

A blurred background image of a courtroom. Several people are seated at a long wooden bench, and a person is standing in the foreground on the right side, facing away from the camera. The scene is out of focus, emphasizing the text overlay.

BRINGING OFFENDERS TO JUSTICE
CRIMINAL JUSTICE PENALTIES AND
SENTENCING

CRIMINAL JUSTICE SYSTEM



The purpose of this paper is to summarise Government's current policy on penalties and sentencing. In particular, it sets out where out of court penalties and other interventions fit in our overall approach. It is intended to provide information to support current public consultation exercises, such as those on sentencing – **Making Sentencing Clearer** - and on anti social behaviour - **Strengthening powers to tackle Anti Social Behaviour**, both of which were published in November 2006.

The paper sets out our intention to work with criminal justice service practitioners and the judiciary to develop a more comprehensive guide to how the police and prosecutors take decisions on whether an individual case which could be settled out of court should be dealt with in this way or whether it should be brought before the court – in other words where this boundary should be drawn. This guide would then be published. As part of this work we will also look at how we can make this process of decision-making more accountable and transparent.

We would welcome any comments or questions on this paper which would then be fed into that more detailed work. Contact details can be found at the back of the document. Comments are requested **at the latest** by end March 2007.

EXECUTIVE SUMMARY

The purpose of this paper is to summarise Government's current policy on penalties and sentencing. In particular, it sets out where out of court penalties and other interventions fit in our overall approach. It is intended to provide information to support current public consultation exercises, such as those on sentencing – **Making Sentencing Clearer** - and on anti social behaviour - **Strengthening powers to tackle Anti Social Behaviour**, both of which were published in November 2006.

The paper also sets out our intention to work with CJS practitioners and the judiciary to develop a more comprehensive guide to how the police and prosecutors take decisions on whether an individual case which **could** be settled out of court **should** be dealt with in this way, or whether it should be brought before the court - in other words where this boundary should be drawn. This guide would then be published. As part of this work we will also look at how we can make this process of decision-making more accountable and transparent.

Crime affects everyone. Victims of crime have to be at the heart of the justice system. We are committed to ensuring that justice is delivered swiftly, fairly, transparently and effectively. The Criminal Justice Act 2003 set out the purposes of sentencing: to protect the public, punish the offender, reduce and deter crime, reform and rehabilitate the offender and provide for reparation by offenders to their victims and communities.

To do this, we need a tailored approach that ensures the appropriate penalty, intervention or sentence for the circumstances of the case and offender. This is why we have developed a range of different responses at different levels so that the Criminal Justice System can respond proportionately, fairly and effectively to the seriousness of the offence – its impact on the victim and wider community - and the risk posed by the offender.

Our approach is part of a broader commitment to making the Criminal Justice System more responsive to the needs of the 21st Century. As part of this, we are committed to improving court processes to deal more efficiently with cases that do go to court. We set out our intentions in the **Delivering Simple, Speedy, Summary Justice** report published in July 2006. This report particularly focussed on improving the speed and effectiveness of the Magistrates and Crown Court, and on practical measures to deal quickly with the least serious, uncontested offences outside court.

In parallel with developing fast track processes for simple cases, we are developing a problem solving approach by extending Community Justice courts. These are designed to break cycles of re-offending by involving a range of agencies to tackle underlying problems, based on experience of what works. And we are improving performance in the Crown Court for more serious cases by more effective case management and stronger judicial leadership.

This paper sets out in particular the role of out of court penalties and other interventions within that broader picture.

Out of court penalties and other similar interventions in one form or another have been available for a long time. They represent a simple, speedy and fair way to respond to minor, **uncontested** offences. Victims' views are taken into account. They save the victim the time spent at court and free up time for police and courts to focus on more serious offending.

A range of designated authorities can issue these penalties and interventions.

Fixed Penalty Notices and Penalty Notices for Disorder are issued by the police. Some fixed penalty notices can also be issued by designated local authority employees. They do not form part of someone's criminal record and do not normally have to be declared to employers.

Simple Cautions are issued by the police and Conditional Cautions are issued following a decision by the Crown Prosecution Service. They are not a conviction but do form part of someone's criminal record and have to be declared to some employers under standard and enhanced Criminal Record Bureau clearances. The Conditional Caution can include conditions such as paying compensation to the victim, attending drug or alcohol counselling, paying a small fine or undertaking reparation to the community.

In addition police and other designated authorities can take measures to tackle anti social behaviour by agreeing Acceptable Behaviour Contracts with perpetrators of anti social behaviour. These are voluntary but if the anti social behaviour persists, the authorities can apply to the court for an Anti Social Behaviour Order.

These penalties and interventions are designed to provide simple, swift and proportionate ways of responding to anti social behaviour and minor offending and save courts the time of listening to minor and undisputed matters.

All contested cases go to court. As does persistent offending and more serious offences, whether contested or not, especially where there are risks to the public relating to that offender and offence. In determining which uncontested cases should go to court, practitioners take account of the victim, the offence itself and its impact on the victim and community, the offender and any previous record and the potential risk to the public. The law sets out where some of the boundaries lie between out of court penalties and court sentencing. In addition there are detailed guidelines to help practitioners decide whether an offence which could be dealt with outside court is something that should go to court.

The paper sets out our overall approach to penalties and other interventions in the broader context. It also indicates our intention to take forward further detailed work with practitioners to develop a comprehensive matrix or guide setting out how decisions are taken between court and out of court penalties, so that we can publish a guide for staff, the judiciary and public in the early part of next year as part of our commitment to transparency and openness.

Crime affects everyone in this country – whether or not you are a direct victim yourself.

Victims of crime have to be at the heart of the justice system. The Government and staff in criminal justice services are working hard together to ensure justice is delivered swiftly, fairly, transparently and effectively. We want people to play by the rules and to know what will happen to them if they break them. We want victims to know that their voices will be heard. And we want any punishment to be proportionate to the crime.

The purposes of sentencing and imposing penalties

The purposes of sentencing, set out in the Criminal Justice Act 2003, are to:

- **protect** the public;
- **punish** the offender;
- **reduce** and **deter crime**;
- reform and **rehabilitate** the offender; and
- provide for **reparation** by offenders to those affected by their offences.

Within this statutory framework provided by the Criminal Justice Act 2003, the Sentencing Guidelines Council has a key role as it frames guidelines covering both the general principles of sentencing and sentencing for particular offences. This enables sentencers to match the penalty to the seriousness of the offence and the needs of the offender.

Similarly, out of court penalties and other interventions must be appropriate to the crime or misdemeanour committed and be consistent with the sentencing framework.

This document sets out the range of these measures¹, why and when they are used and who administers them. This is part of the Government's commitment to being transparent about sentencing, penalties and other interventions and is part of our desire to start a public dialogue on the issues. It also sets this range of measures in some context, showing how the use of penalties and other interventions administered outside the court system has been part of the justice process for a long time.

For many years, various penalties and interventions of different levels have been administered by a range of authorities in addition to the courts. Taken together they provide a coherent framework where the penalty, intervention or sentence can be matched to the individual and the crime. Alongside these there are also powers to agree or impose conditions of behaviour

¹ This paper focuses on the adult system. There are some different interventions designed specifically for young people – we make reference to them in the data tables and will be including the youth system in the further work we are taking forward.

BRINGING OFFENDERS TO JUSTICE

on individuals in order to protect communities – Acceptable Behaviour Contracts (ABCs) and Anti-Social Behaviour Orders (ASBOs).

The guiding principle underlying all our work in this area must be to protect the public and address the needs of communities and victims – whether the victim of the crime in question or future victims. For victims there is no such thing as a ‘low-level’ crime. Of course crime happens on a spectrum from the less serious to the more serious but its impact on an individual victim can be devastating wherever it falls.

Strengthened Community Engagement and a more responsive Criminal Justice System

The Government cannot deliver a truly effective justice system on its own. To make it work we need professionals who use these penalties and interventions everyday to be part of the debate. And, of course, we also need to work closely with communities. We are developing our neighbourhood policing policy which aims to engage better with communities and be more responsive to their needs and priorities.

This means putting the law abiding citizen first. We must shift the balance so that the anti-social perpetrator is put to inconvenience, rather than the law-abiding majority. Developing swift, simple, effective and proportionate responses for low level misbehaviour and offending is key to demonstrating that behaviour which undermines the quality of life for law abiding citizens is being robustly addressed. This is also about increasing the meaningful opportunities for offenders to make visible amends to their communities. For example, Compensation Orders or unpaid work, imposed by the courts provide for victim compensation or community reparation. And for less serious offences, where the offender admits the offence, Conditional Cautions, administered by the police and the Crown Prosecution Service also provide for compensation or reparation to a more limited extent.

The Community Justice initiative is another example of how the Government is making the courts and the wider Criminal Justice System more responsive to local communities. It links with neighbourhood policing and aims to bring courts closer to communities, achieving better outcomes for victims, offenders and communities. It aims to break cycles of re-offending by involving a range of agencies in a problem-solving approach based on what works. Community Justice is an approach that has accountability and responsiveness to the community at its core.

We also need to continue to build our evidence base on what works best in reducing crime and re-offending. This will help us better identify which offenders would benefit from interventions to reduce the risk of their re-offending and those cases where a simple fixed penalty or a fine would be more appropriate. We shall be working with CJS practitioners to provide more information about the impact of different approaches on re-offending and their cost effectiveness.

BRINGING OFFENDERS TO JUSTICE

In July 2006, the Government published the results of two reviews: *The Rebalancing the CJS review* and the *Delivering Speedy, Simple Summary Justice review*. The first looked at how we can further rebalance the justice system in favour of victims and the law abiding majority, while the latter particularly focussed on improving the speed and effectiveness of the magistrates and Crown Courts and on practical measures to deal quickly with the least serious, uncontested offences outside court. We made a number of commitments in these two reviews to do more to tackle both anti social behaviour and more serious crime. As part of this, we published two consultation papers in November 2006. The first was entitled: “*Making Sentencing Clearer*” which contained proposals to strengthen judges’ hands in dealing with dangerous offenders and help the public understand what individual sentences mean. The second consultation document was entitled ‘*Strengthening powers to tackle anti social behaviour*’ and proposed extending the use of out of court interventions for tackling anti social behaviour.

The Government also committed itself in these reviews to setting out a simple statement of the circumstances in which penalties and other interventions might be imposed by a court or outside the court process, in support of our commitment to openness and transparency. This document begins this process.

Who deals with these offences and where are they dealt with?

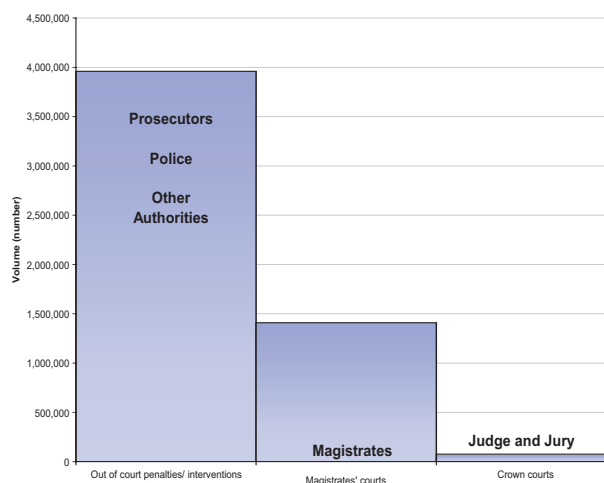
Penalties and other interventions are imposed both outside and inside the court system – and have been for many years. We have to get the balance right on what penalties can be imposed as part of each. We need a sliding scale of response which recognises what victims expect of the system and what is most likely to deter law breakers from re-offending. We also need to consider what are the costs and effectiveness of administering particular solutions. And we need to be transparent about where the line is drawn between out of court interventions and cases handled by the courts.

The rest of this document therefore describes the ways of dealing with crime which are available outside court and gives some examples of the types of offences which can be dealt with in that way. It then sets out the factors which practitioners weigh up in determining whether a particular case should in fact nonetheless go to court. It also briefly describes what types of sentences are available for those cases which do end up going to court. Of course we are fully aware that there may be differing views on whether the factors identified are the right ones and the weight they should be given, as well as whether this is a helpful way of being open and transparent about the way these decisions are made. At the end of this process, following work with staff throughout the system and the judiciary, we intend to produce a more definitive guide for staff which will be made public.

Figure 1 sets out who handles the different penalties, interventions and sentences.

1. Figures are for England and Wales, 2005 data, except where otherwise stated.
2. Data on out of court penalties and interventions consists of numbers issued.
3. Magistrates and Crown Court data consists of persons sentenced plus ASBOs.
4. Further notes on the data are provided at Figure 2 and Annex C.

Figure 1: Who deals with these offences?



- **Out of court interventions** included in the table consist of: Fixed Penalty Notices for motoring and for environmental offences; Penalty Notices for Disorder; Cautions; and Formal Warnings for Cannabis. They are issued by the police, with advice from the Crown Prosecution Service (CPS) in the case of any use of a Simple Caution for indictable only offences. Youth Offending teams (YOTs) are responsible for managing young offenders' sentences and out of court interventions such as Final Warnings, including risk assessment and identifying suitable programmes to address the needs of the young person. Conditional Cautions are issued following a decision by the CPS. Some fixed penalties – environmental FPNs - can be issued by local authorities. Motoring FPNs account for the highest proportion of out of court penalties (see fig 2)
- **Magistrate Courts:** Magistrates Courts handle most lower level court cases ranging from those which would get only a small fine through to those that could attract a custodial sentence of up to 6 months.
- **Crown Courts:** the most serious cases are handled by Crown Courts. Such cases range from any case attracting custody of over 6 months through to the most serious cases such as terrorism and murder. A tiny proportion of cases could be handled by a judge sitting without a jury, under provisions in the Criminal Justice Act 2003: either (a) where the jury has been “nobbled” or (b) in the case of complex fraud. Only the former – (a) has so far been implemented.

Penalties and interventions outside the court system

These are cases which are not contested and where a simple, lower level response would be proportionate, which allows for them to be dealt with outside court. There is a range of such penalties and interventions - from Fixed Penalty Notices (FPNs) and Penalty Notices for Disorder (PNDs) through to Simple Cautions and Conditional Cautions.

Penalties and interventions have been around for some time. The police have used some form of cautioning ever since the creation of organised police forces. Statistics on police cautions were first published in 1954. Fixed penalties relating to vehicles and motoring have also been with us for many years. The current system is enshrined in the Road Traffic Offenders Act 1988 but they were introduced in the 1960s to reduce the burden on the courts. The driver improvement scheme – where police offer careless drivers the opportunity to attend a course at their own expense rather than face prosecution – has been around for 15 years. And out of court penalties have been used for many years for misdemeanours such as littering, dog fouling, being on a train or a bus without a ticket and so on.

Penalties issued outside court can be effective in quickly addressing a problem, nipping offending behaviour in the bud. In many cases they are the most appropriate way of dealing with an offence and no further intervention will be needed. And in some cases, there are options for directing people to counselling and other interventions to reduce the risk of further offending.

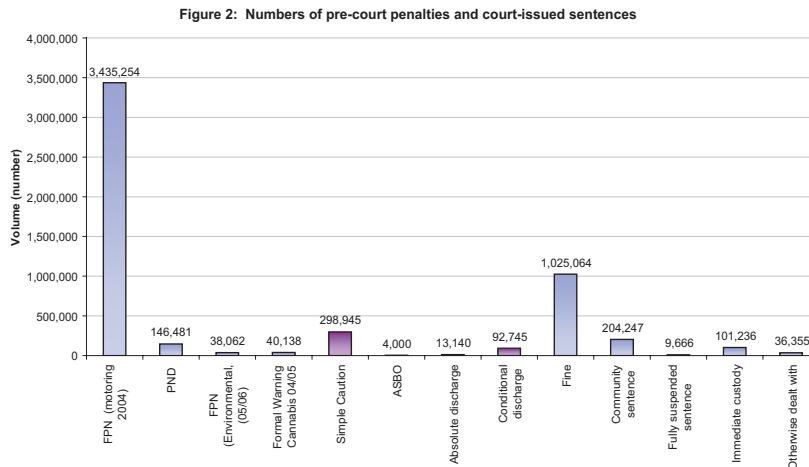
For the victims of crime – whether they are individuals or a community – these penalties can allow justice to happen quickly after which people can move on from the original incident. Reparation can also take place outside court, for example paying compensation to the victim as part of a Conditional Caution.

Where an out of court penalty such as a PND is a proportionate and fair response to a minor, uncontested offence, it is also fairer to the taxpayer. Out of court penalties and interventions such as the PND can save the taxpayer up to two or three hundred pounds per case compared with a guilty plea court case.

However, these penalties and interventions must be used carefully if we are to build public confidence in them and ensure that the system is fair and open. Figure 2 sets out the volumes and a description of each then follows.

A key issue for victims, for staff, for magistrates and judges, and for the Government is where to draw the line between court and other ways of administering penalties. There can be no single answer to this question. There is no single threshold of seriousness that covers all kinds of crime but it is possible – as in the section that follows – to set out the thresholds for individual offences and for specific penalties. It is also possible to be clear about the factors which may mean that it is right to take a case to court even though it could have been dealt with outside court

This is important because victims, the wider public and criminal justice staff need a clear guide to when penalties and other interventions outside court should be used and when a case should go to court. This is important to help staff do their jobs and so that victims and defendants know what to expect from the system. But it is also important that the way offenders are dealt with is open and consistent across the country.



Notes on the data:

1. Figures are for England and Wales, 2005 data, except: Formal Warning for Cannabis is 2004/05. Motoring FPNs are for 2004. Environmental FPN data is for England only and 2005/06.
2. The cautions and court proceedings figures are for all offences. Simple Caution includes Reprimands and Final Warnings for juveniles. Conditional Caution data not available in 2004/05.
3. Figures for ASBOs consist of ASBOs given at the Magistrates and Crown Court.
4. Data sources and further notes on the data are provided at Annex C.

Offences which can be dealt with outside court

Fixed Penalty Notices (FPNs) and Penalty Notices for Disorder (PNDs)

Designed to save courts the time of listening to minor and undisputed offences and enable the police and other authorities to respond swiftly and proportionately to minor matters. FPNs can be contested in court.

Examples of where FPNs would be used include littering and dog fouling. They can also be used for some specific minor traffic offences. Some motoring FPNs include points on your driving licence.

Fixed penalties can also be issued for anti social behaviour such as drunk and disorderly behaviour. These notices are called Penalty Notices for Disorder (PNDs). As with FPNs, they are designed to save courts time spent listening to minor, undisputed offences. They can also be contested in court. Current operational guidance is clear that PNDs should not be issued for serious offences. In the case of theft, PNDs are limited to retail or commercial theft and usually under a value of £100 . The offences which can be dealt with in this way are listed at Annex A.

The Government is now considering suggestions for additions to the list of offences for which a PND can be issued, as part of the regular review of the scheme. Suggestions for new offences are received from a variety of sources, including the police. It will be up to Parliament to agree to any new PND offences before they can be added to the list of offences for which a notice may be issued. In every case, PNDs will be issued only for low-level offences. Those issued with penalty notices will not receive a formal criminal record although a PND may be used as evidence of bad character in court. A PND does not generally need to be notified to an employer.

Formal Warnings for Cannabis

Formal warnings for cannabis can be used when someone is caught in simple possession of a small amount of cannabis for personal use. The formal warning in this instance does not count as part of your criminal record but it is retained on police records and can be held against you if you are found in possession again.

² A PND for theft up to the value of £200 may exceptionally be given with the agreement of the victim ie the retailer.

Simple Cautions

Simple Cautions have been in use for a long time. They allow the police to deal quickly and simply with people who have admitted committing a less serious offence (usually in cases involving first time offenders). Deciding whether to give a caution in any particular case is an operational matter. To help police officers in the exercise of this discretion, we have issued guidance on the Cautioning of Adult Offenders Circular 30/2005, which includes the use of a gravity factors matrix to determine the seriousness of the offence and any aggravating or mitigating factors in order to decide whether or not a Simple Caution is appropriate.

A simple caution tells someone that his offence is serious enough to warrant a formal police response but without having to go to court. It is not a soft option, but it is not as serious as a conviction. It goes on the person's record. If the person re-offends, it will be a factor in the police and CPS decision as to whether or not to prosecute. It can be cited in court if they offend again and has to be declared to some employers under standard and enhanced Criminal Record Bureau clearances.

Conditional Cautions

Introduced by the Criminal Justice Act 2003, the Conditional Caution is aimed at dealing with low level offences that would typically receive a small fine, small compensation order or conditional discharge at magistrates' court.

The police can refer a case to a Crown Prosecutor to consider whether to issue a Conditional Caution or to prosecute. Victims are consulted. The person arrested has a right to legal advice as is the case with anyone in police custody. If he admits the offence and is willing to make amends or tackle his offending behaviour and there are no public safety issues, a Conditional Caution with conditions may be offered. Typical conditions could include victim compensation, reparative work or referral to drug or alcohol misuse counselling. In addition the Police and Justice Act has provided for other conditions to be imposed such as a fine or community work.

Conditional Cautions may reduce the time that the victim would have to wait were the case to be dealt with by a court. If the offender does not comply with the conditions he can be prosecuted for the original offence. As with the Simple Caution, although not a conviction, it does form part of an offender's criminal record, can be cited in court if he offends again. It has

to be declared to some employers. It also appears under standard and enhanced Criminal Record Bureau checks.

The Conditional Caution is intended as a proportionate response to less serious offending, with conditions tailored to the particular nature of the offence.

Conditional Cautions can be issued for any case which can only be tried in the magistrates' court – summary offences. There is a wide variety of offences within this category but a Conditional Caution will only be used where the outcome expected at court is either a fine, compensation or conditional discharge and never where an offender is likely to be sentenced to custody.

A Conditional Caution can also be used for some of those offences which can be tried either in the magistrates' court or the Crown Court, namely:

- Possession of a small amount of drugs for personal use
- Criminal damage
- Minor burglary – such as taking something from a garden shed but not from residential or commercial premises; and
- Various forms of theft.

But the more serious theft offences are **specifically excluded**, these being

- burglary (other than burglary of non-dwelling / non-commercial property);
- aggravated burglary;
- robbery; and
- blackmail.

The statutory Code for Crown Prosecutors sets out the circumstances which determine whether to charge or Conditionally Caution an offender. Guidance is provided by the Director of Public Prosecutions and includes the full list of offences for which a Conditional Caution can be given. These offences are set out at Annex B.

How practitioners decide how to deal with an individual case

We have set out above the range of offences which can be dealt with outside court. But even if a crime can be dealt with in this way, a police officer or CPS lawyer will always of course use their discretion to decide whether or not a particular defendant needs to be brought to court.

Table I sets out the main factors that practitioners will weigh up in taking their decisions.

TABLE I	Penalty outside court	Court
Contested case – does the defendant want to contest the case?	If no, the case may be suitable for an alternative such as the Simple Caution, Conditional Caution or PND.	If yes, the case must go to court.
What does the victim think?	Victims will be considered eg before a Simple Caution, Conditional Caution or PND is issued.	Victims will be consulted. Their views on whether a case is so serious that it must go to court will be considered but they do not have the final say
Is this a persistent offender?	These penalties are not generally suitable for persistent offenders..	If yes, the case will normally go to court.
Are there other factors which make the offence more or less serious?	Police and prosecution will consider mitigating circumstances which might make an out of court penalty more suitable such as vulnerable defendant and aggravating factors which make court more appropriate.	Court will generally be used where offending is part of an organised pattern e.g. an organised shop-lifting gang or the organised and persistent targeting of a particular individual or part of the community.

TABLE 2	Penalty outside court	Court
Is the offence serious and does the offender have underlying problems which need to be tackled to prevent further offending?	An out of court penalty or intervention may be used with less serious offences where any underlying problems can be addressed without the need for a court sanctioned programme e.g. referral to counselling for alcohol misuse through, for example, a Conditional Caution.	Court will generally be needed to tackle offences relating to serious underlying problems e.g. long term drug addiction which can only be addressed by a drug rehabilitation requirement of a community order. But only if the offence itself is serious enough to merit a community sentence.
Is the offender a high risk to the public, eg a person who appears on the sex offenders' register?	In such cases, an out of court penalty may be appropriate only where the incident is truly trivial and obviously unrelated, eg littering.	Court will generally be needed to determine whether this incident of further offending may lead to an increased risk to the public.

We shall work with the police, prosecutors, magistrates and judges over the next few months to produce a clear framework for the use of these penalties and interventions and in particular, for some of the most common offences. We will also be looking at how to ensure that the use of these penalties is open and transparent with effective mechanisms for public accountability.

As part of that work we would be welcome comment or questions from the public and especially those with a particular interest or experience of the Criminal Justice System on whether this is a helpful way of deciding how best to handle individual cases.

Other interventions

As well as these penalties and interventions, the police and other authorities in a local area may decide that other forms of direct action to prevent further bad behaviour may be more effective in protecting individuals and communities from anti-social behaviour.

Acceptable Behaviour Contracts (ABCs)

In response to calls from communities and frontline workers, we have extended the ways in which authorities can deal with anti-social behaviour. At the bottom end of the spectrum, police and local agencies can draw up an ABC which challenges that person to recognise the impact of his behaviour and to undertake steps to address it. An ABC is not a penalty and does not involve a criminal record.

If needed, it is possible to include support to help that person change his behaviour such as counselling or attendance at a youth project. Its use will be a first step so that behaviour can be addressed before it becomes a problem. It is voluntary but if the anti social behaviour persists, the authorities can apply to the courts for an Anti Social Behaviour Order.

As we flagged up earlier in this document, on 14 November, we issued a consultation paper on strengthening powers to tackle anti social behaviour. The consultation includes considering the possibility of attaching deferred Penalty Notices for Disorder to ABCs.

Anti-Social Behaviour Orders (ASBOs)

In cases where anti-social behaviour is sufficiently damaging and to prevent further anti social behaviour, police and other designated, relevant authorities can apply to the courts for an ASBO. When a formal response is needed immediately, an interim ASBO can be applied for. The orders are given by courts acting in their civil capacity. They are not criminal penalties and are not intended to punish the offender but to protect the community.

ASBOs are used to protect the public from harassment, distress or alarm. This can cover a wide range of anti-social behaviour. An Order contains conditions prohibiting the offender from specific anti social acts or entering defined areas and is effective for a minimum of two years.

The issuing of an ASBO does not form part of an individual's criminal record although police records are kept to enable police enforcement of the Order. However an ASBO can also be issued **in addition** to conviction in the Magistrates or Crown Court. Breach of an ASBO is a criminal offence. If an individual is convicted of an offence of breach of an ASBO, it will form part of his criminal record.

As part of our further work with practitioners we will look at how best to set out the circumstances in which these penalties and interventions would be used rather than prosecution at court.

Penalties and sentences inside the court system

Handling cases in court

Persistent offenders, dangerous offenders and all contested cases should be dealt with in court because it is only the courts which can impose the greater sanctions which are appropriate for such individuals. Any contested case must also go to court.

Delays can cause frustration and distress for victims. By getting the balance right between less serious, uncontested cases and cases needing court attention, the justice system can be made more efficient and deliver justice more swiftly.

To promote these principles and drive up confidence the Government, in *Delivering Simple, Speedy, Summary Justice* has set out how it will:

- Improve the speed and effectiveness of the magistrate's court through better case management and fast track processes for guilty plea.
- Develop a problem solving focus through the extension of the community justice approach.
- Improve performance in the Crown Court for more serious cases by more effective case management and stronger judicial leadership.

In addition, the Sentencing Guidelines Council and the Sentencing Advisory Panel are helping to create a consistent approach to sentencing. These independent bodies consult with and issue guidelines to all courts in England and Wales. They aim to give authoritative guidance on sentencing, enable sentencers to make decisions on sentencing that are supported by information on effectiveness and give a strong lead on the approach to allocation and sentencing issues based on a principled approach which commands general support.

In early November 2006, the Government published *Making Sentencing Clearer* which asked for views on aspects of its sentencing framework, including proposals which address specific concerns about high risk offenders.

More effective sentencing

As with sanctions outside the court system, there are a number of options available to sentencers so the penalty can best match the crime. Jail is clearly the most appropriate sentence in some cases and as the Home Secretary announced in his review of the CJS, we will always ensure that there will be prison places for those serious, sexual and prolific offenders who ought to be in prison. But prison is not the only option available to courts. Community Orders and other non custodial sentences can include innovative schemes such as community payback which not only provide a punishment, but also a very visible symbol of offenders making reparation to the victims and the community.

Fines

Fines can be used when the issue is not so serious as to need a community penalty. Fines may be given together with Compensation Orders. They are aimed at those who might otherwise have been dealt with outside court but have pleaded not guilty, and those committing less serious offences (including in some cases persistent offenders whose offending remains minor).

Fines are now much better enforced, hit offenders in the pocket and save taxpayers' money. They should be considered more widely as an effective punishment for certain types of crime. Some offences which currently attract a low level community order, but might formerly have resulted in a fine, should again be dealt with by a fine. This will avoid the probation service being overloaded with low-level offenders serving community sentences. Payment should be set at a level and over a time period which the offender can afford so that he doesn't turn to further crime in order to be able to pay.

Community penalties

However, fines can only deal with a certain level of crime. For those above that level, but not needing a jail term, community penalties should be used. Community Orders are often more challenging than a short period in custody and do more to reduce the likelihood that offenders will reoffend. Community payback – unpaid work – allows for communities to become involved in the justice system through suggesting projects on which offenders can work.

³Community Payback is an unpaid work requirement which can be included in a Community Order or a Suspended Sentence Order.

Orders can be tailored to address individual behaviour and courts have twelve different requirements which can be implemented as part of an order.

Offenders needing intensive supervision and/or who are at high risk of re-offending must have appropriate probation resources and the Government is determined to provide these. And we want to bring in expertise from the private and voluntary sectors to drive up the quality and performance of community punishments since this is too big a job for the probation service alone.

We shall also bring together our approach for tackling prolific and priority offenders with our Drug Interventions Programme to ensure that the highest crime-causing drug users are identified and targeted.

Custody

Individual sentencing decisions are a matter for the courts. The Government believes that prison should be targeted on serious and dangerous offenders. We are expanding prison places by an additional 8,000 places over the medium term and 1,000 in the short term and we intend that these new places are focused on the serious, dangerous, and seriously persistent offenders who ought to be in prison. The Criminal Justice Act 2003 introduced new sentences for public protection. These enable those serious offenders who continue to present a risk of serious harm to be kept in prison for a very long time – for ever if necessary.

Conclusion

Victims and their needs must be at the heart of everything that is done in the Criminal Justice System. Swift. Fair. Effective. These must be the principles on which the system is based.

As a result, we have built on our options of sanctions so that a broad range is available to sentencers. They allow justice to be delivered in good time, with a proportionate punishment, while also allowing for offending behaviour to be tackled and root problems addressed.

We have underpinned this package of penalties and sentences with solid legislation, such as the Criminal Justice Act 2003, which means that appropriate resources can be focused on the areas most needing them. For example, penalties and other interventions issued outside court are an appropriate response to low level offending. Such penalties and interventions also mean more resources are available for courts, prisons and probation services to target persistent, serious, dangerous and prolific offenders.

As society changes and offending patterns change, there is an ongoing challenge to ensure that the Criminal Justice System can respond accordingly. This must be through dialogue with practitioners and the public.

The reviews we published in July 2006 and ongoing discussion and consultation are part of that debate. The Government very much wants to hear the views of those involved in sentencing and issuing penalties as well as the view of members of the public.

In particular, this paper invites views on our ongoing work to develop a comprehensive guide for practitioners setting out how out of court penalties and other interventions are handled. We would welcome any comments or questions on this paper which would then be fed into our ongoing more detailed work.

Comments should be sent to: ellisha.stewart@cjs.gsi.gov.uk by **end March 2007** at the latest although, as our work is continuing, early comments will be much appreciated.

Please note that in responding to this document, the information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Department will process your personal data in accordance with the DPA - in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Please contact Elisha Stewart at the email address in this document should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.

A summary of the responses received will be published within 3 months of the closing date for this consultation and will be made available on our website.

Annex A – current PND offence list

Upper Tier £80

PND Offence Code	CCCJS Code	Act	Description	Notifiable/ Recordable
DA01	CL67008	S 5, Criminal Law Act 1967	Causing wasteful use of police time/ wasting police time, Giving false report	Recordable
DA02 ⁱ	CA03007	s127(2) of the Communications Act 2003	Send false message/persistently use a public electronic communications network in order to cause annoyance, inconvenience or needless anxiety	Recordable
DA03 ⁱⁱ	FS04009	S49 of the Fire and Rescue Services Act 2004	Knowingly give a false alarm to a person acting on behalf of a fire and rescue authority.	Recordable
DA04 ⁱⁱⁱ	PU86107	S 5, Public Order Act 1986	Use words/conduct likely to cause harassment, alarm or distress	Notifiable & recordable
DA05	EP75005	S 80, Explosives Act 1875	Fire/ throw firework(s)	Non-recordable
DA06	CJ67002	S 91, Criminal Justice Act 1967	Drunk & disorderly in a public place	Recordable
DA11 ^{iv}	CD71040	s1(1) of the Criminal Damage Act 1971	Destroying or damaging property (under £500)	Notifiable & recordable
DA12 ^{iv}	TH68010	s1 of the Theft Act 1968	Theft (retail under £200)	Notifiable recordable

BRINGING OFFENDERS TO JUSTICE

PND Offence Code	CCCJS Code	Act	Description	Notifiable/ Recordable
DA13 ^v	FW04003	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Breach of fireworks curfew (11pm-7am)	Recordable
DA14 ^v	FW04002	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession of a category 4 firework	Recordable
DA15 ^v	FW04001	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession by a person under 18 of an adult firework	Recordable
DA16 ^{vi}	LG03036	*Section 141 of the Licensing Act 2003 (c.17)	Sells or attempts to sell alcohol to a person who is drunk.	Recordable (1/12/05)
DA17	LG03067	*s146(3) of the Licensing Act 2003	Supply of alcohol by or on behalf of a club to a person aged under 18	Recordable (1/12/05)
DA18 ^{iv}	LG03064	*s146(1) of the Licensing Act 2003	Sale of alcohol anywhere to a person under 18	Recordable (1/12/05)
DA19 ^{iv}	LG03081	*s149(3) of the Licensing Act 2003	Buys or attempts to buy alcohol on behalf of person under 18	Recordable (1/12/05)
DA20	LG03083	*s149(4) of the Licensing Act 2003	Buys or attempts to buy alcohol for consumption on relevant premises by person under 18.	Recordable (1/12/05)
DA21 ^{iv}	LG03088	*s151 of the Licensing Act 2003	Delivery of alcohol to person under 18 or allowing such delivery	Recordable (1/12/05)

Lower Tier £50

PND Offence Code	CCCJS Code	Act	Description	Notifiable/ Recordable
DB01				
DB02				
DB03	BT49005	S 55, British Transport Commission Act 1949	Trespass on a railway	Non- recordable
DB04	BT49006	S 56, British Transport Commission Act 1949	Throwing stones/matter/thing at a train	Non- recordable
DB05	LG72008	S 12, Licensing Act 1872	Drunk in highway	Recordable
DB06				
DB07	CJ01002	S12, Criminal Justice & Police Act 2001	Consume alcohol in designated public place, contrary to requirement by constable not to do so.	Non- recordable
DB08 ^{iv}	EP90046	s87(1) and (5) of the Environmental Protection Act 1990	Depositing and leave litter	Non- recordable
DB12 ^{iv}	LG03085	*s150(1) of the Licensing Act 2003	Consumption of alcohol by a person under 18 on relevant premises.	Recordable (1/12/05)
DB13 ^{iv}	LG03086	*s150(2) of the Licensing Act 2003	Allowing consumption of alcohol by a person under 18 on relevant premises.	Recordable (1/12/05)
DB14 ^{iv}	LG03079	*Section 149(1) of the Licensing Act 2003 (c.17)	Buying or attempting to buy alcohol by a person under 18.	Recordable (1/12/05)

i Offence repealed by Communications Act 2003 with effect from 5 March 2004

ii Offence repealed by Fire and Rescue Services Act 2004 with effect from 1 October 2004

iii Offence added with effect from 8 August 2002

iv Offence added with effect from 1 November 2004

v Offence added with effect from 11 October 2004

vi Offence added with effect from 4 April 2005

* New legislative reference with effect from 24 November 2005 on implementation of Licensing Act 2003

ANNEX B – Current Conditional Caution Offence list

Conditional Cautions are restricted by the DPP's guidance to the following either way offences:

- Criminal Damage, Section 1(1), Criminal Damage Act 1971
- Unlawful Possession of Class B or Class C drugs, (commensurate with personal use only), Section 5, Misuse of Drugs Act 1971
- Unlawful possession of Class A drugs (small quantities commensurate with personal use only) Section 5 Misuse of Drugs Act
- Burglary other than commercial premises and residential property, Section 9 Theft Act 1968
- Any offence under the Theft Acts 1968 & 1978, except the following offences: Burglary (other than as provided for above); Aggravated Burglary; Robbery; Blackmail

And any **summary offence**, but excluding offences under the Road Traffic Acts or any offence arising from the presence of a motor vehicle, trailer or pedal cycle on a road or other public place, except the following offences:

- Unlawful taking of motor vehicle
- Using Driving Licence or Insurance with intent to deceive
- Fraudulent use of a vehicle excise licence

Conditional Cautioning may **not** be considered in any **indictable only** case.

ANNEX C: NOTES ON THE DATA SOURCES

General Caveat - Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the police forces and courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Criminal Statistics for 2005, England and Wales were published 23 November 06 and are available at <http://www.homeoffice.gov.uk/rds/crimstats05.html>.

The sentencing figures are for all criminal courts and all offenders in England and Wales in 2005. Figures include data on the numbers of ASBOs issued in Magistrates and Crown Court. ASBO data can be found at <http://www.crimreduction.gov.uk>. Latest figures were published in December 2006.

Magistrate's courts - Total number of defendants sentenced in magistrates' courts in 2005. Including "other defendants" i.e. companies, public bodies, etc. Data from <http://www.homeoffice.gov.uk/rds/pdfs05/hosb1505.pdf>.

Crown Court – all persons sentenced at the Crown Court in 2005. Data from <http://www.homeoffice.gov.uk/rds/pdfs05/hosb1505.pdf>.

Caution figures are taken from the database held by the Office for Criminal Justice Reform and include reprimands and final warnings for juveniles. Figures are for 2005 and cover all offences. The figures presented are counts of offenders: an offender receiving more than one caution on one occasion is counted only once. Figures for Formal Warnings for Cannabis are 2004/2005.

FPN - Includes 3,435,254 FPNs issued for all driving offences in E&W 2004. Data from <http://www.homeoffice.gov.uk/rds/pdfs06/hosb0506supp.pdf>), and FPNs issued for all environmental offences in England in 2005-06 <http://www.defra.gov.uk/environment/localenv/legislation/fpn/index.htm>

