



**Public
Prosecution
Service**

Public Prosecution Service for Northern Ireland

Guidelines for the Prosecution of Young People

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Independent, Fair and Effective

FURTHER INFORMATION

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Guidelines for the Prosecution of Young People

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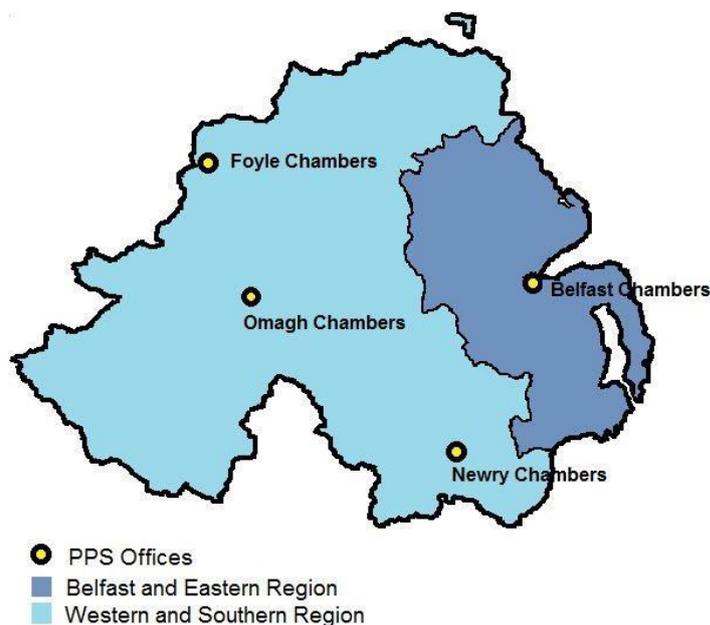
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About the Public Prosecution Service

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 the commencement of criminal proceedings. Throughout the policy the term young person (or young people) refers to a person (or persons) accused of a crime.
- 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.¹
- 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.

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).²
- 1.2.2 The key considerations governing the decisions made by 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

¹ UNCRC November 1989 - UK became a signatory in June 1992.

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

involved in the Youth Justice System to be the prevention of offending by 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 B**.

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); 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. This includes the development of initiatives to promote greater understanding of why young people offend, including recognition of the potential impact of trauma and Adverse Childhood Experiences (ACEs) – see **Annex C**.

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; and 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/she 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 D**. This includes guidance as to the trial process in the Crown Court, the summary trial of indictable offences and the use of bail.

1.5 PPS Youth Prosecution Team

- 1.5.1 The most common types of offences committed by young people include assaults, criminal damage and theft which are often associated with incidents of antisocial behaviour. Offending by young people tends to be less serious than offending by adults; the value of goods stolen tends to be smaller, the assaults less serious and young people are much less likely to be involved in serious offending behaviours such as fraud or drug trafficking.
- 1.5.2 In dealing with cases involving young people, the PPS has established a dedicated team of Youth Prosecutors, based in its regional offices, who have developed an expertise in taking prosecutorial decisions in cases involving young people who offend.³
- 1.5.3 Where a case is referred to the PPS from police, the Youth Prosecutor will determine whether the young person should be prosecuted or diverted from prosecution. If the Youth 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.
- 1.5.4 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.

1.6 Legal advice and representation

- 1.6.1 All young people are entitled to independent legal advice and representation. The PPS recognises the merits of young people obtaining the services of a solicitor on coming into contact with the criminal justice system to ensure their legal rights are protected. This is in accordance with the Committee on the Rights of the Child, General Comment number 12 and the right of the child to be heard.⁴
- 1.6.2 A solicitor can communicate directly with the PPS and make representations throughout the process on the young person's behalf. Representations can be made to the PPS at any stage of the process and even before a decision has been taken.

³ It should be noted that the majority of cases involving serious sexual offending, including by young people, are conducted within the PPS's Serious Crime Unit. All prosecutors are specialists in prosecuting sexual offences and have responsibility for providing prosecutorial advice to investigators and taking decisions as to prosecution.

⁴ For further information, please contact the Law Society of Northern Ireland (www.lawsoc-ni.org).

1.6.3 Solicitors and instructed counsel can also advocate on the young person's behalf at the police station, youth engagement clinics and in court, in the event that the case proceeds to the formal criminal justice system.

1.7 Structure of this document

1.7.1 The structure of this document is as follows:

- **Chapter 2** outlines the principles underpinning the youth justice system.
- **Chapter 3** sets out the PPS Test for Prosecution and an outline of the key principles guiding the decision as to prosecution or no prosecution in cases involving young people.
- **Chapter 4** presents information in respect of the diversionary options available to the PPS and the various factors to be considered in respect of diversion.
- **Chapters 5 and 6** are intended to explain the approach taken by the PPS when dealing with vulnerable young people within the criminal justice process. The immediate focus of these chapters is on:
 - Offending within children's homes (Chapter 5); and
 - Mental health and learning disabilities in young people who offend (Chapter 6).

Whilst the focus is on the above categories, it is recognised that there are many forms of vulnerability and that different vulnerable groups exist.

- Finally, **Chapter 7** provides an outline of the key issues considered by the prosecutor in cases involving young persons where the allegations relate to a sexual offence.

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).⁵

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.

⁵ <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 on the child which has been provided to the PPS by carers, the Youth Justice Agency, PSNI (including the Youth Diversion Officer), 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 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 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:

Informed warning

4.2.3 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.

Restorative caution

4.2.4 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.

Diversionsary youth conference

4.2.5 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 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 E**.

4.3 Youth Engagement

- 4.3.1 The objective of Youth Engagement is to assist in the early identification of those cases which are deemed suitable for diversion from the court system. Youth Engagement, 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 of being involved in an offence, youth justice workers from the Youth Justice Agency 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 With the exception of the National Driver Alertness Course (where an admission of guilt is not a prerequisite for entry onto the course), the general

principle is that the offender must admit the offence in order for diversion to be directed. The admission must be clear and reliable for the restorative process to be effective. This admission can be made in the course of a formal police interview or at any stage up until trial, and can be made to police or to a prosecutor, either by the offender in person or through his or her solicitor. Prosecutors are under a continuing duty to keep files under review and can consider whether diversion is appropriate at any time admissions are forthcoming from a young person.

- 4.3.8 There may be occasions where having regard to all the circumstances of a particular case, diversion can be directed in the absence of an admission. For instance, where a young person has not yet had an opportunity to formally admit the offence (e.g. there was no interview after caution or the offence was not actually put to the young person) or the young person perhaps lacked the maturity to admit an offence at interview. In such situations, if the prosecutor considers that an admission may be forthcoming, then diversion can be directed. Where this occurs, the prosecutor should indicate to police that the diversion cannot be administered unless the young person fully admits the offence, and if an admission is not forthcoming, the matter must be returned to the PPS without delay and a prosecution will follow.
- 4.3.9 In exceptional circumstances, it may be appropriate to direct a diversionary disposal where the offender has made limited or partial admissions and where there are cogent public interest considerations in favour of diversion.
- 4.3.10 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.
- 4.3.11 Indictable only offences will not be eligible for YE 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.
- 4.3.12 There are also some cases that may not be suitable for YE. 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.

- 4.3.13 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 only be in exceptional cases. 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.⁶
- 4.3.14 A summary of the young person's journey through the YE process is provided at **Annex F**.

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. A young person'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 has experience of care / 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 not offended before, is of previous good character or has only a very minor offending history;
 - (iv) The young person has a parent who suffers from an addiction;
 - (v) The young person suffers from an addiction;
 - (vi) The young person has a parent who is in prison;
 - (vii) The young person's parents are recently estranged;

⁶ For further information, please refer to the [PPS Policy for Prosecuting Road Traffic Offences](#).

- (viii) The young person has been freed for adoption;
- (ix) The young person has a learning disability;
- (x) The young person suffers from mental health issues;
- (xi) The young person has a personality disorder;
- (xii) The young person has been a victim of sexual assault and/or child sexual exploitation;
- (xiii) The young person has been a victim of bullying/harassment;
- (xiv) 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.

4.4.5 All available 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(s) 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 the National Driver Alertness Course) 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 persons 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.⁷
- 4.5.3 It should be noted that 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.

⁷ For further information about the maintenance of criminal records, please refer to: www.nidirect.gov.uk/articles/information-disclosed-about-you.

5. Offending within Children's Homes

5.1 Background

5.1.1 PPS prosecutors are often required to determine where the public interest lies when it is alleged that a child has committed an offence in the children's home where he or she lives. This section is not intended to apply to all offences committed by children with experience of care, 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 children with experience of care entering the youth justice system. Many of these children are vulnerable, which can contribute to the development of offending behaviour, often exacerbated by family instability, abuse, neglect and poor educational attainment.⁸ 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 children living in children's homes are at a high risk of offending behaviour because:⁹

- Many 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.

⁸ A Scoping Study of the Implementation of Routine Enquiry about Childhood Adversity (July 2015).

⁹ Bowles, R and Pradipto, R (2005): 'Young Adults in the Criminal Justice System: Cost and Benefit Considerations, Barrow Cadbury Foundation'.

- Many 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 difficulties or mental health problems and their offending behaviour may be caused by or otherwise linked with the disorder.
- 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. 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 or youth conferencing may be sufficient to satisfy the public interest and to reduce the risk of future offending. Informal responses, such as disciplinary measures and / or restorative practices applied within the home, may also be sufficient to satisfy the public interest.

5.3 The decision to prosecute

5.3.1 Prosecutors will consider all of the circumstances surrounding the offence(s) and all known personal 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.

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

6.1 Background

- 6.1.1 As with children with experience of care, young people with mental health difficulties also tend to be over represented in the youth justice system.
- 6.1.2 In Northern Ireland 'mental illness' or 'disorder' and related expressions are defined in section 3(1) of the Mental Health (NI) Order 1986. 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' is defined as "...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.¹⁰ Furthermore, a recent report has indicated that 1 in 10 school children in Northern Ireland have a diagnosable mental illness.¹¹
- 6.1.6 Children and young people in the criminal justice system with poor mental health are extremely vulnerable.

6.2 Key considerations

- 6.2.1 If a prosecutor becomes aware that a young person is suffering from any form of mental illness or learning disability, this will be taken in to account as part of the decision making process. It is important that those who have any vulnerability by reason of their mental health or capacity do not suffer discrimination, unfair criminalisation or unfair punishment, so far as possible

¹⁰ DHSSPS, 2010; Khan, 2016.

¹¹ Dr Phil Anderson, *Child & Adolescent Mental Health Services, February 2019.*

within the limits of ensuring public safety. It is also the responsibility of prosecutors to respect a young person's right to a fair trial

6.2.2 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 young person's mental illness, disability or learning disability;
- the likelihood of repetition; and
- the availability of suitable alternatives to prosecution.

6.2.3 Learning disability, like mental health, is a broad field and within that field there are many different types of disability. Some young people may have a dual diagnosis, whereby they have co-occurring conditions, such as mental health needs combined with a learning disability.

6.2.4 The problems and challenges faced by vulnerable groups are similar to those faced by other young people in the youth justice system, they are, however compounded by their specific circumstances.

7. Sexual Offences Committed by Young Persons

7.1 Background

- 7.1.1 The PPS understands the serious impact of sexual crime upon victims. 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 also recognises that young people who offend may themselves have been victims of abuse.
- 7.1.3 When sexual crimes are alleged to have been committed by young people, prosecutors are 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 Where there is an allegation of sexual abuse committed by a young person, and the evidential test is met, careful consideration must be given to whether prosecution is required in the public interest. In doing so, a number of factors will be taken in to account and these factors will vary from case to case. A further consideration for prosecutors dealing with such cases, is whether the public interest would be best served by the use of diversion to dispose of the case, e.g. Diversionary Youth Conference.
- 7.1.5 The file should include detailed background information in relation to both the suspect and the 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, as well as information regarding the effect a prosecution may have on the victim. In taking decisions, the PPS will also 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 person must be prioritised and dealt with as quickly as possible, to minimise avoidable delay throughout the process.

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 In accordance with the 2008 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. The 2008 Order also creates a number of offences which are relevant to children under the age of 18, where there is a relationship between the parties, such as a familial relationship or those involving a position of trust.

7.3 Public interest considerations

- 7.3.1 In any case where the evidential test is met, the public interest must be considered with care before a prosecution is commenced.
- 7.3.2 Examples of public interest considerations for and against prosecution are set out in the Code for Prosecutors. Prosecutors should, where appropriate, take into consideration the additional 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 person;
 - the age and understanding of the victim;
 - whether the offence has taken place in a familial setting where the young person 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 person and the victim in regard to their sexual, physical, emotional and educational development;
 - The psychological or physical harm caused by the young person;

- whether there was a relationship between the young person 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 person; and
- whether the young person has been subjected to any exploitation, coercion, threat, deception, grooming or manipulation by another which contributed to the offender's commission of the offence.

This list of factors is not exhaustive.

7.3.3 In taking a decision regarding prosecution, the prosecutor will consider all available evidence in the case. Additional information which has been provided by other agencies or individuals, such as Social Services, schools, parents/guardians, police in relation to what is considered to be in the best interests of the child as well as information pertaining to the welfare of the victim, will also be considered, where available, as part of the decision making process.

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 ostensibly 'consensual' and 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 arranging 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 have been made 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. 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.
- 7.5.2 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.
- 7.5.3 'Revenge Pornography' is where sexually explicit media content is publicly shared online without the consent of the pictured individual, usually following 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.
- 7.5.4 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.
- 7.5.5 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 images(s) and whether this was with the consent of the sender.

7.5.6 It should be noted that separate guidance is available which deals with how those who lead on safeguarding in schools and education establishments should respond to incidents involving sexting. This includes guidance produced by the UK Council for Internet Safety, working in collaboration with the Safeguarding Board for Northern Ireland, which sets out the circumstances in which the police may need to become involved.¹² Information is also available on the PSNI website.¹³

7.6 Sexual Offences Prevention Orders (SOPOs) and notification requirements

7.6.1 Under section 104 of the Sexual Offences Act 2003 a court may in appropriate circumstances, make a Sexual Offences Prevention Order (SOPO). A SOPO operates to prohibit the defendant from doing anything described in the order and will have effect for a fixed period of not less than five years or until further order. The SOPO places restrictions on the behaviour of the defendant and the only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant by reducing the motivation and/or opportunity to reoffend. The SOPO should be tailored to meet the dangers the specific defendant poses and should be proportionate and not oppressive.

7.6.2 A SOPO may be issued against a 'qualifying offender'. This is defined as a person who before or after the commencement of the Sexual Offences Act 2003:

- (i) has been convicted of an offence listed in Schedule 3 or Schedule 5;
- (ii) has been found not guilty of an offence listed in schedule 3 or schedule 5 by reason of insanity; or
- (iii) Is under a disability and has done the act charged against him in respect of such an offence; or
- (iv) has received a caution in respect of such an offence

7.6.3 Any breach of a SOPO (or interim SOPO) without reasonable excuse is an offence under section 113 of the Sexual Offences Act 2003

7.6.4 In accordance with section 80 of the Sexual Offences Act 2003, persons who have committed certain sexual offences can become subject to notification requirements if they:

¹² Formerly the UK Council for Child Internet Safety.

¹³ [Sexting and the law: A basic guide to help professionals and the public deal with incidents of sexting.](#)

- are convicted of an offence listed at Schedule 3;
- are found not guilty by reason of insanity;
- are found to be under a disability and to have done the act charged; or
- have received a caution in respect of such an offence.

This is often referred to as 'signing the Sex Offenders Register'.

7.6.5 The period of time that the young person will be subject to the notification requirements is dependent on a number of factors, including the type of offence, the sentence received and the age of the young person. The relevant period is calculated from the date of conviction. Details of the notification period can be found at section 82 of the 2003 Act, and it should be noted that the period is halved in the case of young people.

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 (for general enquiries)
complaints@ppsni.gov.uk (for complaints)

Website: 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

Website: www.psni.police.uk

Youth Justice Agency

41-43 Waring Street

Belfast

BT1 2DY

Telephone: 02890 316400

Website: www.justice-ni.gov.uk/youth-justice

Annex B: 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 27th August – 7th 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 General Comment No.10 (2007).
- The UN Committee on the Rights of the Child General Comment No. 14 (2013).
- The UN Committee on the Rights of the Child General Comment No. 12 (2009)
- 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 C:

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.¹⁴ Adverse Childhood Experiences 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, including some of those 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 prosecutors.

¹⁴ *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.*

Annex D:

The Youth Justice System in Northern Ireland

Introduction

In recognition of the evolving capacity of children in terms of their moral understanding, reasoning capacity and experience of life, and the fact 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. This includes 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 years. 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.

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 Youth Justice Agency (YJA) is responsible for the custody of a small number of 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 and gowns are not worn by Counsel 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 normally 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 identity, 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 below). 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.

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; and
- 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/she

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.¹⁵

Use of bail

There are strict legal criteria, reflecting international standards, pertaining to the deprivation of liberty, particularly in relation to children. There is a statutory presumption in favour of bail. Bail may only be refused if certain criteria are met, relating to the nature of the offence and the previous offending behaviour of the child, and where the court considers that to protect the public it is necessary to remand him/her 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

¹⁵ *R v Nottingham Justices ex parte Taylor* (1992) 1 QB 557.

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.¹⁶

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.*”

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.*
- (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).”*

¹⁶ John F. O'Neill, 'Criminal Practice and Procedure in the Magistrates' Court of Northern Ireland', The Law Society of Northern Ireland (2013).

Words not to be used in relation to children being 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."*

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 E:

Youth Conferencing

Types of 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 person, 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 to restrictions on his/her 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.

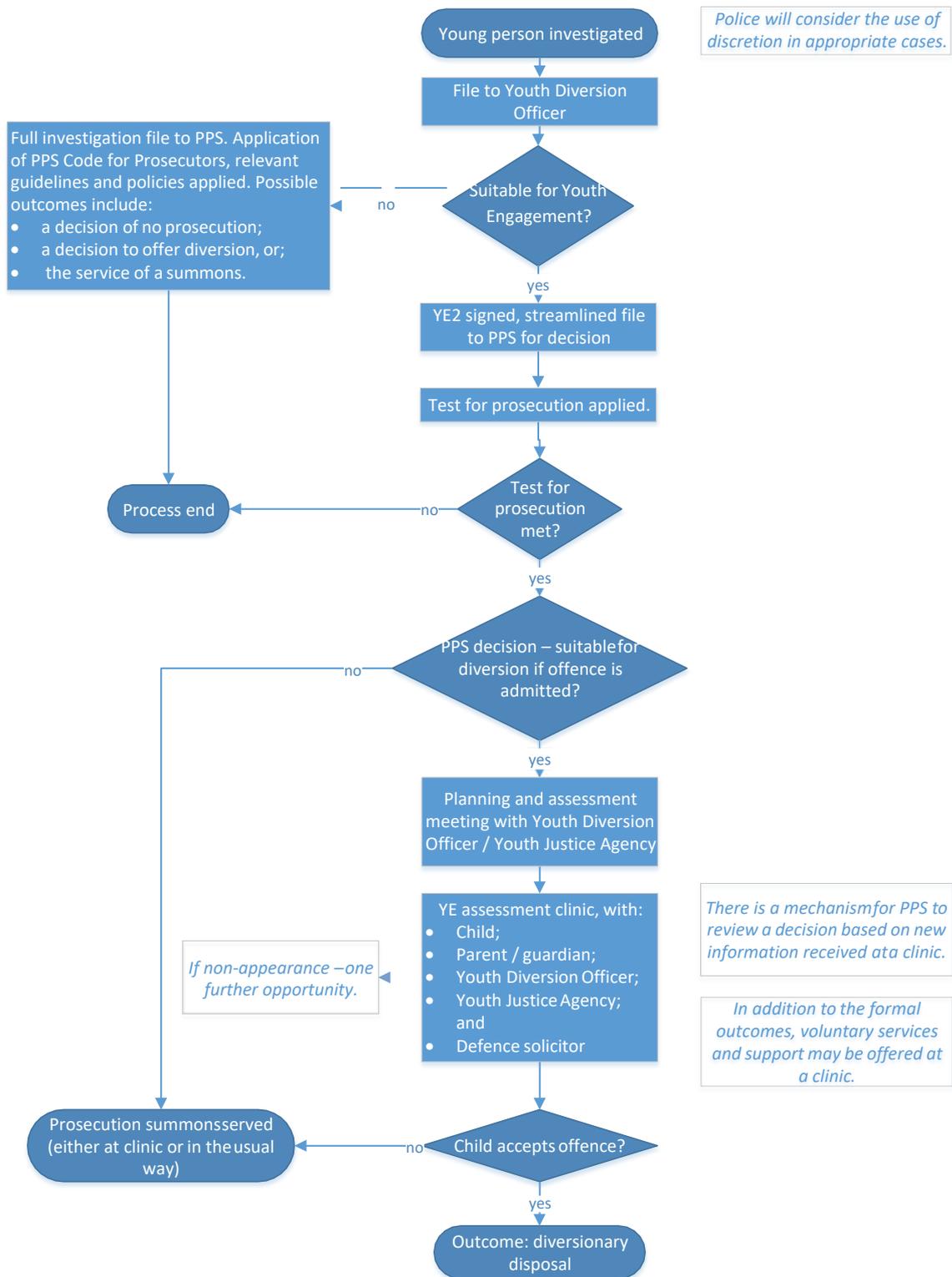
A youth conference plan must specify the period during which the young person must comply with the requirements specified and that period must not be more than one year.

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.

Annex F: Journey of the Young Person through the Youth Engagement Process



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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