

THE MAGISTRATES' ASSOCIATION

SENTENCING POLICY & PRACTICE COMMITTEE

Previous out-of-court disposals

For some time magistrates have had serious concerns, both about the rise in numbers of out-of-court disposals and also due to problems which have arisen because the courts are not told when an offender has received certain of these disposals. An offender who has for example received two recent Fixed Penalty Notices (FPNs) for speeding and has a total of six points on his licence, may be fined more heavily and indeed may be disqualified by the court as part of their discretionary powers, because it considers that his driving record shows him to be an unsafe motorist. However, a person who has acquired two or more Penalty Notices for Disorder (PNDs) and then comes to court for the first time for a 'first offence' would be sentenced as a first offender, even if these PNDs were for similar or related offences, because the court would not have been made aware of them.

Cautions and Conditional Cautions do not count as convictions but a record is kept and these are shown on the record of previous convictions shown to the court.

PNDs are not shown on the record of previous convictions, but FPNs, which are similar but exclusively for motoring offences, are shown on the driving licence and do affect subsequent sentences. PNDs do not count as a conviction. Although a record is kept on the Police National Computer of PNDs that record is not produced in court and we do not know whether the prosecutor present in court will be aware of any PNDs. Relatively frequently an offender may appear before the court pleading guilty to a 'first offence' and it then emerges (after he has been sentenced) that there are enforcement proceedings against him due to one or more unpaid PNDs. When this happens the court is often left feeling that it should perhaps have imposed a somewhat more severe penalty.

PNDs are fixed at a level which is generally higher than a fine that would have been imposed on an offender who is either on a low income or is in receipt of benefits; it is therefore not uncommon for these offenders to appear before the enforcement court asking for a proportion to be remitted. It is also a matter for debate as to how effective PNDs are compared to fines imposed by the courts. Records show that 50% are paid in first instance, 2% are challenged in court, and 48% are registered as fines for collection.

These problems arise because of an anomaly in the legislation and should be addressed by a change in this legislation. All previous convictions and out-of-court disposals should be placed before the court, whether they are Cautions, Conditional Cautions, FPNs or PNDs, and all offenders, if offered an FPN or PND, should be warned that if they commit a similar offence the court will be made aware of these previous notices.