



**Public Prosecution Service for Northern Ireland**

# **Guidelines for the Use of Diversionary Disposals**

**Draft for Consultation (November 2018)**

**Independent, Fair and Effective**



## **FURTHER INFORMATION**

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# Guidelines for the Use of Diversionary Disposals

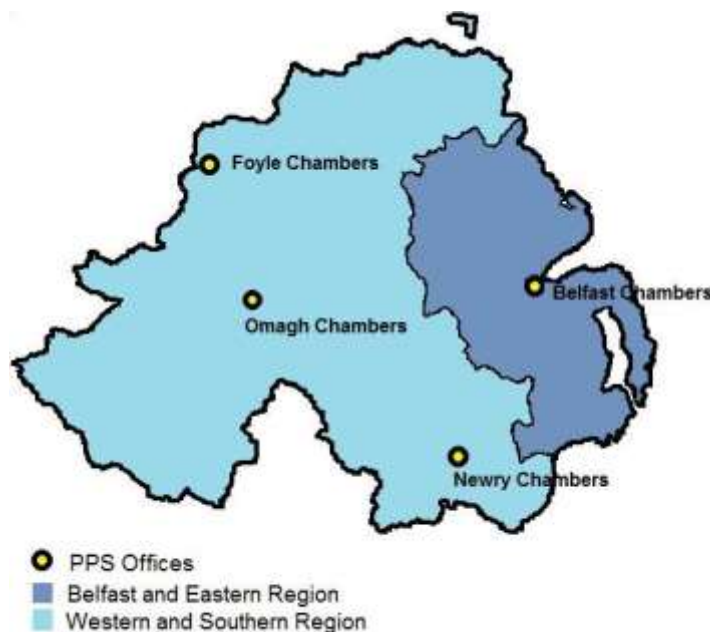
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## About the Public Prosecution Service

The PPS, which is headed by the Director of Public Prosecutions, is the principal prosecuting authority in Northern Ireland. In addition to taking decisions as to prosecution in cases investigated by the police, it also considers cases investigated by other statutory authorities, such as HM Revenue and Customs.

While the PPS works closely with the police and other agencies, it is wholly independent; its decisions are impartial, based on an independent and professional assessment of the available evidence and the public interest. The PPS vision is to be recognised as providing a first class prosecution service for the people of Northern Ireland.



The PPS is a regionally based organisation (see map above). There are two regions, both headed by an Assistant Director. The Assistant Director has overall responsibility for decisions as to prosecution and for the conduct of all prosecutions in that region, with the exception of those cases which are considered by prosecutors at Headquarters in Belfast.

There are also a number of other sections within the Service, each headed by an Assistant Director, which deal with specialised areas of work. These include High Court and International, Fraud and Departmental, Central Casework and the Serious Crime Unit.

Contact details for the PPS regional offices, as well as a number of other stakeholders, are provided at **Annex A**.

# 1. Introduction

## Purpose of this guidance

- 1.1 This guidance aims to inform the public about the types of diversionary disposals available when a prosecutor is deciding whether to divert an accused person away from the formal court process.
- 1.2 It also provides details of the general principles and procedures to be applied by prosecutors in deciding whether to use diversion.
- 1.3 These Guidelines replace the Guidelines for Diversion, published in 2008.

## The use of diversion

- 1.4 Diversion refers to a variety of criminal justice methods which are used as alternatives to prosecution to avoid the formal processing of an accused person via the court system.
- 1.5 The types of diversion currently available to the PPS include:
  - Adult caution / youth restorative caution
  - Informed warning
  - Diversionary youth conferencing
  - Community Based Restorative Justice
  - National Driver Alertness Course
  - Immediate caution
- 1.6 Diversionary disposals are designed to simplify and speed up dealing with less serious offending. They were introduced as a proportionate response to low-level crime. In summary, the purpose of PPS diversionary disposals are as follows:
  - To deal with less serious offences and the offender quickly and simply;
  - To reduce the risk of re-offending;
  - To engage the offender in a restorative process with the victim and community;
  - To reduce to a minimum the offender's involvement with the criminal justice system;
  - To enable victims to express their views; and
  - To enable early intervention in respect of young offenders.

- 1.7 It should be noted that a number of disposals are also available to the police, including Penalty Notices for Disorder and Community Resolution Notices. Further information about the various types of disposals, and how they are applied, is presented at Chapter 3.

## Standards applied

### *The Code for Prosecutors*

- 1.8 This guidance should be read in conjunction with the PPS Code for Prosecutors. The Code sets out the general principles to be applied in decision-making and outlines in detail the Test for Prosecution, as well as guidelines for the conduct of criminal prosecutions and other information about the role and functions of the PPS.
- 1.9 Prosecutions are initiated or continued by the PPS only where it is satisfied that the Test for Prosecution is met. The Test for Prosecution is met if:
- (i) the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and
  - (ii) prosecution is required in the public interest – the Public Interest Test.
- 1.10 The prosecutor must analyse and evaluate all of the evidence and information submitted by police in a thorough and critical manner. The Evidential Test must be passed before the Public Interest Test is considered.<sup>1</sup> Each of these stages must be considered separately and passed before a decision to prosecute can be taken.
- 1.11 Diversionary options can only be considered once the prosecutor is satisfied that the Evidential Test for prosecution is met. The Evidential Test for prosecution is met if the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction.<sup>2</sup>
- 1.12 Once a prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, the next consideration is whether the public

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<sup>1</sup> *There may be exceptional cases where it is clear, prior to the completion of an investigation, that the public interest will not require a prosecution, in which case a Public Prosecutor may decide that the Test for Prosecution will not be met and the case should not proceed further (see Code for Prosecutors, paragraph 4.6).*

<sup>2</sup> *A reasonable prospect of conviction exists if, in relation to an identifiable individual, there is credible evidence which the prosecution can adduce before a court, upon which evidence an impartial jury (or other tribunal) properly directed in accordance with the law, may reasonably be expected to find proved beyond reasonable doubt, the commission of a criminal offence by the individual who is prosecuted.*



interest requires prosecution through the courts. It is not an absolute rule that all offences for which there is sufficient evidence must be prosecuted; prosecutors must decide whether a prosecution is required in the public interest. In taking decisions as to prosecution the prosecutor is taking decisions for the benefit of society as a whole.

- 1.13 However, there are circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, a court-based outcome is not required in the public interest. Prosecutors should consider the appropriateness of proceeding by way of a diversionary disposal, particularly where the defendant is a young person.

## 2. Diversionary disposals: Key considerations

### General principles

- 2.1 When considering the appropriateness of diversion, each case should be assessed on its merits, taking into account the facts and circumstances of the individual case.
- 2.2 Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration of each individual case. In some instances the serious nature of the case will make the presumption a very strong one.
- 2.3 A diversionary disposal should never be directed for the most serious indictable offences, and only in exceptional circumstances where the offence is triable only on indictment. Other summary and hybrid offences, less grave in themselves, may nevertheless be too serious for diversion to be appropriate due to the nature and extent of the harm or loss resulting from the offence.

### Factors for and against prosecution / diversion

- 2.4 The following are examples of factors that may be considered by the prosecutor *in favour of prosecution and against diversion*:
  - The seriousness of the offence; i.e. where a conviction is likely to result in a significant penalty including any confiscation order or disqualification.
  - Where the offender was in a position of authority or trust and the offence is an abuse of that position.
  - Where the offender was a ringleader or an organiser of the offence.
  - Where the offence was pre-meditated.
  - Where the offence was carried out by a group.
  - Where the offence involved organised crime.
  - Where the offence involved the possession or use of a firearm, imitation firearm or other weapon such as a knife.
  - Where the offence was motivated by hostility against a person because of their race, ethnicity, sexual orientation, disability, religion, political beliefs, age etc.
  - Where the offence is prevalent.
  - Where the offence has resulted in serious financial loss to the individual, corporate person or society.

- Where the offence was committed against a person serving the public, for example a doctor, nurse, paramedic, firefighter or police officer.
- Where the victim of the offence is vulnerable.
- Where the victim and/or their family has been put in fear or suffered personal attack, damage or disturbance.
- Where the case involves domestic violence.
- Where there is a marked difference between the actual or mental ages of the offender and the victim, and the offender took advantage of this.
- Where there is any element of corruption.
- Where the offender is alleged to have committed the offence whilst on bail, on probation, or subject to a suspended sentence or an order binding the offender over to keep the peace, or released on licence from a prison or place of detention, or otherwise subject to a court order.
- Where there are grounds for believing that the offence is likely to be continued or repeated, for example where there is a history of recurring conduct.
- Where the offender has previous convictions or diversionary disposals which are relevant.

2.5 The following are examples of factors that may be considered by the public prosecutor *in favour of diversion and against prosecution*:

- Where the court is likely to impose a very small or nominal penalty or sentence.
- Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake.
- Where the offence is not of a serious nature and is unlikely to be repeated.
- Where there has been a long passage of time between an offence taking place and the likely date of trial unless:
  - The offence is serious;
  - Delay has been caused in part by the offender;
  - The offence has only recently come to light; or
  - The complexity of the offence has resulted in a lengthy investigation.
- Where prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness.
- Where the offender is a young person or otherwise vulnerable by virtue of age.
- Where the offender was at the time of the offence or trial suffering from significant mental or physical ill health.

- Where the offender has put right the loss or harm that was caused (although offenders must not be able to avoid prosecution simply because they pay compensation).
- 2.6 It should be noted that the factors for and against, as outlined above, are not exhaustive.
- 2.7 Deciding on where the public interest lies in a particular case is not simply a matter of adding up the number of factors on each side. It is a matter of judgement. In making that judgement prosecutors must decide the weight to be attached to each factor in the circumstances of each case and go on to make an overall assessment.
- 2.8 Assessment of the public interest will often involve the consideration of competing interests. Although there can be some public interest factors against prosecution and in favour of diversion in a particular case, sometimes the overall balance is that prosecution should be directed and those matters should be put to the court by the defence in mitigation when sentence is being considered.

## **Offender's admission of guilt**

- 2.9 With the exception of the National Driver Alertness Course (where admission of guilt is not a prerequisite for entry onto the course), the general principle is that the offender must admit the offence in order for a diversion to be directed. The admission must be clear and reliable for the restorative process to be effective. This admission can be made in the course of a formal police interview or at any stage up until trial. The admission can be made to police or to a prosecutor, either by the offender in person or through his or her solicitor.
- 2.10 The attitude of the offender will be a crucial factor as he/she will have admitted the offence which will make diversion possible. In addition to the admission, it is also relevant if he/she has made an immediate or early admission of guilt, expressed remorse or offered restitution. In exceptional circumstances, it may be appropriate to direct a diversionary option where the offender has made limited or partial admissions and where there are cogent public interest considerations in favour of diversion.
- 2.11 There may be occasions where there is not a specific admission recorded by police or no formal proof of an admission, but yet it is appropriate to direct diversion subject to an admission. This situation can occur when an offender has not yet had the opportunity to formally admit the offence (for example, if there was no interview after caution or if the offence directed was not actually

put to the offender). In such a situation, if the prosecutor considers from the information received that the offender would willingly admit to the offence were he/she given the opportunity, then diversion can be directed. Where this occurs the prosecutor should indicate to police that the diversion cannot be administered unless the offender fully admits the offence. The prosecutor should also advise police clearly that if the admission is not forthcoming the matter must be returned to the PPS without delay and a prosecution will follow.

- 2.12 If police have made enquiries to no avail (for example, the offender has moved address and his attitude cannot be assessed), a prosecutor can issue a summons and mark clearly on the file that if the accused admits his guilt a caution may be offered and the summons withdrawn.

## **Previous offending history**

- 2.13 Where an offender has been the subject of diversion, or has a previous conviction, this is a matter to be taken into account in considering the appropriate disposal in the current case. The existence of a previous conviction(s) and/or diversion(s) is a factor that generally makes it less likely that a person will be offered diversion instead of prosecution. However, there is no rule that a person with an earlier conviction(s) and/or diversion(s) will not be able to receive further diversion. The date, nature and circumstances of the earlier conviction(s) and/or diversion(s) will be relevant.
- 2.14 As a rule of thumb, where there is sufficient evidence, serious offences (and perpetrators who carry on offending despite being given appropriate chances to stop) should be dealt with by prosecution.
- 2.15 Where someone has received a police disposal (e.g. a Community Resolution Notice), this will be relevant when considering if a PPS diversionary disposal is appropriate. As outlined above, where police have previously administered a disposal in respect of an offender and subsequently submit a file to the PPS, the existence of a previous disposal will be disclosed to the prosecutor. The information will be included as part of the police file so that the prosecutor is in possession of the salient background circumstances of the offender so as to properly inform the prosecutorial decision.

## **Views of the victim**

- 2.16 The police file will normally include the views of the victim in relation to the circumstances of the offence and its impact, the extent of loss and damage and whether reparation or compensation has been made. Where an issue of

diversion arises, the file should also contain the views of the victim in relation to the suitability of the case being disposed of by way of diversion. If not previously provided by police, the views of the victim will be sought after the file has been received.

- 2.17 In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim and the impact of the offence on a victim and, in appropriate cases (such as where the victim is a youth) their family, where such views are available. However, the decision whether to offer a diversionary disposal remains one for the prosecutor. The PPS does not represent victims or their families in the same way as solicitors act for their clients. It is the duty of prosecutors to form an overall view of the public interest.
- 2.18 Once the prosecutor has taken a decision, the victim will be notified by the Victim and Witness Care Unit (VWCU) within five days of the decision by letter. This letter will include the name of their VWCU Case Officer and their direct telephone number.
- 2.19 For further information, please refer to the [PPS Victims and Witness Policy](#).

## 3. Forms of Diversion

### PPS and police disposals

- 3.1 Broadly speaking, diversionary disposals in Northern Ireland can be divided into two categories; those issued by the PPS and those issued by the police.
- 3.2 The main distinguishing feature between the PPS and police disposals is that the majority of those which have been issued by prosecutors result in a criminal record and those issued by police do not. Further information in respect of criminal records is presented at page 20.

### Choosing one diversion over another

- 3.3 In considering which diversionary disposal is appropriate the prosecutor must take into account the facts and circumstances of each individual case. Each diversionary disposal which is currently available to a prosecutor imposes different requirements upon an offender. If the offence under consideration is relatively minor and different in nature to previous offences it may be appropriate to direct an informed warning or caution even if the offender has previously had the benefit of diversion.
- 3.4 There may be instances where there has been a sufficient lapse of time since the first diversionary disposal to suggest that it had some effect. Similarly, if the offence is more serious it may be appropriate to direct a youth conference for a first offence. Where it is considered that diversion is appropriate, an informed warning for a first offence will more commonly be directed in the case of a youth than in the case of an adult. However, each case must be considered on an individual basis with particular regard to the seriousness of the offence and the circumstances of the offence and the offender.

### Types of PPS diversion

- 3.5 The diversionary disposals available to the prosecutor are set out below:

#### *Adult Cautions and Restorative Youth Cautions*

- 3.6 A prosecutor may require police to administer a caution to the offender as an alternative to prosecution at court. An adult caution is a formal reprimand by police, and although not a conviction, is recorded on a person's criminal record for a period of six years.

- 3.7 In the case of a youth (i.e. a young person under 18 years of age), the aim of the caution is restorative and is to provide an opportunity for the offender to meet the victim (who will have been invited) and affected members of the community.
- 3.8 Cautions for youth offenders are referred to as 'restorative cautions'. Restorative cautions are recorded on the young person's criminal record for a period of two years.

### *Informed Warning*

- 3.9 A prosecutor may require police to administer an informed warning to the offender as an alternative to prosecution at court. An informed warning is a formal reprimand by police, and although not a conviction, will be recorded on a person's criminal record for a period of one year.

### *Diversionary Youth Conference*

- 3.10 In all decisions involving children, prosecutors must take note of the statutory aims of the Youth Justice System, enshrined under section 98 of the Justice (NI) Act 2015. This stipulates that in all actions concerning children, public bodies must have regard to the 'best interests of the child.' This is set out in more detail in the PPS Guidelines for the Prosecution of Young Offenders.<sup>3</sup>
- 3.11 The Northern Ireland Youth Conferencing Service, which was launched in December 2003, was introduced as part of the Justice (NI) Act 2002. In addition, the Youth Conference Rules (Northern Ireland) 2003 established the procedures to be followed when convening and facilitating a youth conference. The Youth Conference Service (YCS) is part of the wider Youth Justice Agency (YJA).
- 3.12 This type of restorative conference involves a number of parties and must include as a minimum requirement the offender, a police officer, an appropriate adult for the offender and a youth conference co-ordinator. The victim is entitled, although not obliged to attend, as is a legal representative of the offender. Youth conferencing seeks to encourage young people to recognise the effects of their crime and to take responsibility for their actions by actively engaging with the victim, offender and community in the restorative process.
- 3.13 At the conference, the offender is given the opportunity to discuss the offence and what he/she is prepared to do to repair the harm caused to the victim

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<sup>3</sup> To be published for consultation in December 2018.



(called an Action Plan). The victim is given the opportunity to tell the offender about the impact the offence has had and what they feel should be done to repair the harm. This may, for example, include an apology, reparation to the victim or community, participation in activities to address offending behaviour and / or treatment for alcohol and drug dependency. This plan is then sent to the PPS prosecutor who must accept or reject the plan.<sup>4</sup> If at any stage the offender fails to co-operate or fulfil his/her responsibilities subsequent to the conference, a decision to prosecute may be directed.

- 3.14 A youth conference is a formal process and although not a conviction, is recorded on a youth's criminal record for a period of two years.<sup>5</sup>

### *Youth Engagement Scheme*

- 3.15 A young person who is detected for involvement in a criminal offence will, if they meet certain criteria, be offered an appointment at a Youth Engagement Clinic. The objective of the clinic is to enable early intervention in instances of less serious offending and to prevent young people entering the court system unnecessarily. It aims to encourage young people to take responsibility for their offending and can also offer the young person additional support on a voluntary basis.

- 3.16 A young person does not have to admit the offence to be offered an appointment to attend a Youth Engagement Clinic. In advance of the appointment the police will submit a 'streamline' file to the PPS.<sup>6</sup> The prosecutor will decide whether there is sufficient evidence to afford a reasonable prospect of a conviction (Evidential Test) and whether the public interest requires prosecution or alternatively whether diversionary disposal is appropriate. This is set out in more detail in the PPS Guidelines for the Prosecution of Young Offenders.

### *Community Based Restorative Justice*

- 3.17 In recent years, Northern Ireland has seen the introduction of the use of restorative practice within the criminal justice system. The operation of the Community Based Restorative Justice Scheme is governed by the [Protocol for Community-based Restorative Justice Schemes \(NIO 2007\)](#).

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<sup>4</sup> See Article 10 of the Criminal Justice (Children) (Northern Ireland) Order 1998 as amended.

<sup>5</sup> Diversionary youth conferences are distinct from court-ordered youth conference orders, primarily in that the court-ordered conference is ordered by the Youth Court rather than the PPS. This results in a Youth Conference Order, which is a sentence of the court and therefore constitutes a criminal conviction.

<sup>6</sup> A streamline file is in the form of a report from an investigating officer with key witness statements if available.

- 3.18 There have been two main drivers behind these developments:
- (i) A desire to better meet the needs of, and provide redress for the harm caused to, victims of crime; and
  - (ii) To find an effective alternative to punitive responses and establish positive ways of dealing with children, young people and adults when incidents occur.
- 3.19 There are currently two government accredited community-based providers:
- Alternatives NI.
  - Community Restorative Justice Ireland.
- 3.20 Police will submit a streamline file and will recommend that the accused may be suitable to be dealt with by referral to a restorative scheme. Police will make the necessary enquiries into which scheme has the capability to provide a worthwhile restorative programme as an alternative to prosecution, and refer the matter to PPS.
- 3.21 Such a reference can only be made with the consent of the offender and, where there is one, the victim. The decision to be made by the PPS is whether the case is suitable to be dealt with by the scheme.<sup>7</sup>
- 3.22 Where the decision is taken that the case is suitable to be dealt with by the scheme, police will be informed, and will in turn notify the scheme. If the offender does not cooperate with the scheme, the matter may be referred back to police for further investigation. Similarly, if the decision of the PPS is that the case is not suitable for disposal by the scheme, a full police investigation will be conducted and reported to PPS.
- 3.23 A Community Based Restorative Justice Scheme disposal will be recorded on the individual's criminal record for a period of two years for a young person and six years for an adult.

*National Driver Alertness Course (formerly the Northern Ireland Driver Improvement Scheme)*

- 3.24 The National Driver Alertness Course (NDAC), formerly known as the NI Driver Improvement Scheme (NIDIS), exists to provide a training course to a

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<sup>7</sup> The 2007 Protocol applies to all cases where schemes deal or seek to deal with criminal offences. Such cases will generally involve relatively low level offending; schemes must not deal with more serious offences, including for example sexual offences or cases of domestic violence.

driver who would otherwise be prosecuted for an offence of careless or inconsiderate driving contrary to Article 12 of the Road Traffic (NI) Order 1995. It is part of the National Driver Offender Retraining Scheme (NDORS - [www.ndors.org.uk/scheme](http://www.ndors.org.uk/scheme)) which also includes the Rider Intervention Developing Experience (RIDE) course, for motorcyclists and the National Speed Awareness (NSA) course, offered by PSNI.

- 3.25 If the Evidential Test for prosecution is met, a prosecutor may determine, in the public interest, that as an alternative to prosecution, a driver/rider should be invited to attend a NDAC or RIDE course.
- 3.26 A prosecutor may offer the offender the opportunity to attend a National Driver Alertness Course as an alternative to prosecution for an offence of careless driving, provided that the driving in question did not result in serious injury or death and that no other offences were committed at the same time.
- 3.27 In order to be eligible for a disposal under the National Driver Alertness Course, the driver must not have attended a retraining course within the previous 3 years. Information in respect of the National Driver Alertness Course is not recorded on an individual's criminal record. Completion of the course avoids payment of a fine and the endorsement of penalty points on a driving licence. The driver does not need to admit culpability to be considered for the course. However it is essential that the driver shows willingness, agrees to pay the cost of the course and fully participates in the training.
- 3.28 If the course is refused by the offender or not successfully completed, the matter will be referred back for prosecution and, where necessary, a Form 1 Protective Summons is taken out (see page 18).
- 3.29 The following factors should be considered by the prosecutor *in favour* of offering the National Driver Alertness Course:
- The driver has no previous motoring offences on his criminal record and no current penalty points.
  - A significant time period has elapsed since any previous motoring offences.
  - The accident was minor in nature, involving minor damage to one or both vehicles and any injuries sustained were also minor
  - The actions of the driver, whilst falling within the remit of 'careless driving', could be characterised as bad driving habits, for example, failing to indicate, inadequate use of mirrors.
  - It appears likely that the driver would benefit from participating on the course, for example, if the accident was partly due to the fact that the

driver had not made provision for the prevailing weather conditions or the accident occurred at an 'accident hotspot'.

3.30 The following factors should be considered by the prosecutor *against* offering the National Driver Alertness Course:

- Significant damage was caused to both vehicles and serious injury was narrowly avoided.
- The actions of the defendant were so bad that the court would be likely to impose more than the minimum penalty points.
- Evidence suggests the defendant consciously took a risk causing danger to other road users.
- The actions of the driver and his attitude suggest he would not benefit from the course.

3.31 These lists are not exhaustive. Each case will have to be considered on an individual basis, taking into account the recommendations of police. There may be instances where a case is not suitable for the course but is still suitable for diversion. For example, a caution might be considered where the driver has refused the offer of a course for a careless driving offence, but where the level of carelessness was minor, the offender has a clear record and had been driving for a significant period.

#### *Immediate Telephone Caution Scheme*

3.32 This Scheme applies to both adults and youths and it is governed by the same overarching principles that apply to non-immediate diversionary options. The diversionary options available under the scheme include informed warnings and the National Driver Alertness Course, in addition to cautions. If dealing with a road traffic matter under the scheme, and where police request a caution, the prosecutor should consider whether the offender (if eligible) has been offered the National Driver Alertness Course.

3.33 The scheme is available to police 7 days a week for the extended hours of 8am to 8pm. There are a number of criteria which must be met before police contact PPS for authority. These include whether the evidence is sufficient to prove that the suspect has committed an offence and whether the suspect has made an admission of guilt. Police must also carry out a full criminal records check in respect of the offender.

3.34 Where the offender is a youth, the prosecutor should also confirm with the police officer making the request that the Youth Diversion Officer (YDO) has

been consulted or at least that the YDO database has been checked for any relevant material that may inform the decision to divert.

## Types of police disposal

3.35 In some instances, police do not submit a file to the PPS. This will apply in cases where a police officer decides that the offending is suitable to be dealt with by way of a police disposal, rather than the normal route (i.e. by submitting a file to the PPS).

3.36 The types of disposal available to police include:

- Penalty Notices for Disorder
- Fixed Penalty Notices
- Community Resolution Notices
- NI Speed Awareness Scheme

3.37 Details of these disposals, and the procedures followed, are set out at **Annex B**.

## Impact of police disposals on subsequent prosecutorial decisions

3.38 Where an individual has received a police disposal it will be recorded on police computer systems. Where police decide that any subsequent offending should be referred to the PPS, the investigating officer is required to submit (as part of the case papers) the date, offence and method of previous police disposals. The prosecutor will then take the police disposal into account when considering whether to divert the offender in relation to the current matters.

## 4. Other issues

### Non-acceptance of diversionary disposals by the offender

- 4.1 Diversionary disposals are directed as an alternative to prosecution. However, they require the co-operation of the offender in order to be effective. If an offender does not accept a diversionary disposal, the case will be returned to the prosecutor to consider prosecution. It will usually follow that proceedings will issue as the Test for Prosecution will already have been met, and at this stage diversion is no longer a viable alternative.
- 4.2 Given the processes and likely timescales involved when administering diversionary options, it will always be necessary to issue a 'Form 1' in summary only cases at the same time as directing the diversionary disposal.<sup>8</sup> This is the responsibility of the directing prosecutor so that if diversion is unsuccessful police may refer the case back to the PPS for consideration of prosecution regardless of the fact the summary time limit has expired.

### Reconsideration of a prosecution decision in favour of diversion

- 4.3 Where prosecution has been directed, defence practitioners can request the consideration of a diversionary disposal (i.e. following the commencement of a prosecution). This request should be made as early as possible in the proceedings. It should normally be done in writing, stating the rationale for the request along with supporting evidence where relevant. The longer a case remains before the court, the more the specific benefit of diversion to the public diminishes.
- 4.4 When requesting the consideration of diversionary disposal the defence practitioner should make it clear that the accused accepts his/her guilt and should provide any relevant information which may not have been available to the prosecutor at the time the prosecution decision was taken, such as background information about the defendant, his/her family circumstances, employment, any effect a conviction would have on career prospects, ability to travel outside the jurisdiction etc. If restitution has been made, this will also be taken into consideration.

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<sup>8</sup> *The time limits which apply to summary only offences are specified in the Magistrates' Courts (Northern Ireland) Order 1981. In such cases, the complaint(s) must be made within 6 months from the date the offence was committed, or in the event of a continuing offence, the date it ceases. A complaint can be made by way of the lodgement of a charge sheet, the creation of a prosecutor summons or by the creation / signing of a Form 1.*

## Multiple offenders

- 4.5 Where multiple offenders are involved in the same case, the prosecutor will consider the appropriateness of the available diversionary options in regard to each offender separately. Depending on the facts of each case, it may be appropriate for different disposals to be applied to individuals within the same case. For example, in a case with three offenders, one person may be prosecuted, a second person (who is a young person) may take part in a youth conference, while it may be decided not to prosecute the third person as there is insufficient evidence.

## ‘Splitting’ of offences

- 4.6 Where more than one criminal offence arises out of the police investigation, and in circumstances where the Test for Prosecution is met, it is normal practice to prosecute an offender or to divert for all of the offences directed.
- 4.7 However, the particular facts and circumstances of a case may result in certain offences being prosecuted and others being diverted. This will most frequently arise in circumstances where a number of offences which would not be properly dealt with together appear on the one charge sheet or are reported by police on the one file. A common example is where an offender is found in possession of a small amount of Class B drugs in circumstances where he has been arrested and charged or reported for unrelated and more serious matters. It may be appropriate to deal with the drugs offence by way of diversionary disposal whilst proceeding with a prosecution in relation to the other more serious matters.

## Motoring offences

- 4.8 Cases which attract a mandatory penalty should not normally be diverted from prosecution. A distinction can be drawn however between road traffic offences which carry a mandatory disqualification and those which carry mandatory penalty points. In the former case it will be extremely rare for diversion to be appropriate.
- 4.9 However, in the case of a young person who has not yet reached the age to hold a licence, a diversionary option in respect of the offence of driving whilst disqualified by virtue of age may be appropriate, for example, where the offender has no previous offending, where other road users have not been inconvenienced and where the offender expresses remorse. In the latter case the public interest in the imposition of the penalty is less compelling and so diversion, whilst not usual, may be appropriate. For example, the imposition of



penalty points may have a substantial impact on a young offender's employment prospects and the best interest of the child principle is a relevant consideration.

- 4.10 Prosecutors should be aware of the provisions of Article 49 of the Road Traffic Offenders (Northern Ireland) Order 1996, as amended by Article 39 of the Road Traffic (Northern Ireland) Order 2007. This allows for the prospective endorsement of a licence with an order for disqualification or imposition of penalty points where a person of any age does not hold a licence at the relevant time, but subsequently applies for a licence. Article 50 of the 1996 Order sets out the period for which the endorsement is to remain effective.

### **Departmental (non-police) cases**

- 4.11 The PPS prosecutes offences investigated by Northern Ireland Government Departments, for example the Department for Communities and the Department of Agriculture, Environment and Rural Affairs. The same considerations for diversion will apply to individuals prosecuted for departmental offences.
- 4.12 A company can also be the recipient of a diversionary disposal. Any diversion will be accepted on behalf of the company by an official company officer such as a Director or Company Secretary.

### **Criminal records**

- 4.13 As outlined above, PPS diversionary disposals (with the exception of NDAC) are recorded on an individual's criminal record, via the Criminal Records Viewer (CRV). A record can also be kept on police databases, and if any offence is 'recordable', on the Police National Computer (PNC).
- 4.14 It should be noted that the Public Prosecutor, in taking a prosecutorial decision, can examine the full offending history of the individual, including any 'exhausted' diversions (e.g. an adult caution administered more than six years ago). Such details may be presented to the court where it is considered to be relevant to the case. However in the event of a conviction, details of exhausted diversions will not normally be presented to the court for the purposes of sentencing.
- 4.15 Offenders accepting a caution, informed warning or youth conference should be aware that information about the disposal can be disclosed by other agencies for an indefinite period of time. For example, if an offender applies to work or volunteer in a position that requires a Standard or Enhanced criminal



record check via Access NI, the diversion may be disclosed on that check where it relates to a 'specified' offence, such as affray and violent or sexual crimes.

- 4.16 For further information about the maintenance of criminal records, please refer to [www.nidirect.gov.uk/articles/information-disclosed-about-you](http://www.nidirect.gov.uk/articles/information-disclosed-about-you)

# Annex A: Contact details

## **Public Prosecution Service**

### **Policy and Information Unit**

Policy and Information Unit  
Public Prosecution Service  
Belfast Chambers  
93 Chichester Street  
Belfast BT1 3JR

Telephone: (028) 9089 7100  
Deaf/Hard of hearing (SMS): 07795 675528  
Email: [info@ppsni.gov.uk](mailto:info@ppsni.gov.uk) (for general enquiries)  
[complaints@ppsni.gov.uk](mailto:complaints@ppsni.gov.uk) (for complaints)  
[reviews@ppsni.gov.uk](mailto:reviews@ppsni.gov.uk) (for victim requests for reviews of no prosecution decisions)

Website: [www.ppsni.gov.uk](http://www.ppsni.gov.uk)

### **Belfast and Eastern Region / Headquarters Sections**

#### **Belfast Chambers**

93 Chichester Street  
Belfast BT1 3JR  
Telephone: (028) 9054 2444  
Deaf/Hard of hearing (SMS): 07795 673927

### **Western and Southern Region**

#### **Foyle Chambers**

35 Limavady Road  
Londonderry BT47 6LP  
Telephone: (028) 7134 0648  
Deaf/Hard of Hearing (SMS): 07795 675338

#### **Omagh Chambers**

2 Townhall Square  
High Street  
Omagh BT78 1BL

Telephone: (028) 8224 4319  
Deaf/Hard of Hearing (SMS): 07795 831188

### **Newry Chambers**

1 Downshire Close  
Newry BT34 1FD  
Telephone: (028) 3083 2500  
Deaf/Hard of Hearing (SMS): 07795 810114

### **Police Service of Northern Ireland**

65 Knock Road  
Belfast BT5 6LE  
Telephone: 028 9065 0222 or 0845 600 800  
Crimestoppers: 0800 555 111  
Website: [www.psn.police.uk](http://www.psn.police.uk)

### **Youth Justice Agency**

Duncairn Gardens  
Belfast  
BT15 2GE  
Telephone: 02890 351982  
Website: [www.justice-ni.gov.uk/youth-justice](http://www.justice-ni.gov.uk/youth-justice)

### **Victim Support Northern Ireland**

3<sup>rd</sup> Floor  
Annsgate House  
70-74 Ann Street  
Belfast BT1 4EH  
Telephone: (028) 9024 3133  
Supportline: 0845 3030900  
Email: [info@victimsupportni.org.uk](mailto:info@victimsupportni.org.uk)  
Website: [www.victimsupportni.co.uk](http://www.victimsupportni.co.uk)

### **National Driver Alertness Course**

DriveTech (UK) Limited  
Alexandra House  
Wellington Business Park  
Dukes Ride, Crowthorne  
Berkshire, RG45 6IS  
Tel: 01344 773144

## Annex B: Police disposals

### *Penalty Notices for Disorder*

Penalty Notices for disorder (PNDs) are a fixed penalty designed to tackle low-level, anti-social and nuisance offending for offenders aged 18 and over and are issued for a range of minor offences. They were introduced in Northern Ireland on the 6th June 2012 as a result of the Justice Act (Northern Ireland) 2011. Penalty Notices are for first-time or non-habitual offenders committing a prescribed offence. Paying the notice within 28 days discharges their liability for that offence. They are issued by the police without a direction from the PPS.

There are seven eligible offences which are listed in Schedule 4 of the 2011 Act. These offences attract a financial penalty. Where recipients take no action within 28 days of the issue of the penalty, its value is uplifted by fifty percent, registered as a court fine and enforced through existing court fine default arrangements.

### *Fixed Penalty Notices (Endorsable and Non-Endorsable)*

Police may also issue Fixed Penalty Notices (FPNs) in relation to driving offences including those which attract penalty points. Police officers (in uniform) are able to issue Endorsable Fixed Penalty Notices (EFPNs) for a variety of road traffic offences. The offences range from stopping on a motorway to driving a motor vehicle with defective tyres. Parking Attendants are able to issue EFPNs for offences related to pelican and zebra crossings only. However, the most common offences are excess speed, using a handheld mobile phone and driver failing to wear a seatbelt.

Endorsable Fixed Penalty Notices differ from non-endorsable fixed penalty notices. They involve the endorsement of penalty points on a driving licence and they carry a heavier fine. Penalty Points remain for a period of 3 years.<sup>9</sup>

Further information on FPNs can be accessed at [www.psni.police.uk/advice\\_information/roads-and-driving/penalty-notices](http://www.psni.police.uk/advice_information/roads-and-driving/penalty-notices).

### *Community Resolution Notices*

Community Resolution Notices (CRNs), introduced in 2016, have replaced the Discretionary Disposals previously employed by police. CRNs represent an additional means by which police can directly secure a formal crime outcome against

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<sup>9</sup> *The offence of 'Driving or causing or permitting a person to drive a motor vehicle whilst uninsured' may also be dealt with by the issue of an Endorsable Fixed Penalty Notice.*

an offender who has committed a specified non-traffic related crime. This change from Discretionary Disposals occurred as a result of a recommendation made by Criminal Justice Inspection Northern Ireland (CJINI).<sup>10</sup>

Community Resolution is non-statutory, but instead relies upon the common law ability of officers to deal informally with reported crime, and mirrors the nationally recognised community resolution disposal in England and Wales.<sup>11</sup>

The Community Resolution disposal seeks to continue to deliver similar objectives to Discretionary Disposals, namely:

- To improve the involvement and quality of service provided to victims by taking into account their views.
- To increase victim satisfaction in policing and criminal justice by providing a comparatively prompt and tailored resolution.
- To provide a proportionate justice disposal for offenders with little or no previous offending history to reduce the impact on their lives compared to other non-court disposals and to encourage them to change their behaviour and not re-offend.
- To provide officers with a proportionate disposal for offences that are comparatively less serious.

The main ways CRNs differ from Discretionary Disposals are:

- No road-traffic related offending is eligible for a CRN.
- CRN will without exception only apply to certain offences (outlined in police operational guidance).
- CRN will not apply to young people under the age of 18 without the consent of a YDO.
- A CRN will not be used unless the offender signs the Notice.
- The Resolution the offender has to complete must be stated in the CRN.

### *NI Speed Awareness Courses*

Drivers, depending upon the speed at which they were detected, may be invited to attend a Speed Awareness Course as an alternative to penalty points. This course can only be offered once in a period of three years from the last date of detection.

The driver has to book the course within 14 days following receipt of an offer.

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<sup>10</sup> *Police Use of Discretion Incorporating Penalty Notices (January 2015).*

<sup>11</sup> *Due to the prosecutorial nature of these decisions, CJINI has recommended that the PPS provide a quality assurance function. Quality assurance of these disposals is carried out on a regular basis in conjunction with PSNI.*

For the speed awareness course, the speed of the offence must fall within the criteria stated below:

- In a 30 mph zone, a speed of 31 mph up to and including 42 mph
- In a 40 mph zone, a speed of 41 mph up to and including 53 mph
- In a 50 mph zone, a speed of 51 mph up to and including 64 mph
- In a 60 mph zone, a speed of 61 mph up to and including 75 mph
- In a 70 mph zone, a speed of 71 mph up to and including 86 mph

The cost of the course is paid for by the driver. It lasts for four hours and involves an interactive presentation. It is available at eight locations throughout Northern Ireland and is delivered and managed by an appointed contractor, AA Drive Tech. The course must be attended within 120 days from the date of detection. Completion of the course avoids payment of a fine and the endorsement of penalty points on a driving licence.

### *Young driver scheme*

A Young Driver Scheme is available to drivers under the age of 25 who are invited to attend a Speed Awareness Course. The course is a two and a half hour workshop followed by four online modules and a test which must be completed within 28 days of completing the course.

If you require any further information about the PPS, or a copy of this document in an alternative format, please contact:

**Policy and Information Unit  
Public Prosecution Service  
Belfast Chambers  
93 Chichester Street  
Belfast BT1 3JR**

**Tel: (028) 9089 7100**

**Deaf/Hard of hearing (SMS): 07795 675528**

**Fax: (028) 9089 7030**

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