

Title & Version	Draft PSNI guidance on when and how to dispose of a crime by use of discretion, v4 (24/9/12)
FOIA exempt?	No
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<i>Organisation</i>	PSNI, Service Improvement Department, S2, Criminal justice Branch
<i>Summary</i>	Provides draft PSNI guidance to operational officers on when and how it's appropriate to use a discretionary disposal to resolve an allegation of crime.
<i>Effective from date:</i>	tbc
<i>Review date:</i>	tbc

## **OPERATIONAL GUIDANCE**

### **WHEN AND HOW TO MANAGE DISCRETIONARY DISPOSAL**

#### **1. AIM OF THIS GUIDANCE**

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

#### **2. INTRODUCTION**

2.1. Discretion is one of a range of disposal options open to police in dealing with a crime or incident, in considering the most appropriate disposal option the investigating Officer must consider risk, vulnerability and the evidential and public interest tests.

2.2. A discretionary disposal provides a more individual, victim led alternative to formally prosecuting a suspect. It is generally suitable where a minor crime or incident has been committed.

2.3. Investigating Officers (IO) are expected to use their professional judgement to consult with victims and determine satisfactory outcomes that are proportionate to the incident or crime. In this way Discretion will:

- (i) Improve community confidence in policing and criminal justice – as justice will be seen to be done promptly and at a more localised level.
- (ii) Improve the quality of service to victims through engaging them in the discretion process.
- (iii) Empower the officers to use their professional judgement to deliver a proportionate and effective response to local crime issues.
- (iv) Reduce bureaucracy by delivering prompt and local resolution.

- (v) Reduce repeat offending by delivering a restorative justice outcome nearest to the time of offending.

### **3. APPLICATION OF DISCRETION**

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

- 3.6. If an outcome involves payment to cover damage/loss, the IO must take reasonable steps to ensure the amount appears proportionate to the damage/loss caused; for example, by establishing if the victim has a receipt &/or quotes for repair/replacement of items.
- 3.7. If the suspect is under 18, the IO must seek authority from a supervisor and consider what is in the best interests of the young person. In doing this, they must check for any relevant information contained within the Youth Diversion database and consult with the Youth Diversion Officer (YDO) if available.
- 3.8. The suspect must give consent to having the matter dealt with as a discretionary disposal. (If the suspect is under 18 or a vulnerable adult consent must also be obtained from the relevant appropriate adult).
- 3.9. It is desirable that the victim should consent and be satisfied with the proposed outcome; however, a victim has no right of veto to this process.
- 3.10. Having investigated the incident and identified a suspect the Investigating Officer (IO) will utilise the 'Traffic Light' system to ascertain if the offence is appropriate for discretionary decision making.

## 4. OFFENCES UNSUITABLE FOR DISCRETION

- 4.1. Discretion **cannot be availed of** where the offence/incident involves one or more of the following circumstances:
- C** (i) **Conduct of a public figure who is in a position of authority or trust, including a member of:**
    - I. Parliament;
    - II. the legislative assembly;
    - III. a public representative;
    - IV. clergy or religious leader;
    - V. 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.**

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

## 5. SUSPECTS SUITABILITY FOR DISCRETION

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

- (i) The suspect has another case(s) pending;
- (ii) The suspect has another criminal justice disposal recorded against them;

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

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

## 6. THE DISCRETION PROCESS

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

### 6.2. Engaging the Victim

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

- (vi) Once the disposal has been completed by the suspect, the IO must contact the victim to update them. The victim should be encouraged to sign the IO's notebook to certify the agreed outcome has been completed to their satisfaction. The IO must also inform the victim that it is police policy to randomly survey those victims whose case has been resolved using discretion.

### 6.3. Engaging the Suspect

- (i) The IO must notify the suspect of any offence or incident they are suspected of having committed, and of the intention of the opportunity to have the matter dealt with as a Discretionary Disposal.
- (ii) The following must be explained to the suspect in relation to the discretionary disposal:
  - A. This is an opportunity for the suspect to make reparation (make good the damage or loss caused).
  - B. This is a resolution which will deliver a speedy, effective outcome tailored to the needs of the victim which may include but is not limited to:
    - I. An apology;
    - II. Repairing damage;
    - III. Paying for an item damaged or stolen;
    - IV. Taking on some other action i.e. helping at a charity event.
  - C. Accepting a discretionary disposal does **not constitute a criminal conviction** and as such the disposal is not routinely disclosed, although it may be disclosed as part of an enhanced criminal record check dependant upon the circumstances.
  - D. A discretionary disposal will remain active for a period of twelve months from the date of completion of reparation.
  - E. Details of all discretionary disposals are held on police records and this may be used to inform a decision as to future disposals should the suspect commit further offences.
- (iii) A suspect must be cautioned under Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 in accordance with the relevant Codes of Practice – the officer should record the fact the person has been cautioned and the reply, if any, in their notebook.
- (iv) Where required the officer must ask relevant questions to support their investigation after caution – these should be recorded in their notebook.

- (v) If the suspect admits the offence and is willing to accept a discretionary disposal, then the IO must explain:
  - A. the details of the outcome which has been agreed with the victim – the officer should seek to secure the suspects agreement to this outcome;
  - B. that they will manage and oversee the discretionary process until the agreed outcome has been completed;
  - C. if the suspect does not complete their part of the agreement, that the matter may then be referred to the PPS.
- (vi) The suspect's agreement should be documented in the officer's notebook and countersigned by the suspect.
- (vii) Fingerprints and DNA are not required for Discretionary Disposals, but where the offence is a recordable offence and fingerprints and DNA have been taken as part of the investigative or custody process, then these may be retained in line with current retention schedules.
- (viii) Where a suspect refuses to take part in the Discretionary Disposal then the matter should be referred to PPS in file format.

#### 6.4. Juvenile or Vulnerable Suspects

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

- E. Perform unpaid work or service in or for the community;
- F. Participate in activities (such as activities designed to address offending behaviour, offering education or training or assisting with the rehabilitation of person dependent upon or having a propensity to misuse alcohol or drugs).

## 7. Retailers Discretion Scheme

- 7.1. The IO should conduct their initial investigation in accordance with PACE and Codes of Practice and should also consider the eligibility of the offence to be dealt with by discretion.
- 7.2. Where the offence is suitable to be dealt with by discretion, the IO should establish if the store is a member of the scheme – (this can be done by asking store staff or by reviewing the Criminal Justice A-Z on the Service Improvement pages of Policenet).
- 7.3. Several large retail chains have agreed to adopt a discretionary disposal scheme to deal with minor shoplifting suspects. Those who have adopted the scheme will have clearly agreed outcomes for disposal with police.
- 7.4. If the retailer is a member of the scheme and the offence is not committed by:
- (i) A Repeat suspect or/and
  - (ii) Those going equipped for theft.
- 7.5. The officer must explain the scheme to the suspect as per any discretionary disposal as outlined in the Engaging the Suspect Section of this guidance.
- 7.6. The IO should also outline that the discretionary disposal sought is:
- (i) That the suspect will sign a store banning order;
  - (ii) And that police will provide the suspects personal details to the retailer who may choose to pursue a civil costs recovery from them;
  - (iii) That the discretionary disposal will not be conditional upon the suspect paying any civil costs demanded as part of the civil costs recovery process;
  - (iv) Any other conditions as outlined in the retail scheme for that store.
- 7.7. In addition to the notebook entries to support the discretionary disposal as previously outlined in this guidance, the IO must also confirm the suspect's address and update their notebook with the following statement:

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

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

## 8. ADMINISTRATION

8.1. The IO must monitor the delivery of the agreed outcome and aim to have it completed within 7-14 days.

- (i) Where more time is required for completion, this must be agreed with a supervisor.

8.2. The IO must update the occurrence enquiry log (OEL) regularly as to the progress of their investigation, ensuring key actions are noted.

8.3. Where the payment of money as reparation has been agreed the money must be paid direct to the victim by the suspect. This should be paid in one lump sum and can be supervised by the IO if required. It can also be arranged by the IO that this transaction can take place at a police station if required. The IO **must never** take money from the suspect to give to the victim.

8.4. If the suspect fails to comply with the agreement or fails to comply within a reasonable time then the matter should be referred to the PPS for an alternative disposal. Where the suspect is a juvenile then the matter must be referred to the YDO.

8.5. If the suspect only partially completes the disposal or the victim remains dissatisfied, then the matter should be referred to the Service Gatekeeper for a decision on how best to proceed.

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

- (i) Initial follow up within 10 days;

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

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

8.7. Once the disposal has been completed and the victim updated to this fact, then the matter will be closed by the IO updating the OEL log.

8.8. Discretionary disposals will be quality assured and audited on a monthly basis through the interagency Quality Assurance Panel chaired by the PPS.



8.9. Districts are required to call back at least 8 victims per month to monitor victim satisfaction with Discretion and to ensure this guidance is being followed.

## **9. RELATED POLICIES/GUIDANCE**

### **9.1. Guidance on alternative methods of disposal:**

(i) The following documents are available on the Service Improvement Criminal Justice Web Page A-Z:

- A. 'When and how to use a Penalty Notice for Disorder (PND)'.
- B. 'When and how to obtain a Non-Court Diversion Decision by telephone.'
- C. 'When and how to use a streamline no prosecution file'.
- D. 'When and how to use the Service Gatekeeper'.
- E. 'When and how to use a streamline charge file'.
- F. 'Speedy Justice Aide Memoir'.

(ii) The Road Policing Manual Chapter 10 – Appendix 10A – Driver Improvement Scheme.

### **9.2. Guidance on standards of investigation and supervision occurrences**

(i) The following documents are available on the Service Improvement Criminal Justice Web Page A-Z:

- A. 'How to deal with and manage occurrences'.
- B. 'Case file Minimum Standards'.

(ii) 'Investigations carried out by PSNI' – PD04/10

(iii) National Occupational Standards

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

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

## **10. LEGAL BASIS**

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

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

- (iii) Section 75 of the Northern Ireland Act 1998
- (iv) Part 2 of the Justice (Northern Ireland) Act 2002.
- (v) Section 32 of the Police (Northern Ireland) Act 2000.
- (vi) The Justice (Northern Ireland) Act 2002.

## **11. MONITORING AND REVIEW**

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