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<i>Organisation</i>	PSNI, Service Improvement Department, S2, Criminal justice Branch
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OPERATIONAL GUIDANCE

WHEN AND HOW TO OBTAIN A NON COURT DIVERSION DECISION BY TELEPHONE – FROM THE PUBLIC PROSECUTION SERVICE

1. AIM OF THIS GUIDANCE

1.1. This document provides operational officers with guidance as to when and how to seek a non court diversion decision by telephone from the Public Prosecution Service (PPS).

2. INTRODUCTION

2.1. Non Court Diversion is one of a range of disposal options open to police in dealing with a crime or incident, in considering the most appropriate disposal option the Investigating Officer (IO) must consider risk, vulnerability and the evidential and public interest tests.

2.2. This guidance applies to both adult and juvenile cases.

2.3. The types of non court diversion this guidance applies to are:-

- i. Informed warning (Youth) (delivered by trained officers only)
- ii. Restorative Caution (Youth) (delivered by trained officers only)
- iii. Youth Conference (multi agency conference)
- iv. Informed Warning (Adult)
- v. Caution (Adult)

- vi. Driver Awareness Scheme (17+yrs) for driving offences arising from Road Traffic Collisions (refer to Road Policing Manual Chapter 10 Appendix 10A)

3. APPLICATION OF NON COURT DIVERSION BY TELEPHONE

- 3.1. Investigating Officers (IO) must complete an effective and proportionate investigation in accordance with National Occupational Standards; PSNI policy directive 'Investigations carried out by the Police Service of Northern Ireland' and operational guidance on 'Minimum Standards'.
- 3.2. A Non Court Diversion by telephone is not an *alternative* to the effective investigation of an alleged offence regardless of the anticipated outcome.
- 3.3. Whilst conducting an investigation, the IO should continually review the most effective disposal options available and follow the relevant process for each.
- 3.4. The red, amber, green traffic light system for offences in the speedy justice aide memoire is utilised for the non court diversion process. All green offences are referred directly to the PPS. It must be remembered that PPS make the final decision and where a request is not approved, a full PPS file may be required.
- 3.5. Identifying what constitutes an appropriate outcome is the responsibility of the Public Prosecutions Service (PPS), however the following must be in place if a Telephone Diversion Decision is to be considered by the Public Prosecution Service: In doing this the following should be considered by the IO and reported to the PPS:-
 - a. **Offence:** The offence must be a suitable offence to be considered for telephone Diversion.
 - i. The offence type should fit the criteria set out on the traffic light system. The PPS must be made fully aware during the telephone request of the rationale to recommend a non court diversion disposal, including any previous convictions/disposals, the consideration of any aggravating features and the victim's views on the disposal. This must also be reflected in the outline of case in the streamline file.
 - b. **Offender:** There must be a clear and reliable admission of guilt. The PPS will be interested in the attitude of the offender – were

they remorseful, did they make an early and a full admission of guilt. They may also be interested in whether or not reparation has been made.

- i. Carry out a full Criminal Record Viewer (CRV) check (and Police National Database (PND) check for previous UK residents). If the suspect is a juvenile, the IO should consult with the Youth Diversion Officer (YDO), (if the YDO is unavailable the YDO database should also be checked via call handling).
- c. **Evidence:** There must be sufficient evidence to bring a reasonable prospect of prosecution. (Copy of the Evidential Test Appendix A). A diversion must never be used as a substitute for a weak case.
- d. **Public Interest:** The IO must believe that telephone diversion is the appropriate and right thing to do in their professional judgement (i.e. in the public interest).
- e. **Precluded Circumstances:** Where the offence/incident involves one or more of the following circumstances:
 - C** i. **Conduct of a public figure who is in a position of authority or trust, including a member of:**
 - a. Parliament;
 - b. the legislative assembly;
 - c. a public representative;
 - d. clergy or religious leader;
 - e. senior civil servant (above deputy principal grade).
 - H** ii. **Hate motivated.**
 - I** iii. **Intimidated or vulnerable repeat victim with the offence committed by the same suspect.**
 - M** iv. **Media interest (either actual or likely)**
 - P** v. **PSNI – the conduct of a member of the PSNI (staff or officer).**
 - S** vi. **Serious Crime, assault, sexual offences, child protection offences, domestic abuse or serious fraud or where there is a serious impact on the victim.**

Then the matter is not suitable to be dealt with by Discretion and must be referred to the Public Prosecution Service. (The above categories may be easier recalled using the pneumonic **CHIMPS**).

- f. **Victim:** A victim does not have the power to 'veto' a case that otherwise appears suitable to be dealt with by a non-court diversion and this type of disposal aims to use restorative principles to produce an outcome that satisfies the victim whilst diverting an offender from a court disposal where it appears appropriate.

4. PROCESS

- 4.1. **OEL:** Where the IO is satisfied a case is suitable for non court diversion, they must confirm details in the Occurrence Enquiry Log (OEL).
- 4.2. **Gatekeeper:** The IO must then contact a Gatekeeper in order that a preferred disposal recommendation can be considered prior to referral to the PPS.
- 4.3. **PPS:** If telephone diversion is agreed as the most appropriate disposal method then the IO should contact the relevant PPS region by telephone and provide the prosecutor with the information required to make a decision.
 - (i) Out of hours decisions from the PPS should be confined to those suspects in custody. Advice can be sought from the gatekeeper as to whether to progress by arranging for the suspect to return either on bail or as a voluntary attendee, or to report the matter to the PPS for consideration.
- 4.4. **Non Court Diversion not directed:** If the PPS do not direct a non court diversion, the IO must progress as appropriate (ie complete a full case if prosecution is directed / streamline no prosecution file etc) guidance can be sought from the Gatekeeper as required.
- 4.5. **Delivering the Diversion:** Where the PPS direct a non court diversion, the IO should arrange for this to be administered as soon as practically possible (preferably within 7 days).
- 4.6. **Victim:** The victim must be consulted/updated in addition to victim update timescales at the following times:
 - (i) Following suspect interview when a non court diversion is being considered to seek their views;

- (ii) Where the outcome of the PPS decision is **not** for non court diversion to advise them as to the action to be taken now:
- (iii) On completion of the caution – to advise them the matter is complete.

4.7. **Juveniles:** If the suspect is under 18, the IO must check for any relevant information contained within the Youth Diversion database and check with the Youth Diversion Officer (YDO) if available. Where a non court diversion decision is issued the IO should make arrangements for this to be delivered by the YDO or a trained restorative caution officer as soon as possible. **Juveniles under the age of 10 years (i.e. under the age of criminal responsibility) can never receive a Non Court Disposal.**

4.8. **Perfecting records:** The PPS will issue an electronic prosecutorial decision report via Niche, which when the non court diversion is delivered and resulted to OCMT, will ensure the non court diversion is captured within CRV.

5. ADMINISTRATION

5.1. Where the PPS have authorised a non court diversion disposal the IO must within 5 days of the decision:

- (i) Submit form OMF 2b for non custody cases (as this triggers creation of a case file by OCMT).
- (ii) Complete a **streamline non court diversion file** on niche to include:
 - I. Suspect report
 - II. Recommendations
 - III. An outline of case which provides the prosecutor with a brief chronological summary of the key evidence previously discussed by telephone when the decision was made highlighting within it:
 - What evidence the key witnesses can provide
 - A brief outline of any explanation given by the suspect in interview (include any remorse / mitigation put forward)
 - A brief outline of any medical evidence including the officers observations
 - Any photographic / video / forensic evidence present
 - The impact on the victim including the value of damage or loss caused

- (iii) Submit the original hardcopy of the caution / informed warning form and any other original hardcopy evidence for filing and “key witness” statements are submitted via the blue folder process to your supervisor. **There is no requirement for:**
 - Disclosure forms
 - PACE forms
 - Interview summaries
 - Security and Justice Report
 - Physical exhibits
 - Documentary exhibits
 - Statement from police (unless an eye witness)
 - Notebook entries
 - Corroborating or continuity statements
- (iv) Update the YDO of any disposal decision involving an offender under 18.

5.2. Supervisors must do the following within 10 days of the decision being made:

- a) Review the occurrence on niche to ensure the investigation is completed effectively, the victim is regularly updated and that this is recorded within the OEL.
- b) Update the niche status of the occurrence to “Supv – Investigation Complete” to assist managing the occurrence workload.
- c) Ensure the blue folder contains all the documents required and that they are of an acceptable quality and sign to this effect before forwarding to OCMT.

5.3. The crime clearance should NOT be claimed on niche unless the disposal has been delivered and the niche administration process completed satisfactorily.

5.4. Whatever disposal option is agreed, the IO must ensure they update the victim as to the progress of the investigation at appropriate intervals taking into consideration the impact of the offence on the victim and their particular needs. In any cases the minimum standard of update will be:

- (i) Initial follow up within 10 days;

Where the case is not completed within 14 days, the further updates will be at least as follows until the victim has been updated and agreed the case is complete:

- (ii) 30 days
- (iii) 75 days

6. RELATED POLICIES/GUIDANCE

6.1. Guidance on **alternative methods of disposal**:

- (i) The following documents are available on the Service Improvement Criminal Justice Web Page A-Z:
 - A. 'When and how to use a Penalty Notice for Disorder (PND)'.
 - B. 'When and how to manage disposal of a crime by discretion.
 - C. 'When and how to use a streamline no prosecution file'.
 - D. 'When and how to use the Service Gatekeeper'.
 - E. 'When and how to use a streamline charge file'.
 - F. 'Speedy Justice Aide Memoir'.
- (ii) The Road Policing Manual Chapter 10 – Appendix 10A – Driver Improvement Scheme.

6.2. Guidance on **standards of investigation and supervision occurrences**

- (i) The following documents are available on the Service Improvement Criminal Justice Web Page A-Z:
 - A. 'How to deal with and manage occurrences'.
 - B. 'Case file Minimum Standards'.
- (ii) 'Investigations carried out by PSNI' – PD04/10
- (iii) National Occupational Standards

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

7. LEGAL BASIS

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

- (i) The European Convention of Human Rights (ECHR).
- (ii) The United Nations Convention of the Rights of the Child (UNCRC).

- (iii) Section 75 of the Northern Ireland Act 1998

8. MONITORING AND REVIEW

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

APPENDIX A EVIDENTIAL & PUBLIC INTEREST TEST FACTORS

[Section 4\(1\)](#) provides a summary of the four basic criteria that have to be satisfied in order that a case maybe considered suitable for a no prosecution disposal. However fuller explanatory notes on each of these criteria follow.

[Evidential test] The evidential test is met if the evidence is sufficient to provide a reasonable prospect of conviction. When assessing whether the test is met, police need to consider:

- (a) Are there substantial concerns about the credibility of essential evidence?
- (b) Is the evidence required to be used – reliable and legally admissible?

[Public interest test] If the evidential test is met, the next consideration is whether the public interest requires prosecution

- (a) Whilst establishing the public interest test is ultimately a matter of discretion for a PPS prosecutor, it is important an IO has an understanding of the information a PPS prosecutor will review in order that police recommendations reflect this. This will ensure the decision process is as efficient as possible and both police and PPS share the relevant information required to make such a decision. As such this section complements the PPS Code of Prosecutors guidance.
- (b) There is a broad presumption it is in the public interest to prosecute where a crime has been committed. However this presumption only provides a starting point when considering an individual case and it is not the rule all

offences for which there is sufficient evidence must be prosecuted.

- (c) There are circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, prosecution is not required in the public interest. For example, there should be positive consideration of the value of a diversionary option instead of prosecution, such as informed warning or caution particularly if the defendant is a young person.
- (d) There is no definitive list of factors to determine 'public interest', however the following sections list key factors that if present may favour or not favour prosecution;
- (e) Factors that may **favour prosecution** over diversion:
 - (i) The seriousness of the offence i.e. where a conviction is likely to result in a significant penalty including any confiscation order or disqualification;
 - (ii) Where the defendant was in position of authority / trust and offence is abuse of position;
 - (iii) Where the defendant was a ringleader or organiser of the offence;
 - (iv) Where the offence was premeditated;
 - (v) Where the offence was carried out by a group;
 - (vi) Where the offence was carried out pursuant to a plan in pursuit of organised crime;
 - (vii) Where the offence was motivated by hostility against a person because of their race, Ethnicity, sexual orientation, disability, religion, political beliefs, age (hate crime);
 - (viii) Where the offence is prevalent;
 - (ix) Where offence has resulted in serious financial loss ;
 - (x) Where the offence was committed against person serving the public (ie. Doctor, Nurse, member of the Ambulance / Fire / Police Service);
 - (xi) Where the victim, or their family, has been put in fear, or suffered personal attack, damage or

disturbance. The more vulnerable the victim the greater the aggravation;

- (xii) Where there is any element of corruption;
- (xiii) Where the defendant has previous convictions or cautions which are relevant;
- (xiii) 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.

(f) Factors that may **favour diversion** over prosecution:

- (i) where the court is likely to impose a very small or nominal penalty;
- (ii) where the loss or harm was minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake;
- (iii) where the offence is not of a serious nature and is unlikely to be repeated;
- (iv) where there are long passage of time between the offence taking place and the likely date of trial unless;
 - the offence is serious;
 - delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has resulted in a lengthy investigation;
- (v) where prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness, particularly where they have been put in fear;
- (vi) where the defendant is elderly or where the defendant is a child or a young person;
- (vii) where the defendant was at the time of the offence or trial suffering from significant mental or physical ill-health;

- (viii) where the defendant has put right loss / harm that was caused (although defendants must not be able to avoid prosecution simply because they pay compensation);
- (ix) where the recovery of the proceeds of crime can more effectively be pursued by civil action brought by the Serious Organised Crime Agency;
- (x) Where details may be made public that could harm sources of information, international relations or national security.