

# Legal research assessment



## **Question 1 – Could Vincent’s security staff be given power to issue fixed penalty notices for disorder?**

### **Issues**

- What is a fixed PND?
- Who legally can issue?
- How does this apply to these particular facts?

### **Research**

#### Lexis

Halsbury’s Laws of England – search “ penalty notice for disorder” Result – 639 Directions as to Defendant’s good character – reference to Criminal Justice and Police Act 2001 s2(1)

Search Criminal Justice and Police Act 2001 s2(1) – Part 1 deals with Provisions for Combating Crime and Disorder and within this section 2 with Penalty Notices S2(1) “ a constable who has reason to believe that a person aged [10] or over has committed a penalty offence may give him a penalty notice in respect of the offence.” Note subordinate legislation – Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004, SI 2004/3166 – no reference to under-age drinkers in the facts so not following up further

Reviewing rest of Part 1 and noting that under s(4) a “ penalty notice” is defined as “ a notice offering the opportunity...to discharge any liability to be convicted of the offence to which the notice relates.”

S(1) lists offences leading to penalties on the spot and noting that these include “ being drunk in a highway, other public place or licensed premises” , “ disorderly behaviour while drunk in a public place” and “ behaviour likely to cause harassment, alarm or distress”

Halsbury’s Laws of England 542 – penalty notices and penalties

Halsbury’s Laws 543 deals with procedure

Therefore appears that in addition to the police “ accredited persons” may be able to issue PNDs subject to certain exceptions.

Westlaw

Searching for Police Reform Act 2002 s41 – accreditation under community safety accreditation schemes

Applies where under s(1) a chief officer of police has entered into arrangements with an employer for the purposes of carrying out community safety functions Schedule 5 sets out the powers that may be conferred on “ accredited person”

Under s41 (4) chief officer of police must be satisfied that (a) the employer is a “ fit and proper person to supervise” [the carrying out of the function of the accredited person], (b) the person themselves is a suitable person to exercise the powers (c) the person is capable of carrying out the function and (d) the person has received adequate training Under s41(5) chief officer of police may charge a fee for considering and granting applications

Accreditation only applies while AP is employee of the person with whom chief of police has entered into the arrangement and for specified period, although can be renewed. S40 Police Reform Act 2002 – community safety accreditation schemes – under s40(1) chief officer of police of any police force may establish such a scheme

Business Link website [www.businesslink.gov.uk/bdotg/action/detail?itemId=1084582443&type=RESOURCES](http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1084582443&type=RESOURCES)

Guidance also found on the Home Office website at [www.homeoffice.gov.uk/police/penalty-notices/212291](http://www.homeoffice.gov.uk/police/penalty-notices/212291)

Essex Police website – details of accreditation scheme on “about us” page <http://www.essex.police.uk/about.aspx>

**Question 2 – Would male customers have any cause of action against the Club for being charged twice the entrance fee of women on a Wednesday or Thursday night? If so, where could this action be instigated?**

#### **Issues**

- Is this sex discrimination?
- Where can proceedings be brought?

#### **Research**

As mentioned in memo that threatened to complain to Equal Opportunities Commission – looked for its website.

Comes under Equality and Human Rights Commission (EOC) at [www.equalityhumanrights.com/](http://www.equalityhumanrights.com/)

<https://assignbuster.com/legal-research-assessment/>

Main legislation is the Equality Act 2010 which came into force 1 October 2010 and brought into one place the fragmented existing laws against discrimination.

Guidance on EOC website suggest that businesses need to avoid unlawful discrimination which includes setting conditions – eg “ ladies nights” would almost certainly fall into this.

Says EA applies to both public and private sectors, Human Rights Act 1998 – to public bodies

Also referred to Human Rights Law and Practice, Third Edition Lexis Nexis 2009 – EHRC is non-departmental government body

Lexis

Equality Act 2010

s13 Direct discrimination (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. s29 Provision of services, etc. (1) A person (a “ service-provider”) concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service. (2) A service-provider (A) must not, in providing the service, discriminate against a person (B)— (a) as to the terms on which A provides the service to B; (b) by terminating the provision of the service to B; (c) by subjecting B to any other detriment.

Part 9 deals with enforcement – s113 with proceedings, 114 jurisdiction, 118 time limits and 119 remedies. Important points – bring in county court in area where business based within 6 months of discrimination.

Westlaw

Equality Act 2010, Part 2 (4) and (11) “ protected characteristic” includes sex. Recent news – Hall and Preddy case (unreported) – same sex couple who were not allowed to stay in bed and breakfast received £1, 800 each in damages

**Question 3 – Is Lucca entitled to the additional 6 months leave? If so, does Vincent have to keep his job open for him?**

**Issues**

- What is the entitlement to paternity leave?
- Can Lucca return to the same job?

**Research**

Westlaw

Search “ paternity leave” – Additional Paternity Leave Regulations 2010 (SI 2010/1055) came into force 6 April 2010. Under Employment Rights Act 1996 requirement to make regulations entitling fathers to paternity leave – 2 consecutive weeks within 56 days of birth. Work and Families Act 2008 inserted s80AA and 80BB into ERA – reference to ordinary and additional leave. Paternity and Adoption Leave Regulations 2002/2788 gave entitlement to 2 weeks paternity leave. Additional Paternity Leave Regulations 2010 (SI 2010/1055) Additional paternity leave where child due

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on or after 3 April 2011 – up to 6 months and entitled to return to same job after leave.

## **Internal Report**

Memo

From: Trainee To: Supervising Partner Date: 30. 03. 11 Re: Vincent Grubnic, managing director of the Vortex, Night- Club

Dear Supervising Partner

Thank you for your memo dated 29. 03. 11 in which you requested I conduct some research ahead of your meeting with Vincent Grubnic next Thursday, focusing particularly on the following issues:

1. Could Vincent's security staff be given power to issue fixed penalty notices for disorder?
2. Would male customers have any cause of action against the Club for being charged twice the entrance fee of women on a Wednesday or Thursday night? If so, where could this action be instigated?
3. Is Lucca entitled to the additional 6 months leave? If so, does Vincent have to keep his job open for him?

Summary

In relation to issue 1 Vincent can apply to the local police force for accreditation for his security staff to be given the power to issue penalty notices.

In relation to issue 2 it is likely that the promotion described would fall foul of sex discrimination law and the complainant could bring proceedings in the county court and possibly be awarded damages. Therefore it is advisable that the promotion is changed.

In relation to issue 3 it is again likely that Lucca will be entitled to the additional leave and, if his job is not held open for him, there is a risk of Lucca bringing an employment claim. Issue 1 Fixed penalty notices for disorder

The starting point is the Criminal Justice and Police Act 2001 (CJPA), Part 1 of which deals with Provisions for Combatting Crime and Disorder. This legislation created the power for the police to issue penalty notices for certain offences.

A “ penalty notice” is defined as “ a notice offering the opportunity...to discharge any liability to be convicted of the offence to which the notice relates” . Therefore a person given a penalty notice, assuming they elect to pay the specified amount, will not be convicted of the offence detailed in the notice. If, however, they do not pay the specified amount they are likely to be charged with the offence and may be convicted.

The offences which may lead to on-the-spot penalties include “ being drunk in a highway, other public place or licensed premises”, “ disorderly behavior while drunk in a public place” and “ behavior likely to cause harassment, alarm or distress .”



The amount of the penalty is specified by order of the Secretary of State with the fixed amount for most of the listed offences being £80, or £40 in case of person under 16. The notice must include specified details including the alleged offence, the circumstances in which it occurred and the person's right to ask to be tried for the alleged offence in place of paying the fixed amount.

Initially, under CIPA, it was envisaged that penalty notices would be issued by the police . However, this was later widened to include Police Community Support Officers as well as people accredited under a community accreditation scheme .

The Police Reform Act 2002 (PRA) created the power for the chief officer of a police force to set up a community accreditation scheme. Under such a scheme, an “ accredited person” has similar powers to the police to issue notices and therefore the chief officer must be satisfied that that their employer is fit to supervise them carrying out their role, that the person themselves is suitable to the role and that they have received training. Under s41(5) PRA the chief officer of police may charge a fee for considering and granting applications.

Accreditation schemes are aimed at particular types of work including staff of private security firms . My research suggests that Vincent's staff may therefore be able to obtain accreditation, assuming Vincent is prepared to pay the necessary fees for the application and training and that both he and the staff are deemed suitable to participate. If this is something Vincent

would like to pursue, there are further details about the local accreditation scheme on the Essex Police website .

## Issue 2 Sex discrimination in promotions

In order to consider this issue, I firstly reviewed the law in relation to discrimination on the grounds of sex.

The legislation in relation to the various types of discrimination has recently been brought into one place in the form of the Equality Act 2010 which came into force 1 October 2010.

I note that the student who made the complaint had threatened to complain to the Equal Opportunities Commission. The EOC now comes under the Equality and Human Rights Commission (EHRC) which provides a wide range of guidance and advice to both service users and businesses. The guidance suggests that businesses need to avoid setting conditions in promotions which favour either sex and suggests that “ ladies nights” would almost certainly fall foul of the requirements of the new legislation. .

This guidance is confirmed by the legislation itself. The Equality Act 2010 (EQA) states that “ a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.” The sex of a person is a protected characteristic.

The EQA makes specific references to service providers and that discrimination is not permitted in the terms in which A provides a service to B.

My view is that it is clear under the EQA legislation that service providers such as Vincent cannot offer a service at one rate to men and at another rate to women without breaching requirements in relation to discrimination.

Turning to enforcement, this is dealt with under Part 9 EQA. The student could issue proceedings in the county court in which Vincent's business is situated, which in this case would be Colchester County Court, and would have 6 months from the action complained of in which to do so. While he cannot make a claim through EHRC it may provide assistance if there is sufficient interest in the matter.

If the student's case was successful, he may be awarded damages and it is therefore advisable commercially that Vincent changes the promotion as soon as possible. While this would not prevent a claim, it would limit its impact and the interest of the EHRC.

### Issue 3 Additional parental leave

Finally, I turn to the question of the bar manager, Lucca.

The Employment Rights Act 1996 (ERA) states that the Secretary of State shall make regulations entitling fathers who meet specified conditions to a period of 2 weeks of paternity leave. This was carried out through secondary legislation in the form of the Paternity and Adoption Leave Regulations 2002. The Work and Families Act 2008 then inserted s80AA and 80BB into ERA making reference to "ordinary" and "additional" leave. Following this, the Additional Paternity Leave Regulations 2010 (APLR) came into force on 6

April 2010 and made provision for entitlement to additional leave where the baby was due on or after 3 April 2011.

It appears that Vincent does not dispute Lucca's entitlement to the 2 weeks ordinary paternity leave. However, it appears that Lucca also meets the criteria for additional paternity leave under the APLR having been employed for more than 26 weeks, being the father of the child and, along with the mother, apparently expecting to have the main responsibility for bringing up the child. In addition, the baby is due after 3 April 2011.

Lucca wishes to take 6 months leave beginning 6 months after the birth, which he is entitled to do providing he gives notice 8 weeks prior to the start of the leave . The notice must be in writing and include both employee and mother declarations that the purpose of the leave is for Lucca to care for the child while the mother is at work.

The APLR also confers a right for Lucca to return to the same job providing he does not take more than the 6 months intended leave . If Vincent does not keep the job open for Lucca then it is likely that he will have been unfairly dismissed which may give rise to a claim.

I hope this is helpful. Please let me know if you have any queries or would like me to do any further work on this matter prior to your meeting, such as contacting Vincent to ensure he brings along identification if he is a new client.