



# POLICE USE OF DISCRETION INCORPORATING PENALTY NOTICES

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A FOLLOW-UP REVIEW

**FEBRUARY 2021**



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# LIST OF ABBREVIATIONS

<b>ACC</b>	Assistant Chief Constable
<b>CJI</b>	Criminal Justice Inspection Northern Ireland
<b>COVID-19</b>	Coronavirus COVID-19 is a contagious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)
<b>CRN</b>	Community Resolution Notice
<b>DDS</b>	Discretionary Disposal Scheme
<b>DPC</b>	District Policing Command
<b>DoJ</b>	Department of Justice for Northern Ireland
<b>FPFE</b>	File Pending Further Evidence
<b>FPN</b>	Fixed Penalty Notices
<b>FPPC</b>	Fixed Penalty Processing Centre
<b>IO</b>	Investigating Officer
<b>NFPA</b>	No Further Police Action
<b>OCMT</b>	Occurrence Case Management Team
<b>PB</b>	Performance Board
<b>PND</b>	Penalty Notices for Disorder
<b>PoInt</b>	PSNI intranet
<b>PPDG</b>	Police Powers and Development Group
<b>PPS</b>	Public Prosecution Service for Northern Ireland
<b>PSNI</b>	Police Service of Northern Ireland
<b>QA</b>	Quality Assurance
<b>QAP</b>	Quality Assurance Panel
<b>SAC</b>	Speed Awareness Course
<b>YDO</b>	Youth Diversion Officer (within PSNI)

# CHIEF INSPECTOR'S FOREWORD

The application of discretion by the Police Service of Northern Ireland has been brought into sharp focus during the current COVID-19 pandemic. Police Officers knowledge of current and frequently changing health regulations and how they engage with the public and decide enforcement action has been tested as never before.

Exercising police discretion must not only be fair and consistent but must also be seen to be. Public confidence in our justice system is damaged if an even-handed approach is doubted and people believe they are being dealt with differently than others in the same or similar circumstances.

Recognising that an offence has been committed, deciding to issue a notice and what notice is the most appropriate, requires each Police Officer to act with integrity each and every time. It requires thoughtful consideration of each offender and the right police response whether that is taking no action, issuing a notice or referring to the Public Prosecution Service for Northern Ireland for a prosecutorial decision. The thought process and decision making to issue or not issue a notice, should not be influenced by wanting to avoid a more administratively complex and time consuming alternative and court proceedings.

This Follow-up Review looked at how the Police Service of Northern Ireland had implemented the recommendations in our 2015 report.

I am pleased that significant progress has been made with improvements at a strategic and operational level and most recommendations achieved or partially achieved.

Better quality assurance and partnership with the Public Prosecution Service for Northern Ireland through the Quality Assurance Panel has improved oversight without interfering with either organisation's operational independence. This could be further improved and extended to review cases where police discretion could or should have been applied, but instead people were referred to the Public Prosecution Service for Northern Ireland for a direction on prosecution or another disposal.

The implementation of an effective digital solution to support all types of disposal requiring police discretion remains an ongoing issue that requires further consideration and prioritisation by the Police Service of Northern Ireland.

Once again we are reporting that, while recognising the challenges of recording Section 75 data, information is collected yet still not reported in a transparent and accessible way. There appears to be too much focus on the recording problems and limitations of the data collected rather than the need for transparency and analysis.

I hope the implementation of these recommendations has supported policing, particularly since March 2020 and continues to as Police Officers navigate the current challenges and future use of their discretion.

This report identifies further opportunities to maintain a focus on continuously improving police use of discretion and information on its use.

I am grateful to Stevie Wilson who led this Follow-up Review and to the Police Service of Northern Ireland and Public Prosecution Service for Northern Ireland officers and staff who provided information and support.

**Jacqui Durkin**

Chief Inspector of Criminal Justice  
in Northern Ireland

**February 2021**



# CHAPTER 1: INTRODUCTION

## BACKGROUND TO THE FOLLOW-UP REVIEW

### Maintaining public confidence in the criminal justice system

The principal prosecuting authority in Northern Ireland, the Public Prosecution Service for Northern Ireland (PPS), was responsible for taking decisions on prosecution in all cases investigated by the police. The independence of the PPS was fundamental to impartiality and justice. All discretionary actions taken by the Police Service of Northern Ireland (PSNI) to dispose of offences must satisfy those same high standards. That was crucial to public confidence in policing and the criminal justice system. In a recent survey three-fifths of participants thought the criminal justice system as a whole was fair.<sup>1</sup>

In 2010 Criminal Justice Inspection Northern Ireland (CJI) urged the criminal justice organisations, *'to deal now with those issues directly contributing to the causes of delay within the system.'*<sup>2</sup> Later that year the Department of Justice for Northern Ireland (DoJ) implemented the *'Speeding up Justice'* programme. The programme introduced legislative and procedural reform to tackle avoidable delay in the criminal justice system by focusing on case preparation, case management, youth cases and governance.

The Discretionary Disposal Scheme (DDS) emerged from that programme and was one of three methods (see Table 1) of discretionary disposal arrangements examined in the original 2015 CJI report.<sup>3</sup> All three methods were examples of decision making and disposal of offences that excluded the PPS from its normal role and wider justice responsibilities.

This Follow-up Review focuses on the three methods of discretionary disposal inspected by CJI in 2015 and the progress achieved against recommendations.

1 DoJ, Analytical Services Group, *Perceptions of Policing and Justice: Findings from the 2018-19 Northern Ireland Safe Community Survey*, October 2020 available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/perceptions-of-policing-justice-findings-18-19.pdf>

2 Criminal Justice Inspection Northern Ireland (CJI) *Avoidable Delay*, June 2010, available at <http://www.cjini.org/getattachment/c0243f51-1e73-47e8-a6fa-344d5f0063c5/Avoidable-Delay.aspx>

3 CJI, *Police Use of Discretion Incorporating Penalty Notices, January 2015* available at <http://www.cjini.org/getattachment/a508de4d-18de-49dd-9c29-65a2212b8676/report.aspx>

**Table 1: Discretionary disposal arrangements reported on by CJI in 2015**

<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
The Fixed Penalty Notices Scheme (FPN)	Penalty Notices for Disorder Scheme (PND)	Discretionary Disposals Scheme (DDS)
(Imposing monetary penalty)	(Imposing monetary penalty)	(No monetary penalty)
Endorsable and non-endorsable road traffic offences.	An immediate penalty imposed by Police Officers on first time or non-habitual offenders for some minor offences, including drunkenness and disorderly behaviour. <sup>4</sup>	The PSNI offered the following explanation of discretion:  <i>'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.'</i>

Inspectors initiated fieldwork for this Follow-up Review within the PSNI and the PPS prior to March 2020 and before the Coronavirus COVID-19 (COVID-19) pandemic impacted on Northern Ireland. The introduction of the United Kingdom Coronavirus Act 2020 enabled local regulation making powers. A recent report examining the PSNI response to COVID-19 commented that, *'It was the law, particularly the criminal law, that was used to try to prevent the spread of the virus and the police, as a result, were expected to regulate our activities and force us to stay at home'*<sup>5</sup>.

Treating members of the public with courtesy, respect and fairness was already core to delivering the PSNI's vision to *'help build a safe, confident and peaceful Northern Ireland'*.<sup>6</sup> The three main themes (People and Culture, Operational Delivery and Organisational Processes) contained within the PSNI's Equality, Diversity and Good Relations strategy were underpinned by a fourth theme of *'increasing trust and confidence in police'*. The 'Perceptions of Policing and Justice' survey results published in October 2020 indicated that respondent's overall confidence in policing was at 81% and had remained consistent for over 15 years.<sup>7</sup>

4 PSNI website Penalty Notices for Disorder, available at [https://www.psnipolice.uk/advice\\_information/penalty-notices-for-disorder/](https://www.psnipolice.uk/advice_information/penalty-notices-for-disorder/)

5 Northern Ireland Policing Board, Report on the Thematic Review of the Policing Response to COVID-19, November 2020 available at <https://www.nipoliceboard.org.uk/sites/nipb/files/publications/report-on-the-thematic-review-of-the-policing-responder-to-covid-19.pdf>

6 PSNI website, Our Strategy and Vision, October 2020 available at [https://www.psnipolice.uk/inside-psni/our-strategy-and\\_vision/](https://www.psnipolice.uk/inside-psni/our-strategy-and_vision/)

7 DoJ, Analytical Services Group, Perceptions of Policing and Justice: Findings from the 2018-19 Northern Ireland Safe Community Survey, October 2020 available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/perceptions-of-policing-justice-findings-18-19.pdf>



When the police detected offenders who had committed offences of a minor nature, justice needed to be proportionate, administered fairly and with consistency across all sections of the community in all parts of Northern Ireland. Application of police discretion required effective governance to deliver such outcomes and to prevent systemic abuse and subjective interpretation by Police Officers/Officers in the application of or ignorance of guiding policy. It was core to protecting both the rights of the victim and the offender.

Discretion remained essential to speeding up justice and was an extension to other more formal justice practices and as such was common to many jurisdictions. It prevented minor criminal cases from entering an already slow and heavily burdened judicial process. In 2019-20 there were 106,585<sup>8</sup> recorded crimes in Northern Ireland (excluding fraud).<sup>9</sup> In the same period the PPS received a total of 42,383 files from the police.<sup>10</sup>

### Police Use of Discretion Incorporating Penalty Notices inspection 2015

The 2015 inspection had identified areas and opportunities for improvement through recommendations impacting on strategy, governance and delivery with a focus on outcomes leading to effective services and increased public confidence. At that time the then CJI Chief Inspector commented, *"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."*

Discretion, when used appropriately, enabled disposal by a method that was quick, removed the need for court proceedings and avoided a criminal record outcome. However, the benefits to the system and for the offender must not be considered in isolation of the needs of the victim. In considering fairness and proportionality the victim should remain central to all such remedies.

The suitability of the offence and the associated circumstances were prerequisites to considerations for use of police discretionary powers. The importance of getting it right was critical to maintaining the highest standards of justice. Good governance needed to deliver practice in a way that universally cast a safety net across individuals and qualifying offences to ensure all were dealt with fairly and equally.

The following bullet points summarised the key findings from the 2015 inspection report:

- **Improve governance and quality assurance** - PNDs and the DDS had resulted in inconsistencies with unsuitable cases being dealt with by way of discretion. CJI supported a re-launch of the DDS strategy to bring improvements to governance and quality assurance.

8 PSNI, *Police Recorded Crime in Northern Ireland: Update to 31 March 2020*, May 2020 available at <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/2020/march/crime-bulletin-mar20.pdf>

9 Action Fraud became responsible in 2015 for the central recording of fraud and cybercrime previously recorded by the PSNI. See: <https://www.actionfraud.police.uk/>

10 PPS, *Statistical Bulletin 2019-20, July 2020* available at <https://www.ppsni.gov.uk/sites/ppsni/files/publications/Statistical%20Bulletin%202019-20%20Final.pdf>

- **strategic partners** - the PPS was crucial to development of practice that incorporated checks and balances delivering appropriate and consistent application of the schemes.
- **Scheme integrity and public confidence** -
  - schemes needed to be applied in a non-interpretive manner across all police Districts. Regional Assistant Chief Constable (ACC) accountability meetings with District Commanders were identified as key to this;
  - safeguarding mechanisms needed to identify errors, inconsistency and inappropriate use of disposals that resulted in remedial actions including those in respect of individual Officers;
  - better recording of the decision-making process employed by Officers when choosing a means of disposal was needed;
  - a need to capture the full range of the Northern Ireland Act 1998 Section 75 categories of person; and
  - speeding detection methods by FPNs needed to result in an offer of a Speed Awareness Course (SAC) that aligned with practice for detections by speeding safety cameras.
- **Young People** -
  - inconsistent corporate practice regarding timely consultation with Youth Diversion Officers (YDOs) by Investigating Officers (IOs) when dealing with young people by discretionary disposal arrangements; and
  - Youth Engagement Clinics were identified as a potential model that should be considered as part of a wider solution to improved governance of discretionary disposal arrangements for young people.
- **Technology solutions** - A successful electronic system for FPN did not extend more widely across all discretionary disposal arrangements. Wider implementation of such technology could offer opportunities for improved efficiencies and effectiveness.

## **CHANGES SINCE THE 2015 INSPECTION**

### **A new approach - Community Resolution Notices (CRNs)**

Considerable changes had occurred since the 2015 CJI inspection of the police use of discretion. The PSNI Criminal Justice Branch, within a newly created Community Safety Department, was responsible for governance and future development of CRNs and PNDs. On 30 June 2016 the PSNI stopped the DDS and introduced the CRN as its replacement. The DDS, as already mentioned, had been introduced as part of the '*Speeding up Justice*' programme in 2010.

The PSNI had stopped using the term '*Discretionary Disposal*' to describe wider use of disposal arrangements and instead now described CRNs and PNDs as '*Police Disposals*'. The re-branding of CRNs and the new terminology was considered to better align the use of police discretion in Northern Ireland with wider practice across England and Wales, as well as aiding benchmarking and enabling wider national comparisons in performance.

## The impact of COVID-19

While new discretionary powers created specifically in response to the COVID-19<sup>11</sup> pandemic did not form part of the Follow-up Review, it was considered appropriate that their use be placed in the context of the wider use of discretion by police. The impact of the pandemic had demanded an unprecedented response by Government and wider society. Emergency regulations had been made to control the spread of the virus and protect the population. These evolved in response to the pandemic and the need to protect the vulnerable, health services and the wider community. With regulations came a need for enforcement and as previously mentioned this largely fell to the police.

## Recovery planning and the review of PNDs

Just as it had been essential to implement emergency regulations to deal with the immediate and ongoing impact of the COVID-19 pandemic on public health; it had been essential to plan immediate actions and recovery of the criminal justice system itself. The Criminal Justice Board had been overseeing this work and had sought to put expedient and efficient measures in place while ensuring that delivery remained proportionate and could be administered fairly. As a result the DoJ had reviewed its guidance in relation to the PND scheme originally introduced by the Justice Act (Northern Ireland) 2011.<sup>12</sup> Changes took effect on 30 October 2020.

11 Severe acute respiratory syndrome coronavirus 2 (SARSCoV-2)

12 *Justice Act (Northern Ireland) 2011*, Northern Ireland Assembly, available at <https://www.legislation.gov.uk/nia/2011/24/contents#:~:text=Justice%20Act%20%28Northern%20Ireland%29%202011%20is%20up%20to,be%20brought%20into%20force%20at%20a%20future%20date>.

## THE FOLLOW-UP REVIEW

The CJI Business Plan 2019-20 identified the 2015 inspection report on the *Police Use of Discretion Incorporating Penalty Notices* for a Follow-up Review.<sup>13</sup> The purpose of the Follow-up Review was not to repeat work undertaken by the original inspection but to review progress in implementing and the continued relevance of the recommendations made.

On 19 November 2019 CJI notified the PSNI and the PPS of its intention to conduct a Follow-up Review of its 2015 inspection on *Police Use of Discretion Incorporating Penalty Notices*. The CJI *Operational Guidelines for Inspection* made provision for Inspectors to request a self-assessment from any inspected organisation.<sup>14</sup> Doing so provided the organisation with an opportunity to identify current areas impacting on activity and delivery.

As the primary organisation, the PSNI was asked to complete a self-assessment to demonstrate how it had progressed implementation of the recommendations in the *Police Use of Discretion Incorporating Penalty Notices* report. A self-assessment was subsequently received from the PSNI and reviewed by Inspectors. As part of normal CJI practice to validate self-assessments, there were additional requests made on points of clarity and for additional information and material to help focus fieldwork and subsequent reporting.

Both inspected organisations were also informed that fieldwork would be undertaken to validate information provided in the self-assessment and this began prior to the COVID-19 pandemic.

13 CJI, *Police Use of Discretion Incorporating Penalty Notices*, January 2015 available at <http://www.cjini.org/getattachment/a508de4d-18de-49dd-9c29-65a2212b8676/report.aspx>

14 *Operational Guidelines for Inspection*, CJI, December 2018, available at <http://www.cjini.org/getdoc/15070948-fab1-4b38-b7e9-81ce636f7327/OPERATIONAL-GUIDELINES-FOR-INSPECTION-v1-7.aspx>

## CHAPTER 2: PROGRESS AGAINST RECOMMENDATIONS

### STRATEGIC RECOMMENDATION 1

**The Police Service of Northern Ireland, together with the Public Prosecution Service should review the governance and management of all non-Public Prosecution Service disposals. This must include improvements in its governance and quality assurance.**

The proposed Police Service of Northern Ireland 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.

Public Prosecution Service input should be secured in developing clear guidance for Officers on the use of Discretionary Disposals and in continuing to provide monitoring information through dip-sampling.

Status: Partially achieved.

## ORGANISATIONAL RESPONSE

*The PSNI along with the PPS has reviewed and put in place a service level agreement implementing significant improvement to governance, management and quality assurance arrangements for non-PPS disposals.*

## INSPECTORS' ASSESSMENT

### **New Joint Protocol Arrangements**

The service level agreement intended to put in place effective collaborative arrangements between the PSNI and the PPS about the use of discretion by the PSNI. It outlined arrangements that sought to deal with consistency and compliance of relevant guidance and legislation while, at the same time, recognising the independence and the very different functions and roles of the two organisations already commented on in the report introduction.

During fieldwork Inspectors made a visit at short notice to see for themselves how the protocol (for CRN and PND) actually worked in practice. This involved meeting with the Quality Assurance Panel (QAP) established by the protocol. The QAP met on a monthly basis and consisted of a PSNI Sergeant attached to the Criminal Justice Branch and a PPS Prosecutor based in Belfast. The QAP met at the PSNI Headquarters to facilitate ease of access to police systems and the information needed to fulfil the protocol arrangements for quality assurance (QA).

Inspectors met the QAP and were taken through the entire established process step by step. This included online access to information systems and to all supporting monitoring and QA documentation used as part of the Sergeant's monitoring role and the QA process in partnership with the PPS. Numerous random cases were selected during the visit thus enabling a level of detailed challenge and questioning not achievable by paper sift. Inspectors were satisfied that the QAP met regularly and that this needed to continue.

The scope of the joint protocol was limited to those instances when a CRN or a PND had been issued by the PSNI to an offender. It did not provide arrangements for FPNs and the PSNI and the PPS confirmed that there was no separate FPN protocol in that regard. Police Officers continued to use the FPN Scheme for dealing with specific offences categorised as endorsable and non-endorsable road traffic offences that the Roads Policing Unit remained responsible for. The DDS was removed as an alternative method of disposal for dealing with traffic offences on 30 June 2016 (CRNs applied to non-traffic related crimes only).

The DoJ's recovery plans in response to COVID-19 had also included a review of the current use of FPNs.<sup>15</sup> Inspectors learned that extending the use of FPNs to other motoring offences would require legislative change that might not be achievable within the current Northern Ireland Assembly mandate. Inspectors also learned that offences such as Careless Driving were being considered for disposal by FPN.

Such changes would be significant in terms of existing and well established practices but also in regard to the additional levels of governance and the QA measures needed. Given that the current protocol did not address the issue of QA in relation to FPNs or the new changes envisaged, Inspectors considered this to be an area for future consideration by the PSNI in consultation with the PPS.

While the protocol had some limitations, it was the view of Inspectors that it was achieving what it had set out to do in respect of adding a robust, proportionate and sustainable approach to those areas it sought to QA. Inspectors were very encouraged with the working relationship between the two organisations and the practices established under the protocol that delivered hands on effective and agile measures which made a real difference at both strategic and operational levels within the PSNI.

<sup>15</sup> NI Direct website *Fixed Penalties for motoring offences*, available at <https://www.nidirect.gov.uk/articles/fixed-penalties-motoring-offences>

The roles established by the protocol provided a process that was not merely a tick box exercise. It provided detailed strategic oversight and daily monitoring that regularly resulted in real time advice and support to Constables and their supervisors operating on the frontline. This added value to ongoing learning as well as identifying remedial actions needed for individual Officers. The monitoring role of the Sergeant within the Criminal Justice Branch was central to the entire process and future review or development of that role needed to consider the benefits currently delivered.

The QAP met on a regular basis with the PPS Head of Policy and Information, an arrangement also established by the protocol. A summary report was provided to the meeting by the QAP. It was an informal and practical arrangement enabling those involved to problem solve and to implement sensible measures to add improvement to existing arrangements of practice and process in relation to the use of CRN and PND disposals. That established practice and momentum was very important to the ongoing partnership approach to QA.

### **Policy and Operational Guidance - CRNs and PNDs**

Inspectors examined the current PSNI operational guidance for CRNs dated 11 October 2019 and interviewed the policy owner for CRN and PND (Head of Branch for Criminal Justice). The guidance was up-to-date and contained a mechanism for regular annual audit. Operational feedback was encouraged from Officers and police staff and was considerate to the views of relevant agencies such as the PPS.

The documentary evidence examined indicated that governing arrangements were effective in identifying ongoing business need for practice and policy change. Since its introduction, the guidance had been reviewed and updated by the PSNI on 11 occasions and indicated that further review was due on 11 October 2020.

The four CRN objectives were:

- to improve the involvement and quality of service provided to victims by taking account of their views where reasonable and proportionate in the resolution;
- to increase victim satisfaction in policing and criminal justice by providing a comparatively prompt and tailored resolution;
- to provide a proportionate justice disposal for offenders with little or no previous offending history, to reduce the impact on their lives compared to other non-court disposals and encourage them to change their behaviour and not re-offend; and
- to provide Officers with a proportionate disposal for offences that are comparatively less serious.

Central to the new CRN scheme was a need to take account of the demeanour, attitude, remorse and background of the offender and the impact of the crime on the individual victim, their views and likely engagement in the community resolution process. Replacement of the previous DDS was seen as an opportunity to provide reassurance that police retained the ability to make appropriate use of informal discretion, for example, giving words of advice for minor infringements without a need for invoking more formal discretionary disposal arrangements.

The CRN was considered to be most appropriate for offenders with little or no previous offending history but was not entirely limited to that criteria. It was also deemed best suited to offences where there was a victim. The previous DDS had facilitated a practice for dealing with what was described as 'victimless' offences that, in essence, was an agreed resolution that amounted to an apology to the detecting Officer and typically for road traffic offences (this practice was now no longer available for road traffic offences).<sup>16</sup>

The initial desire had been to remove all such practice from the new CRN process but that had not materialised. Certain so called 'victimless' crimes and some offences classed as crimes against the State remained within the scope of the new CRN policy. However, in such cases there was clear and unequivocal instruction to Officers that the agreement should always seek a meaningful resolution that went beyond a mere apology. Nonetheless, when this was not possible, an apology or expression of remorse by the offender was still acceptable as in the past for the DDS.

The CRN had been introduced to provide locally tailored resolutions that met the individual circumstances and needs of the victim and the offender. To issue a CRN there had to be agreement with the offender but not the victim. The PSNI policy stated that, '*One of the unique and positive aspects of CR is that an IO can determine what resolution (action), appears most suitable in the circumstances for the offender to make good the loss, harm or damage caused....*'<sup>17</sup> How the offender could make good the loss, damage or harm was central to any such an agreement.

Even though an agreement was in place with the offender, the IO was without power to enforce a community resolution as it was completely dependent on a voluntary agreement by the offender. Consent from the victim to proceed by way of community resolution was not a prerequisite to disposal by such means. As was previously the case with the DDS, the Community Resolution policy was clear that a victim did not have the right to 'veto' an offender being dealt with by community resolution when deemed appropriate and in line with that policy. In reality and in the absence of a willing victim to accommodate the CRN process and agreement to an outcome, it was unlikely to reach a successful conclusion.

The policy contained a '*CR Statement*' that was read to the perpetrator by the Police Officer and read on the premise that disposal by community resolution was, '*to improve the involvement and quality of service provided to victims by taking account of their views where reasonable and proportionate in the resolution*'. The statement set out key information that the offender needed to know before consenting to the community resolution. Fundamentally it conveyed rights such as telling the offender that, '*you do not have to participate*'.

16 PSNI, *Discretionary Disposals: Post Implementation Evaluation Report*, February 2014, p10. '*DD were principally designed to deal with 'victim' offences and therefore did not initially cover level 2 (traffic) as many are 'victimless' in the sense the offender is often the only party present.*' Internal PSNI document.

17 PSNI, *Operational guidance on the use of community resolution as a crime outcome*, , October 2019. Internal PSNI document.



One of the four policy objectives was to increase victim satisfaction in policing and criminal justice by providing a comparatively prompt and tailored resolution although there was no mention of how this was to be measured. While the policy in its opening paragraphs made reference to the, *'needs of the victim and the offender'* the policy appeared to be predominantly focused on the process for dealing with the perpetrator.

The reference to victim needs did not result in a similar practice that took account of the victim's rights or the victim's needs in regard to greater understanding of the CRN process and in this respect, no similar community resolution statement was read to the victim. The victim received a copy of the CRN when it was issued to an offender. It was at that point that information was provided to the victim on the back of the copy notice.

An internal audit of CRNs by PricewaterhouseCoopers had reviewed the processes and procedures since its introduction on 30 June 2016. That review focused on risk management, policies and procedures, training, quality assurance and management information. The PricewaterhouseCoopers report (published in 2017)<sup>18</sup> identified good practice in terms of control design and procedural compliance but found three areas of concern:

- issue had been inappropriate;
- issue had not being authorised and reviewed in line with Operational Guidance; and
- necessary documentation had not been completed.

Nonetheless, the overall rating awarded by the audit was *'satisfactory'*.

Guidance to Officers on CRNs stated that they *'can be used for multiple offences but only where they are part of a single incident'* and that they should not be used in circumstances where it would mean mixing PND, charge and report. In relation to the issue of PNDs, the guidance on approach was similar and advised Officers that a notice, *'can only be used for one offence for one recipient for a single incident'*.

Inspectors considered those approaches to limit the full scope and benefits of CRNs and PNDs in respect of the victim, the offender and the criminal justice system. While the earlier discussed review of PNDs by the DoJ sought to address some of those concerns, Inspectors believed that further consideration should be made by the PSNI in regard to the mixing of disposal options such as CRNs (or PNDs) along with charging and reporting for offences related to the same incident. Given existing pressures on the criminal justice system, Inspectors believed this to be an area for future review of the guidance for CRNs and PNDs by the DoJ, PSNI and the PPS.

18 *PriceWaterhouseCoopers, Internal Audit Report 2016-2017: Community Resolutions, January 2017.* Where *'Satisfactory'* is green (using the traffic light system (green/amber/red) and indicates that *'Overall there is a satisfactory system of governance, risk management and control. While there may be some residual risk identified, this should not significantly impact on the achievement of system objectives.'* Internal PSNI document.

## Proportionate, fair and consistent

Please note that operational recommendation 7 deals specifically with matters relating to the implementation of Section 75 (1) of the Northern Ireland Act 1998 and should be read in conjunction with this section.

Inspectors were unable to establish with any clarity if the PSNI Operational Guidance on disposal by CRN and PND had been consistently applied across the PSNI for each offence and offender. The protocol between the PSNI and the PPS contained no specific QA process to monitor offences reported to the PPS (cases when no CRN or PND had been issued) to ensure that police discretion had been appropriately applied before being submitted to the PPS for direction.

Cases reported to the PPS for direction could result in various methods of disposal, for example, prosecution, no prosecution and diversion but excluded options of CRN and PND. The PPS confirmed that when a case reached them for direction it responded on the basis of disposal options set out in the PPS 'Code for Prosecutors' (the Code).<sup>19</sup> The Code did not permit Prosecutors to issue a direction for the use of discretion by the police.

The PPS was not required and did not normally delay cases to ascertain if police discretion had been appropriately considered, nor could it direct the PSNI to consider police discretion. Nonetheless, Inspectors learned that some Prosecutors considered it to be in the interest of justice to make contact with the PSNI to establish that police discretion had been considered.

When such cases reached the courts they added burden and detracted attention from more serious offences. Almost half (47%) of cases in 2019-20<sup>20</sup> were for summary offences (offences with less severe penalties and imprisonment terms) and this was similar to 2015-16 when it was 46%.<sup>21</sup> Summary prosecution decisions over the most recent five year period<sup>22</sup> indicated a 1.6% increase between 2019-20 and 2018-19.<sup>23</sup>

Fewer people (a drop of 2.9%) received diversionary decisions (comparing 2018-19 and 2019-20) and drops in diversionary decisions had been consistent each year over the five year period. No prosecution decisions dropped by 3.8% (comparing 2018-19 and 2019-20) and this drop had increased from 1% when comparing 2014-15 and 2015-16.

19 PPS, *Code for Prosecutors*, July 2016 available at <https://www.ppsni.gov.uk/publications/code-prosecutors>

20 PPS, *Statistical Bulletin: 2019-20, July 2020* available at <https://www.ppsni.gov.uk/sites/ppsni/files/publications/Statistical%20Bulletin%202019-20%20Final.pdf>

21 PPS, *Statistical Bulletin: 2015-16, June 2016* available at [https://www.ppsni.gov.uk/sites/ppsni/files/publications/Statistical%20Bulletin%20Quarters%201-4%202015-16\\_0.pdf](https://www.ppsni.gov.uk/sites/ppsni/files/publications/Statistical%20Bulletin%20Quarters%201-4%202015-16_0.pdf)

22 PPS *Statistical Bulletins*, accessed via PPS Publications webpage available at <https://www.ppsni.gov.uk/publications>

23 PPS, *Statistical Bulletin: 2019-20, July 2020* available at <https://www.ppsni.gov.uk/sites/ppsni/files/publications/Statistical%20Bulletin%202019-20%20Final.pdf>

**Table 2: Outcomes from PSNI files referred to the PPS for decision**

<b>PPS Decision</b>						
<i>(these statistics are not based on a particular file type)<sup>24</sup></i>						
	Summary Prosecution		No Prosecution		Diversion	
	% Increase	% Decrease	% Increase	% Decrease	% Increase	% Decrease
2018-19 and 2019-20	1.6	-	-	3.8	-	2.9
2017-18 and 2018-19	-	0.4	2.5	-	-	11.5
2016-17 and 2017-18	-	*	-	1.1	-	9
2015-16 and 2016-17	-	1.1	-	0.5	-	6.7
2014-15 and 2015-16	-	4.7	-	1	-	6.6

*\*No significant change from the previous year*

Should a summary offence file incorrectly reach the PPS in such circumstances, it was possible that the offender could be prosecuted, was less likely to be dealt with by one of the diversionary methods available to the PPS or indeed be less likely to be told that there would be no prosecution.

The police needed to monitor and implement joint protocol oversight arrangements for QA for instances in which discretion had been applied as well as those when it had not. Such practice was vital to ensuring that incidents suitable for disposal by police discretion did not reach the PPS for direction.

Directions made by the PPS could clearly result in very different outcomes for the offender. A failure to appropriately apply use of police discretion also deprived victims of outcomes delivering early effective justice through community resolution practices and their desire to avoid court.

In the months following initial fieldwork the PSNI had implemented Gatekeepers to provide additional scrutiny of cases sent to the PPS for direction. Inspectors welcomed the addition to internal monitoring practice but recognised a need for ongoing evaluation of its effectiveness. The new arrangements were not inspected during the review.

The PSNI, in consultation with the PPS, should consider reviewing current QA mechanisms for cases submitted to the PPS for direction and ensure all appropriate cases received due consideration for police discretion. Those considerations needed to be reflected in the case file material and be available to the PPS Prosecutors assessing the evidence and issuing a direction. Inspectors believed this to be an important area that required further scoping and development of QA measures and oversight protocol arrangements.

<sup>24</sup> While almost half of all cases received by PPS are for summary offences, other more serious hybrid or indictable offences that are triable summarily can also result in a direction to prosecute summarily or alternatively that there be no prosecution.

## Strategic oversight and performance

In 2015, following the completion of fieldwork and at draft report stage, Inspectors had also been made aware of the disposal category known as File Pending Further Evidence (FPFE). The approach to FPFE implemented in May 2014, although referenced in the original inspection report, did not form part of the inspection itself. The report concluded however that FPFE should nonetheless be included within the scope of strategic recommendation 1.

During the Follow-up Review Inspectors examined internal operational guidance available to Police Officers and staff on the PSNI intranet (known as Polnt<sup>25</sup>). The operational guidance set out the following criteria for incidents deemed to fit the FPFE criteria.<sup>26</sup> A further category also set out criteria for another group of incidents deemed to fit within the category of 'No Further Police Action' (NFPA).

### Extract from Polnt Internal PSNI Guidance on FPFE and NFPA

#### FPFE:

- No suspect identified (or outstanding proportionate lines of enquiry that make it likely to be solvable); or
- Suspect identified - but there is no evidence to connect a suspect to the offence (and no outstanding proportionate lines of enquiry that make it likely to be solvable).
- The exception to this is for domestic abuse cases where a case file should be submitted to the PPS even if there is only hearsay evidence, such as an oral allegation.
- For other cases where a victim withdraws a complaint, the investigation must still continue unless:
  - There is no other relevant evidence such as injuries consistent with an assault (and no outstanding proportionate lines of enquiry that make it likely to be solvable); and
  - There is no suspicion the withdrawal is being made under duress.

#### NFPA:

- Suspect identified - but deceased (with exception of fatal road traffic collisions unless suspect is the only active participant that is driver/rider); or
- suspect identified - but below age of criminal responsibility; or
- resulted by other means.

25 An internal network for sharing information, collaboration tools, operational systems, and other computing services within an organisation, usually to the exclusion of access by outsiders.

26 PSNI, *Operational guidance: Niche Supervision standards for managing occurrences and case files*, 2019. Internal document.

In order to understand the complete picture on all methods of disposal for the offences listed within current operational guidance for CRN and PND, Inspectors requested year-on-year data for community resolution (since being introduced on 30 June 2016) and PNDs (from 2014) in respect of other types of disposal that included, charge, summons, caution, offences taken into consideration at court, no prosecution, deceased and FPF. The PSNI informed Inspectors that they did not hold this data in a format that could be retrieved. Inspectors considered this to be an area in need of further development by the PSNI.

The QAP and, in particular, the monitoring role of the Sergeant in the Criminal Justice Branch had created the mechanism for and access to a great deal of useful management information, learning and best practice in terms of CRN and PND disposals. Some of that data was provided to the Police Powers and Development Group (PPDG) which was held quarterly and chaired by an ACC.

The PPDG existed to provide support to the Northern Ireland Policing Plan and the continued delivery of policing within the community. The key objective of the PPDG was to improve public confidence and consistency of service delivery. It achieved this by identifying and promoting best practice in a number of areas that included criminal justice disposals by PND and CRN but did not include police discretion by way of FPN.

The previously discussed DoJ plans to expand use of FPNs along with its review on PND guidance would require effective risk management by the PSNI to maintain public confidence and consistency of service delivery. Changes to PNDs would increase the 2011 thresholds for criminal damage (rising to £300 or under) and theft (rising to £200 or under). Police Officers would also be able to include up to three qualifying offences on a single PND. Previously only one qualifying offence could be issued for each PND.

A Performance Board within the PSNI was chaired by the Deputy Chief Constable to provide assurance of ongoing confidence in the organisational delivery against the Northern Ireland Policing Plan and around key performance priorities. It in turn supported the objectives of the Service Executive Board, chaired by the Chief Constable, and provided appropriate information on a six monthly basis.

The Justice Act (Northern Ireland) 2011 (Explanatory Notes) established that, '*Penalty notices (PNDs) are for first-time or non-habitual offenders*' and the PSNI operational guidance specific to CRNs cited the prevention of re-offending as a key objective for its use. '*We have a safe community*' was Outcome 1 of the PSNI's Annual Performance Plan 2020-21 that had repeat offending as a key indicator of performance. While there was particular focus on and measurement of domestic abuse, organised crime groups and paramilitary organisation reoffending this was not to the exclusion of all repeat offender types. This was particularly important given that 60% of offenders had committed previous offences.<sup>27</sup>

<sup>27</sup> DoJ, *The Adult and Youth Reoffending in Northern Ireland (2016-17 Cohort)*, November 2019 available at [www.justice-ni.gov.uk/news/adult-and-youth-reoffending-northern-ireland-cohort-201617](http://www.justice-ni.gov.uk/news/adult-and-youth-reoffending-northern-ireland-cohort-201617)

Inspectors requested reoffending performance information specific to CRNs and PNDs but were informed that this did not exist for adults. Inspectors understood that limited recent arrangements had been put in place for recording youth offender CRN reoffending rates. However, a current lack of quantitative data meant the production of credible statistics was unlikely to produce credible analytics. Inspectors considered this to be an area in need of further development.

The PPDG had a clear role in identifying and promoting best practice for police disposals but only considered PNDs and CRNs and did not consider use of police discretion as part of its agenda. Inspectors were unclear how cohesive and wider learning and knowledge was being captured for all methods of police discretionary practice and in turn, how that fed the wider corporate response to performance improvement. Inspectors considered this to be an area for future consideration by the PSNI.

### **Coronavirus (COVID-19) Pandemic Regulations**

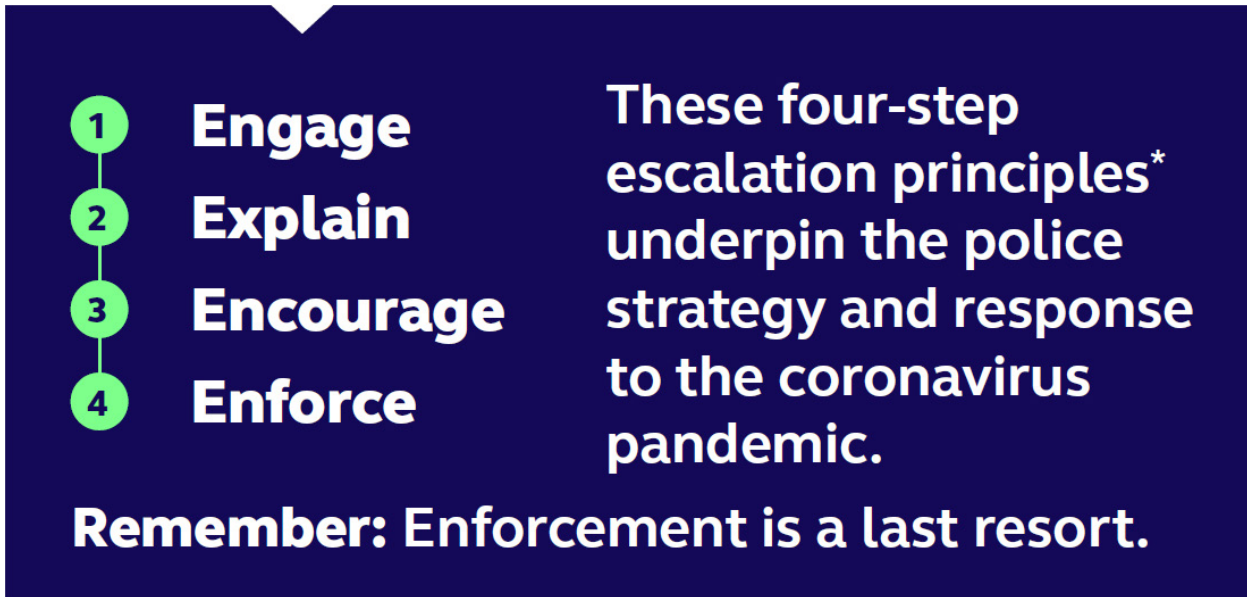
Northern Ireland Assembly regulations included requirements to self-isolate, restrictions on numbers of people and households permitted to meet indoors and outdoors, and wearing of face masks or face coverings. The hospitality sector and other businesses had restrictions on how and when they could open with strict operational guidelines and safety control measures for staff and patrons.

Policing with the community and the continuity of pre-pandemic levels of operational effectiveness was clearly a significant challenge for the police. In 2018-2019, the overall confidence in community engagement had already fallen from 40% to 36%.<sup>28</sup> Enforcing the new regulations within local communities required application and an approach that was sensitive and considerate to each set of circumstances. The PSNI response from the outset and ongoing at the time of writing was aligned with guidance provided by the College of Policing<sup>29</sup> and was endorsed by the National Police Chief's Council. The approach was one of 'Engage, Explain, Encourage and Enforcement' (the *Four Es*).

28 DoJ, Analytical Services Group, *Perceptions of Policing and Justice: Findings from the 2018-19 Northern Ireland Safe Community Survey*, October 2020 available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/perceptions-of-policing-justice-findings-18-19.pdf>

29 College of Policing, *Policing the pandemic: the Act, the Regulations and Guidance*, 2020 [https://www.college.police.uk/What-we-do/Support/Health-safety/Documents/Policing\\_the\\_pandemic.pdf#search=4es](https://www.college.police.uk/What-we-do/Support/Health-safety/Documents/Policing_the_pandemic.pdf#search=4es)

Diagram 1: College of Policing Guidance



© College of Policing.

When implementing the *Four Es* approach the police had also made use of the CRN as one of the discretionary disposal arrangements available. CRNs sought resolution utilising community resolution practices and did not impose a monetary penalty. Inspectors noted that the report published by the Northern Ireland Policing Board commented on CRNs that, *'whilst this approach is very sensible in general, it is not particularly useful when dealing with breaches of the lockdown rules'*.<sup>30</sup> At the time of writing, public health regulations created under the Public Health (Northern Ireland) Act 1967 provided powers to issue FPNs (COV1) with a first notice imposing a penalty of £60, a second notice imposing a penalty of £120 and a third and subsequent FPN doubling the amount specified in the last fixed penalty notice issued to that person up to a maximum of £960.<sup>31</sup>

Police could issue prohibition notices (COV2) requiring recipients to close premises and/or cease certain activities. Restrictions also included a requirement to self-isolate for 14 days when arriving in Northern Ireland from specified countries. In such circumstances the police had discretion to issue a FPN (COV3) for £1,000 when people failed to isolate or obstructed functions provided under the International Travel Regulations. Ultimately, where discretionary practices had not been appropriate or had been exhausted, the police could (in certain circumstances) pursue a prosecution.

30 Northern Ireland Policing Board, *Report on the Thematic Review of the Policing Response to COVID-19*, November 2020 available at <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/report-on-the-thematic-review-of-the-policing-responser-to-covid-19.PDF>

31 Northern Ireland Assembly, *The Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020*, available at <https://www.legislation.gov.uk/nisr/2020/150/contents/made>

On 1 October 2020 the Chief Constable reported to the Northern Ireland Policing Board that supporting medical professionals in managing a health crisis continued, 'to present a challenge to our Officers and staff as they continually adapt to changes in Regulations and guidance, whilst dealing with our traditional policing priorities.'<sup>32</sup> Constant fluctuations in the infection rate had continued to dictate the pace and a need for continual review of emergency regulations that resulted in ongoing need for regulatory amendments in efforts to control the spread of the virus to protect public health.

### Diagram 2: PSNI Coronavirus (COVID-19) Update 2 November 2020



© PSNI.

On 8 October 2020, the Northern Ireland Assembly announced substantial changes to the regulations that would result in their strengthening to include wearing face coverings on transport and in certain premises. Penalties for breaches of the regulations would also be increased. The existing £60 FPN (COV1) was to be replaced by a single penalty of £200. Three new offences were to be created and would be punishable on conviction by a fine of up to £10,000, or attract a FPN ranging from £1,000 to £10,000 for:

- failure to close a business as required under the regulations;
- breaching the early closing requirements for hospitality; and/or
- failing to implement measures to maintain social distancing.

The Northern Ireland Policing Board also said that, 'Overall the PSNI were careful in their use of the Regulations, particularly by following the four Es of; Engage, Explain, Encourage and Enforcement'.

<sup>32</sup> PSNI, Chief Constable's Report to Northern Ireland Policing Board, October 2020 available at <https://www.psnipolice.uk/news/Latest-News/011020-chief-constable-report-to-nipb/>



In addition to use of the CRN as part of the approach to the pandemic, the PSNI was also exploring other future uses of CRNs for some communications offences and hate motivated offences aggravated by hostility. Inspectors understood however that progress on further expansion of CRN would await the outcome of His Honour Judge Marrinan's independent review of hate crime legislation. Judge Marrinan published his report on 30 November 2020.<sup>33</sup>

### Overall finding by Inspectors

In overall consideration of this strategic recommendation, Inspectors took cognisance of operational recommendations relating to specific areas of governance and management needs (dealt with in subsequent paragraphs). The new arrangements implemented as the result of the joint protocol between the PSNI and the PPS provided grounds for optimism about partnership working and what was achievable in terms of new and improved measures relating to governance, management and QA. Nonetheless, some areas required further consideration and Inspectors assessed overall progress in respect of this recommendation as partially achieved.

#### OPERATIONAL RECOMMENDATION 1

**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.**

Status: Achieved.

### Organisational response

*Drivers stopped by Police Officers are considered for SACs [Speed Awareness Courses] and are offered the opportunity to attend, if eligible, as would be the case with those detected by the Road Safety Partnership. This protocol has been in place since the adoption of SACs.*

## INSPECTORS' ASSESSMENT

This recommendation dealt specifically with access to the SAC. Operational recommendation 2 related to the issuing, recording and administration of notices. Inspectors heard and received documentary evidence showing that roadside detecting Officers had been alerted of the need to make speeding offenders aware at the time of detection that they 'may' be eligible for attendance at a SAC. Officers were provided with operational guidance setting out qualifying criteria and the necessary actions to be taken.

<sup>33</sup> DoJ, *Final report into Hate crime legislation in Northern Ireland Independent Review, November 2020* available at [www.justice-ni.gov.uk/sites/default/files/publications/justice/hate-crime-review.pdf](http://www.justice-ni.gov.uk/sites/default/files/publications/justice/hate-crime-review.pdf)

When last inspected CJI considered two separate processes through which the opportunity to undertake a SAC was offered to speeding offenders. For Road Safety Partnership detections by safety camera this was built in and was a routine part of the administrative process when dealing with the offender. This removed the human interaction required when a detecting Officer stopped and issued a speeding motorist with a FPN at the roadside.

Data from the Road Safety Partnership showed that 49,312 offenders were detected for speeding in 2019.<sup>34</sup> Over a similar period between 1 July 2019 and 30 June 2020, the PSNI detected a total of 8,018 speeding offences equating to approximately 14% of the overall detections during the stated periods.<sup>35</sup> Additional data obtained from the PSNI showed SAC up-take over the most recent full three year period between 1 January 2017 and 31 December 2019 as:

- 65% (64,394 out of 99,720) of those eligible to complete a SAC following a detection for speeding by the Northern Ireland Road Safety Partnership went on to complete a SAC; and
- 55% (3,737 out of 6,771) of those eligible to complete a SAC following a detection for speeding by a PSNI Officer went on to complete a SAC.

A difference in process required roadside detecting Officers to firstly consider if the motorist was eligible and therefore qualified for a SAC having considered the appropriate criteria. Having determined that the speed fell within the SAC range, the responsibility rested with the Police Officer to tell the motorist that:

- they may be eligible for a SAC (this was because the Officer was unable at the roadside to check the National Driver Offenders Rehabilitation Scheme to ascertain whether the driver had previously attended a SAC within the last three years); and
- they should delay payment of the penalty for seven days until they had received written confirmation from the Fixed Penalty Processing Centre (FPPC) confirming by way of offer, the option to undertake a SAC.

A SAC was not offered when multiple offences had been detected and a further anomaly meant that, should the motorist make payment in advance of the written confirmation from the FPPC, they would not receive the penalty refund until the SAC had been paid for and the course completed. The circumstances of detection, the weather conditions and the location did not always lend themselves to an environment for information exchanges and engagement. Any omission by the detecting Officer or failure by an offending motorist to fully understand or forget what they had been told, could lead to very different outcomes.

34 NISRA, *Road Safety Partnership 2019 Annual report, June 2020* available at <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/Northern%20Ireland%20Road%20Safety%20Partnership%20Statistical%20Report%202019.pdf>

35 PSNI *Motoring Offence Statistics for Northern Ireland 1st July 2019 - 30th June 2020, August 2020* available at <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/motoring-offences-statistics/2020/june/motoring-offences-monthly-update-to-end-june-2020.pdf>

It was difficult to draw conclusive comparable findings on the take-up rate for the SAC based on the data available. Nonetheless, Inspectors remained of the opinion that specifically designed technology for use at the roadside would add further improvement to the police process. It was a view supported fully by the PSNI (see also Operational recommendation 3).

Inspectors recognised and accepted that demand for technology solutions to support policing continued to grow within a declining budget. Appropriate response required a risk based approach to prioritisation of the PSNI's organisational needs. This recommendation was assessed by Inspectors as achieved.

### OPERATIONAL RECOMMENDATION 2

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 Police Service of Northern Ireland in an effort to improve accuracy and efficiency.

Status: Not achieved.

## ORGANISATIONAL RESPONSE

*The PSNI Digital Programme Board chaired by an ACC has an objective to develop direct inputting of data but this is still at a development stage as delivering a product that can both input and print a form of ticket is costly and complex.*

## INSPECTORS' ASSESSMENT

Officers continued to utilise police issued mobile devices to capture mobile data (through the PUMA system)<sup>36</sup> when administering discretion by way of FPNs. It was a technology solution that had proven itself in terms of improving efficiency and effectiveness but no such solution had been implemented for issuing CRNs or PNDs. Inspectors learned that some work had taken place to improve recording of PNDs (digital coding on NICHE) but the electronic issuing of CRNs and PNDs remained unachieved.

The Digital Delivery Group (DDG) existed under the chair of an ACC and had responsibility for setting and maintaining the digital vision and strategy on behalf of the PSNI. Its remit included prioritisation of the Information, Communication and Technology programme and allocation of funding. In doing so, it was also responsible for identifying and managing risks and taking actions to address any key strategic issues that had major implications across the organisation.

<sup>36</sup> PUMA focused on the mobilisation of key business processes and replicating line-of-business applications into a common set of mobile applications.

Allocation of the resource expenditure budget in 2016-17 equated to 2.7% of the overall budget. The 'Digital Strategy to 2020 and Beyond' was clear that priorities would focus mainly on 'maintaining and running the existing telephone, radio, data and computer systems'.<sup>37</sup>

Inspectors accepted that there were many competing priorities for the development of innovative new and aspirational technology solutions. Maintenance and development of existing technology provision was critical to ongoing service delivery. Inspectors examined DDG minutes and actions and were satisfied that the group took a risk based approach to assessing such priorities and to all identified new areas of development. Budgetary constraints had also played a major role in progressing this specific recommendation.

Inspectors considered achievement of this recommendation in the spirit of a complete system capable of issuing, recording and administering an effective solution for 'all the alternative means of disposal'. In the absence of organisational implementation or part implementation of a whole system solution, Inspectors assessed this recommendation as not achieved.

### OPERATIONAL RECOMMENDATION 3

However, Youth Diversion Officers continued to raise concerns about the timeliness of consultations. This issue should be closely monitored by collating Youth Diversion Officers' 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.

Status: Achieved.

## ORGANISATIONAL RESPONSE

- Youth Diversion Officers (YDOs) provided access to CR [Community Resolution] script to cross check compliance with IOs and escalate locally any non-compliance;
- compliance with YDO contact is considered by both the PPS and the PSNI QA checks and non-compliance monitored;
- in July 2018, Criminal Justice Branch reviewed all CR issued to juveniles in June 2018 for YDO Approval. 85 of 89 (96%) issued were found to have been given approval for CR by YDO. From the remaining four without approval, one was given approval by a Police Decision Maker and one was approved by a Supervisor as YDO not on duty and the offender lived in Waterford so it was deemed inappropriate to wait for approval and have the offender travel back to Belfast to have a CRN issued; and
- all lapses of compliance are graded and acted upon accordingly as per QA spreadsheet.

<sup>37</sup> , PSNI, *Digital Strategy to 2020 and beyond*, 2017 available at <https://www.psni.police.uk/globalassets/inside-the-psni/our-departments/finance-and-support-services/ics/digital-strat-2020/psni-digital-strategy-a4-document-v9.2.3-external.pdf>

## INSPECTORS' ASSESSMENT

This response should be read in conjunction with the Inspectors' assessment at Strategic recommendation 1 (governance and quality assurance). The QAP protocol and the functions of the monitoring Sergeant within the Criminal Justice Branch examined by Inspectors during fieldwork demonstrated an in-depth knowledge that was used proactively to identify actions consistent with good practice and process compliance. Both ensured that areas of improvement and issues impacting operational delivery continued to be identified, monitored and actioned. While recognising that improvement along with the steps outlined in the organisational response, Inspectors felt it important to re-emphasise the significance of maintaining the now established momentum to QA by the Sergeant's role and the QAP. Inspectors assessed this recommendation as achieved.

### OPERATIONAL RECOMMENDATION 4

Inspectors would encourage a thorough scoping of whether Youth Engagement Clinics could improve the governance of Discretionary Disposal for young people.

Status: Achieved.

## ORGANISATIONAL RESPONSE

*(Inspectors summarised the response provided in the self-assessment as follows).*

*The PSNI fully reviewed and scoped this suggestion prior to launch of CR. However, as the result of the review the recommendation was not adopted.*

## INSPECTORS' ASSESSMENT

Inspectors were provided with and examined a substantial amount of background documents and information associated with this recommendation and for all other areas included in this Follow-up Review. This included the review referenced in the response by the PSNI. The review and the rationale identified by scoping as the result of the work carried out by Inspectors included considerations about process, outcome delay and proportionality in respect of young first time offenders with no other aggravating factors.

The review also included a direct input to community resolution by way of approval by the YDO and Inspectors found evidence of that practice. The PSNI recognised through the current QAP practice that this remained an area for further improvement. Inspectors were satisfied that due consideration had and continued to be given to this recommendation and assessed it as achieved.

## OPERATIONAL RECOMMENDATION 5

Governance and management of non-Public Prosecution Service 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.

Status: Achieved.

## ORGANISATIONAL RESPONSE

*(Inspectors summarised the response provided in the self-assessment as follows).*

*In addition to the arrangements for QA and the QAP role established under joint protocol arrangements between the PSNI and the PPS and the proactive role of the Sergeant within the Criminal Justice Branch, a number of new mechanisms had been implemented in support of this recommendation.*

## INSPECTORS' ASSESSMENT

This response should be read in conjunction with the Inspectors' assessment at Strategic recommendation 1. During fieldwork Inspectors reviewed practices of the monitoring Sergeant in the Criminal Justice Branch in regard to this recommendation. There was clear and good evidence that this role provided proactive support in identifying concerns of this nature. This resulted in appropriate interventions that included electronic messaging and phone calls to Officers and staff as deemed appropriate.

The QA processes also identified Officers at various levels for non-compliance. The monitoring Sergeant was also highly vigilant and experienced in identifying areas of concern. A specific process had been implemented for dealing with identified repeat non-conformance (more than one failure in a rolling 12-month period). Repeat failure resulted in a referral to the Police Officer's performance Chief Inspector. This appeared to work well as repeat failures were few. Inspectors assessed this recommendation as achieved.

## OPERATIONAL RECOMMENDATION 6

Whilst recognising that Discretionary Disposals 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.

Status: Achieved.

## ORGANISATIONAL RESPONSE

*(Inspectors summarised the response provided in the self-assessment as follows).*

*On 30 June 2016 the PSNI ceased use of the Discretionary Disposal scheme and introduced the Community Resolution Notice (CRN) as its replacement. The PSNI has now introduced practice that records the decision-making process.*

## INSPECTORS' ASSESSMENT

A range of measures had been incorporated within the newly introduced CRN and to a redesign of the PND that effectively stepped the issuing Officer through progression prompts whereby they recorded how the offender met the eligibility criteria. When the CRN or PND was completed, the victim and the offender were both provided with clear information explaining what it all meant to them.

The IO was required to input data within specially designed areas of the PSNI's core operational information system (NICHE) that had been designed to record the rationale for choosing disposal by PND or CRN. The system provides prompts to document evidence that proved the offence, admission, remorse, previous offending history, resolution details and views of the victim or community. When a PND was chosen as the appropriate method of disposal, there was an additional prompt seeking the rationale for the decision, for example, choosing a PND rather than a CRN.

For certain offences the supervisor had to authorise the issue of the notice on the NICHE system's Occurrence Entry Log (known as the OEL). In doing so the supervisor provided the rationale for the disposal method if this was not clear from the issuing Officer's OEL entry. Evidence from the QA process had identified occasions when supervisors had authorised notices against the Operational Guidance. While improvement was still needed, the evidence indicated that the QA process was working and that it was identifying key issues that were being addressed. Inspectors assessed this recommendation as achieved.

### OPERATIONAL RECOMMENDATION 7

**To provide a more comprehensive assessment of the operation of Discretionary Disposal, the Police Service of Northern Ireland should expand its data capture to include the whole range of Section 75 categories. This was recognised in a recommendation of the Police Service of Northern Ireland evaluation report and Inspectors support its prompt implementation.**

**Status: Partially achieved.**

## ORGANISATIONAL RESPONSE

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*(Inspectors summarised the response provided in the self-assessment as follows).*

*On 30 June 2016 the PSNI ceased use of the DDS scheme and introduced the Community Resolution Notice (CRN) as its replacement. The PSNI has now introduced practice that captures Section 75 categories that is gender, marital status, disability, dependants, ethnicity and community background. A post implementation evaluation into CR was also able review data on age.*

## INSPECTORS' ASSESSMENT

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At the time of the last inspection, Inspectors identified a significant deficit when it came to the capturing the full range of Northern Ireland Act 1998 (the Act) Section 75 categories. The PSNI's Equality, Diversity and Good Relations strategy had a specific theme dealing with 'People and Culture' and was underpinned by a fourth theme of 'increasing trust and confidence in police'.<sup>38</sup>

A 2018 inspection by CJI of equality and diversity within the criminal justice system focused on the implementation of Section 75 (1) of the Act. Although the report acknowledged that progress had been made in respect of CRNs and PNDs, it also confirmed that, 'issues remained in publishing the results'.<sup>39</sup> While the provision of such information to the PSNI was entirely voluntary, the report established that progress in recording data had been described as a 'success story' as a 'higher than expected return had been received'.

The PPDG (discussed at Strategic recommendation 1) remained unable to determine Section 75 patterns across the PSNI areas of discretion because a technology solution had not yet delivered the analytical product needed.

Recommendation 8 of the recent Northern Ireland Policing Board report found that, 'The PSNI should review its records as far as possible to publish Section 75 statistics of those subject to the additional powers and the equipment that it used during the lockdown (including figures based on the community background of the people involved)'.<sup>40</sup>

The relevant policies for PND and CRN included 'Legal basis' sections stating that guidance was Human Rights compliant and did 'not negatively engage any Article under European Convention for Human Rights (ECHR)'.<sup>40</sup>

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38 PSNI, *PSNI Equality Scheme (Equality, Diversity and Good Relations Strategy 2017-2022)*, 2017 available at

<https://www.psni.police.uk/inside-psni/our-policies-and-procedures/equality-diversity-and-good-relations/>

39 CJI, *Equality and Diversity within the Criminal Justice System: An Inspection of the Implementation of Section 75 (1) of the Northern Ireland Act 1998*, September 2018 available at <http://www.cjini.org/getattachment/f2f58a1f-a9f3-449f-a684-567b6db4c667/report.aspx>

40 Northern Ireland Policing Board, *Report on the Thematic Review of the Policing Response to Covid-19, November 2020* available at <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/report-on-the-thematic-review-of-the-policing-responser-to-covid-19.PDF>



Both stated that Section 75 screening exercises had identified no adverse differential impacts and CRN operational guidance acknowledged the need for improved data and ongoing review.

Progress had been made but it was disappointing that Section 75 data being input into the NICHE system by frontline Police Officers was not analysed and reported to aid the assessment and delivery of strategic outcomes. The identified business need required a resolution to this issue by the PSNI as soon as possible.

Inspectors remain concerned that while Section 75 data was being recorded, the absence of statistical outputs and meaningful management information meant that issues or impacts for different equality groups, including implications for governance and effective delivery, remained unknown. Inspectors were also concerned that the PSNI's ongoing review of its Section 75 screening would be limited by this data gap. Inspectors assessed this recommendation as partially achieved.

#### OPERATIONAL RECOMMENDATION 8

The Police Service of Northern Ireland 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 meeting 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.

Status: Achieved.

## ORGANISATIONAL RESPONSE

*The PSNI in response to the evaluation report into the use of discretion and as highlighted by CJI, have implemented this recommendation as part of the District Policing Command (DPC) accountability meetings.*

## INSPECTORS' ASSESSMENT

This response should be read in conjunction with the Inspectors' assessment at Strategic recommendation 1 and Operational recommendation 5. The monthly DPC accountability meetings chaired by an ACC and the quarterly PSNI Performance Board meeting chaired by the Deputy Chief Constable were provided with, and reviewed, a variety of disposal reports that included CRNs and PNDs. The DPC forum had also received a presentation to highlight differences across Districts.

At a strategic level the PSNI monitored and recognised that some differences still remained. This mechanism facilitated ongoing focus where and when it was needed. At the delivery end, the QAP and the role of the QA Sergeant maintained ongoing and close vigil that ensured that remedial action was swift and that necessary learning was disseminated as appropriate. Inspectors acknowledged that efforts to manage identified variances were ongoing, proactive and receiving appropriate attention. Inspectors assessed this recommendation as achieved.

#### OPERATIONAL RECOMMENDATION 9

The Police Service of Northern Ireland should therefore secure the active input of the Public Prosecution Service as a strategic partner in ensuring Discretionary Disposals 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.

Status: Achieved.

### INSPECTORS' ASSESSMENT

The assessment of this recommendation should be read in conjunction with the organisational response and the Inspectors' reviewing comments contained under Strategic recommendation 1. Inspectors assessed this specific recommendation as achieved.

#### OPERATIONAL RECOMMENDATION 10

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

Status: Achieved.

### ORGANISATIONAL RESPONSE

*(Inspectors summarised the response provided in the self-assessment as follows).*

- A total of 5% of all PNDs issued are dip sampled weekly by the PSNI Criminal Justice Branch and a compliance rate along with common errors are recorded;
- a further 5% of all PNDs issued are dip sampled by the PPS which is facilitated by the PSNI. The PSNI Criminal Justice Branch liaises with the PPS on an ongoing basis to discuss and monitor PNDs and any amendments required; and
- the PSNI Occurrence Case Management Team conduct a physical review of the hard copy forms and refer back to the issuing Officer if there are gaps found.

## **INSPECTORS' ASSESSMENT**

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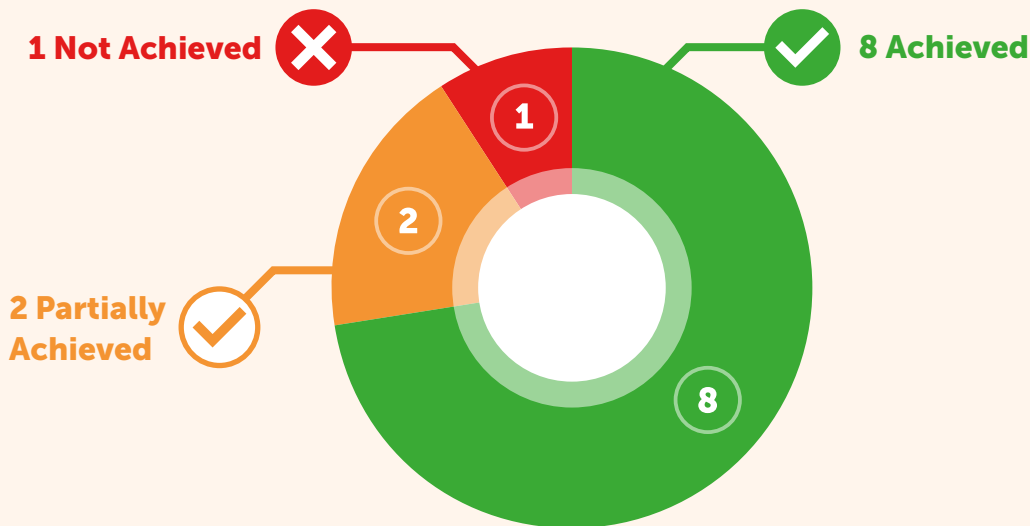
The assessment of this recommendation should be read in conjunction with the Inspectors' reviewing comments contained under Strategic recommendation 1. PNDs were introduced by the DoJ under the Justice Act (Northern Ireland) 2011. Disposal was by way of payment or court proceedings. Arrangements for improved governance, management and QA were identifying PNDs that had been issued in contravention of operational guidelines. Although the PSNI had no legal authority by which to rescind or cancel any such PND once it had been issued by an Officer, the QAP was proving successful in identifying underlying issues to be addressed. Inspectors assessed this recommendation as achieved.

## CHAPTER 3: CONCLUSION

Ten years had passed since CJI published its second report on 'Avoidable Delay' in the criminal justice system.<sup>41</sup> Preventing people from entering an already slow and heavily burdened judicial process was recognised as being more important now than ever. Effective use of discretion was strategically important to delivering that outcome.

Serving justice and maintaining public confidence in the use of discretionary powers by the PSNI was dependent on effective governance over practice that delivered proportionate, fair, and appropriate outcomes for victims and offenders. Maintaining integrity required continuous internal monitoring by the PSNI with effective external oversight of practice and governance by the PPS. Inspectors were satisfied that the PSNI and the PPS had made significant progress in relation to Strategic recommendation 1 and to the accompanying Operational recommendations.

### Graphic 1: CJI overall assessment of implementation of inspection recommendations



The joint protocol between the two organisations was unhampered by process bureaucracy and had resulted in pragmatic effective oversight and good relationships between organisations and individuals with delegated responsibilities. The QAP introduced as part of the joint protocol between the PPS and the PSNI for CRNs and PNDs was working well. The monitoring role fulfilled by a Sergeant within the PSNI Criminal Justice Branch was delivering important strategic and delivery outcomes directly impacting at operational level. That role was critical to the effectiveness of the joint protocol arrangements.

41 CJI, *Avoidable Delay*, June 2010 available at <http://www.cjini.org/getattachment/c0243f51-1e73-47e8-a6fa-344d5f0063c5/Avoidable-Delay.aspx>

When last inspected the full range of Section 75 categories were not being captured. Progress had been made in relation to recording but there was no meaningful statistical outputs or management information to enable identification of issues or impacts for different equality groups. Maintaining public confidence and support from local communities would become more challenging for the PSNI and the PPS with the introduction of new FPN offences, new PND fines and enforcement of COVID-19 regulations. A resolution needed to be found urgently to address the current gap in identifying patterns across the different Section 75 groups through use of the monitoring information now being recorded by the PSNI.

Internal monitoring and joint protocol arrangements for QA were well established in respect of PNDs and CRNs. Those measures needed to be more widely applied to other instances in which discretion had been used. Prosecution cases to be forwarded to the PPS, and for which police discretion had not been applied, required QA oversight by the PSNI and the PPS. Providing that wider scrutiny was considered to be another important level of assurance that discretion had been appropriately and fully considered by the PSNI before a case was forwarded to the PPS for direction.

The COVID-19 pandemic had effected almost every aspect of normal daily life in Northern Ireland. The PSNI played a key role in enforcing the new and changing COVID-19 regulations while maintaining service delivery and existing policing priorities against a backdrop of workforce considerations and public and media scrutiny.

The need for the PSNI and the PPS to improve governance and QA in the use of discretion had been clearly identified in 2015. CJI could not have envisaged the added relevance and importance of those recommendations within the current COVID-19 pandemic environment. During this Follow-up Review, Inspectors were encouraged by the progress made and have identified a number of important areas that require further consideration and development. CJI is likely to return to this inspection topic in a future programme.



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