



## PPS GUIDELINES FOR THE USE OF DIVERSIONARY DISPOSALS SUMMARY OF CONSULTATION RESPONSES

The PPS's Consultation on its Guidelines for the Use of Diversionary Disposals was issued on 16<sup>th</sup> November 2018 for a period of 12 weeks and closed on 8<sup>th</sup> March 2019. The aim of the consultation was to seek a wide range of views to inform an updated version of the guidance document.

Responses were received from:

- The Commissioner for Children and Young People.
- Reducing Offending Directorate, Department of Justice for Northern Ireland.
- Law Society of Northern Ireland.
- Victim Support Northern Ireland.

All comments raised were taken fully into consideration.

**We have provided feedback to each consultee and a summary of the main points raised is set out below.**

The Commissioner for Children and Young People for Northern Ireland (5 Comments)	
Comment	PPS Response
Recommendation – The PPS undertake a child's right impact assessment (CRIA) to ensure that its procedures complies with children's rights. Welsh Government guidelines provided for assistance.	<b>Noted.</b> The best interests of the child principle is central to all PPS working practices involving children and young people. Whilst certain aspects of the child's right impact assessment have been incorporated in the development of the Guidelines for Diversion policy, the majority of the considerations were adopted in the development of the PPS Young Offenders policy which is currently available for public consultation.
Recommendation – The PPS examine whether the diversionary landscape is too complicated and confusing for children and their parents.	<b>Noted.</b> Where appropriate, prosecutors will seek to divert a case involving a young person and it is important that there is a range of diversionary disposals available to meet the particular needs and circumstances of each case. Where a decision is taken for diversion, the

	<p>prosecutor can decide to give an informed warning, a restorative caution or a diversionary youth conference.</p> <p>In many instances support is available to young people and their parents in the form of a Youth Engagement Clinic. The young person will have an appropriate adult at the clinic and may engage the services of a legal representative. The youth justice worker and the Youth Diversion Officer (YDO) will also tell the young person what the prosecutor has decided in their case, and explain to them what that disposal means in practical terms and the options and possible support open to them as part of the YE process.</p> <p>Ultimately any reform of the youth justice process, including the range of diversionary disposals available, is a matter for the Department of Justice.</p>
<p>Has the PPS considered the proportionality as outlined in recommendation 6 of the Youth Justice Review?</p>	<p><b>Noted.</b> Whenever possible, low level offending involving young people should be addressed by parents and schools. It is only when there is an escalation in the frequency or seriousness of the offending behaviour that matters may progress to the criminal justice system.</p> <p>The best interests and welfare of the child or young person is always taken into account when prosecutorial decisions are being taken in youth cases. Prosecutors will consider whether a prosecution is likely to have an adverse impact on the child's future prospects that is disproportionate to the seriousness of the offending.</p> <p>Once in contact with the system, diversion should be considered in all but the most serious indictable offences involving a young person. As explained in the policy document, there are a number of diversionary disposals that can be offered.</p>
<p>Recommendation – Guidelines are amended to recognise the PPS's responsibility to have regards to</p>	<p><b>Noted.</b> When taking decisions in youth cases, prosecutors have a duty to ensure that the best</p>

<p>the best interest of children in all their work and that the PPS develops indicators and gathers information to demonstrate how they are adhering to this principle.</p>	<p>interests of the child or young person are fully considered. This will come into play once the Test for Prosecution has been met. At this juncture, prosecutors will have in mind the best interests of the child principle, and such considerations are factored into the decision. Additionally, the prosecutor will consider what impact the decision will have upon the young person.</p> <p>Whilst the best interests of the child is a primary consideration in the decision making process, it must be balanced with the interests of all other parties, such as victims and the wider community.</p> <p>Although the best interests of the child principle is factored into PPS decisions, at present the detail of such considerations is not recorded by prosecutors.</p>
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<p>Page 20 - Expressed serious concerns about the PPS diversionary disposals forming part of the criminal record. This is in direct conflict with recommendation 21 of the Independent Review of the Youth Justice in Northern Ireland.</p>	<p><b>Noted.</b> Any policy decisions in respect of the maintenance of criminal records in respect of young people is a matter for the Department for Justice.</p>
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**Department of Justice for Northern Ireland - Directing Offending Directorate (5 Comments)**

<b>Comment</b>	<b>PPS Response</b>
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<p>Page 7, Paragraph 2.5 The factor of an offender being a young person of otherwise vulnerable by virtue of age should receive more prominence at the start of the list of factors taken into consideration by the prosecutor.</p>	<p><b>Accepted.</b> Whilst this recommendation is accepted, it should be noted that the list sets out the factors taken into account when taking prosecution decisions and are not in any particular order.</p>
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<p>Page 12 Paragraph 3.10 Suggest that this paragraph which relates to the statutory aims of the youth justice system should sit earlier in the guidance as it applies to all decisions taken in respect of</p>	<p><b>Accepted.</b> The policy document will be amended accordingly.</p>
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<p>children, rather than being specific to DYCs.</p> <p>The legislative reference needs a slight amendment i.e. the statutory aims are contained in S.53 of the Justice (NI) Act 2002, as amended by the 2015 Justice Act.</p>	<p><b>Accepted.</b> The policy document will be amended accordingly.</p>
<p>Page 12 Paragraph 3.11 The YC service no longer exists as an identity. Clarification required along the lines of “The Youth Conference Service (YCS) has now been subsumed within the wider Youth Justice Agency (YJA) as part of their Youth Justice Services but the process remains the same”.</p>	<p><b>Accepted.</b> The policy document will be amended accordingly.</p>
<p>Page 13 Paragraph 3.15 and 3.16 Siting these paragraphs in a selection which lists diversionary disposals available to the PPS is a little confusing. Perhaps these paragraphs could be included prior or after this section on Youth Engagement.</p> <p>More of an explanation as being a process and not an outcome.</p>	<p><b>Accepted.</b> The policy document will be amended accordingly.</p> <p><b>Accepted.</b> The policy document will be amended accordingly.</p>
<p><b>Law Society for Northern Ireland (5 Comments)</b></p>	
<p><b>Comment</b></p>	
<p>Question 1 Response At Chapter 2, is there sufficient information as to the factors considered by the prosecutor for and against prosecution / diversion?</p> <p>On the whole members were not satisfied that sufficient information on the factors considered by a prosecutor on whether to prosecute or divert have been provided. The guidance offered in</p>	<p><b>Noted.</b> The PPS consider that sufficient information has been provided in relation to the factors considered for and against prosecution/diversion.</p> <p>The list is not exhaustive and it would not be possible to draft guidance to cover every type of case and all possible circumstances.</p>

<p>the consultation document fails to clearly outline all relevant factors considered and the various steps in each category that needs to be reached before making a decision. Particularly appears to insufficiently address complex and delicate situations which can develop or arise in the course of an investigation e.g. Implications for a young accused if they refuse to admit guilt due to involvement of Social Services, moving address or family strains. Complete transparency is required at each stage of the process.</p>	
<p><b>Question 2 Response</b> Is there sufficient information regarding the different types of diversion? (see Chapter 3).</p> <p>Noticeable brevity on explanation of “Types of Police Disposals” in comparison to that of the PPS. Much more open and transparent information need to be supplied.</p>	<p><b>Noted.</b> The section on police disposals is provided for information purposes only.</p> <p>Police disposals are referenced in the main body of the policy document and further detail has been provided in the annexes. Given that this is a PPS policy document, the information provided in relation to police disposals is considered to be sufficient.</p>
<p><b>Question 4 Response</b> A new section has been added to the guidance to address the recording of diversionary disposals on an individual’s criminal record. Is this information clear and easy to understand and/or are further details required? (see paragraphs 4.13 - 4.16).</p> <p>Concerns that the implication of accepting a diversionary disposal may not always be fully explained to an accused. If a legal representative is not involved, who explains this to the accused? Is that person monitored to ensure it is done in every case?</p> <p>Guidance requires Article 6 ECHR Compliant</p>	<p><b>Noted.</b> This is not a matter for the PPS.</p> <p>Police advise the defendant of their right to legal representation for the purposes of caution administration. It is the choice of the individual as to whether or not they access this right.</p> <p>Prior to the administration of a caution, a declaration is either read to the defendant by the police officer or alternatively, the declaration is given to the defendant to read. The declaration outlines the implications of accepting the caution. The defendant then signs the declaration and in doing so confirms that they understand the meaning of the caution and the consequences of acceptance.</p> <p>Police now have a standard form which is completed at all Youth Engagement Clinics which evidences whether legal advice was obtained or whether legal advice was</p>

<p>Representative from the Department has given evidence to the NI audit Committee suggesting that youth engagement attendees rarely benefit from legal representation</p>	<p>recommended but declined. Police are monitoring this situation closely as information suggests that whilst legal advice is recommended and available, it is not being accessed for the purposes of caution administration.</p>
<p>Question 5 Response Thinking about the document as a whole, is the information clear and easy to understand? (for example, is there any complex legal language or jargon which needs to be amended or explained?).</p> <p>Fully support the use of plain English. Should be road tested and revisited regularly.</p>	<p><b>Noted.</b> This will be considered in respect of all updates to the policy document.</p>
<p><b>Victim Support Northern Ireland (6 Comments)</b></p>	
<p><b>Comment</b></p>	<p><b>PPS Response</b></p>
<p>Question 2 Response Is there sufficient information regarding the different types of diversion? (see Chapter 3).</p> <p>This section could be improved by the addition of information about the test for prosecution and how it is applied to cases.</p> <p>The use of the phrase, 'proceedings will issue' is unhelpful and could be simplified, for example, 'court proceedings will follow.'</p>	<p><b>Noted.</b> The Test for Prosecution is set out in Chapters One and Two of the policy document and is also covered in more detail within the PPS Code for Prosecutors.</p> <p>Comments in relation to the phrase 'proceedings will issue' have been noted, however the wording is consistent with other PPS policies (including the Code) and will remain unchanged.</p>
<p>Question 3 Response The document includes a summary of the diversionary disposals available to police. Is this information useful / of interest? (see paragraphs 3.35 - 3.37 and Annex B).</p> <p>It is helpful that an explanation of disposals available to police and PPS in diversionary terms is</p>	<p><b>Noted.</b></p>

<p>included here. While it is additional information in some respects it is better to include the wider picture so that victims can be as fully informed as possible.</p>	
<p><b>Question 4 Response</b>  A new section has been added to the guidance to address the recording of diversionary disposals on an individual's criminal record. Is this information clear and easy to understand and/or are further details required? (see paragraphs 4.13 - 4.16).</p> <p>Victim Support NI welcomes this inclusion. One of the questions that persists for those who experience crime is how crime continues to impact them but not the offender and for those who find diversionary disposal difficult it is helpful to know how that crime is recorded on an individual's criminal record. The implications of diversionary disposal for the offender is backed up throughout the document. This is welcome.</p>	<p><b>Noted.</b></p>
<p><b>Question 6 Response</b>  Are there any other comments you would like to make about this guidance?</p> <p>The document is clear that victim's views should be taken into account in the process of deciding and implementing diversionary disposal. It is not clear how this will happen and, therefore, is likely to be disturbing for those victims who feel they were not properly considered. It is clear that victim's will not have the final say in whether or not the diversionary route is chosen but it is not clear what the purpose of victims' views being taken actually is nor is there any clarity about how those views</p>	<p><b>Noted.</b>  The PPS consider that sufficient information has been provided at paragraphs 2.16-2.19 in relation to how the victim's views are obtained and considered.</p> <p>This is consistent with other PPS policies and the Victim Charter.</p>

<p>will be gathered. Some clarity is essential so that victims know they have been asked for their views. Diversionary disposal can have both positive and negative effects on victims. Some victims, in certain kinds of cases, would prefer not to proceed to trial but to give the offender the opportunity for a diversionary approach. Their point is often that there has been so much suffering that they do not want to see more and they believe that a person should be given the chance to make amends and reform. Others find diversionary disposals a disturbing alternative to the traditional criminal justice process. It is, therefore, critical that victims are involved in the diversionary process and have it clearly explained to them. The PPS should, therefore, explore with Victim Support NI how we can collaborate to assist in gathering victim's views where diversionary disposal is being considered in order that Victim Support NI can assist in ensuring that victims are properly engaged in the process, the role of the diversion explained and their views properly heard. This would also provide an opportunity for views about restorative processes to be aired and restorative processes explained.</p>	
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**PPS would like to thank everyone who has taken the time to respond to this consultation.**