DA13 ⁵	FW04003	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Breach of fireworks curfew (11pm-7am)	Recordable
DA14	FW04002	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession of a category 4 firework	Recordable
DA15	FW04001	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession by a person under 18 of an adult firework	Recordable
DA16	LG03036	Section 141 of the Licensing Act 2003 (c.17)	Sells or attempts to sell alcohol to a person who is drunk.	Recordable
DA17	LG03067	s146(3) of the Licensing Act 2003	Supply of alcohol by or on behalf of a club to a person aged under 18	Recordable
DA18	LG03064	s146(1) of the Licensing Act 2003	Sale of alcohol anywhere to a person under 18	Recordable
DA19	LG03081	Error! Bookmark not defined. s149(3) of the Licensing Act 2003	Buys or attempts to buy alcohol on behalf of person under 18	Recordable
DA20	LG03083	s149(4) of the Licensing Act 2003	Buys or attempts to buy alcohol for consumption on relevant premises by person under 18.	Recordable
DA21	LG03088	s151 of the Licensing Act 2003	Delivery of alcohol to person under 18 or allowing such delivery	Recordable
DA 22	MD71530	s.5(2) & Sch 4 Misuse of Drugs Act 1971	Possess a controlled drug of Class B - cannabis/cannabis resin.	Notifiable & recordable

¹ Offence repealed by Communications Act 2003 with effect from 5 March 2004

² Offence repealed by Fire and Rescue Services Act 2004 with effect from 1 October 2004

³ Offence added with effect from 8 August 2002

⁴ Offence added with effect from 1 November 2004

⁵ Offence added with effect from 11 October 2004

⁶ Offence added with effect from 4 April 2005

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Lower Tier (Adult Penalty: £60)				
PND Offence Code	CCCJS Codes	Act	Description	Notifiable/ Recordable
DB03	BT49005	S 55, British Transport Commission Act 1949	Trespass on a railway	Non-recordable
DB04	BT49006	S 56, British Transport Commission Act 1949	Throwing stones/matter/thing at a train	Non-recordable
DB05	LG72008	S 12, Licensing Act 1872	Drunk in highway	Recordable
DB07	CJ01002	S12, Criminal Justice & Police Act 2001	Consume alcohol in designated public place, contrary to requirement by constable not to do so.	Non-recordable
DB08 ^{Error! Bookmark not defined.}	EP90046	s87(1) and (5) of the Environmental Protection Act 1990	Depositing and leave litter	Non-recordable
DB12 ^{Error! Bookmark not defined.}	LG03085	s150(1) of the Licensing Act 2003	Consumption of alcohol by a person under 18 on relevant premises.	Recordable
DB13 ^{Error! Bookmark not defined.}	LG03086	s150(2) of the Licensing Act 2003	Allowing consumption of alcohol by a person under 18 on relevant premises.	Recordable
DB14 ⁶	LG03079	*Section 149(1) of the Licensing Act 2003 (c.17)	Buying or attempting to buy alcohol by a person under 18.	Recordable

* New legislative reference with effect from 24 November 2005 on implementation of Licensing Act 2003

APPENDIX B

Supporting Documents, Policy

- The Directors Guidance on Charging – 4th Edition 2011
- Authorised Professional Practice: Case Management and Prosecution, Module III Justice Outcomes (under construction)
- ACPO Out of Court Disposal Framework
- The Sentencing Guidelines Council – Overarching Principles, Sentencing Youths, Definitive Guidelines 2009
- Ministry of Justice Circular 2009/05 PND Police Operational Guidance: Cannabis Possession Offences
- Ministry of Justice Circular 2009/04 PND Police Operational Guidance: Retail Theft and Criminal Damage
- WMP Positive Justice Policy
- WMP Combined Cautioning Policy
- WMP Community Resolutions Policy
- Part I Order 7/2009 – Proportionate Investigations
- WMP guidance – Disclosure Issues for Police Disposals

Supporting Documents, Other

- ACPO Memo Dec 2012 R v Killick and the Right of a Victim to Request a Review of a Decision Not to Prosecute
- Criminal Law Review 2012 – ‘Finality in Criminal Justice – When should the CPS Reopen a Case?’ by Kier Starmer
- Ministry of Justice Green Paper ‘Breaking the Cycle – Effective Punishment, Rehabilitation, and Sentencing of Offenders’ 2010
- Ministry of Justice White Paper ‘Swift and Sure Justice’ 2012
- ‘Primary Justice – an Enquiry into Justice in our Communities’ All Party Parliamentary Local Government Group 2009
- NPIA National Decision Making Model 2012
- Home Office ‘Putting Victims First’ More Effective Responses to Anti-Social Behaviour’ 2012
- House of Commons Justice Committee – ‘Cutting Crime, The Case for Justice Reinvestment’, 2010
- ‘Our Vision for Safe and Active Communities’ Baroness Newlove 2011
- CJS ‘Engaging Communities in Criminal Justice’ 2009
- Ministry of Justice Report on the Governments Strategy for Diverting Women Away from Crime 2009
- Home Office Consultation on a Revised Framework for Recorded Crime Outcomes, 2012
- ‘Why Invest?’ How Drug Treatment and Recovery Services Work for Individuals, Communities and Society, NHS leaflet
- Restorative Justice – an Overview, Marshall 1999 for the Home Office
- ‘Facing Up to Offending – the Use of Restorative Justice in the Criminal Justice System’ CJI 2012
- ACPO Restorative Justice Guidance and Minimum Standards 2010
- NOMS ‘Better Outcomes Through Victim Offender Conferencing’ 2012
- Ministry of Justice Restorative Justice Action Plan for the Criminal Justice System 2012

Evidence Based Research

- A State of Disorder – Moving Beyond the ASBO in Tackling Anti-Social Behaviour, from the Policy Exchange, 2010
- 'It's a Fair Cop – Police Legitimacy, Public Cooperation and Crime Reduction' NPIA 2011
- 'Procedural Justice, Trust and Institutional Legitimacy' Hough, Jackson, Myhill, Bradford, Quinton, Bradford, 2010
- Overview of 'Imprisonment and Crime – Can both be Reduced?' Durlauf and Nagin ASC 2011
- 'From Peel to Popper – The Case for more Scientific Policing' Neyroud ASC 2011
- 'Restorative Justice – the Evidence' Sherman and Strang 2007
- 'Does Restorative Justice Affect Reconviction?' Shapland 2008 for the Ministry of Justice