



Guidelines for Diversion

PUBLIC
PROSECUTION
SERVICE

Independent, Fair
and Effective

Guidelines for Diversion

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Introduction

- 1.1 The purposes of diversion are:
- (i) to deal quickly and simply with less serious offenders;
 - (ii) to reduce the risk of re-offending;
 - (iii) to engage the offender in a restorative process with the victim and society as a whole;
 - (iv) to reduce to a minimum the offender's involvement with the criminal justice system.
- 1.2 Diversionary options can only be considered once the Public Prosecutor is satisfied that the evidential test for prosecution is met.
- 1.3 The evidential test for prosecution is met if the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction. A reasonable prospect of conviction exists if, in relation to an identifiable individual, there is credible evidence which the prosecution can adduce before a court, upon which evidence an impartial jury (or other tribunal) properly directed in accordance with the law, may reasonably be expected to find proved beyond reasonable doubt, the commission of a criminal offence by the individual who is prosecuted.
- 1.4 Once a Public Prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, the next consideration is whether the public interest requires prosecution. It is not the rule that all offences for which there is sufficient evidence must be prosecuted – Public Prosecutors must exercise their discretion as to whether a prosecution is required in the public interest.

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- 1.5 In 1951 Sir Hartley Shawcross QC MP, the then Attorney General, made the following statement to Parliament in relation to prosecutorial discretion:

“It has never been the rule in this country ... that suspected criminal offences must automatically be subject of prosecution.”

- 1.6 Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration in each individual case. In some instances the serious nature of the case will make the presumption a very strong one. However, 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. Public Prosecutors should positively consider the appropriateness of a diversionary option (particularly if the defendant is a youth) when considering where the public interest lies.

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Approach to Diversion

- 2.1 When considering the appropriateness of diversion, each case should be assessed on its individual merits based on the general factors for consideration below. Whether diversion is appropriate will depend on the seriousness of the offence, and the circumstances of the offence and the offender in each case.
- 2.2 Diversionary disposal should never be directed for the most serious indictable offences and only in exceptional circumstances where the offence is triable only on indictment. Other offences, less grave in themselves, may nevertheless be too serious for diversion to be appropriate by reason of the nature and extent of the harm or loss resulting from the offence.
- 2.3 For diversion to be directed, the offender must admit the offence. The admission must be clear and reliable for the restorative process to be effective. This admission may be made in the course of formal police interview or at any stage up until trial. The admission may be made to police or to the Public Prosecutor either by the offender in person or through his or her solicitor.
- In exceptional circumstances it may be appropriate to direct a diversionary option where the offender has made limited or partial admissions and where there are cogent public interest considerations in favour of diversion.
- There may be occasions where there is not a specific admission noted on the file received from police but yet it may be appropriate to direct diversion subject to an admission. This situation may occur when an offender has not actually denied the offence but yet has not had the opportunity to formally admit it, for example if there was no interview after caution or if the offence directed was not actually put to the offender. In such a situation, where although there is no formal proof of an admission, the Public Prosecutor considers from the information received that the offender would willingly admit to the offence were he given the opportunity, then the Public Prosecutor may direct diversion but indicate to police that a caution or informed warning cannot be administered unless the offender fully admits the

offence. The Public Prosecutor should advise police clearly that if the admission is not forthcoming the matter must be returned to the PPS without delay and a prosecution will follow. The Public Prosecutor will take out a Form 1 complaint on the basis that the evidential test for prosecution has been met.

- 2.4 In considering which diversionary option is appropriate the Public Prosecutor will take into account the facts and circumstances of the individual case. The three types of diversion currently available are informed warning, caution and youth conference. Each imposes different requirements upon the offender and although they are not convictions they are recorded for different periods as part of an offender's criminal record. The choice among diversionary options is not made rigidly according to an ascending scale of severity. If the offence under consideration is relatively minor and different to previous offences it may be appropriate to direct an informed warning or caution even if the offender has previously had the benefit of diversion. Similarly, if the offence is more serious it may be appropriate to direct a youth conference for a first offence.
- 2.5 Where it is considered that diversion is appropriate, an informed warning for a first offence will more commonly be directed in the case of a youth than in the case of an adult.
- 2.6 Cases which attract a mandatory penalty should not normally be diverted from prosecution as it is considered appropriate by Parliament that the offender incur a specific minimum punishment. A distinction can be drawn however between road traffic offences which carry a mandatory disqualification and those which carry mandatory penalty points. In the former case it will be extremely rare for diversion to be appropriate. In the latter case the public interest in the imposition of the penalty is less compelling and so diversion, while not usual, may be appropriate.

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- 2.7 There is a significant public interest in the effective and efficient use of the system for the issue of fixed penalty notices. By the nature of the process offenders are given an early opportunity to avoid prosecution. It will therefore rarely be appropriate to divert from prosecution cases of non-payment of a fixed penalty notice at the decision stage and particularly after proceedings have been commenced.
- 2.8 Where an offender has been the subject of diversion on a previous occasion this is a matter to be taken into account in considering the appropriate disposal in the instant case. For example if an offender has previously been diverted from prosecution in favour of an informed warning, in the event of a further offence of a similar nature the balance of public interest may favour disposal by way of caution, youth conference or prosecution. On the other hand if there is a significant time lapse between offences, or if the further offence is minor by comparison it may be appropriate for an offender who was previously dealt with by prosecution or youth conference to be made the subject of an informed warning or caution.
- 2.9 A Public Prosecutor directing on a case should consider the nature of the offence and the attitude of both the offender and the victim. The Public Prosecutor should consider the gravity of the offence and whether it can be suitably dealt with by diversion (as discussed above).
- 2.10 The attitude of the offender will be a crucial factor as he/she will have admitted the offence which will make diversion possible. In addition to the admission it is also relevant if he/she has made an immediate or early admission of guilt, expressed remorse or offered restitution. The Public Prosecutor will take into account the recommendations of police, as the Investigating Officer will have had direct contact with the offender and the victim.
- 2.11 Whilst the consent of the victim is not necessary, the attitude of the victim should always be considered. The decision whether to offer a diversionary disposal

remains one for the Public Prosecutor. Any interference with victims/witnesses will normally preclude diversion. A police report will normally include the views of the victim in relation to the circumstances of the offence and its impact on the victim, the extent of loss and damage, and whether reparation or compensation has been made. Where an issue of diversion may arise, the police report should also contain the views of the victim in relation to the suitability of the case being disposed of by way of diversion.

3.

Factors to be considered for and against diversion

3.1 The following factors in a case should be considered by the Public Prosecutor in favour of prosecution and against 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 offender was in a position of authority or trust and the offence is an abuse of that position;
- (iii) Where the offender was a ring-leader or an organiser of the offence;
- (iv) Where the offence was pre-meditated;
- (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 involved the possession or use of a firearm, imitation firearm or other weapon such as a knife;
- (viii) Where the offence was motivated by hostility against a person because of their race, ethnicity, sexual orientation, disability, religion, political beliefs, age or the like;
- (ix) Where the offence is prevalent;
- (x) Where the offence has resulted in serious financial loss to the individual, corporate person or society;
- (xi) Where the offence was committed against a person serving the public, for example a doctor, nurse, member of the ambulance service, member of the fire service or a member of the police service;
- (xii) Where the victim of the offence or their family has been put in fear or suffered personal attack, damage or disturbance. The more vulnerable the victim the greater the aggravation;
- (xiii) Where there is a marked difference between the actual or mental ages of the offender and the victim, and the offender took advantage of this;
- (xiv) Where there is any element of corruption;

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- (xv) Where the offender has previous convictions or diversionary disposals which are relevant;
 - (xvi) Where the offender is alleged to have committed the offence whilst on bail, on probation, or subject to a suspended sentence or an order binding the offender over to keep the peace, or released on licence from a prison or a place of detention, or otherwise subject to a court order;
 - (xvii) 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.

3.2 The following factors should be considered by the Public Prosecutor in favour of diversion and against prosecution:

- (i) Where the court is likely to impose a very small or nominal penalty or sentence;
- (ii) Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgment or a genuine mistake;
- (iii) Where the offence is not of a serious nature and is unlikely to be repeated;
- (iv) Where there has been a long passage of time between an offence taking place and the likely date of trial unless:
 - the offence is serious;
 - delay has been caused in part by the offender;
 - the offence has only recently come to light; or
 - the complexity of the offence has resulted in a lengthy investigation;
- (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 offender is elderly or where the offender is a child or young person;
- (vii) Where the offender was at the time of the offence or trial suffering from significant mental or physical ill health;
- (viii) Where the offender has put right the loss or harm that was caused (although offenders must not be able to avoid prosecution simply because they pay compensation).

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- 3.3 Deciding on where the public interest lies in a particular case is not simply a matter of adding up the number of factors on each side. It is a matter of judgment. In making that judgment Public Prosecutors must decide the weight to be attached to each factor in the circumstances of each case and go on to make an overall assessment. Assessment of the public interest will often involve the consideration of competing interests. Although there may be some public interest factors against prosecution and in favour of diversion in a particular case, sometimes the overall balance is that prosecution should be directed and those matters should be put to the Court by the defence in mitigation when sentence is being considered.
- 3.4 The background and circumstances of offenders involved in offences with co-accused can vary greatly as can their degree of involvement. Each offender should be considered separately and different disposals for different offenders within a single case may be justified. The reason for differentiation must be recorded and capable of explanation. Where prosecution is directed against some but not all suspects the court should be made aware of the other diversionary disposals.
- 3.5 Diversionary disposals are directed as an alternative to prosecution. However they require the co-operation of the offender in order to be effective. If an offender does not accept diversionary disposal the case will be returned to the Public Prosecutor to consider prosecution. It will usually follow that proceedings will issue as the prosecution test will already have been met and at this stage diversion is no longer a viable alternative. Given the processes and likely timescales involved in administering diversionary options, it will always be necessary to issue a Form 1 in summary only cases at the same time as directing the diversionary disposal. This is the responsibility of the directing Public Prosecutor so that if diversion is unsuccessful police may refer the case back to PPS for consideration of prosecution regardless of the fact the summary time limit has expired.

4

Diversiory Options

1. **Informed Warning**
2. **Caution**
3. **Youth Conferencing (Youth offenders only)**

4.1 Informed Warning

- 4.1.1 In this case the charge is read to the offender and he is warned about his future behaviour. An Informed Warning is a formal reprimand by Police, and although not a conviction, is recorded on a person's criminal record for a period of 12 months.
- 4.1.2 When a Youth receives an informed warning, a police officer who is a trained facilitator, will conduct the Informed Warning meeting at a police station in the district where the offence was committed. The facilitator will have researched the circumstances of the incident in question, including where possible the views of the victim (although they will not be in attendance), and carried out any other necessary preparation, prior to the actual meeting. During the meeting, the facilitator will seek to explore the incident in question by asking those present what happened from their perspective, how they felt at the time, and how they have felt since. An important element of the process is to discuss and expand the offender's understanding of the impact of the crime in terms of all those affected, and to attempt to identify what actions may be taken to repair the harm caused.
- 4.1.3 Before the meeting commences, the offender (and their parent/guardian in the case of a youth), will be required to sign a certificate acknowledging their understanding of the meaning of an Informed Warning, the consequences of the acceptance, and giving their informed consent to proceed with the disposal.

4.2 Caution

4.2.1 In this case a warning is administered in a formal context by a trained facilitator who may or may not be a police officer. However if it is not a police officer, a police officer must also be present.

In the case of a Youth, the aim of the caution is restorative and to provide an opportunity for the offender to meet the actual victim (who will have been invited) and affected members of the community. Cautions for youth offenders are referred to as 'restorative cautions.'

4.2.2 Prior to the meeting the facilitator should comprehensively prepare all participants engaged in the process. Neither the victim nor the offender can be coerced into meeting each other, but instead all parties should have the process explained to them, including the potential benefits from their perspective, in order that they can make an informed decision. If the offender refuses to meet the victim or the victim declines to attend in person, this does not affect the decision to dispose of the matter by way of a caution. The views of the victim can be introduced to the process by the facilitator, either verbally recounting what they have been told by the victim, reading out a letter, or possibly using a tape recording.

4.2.3 Before commencing the caution process, the offender (and their parent/guardian in the case of a youth) will be required to sign a certificate acknowledging their understanding of the meaning of a caution, the consequences of acceptance, and giving their informed consent to proceed with the disposal.

4.2.4 A caution is a formal reprimand by police, and although not a conviction, is recorded on a person's criminal record for a period of 30 months (2½ years) for youths and 5 years for adults.

4.2.5 Both informed warnings and cautions represent administrative processes for dealing with offending behaviour, such processes therefore potentially impact on Article 6 ECHR, the entitlement to a fair trial.

4.2.6 It is the responsibility of the facilitator delivering the informed warning/caution to ensure that the offender (and their parent/guardian in the case of a youth), provide informed consent to being dealt with by this means of disposal. This consent must be obtained in writing and before the disposal is administered. This requires a full explanation by the facilitator of the consequences of the disposal, for example recording on Criminal record.

4.3 Youth Conferencing

4.3.1 Where the offender is a youth, the Public Prosecutor may consider a diversionary youth conference as an alternative to prosecution. This type of restorative conference may involve a number of parties and must include as a minimum requirement the offender, police, an appropriate adult for the offender, and a youth conference co-ordinator. The victim of the offence is entitled to attend as is a legal representative of the offender. Relevant others may attend if deemed appropriate. Youth Conferencing seeks to encourage young people to recognise the effects of their crime and take responsibility for their actions by actively engaging the victim, offender and community in the restorative process.

4.3.2 In order for the youth conference to proceed, the youth must admit the offence and consent to the conference taking place. As with other diversionary disposals the consent must be informed. The youth will receive information leaflets, view a DVD showing a mock conference and plan, and will meet personally with a youth conference facilitator who will fully explain the process to him/her.

4.3.3 The conference itself is facilitated by a Youth Justice Agency co-ordinator (trained and qualified in the restorative process). At the conference, a police officer (also trained in restorative practices) attends along with the offender and an appropriate adult, his legal representative if he wishes, and in some cases the victim. The offender is given the opportunity to discuss the offence and what he/she is prepared to do to repair the harm caused to the victim (called an action plan). The victim is given the opportunity to tell the offender of the impact the offence has had and what they feel should be done to repair the harm. This may for example include an apology, reparation to the victim or community, participation in activities to address offending behaviour, treatment for alcohol and drug dependency. This plan must be agreed by the Public Prosecutor. If at any stage the offender fails to co-operate or to fulfil his responsibilities subsequent to the conference, then criminal proceedings can be commenced. A Youth Conference is a formal process and, although not a conviction, is recorded on a person's criminal record for a period of 30 months (2 ½ years).

Contact Details

Criminal Justice Inspection Northern Ireland

6th - 7th floor
14 Great Victoria Street
Belfast
BT2 7BA
Tel: 028 90 258000
Fax: 028 90 258033

Criminal Justice System Northern Ireland

www.cjsni.gov.uk

Independent Assessor of Complaints for PPS

C/O Law Society of Northern Ireland
Victoria Street Belfast

NSPCC

Block 1
Jennymount Business Park
North Derby Street
York Road
Belfast
BT15 3HN
Tel: 028 90 351135
www.nspcc.org.uk

Northern Ireland Court Service

The Information Centre
Windsor House
10 - 12 Bedford Street
Belfast
BT2 7LT
Tel: 028 90 328594
Fax: 028 90 412390
Text phone: 028 90 412920
Email: informationcentre@courtsni.gov.uk

Northern Ireland Office

Stormont Castle
Stormont Estate
Belfast
BT4 3TT
Tel: 028 90 520700
Text phone: 028 90 378085

Northern Ireland Prison Service

www.niprisonservice.gov.uk
Northern Ireland Prison Service Victims
Information Scheme
www.niprvis.gov.uk
Tel: 0845 2470002

Police Service of Northern Ireland

www.psni.police.uk

Probation Board for Northern Ireland

80 - 90 North Street

Belfast

BT1 1LD

Tel: 028 90 262400

Fax: 028 90 262470

Text phone: 028 90 262490

Email: info@pbni.org.uk

Probation Victim Information Scheme

Victims Unit

Imperial Buildings

72 High Street

Belfast

BT1 2BE

Tel: 028 90 321972

Fax: 028 90 321973

Email: victimsunit@pbni.org.uk

www.pbni.org.uk/victims

Public Prosecution Service

Belfast Chambers

93 Chichester Street

Belfast

BT1 3JR

Tel: 028 90 897102

Fax: 028 90 897030

Email: info@ppsni.gsi.gov.uk

www.ppsni.gov.uk

PPS Community Liaison Teams

Area	Tel
Belfast	028 90 897070
Ballymena	028 25 666563
Lisburn	028 92 625509
Omagh	028 82 257212
Londonderry	028 70 353316, ext 42
Newry	028 90 545928

Victim Support Northern Ireland

3rd Floor

Annsgate House

70 - 74 Ann Street

Belfast

BT1 4EH

Tel: 028 90 244039

Fax: 028 90 313838

Victim Support Line: 0845 3030900

Email: info@victimsupportni.org.uk

Youth Justice Agency

Corporate HQ

41 - 43 Waring Street

Belfast

BT1 2DY

Tel: 028 90 316400

Fax: 028 90 316402/3

Email: info@yjani.gov.uk

www.youthjusticeagencyni.gov.uk

www.youthconferenceserviceni.gov.uk

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For further information about the PPS,
please contact:

Public Prosecution Service
Belfast Chambers
93 Chichester Street
Belfast BT1 3JR

Tel: 02890 897102
Fax: 02890 897030
Email: info@ppsni.gsi.gov.uk
Website: www.ppsni.gov.uk

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