



Northern
Ireland
Office

Alternatives to Prosecution

A Discussion Paper

March 2008

CONTENTS

Foreword	3
Section 1: Consultation arrangements	5
Section 2: Existing alternatives to prosecution in Northern Ireland	8
Statutory Youth Conferencing	9
Community-based Restorative Justice	11
Restorative Adult Conferencing	12
Fixed Penalties	13
Informed Warnings/Adult Cautions/Restorative Cautions	15
Section 3: Alternatives to prosecution in other UK jurisdictions: (and the impact of introduction in Northern Ireland)	17
Penalty Notices for Disorder	17
Conditional Cautioning	23
Direct Measures	26
Section 4: Wider issues raised by potential alternative measures:	29
Recorded Crime Levels	29
Public Perceptions	29
Human Rights and Equality Implications	30
Section 5: Questions & Next Steps:	31
Consultation Questions	31
Next Steps	32

FOREWORD

Much of the public debate about delivering an effective criminal justice system is focused, quite rightly, on the high level strategic objectives of enhancing public protection, strengthening sentencing options, reducing delay, tackling re-offending and supporting victims and witnesses. These have been my highest priorities and indeed in the past year I have taken forward a programme which is set to deliver significant improvements in the way we deliver on all of these responsibilities.

A truly effective criminal justice system, however, is also one which delivers a proportionate response to those who break the law. Both imprisonment and non-custodial disposals provide options for dealing with offenders on the basis of the seriousness of their offence and the risk which they pose to the public. At the other end of the spectrum are a range of relatively minor offences - committed by persons unlikely to habitually re-offend - where traditional prosecution through the courts may not always be the most effective way of delivering a proportionate justice outcome. Receiving a criminal record for a minor offence can have a significant long term impact on employment prospects and on the ability of such individuals to pass through a short-lived phase of offending to go on to lead law-abiding lives. That does not mean that low level offending should be ignored. What is important is that there is the opportunity for the offence to be acknowledged and, where appropriate, the harm caused to victims to be repaired and the root cause of the offending behaviour tackled in a more meaningful way.

Of course the concept of diversion is not new in Northern Ireland. We already operate statutory youth conferencing which has diverted young offenders from traditional prosecution and offers case conference disposals based on confronting and changing their offending behaviour. The Youth Conference Service is internationally recognised as an example of best practice in youth justice.

What we have not done, as yet, is look at other broader diversionary measures which might provide a proportionate response to minor offences committed by a wider range of offenders and, in appropriate cases, potentially offer better prospects of rehabilitation than conventional criminal justice system sanctions. I believe that the time is now right to begin that discussion and this paper represents the beginning of that process.

We have researched a range of alternatives to prosecution which already operate in England & Wales and Scotland. These include measures relating to: the issue of fines by police; prosecutorial fines; and diversionary cautioning arrangements which can incorporate elements of a punitive fine, as well as rehabilitation and reparation. This paper sets out the measures taken in Great Britain and the issues which their implementation raised for those jurisdictions and seeks views on whether Northern Ireland might benefit from developing similar approaches.

Alternative approaches to prosecution could potentially offer benefits for the criminal justice system as a whole. It can readily be argued that for less serious offending, the process of criminal prosecution does not always represent an efficient or proportionate use of police, prosecutorial or court resources. Some of the measures outlined in the paper indicate clearly where efficiencies have been

realised in other jurisdictions. An obvious area is in the reduction in administration which would allow police manpower to be redeployed to provide an even more effective community policing presence. Acceptance of an alternative disposal would also reduce the number of contested cases coming before the courts enabling more effective use to be made of prosecutorial and court resources.

But finding more effective ways to use finite resources, whilst welcome, is not our primary driver. In developing a criminal justice system which is fit for the 21st century it is vital that we look at how we deal with offending at all levels to ensure that our response is both effective and proportionate. We have already been engaged in radically overhauling the sentencing framework to ensure that it better meets our needs to deal robustly with sexual and violent offenders who pose a risk of harm to the public. It is right that we should also examine whether alternatives to prosecution would provide a more appropriate response to certain low level offences at the other end of the offending spectrum. Your views on the issues raised in this paper would be very welcome and will help inform how we take policy forward in Northern Ireland.

A handwritten signature in black ink that reads "Paul Goggins". The signature is written in a cursive, flowing style.

PAUL GOGGINS

Minister of State

SECTION 1: CONSULTATION ARRANGEMENTS

Purpose of the consultation

1.1 This discussion paper sets out a number of potential alternatives to traditional prosecution through the courts, for low level criminal offences committed by persons with little or no previous offending record. It outlines existing practices in Northern Ireland which already adopt this ethos and examines examples of alternative approaches taken elsewhere in the UK.

1.2 The key features of each of the alternative measures are described and the paper captures some of the operational experience in implementing them and the lessons learned in developing best practice. The paper also outlines a number of potential benefits for offenders, victims and the criminal justice system in adopting such an approach in Northern Ireland and identifies issues which would need to be addressed if any, or all of these, measures were considered for adoption in Northern Ireland.

Consultation Responses

1.3 The paper is being issued for public consultation because we would welcome the views of key stakeholders and any other interested parties before a definitive policy position on the issue of alternatives to prosecution is developed. Views are specifically sought on the range of specific questions posed but would also be widely welcomed on any aspect of the matters raised in the paper. Comments should be sent to:

Alternatives to Prosecution Consultation,
Criminal Justice Policy Unit
Northern Ireland Office
Massey House
Stoney Road
BELFAST BT4 3SX

Telephone: 02890 527299
Fax: 02890 527507
Text phone: 02890 527668
E-mail: CJRDD.Public@nio.x.gsi.gov.uk

1.4 If you have any queries or concerns about the way in which the consultation process has been handled you may raise these with the NIO Consultation Co-ordinator at the following address:

Donna Knowles
Equality Branch
Central Management Unit
Northern Ireland Office
Room 14
Stormont House Annexe
Stormont Estate
Belfast
BT4 3SH

E-mail: donna.knowles@nio.x.gsi.gov.uk
Telephone 02890 527015
Text phone: 02890 527668

Alternative Formats

1.5 An electronic version of this document is available to view and download from the NIO website (www.nio.gov.uk). Hard copies will be posted on request. The text phone contact details are provided above. Copies in other formats, including Braille, large print, computer disk etc may be made available on request. If it would assist you to access the document in an alternate format or a language other than English please let us know and we will do our best to assist you.

Confidentiality of Responses

1.6 The NIO will publish a summary of responses following the completion of the consultation process. Unless individual respondents specifically indicate that they wish their response to be treated in confidence, their name and the

nature of their response may be included in any published summary of responses. Respondents should also be aware that the NIO's obligations under the Freedom of Information Act may require that any responses, not subject to specific exemptions in the Act, may be disclosed to other parties on request.

1.7 The closing date for receipt of responses is 30 May 2008.

SECTION 2: EXISTING ALTERNATIVES TO PROSECUTION IN NORTHERN IRELAND

2.1 This section sets out existing diversionary models in Northern Ireland to enable the series of measures for ‘alternatives to prosecution’ implemented in the rest of the United Kingdom (identified in section 3) to be considered in context.

Introduction

2.2 Some of the key elements of existing diversionary practice were strongly influenced by the last major review of the Criminal Justice System in Northern Ireland¹ which reported in 2000. The Criminal Justice Review Team brought a breadth of policy, legal, judicial and academic experience to bear on its work, commissioning research reports and drawing on national and international experience in fulfilling its remit to conduct a wide ranging review which met the aims of the Belfast Agreement to:

- deliver a fair and impartial system of justice to the community;
- be responsive to the community’s concerns and encourage community involvement (where appropriate);
- have the confidence of all parts of the community; and
- deliver justice efficiently and effectively.

2.3 The Review Team received views from a wide cross-section of opinion in Northern Ireland from individuals and organisations in the statutory, voluntary and community sectors. The chapter in their report dealing with restorative justice indicated broad support for measures which would: divert suitable cases from prosecution (particularly young and first time offenders); include measures to address underlying offending behaviour; and promote restorative justice interventions involving the victim and the community.

¹ Review of the Criminal Justice System in Northern Ireland (2000)
Link: http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf

RESTORATIVE JUSTICE

2.4 In the main, approaches involving Restorative Justice focus on crime as an act against an individual or community rather than the state. Restorative justice typically brings victims and offenders together to decide on the most appropriate response to the harm caused by the offence with the victim playing a major role in the process and often receiving some form of restitution from the offender.

2.5 The Review of the Criminal Justice System in Northern Ireland identified two particular types of diversionary restorative approach – statutory youth conferencing and community-based restorative justice - which it believed would have a beneficial role to play in managing juvenile or low level offending.

Statutory Youth Conferencing

2.6 The Youth Justice Agency delivers a range of services, often in partnership with others, to help children address their offending behaviour, divert them from crime, assist their integration into the community, and to meet the needs of victims of crime. It is an integral part of the wider criminal justice system and contributes to achieving the system's overall aims to support the administration of justice, to promote confidence in the criminal justice system and to contribute to the reduction of crime and the fear of crime.

2.7 Statutory youth conferencing was introduced by the Youth Justice Agency on a pilot basis in the Greater Belfast area in December 2003 and has been available across Northern Ireland since December 2006. It is based on a New Zealand model but has been successfully developed to meet local needs and is now mainstreamed within the Northern Ireland justice system.

2.8 Youth conferencing receives its referrals from two sources. The Public Prosecution Service can, with the consent of the young offender, direct cases for a Youth Conference rather than proceed with prosecution of the offence

through the courts. The Youth Court may also order cases coming before it to be diverted for a Youth Conference but retains its interest in ensuring that the conference plan is successfully completed.

2.9 In 2006-07 1298 referrals were received by the Youth Conference Service; 39% were diversionary referrals from the PPS and 61% were ordered by the Youth Courts. During the first nine months of 2007-08 referrals totalled 1,415 of which 63% were court ordered youth conference disposals. Based on an analysis of youth conferences given in the calendar year 2005, 38% of young people referred for a youth conference had not been sentenced for a previous offence; 14% had one and 48% had two or more previous sentences.

2.10 Youth Conferencing gives young offenders the opportunity to understand and make amends to their victims for the consequences of their offending and, through a plan of action, take active steps to prevent the commission of further offences. It involves the offender, the young person's family or responsible adult, the police, and the victim (where they so wish) - acting under the direction of a Conference Coordinator - to reach an agreed decision on what can be done to address the offending behaviour and put right the harm caused by the young person's actions.

2.11 Rather than being a soft option, the process can be challenging for an offender forcing them to face up to the consequences of their offending for themselves, their victim and the community. Victims have found it beneficial too in that they are empowered through having a say in how the harm caused to them can be addressed. Many victims have also reported that they participated in the process not necessarily because they wanted to punish the individual but because they hoped it would contribute to helping a young person avoid the descent into a spiral of offending which might blight their lives.

2.12 Statutory Youth Conferencing in Northern Ireland is widely viewed, within the United Kingdom and internationally, as an example of best practice in the field of restorative justice. It is still a little early to be able to assess the

impact of Youth Conference disposals on re-offending levels as this is traditionally measured using a two year cohort of cases but initial indications are very encouraging. We already know that the conferences are attracting high satisfaction levels from participants. A survey by the Youth Justice Agency on satisfaction ratings for youth conferencing show that 91% of victims would recommend conferencing to another victim and 93% of young offenders reported satisfaction with the conference outcome. Only around 6% of plans are revoked due to non-compliance.

Community-based Restorative Justice

2.13 The Review of the Criminal Justice System in Northern Ireland, recommended that Community-Based Restorative Justice (CBRJ) could also have a role to play, within the criminal justice system, in dealing with the sort of low level crime that causes concern to many local communities. Its recommendation was subject to specific safeguards requiring schemes to work actively to uphold the human rights of all, to be prepared to work with statutory agencies including the police, to be willing to be accredited, to adhere to established standards in all key areas, and to be scrutinised by the independent Criminal Justice Inspectorate to ensure strict compliance.

2.14 On 5 February 2007, Government published the Protocol for Community-based Restorative Justice (CBRJ) Schemes which will regulate the activities of schemes seeking to engage in restorative justice matters and sets the framework for an acceptable relationship between schemes and the criminal justice system in dealing with these matters.

2.15 Under the Protocol, schemes identify offences to the police who liaise with the Public Prosecution Service and cases considered suitable by the PPS for a community disposal will be referred to schemes. In such cases the offender must have admitted their guilt and have made an informed decision about accepting a community-based restorative justice disposal. The offender can choose at any stage to revert to traditional prosecution through the courts and in such circumstances the restorative disposal would be terminated. A CBRJ intervention, involving an informed warning or restorative caution by the

police, will be recorded on the criminal record. Referrals will also be noted to allow repeat offenders to be identified as this may make them unsuitable to be considered for a further CBRJ referral.

2.16 Five CBRJ schemes have to date been accredited under the Protocol.

Restorative Adult Conferencing

2.17 It was a further recommendation of the Criminal Justice Review that a conferencing approach should also be considered for young adults between 18 and 21 years of age. Initial scoping of the process has however indicated that only a small percentage of offenders may be suitable for such a disposal, while it would be resource intensive given the need to challenge often deeper seated offending behaviour.

Assessment of Effectiveness of a Restorative Justice Approach

2.18 The long term effectiveness of both statutory conferencing and CBRJ referrals under the Government Protocol will take some time to assess. The broader restorative justice approach has however been subject to some independent analysis of its effectiveness when compared to the conventional criminal justice approach. A comprehensive study on restorative justice in the UK and abroad undertaken by The Smith Institute² found in 36 direct comparisons with the conventional justice system that restorative justice:

- substantially reduced repeat offending for some, but not all, offenders reducing recidivism more than imprisonment did (for adults) or as well as imprisonment did (for youths)
- doubled the offences brought to justice;
- reduced crime victims' post-traumatic stress symptoms and related costs;
- provided both victims and offenders with more satisfaction with the justice outcome;

² "Restorative Justice: The Evidence " (2007)

Link: http://www.smith-institute.org.uk/pdfs/RJ_full_report.pdf

- reduced crime victims' desire for violent revenge against their offenders; and
- reduced the costs of administering justice.

FIXED PENALTY NOTICES

2.19 A system of fixed penalties has operated in Northern Ireland for many years dealing principally with minor traffic offences which do not require specific action to be taken by the courts. Where an individual refuses to accept a Fixed Penalty Notice the case will be processed by the Court in the normal manner.

2.20 There are 3 different types of motoring fixed penalties;

Non-endorsable: e.g. parking offences or no seat belt. A fine of £30 to be paid within 21 days is levied, but the driving licence is not endorsed.

Endorsable: e.g. identified by a Police Officer as speeding or having defective tyres. A fine of £60 to be paid within 21 days is levied. A driving licence must be submitted at a local police station within 7 days of the offence for endorsement.

Conditional: e.g. caught speeding on camera - A fine of £60 to be paid within 28 days is levied. The driving licence must be submitted with payment for endorsement.

2.21 Other offences for which a Fixed Penalty Notice may be issued include littering and other environmental offences. Provisions in the draft Criminal Justice (Northern Ireland) Order 2008 – laid in Parliament on 3 March 2008 - would also provide new police powers for a fixed penalty notice to be issued for alcohol consumption in a public place.

FIXED PENALTIES FOR DEPARTMENTAL PROSECUTIONS.

2.22 Many Government Departments undertake the prosecution of minor criminal offences which relate to infringements of their own regulatory functions. These involve offences, for example, relating to vehicle and television licensing and benefits entitlements. Around 8000 cases a year are prosecuted in this way.

2.23 Some consideration has been given to the possible introduction of fixed penalties for Departmental prosecutions which are currently processed via a court summons. Preliminary investigation, however, indicates that whilst such an initiative would save some court time it would not result in significant savings that would allow re-deployment of existing judicial resources to other areas. Many of these offences are undefended, and these require little administration or court time. Some Departmental cases would not be suitable for disposal in this way either because of the seriousness of the offences; the amount of money wrongfully obtained; the complexity of the cases or the Public Interest in the case being prosecuted in open court.

2.24 The introduction of Fixed Penalty Notices for Departmental prosecutions would require legislative change and Departments to introduce significantly different processing systems. Balanced against the limited benefits to be derived, the introduction of fixed penalties for Departmental prosecutions has not, for the most part, been viewed as a cost effective option.

2.25 Some Departments are however giving consideration to the possible application of fixed penalties in limited circumstances. The Driver Vehicle Agency, for example, hopes to institute within the next three years a system of fixed penalty notices to deal with less serious haulier offences and illegal taxis. The DOE Environment & Heritage Agency, as part of a strategy in trying to work with businesses to achieve compliance, is also considering the potential to dispose of suitable cases by fixed penalty where there is cooperation.

INFORMED WARNINGS / ADULT CAUTIONS / RESTORATIVE CAUTIONS

2.26 In Northern Ireland, PSNI officers only have discretion to give informal advice and warning for minor infringements. Informed Warnings, Adult Cautions, and Restorative Cautions are all formal diversions which require consideration of, not only the weight of evidence, but of public interest factors as well. For that reason the decision as to prosecution, or diversion, rests with the PPS alone. In 2006-07 the PSNI issued over 5000 cautions. Almost 60% of cautions issued were for shoplifting, criminal damage or low level drug offences.

Informed Warning

2.27 To issue an informed warning the police must be satisfied that there is sufficient evidence which would allow a case to be brought before a court and there must be an admission of guilt by the offender. An informed warning is recorded on a criminal record for 12 months. Further offending within that time may extend the period for which an informed warning is recorded.

Adult Caution

2.28 Reserved for more serious offending than that warranting an informed warning, an adult caution requires a signature of informed consent, and will be recorded on a criminal record for a period of 5 years. Further offending in that time may extend the period for which an adult caution is recorded.

Restorative Caution

2.29 To issue a restorative caution the police must be satisfied that there is sufficient evidence which would allow a case to be brought before a court, that there is an admission of guilt by the offender, and that some form of restorative intervention would be appropriate to address the underlying offending behaviour demonstrated. A restorative caution remains on the criminal record for a period of 2 1/2 years though further offending may extend the period for which it is recorded.

2.30 There is a system in place to expedite disposal of cases suitable for warnings and cautions for adult offenders. It involves direct communication between the police and a prosecutor where the offender is content to remain in the police station whilst contact is made. It remains a PPS decision but can be made almost immediately. This system is not deemed suitable for youth cases because they require input from the Youth Diversion Officer who requires some time to make enquiries into the youth's background.

SECTION 3: ALTERNATIVES TO PROSECUTION AVAILABLE IN OTHER UK JURISDICTIONS

3.1 Both England & Wales and Scotland have introduced a range of diversionary measures which are aimed at addressing low level criminal behaviour without recourse to prosecution through the courts. This is achieved by different means in each of the jurisdictions but they share a common purpose in quickly bringing a stop to the offending behaviour through a proportionate response which, in appropriate circumstances, may involve elements which are punitive, rehabilitative or reparative in nature.

3.2 This section identifies a range of these alternatives to prosecution and examines some of the benefits which statutory agencies believe they have realised for all the parties concerned. It also looks at some of the issues raised as a result of their implementation and examines the potential impact in Northern Ireland of adopting specific measures.

PENALTY NOTICES FOR DISORDER/ FIXED PENALTY NOTICES

Nature and Usage

3.3 Penalty Notices for Disorder (PNDs) are used by all 43 police forces in England and Wales. First introduced by the Criminal Justice and Police Act 2001, PNDs are designed to deal with a specified range of low level public disorder offences. PNDs for offenders aged 18 years and over were implemented across all police forces in England and Wales in 2003 – 2004 with their use extended to 16 and 17 year olds in January 2004. Legislation to further extend their use to include 10–15 year olds was introduced in September 2004 and pilots of PNDs for that age group are currently ongoing in some areas.

3.4 There are 25 offences that can currently be dealt with by issue of a PND. Typical offences include drunk & disorderly, causing harassment alarm or distress, throwing fireworks in the street, or using threatening words or behaviour. A PND can also be issued for incidents of criminal damage up to £500 and retail theft up to £200. Their issue is at the discretion of a police

officer, working to strict operating guidelines, and the value of the fine is either £50 or £80 depending on the level of the offence. PNDs are not considered suitable for dealing with offences which involve racial violence, domestic violence or mental health issues.

3.5 The issue of a PND does not require an admission of guilt and acceptance does not result in any criminal conviction though a PND disposal may be a disclosable fact in any future court proceedings. They can be issued either at street level, in mobile units or, where necessary, in the police custody suite. Offenders must consent to having DNA / fingerprints taken and, if intoxicated, must be brought back to the station to ensure informed consent has been given. Where the offer of a PND disposal is declined then an offence may be prosecuted through the courts in the normal manner.

3.6 Recipients have 21 days to pay the fine or to request a court hearing. Failure to do so will result in the penalty being re-issued at one and a half times the original amount. Failure to pay a re-issued penalty will result in its automatic registration as a court fine. Default on the court fine will lead to court enforcement action.

3.7 An analysis of PNDs usage levels in the five police areas of England and Wales which are designated as the most similar forces to PSNI³ indicates that an average of 7,500 PNDs were issued to persons aged 16 years and over during 2006. We might therefore expect to see similar usage levels in Northern Ireland if PNDs were fully implemented here. Experience in England and Wales suggests that: 54% of PNDs are paid in full; 40% are registered at court for non-payment but that only 10% of these will result in the issue of a court warrant with the potential for up to 300 of the 7,500 cases defaulting to imprisonment.

3.8 Scotland has been running, on a pilot basis, a system of Fixed Penalty Notices (FPNs) which operate in a similar way to PNDs in England and Wales and for a similar range of offences. Police may issue a fine of £40 allowing 28 days to pay. During the pilot period a total of 3327 FPNs were issued. If

³ Greater Manchester, Northamptonshire, Northumbria, West Midlands and West Yorkshire

unpaid, the fine is automatically registered as a court fine but it was estimated that less than 1% of offenders were charged for non-payment of fines which they attributed to the relatively low value of the fine.

Experience of implementation in Great Britain

3.9 As part of the research for this paper, a multi-agency working group from Northern Ireland visited England & Wales and Scotland to learn about their experiences of implementing PNDs/ FPNs. Both jurisdictions found penalty notices to be a valuable disposal for police, and believed their operation had had a significant effect in reducing disorderly behaviour particularly in city centre locations engaged in night-time economic activity.

3.10 The experience in Great Britain identified a number of beneficial impacts from their introduction:

- They allow an offence to be dealt with conclusively at the point of commission enabling the offender to acknowledge the inappropriateness of their behaviour whilst avoiding a criminal record for what can often be a minor misdemeanour.
- The use of PNDs/ FPNs represent a significant saving of police time spent on administration enabling police resources to be re-deployed more effectively to provide a greater on-street police presence.
- The diversion of cases which might otherwise have been subject to traditional prosecution enable prosecutorial and court resources to be targeted more effectively on cases involving more serious offences.
- The issue of PNDs/ FPNs can defuse public disorder situations (particularly those associated with drunkenness and alcohol-related disorder in busy city centre locations) and potentially minimise more serious offending in the locality.

- Swift action to deal with this type of low level offending behaviour can increase community confidence in policing and reduce the fear of localised crime.

3.11 Their introduction however did raise a number of implementation issues which required careful management. These included issues associated with:

- **Net widening.** Whilst PND's/ FPN's may be a quick and effective way of dealing with minor criminal activity there is the risk that actions which may previously have been disregarded or dealt with informally could be escalated to the issue of a penalty. An analysis of usage in the early stages in England and Wales identified a problem with over-enthusiastic application. They recognised the importance of producing clear guidance and training for police officers to guard against the dangers of net-widening and introduced Quality Assurance officers to examine all processed PND records to ensure application was consistent and appropriate.
- **Appropriate Usage.** In addition to the potential for net widening, it was recognised that it was also important that penalty notices are only issued in cases where they are the most appropriate disposal. This required clear marking guidelines indicating circumstances in which even a low level offence would not be appropriate to be dealt with in this way. Examples included where it was part of a pattern of repeat offending or was associated with racial or domestic violence or mental health and learning disability problems. The guidelines also needed to indicate where it would be appropriate for another disposal – perhaps one targeting underlying offending behaviour or involving reparation or compensation for victims – to be deployed. In addition to guidance, an overarching quality assurance process would be required to examine usage and permit penalties to be cancelled or appropriately re-designated and to use that information to refresh officer training.
- **Operational Capability.** To be able to issue PNDs on the street officers needed to be able to access appropriate information and, with

consent, take DNA and fingerprints at the scene. Officers need to know an individual's previous PND history (if any) which required police to maintain a centralised record (as PND issue does not appear on an individual's criminal record). Police forces in England & Wales and Scotland have tackled the issue of on-street collection of DNA and fingerprints in different ways e.g. either operationally: through deployment of mobile units; or technologically: through use of hand-held print readers and mobile DNA sample kits. These issues do not arise where the penalty is given in a police custody suite.

Specific issues for Northern Ireland

3.12 In addition to the broader implementation issues outlined above we have identified some areas where implementation of PNDs would raise particular issues for Northern Ireland to consider.

3.13 The time and cost efficiencies which penalty notices for disorder deliver rely heavily on the ability of police to issue at their own discretion within strict operational guidelines. Full implementation of PNDs in Northern Ireland would require PSNI to be able to exercise a greater degree of autonomy than is allowed under current arrangements which require oversight of decisions by the Public Prosecution Service. The Justice (NI) Act 2002 vested decisions, in all cases investigated by police, in the new prosecution service. Implementing such a system was judged necessary to foster public confidence and to separate transparently, the functions of investigating and prosecuting crime. The PND system would represent a different approach in relation to offences at the lower end of the offending spectrum.

3.14 The introduction of a new fine-based disposal has the potential to lead to an increase in default for non-payment. As automatic committal to custody is the only sanction presently available in Northern Ireland for dealing with fine default this could increase pressure on prison places. Fine default accounted for 1951 prison receptions in 2006 and defaulters currently occupy 25-30 prison places on an average day. This need not necessarily be a bar to the consideration of PNDs in Northern Ireland but would require to be factored

into action currently being taken to reduce the number of defaults to prison custody. While it is necessary to retain custody as the ultimate sanction, Government is committed to introducing other non-custodial options which will deal with fine defaulting. A cross-agency Fine Default Implementation Team is currently considering a range of measures aimed at encouraging payment and providing alternatives to custody. These include:

- Court Fine Officers contacting offenders to remind them of the stipulated time period for payment. A Fine Enforcement Officer pilot commenced on 12 November at Laganside Courts and will be evaluated in April 2008;
- Introducing statutory arrangements for attachment of earnings or deduction from benefits to assist with making payments; and
- Creating additional powers for enforcement of money judgements.

3.15 The draft Criminal Justice (Northern Ireland) Order 2008 also contains provisions to provide a supervised activity order (SAO) as the preferred default position for unpaid fines up to the value of £500. An SAO would require that a defaulter engage in activity of between 10 and 100 hours duration.

3.16 If PNDs/FPNs were introduced here it would be important to do so in a way which minimised the impact on fine default custody, as the Scottish model (described in paragraph 3.34) has done.

QUESTIONS

Do you consider that Penalty Notices for Disorder would be a useful addition to the disposals available in Northern Ireland?

Do you consider that the PSNI should have the ability to make autonomous decisions on the issue of Penalty Notices for Disorder?

CONDITIONAL CAUTIONING

3.17 The conditional caution, introduced by the Criminal Justice Act 2003, and amended by the Police and Justice Act 2006, is a disposal which enables offenders to avoid traditional prosecution through accepting a caution which requires that they must comply with specified conditions. The conditions applied must be an appropriate, proportionate and effective means of addressing an offender's behaviour or of making reparation for the effects of the offence on the victim or the community.

3.18 A conditional caution may be given for the same types of low level offences which might otherwise attract the issue of a PND by a police officer. It is more likely to be used in circumstances where financial reparation to the victim is an issue or it is believed that action to address the underlying behaviours underpinning the commission of the offence might make commission of further similar offences less likely.

3.19 A conditional caution can only be approved by a Crown Prosecutor and would therefore require that the offender is in the police custody suite for its imposition to be considered. The conditions that can be attached to a conditional caution must have one or more of the following objectives:

rehabilitative – conditions that help to change the behaviour of the offender, reduce the likelihood of them re-offending or help to reintegrate the offender into society.

reparative – conditions that aim to repair the damage done either directly or indirectly by the offender.

punitive - conditions which punish or penalise the offender for their law-breaking and can include:

- the payment of a financial penalty (up to £250);

- unpaid work for a period not exceeding 20 hours; or
- attendance at a specified place for a period not exceeding 20 hours.

3.20 If an offender fails without reasonable excuse to comply with the conditions attached to a conditional caution the legislation provides for criminal proceedings to be instituted and the caution cancelled.

Experience in implementing conditional cautions

3.21 Statutory provision has been made for implementation across England and Wales but application is not yet universal. Initial feedback on the study visit to a police force in England during 2007 was that relatively few conditional cautions had been issued. The ability to issue a PND for a similar offence was cited as a particular factor in the low level of usage. As offenders who might potentially have been suitable for a conditional caution were dealt with quickly by police officers either on the street, or overnight in the custody suite, there were fewer cases available for assessment by Crown Prosecution Staff. The issue of guidance on use of PNDs has had an impact on this situation and the numbers of conditional cautions are now beginning to increase.

3.22 The most recent report from the Office of Criminal Justice Reform shows that conditional cautioning is now operating in nearly half the Basic Command Units in England and Wales. The level of use continues to vary considerably between areas but is growing quickly as the following table indicates:

FINANCIAL YEAR	CONDITIONAL CAUTIONS ISSUED
2005- 2006	510
2006 - 2007	1,578
2007 – 2008 (1 st quarter only)	875

3.23 Offences involving criminal and malicious damage (under £500 in value) accounted for almost half of all conditional cautions administered.

Common assault, theft, fraud and drugs possession offences accounted for a further 26% of cases. The most commonly applied conditions to cautions are:

- compensation (64%)
- letter of apology (13%)
- drug intervention programme (12%)
- alcohol related condition (5%)
- restrictive conditions (2%)
- all other conditions (4%)

3.24 Although it is still relatively early to draw conclusions about their use in England and Wales, experience to date has already identified some benefits. Conditional cautioning is viewed as particularly helpful for victims of criminal damage as the disposal allows for financial compensation to be made to the victim for property which has been criminally or maliciously damaged by the offender. This is strongly evidenced in the use of compensation conditions in 64% of all cautions applied. Where the same offence is dealt with by means of issue of a PND a fine is paid to the state but no direct compensation is made to the victim. This is a matter of concern to all victims, but victims of retail crime in particular.

3.25 A conditional cautioning approach is believed to be able to make a contribution to longer term behavioural change in offenders by channelling offenders' energies into diversionary activities or attaching programme requirements targeting the attitudes which underpin their offending behaviour. The most commonly applied rehabilitative condition relates to drug intervention strategies. It will however be some time before the impact on two-year reconviction rates can be assessed.

3.26 However, current experience has also highlighted some issues which have impinged on the ability to deliver conditional cautioning effectively. As has already been highlighted, there are tensions surrounding the ability of police to deploy PND's and prosecutors to deploy conditional cautions for the same range of offences. In addition there are issues around resourcing and capacity building in order to deliver conditions aimed at offender rehabilitation.

Cautions have thus far tended to concentrate largely on punitive and reparative (compensatory) conditions which are relatively cost-neutral to effect. The ability to deliver programmes and secure placements which underpin specified rehabilitative conditions has been hampered in many areas by the need to build capacity amongst statutory and voluntary sector agencies and their ability to secure adequate resources to administer them.

3.27 Conditional cautioning could provide similar benefits but also face similar constraints in terms of resourcing and capacity building if adopted here. There are no known additional impacts which would be specific to Northern Ireland. As conditional cautioning is prosecutor-led the tension which exists as a consequence of the respective roles of PSNI and PPS in Northern Ireland do not arise in the same way that they do in relation to penalty notices for disorder.

DIRECT MEASURES

3.28 Direct Measures is a term used in Scotland to describe a range of ways in which cases might be dealt with as an alternative to prosecution through the courts. The measures include: fines or warnings from the procurator fiscal; diversion; unpaid work orders; and compensation orders.

3.29 A 'fiscal' fine - a conditional offer (from the Procurator Fiscal) of a fixed penalty in relation to any offence in respect of which an alleged offender could competently be tried before a district court - is a means of prosecutors expediting the disposal of less serious offending, while giving an alleged offender the opportunity of avoiding a criminal record. The levels of fine, set by the Scottish Executive, are £25, £50, £75 and £100, but from 10 March 2008 fines may be levied between £50 and £300. If they are paid there is no prosecution or formal conviction against the accused. The accused can choose not to accept the fine in which case the Procurator Fiscal may prosecute the case in court. Additionally, the scope of the fiscal fine has been widened to allow the use of a compensation order, which is offered and enforced in the same way as a fiscal fine, but with the proceeds going to the victim of the offence. Where the prosecutor feels that an offender could avoid

re-offending with the assistance of a support programme, and there are suitable placements available, he may also attach a programme requirement to the disposal.

3.30 In Scotland, it is also intended to pilot “work orders”, where an offender might be asked to accept short periods of unpaid work as an alternative to prosecution.

3.31 If the Procurator Fiscal decides to take no proceedings following failure or refusal to accept a fiscal fine, the fact that a fiscal fine was made will remain confidential. If, following failure to accept the offer, a prosecution follows, the failure of the accused to take up a fiscal fine may be disclosed to the Court. Once an offer (of a fiscal fine) has been accepted the Procurator Fiscal, if asked, may disclose this to any person whom he considers to have a legitimate interest in knowing the outcome of the case, for example, the victim or the media.

3.32 The Procurator Fiscal may decide to give the accused either a written or personal warning for an offence, rather than a fine. These warnings make it clear that a report of a crime has been submitted to the Procurator Fiscal and that repetition of the alleged behaviour will be likely to result in a prosecution.

Experience of implementing direct measures

3.33 Some difficulties have been experienced in circumstances where offenders have failed to respond to the offer of a fiscal fine. In response Scotland is implementing legislative amendments – effective from 10 March 2008 – to provide that a failure to reject the offer of a fiscal fine will be deemed acceptance of that fine for the purposes of any subsequent default action.

3.34 Scotland has also experienced some difficulties in pursuing fines which have been partially, but not fully, paid. Powers have also therefore been taken to introduce Fines Enforcement Officers whose role it is to maximise the number of cases in which fines are fully paid. They will have powers to: make

variations in payment terms; make deductions from salaries and benefits; freeze bank accounts; and seize vehicles.

Issues raised in Northern Ireland

3.35 The Criminal Justice Review recommended that the introduction of a prosecutorial fine in Northern Ireland be considered. A Prosecutorial Fine is a power conferred on prosecutors to offer a fine as a disposal to an offender, which the Review envisaged as a means of expediting some of less serious cases, while giving an alleged offender the opportunity of avoiding a criminal record.

3.36 The Review Team acknowledged that it might be argued that Prosecutorial Fines involve the imposition of punishment, or putting pressure on a suspect to accept punishment without recourse to due process. However they concluded that, provided that in issuing a fine it is made very clear that the recipient has the option of fighting the case in court, there should be no human rights objections to this course. In principle the concept is little different from a fixed penalty.

QUESTION

Do you consider that a conditional caution approach - involving elements of a punitive prosecutorial fine, and a menu of other rehabilitative and reparative conditions, where appropriate - should have a role in Northern Ireland?

SECTION 4: WIDER ISSUES RAISED BY POTENTIAL ALTERNATIVES TO PROSECUTION MEASURES

4.1 The consideration of some of the alternative measures identified in section 3 has already touched on some potential advantages for the offender, victim and the criminal justice system of the measures implemented in Great Britain. It also highlighted some of the potential difficulties which were experienced in their implementation and the impact these may have in Northern Ireland. This section addresses some of the broader cross-cutting issues which are raised by the alternatives to prosecution approach but are not exclusive to any particular measure.

Recorded Crime Levels.

4.2 Experience in Great Britain has shown that, with the introduction of alternatives to prosecution, recorded crime rises sharply and this has the potential, unless properly communicated and qualified, to impact on public confidence and increase fear of crime. As individuals subject to these measures have admitted their offence, or otherwise consented to the disposal, this should however also translate into a corresponding increase in clearance rates.

Public Perceptions.

4.3 Options which divert offenders from prosecution through the courts can sometimes be viewed in the eyes of the public as a 'soft' option for dealing with offenders. In fact a fine, issued as a diversionary disposal, reflects the most likely outcome of comparable cases which have been processed in the normal way through the court system. Fines are the most commonly used court disposal (accounting for 66% of all disposals made in 2006). Some of the alternative options can in reality be very challenging as offenders face up to the consequences of their actions by making reparation to their victims and participate in activities which address their offending behaviour.

4.4 There could potentially also be a perception that introducing new financial penalties is simply another means of generating revenue for central Government. That is not a consideration in these measures. There may however be potential to explore diverting revenue from these disposals to directly improve victims' services or offender rehabilitation services.

Human Rights and Equality Implications

4.5 On the basis that all of the alternatives to prosecution identified in this paper are consensual and will operate on the basis of informed consent, we do not believe that they infringe any individual's human rights. Individuals who do not consent to the offer of an alternative measure – where this is considered an appropriate option - are fully entitled to have their case progress as normal through the traditional justice process. Those who would accept a penalty notice for disorder (including one issued on-the-street) have the period before payment of the fine is due (up to 28 days) to identify if they should wish to exercise that option. Should an individual accept but does not subsequently complete the specified requirements of a conditional caution it would be for the prosecutor to reconsider prosecution of the case.

4.6 This paper sets out in broad terms a number of developments which could bring advantages in Northern Ireland. In light of comments received more specific plans will be drawn up and subjected to equality impact screening. In the meantime we would welcome views from respondents who might identify any area in which they feel the proposals could have adverse equality impacts.

QUESTIONS:

Do you think it would be appropriate for revenue raised through the imposition of any alternative to prosecution punitive fine to be diverted to support victims' services, and/or to fund rehabilitative services for offenders?

Do you consider that implementation of any of the alternatives to prosecution identified in this paper might give rise to any concerns about human rights or equality issues?

SECTION 5: CONSULTATION QUESTIONS & NEXT STEPS

5.1 Views are welcome on any aspect of the matters raised in the paper but are particularly sought on the range of specific questions set out below. Some of these have been posed already in response to particular measures identified in sections 3 and 4 of the paper and others of a more general nature are posed for the first time in this section. For convenience, the questions are replicated in full below.

The overall alternatives to prosecution approach:

Q1: Would you consider the development of alternatives to prosecution to be an advantageous addition to the criminal justice system in Northern Ireland?

The suitability of measures identified for application in NI:

Q2: Do you consider that Penalty Notices for Disorder would be a useful addition to the disposals available in Northern Ireland?

Q3: Do you consider that a conditional caution approach - involving elements of a punitive prosecutorial fine, and a menu of other rehabilitative and reparative conditions, where appropriate - should have a role in Northern Ireland?

Q4: Are there any other alternatives to prosecution which you believe the government should be considering?

Operational Issues:

Q5: Do you consider that the PSNI should have the ability to make autonomous decisions on the issue of Penalty Notices for Disorder?

Q6: Do you consider that the counter-measures identified, in section 3, adequately address the potential implementation issues raised?

Q7: Have you identified other potential operational difficulties, or issues of concern, arising from implementation of the measures identified?

Any possible differential impact in NI:

Q8: Do you consider that there are special circumstances in Northern Ireland which may lead to an unintended impact here of alternatives to prosecution. If so, what are these, and how do you consider they might be addressed?

Use of fines revenue:

Q9: Do you think it would be appropriate for revenue raised through the imposition of any alternative to prosecution punitive fine to be diverted to support victims' services, and/or to fund rehabilitative services for offenders?

Human rights and equality issues:

Q10: Do you consider that implementation of such alternatives to prosecution might give rise to any concerns about human rights or equality issues?

NEXT STEPS

5.2 The consultation period concludes on 30 May 2008. All responses should be made to the address identified on page 3. A pro forma listing the questions raised has been attached for those who might find it a convenient way to respond, but we would of course welcome responses in whatever form respondents find most suitable.

5.3 Responses will be analysed and a summary of responses published on the NIO website. The responses will inform further policy consideration by Northern Ireland Office Ministers on the viability of adopting a policy of implementing further options for alternatives to prosecution in Northern Ireland.

5.4 NIO Ministers will remain responsible for taking decisions in this area up to the point of devolution of justice and policing. After devolution responsibility for these matters will transfer to the relevant Minister in the NI Executive with any legislative change being the responsibility of the NI Assembly.

CONSULTATION QUESTIONS RESPONSE FORM

For convenience, the questions raised in the discussion paper are replicated below;

The overall alternatives to prosecution approach:

Q1: Would you consider the development of alternatives to prosecution to be an advantageous addition to the criminal justice system in Northern Ireland?

The suitability of measures identified for application in NI:

Q2: Do you consider that Penalty Notices for Disorder would be a useful addition to the disposals available in Northern Ireland?

The suitability of measures identified for application in NI (contd.):

Q3: Do you consider that a conditional caution approach - involving elements of a punitive prosecutorial fine, and a menu of other rehabilitative and reparative conditions, where appropriate - should have a role in Northern Ireland?

Q4: Are there any other alternatives to prosecution which you believe the government should be considering?

Operational Issues:

Q5: Do you consider that the PSNI should have the ability to make autonomous decisions on the issue of Penalty Notices for Disorder?

Q6: Do you consider that the counter-measures identified, in section 3, adequately address the potential implementation issues raised?

Q7: Have you identified other potential operational difficulties, or issues of concern, arising from implementation of the measures identified?

Any possible differential impact in NI:

Q8: Do you consider that there are special circumstances in Northern Ireland which may lead to an unintended impact here of alternatives to prosecution. If so, what are these, and how do you consider they might be addressed?

Use of fines revenue:

Q9: Do you think it would be appropriate for revenue raised through the imposition of any alternative to prosecution punitive fine to be diverted to support victims' services, and/or to fund rehabilitative services for offenders?

Human rights and equality issues:

Q10: Do you consider that implementation of such alternatives to prosecution might give rise to any concerns about human rights or equality issues?

Please return to;

Alternatives to Prosecution Consultation,
Criminal Justice Policy Unit
Northern Ireland Office
Massey House
Stoney Road
BELFAST BT4 3SX

Telephone: 02890 527299
Fax: 02890 527507
Text phone: 02890 527668
E-mail: CJRDD.Public@nio.x.gsi.gov.uk

Closing date of consultation is 30 May 2008.