



POLICE USE OF DISCRETION INCORPORATING PENALTY NOTICES

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Criminal Justice Inspection
Northern Ireland
a better justice system for all





POLICE USE OF DISCRETION INCORPORATING PENALTY NOTICES

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List of abbreviations

CJI	Criminal Justice Inspection Northern Ireland
CPS	Crown Prosecution Service (in England and Wales)
CTO	Central Ticket Office
DD	Discretionary Disposals
DoJ	Department of Justice for Northern Ireland
DPP	Director of Public Prosecution
EQIA	Equality Impact Assessment
FPFE	File Pending Further Evidence
FPN	Fixed Penalty Notices
HMIC	Her Majesty's Inspectorate of Constabulary
NICTS	Northern Ireland Courts and Tribunals Service
OCMT	Occurrence Case Management Team
PND	Penalty Notices for Disorder
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
YDO	Youth Diversion Officer (in the PSNI)
YECs	Youth Engagement Clinics



Chief Inspector's Foreword

Reducing the number of minor criminal cases which are detected by the police from entering a full judicial process has been a long-term objective of the criminal justice system. Not only can it deliver a fairer more proportionate response to minor offending, but it is a quicker more effective and efficient way of dealing with suitable cases and freeing the courts to focus on more serious matters.

The police are now issuing fewer Fixed Penalty Notices (FPNs) than in the recent past, and Penalty Notices for Disorder (PNDs) have been used sparingly since they were introduced in 2012. The main growth in alternatives to prosecution has been in the use of Discretionary Disposals (DD).

The judicious use of discretion by the police is recognised as an important building block in establishing police legitimacy. However, it needs to be consistent and carefully managed so that it is not seen as an expedient alternative for officers who may be averse to preparing full prosecution cases.

Getting it right can reinforce the benefits of early intervention, and giving offenders, particularly children and young people, a second chance from criminalisation. Getting it wrong can alienate victims, encourage further offending and bring the criminal justice process and

respect for the law into ridicule.

This report confirms the need for the police to re-launch their Discretionary Disposals Strategy with a greater emphasis on the critical role of supervisors in ensuring corporacy and equality in the use of this powerful policing tool.

This inspection was led by William Priestley and Rachel Lindsay. My sincere thanks to all those who participated in the inspection.

Brendan McGuigan
Chief Inspector of Criminal Justice
in Northern Ireland

January 2015



Executive Summary

Disposing of less serious offences by means other than engaging the Public Prosecution Service for Northern Ireland (PPS) or the courts is a legitimate, pragmatic and common method of dealing with low level offences in many jurisdictions. The three methods of alternative disposals examined in this report, Fixed Penalty Notices (FPN), Penalty Notices for Disorder (PND) and Discretionary Disposals (DD) had been in operation for varying lengths of time and introduced for different reasons.

The number of FPN issued by the police has been declining over a period of years. Other than some inaccuracies in recording information, FPN were operating, for the most part, soundly. They were well understood and offences to which this disposal could be applied were clearly defined. An electronic system of issuing Notices was in limited operation at the time of inspection fieldwork, and legal advice on issuing a wider range of Notices in this manner was being sought. The introduction of such a system has the potential to improve accuracy and efficiency, which should be further investigated by the Police Service of Northern Ireland (PSNI).

Only two of the seven offences eligible to be dealt with by way of PND were recordable and had accounted for only around 0.8% of the total recorded crime. Whilst this was a significant increase on the previous year's figures, it supports the view that PND are not yet in widespread usage. PND operated under a similar system to FPN but did not suffer to the same extent as FPN from inaccuracies in recording information. However, there had been instances of their use for offences outside of the scope, for example, to deal with some domestic assaults. Improvements needed to be made in correctly recognising and categorising offences which could legitimately be disposed of by means of PND.



The usage rate of DD is higher than originally envisaged by the PSNI, but the clear majority of cases were appropriate for disposal by such means. An internal PSNI evaluation of the use of DD had been completed and made several recommendations for improvement.

Governance and quality assurance of DD remained inconsistent resulting in a number of unsuitable cases being dealt with by means of discretion. Instances emerged which indicated that both DD and PND were being used beyond scope. These instances may indicate some legacy from the previous system of management applied to the use of discretion impacting on the decision-making of issuing officers. However, Inspectors believe that there needs to be more robust supervision over cases where the use of PND or DD is considered. The PSNI should therefore secure the active input of the PPS as a strategic partner in ensuring DD are delivered as consistently as possible by involving it in developing clear guidance for police officers, and by continuing to provide monitoring information through dip-sampling.

A report published in 2012¹ and the earlier Youth Justice Review² covered the issue of disclosure of DD and recommended that it be made a special case, including exempting it from disclosure in the interests of young people. Records of DD may be disclosed following a review by the PSNI of the circumstances of each individual request to do so. If DD are operating within a robust, clear and well established governance framework, Inspectors believe the benefits of exempting discretion from disclosure would outweigh the risks.

The PSNI, together with the PPS should review the governance and management of all non-PPS disposals. This must include improvements in its governance and quality assurance. The PSNI should take measures to prevent the use of such disposals to deal with situations outside the intended scope. The proposed PSNI re-launch of the Discretionary Disposals Strategy based upon the recommendations of the PSNI evaluation report, is an opportunity to make improvements to its governance and management.

1 A managed approach: a review of the criminal records regime in Northern Ireland, Part 2: Sunita Mason Independent Advisor for Criminology Information in England and Wales. 7 March 2012; DoJ.

2 A review of the Youth Justice System in Northern Ireland, 2011.



Recommendation

Strategic

1

The PSNI, together with the PPS should review the governance and management of all non-PPS disposals. This must include improvements in its governance and quality assurance (Paragraph 2.29).

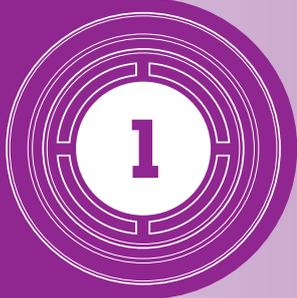
The proposed PSNI re-launch of the Discretionary Disposals Strategy based upon the recommendations of a recent evaluation report should be used as an opportunity to improve its governance and management.

Measures should be implemented to prevent the use of alternative disposals outside of scope.

PPS input should be secured in developing clear guidance for officers on the use of DD and in continuing to provide monitoring information through dip-sampling.



Inspection Report



Introduction

- 1.1 This inspection incorporates an examination of several alternative methods of dealing with mostly low-level offending. These methods exclude the PPS from the decision making process, which otherwise is the statutory, independent body charged with the responsibility of deciding how to proceed in criminal cases³.
- 1.2 The alternative methods examined are the responsibility of the PSNI in their administration and implementation. This involves making decisions on the most appropriate way of discharging justice, including whether the matter should be more appropriately referred to the PPS to be subject to its decision-making process.
- 1.3 The inspection of non-PPS disposals covers the following range:
 - FPN Scheme - dealing with endorsable and non-endorsable road traffic offences;
 - PND Scheme - allowing an immediate penalty to be imposed by police on first time or non-habitual offenders for some minor offences, including drunkenness and disorderly behaviour;
 - DD - the PSNI have offered the following explanation of discretion:
'Discretion aims to encourage officers to use their professional judgement to resolve minor crime to the satisfaction of victims and the community whilst maintaining accountability.'
 - During the drafting of this report Inspectors were made aware of a disposal category known as File Pending Further Evidence (FPFE). This had only gone live in the PSNI since May 2014, after the fieldwork period, and therefore is excluded from the report. However, it should be included within the scope of the implementation of our strategic recommendation. This category is not included in disposal figures and does not contribute to figures for the 90 day file submission target.

Fixed Penalty Notices Scheme

- 1.4 Over the last 16 years the number of FPN issued by the PSNI has decreased by 84%. One of the milestones in the decreasing number of FPN issued was the decriminalisation of many parking offences in 2006. However, more recent reductions have been suggested to be as a result of the impact of the Speed Awareness Course⁴ and DD.

³ Justice (Northern Ireland) Act 2002.

⁴ Since June 2010 drivers may be offered an opportunity to attend a Speed Awareness Course as an alternative to penalty points.

Penalty Notices for Disorder Scheme

- 1.5 PND were introduced by the Department of Justice (DoJ) under the Justice Act (Northern Ireland) 2011, and the policy was subject to a separate screening procedure.⁵ PND went operational in June 2012 and may be issued for a range of offences including:
- theft (shoplifting - up to and including the value of £100 where goods are recovered in a saleable condition or the retailer has been compensated for their loss);
 - criminal damage (up to and including the value of £200);
 - disorderly behaviour;
 - behaviour likely to cause a breach of the peace;
 - resisting/obstructing/impeding a constable;
 - indecent behaviour; and
 - drunk in a public place.

PND were previously implemented in England and Wales across all 43 Home Office police forces in 2003-04.

Discretionary Disposals Scheme

- 1.6 DD were introduced as an initiative during the PSNI 'Speedy Justice Initiative' in 2010 as an alternative to the prosecution route when dealing with specified low level offences.
- 1.7 The PSNI state that this disposal path was designed to challenge offenders, who must have admitted to the offence, to recognise the impact of their behaviour. The use of DD by the PSNI has been scrutinised and commented upon by non-governmental organisations, other justice organisations and the media.
- 1.8 An Equality Impact Assessment (EQIA) was carried out by the PSNI, which included assessment of the use of DD.⁶ This publication encompasses responses from Include Youth, the Youth Justice Agency, the Children's Law Centre, and Victim Support Northern Ireland. Issues raised included:
- subjectivity of officers' decision-making regarding the application of discretion;
 - need for officer training on dealing with children and young people;
 - the effect of young persons' attitude to officers on the uptake of DD;
 - victims' influence on the proportionality of disposal actions;
 - entitlement to legal advice and appropriate information in a child friendly format;
 - need for independent scrutiny;
 - need to consult on the use of DD in accordance with Section 75 statutory obligations;
 - focus on speed rather than justice; and
 - arrangements for payment of reparation.

These issues were also raised with Criminal Justice Inspection Northern Ireland (CJI) Inspectors during stakeholder consultation and are examined in later chapters.

⁵ Equality screening forms proposed Justice Bill (Northern Ireland) 2010.

⁶ PSNI Speedy Justice Equality Impact Assessment, November 2012.

- 1.9 Discretion in a range of pre-trial procedures is commonplace across many jurisdictions. This ranges from giving complete autonomy to the police to decide on a particular course of action during the investigative stage, to giving control of such decisions to independent prosecutors who receive all files investigated by the police.
- 1.10 Where discretion to make prosecution decisions operates any system of rules is likely to be applied imprecisely as it is open to subjective interpretation by various people charged with its administration. Whilst the overarching aim of the system may be apparent, such as, for example, 'faster, fairer justice', the day-to-day interpretation of how the operating model applies in specific circumstances is vested in the person(s) charged with making the discretion judgements.
- 1.11 Discretion is commonplace across jurisdictions for the simple reason that it enables the 'grey areas' of statutes to be dealt with in a way that resembles a formal application of criminal justice. Discretion is an essential extension to the formal justice system, similar to how software enhancements add specific useful features to improve the scope of computerised operations.
- 1.12 In England and Wales the police have long been able to discontinue cases during investigations without recourse to the Crown Prosecution Service (CPS). In this system the CPS duty extends to reviewing only those cases passed to it by the police. The early use of discretion by the police therefore, to an extent, determines the caseload of the CPS. In making its determination the police apply the 'evidence test' and take into consideration the 'public interest' test. The police filter cases by deciding either to take no further action or to caution. The CPS then becomes the second filter using its power to discontinue prosecutions based upon the information forwarded to them by the police.
- 1.13 Legislation in Northern Ireland relevant to this inspection (Justice (Northern Ireland) Act 2002), sets out the responsibilities of the independent Director of Public Prosecutions (DPP) in the following terms:

'Conduct of prosecutions

(1)The Director must take over the conduct of all criminal proceedings which are instituted in Northern Ireland on behalf of any police force (whether by a member of that force or any other person)...

(5)The Director must give to police forces such advice as appears to him appropriate on matters relating to the prosecution of offences.

Interpretation

(1)For the purposes of this Part proceedings in relation to an offence are instituted -

(a)where a summons is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)), when the complaint for the offence is made under that Article,

(b)where a warrant is issued for the arrest of any person under that Article, when the complaint for the offence is made under that Article,

(c) where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge,
(d) where an indictment is presented under section 2 of the Grand Jury (Abolition) Act (Northern Ireland) 1969 (c. 15 (N.I.)) in a case falling within paragraph (c) or (e) of subsection (2) of that section, when the indictment is presented to the court.'

- 1.14 The effects of the legislation on the prosecution of offenders in Northern Ireland was subject to legal advice to the PSNI, which stated that once a case undergoes investigation as a crime to the extent that:
- a summons is issued;
 - a warrant is issued; or
 - a person is charged following arrest without warrant,
- the police do not have the power to make a determination regarding the probability of a prosecution succeeding or whether prosecution is in the public interest. These determinations may only be made by the PPS. This occurs following the submission of case files from the PSNI to the PPS, and is carried out by prosecutors applying the evidential and public interest tests within prosecution guidelines set out in the Code for Prosecutors.
- 1.15 However, notwithstanding the powers available to the DPP to require information from the Chief Constable,⁷ discretion still rests with PSNI officers with regard to whether incidents reported to it are recorded as crimes worthy of investigation to a point where the three outcomes listed above occur, thereby necessitating their transmission to the PPS for a prosecution decision. Issues concerning the recording of incidents by the PSNI are raised in a separate CJI report into the handling of volume crime accessible via www.cjini.org.
- 1.16 One example of police discretion in this sense, operating with regard to the recording of minor offences, is the warnings given by police officers to motorists who contravene road traffic legislation. Whilst strictly speaking the law may have been broken, many verbal warnings are issued to motorists who commit lower level offences. This approach is well understood by citizens and the police, and operates to keep many minor offences out of the formal justice system. Verbal warnings illustrate the operation of discretion but not the formal DD considered by this inspection.
- 1.17 This inspection is based upon the CJI framework and examines:
- the strategy and governance in place with regard to the administration and management of DD, FPN and PND;
 - the delivery of the systems of FPN, PND and DD taking into account issues raised with respect to disposals and the interaction of each approach; and
 - outcomes arising from all of these activities, including resourcing implications for the PSNI and PPS.

⁷ Section 35(4) and 35(5) Justice (Northern Ireland) Act 2002.

- 1.18 Inspection fieldwork took place with the PSNI between November 2013 and January 2014 and with relevant stakeholders during January to April 2014. Statistics used in the inspection to assist with the analysis of non-PPS disposals are those covering the period up to April 2014, which were made available to CJI between May and July 2014. The findings of an internal evaluation conducted by the PSNI into the use of DD were formally made available to CJI in April 2014 and the findings of the inspection take cognizance of these.
- 1.19 Her Majesty's Inspectorate of Constabulary (HMIC) reports into similar out-of-court discretionary practices in England and Wales were published in 2011⁸ and 2014⁹. Issues arising in the 2011 report were variations in the use of disposals, appropriateness of decisions, effectiveness of disposals, efficiency and reducing costs, and recording and enforcement. There had been substantial growth in England and Wales of the use of out-of-court disposals and inconsistencies in their use. HMIC recommended that a national strategy to improve consistency in the use of out-of-court disposals across England and Wales should be formulated to reduce inconsistencies, reduce re-offending, achieve transparency and provide reassurance for the public. Chapter 2 deals with similar issues in the governance of discretionary and other disposals in Northern Ireland.
- 1.20 The 2014 HMIC report assessed the effect of alternative disposals on the recording of crime. It found that some offenders had been issued with out-of-court disposals when their offending history could not justify it, and in some cases they should have been prosecuted. Out-of-court disposals had not always been issued in accordance with national guidelines, and recording of these disposals was inadequate. Chapter 3 of this inspection report deals with similar issues arising from inspection fieldwork in Northern Ireland.

The full terms of reference are set out in Appendix 1.

8 Exercising discretion: the gateway to justice, June 2011, HMIC.

9 Crime recording: a matter of fact, May 2014, HMIC.



Strategy and governance

Fixed Penalty Notices and Penalty Notices for Disorder

- 2.1 The use of FPN and PND are part of an overall strategy of enforcement that despite their recent implementation, in the case of PND, is well established and well understood within the PSNI and among stakeholders. The strategy could be regarded as the first element of 'faster, fairer justice' in that the processing of minor offences happens proportionately to the gravity of the misdemeanour. Lengthy decision-making processes are avoided in favour of less bureaucratic, faster methods.
- 2.2 Offences subject to the FPN regime are clearly identified and governed through existing supervisory structures. FPN are issued in hard copy, pro-forma notices which differentiate between endorsable¹⁰ and non-endorsable¹¹ offences.
- 2.3 Officers demonstrated a clear understanding of the system and the range of offences eligible to be dealt with by this method. Alleged offenders are issued with copies of the Notices and a copy is lodged with an administrative branch of the PSNI after passing through local supervisory checks. This supervisory checking varied across the PSNI area. For example, some officers had experienced only minimal checking before submitting the forms for processing. Other supervisors closely scrutinised Notices before they were forwarded. This resulted in variance in quality of the forms received at the processing centre.
- 2.4 Many FPN received for processing had been written poorly by the issuing officers and had not been corrected by supervisory checks. In the majority of cases these checks would have remedied the mistakes caused by handwriting Notices in poor weather conditions or by carelessness. There had also been issues where details from the alleged offender's driving licence had been used to complete the FPN but had been found to be out-of-date, for example, current address. These issues require better governance at the point of service delivery through closer supervisory checks on details contained on FPN before they are submitted for processing to the PSNI Central Ticket Office (CTO).

10 The penalty is a combination of a fine and penalty points on a drivers' licence.

11 The offences are lower level with a penalty of a fine only.

- 2.5 Categorisation of offences had also been problematical in cases where DD had been used by officers in preference to alternatives such as FPN or PND. Although there is obvious crossover between all three alternative methods of disposal, at its most stark were issues arising from the use of DD in dealing with motorists for no insurance. The PSNI had dealt with the offence of no insurance by way of DD in only 50 instances during 2013-14. The offence of no insurance may be dealt with by way of a FPN but attracts an enhanced penalty of £200 and six penalty points. The 50 no insurance cases dealt with by DD in 2013-14 had involved circumstances which had influenced the decision-making of issuing officers such as, the involvement of young people as the alleged offenders, and drivers' genuine belief that insurance was in place. However, in view of the enhanced penalty regime, which reflects the seriousness of the offence, Inspectors consider that the use of DD to deal with no insurance is difficult to justify.
- 2.6 In addition, drivers stopped at the roadside for offences such as speeding, and issued with a FPN, do not have the same access to the option of undertaking a Speed Awareness Course or Young Drivers' Scheme as an alternative to receiving penalty points on their licences. Those detected by safety cameras are routinely offered the option of attending speed awareness courses.

Operational Recommendation

An anomaly whereby drivers stopped for speeding do not have the same access to the option of speed awareness courses as those detected by safety cameras requires remedial action.

- 2.7 An electronic system of issuing FPN (known as PUMA) had been introduced within Roads Policing but this had not yet been expanded. At the time of inspection fieldwork the PSNI were receiving legal advice on the issuing of FPN by this method. Such an electronic system, which included built in checking and accuracy parameters, would greatly improve consistency in the issuing and processing of FPN. The system could also potentially improve accuracy and reduce processing times as at present, the gap between a FPN being issued and received for processing can be several weeks. Using the electronic system FPN issued one day would be available to process the following day.

Operational Recommendation

The application of an electronic system to the issuing, recording and administration of all the alternative means of disposal examined in this inspection should be the long-term aim of the PSNI in an effort to improve accuracy and efficiency.

- 2.8 Staffing within the CTO reflected the changing business priorities. For example, the majority of staff deal with the outputs of the Road Safety Camera Partnership which provides the bulk of cases passed to the CTO.

Penalty Notices for Disorder

- 2.9 The founding legislation for PND is the Justice Act (Northern Ireland) 2011 whilst the Notices went operational in June 2012. The governance and management of PND is similar to that of FPN. Issuing officers provide a copy of the Notice to the recipient and a copy is lodged with the

CTO, which takes charge of the further administration within the PSNI. Receipt of payment and final disposal of PND is administered by the Northern Ireland Courts and Tribunals Service (NICTS). For non-payers disposal may be through the court system although the numbers reaching this stage are few. For example, in 2013 out of a total of 100,129 charges disposed of in the Magistrates' Court only 107 were PND.

- 2.10 Northern Ireland Statistics and Research Agency figures for 2013-14 indicate that PND account for around 0.8% (826 incidences) of the total recorded crime and whilst this was double the previous years rate, it indicates that PND are not yet in common usage. Whilst PND are applicable to a wider range of offences in England and Wales, the rate there stood at 1.7% of all detected crime in 2012-13.
- 2.11 Two levels of offences are identified in the PND system. Those attracting a penalty of £40 include urination in the street (indecent behaviour), and being drunk in a public place. Offences such as criminal damage (to a value of £200) and disorderly behaviour attract a penalty of £80. PND may be issued only to people who are 18 years of age and over and not in any case where there is injury or threat of injury, sexual offences, offences related to domestic violence or hate crime.
- 2.12 Records of the issue of PND are retained and available to the PSNI and PPS so that these can be taken into account should further offending occur. Informed decision-making on the issue of subsequent disposals is thereby enabled. However, these are not formal criminal records.
- 2.13 PND did not suffer to the same extent from the poor recording of data experienced by staff in the CTO when dealing with FPN. Evidence from operational officers may, at least partly explain this as they stated PND were often issued following the removal of alleged offenders from streets or other public places to police stations or police vehicles. The recording of information was often carried out in less demanding situations, which facilitated accurate recording of information. Officers also stated that they were required to issue PND only when a person accepted this as a method of disposal and that offers were made only when the alleged offender was in a fit state to make such a decision, for example, not drunk.
- 2.14 Rules and guidance on the issue of PND were generally well understood by officers. Offences to which this method of disposal applied were straightforward, and those excluded by legislation, for example, domestic violence, were generally reinforced by supervisors. The regime operated similarly to FPN but the numbers involved were much less.
- 2.15 However during dip-sampling, the PPS came across instances where PND had been issued in circumstances, which were outside the guidelines. The examples included an incident being recorded and dealt with as an assault when in fact it was a domestic assault and should not have been dealt with by PND. There were also instances of PND being issued when the offender had a previous prosecution, which should have precluded this method.
- 2.16 These examples point to the need to ensure that the issue of PND are correctly managed and closely supervised, and are similar to the issues found in previous HMIC reports on alternative means of disposal in England and Wales¹². This would best be done at the point of service delivery by the issuing officers' line managers. The non-conformances had been communicated

12 Exercising discretion: the gateway to justice, June 2011: and Crime recording: a matter of fact, May 2014 (HMIC).

to the PSNI by the PPS and that should enable improvement in the system to continue to be made. At the time of the inspection HMIC had been conducting an examination of crime data integrity which also highlighted as an area for improvement the monitoring of PND¹³. However, during the period of inspection fieldwork, instances continued to come to light as a result of dip-sampling carried out by the PPS.

Discretionary Disposals

- 2.17 Unlike PND, DD may, in certain circumstances, be used to deal with offences committed by young people under the age of 18. This, and the extended range of offences to which DD may apply, requires robust quality assurance and governance systems to ensure fairness and accuracy, as well as to prevent 'mission creep' whereby this method of disposal is applied in circumstances for which it is not intended.
- 2.18 At the time of inspection fieldwork the quality assurance and governance regime had been revised as a result of feedback and concerns. In particular, an instance when it had been reported in the media that DD had been used to deal with children under the age of criminal responsibility had called into question the effectiveness of its management. Inspectors were assured that this instance, concerning though it was, had been an isolated incident whereby a procedural matter had resulted in the Niche computer system recording the issue of a DD, prompted by the submission of a detection form, when in fact a discretionary disposal had not been issued.
- 2.19 Revisions impacting on the quality assurance of DD included the introduction in August 2013 of mandatory recording of information on the Niche system as opposed to the previous situation, which left the recording of this information open to interpretation by individual officers. Those spoken to by Inspectors stated that they had normally recorded the required information in their notebooks but some admitted that, on occasion, due to operational pressures they had omitted to do so. However, officers also stated that the new requirements had made the whole process more bureaucratic, though not sufficiently to discourage its use.
- 2.20 Much work had gone into the development of a governance system and clear models of operation which officers were required to follow when applying DD. The system included the mandatory input of parents/guardians and PSNI Youth Diversion Officers (YDOs) when dealing with persons under 18-years-old. There was mandatory checking of whether persons had any matters outstanding which impacted on the use of DD, for example, warrants or summonses. Additionally, a traffic light system was developed to assist officers with their decision-making as to whether a discretionary disposal was appropriate to the circumstances.
- 2.21 Included in the management of the system was recording of case progress at each stage and both victim and offender agreement with the method of disposal. In the case of the suspect, non-agreement results in the case being progressed by way of the standard prosecution process. Initial instructions to officers mis-directed them to apply a veto on discretion when there was no agreement from victims. However, at the time of inspection fieldwork this instruction had been revised and it had been made clear that whilst victims' wishes were to be considered, that this did not amount to a veto on the use of discretion. Some officers spoken to by Inspectors were unsure of these revised instructions.

¹³ PSNI Crime Data Integrity 2014; HMIC unpublished as of 6 January 2015.

- 2.22 Despite the development of clear governance and management systems, and a training and communication programme across the service in support of DD, flaws in the implementation of its management system had surfaced.
- 2.23 YDOs had not always been consulted by the investigating officer at the appropriate time with regard to young people being considered for DD. At the time of inspection fieldwork revisions to the management systems had made it mandatory for officers to record YDOs' involvement and had produced information, which enabled YDOs to check whether they had been consulted on any case involving young people.

Operational recommendation

However, YDOs continued to raise concerns about the timeliness of consultations. **This issue should be closely monitored by collating YDOs' findings to indicate cases where consultation has not occurred or has not been at the appropriate time. Lapses should be acted upon to ensure that young people are dealt with appropriately and in compliance with national and international standards.**

- 2.24 Youth Engagement Clinics (YECs), involving YDOs and the Youth Justice Agency, with the prior input of the PPS to determine an appropriate disposal method, were indicated to Inspectors as a possible solution to ensuring consistency of approach when considering the application of DD to cases involving young people. At the time of inspection fieldwork YECs were only operating in the Belfast area.

Operational recommendation

Inspectors would encourage a thorough scoping of whether YECs could improve the governance of DD for young people.

- 2.25 The PPS raised a matter with Inspectors as regards the continued application of DD. Whilst revisions to the management system and processes encountered by Inspectors had improved the application of DD, a resumption of dip-sampling by the PPS from November 2013 indicated that instances of the inappropriate application of discretion had continued along with considerable disparity between districts in the number of cases dealt with by way of discretion.
- 2.26 Whilst the PPS indicated that there had been marked improvement in the administration of DD, examples continued to emerge of officers using DD to deal with serious road traffic collisions involving considerable damage to property and injuries to persons involved. In other instances it was found that the cases appeared unsuitable for discretion because of previous offences committed by the alleged offenders. An instance of tendering counterfeit currency and an apparent domestic incident (not involving assault) had also been dealt with using discretion.
- 2.27 These examples of non-conformances are all matters of concern, especially given the revisions to the management system and processes, which were in place when they occurred. Whilst these instances may indicate some legacy from the previous system of management applied to the use of discretion, Inspectors believe that more robust supervision over cases where discretion is

considered should be introduced. The use of discretion undoubtedly belongs to the stable of 'faster, fairer justice', but requires effective supervision to ensure the risks associated with its application are minimised.

Summary

- 2.28 The FPN governance and management regime appeared to be operating well with the exception of those issues relating to the accurate completion of hand written notices, sometimes in difficult circumstances. PND were less prone to issues of inaccuracy but officers' decision-making regarding the appropriateness of their issue, continued to give rise for concern. The use of DD on some occasions to deal with situations outside the parameters set for its use also gave some cause for concern.
- 2.29 Governance and quality assurance of the implementation of PND and DD remains inconsistent resulting in a number of unsuitable cases being dealt with by means of discretion. Inspectors therefore support the proposed PSNI re-launch of the Discretionary Disposal Strategy based upon the recommendations of a recent evaluation report. This must include improvements in its governance and quality assurance.

Strategic recommendation

The PSNI, together with the PPS should review the governance and management of all non-PPS disposals. This must include improvements in its governance and quality assurance. The proposed PSNI re-launch of the Discretionary Disposals Strategy based upon the recommendations of a recent evaluation report should be used as an opportunity to improve its governance and management. Measures should be implemented to prevent the use of alternative disposals outside of scope. PPS input should be secured in developing clear guidance for officers on the use of DD and in continuing to provide monitoring information through dip-sampling.

- 2.30 The PSNI should take measures to prevent the use of such disposals to deal with situations outside the intended scope. This may involve the more effective use of Occurrence Case Management Teams (OCMT) and/or officers' direct line managers in a more active screening process, in addition to a re-issue of instructions on the use of PND and DD. However, there is a continuing responsibility on issuing officers to correctly identify cases suitable, and those unsuitable for alternative means of disposal.

Operational recommendation

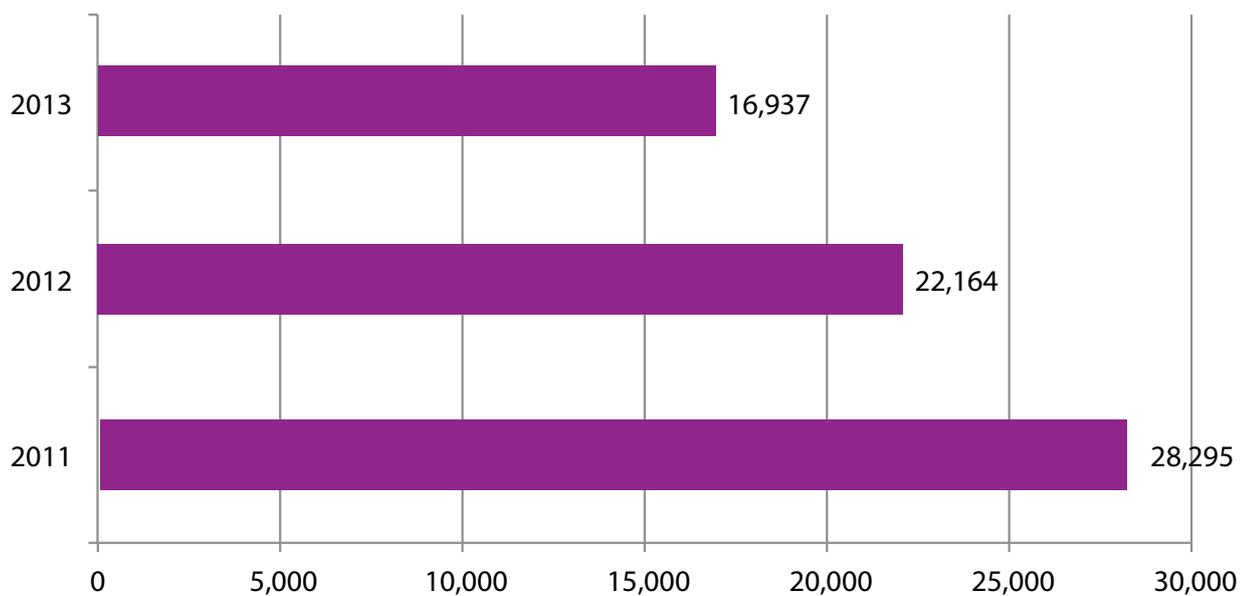
Governance and management of non-PPS disposals requires a method of identifying officers who continually use alternative methods of disposal inappropriately so that a consequence of doing so is the withholding of their option to use such methods until such time as they demonstrate better understanding of their use.



Delivery

- 3.1 Many of the issues relating to service delivery with regard to non-PPS disposals have been raised previously as they directly impact upon the strategy and governance of alternative methods of disposal. The PSNI internal evaluation into the use of DD also identified many of the issues brought to Inspectors' notice during the fieldwork and in subsequent interviews with stakeholders.
- 3.2 Figure 1 illustrates the declining use of FPN as a means of disposal over more recent years (2011-13). The use of FPN as a means of disposal by the PSNI has decreased over the last 16 years by 84% from 105,966 in 1998 to 16,937 in 2013 (an overall decrease of 84%). These decreases were largely attributed to the decriminalisation of most parking offences and the introduction of the Speed Awareness Course and DD as options available to police officers in more recent years¹⁴.

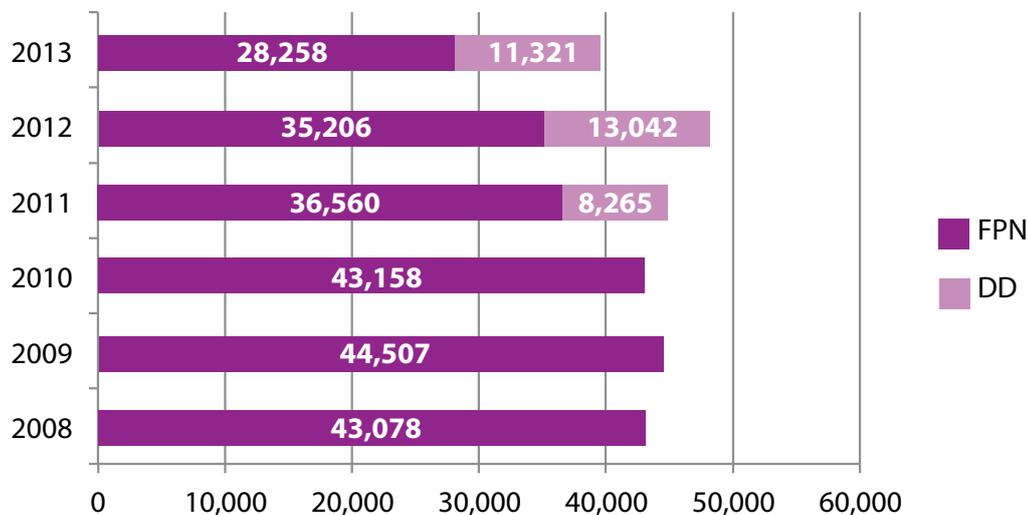
Figure 1: Recent decline in the use of FPN by the PSNI 2011-13



¹⁴ Police issued FPN statistics for traffic offences in Northern Ireland, Annual Report 2013.

- 3.3 In 2012, the PSNI issued a total of 22,164 FPN compared with 28,295 issued in 2011, a decrease of 6,131 (23%). More recently, the 16,937 FPN issued in the 12 months from 1 January 2013 to 31 December 2013 when compared with the 22,164 issued in the same 12 month period during 2012 represents a further decrease of 23%.
- 3.4 The most recent available figures for the combined issue of FPN and DD as a means of dealing with road traffic offences indicate that there were 26,684 FPN and DD issued by the police for traffic offences in Northern Ireland in the 12 months from 1 May 2013 to the 30 April 2014 compared with 32,426 issued in the previous twelve months to 30 April 2013, a decrease of 5,742 (18%)¹⁵.
- 3.5 Figure 2 illustrates the total combined number of FPN and DD issued for road traffic offences from 2008-13. DD were introduced in a phased approach from 2010 and its use is illustrated as a proportion of the total road offences dealt with by alternative means of disposal from 2011 onwards. DD comprise on average 38% of total disposals by alternative methods for road traffic offences over a full 12-month period¹⁶.

Figure 2: FPN and DD from 2008-13



- 3.6 There is little doubt that the use of DD is reducing the number of FPN issued by police officers. In many cases there is a genuine choice between these two disposal methods open to the police officer. However, the decision employed in making that choice is not routinely recorded except in officers' notebook.

¹⁵ Police issued FPN and DD statistics for traffic offences in Northern Ireland, monthly report covering the reporting period 1 May 2013 – 30 April 2014, published 25 June 2014.

¹⁶ Excluding offences detected under the Northern Ireland Road Safety Partnership.

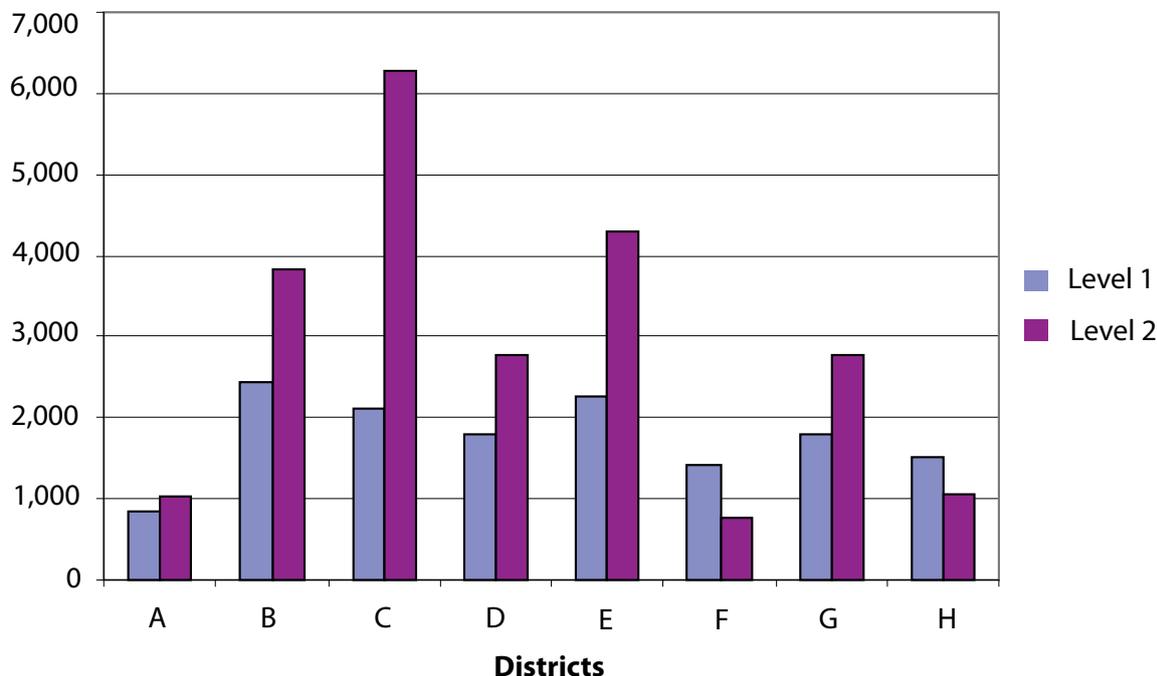
- 3.7 The PSNI evaluation into the use of DD recognised this issue and recommended that a determination should be made as to whether such information should be formally recorded. The use of DD reduces bureaucracy, but there are risks of it being used for inappropriate events in the interests of expediency.

Operational recommendation

Whilst recognising that DD should remain a less bureaucratic system **Inspectors believe that recording the decision-making process employed by officers in choosing a means of disposal would increase public confidence in the system and would go some way to mitigating the risk of inappropriate use by officers.**

It may be possible to enable this by integrating it into the PSNI evaluation recommendation to investigate whether DD should be issued by way of a pro-forma notice.

- 3.8 Inspectors were told of variances in the use of DD across the service area. Officers, especially those who had worked in a number of PSNI districts, confirmed that in some areas the use of DD was encouraged whilst in others it was not. Officers also raised variances in the management of discretionary processes across districts, which have been reported by Inspectors in the context of governance.
- 3.9 Examples of anomalies in the use of DD have been referred to in Chapter 2 where they impact on governance and management. The PPS had continued to dip-sample cases dealt with by alternative disposals and examples of flaws in the delivery of DD continued to emerge. Whilst occasional human error is to be expected in the administration of such a system there were, as we observed earlier, several instances of its application to serious road traffic collisions.
- 3.10 Dip-sampling by the PPS illustrated continuing instances of serious collisions being dealt with by way of DD. For example, in a collision involving two vehicles where one had attempted a right-hand turn across the others' path, one vehicle was completely written-off, a passenger had to be cut from the vehicle and the scene required the attendance of both the Fire and Rescue Service and the Ambulance Service. The driver of the vehicle, who turned across an oncoming vehicle, was dealt with by way of DD in spite of the fact that he had previously received the same sanction during the previous year for driving whilst using a mobile telephone. The PSNI had checked the circumstances of this incident and concluded that the use of DD was warranted. Both drivers involved had agreed to the use of DD; rules allow the issue of two DD in a rolling 12 month period; and no serious injuries resulted. However, the incident illustrates the need for better alignment of the expectations of the PSNI and PPS with regard to DD. This further supports our strategic recommendation illustrated at Paragraph 2.29.
- 3.11 The PSNI evaluation into of the use of DD also indicated significant variances in the delivery of disposals across PSNI districts. Figure 3 illustrates the total DD issued per district from April 2010 to October 2013. These figures include a period of phased implementation across districts.

Figure 3: DD issued per District from April 2010 - October 2013

Source: PSNI evaluation report 2014

A - W.Belfast; B - E.Belfast; C - Ards, Castlereagh, North Down and Down; D - Antrim, Carrickfergus, Lisburn and Newtownabbey; E - Armagh, Craigavon, Banbridge and Newry and Mourne; F - Cookstown, Dungannon and South Tyrone Fermanagh and Omagh; G - Foyle, Limavady, Strabane and Magherafelt; H - Coleraine, Ballymoney, Moyle, Ballymena and Larne.

3.12 Analysis of the variances identified the following contributory factors:

- no clear guidance when dealing with level 2 (traffic offences);
- variance in district policy such as using or not using disposals as performance indicators;
- variance in the volumes of offences occurring in each district;
- local percentage of persistent offenders;
- proportion of transient population in the district;
- existing relationship with the police in the district;
- legacy from the phased introduction across the service area; and
- inconsistency deriving from officer judgement.

3.13 Of the Section 75 categories, only age and gender information is recorded with regard to the application of alternative disposals. Persons aged 25-39 years accounted for over one-third (36%) of all FPN and DD in the 12 months from 1 May 2013 to the 30 April 2014. Males accounted for 72% of all FPN and DD in the 12 months from 1 May 2013 to 30 April 2014.

Operational recommendation

To provide a more comprehensive assessment of the operation of DD, the PSNI should expand its data capture to include the whole range of Section 75 categories. This was recognised in a recommendation of the PSNI evaluation report and Inspectors support its prompt implementation.

- 3.14 As stated in the introductory chapter, where discretion operates it is likely to be applied imprecisely as it is open to subjective interpretation by various people charged with its administration. The PSNI evaluation into the use of DD found that the overwhelming majority of cases dealt with in this way had been done so correctly and this positive finding must be given due recognition.
- 3.15 However, variance in the delivery of DD across districts has the potential to undermine confidence in the impartiality of police officers. Every effort must be made to ensure that discretion is delivered as consistently as possible. Those factors, which have been identified as contributing to the variance of delivery of DD, which are plainly under the control of the PSNI, must be addressed.
- 3.16 This will require better governance and management as described in Chapter 2. It will also require more precise instructions on the use of discretion for road traffic and other offences, and a consistent corporate approach driven from the centre. The level of encouragement given to officers to use discretion should be the same across all districts and not open to local interpretation.

Operational recommendation

The PSNI evaluation report into the use of discretion recognised inconsistency of application of discretion across and within districts as an issue and recommended that it form part of District Commanders' accountability meetings with regional Assistant Chief Constables. Inspectors support this recommendation as part of ensuring as consistent an approach to discretion as possible across the service area.

- 3.17 The PPS raised with Inspectors the issue of police officers applying a form of public interest test to enable them to reach a decision as to what form of alternative disposal to apply in a particular situation. The test applied by the police is not clearly defined and the PPS had no input into the development of guidance for police officers as to the application of DD.
- 3.18 The application of a public interest test is a well-defined and understood process within the PPS. It sits alongside the evidential test within clear and detailed guidance for prosecutors. Whilst, if applied properly and consistently, the offence types encompassed by DD are relatively minor, the PSNI should seek to make use of the expertise of the PPS in developing guidance, which assists police officers' quasi-prosecutorial decision-making involved in DD.

Operational recommendation

The PSNI should therefore secure the active input of the PPS as a strategic partner in ensuring DD are delivered as consistently as possible by involving it in developing clear guidance for police officers and by continuing to provide monitoring information through dip-sampling.

- 3.19 The use of PND, since being introduced in June 2012, had not been on the same widespread scale as either FPN or DD. Between June and December 2012 only 1,178 were issued. In the full year June 2012-13, the number of PND issued for the total year represented only 0.5% of the total recorded crime. Recent figures suggest that this percentage will increase in the year June 2013-14 but the final figure was not available at the time of drafting.

- 3.20 PND are administered in a similar way to FPN. Pro-forma notices are made available to officers and are completed by them before being forwarded to the CTO. The PSNI evaluation report into DD recognised the advantages of such a system and recommended that the introduction of such a scheme should be scoped and considered to enable better administration of DD. Inspectors support this recommendation, which has potential for ensuring the better recording of information and more accurate deployment of the scheme, particularly if the proposed Notices included instructions and guidance. However, any potential improvement to the administration of DD through this approach requires to be supported by better governance and management as outlined in Chapter 2.
- 3.21 PPS dip-sampling into the use of PND, which covered the period of the inspection fieldwork, indicated that issues with their use remained. For example, an alleged offender received a PND for theft (shop-lifting) but had previously been prosecuted for an earlier theft. A case, which was recorded as an assault and dealt with by way of a PND, was actually a domestic assault where it was recorded that the injured party did not wish to make a statement of complaint. In another case, a 19-year-old suspect received a PND for 'Behaviour Likely to Cause a Breach of the Peace'. The suspect had an extensive criminal record but nevertheless received a PND. These instances should have been deemed unsuitable to be dealt with by way of the issue of a PND. At the time of writing, Inspectors were informed by the PSNI that lessons had been learned and no further such incidences had arisen. However, Inspectors are unable to verify this without a further period of fieldwork. Such issues should be included in implementing our strategic recommendation.
- 3.22 These issues have been commented upon in Chapter 2 as they indicate required improvements in management and governance. This was also commented upon by HMIC¹⁷ in a report that is pending publication. They also indicate that improvements are required in the delivery of alternative disposal methods such as PND. It was evident that checking of the issue of PND was taking place. The PSNI had recorded six out of a total of 3,724 PND issued during 2013-14 had been rescinded or cancelled. Half of these had been issued to people under 18 years of age, two were issued to people from outside the jurisdiction and one was issued for an offence of common law breach of the peace, which does not qualify for treatment, by PND. Issuing officers retain the responsibility of correctly assessing situations and deciding on the appropriate method of disposal. Guidance, especially with regard to PND was comprehensive, and the administration of PND carried out by use of a pro-forma booklet.

Operational recommendation

Improvements need to be made in monitoring the issue of PND and in scrutinising them for errors.

- 3.23 However, issuing officers should be encouraged to correctly apply the guidance to the circumstances they face. Enhanced and/or additional training and closer supervision may provide encouragement to issuing officers. Continued failure by officers to correctly categorise those incidents, which warrant the issue of PND, should have consequences as outlined in the recommendation made in paragraph 2.30. This may also involve the removal of this method of disposal until such time they demonstrate a better understanding of the guidance and can apply it consistently. Continued non-compliance with the guidelines on issuing PND should also impact upon officers' annual appraisal and any subsequent consideration of performance-based enhanced payments, and in serious non-compliance cases discipline should be considered.

¹⁷ PSNI Crime Data Integrity 2014: HMIC unpublished as of 6 January 2015.



Outcomes

- 4.1 The use of alternative means of disposal, FPN, PND and DD are an integral part of a programme aimed at reducing delay in the criminal justice system by dealing with relatively minor occurrences in a proportionate manner. There had been earlier reform of the police use of FPN, for example, removing parking and waiting offences so that the profile of offences dealt with by this method had changed as well as a resultant decrease in the overall numbers issued. This chapter focuses on the outcomes experienced originating from the introduction of DD including the impact of discretion on FPN.
- 4.2 PND had been introduced only recently and their impact remained relatively minor at the time of inspection fieldwork. However, DD appeared to have had the most impact on outcomes despite having only been introduced, in a phased approach, during 2010.
- 4.3 Initially, the Northern Ireland Policing Board expected that the number of DDs issued annually would be in the region of 3,000. However, this number has been greatly exceeded. At present the number of DD in a yearly period averages around 13,000, although these numbers had been increased by the addition of level 2 (mostly road traffic) offences. The average number of level 1 offences is around 4,000 per year, (25% above the original estimate). The connectivity between DD and FPN is apparent and illustrated by the year-on-year reduction in the number of FPN issued since the introduction of DD. However, the connection is a complex one and the more recent reduction in the number of FPN issued cannot entirely be accounted for by the use of discretion.
- 4.4 The greatly increased number of DD, especially their use in dealing with level 2 (traffic) incidents is illustrated in Figure 3. In 2013, as a proportion of the total number of traffic offences dealt with by alternative means, DD comprised 40%. This appears to link with the decline in the use of FPN from 2010, which is in the region of 34.5%. Whilst other factors, such as the introduction of speed awareness courses have undoubtedly contributed to the declining use of FPN, the figures point to the use of discretion as the major contributing factor.
- 4.5 The impact of PND and DD on crime outcomes was reported in a publication, which became available as drafting of this report was being finalised¹⁸. Table 1 illustrates the outcomes by crime type and method of disposal for the period April 2013-14.

18 Trends in police recorded crime in Northern Ireland, 1998-99 to 2013-14, Annual Bulletin published 3 July 2014.

- 4.6 The impact on outcomes of crime of the use of DD and PND is clearly illustrated. Proportionally, at 8.4% of recorded crime, the most common usage of DD is in drugs offences. The use of discretion for dealing with drugs offences is sanctioned in the PSNI guidance, which places the offence of possession of small quantities of drugs (drugs found in vicinity or vehicle with multiple occupants) in the amber sector of its Red, Amber, Green guidance document. No figures are readily available to assess whether any of the drugs offences dealt with by discretion were outside of scope. However, the PSNI evaluation into the use of DD found that the vast majority were in compliance with the guidance. Inspectors support the conclusions of the HMIC examination of data integrity, which identified that the joint PSNI/PPS group assessing the use of DD should focus on the criteria applied to ensure that the offender is aware of the implications of the disposal and that the nature of the desired outcome is apparent and recorded¹⁹.
- 4.7 The second most common usage of discretion, proportionally, was for 'other theft' (including shoplifting) at 4.2% of the total recorded, followed by criminal damage at 3% of the total recorded. The combined use of discretion and PND during the period 2013-14 meant that out of the 102,746 recorded crimes, 3,529 (3.4%) did not result in a case file being prepared for onward transmission to the PPS to make a prosecution decision.
- 4.8 The PSNI evaluation estimated that the impact of the use of discretion on resources had been significant. Using average figures for the amount of time spent by officers in pursuing investigations which included arrests, voluntary attendance, interviews, statement taking, case file preparation and case checking, it was estimated that over the course of a year the equivalent of 9.5 full time equivalent officers had been saved.
- 4.9 The most common usage of PND at 3.2% of the total was in dealing with 'other theft' (including shoplifting). This would appear to be counter-intuitive but the guidelines for the use of PND are clear in identifying theft, specifically shoplifting as eligible, up to and including the value of £100 where goods are recovered in a saleable condition or the retailer has been compensated for their loss. In England and Wales the equivalent rate for 2012-13 was 1.4% of recorded thefts.²⁰
- 4.10 Although the jurisdictions are not directly comparable, these figures support the assertion that the use of PND by the PSNI has not yet reached its full potential, especially with regard to public disorder. Whilst DD do not exist in the same format in England and Wales as they do in Northern Ireland other alternative means of disposal, such as cannabis warnings, are available in that jurisdiction. The impact of PND in Northern Ireland therefore remains minimal and this is unlikely to change if the use of DD continues at its present rate.
- 4.11 DD are not regarded as a criminal conviction and therefore may only be subject to disclosure as a result of an enhanced check and if doing so is relevant and proportionate. The issue of disclosure, especially to employers, is one that is of particular relevance to young people seeking employment and therefore requires clear and sensitive rules.

19 PSNI Crime Data Integrity 2014, HMIC (unpublished as of 6 January 2015).

20 Home Office Statistical Bulletin Crimes detected in England and Wales 2012-13 (July 2013) HOSB: 02-13.

Table 1: Outcomes by crime type and method of disposal 2013-14

	Total recorded crime	Charge/ summons	Caution	Discretion	P N D	Taking into consideration	No prosecution	Offender deceased
Violence against the person	32,403 (31)	8,417 (26)	887 (2.7)	686 (2.1)	53 (0.2)	0	0	1
Sexual offences	2,234 (20.8)	420 (18.8)	30 (1.3)	9 (0.4)	2 (0.1)	0	3	0
Robbery	958 (16.5)	157 (16.4)	0	0	0	1	0	0
Theft-burglary	9,067 (10.5)	872 (9.6)	47 (0.5)	20 (0.2)	1	16	0	0
Theft-vehicle	5,609 (16.7)	886 (15.8)	34 (0.6)	16 (0.3)	1	0	0	0
Other theft	21,347 (24.1)	2,946 (13.8)	607 (2.8)	898 (4.2)	686 (3.2)	18	0	0
Criminal damage	19,889 (15.6)	2,174 (10.9)	259 (1.3)	590 (3.0)	77 (0.4)	0	0	0
OTHER CRIMES								
Drug offences	4,732 (80.7)	2,305 (48.7)	1,117 (23.6)	398 (8.4)	0	0	0	0
Possession of weapons	727 (62.7)	385 (53)	55 (7.6)	16 (2.2)	0	0	0	0
Public order	1,536 (55)	792 (51.6)	48 (3.1)	4 (0.3)	1 (0.1)	0	0	0
Miscellaneous	2,415 (59.7)	1,371 (56.8)	44 (1.8)	26 (1.1)	1	0	0	0
Other fraud	1,829 (32.8)	506 (27.7)	48 (2.6)	41 (2.2)	4 (0.2)	0	0	0
TOTAL	102,746 (27.2)	21,231 (20.7)	3,176 (3.1)	2,704 (2.6)	826 (0.8)	35	3	1

- 4.12 A report published in 2012²¹ raised the issue of disclosure of DD and recommended that it be made a special case, exempting it from disclosure in the interests of young people. Additionally, the Youth Justice Review also recommended that DD should not attract a criminal record or be subject to employer disclosure²².
- 4.13 The potential outcome of disclosing is to jeopardise the prospects of young people gaining employment because of a minor misdemeanour, dealt with by way of discretion, which does not amount to a criminal conviction. The present system within the PSNI enables the retrieval of records of DD to allow officers to make judgements as to the most appropriate method of disposal. This necessitates the PSNI retaining records of DD on the Niche system. At present records of DD may be disclosed following a review by the PSNI of the circumstances of each individual request to do so. The PSNI evaluation report recommends that this situation should continue and states that there is a risk to public safety should DD be excluded from disclosure.
- 4.14 The DoJ has consulted on the recommendations of the report 'A managed approach' and consideration is being given to a further consultation on the proposed definition of what constitutes a discloseable criminal record. Inspectors believe that the extended range of offences, which have been dealt with by way of discretion, exacerbates the risk to public safety of exempting DD from disclosure, identified by the PSNI in the evaluation report. That risk, identified as small by the PSNI, could be further mitigated by strict management and governance of the use of discretion as recommended in Chapter 2. What must be avoided is a situation where a young person is denied employment based upon a single, minor misdemeanour with no further re-offending and this must be balanced with any risk or potential risk to the public. In a situation where the use of DD is operating within a robust, clear and well established governance framework Inspectors believe the benefits of exempting discretion from disclosure would outweigh the risks.
- 4.15 In those incidences where the crime was victim-based a system of call backs, implemented by the PSNI had established that victim satisfaction with the use of discretion was high at 95%. Cases dealt with by way of discretion averaged around 12 days from inception to final resolution, compared with an average of 63 days for other alternative disposal methods. These are positive outcomes resulting from the use of DD in appropriate circumstances.
- 4.16 Further outcomes that may be expected from the operation of discretion, such as reducing re-offending had not been subject to any measurement and therefore cannot be commented upon.

21 A managed approach: a review of the criminal records regime in Northern Ireland Part 2: Sunita Mason Independent Advisor for Criminology Information in England and Wales.

22 A review of the Youth Justice System in Northern Ireland 2011, DoJ.



Appendix



Appendix 1: Terms of reference

Introduction

Criminal Justice Inspection Northern Ireland (CJI) proposes to undertake an inspection of the use of non-Public Prosecution Service (PPS) disposals by the Police Service of Northern Ireland (PSNI). This inspection refers to disposal options available to the PSNI which do not involve a referral to the PPS.

There are two disposal options available to PSNI without involving a referral to the PPS. These are Discretionary Disposals (DD) and Penalty Notices for Disorder (PND). Sitting outside of this disposal process is the use of Fixed Penalty Notices (FPN) which has been in existence for over 15 years. However, the examination of the FPN system is included in this inspection based on recent figures which suggest that their decline in use may in part be linked to the use of DD.

Context

This inspection takes place in the wider context of the enhanced use of discretion²³ by the PSNI. After the formation of the PSNI and the setting up of the PPS in 2002, the PPS became the principal prosecuting authority in Northern Ireland. In recent years the need for reducing avoidable delay across the criminal justice system in Northern Ireland has been highlighted by CJI and others²⁴.

This has led to a programme of work in Northern Ireland referred to as 'Speeding Up Justice' with the Department of Justice (DoJ) and criminal justice agencies identifying sources of avoidable delay and attempting to find solutions to reduce or remove these.

This has occurred alongside a drive to increase efficiency in the face of austerity by removing bureaucracy across the system but particularly within the PSNI and PPS. The increase in police discretion has been one of the areas of work within this. The move towards a greater level of police discretion brings the PSNI into line with developments in England and Wales and also Scotland where there has been an increase in the ability of police to make decisions without recourse to the prosecuting authority in recent years.

Whilst CJI reports have demonstrated the benefits of a discretionary approach and monitor its progress with interest, Inspectors are aware of the potential risks that have been identified in police discretion by various commentators. These include that such discretion may be open to abuse unless appropriate safeguards are in place, the level of oversight by managers within the PSNI about decision making and external/independent quality assurance of this approach. Some of these risks are discussed further below.

23 The PSNI have offered the following explanation of discretion: '*Discretion aims to encourage officers to use their professional judgement to resolve minor crime to the satisfaction of victims and the community whilst maintaining accountability.*' See http://www.psni.police.uk/discretionary_disposals.pdf

24 CJI's reports and follow-up reviews on avoidable delay can be located on the CJI website www.cjini.org.

DD were introduced as an initiative during the 'Speeding Up Justice' programme in 2010 as an alternative to the prosecution route when dealing with some specified low level offences. The PSNI state that this disposal path was designed to challenge offenders, who must have admitted to the offence, to recognise the impact of their behaviour. The use by the PSNI of DD has been scrutinised and commented upon by non-governmental organisations, other justice organisations and the media.

An Equality Impact Assessment (EQIA) was carried out by the PSNI which included assessment of the use of DD²⁵. This publication included responses from Include Youth, Youth Justice Agency, Children's Law Centre, and Victim Support Northern Ireland. Issues raised included:

- subjectivity of officers' decision making regarding the application of discretion;
- need for officer training on dealing with children and young people;
- the effect of young persons' attitude to officers on the uptake of discretionary disposals;
- victims' influence on the proportionality of disposal actions;
- entitlement to legal advice and appropriate information in a child friendly format;
- need for independent scrutiny;
- need to consult on the use of discretionary disposals in accordance with Section 75 statutory obligations;
- focus on speed rather than justice; and
- arrangements for payment of reparation.

A number of issues have been raised by consultees during the EQIA and these will form the basis of the section of inspection devoted to an examination of the current situation regarding DD. The PSNI had been undertaking an evaluation of the use of DD the results of which will be available in September 2013. As fieldwork for this inspection will take place during September/October 2013 it is anticipated that the results of the evaluation will be available to Inspectors.

PND were introduced by the DoJ under the Justice Act (Northern Ireland) 2011, and the policy was subject to a separate screening procedure²⁶. PND went operational in June 2012 and may be issued for a range of offences:

- theft shoplifting (up to and including the value of £100 where goods are recovered in a saleable condition or the retailer has been compensated for their loss);
- criminal damage (up to and including the value of £200);
- disorderly behaviour;
- behaviour likely to cause a breach of the peace;
- resisting/obstructing/impeding a constable;
- indecent behaviour; and
- drunk in a public place.

PND were previously introduced in England and Wales in legislation in 2001 and rolled out across police forces in late 2003 and 2004.

25 PSNI Speedy Justice Equality Impact Assessment, November 2012.

26 Equality screening forms proposed Justice Bill (Northern Ireland) 2010.



Over the last 15 years the number of FPN issued by the PSNI has decreased by 79%. In 2012, the PSNI issued a total of 22,164 FPN compared with 28,295 issued in 2011, a decrease of 6,131 (22%). One of the milestones in the decreasing number of FPN issues was the decriminalisation of many parking offences in 2006. However, more recent reductions have been suggested to be as a result of the Speed Awareness Course and DD.

Aims of the inspection

The broad aims of the inspection are to:

- inspect the effectiveness of the overall PSNI strategy and governance with regard to the use of non-PPS disposals;
- inspect the delivery of the PSNI policies and guidance with regard to the use of DD;
- inspect the delivery of PSNI policies and guidance with regard to the use of FPN;
- inspect the delivery of PSNI policies and guidance with regard to the use of PND; and
- examine the interactions between discretionary disposals and the use of motoring FPN and PND in terms of delivery and outcomes.

Methodology

The inspection will be based upon the CJI framework which is set out in Figure 1 below.

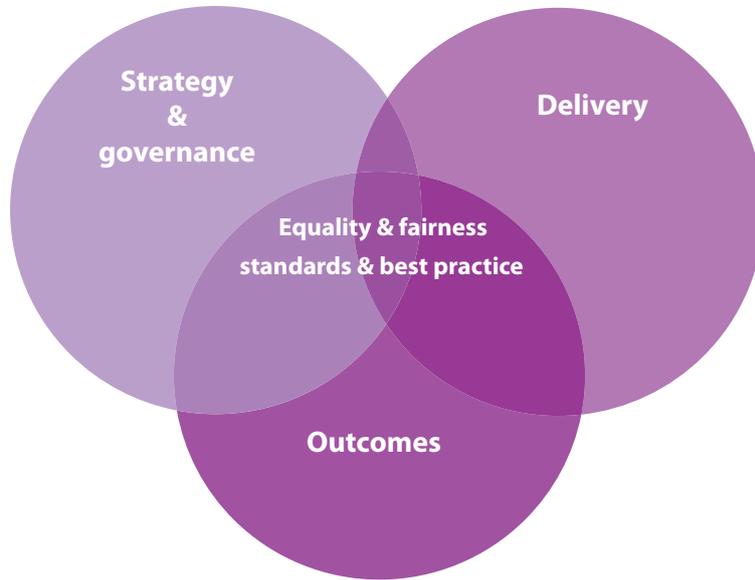
This inspection will look at:

- the strategy and governance in place with regard to the administration and management of DD, FPN and PND;
- the delivery of the systems of FPN, PND and DD taking into account issues raised with respect to disposals and the interaction of each approach; and
- outcomes arising from all of these activities, including resourcing implications for PSNI and PPS.

Equality and fairness is expected to form an important element of this inspection as evidenced by the issues raised regarding DD in the EQIA and by non-governmental organisation and media comment.

As with all CJI reports, this inspection will be based on the principles of inspection outlined in the Government's Policy on Inspection of Public Services. The principles of inspection are set out more fully on the CJI website at: <http://www.cjini.org/TheInspections/Our-Approach/The-Inspection-Process.aspx>

Figure 1: CJI inspection framework



The following methodology within a three-stage framework is proposed.

Design and planning

Consultation has already taken place with non-governmental organisations and with the PSNI to help develop the terms of reference document. Desk-top analysis of relevant reports, screening exercises and consultations has taken place. The PSNI had been conducting an evaluation into the use of DD and the results of this will be made available to Inspectors as part of the inspection process. A further evaluation of the use of PND will not be available to inspectors during the time frame of the inspection.

Following agreement of these terms of reference the PSNI will be asked to make available all relevant documents that describe the arrangements for managing and administering DD, FPN and PND as well as relevant statistics covering the last three full years of data capture.

Delivery

Fieldwork with the PSNI will take place during September and October 2013 and will consist of a series of face-to-face, semi-structured interviews with senior and other staff identified as being able to provide evidence to fulfil the aims of the inspection. It is anticipated that the fieldwork will take a maximum of five days. Upon completion of the fieldwork, a draft report will be prepared by CJI and shared with the relevant organisations for factual accuracy checking.

Publication and closure

The final draft report will be forwarded to the Minister of Justice for permission to publish. A date of publication will be agreed between CJI, the DoJ, and the PSNI. A press release will be prepared and shared with the Department and with the PSNI.



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