

Title & Version	PSNI guidance on when and how to use a streamlined no prosecution file v1 (17/9/12)
FOIA exempt?	No
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<i>Organisation</i>	PSNI, Service Improvement Department, S2, Criminal justice Branch
<i>Summary</i>	Provides guidance to operational officers on when and how to use a streamlined no prosecution file.
<i>Effective from date:</i>	tbc
<i>Review date:</i>	tbc

OPERATIONAL GUIDANCE

WHEN AND HOW TO USE STREAMLINED NO PROSECUTION FILES

1. AIM OF THIS GUIDANCE

- 1.1. This document provides operational officers with guidance on when and how to use the streamline no prosecution file to seek a no prosecution decision from the Public Prosecution Service (PPS).

2. INTRODUCTION

- 2.1. A no prosecution recommendation is one of a range of options open to police in dealing with a crime or incident. In considering the most appropriate disposal portion the Investigating Officer (IO) must consider risk, vulnerability and the evidential and public interest tests.
- 2.2. These procedures outline a streamline process in which the PPS will continue to be the decision maker for cases recommended by police as “No Prosecution” using a streamline no prosecution file which requires significantly less information than a full file.
- 2.3. This approach ensures that the time spent in preparing an investigation file is proportionate to the anticipated outcome, thereby reducing unnecessary time and bureaucracy where a no prosecution is being recommended.

3. APPLICATION OF STREAMLINED NO PROSECUTION FILE

- 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. It is a matter for police to determine what investigative enquiries are proportionate and necessary in the circumstances and for recommending an appropriate disposal option for the Public Prosecutions Service (PPS) to consider.
- 3.3. If there are reasonable grounds to suspect a persons involvement in the offence and they have been identified and located, they must be interviewed in accordance with PACE and the codes of practice either at a police station, on tape or at a venue other than a police station.
 - (i) If elsewhere than at a police station, officers must record replies and questions put after caution in their notebook, the suspect should then sign the officers notebook indicating it is a true and accurate record of the interview.
- 3.4. 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
- 3.5. When PPS make a disposal direction their routine practice is to inform the victim via letter. However where a PPS prosecutor determines it would be inappropriate to update the victim by letter (due to the sensitivity of the case and or impact of the decision), they will request the IO (via email) to deliver the decision in person within 14 days and will delay the issue of the letter until the IO confirms (via email) that this has taken place.

4. WHEN A STREAMLINED FILE FOR “NO PROSECUTION” RECOMMENDATION IS APPROPRIATE

4.1. In deciding whether an investigation appears suitable for a no prosecution recommendation, the following criteria must be satisfied:

- a) There is a named suspect linked to the offence (no matter how evidentially weak)
- b) All proportionate investigative lines of enquiry have been completed;
- c) The evidential test is not met, i.e. there is insufficient evidence to bring a successful prosecution;

Or

- d) The public interest test is not met, i.e. there is sufficient evidence – but it is not considered in the public interest to prosecute.

4.2. Where these criteria are satisfied, the IO should follow the process within section 5 to obtain authority for a no prosecution recommendation.

5. WHEN NO REFERRAL TO THE PPS IS REQUIRED

5.1. Where the criteria as outlined in section 4 are applicable and any of the following factors are present:

- (i) The identity of the offender is unknown, **or**
- (ii) The offender is deceased, **or**
- (iii) There is no evidence to connect a suspect to the offence.

There is **no requirement to forward a file to the PPS** for decision.

5.2. The IO should instead refer the matter to their supervisor to seek consideration to be given for taking ‘No Further Police Action’ (NFPA).

5.3. The supervisor must review the investigation to ensure the minimum standards of investigation have been completed and if satisfied they must update the Niche Occurrence Enquiry Log (OEL) recording their rationale, updating the status of the occurrence to ‘Supv-NFPA’ or ‘Supv-filed pending further evidence’.

6. THE PROCESS OF HOW TO SEEK A “NO PROSECUTION” RECOMMENDATION

- 6.1. Where the IO is satisfied the case appears suitable to be dealt with by no prosecution, they should record this within the OEL.
- 6.2. The IO must contact a gatekeeper via niche workflow to GATEKEEPERS (or via phone if urgent and between the hours of 0800 to 2200, 7 days a week), to seek authority to submit a streamline no prosecution file.
- 6.3. The gatekeeper will inform the IO of their disposal recommendation and note this within the OEL. If not satisfied, the gatekeeper will consider an alternative disposal option with the IO and document this and any other directions to the IO within the OEL.
- 6.4. Where the gatekeeper authorises the IO to seek a no prosecution decision from the PPS, the IO must complete a streamline no prosecution file.
- 6.5. The PPS will issue an electronic prosecutorial decision report via niche to confirm the decision.
- 6.6. The IO must comply with any decision issued by the PPS.

7. ADMINISTRATION

- 7.1 Where a gatekeeper has authorised the IO to seek a no prosecution decision from the PPS, the IO must within 5 days of the decision:
 - a. Submit form OMF 2b for non custody cases (as this triggers creation of a case file by OCMT).
 - b. 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
- c. Ensure “Key Witness” statements are submitted via the blue folder to the supervisor (i.e. complainants’ statement if alleged assault, theft or criminal damage etc and police officers’ statement if they were an eye witness to the incident and there is no complaint).
- d. 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

7.2 Supervisors must 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 Occurrence Enquiry Log (OEL).
- b) Update the 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 the folder to this effect before forwarding to OCMT.

8. RELATED POLICIES/GUIDANCE

8.1 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 obtain a Non court Diversion Decision by telephone.
 - 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.

8.2 Guidance on **standards of investigation and supervision occurrences**

- i. The following documents are available on the Service Improvement Criminal Justice Web Page A-Z:
- ii. 'How to deal with and manage occurrences'.
- iii. 'Case file Minimum Standards'.
- iv. 'Investigations carried out by PSNI' – PD04/10
- v. National Occupational Standards
- vi. 'Policing with Children and Young People' – PD13/06

9. LEGAL BASIS

9.1 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

10. 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.