Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Justice Bill: Parts 5 and 6

9 December 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Sir Reg Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Paul Black	)	
Mr Tom Haire	)	Department of Justice
Mr Gareth Johnston	)	
Ms Janice Smiley	)	
Ms Louise Cooper	)	
Mr Hugh Hamill	)	Probation Board for Northern Ireland
Mr Brian McCaughey	)	
Mr Pat Conway	)	Northern Ireland Association for the Care and Resettlement of
Mr David Weir	)	Offenders
Ms Edel Quinn	)	
Ms Paula Rogers	)	Include Youth

Ms Koulla Yiasouma)

The Chairperson (Lord Morrow):

Today's session will focus on Parts 5 and 6 of the Justice Bill and schedule 4, relating to the treatment of offenders and alternatives to prosecution. We were to be out of the last session by 3.00 pm and it is now 3.20 pm, so we have some time to make up. From here on in, strict timings will be enforced. I ask members to bear that in mind when they are asking questions. I welcome Mr Johnston and his team. There will be 10 minutes for each oral presentation and 20 minutes for questions — strictly, otherwise we could be here until 10.00 pm, and I suspect that no one is up for that at the moment.

Members have been provided with an Assembly Research Services paper and a paper on the issues raised in other relevant written submissions on the treatment of offenders and the alternatives to prosecution.

Mr Gareth Johnston (Department of Justice):

I will ask Tom Haire, the head of the criminal law branch, to speak to Part 5 of the Bill, which is about treatment of offenders, and then Janice Smiley will speak to Part 6, which is about alternatives to prosecution.

The Chairperson:

There may have been a misunderstanding on my part; it is five minutes for presentations. I suspect you will not need more than that anyway.

Mr Tom Haire (Department of Justice):

I am not sure. I will give a fairly short summary of Part 5, which contains only eight clauses. It builds on and adjusts existing sentencing powers. It does not create any new offences; it just enhances the court's powers in a number of disparate areas.

Clause 56 increases the penalty for common assault when dealt with summarily to six months. A penalty of two years is also available on indictment within existing law. The change brings the base sentence for common assault up to the same level as an existing offence called aggravated

common assault. That offence is actually being repealed in the Bill, and it is all being amalgamated into one single same-penalty offence for common assault.

Clause 57 increases the penalty for having an offensive weapon on school premises and brings it into line with our knife and offensive weapons package. It doubles the summary conviction penalty from six months to 12 months. Again, indictment is already available and carries a sentence of four years. Together with clause 98, it puts our knife crime and offensive weapons powers into one single set of provisions.

Clause 58 extends the period for which a sentence can be deferred from six to 12 months. That will provide an increased opportunity for courts to monitor and assess offenders, and will allow victims to see how offenders respond before a court passes sentence.

Clause 59 improves the existing legislation on sex offender licensing. It deals with the breaching of licences when a residency requirement, which is currently in law, determines which court an offender should be brought to. The current statutory reference to where the offender resides can cause difficulties in a limited number of cases. We are improving the law to correct those anomalies, and to ensure that the correct court is available in the correct circumstances.

Clause 60 is a technical amendment, which will correct the type of judge who can impose, extend or discharge a closure order. A closure order is used to close premises which have been used, for example, for certain prostitution offences under the Sexual Offences Act 2003. I should point out that that particular provision has not yet been commenced. It is a preparatory adjustment, so that the right level of judge will consider closure order applications.

Clause 61 adds money laundering, bribery and a series of fraud offences to what is called financial reporting orders law. A financial reporting order requires the offender to make reports of their financial affairs to law enforcement agencies for anything up to 20 years. They can already be applied to theft, fraud and offences under the Proceeds of Crime Act 2002.

Clause 62 adds hijacking to the public protection sentencing regime. Again, that was a gap in our law, and its inclusion means that a person who is convicted of hijacking can, in appropriate

circumstances, receive a sentence that requires risk assessment before release.

Clause 63 is an adjustment to ensure that the supervised activity order, which is an alternative to custody for fine default, is available when commenced to anyone who has had a fine imposed anywhere else in the EU, and who lives or moves to live in Northern Ireland. It is part of an EU directive requirement to ensure that there is mutual recognition of financial penalties across the EU.

The Chairperson:

Thank you, Mr Haire. Any member who wants to seek clarification on some of the things that Mr Haire —

Mr O'Dowd:

Chairperson —

The Chairperson:

It is not questions as such, just clarification. OK?

Mr O'Dowd:

That is a difficult one; you can tell me if I am right or wrong. Why must there be a special category for the possession of a knife on school premises? I would have thought that if there was an offence for carrying a knife that that would apply no matter where you are.

Mr Haire:

There is an existing offence for that, but it was not mapped into the sentencing powers, so we are bringing it in.

Mr O'Dowd:

OK.

The Chairperson:

I take it that everyone is well clarified. Can we move on?

Ms Janice Smiley (Department of Justice):

We last spoke to the Committee on 27 May about proposals for alternatives to prosecution. At that time, we indicated that the proposals were for an expansion of fixed penalties and the introduction of conditional cautions. That was to help system efficiency in dealing with minor offending by first time and non-habitual offenders in three ways: enabling offences to be dealt with proportionately at an early juncture without a full prosecution; enabling police and prosecutorial resources to be better directed to front line policing duties and prosecuting more serious offending; and utilising conditional cautions to begin addressing the sorts of behaviour that underpin the commission of offences and to minimise the risk of reoffending. Although those provide opportunities for certain uncontested cases to be dealt with soon after the commission of the offence, offenders still retain their rights to ask for the offence to be tried at court instead.

Part 6 of the Bill contains 20 clauses. Clauses 64 to 75 in Chapter 1 deal with the creation of the fixed penalties that build on existing fixed penalty powers already exercised by the police when dealing with certain road traffic offences.

Clause 64 and schedule 4 set out the eligible offences and identify which of them attract the £40 penalty and which the £80 penalty. Those are set out in the paper that we provided to the Committee. There are certain limitations on their use for some particular offences, and those will be set out in departmental guidance to police. They include, for example, that indecent behaviour is limited to urination in the street, that criminal damage is limited to a maximum of £200, and that retail theft is for a first offence only, up to a value of £100. We had originally proposed that a fixed penalty for retail theft would be available only when the goods were recovered in a saleable condition. The Committee will recall that it asked us to consider whether we might extend that to cover incidents where the goods were not saleable but the retailer had been compensated for their loss. I can confirm that the guidance will include that provision. An order-making power in that clause provides that any future amendments to the list of offences or the penalty rates will come back to the Committee and the Assembly for consideration.

Clauses 65 and 66 create the penalty notice powers in respect of adult offenders and establish

that a penalty notice must contain certain information, such as details of the offence, the penalty amount, how it can be paid and how the recipient can exercise their rights within 28 days to request a court hearing instead.

Clauses 67 and 68 explain the effect of the penalty notice and set restrictions on instituting prosecution proceedings. They provide that proceedings may not be brought against the person until the 28 days have elapsed from the date of issue, unless that person has exercised their right to request, in the prescribed manner, that they be tried at court. Where no request is made or the penalty remains unpaid after that 28-day period, the penalty will be increased by 50% and registered as a court fine.

Clause 69 enables the Department to issue guidance to police about the operation of fixed penalties. I have already indicated that that will include certain restrictions on particular offences. However, it will also include, for example, considering the impact of an offence on a victim and preventing issue in circumstances where an otherwise eligible offence may have been motivated by issues such as domestic violence, hate crime or behaviour of a sexual nature.

Clause 70 sets out the procedures for a payment of penalty to the individual specified on the penalty notice. Clauses 71 and 72 describe the process for dealing with the registration of fixed penalties that remain unpaid 28 days after issue. That gives the Chief Constable a power to issue a registration certificate on default of the penalty sum, which enables it to be registered as a court fine. Courts are also empowered to register the sum and issue a notice of registration to the defaulter requiring payment within 21 days from the date of registration. From this point onwards, the registered penalty sum is subject to the same enforcement procedures as any court-imposed fine.

Clause 73 provides the ability for an individual who receives a notice of registration to challenge the notice. In order to do so, he or she must make a statutory declaration to the court that either they are not the person to whom the penalty notice had been issued or that they had, in fact, exercised their right to request a court hearing within the prescribed 28-day period. The clause enables the court, where appropriate, to either void the enforcement proceedings or treat the case as though that request had been made within the 28-day period.

Clause 74 provides a similar power for the court to set aside, of its own volition, a registered sum that is enforced as a fine in the interests of justice. It is envisaged that that will be used in circumstances where the court has become aware that the individual is not the person to whom the penalty notice was issued or that it was not reasonable to expect that the individual who had received it could have complied with the requirements set out in the penalty notice. Clauses 73 and 74 are important safeguarding provisions and protect the rights of individuals where an offence has been dealt with by means of a non-court fixed penalty disposal. Clause 75 simply explains the meaning of the terms that have been used in Chapter 1.

I turn now to Chapter 2. Clauses 76 to 84 deal with the creation of a new conditional caution disposal, which can be directed by a public prosecutor for suitable offences committed by adult offenders. This may be used in some instances for first-time offending. However, it is perhaps more suitable for individuals who have already shown some history of minor offending that suggests an ongoing pattern of offending that might best be tackled by compliance with conditions.

Clause 76 makes provision for the conditional caution to be given by an authorised person — either a police officer or, where it is a departmental prosecution, a person authorised by the Director of Public Prosecutions. It specifies that the conditions attached to the caution, with which the offender must comply, should have a rehabilitative or reparative objective. Rehabilitative conditions may include, for example, participating in a programme dealing with substance misuse or with other offending behaviour aspects of a chaotic lifestyle. Reparative conditions might provide the opportunity for a course of action to be agreed between a victim and offender as to how the harm caused to the victim can be repaired.

Members of the Committee will remember that they raised the question of the role that restorative justice interventions might play, and this is one of the examples where we might see that being deployed. There could also be short-term restrictive elements applied to either type of condition. For example, a prohibition might be placed on entering certain premises or areas if the prosecutor considered that that would help to achieve the objectives of the conditions.

Clause 77 sets out the five requirements that must be satisfied before the initial caution is given. In summary, these are: that there is sufficient evidence to sustain a prosecution against the individual for the offence; that there has been an admission of the offence to an authorised person; that the effects of the initial caution and the consequences of failure to comply have been explained to the offender; and that the offender signs a document detailing the offence, their admission, the conditions being attached and their consent to the disposal.

Clause 78 creates a power for the public prosecutor, with the consent of the offender, to vary the conditions that have been imposed by modifying, adding or removing a condition. That is to provide a bit of flexibility around adjusting circumstances that might arise after the initial caution is given to help achieve the objectives. Clause 79 makes provision for criminal proceedings to be brought where there is a failure to comply with a condition without reasonable excuse.

Clause 80 provides a power of arrest without warrant where a police officer has reasonable grounds to believe that an offender has, without reasonable excuse, failed to comply with conditions attached to the initial caution. It will not always be necessary to effect an arrest to ascertain whether a breach has been made without reasonable excuse, but the power has been created for circumstances where that might be a necessary course of action. The code of practice included in the Bill will provide clear guidance on the exercise of that power of arrest.

Clause 80 also makes provision for the handling of cases where the arrest power has been exercised, providing that the individual can be charged with the original offence, bailed pending a decision on charging, or released without charge or bail either with or without any variation of conditions. Clause 81 ensures the relevant provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to any person arrested under clause 80.

Clause 82 requires the Department to produce a code of practice and provides an indication of a range of issues that it should incorporate. These include the circumstances, procedures and places in which a conditional caution may be given and by whom, the conditions that may be attached and the period that they will have effect. It will also include information on the monitoring of conditions and the exercise of the power of arrest and consequential procedures. The code will be published in draft form for consultation and cannot be published or amended

without the consent of the Attorney General. It will be laid in the Assembly and brought into operation by Order.

Clause 83 enables the Probation Board for Northern Ireland (PBNI) to assist public prosecutors in determining whether a conditional caution should be given and to provide assistance in the supervision and rehabilitation of persons to whom conditional cautions are given. It is more of a permissive provision than an obligatory statutory requirement and enables the Public Prosecution Service to draw on the expertise of PBNI in relation to the consideration of individual cases. Clause 84 provides interpretation for the terms that are used in the Chapter.

I will just say a little bit about the costs of the overall implementation. Implementing the proposals will necessitate around £200,000 in one-off capital costs for organisational and IT changes, which we are meeting through reprioritising our existing resources. The ongoing administration costs will be absorbed by the agencies concerned. For most, this is a different way of dealing with existing offending levels, and it is not creating any new offences.

The PSNI will incur additional costs in back-office processing of the fixed-penalty notices, and it is looking at the model that it will adopt. It is willing to absorb the resources that are required to implement that processing model, and this is to realise the significant longer-term efficiency gains to be made by removing the administrative burden of producing a full prosecution file in all of these cases.

The number of disposals will depend on the take-up rate, but we anticipate that around 2,000 cases could be diverted from courts in this way. The net efficiency gains will be quite significant. They will depend on the processing model, as I have indicated, and the administration costs for police in relation to that, but we are estimating gains of between £750,000 and £1 million a year.

The Chairperson:

Do any members want to seek clarification on what has been said?

Mr McCartney:

Clause 78 allows a public prosecutor, with the consent of the offender, to vary the conditions.

How does that work? If the offender does not give consent, what happens?

Ms Smiley:

The clause provides individuals with the ability to identify that they have moved house or that family who they may visit have moved to a prohibition area. That allows the changes to be made. That is generally considered to be assisting the individual; it is not being imposed in cases where an individual has not consented.

Mr McCartney:

So, the application is made by the individual rather than the public prosecutor.

Ms Smiley:

If someone who is monitoring conditions finds that the person's circumstances have changed in a certain way, they may bring forward the recommendation. However, it is not imposed on the individual; it is a consensual arrangement.

Ms Ní Chuilín:

I am not sure if I heard you right, Janice, but when you spoke about clause 82, you said that once the draft has been agreed and laid before the Assembly, the code can be brought in by Order, and then from time to time the Department can revise the code. What does that mean? An equality impact assessment (EQIA) has been done on the Bill. Does that mean that the Department can add bits of it on without putting it out to public consultation or scrutiny?

Ms Smiley:

No, it means that whenever the code is initially produced it will come to the Committee and will then go out to public consultation. It will then be brought back to the Committee and the Assembly to lay an Order. If you seek to change the code, you have to go through the same process all over again, so it will go out to public consultation again and comes before Assembly scrutiny, and then it is produced and reissued.

The Chairperson:

We will leave it there. You are staying with us and will be coming back to the table a little later.

Thank you very much.

The next evidence session is with representatives from the Probation Board. I welcome Mr Brian McCaughey, who is the director, Hugh Hamill, who is the assistant director, and Louise Cooper, who is the head of business planning and development. You have 10 minutes to outline your brief — although I suspect that you will not need that long — and then there will be 20 minutes for questions.

Mr Brian McCaughey (Probation Board Northern Ireland):
Thank you very much. I intend to give a broad overview of the work of the Probation Board, although some members are very familiar with our work. After that, I will focus on Parts 5 and 6 of the Bill.

The Probation Board and its work are enshrined in legislation. Our functions are set out in the Probation Board (Northern Ireland) Order 1982, and further responsibilities are outlined in the Criminal Justice (Northern Ireland) Order 1996 and the Criminal Justice (Northern Ireland) Order 2008. Part of that legislation empowers us to contribute funding to the voluntary and community sector. We have allocated £1·3 million to 57 voluntary and community organisations over the past year, including some of our colleagues who you will hear from this afternoon.

Our role can be summarised under four core elements: ensuring that offenders comply with the sentences imposed by the courts; reducing reoffending; minimising harm; and working with offenders to promote and develop responsible citizenship. The Bill will assist us in those elements of work and help us to make a contribution to making Northern Ireland safer.

The board employs 420 staff across 31 locations, including three prison sites. All probation officers hold a professional qualification in social work. They are committed to their jobs, believe in what they are doing and work to a very high standard. All of them undertake continuous professional development.

On an annual basis, we prepare 6,000 reports for courts. On a daily basis, we supervise 4,300 orders, including probation orders, custody probation orders, combination orders, community

service orders, article 26 licences and life licences, and the range of new public protection sentences. In our work, we deliver challenging programmes that tackle issues such as violent behaviour, sexual offending, alcohol abuse, drug abuse, domestic violence and anger management. We also play a full role in the public protection arrangements for Northern Ireland, chairing all the local committees.

We continually review our work and continually try to be at the forefront of testing out new ideas. Some of our recent partnerships have included the Inspire Women's Project, which delivers services in the greater Belfast area, forging new partnerships across the voluntary and community sector. We have also developed a priority youth offending project with the Youth Justice Agency, which tackles the issue of higher-risk young people, and we have a very successful community service scheme working right across Northern Ireland in 300 community-based locations, which delivers over 140,000 hours of unpaid work. Our victims' unit was established in 2005, and it provides information to victims when someone has been sentenced to an order that requires supervision.

I will move on to the Bill. We support the principle of offenders paying back for their crime, which is encapsulated in the offender levy under Part 1, and we also wanted to mention policing and community safety partnerships. I know that those are not issues for today and that there will be a chance to talk about those again. We understand that there will be a further meeting, and we wish to participate in that.

I will focus on Parts 4 and 5 and start with the treatment of offenders. I will look first at clause 59, "Breach of licence conditions by sex offenders" and then at supervised activity orders, which are covered in Part 5. The Probation Board welcomes the proposed amendment to the Criminal Justice (Northern Ireland) Order 1996 through the insertion of paragraph (11) as a means of overcoming problems associated with petty session boundaries in respect of warrant applications for offenders residing in Northern Ireland. It would be beneficial to extend the amendment to custody probation orders and probation orders.

The Probation Board welcomes the proposed amendment to the Criminal Justice Order to address the residency gap regarding sex offenders who are in the territory of Northern Ireland.

As the law stands at present, article 26 licences are limited to the territory of Northern Ireland. The Probation Board recommends that legislative change is made to extend the provision of article 26 licences to the jurisdiction of England and Wales and the jurisdiction of Scotland.

As regards supervised activity orders, the Probation Board has made preparations to pilot that disposal and can see the benefit of those orders, such as the direct benefit to the community through community service work and reserving prison for those who pose the greatest risk to the public.

It is our view that there are advantages to introducing alternatives to prosecution, and our experience has been that there are some cases that could be dealt with outside the formal court hearing; for example, those that involve low-level offending or in which there are verified mental health issues. It is crucial, however, that, in considering alternatives to prosecution, the views of victims are taken into account. Chairperson, you recently spoke about a day in court having a sobering effect on people. I agree that it is not only important because it allows offenders to understand the gravity of what they have done but because it allows victims to see that justice is being done. Alternatives to prosecution may, however, be appropriate in certain conditions, but the views of victims and victims' representatives must be taken into consideration and the criteria must be clear, transparent and applied consistently.

The board welcomes the clauses dealing with conditional cautions. However, we believe that more detail on budgetary and personnel commitments will be required in order to properly cost that development along the justice process. The Probation Board will welcome the opportunity to be involved in the code of practice for conditional cautions and the early enactment of the provision. Once the criteria for conditional cautions are met, the Probation Board will be in a position to assist prosecutors to decide what types of conditions could be attached to a caution. As has been mentioned, the types of cautions could be rehabilitative or reparative. Rehabilitative cautions would address the issues underpinning the offending behaviour and reparative cautions would involve undertaking unpaid work, making an apology or repairing the damage caused. Rehabilitative activity could include attending a programme or course. It could involve identifying the issues in an individual's offending history, which could include drugs and alcohol awareness courses or seeking to improve a person's basic skills or employability.

As I mentioned, the Probation Board has a network of contacts in the voluntary and community sector across Northern Ireland. We believe that we can play a very important role in linking people and giving conditional cautions through those providers. However, in drafting a code of practice, it will be important to consider the need to ensure that an offender clearly understands what is to be done, when it must be done by and what acceptable evidence of completion is.

In conclusion, I thank the Committee for the opportunity to give evidence today. We in the Probation Board want to make our contribution as fully as possible. We believe that the Bill presents opportunities to work more collaboratively and creatively and to contribute further to safer local communities in Northern Ireland. We welcome any questions on issues that the Committee wants us to expand on.

The Chairperson:

Thank you, Mr McCaughey. Not only does justice need to be done but it needs to be seen to be done. You summed that up quite well. Do you think that justice will be seen to be done if the processes in the Justice Bill are adopted?

Mr McCaughey:

We are keen that the restrictions around sex offenders are enhanced in the areas that we have outlined. We believe that, with the full involvement of victims, the other areas of supervised activity orders, alternatives to prosecution and conditional cautions can bring real meaning to justice in Northern Ireland. We are confident that those measures will be an addition to criminal justice in Northern Ireland.

The Chairperson:

I have heard it said by those who are looking at the Bill that the victim is at the heart of all of it. However, some of us are not convinced that that is the case. Some of us believe that the offender has been put at the heart of the Bill. How would you respond to that?

Mr McCaughey:

I would respond by saying that justice has to be at the heart of criminal justice in Northern Ireland. There is a place for an enhanced inclusion of victims at every stage of the process, and the Probation Board has championed that in the assessments it prepares for sentences in the courts and for the supervision of offenders in the community. We want to ensure that offenders are given the opportunity to repair the harm that they have done and that supervision remains a central plank of justice in Northern Ireland in the future. I am absolutely in favour of developing the inclusion of victims at every stage of the process.

The Chairperson:

Are you confident that the Bill will do that?

Mr McCaughey:

I am confident that it will make a contribution. We have a long way to go to ensure that the voice of victims is heard at every point in the process in Northern Ireland.

Mr McDevitt:

I thank Mr McCaughey and his colleagues for their presentation. I am curious about penalty notices and your attitude towards them. Some have suggested that fines do not normally change behaviour. Do you agree?

Mr McCaughey:

I shall ask Ms Cooper to answer that question in detail. For some people, a fine will be such a deterrent that they will not reoffend. However, for many others, it is a penalty that they cannot meet or, on some occasions, choose not to meet, and, in a calculated fashion, they make a decision to spend time in prison. The cost to the system in processing that choice is immense.

Ms Louise Cooper (Probation Board for Northern Ireland):

Extensive use is made of fines as a disposal in Northern Ireland courts. What is less well known is that, in 45% of cases in Northern Ireland, fines are paid on time, and, when fines are followed up by fine collection, that rate rises to 90%. However, when people choose not to pay a fine or are unable to do so, constructive activity to assist people is more conducive to helping them to

stop reoffending.

Mr McDevitt:

What you are saying is that fine defaulters should not go to prison.

Ms Cooper:

Fine defaulters can be dealt with in alternative ways. The Probation Board believes that prison needs to be reserved for harmful people.

Mr McCaughey:

The time and money that we spend on bringing people who do not pay fines into the prison system — the time spent processing their case and then releasing them from the system — is a waste. We should look at more constructive and creative ways of ensuring that those offenders pay back to the community.

Mr McDevitt:

Is it fair to say that you see a role for fines and that you are not unhappy with the idea of fixed penalties but that you do not want prison to be the consequence of not honouring a fixed penalty?

Mr McCaughey:

That is correct.

The Chairperson:

Mr McCaughey, I want to put you over something that you said so that I can get it into my head. You said that the expenditure may not be justifiable. The PPS was before the Committee on Tuesday, and we raised the issue of a court case concerning the alleged theft of an item that cost £1·79. The answer that I got from the Minister was that expenditure on that case was, I think, about £15,000. I suspect that the PPS thinks that that is money well spent but that you are not of that opinion. You feel that a lot of money could be saved by doing it in another way. I read a newspaper article that highlighted that there are tens of thousands of unpaid small fines in the English courts. Do you think that we would be better at getting people to pay fines than they are?

Mr McCaughey:

I have lots of views on how we could be more creative in engaging people for non-payment of fines. A probation order costs around £4,000, and a community service order costs around £2,000. We have 4,300 people under supervision, and we are the most effective probation service on these islands. This justice system has a good news story, and we should build on that. Our effectiveness is unrivalled.

As we have not previously had the option to deal with non-payment of fines in an alternative fashion, we now have an opportunity to be very creative. In many instances, money is wasted in processing people into prison, holding them there for a number of days and then releasing them. We could use that money much more effectively, not on softer options but on creating alternative, creative and demanding options that enable the community to see payback and restoration for the harm done.

The Chairperson:

Other places have tried that system. I cannot be emphatic about this, but I think that there are either 33,000 or 38,000 unpaid fines in England. Where will we be with the system if the unpaid fines accumulate in those sorts of numbers?

Ms Cooper:

As I said, in Northern Ireland, we are relatively better at fine collection. The figure for fine collection by the Court Service is around 90%. We are keen to have different ways to deal with people who default in the community. If people do not comply with the requirements of a supervised activity order, for example, they will be found in breach of it and brought back to the court. However, we do not see it as a revolving door. We see it as a constructive alternative to putting people in custody for not paying a fine.

The Chairperson:

Your illustration of a revolving door is a good one. Some people might see it as that, but you do not.

Mr McCartney:

Thank you for your presentation. I want to speak about clause 83, which gives powers to the Probation Board and which you mention in your written submission. Have you done any work on the personnel commitments and budgetary concerns?

Ms Cooper:

We are at the early stages of development of that. To be honest, it will depend on agreeing the code of practice so that we can be absolutely sure about the role of the probation service in assisting the PPS and about the types of caution, as well as about what the commitments and requirements will be for the supervision and rehabilitation of those given conditional cautions. That would be based on a cost-by-case basis. We will want to ensure that we fully cost that out and understand the full implications.

Mr McCartney:

Your submission states that the board:

"would welcome the opportunity to be involved".

Is the Probation Board involved, or is that just a broad statement?

Ms Cooper:

As far as I am aware, work on the code of practice has not commenced, but we welcome any opportunity to be involved in that.

Mr McCartney:

Will you be involved?

Mr McCaughey:

To date, we have had no involvement.

Mr O'Dowd:

I apologise for missing some of your presentation. I was interested in a point that the Chairperson picked up on about the role of the victim in the justice system, which has been a subject of debate here. The Committee heard an interesting remark from the PPS the other day. It was not the first

time that I heard it, but it clarifies the situation. The comment was that the state takes the prosecutorial role off the victim, and, therefore, the state carries out the prosecution. It is no longer the victim who carries out the prosecution, it is the state. The victim is, therefore, set to one side. If we continue to say that the victim is at the centre of the justice system, we are only letting the victim down. How do you balance that with the comment — I am not quoting you verbatim — that we have to ensure that the victim is involved or central to the justice system?

Mr McCaughey:

I believe that I said that justice should be central to the justice system and that we have much work to do to include victims at every stage in the process, including in the work of the Probation Board in preparing reports for sentencers and in supervision in the community.

Mr O'Dowd:

I was not trying to entrap you. In preparing its reports and so on, does the Probation Board speak to the victim of a crime about the perpetrator? In what way would the victims and their needs be recognised in such reports?

Mr McCaughey:

We receive the case depositions, but we do not interview the victim. That is not a role that we have at present. However, I seek to explore further how we can ensure that there are always victim impact reports at court and that we can have access to those in the preparation of our report so that there can be no room for any minimisation on the part of an offender about the harm that they may have caused.

Mr O'Dowd:

I am not being flippant, but are you overly concerned that perhaps you are too associated with the perpetrator and that, rather than being inclusive, you are on one side of the judicial system? I did not expect your presentation to be so concentrated on the victim. That is not a criticism; it is a welcome development, but I thought it was an interesting angle for the presentation.

Mr McCaughey:

Since the establishment of our victim information scheme in 2005, and through our contact with

victims associated with people on supervision, we have found that the major areas that require attention are: the lack of understanding of the justice system; the lack of awareness of what the sentence means; the lack of awareness of the progression of that sentence; the lack of awareness of whether the offender adheres to their sentence. So, if there is a rebalancing of my attention and focus, it will be because of that experience.

My engagement with victims' groups as part of our corporate planning consultation over the past months means that that experience is fresh in my mind. We are writing our corporate plan for the next three years, and our engagements have been very inclusive. I want to place victims' needs and issues more centrally in the work of the Probation Board. Our core business is to ensure that offenders adhere to sentences. However, I want to ensure that work with victims is more central in the work plan with the offender, first, to make them aware that there was a victim; secondly, to make them aware of the impact of the offence on the victim; and, thirdly, to agree what work can be done to reduce the likelihood of such harm happening again.

We have engaged in pilot projects over the past years with community-based groups that may be more skilled in that area and that may be able to help us to move, if possible, in a very managed fashion, towards a situation in which the offender and victim could meet and in which the offender will begin to make amends or at least to face up to what they have done. That is way, way down the road, but my vision is that, ultimately, victims' needs and work will be central to the supervision of offenders.

The Chairperson:

Did you allude to the fact that you feel that there should be more innovative approaches in the Bill? Did I pick you up right on that?

Mr McCaughey:

There is scope in the Bill for us to implement supervised activity orders, cautions and programmes, and to develop that creativity.

The Chairperson:

Do you want to tell us anything more?

Mr McCaughey:

Through the range of programmes that we can provide around alcohol, drugs, personal development or employability, we have a clear knowledge of the factors, the reasons why people offend and what can prevent them from reoffending. If we can get involved at an early stage, we will divert people from the criminal justice system. All of our experience tells us that, when people are brought into and processed through the system, it is very hard for them to stay out of it. We very much welcome anything that can be done in a constructive fashion as an alternative to prosecution.

Ms Cooper:

I will supplement that by giving an example to the Committee. The Inspire Women's Project centre is a place where the Probation Board, in partnership with the Prison Service and voluntary and community agencies, has brought together a range of services for female offenders. The likes of that type of centre would be helpful, perhaps at a diversionary stage, because, through a range of supports and service providers, people could be offered help to deal with issues and behaviours that lead them to offending. It would, hopefully, address some of the deficits and needs of those people.

Lord Browne:

In your submission, you refer to article 26 orders, which apply only to the territory of Northern Ireland and are not enforceable in England, Scotland and Wales. Have you had any communication with the relevant jurisdictions to put forward your case for those being extended?

Mr Hugh Hamill (Probation Board for Northern Ireland):

We have made the Department of Justice in Northern Ireland aware of the problem. It is my understanding that it has been in contact with its colleagues in London because it may require legislative change in London.

Lord Browne:

Do they apply to the Republic of Ireland? How does it fit into this?

Mr Hamill:

No, they are not transferrable to or enforceable in the Republic of Ireland.

Sir Reg Empey:

Brian, do you share some of the views that are being expressed by the Home Secretary?

Mr McCaughey:

I would respond by seeking clarification.

Sir Reg Empey:

Following on from the questions that the Chairman put to you a short time ago, do you share some of the views about short-term sentences and alcohol and addiction issues? Do you share some of the views espoused by Kenneth Clarke?

Mr McCaughey:

I certainly share some of those views, but some of the factors and drivers for change in England and Wales do not exist in Northern Ireland. Prisons in England and Wales are very overcrowded. They have introduced an early release scheme, and sentencing around the public protection arrangements has resulted in an overcrowding of prisons, because they removed discretion from the judiciary as to whether somebody is deemed dangerous. That has had a consequence for the prison population.

I absolutely believe that we should be as creative as possible in the management of offenders in the community. We in Northern Ireland are an exemplar when it comes to how the probation service delivers its services in, with and through the community. I refer to the fact that we financially support 57 voluntary and community partners. We have 300 partners in the delivery of our community service scheme. In England and Wales, the Home Secretary is attempting to broaden the involvement of the voluntary and community sector and the private sector in the oversight of offenders. We already do that. I will be making that clear to the Government in our correspondence.

Overall, prison needs to be reserved for the people who are most dangerous and who will

cause hurt and harm to us and our families. Those people need to be in prison, and they should not be released until they have evidenced a reduction in their risk. However, it is an expensive resource, and, therefore, we need to use that option wisely, and we should use all our resources across all our Departments to work collaboratively to reduce crime and the harm that it does. That is the challenge that we face.

The Chairperson:

Thank you for your presentation. If you wish to remain in the Public Gallery, you may do so. The officials will come back and deal with some of the issues that you raised.

Members, we move to the next presentation, which is by the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO). It is on the treatment of offenders and alternatives to prosecution. I welcome Mr David Weir, director of family services, and Pat Conway, director of adult services. Gentlemen, you are welcome. You have 10 minutes to outline the issues.

Mr Pat Conway (Northern Ireland Association for the Care and Resettlement of Offenders):

Thank you for giving us the opportunity to amplify the written evidence that we submitted. NIACRO provides services under the headings of working with children and young people who offend; providing services to families and children of offenders; supporting offenders and ex-prisoners in the community; and working with prisoners. We also prize the connection from practice to policy comment. Mr Weir and I will focus on Part 6 of the Bill. Mr Weir will lead on alternatives to prosecution, and I have a few words to say about the offender levy. We will stick to the 10-minute timescale.

Mr David Weir (Northern Ireland Association for the Care and Resettlement of Offenders):

We support the concept of providing effective alternatives to prosecution. We are a bit concerned that the proposed legislation appears to focus almost exclusively on monetary penalties. We have raised the concern before that the proposed legislation does not particularly address the issue of fine default, and our concern is that the proposition of a focus on further monetary fixed penalties,

including fixed penalty notices, will increase the risk of people being in default of payment.

The consequence of default can be admission to custody. From our reading of the Department of Justice's report on the Northern Ireland prison population in 2009, it seems that 24% of all receptions into prison were for fine default. That represents 1,400 people. By our calculations, an average of 29 or 30 people a week enter custody for fine default. That must represent a colossal drain on the resources of the Prison Service. Our colleagues from the Probation Board referred to managing the admission, detention and discharge of a revolving prison population and the amount of the Prison Service's time that that must absorb. Those resources are not then being directed towards effective resettlement.

Our argument is that the proposals in the Justice Bill have the potential to increase that drain on prison resources. We are not arguing that people should not be fined or that they should not pay their fines. In many cases, a monetary penalty can be an effective tool, both as a punishment and as a deterrent. However, we are arguing that the monetary penalties for some are neither an effective deterrent nor an effective punishment. By way of illustration, we are working with a family where a single mother with four children has received fines for non-payment of her TV licence.

We are not suggesting that she should avoid the responsibility of paying for her TV licence. However, we are suggesting that imposing a fine on someone who is already in financial difficulty is not a solution. She is subject to arrest and has, in fact, been arrested. She has borrowed money to pay the fine, so she continues to be in debt and is an increasingly disadvantaged financial position. We would, therefore, like an alternative alternative to prosecution for that type of incident.

By way of comparison, someone in debt to a credit card company or bank has the possibility of entering into a voluntary agreement to pay that off over time. Similarly, we argue that someone in default of a TV licence should, for example, have the facility to enter into a voluntary agreement to discharge that responsibility. In that type of context, we believe that an appropriate disposal and alternative to prosecution is referral to a debt counselling service as opposed to recourse through a monetary penalty. That case illustrates our vision of alternatives to prosecution as more of a diversion to a service.

Through direct work with our client group, we have also seen other examples of where monetary penalties and prosecution do not actually address the causes of offending. We are not talking about letting people away with it. We are, instead, talking about situations in which an offence has been committed and the police or Public Prosecution Service, while expressing societal disapproval of that, consider that a monetary penalty could actually increase the risk of custody and of the person being criminalised through default of payment. The sort of instances that we believe should be considered for alternatives to alternatives are poor money management skills, where that is a contributor to offending; homelessness or inadequate accommodation, where that is a contributor; mental health issues, and drug and alcohol issues; and the types of low-level assaults and aggression that are associated with alcohol-related behaviour.

We have some concerns that the proposed legislation, at is stands, runs the risk of providing a quick and efficient way of reducing court lists. However, we do not regard that as a particularly effective way of preventing offending and believe that it would, in fact, lead to criminalisation.

Clause 69 states that the Department may issue guidance about the exercise of discretion given to police officers. We urge that that guidance contain a clause setting out that, in appropriate circumstances, police officers should consider a referral to an appropriate service as opposed to a fixed penalty notice. We are not arguing for that as a single solution to all situations but as something that could be considered as an alternative disposal. Having said that, we do not want such discretion to be unmonitored, and we expect the exercise of that discretion to be applied fairly and consistently across the jurisdiction.

Conditional cautions provide a second bite at the referral to a service. However, such referrals are conditional and, therefore, enforceable. We support that concept as an alternative to prosecution and a court disposal. However, we are anxious that, rather than eating into the higher-level disposals, conditional cautions would actually creep downwards and that people who were not previously involved in that level of disposal would creep into it.

Mr Conway:

To reinforce what David said: we anticipated that we would be asked about the alternatives. We

run a series of projects that we call "assisting people and communities". We have people working directly with women offenders and ex-prisoners. We also have people working with individuals who were given no support when they were discharged from Hydebank. Those individuals are usually subject to short sentences and do not come out with any probation support. They are the people who are most likely to go back into communities, reoffend and then to re-enter the prison system. We have a person working on mental health issues related to offenders, including addictions. There are also people who are working with young people through our child and parent support (Caps) programme.

We agree with the concept of the offender levy, in so far as it is a tool for offenders to address their behaviour through understanding the impact on victims. However, the legislation, as it stands, does not require the criminal justice system to explain to offenders why they must or should pay. If it is the intention to make offenders more accountable, we would argue that they must understand what they are paying, and for what reasons. We remain concerned about the departmental view that moneys for administration will be taken from existing budgets, not the proceeds of the levy. We recommend that that be reviewed annually, along with a published report that details where the money has gone. In short, if the two issues of the offender levy and alternatives to prosecution are bundled together, we feel that any alternatives that are arrived at need to have connectivity to the community. They need to be resourced, and by that we do not necessarily mean financially, but through the training of police officers and others in the criminal justice system.

Any scheme should be subject to regular review and underpinned by a "what works" philosophy.

The Chairperson:

Thank you very much for your insight and your time. You spoke about community projects. Did you have in mind, for instance, the clearing of snow from footpaths, etc?

Mr Conway:

Not immediately. We have very good councils that do that, apparently. *[Laughter.]*

The Chairperson:

In the absence of councils' debating whether they should do that, perhaps you could consider it as one of your projects.

You are quite emphatic in your paper that fines do not normally change behaviour. We are told that prison does not normally change behaviour. What do you think would change a person's behaviour?

Mr D Weir:

An analysis is required of the situation that the person is in. It is not an absolute statement that prison does not change behaviour. My argument on fines is that, if we consider a small business model, a fine is an expense that eats away at the bottom line. Therefore, people do not act in a way that adds to their costs. For someone who is already in financial difficulties, a fine is almost meaningless; it deepens their difficulties.

As for prison, the thought of imprisonment is a deterrent — a preventative tool. However, as I think Sir Reg mentioned, Ken Clarke's recent green paper pointed out that, despite the vast increases in investment in the criminal justice system, 50% of people still reoffend, and the system has not actually addressed the causes of their offending behaviour. Although prison provides a sanction, I do not see many cases where it has changed the behaviour of the people who come out. In respect of alternatives to prosecution, we were not originally talking about that higher level of offending that merits court action and the sanctions that are available; our concern with lower-level offending is with people who are in difficulties or who are in situations where they are not adequately supported. Their social needs are what influence their behaviour. Prison does not affect those people positively. The thesis of our argument is that recognising and responding to those people who have needs is a way of changing their behaviour.

The Chairperson:

I take that point sincerely about those with needs. However, not all offenders are in the category of those with needs. There is a thing called bad behaviour and accepting responsibility for that. We hear a lot about human rights, and that is an important issue. We hear less and less about human responsibility, do we not?

Mr D Weir:

I can give you another example that I was going to refer to earlier, but I thought that I was going to run out of time. We have a case of a young man who is 36 years old. He was prosecuted for urinating in a public place when he was aged 18. He is now a professional and never reoffended, yet that offence appears on his criminal record if he applies for a job, and it also came up when he volunteered for a similar organisation to NIACRO. Therefore, for one piece of behaviour, which was offensive, inappropriate, silly and stupid, he is still paying the price and is still humiliated by it 18 years later. People need to accept responsibility for their actions, but, in his case, surely it would have been better to tell him to go home and catch himself on, rather than having to go to court and get a criminal record, which is still affecting him 18 years later. However, again, that may be an extreme case.

The Chairperson:

No, you make a good point and you make it well.

Mr D Weir:

Thank you.

Mr McDevitt:

I am still struggling with whether the issue is with the penalty notices or with the default or non-payment of a penalty notice. I do not want to focus on one case, but had the young man you referred to been offered a penalty notice, he may have paid it and would not have a criminal record. However, would that not have had the same effect as what you suggested? He would have been told to go away and think about his behaviour and cough up £40, which, according to schedule 4 to the Bill, is the fixed penalty for indecent behaviour?

Mr D Weir:

That is possible, and another young person may have defaulted simply because they did not have the £40. I know of young people who are living semi-independently, and who must make the choice between paying a fine and eating dinner. Those are the type of situations in which I would ask that the police officer involved to exercise discretion, and, rather than issuing a fixed penalty

notice, they could consider telling someone to go home and catch themselves on.

Mr McDevitt:

Just on that point —

The Chairperson:

Sorry, if I could butt in. You said that 18 years later that individual is still paying for the offence, but he had no needs at that stage, did he?

Mr D Weir:

No, he did not have any needs, but I was talking particularly about the issue of fixed penalty notices.

The Chairperson:

It was in a moment of folly that he did what he did. He then caught himself on, for the sake of a better term, and 18 years later he has not reoffended. However, could that not be said about many people?

Mr D Weir:

It could, Lord Morrow, and that is part of my thesis. An immediate action without sanction, but which allows the person the opportunity to catch themselves on, can be effective and we would argue that it should be tried as a first step. It could involve simply taking someone home to their mummy — my background is in youth justice — or diverting them to a debt counselling service or some form of accommodation support. If they reoffend, that is fair enough; at least we would have tried, but they would not have been brought in to the criminal justice system at the first opportunity, which is a risk for some.

The Chairperson:

There is an example of guy who smashed a window in the 1970s and was sent to jail for, I think, 3 months. He has not reoffended. Do you think that that was rough justice?

Mr D Weir:

I would propose that he was probably never going to reoffend anyway.

The Chairperson:

OK. Sorry, Mr McDevitt, I cut in during your question.

Mr McDevitt:

No, that is OK, Mr Chairman; we were talking about related issues. Mr Weir, are you arguing against penalty notices?

Mr D Weir:

No.

Mr McDevitt:

What you are arguing is that there should be discretion, and, in this case, that it should be with the police officer.

Mr D Weir:

That is the clause that I see as offering that possibility.

Mr McDevitt:

OK. Define "catch yourself on." What are we talking about? This section refers to adults. Are we talking about them being given the choice between a fixed penalty notice and a series of scheduled community services, or, on the basis of some needs assessment, that an offender would be referred to a support service?

Mr Conway:

It is about ability to pay. People who are clogging up the prison system are in for fine defaults and they have to have other needs met to stop that from happening. There are clearly many people subject to fines who can pay them. That is OK and it is punishment enough. However, there are others who have a disproportionate effect on other elements of the criminal justice system, such as probation and the Prison Service, who, we argue, do not have to be there.

It is relatively easy to enter the criminal justice system but far more difficult to extract people, and once they are in prison, a whole series of consequences may arise.

Mr McDevitt:

Let us say for argument's sake that the police officer was able to apply a quick ability-to-pay test by saying, for example, "I am proposing to fine you, are you able to meet this fine?" Say the individual before him says, "No". What specifically are you asking us to legislate for in that scenario?

Mr Conway:

To maintain an ability to divert people from the criminal justice system, utilise the resources that exist in the communities that those people will eventually be hosted in, and have those needs addressed.

Mr McDevitt:

Give us an example.

Mr Conway:

Our women's project has a relationship with the Women's Support Network. We are involved in a project with it. People who come out of prison and are on probation work with women's centres. We have a pilot project running in Belfast at the moment. Those centres will host them and attend to those needs.

If a crime is committed, or a TV licence is not paid, for example, it has to be addressed and flagged up. However, if the issue is inability to pay, those needs have to be addressed to stop a downward spiral that continues into the criminal justice system.

Mr O'Dowd:

I am interested in Ken Clarke's approach to the justice system. I watched 'Newsnight', which was recently broadcast from a prison. I thought it most enlightening, especially given the difference between Ken Clarke's political views on life and my own. He has a very enlightened view on justice. It was useful.

Your briefing paper gives us the example of James. You recommend that a police officer should be equipped to direct potential offenders or offenders into diversionary or rehabilitation services. Is a police officer sufficiently trained to do that?

Mr D Weir:

To be fair: I said that that clause seems to offer that possibility. I am not saying that that is necessarily a solution. However, within the legislation as drafted, it seems that that possibility is there.

Pat mentioned the requirement for a police officer to be trained in that decision-making. It is not that long ago that we had youth diversion officers. The arresting officer could refer the child to a diversion officer who was trained specifically on how to respond to the particular situation. His or her choices were to give an informal warning, a restorative caution or to proceed to prosecution. Therefore, somewhere in there the facility and ability exists. Whether it is with the front line police office who comes across the offence, I do not know. I was only saying that I see that clause as providing that possibility.

Mr Conway:

We are concerned that the police may be, in effect, judge and jury. We need an independent arbiter, but decisions need to be made to be rapidly. When young people, or anyone for that matter, commit an offence, often it is dealt with nine months later, which is a bit of a nonsense. There must be immediacy. If someone has done wrong and admits to it, that is an easy one. It should be more easily dealt with than it is now, but I am not convinced that the police should have the functions of judge and jury.

Mr O'Dowd:

The other side of the coin is that, if the system was working properly and young people in particular were being redirected away from the criminal justice system, are there sufficient support networks out there for young people to be directed towards?

Mr D Weir:

I am not entirely convinced about that, as you might imagine, but we do not think that their

spending three months in custody or wherever would necessarily create that opportunity or that it would appear while they were there. The shortage of resources is a continuing issue, and needs to be worked on. We know that it can be done. In some areas of work, we have demonstrated how we can work with 18- to 25-year-olds with mental health issues who are returning to the community from custody. We want to see investment in that area.

However, we also want to draw on the ordinary, everyday mainstream resources that exist. One of my anxieties is about ensuring that the criminal justice system does not become the route to services. Mental health, addiction and counselling services are already there. Using the criminal justice system as a way of getting to them seems inappropriate.

Mr O'Dowd:

We visited Hydebank recently and were informed that, occasionally, a judge would send people there for services that do not exist — rehabilitation services and so on. It looks well on the sheet, they did not want to send the person to prison, so they sent them to Hydebank for services, but they do not exist. I agree with your thought process of how we deal with this, but we have to ensure that, if we are doing it that way, we support the services at the other end.

The Chairperson:

The NIACRO example about James mentions that he is 22 years old. If he is caught shoplifting an item under the cost of £100 from Tesco, or even one that costs £1·79, we know where he is going. The question is: what age is a "young person"? Is James a "young person"?

Mr D Weir:

The protocol in England and Wales is that a young person is 18- to 21-years-old. We would probably go with 18- to 25-years-old, just to match the Hydebank population.

The Chairperson:

Your analysis is that James would not reoffend. Reading your submission, I would not be very sure about that. However, that is a call that everybody makes in life.

Mr D Weir:

The problem with preventative services is that people know about only the failures.

Mr Buchanan:

You spoke about alternatives to prosecution and the concept of diverting young people away from the courts system. What, in your opinion, defines the difference between a slap on the wrist, a fixed penalty notice or fine or something like that? Who makes the decision as to whether it is a slap on the wrist or whether it is something that deserves much more than that?

Mr D Weir:

That is the skill in the assessment process and all those outcomes have their place. The problem is assuming that one of them has more efficacy than others. A slap on the wrist for my son would probably be mortifying, but for other people, it might not be quite so mortifying. A slap on the wrist would have been mortifying for me.

For some young people, and some of the adults who we work with, their sense of self-worth and how they are viewed by others is so flawed and low down that further approbation or opprobrium from the state or the court will not do anything to help lift them out of that. It is for those people that we argue that a slap on the wrist does not do anything except confirm their inadequacy. We suggest that a referral to a service has greater potential to change their behaviour. However, fining someone who is already in financial straits or imprisoning somebody who has already lost their social contacts and community supports does not address, or have the same potential to change, their behaviour.

Mr Conway:

There is a fundamental issue here about citizenship and people's contribution to society. You can get into nebulous, ethereal territory about the respect for people and property. I am not sure that that is fully accepted in some areas in Northern Ireland, and there is variance in that. People talked about rights and responsibilities, and it is correct to say that young people — people up to the age of 25 — feature disproportionately in the criminal justice system. There is an issue about promotion of citizenship, and that brings in people from outside the criminal justice system from the education system and the political classes. We must be clear on what that is, what that means

and what the impact of it is.

Three or four years ago, we were in a period of economic well-being, and we have been trying to get people into employment as a solution. It is generally recognised that getting people into a job will address and reduce their offending behaviour. That task will become much more much difficult, and, for economic reasons, the numbers of people who come before the courts will probably increase. We need to counter that in some way, but that project is much wider than being purely for the Department of Justice or the criminal justice system to deal with.

The Chairperson:

Once you leave it to subjectivity, you can be taken in all sorts of territory. It is about knowing where the bar is.

Mr D Weir:

We urged that, if our proposal were adopted, it would need to be monitored strenuously. The guidelines would have to be clear enough to allow the room for discretion not to be too wide and to allow the equity of it to be measured and monitored.

The Chairperson:

Gentlemen, we are stopping there. Thank you for coming.

In the next briefing session, we will hear from representatives from Include Youth. We welcome Koulla Yiasouma, Edel Quinn and Paula Rogers. Koulla is the director, Edel is the policy manager and Paula is the policy co-ordinator. Ladies, we welcome you to the meeting, and you have 10 minutes to outline your brief, after which we may have some questions.

Ms Koulla Yiasouma (Include Youth):

On behalf of Include Youth, we are delighted to be here once again to give evidence to the Committee on the Justice Bill. As the Chairperson pointed out, I am joined by my colleagues Edel Quinn, who is the policy manager, and Paula Rogers, who is our policy co-ordinator. I am aware that you have had a busy and tiring afternoon, so we will try to be as brief as possible. We heard the evidence from our colleagues in our partner organisation NIACRO, and we will try,

where possible, not to repeat what they said. I agree with many of their points.

I hope that, by now, members are aware of the work of Include Youth, but I will recap. We are a voluntary organisation with over 30 years experience of working with young people in need or at risk. We work at policy and practice level. We work directly with young people aged between 14 and 21 through a number of schemes, including Give and Take, which addresses employability, and policy and consultation work with young people in Hydebank Wood, the Juvenile Justice Centre and across the community in Northern Ireland.

Our comments will draw heavily on work in our manifesto for youth justice, which all the Committee members have received and, no doubt, have read on several occasions. Include Youth commends the Minister and the Department of Justice for seeking to implement alternatives to prosecution. We are a strong advocate for the development of effective alternatives to prosecution, and we welcome the inclusion of measures that will successfully divert young adults form offending behaviour and away from the criminal justice system.

We, like NIACRO, will talk exclusively about Part 6. We welcome the fact that the proposals will not be applied to under-18s, but we remain concerned about their potential adverse impact on vulnerable adults, particularly up to the age of 21. As I said, our Give and Take scheme works with that vulnerable group. I will try to give you a very quick understanding of who the scheme works with and and where our experiences come from: 100% of the young people with whom we work are considered NEET, i.e. not in education, employment or training; three quarters of them are in care or from a care background; 70% have essential skills difficulties, i.e. they do not have the standard of education required to join the world of work; 60% come from a socio-economically deprived background; and nearly half have experienced significant abuse or neglect as children.

What do we believe works in crime reduction? Members have heard me say on several occasions that I am the first to want to stop offending of any kind. I do not want my children to grow up in a community that is unsafe and in which they will be harmed in any way. I do not want my family members or those who are close to me to live in fear of any sort of activity by anyone, including young adults, that would cause them anxiety or distress. Include Youth accepts

that that type of unacceptable behaviour must be addressed effectively. It is not about being soft on young adults or making excuses for them; it is about finding the option that best fits. Having heard members' questions, I know that that is something that we can explore much further when we are being questioned.

We are concerned that the proposals focus exclusively on fines and conditional cautions, both of which can result in a criminal conviction and which do little to address the underlying causes of behaviour. Those methods are unlikely to be as effective as a mixture of holistic community-based diversionary measures that address the reasons behind that type of offending.

Our evidence today is set in the context of the wider piece of work that we are undertaking to inform the ongoing youth justice review, in which alternatives to prosecution will form a central part. With that in mind, we are concerned about the timing of the introduction of the Bill, particularly as there are a number of ongoing critical reviews on parallel issues that should inform the development of law, policy and practice in respect of alternatives to prosecution and some of the other measures that are outlined in the Bill. Those include youth justice, the prison review and the work on the strategy on offending. It is not helpful that those proposals have pre-empted the outcomes of those reviews. I will now hand over to Paula.

Ms Paula Rogers (Include Youth):

Before I talk about our substantive concerns about fixed penalty notices and conditional cautions, I want to take the opportunity to very briefly talk about some of our concerns about the EQIA. I will not take up much time. We produced a written submission, and we have a number of procedural concerns as well as substantive equality concerns, the first of which is about the lack of meaningful consultation. Members will be aware that the EQIA was put out for consultation from 12 August to 4 November of this year. However, the Bill was introduced to the Assembly on 18 October, which was before the consultation had closed and all the responses had been received and analysed. We believe that that is in breach of the Department's statutory obligation under schedule 9 of the Northern Ireland Act 1998. Secondly, we believe that the screening process was flawed. It failed to properly identify significant potential adverse impact on young males in respect of the current proposals on alternatives to prosecution. Thirdly, we think that that led to a wrong decision to not conduct a full EQIA.

The concerns that we will outline arise precisely because of their potential to adversely impact on young men. Those issues need to be fully explored and remedied. We ask that Committee members seek further information and clarification on those issues from the Department and ask that the Department conducts a full EQIA.

We have a number of concerns about fixed penalty notices and conditional cautions. Both of those measures can result in a criminal record, which will increase barriers to education, training and employment opportunities. Both can draw young people into the criminal justice system, including, potentially, into custody for what originated as a minor offence. Both fail to adequately or at all address the underlying reasons that can give rise to offending. They also fail to deal with the 1,700 people who spend short periods in custody as a result of fine default. Those people have no opportunity to access the necessary diversionary programmes of support to help them to desist from offending in the future. As you have already heard, they could also disproportionately impact on groups with very low incomes.

Fixed penalty notices may have a detrimental impact on young adults for a number of reasons, the first of which is to do with their inability to pay the fines. That is plain and simple to understand. There is concern that they will be more likely to accept the fine and will not be aware of the implications of doing so or that they will not be aware of the consequences of not paying it. They are likely to agree to anything just to get out of the immediate situation in which they find themselves. Young people may also not understand the process, which is a real concern and can often be down to poor communication skills, limited social and intellectual development or special needs, including mental health, alcohol or substance misuse problems.

Research in England has shown that fixed penalty notices have led to an increase in the number of people being put into custody. That research was done by Professor Rod Morgan, who is the former chairperson of the Youth Justice Board. We can get the Committee more information on that, if required.

The Attorney General for England and Wales, Dominic Grieve, speaking in 2009, when he was still the shadow Justice Secretary, warned that the increasing use of administrative penalties

represented an undermining of justice. We share that concern. There also needs to be clarification of how police officers assess the correct age of an individual. Could there be ambiguity over the age of a young person? We want clarification on that.

We are also concerned about the possibility of an overenthusiastic application of fixed penalty notices for young adults and the degree of discretion that police officers will have to issue them. The risk is that the situation regarding minor offences, which might previously have been dealt with very informally, will escalate to the use of a penalty. We recommend that, if the decision is made to go ahead with fixed penalty notices, at the very least a robust mechanism should be used to assure effective police training and regular monitoring and oversight of powers.

We support the concept of conditional cautions in principle. However, we suggest that a conditional caution should not appear on a criminal record and that its purpose should genuinely be about rehabilitation. We are concerned that the rehabilitative aspect of the cautions is not a mandatory component of the proposals in the legislation as currently drafted. We are also concerned that the proposals appear to provide for statutory criminal agencies to deliver the rehabilitative programmes. We believe that the programmes would be best delivered by organisations that are currently working in the community, such as NIACRO and community-based organisations that provide drug and alcohol support, suicide prevention support and family support.

We accept that our suggestion may require additional investment, but we would argue that that will reap a significant long-term saving. For example, the total annual cost of keeping a young person up to the age of 21 in prison is £88,181. A young person who is not in education, employment or training in 2008 will cost an average of £56,000 in public finance before retirement age. Research has shown that £4,000 of short-term support to a teenage mother, for example, can reduce public service costs by nearly £200,000 over a lifetime. Those are simple sums.

In conclusion, we support community-based diversionary measures that are run by local communities and use models of restorative justice. Those models, which are centred on strengthening and supporting families, are more likely to prevent offending and are, therefore, a

more viable alternative to prosecution than those proposed under this legislation.

We are disappointed that the Minister has decided to proceed with the proposals to address alternatives to prosecution in advance of the outcome of the prison review, the youth justice review and the review on reducing offending. With regard to the current proposals, we submit that fining vulnerable and marginalised young adults will not stop them committing crime and will not ultimately make the community safer. The evidence is clear that putting vulnerable young adults into custody does not prevent offending and that it costs the public purse hugely. We would like to see community-based diversionary measures that are delivered in a timely matter and that not only address the underlying causes of offending but support the person who has committed the infringement to take responsibility for his or her action and the harm or hurt that it has caused individuals and the wider community.

The Chairperson:

Thank you very much. You finished inside your time by 10 seconds or thereabouts, so well done.

You are like some of the rest of us in that you ask for a definition of antisocial behaviour. We have wrestled with that for a long time, but it is a wee bit like wrestling with smoke. You are absolutely right that the definition is not clear. Are four people who keep an elderly person up half the night by standing talking beside a fence engaging in antisocial behaviour? It has been kicked around for a long, long time, and we are still waiting for the proper definition. You are disappointed that antisocial behaviour orders are not gone, and so am I, because they are usually worn as a badge of honour and have been ineffective.

Everything that you have said is very good, but the one thing missing is how you intend to take the public with you in all this.

Ms Yiasouma:

This is a massive issue. On any given day, you only need to pick up a local or regional newspaper or to switch on the radio, particularly between 9.00 am and 10.30 am, to be aware of the public outcry about crime and, in particular, about the behaviour of young people and younger adults. Society has grown increasingly intolerant of our young people's behaviour. I am one of

the few who have gone on 'The Nolan Show', for example, on behalf of Include Youth. I have been pilloried, insulted and verbally abused because of some of the stances that I have taken, which we have reflected today.

We have to be brave. We need education that states what has to be done if people are to feel genuinely safer. Locking people up does not work, and intolerance of young people standing on street corners is not the way to go. We have to find other ways. We must have a public conversation about how certain types of behaviour are viewed and about what will reduce offending. What the public and some journalists seem to think will work will not work. We go into communities and ask people about their young people who are all over the media. Those communities are solution-focused. Although they want the behaviour to stop, they understand that those kids are from the most disadvantaged homes. There is nowhere for them to go. Why should they all be expected to go to youth clubs that offer only pool and are closed during the public holidays?

We must be brave and have a public conversation. The problem is that it is people like us, the liberal do-gooders, who come out and make a stand. We ask the Government, the police, the Youth Justice Agency and the Probation Board to stand up and say, "If you want to stop offending, this is what you have to do and this is what works." It should be done community by community, if not street by street. They must take Nolan on.

The Chairperson:

Your submission states that the Give and Take scheme works with approximately 135 young people. Are those young people exclusively from broken homes? Do you feel that parents have any responsibility for their offspring?

Ms Yiasouma:

Absolutely: parents are key. Parents who feel that they can do their job are the best people to support young people. The problem is that some parents are struggling. If we support parents and families, we support children, regardless of whether they are teenagers or five years old. The challenge is how we do that in a supportive way that does not label people as bad parents; otherwise, it becomes a conflict.

There is some phenomenally good work going on around Northern Ireland, particularly in the west, in family support. We need to mainstream that work so that we can pick up on certain children and determine how we can get health visitors to identify parents who might be struggling and how we can break cycles. It is no coincidence that parents who are struggling to look after and parent their children are people who did not have role models in their own lives. We are in a cycle, and we need to know how to break it without getting into the rhetoric of blaming bad parents.

The Chairperson:

Would you not accept that there are some parents who have abdicated their responsibility?

Ms Yiasouma:

If there are, there are very few of them. I have met many parents of children who have done some awful things, Lord Morrow, and our NIACRO colleagues have met even more parents in that category, but not one of them has said, "It is not my fault". They have told us and our colleagues that they did not know what to do, that they were struggling and there was no one there to help them. As a middle-class woman I might think, "Oh my goodness", when I hear about some of the behaviour, but I have to put that behaviour in context. If someone, perhaps from a school, had intervened, or if someone had intervened when the children concerned were much younger, those children might not have got into situations in which they became involved in bad behaviour. If there are parents who have willingly and knowingly abdicated their responsibility, they are very few and far between.

The Chairperson:

Are you concerned that the Bill will not put those wrongs right or even set the infrastructure in place to bring that about?

Ms Yiasouma:

It is about breaking the cycle.

Mr McCartney:

Thank you for your presentation. You mentioned the EQIA process. Have you written to the Department, and did you get a response?

Ms Rogers:

We made a written submission but have not yet received a response. I know that a lot of our concerns about the EQIA process are shared by our colleagues in other organisations. We are not a lone voice in that regard.

Mr McCartney:

You would have expected the Department to at least respond to your concerns.

Ms Rogers:

We would have liked a response by this stage, but there has been nothing to date.

Mr McCartney:

The officials are here, and we will be able to raise the matter with them at the end of the session.

Mr McDevitt:

We are dealing with the Bill as we see it. Are you arguing that there is no place for penalty notices in any circumstances?

Ms Edel Quinn (Include Youth):

Include Youth is not arguing that there are no circumstances in which fixed penalty notices should be issued. We have attempted to draw on our 30 years of experience of working with vulnerable young people aged 18 to 21 who have come through a lot of challenges in their childhood. We are exercised about how the application of a fixed penalty notice will have any positive outcome for such young adults. There may be occasions when there is a short, sharp shock effect. The difficulty is that the proposal is a homogeneous one that is blind to the vulnerabilities of young people. The operation of the fixed penalty system by the police at the discretion of individual officers places an onus on those officers. The proposal needs a lot more teasing out and examination. We would welcome the opportunity to develop that further in

conversations with others to come up with solutions.

Mr McDevitt:

Did you hear the evidence that was given by colleagues from NIACRO?

Ms Yiasouma:

Yes, most of it.

Mr McDevitt:

I do not want to misrepresent them, but to reflect what they said. They said that there was possibly a place for fixed penalty notices, but in the context of an assessment. The assessment could quickly determine whether an individual would be a suitable candidate for a fixed penalty notice and whether the short, sharp shock would work particularly well or whether an alternative would have to be found. Would that type of approach to this clause meet the concerns that you have raised?

Ms Yiasouma:

It would, except to say that the behaviours that have been identified in the legislation do not provide much opportunity for assessment. We are generally talking about night-time activity and we wonder where there would be opportunities for assessment. Given what Edel has just said, we endorse fully the idea that there is no need to discuss diversionary issues if an incident is an aberration, and if, as Edel says, the person involved has the wherewithal to pay the £40 or £80 and it is a quick wake-up call that will allow that person to move on in life. In the context of Friday night chucking-out time, when people talk about indecent behaviour generally, we know what that means. Where is the opportunity for assessment and what level of training will police officers be given to be able to undertake what is, generally, a social needs assessment?

Mr McDevitt:

Are you saying that, essentially, there is a place for fixed penalty notices, but not in this Bill?

Ms Quinn:

Part of our disappointment in respect of those aspects of the Bill is that there have been a lot of

conversations, in-depth research and gathering of experiences from young people, families and communities about what works and what does not. That will all be submitted to the review of youth justice in due course. Central to that will be how to prevent young people from getting into the justice system in the first place and how to divert them should they come into contact with it.

The point has been well made by the Probation Board and NIACRO that, when young people get into the system, it is very difficult for them to back-pedal their way out. We believe that the timing is unfortunate for those reasons. We are giving a qualified welcome, but we reserve the right to come back, having had time to take a broad spectrum of the views of our stakeholders.

Ms Yiasouma:

There are some safeguarding issues.

Mr McDevitt:

Would it be helpful for us to request further written evidence from the organisations? Ideas are emerging, but they are broad. In defence of everyone, it is difficult to firmly assess that.

The Chairperson:

There is nothing to prevent any organisation or group that has presented to the Committee from submitting an additional paper; they are quite at liberty to do that. That is always open to witnesses.

Ms Yiasouma:

We are not satisfied that there are sufficient safeguards that the right people will be getting fixed penalty notices. We are happy to discuss and get specific about whether that is a matter for additional clauses in the legislation or the codes of practice and regulations that will accompany it. We are happy to come back to you with specific wording if that would be helpful.

Mr McDevitt:

We are dealing with the Bill now, so we have to focus the conversation on what is before us. If you have some specific suggestions about the outworking of the clauses, I would welcome that.

The Chairperson:

You should submit that by the first week in January. The Committee has to have its work collated and deliberated on by 11 February. Therefore, we need any further paper from you by the first week in January so that we can give it due consideration.

Sir Reg Empey:

First, I declare that I have worked with this organisation and am fairly familiar with its work. We are confronted with a dilemma. People tell us that fines do not work. I think that the NIACRO representative said that something like 24% of people in prison were there because of non-payment of fines. We are told that prison does not work for a variety of reasons. Statistics are used in the debate that is going on, and I mentioned Kenneth Clarke because it is a national debate as well as a local one. It is very difficult when we are confronted with a piece of legislation that we are being told could add to the complexities and the problems, which is what the witnesses are saying. As Mr McDevitt has said, we have to distil this down to writing that can be interpreted by a court, so we are confronted with a very great dilemma. I echo Conall by saying that we are happy to look at anything that can distil that down.

We are being advised that two of the principal methods of inflicting punishment for a crime do not work. I do not dispute that there is a great deal of supporting evidence that they do not work in many cases — I am talking about repetition and all the rest of it. We all know the social backgrounds of a lot of offenders. I saw the young people in your office who you took from care and whose lives you turned around. Unfortunately, that is not everybody's experience.

It is a bit unclear where we go from here. However, I would appreciate any additional points about this, because the last thing that we want to do is to add to the problems. We are looking for solutions, not to create more problems. This will be extremely difficult for us, because everybody in the developed world is trying to solve this problem.

Ms Yiasouma:

That is right. The challenge between solving the problem and public perception and confidence is where we sometimes ignore the evidence. A lot of work has been done on what works. The Northern Ireland Office commissioned research entitled, 'Reducing Offending: A Critical Review

of the International Research Evidence', which is just one of several pieces of research in this area. It identifies what it calls "sixteen worth trying". Those include CCTV and burglary prevention schemes. However, the research is also clear about holistic working and what it calls infant home visitation; that is, working with young families. The sixteen interventions include community restorative justice and employment opportunities. So, there is research that talks about what may work and what we are promising, and, as my colleague just reminded me, it does not mention fixed penalty notices or conditional cautions.

Sir Reg Empey:

The Chairperson tried to tease out the issue of responsibility. The average person does not go around harming their fellow citizens. They may not be taken by the hand and given special treatment. If somebody is from a very difficult background, it does not automatically mean that that person will commit crime, although, statistically, on average, that tends to be the case. However, I think that the Chairperson's point, if I am reflecting it correctly, was that there is a right and a wrong, and we cannot go chasing after the wrong at the expense of the right. That is the crux of the debate, where those different tensions collide.

Ms Yiasouma:

It is about citizenship for me, particularly with the young people with whom we work. Let us forget about our organisation: if our society can help people to become active — I will use the "r" word — responsible citizens, that is, for us, the way to go, because that is how we make communities safer and reduce reoffending.

That is all that we are suggesting. We are suggesting that we support people, young and old, to be citizens, to take the rights that come with that and to protect the rights of their fellow citizens. There is no other way. My colleagues did a lot of reading around this, and they found nothing that says that some of the measures proposed in this legislation are more likely to produce active citizens than some of the stuff that is mentioned in the research.

Sir Reg Empey:

I am relieved that we will find the solution delivered to us on two sides of A4. *[Laughter.]*

The Chairperson:

Finally — and I want you to take this on board — we do not want a system fixed around 135 or 140 people, if you understand what I am saying, and I am saying that in as nice a way as I can.

To repeat what has been said a few times around the Committee table: we are told that the prisons do not work, that we need not send people to prison because that will not work. We need not fine them either, because that will not work. So, we are left in a dilemma. I am not saying this in a belligerent way, but you are saying that here is a system and we should suck it and see if it will work.

Ms Yiasouma:

Sorry, will you repeat that? What are we saying?

The Chairperson:

It is an Ulster one — suck it and see if this work. Some of the presentations today might have told us that the systems in place are not working. Now, we have to get our heads around all this. And you are saying to us that here is a novel idea —

Ms Yiasouma:

No.

The Chairperson:

— now, try this one to see if it will work. Then, when we are down that system, whoever sits around this table in years to come will say that we have tried this, that and thon, and none of them worked, here is another idea that we need to get into. Is that it?

Ms Yiasouma:

No. We are not basing our evidence on the 150 people we work with every year. Our evidence is based on the specific work that is undertaken in Northern Ireland and on international research. We are definitely not suggesting "suck it and see". This is far too expensive and important to go into blindly. We suggest that there is international evidence from, among other sources, Northern Ireland Office-sponsored research that, fortunately, reinforces some of our views, based on 30 years' experience that we and colleagues share. That tells us that, if you are brave enough to

withstand the public debate and make that initial investment, this may be the way to go and this is some of the stuff that is worth trying. It is not about 140 kids.

The Chairperson:

That is good. You did say that this "may be the way to go". There is a wee bit of suck it and see there. However, we have to stop there. Sorry.

Mr McCartney:

On what date in November did you send the equality impact assessment to the Department?

Ms Rogers:

Sorry, I do not have a date on the document. I do not know exactly when, but I will e-mail to you the date on which it was sent.

The Chairperson:

Thanks for your presentation, well done.

The Committee has come full circle. The departmental officials are coming back after listening intently to everything said. In the new year, the Department will be providing a briefing and answering questions on the results of the EQIA, which is an issue that has arisen. Are members content with that?

Members indicated assent.

The Chairperson:

Mr Johnston, you and your team have been very tolerant. You have listened to everything said and picked up on all the issues, so it is over to you.

Mr Johnston:

I will start with the points made by the Probation Board, with the rider that I will try to pick up the points that are relevant to the Bill. I recognise that wider points were made and, if the Committee wants to come back to us with questions on any of those, we will answer them.

We welcome the Probation Board's support for the thrust of the proposals on those Parts of the Bill. We recognise the board's expertise and potential role, particularly in the context of conditional cautions and delivering services on the back of such cautions. There is, of course, specific provision in the Bill that would allow the Probation Board to do that.

We believe that the Bill's provisions on sex offenders in breach of article 26 orders will be helpful and take us a certain distance, particularly for offenders who breach and who have no clear residence. However, we recognise that wider powers would be useful beyond this jurisdiction. That would require legislation in England and Wales, but we will raise with the Ministry of Justice and the Home Office the question of whether those changes can be accommodated in future legislation for England and Wales.

We are working separately on an EU decision on mutual recognition, and we will have more to say to the Committee about that next year. That will be helpful in enforcing things in other European countries, including the Republic of Ireland.

The Probation Board asked whether the provisions on warrants could be extended to custody orders and probation orders. That is related to our existing work on a single jurisdiction and it would not be appropriate to expand on that in this Bill until we have done some more consultation. However, that request has been noted and we will certainly consider it for future legislation. The Probation Board also expressed concern that, in giving alternatives to prosecution, full account should be taken of the views of victims. I can confirm that the police and/or the prosecution will consider the impact of an offence on a victim in considering the appropriateness of an alternative disposal. In particular, when considering a conditional caution, the views of the victim will be an integral part of any decision as to the appropriateness of attaching a reparative condition to that caution. We will provide guidance to the police and prosecutors on the consideration of the views of victims.

I will group the points that were made by NIACRO and Include Youth.

The Chairperson:

Will you elaborate on the budgeting and personnel commitments that will be needed for conditional cautions?

Mr Johnston:

The personnel commitments are containable within existing resources. We are prepared to introduce conditional cautions on a phased basis so that training can be carried out and all the other personnel things that need to be put in place are put in place. There will be an upfront cost, which is included in the £200,000 for changes to computer systems. The cases are going through the justice system anyway. We are not creating new offences; this is simply a different, and we hope a better, way of dealing with them.

NIACRO and Include Youth raised various concerns about fine default. I take the points that were made, but the introduction of fixed penalty notices should not, of itself, increase the number of fine defaults. The cases that we are targeting are those in which there would have been a fine from the court in any event. Indeed, as we are dealing with people who will have voluntarily accepted a penalty rather than having one imposed by the court, there may be an opportunity for a slightly lower level of default. In England and Wales, fixed penalties were perhaps embraced a little too enthusiastically. We are concerned that they should be used only in cases that would have been taken through the justice system already, and that their use does not creep into areas that are not currently criminalised. When fixed penalties are introduced, the police will regularly monitor their use to ensure that they are being used appropriately. NIACRO also made the point about offenders paying a fine by instalments and needing extra time to pay. I can confirm that those options are already available at the discretion of the court. If the Committee wants me to say something more about fine defaults in general, I can, but hopefully that addresses the specific issues that are associated with the Bill.

The majority of the rest of the time was spent discussing the prevention of offending and the contribution or lack of contribution of the proposals to that. It has to be recognised that the justice system will not be reformed in 108 clauses. I listened to NIACRO and Include Youth and agreed with a great deal of what they said. However, the issues raised are featuring in wider plans and wider reviews of the justice system.

A fine can often be an effective disposal. As a number of people acknowledged, it has the effect of encouraging people to catch themselves on and we welcome the recognition that fixed penalty notices could do the same. However, fixed penalty notices are only a part of a wider menu of options. One option is the ordinary discretion that police officers exercise, and a pilot to make sure that that is well-grounded in the police is being expanded throughout Northern Ireland. There is the option, in the first instance, to think about whether the offence is something to be referred to the PPS, gets a fixed penalty notice or whether discretion at a local level to deal with it can be used. That is one stage.

The conditional caution is another option on the menu, another part of the armoury. Various conditions can be attached that address some of the issues which have been discussed. We are looking seriously at a pilot scheme of specific conditions that could be attached under conditional cautions using the Inspire project and tapping into the community support services that are available to help women offenders. The Department, through the Probation Board, has been providing support to the Inspire project, and there are various other examples of funding that provide alternative disposals. We are also working at improving the identification of people with mental health issues who come into contact with the justice system and at diverting them to appropriate services. We are working on that with our health partners as well as with partners in the criminal justice system.

All those issues come together in the strategy on reducing offending that the Minister announced. That is where we can look particularly at wider social issues and breaking the cycle of offending. It is also where we can draw on the research to which Koulla referred, even though it was conducted by an organisation called the Northern Ireland Office, which we do not mention now. *[Laughter.]* We are looking at finding the solutions that best fit. That all leads me to say that I am not sure that we are too far apart. However, I ask the Committee not to expect too much from one piece of legislation.

Looking ahead, we will come every year for the foreseeable future with another justice Bill. Those will present opportunities to pick up on the results of the reducing offending strategy, the prisons review and the review of youth justice. The Committee may well want to come back on

those points.

I want to address a few points that Include Youth raised. We spoke before about the equality impact assessment. The various major policies that led into the Bill were consulted upon. We screened them out in equality impact terms, but then did the equality impact assessment, in some ways, as a belt and braces exercise. We have been finalising our report on responses, and I hope that the Committee will have that within the next week. That will be our response to the various points made, including those by Include Youth, whose submission we received on 25 November. Once the Committee has seen our report on responses, we will publish it and it will be available to everyone.

There were concerns about inability to pay fixed penalty notices, which we appreciate. We have taken into account a number of considerations on that. To encourage payment, we set the penalty levels slightly lower than the equivalent court fines. We extended the time limit for paying to 28 days, and, although that might seem like a small extension, the Scottish experience has been that that has led to 12% more payments than in England and Wales, which have a limit of 21 days. If people cannot afford the fine and want the court to take on board an assessment of their means, they can decline to accept the penalty notice. In such circumstances, the PPS would consider court prosecution, and the court could take means into account in setting the fine level.

A query was raised about ensuring that the age of someone who is being given an alternative disposal is known and is accurate. In such cases, particularly for fixed penalty notices, we will look to people to produce identification so that details can be checked.

Ms Smiley:

Yes, we would rather have documentary evidence of their age. A person might not go about with that information on them, so they could go back to the station and confirmation could be obtained from a number of sources to ensure that the person is 18 or over and is eligible to receive one of those penalties. In exceptional circumstances, the penalty might be issued to someone who is under 18. That would be voided because it would be an unlawful use of the powers, so the individual would not be required to make payment.

Mr Johnston:

We can confirm that arrangements will be in place to confirm age. There will be oversight and monitoring by the police to ensure that the fixed penalty notices are being used in appropriate circumstances.

Finally, a couple of concerns were raised about the offender levy. That has not been the subject of our presentation, but the fixed penalty notice will state clearly about the offender levy. I will leave to the judges what they might say in court about the offender levy. When a levy is being imposed in court, there will be an opportunity to note its purpose. We do not intend to take the administration and governance costs of the levy and of the victims fund from the victims' fund. That fund will be ring-fenced for the benefit of work directly with victims. We are happy to publish a report annually on the expenditure of the victims' fund.

The Chairperson:

Thank you, Mr Johnston. The next Bill will be a good Bill to look forward to.

Mr Johnston:

Yes, and the one after that.

The Chairperson:

You said that you could not fix everything in 108 clauses, and you are right. When we talked about the sports law clauses, you talked about providing for 20 years down the road.

Mr Johnston:

With each individual aspect that we legislate on, we look to ensure that it will be durable. Likewise, that is the case with the different aspects that we are legislating on here. On alternatives for prosecution, we want to provide a framework that will be durable. For example, we may well come back after consultation with the Committee and look again at the offences that are listed for fixed penalty notices. We are trying to create a durable framework, and that is the same for sports law.

Mr McCartney:

Thank you for addressing the Committee. Include Youth made a number of points on the specifics of the EQIA. As you know, we have raised concerns about the process throughout. Include Youth is clear that it feels that the Department has not complied with its statutory obligations under section 75. What do you say to that point?

Mr Johnston:

We feel that we have complied with those statutory obligations, both at the policy stage and in issuing the EQIA on the Bill as a whole. We were very conscious of the changes that are being made and the section 75 guidance. We will concern ourselves with ensuring that we continue to implement those.

Mr McCartney:

The consultation began on 12 August and ended on 4 November, but the Bill was introduced between those dates.

Mr Johnston:

The Bill started its Committee Stage on 4 November. The stages before that were fairly formal. The EQIA results will be available to the Committee in the next week or so and I am confident that they will inform the Committee's continued consideration of the Bill. I come back to the fact that the individual policies were screened out but we are trying to be copper-fastened, in a sense, by doing the EQIA.

Mr McCartney:

How will the youth justice review and the prison review impact on the content of the Bill?

Mr Johnston:

I do not think that the content of the Bill would be negatived by those reviews. In the alternatives to prosecution, we are dealing with low-level offending. We are dealing with a limited range of offences, but certainly we want to hear the outcome of those reviews and consider what further legislative implications there might be.

Mr McCartney:

You said that in England and Wales the fixed penalties were used overenthusiastically —

Mr Johnston:

Too enthusiastically, I think.

Mr McCartney:

I am sure that, when this was being laid in front of government in England and Wales, it would have been with the same outcome in mind that you are trying to achieve. What guarantees do we have that it will not be overenthusiastically applied here?

Mr Johnston:

We are starting small with the fixed penalties. We are starting with a very limited range of offences. It still has potential to divert a significant number of cases from the justice system and to save between £750,000 and £1 million a year. There is a much longer list in England and Wales. It has 26 offences, which includes possession of cannabis, wasting police time, giving a false alarm to a fire and rescue authority and certain fireworks offences. We are not covering those. I think England and Wales learned from going too far because, in 2009, there was a proposal to add 21 further offences to the fixed penalty notice scheme. They pulled back from all those with the exception of cannabis. We want to start small, judge it by the experience and see where we go.

Mr McCartney:

Was there enthusiasm in the ones that are not included here?

Mr Johnston:

There was a whole list of things that we are not including that England either included or proposed to include.

Mr McCartney:

Are you excluding them because that is where they were overenthusiastic?

Mr Johnston:

I think that is, frankly, where England and Wales went wrong. They ended up trying to cover a lot of things in the fixed penalty notice scheme that perhaps should not have been covered.

The Chairperson:

Include Youth was not enthusiastic about ASBOs. Do you still think they merit inclusion in the Bill?

Mr Johnston:

We are not making any specific provision in the Bill about ASBOs. However, our general position is that we feel that they have been applied very proportionately in Northern Ireland. The agencies have concerned themselves with looking at all the alternatives, including various sorts of agreements with young people and their families before reaching the stage of issuing an ASBO. That is partly in recognition of what you said, in that there is the risk that an ASBO can be regarded as a badge of honour. The number of ASBOs in Northern Ireland has been relatively low, and we maintain that they have been used appropriately.

The Chairperson:

In some areas, they have not been used at all. For instance, in F district, which covers Fermanagh, Omagh, Dungannon and Cookstown, no ASBOs have been issued.

Mr Johnston:

Those figures have been published. We believe that ASBOs have been used in response to need, but not as the first port of call.

Mr McDevitt:

I want to go back to the debate about penalty notices, which, to sum it up, was about penalty notices having their place but about their being a little too blunt an instrument if they were legislated for as a sole discretionary alternative for a police officer. Would it be feasible to build in an assessment exercise to look at that idea of the fixed penalty against an alternative diversionary model?

Mr Johnston:

I am certainly happy to see what we can include in the guidance for police on the circumstances in which a fixed penalty is appropriate. As you say, it is just one option. However, there are options, such as conditional cautions —

Ms Smiley:

There are a number of ways in which the police can already exercise discretion without using any disposal that comes before the justice system. They are rolling that out across each of their districts at the moment. If something in somebody's behaviour suggests that there is an activity that they could undertake to address their behaviour and to prevent them from reoffending, they might be given a fixed penalty, an informed warning, a caution or a conditional caution as opposed to a criminal sanction. The police, therefore, have a complete gamut and, as Gareth mentioned, the guidance with the Bill will explain how officers can exercise that discretion within the whole gamut of the options available to them. This is not a one-size-fits-all approach for the offences in the Bill. Rather, it is a tool that can be used in circumstances where it is the most appropriate disposal.

Mr McDevitt:

What about taking a further proactive step and indentifying, based on a basic needs assessment, whether an individual needs a specific diversionary process? That individual could then be diverted to a support service. Would that be achievable under the guidance, or would specific reference need to be made in the Bill to enable an officer to do that?

Ms Smiley:

I think the guidance will allow for that. We are bringing in conditional cautions, which may be used when a need to address behaviour that is leading to further offending has been identified. At that point, the PPS will become involved in assessing whether that is a suitable diversion. As you heard, the Probation Board may also be asked for its expertise if it is able to assist on any particular issues. Elements are already there that allow that to take place.

Mr McDevitt:

Ms Smiley, are you able to provide us with a short list of the alternatives and the suite of

discretionary disposals that a police officer has as it stands today? I am not asking for a huge research paper, just a short list.

I want to ask a further question about the conditional cautions and, specifically, about enabling the code of practice. I note that the Bill requires the Department to get the agreement and consent of the Attorney General, to lay that code before the Assembly and then to make an Order. When I go back to the schedule referring to what will be done by negative and affirmative resolution, I see that the Order is secondary legislation that is subject to negative resolution.

Ms Smiley:

We would consult on that publicly and speak to the Committee about it, so there would be an opportunity to address any possible areas of concern. The publishable version would, therefore, be done in full consultation with all the interested parties.

Mr McDevitt:

I want to ask the Clerk a technical question. It seems strange that the legislation will require the Department to lay the code before the Assembly. Does that mean that we debate it?

The Committee Clerk:

I will have to check that.

Ms Smiley:

It is prayed against rather than debated on. Therefore, if there were obvious concerns about it, those could be raised, and the Order could then fall. However, if there were no objections, it could be taken forward as drafted and consulted on with the Committee, the Assembly and others.

Mr McDevitt:

I am curious about this, Mr Chairman. I know that I have not been around here long, as members are quite keen to point. However, if the legislation is subject to negative resolution, it would go through unless we actively pray against it. Before telling us that the Order will be subject to negative resolution, you are putting in a specific line stating that the Department must lay it before the Assembly. It would be useful for us to know exactly what that means.

The Chairperson:

I am sure that we can ascertain that and deal with it at our next meeting.

The Committee Clerk:

I can check that. It could simply be a matter of submitting it to the Business Office so that it is laid before the Assembly, although that does not mean that it will be debated on the Floor of the House.

Mr McDevitt:

Given its impact, we will need to scrutinise it quite carefully.

Sir Reg Empey:

In his response, Mr Johnston painted a slightly more benign picture of the differences between some of the evidence that we have received from the various organisations. He indicated that perhaps there is not that much between us. Unless I picked them up wrong, some of the evidence and presentations indicated that we could make matters worse by supporting some of the clauses. That is the thrust, as I read it, of some of the evidence that we have received. I am not convinced that there is such a benign difference between the position on the current proposals and the evidence that we have received.

Be that as it may, however, I take the point that Mr Johnston made that 108 clauses will not cure everything. That is true, but we want to be absolutely sure that we do not make matters worse. It seems that there is perhaps a conflict between Mr Johnston's interpretation of some of the evidence that we have received and the interpretation of some of the rest of us, but that is a matter for future deliberations.

The Chairperson:

I think that you are making a point that was made in a different way when we talked about legislation for the sake of legislation.

Sir Reg Empey:

Janice talked about age. What documentation are young people expected to have to establish their age?

Ms Smiley:

If young people are in education, they will have identification from the school, university or further education college.

Sir Reg Empey:

Hold on. I fully accept that a university student will have a student card. However, I am thinking of a group of young people who perhaps do not have the sort of formal lifestyle that is regarded as normal in society; in other words, the young people who do not go home at teatime and have meat and two veg and all of that. Quite a number of the young people who fall foul of the justice system come from dysfunctional families or care backgrounds or whatever. What would they be likely to have in their possession to establish their age?

Ms Smiley:

They do not always have to have the identification information in their possession; it is about the ability to be able to tap into the information that is already available, such as the information that is available through the police database records and all sorts of things that the police hold.

Sir Reg Empey:

That will work for somebody who has already clashed with the justice system, because there will be some record.

Ms Smiley:

People could be on the electoral register.

Sir Reg Empey:

I am talking about a person who has not crossed that threshold. What do you expect them to produce?

Ms Smiley:

The individual can produce information at the time, or it can be produced within an agreed time frame.

Sir Reg Empey:

What are they likely to have on their mantelpiece to determine their age?

Mr Johnston:

We are not dealing with something that is different from the issue at the minute, because we are talking about cases that would currently be considered for prosecution and would go through the fines process. So, at the moment, when someone is taken to a police station, there are procedures in place for the police to make sure that they are dealing with the person whom they think they are dealing with.

Sir Reg Empey:

I do not dispute that, Mr Johnston. I just wonder what you expect the young people who are about an area to have access to that determines their identity.

Ms Smiley:

A lot of young people would have some form of identification to buy alcohol, for example, because they need to be 18 or older to do so.

Sir Reg Empey:

Most of them are produced. I have seen a few of them, and some are not too great.

Ms Smiley:

I think that the police would require proof of age, identity and address.

Sir Reg Empey:

I think that I have seen one that would cover you, Mr Johnston. *[Laughter.]*

Mr Johnston:

If it would be helpful, I am happy to get clarification on that from the police and to write to the Committee.

Sir Reg Empey:

Bureaucracies, by definition, look for forms and things that most people have. However, we are dealing with a particular group of young people, and I am not sure that, in the informal life that they lead, the things that we take for granted are necessarily readily available to them, even in their homes or wherever they reside. However, that is only a detail, and I am sure that you will pick up on that.

Mr Johnston:

We will write to the Committee. If it is any consolation, I find it difficult enough to find my own driving licence.

Mr O'Dowd:

Thank you for your presentation. Other members have drawn attention to your comment that we cannot reform the justice system in 108 clauses. I totally agree with you. However, as legislators, we have to ensure that we do not make the justice system worse, and it is those 108 clauses that we are looking at today.

Part of the justice system deals with alternatives to prosecution. However, the justice system and prosecution system are not only about punishment but about ensuring that we reform the character of the individual or, as was mentioned earlier, make him a good citizen. What part of Part 6 is about making a person a good citizen?

Mr Johnston:

We must look at the wider context in which it is set. The Justice Bill is one key goal of the addendum to the Programme for Government that the Department took through the Assembly, but it is only one key goal. There are other issues, for example, the reducing offending initiative, in which those questions of citizenship will be factored in to a much greater extent.

Mr O'Dowd:

It is interesting that you mention it. To my mind, this chapter should be held. It fits in neatly with the alternative methods of dealing with offenders. I agree that we need to take substantial numbers of people out of the justice system and ensure that fewer people go through it, both for financial reasons and so that people do not get criminal records at a very young age that stay with them. I wonder whether we have put the cart before the horse. Should we not wait for the other strategy and see what comes out of that discussion? We could then marry them instead of going ahead with this.

Mr Johnston:

My fear is that we could end up waiting for that discussion and then the next one and the one after that. The provisions, particularly those on fixed penalty notices, have been very firmly called for by, among others, the Policing Board. They represent a way of dealing effectively and efficiently with minor crime, particularly with first-time and non-habitual offenders. They provide a way of addressing some of the clogging up of the justice system with cases that really do not need to be there. We can certainly think about how the powers could be tweaked and look at what guidance will be issued, but this is a good start to make. We can then address all the other questions about alternatives to prosecution, diversion and getting the right solution for the right problem.

Mr O'Dowd:

We can do all that, but, in the meantime, chapter 6 will be on the statute books and the police will be running around giving out fixed penalty notices in the wrong circumstances.

Mr Johnston:

At the moment, 1,000 people, including young adults, are going through the courts each year and getting fines that that will likely result in a criminal record. Through fixed penalty notices, we offer the opportunity for that sort of minor, first-time offending to be dealt with by a short, sharp shock that has no lasting effects. It is useful that we do that now as a starter, and we can then consider what other measures might be useful.

The Chairperson:

That is it. We have exhausted the list. Mr Johnston, I thank you and your team very much for

coming today.