



Police Service of Northern Ireland

Speedy Justice

Equality Impact Assessment

Draft Report

30th November 2012

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SPEEDY JUSTICE Equality Impact Assessment

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PREFACE

Further to the statutory duties contained within Section 75 of the Northern Ireland Act 1998, PSNI committed to carrying out an Equality Impact Assessment (EQIA) on each policy where screening has indicated that there may be significant implications in relation to one or more of the nine Section 75 grounds.

As part of the work to introduce Speedy Justice, and including three separate guidance documents on its implementation, a screening exercise has determined this EQIA is necessary to ensure the PSNI upholds its duties in relation to s75. This draft report has been made available as part of the Formal Consultation stage of this EQIA.

We would welcome any comments that you may have in terms of this EQIA, including our preliminary recommendations with regard to measures to mitigate adverse impact. Further copies of this EQIA report are available on PSNI's website at www.psnipolice.uk (pathway: 'Updates' / 'Consultation Zone')

If you have any queries about this document, and its availability in alternative formats (including Braille, disk, large print and audio cassette, and in minority languages to meet the needs of those whose first language is not English) then please contact:

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Deadline for comments will be: **1st March 2013**

Following consultation the Final Report will be made available.

1. PSNI and SECTION 75

Section 75 (1) of the Northern Ireland Act 1998 requires that PSNI shall, “in carrying out its functions relating to Northern Ireland, have due regard to the need to promote equality of opportunity” between the following nine Section 75 grounds:

- Persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- Men and women generally;
- Persons with a disability and persons without; and
- Persons with dependents and persons without.

In addition, and without prejudice to these obligations, in carrying out its functions relating to Northern Ireland, PSNI is also committed to having due regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

PSNI’s Revised Equality Scheme was approved by the Equality Commission for Northern Ireland on 26th September 2012. This scheme sets out arrangements as to how PSNI proposes to fulfil its obligatory duties determined through Section 75 legislation and its implementation.

The Revised Equality Scheme also acknowledges the commitment to carrying out Equality Impact Assessments (EQIAs) and policy reviews on existing policies and to screen all new policies as required.

PSNI has conducted screening of all policies, written and unwritten, to assess which policies may potentially impact on equality of opportunity and/or good relations obligations.

Following this screening process, it was determined that processes and procedures attaching to **Speedy Justice** should be subjected to an EQIA. This report presents the draft findings of that assessment.

2. BACKGROUND TO SPEEDY JUSTICE

In May 2006, the Criminal Justice Inspectorate NI carried out an extensive review of the Northern Ireland Justice system, with a particular focus on the often considerable time that was taken to process cases through the formal justice system.

In recognition of this delay, the Inspectorate recommended that more cases, and especially youth cases, should be diverted away from the Public Prosecution Service (PPS) and the courts by use of police informed warnings and cautions. The report also recommended that greater flexibility be applied to decisions on informal warnings and cautions for young people in particular, so that (in the words of the Criminal Justice Review), 'cases are dealt with expeditiously.

As a result of this review, PSNI was required to assume greater delegated responsibility for decisions on youth warnings and cautions, a shift in approach that necessitated additional training for PSNI officers in order to promote consistency in their decision making.

This approach to 'Speedy Justice' was reinforced by a 2009 Ministry of Justice (MoJ) report, 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders'.

In this report, the following questions were posed:

Q48 How can we simplify the out of court disposal framework for young people?

&

Q49 How can we best use restorative justice approaches to prevent offending by young people and ensure they make amends.

Sections 263 to 265 of this report highlighted the need for all front-line professionals to deliver services that will have the greatest impact on both potential and current offenders.

As a result of the Ministry of Justice report, a working group was created between PSNI and the Public Prosecution Service (PPS) to look at ways of reducing delays and, where appropriate, removing cases from the formal justice process. The 'Speedy Justice' initiative for non court disposals was one outcome of these deliberations.

SUMMARY OF THE PSNI DISPOSAL PROCESS

PSNI typically dispose of incidents and reported criminal activity through a common process, which can be summarised briefly in the following steps:

1. A crime is reported and investigated
2. If there is evidence to link an offender to the crime, a disposal decision is made.

- The only two disposal options that are currently available to PSNI, without a referral to PPS, are **discretion** and **penalty notice for disorder** (PND).
- For all other cases, the PSNI provide a recommended disposal which PPS ultimately direct on. These disposals include a range of non-court and court disposals.

OVERVIEW OF DISPOSAL OPTIONS

PSNI assesses the case and, based on a range of factors (e.g. nature and severity of crime, available evidence, age of offender), recommends a disposal option.

The case is not referred to PPS either if no further action is required (i.e. where there is no or insufficient evidence to link a named suspect/s to the crime), or the matter is suitable for Discretion or penalty notice for disorder (PND).

If it is necessary to refer the matter to PPS, then two main options are available - non-court and court disposals.

On average, PSNI refer around 30,000 files to PPS each year; approximately 50% of these are court disposals and 50% non-court disposals.

Of the 50% that are court disposals, the vast majority of these (around 80%) are magistrate court disposals.

The most common offence types reviewed by PPS are:

- Public order offences;
- Assaults;
- Criminal damage; and,
- Theft.

Further data on court and non-court disposals is available in the PPS Annual Report.

Court Disposals

These disposals are most commonly recommended as the disposal option where either the seriousness of the offence and/or the offender's offending history merits a court hearing. The PPS make a disposal direction on all cases recommending court disposal.

Non-Court Disposals

These disposals are most commonly recommended as the disposal option for crimes that are comparatively less serious and/or involve offenders who have little or no previous offending history. All **Speedy Justice** disposals fall into this category¹.

¹ 'Conditional Cautions' and 'Prosecutorial fines' disposal options are envisaged to be available in the near future but so far have not been implemented.

In summary non-court disposals include²:

- Streamline No Prosecution Files;
- Non-Court Diversion (i.e. Informed warning (Juvenile); Restorative Caution (Juvenile); Youth Conference (Juvenile); Informed Warning (Adult); Caution (Adult); Driver Improvement Scheme (17 years and above));
- Penalty Notices for Disorder (PND);
- Discretionary Disposals.

Streamline No Prosecution

This is the process PSNI will follow to seek a no prosecution decision from the PPS. It ensures police continue to investigate crimes effectively but also that time spent on preparing an investigation file is proportionate to the likely outcome, thereby reducing any unnecessary effort and bureaucracy where no prosecution is being recommended.

This process was subject to s75 screening but there was no evidence of adverse impact identified and PPS continue to be the final decision-maker³. Hence this element of Speedy Justice was not subject to further scrutiny within the EQIA (see Appendix C).

Non-Court Diversion

This is the process that police will follow to obtain a non-court disposal decision from the PPS by telephone.

The types of non-court disposals to which this applies are: Informed warning (Juvenile); Restorative Caution (Juvenile); Youth Conference (Juvenile); Informed Warning (Adult); Caution (Adult); Driver Improvement Scheme (17 years and above).

Prior to Speedy Justice, police have only been able to obtain a PPS decision on these disposals following submission of a non-court diversion case file. Speedy Justice seeks to reduce the delay this causes through instead obtaining them via telephone and then submitting the case file

As such the new Speedy justice telephone method of obtaining such decisions have been subject to s75 screening. This identified that there was no evidence of adverse impact, in particular as the decision-making process itself remains unaltered and PPS continue to be the final decision-maker. Hence this element of Speedy Justice was not subject to further scrutiny within the EQIA (see Appendix C).

Penalty Notices for Disorder (PND)

A PND provides a monetary penalty, for a fixed amount of either £45 or £85 depending on the offence, as an alternative to prosecution in prescribed circumstances. These

² For further information on these and related PSNI policies, please go to http://www.psnipolice.uk/index/updates/consultation_zone.htm.

³ PPS currently has an exemption from all s75 statutory obligations in relation to any of its functions attaching to prosecutions.

finances are available to police for issue to individuals aged 18 years and over for first time or non-habitual offences both on-the-street and in custody (subject to voluntary acceptance). The benefit to the offender is there is no criminal record unless the individual defaults on payment and the fixed penalty notice becomes court registered. One key benefit to the PSNI and the wider criminal justice system is the reduction in work that would otherwise be required if another disposal option were followed.

PNDs were established within a legal framework and as such were instituted by the Department of Justice (DoJ) under the Justice Act (Northern Ireland) 2011; DoJ subsequently conducted equality screening on the proposed legislation in August 2010 under the document heading of 'Equality screening forms proposed Justice Bill (NI) 2010' (http://www.dojni.gov.uk/index/public-consultations/current-consultations/justice_bill_screening_forms.pdf)

PNDs were referred to as 'Fixed Penalty Fine' within this document and the screening is on pages 1-7 of the DoJ document.

The minor offences mentioned in the DoJ screening document were amended slightly when the legislation was enacted, the confirmed offences were⁴:

- Behaviour likely to lead to cause a breach of the peace contrary to Article 18(1)(b) Public Order (NI) Order 1987.
- Criminal Damage (up to a threshold value limit of £200) contrary to Article 3(1) Criminal Damage (NI) Order 1977
- Disorderly behaviour contrary to Article 18(1)(a) Public Order (NI) Order 1987
- Indecent Behaviour (limited to street urination) contrary to Section 9 Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968
- Obstructing, Resisting or Impeding a constable contrary to Section 66(1) Police (NI) Act 1998.
- Shoplifting (as a first time offence up to a threshold value limit of £100, where goods are recovered in saleable condition or the retailer has been compensated for their loss) contrary to Section 1 Theft Act (NI) 1969.
- Drunk in a public place contrary to Article 10(1) Criminal Justice (NI) Order 1980.

Although forming part of the Speedy Justice policy on non court disposals, the PND policy was devised, screened and delivered by DoJ. For this reason PNDs are not included in this EQIA as, for the purposes of s75, they are taken as the responsibility of the Department and not PSNI.

Discretionary Disposals

A further arm of Speedy Justice relates to Discretionary Disposals (hereafter referred to as 'Discretion'). These disposals are an alternative way of dealing with crimes that are comparatively less serious and have less impact on those involved. For example minor shop-lifting, minor assaults, graffiti and broken windows.

⁴ Purchasing intoxicating liquor for a minor & Selling intoxicating liquor to minor were both withdrawn by DoJ prior to enactment of the legislation.

Discretion seeks to actively engage the victim in the process and encourages PSNI officers to use their professional judgement to resolve crimes to the satisfaction of victims and the community, while still maintaining accountability.

Speedy Justice by way of Discretion is administered by PSNI without reference to PPS. This disposal method is the focus of the EQIA, as it remains the primary responsibility of PSNI to identify if there is any adverse impact on any sections of the community and, in light of this analysis, to determine whether PSNI could take steps to mitigate these adverse impacts in the future.

This EQIA has been undertaken at a relatively early stage in the implementation of this process and as such has limited data. However it is believed likely the EQIA may provide useful indicators as to potential adverse impacts and measures to mitigate those impacts. The EQIA also takes on board and reports on the results of pre-consultation (see Appendix B).

3. AIM OF THE POLICY

AIMS OF THE POLICY

The overall aims of the Policy are to:

- Enable victims of comparatively low level /low impact crimes to be more involved in determining how the crime should be dealt with whilst maintaining the rights of offenders.
- Offer a method of disposal that is prompt, proportionate to the crime and that will improve victim satisfaction.
- Afford greater access to justice for victims, with justice done and seen to be done, thus supporting the drive to promote confidence in policing and the Criminal Justice System.
- Provide a personal police service, thereby avoiding the lengthy, costly and impersonal bureaucracy attached to the formal justice system.

OBJECTIVES OF THE POLICY

The specific objectives are to:

- Improve the quality of service for victims;
- Improve community confidence in policing and criminal justice;
- Enable officers to deliver an effective response to local crime issues; and,
- Reduce the bureaucracy and deliver more satisfaction in criminal justice outcomes in real time.

The Discretion guidance provides operational officers guidance in when and how to deal with a crime by way of a discretionary disposal.

A significant amount of consultation took place and independent legal advice was sought prior to publication and full implementation of the draft policy in 2010.

This was followed by further 'pre-consultation' with a wide range of key stakeholders at the end of 2011 to assist formulate the final policy. The majority of these responses were positive but three contained concerns (see Appendix B).

The introduction of discretionary disposals directly supports Recommendation 21 of the 'Review of Policing' by Sir Ronnie Flanagan⁵ i.e. "This new process will ensure that crimes are subject to proportionate recording, with reduction in the information recorded for many crimes down to that required to meet national standards but with more comprehensive recording for the more serious crimes"

WHEN AND HOW TO MANAGE DISCRETIONARY DISPOSALS?

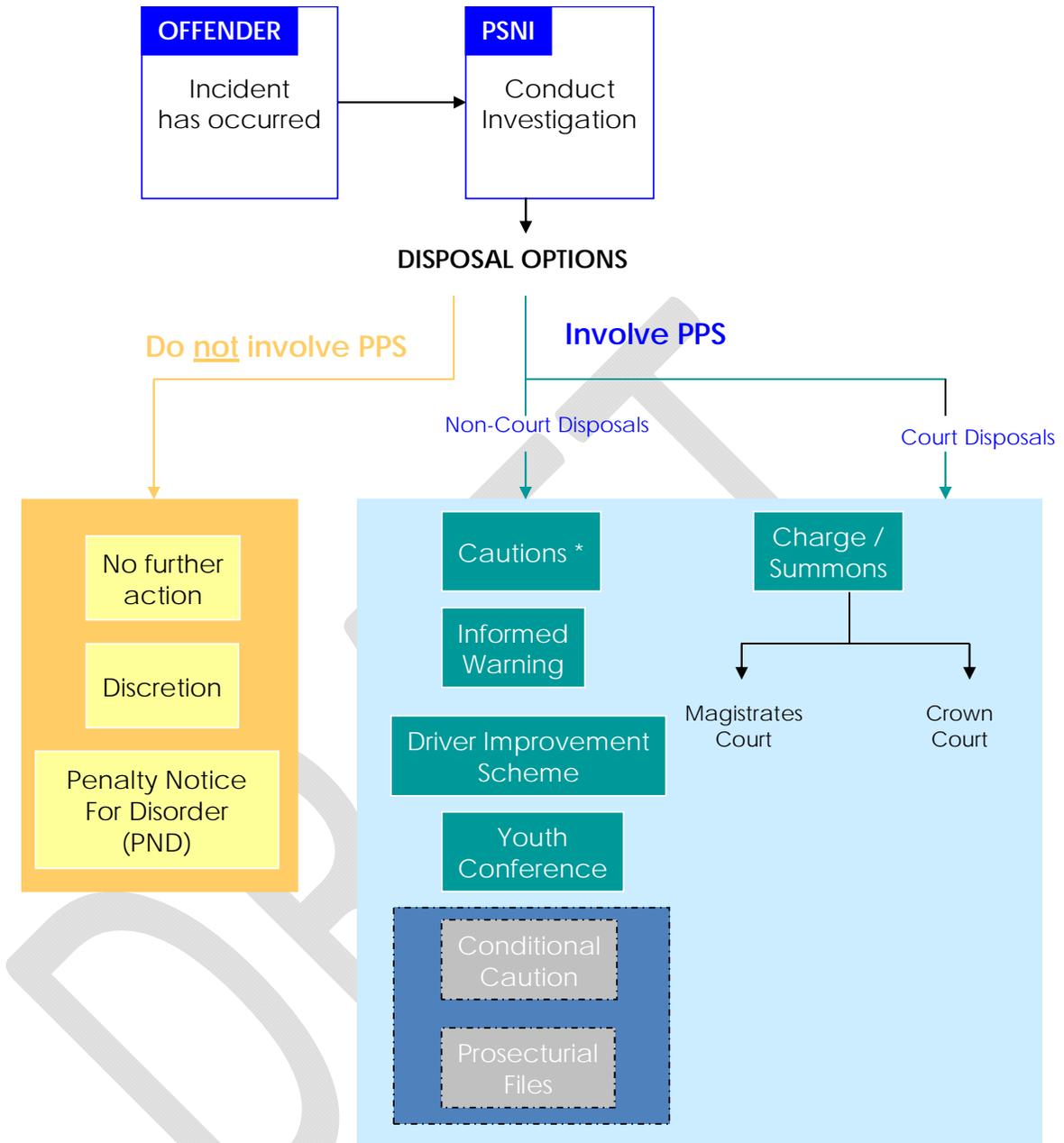
The operation of Discretion has been laid out in a draft operational guidance titled 'When and how to manage disposal of crime by discretion'. This is available via the PSNI website at: www.psnipolice.uk/updates/consultation or refer to Appendix D.

In addition a leaflet primarily intended to assist victims understand what a Discretionary disposal involves and titled 'Discretion, Speedy Justice Leaflet (Victim Support)', is available via the Victim Support Northern Ireland website at: www.victimsupportni.co.uk/publications

LINKS WITH OTHER POLICIES

The application of Discretion is one of the possible pathways in terms of disposal of an offence. The figure below is a high level summary of the various disposal options. It illustrates, in broad terms, where a Discretion disposal fits in. In essence, Discretion is one of a limited number of disposal options that does not involve court or the Public Prosecution Service (PPS).

⁵<http://webarchive.nationalarchives.gov.uk/20080910134927/http://police.homeoffice.gov.uk/publications/police->



Consultation Questions

Do you agree with the way in which the policy has been scoped and set out in this report?

Do you have any further comments about this section of the EQIA?

4. CONSIDERATION OF AVAILABLE DATA AND RESEARCH

METHODOLOGY FOR CONSIDERATION OF AVAILABLE DATA PRIOR TO EQIA

The approach taken to compiling the data that may inform the EQIA is set out below.

Stage 1: Project Initiation

(March 2010)

Steering Group and project team established
Agreed methodology and timescales.
Identified documentation and contacts etc.

Stage 2: Review Available Data

(March 2010 – April 2012)

This involved:

- Desk based analysis of a wide range of data - both quantitative and qualitative (See Appendix A - Data Catalogue)
- Views and experiences of a range of key stakeholders were sought prior to implementation of the draft policy in 2010. This was followed by a review by Victim Support (See Appendix B for list of those consulted and feedback received) and a further three month pre-consultation exercise from August – October 2011, with those who had an interest in and direct involvement with the specific groups the policy may affect. This pre-consultation has helped inform the current EQIA.

Stage 3: Scoping the EQIA

(December 2011 to May 2012)

This has involved:

- Analysing the available data and feedback and seeking to identify and agree where inequalities seem to exist;
- Agreeing most appropriate (suitable, feasible) approach of future data collection for monitoring purposes;
- Agreeing parameters of way forward.
- Agreeing a broad format for the EQIA; and,
- Agreeing target dates for consultation and publication of draft and final reports.

CONSTRAINTS

The guidance from the Equality Commission on conducting Equality Impact Assessments acknowledges that '*assessing the adverse impact of public policy across all nine categories cannot be effectively undertaken unless qualitative and quantitative data relevant to all the Section 75 categories are available and accessible*'⁶

It is duly acknowledged that to date there have been considerable constraints placed on the identification of valid and reliable S75 data in relation to the EQIA on application of Discretion. These constraints are set out below.

Limitations in Data Availability

PSNI is aware of the limited data available in relation to Discretion. This is due to:

Missing data items

As of April 2011, the majority of the Section 75 grounds were not captured by NICHE (the main PSNI database that records instances of application of Discretion).

At the moment, NICHE only records information on the:

- Gender of the offender and victim;
- Age of the offender and victim;
- Address (Postcode) of victim and offender

It does **not** record details of either the offender or the victim by:

- Religious belief;
- Political opinion;
- Marital status;
- Ethnicity;
- Disability;
- Dependants; or
- Sexual orientation

⁶ Source: Section 75 of the NI Act 1998, Practical Guidance on Equality Impact Assessment, Equality Commission NI, February 2005

Recent Implementation

Discretionary Disposals have only been implemented relatively recently (i.e. in 2010) and, furthermore, different Districts went 'live' across a subsequent 6 month period. (See table below).

District	Locations	Month	Date
C	Castlereagh, Down, North Down, Ards	May	01/05/2010
E	Armagh, Banbridge, Craigavon, Newry	May	01/05/2010
F	Cookstown, Dungannon, Fermanagh, Omagh	June	14/06/2010
G	Foyle, Limavady, Magherafelt, Strabane	July	01/07/2010
H	Ballymena, Ballymoney, Colerain, Larne	July	10/07/2010
B	Belfast East, Belfast South	July	11/07/2010
D	Newtownabbey, Antrim, Lisburn	July	15/07/2010
A	Tennent Street, York Road and West Belfast	October	22/10/2010

Source: PSNI Background Information

Therefore, at the time of writing (June 2012), PSNI had, at most, only two years data to analyse. Indeed, for the vast majority of Districts (6 out of 8) the data horizon is even shorter. The analyses included in Section 4 are based on those cases logged on PSNI data management systems from May 2010 to February 2012.

Low level crime data

It is also important to be aware that Discretionary Disposals only apply to investigations and disposals in the context of low level crime and anti-social behaviour. However, within PSNI, there is very little specific data in respect of low level crime as it is not normally broken down within the criminal justice environment apart from by mode of trial i.e. summarily or on indictment, and not by Section 75 categories. Hence, in some case, the data available is undifferentiated and what data exists is merely a profile of offenders who come in contact with police (see Appendix A).

Partnership-based

Moreover, most of this policy area is based on a partnership with other criminal justice agencies and bodies involved in the formal justice system and while PSNI has been designated with specific areas to lead (e.g. Road Safety), each area is not owned by any one agency or body.

Challenges in Data Analysis and Interpretation

Our analysis of the available data has identified four major challenges:

Data on Victims, Offenders and 'Victimless' crimes

In many EQIAs, the specific data set of interest is clear cut. The focus is typically on service users / persons impacted by the service or policy. However, with

Discretionary Disposals, there are at least two populations of persons to be considered:

- The profile of offenders impacted by the policy (i.e. from a Section 75 point of view); and,
- The profile of victims impacted (again from a Section 75 perspective).

Indeed, the original premise for Discretionary Disposals was that there would always be an identifiable 'victim' and 'offender'.

However, since 2011, minor traffic offences have the option to be treated under Discretion. There is therefore potential to have an 'offender' (i.e. the person committing the traffic offence) without there being a corresponding 'victim' (i.e. no-one else was involved in / affected by the specific traffic offence).

Since traffic offences make up the vast majority of the instances of Discretionary Disposals, overall this creates an imbalance in the dataset in favour of analysis of 'offender' data. This is a feature that has to be borne in mind when analysing the data at a high level.

Potential for 'One to Many' Relations within the Data Set

A further challenge to analysis and interpretation is the fact that any one instance of Discretion could have more than one victim and more than one offender. This feature makes meaningful data analysis even more complex.

Different Data (and Policy?) Year on Year

The inclusion of traffic offences within Discretionary Disposals since 2011 creates further challenges in terms of the analysis of Discretion data - at least at a high level - because the volume and profile of the data for Year 1 (May 2010 to April 2011) in relation to Discretion is materially different from the data for Year 2 (May 2011 to April 2012)⁷. This difference is linked to a very considerable extent to the introduction of minor traffic offences. In effect, in 2011, the way in which the Discretion policy itself was operated was materially different. For this reason, it is arguable that any comparison between Year 1 and Year 2 data on Discretion is actually invalid.

Retrospective Attempts to Baseline the Data are Not Practical or Value for Money

An alternative would be to seek to establish a baseline i.e. to assess what the profile of offenders and their outcomes would have been, for the same offences, without Discretion. However, this would be an immense and complex undertaking. It would also be problematic because if one sought to analyse this retrospectively, one would have to know considerably more about each individual's situation than is actually recorded on the files (i.e. in order to establish the likelihood of Discretion being applied). And even then, to an extent, this would be speculative. Consequently, the data produced would not be considered sufficiently robust and for this reason, PSNI has opted not to carry out such an exercise.

⁷ Question: Did all Districts go live with traffic offences in the same month? Or was it phased in?

GENERAL DATA CONSIDERATIONS

Scope of Data Examined and Commitment to Ongoing Collation

Whilst there has been a range of data examined in the preparation of this EQIA, it should be noted that it was never intended that this list would be exhaustive nor would aspire to represent a systematic review of literature in the field. Instead, the data gathering process was deliberately designed to identify and highlight the most salient material. Consequently, this EQIA is, as it was intended to be, a précis of the key issues rather an exhaustive analysis of all relevant data, and therefore a guide by which to inform mitigating measures.

Intrinsic and Extrinsic Factors

It is important to acknowledge that **all** data sets, including those identified for this EQIA, are less than perfect. These imperfections (such as incompleteness, inaccuracies) can be caused by a wide variety of factors including unsuitable sample sizes, profile of the samples, methods of capture, quality assurance processes, contextual factors (e.g. that affect levels of reporting or under reporting) etc. Other imperfections are intrinsic to the data itself in the sense that the data set selected does not wholly reflect the actual issue under examination (i.e. no direct data was actually available) but is rather the closest available proxy. (For example, the religious belief or political opinion of an offender is not recorded but one might try to infer this from other available data e.g. postcode or address).

To ensure that findings are reliable and valid, the EQIA has focused attention on those datasets that were regional (i.e. across NI as a whole) and where the broad methodology used to gather and analyse the data suggested that the data quality was likely to be high and consistent in terms of the data items captured. The data sets collated by PSNI were assessed as being of high quality in terms of the criteria above.

However, some specific constraints within the PSNI data sets were already known internally and were noted *above*.

Implications

All of the above have implications for the interpretation of the data and the extent to which one can draw firm conclusions as to whether or not there are inequities in relation to any aspect of the application of Discretion.

The further consultation with key stakeholders during the formal consultation of the EQIA will provide a further challenge function and may re-shape some of the tentative conclusions reached here.

Consultation Questions

Do you agree with the way in which the data has been analysed and set out in the report?

Do you have any further comments about this section of the EQIA?

5. ASSESSMENT OF IMPACT

DATA EXAMINED

The range of data examined is set out below and in Appendix A.

The views of key stakeholders that were also taken into consideration at the stage of pre-consultation are set out in Appendix B.

KEY FINDINGS

As indicated above, as far as the application of Discretion is concerned, data on the majority of s75 grounds are not currently captured by PSNI's information systems - either paper based or IT-based. Consequently, in relation to either victims or offenders at the present time there is little or no empirical data on the following Section 75 grounds:

- Religious belief;
- Political opinion;
- Marital status;
- Ethnicity;
- Disability;
- Dependants; or
- Sexual orientation

of either the offender or the victim.

Moreover, we have highlighted the very significant constraints and challenges inherent in the limited data that is available.

As a result, at this point in time our capacity to comment, in any meaningful way, on possible inequities within the application of Discretion is likely to be heavily constrained. (Note: Collecting the full range of Section 75 data is one of our key actions under 'Mitigating Measures'). At the same time, based on data currently available, preliminary breakdowns of victims and offenders by certain Section 75 grounds are outlined below.

Victim

The following table includes breakdowns of all available case files on PSNI data management systems between 2010 and February 2012. At this time breakdowns of victims of offences disposed of by the use of Discretion are only available by gender and age.

Table 1: Age and Gender Profile of Victims (Discretionary disposals)		
		%
Sex [BASE=5296]	Male	22
	Female	78
Age [BASE=2973]	10-18	14
	19-30	14
	31-40	9
	41-50	11
	51+	53
Sex / Age [BASE=2984]	Male 10-18	9
	Male 19-30	9
	Male 31-40	7
	Male 41-50	8
	Male 50+	36
	Female 10-18	5
	Female 19-30	4
	Female 31-40	2
	Female 41-50	2
Female 50+	17	

Gender: 78% of victims of crimes disposed of through Discretion were female. The data/research indicates that in general terms, females are more likely to be the victims of crime and hence this finding is not surprising although once more, accurate baseline statistics are not available at this time.

Age: 53% of victims attached to Discretion disposals were aged 51+, while only 14% were aged under 18 years.

Race: The victim satisfaction surveys carried out on behalf of the Policing Board show levels of satisfaction of 90% in 10 out of 11 (for victims of low level crime or anti social behaviour). However, we note very small sample (less than 1% of the total number of instances 1,530). Moreover, some other reports into race and policing have indicated negativity and problems at the service delivery level of policies. Examination of these reports provides indication of potential reasons for under reporting by ethnic minority groups.

Disability - The only information that was available on this was the feedback from the stakeholder consultation which suggested that there was possible under reporting or the concerns in relation to people with learning difficulties.

Offender

The following table includes breakdowns of all available case files on PSNI data management systems between 2010 and February 2012. At this time breakdowns are only available by gender and age.

Profile of Offenders

		%
Sex	Male	73
	Female	27
Age	10-18	19
	19-30	34
	31-40	17
	41-50	15
	51+	15
Sex / Age	Male 10-18	14
	Male 19-30	26
	Male 31-40	12
	Male 41-50	11
	Male 50+	11
	Female 10-18	5
	Female 19-30	8
	Female 31-40	5
	Female 41-50	5
	Female 50+	4

Gender: The available data shows that discretion has been applied more frequently to males than females, by a ratio of almost 3:1. However, without accurate baseline data against which to compare the relative frequency with which both genders either come into contact with PSNI officers generally, or are suspected of committing various offences, then the figures are not able to help identify adverse effect attaching to this disposal procedure *per se*.

During pre-consultation, there was a concern expressed by two of the stakeholders (Youth Justice Agency and Children's Law Centre) that, "*because young people, particularly young males... are the most likely groups to come into conflict with PSNI... [there was a concern that] discretion may be used disproportionately against young men*" (See Appendix B). This causal relationship may be open to challenge. Simply because young men are more likely to offend this does not mean that proportionately, they will be more likely to attract discretionary disposals. This issue is worthy of further analysis.

Age: The available data shows that Discretion has been applied to offenders of different ages as follows:

- Mainly to people below the age of 30; these account for 50% of all instances;
- Those under the age of 18 account for 19% of all the instances of Discretion;
- Those aged 51+ account for 15% of all instances of Discretion.

In relation to age, there was a concern expressed (By the Children's Law Centre, See Appendix B) during pre-consultation regarding what they perceived as, *'a marked lack of emphasis in the "Speedy Justice" Service Procedures and leaflet on children and young people and the focus of the policy appears to be on adults'* and yet, *'we are challenged about [this]... given that it [the policy] is likely to be used disproportionately against under 18's as it is aimed at addressing low level crime and minor offences which are they types of offences that most young people who come into contact with the criminal justice system commit'*.

Disability: The only information available on this is at the present time is qualitative and comes from written responses from two of the stakeholders during pre-consultation, See Appendix B. Youth Justice Agency: Asserts, *'many young people have educational learning needs often other mental health or behavioural difficulties which can result in them failing to comprehend what is being said. We would strongly contest that young people are entitled to and should be encouraged to seek legal advice before agreeing to discretion and we would advocate that a leaflet explaining the process in language that is easily understood needs to be given to the young person and parent. The statement to be read out to young people will also need to be simplified to the fact that in addition to the options available to the PPS that they can refer for a diversionary youth conference.'*

Similarly, the Children's Law Centre contend that, *'issues [including informed consent] are further exacerbated when children have a learning difficulty and / or mental health problems, a disability, or if English is not their first language'*.

Race: The only information available on this is the Children's Law Centre contention that, *'issues [re discretion] are further exacerbated when ... English is not their first language.'*

Consultation Questions

Do you agree with the way in which the adverse impacts have been established and set out in the report?

Do you have any further comments about this section of the EQIA?

6. CONSIDERATION OF MITIGATING MEASURES

CONSTRAINTS ON IDENTIFYING MITIGATING MEASURES

Specific mitigating measures are not easy to identify given the paucity of relevant data. Addressing this deficit therefore becomes an immediate priority and hence processes to ensure that the necessary data is captured completely and accurately will be put in place with immediate effect (see below).

The pre-consultation with stakeholders to date has comprised:

- The process employed during the formation of the policy;
- The process employed by this EQIA; and;
- The consultative processes used through the screening processes.

PSNI RESPONSE TO PRE-CONSULTATION

Stakeholders who provided a written response (see Appendix B) raised a variety of issues, only some of which are directly relevant in the context of this EQIA. However a summary of the key issues raised by stakeholders and initial PSNI response are as follows:

Consultation process

Concern was raised regards insufficient consultation in the formation of the policy and that in particular there was limited reference made to potential impact and recognition of s75 and Human Rights issues.

Due to internal changes to the format and process of formulating policy at the time the service procedures were created, PSNI acknowledge there was no explicit reference made to reflect the fact the draft service procedures had been subject to s75 and human rights screening which subsequently prompted this EQIA.

The PSNI welcomes continued feedback and commits to thoroughly reviewing all responses provided in both pre-consultation and in relation to this EQIA. The PSNI will review the policy in light of feedback received and will ensure a full and complete consultation process, including direct consultation with children and young people as per the Equality Commission's Guidance, is carried out.

Victim veto

Concern was raised regards the ability of a victim to effectively 'veto' an offender from receiving a discretionary disposal.

The PSNI accept that a victim should not ultimately have the power to 'veto' a case that otherwise appears suitable to be dealt with by discretion. However this type of disposal does aim to use restorative principles to produce an outcome that satisfies the victim whilst ensuring the offenders rights are protected and as such has been amended to reflect this.

Impact on young offenders

A number of concerns have been raised specifically regards the impact of discretion on young people including; taking account of the best interests of the child, need to divert young people away from the justice system, establishing 'informed consent', proportionality of restitution, ensuring young people are given the options and implications in a language they understand and impact on criminal records.

The policies are intended as a practical guide to operational officers in how to identify when it may be appropriate to consider discretion and how to administer them; as such it does not seek to duplicate other guidance. However in view of this feedback; a specific entry has now been included regards considering the 'best interests of the child', as a further reminder to officers of this important consideration when dealing with young offenders.

The PSNI fully supports the principal of diverting young people away from the criminal justice system. Indeed, discretion is intended to directly contribute to this through providing officers with another accountable means of dealing with comparatively low level/impact crime without recourse to the more formal criminal justice system.

Establishing 'informed consent' from a young person or vulnerable adult is protected by the Police & Criminal Evidence Order (NI) 1989 and related Codes of Practice which ensures a suitable appropriate adult is present to represent the offender's interests. The PSNI will however seek to improve information supporting discretion, such as the 'suspect information' statement, in order to maximise understanding of those involved in what the process is and its consequences.

Ensuring an outcome is proportionate to the offence is important to satisfy the offender, victim and wider community that the outcome was just and fair. However due to the infinite combination of circumstances that may be present it is impractical to list a definitive range of potential outcomes. Instead officers are empowered to use their professional judgement and to engage with both the victim and offender to seek agreement regarding a proportionate outcome and this is subject to the checks and balances listed below (refer to Accountability Section below).

A discretionary disposal does not result in a criminal conviction. However there are two reasons police need to maintain a record of such a disposal. Firstly for operational reasons, to ensure should the offender commit another crime, this can be taken into account when deciding the most appropriate disposal. This is only maintained for a limited period, is only 'visible' if subject to an enhanced criminal record check or a further offence is committed. Secondly it is necessary to ensure community confidence is maintained in the use of non-court disposals.

Accountability

Concern has been raised specifically regarding police accountability when issuing a discretionary disposal as officers can deal with a crime in this way without recourse to PPS. The PSNI recognises all too well the need to maintain community confidence, however a discretionary disposal can only be issued with the agreement of the offender and their appropriate adult (if a young person or vulnerable adult), a police

supervisors authority is required for cases involving young people or vulnerable adults, the process is fully documented and is subject to a quality assurance process led by the PPS who randomly chose such cases to independently ensure this disposal outcome is used appropriately and consistently.

It is important to note that if this disposal option did not exist, it would effectively mean the 'entry point' available to offenders being raised, as the consequences for every other disposal option is greater than discretion. As such whilst the PSNI recognises the sensitivity of this issue, there are measures in place, both internally and externally, to ensure the disposal is used appropriately and this change reflects the wider changes within Northern Ireland society and it's relationship with PSNI.

6.1 PRELIMINARY RECOMMENDATIONS

This EQIA has identified that existing data with regard to the Discretionary Disposal policy remains partial, and hence it is difficult to identify in a meaningful way, adverse impacts and associated mitigating measures.

Preliminary data analysis would suggest that the profile of those who are either victims of offences that are disposed of via Discretion, or perpetrators of offences addressed through Discretion, may be related to Section 75 grounds but the basis for these conclusions is not strong.

To remedy this deficit, it is recommended that the following actions will be taken. This will include a commitment to carry out a further EQIA during 2014, at which time stronger conclusions can be reached based on a firmer and more robust data foundation.

1. PSNI will consult widely on this EQIA, and use this consultation to help identify appropriate monitoring procedures
2. Internal consultations within PSNI will be used to establish monitoring procedures by all appropriate Section 75 grounds, for both victims and offenders.
3. Guidance documents linked to Speedy Justice will continue to be informed and modified by feedback received before and during the EQIA process.
4. These consultations and data will be used to inform the carrying out of a further EQIA during 2014.
5. Future implementation of Speedy Justice will be fully integrated with actions and outcomes as set out in the PSNI Equality, Diversity and Good Relations Strategy 2012-17.

Consultation Question

Do you agree with the way in which the measures to mitigate and preliminary recommendations have been drawn up and set out in the report?

Do you have any further comments about this section of the EQIA?

7. CONSULTATION

PSNI is committed to consultation which is timely, open and inclusive, and conducted in accordance with the Equality Commission's Guiding Principles. The consultation process in respect of this EQIA will last for a period of **13 weeks** from **November 30th 2012** to **March 1st 2013**.

All Equality Scheme consultees will be notified of the availability of this EQIA report and invited to comment. A public notice will be prepared and issued to various media outlets to make the public aware of the EQIA and information about the EQIA will be placed PSNI's website; comments will be welcomed from any individual with an interest in the proposals.

All consultation documents can be made available in hard copy and alternative formats on request and can be accessed on PSNI's website at : http://www.psni.police.uk/index/updates/consultation_zone.htm

As much background information as possible has been included within this report. If there is any information which has not been provided, PSNI will make every effort to do so on request. If any consultee has difficulty accessing the background information PSNI will consider providing summaries in other formats or explaining issues on a face to face basis.

All comments and queries regarding this report should be addressed to:

Chief Inspector Michael Kirby
Police Service of Northern Ireland
Service Improvement department
Knock House, 29 Knocknagoney Road, BT4 2PP

Telephone: 02890 922373

Fax: 02890 922340

Email: michael.kirby@psni.pnn.police.uk

Consultation Questions

Do you agree with the way in which consultation is planned and set out in the report?

Do you have any further comments about this section of the EQIA?

8. FUTURE MONITORING FOR ADVERSE IMPACT

At the end of the consultation period, the EQIA report will be revised to take into account all comments received from consultees. PSNI's decisions will be incorporated into a final summary report which will set out the consideration given to the impact of alternative policies and mitigating actions. This will complete Step 7 of the EQIA process.

The final summary report will be made available on PSNI's website. In addition, Equality Scheme consultees and those who responded to the consultation will be notified of the availability of the report.

A system will be established to monitor the impact of any decisions in order to find out the effect on the relevant equality groups. Full details of the monitoring system will be included in the final summary report.

The results of ongoing monitoring will be reviewed on an annual basis and included in the annual review on progress to the Equality Commission. This review will be published on our website. This will complete Step 7 of the EQIA process.

If the monitoring and analysis of results over a two year period show that there has been a greater adverse impact than predicted, or if opportunities arise which would allow for greater equality of opportunity to be promoted, PSNI will take steps to achieve better outcomes for the relevant equality groups.

Consultation Questions

Do you agree with the way in which monitoring of the policy is planned and set out in the report?

Do you have any further comments about this section of the EQIA?

Do you have any further comments about the draft EQIA consultation report in general, including its findings and recommendations?

Appendix A- Data and Research available on Anti-Social Behaviour

Overview

- Overall anti-social behaviour incidents fell by 9.4 per cent in the twelve months to 30th September 2011 when compared with the twelve months to 30th September 2010.
- Over the last two years anti-social behaviour incidents were at their lowest level in January 2011 with 4,778 incidents recorded. Since then they showed an upward trend to reach 6,170 in April 2011, before falling again in May 2011. Figures increased between May 2011 and July 2011. July 2011 remains the highest monthly figure since October 2010. The number of anti-social behaviour incidents then fell in August 2011 and again in September 2011. The September 2011 figure of 5,449 is a fall of 11.8 per cent when compared with the previous month.

Crime and Anti Social Behaviour in Northern Ireland

In the report of the independent commission on youth crime and anti social behaviour published in 2010 under "Time for a fresh start" one of the guiding principles states, "Ensuring children and young people responsible for anti social behaviour and crime face meaningful consequences that hold them accountable for the harm caused to victims and the wider community" (a principle of integration)".

On the other hand in the Children's Law Centre "Shout Out Soon" report (2004) there were several comments reflecting a desire to see more police dealing with concerns to their social surroundings, i.e.

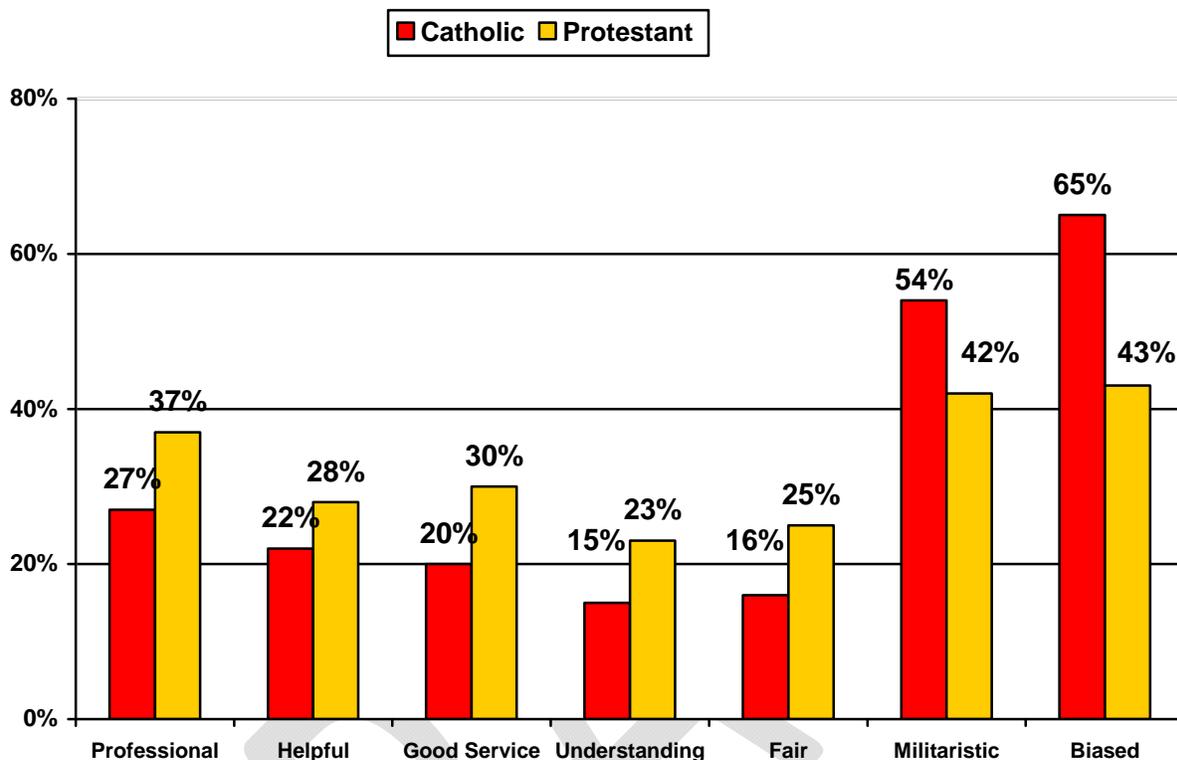
"Some children and young people stated that the reason they did not feel safe was that there was no police (PSNI) on the streets. Children and young people suggested the PSNI needed to work with them, in their communities, in order to reduce the incidence of teenage drinking, joyriding and vandalism"; "Some children and young people suggested that if the police were more visible, they could prevent much of the substance abuse which often happens in public areas and which can make the surrounding area in which the live, feel unsafe".

Examples of comments made by children and young people were:

- "We need more Police on the streets" (13 year old)
- "Police need to become more involved with young people and safety on the streets" (10 year old)
- "There needs to be more police on the streets to catch underage drinkers and stricter rules to make it harder for young people to get alcohol" (17 year old)
- "There should be a harsher punishment (by police) towards people who abuse others" (18 year old on discrimination and hate crimes).

A survey of youth in North Belfast by the Policing Board⁸ in respect of attitudes to police reflected a 6% - 22% variance across a range of perceptions of police between Protestant and Catholic youth (Chart reproduced below).

Attitudes of young Catholics and Protestants to the police in North Belfast



This survey not only highlights a religious variance but also reflected a variance from a geographical perspective. When perceptions of police were compared with other youths who lived outside North Belfast there were significant differences between young people who lived within and outside North Belfast in their experiences of the police, with young people outside North Belfast generally having more positive experiences. This survey suggests socio-cultural influences on young people's perceptions of police.

In a **survey of pupils**⁹ more than a third (38%) of pupils have spoken to, or been spoken to by, a police officer in Northern Ireland in the 12 months prior to the survey, mainly through attending a talk in school relating to drugs or road safety etc. Just over half (51%) think the police in Northern Ireland treat young people very or quite fairly and 46% are very or quite satisfied with the way the police do their job. Almost one in ten (9%) of all pupils say they would be interested in joining the police in Northern Ireland when they finish their education.

⁸ Byrne J, Conway M and Ostermeyer M, (2005) *Young People's Attitudes and Experiences*

While general data/research is available to indicate potential under reporting of Child Abuse this EQIA has to address its requirements in regards to the categories listed under Section 75 of the Northern Ireland Act 1998. The following data/research was used to examine the background of children and young people in Northern Ireland and provide information from which an assessment of impact could be made.

Men and Women Generally

The statistics reflecting discretion used in dealing with low level crime and anti social behaviour at Table 1 indicate that males outnumber women by a ration of almost 3:1.

Table 1

OFFENCES	% OF OCC	NUMBER OF OCCURRENCES	MALE	FEMALE
ANIMAL CRUELTY	0.2	3	2	1
ASSAULT	22.03	337	228	109
ASSAULT ON POLICE	0.92	14	10	4
ATTEMPTED TADA	0.13	2	2	
ATTEMPTED THEFT	0.07	1	1	
BURGLARY	0.33	5	5	1
COUNTERFEITING	0.07	1	1	
CRIMINAL DAMAGE	18.89	289	249	41
DRUGS	2.22	34	29	7
DRUNKENESS	0.13	2	1	1
FIREWORKS	0.46	7	6	1
FRAUD	1.83	28	17	11
HANDLING	0.07	1	1	
HARASSMENT	0.59	9	7	2
HOAX CALLS	0.2	3	3	1
INDECENCY	5.03	77	76	1
LICENSING REGS	0.13	2	3	1
MAKING OFF WITHOUT PAYMENT	1.37	21	11	10
OBSTRUCTION	0.2	3	1	2
POSSESSION OF IMITATION FIREARM	0.07	1		1
PUBLIC ORDER	12.68	194	165	29
STREET DRINKING	0.13	2	2	2
SUPPLY ALCOHOL TO MINORS	0.07	1	1	
THEFT	8.63	132	93	45
THEFT SHOP	22.88	350	176	179
THREATENING PHONE CALL	0.07	1	1	
THREATS TO DAMAGE PROPERTY	0.07	1	1	
THREATS TO KILL	0.33	5	3	3
UNDERAGE DRINKING	0.13	2	1	1
UTTER THREATS	0.07	1		1
WASTING POLICE TIME BY FALSE REPORT	0.07	1		1
TOTAL		1530	1096	455
		% OF INVOLVEMENT	70.66	29.34

Persons of Different Age

Table 2

OFFENCES	% OF OCC	NUMBER OF OCCURRENCES	JUV	18-30	30-50	50+
ANIMAL CRUELTY	0.2	3			2	1
ASSAULT	22.03	337	130	87	84	36
ASSAULT ON POLICE	0.92	14	2	9	3	0
ATTEMPTED TADA	0.13	2		2		
ATTEMPTED THEFT	0.07	1		1		
BURGLARY	0.33	5		5		1
COUNTERFEITING	0.07	1		1		
CRIMINAL DAMAGE	18.89	289	108	131	40	11
DRUGS	2.22	34	5	22	9	0
DRUNKENESS	0.13	2			1	1
FIREWORKS	0.46	7	3	2	2	0
FRAUD	1.83	28	12	10	4	2
HANDLING	0.07	1			1	
HARASSMENT	0.59	9	4	3	1	1
HOAX CALLS	0.2	3	2		1	1
INDECENCY	5.03	77	6	56	12	3
LICENSING REGS	0.13	2		1	1	2
MAKING OFF WITHOUT PAYMENT	1.37	21	1	12	8	4
OBSTRUCTION	0.2	3		3		
POSSESSION OF IMITATION FIREARM	0.07	1		1		
PUBLIC ORDER	12.68	194	43	117	29	5
STREET DRINKING	0.13	2	4			
SUPPLY ALCOHOL TO MINORS	0.07	1		1		
THEFT	8.63	132	33	52	40	13
THEFT SHOP	22.88	350	143	85	92	35
THREATENING PHONE CALL	0.07	1		1		
THREATS TO DAMAGE PROPERTY	0.07	1		1		
THREATS TO KILL	0.33	5	2	1	2	1
UNDERAGE DRINKING	0.13	2	2			
UTTER THREATS	0.07	1			1	
WASTING POLICE TIME BY FALSE REPORT	0.07	1		1		
TOTAL		1530	500	605	333	117
		% OF INVOLVEMENT	32.24	39	21.47	7.54

Persons of Different Religious Belief

Table 3 below, replicated from a survey response of 819 16 year olds¹⁰, provides an indication of religious identity for young people in Northern Ireland in 2005.

Table 3

	%
Church of Ireland (Anglican)	14
Catholic	50
Presbyterian	21
Methodist	4
Baptist	1
Free Presbyterian	2
Brethren	1
Other	1
Christian - no denomination	1
Protestant - no denomination	1
Elim Pentecostal	1
Other Protestant denomination	2
Non Christian	1
Not answered	1

¹⁰ Young Life and Times Survey 2005 <http://www.ark.ac.uk/ylt/2005/Background/RELIGION.html>

The Continuous Household Survey provides percentages for households with dependent children (16 and under + 16-18 if in full-time education) based on religion in terms of Protestant/Catholic. They are as shown at Table 4 below. This shows a consistent reduction in Catholic juvenile population towards an equal proportion of juvenile population in respect of the traditional religious divide.

Table 4

Sex and Religion ²	Has Dependent Children								
	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
All	44	43	43	43	41	40	40	39	38
Catholics	52	52	49	48	49	47	46	43	41
Protestants	39	37	38	39	35	35	36	36	36
Base=100%	5,795	5,374	5,704	5,298	5,272	5,119	5,009	5,108	4,778
Males	43	43	42	41	39	39	39	37	37
Catholics	50	52	49	46	46	45	44	40	39
Protestants	38	37	36	38	34	35	35	34	35
Base=100%	2,732	2,503	2,686	2,468	2,470	2,406	2,328	2,379	2,260
Females	45	44	44	44	43	41	41	41	39
Catholics	54	52	50	50	51	48	48	46	43
Protestants	39	38	39	40	36	35	36	37	36
Base=100%	3,063	2,871	3,018	2,830	2,802	2,713	2,681	2,729	2,518

Persons of Different Race / Ethnic Origin

In the Children's Law Centre 2004 report 'Shout Out Soon' reported that from their sample of 1045 children and young people, "Ten percent (99) children and young people from the age of 5 upwards raised issues around racial and homophobic discrimination." For the purposes of this EQIA, it has been assumed that the racial background for children and young people is reflective of the general population. Table 5 provides the census figures for 2001 in terms of ethnicity.

Table 5

Ethnic Group	Population
White	1,670,988
Irish Traveller	1,710
Mixed	3,319
Indian	1,567
Pakistani	666
Bangladeshi	252
Other Asian	194
Black Caribbean	255
Black African	494
Other Black	387
Chinese	4,145
Other Ethnic Group	1,290

The range of nationalities resident in Northern Ireland have greatly increased since this census, some quite dramatically.

Table 6 provides a breakdown of school attendance for 2000/01 in terms of racial identity.

Table 6

	Primary Schools	Secondary Schools
Irish Travellers	410	153
Chinese	420	352
Indian	146	117
Pakistani	109	33
Bangladeshi	41	4
Black Caribbean	22	11
Black African	64	34
Other ethnic pupils	221	251
Mixed ethnic pupils	433	140
Total	1,866	1,095
Total No of Pupils	172,384	155,553
% ethnic pupils	1.1	0.7

Notwithstanding the fact that victim satisfaction surveys carried out on behalf of the Policing Board show levels of satisfaction of 90% in 10/11 (for victims of low level crime or anti social behaviour), some reports into race and policing have indicated negativity and problems at the service delivery level of policies. Examination of these reports provides indication of potential reasons for under reporting by ethnic minority groups.

The Next Stephen Lawrence report¹¹ provides an indication of problems in terms of ethnic minorities reporting incidents to police. It referred to the under reporting of racist incidents stating:

“Under-reporting is and probably will for the foreseeable future remain, a problem”

The report also highlighted reluctance in reporting due to alleged inactivity of police in responding and dealing with racist violence. In another research report¹² respondents believed that young people from ethnic minorities were not engaging with police. This research also reported that half of the respondents who were victims of crime indicated that they felt satisfied or very satisfied with the service they had received. Only 9% of respondents indicated they had problems with the police.

¹¹ McVeigh R (2006) *The Next Stephen Lawrence? Racist Violence and Criminal Justice in Northern Ireland*, Research Report for Northern Ireland Council for Ethnic Minorities.

¹² Hamilton, J. Radford, K and Jarman, N. (2003) *Policing, Accountability and the Black and Minority Ethnic Communities in Northern Ireland*, Institute for Conflict Research.

The general feeling among ethnic minority groups is in the main positive. This was reflected in focus groups and meetings with ethnic minority groups during the 2005 screening of policies. Only a small number of respondents to surveys in respect of racial violence¹³ indicated a feeling of racism by individual officers. It can be reasonably assumed that these perceptions are reflected in the younger ethnic minority population.

Persons of Different Marital Status

The registrar for Deaths, Births and Marriages in Northern Ireland records marriages for 49 bachelors and 131 spinsters between 16 – 19 years for 2004. It can be assumed that a small number of young people are married.

Persons of Different Sexual Orientation

The Children's Law Centre reference at the Youth and Race section above to the 10% of 5 year olds upwards identifying issues around both race and homophobia provides an indicator of concern from this age category. When examining the sexual orientation of young people there is no definitive figure of how many perceive themselves as members of the Lesbian, Gay, Bi-sexual and Transgender (LGBT) community. Youth Net in their report *Shout* (2003)¹⁴ provided an estimate of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT).

"In a survey of young people in Northern Ireland 10.9% of men and 3.6% of women reported sex with same sex partners on at least one occasion (Schubotz et al, 2002). Based on the 2001 Census population data of 5 – 25 year olds taking the 2 - 10% possibility, this means that between 12,190 and 60,953 young people in Northern Ireland may identify as lesbian, gay, bisexual." (p.6)

A report relating to police and the LGBT community by the Police Ombudsman¹⁵ highlighted both positive and negative perceptions towards police by members of this community. Though the sample surveyed were generally adult, 30% were 18 years and under. Whilst the majority of questions related to their treatment as victims of crime or abuse this data does provide a pen picture of perceptions of police held by members of the LGBT community across all ages.

¹³ McVeigh R (2006) *The Next Stephen Lawrence? Racist Violence and Criminal Justice in Northern Ireland*, Research Report for Northern Ireland Council for Ethnic Minorities. Belfast and Radford, K, Betts, J and Ostermyer, M (2006) *Policing, Accountability and Black and Minority Ethnic Communities in Northern Ireland*, Institute for Conflict Research, Belfast

¹⁴ Carolan, F & Redmond, S. (2003) *The needs of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)*, Belfast: Youthnet.

¹⁵ Radford, K, Betts J and Ostermeyer, M (2006) *Policing, Accountability and the Lesbian, Gay and Bisexual Community in Northern Ireland*, Institute for Conflict Research.

“56% of these respondents were either satisfied or very satisfied with the service they received from the PSNI. • 32% of respondents experienced problems with the police in the last year, of these 42% found the service from the PSNI unsatisfactory and 40% said a police officer had been impolite or rude.

- 25% of respondents who had experienced problems with the police felt these were due to their sexual orientation.” (p.6)

Persons with a Disability and Persons Without

The Northern Ireland Education and Library Boards Youth Services¹⁶ estimate that 30,000 young people have a disability from a total population of 541,272. Disability Action advises that people with disabilities are a vulnerable, as well as a marginalised group, and on a day-to-day basis can experience prejudice and harassment.

A report about sexual abuse of adults¹⁷ with learning difficulties reference was made to research that indicated the incidence of abuse as being as much as four times higher than among the non-disabled population. The report also highlighted the fact that few cases are reported, few reach court and even fewer result in conviction. Mencap have, during consultation, expressed the view that this is likely to be replicated with children and young people with learning disabilities.

Problems with reporting of crime by people with disabilities were also highlighted by Mencap in a study of the Criminal Justice System.¹⁸ The lack of understanding of a crime, reporting to a ‘figure of authority’ and take no further action when highlighted as causing problems. The possibility that the ‘figure of authority’ may well be the perpetrator is also a possibility. Mencap stated:

“A majority of people with learning disabilities who were interviewed said they would report crimes directly to the police. However a significant number expected others to report the crime. This is where problems can arise. If the victim only has one person to report such matters to, it is easy for this system to break down. It would also break down if a crime is re-categorised as something else.” (p.3)

A research project which examined four Social Services Departments in England and Wales [1996-1999] found that more children and young people with learning disabilities were referred because of sexual abuse. In contrast a comprehensive study in America¹⁹ found that disabled children were 1.7 times more likely to be abused than those without a disability. The UK study was based on known abuse.

¹⁶ Developing the Citizens of Tomorrow (2004) Northern Ireland Education and Library Boards' Youth Services

¹⁷ Behind Closed Doors, (2001) Voice/Respond/Mencap

The Child Protection Policy has been formulated to provide for equality provision across all groups including those with disability and those without. Within the written submissions by stakeholders (See Appendix C), comment was made (by both Youth Justice Agency and the Children's Law Centre) in relation to the possibility that some children and young people with disabilities may not fully understand the processes for reporting abuse or recognize they are being abused. Research [3.1.10] also suggests that there is significant underreporting from this group of children and young people.

Persons with Dependants and Persons without

The Northern Ireland Continuous Household Survey indicates that from a 14% identification of all surveyed as carers 9% came from the 16-29 age group.²⁰ In a UK survey²¹ of 6,178 young carers 56% were female, 44% were male and the average age was 12. Eighty-four percent were white and the largest ethnic minority group was African-Caribbean. In this EQIA a carer group consultee felt that 5 – 10% of carers in Northern Ireland were children or young people.

Victims

All victims (where discretion was applied) were contacted via Call back by police re use of the scheme and the impact (Copies available for inspection if required.) However, to provide an independent assessment Victim Support was asked to review the scheme and a report was produced re their findings, all recommendation have been accepted and are receiving attention. A full copy of report and recommendations are attached at Appendix C of this report.

²⁰ Northern Ireland Continuous Survey 2005, Northern Ireland Statistics and Research Agency http://www.csu.nisra.gov.uk/archive/Surveys/CHS/Results/12_Carers/Prevalence_of_carers_by_sex_and_age.xls

Appendix B - Pre-Consultation: Views of Key Stakeholders

List of Stakeholders Consulted

Belfast City Council
Community Restorative Justice
Community Workers
Criminal Justice Board
District Policing Forum
DPP
DRD
NIHE
Parents
Policing Board
PPS
Probation Board
Retailers
Social Services
Victim support
Youth Champions Forum
Youth Justice Agency
Youth Workers

DRAFT

Pre-Consultation Written Responses

In total four written responses were received in respect of this EQIA at the stage of pre-consultation. These were received from:

1. Include Youth;
2. Youth Justice Agency;
3. Children’s Law Centre;
4. Victim Support NI.

Each of these are set out below.

1: Include Youth

Respondent	Responses and PSNI Response
6.1.1 Include Youth.	<p>Response</p> <p>1. Implementation of the Procedure</p> <p>Status of the processes – our understanding is that the service procedure is a draft (although this is not made explicit in any of the documentation) which enables you to be responsive and flexible to developments during the period of implementation. We would be grateful if you could inform us as to the timeframe and process (including consultation) that this procedure will undergo.</p> <p>Section 7 of the procedure addresses “Human Rights / UNCRC / Equality / Code of Ethics / FOI” and states that the procedure is compliant of Human Rights and that the UNCRC has been considered alongside the requirements of S75 of the NI Act 1998. We would be grateful if we could have sight of the evidence used to confirm compliance with the above requirements. Additionally we assumed that part of the process for formalisation of this policy will be full consultation as required by S75 of the NI Act 1998.</p> <p>2. Victim – led approach</p> <p>PSNI has clearly stated that this process has at its centre victims and the community and their “satisfaction” sentiments that Include Youth would generally endorse. The service procedure, however, is also clear that:</p>

The victim must decide whether the Discretion or the traditional route to prosecution is best, officers must not unduly influence the victim in this regard”.

Nowhere else in the Criminal Justice system is the victim given such control and veto with regards to disposal. The legislation (Justice Act 2002) and regulations (Youth Conference Rules 2003) governing youth conference gives veto firstly to the young person and then to the DPP, in the case of diversionary conferences and to the courts for court-ordered conferences. Whilst the views of victims are rightly deemed important they are never given the final say. Such a course runs the risk of being led by the subjectivity of individual victims who have different beliefs and experiences – justice has to wherever possible be fair, consistent and proportionate. This would not be the case when different victims expect different outcomes from young people for the same offence.

“...*traditional route to prosecution*” – whilst it is accepted that in some cases there may be an option to prosecute you have made it clear that speedy justice will instead generally be in a place of advice and warning or caution. We question whether there is a risk of misleading victims with regards to this outcome.

2. Proportionate Criminal Justice Outcomes

We are concerned that this has the potential of being amongst the most disproportionate of all criminal justice outcomes. There is extensive research (McAra and McVie, 2010 is the most recent) which makes it clear that the most minimal or no formal CJ intervention particularly first or early offending is most likely to result in no further offending. Therefore Include Youth is at a loss to understand how this disposal which can have requirements such as financial reparation, an apology, “anti-social behaviour counselling” etc... that can be proportionate when other disposal in this category particularly advice and warning and restorative caution have no such requirements.

We recognise the argument that speedy justice does not appear on a formal criminal record whilst the disposals mentioned above do but we are confident that current work with regards to criminal records and young people will resolve the situation.

As with Fixed Penalty Notices (for adults) we wonder whether PSNI officers are sufficiently skilled or trained to be able to assess the ability of parents to pay reparation or the child to undertake any specific requirements. We do accept that PSNI officers need to be less process driven and allowed to be able to appropriately , quickly and sensibly respond to situations effectively but we would suggest that this must be undertaken within the context of their

experience, training and support mechanisms.

3. Major Retail Chains

The procedure is quite specific with regards to shoplifting. In this instance the most concerning section is as follows:-

“Police inform the offender that the store (victim) is prepared to offer a discretionary disposal provided that the offender:-

- i) Acknowledges receipt of a store banning letter by signature and*
- ii) Signs a store Civil Recovery Offender Report – the offender disagrees then the officer will consider a caution or prosecution”.*

Neither of these disposals can be considered proportionate particularly as we understand that “Civil Recovery” does not refer solely to the recovery of the goods taken but all costs to the store.

We understand that currently only 25% of these disposals have been with young people and welcome the fact that they have not been used disproportionately for children and young people. In view of the number of non-prosecutorial and diversionary disposals available to PSNI and the criminal justice system for young people we would urge PSNI to reconsider the use of speedy justice for children and young people under the age of 18.

PSNI Response

Criminal Justice is grateful for the comments relating to the concerns regarding the position of young persons. This is something that should be examined but needs to be done so through partnership with relevant agencies and organisations, statutory and voluntary. The need to engage with relevant organizations and young persons is important to advancing this issue.

PSNI acknowledges that the introduction of the scheme and subsequent roll out was not subject to as full a consultation process as would have been wished, this was initially a trial project and due to the innovative and radical changes required to implement the scheme, it was always the intention to review and evaluate the scheme fully once processes and procedures and outcomes had been fully developed and validated.

A full review and consultation has now been commenced and will report by April 2012

2: YOUTH JUSTICE AGENCY

Youth Justice Agency Response to PSNI Consultation on its Service Procedures on Speedy Justice

Introduction:

The Youth Justice Agency (YJA) welcomes the opportunity to respond to this consultation, and is keen that the points raised are taken into consideration by the PSNI when reviewing the service procedures on Speedy Justice.

The Youth Justice Agency aims to reduce crime and to build confidence in the youth justice system through delivering a range of services to children and young people involved in offending.

The emphasis is on helping children address their offending behaviour, diverting them from crime, assisting their integration into the community and also meeting the needs of the victims of crime.

There are two operational strands to the services provided by the Agency:

Youth Justice Services – Facilitating youth conferences, a restorative intervention which brings together the young person, family and victim to discuss the impact of the crime. It offers the young person the opportunity to make amends to the victim and together they can agree a plan of action which repairs the harm and contributes to the prevention of re-offending. Youth Justice Services also has responsibility for supervising young people who are subject to a range of Court orders and delivering programmes and interventions with young people and their parents/carers to prevent reoffending. Services are delivered through 8 main area offices across Northern Ireland. YJA has responsibility for the supervision of the following community orders, PPS Youth Conference Plans, Youth Conference Orders, Attendance Centre orders, Reparation Orders and Community Responsibility Orders.

Custody – Woodlands Juvenile Justice Centre has been designed as a centre of national and international excellence in secure care, offering a wide range of services and support to help prevent young people from reoffending. It provides a safe, secure and stimulating environment for up to 48 boys and girls between the ages of 10 and 17 placed in custody.

PSNI Discretion:

The Youth Justice Agency welcomes initiatives which will speed up the process where young people can be held accountable for their offending and receive sanctions and acknowledges the potential role that PSNI discretion can play in

this. However we would want to highlight a number of issues that we believe need to be addressed, particularly with regard to children and young people.

1. The draft Service Procedure for the management of disposal of a crime by discretion notes that this disposal is suitable where a comparatively minor crime has been committed and both the victim and offender agree on suitable reparation. YJA adopt a similar model in the agreement of youth conference plans but in youth conferences a discussion takes place between all parties, the young person, their supporters, the victim and others to agree what is fair and proportionate in terms of reparation or restitution. A quality assurance process is also in place via YJA and then via the PPS or Courts to ensure that whatever actions are agreed are, lawful, fair, proportionate and realistic. The Service Procedures indicate that investigating offices (IOs) are "expected to use their professional judgement to consult with victims and determine satisfactory outcomes that are proportionate to the crime (No. 2, page 3). YJA would suggest that such an approach could be highly subjective and leave young people at risk of agreeing to actions that are not proportionate.

On reviewing the Service Procedures there would not appear to be any independent mechanism to review the proportionality of what is agreed and this is a cause for concern. The YJA delivers interventions within a policy "Reducing Re-offending, a framework for Practice" which reflects the principles of proportionality and guides practitioners to adopt a scaled approach to interventions designing plans which are designed to meet the needs of individual young people and delivered at an intensity appropriate to the level of risk of re-offending. The PSNI Service Procedures for discretion do not appear to be set within any wider policy context for reducing offending and this too could result in making decisions with victims about what actions are appropriate without setting their decision-making within a wider context of addressing offending based on risk.

2. In YJA, following an agreement by the PPS for a youth conference plan the young person receives supervision from a social worker or community youth worker, Agency staff who have skills and expertise in engaging with children and young people. The Service Procedures indicate that it will be the responsibility of the Investigating Officer to "manage and oversee the process until any outcome has been completed" (5a page 4).

YJA would have two concerns relating to this. Firstly the Investigating Officer may be an officer without any specific skills or knowledge in engaging with children and the young person may feel pressured rather than supported to complete the actions. PSNI have officers, Youth diversion officers who are youth specialists and other officers who have commenced work with young people under the Reducing Offending in

Partnership (ROP) model who have had additional training in engaging with children and young people. YJA would recommend that if every police officer will potentially be involved in delivering discretion with young people they need to receive training to develop their knowledge of the wide range of issues that impact on young people and develop the skills to interact in a meaningful and respectful way.

Secondly, YJA have in the past had reports from young people alleging that they have been subject to negative behaviours from some police officers, they do not trust them and as a result the young people and their families may have particular issues about a Police Officer overseeing the work that a young person has agreed to do. This could lead to a situation where a young person refuses discretion and then, because of this, is brought into the formal criminal justice system.

3. Whilst the Service Procedures suggest that any actions should be completed within 7-14 days they do not identify the maximum period over which a discretionary disposal must be completed and nor do they detail what happens if the young person does not complete the agreed actions. These details would need to be made explicit in the procedures and explained fully to the young person and parent or carer. The Service procedures (no 7 page 4) indicate that "the outcome [of discretion] might comprise any number of actions but may typically be either/or; a verbal or written apology, completing unpaid work, the repair of any damage cause, a payment to cover damages or a written agreement/pledge to alter behaviour". Again YJA would highlight the fact that there are no additional guidelines regarding proportionality and there is a risk that two similar offences could result in two very different plans simply because one victim wants the young person to undertake more actions to repair damage.
4. The draft Service procedures contain a statement that must be read to the young person if they believe they are likely to be eligible for a non-court disposal. YJA would highlight the fact that many young people have educational learning needs and often other mental health or behavioural difficulties which can result in them failing to comprehend what is being said. We would strongly contest that young people are entitled to and should be encourage to seek legal advice before agreeing to discretion and we would advocate that a leaflet explaining the process in language that is easily understood needs to be given to the young person and parent. The statement to be read out to young people will also need to be simplified to the fact that in addition to the options available to the PPS that they can refer for a diversionary youth conference.
5. The Service procedures indicate that several large retailers have agreed to adapt discretion to deal with minor shoplifting but the outcome (5a,

page 9) is for the individual to sign a banning order and a civil recovery offender report allowing the store to seek recovery of costs through civil action. YJA would suggest that such action could potentially discriminate against young people who commit offences of theft in these large retailers. Rather than making an apology and repaying money within 7-14 days these young people could be subject to a 12 month ban from a store and be required to repay not only the cost of the goods taken but also additional costs related to security staff who may have been involved in apprehending the young person.

6. Monitoring and review. The procedures indicate that diversionary decisions will be quality assured and audited on a monthly basis by an interagency group comprising a representative from PSNI and PPS. YJA would suggest that there needs to be greater independent scrutiny of this decision-making in respect of children and young people and transparency in terms of the numbers of discretion decisions made, for what range of offences and the content of plans agreed. We would also suggest that information is published as to the outcomes for children and young people where discretion is refused or where a young person does not comply with actions agreed.
7. The Northern Ireland Policing Board (NIPB) has set a target of 3000 Discretionary disposals for Level 1 crime and anti-social behaviour. Although this figure does not distinguish between adults and young people it is likely that a disproportionate number of discretion disposals will be for children and young people as statistically young people particularly young males, they are the most likely group to come into conflict with the PSNI. YJA would agree with the view of the Children's Law Centre (CLC) that this policy on discretion needs to be subject to an Equality Impact Assessment in line with obligations under section 75 of the Northern Ireland Act 1998 on the grounds that diversion may be used disproportionately against young men. YJA would also be concerned that discretion is to be used for anti-social behaviour as we believe this could draw young people into the criminal justice system unnecessarily. Anti-social behaviour does not constitute a criminal offence and therefore should not be subject to discretion but dealt with in an alternative manner.

Conclusion

The Youth Justice Agency believes that PSNI discretion has a role to play in diverting children from the formal criminal justice system and in ensuring that they are held accountable for their actions in a timely fashion. We have highlighted a number of areas of concern which we believe need to be addressed by the PSNI in order to ensure that the disposal is being delivered in a consistent, transparent way by officers who have an understanding of and the skills to engage with vulnerable children and young people.

3: Children's Law Centre

Response to the Police Service of Northern Ireland's Consultation on its Service Procedures on Speedy Justice

Children's Law Centre

November 2011

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Introduction

The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run an advice/ information/ representation service. We have a dedicated free phone advice line for children and young people and their parents called CHALKY and a youth advisory group called Youth@clc. A consultation exercise on this proposed policy was carried out with youth@clc. Their views inform this response.

Our organisation is founded on the principles enshrined in The United Nations Convention on the Rights of the Child, in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as an organisation, which works with and on behalf of children, both directly and indirectly, the Children's Law Centre is grateful for the opportunity to make this submission to the Police Service of Northern Ireland (PSNI) and to offer assistance and comment on its consultation on its Service Procedures on Speedy Justice.

Given the importance of the UNCRC to the Children's Law Centre and the fundamental importance we afford to children's rights and relevant international standards in the work of the Centre, we were extremely supportive of the children's rights focus for the future youth justice system in Northern Ireland within the Hillsborough Agreement. We wish to see all of the work of the PSNI, including the operation of 'Speedy Justice' reflecting the commitment within the Youth Justice Review to the creation of a youth justice system in Northern Ireland which complies with international children's rights standards.

We wish to state from the outset that we believe that, "Speedy Justice" or the use of discretionary disposals by the PSNI reduces the accountability and perceived independence of the PSNI and is in conflict with the Criminal Justice Review Northern Ireland 2000 which emphasised importance of a clear separation of the functions of investigation, prosecution and adjudication in order to protect the principle of independence.

Consultation

The Children's Law Centre welcomes this consultation exercise which the PSNI is currently carrying out on its three Service Procedures on Speedy Justice. It is our understanding that this is the first consultation exercise which the PSNI has carried out with regard to Speedy Justice despite having introduced Speedy Justice in April 2010

following pilots in a number of areas and producing a general Service Procedure on Speedy Justice in 2010²². We are extremely disappointed that there has been no consultation on Speedy Justice prior to this and that, despite Speedy Justice clearly falling within the Equality Commission's definition of a 'policy' for the purposes of section 75 of the Northern Ireland Act 1998, as far as we can ascertain, there has been no screening or Equality Impact Assessment of the policy to date. We are also very disappointed that the current consultation on the PSNI's Service Procedures on Speedy Justice contains no reference to section 75 of the Northern Ireland Act 1998, despite there being a statutory obligation on the PSNI to assess the equality impacts of the policy on members of all of the nine section 75 categories. The CLC believes that Speedy Justice has the potential to adversely impact on the grounds of age and gender as it is very likely, given the operation of similar disposals and the types of low level offending it aims to address, that it will be disproportionately used against young people and young males in particular. There is also potential for adverse impact on the grounds of race, religion and disability. In order to properly identify adverse impact and address it as is required by section 75 of the Northern Ireland Act 1998 through mitigation of the adverse impacts and the adoption of alternative policies, it will be necessary to screen the policy and where the potential for adverse impact is identified, as we believe that it will be, it will be necessary for the PSNI to carry out a comprehensive Equality Impact Assessment in line with its obligations under section 75 of the Northern Ireland Act 1998 on the policy. Given the implications of the operation of Speedy Justice on children and young people we request the PSNI to comply with its obligations under section 75 of the Northern Ireland Act 1998 as a matter of urgency.

Recognising it's potential to deliver children's rights without discrimination the Children's Law Centre is firmly committed to the effective operation of the section 75 equality duty and has worked towards this since the implementation of the Northern Ireland Act 1998. The importance of section 75 cannot be over emphasised and it is vital that we acknowledge the high constitutional importance of section 75 in the context of the new settlement in Northern Ireland. The promotion of equality of opportunity under section 75 is a statutory duty and the language of an enforceable legal duty has been used from its inception. Moreover it is a duty to have "due" regard, that is to say the regard that is owing to such a constitutional and fundamental principle. The Equality duty is a single obligation, across all the stated grounds thereby emphasising its fundamental nature, not a series of obligations having differential weight. The equality duty or statutory obligation was seen by the signatories to the Good Friday Agreement as a particular priority and was intended by the signatories to apply to **all** the functions of such public authorities. Children and young people are the most vulnerable group in our society and they are not a homogenous group. Most will fall into a number of the section 75 categories as children and young people have multiple identities which should afford them extra protection under section 75.

Section 75 of the Northern Ireland Act 1998 applies to the 'policies' of designated public authorities, of which the PSNI is one. The term 'policies' covers all the ways in which an authority carries out or proposes to carry out its functions relating to Northern Ireland. This definition is intentionally very wide and in practice "policy" has tended to cover most, if not all work undertaken by designated public authorities. It is clear from this that Speedy Justice is a 'policy' for the purposes of section 75 of the Northern Ireland Act

²² SP v.1.0/10. We are unsure of the date of this publication as the document is not dated, nor was it consulted on.

1998. It therefore follows that the PSNI, upon introducing the policy of Speedy Justice should have subjected it to screening and Equality Impact Assessment. As far as we are aware, there has been no equality screening exercise undertaken with regard to Speedy Justice under section 75 of the Northern Ireland Act 1998 despite the policy being piloted previous to its introduction in April 2010. We therefore have a number of serious concerns with regard to the PSNI's failure to comply with its statutory equality obligations under section 75 of the Northern Ireland Act 1998 with regard to Speedy Justice to date.

The Equality Commission's Guidance for Implementing Section 75 of the Northern Ireland Act 1998 states that,

"1.4 The new statutory duties make equality central to the whole range of public policy decision-making. This approach is often referred to as "mainstreaming". The Council of Europe has defined mainstreaming as:

"the (re)organisation, improvement, development and evaluation of policy processes, so that a[n] ... equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making"."²³

It is clear from this that the intention of section 75 is to mainstream equality, making it central to policy decision making. In order for an equality perspective to be central to policy making, it needs to be incorporated in all policies at all levels and stages. This would unequivocally involve incorporation of the principles of equality of opportunity from the beginning of the process and throughout the development and implementation of the policy, not merely at the end of the process when decisions have been taken in relation to the policy with no regard shown to section 75.

We are extremely disappointed to highlight the PSNI's failings with regard to compliance with section 75 of the Northern Ireland Act 1998 in relation to Speedy Justice. This is particularly disappointing given the fact that the CLC was heavily involved in discussions and correspondence with the PSNI and the Equality Commission with regard to the PSNI's obligations under section 75 of the Northern Ireland Act 1998 when the PSNI introduced Tasers in Northern Ireland in January 2008. In the PSNI's Equality Impact Assessment on the Introduction of Tasers in Northern Ireland²⁴, the PSNI launched its EQIA, following intense pressure from the CLC and others, at the same time as launching a pilot on the use of 12 tasers by the police force in Northern Ireland. This was in spite of the fact that the Northern Ireland Policing Board (NIPB) Independent Human Rights Advisers stated that in order for the PSNI to be in compliance with its Human Rights and statutory obligations with regard to the proposal to introduce Tasers in Northern Ireland, the PSNI must comply with the Equality Commission's advices to ensure compliance with section 75. The Equality Commission advised, after a request for advice from the PSNI, that an Equality Impact Assessment was necessary on the proposal to introduce Tasers and also that it would be inappropriate for the PSNI to introduce Tasers until the EQIA was completed and conclusions drawn from it were taken into account. The CLC raised its considerable concern with the ECNI, the NIPB

²³ Gender mainstreaming conceptual framework, methodology and presentation of good practices. Council of Europe, Strasbourg May 1998

²⁴ Deadline April 2008

and the PSNI with regard to the PSNI's failure to comply with this recommendation and the Commission's advice.

In the case of the PSNI's introduction of Speedy Justice in Northern Ireland, despite introducing a number of pilots and following these, the introduction of the policy in April 2010, we are unaware that there has been any attempt by the PSNI to comply with its statutory obligations under section 75 of the Northern Ireland Act 1998 as we are unaware of any screening exercise or EQIA having been carried out on the policy. The CLC therefore has serious concerns about the commitment of the PSNI to its equality obligations under section 75 of the Northern Ireland Act 1998. We are confident that if the PSNI had sought the advices of the Equality Commission with regard to its compliance with its section 75 statutory obligations when introducing Speedy Justice it would have reached the same conclusion as it did when the PSNI introduced Tasers in Northern Ireland – that to proceed with a pilot of the policy would be entirely inappropriate until an EQIA had been carried out and the conclusions from the EQIA had been drawn and taken into account. It is extremely disappointing that the PSNI did not draw any parallels between the introduction of Tasers and Speedy Justice with regard to its compliance with section 75 of the Northern Ireland Act 1998. It would also appear that due to the lack of reference to section 75 in the current consultation and the lack of screening or EQIA to date that the PSNI did not believe that there was any merit in complying with its obligations under section 75 of the Northern Ireland Act 1998 in relation to the introduction of Speedy Justice.

Given the fact that we believe the PSNI has repeated its breach of its statutory duties under section 75 of the Northern Ireland Act 1998 and its approved Equality Scheme we are sending a copy of this response to the Equality Commission for Northern Ireland and to the Northern Ireland Policing Board.

The Equality Commission's Guidance for Implementing Section 75 of the Northern Ireland Act 1998 is very clear with regard to the need for designated public authorities to carry out screening and EQIA's on all policies. It states that,

"...effective assessment of the equality implications of a policy includes screening of all policies (see Annex 1 of this Guide) and consideration of undertaking an equality impact assessment²⁵.

Section 75 is important to policy formulation (new or proposed policies) and policy review (existing policies). It is important that public authorities use the assessment of policies for impact on equality of opportunity, including screening and equality impact assessment, as part of their policy development process, rather than as an afterthought when the policy has been established."²⁶

We also note that the PSNI's approved Equality Scheme²⁷ which the PSNI is still operating under until the approval of its new Equality Scheme makes a commitment carrying out screening exercises and EQIA's in line with the Equality Commission's

²⁵ Equality Commission for Northern Ireland (February 2005). Practical Guidance on Equality Impact Assessment.

²⁶ "Section 75 of the Northern Ireland Act: A Guide for Public Authorities" The Equality Commission for Northern Ireland, April 2010

²⁷ Updated November 2005

Guidance. **We believe that the failure to screen and EQIA the policy of Speedy Justice by the PSNI constitutes a serious breach of the PSNI's statutory duties under section 75 of the Northern Ireland Act 1998.**

We wish to see the PSNI carrying out a comprehensive screening exercise on the introduction of Speedy Justice in Northern Ireland in compliance with the Equality Commission's Guidance and the PSNI's approved Equality Scheme. The CLC believes that there is obvious potential for adverse differential impact through the operation of Speedy Justice by the PSNI on children and young people. We also believe that when the screening questions are properly applied, the answer to all questions in this case will be yes. **Therefore, we are very firmly of the opinion that a thorough EQIA must be carried out, including direct consultation with children and young people as per the Equality Commission's Guidance.**

Central to compliance with the statutory duties imposed under section 75 is the concept of increased participation in policy making and development. As age is one of the nine categories specified in the legislation, there is a need to consult directly with children and young people in policy formulation and developments on matters which affect their lives. The Equality Commission's Guidance states that consultation must be meaningful and inclusive, in that all persons likely to be affected by a policy should have the opportunity to engage with the public authority. It also states that targeting consultation at those most affected by particular policies is also beneficial, in terms of identifying any adverse impact of policies or proposed policies at the earliest possible stage.

The Equality Commission's Section 75 Guide for Public Authorities states that consultation should take place in accordance with its stated Guiding Principles on Consultation,

"...specific consideration is given to how best to communicate information to children and young people..."²⁸

Direct consultation should involve the routine production of child accessible documentation, wide dissemination among children and young people as well as face to face engagement. We also suggest that in carrying out any direct consultation with children and young people in compliance with section 75 of the Northern Ireland Act 1998 that the PSNI should take cognisance of the Equality Commission's Guidance for Consulting with Children and Young People, *"Let's Talk, Let's Listen"*²⁹.

Direct consultation with children and young people is essential not only in ensuring compliance with section 75 of the Northern Ireland Act 1998, but also in ensuring compliance with the Government's obligations under Article 12 of the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC Committee, in its Concluding Observations following its examination of the UK Government's compliance with the Convention in 2002 expressed concern about the inconsistent application of Article 12, stating that,

²⁸ Schedule 9 Paragraph 4 (2) (a) Equality Commission's Section 75 Guide for Public Authorities

²⁹ 2008

“...the Committee is concerned that the obligations of article 12 have not been consistently incorporated in legislation”³⁰

This concern was reiterated in the Committee's Concluding Observations in 2008 where they recommended that,

“...the State party, in accordance with article 12 of the Convention, and taking into account the recommendations adopted by the Committee after the Day of General Discussion on the right of the child to be heard in 2006... promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child”³¹

The PSNI's Equality Scheme also states that,

“Consideration will be given as to how best to communicate information to young people...”³² and that,

“Consultations will begin as early as possible. The Police Service will ensure that all consultation is timely, open and inclusive, and is in line with the Equality Commission's Guiding Principles on consultation.”³³

We wish to impress on the PSNI both the obligation to and the fundamental importance of direct consultation with children and young people at all stages of the consultation process. We are unaware if the PSNI has carried out any direct consultation on Speedy Justice with children and young people and for this reason, we wish to request information and details of any direct consultation that has been undertaken with children and young people, including information on the numbers and section 75 identities of children and young people consulted and the extent of such consultation. This is vitally important with regard to Speedy Justice and its operation given that it is very likely that Speedy Justice will be disproportionately used against young people both as a result of the types of low level offending it aims to address and the operation of similar disposals to date.

We would also be grateful if you would provide by return details of the system which you intend to use to analyse responses to this consultation process including the degree of weight which will be attributed to individual and organisational responses. This is a vital element to drawing conclusions from responses and progressing with identified areas for immediate action. For this reason, we would appreciate information both on the system itself and on its operation for the purposes of analysis.

³⁰ Para 29, CRC/C/15/Add.188

³¹ Para 33, CRC/C/GBR/CO/4

³² Page 15, PSNI Approved Equality Scheme

³³ Page 14, PSNI's Approved Equality Scheme

The European Convention on Human Rights

We believe that the European Convention on Human Rights, as incorporated by the Human Rights Act 1998 is very relevant to this discussion and we note the possible engagement and breach of a number of Articles within the European Convention on Human Rights (ECHR), namely Articles 6 - Right to a Fair Trial, 8 – Right to Respect for Private and Family Life, 10 – Right to Freedom of Expression, 11 – Freedom of Assembly and Association and 14 of the ECHR – Right to the Enjoyment of Rights and Freedoms Without Discrimination.

International Human Rights Standards

As the UK government has ratified the UNCRC all consideration of the proposed PSNI Service Procedures on Speedy Justice should be set within the framework of the UNCRC and other international standards and also should take into consideration all relevant recommendations of the United Nations Committee on the Rights of the Child. The UNCRC is a set of non-negotiable and legally binding minimum standards and obligations in respect of all aspects of children's lives which the Government has ratified. The United Kingdom Government has therefore given a commitment to implement the terms of the Convention by ensuring that United Kingdom law, policy and practice relating to children is in conformity with UNCRC standards. The UK Parliamentary Joint Committee on Human Rights in its recent report on the UNCRC described the obligations the Convention places on government as follows;

“It should function as a set of child- centred considerations to be used by all departments of government when evaluating legislation and policy making”

All children and young people under 18 are entitled to enjoy the protection of all rights afforded by the UNCRC and to the rights enshrined in other international standards such as the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),³⁴ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)³⁵ and the United Nations Guidelines for the Protection of Juveniles Deprived of their Liberty.³⁶

Article 40 of the UNCRC requires every child under 18 who has been alleged as, accused of or recognised as having infringed the penal law to be afforded the following minimum rights:

- i) To be presumed innocent until proven guilty according to law;
- ii) To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

³⁴ Adopted by General Assembly Resolution 45/112 of 1990.

³⁵ Adopted by General Assembly Resolution 40/33 of the 29th November 1985.

³⁶ Adopted by General Assembly Resolution 45/113 of the 14th December 1990.

iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance, and, unless it is considered not to be in the best interests of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

vi) To have his or her privacy fully respected at all stages of the proceedings

State parties are required under Article 40 to seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law.

The United Nations Committee on the Rights of the Child recommended in October 2002³⁷ and October 2008³⁸ that the United Kingdom should establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention, in particular Articles 3, 37, 39 and 40 together with the other international standards in this area outlined above.³⁹

In particular, the United Nations Committee recommended that the United Kingdom government should:

“...develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle”⁴⁰

The United Nations Committee also recommended that the United Kingdom government should establish the best interests of the child as the paramount consideration in all legislation and policy affecting children, notably within criminal justice and immigration⁴¹ and that further steps be taken to ensure that the obligations under Article 12 of the

³⁷ Concluding Observations of the Committee on the Rights of the Child, CRC/C/15/ADD.188, 4 October 2002

³⁸ Concluding Observations of the Committee on the Rights of the Child, CRC/C/GBR/CO/4, 3 October 2008

³⁹ Paragraph 58 (a), CRC/15/Add.188, 4 October 2002 and Para 27 and 77 CRC/C/GBR/CO/4, 3 October 2008

⁴⁰ Para 78(b), CRC/C/GBR/CO/4, 3 October 2008

⁴¹ Ibid, Para 27.

UNCRC are consistently reflected throughout legislation and administrative and judicial proceedings⁴².

In addition, the PSNI should have regard to the Council of Europe's Guidelines on Child Friendly Justice which were adopted in November 2010 and developed following widespread consultation, including with children and young people. In the Guidelines on Child Friendly Justice child-friendly justice is defined as,

*"...justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child, including the rights to due process, to participate in and understand proceedings, to respect for private and family life and to integrity and dignity"*⁴³.

The principle of the rule of law is embedded in the Charter of the United Nations. Of relevance to 'Speedy Justice' generally are comments made by the Secretary General of the UN in the Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies⁴⁴ where he states that,

*"The rule of law is a concept at the very heart of the Organization's (The United Nation's) mission. For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."*⁴⁵

The PSNI is also bound by the standards laid down in the Beijing Rules and the Riyadh Guidelines which make a number of very important provisions for children in conflict with the law. The Beijing Rules state that,

"5.1 The juvenile justice system shall emphasise the well being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence"

"7.1 basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to presence of a parent or guardian, the right to confront and cross examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of the proceedings"

"8 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or in the process of labelling. In principle, no information that may lead to the identification of a juvenile offender may

⁴² Ibid, Para 33a.

⁴³ Para II c

⁴⁴ 23rd August 2004

⁴⁵ Para 6

be published”

“11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or his or her parents or guardians, provided that such decision to refer a case shall be subject to review by a competent authority, upon application

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes such as temporary supervision and guidance, restitution and compensation of victims.”

Similarly, the Riyadh Guidelines emphasise the importance of preventative strategies and programmes to divert children and young people away from offending behaviour and emphasise the importance of education, family support and community based services which respond to special needs, problems, interests and concerns of young people.

General Comments

The CLC is concerned about the impetus behind the introduction of ‘Speedy Justice’ in Northern Ireland. It is our belief that all approaches for dealing with young people who come into contact with the criminal justice system must have the best interests of the child as the paramount consideration in line with international children’s rights standards as outlined above. We are concerned that this does not appear to be the case with regard to ‘Speedy Justice’ and we are challenged about the focus of this policy given that it is likely to be used disproportionately against under 18’s as it is aimed at addressing low level crime and minor offences which are the types of offences that most young people who come into contact with the criminal justice system commit. There is a marked lack of emphasis in the ‘Speedy Justice’ Service Procedures and leaflet on children and young people and the focus of the policy appears to be on adults, reducing bureaucracy and saving time and money. While we agree that unacceptably long delays in processing cases through the criminal justice system is a concern, particularly in relation to children and young people, we do not believe that the reduction of delay should occur at the expense of the proper application of international and domestic children and human rights standards and the due process of the law. The Criminal Justice Inspection for Northern Ireland (CJINI) carried out an inspection⁴⁶ into ‘Avoidable Delay’ in the criminal justice system and published a very comprehensive report which recommended that tackling delays for young defendants should be a priority⁴⁷. The CLC whole heartedly supports the findings of this report and wishes to highlight the fact that it

⁴⁶ 2010

⁴⁷ p66

examined avoidable delays in the criminal justice system. Where delay is **avoidable** it should in the interests of children's rights be avoided. However, the proper application of the due process of the law cannot be dispensed with in the interests of expediency; to do so is entirely inappropriate and fundamentally undermines the rule of law and the concept of justice itself.

The CLC wishes to state its support for diversionary approaches in dealing with youth offending. We are extremely supportive of children being diverted away from harmful contact with the formal criminal justice system as we see diversion as a positive response to youth crime which avoids the formal retribution of the criminal justice system. We believe however that the operation of diversionary measures at present do not have enough emphasis on diversion **out of** the formal criminal justice system where this is possible. In Northern Ireland the Criminal Justice Review, in its report in March 2000, recognised the need to divert children out of the formal justice system and emphasised the importance of restorative approaches as a means of diversion away from harmful contact with the criminal justice system. However, it is our experience that the restorative approaches which are currently being adopted in this jurisdiction are not truly diversionary in the way that was envisaged by the Criminal Justice Review. This is also the case with regard to the operation of 'Speedy Justice' as one of the options open to the PSNI in dealing with low level crime and minor offences is non-court diversion which includes the options of a caution, an informed warning or youth conferencing. There is a very clear issue with regard to the training and specialism of those who prosecute children and young people receiving non-court diversionary disposals under 'Speedy Justice' and children and young people who receive the same disposals after travelling through the justice system and having due process applied in the traditional manner. The recent CJINI Report into Youth Diversion highlights this as an issue and states,

"Non-specialist prosecutors still make decisions relating to young people, for example in 'speedy justice' schemes designed to speed up the justice process for young people."⁴⁸

We note that the PSNI's 'Speedy Justice' leaflet and Service Procedures state that discretionary disposals are not criminal convictions. We are concerned however that the non-court diversionary disposals will lead to a criminal record for a period of between 12 and 30 months. The Service Procedure on Discretionary Disposals states that these records are not routinely disclosed but they may be disclosed as part of an enhanced criminal record check under prescribed conditions. The CLC has consistently expressed its concern that the disclosure of such disposals for very minor and low level offending will increase barriers to education, training and employment opportunities for young people. In addition, they can draw young people into the criminal justice system, including potentially into custody for what originated as a minor offence. We believe that such disposals fail to address the underlying reasons that give rise to offending behavior and are a missed opportunity to address the root causes of offending and to provide support and rehabilitation for vulnerable young people

In addition, there is a worrying lack of information and no clarity about what constitutes 'discretion' in terms of what actions will be deemed to be necessary in order to make reparation for the wrongdoing. The involvement of the victim in deciding the type of

⁴⁸ Youth Diversion: A thematic inspection of youth diversion in the criminal justice system in Northern Ireland, Criminal Justice Inspection Northern Ireland, July 2011

reparation, which appears to be limitless in scope, is extremely concerning due to the fact that the wishes and feelings of the victim will be so subjective that the consistent and transparent application of the law in line with international and domestic human and children's rights standards will not be possible. The only reference in the Service Procedure to something which might constitute discretion is information on how money should be paid to the victim by the suspect in one lump sum if this is considered appropriate reparation. We have serious concerns about the payment of money as reparation by young people for low level offending and minor offences in that we believe there is potential for the payment of money as reparation to disproportionately impact on groups with very low incomes who are already living in socially deprived areas who may not possess the means to pay. This raises a number of questions with regard to the training received by and skills of individual PSNI officers to assess the ability of young people or their parents to pay for reparation on behalf of their child or of the child's ability to comply with other requirements. These concerns are heightened given the absence of children's rights training in the PSNI.

The payment of money as reparation raises very similar concerns to the use of fines against young people. The National Association for the Care and Resettlement of Offenders (NACRO) has expressed its concern about the use of fixed penalty notices for young people and has stated that they do not believe that fines are either an effective deterrent or an effective punishment for many. They have stated their opposition to the use of fines for young people as they do not believe that they will reduce bad behaviour or address the underlying causes, stating that any approach to get to the root causes of bad behaviour should be done after an assessment of need, so that the appropriate services can be brought in to intervene if required. The young person is unlikely to be 'punished' by the fine or payment of money, so there will be little incentive for them to change their behaviour. Instead the punishment will fall onto the parents, who are unlikely to have spare money to pay, causing undue hardship. NACRO has warned that this could also put increased stress on the parent/child relationship, with parents blaming their child for the extra financial burden they have created and the child rebelling with more bad behaviour⁴⁹.

We are aware that the origins of the concept of 'Speedy Justice' and the introduction of discretionary disposals for low level and minor offences is the Review of Policing in England and Wales⁵⁰. The CLC is concerned that adequate cognisance has not been taken of the particular circumstances of Northern Ireland and its historical experience of policing. Policing in Northern Ireland is an emotive, controversial and sensitive topic. The CLC is concerned that the introduction of 'Speedy Justice' in Northern Ireland could undermine transparency and accountability in policing due to the level of discretion which each individual officer can employ. This raises questions with regard to the impact that these proposals will have on the implementation of the Patten recommendations⁵¹. The Patten Report is grounded within the principles of accountability and transparency and quotes the Belfast Agreement in the Report stating,

⁴⁹ NACRO *Policy Lines* <http://www.nacro.org.uk/criminal-justice-expertise/policy-lines/on-the-spot-fines-for-children-and-young-people,214,NAP.html>

⁵⁰ Final Report of the Independent Review of Policing Commissioned by the Home Secretary, Flanagan, R., 2008

⁵¹ A New Beginning: Policing in Northern Ireland - The Report of the Independent Commission on Policing for Northern Ireland September 1999.

"It... (policing) ...involves transparency – the police being open and informative about their work and amenable to scrutiny."⁵²

Any detraction from the Patten Report recommendations, or indeed the Belfast Agreement, is hugely significant when one considers the importance of the Patten Report, for the development of a new police service in Northern Ireland and the constitutional importance of the Belfast Agreement in the Northern Ireland Peace settlement. We are deeply concerned that the introduction of police officer discretion in policing in Northern Ireland will undermine the level of perceived independence of the PSNI and could open the PSNI up to claims of not being impartial, compromising accountability and transparency in policing, both of which are key principles of the Patten Report and key elements of the Northern Ireland political settlement.

The issue of whether prosecutorial responsibility for minor offences should lie with the PSNI was addressed by the Criminal Justice Review⁵³ which concluded that in order to build confidence in the criminal justice system in Northern Ireland it was important that the functions of investigation, prosecution and adjudication were clearly separated and the principle of independence protected. The Committee on the Administration of Justice (CAJ) commented on the blurring of these functions and the increase in PSNI discretion stating that it could undermine public confidence in the criminal justice system and reduce the PSNI's accountability.⁵⁴ Further, CAJ stated that given the historical and in some communities continuing, disputed nature of policing the use police discretion may raise allegations in relation to sectarianism, discrimination and/or harassment.

In addition to the need for policing in Northern Ireland to be as transparent, accountable and independent as possible, we also have very serious concerns about the use of 'Speedy Justice' measures against young people due to the very poor relations which exist between young people and the PSNI. Recent research⁵⁵ shows that large numbers of young people hold very negative perceptions of the police, which are based on negative firsthand experiences of interacting with police officers. Young people maintain that they are frequently targeted by the police and are too readily labelled as criminals. They also believe that they are regularly being discriminated against and recounted their experiences of being forced to disperse and constantly being forced to move throughout their neighbourhoods in response to police officers telling them not to congregate in public areas. Many young men referred to being stopped and asked details of their name and address for no apparent reason and contented that the police used these powers against them but not against adult members of their wider community. Several young people recounted episodes where the police threatened them with arrest or anti-social behaviour orders on the assumption that because they were in a group in a public place they were participating in criminal behaviour.

In addition, the research found negative perceptions of some young people by the police and found that the police sometimes target particular categories of young people by

⁵² Para 1.14, A New Beginning: Policing in Northern Ireland - The Report of the Independent Commission on Policing for Northern Ireland September 1999.

⁵³ March 2000

⁵⁴ <http://www.belfasttelegraph.co.uk/news/local-national/human-rights-campaigners-slam-onthespot-fine-powers-for-psni-14523205.html>

⁵⁵ Ten Years after Patten: Young People and Policing in Northern Ireland, Byrne J. and Jarman N., October 2010

making assumptions about their types of behaviour based on their appearance and social background. This negative perception of children and young people by the police when they come into contact with the police is illustrated by Foyle District Command Unit's "Strategy for Children and Young People"⁵⁶, which states that,

"We do not always treat them (children and young people) with the respect and understanding they deserve and our challenge will be to recognise and act on the issues that affect them and the wider community. We must make a concerted effort to break down the cultural barriers between police officers and our children and young people and encourage healthy discussion on their role in both today's society and in the future."

The Northern Ireland Commissioner for Children and Young People (NICCY) commissioned research "Children's Rights in Northern Ireland"⁵⁷ supports this and states that routine negative perceptions were consistent with the focus groups set up across Northern Ireland to carry out the research⁵⁸. The research identified some key issues in relation to policing, including an absence of the 'best interests' principle in policing policy and strategy, differential and discriminatory treatment of children and young people on grounds of age, class, community, ethnicity, care, disability, gender and sexual orientation, children's negative perceptions of the police associated with the sectarian divide and use of intimidation and unreasonable force against children and young people in certain locations, from moving on to assault.

In addition the frustration of the PSNI in dealing with minor offences and low level crimes can be illustrated by research carried out by Byrne and Monaghan⁵⁹ which noted that police officers in Belfast often stated that they spent much of their time responding to incidents involving young people, and there was a sense that the police resented having to respond to call-outs to deal with low-level problems. The CLC has concerns that the introduction of discretionary disposals to deal with low level offending by young people will only serve to exacerbate problems between the PSNI and young people. Research into the, "Use and Impact of Dispersal Orders" in Britain by the Joseph Rowntree Foundation⁶⁰ found that, the discretionary and subjective nature of police powers place significant pressures of professional judgement on individual police in situations that may precipitate rather than reduce conflict. The research found that where targeted at groups of youths, dispersal orders have the capacity to antagonise and alienate young people who frequently feel unfairly stigmatised for being in public places in the company of friends. In addition, many of the young people due to the level of police discretion involved reported feeling unfairly treated. Half disagreed that the police listened to what they had to say and two fifths said that the experience left them less confident with the police.

We also have a number of concerns that access to discretionary approaches can only be gained through the admission of guilt and / or the informed consent of the child. The Beijing Rules state that,

⁵⁶ 2005

⁵⁷ 2004

⁵⁸ Page 178

⁵⁹ Policing Loyalist and Republican Communities – Understanding Key Issues for Local Communities and the PSNI, Byrne J. and Monaghan L, 2008

⁶⁰ Adam Crawford and Stuart Lister, 2007

“11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.”

The Commentary on Rule 11.3 in the Beijing Rules states that,

“Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a “competent authority upon application”.”

We have serious concerns about a child’s involvement in such discretionary approaches for the reasons expressed in the above commentary on rule 11.3 of the Beijing Rules. We believe that the operation of diversionary approaches which are only accessible to children and young people following the admission of guilt such as ‘Speedy Justice’ should be amended to ensure compliance with international human rights standards including taking into account the commentary on rule 11.3 of the Beijing Rules with regard to the requirement to give informed consent and / or admit guilt so that young people do not consent or admit guilt out of desperation to avoid the more formal side of the criminal justice system.

Research carried out by CLC and Save the Children⁶¹ highlighted instances where children have admitted guilt without knowledge of the consequences of such an admission and instances where young people have entered into a Youth Conference Plan without knowing or understanding that to do so involves an admission of guilt and a criminal record. The research found that,

“NGOs are aware of cases where children have admitted guilt and agreed to receive a caution, without being fully aware of the consequences of their actions. Anecdotal evidence also suggests that children are not always aware that their agreement to a Youth Conference Plan involves admission of guilt and a criminal record. These issues are further exacerbated when children have a learning difficulty and/or mental health problems, a disability, or English is not their first language.”⁶²

Issues of capacity in relation to informed consent within the criminal justice system are evidenced by research into the detention and questioning of young persons by the police in Northern Ireland, which found that many young people had great difficulty

⁶¹ Page 46, CLC and Save the Children’s NGO Shadow Report to the UN Committee on the Rights of the Child, March 2008

⁶² Page 46, CLC and Save the Children’s NGO Shadow Report to the UN Committee on the Rights of the Child, March 2008

understanding the cautions delivered under the *Criminal Evidence (Northern Ireland) Order 1988*.

The CLC believes that it is extremely important that the issue of 'informed consent' is objectively appraised by a, "*competent authority upon application*" in line with the Beijing Rules. Informed consent is an essential element of participation in proceedings under Article 12 of the UNCRC and the child's right to a fair trial. There are also many issues relating to the capacity of a young person with regard to informed consent, particularly given the profile of young people who are likely to come into contact with the criminal justice system as evidenced in the above quote. These issues must be fully addressed in determining the ability of the child to give informed consent and the nature of the consent.

We have a number of concerns about the level and type of training which the PSNI have received prior to the introduction of 'Speedy Justice'. The need for appropriate and adequate training of officials who deal with children and young people is highlighted by the UNCRC. Articles 4 and 42 of the UNCRC stress that all professionals working with children and young people should be aware of, and receive training about, the UNCRC and children's rights. The UNCRC Committee's General Comment No 5 provides a detailed account of children's rights training requirements of Governments. It notes that the Government's target audiences for training must include,

*"...all those involved in the implementation process- Government officials, parliamentarians, judiciary, and for all those working with and for children."*⁶³

Training provided must be,

*"...systematic and ongoing - initial and re-training. The Convention should be reflected in professional training curricula, codes of conduct and educational curricula"*⁶⁴

In addition, "*understanding of human rights must be promoted among school children themselves, through the school curricula and in other ways*".⁶⁵

In its 2008 Concluding Observations following its most recent examination of the UK Government, the UN Committee on the Rights of the Child continued to place a heavy emphasis on the need for training in all aspects of the Convention and its application. In its 2008 Concluding Observations it recommended to the UK Government,

"...the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officials, media, teachers, health professionals, social workers and personnel of child-care institutions".⁶⁶

General Comment No 10 on Children's Rights in Juvenile Justice emphasizes the importance of such training being applied within every day practice,

⁶³ Para 53

⁶⁴ Para 53

⁶⁵ Para 53

⁶⁶ CRC/GBR/CO/4 paragraph 21

“It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions”⁶⁷

The Beijing Rules state,

“In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.”⁶⁸

Like the Beijing Rules, the UN Council of Europe’s Guidelines on Child Friendly Justice stress the importance of appropriate staff training.⁶⁹ International standards also draw attention to the need for dedicated training for law enforcement personnel in how to respond to the special needs of young people.⁷⁰

Despite the international standards detailed and the level of discretion inherent in ‘Speedy Justice’ there appears to be an alarming deficit in respect of appropriate and necessary training undertaken individual officers of the PSNI who will be and are operating ‘Speedy Justice’. We believe that training on child protection, child rights, determining capacity of the child, how to communicating with children and equality should be mandatory for PSNI officers implementing ‘Speedy Justice’.

The CLC does not believe that ‘Speedy Justice’ is an effective way to address minor and low level offending of young people. It is the view of CLC that ‘Speedy Justice’ is much too vague and the Guidance provided by the PSNI allows for far too much subjectivity in the exercise of discretion by individual police officers. We believe that there is potentially a role for discretion in dealing with low level offending but only in instances where the possibility of the inconsistent application of the law is removed. The individual officers who will be operating ‘Speedy Justice’ will not have sufficient training, either in prosecution, communicating with young people or children’s rights. Subjectivity has not been guarded against and there are not sufficient safeguards in place to protect the rights of children and young people and the PSNI from allegations of absence of impartiality, the impacts of which could be devastating for the Northern Ireland Peace settlement and the relationship between children and young people and the PSNI. Due to the failure to implement adequate safeguards with the operation of ‘Speedy Justice’ and the apparent breaches of international and domestic children and human rights standards, the CLC cannot support the use of ‘Speedy Justice’ against under 18’s at this stage. We believe that a great many of these flaws could have been addressed through the proper application of screening and EQIA and we again urge the PSNI to carry these out as a matter of urgency.

⁶⁷ General Comment No 10 on Children’s Rights in Juvenile Justice (2007) paragraph 97

⁶⁸ 12.1

⁶⁹ A4

⁷⁰ Riyadh Guidelines Guideline 58

Conclusion

The Children's Law Centre is grateful to have the opportunity to make this submission to the PSNI and offer assistance and comment on its Service Procedures on Speedy Justice. The CLC looks forward to continuing its engagement on 'Speedy Justice' in Northern Ireland with a view to achieving children's rights compliant youth justice system in Northern Ireland.

We hope that our comments have been constructive and useful and are more than happy to meet with members of the PSNI to discuss anything raised in this response. We wish to be kept informed of progress in the development of 'Speedy Justice' and look forward to the issues raised in this response being addressed, taken forward by the PSNI, receiving the information requested and hearing from the PSNI in the near future.

DRAFT

4: Victim Support Northern Ireland

Review of PSNI Discretionary Disposal Scheme

June 2011

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1: TERMS OF REFERENCE

Review of Discretionary Disposal Scheme by Victim Support Northern Ireland

Role and remit

To carry out a limited review of the impact on victims of minor crime of the use of the Discretionary Disposal Scheme by the Police Service of Northern Ireland (PSNI).

1. To assess the effectiveness of the Discretionary Disposal scheme in meeting the needs and interests of victims
2. To establish the benefits of the Discretionary Disposal feedback questionnaire with regards to providing victims with an opportunity to give accurate and honest feedback
3. To make any recommendations as to suggested improvements to the scheme or feedback process to better meet victim interests

2: DISCRETIONARY DISPOSALS: DESCRIPTION OF THE SCHEME

The PSNI's Discretionary Disposal Scheme aims to encourage police officers to use their professional judgement to resolve minor crime to the satisfaction of victims and the community while maintaining accountability.

Discretion is described as a 'victim led' alternative to prosecution and one of a range of options which is open to police in dealing with crimes and incidents.

Discretion within PSNI has the following aims:-

- a) To improve the quality of service for victims.
- b) To improve community confidence in policing and criminal justice.
- c) To enable officers to deliver an effective response to local crime issues.
- d) To empower officers to use their professional judgement to make decisions that make a difference
- e) To reduce the bureaucracy and deliver more satisfaction in criminal justice outcomes in "real time".

Procedure

PSNI advise that Discretion may be used in minor, low level offences where an offender has been identified and admits the offence. The victim is offered the choice of having their case dealt with through the formal criminal justice process or by Discretion. If the victim chooses Discretion, a satisfactory and proportionate outcome will be agreed with the victim i.e. an apology, reparation for the cost of damage, repair etc. Any outcome must be proportionate to the crime i.e. if a window costs £30 to repair the reparation sought must not exceed £30.

The option to have the matter dealt with by Discretion is then explained to the offender who is also offered the choice of having the matter dealt with by way of discretion or through the formal channels. If the offender agrees to have the matter dealt with through Discretion and agrees to meet the victim's expectations in respect of the desired outcome, then police may proceed to deal with the matter by way of Discretion.

The offender will then complete the desired outcome e.g. payment for damage, apology, etc. and once this is completed and the victim certifies it has been completed then the case will be deemed to have been completed by a Discretionary Disposal.

Anticipated effects of Discretion

The use of Discretion aims to speed up the justice process and deliver meaningful and timely outcomes for victims. It aims to prevent recidivism by dealing swiftly and effectively with offenders using restorative principles and in some instances restorative practice i.e. restorative conferences between victim and offender by trained officers. It also aims to ensure that offenders are not criminalised for minor crimes.

PSNI: EQIA 'Speedy Justice' / Application of Discretion

It is necessary to record the use of discretion against an offender to ensure that the offender is not given several Discretionary Disposals by different officers for different crimes. It is also necessary to retain information in order to inform decision making as to the appropriate criminal justice disposal should a person who has been given the opportunity of a Discretionary Disposal commit further crimes. However Discretionary Disposals do not constitute a formal criminal record for the purposes of employment checks.

Information provided to victims

The police have produced a leaflet on the Scheme which is given to all victims where the police are considering using the Scheme. In the leaflet, the Scheme is referred to as 'Discretion'. Information provided states clearly that the Scheme relies on the involvement of both victim and offender and on the fulfilment of agreed reparative measures.

3: ANALYSIS OF PSNI VICTIM FEEDBACK

This section provides an overview of the feedback from victims received by the police through their telephone survey of victims. In addition to providing a general overview of all DCUs, the 2 Belfast DCUs, A and B, are discussed separately.

The Discretionary Disposal Scheme was introduced by the PSNI in March 2010 and is now in operation across all District Command Units (DCUs). From March 2010 to May 2011, there have been a total of 3571 discretionary disposals issued. The breakdown per DCU is illustrated in Table 1 below.

Table 1 Number of Disposals issued per DCU

DCU	Number of Disposals
A+B	364
C	941
D	378
E	987
F	184
G	388
H	329
Total	3571

The PSNI has carried out telephone surveys with 845 victims who agreed to a Discretionary Disposal (see Appendix 1 for a copy of the survey). The purpose of these interviews was to obtain victims' opinions on the Discretionary Disposal process, including what they felt worked well and what aspects of the process could be improved.

PSNI: EQIA 'Speedy Justice' / Application of Discretion

The next section of this paper provides a partial analysis of the survey results. Table 2 below illustrates the breakdown of the number of interviews carried out per DCU.

Table 2 Number of Victim Surveys per DCU as % of total Disposals

DCU	Victim Surveys conducted	% of disposals
A	28	45%
B	137	
C	141	15%
D	160	42%
E	67	7%
F	73	40%
G	142	37%
H	96	29%
Blank	1	-
Total	845	24%

Analysis of Survey Questions

Table 3 below illustrates the responses to Question 1 of the survey, which asked victims if the police had informed them of the identity of the perpetrator. Of the 845 victims contacted, 61% (514) stated that the police had informed them although they were already aware of this information. 17% (145) of victims indicated that the police told them the perpetrator's identity and that they had not been previously aware of this. 13% (114) of victims indicated that the police did not tell them who the perpetrator was, however they already knew the person's identity. 5% (41) indicated that they were not told and did not know the identity of the perpetrator.

Table 3

Q1. How did you find out who did this to you – did police tell you?		
Response	No of Respondents	Percentage (%)
Yes, but already aware	514	61%
Yes, not aware previously	145	17%
No, but already aware	114	13%
No, not aware	41	5%
Don't know/Can't remember	10	1%
Other	11	1%
N/A	7	1%
Blank	3	1%

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Total	845	100%
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Table 4

Q2. When did police ask you about how they should deal with the offender?		
Response	No of Respondents	Percentage (%)
Yes, discussed at time crime was reported	587	69%
Yes, discussed after offender admitted offence	204	24%
No	20	2%
Don't know/can't remember	30	4%
Other	4	1%
Total	845	100%

Table 4 above shows that the majority of victims interviewed (93%, 791) indicated that the police discussed with them how the offender could be dealt with, either at the time the crime was reported or when the offender admitted carrying out the offence. 2% (20) of victims interviewed stated that they were not asked for their opinion on this matter and 4% (30) stated that they didn't know or couldn't remember.

Table 5

Q3. Were you given a choice as to how the offender would be dealt with?		
Response	No of Respondents	Percentage(%)
Yes, been told	664	79%
Yes, already knew	120	14%
No, already knew	7	1%
No	44	5%
Don't know/can't remember	10	1%
Total	845	100%

Table 5 above shows that 94% (784) of victims interviewed stated that they were given a choice as to how the offender would be dealt with and 6% (51) indicated that they were not given a choice. 1% of victims interviewed didn't know or couldn't remember if they were given a choice.

Table 6

Q4. Do you know the offender has been dealt with?		
Response	No of Respondents	Percentage(%)
Yes, been told	396	47%
Yes, was involved in process	399	47%
No	34	4%
Don't know/can't remember	16	2%
Total	845	100%

Question 4 of the survey asked the victim if they knew the offender had been dealt with. The table above shows that 94% (795) of victims interviewed indicated that they knew the offender had been dealt with. 4% (34) indicated that they did not know and 2% (16) didn't know or couldn't remember.

Table 7

Q6. How satisfied are you with how the offender was dealt with?		
Response	No of Respondents	Percentage (%)
Very satisfied	514	60%
Satisfied	258	31%
Neither satisfied nor dissatisfied	43	5%
Dissatisfied	17	2%
Very dissatisfied	8	1%
Other	4	0.5%
Blank	1	0.5%
Total	845	100%

In Question 6 of the Survey, victims were asked if they were satisfied with how the offender had been dealt with. The free text responses to Questions 7 and 8 explore this issue in more detail and provide an insight into how the Scheme is perceived from the victim's perspective.

Questions 7 and 8: victims' responses

Of the 845 surveys conducted, 72 victims indicated that they were dissatisfied, very dissatisfied or ambivalent regarding the way the offender was dealt with through the Discretionary Disposal Scheme. Excluding non-responses and incidents relating to commercial premises (mainly thefts from shops), 46 individual victims fell into these 3

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groupings. While this is a small percentage of the overall respondent total (less than 1%) a closer scrutiny of the comments made by these victims may provide useful information regarding any shortcomings of the Scheme which, if addressed, could potentially further enhance public confidence in this approach to tackling less serious crime.

Neither satisfied nor dissatisfied responses (ambivalent)

32 respondents indicated that they were ambivalent towards the way the Scheme had dealt with the offender in their case.

Comments provided related to three main areas, namely:

- Concern that the Scheme would not prove to be a deterrent against future wrong-doing
- Lack of information on the process and follow-up action from police
- Offender did not follow through on agreed reparation (i.e. paying for damage done)

Dissatisfied and very dissatisfied responses

14 respondents indicated that they were dissatisfied or very dissatisfied regarding the way the Scheme had dealt with the offender in their case.

Comments provided related to:

- Failure by the offender to apologise to the victim
- Failure by parents of the offender to apologise (in the case of child offenders)
- Belief by the victim that the apology made by the offender was not genuine and was simply a means to keep them out of court
- Feeling that they had no choice but to accept the DD Scheme even though they felt the offender should be formally prosecuted
- Failure to explain the process to the victim in words they could understand
- Not being kept informed
- Failure to update victim regarding agreed actions by offender

REVIEW OF RESULTS FROM A AND B DISTRICT COMMAND UNITS

Of the 165 surveys conducted in Districts A and B, 86 related to offences committed in relation to commercial premises, notably theft from shops. This leaves 79 surveys which relate to offences committed against individuals. The results from this group are discussed below.

In relation to Question 3, only one person stated that they had not been given a choice as to the means of disposal.

In relation to Question 4, 2 respondents stated that they did not know if the offender had been dealt with the question 5 clarified that this was because they had not received an update from police.

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Question 6 gauged the level of satisfaction of the victims in relation to the Scheme. Of the 79 individuals, 75 (95%) were satisfied or very satisfied with the way the Scheme had dealt with the offender. Questions 7 and 8 further explored the reasons for the degree of satisfaction experienced:

- The options were explained - I was given choice
- It was dealt with quickly, creating less hassle
- I didn't have to go to court
- I didn't want a court case – just wanted damage paid for
- Didn't want the young person to get a criminal record for doing something stupid
- It was a first offence – hopefully it will be his last
- I got my property back

Dissatisfaction and ambivalence

3 people (5%) were dissatisfied or ambivalent about their experience of the Scheme. The reasons given were:

- The offender did not apologise
- The police did not explain the process so I did not understand what was happening
- The offender had mental health problems so I was told nothing else could be done
- No update was received from police
- Could not make contact with police officer to get update

4: VSNI VICTIM FEEDBACK

Introduction

As part of this review, Victim Support NI agreed to carry out a further follow-up interview with a sample of victims. A structured interview questionnaire was developed, focussing on the impact of the Scheme on the victim and the key victim-focussed aspects of its delivery. This is provided at Appendix 2.

Methodology

Due to the short time frame in which Victim Support NI had to carry out this review, it was decided for privacy and data protection reasons that only those victims who had already consented to Victim Support NI being provided with their contact details could be approached as part of the follow-up survey.

In order to identify those victims whose details were already in our possession, it was agreed that Victim Support NI's interview sample would be chosen based on responses to Question 13 of the PSNI Victim Call Back Survey (see Appendix 1). Question 13 asked respondents if they had been offered Victim Support when they first reported the incident and also whether the respondents had taken up that offer or not. Indicating 'yes' to both parts of Question 13 meant that the individual's contact details would have been sent to Victim Support NI at the time of the incident (this practice is part of the protocol which exists between the PSNI and Victim Support NI and satisfies data protection requirements).

As discussed previously, a total of 845 individuals took part in the PSNI Victim Call Back Survey. Of these, 118 indicated that they had been offered Victim Support. Of these, it was agreed with PSNI that some victims should not be contacted, namely 26 cases which related to retail theft, 10 juvenile victims and 3 cases which related to crimes against the state.

This left a total of 79 interviews where it appeared that the victims' details had already been passed to Victim Support NI. However, careful scrutiny of the free text responses of these 79 interviews revealed that in many cases it was possible that the information about Victim Support had been provided by the police officer concerned and that it was not clear if the victim had consented to their details being passed to Victim Support NI. As a result, the number of cases suitable for follow-up telephone calls had to be reduced to 27.

Of the 27 individuals identified as being eligible for contact based on their answer to Question 13, 3 of the contact numbers were incorrect or incomplete. This left a total of 24 individuals for potential contact. Over a three day period attempts were made, during office hours and in the evening, to make contact with all 24 individuals. In total, 14 individuals were

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successfully contacted and interviewed. The results of the interview survey are outlined in further detail below.

Results

Table 1

Q1. Did you feel you had a real choice about whether the offender would be taken to court or dealt with under the scheme?		
Response	No of Respondents	Percentage (%)
Yes	14	100%
No	0	0%
Don't know/can't remember	0	0%
Total	14	100%

Table 1 above shows that all 14 individuals interviewed felt they had a real choice about whether the offender would be taken to court or dealt with under the Scheme.

Table 2

Q2. Did you feel you had the right to say 'no' to using the new scheme?		
Response	No of Respondents	Percentage (%)
Yes	14	100%
No	0	0%
Don't know/can't remember	0	0%
Total	14	100%

Table 2 illustrates that all 14 respondents indicated that they felt they had the right to say 'no' to using the Scheme.

Table 3

Q3. Did the conditions agreed with the offender satisfy you?		
Response	No of Respondents	Percentage (%)
Yes	12	86%
No	1	7%
Don't know/can't remember	1	7%
Total	14	100%

Table 3 above shows that 86% of respondents (12) were satisfied with the conditions agreed with the offender and 7% (1) were not satisfied. 7% (1) didn't know or could not remember.

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The individual dissatisfied with the conditions agreed in their case was a victim of assault and criminal damage. They explained that while the offender agreed to pay for damages to the car, the victim was left with a "hefty dental bill" as a result of the assault. The victim also explained that they later found out that the offender's mother had actually paid for the damage to the car on behalf of the offender. The person concerned explained that this made them feel like the offender had "got off with it".

Table 4

Q4. Did the offender do what was agreed?		
Response	No of Respondents	Percentage (%)
Yes	12	86%
No	1	7%
Don't know/can't remember	1	7%
Total	14	100%

Of the 14 respondents, 86% (12) indicated that in their case the offender did what was agreed however one person indicated the offender did not and one person stated that they did not know or couldn't remember. The individual who indicated that the offender did not comply with agreed conditions relates to the case outlined in the explanation for Question 3. The victim felt that the offender did not carry out what was agreed because their mother paid for the damage.

Another victim commented that although the offender complied with the terms of the agreement, which in this case was offering an apology, the victim felt that the offender was "just going through the motions" and did not really mean it.

Table 5

Q5. Did the police keep you up to date with what was happening throughout the process?		
Response	No of Respondents	Percentage (%)
Yes	13	93%
No	1	7%
Don't know/can't remember	0	0%
Total	14	100%

Of the 14 respondents, 93% (13) indicated that the police kept them up to date with what was happening throughout the process with 7% (1) indicating the police did not keep them

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informed. The individual who indicated that they were not kept up to date by the police commented that they weren't contacted again after the initial meeting with the police.

Table 6

Q6. Were your expectations met?		
Response	No of Respondents	Percentage (%)
Yes	13	93%
No	1	7%
Don't know/can't remember	0	0%
Total	14	100%

Of the total number of respondents to the survey, 93% (13) agreed their expectations of the Scheme were met. One respondent indicated that their expectations were not met.

Table 7

Q7. Would you recommend this new scheme to other friends/family members/colleagues?		
Response	No of Respondents	Percentage (%)
Yes	13	93%
No	1	7%
Don't know/can't remember	0	0%
Total	14	100%

Of the 14 respondents, 93% (13) indicated that they would recommend this new Scheme to other friends/family members/colleagues and one person stated that they would not recommend it. One individual also commented that they would only recommend using the Scheme in cases where the crime committed was minor.

Victims' Comments

There are a number of common themes that can be identified from the comments received from the individuals interviewed. These are outlined in further detail below.

- Avoiding the case going to Court

A common response made by a number of individuals was that they didn't want their case going to court. They just wanted a speedy resolution so chose to use the Discretionary Disposal Scheme.

- Choice is Important to the Victim

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From the comments made during the interviews, it is clear that one of the most important aspects of the Scheme is giving the victim a choice as to how they wish to proceed. For example, one individual explained how they had been a victim of criminal damage before the most current incident. The previous case proceeded to court after nearly two years, with no satisfactory outcome. When the most recent incident occurred this individual was given the choice of using the Discretionary Disposal Scheme, which they agreed to. Comparing both outcomes, this individual was very satisfied with the Discretionary Disposal Scheme commenting:

“This process took a week, the offender paid for the damage to the car and the car was fixed. I had a previous experience where the case went to court, it took 2 years and the offender never paid for the damage.”

- Discretion Should be Used Only for Minor Crimes

An important point made by a number of individuals is that the Discretionary Disposal Scheme should only be used where the incident is minor, for example in cases of criminal damage or minor theft. In such cases there were many positive experiences recounted by individuals, where the damage caused by the offender was paid for or stolen items returned. However, one individual who was a victim of criminal damage and assault commented that they felt the crime committed against them was too serious to be dealt with by the Discretionary Disposal Scheme. Even though this individual was offered the choice of using the Scheme or prosecuting the offender, the individual felt they were not in the right frame of mind to make such a decision. In fact they stated that if they had to make the choice again, they would not have chosen the Scheme.

This particular individual explained that although the offender agreed to pay for the damage caused to the car, the victim was left with a “hefty dental bill” as a result of the assault, which the offender did not pay. The victim continued to explain how they had subsequently discovered that the offender’s mother had paid for the damage caused. This made the victim feel that the offender had not been punished at all. This victim appeared to have been emotionally affected by the incident they had experienced which illustrates the importance of using discretion appropriately.

- Follow Up from PSNI Essential

Although the majority of individuals interviewed were satisfied with the Scheme and the outcome, a number raised the issue of follow up contact from the police. For example, one individual explained that they were not contacted again after the crime was initially reported and another individual said they never found out if the offender carried out the conditions agreed as the police did not inform them of this.

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- The Needs of Victims of Crime

The majority of individuals interviewed expressed their satisfaction with the Discretionary Disposal Scheme and how they were treated by the PSNI. It is clear from analysing the comments made that the most satisfied victims were those who had a speedy resolution, had follow up contact by the police and had their needs met. Much can be learnt from these positive experiences to further improve the Scheme as a whole.

One individual who reported being very satisfied with the scheme, its outcome and their treatment by the PSNI commented that the only drawback was sharing the same waiting area of the police station with the offender. They went on to describe how they felt intimidated and did not wish to see the offender ever again. Indeed these feelings toward the offender were common to a number of individuals interviewed.

Another individual who was very satisfied with the whole experience of the Discretionary Disposal Scheme explained how the police officer asked them how they wanted to proceed and did everything they asked. Even though it took some time to apprehend the offender, the police officer contacted the victim and informed them of this. The victim did not wish to have any further contact with the offender so the police officer acted on their behalf.

The examples outlined above illustrate the importance of assessing the needs of victims of crime on an individual basis.

5: COMMENTS ON PSNI FEEDBACK QUESTIONNAIRE

The PSNI feedback questionnaire is divided into 13 questions, of which 7 are answered by fixed responses which can thus be easily analysed. However a number of the possible responses to these questions are not clear and could give rise to confusion among respondents as follows:

Questions 2 and 3

Question 2 – (When did police ask you about how they should deal with the offender?)

The option 'no' does not relate to the question – this should perhaps be redefined as 'I was not asked'.

If the answer to Question 2 is 'no', Question 3 will appear to be very similar to Question 2. Also, in relation to Question 3, the responses 'Yes, been told' and 'Yes, already knew' appear to be the same, while 'No, already knew' does not indicate how the information was known.

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Question 4

The expression 'dealt with' is not clear – it is assumed to mean that the agreed reparative measures were completed. A rewording of this question would assist in clarifying this point.

Question 5

This is only relevant if the answer to Question 4 is 'yes', so Question 5 should start with 'If answered 'yes' to Question 4'.

Fixed responses to Question 5 could be offered to aid in analysis, for example, 'police told me', 'offender contacted me', or 'offender had complied with agreed actions' in addition to a free text option.

Questions 7, 8, 10 and 11

These 4 questions offer free text responses which make analysis problematic. However a review of the responses to the survey would indicate that in several of these questions a number of fixed responses could significantly reduce the pool of information provided and make analysis much easier.

Question 13

It is not clear if the question relating to Victim Support relates to the referral or to the take up of VSNI services. In addition it does not need to be a free text answer as there are a limited number of possible answers as follows:

- Did the police offer to refer you to Victim Support
- Did you accept this offer
- If yes, have you taken up the offer of support

6: CONCLUSIONS AND RECOMMENDATIONS

Public understanding

The terms 'discretionary' and 'disposal' are not understood by victims. If the Scheme is to become a prevalent feature of policing in relation to more minor crimes, consideration should be given to adopting a user-friendly term which would assist victims to understand the process and which could also assist to increase public confidence in the Scheme through a greater understanding and awareness of its positive impacts. The use of terms such as 'redress' or 'community justice' may merit further consideration.

Information

For victims to feel that they are an important part of the process they need to be able to understand the Scheme. Efforts should be made to ensure that all officers can explain the Scheme in simple but comprehensive terms to victims.

It should be stressed to offenders that the victim must be prepared to accept their offer of reparation. Specifically, an apology must be seen to be genuine.

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Where appropriate, any follow-up action required of the offender should be promptly reported to the victim to ensure that confidence in the scheme is maintained.

These findings would appear to be similar to those proposed by a similar study in GB. The report entitled 'Exercising Discretion: The Gateway to Justice' was carried out by Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate on cautions, penalty notices for disorder and restorative justice in June 2011. It found that:

"Consulting victims before making a decision and keeping them updated after administering the disposal appears to have a positive impact upon satisfaction levels towards the overall result."

PSNI victim feedback questionnaire

From analysing the victim feedback to the PSNI survey, it appears evident that the questions used in some cases overlap. Satisfaction with the Scheme is likely to be inseparable in a victim's mind from satisfaction with the service provided by the police.

Providing fixed answers in addition to free text for many of the questions would aid analysis in future reviews.

CONCLUSIONS

The Discretionary Disposal scheme has to date been utilised in respect of over 3,000 minor offences. A survey of 845 victims has shown that in the majority of cases, the victims concerned were satisfied with the way the Scheme dealt with their case.

Providing more accessible information and ensuring that all victims are fully aware of their right to choose will further assist in maintaining high levels of victim satisfaction.

Ensuring that feedback to victims is carried out on a regular basis up to the point that the agreed remedy has been completed will also ensure that the stated benefits to victims of using the Scheme are realised.

5: Responses from Focus Groups/ Meetings

Schedule of Focus Groups / Meetings

The following table details the focus groups / meetings that took place.

Date & Time	Agency	Names	Location
2 March 2010 at 2.30	Victim support	Susan Reid	Annsagate House
10 March 2010 at 2.30	Victim Support	Susan Reid	Annsagate House
16 March 2010 at 11.00	PPS	Raymond Kitson	Belfast Chambers
7 April 2010 at 12.00	PPS (cautions & quality assurance)	Raymond Kitson	Belfast Chambers
21 May 2010 at 10.30	NIPB	Amanda Stewart DPP Support Manager	Waterside Tower
10 June 2010 At 17.00	DPP meeting	DPP representatives	Galgorm, Ballymena
21 June 2010 at 11.00	Youth Justice Agency	Alice Chapman / Bill Lockhart	Knockngoney
26 August 2010 at 10.00	PSNI	Supt Shields, C/Insp Kirby	Lurgan
26 August 2010 at 3.00	PSNI	C/Supt Dunwoody	Police college Garnerville
01 Sept 2010 at 2.00	PSNI	Supt Shields	Lurgan
09 Sept 2010 at 12.30	District Policing forum		Main Conference Room, Brooklyn
10 Sept 2010 at 2.30	Youth Justice Agency	Paula Jack Alice Chapman	Youth Justice Agency HQ Waring Street Belfast
30 Sept 2010 at 3.00	District Policing forum		Main Conference Room, Brooklyn
03 December 2010 at 9.30	Strategic Community safety Multi-Agency Meeting	Political representatives, residents, PSNI, NIHE, Belfast City Council, Probation Board, Youth Justice Agency, Community Restorative Justice and DRD Roads Service among others.	North Belfast
08 December 2010 at 12.00	Council / DPP member North Down	12 external DPP members and SMT in C District	Bangor
15 December 2010 at 9.30	PPS	Mr Kitson, Stephen Burnside, Marie Ann O'Kane	Belfast Chambers

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12 Jan 2011 at 10.00	Contact with major retailers	M&S, Sainsburys, TK MAXX, David Connery / John Majury	Knocknagoney
25 Jan 2011 at 2.00	Meeting with District reps		Knocknagoney
27 Jan 2011 at 9.30	Include Youth	Koulla Yiasouma, Stephen Lilley	Knocknagoney
08 Feb 2011 at 12.00	NI Alternatives practitioners forum		Spectrum Centre Tennent Street
09 Feb 2011 at 12.00	HMIC	Dave Jones	NIPB Waterside Tower
16 Feb 2011 at 10.00	Criminal Justice Board Meeting - Youth Justice Agency	ACC Kerr attended along with staff from DoJNI and Courts	Waring Street Belfast
11 March 2011 at 9.30	Include Youth	Koulla Yiasouma	Alpha House, 3 Rosemary Street
14 March 2011 a 17.00	North Down DPP	DPP Public Discussion Forum ACC Kerr C District SMT	Signal centre of business excellence – Bangor
14 March 2011 at 3.30	PPS	ACC Kerr C/Supt Farrar T/Supt A McMullan Jimmy Scholes Raymond Kitson	Knocknagoney
16 March 2011 at 9.30	Criminal Justice Board Meeting	DoJ (Chair), NICTS, PPS, PBNI, YJA, NIPS, PSNI, CJINI	Public Prosecution Service, Belfast Chambers
14 April 2011 at 2.00	Youth Champion forum	ACC Kerr, Stephen Lilly	Knocknagoney

Analysis of Feedback from Focus Groups / Meetings

Responses from focus groups and meetings were similar to those identified in the written response.

Those who had experiences of working with youths (Youth Diversion Officers) expressed concern re appropriateness of the reparation especially re youth offenders. However, youths believed they could approach them but this was due to trust and relationships, "I would go to ... (Youth Diversion Officer) if I had any problems"; "The youth diversion guys are in plain clothes and that makes them easier to talk to".

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The focus groups and meetings involving agency and organization staff generally felt there was little objection to the scheme with most feeling it was a common sense approach. The minority groups responding did not feel there was the same crime or anti social behavioural problems in their communities due to the benefits coming from extended family support and their culture.

Some suggestions were provided in relation to encouraging use of scheme in relation children or young people. As if incidents dealt with in this way was less likely to invoke negative reactions towards complainants who themselves can be vulnerable individuals. There was a general concern re inappropriate use of the scheme re Hate crime, Domestic and for more serious offences.

A representative 'carer' organization indicated that there were issues around mental disability' especially in the health care centres. This was again around appropriateness. Concern was also raised re the condition placed on especially young people could be classed as abuse. It was felt the professional judgment of officers and consultation with supervisors were addressed through the Traffic light guidance scheme.

Appendix C – PSNI Screening Forms: Speedy Justice:

1. Streamlined No Prosecution Files
2. Non Court Diversion By Telephone

1. Streamlined No Prosecution Files

1.1 Is this a new or existing function/policy?

New	Existing
	X

1.2 What is the purpose of the function/policy?

Details: The streamline file ensures police continue to investigate crimes effectively but also that time spent on preparing an investigation file is proportionate to the likely outcome, thereby reducing any unnecessary time and bureaucracy preparing a file where a no prosecution is being recommended.

1.3 What outcomes are wanted from this function/policy?

Details: It provides the streamline file process that police will follow to seek a no prosecution decision from the Public Prosecution Service (PPS). The streamline file requires significantly less information to be submitted than the full file required to support a prosecution recommendation.

1.4 Are there any factors that might prevent outcomes being achieved?

Details: None

2.1 Is there any indication or evidence of higher or lower participation or uptake by different groups? If so, please indicate below.

CATEGORY	YES	NO	NOT KNOWN
Gender		X	
Sexual orientation		X	
Religion		X	
Political opinion		X	
Disability (physical and learning)		X	
Race or ethnic origin (includes Travellers)		X	
Age		X	
Dependant responsibilities		X	
Marital status		X	

Apply the following two questions and provide details of the indicators or evidence below. Remember you may have indicated NO or NOT KNOWN to the groups above but have examined various sources of information/data in that assessment process.

Irrespective of your answer to the question all those sources should be included in the details below. They will support your final assessment.

1. What qualitative data do you have about the function/policy relating to Section 75 groups?

2. What quantitative data do you have on the different groups and from where has it been gathered?

At this time there are no available data, either quantitative or qualitative, to suggest that the operation of this process will have an adverse effect on any s75 category, over and above the typical profile of offenders which would suggest a higher proportion of younger males within this offender population. There are no data to suggest that this process will have an adverse effect on this group in particular,.

Available Data Details:

All the details are held on NI

Is Documentary Evidence available?

Yes	No
x	

Current data management systems, and including NICHE, will continue to monitor emerging trends.

2.2 Is there any indication or evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy?

CATEGORY	YES	NO	NOT KNOWN
Gender		x	
Sexual orientation		x	
Religion		x	
Political opinion		x	
Disability (physical and learning)		x	
Race or ethnic origin (includes Travellers)		x	
Age		x	
Dependant responsibilities		x	
Marital status		x	

Apply the following two questions and provide details of the indicators or evidence below. Remember you may have indicated **NO** or **NOT KNOWN** to the groups above but have examined various sources of information/data in that assessment process. Irrespective of your answer to the question all those sources should be included in the details below. They will support your final assessment.

1 What qualitative data do you have about the policy/function relating to Section 75 groups?

2 What quantitative data do you have on the different groups and from where has it been gathered?

Available Data Details:

All the data is available from NICHE.

Is Documentary Evidence available?

Yes	No
X	

2.3 Have previous consultations with relevant groups, organisations or individuals indicated that particular policies create problems that are specific to them?

CATEGORY	YES	NO
Gender		X
Sexual orientation		X
Religion		X
Political opinion		X
Disability (physical and learning)		X
Race or ethnic origin (includes Travellers)		X
Age		X
Dependant responsibilities		X
Marital status		X

Apply the following two questions and provide details of the indicators or evidence below. Remember you may have indicated **NO** to the groups above but have examined various sources of information/data in that assessment process. Irrespective of your answer to the question all those sources should be included in the details below. They will support your final assessment.

- 1. What qualitative data do you have about the policy/function relating to Section 75 groups?**
- 2. What quantitative data do you have on the different groups and from where has it been gathered?**

Details:

All the data is available from NICHE

Is Documentary Evidence available?

Yes	No
X	

2.4 Is there an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with others in Government or in the larger community?

CATEGORY	YES	NO
Gender		X
Sexual orientation		X
Religion		X
Political opinion		X
Disability (physical and learning)		X
Race or ethnic origin (includes Travellers)		X
Age		X
Dependant responsibilities		X
Marital status		X

Apply the following two questions and provide details of how the criterion can be achieved below. Remember you may have indicated **NO** to the groups above but have examined various sources of information/data in that assessment process. Irrespective of your answer to the question all those sources should be included in the details below. They will support your final assessment.

- 1 What qualitative data do you have about the policy/function relating to Section 75 groups?**
- 2 What quantitative data do you have on the different groups and from where has it been gathered?**

Available Data Details:

All the data is available from NICHE

Is Documentary Evidence available?

Yes	No
X	

3. EQUALITY IMPACT ASSESSMENT RECOMMENDATION

Equality Impact Assessment procedures are confined to those policies considered likely to have significant implications for equality of opportunity. Remember those policies that have the potential to be significant in terms of impact and controversy.

3.1 If screening has indicated that a policy is having an adverse differential impact, how would you categorise it?

Significant impact

Low impact

3.2 Do you consider that this policy needs to be submitted to a full equality impact assessment?

YES	NO
	X

Reasons for your recommendation:

The decision maker is the PPS

POLICY TO BE SCREENED

2. Non Court Diversion by Telephone

1.1 Is this a new or existing function/policy?

New	Existing
	X

1.2 What is the purpose of the function/policy?

Details: It provides a non court disposal option for police from the PPS by telephone. The types of non court disposals to which this policy apply are Informed warning (Juvenile); Restorative Caution (Juvenile); Youth Conference (Juvenile); Informed Waning (Adult); Caution (Adult); Driver Improvement Scheme (17 yeas and above).

1.3 What outcomes are wanted from this function/policy?

Details:
It provides guidance to assist police officers identify when and how to seek a non-court diversion decision from the Public Prosecution Service (PPS) by telephone.

1.4 Are there any factors that might prevent outcomes being achieved?

Details: None

2.1 Is there any indication or evidence of higher or lower participation or uptake by different groups? If so, please indicate below.

CATEGORY	YES	NO	NOT KNOWN
Gender		X	
Sexual orientation		X	
Religion		X	
Political opinion		X	
Disability (physical and learning)		X	
Race or ethnic origin (includes Travellers)		X	
Age		X	
Dependant responsibilities		X	
Marital status		X	

Apply the following two questions and provide details of the indicators or evidence below. Remember you may have indicated NO or NOT KNOWN to the groups above but have examined various sources of information/data in that assessment process.

Irrespective of your answer to the question all those sources should be included in the details below. They will support your final assessment.

3. What qualitative data do you have about the function/policy relating to Section 75 groups?

4. What quantitative data do you have on the different groups and from where has it been gathered?

At this time there are no available data, either quantitative or qualitative, to suggest that the operation of this process will have an adverse effect on any s75 category, over and above the typical profile of offenders which would suggest a higher proportion of younger males within this offender population. There are no data to suggest that this process will have an adverse effect on this group in particular,.

Available Data Details:

All the details are held on NICHE

Is Documentary Evidence available?

Yes	No
x	

If Not Known please explain why you believe this is not known:

4.2 Is there any indication or evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy?

CATEGORY	YES	NO	NOT KNOWN
Gender		x	
Sexual orientation		x	
Religion		x	
Political opinion		x	
Disability (physical and learning)		x	
Race or ethnic origin (includes Travellers)		x	
Age		x	
Dependant responsibilities		x	
Marital status		x	

Available Data Details:

All the data is available from NICHE

Is Documentary Evidence available?

Yes	No
X	

2.3 Have previous consultations with relevant groups, organisations or individuals indicated that particular policies create problems that are specific to them?

CATEGORY	YES	NO
Gender		X
Sexual orientation		X
Religion		X
Political opinion		X
Disability (physical and learning)		X
Race or ethnic origin (includes Travellers)		X
Age		X
Dependant responsibilities		X
Marital status		X

3. What qualitative data do you have about the policy/function relating to Section 75 groups?

4. What quantitative data do you have on the different groups and from where has it been gathered?

Details:

All the data is available from NICHE

Is Documentary Evidence available?

Yes	No
X	

2.4 Is there an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with others in Government or in the larger community?

CATEGORY	YES	NO
Gender		X
Sexual orientation		X
Religion		X
Political opinion		X

Disability (physical and learning)		X
Race or ethnic origin (includes Travellers)		X
Age		X
Dependant responsibilities		X
Marital status		X

Apply the following two questions and provide details of how the criterion can be achieved below. Remember you may have indicated **NO** to the groups above but have examined various sources of information/data in that assessment process. Irrespective of your answer to the question all those sources should be included in the details below. They will support your final assessment.

3 What qualitative data do you have about the policy/function relating to Section 75 groups?

4 What quantitative data do you have on the different groups and from where has it been gathered?

Available Data Details:

All the data is available from NICHE

Is Documentary Evidence available?

Yes	No
X	

It may be that a policy has an adverse differential impact on certain people in one or more of the categories as a consequence of targeting or affirmative action to combat an existing or historical inequality. If this is the case, please give details below and contact the Equality Unit if you are in doubt:

Details:

N/A

3. EQUALITY IMPACT ASSESSMENT RECOMMENDATION

Equality Impact Assessment procedures are confined to those policies considered likely to have significant implications for equality of opportunity. Remember those policies that have the potential to be significant in terms of impact and controversy.

3.1 If screening has indicated that a policy is having an adverse differential impact, how would you categorise it?

Please tick.

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Significant impact

Low impact

3.2 Do you consider that this policy needs to be submitted to a full equality impact assessment?

YES NO

<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Reasons for your recommendation:

The decision maker is the PPS

Please indicate the time it has taken to screen this policy area, this will include time taken to carry out consultations and research:

2 hours

Having completed this Section 75 Screening Tool retain a copy for your own records and email a copy to the Section 75 Project Manager, Equality and Diversity Unit, PSNI Lisnasharragh via email.

Appendix D – PSNI Draft Guidance on Discretionary Disposal 2012

Title & Version	Draft PSNI guidance on when and how to dispose of a crime by use of discretion, v4 (24/9/12)
FOIA exempt?	No
Author	C/Insp Michael Kirby, S2, Service Improvement Department
Organisation	PSNI, Service Improvement Department, S2, Criminal justice Branch
Summary	Provides draft PSNI guidance to operational officers on when and how it's appropriate to use a discretionary disposal to resolve an allegation of crime.
Effective from date:	29/10/2012
Review date:	1/11/2013

OPERATIONAL GUIDANCE WHEN AND HOW TO MANAGE DISCRETIONARY DISPOSALS

1. AIM OF THIS GUIDANCE

- 1.1. This document provides operational officers with guidance as to when and how a crime may be dealt with by way of discretionary disposal. It is most appropriate for those suspects who have little or no prior offending history.

2. INTRODUCTION

- 2.1. Discretion is one of a range of disposal options open to police in dealing with a crime or incident, in considering the most appropriate disposal option the investigating Officer must consider risk, vulnerability and the evidential and public interest tests.
- 2.2. A discretionary disposal provides a more individual, victim led alternative to formally prosecuting a suspect. It is generally suitable where a minor crime or incident has been committed.
- 2.3. Investigating Officers (IO) are expected to use their professional judgement to consult with victims and determine satisfactory outcomes that are proportionate to the incident or crime. In this way Discretion will:
- (i) Improve community confidence in policing and criminal justice – as justice will be seen to be done promptly and at a more localised level.
 - (ii) Improve the quality of service to victims through engaging them in the discretion process.
 - (iii) Empower the officers to use their professional judgement to deliver a proportionate and effective response to local crime issues.
 - (iv) Reduce bureaucracy by delivering prompt and local resolution.
 - (v) Reduce repeat offending by delivering a restorative justice outcome nearest to the time of offending.

3. APPLICATION OF DISCRETION

- 3.1. Investigating Officers (IO) must complete an effective and proportionate investigation in accordance with National Occupational Standards; PSNI policy directive 'Investigations carried out by the Police Service of Northern Ireland' and operational guidance on 'Minimum Standards' refer.
- 3.2. A Discretionary Disposal is not an *alternative* to the effective investigation of an alleged offence regardless of the anticipated outcome.
- 3.3. Whilst conducting an investigation, the IO should continually review the most effective disposal options available and follow the relevant process for each.
- 3.4. The following must be in place if a Discretionary Disposal is to be delivered:
 - (i) There must be a clear and reliable admission of guilt.
 - (ii) There must be sufficient evidence to bring a reasonable prospect of prosecution.
 - (iii) The IO must believe it is the appropriate and right thing to do, in their professional judgement (i.e. in the public interest).
 - (iv) The agreed outcome must be proportionate and where reparation or action is required the officer must be assured the suspect has the ability/means to meet it within the period sought.
 - (v) Identifying what constitutes an appropriate outcome is the responsibility of the IO. In doing this the following should be considered:-
 - a. The impact of the crime on the victim.
 - b. Any factors relating to the suspect which may cause them to commit offences.
 - c. Citizenship – the responsibilities a person owes to the community.
- 3.5. The outcome might comprise any number of actions including either:
 - (i) a verbal or written apology,
 - (ii) completing unpaid work,
 - (iii) the repair of any damage caused,
 - (iv) a payment to cover damages,
 - (v) a written agreement/pledge to alter behaviour for example.
- 3.6. If an outcome involves payment to cover damage/loss, the IO must take reasonable steps to ensure the amount appears proportionate to the damage/loss caused; for example, by establishing if the victim has a receipt &/or quotes for repair/replacement of items.
- 3.7. If the suspect is under 18, the IO must seek authority from a supervisor and consider what is in the best interests of the young person. In doing this, they

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must check for any relevant information contained within the Youth Diversion database and consult with the Youth Diversion Officer (YDO) if available.

- 3.8. The suspect must give consent to having the matter dealt with as a discretionary disposal. (If the suspect is under 18 or a vulnerable adult consent must also be obtained from the relevant appropriate adult).
- 3.9. It is desirable that the victim should consent and be satisfied with the proposed outcome; however, a victim has no right of veto to this process.
- 3.10. Having investigated the incident and identified a suspect the Investigating Officer (IO) will utilise the 'Traffic Light' system to ascertain if the offence is appropriate for discretionary decision making.

4. OFFENCES UNSUITABLE FOR DISCRETION

4.1. Discretion **cannot be availed of** where the offence/incident involves one or more of the following circumstances:

- C** (i) **C**onduct of a public figure who is in a position of authority or trust, including a member of:
 - a. Parliament;
 - b. the legislative assembly;
 - c. a public representative;
 - d. clergy or religious leader;
 - e. senior civil servant (above deputy principal grade).
- H** (ii) **H**ate motivated.
- I** (iii) **I**ntimidated or vulnerable repeat victim with the offence committed by the same suspect.
- M** (iv) **M**edia interest (either actual or likely)
- P** (v) **P**SNi – the conduct of a member of the PSNI (staff or officer).
- S** (vi) **S**erious Crime, assault, sexual offences, child protection offences, domestic abuse or serious fraud or where there is a serious impact on the victim.

In the above circumstances the matter must be referred to the Public Prosecution Service for Decision. (The above categories may be easier recalled using the mnemonic **CHIMPS**).

5. SUSPECTS SUITABILITY FOR DISCRETION

5.1. A suspect **may not** be suitable for discretion where any of the following are applicable. To determine suitability the case **must be** referred to a Gatekeeper (supervisor if gatekeeper is not available):

- (i) The suspect has another case(s) pending;

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- (ii) The suspect has another criminal justice disposal recorded against them;

The suspect will usually not be permitted to avail of more than 2 discretionary disposals in any rolling 12 month period.

- 5.2. If the suspect has cases pending for a similar offence to the one being considered for discretion then in most incidences the offence will be deemed unsuitable for Discretion.

6. THE DISCRETION PROCESS

- 6.1. A Command and Control Serial should be opened and a police officer assigned to investigate the incident.

6.2. Engaging the Victim

- (i) Where the investigating officer (IO) believes an offence is suitable to be dealt with by Discretion, they must offer the victim the opportunity to avail of a discretionary disposal. They must also explain that they will manage and oversee the discretion process and any agreed outcome.
- (ii) The IO must explore and agree with the victim a suitable desired outcome. This outcome must be proportionate to the crime and the suspect's means to deliver same.
- (iii) The IO must explain that Discretion can only be delivered if the suspect also agrees to the process and therefore they cannot, at this stage, guarantee a specific outcome.
- (iv) The IO should record the fact that the case is considered suitable to be dealt with by discretion and the outcome desired by the victim in their notebook. The victim should be encouraged to sign this.
- (v) The IO must seek the victim's consent for referral to Victim Support Northern Ireland and record this in their notebook or on form OMF 2A as applicable.
- (vi) Once the disposal has been completed by the suspect, the IO must contact the victim to update them. The victim should be encouraged to sign the IO's notebook to certify the agreed outcome has been completed to their satisfaction. The IO must also inform the victim that it is police policy to randomly survey those victims whose case has been resolved using discretion.

6.3. Engaging the Suspect

- (i) The IO must notify the suspect of any offence or incident they are suspected of having committed, and of the intention of the opportunity to have the matter dealt with as a Discretionary Disposal.
- (ii) The following must be explained to the suspect in relation to the discretionary disposal:

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- a. This is an opportunity for the suspect to make reparation (make good the damage or loss caused).
 - b. This is a resolution which will deliver a speedy, effective outcome tailored to the needs of the victim which may include but is not limited to:
 - I. An apology;
 - II. Repairing damage;
 - III. Paying for an item damaged or stolen;
 - IV. Taking on some other action i.e. helping at a charity event.
 - c. Accepting a discretionary disposal does **not constitute a criminal conviction** and as such the disposal is not routinely disclosed, although it may be disclosed as part of an enhanced criminal record check dependant upon the circumstances.
 - d. A discretionary disposal will remain active for a period of twelve months from the date of completion of reparation.
 - e. Details of all discretionary disposals are held on police records and this may be used to inform a decision as to future disposals should the suspect commit further offences.
- (iii) A suspect must be cautioned under Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 in accordance with the relevant Codes of Practice – the officer should record the fact the person has been cautioned and the reply, if any, in their notebook.
- (iv) Where required the officer must ask relevant questions to support their investigation after caution – these should be recorded in their notebook.
- (v) If the suspect admits the offence and is willing to accept a discretionary disposal, then the IO must explain:
- a. the details of the outcome which has been agreed with the victim – the officer should seek to secure the suspects agreement to this outcome;
 - b. that they will manage and oversee the discretionary process until the agreed outcome has been completed;
 - c. if the suspect does not complete their part of the agreement, that the matter may then be referred to the PPS.
- (vi) The suspect's agreement should be documented in the officer's notebook and countersigned by the suspect.
- (vii) Fingerprints and DNA are not required for Discretionary Disposals, but where the offence is a recordable offence and fingerprints and DNA have been taken as part of the investigative or custody process, then these may be retained in line with current retention schedules.

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- (viii) Where a suspect refuses to take part in the Discretionary Disposal then the matter should be referred to PPS in file format.

6.4. Juvenile or Vulnerable Suspects

- (i) Juvenile suspects are a unique category and therefore extra safeguards are in place under legislation to ensure they are treated appropriately.
- (ii) Where a suspect is identified as either a juvenile or vulnerable, then the process of dealing with the suspect must be carried out in the presence of an appropriate adult. **Juveniles under the age of 10 years (i.e. under the age of criminal responsibility) can never receive a Discretionary Disposal.**
- (iii) Where a juvenile or vulnerable adult is requested to sign the officer's notebook or to agree to a discretionary disposal, the appropriate adult should also be requested to sign and to give consent.
- (iv) A juvenile suspect may only be required to perform one or more of the following outcomes as part of any discretionary disposal:
- a. Apologise to the victim of the offence or any person affected by it;
 - b. Make reparation for the offence to the victim or any such person or to the community at large;
 - c. Make a payment to the victim of the offence not exceeding the cost of replacing or repairing any property taken, destroyed or damaged in the commission of the offence;
 - d. Submit him/herself to the supervision of an adult;
 - e. Perform unpaid work or service in or for the community;
 - f. Participate in activities (such as activities designed to address offending behaviour, offering education or training or assisting with the rehabilitation of person dependent upon or having a propensity to misuse alcohol or drugs).

7. Retailers Discretion Scheme

- 7.1. The IO should conduct their initial investigation in accordance with PACE and Codes of Practice and should also consider the eligibility of the offence to be dealt with by discretion.
- 7.2. Where the offence is suitable to be dealt with by discretion, the IO should establish if the store is a member of the scheme – (this can be done by asking store staff or by reviewing the Criminal Justice A-Z on the Service Improvement pages of Policenet).
- 7.3. Several large retail chains have agreed to adopt a discretionary disposal scheme to deal with minor shoplifting suspects. Those who have adopted the scheme will have clearly agreed outcomes for disposal with police.

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- 7.4. If the retailer is a member of the scheme and the offence is not committed by:
- (i) A Repeat suspect or/and
 - (ii) Those going equipped for theft.
- 7.5. The officer must explain the scheme to the suspect as per any discretionary disposal as outlined in the Engaging the Suspect Section of this guidance.
- 7.6. The IO should also outline that the discretionary disposal sought is:
- (i) That the suspect will sign a store banning order;
 - (ii) And that police will provide the suspects personal details to the retailer who may choose to pursue a civil costs recovery from them;
 - (iii) That the discretionary disposal will not be conditional upon the suspect paying any civil costs demanded as part of the civil costs recovery process;
 - (iv) Any other conditions as outlined in the retail scheme for that store.
- 7.7. In addition to the notebook entries to support the discretionary disposal as previously outlined in this guidance, the IO must also confirm the suspect's address and update their notebook with the following statement:

'I confirm the address provided by (name of suspect) matches the address on PSNI records. I disclosed this address to (name of person for store) as it was necessary for the purposes of civil legal recovery under Section 35(2) of the Data Protection Act 1998.'

- 7.8. Where the officer believes the offence is suitable for discretion but the retailer is not involved in the retailers' scheme or where the person is a repeat suspect or has committed the offence of going equipped, then the advice of a Gatekeeper or supervisor should be sought and the standard process for discretion should be completed.

8. ADMINISTRATION

- 8.1. The IO must monitor the delivery of the agreed outcome and aim to have it completed within 7-14 days.
- (i) Where more time is required for completion, this must be agreed with a supervisor.
- 8.2. The IO must update the occurrence enquiry log (OEL) regularly as to the progress of their investigation, ensuring key actions are noted.
- 8.3. Where the payment of money as reparation has been agreed the money must be paid direct to the victim by the suspect. This should be paid in one lump sum and can be supervised by the IO if required. It can also be arranged by the IO that this transaction can take place at a police station if required. The IO **must never** take money from the suspect to give to the victim.
- 8.4. If the suspect fails to comply with the agreement or fails to comply within a reasonable time then the matter should be referred to the PPS for an alternative disposal. Where the suspect is a juvenile then the matter must be referred to the YDO.

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- 8.5. If the suspect only partially completes the disposal or the victim remains dissatisfied, then the matter should be referred to the Service Gatekeeper for a decision on how best to proceed.
- 8.6. Whatever disposal option is agreed, the IO must ensure they update the victim as to the progress of the investigation at appropriate intervals taking into consideration the impact of the offence on the victim and their particular needs. In any cases the minimum standard of update will be:
- (i) Initial follow up within 10 days;
- Where the case is not completed within 14 days, the further updates will be at least as follows until the victim has been updated and agreed the case is complete:
- (ii) 30 days
 - (iii) 75 days
- 8.7. Once the disposal has been completed and the victim updated to this fact, then the matter will be closed by the IO updating the OEL log.
- 8.8. Discretionary disposals will be quality assured and audited on a monthly basis through the interagency Quality Assurance Panel chaired by the PPS.
- 8.9. Districts are required to call back at least 8 victims per month to monitor victim satisfaction with Discretion and to ensure this guidance is being followed.

9. RELATED POLICIES/GUIDANCE

- 9.1. Guidance on **alternative methods of disposal**:
- (i) The following documents are available on the Service Improvement Criminal Justice Web Page A-Z:
 - a. 'When and how to use a Penalty Notice for Disorder (PND)'.
 - b. 'When and how to obtain a Non-Court Diversion Decision by telephone.'
 - c. 'When and how to use a streamline no prosecution file'.
 - d. 'When and how to use the Service Gatekeeper'.
 - e. 'When and how to use a streamline charge file'.
 - f. 'Speedy Justice Aide Memoir'.
 - (ii) The Road Policing Manual Chapter 10 – Appendix 10A – Driver Improvement Scheme.
- 9.2. Guidance on **standards of investigation and supervision occurrences**
- (i) The following documents are available on the Service Improvement Criminal Justice Web Page A-Z:
 - a. 'How to deal with and manage occurrences'.
 - b. 'Case file Minimum Standards'.

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- (ii) 'Investigations carried out by PSNI' – PD04/10
- (iii) National Occupational Standards

9.3. A list of retailers who have adopted the Discretionary Disposal Scheme is available on the Service Improvement Criminal Justice Web Page A-Z.

9.4. 'Policing with Children and Young People' – PD13/06

10. LEGAL BASIS

10.1. This guidance is compliant with/or takes cognisance of:

- (i) The European Convention of Human Rights (ECHR).
- (ii) The United Nations Convention of the Rights of the Child (UNCRC).
- (iii) Section 75 of the Northern Ireland Act 1998
- (iv) Part 2 of the Justice (Northern Ireland) Act 2002.
- (v) Section 32 of the Police (Northern Ireland) Act 2000.
- (vi) The Justice (Northern Ireland) Act 2002.

11. MONITORING AND REVIEW

The Head of Sub- Branch S2, Justice Management is responsible for reviewing this guidance as and when required.