



Northern  
Ireland  
Office

Summary of responses to

**Alternatives  
to  
Prosecution**  
A Discussion Paper

October 2009

## **FOREWORD**

Last year I published for consultation a discussion paper which explored the potential for developing measures which could act as alternatives to prosecution for minor offences. It was prompted by the growing recognition that prosecuting uncontested minor offences through the courts is not always the most effective or proportionate outcome.

The paper highlighted a range of measures which have been utilised in other jurisdictions including fixed penalty fines, prosecutorial fines and cautions with conditions aimed at rehabilitating the individual or making reparation to their victims.

The response to the consultation has been very positive with many respondents welcoming the opportunity to divert first-time and non-habitual offenders from prosecution. Respondents recognised the obvious benefits to the individual in avoiding a criminal record for an isolated minor offence. The ability to divert valuable police resources from administration to front-line policing as well as enable prosecutorial and court resources to be utilised in focusing on more serious offending, will also be seen as bringing benefits to the criminal justice system. I have listened carefully to the views of respondents who expressed concern about the impact on people with low incomes and the need for new powers to be matched with stringent guidelines on their usage and close monitoring of their implementation.

This summary of responses reflects the range of views received during the consultation and sets out my proposals on the way forward. Given the broad consensus it is my intention to begin the process of drafting legislative proposals, in order that they will be available to a devolved Minister of Justice following the devolution of policing and justice powers.

A handwritten signature in black ink, appearing to read 'Paul Goggins', is centered on the page. The signature is fluid and cursive, with a large initial 'P' and a long, sweeping underline.

**Rt. Hon Paul Goggins MP**

# **ALTERNATIVES TO PROSECUTION CONSULTATION – SUMMARY OF RESPONSES**

## **Introduction**

A consultation on an “Alternatives to Prosecution” policy discussion paper was launched on Monday 3 March 2008, and closed on 30 May, but was extended until July to facilitate some key respondents. The “Alternatives to Prosecution” discussion paper set out: the context of existing diversionary approaches in Northern Ireland; looked at a range of Alternatives to Prosecution currently available in other UK jurisdictions which are principally aimed at individuals with little or no previous offending history who have committed relatively minor offences which they don’t intend to deny in court; and examined their experience in implementing these measures and addressing any differential impacts. The paper recognised the benefits identified in Great Britain and identified the operational issues which require specific management to deliver those benefits for victims, offenders and the criminal justice system as a whole.

The document discussed and sought views on the potential impact of the introduction of such measures in Northern Ireland, and concluded with a series of questions seeking views both on the general principles of alternatives to prosecution and some specific issues relevant to a number of the measures discussed.

This document provides a summary of the range of views expressed by 29 respondents (listed at Annex A) who responded to the consultation. It also includes views solicited from interested parties at a consultation event in April 2009 discussing the draft strategy on the management of women offenders at which an ‘alternatives to prosecution’ workshop was held. The document also outlines the proposals which have been developed by the NIO, taking account of the responses received during the consultation process.

## **SUMMARY OF RESPONSES TO THE ALTERNATIVES TO PROSECUTION DISCUSSION PAPER**

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

Views expressed

16 respondents commented directly on this question, and all were in favour of the introduction of alternatives to prosecution, with some respondents agreeing subject to certain conditions.

Respondents felt that the introduction of alternatives to prosecution may help to reduce the time required to process a case, and that a reduction in bureaucracy would have the potential to free up police resources. It was generally viewed as appropriate that low level offences should be dealt with outside the formal court system, and the benefits to low level or first time offenders in avoiding a criminal record were highlighted. Some respondents, while viewing alternatives to prosecution as useful, believed they should be developed with limited bureaucracy for enforcing officers, but very clear guidelines and protocols to allow a standardised approach to the application of alternatives to prosecution across geographical areas.

**Q2. “Do you consider that Penalty Notices for Disorder (PNDs) would be a useful addition to the disposals available in Northern Ireland?”**

Views Expressed

Of 21 respondents who commented directly on this question 17 were in favour of the introduction of PNDs, with some agreeing subject to certain caveats and others expressing some reservations.

Most respondents favoured the introduction of PNDs which were viewed as a useful tool which would allow police to control anti-social behaviour, particularly that related to alcohol consumption, without criminalising first-time offenders. A minority expressed the view that such powers should also be made available to other local enforcement bodies. The need to ensure that implementation issues were adequately prepared for and resourced was emphasised by some respondents and others highlighted the need for consistency in their application and the important role played by guidelines, staff training and quality assurance monitoring in achieving this. For those expressing reservations the key reason was concern about the potentially disproportionate impact which a new fixed penalty notice based disposal could have on those on low incomes.

**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?”**

Views expressed

Of 17 respondents who commented directly on this question, all were in favour of their introduction, with some respondents agreeing subject to certain conditions.

A general view was that adequate resourcing and the availability of appropriate programmes would be necessary for conditional cautions to be successful. It was felt that conditional cautions might be helpful in addressing victims’ needs and the potential for conditional cautions to allow restitution to victims for criminal damage was welcomed. The opportunity to address offenders’ underlying problems (e.g. addiction) was seen by some as a particular advantage of such a caution. Some reservations were expressed about individuals’ ability to pay any associated compensation, and the consequences if they defaulted on the payment.

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

Views expressed

14 respondents commented on this question.

A number of respondents thought that the needs of the victims should be a priority in the development of any alternatives to prosecution, including 6 who highlighted the benefits for victims of restorative justice and youth conferencing. Several respondents commented that any revenue generated by alternatives to prosecution should be allocated for community safety programmes.

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

Views expressed

Of 13 respondents who commented directly on this question, 9 were in favour with some respondents agreeing subject to certain conditions. 4 respondents were not in favour.

The respondents in favour saw the key advantage as allowing quick action to be taken by police to address offending which they felt would promote public confidence. Those not in favour however felt that such autonomy instead had the potential to undermine public confidence in policing. Whatever their viewpoint on autonomy, most respondents felt that officers should be provided with clear guidance on the issue of PNDs and that their arrangements should be subject to safeguards and close scrutiny. Respondents also identified the potential benefits for the Public Prosecution Service in enabling them to focus on prosecuting more serious criminal matters.

**Q6. “Do you consider that the counter-measures identified (in section 3) adequately address the potential implementation issues raised?”**

Views expressed

10 respondents commented directly on this question, which sought views on how to address implementation issues in relation to net-widening, appropriate usage and confirmation of offenders’ identity. Respondents restricted their comments to the implementation of PNDs. It was generally felt that any potential implementation issues could be addressed by adequate training for police officers, and measures to monitor, evaluate and ensure consistency and individual accountability. Some respondents stated that there should be clear protocols to ensure offenders give informed consent, and are aware of the longer term consequences of providing DNA samples and fingerprints should they be taken.

2 respondents did not agree that the counter-measures addressed implementation issues on the basis of their disagreement with the level of autonomy it would confer on PSNI officers.

**Q7. “Have you identified other potential operational difficulties, or issues of concern, arising from implementation of the measures identified?”**

Views expressed

15 respondents commented directly on this question.

Several respondents commented that alternatives to prosecution should not be seen as trivialising offences, or a “soft option”. The potential level of default was highlighted as a concern and respondents identified the need for appropriate mechanisms to be in place to deal with this issue. A number of respondents expressed concern particularly about the effect on those on low incomes, and suggested that diversionary rather than financial penalties would be more appropriate for low income groups.

**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?”**

Views expressed

12 respondents commented directly on this question.

Respondents did not generally anticipate that the possible introduction of alternatives to prosecution would lead to any unintended impact. Several respondents identified that any use of alternatives in relation to sectarian behaviour however could present problems. Consequently it was felt there was a need for close monitoring to ensure consistency of application across community and geographical boundaries. Some respondents felt that compiling comprehensive statistics on the use of alternatives to prosecution would be necessary to identify any unintended impacts. Some concern was expressed by a small number of respondents that more significant restrictions, which might be attached to a conditional caution, may impact on an individual’s right to liberty.

**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?”**

Views expressed

Of 14 respondents who commented directly on this question, all were in favour of the diversion of revenue from alternatives to prosecution, with some respondents agreeing subject to certain conditions.

All respondents were in favour of revenue raised through alternatives to prosecution being used to fund victims’ and rehabilitative services. Some respondents favoured the revenue being directed at victims, rather than offenders. A majority of respondents, however, were in favour of funding both victims and offenders with a general recognition that rehabilitative services can help to reduce crime.

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

Views expressed

12 respondents commented directly on human rights issues.

A majority of respondents who commented on human rights and equality matters felt that there were potential issues, particularly if individuals under 18 were to be subject to an alternative to prosecution. The consensus view, however, was that any limitation of rights that alternatives to prosecution may give rise to would be proportionate. Respondents felt that care must be taken to ensure no part of the community is penalised disproportionately, and that a transparent and accountable system should guard against perceptions of inequality.

## **Impact of alternatives to prosecution on women offenders**

### Views expressed

Although the discussion paper did not specifically seek views in relation to the effect of alternatives to prosecution on women offenders, some respondents did address the issue, and a workshop held during a consultation event on the draft strategy for the management of women offenders yielded some further views. Respondents felt that it was important to recognise the impact of punitive action on women offenders. The potentially disproportionate impact on a family where women are fined for more minor offences was highlighted, and it was noted that women who were imprisoned were twice as likely as men to have suffered from mental health issues. Respondents considered that diversionary, rather than financial penalties would have a less detrimental impact on women offenders. Women's groups at the event identified that services to help women address their offending behaviour could be provided in the community as part of diversionary disposals, but that they needed to be adequately funded.

## **NIO RESPONSE TO THE CONSULTATION**

### **Response to views expressed**

Each of the measures identified in the consultation document represent diversionary means of dealing with low level offending by first time or non-habitual offenders who consent to the offence being dealt with outside the traditional court process. Where consent is not given the individual will be prosecuted in the normal manner.

The majority of respondents were in favour of diverting suitable first time and non-habitual offenders committing minor offences from prosecution and providing alternative non-court disposals which represented a proportionate justice outcome. **Given the broad welcome, it is therefore our intention to begin drafting legislation for the introduction of the three alternatives to prosecution measures proposed in the consultation document: Fixed Penalty Notices; Prosecutorial Fines; and Conditional Cautions.**

Respondents' welcome for the availability of these measures was sometimes subject to caveats and, where possible, we will seek to ensure that appropriate safeguards are reflected in the arrangements underpinning those measures.

The majority of issues raised were in relation to the introduction of fixed penalty notices and our recognition of those concerns will be particularly evident in the decisions to limit the number of offences eligible for a fixed penalty notice, the requirements for strict guidance on their usage, the close supervision of issue and the commitments to training, quality assurance and internal and external monitoring of implementation.

Some concern was expressed that the introduction of fixed penalty notices could have a disproportionate effect on those on low incomes. However fixed penalty notices would be imposed as an alternative to prosecution in cases where otherwise a court imposed fine is the most likely outcome. It is not anticipated that there should be any additional financial burden on individuals committing qualifying offences. Indeed it is proposed that the time limit for

making payment would be longer, than in England and Wales, and the value of the fixed penalty notice slightly lower than the likely court fine which would otherwise have been imposed.

Particular concerns were expressed about the ability of individuals to pay compensation orders awarded by prosecutors and the action which would be taken on default. It is proposed that the means of an individual are taken into account when compensation is awarded and appropriate instalment arrangements agreed to minimise the risk of payment default.

The need to ensure that all of the measures proposed were adequately funded was another recurring theme in responses and we are committed to ensuring that the measures are adequately resourced before implementation. The introduction of fixed penalty notices in particular will require investment to implement new police processing arrangements but will also realise off-setting efficiency savings within PSNI and PPS which will be directed to cover implementation and administration costs and help deliver improved front line services. There will also be one-off capital costs to make the necessary changes to IT systems in each of the criminal justice agencies to enable effective information sharing and these will be met by re-prioritising existing budget baselines.

Additional costs will also be incurred in respect of programme delivery, particularly in relation to conditional cautions. We will be working with providers of rehabilitation services in the community to enable offenders to access appropriate programmes. It is anticipated that we will initially pilot conditional cautions and phase implementation roll-out in line with community capacity and the availability of resources.

Respondents commented that revenue from fixed penalty notices should be directed to support the delivery of offender and/ or victims services. It is now unlikely that any revenue from fixed penalty notices will be able to be retained for use in delivering these services. The fixed penalty notices represent disposals which, but for their diversion from traditional prosecution, would have resulted in a fine imposed at court. The fixed penalty notice will be the lawful disposal of that offence and revenue accrued will therefore have to be

remitted to the Treasury in the same way that it is when a fine is imposed in court. A separate initiative is however being developed which is aimed at creating a levy from offenders which will be used for providing enhanced services to victims of crime.

## **Summary of final proposals**

In determining if an offence, and offender, may be suitable to be dealt with by one of these measures – and deciding on the most appropriate measure to deploy - their previous offending history, the impact on victims and the potential to enhance prospects for the rehabilitation of the offender will all be relevant factors. There will be no automatic eligibility for any of the proposed measures and decisions to offer an alternative to prosecution will take account of all the individual circumstances of a case. Where these indicate that it is in the public interest that the case be prosecuted in court then alternatives to prosecution will not be used.

Having considered respondents' views, final policy decisions have been taken on the development of the three alternatives to prosecution measures and a summary of these is provided below:

### Fixed Penalty Notices

Fixed Penalty Notices would be:

- available to police for issue to individuals aged 16 years and over for first time or non-habitual offences both on-the-street and in custody (subject to voluntary acceptance) and would not result in a criminal record unless the individual defaults on payment and the fixed penalty notice becomes court registered;
- available for a defined list of qualifying minor offences:
  - Behaviour likely to cause a breach of the peace
  - Criminal Damage (up to a threshold value limit)
  - Disorderly behaviour
  - Indecent Behaviour
  - Obstructing Police

- Purchasing intoxicating liquor for a minor
  - Selling intoxicating liquor to minor
  - Shoplifting (as a first time offence up to a threshold value limit)
  - Simple Drunk
- for a fixed amount of either £40 or £80 depending on the offence;
  - subject to clear detailed guidance on usage and prohibitions on issue (eg for otherwise eligible offences involving domestic violence and hate crime);
  - subject to verification by a supervising officer (with the authority to cancel a fixed penalty notice issued inappropriately) before tickets are authorised for processing;
  - capable of being contested by the individual, by opting for traditional prosecution, for up to 28 days after issue; and
  - quality assured by PSNI internal scrutiny arrangements, external overview and Criminal Justice Inspection scrutiny.

### Prosecutorial Fines

Prosecutorial fines would:

- be available to the prosecutor to exercise in relation to any summary offence in which it is believed that this would be an appropriate and proportionate diversionary response. No designated list of offences is proposed and it would be for the prosecutor – subject to strict internal guidelines - to consider its appropriateness as a disposal in individual cases (as they currently do for all other available diversionary measures).
- require the recipient to admit the offence and consent to receiving a prosecutorial fine.
- not be recorded on an individual's criminal record but may be taken into account by PPS and the Courts if further offences are committed in the future.
- have a variable, rather than a fixed, fine value. The prosecutor would consider the appropriate rate based on the level of court fine the offence would attract.

- have the ability to attach a compensation order to recompense victims for the value of criminal damage costs incurred and offer the recipient the ability to pay by instalments based on a means assessment. [It had originally been proposed in the consultation document that the award of compensation to victims for costs incurred in criminal damage offences would be a reparation condition within a conditional caution. It is now proposed that a compensation requirement (where appropriate) should instead be attached to prosecutorial fine disposals enabling all the financial penalties to be managed (and enforced as necessary) together].

### Conditional Cautions

Conditional Cautions would:

- be an additional diversionary disposal available to prosecutors to use alongside adult and juvenile cautions, youth conferencing and CBRJ referrals;
- allow the Prosecutor to determine that, while the public interest justifies a prosecution, there may be circumstances where the interests of the suspect, victim and community may be better served by the suspect complying with suitable conditions aimed at reparation or rehabilitation;
- require the recipient to admit the offence and agree to comply with specified conditions such as making reparation to a victim, restrictions on entering a specific area or (where these are available) engaging with substance misuse or other rehabilitative services in the community;
- like existing adult and juvenile cautions be included on the individual's criminal record;
- not discharge the recipient's liability to prosecution for the offence unless conditions imposed with the caution are fully met. Where any condition is not met the case will be re-considered by PPS for prosecution (as if the original caution had not been administered).

## **Concluding remarks**

The NIO is very grateful to all those who responded to the Alternatives to Prosecution discussion paper and those views have been helpful in shaping future policy development. It is proposed that the draft legislation would be available to a devolved Minister of Justice to include in an NI Assembly legislative programme.

**ALTERNATIVES TO PROSECUTION DISCUSSION PAPER – LIST OF RESPONDENTS**

Ards Borough Council

Ballymena Borough Council

Ballymena Community Safety Partnership

Ballymena DPP

British Irish Rights Watch

Child Support Agency

Community Relations Council

Cookstown District Council

CRJI

DARD

Department of the Environment NI

Manton, Derek

Marshall, Karen (Armagh DPP)

NI Commissioner for Children and Young People

NI Prison Service

NIACRO

NIO Firearms and Explosives Branch

North Down Borough Council

North Down District Policing Partnership

Northern Health and Social Care Trust

Northern Ireland Court Service

Northern Ireland Human Rights Commission

Northern Ireland Legal Services Commission

Northern Ireland Policing Board

Omagh District Policing Partnership

Probation Board Northern Ireland

PSNI

Sinn Fein

Western Education and Library Board

Workshop on Strategy for Women offenders (various organisational and individual inputs).