

DIVERSION FROM PROSECUTION

Practice Guidance for Justice Partners

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1. Diversion from Prosecution in Practice

Introduction

Diversion from Prosecution (DfP) is the process by which the Procurator Fiscal refers a person to their Local Authority to address the underlying causes of offending behaviour. All offences can be diverted and, in making the referral, Crown Office and Procurator Fiscal Service (COPFS) have decided that the offence in question meets the threshold for diversion and that this is the most appropriate course of action. It is for the Local Authority to assess the 'suitability' of the person's needs, not to assess the risk inherent in the alleged offence or reject a referral on the grounds of offence type. This is key to the successful delivery of Diversion from Prosecution in Scotland.

DfP is:

- An option for the Procurator Fiscal (PF) as an alternative to court proceedings (or before final decision is taken in relation to court proceedings).
- The PF will divert the person to their Local Authority to receive support to address the needs which underly the offending behaviour.
- While participation in the scheme is voluntary, the Local Authority must outline the outcomes of engagement or non-engagement with DfP.
- Further criminal behaviour or any interference with witnesses may result in the offer of DfP being withdrawn.
- When considering the matter for which DfP is offered, the content of any assessment or intervention will not be referred to in any future prosecution.

DfP does not address risk or provide a programme of offence-focused intervention, but plans to deliver the following Justice Practice Aims:

- Prevent further entrenchment in the justice system.
- Provide better access to, and engagement with, support.
- Address the needs that increase the risk of further offending.
- Give people the opportunity to take responsibility for, and effect change to, their behaviours and future actions.
- To utilise early intervention to improve outcomes and life chances for people.
- To reduce future victimisation by improving victim safety.
- To jointly assess and agree the person's offending-related needs.
- To engage people in focused activities that both parties agree are needed.
- To allow the person to develop pro-social behaviours and thinking.
- To promote citizenship and to be a valued member of your local community.
- To offer an alternative path that should redress social inequality and alleviate deprivation.
- To develop self-worth, self-esteem and build confidence.
- Deliver on unconditional positive regard.

DfP support should be:

- **Prompt** - decisions should be made within a specified timeframe considering the impact of any delay on the person's willingness to engage.
- **Immediate** - DfP should be in place as soon as possible after the alleged offence to enable a swift intervention, which can interrupt a cycle of offending and/or prevent further offending.
- **Relational** - it is important to build a relationship with the person, understand their individual circumstances and be caring, empathic and compassionate.
- **Person-centred** - the plan must focus on the person and the specific needs that underly the alleged offence and clearly state the parameters of the intervention.
- **Flexible in approach** - taking into consideration the person's home/work responsibilities, learning style and communication needs at the beginning of DfP.
- **Open, honest and transparent** - ensuring that our response is fair and non-judgemental.
- **Empowering** - underpinned by a belief in change.
- **Trauma informed and responsive** - when engaging someone in DfP it is important that there is an understanding of the impact of trauma and responding appropriately.
- **Victim aware** - throughout DfP it is important that the impact of the offence on the victim is a key consideration.

2. Responsivity - Assessing and Supporting People with Learning Disabilities, Neurodiverse Conditions, and Mental Health Issues

Initial Contact

Upon receiving the DfP referral, the practitioner should note any information which might identify if there are responsivity needs. This will include checks of appropriate databases/records, communication with current/previous workers, and completing an initial screening to identify any indications of learning disabilities, neurodiverse conditions, or mental health issues.

If this initial contact raises significant concerns about the person's welfare and/or mental state then support should be provided to access health services i.e. mental health triage services, accident and emergency services, emergency GP appointment. The practitioner should obtain consent from the person or their guardian where appropriate.

Communication and Interaction

Where it is believed that a person is, or has been identified as neurodiverse, learning disabled, or having a mental health condition, clear, simple and direct language should be used. The practitioner should avoid legal and social work jargon, acronyms, complex sentences, and expressions that are familiar only to those working in the justice system. Practitioners should confirm understanding regularly by asking the person to repeat information in their own words.

Practitioners may have to consider adjustments to accommodate the person's needs, this can include home visits instead of office appointments. If meetings are in the office the practitioner should ensure the environment is as comfortable and trauma informed as possible, considering factors like, the building set-up, room types, seating arrangements and room layout.

Practitioners should also consider allowing additional breaks during assessments and appointments, modifying questioning techniques as noted above, or consider whether an advocacy worker is required both at the assessment, and during the programme of intervention.

Use of Support Tools

From the first meeting with the person, the practitioner should ask what the preferred communication method is and agree on how this will be actioned. Wherever possible, practitioners should provide written information in an easy-to-read format. This can take the form of visual aids, diagrams, or other available tools that might help in explaining complex information. Practitioners should consider the use of communication aids or assistive technology if required.

Access to Support Services

Provide information about available support services – for example mental health or education - relevant to the person's needs. Importantly the practitioner should offer and aid the person in

accessing these services if required. Supporting independence and modelling appropriate behaviour and interactions is pivotal to achieving good outcomes but this must be balanced with providing enough support without creating dependence.

Coordination with Support Networks

People may already have an existing support network and practitioners should, at the earliest opportunity, engage with these networks and with appropriate consent share relevant information to ensure cohesive support.

3. Suitability Process

Types of Diversion

Pathway A: Following submission of the Suitability Report, if an intervention programme is recommended, this may commence immediately, without waiting for a response from COPFS.

Pathway B: Following submission of the Suitability Report, the agency must wait for a response from COPFS before beginning any intervention work. There should be good communication between the agency and COPFS to ensure that agreement has been given and timescales of the work agreed before the intervention begins.

Templates: There is a Suitability Report Template for use with either Pathway, as well as specific Suitability Reports for Pathway A and Pathway B – it is up to Local Authorities to decide which to use. In all cases, the report must be submitted within 25 working days of receipt of the COPFS Referral.

Suitability Report Considerations

All efforts should be made to contact the person on multiple occasions and these efforts should be recorded within the Suitability Report. Where no contact has been able to be made, an update should be provided to COPFS at the earliest opportunity to allow them to consider alternative options. At this stage, no further action would be required by the Local Authority although the Suitability Report should still be completed and retained.

The Suitability Report must provide details of the alleged offence, although the Standard Prosecution Report (SPR) must not be shared with the person. Additionally, the report is not assessing or considering guilt or innocence, nor is it a risk assessment, but the person must acknowledge that an incident did take place. The focus of the report is to discuss the needs that have been identified and advise of any action or intervention that can be provided to support the person to address these needs and promote their welfare. In some cases, the focus of DfP will be to support the individual's ongoing engagement with another agency / any sustained progress since the date of offence.

Prior to the person consenting to participate in DfP, it is important they are provided with a full explanation of the process, the decisions they can make and the potential range of outcomes, which must cover the following:

- It should be clearly explained that they can seek legal advice before deciding whether to participate.
- The decision to engage is voluntary and they can choose not to participate.
- Any information provided about the alleged offence during the DfP process **should only** be used by COPFS if the person fails to comply with, or withdraws from, DfP prior to completion. Information provided in relation to other offences which is freely given may be used by COPFS.

- Whilst concepts of guilt or innocence are not required, the person should acknowledge some degree of responsibility for the circumstances which precipitated the alleged offence, and a willingness to take advantage of the support offered to them.
- The expectations of engagement (Intervention Plan), the timescales and the potential outcomes of the process.
- That it is the decision of COPFS as to whether a diversion is successful or not, though the practitioner will submit a recommendation within their report to aid the decision-making process.
- Clear explanation regarding where information will be shared in respect of public protection and/or risk of harm to self/others and the action likely to be taken in line with the Local Authority child and/or adult protection procedures.

Suitability Report Inclusions

- A record of the efforts made to contact the person, the offered appointments, and whether the person attended.
- The person's understanding and views of the referral from COPFS.
- The circumstances, thinking and behaviour in relation to the alleged offence.
- An assessment of the person's needs, specifically those identified in the PF referral and any others noted during the assessment process, including any the person themselves identifies.
- The person's understanding of the impact of their behaviour on others such as victims, family and community.
- The person's willingness to be involved in DfP. This should include identifying specific activities for example advice, support, intervention to address needs, mediation, restorative practices, and referral to other agencies.
- A clear statement as to suitability and recommendation for progression, or not, of the DfP intervention.
- An Intervention Plan with indicative timescales.
- Where the referral indicates Pathway A, but during assessment further information indicates that Pathway B would be more appropriate, the practitioner should immediately liaise with the PF prior to completing the Suitability Report.

4. Intervention Process

Pathway A

The Pathway A general principles are as follows:

- The skills, knowledge and experience of the practitioner should be proportionate with the needs and intervention identified.
- The areas for intervention will be based upon the needs identified during the assessment process, which may have included use of an agreed tool such as an “outcome star” or Liquid Logic’s Radar Chart.
- The intended levels of contact during the diversion intervention should be commensurate with the circumstances of the case.
- The Intervention Plan should identify and address the needs that precipitated the person’s involvement in the alleged offence.
- The use of appropriate needs-focused intervention tools along with any appropriate referrals to services and partner agencies should be completed.
- A relationship based and trauma informed approach should be adopted when undertaking intervention activity.
- An assertive outreach approach should also be adopted, where appropriate and safe to do so, and should include opportunities for regular home and community visits as agreed with the person.
- Interventions should be delivered in a safe space that is conducive to undertaking focused sessions.
- It is important to choose the most appropriate intervention tool(s) to meet the needs of the person with consideration of the person’s own learning style. For example, more visual aids or scenario-based intervention work rather than written worksheets or tasks.
- Regular updates and review of the outcome star, radar chart or relevant equivalent should be used to record progress and outcomes throughout the intervention period.
- Where appropriate, and only at the request of the victim, restorative practices can be considered as a part of the intervention.
- In the case where a person subject to DfP moves address or relocates to another area prior to the work being completed, an individual assessment should be undertaken. This should consider and agree if
 - the work continues, potentially using digital communications **or**
 - the work ends early, and an Intervention Report is provided to COPFS **or**
 - the receiving authority agrees and is able to complete the intervention on behalf of the sending authority.
- A DfP is not transferrable between Local Authorities and if the work cannot be completed or overseen, this should be reported to COPFS by way of the Intervention Report.
- The Service User Feedback Template should be completed at the end of the intervention and used to support improvements in service delivery.

Pathway B

The Pathway A general principles remain relevant but are supplemented as follows:

- Where paraprofessionals deliver the intervention, line managers must be confident that they are appropriately trained and supported to manage the complexities of the DfP and have access to supervision and/or mentoring support.
- There is a recognition that complex cases may include sexually harmful or domestically abusive behaviours, however, the focus of intervention is on the underlying needs not risks – DfP is not a risk assessment and management intervention.
- Throughout the delivery of DfP, consideration should be given to any necessary actions relating to public protection, child protection and any adult support and protection concerns that require action in line with local procedures.
- At commencement of the intervention there should be an agreed programme to update the outcome star, radar chart or relevant equivalent.
- If at the end of the DfP period there is work outstanding and a continuation would be of benefit, contact should be made with the referring PF to seek authority to extend the timeframe.

Interventions

Delivery of Constructs, Up to You, MFMC/MF2C, the Caledonian System etc. is not appropriate for anyone on DfP, as these are rooted in an accredited risk assessment being completed. However, certain elements of the work can be used, where the focus is on wellbeing, positive outcomes or improved thinking skills. There are no national DfP accredited individual or group work programmes, but the following are possible activities that DfP providers may want to consider.

- Consent, boundaries and permission
- Consequential thinking and decision-making
- Strengths-based exercises
- Icebergs, locus of control and Maslow
- Healthy relationships and friendships
- Addictions
- ACEs and trauma
- Community engagement and volunteering
- Employment, Training and Education
- Housing/accommodation stability
- Advocacy, access to services and signposting to specialist providers where appropriate

In some cases, the focus of DfP will be to support the individual's ongoing engagement with another agency/any sustained progress since the date of offence.

Intervention Report

On completion of the DfP, an Intervention Report should be provided to COPFS detailing progress, outcomes and any outstanding activities or work required. There is an Intervention Report Template for use with Pathway A and Pathway B separately. In all cases, the report must be submitted within 10 working days of the last contact with the person where the DfP has been completed successfully or five working days where the DfP has not been successful.

5. Justice Practice Process Map

