



**Northern Ireland  
Assembly**

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**COMMITTEE FOR JUSTICE**

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**OFFICIAL REPORT  
(Hansard)**

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**Departmental Briefing on Proposals for  
Alternatives to Prosecution**

27 May 2010

**NORTHERN IRELAND ASSEMBLY**

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Departmental Briefing on Proposals for Alternatives to Prosecution

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**Members present for all or part of the proceedings:**

Lord Morrow (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Jonathan Bell  
Mr Tom Elliott  
Mr Conall McDevitt  
Ms Carál Ní Chuilín  
Mr Alastair Ross

**Witnesses:**

Mr Paul Black )  
Mr Gareth Johnston ) Department of Justice  
Ms Janice Smiley )

**The Chairperson (Lord Morrow):**

With us today are Gareth Johnston, head of the justice strategy division; Janice Smiley; and Paul Black from the criminal policy unit. You are welcome here today. Gareth, you are becoming a regular. I hope that you do not tire of us too soon.

**Mr Gareth Johnston (Department of Justice):**

I hope that the Committee does not tire of me.

**The Chairperson:**

We welcome you and your team here today.

**Mr Johnston:**

As you say, Chairperson, I have appeared before the Committee a couple of times already. However, I will ask my colleagues to introduce themselves.

**Ms Janice Smiley (Department of Justice):**

I am head of the criminal policy unit in the justice strategy division and have been in that post for five years. My responsibilities include sentencing policy development, including alternatives to prosecution and custody, sentencing guidelines and community-based restorative justice. Prior to that, I spent around 14 years in various operational, policy and legislative roles in the Northern Ireland Prison Service. Prior to that, I spent a period in what was then known as the Police Authority.

**Mr Paul Black (Department of Justice):**

I joined the Northern Ireland Civil Service in 1988. Since then, I have worked in the Compensation Agency, the Public Prosecution Service and the criminal justice directorate of the Northern Ireland Office. For the past six years, I have been a deputy principal in the criminal policy unit of the justice strategy division.

**Mr Johnston:**

Last week, I provided the Committee with an overview of legislative proposals for potential inclusion in a justice Bill. Today, we will outline specifically the package of proposals on alternatives to prosecution, which aim to improve system efficiency in dealing with relatively minor offences.

There is growing recognition that submitting all instances of minor offending to the full prosecution process, especially when they are uncontested and court fines are the likely disposal, may not necessarily deliver a proportionate justice outcome. It ties up valuable police and prosecutorial resources that could be better directed to front line policing duties and prosecution of more serious offences. Those more minor cases slow down the court system.

We propose the introduction of three measures that will provide new powers to police and prosecutors to deal primarily with non-habitual low-level offending by adult offenders as an alternative to formally prosecuting the offence at court. The three measures are an extension of fixed penalty powers for police and the creation of two new disposals for prosecutors; the power to award a financial penalty and the creation of a system of conditional cautions. Each would be offered to offenders in different circumstances. However, those who are accused of offences would retain their right to ask to be tried for the offences in the usual way instead.

Our first proposal deals with fixed penalties that build on existing powers that are already exercised by police in dealing with certain road traffic offences. We propose that the powers be extended to allow police to offer fixed penalties for certain low-level criminal offences to first-time or non-habitual offenders.

We have looked at the volume and profile of summary offences that attract average court fines of between £50 and £100. We have spoken to police about other lower-volume offences for which fixed penalties might still represent a more proportionate response. As a consequence, nine offences have been identified as being potentially suitable for a fixed penalty regime. They are simple drunk; breach of the peace; disorderly behaviour; indecent behaviour, which I emphasise relates to behaviour such as urination in the street rather than anything more serious; obstructing police; purchasing alcohol for a minor; selling alcohol to a minor; criminal damage, although we propose that the penalty should apply only to cases in which damage amounts to under £200; and petty shoplifting, which is limited to first-time offences that involve goods that amount to up to £100 and are recovered in a resaleable condition.

We propose fixed penalties of £40 and £80, which are broadly comparable with respective court fines. They would be offered by police for only those nine prescribed offences in accordance with detailed guidance and training on the appropriate exercise of discretion by officers. That would include, for example, considering the impact of an offence on the victim, limiting their use to non-habitual offenders and preventing issue in circumstances in which the offence might have been motivated by domestic violence, hate crime or behaviour of a sexual nature.

We want to keep the list of offences under review and propose that it could be amended by secondary legislation. As I suggested last week, we feel that it is right to start with a relatively

modest core of offences that still have significant impact but that would allow us to review the experience of using those new penalties over time and see how that impacts on decisions on the list of offences as experience moves forward.

If paid on time, a fixed penalty would not form part of an individual's criminal record, although a separate administrative record of the fact that it had been issued would be kept. That would influence decisions on the use of fixed penalties for any subsequent offences. However, if an individual does not pay a fixed penalty within 28 days or there is a request that it be prosecuted instead within that period, the penalty would be considered to be in default. If someone does not pay the value of the penalty in default, it would be uplifted in value by 50% to reflect the additional handling costs. It would be registered as a court fine and would be enforced through the existing court fine default arrangements. Any penalty registered at court on default would be recorded on the criminal record as it would become a fine that was imposed by a court. That would, of course, be a further incentive to pay the penalty early.

The second proposal deals with prosecutorial penalties. It proposes to create new powers to enable public prosecutors to offer certain offenders a financial penalty, up to a maximum of £200 — the equivalent of a level 1 court fine — as an alternative to prosecution of the case at court. It is proposed that those penalties would be used in the following circumstances: first, where the offence is relatively low level and the evidence meets the threshold test for prosecution; secondly, where the individual admits the offence; and, thirdly, where the prosecutor considers that it would be an appropriate diversionary disposal, taking account of all the relevant factors in the case.

We are not proposing to identify specifically in statute a list of particular offences that could attract a prosecutorial penalty, as the circumstances of an offence in individual cases might make it appropriate or inappropriate. The prosecutor would exercise his or her professional judgement to determine in which cases that type of disposal would be appropriate, taking account of the particular circumstances of the offence, the individual's previous offending history and, of course, the impact on the victim. It would be limited to offences that would be capable of being heard in a Magistrate's Court, and the PPS would produce clear guidelines for prosecutors in exercising those judgements.

We also propose that the prosecutor should have a specific statutory power to attach a financial compensation order to the proposed penalty. That is important from the point of view of

victims. It would mean that the offender could meet the cost incurred by victims in making good the damage that had been caused. As is the case with a police-issued fixed penalty, a prosecutorial fine would be recorded on the offender's criminal record only if he or she defaults by failing to make payment within the agreed timescale.

The third proposal is for conditional cautions, and it targets a different group of offenders from those targeted by the other proposed penalties. Although a conditional caution could be used in some cases of first-time offending, it is really aimed at individuals who already have some history of minor offending that is suggestive of an ongoing pattern of behaviour that is contributing to their offending. The prosecutor could determine that a formal caution would come with appropriate rehabilitative or reparative conditions to be fulfilled by the offender and aimed at minimising their risk of further reoffending.

Rehabilitative conditions might, for example, include participation in programmes that address substance misuse or other offending behaviour or aspects of a chaotic lifestyle that contribute to a pattern of offending. Reparative conditions, on the other hand, would provide an opportunity for a course of action to be agreed between a victim and an offender as to how the harm caused by the offence could be repaired and better community relations restored. Last week, the Committee raised the issue of continuing to develop restorative justice interventions, and that is one example of how that can be done.

Compliance with the conditions would be monitored and failure to comply with them without a reasonable excuse would result in the original offence being reconsidered for prosecution. An offender can be brought back and put through the prosecution system if he or she does not comply with the conditions that have been imposed. The conditional caution would be reflected in an individual's criminal record in the same way as other cautions are.

The broad proposals have been the subject of public consultation, and the majority of the 29 respondents welcomed the introduction of additional diversionary disposals for low-level offending. The reservations expressed fell broadly into four categories: first, concern that allowing police to exercise fixed penalty powers might lead to net-widening; secondly, concern that the focus on financial penalties could have a particular impact on those on low incomes; thirdly, concern about the list of offences attracting fixed penalties; and, fourthly, concern that conditional cautions would need to be adequately resourced to be effective.

I will deal with each of those concerns in turn. First, there is the concern about net-widening; in other words, that behaviour that is not currently treated as criminal would be treated as such under the new fixed penalty powers. In response to that, we have indicated that officers would be fully trained in their use and would operate in accordance with clear guidance. The issue of fixed penalty notices would be supervised internally, and, in addition, we expect that the Criminal Justice Inspection would want to review the early experience of their operation. There were particular concerns that net-widening would occur if young people were included in the scope of disposals, given that there are already excellent diversionary options available to young people through youth conferencing. Consequently, we proposed that the minimum age for each of the disposals proposed is 18 so that the usual disposal for young people would continue to be the youth conference.

Secondly, we have sought to ameliorate the impact of financial penalties on those on low incomes in a number of ways: first, by setting the level for the fixed penalty slightly lower than those for equivalent fines imposed by courts; secondly, by extending the time limit for paying fixed penalties to 28 days to help individuals to plan their payments and minimise the risk of default; and, thirdly, in recognition that prosecutorial fines might be higher and might have compensation awards attached, by making provision that payment could be made in instalments.

The third concern was about resourcing conditional cautions. We are committed to ensuring that measures are adequately resourced before implementation. In some cases, it is about using existing statutory and community services more effectively, and, in others, it is about buying in the necessary expertise. However, we will consider moving forward in a measured way, perhaps beginning with a pilot to test the effectiveness of particular interventions in the whole area of conditional cautions.

Finally, two specific concerns were expressed about the list of offences. The first concern was about shoplifting. We are proposing that those provisions would apply only to goods up to £100 if there was no loss to the retailer because the goods were recovered in a saleable condition. However, we recognise the concerns of some smaller retailers. The proposals have had the support of Belfast City Centre Management, which represents a wide range of retailers in central Belfast, as a short, sharp way of dealing with first-time shoplifters that does not tie up staff in having to attend court to give evidence. There will, of course, be guidance on the circumstances

in which it would be appropriate to use those penalties in shoplifting cases.

Secondly, there were concerns about the inclusion of an offence of obstructing police and a fear that that might mean that the police would act as judge and jury. Anyone will have a right to refuse to accept a fixed penalty, in which case the case would follow the normal prosecutorial process. That right to go through the prosecutorial process would be clearly presented to people; indeed, it would be written on the ticket that was issued. We recognise both sets of concerns, and we are trying to deal with them in the way that I have outlined.

I turn now to costs. The implementation of the proposed disposals would necessitate one-off changes to IT systems, which would incur one-off capital costs of about £200,000 that we would hope to meet from reprioritising existing capital resources. Ongoing administration costs will be absorbed by the agencies. For the most part, we would not be creating new business but dealing with existing business differently. However, there are significant longer-term efficiency gains to be made, particularly by the PSNI. Such gains would enable the Chief Constable to minimise the time spent on administrative tasks and to maximise the time officers spend on front line policing duties. At the same time, police would face the administrative costs of logging the fixed penalty tickets, and we are exploring the options for that with the PSNI. Nevertheless, when we compare those costs with the costs incurred by the PSNI in preparing prosecutorial files in all of those cases, we can see that there are significant gains to be made. The Public Prosecution Service would make more modest gains that would enable prosecutors to maximise time spent on prosecuting those accused of more serious offending.

The number of disposals will depend on take-up rates, but we anticipate that around 3,000 cases could be diverted from courts in this way — 2,000 by way of fixed penalty notices and up to 1,000 by way of prosecutorial penalties and conditional cautions. The net efficiency gains for the system would be significant. As I said, the gains made will depend on exactly how the logging of tickets is administered, but we are estimating that there will be annual gains of between £750,000 and £1 million.

In summary, the proposals are tailored to meet locally identified needs and to provide for a proportionate but effective response to non-habitual low-level offending. They would deliver diversionary options that address offending, take account of the impact on victims and improve the speed and effectiveness of the justice system.

**The Chairperson:**

Thank you, Mr Johnston. You talked about net-widening. I continually hear from police and the media and read in newspapers that the PSNI is so snowed under with paperwork that its officers cannot get out to provide front line services. The new Chief Constable has made it a top priority to get qualified policemen out of back-room jobs and into dealing with crime on the streets. Are the police enthusiastic about the proposals that you have outlined today?

**Mr Johnston:**

The Chief Constable is very concerned to see the early implementation of these powers because they would assist him in his objective of getting more police officers into front line work. Although the proposals will make an important contribution, we are also exploring other angles; for example, the streamlining of the files that the police present to the Public Prosecution Service in cases in which there is a recommendation of no prosecution. There is a programme of work aimed at reducing police bureaucracy and helping the Chief Constable to reach his aim of getting more officers back into communities and into neighbourhoods.

**The Chairperson:**

I believe that 39 antisocial behaviour orders (ASBOs) were served last year. I do not think that a single one was served in my Fermanagh and South Tyrone constituency. There is antisocial behaviour in my constituency but not, apparently, to a degree that has ever merited anybody getting an ASBO. When I say my area, I mean PSNI F district, which takes in a fairly big geographical area that includes Fermanagh, south Tyrone, Cookstown and Omagh, yet not a single ASBO has ever been issued there. I do not know the reason for that, but I know the number of complaints that I get about antisocial behaviour; I received three in one day last week. Fines are perhaps going to be handed out to offenders. However, no ASBOs have been issued in the cases that I outlined where I live.

Society as a whole is wondering what the point is. The public will say that the system is going in the wrong direction. They may understand that this is being done to alleviate and lubricate the clogged court system to make it more effective and efficient. However, I wonder whether they have a full appreciation of what is being offered.

There were 29 responses to the consultation process that you carried out. That is not an

overwhelming response, is it?

**Mr Johnston:**

We did go out to try to encourage responses and we made sure that the various stakeholders from the statutory and voluntary sectors were aware of what was happening.

We are talking about a relatively small group of mainly first-time and non-habitual offenders. If someone is causing a continued nuisance, indulging in antisocial behaviour or creating a real problem in a community, I would not expect that person to get a fixed penalty notice or a prosecutorial fine. There are more appropriate ways of dealing with such a person. That said, the system does allow communities to see swift action being taken against first-time and non-habitual offenders. It is not the case that someone offends and then, months later, appears before the court to receive a relatively small fine. A fine may be given there and then if an offender has the right identification documents or it may be given the next day at a police station. Therefore, there is a rapid response, which is very clearly linked to offending.

ASBOs are not my area. However, I am conscious that they are a last resort for dealing with antisocial behaviour. There are a number of stages that can be called into play before that, including — and I may not get the nomenclature quite right — antisocial behaviour contracts and other interventions, which are carried out by the Youth Justice Agency. The Department will be bringing forward proposals for a fresh community safety strategy, on which the Committee will have an opportunity for input. The strategy will look afresh at all the issues surrounding antisocial behaviour. If there are concerns, such as those that you expressed, that will provide the opportunity for those to be picked up on.

**The Chairperson:**

A day in court can have a sobering effect on people. If the system becomes very casual, it will not have the same impact on offenders. However, the proposals could be seen as though offenders will just be visited, fined and told their rights beforehand to ensure that we do not offend them too much and, then, life goes on.

**Mr Johnston:**

Again, we are talking mainly about first-time offenders. If someone starts to present with a pattern of offending, they will absolutely go through to the court stage, which sends a very strong

message to the individual. That said, the experience of being stopped by a police officer, having all the details taken down and being brought to the station to be issued with a fixed penalty notice presents the opportunity, if needs be, for some very stern words that are linked directly to the offence and the time at which it was committed. That can have a significant rehabilitative impact if the person involved is a first-time offender and not someone who is starting a pattern of offending. However, I assure the Committee that someone who offends for a second or third time should be pursued by the prosecutor in the usual way for pursuance in court. In a sense, we are moving up the scale of responses according to the circumstances that are presented to us and the likelihood of reoffending.

**Ms Ní Chuilín:**

My question is about fixed penalties. Some of the behaviours listed in the submission — I am not even trying to be funny — are the sorts of behaviours that occur in my constituency from a Thursday evening to a Sunday. The people who behave in those ways are very cute. I have heard stories about people drinking in a street, where there are no signs prohibiting that, moving on because they know that the PSNI or the residents cannot lift their drink unless their bottles or cans are open. They know that there are ways round it. They know that they can stand in the street, make noise and do some of the things listed in the submission and will not be touched. I know that councils, through the Department for Social Development, are trying to introduce ways of addressing that. However, will the proposed measures be in addition to fines? When do you envisage those measures will be implemented?

**Mr Johnston:**

The measures will add to the existing disposals. As you say, the Department for Social Development, which has lead responsibility for such policies, has been examining the relationship between alcohol and offending, and it continues to keep that under review. We intend to put relevant provisions in the proposed justice Bill, which the Minister wishes to bring before the Assembly after the summer vacation. The speed at which we can bring those in will then depend on the processes. Janice and her team have been working closely with police and with the Public Prosecution Service on implementation issues, including changes that need to be made to the computer systems. Once the legislation is in place, we aim to be in a position to move quickly to on-the-ground implementation.

**Ms Ní Chuilín:**

I am in favour of alternatives to prosecution. I understand that the measures are for first-time offenders only. Drinking and urinating in the street is antisocial. It takes almost two years for someone involved in antisocial behaviour to be issued with an ASBO. It took nearly three years to evict one family in my constituency for antisocial behaviour and a couple of months shy of two years to evict another two families. I understand that people have rights. However, it is a slow process. It can take two years from putting in a question about someone's antisocial behaviour in my constituency to finding out they have been issued with an ASBO. The behaviour listed in the submission is the stuff of nightmares for residents at the weekends. However, they are the first to say that they do not want kids, in particular, to go through the criminal justice system. If fines do not work, perhaps we need to look at alternatives, such as restorative justice. I know some kids who pay adults to buy drink for them. I know that there is test purchasing. However, those adults would gladly pay a fine or £40 because they have the money in their pocket. That is no big deal to them.

**Mr Johnston:**

We certainly recognise the seriousness of antisocial behaviour. One or two recent cases in other jurisdictions have highlighted, tragically, the impact that continued antisocial behaviour can have on people and the lengths to which it drives individuals.

The comment about restorative justice is relevant. We continue to work on restorative interventions. Along with Atlantic Philanthropies, we have been funding local schemes with Northern Ireland Alternatives and Community Restorative Justice (Ireland). They have had considerable success in bringing offenders and victims together and helping offenders, including young offenders, to see the impact of what they are doing. Youth conferencing has helped to have that same effect. However, I will pass the Committee's concern about the delay of ASBOs back to colleagues. We are looking at tackling delay in the justice system generally, and the Committee will get further briefings on that.

**Mr McDevitt:**

I want to delve into some of the practical issues. You said that an individual can opt to have his or her day in court. You clarified that that refers to adults and does not apply to children. How is that choice offered to the offender? Is there an opt-out clause? Could they accept a fixed penalty notice and subsequently within 20 days, for argument's sake, opt for their day in court?

**Ms Smiley:**

A police officer will establish whether a criminal offence has occurred and whether there is evidence that could be used in court. If the individual does not want to accept the penalty, the offer will be made on the basis that the officer believes a criminal offence has been committed. At that point, the individual can accept or reject the fixed penalty notice. If they accept it, there is a period of 28 days in which they can reflect, perhaps take advice and consider whether they would prefer to have their case prosecuted. That should be explained to them by the officer at the time the notice is issued. However, that explanation will be replicated on the ticket which will explain the process, their rights and how they exercise those rights. If the person wishes the case to be prosecuted, they will have to tear off a portion of the ticket and return it to the address shown. There are two options.

**Mr McDevitt:**

The fixed penalty notice could literally be administered there and then or it could be administered at a later point if the person was drunk and disorderly and not in a fit state to receive it, I presume.

**Ms Smiley:**

Yes. The two important points are to make sure that the person fully understands and makes an informed choice about accepting the penalty, and to ensure that their identity can be confirmed. There is little point in issuing a ticket to someone if you are not sure that they are the right person. There are checks that the police can do immediately; for example, the individual may have some photographic ID, and the police can call the station and check other information held on the electoral role, for example, that will enable them to identify the person. If that is done, the penalty can be issued in the street. If there is any concern over identity, the person will be asked to come to the station or, if required, be arrested and brought back to the station under a constable's existing powers of arrest.

**Mr McDevitt:**

Ms Ní Chuilín's made a point about whether this will act as a genuine disincentive. At one level, it seems an appropriate level of fine, but it could also be argued, to play devil's advocate, that the fines are pretty low level. How did you come to that particular price point of having fines of £40 or £80?

**Ms Smiley:**

We looked at volume offences that, when they went to court, received either a £50 or £100 court fine. At that point, we looked at what might be considered an incentive for someone to accept a penalty as opposed to going through the court process. The average court fines reflect sentences across a spectrum of minor to more serious offences, so if a fine was £50 on average, we might say that it should be slightly lower for first-time offenders, which is why we plump for £40, and £80 as against a £100 court fine.

**Mr McDevitt:**

Will you review those if you feel that they are not adequate?

**Ms Smiley:**

Yes; power will be taken to allow those to be varied in respect of the operation and inflationary matters in times to come.

**Mr McDevitt:**

I have one last contextual question. The context of an offence, such as breach of the peace or disorderly behaviour, is quite important, particularly here. The context could concern the Holylands area of my constituency on St Patrick's Day, and I think the residents would be quite keen on the proposal. Or, it could be in my constituency on an interface during a sectarian episode. One would assume that we are not talking about using fixed penalties to mop up sectarian riots. How will we provide for that in the legislation? How can we ensure that this practice does not creep into other aspects?

**Ms Smiley:**

The power is there for a constable to issue a ticket, but the guidance that will be provided by the Department and by the Chief Constable to his officers will indicate circumstances in which it is not appropriate to use it to deal with something that might inflame an already inflammatory situation.

**Mr Bell:**

I refer the third option. Will the same principles that operate in the Youth Justice Agency be applied to victims? For those who consider restorative justice, the first condition is that the victim is happy to engage in that process. Their involvement seems to have a direct effect on

reducing future crime. Perpetrators meet face to face with their victims and see that the distress caused by a burglary is greater than can be repaired by claiming on house insurance. They see the real impact. Will those same principles apply across the board?

**Mr Johnston:**

The set of circumstances is different. We do not propose with conditional cautions that there would be the full arrangement with youth conferencing, in which the offender and the victim are brought together in a very controlled and facilitated set of circumstances. The rehabilitative conditions might include the offender apologising to the victim and paying back the cost of the damage. If it had been a case of criminal damage and it was going to cost £100 to put it right, the offender would pay to have it fixed. Those are the restorative interventions that we are thinking about. Janice may want to add to that.

**Ms Smiley:**

It would be an act of reparation. For example, the victim might agree that a damaged fence might be repaired by an individual at their own expense and through their own labour. It is more about engaging with the victim, almost the same as what happens through basic restorative justice practices. The victim themselves want to engage in the process and want to help the other person understand that the impact of what may have been a relatively minor offence was serious for them. As Gareth said, it may involve an apology, an act of reparation or making some reparation to the community if the victim does not want direct reparation.

**Mr Bell:**

Where will the money that is raised from this go?

**Mr Johnston:**

I am afraid that the money from the fines will go to the Consolidated Fund in the same way that fines generally go. Would that it did not, but it is up to the Department of Finance and Personnel.

**Mr Bell:**

I know for a lot of people involved in road traffic offences the £60 fine seems to disappear. By doing this, I can appreciate that we will save money through the courts, establish better justice and see more satisfaction for a lot of victims. We will also see a lot of minor offences taken out of the court system, which means that the backlog of cases can be addressed. However, I wish

there was some better way to use the money. It could be redeployed to put more police personnel on the streets.

**Mr Johnston:**

We will come back to the Committee next week to discuss the offender levy and proposals for a victims' fund. We intend that that will apply to the fixed penalties that are charged through this scheme. As well as the £40 or £80 fines, there will be an additional fee that will go into funding additional victims' services. In that way, we will not recover the full value of the fine, but at least we will start to make a link between the offence and the costs to the community of putting things right.

**Mr Bell:**

You mentioned shoplifting and said that the goods should be returned if they are in a good enough condition. If someone steals food or confectionery — and a lot of that crime is of that nature — and they are prepared to replace it, as well as pay the fine, does it still count? You said that the goods had to be in a saleable condition.

**Ms Smiley:**

Officers will exercise their discretion. In the case of someone taking a sandwich from a shop, for example, police officers will use their judgement to decide whether the offence is significant enough to be dealt with in that way.

**Mr Bell:**

I was in court in a professional capacity in not dissimilar circumstances. There are major costs involved in putting cases through the courts. If the offender is prepared to pay the £40 fine plus the cost of what was stolen, could that be factored in?

**Mr Johnston:**

We will certainly look at that.

**The Chairperson:**

A person could replace the Mars Bar that they took, for example.

**Mr Elliott:**

Thanks for the presentation. I am attracted to the idea of fixed penalties because, at the moment, people are not penalised for some offences because the police do not have the resources, time or manpower to do so. People who obstruct police, for example, are often just told to behave themselves. Fixed penalties could be useful in that sense, but my concern relates to reoffending. If an individual pays a fixed penalty in full, it will not be recorded on their criminal record. Therefore, unless there is local police knowledge, how will you know whether people are reoffending? People could offend 10 times and get a fixed penalty or no penalty. How do you get around that?

**Mr Johnston:**

There will still be circumstances in which telling someone to behave themselves remains appropriate. As you suggested, fixed penalties provide an option in other sets of circumstances. As regards police knowing whether someone has had a fixed penalty previously, amendments to the police's Niche IT system mean that the relevant information will pop up on the record. Rather than relying on local knowledge, we will put the information on the computer system. It will not be part of the formal criminal record, but it will be part of the individual's computer-system record.

**Ms Smiley:**

It is part of the monitoring process. One of the factors in an officer's determination of whether to issue a fixed penalty will be whether the individual has received a fixed penalty in the past, what it was for and how long ago it was issued. As part of the identity checks, officers will check whether an individual has received a fixed penalty for a previous offence. As Gareth said, that information will be available centrally, and it may be part of the determination that it is not appropriate to issue a further fixed penalty and that it should be prosecuted in the normal fashion.

**Mr Johnston:**

That information will also be available to police on the street. In a situation in which a fixed penalty may be issued on the street, an officer will be able to radio in to check whether the individual has received any fixed penalties in the past.

**Mr Elliott:**

Do you envisage the powers being abused by a policeman who does not like a certain individual?

**Ms Smiley:**

Safeguards are in place and officers will follow guidance. There will be a requirement for the tickets that are issued to be monitored by supervisory officers before they are processed onto the system. That is a determination that the offence has occurred and will meet the test of a prosecution. It will be processed in that way and that internal monitoring will be ongoing. As Gareth mentioned, that will be subject to scrutiny in the normal course of operations when there are inspections on what police officers do and how they exercise their functions.

**Mr Ross:**

Where else in the UK have the schemes been run?

**Mr Johnston:**

England and Scotland have fixed penalty schemes. England does not operate a prosecutorial fines scheme, but Scotland does.

**Ms Smiley:**

Conditional cautions are primarily in England. The Republic of Ireland also has fixed penalties. We looked at a range of jurisdictions that faced the same problems and have developed different solutions to suit their local needs.

**Mr Ross:**

How are the schemes working elsewhere? I am fairly supportive of the schemes, but I understand the Chairman's point that a day in court is more intimidating and may make it less likely for someone to reoffend. Are there any statistics on the reoffending rates of those who have gone through the fixed penalty scheme as opposed to those who have gone through the courts?

**Mr Johnston:**

We have two pieces of learning: one from England and one from Scotland. The fixed penalty scheme in England already covers a larger number of offences than we propose to cover. However, it was proposed, at one stage, to extend fixed penalties in England to a much wider range of offences. The scheme was extended to include possession of cannabis, which is now also in place in Wales, and there were also much broader proposals. However, it was quickly realised that fixed penalties were being used in too broad a range of circumstances in which the

correct course was prosecution through the normal process. In Scotland, when an offender was given the option of a prosecutorial fine but did not reply, that was taken as a yes. As a result, the Scottish scheme ended up with significant numbers of offenders in default. Therefore, we are going to make sure that people accept the penalty upfront before it is imposed.

**Mr Ross:**

You said that a fairly modest number of offences would be included in the fixed penalties. That is the right approach. We do not want to go so far that we have to claw it back, as was the case in England.

If the scheme is successful in Northern Ireland, perhaps we could look at extending it to include the range of offences that were settled on in England. What are those additional offences?

**Mr Johnston:**

Janice might want to come in on that. Some of the offences relate to the sorts of areas that are on our list, such as alcohol and criminal damage. Including those offences would push the net a little wider.

**Ms Smiley:**

The scheme in England includes a broader range of offences in the same groupings. In most cases, they are not volume offences, but offences for which fixed penalties would be considered an appropriate disposal, as opposed to taking a very minor offence to court. We opted to go for the volume offences and, in consultation with the police and others, offences that may be seen as too trivial to necessarily always be dealt with in court. However, we did not want to go too far in the initial phase and wanted to target those offences which seemed the most appropriate. That way, based on an evaluation of the system and a review of its effectiveness, we can see how the system works and whether we want to develop it.

**Mr Johnston:**

Examples of some areas that are covered in England and Wales that we are not currently proposing to cover include nuisance telephone calls and knowingly giving a false alarm to the Fire Service. However, we intend to review the list of offences and there is the potential to extend it if we feel that the scheme has been successful. We would come back to the Committee

before doing so.

**The Chairperson:**

We will stop there. I thank Gareth Johnston, Paul Black and Janice Smiley for their briefing. It would be useful if you could supply the Committee with a summary of the responses to the consultation. We look forward to receiving that information.

**Mr Johnston:**

We will arrange for you to receive that with all haste.

**The Chairperson:**

Thank you.

Are members content that we ask Assembly Research Services to provide a paper on how effective similar non-court-based alternatives have been in other jurisdictions? That would be a useful exercise. Mr Ross touched on that point.

*Members indicated assent.*