



**Public Prosecution Service for Northern Ireland**

# **Guidelines for the Prosecution of Young Offenders**

**Draft for Consultation (February 2019)**

**Independent, Fair and Effective**



## **FURTHER INFORMATION**

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# Guidelines for the Prosecution of Young Offenders

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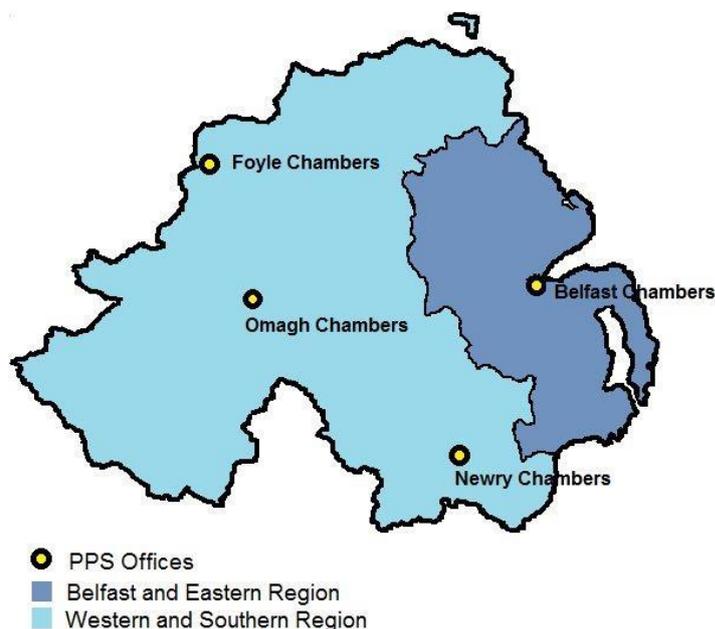
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## About the Public Prosecution Service

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

## 1.1 Purpose of this policy

- 1.1.1 The purpose of this policy is to provide guidance on the general principles, commitments and associated working practices, and to explain the standards of service expected from the PPS when a young person has been accused of a crime.
- 1.1.2 In the context of this policy, a 'young person' or 'child' is defined as someone that is under 18 years of age at commencement of criminal proceedings. A 'young person' may also be referred to as a 'young offender'.
- 1.1.3 The Public Prosecution Service (PPS) is committed to ensuring that the Best Interests of the Child Principle, as set out in Article 3(1) of the United Nations Convention on the Rights of the Child, is adhered to, and that the special considerations which apply to cases involving a young person are enshrined in its working practices.<sup>1</sup>
- 1.1.4 This policy should be read in conjunction with the PPS Code for Prosecutors, as well as the Service's Guidelines for Diversion. Both documents are available on the PPS website at [www.ppsni.gov.uk](http://www.ppsni.gov.uk).

## 1.2 International, European and domestic law obligations

- 1.2.1 In developing this policy, the PPS has considered the recommendations of the UN Committee on the Rights of the Child, through its General Comment No.10 on a child's rights compliant Youth Justice System and the recommendations of the Review of Youth Justice in Northern Ireland (2011).<sup>2</sup>
- 1.2.2 The key considerations governing the decisions made by Public Prosecutors in dealing with children and young people are those contained in:
- The Criminal Justice (Children) (Northern Ireland) Order 1998, establishing the key components of the Youth Justice System in Northern Ireland.
  - Section 53 of the Justice (NI) Act 2002 (as amended by Section 98 of the Justice (NI) Act 2015) which requires the principal aim of agencies involved in the Youth Justice System to be the prevention of offending by

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<sup>1</sup> UNCRC November 1989 - UK became a signatory in June 1992.

<sup>2</sup> <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

young persons and in taking any such decision involving a young person, their best interests shall be considered as a primary consideration.

- The PPS [Code for Prosecutors](#) which states that prosecutors must consider the interests of a young person as a primary consideration, amongst other public interest factors, when deciding whether a prosecution is needed.
- PPS Guidelines for the Use of Diversionary Disposals.

1.2.3 PPS is also guided by various international authorities in all actions concerning children. A detailed list of these can be found at **Annex C**.

## 1.3 The Youth Justice System

### *Working with partners*

1.3.1 The PPS is one of several criminal justice agencies in Northern Ireland which deals with young people who offend. The PPS works with its partners within the Youth Justice System, including:

- Police Service of Northern Ireland (PSNI);
- Youth Justice Agency (YJA);
- Northern Ireland Courts and Tribunals Service (NICTS);
- Northern Ireland Prison Service (NIPS); and
- Probation Board for Northern Ireland (PBNI).

1.3.2 The PPS is committed to working with partners in a multi-agency approach to deliver the best outcomes for both young people who offend and the victims of young people who offend.

1.3.3 The PSNI is the principal investigative body which submits files to the PPS. It is the responsibility of the investigator to investigate an allegation that a criminal offence has been committed, to gather evidence in relation to that allegation and to present that evidence to the prosecutor.

1.3.4 Once a file has been received from police, the PPS may request further investigation where it considers that additional evidence or information is required in order to take a fully informed decision.

## 1.4 The courts

### *Youth Court*

1.4.1 The statutory provisions relating to the constitution and composition of Youth Courts are set out in:

- The Criminal Justice (Children) (NI) Order 1998 ('the 1998 Order'); and
- The Children and Young Persons Act (NI) 1968 ('the 1968 Act').

1.4.2 Article 27(1) of the 1998 Order states that a juvenile court properly constituted in accordance with the 1968 Act to hear any charge against a child, or to carry out any legal right given to it by or under the 1998 Order or any other statutory provision, may be known as a 'Youth Court'.

1.4.3 A Youth Court is made up of a District Judge (Magistrates' Court), who acts as chairperson of the court, and two Lay Magistrates (Panel Members) (one of whom should be a woman). Lay Magistrates are members of the community (who are not legally qualified), and are appointed based on assessment criteria which include good character; understanding and communication; social awareness; sound judgement; commitment and reliability.

1.4.4 On 30th August 2005 the youth justice system was extended to include those aged 17 years. Legislation defines a child as 'a person who is under the age of 18'. This means that people who have not reached the age of 18 will be treated as children in respect of proceedings against them for criminal offences.

1.4.5 Section 3 of the Criminal Justice (Children) (NI) 1998 Order determines the age of criminal responsibility:

*"It shall be conclusively presumed that no child under the age of 10 can be guilty of an offence."*

1.4.6 By Article 30(2) of the 1998 Order, when proceedings in respect of a child are commenced before a youth court and he turns 18 before the conclusion of the proceedings, the court may continue to deal with the case and may make any order which it could have made if he had not attained that age.

1.4.7 Further details of the Youth Justice System are provided at **Annex B**

## **1.5 PPS Youth Prosecution Team**

- 1.5.1 PPS has a dedicated team of Youth Prosecutors, based in its regional offices, who have developed an expertise in taking prosecutorial decisions on cases involving young people who offend.
- 1.5.2 Where a case is referred to the PPS from police, the Youth Prosecutors will determine whether the young person should be prosecuted or diverted from prosecution. If the Public Prosecutor decides that in any case being considered there is insufficient evidence, or that it is not in the public interest to prosecute, a decision of no prosecution will be taken.
- 1.5.3 Youth Prosecutors make regular appearances as prosecution advocates in the Youth Court. The services of counsel in independent practice are also used by the PPS. Whilst they are not members of staff, they are subject to the same requirements as to standards of service.

## 2. Background

### 2.1 The Statutory Aims of the Youth Justice System

2.1.1 The statutory aims of the Youth Justice System in Northern Ireland were established by section 53 of the Justice (Northern Ireland) Act 2002, as amended by section 98 of the Justice (NI) Act 2015.

2.1.2 Prior to commencement of the Justice (Northern Ireland) Act 2015, section 53(1) stated that the principal aim of the Youth Justice System was

*“...to protect the public by preventing offending by children.”*

2.1.3 In addition, Part 3 directed that

*“...anyone exercising functions in relation to children must have regard to their welfare with a view to furthering their personal, social and educational development.”*

2.1.4 In 2011 an independent review team was appointed by the then Minister of Justice to conduct a review of the Youth Justice System in Northern Ireland. The team’s remit was to scrutinise the section 53 aims and to consider the extent to which legislation, policy and practice reflected international standards and best practice. Whilst the team acknowledged the positive steps taken in introducing the aims in statute, it was felt that there was a need to update these to fully reflect the terms of international instruments, and in particular Article 3(1) of the UN Convention on the Rights of the Child (UNCRC).<sup>3</sup>

2.1.5 Article 3(1) states:

*“The best interests of the child are a primary consideration to be considered in all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.”*

2.1.6 The recommendations of the review included the requirement for legislation to be passed by the Assembly to bring the Youth Justice System in Northern Ireland into line with UNCRC guidance on the rights of the child.

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<sup>3</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

2.1.7 This was taken forward by way of section 98 of the Justice Act (Northern Ireland) 2015 which amends the Justice (NI) Act 2002 and compels all those working in the Youth Justice System to:

*“...have the best interests of children as a primary consideration.”*

2.1.8 The PPS is committed to incorporating its obligations under the revised statutory aims of the Youth Justice System into its working practices.

## **2.2 Definition of ‘Best Interests’**

2.2.1 In common with the other agencies within the criminal justice system in Northern Ireland, the PPS has examined how it gives effect to the changed legislative framework in order to ensure that a child’s best interests are fully considered when a decision is being taken about whether to prosecute a child.

2.2.2 There is no ready or standard definition of best interests, and no checklist for how the criminal justice system should operate to deliver on this principle. However, the UN Committee on the Rights of the Child (UNCRC) General Comment No.14 (2013) is an important building block for the process and should be considered in its entirety.

2.2.3 General Comment No.14 (2013) provides that the concept of a child’s best interests is complex, and should be determined on a case-by-case basis:

*“Best interests is a dynamic and flexible concept, the delivery of which will depend on the role played by each organisation in the criminal justice system and their relationship with the children they come into contact with. It is likely to involve an assessment of a child’s needs and circumstances within the specific context of the interaction between the child and the relevant agency.”*

2.2.4 At paragraph 4 of the Comment the Committee states:

*“The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child”. The “holistic concept” should embrace the child’s physical, mental, spiritual, moral, psychological and social development and should promote the child’s human dignity.”*

2.2.5 The UN Committee acknowledge this potential conflict with other interests or rights. In these cases, the approach calls for a degree of flexibility and a careful weighing up of all aspects of the case.

*“Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child’s best interests.” (UN General Comment No.14 paragraph 4.39)*

## 3. Principles Guiding the Decision as to Prosecution

### 3.1 The Test for Prosecution

3.1.1 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.

3.1.2 This is a two stage test and each stage of the test must be considered separately and passed before a decision to prosecute can be taken. The Evidential Test must be passed first before the Public Interest Test is considered. If this is also passed, the Test for Prosecution is met. Each stage is set out in detail in the PPS Code for Prosecutors.

### 3.2 Key considerations

3.2.1 When applying the public interest factors in a case involving a young person, paragraph 4.14 of the Code for Prosecutors sets out the key issues as follows:

*“...where the suspect is a child or a young person, the best interests and welfare of the child or young person must be considered, including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people.”*

3.2.2 Whilst “the best interests of the child” is a primary consideration, it should be balanced with the interests of all other parties, such as victims and the wider community.

3.2.3 It is essential in all youth cases that when considering the public interest factors for and against prosecution, prosecutors have in mind the best interests of the child principle, and that these considerations are factored in to the decision. The prosecutor should also consider what impact the decision will have upon the child.

- 3.2.4 Regard shall be had to all known relevant facts and circumstances of the young person's environment, age/maturity, educational attainment, family circumstance and previous records of offending.
- 3.2.5 Taking into account the best interests of the child principle may also involve an analysis of a cluster of background information of the child provided by carers, the Youth Justice Agency / PSNI Youth Diversion Officer, Police, education bodies and Social Services.
- 3.2.6 In all cases, the victim's views are given careful consideration before a decision is taken, and regard shall be had to the PPS Victim and Witness policy.
- 3.2.7 The PPS, where appropriate, will consider whether a young person can be dealt with by way of diversionary disposal (see Chapter 4). However the type of diversion directed must reflect the balancing of the relevant public interest considerations and the statutory duty to prevent offending.

### **3.3 The prosecution decision**

- 3.3.1 Any decision should be taken as expeditiously as possible. The young person and their parent(s)/guardian(s) should be informed of the decision and this information should be given promptly after the decision has been taken. The information should be provided in such a way that the decision outcome is easily understood.

### **3.4 No prosecution**

- 3.4.1 If the Public Prosecutor decides in any case being considered that there is insufficient evidence, or that it is not in the public interest to prosecute, a decision for no prosecution will be taken. A decision of no prosecution does not preclude any further consideration of a case by the PPS, if new or additional evidence becomes available or a review of the original decision is required. Further details on the review process are set out at paragraphs 4.59 - 4.65 of the Code for Prosecutors.

## 4. Youth Diversion

### 4.1 General principles

4.1.1 When considering prosecution of a young person, the PPS is guided by Articles 18 and 19 of the General Principles of the Guidelines on the Role of Prosecutors, as adopted by the International Association of Prosecutors at the Eighth United Nations Congress on the Prevention of Crime, The Treatment of Offenders (Havana 27th August - 7th September 1990).

4.1.2 Articles 18 and 19 state as follows:

*“Alternatives to prosecution:*

*18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.*

*19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.”*

4.1.3 Therefore in respect of youth cases, and in line with international guidance, prosecutors should give particular consideration to diversion in appropriate cases.

### 4.2 Diversionary options

4.2.1 If the Evidential Test is met, the Public Prosecutor may decide that it is in the public interest to dispose of the case by an alternative to prosecution at court, known as a diversionary disposal. This may be by virtue of age, clear record or one of a range of other factors such as the young person’s familial background or mental health concerns.

4.2.2 Where a decision to divert a young person from prosecution is made, the young person may receive one of the following diversionary disposals:-

#### 4.2.3 **Informed warning**

An informed warning is a formal reprimand by police and, although not a conviction, is recorded on a young person's criminal record for a period of one year. An informed warning is administered by the police in the presence of the young person and his parent(s) or guardian.

#### 4.2.4 **Restorative caution**

A restorative caution will normally take place in a police station and will be delivered by a police officer or a community representative. The caution is an opportunity for the young person and their parent(s)/carer(s) to meet with the victim and anyone else who has been affected by the crime. Although not a conviction, it is recorded on a young person's criminal record for a period of two years.

#### 4.2.5 **Diversionsary youth conference**

The process of youth conferencing is conducted in such a way as to maximise the chances of young people putting offending behind them. There are two types of youth conference:

- Diversionsary Youth Conference
- Court-Ordered Youth Conference

4.2.6 A diversionsary youth conference is an alternative to prosecution at court. This type of restorative conference may involve a number of parties including the defendant, the victim and police. A plan will be produced by this conference which must be approved by the Public Prosecutor and consented to by the young person.

4.2.7 A diversionsary youth conference is a formal process and, although not a conviction, is recorded on a young person's criminal record for a period of two years. Diversionsary Youth Conferences are organised by the YJA and managed by professionally trained conference co-ordinators.

4.2.8 A court-ordered youth conference differs from a diversionsary conference primarily in that it 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. Further details in respect of Youth Conferencing can be found at **Annex B**.

## 4.3 Youth Engagement

- 4.3.1 The objective of Youth Engagement (YE) is to assist in the early identification of those cases which are deemed suitable for diversion from the court system. YE, which is a 30 day process, aims to encourage young people to engage effectively in diversion.
- 4.3.2 A Youth Engagement (YE) clinic is a meeting between the young person suspected to be involved in an offence and youth justice workers from the Youth Justice Agency (YJA) and the police Youth Diversion Officer (YDO). The young person will have an appropriate adult in the clinic and may engage the services of a legal representative.
- 4.3.3 The preliminary stage of YE involves the identification by PSNI of cases suitable for diversionary disposal, including suitability for referral to a YE clinic, where appropriate. Those cases deemed suitable for YE will have a streamline file prepared by police which will be forwarded to the PPS. Once police have identified that a young person is suitable for a YE clinic, a file will be sent to the PPS in advance of the clinic.
- 4.3.4 Upon receipt of the YE file the prosecutor will apply the Test for Prosecution. It may be that there is insufficient evidence to afford a reasonable prospect of conviction or that further action is not in the public interest. In either of those scenarios a decision of 'no prosecution' will be issued. Conversely, the prosecutor may decide that the directing test is met and that diversion is inappropriate and accordingly decide that the youth should be prosecuted.
- 4.3.5 Where a decision is taken for diversion, the prosecutor can decide to give either an informed warning, a restorative caution or a diversionary youth conference. The youth justice worker and YDO will tell the young person what the prosecutor has decided in their case, and explain to them what that means and the options and possible support open to them as part of the YE process.
- 4.3.6 The case can only be dealt with using a diversionary disposal if the young person admits responsibility for the offence and accepts the PPS decision. At the YE clinic they will have to decide whether to admit responsibility and accept the diversionary disposal offered or if they want to take their case to court.
- 4.3.7 It should be noted that PPS may direct PSNI to refer a youth case to a YE clinic, for example where a youth file has been submitted by police with a

recommendation for prosecution, and the prosecutor concludes that the matter is suitable for a diversionary disposal.

- 4.3.8 Indictable only offences will not be eligible for Youth Engagement Clinics. Indictable only offences are those which can be tried only in the Crown Court in the case of adult offenders and are heard by a judge sitting with a jury. They include offences such as murder, manslaughter and certain serious sexual offences, including rape.
- 4.3.9 There are also some cases that may not be suitable for Youth Engagement. For example, those cases involving a young person who is a repeat offender. In such cases, consideration will be given to the number and nature of previous diversionary disposals and convictions accrued by the young person and the length of time which has passed between the current offence and the young person's prior offending.
- 4.3.10 Another example relates to cases involving motoring offences which carry penalty points or disqualification where the young person is of an age whereby he/she could have the necessary driving licence and insurance in place in respect of the vehicle in question. If there are some compelling mitigating factors, the offender may be offered a diversionary disposal, but this would be very rare. Similarly, where a young person is entitled to be the holder of a provisional licence, it is usually in the public interest to proceed with the prosecution to enable the licence to be endorsed with penalty points. The position in relation to underage drivers is different as there is no prospect of a licence being endorsed or them being disqualified, and therefore diversion may be considered.

#### **4.4 Factors to be considered in respect of diversion**

- 4.4.1 Diversion should be considered in all but the most serious indictable offences involving a young person. An offender's youth will often be an important public interest factor in favour of diversion. This is because it negates the need for young people to come into contact with the formal criminal justice system and is believed to be a positive response to youth crime which reflects the UNCRC and other international children's rights standards.
- 4.4.2 Prosecutors will have regard to the factors for and against diversion as set out in the Code for Prosecutors and the PPS Guidelines for the Use of Diversionary Disposals. There are a number of factors which may exist and are specific to young offending.

4.4.3 The following are a list of such factors which may be relevant to the decision-making process:

- (i) The young person is a looked after child / lives in a Children's Home (see Chapter 5);
- (ii) The young person has been a victim or a witness of domestic abuse;
- (iii) The young person has suffered from one or more 'Adverse Childhood Experiences' (ACEs – see **Annex D**);<sup>4</sup>
- (iv) The young person has never offended before, has previous good character or has only very minor offending history;
- (v) The young person has a parent who suffers from an addiction;
- (vi) The young person suffers from an addiction;
- (vii) The young person has a parent who is in prison;
- (viii) The young person's parents are recently estranged;
- (ix) The young person has been freed for adoption;
- (x) The young person has a learning disability;
- (xi) The young person suffers from mental health issues;
- (xii) The young person has a personality disorder;
- (xiii) The young person has been a victim of sexual assault and/or child sexual exploitation;
- (xiv) The young person has been a victim of bullying/harassment;
- (xv) The family of the young person has sought help from Social Services to assist the young person.

4.4.4 The above factors are not exhaustive and it must be borne in mind that the public interest may be considered as indicating a decision should be taken in favour of prosecution, notwithstanding the complex circumstances a young person has encountered. For example, the following factors may be relevant:

- (i) The offence committed is extremely serious;
- (ii) The victim has been seriously injured as a result of the crime;
- (iii) The young person is a persistent offender;
- (iv) The young person has continued to commit crimes which are increasing in seriousness;
- (v) The young person has previously been diverted, but has not fulfilled the requirements of the disposal;
- (vi) The young person was the ringleader in the offending.

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<sup>4</sup> *Adverse Childhood Experiences (ACEs) are stressful experiences occurring in childhood that affect a child either directly (e.g. child abuse and neglect) or indirectly through the environment in which they live (e.g. exposure to domestic abuse, parental mental illness, substance misuse or incarceration). Evidence has shown that ACEs impact neurological, immunological and endocrine development, increasing stress on the body and individuals' vulnerability to health-harming behaviours, leading to increased risk of poor health outcomes in adulthood (Larkin et al., 2012; Bellis et al., 2013).*

- 4.4.5 All relevant background information should be conveyed to the prosecutor by the Officer in Charge when submitting the file, with the input from the YDO recorded clearly on the file. If it is established that more information is required then the prosecutor shall issue a request to police to obtain this information in proper evidential format, or as otherwise required.
- 4.4.6 The views of the victim and their parent(s)/guardian are important and, whilst prosecutors will not always be able to act in accordance with their wishes, they will be carefully considered before any decision is reached. Ultimately, the decision whether to offer a diversionary disposal remains one for the prosecutor.

## 4.5 Criminal records

- 4.5.1 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).
- 4.5.2 Young Offenders accepting a diversion 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. 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).
- 4.5.3 It should be noted that Public Prosecutors, in taking a prosecutorial decision, can examine the full offending history of the individual, including any 'exhausted' diversions. Such details may be presented to the court where it is considered to be relevant to the case. For example, in the context of a bail application or the making of a bad character application. However in the event of a conviction, details of exhausted diversions will not normally be presented to the court for the purpose of sentencing.

## 5. Looked After Children and Offending within Children's Homes

### 5.1 Background

5.1.1 This section of the policy is intended to explain the approach of the PPS in determining where the public interest lies when it is alleged that a looked after child has committed an offence in the children's home where he or she lives. It is not intended to apply to all offences committed by looked after children, although some of the principles may be helpful when applying the public interest stage of the Test for Prosecution to offences committed outside the home.

### 5.2 Risk of offending and vulnerability to being reported for an offence

5.2.1 There is a disproportionate number of looked after children (LAC) entering the youth justice system. Many LAC are vulnerable and have experienced Adverse Childhood Experiences (ACEs), which contribute to the development of offending behaviour, often exacerbated by family instability, abuse, neglect and poor educational attainment.<sup>5</sup> The Youth Justice Review (2011) noted that "...children living in care homes are more likely to be referred to the police for committing often quite trivial offences, which had they been committed in their parental home, would not have reached the criminal justice system."

5.2.2 Research has shown that looked after children living in children's homes are at a high risk of offending behaviour because:<sup>6</sup>

- Many looked after children are between the ages of 14 and 17, which is regarded as the peak offending age range;
- They may be living in accommodation far from their home, so may lack support from friends and family;
- Their behaviour is likely to be more challenging and demanding because of their family experience, the breakdown of foster placements and frequent moves from other children's homes;

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<sup>5</sup> A Scoping Study of the Implementation of Routine Enquiry about Childhood Adversity (July 2015). See Annex D for further detail.

<sup>6</sup> Bowles, R and Pradiptyo, R (2005) – *Young Adults in the Criminal Justice System: Cost and Benefit Considerations*, Barrow Cadbury Foundation.

- Many looked after children display challenging behaviour, which may be a reaction to past experiences of abuse and neglect. They may also have been diagnosed as experiencing intellectual or learning disabilities or mental health problems and their offending behaviour may be caused by or otherwise linked with the disorder; and
- Living in a group with other challenging and demanding children of the same age may give rise to greater potential for conflict, bullying and peer group pressure.

5.2.3 The police are more likely to be called to a children's home than a domestic setting to deal with an incident of offending behaviour by an adolescent. Youth Prosecutors will bear this in mind when dealing with incidents that take place in a children's home.

5.2.4 Disposals such as restorative cautions, youth conferencing, and disciplinary measures by the home may be sufficient to satisfy the public interest and to reduce the risk of future offending.

5.2.5 A criminal justice disposal, whether a prosecution or a diversion, should not be regarded as an automatic response to offending behaviour by a looked after child, irrespective of their criminal history. This applies not only to youths of previous good character but also to those with an offending background.

### **5.3 The decision to prosecute**

5.3.1 Prosecutors will consider all of the circumstances surrounding the offence(s) and the circumstances of the young person before reaching a decision, applying all relevant PPS policies and documents.

5.3.2 The PPS may request further investigation where it considers that additional evidence or information is required in order to take a fully informed prosecution decision. It is the responsibility of the PSNI to gather and provide that additional evidence or information.

5.3.3 Factors that may be considered include:

- The disciplinary policy of the children's home.
- An explanation from the home regarding their decision to involve the police, which should refer to the procedures and guidance on police involvement.

- Information from the child's key worker in the home or community social worker about the recent behaviour of the youth, including similar behaviour and any incidents in the youth's life that could have affected their behaviour; any history between the youth and the victim; any apology or reparation by the youth; history of the incident; and any action under the disciplinary policy of the home.
- The views of the victim, including their willingness to attend court to give evidence and/or participate in a restorative justice or other diversionary programme.
- The views of the key worker, social worker, counsellor or CAMHS (Child and Adolescent Mental Health Services) worker on the effect (positive or negative) of criminal justice intervention on the youth, particularly where the youth suffers from an illness or disorder.
- Any explanation or information about the offence from the looked after child.
- If the looked after child wishes it to be considered, information about the Trust's assessment of his / her needs and how the placement provided by the home is intended to address them. The Trust should be able to provide this information as it should be an integral part of the Care Plan for the looked after child.
- Any report on the Adverse Childhood Experiences of the child.

## 6. Mental Health and Learning Disabilities in Young People Who Offend

### 6.1 Background

- 6.1.1 In Northern Ireland 'mental illness' or 'disorder' and related expressions are defined in section 3(1) of the Mental Health (NI) Order 1986.
- 6.1.2 The definition of 'mental disorder' is broad and includes mental illness, learning disabilities or any other disorder or disability of the mind. Examples of clinically recognised mental disorders include personality disorders, eating disorders, autistic spectrum disorders, mental illnesses such as depression, bi-polar disorder and schizophrenia, as well as learning disabilities.
- 6.1.3 'Mental illness' means a state of mind which affects a person's thinking, perception, emotion or judgement to the extent that he/she requires care or medical treatment in his/her own interests or in the interests of other persons.
- 6.1.4 'Learning disability' means "...a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning."
- 6.1.5 It has been estimated that more than 20% of young people in Northern Ireland will suffer significant mental health problems before their 18th birthday.<sup>7</sup> Furthermore, a recent report has indicated that 1 in 10 school children in Northern Ireland have a diagnosable mental illness.<sup>8</sup> Children and young people in the criminal justice system with poor mental health are extremely vulnerable.

### 6.2 Key considerations

- 6.2.1 The difficulty for the prosecutor is to decide to what extent the law may have to take into account the child's mental capacity, mental health, and mental development when determining if their actions have resulted in a breach of the criminal law and how best to deal with the case. It is also the responsibility of prosecutors to respect a person's right to a fair trial.
- 6.2.2 An important factor should be that those who have any vulnerability by reason of their mental health or capacity do not suffer discrimination, unfair

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<sup>7</sup> DHSSPS, 2010; Khan, 2016.

<sup>8</sup> Dr Phil Anderson, *Child & Adolescent Mental Health Services*, February 2019

criminalisation or unfair punishment, so far as possible within the limits of ensuring public safety.

6.2.3 As well as overall consideration of the public interest test, the prosecutor should look particularly to:

- the seriousness of the offence;
- the circumstances of any previous offending;
- the nature of the youth offender's mental illness, disability or learning disability;
- the likelihood of repetition; and
- the availability of suitable alternatives to prosecution.

6.2.4 Learning disability, like mental health, is a broad field and within that field there are many different types of learning disability. Some young people may have a dual diagnosis; e.g. mental health needs combined with a learning disability. Given the broad range of young people affected by co-occurring conditions, it is essential that prosecutors are aware of the interpretation of statements made by these young people to PSNI in interviews and when interpreting witness statements around behaviour. For example, autistic children may repeat phrases or make certain sounds which can be misinterpreted by those who do not understand the condition.

6.2.5 Prosecutors are often faced with the task of deciding how to deal with a case where a young person who has committed a criminal offence has mental health problems. Prosecutors may need the assistance of medical reports from a child psychiatrist or suitably qualified child psychologist in order to take a properly informed decision.

6.2.6 If a report shows that a child has a recognised mental disorder it may be apparent that they have been interviewed for offences for which they may not have the mens rea.<sup>9</sup> This should be considered in prosecutorial decisions.

6.2.7 Prosecutors should exercise caution when authorising a diversionary measure for such young people, and admissions made to police must be viewed within the context of a young person's known mental illness or learning disability.

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<sup>9</sup> A fundamental principle of criminal law is that a crime consists of both a mental (*mens rea*) and a physical element (*actus reus*). *Mens Rea* can be translated as "guilty mind". The prosecution must prove that the accused had the necessary mental state or degree of fault at the relevant time, *Blackstone's Criminal Practice 2019*. The precise mental element varies from crime to crime and is typically defined in statute. A typical statute, for example, may require that a person acts knowingly, purposely or recklessly.



## 7. Sexual Offences Committed by Young Offenders

### 7.1 Background

- 7.1.1 The PPS understands the serious impact of sexual crime upon victims, who may themselves be a young person, or have been abused when a child and are now adults. It is universally acknowledged that being the victim of sexual crime, and fear of sexual crime, has a profound and damaging effect on the lives of individuals and communities.
- 7.1.2 The PPS works with other Departments and partners in support of the development of initiatives to promote greater understanding of why young people offend in this way, including recognition of the potential impact of trauma and Adverse Childhood Experiences on the development of this offending behaviour.
- 7.1.3 When sexual crimes are alleged to have been committed by young people, the PPS is required to balance the strong public interest factors in favour of prosecution of such crimes with its obligations to have regard to the best interests of the child who has been accused of this type of offending.
- 7.1.4 All cases of serious sexual offending, including by young people, are conducted within the PPS's Serious Crime Unit, which comprises a team of Senior Public Prosecutors led by an Assistant Director. All are specialists in prosecuting sexual offences and have responsibility for providing prosecutorial advice to investigators and taking decisions as to prosecution.
- 7.1.5 Where there is an allegation of sexual abuse committed by a young person, and the evidential part of the Test for Prosecution is met, careful consideration must be given to the relevant public interest factors. The file should include detailed background information in relation to both the suspect and victim, the nature of any relationship between them, any history of relevant conduct and information about the wishes of the victim and/or their parent/guardian and information regarding the effect a prosecution may have on the victim. In taking decisions, the PPS will take into account the views of other experts involved in the case. In particular, it will be important to know the views of the PSNI Youth Diversion Officer and Social Services. Where the information outlined has not been provided, the Investigating Officer may be requested to obtain the relevant information, where available.

7.1.6 All cases involving a young offender must be prioritised and dealt with as quickly as possible, to minimise avoidable delay throughout.

## **7.2 Legislation**

7.2.1 The main legislation governing sexual offences, including those committed by children, is the Sexual Offences (NI) Order 2008 which came into effect on 2 February 2009. The Order sought to consolidate and strengthen the law on sexual offences and to protect children from exploitative sexual behaviour.

7.2.2 Under this Order, it is unlawful for a person of any age, including a person who themselves is under the age of 16, to engage a child under 16 in any form of sexual activity.

7.2.3 In any case where there is sufficient evidence of a sexual offence committed by a young person to justify instituting proceedings, the public interest must be considered with care before any prosecution is commenced.

## **7.3 Public Interest considerations**

7.3.1 Examples of public interest considerations for and against prosecution are set out in the Code for Prosecutors. Prosecutors must take into consideration the factors below together with any other relevant public interest factors. The weight to be attached to a particular factor will vary depending on the circumstances of each case. The factors are:

- the age and understanding of the young offender;
- the age and understanding of the victim;
- whether the offence has taken place in a familial setting where the young offender is living in the same house as the victim;
- the relative ages of the parties;
- whether the victim entered into sexual activity willingly; i.e. whether the victim understood the nature of his or her actions and was able to communicate his or her willingness freely;
- whether there was disparity between the young offender and the victim in regard to their sexual, physical, emotional and educational development;
- the sexual and psychological maturity of the young offender;

- the sexual and psychological maturity of the victim;
- the psychological or physical harm caused by the young offender;
- whether there was a relationship between the young offender and the victim and its nature and duration;
- whether the conduct could be considered to be part of adolescent development;
- whether there is any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship or in the conduct of the young offender; and
- whether the young offender has been subjected to any exploitation, coercion, threat, deception, grooming or manipulation by another which contributed to the offender's commission of the offence.

These factors are not comprehensive or exhaustive.

7.3.2 In taking a decision as to prosecution the prosecutor must consider any evidence or information provided by others, including police, Social Services and parent/guardian as to what is considered to be in the best interests and welfare of the victim.

## **7.4 Consensual Sexual Activity**

7.4.1 The public interest may not always require prosecution of young persons who engage in sexual activity, and who are of the same or a similar age and understanding, provided that the activity is "consensual" and that there are no aggravating features such as coercion, exploitation or threatening activity. In such "consensual cases", where no aggravating features are present, resolution may be best achieved by providing education for the young person and providing them and their families/guardians with access to advisory and counselling services.

7.4.2 A diversionary option may also be considered in such cases which will provide access to educational, advisory and counselling services. In reaching such a conclusion, and if appropriate to do so, the prosecutor should consider any relevant information or reports which are available from other agencies involved, in particular Social Services.

## 7.5 Social Media, 'sexting' and revenge pornography

- 7.5.1 Sexual offences may be committed or initiated via social media.
- 7.5.2 For example, offenders may utilise social media sites to research and contact a young person, engage in communication with them with a view to meeting the child (grooming) or inciting them to engage in sexual activity, contrary to Article 22 of the Sexual Offences (NI) Order 2008.
- 7.5.3 Electronic communications may be used to commit a number of offences involving images captured, made or distributed using computers or other electronic devices. The Protection of Children (Northern Ireland) Order 1978 and Article 15 of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988 deal only with indecent images of children. The Coroners and Justice Act 2009 contains provisions in respect of prohibited images of children and offences relating to extreme pornography are set out within the Criminal Justice and Immigration Act 2008. These are serious offences that can, in appropriate cases, carry lengthy custodial sentences and, in addition, may require the offender to be placed on the sex offenders' register.
- 7.5.4 'Revenge Pornography' – where sexually explicit media is publically shared online without the consent of the pictured individual - usually follows the breakdown of an intimate relationship. The impact of such offences on victims can be significant. Section 51 of the Justice Act (Northern Ireland) 2016 makes it an offence to disclose a private and sexual photograph or film of a person without the consent of the person and with the intention of causing that person distress. Such cases are a further example of the importance of context. Where there is more than one incident, or the incident forms part of a course of a conduct directed towards an individual, a charge of harassment should also be considered. As above, where the images shared may have been taken when the victim was under 18, prosecutors should consider whether any offences under the Protection of Children (Northern Ireland) Order 1978 have been committed.
- 7.5.5 In taking a prosecutorial decision in cases where, for example, a young person has sent an indecent image of themselves to another young person (a practice often referred to as "sexting"), prosecutors must identify and evaluate all relevant public interest considerations.
- 7.5.6 Such considerations may include the age of the young people involved, the relationship that exists or existed at the time, the number of images, the nature/category of the image(s), whether the recipient distributed the image(s) and whether this was with the consent of the sender.

## **7.6 Sexual Offences Prevention Orders (SOPOs) and Notification requirements**

- 7.6.1 The purpose of these provisions is to ensure the robust assessment and management of risk arising from offenders' sexual misconduct and to protect the public from serious harm by reducing the motivation and/or opportunity to reoffend.
- 7.6.2 Upon conviction for sexual offences listed in Schedule 3 of the Sexual Offences Act 2003, the court can impose a SOPO under section 104 of the Act as part of the sentencing process, where the court is satisfied that it is necessary for the purpose of protecting the public or any particular members of the public from serious harm by the offender. Breach of a SOPO (or Interim SOPO) without reasonable excuse is an offence under section 113 of the Sexual Offences Act 2003.
- 7.6.3 The law does not specify that a SOPO can only be issued against a person who has been found guilty of a sexual offence. Instead the SOPO may be issued against a "qualifying offender". This is a person who is legally defined as a person who before or after the commencement of the Sexual Offences Act 2003 has been convicted of a Schedule 3 or Schedule 5 offence, found not guilty by insanity or disability and to have done the act charged, or cautioned for such an offence under the Act. This means that the order can be issued against a person based on their alleged behaviour, even if this did not result in a conviction or prosecution.
- 7.6.4 There is also provision under the Sexual Offences Act 2003 for certain offenders to sign the sex offenders register. Section 80 states that a person becomes subject to the notification requirements under the Act if they are convicted of an offence listed at Schedule 3, found not guilty by reason of insanity, found to be under a disability and to have done the act charged or cautioned in respect of such an offence.
- 7.6.5 The period of time that the young offender will be subject to the notification requirements depends on the sentence received. The period is calculated from the date of conviction or the administration of the caution. Section 82 of the Act details the notification period and it should be noted that for young offenders, the period is halved.

## 8. School Bullying and Cyber-Bullying

### 8.1 Background

- 8.1.1 Bullying is behaviour that causes suffering to the victim such as verbal insults, physical assault, spreading rumours, threatening or undermining someone. Some of these behaviours can constitute a criminal offence. It can happen anywhere – at school, at home or online. It is usually repeated over a long period of time and can hurt a child both physically and emotionally.<sup>10</sup>
- 8.1.2 Bullying that happens online, using social networks, games and mobile phones, is often called ‘cyber-bullying’. A child can feel like there is no escape because it can happen wherever they are, at any time of day or night.
- 8.1.3 Serious cases of repeated and persistent bullying in a school environment usually involve one pupil or a group of pupils using their strength or power to induce fear in the victimised pupil. They may involve verbal abuse, physical assault or the threat of it, or even the degradation or humiliation of the victim. Such attacks tend to be systematic and persistent leading to the oppression of a victim and his or her virtual isolation from the support and friendship of others.

### 8.2 Dealing with cases involving bullying

- 8.2.1 Where a file has been referred to the PPS to take a prosecution decision, relevant considerations by the prosecutor may include:-
- the background to the incident in question, including any history of bullying of the same victim by the young person or generally;
  - whether the young person is remorseful and the attitude of his or her parent(s)/guardian(s);
  - the impact of the behaviour on the victim; and
  - any internal action already taken by the school whether in connection with the incident or in the past.
- 8.2.2 In such cases the file should include information on the background of the incident, any previous incident and any disciplinary measures taken by the school.

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<sup>10</sup> <https://www.nspcc.org.uk/preventing-abuse/child...and.../bullying-and-cyberbullying>

8.2.3 If the incident has taken place outside school, but is connected to conduct occurring at school, the same information described above is relevant.

## 9. Road Traffic Offences

- 9.1 In all decisions affecting young people accused of a road traffic offence, prosecutors must have regard to the statutory aims of the Youth Justice System, and in particular, section 53 of the Justice Act (Northern Ireland) Act 2002, as amended by section 98 of the Justice Act (Northern Ireland) 2015. This requires prosecutors to have regard to the “best interests of children” and also to prevent reoffending.
- 9.2 In respect of endorsable road traffic offences where a youth is eligible to apply for a provisional licence, it is usually in the public interest to proceed with the prosecution in order to enable the licence to be endorsed with penalty points (see also PPS Road Traffic Policy).

# 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)

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.psnj.police.uk](http://www.psnj.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)

## Annex B:

### The Youth Justice System in Northern Ireland

In recognition of the now widely accepted evolving capacity of children in terms of their moral understanding, reasoning capacity and experience of life, and that children are more likely to change their behaviour than adults, Northern Ireland, like other developed countries, has separate arrangements for dealing with children who enter the criminal justice system, including dedicated Youth Courts and different sentencing options.

The Youth Court deals with almost all youth cases (approximately 98%), although a small number of children are dealt with in adult courts (i.e. the Crown Court). In Northern Ireland, the minimum age of criminal responsibility is 10. Where children under that age are involved in wrong-doing, their behavioural issues can be addressed through family, social and educational means outside the criminal justice system. At the age of 18 young people enter the adult justice system, therefore, 'young offenders' are those aged 10 to 17 inclusive. In any one year, up to 10,000 young people come into contact with the criminal justice system. This represents just 5% of the total population of young people in this age group.

A number of agencies are responsible for the operation of the criminal justice system, each with their own responsibilities and separate lines of accountability:-

- The Police Service of Northern Ireland (PSNI) has responsibility for the prevention and detection of crime;
- The Public Prosecution Service (PPS) has responsibility for prosecution decisions and the prosecution process;
- The Northern Ireland Courts and Tribunals Service (NICTS) has responsibility for supporting the judiciary in their role of adjudicating on offenders, determining guilt or innocence, and passing sentence on those found guilty;
- The Probation Board for Northern Ireland (PBNI) is responsible for supervising offenders in the community as well as providing Pre-Sentence Reports to courts;
- The Youth Justice Agency (YJA) has responsibility for the provision of community and custodial services to children who offend and those at risk of offending and for organising youth conferences;
- The NI Prison Service (NIPS) is responsible for the custody of a small number of male juveniles in Woodlands Juvenile Justice Centre.

With the exception of the Youth Justice Agency, all these agencies are responsible for dealing with adults and children, although they all have specific arrangements for children and young people.

## **The Youth Court in Northern Ireland**

The statutory provisions relating to the constitution and composition of youth courts are set out in:-

- The Criminal Justice (Children) (NI) Order 1998 ('the 1998 Order'); and
- The Children and Young Persons Act (NI) 1968 ('the 1968 Act').

Article 27(1) of the 1998 Order states that a juvenile court properly constituted in accordance with the 1968 Act to hear any charge against a child, or to carry out any legal right given to it by or under the 1998 Order or any other statutory provision, may be known as a Youth Court.

Other legislation relating to the Youth Court includes:

- The Police and Criminal Evidence (Northern Ireland) Order 1989.
- The Children's Evidence (Northern Ireland) Order 1995.
- The Criminal Evidence (Northern Ireland) Order 1999.
- The Justice (Northern Ireland) Act 2002.
- The Criminal Justice (Northern Ireland) Order 2005.
- The Justice Act (NI) 2015.

Article 6 of the European Convention on Human Rights and Articles 12 and 40 of the United Nations Convention on the Rights of the Child are also applicable in the operation of the Youth Court.

Youth Courts are held in 17 venues across Northern Ireland. In the busy courts, the Youth Court might sit several days a week but in more rural areas it might be fortnightly or even monthly. The Youth Court is comprised of a District Judge (Magistrates Court), who chairs the court, and two Lay Magistrates (one of whom should be a woman). The District Judge and the Lay Magistrates are all trained in Youth Court business. District Judges may also hear cases in the adult, family and civil courts. Lay Magistrates work in both the youth and family courts.

The court is generally conducted on less formal lines than the adult court. Wigs are not worn and the young person sits at a table rather than appearing in the dock. The young person is usually accompanied by an adult and is usually represented by a solicitor. There is no jury and decisions are made by a majority of the members. The Youth Court is not open to the public and, although journalists may be present, they

cannot report anything that would reveal a young person's identify without prior permission from the District Judge.

On an admission or finding of guilt, the Youth Court is required, in the majority of cases, to offer a youth conference (see 4.4 above). Where consent to the youth conference is not given, or where a conference may not be appropriate for other reasons, the Youth Court can, on conviction, order any of the disposals set out in Table 1 below. In these circumstances, the court may seek a pre-sentence report from a probation officer to help to inform the decision.

## Youth Conferencing

There are two types of youth conference:

- Diversionary Youth Conferences and
- Court-Ordered Youth Conferences.

Court-ordered conferences differ from diversionary conferences primarily in that they are ordered by the Youth Court rather than the PPS.

A Youth Conference is a meeting (or series of meetings) involving the young offender, family members, relevant agencies and, in most cases, the victim or a representative of the victim. They provide a forum for discussion about the offence and usually result in a conference plan that can include arrangements for an apology, reparation, compensation, service for the community, restrictions on conduct or whereabouts, curfews / electronic monitoring or involvement in activities or programmes (for example for alcohol or drug dependency).

## Youth Conference plans

A youth conference plan is a proposal made by a youth conference co-ordinator, after a youth conference convened with respect to the child and the offence has been completed. The plan should set out that the young person be required to do one or more of the following:

- apologise to the victim of the offence or any person otherwise affected by it;
- make reparation for the offence to the victim or any such person or to the community at large;
- make a payment to the victim of the offence not exceeding the cost of replacing or repairing any property taken, destroyed or damaged by the young person in committing the offence;
- submit himself to the supervision of an adult;

- perform unpaid work or service in or for the community (only if the young person is 16 years or older);
- participate in activities (such as activities designed to address offending behaviour, offering education or training or assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol or drugs);
- submit himself to restrictions on his conduct or whereabouts (including remaining at a particular place for particular periods); and
- submit to treatment for a mental condition or for a dependency on alcohol or drugs.

A youth conference plan must specify the period during which the young person must comply with the requirements specified and that period must not be more than one year.

A youth conference plan must specify the date on which the young person should begin to comply with the requirements.

The plan worked out at the conference must be approved by the PPS or, in the case of a court-ordered conference, a District Judge sitting in the Youth Court. If a diversionary youth conference is rejected, or if the young person fails to comply with the approved plan, the PPS can refer the matter to the court. In the case of a court-ordered conference, the matter is referred back to the Youth Court for formal adjudication.

Diversionary youth conference disposals do not count as convictions, but (as stated above) are recorded on a person's criminal record for a period of two years. A court-ordered conference results in a Youth Conference Order, which is a sentence of the Court and therefore constitutes a criminal conviction.

### **Trial of Children and Young People in the Crown Court**

The Practice Direction concerning the Trial of Children and Young People was issued by the Lord Chief Justice in Northern Ireland in 2011. The Practice Direction states that the trial process itself should not expose a young defendant to avoidable intimidation, humiliation or distress and that every effort should be made to assist the young defendant in understanding and participating in proceedings.

There are a number of directions including:

- holding the hearing in a courtroom in which all parties can sit at the same level;
- allowing the young person to sit with family;
- explaining the course of proceedings to a young person and reminding the

representatives of a young person to explain the course of proceedings in terms he can understand;

- restricting attendance at trial, having frequent and regular breaks;
- not wearing wigs and gowns unless the young person asks for this.

The Practice Direction confirms that it will only be in the most serious cases that a young person will be committed for Trial in the Crown Court.

Article 28(2) of The Criminal Justice (Children) (NI) Order 1998 states that a charge may be heard by an adult court where a young person is jointly charged with an adult. If, however, the court convicts a young person of an offence other than murder, it may remit him under Article 32(1) of the 1998 Order to the Youth Court for sentencing.

The Council of Europe's Guidelines on Child Friendly Justice outline the standards which should be complied with in relation to children and young people and child accessible justice in Northern Ireland courts. The Practice Direction largely replicates the recommendations contained within these Guidelines.

By Article 30(2) of The Criminal Justice (Children) (NI) Order 1998, when proceedings in respect of a child are commenced before a Youth Court and he turns 18 before the conclusion of the proceedings, the court may continue to deal with the case and make any order which it could have made if he had not attained that age.

### **Summary trial of indictable offences**

PPS prosecutors shall only in exceptional circumstances direct that a young person is prosecuted in the Crown Court on indictment. In any such decision, a record for the basis of their decision shall be made and retained on the file.

Article 17 of The Criminal Justice (Children) (NI) Order 1998 states as follows:-

“(1) Where a child is charged with any indictable offence other than homicide and—

(a) a court of summary jurisdiction before which he is so charged thinks it expedient to deal with the case summarily;

(b) the parent or guardian of a child under the age of 14 or in any other case, the child so charged, is informed by the court of his right to have the case tried by a jury and consents to the case being dealt with summarily; and

(c) the prosecution consents

the court may deal summarily with the offence.”

The relevant date for determining whether the defendant is still a child is the appearance in court when the charge is put and the court makes its decision as to the mode of trial, not the date of the first appearance in court nor the date when attendance is first called.<sup>11</sup>

### Words not be uses in relation to children dealt with summarily

By Article 5(1) of The Criminal Justice (Children) (NI) Order 1998 the words 'conviction' and 'sentence' shall not be used in relation to children dealt with summarily. As Article 5(2) makes clear, the proper terms are 'a finding of guilt' and 'order made upon such finding'.

### Restrictions on Reporting

Article 22(2) of the 1998 Order restricts press and media reporting of proceedings in Youth Courts and states:

*"Where a child is concerned in any criminal proceedings in a Youth Court or on appeal from a Youth Court (including proceedings by way of case stated):*

- *No report shall be published which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child; and*
- *No picture shall be published as being or including a picture of any child so concerned, except where the court or the Department of Justice, if satisfied that it is in the interests of justice to do so, makes an order dispensing with these prohibitions to such extent as may be specified in the order."*

### Bail

There is a statutory framework that governs the grant or refusal of bail to a young person. Article 12 of The Criminal Justice (Children) (NI) Order 1998 states:

*"12(1) Where a court remands or commits for trial a child charged with an offence, it shall release him on bail unless-*

*(a) the court considers that to protect the public it is necessary to remand him in custody; and*

*(b) paragraph (2) or (3) applies.*

*(2) This paragraph applies where the offence charged-*

*(a) is a violent or sexual offence; or*

*(b) is one where in the case of an adult similarly charged he would be liable on conviction on indictment to imprisonment for 14 years or more.*

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<sup>11</sup> *R v Nottingham Justices ex parte Taylor (1992) 1 QB 557*

- (3) *This paragraph applies-*
- (a) *where the offence charged is an indictable offence; and*
  - (b) *the child either -*
    - (i) *was on bail on any date on which he is alleged to have committed the offence; or*
    - (ii) *has been found guilty of an indictable offence with the period of two years ending on the date on which he is charged with the offence mentioned in sub-paragraph (a)."*

There is a statutory presumption in favour of bail. Bail may only be refused if certain criteria are met (these relate to the nature of the offence and the previous offending behaviour of the child) and that "the court considers that to protect the public it is necessary to remand him in custody". There is no reference to protecting the young person (unlike Article 39 of the Police and Criminal Evidence (Northern Ireland) Order 1989, in respect of the grant or refusal of bail by police. However, it could be argued that the "best interests" principle could be invoked by the court if it was considered necessary to refuse bail in order to protect the young person.

Alternatively, bail may be withheld where the offence charged is an arrestable offence and either the youth was already on bail when the new offence was committed or has been found guilty of an arrestable offence in the two years preceding the date of charge<sup>12</sup>.

The statutory provisions are subject to the overarching aims of the Youth Justice system including the best interests of the child principle which are set out in section 53 of the Justice (Northern Ireland) Act 2002 (as amended by section 98 of the Justice (NI) Act 2015. Decisions in respect of bail are governed by Article 5 of the European Convention on Human Rights.

Rule 13.1 of the United Nations Standard minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) states that "*detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time*" and (Rule 13.2) "*whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.*"

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<sup>12</sup> John F. O'Neill, "Criminal Practice and Procedure in the Magistrates' Court of Northern Ireland", *The Law Society of Northern Ireland* (2013)

**TABLE 1:**  
**Types of Youth Court Disposal**

**Absolute/Conditional Discharge**

Finding of guilt with or without conditions.

**Fine**

Limited to Level 3 on standard scale (i.e. £1,000).

**Reparation Order**

Up to 24 hours of direct reparation to the victim or the community.

**Attendance Centre Order**

12 – 24 hours at an Attendance Centre for programme work on addressing offending behaviour.

**Community Responsibility Order**

20 – 40 hours split between instruction in citizenship and relevant activity.

**Youth Conference Order**

Tailored conference plan with reparative / restorative theme – court ordered disposal.

**Probation Order**

6 months – 3 years community supervision and can include specified requirements such as attending a particular programme.

**Community Service Order**

Unpaid work from 40-240 hours in the community. Available for 16+.

**Custody Probation**

Custody followed by a specified period of Probation supervision. Available for 16+

**Juvenile Justice Centre Order**

Minimum 6 months to maximum 2 years with half spent in custody and half under Probation supervision in the community.

**Young Offenders' Centre Order**

Custodial sentence of up to 4 years served in the Woodlands Juvenile Justice Centre. Available for young offenders who are aged 16 or over.

**Other Custodial Orders**

A range of determinate and indeterminate sentences for grave offences.

## Annex C:

### International, European and domestic law obligations

PPS is guided by various international authorities in all actions concerning young people, such as:

- Guidelines on the Role of Prosecutors adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana 27<sup>th</sup> August – 7<sup>th</sup> September 1990).
- United Nations Standard Minimum Rules for the administration of Juvenile Justice, 1985 (The Beijing Rules).
- United Nations Convention on the Rights of the Child, November 1989.
- United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”) 14 December 1990.
- Havana Rules – Juveniles Deprived of Liberty (1990).
- The UN Committee on the Rights of the Child Comment No.10 (2007).
- The UN Committee on the Rights of the Child Comment No. 14 (2013).
- Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice.
- European Convention on Human Rights.
- Human Rights Act 1998.

## Annex D:

### Adverse Childhood Experiences

Adverse Childhood Experiences (ACEs) are stressful experiences occurring in childhood that affect a child either directly (e.g. child abuse and neglect) or indirectly through the environment in which they live (e.g. exposure to domestic abuse, parental mental illness, substance misuse or incarceration).

A growing body of research is revealing the long-term impacts that experiences and events during childhood have on individuals' life chances.<sup>13</sup> Adverse Childhood Experiences (ACEs) such as abuse, neglect and dysfunctional home environments have been shown to be associated with the development of a wide range of harmful behaviours including smoking, harmful alcohol use, drug use, risky sexual behaviour, violence and crime. They are also linked to diseases such as diabetes, mental illness, cancer and cardiovascular disease, and ultimately to premature mortality.

Some children in the care system in Northern Ireland may come from dysfunctional and chaotic families where drug and alcohol misuse, physical and emotional abuse and offending is common. Often they are victims of crime themselves.

Though children's backgrounds should not be used as an excuse for their behaviour, it is clear that these experiences may have contributed to their presence in the youth justice system.

The NI Safeguarding Board have initiated ACEs training with Social Services and Health Workers across Northern Ireland. This training has also been provided to Public Prosecutors. It is envisaged that all LAC will now be subject to the ACE questionnaire which has been tailored for young children.<sup>14</sup>

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<sup>13</sup> *The relationship between ACEs and the development of health harming behaviours and chronic disease in adulthood was first explored in the USA (Felitti et al 1998). Based on this research, organisations including the US Centers for Disease Control and Prevention (CDC) and the World Health Organisation (WHO) have strongly promoted research into ACEs internationally and have developed standard ACE tools to support measurement of the prevalence and impact of ACEs on population health.*

<sup>14</sup> <http://www.cypsp.hscni.net/wp-content/uploads/2017/11/5-Noreen-McBride-and-Colum-Benstead-SE-HSC-Trust-ACE-Pilot-Presentation.pdf>. *It is anticipated that the PPS will be entitled to request the completed ACE report when police notify the prosecutor of its existence on a file.*

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

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