

ANNEX A

OFFENCE SERIOUSNESS FACTORS

BASIC ELIGIBILITY FACTORS

For diversion from prosecution to restorative processes *to be considered*, the prosecutor must be satisfied that the following requirements have been fulfilled, the “eligibility requirements”:

- There is sufficient evidence to prosecute the offender;
- The public interest justifies prosecution¹;
- The offender is aged 18 or over at the time of the offence;
- There is an identifiable victim²;
- The offence is *not* one of the following excluded offences³:
 - an indictable only offence;
 - offences of domestic violence⁴;
 - sexual offences or any other offence with sexual overtones⁵;
 - road traffic offences;
 - offences where a death resulted;
 - offences where there is evidence of racial, religious or homophobic hostility towards the victim;
 - offences against public justice;
 - any offence where a restorative process may compromise a criminal action against an offender⁶;
 - any offence where a restorative process may compromise a civil action against an offender⁷;
 - any offence with a child victim in which there is more than five years disparity between the age of the offender and that of the child;
 - any offence that places the defendant, if convicted, in breach of a court order;
 - any offence that is committed during the currency of a court order⁸.
 - any offence committed while the offender is on prison licence
 - offences (not otherwise excluded above) to which sections 109 – 111 of the Powers of Criminal Courts (Sentencing) Act 2000 apply.⁹

¹ Where the public interest does not justify a prosecution, a police caution may still be appropriate depending upon the circumstances of the case and seriousness of the offence.

² For the purposes of the pilot the term “victim” excludes businesses, organisations or other corporate bodies where no individual can be identified as suffering harm. E.g. theft from or damage to a department store would be excluded whereas theft or damage to a small grocery store could be included.

³ Including attempt, incitement and conspiracy.

GENERAL PUBLIC INTEREST FACTORS

Public interest factors to be taken into account when considering whether diversion to restorative processes is in principle appropriate

Where the basic eligibility requirements have been fulfilled, an offence ought to be considered in principle suitable for diversion to restorative processes **unless** one or more of the following factors is present:

The offence is too serious for any form of diversion to be justified in the public interest¹⁰ (see specific offence seriousness factors below);

A conviction is likely to result in a significant sentence;

A prosecution would have a significant impact on community confidence;

The offender has recent convictions for similar matters¹¹;

⁴ Domestic violence is defined by the CPS as “Any criminal offence arising out of physical, sexual, psychological, emotional or financial abuse by one person against a current or former partner in a close relationship, or against a current or former family member”

⁵ The term “sexual offence” includes any offence under the Sexual Offences Acts 1956 –1992 or the Sexual Offences Act 2003 and any other offence with sexual overtones, including indecent exposure.

⁶ E.g. If other suspects for an offence are still outstanding or a co-accused is to be prosecuted, a conference at which the facts of the case are discussed between victim and offender may prevent the co-accused from receiving a fair trial.

⁷ A conference may prejudice outstanding civil proceedings.

⁸Not including financial orders, such as fines or compensation. PNC checks will be made. However, a condition of receiving a CC will be that offender declares no court orders are outstanding.

⁹ Fixed or minimum custodial sentences for certain offences, including drug trafficking and burglary.

¹⁰Aggravating factors to take into account when considering the seriousness of an offence are as follows (the list is not exhaustive):

- A weapon was used during commission of offence;
- The offender abused a significant position of trust;
- The offender was a ringleader/organiser;
- The offender was part of an organised team;
- The offence contained elements of professionalism;
- The victim was deliberately targeted and put in considerable fear;

¹¹ Prosecutors should take into account any recent previous convictions or cautions that are similar to the present offence and any grounds for believing that the offence is likely to be continued or repeated. However, previous convictions are not a bar to participation in this scheme, as a restorative process may work to curb offending behaviour where other interventions have previously failed to do so. Previous convictions are just one of a number of factors to be taken into account when considering whether diversion is appropriate.

The weight that should be placed on previous convictions depends on how recent they are, their seriousness, their relevance to the current offence and whether or not they relate to the current victim. However, they must be considered as part of the case as a whole. For example, a recent conviction for an offence committed on the victim may tend to weigh heavily against diversion but the circumstances of the latest offence and the attitude of the offender and the victim may tip the balance in favour of diversion.

OFFENCE SERIOUSNESS FACTORS

These factors should only be applied after a decision has been made, in accordance with the Code for Crown Prosecutors, that there is sufficient evidence for a realistic prospect of conviction and it is in the public interest to prosecute the case.

REMINDER - The following offences are excluded from diversion to restorative processes:

<p>Any indictable only offence</p> <p>Any offence involving domestic violence;</p> <p>Any sexual offence or any other offence with sexual overtones;</p> <p>Any offence where there is evidence of racial religious or homophobic hostility towards the victim;</p> <p>Road traffic offences;</p> <p>Any offence where a death has resulted;</p> <p>Offences against public justice;</p> <p>Any offence where a conference may compromise a separate criminal action against an offender;</p> <p>Any offence where a conference may compromise a separate civil action against an offender;</p> <p>Any offence with a child victim in which there is more than five years disparity between the age of the offender to that of the child;</p> <p>Any offence that places the offender, if convicted, in breach of a court order;</p> <p>Any offence that is committed during the currency of a court order;</p> <p>Any offence committed while the offender is on prison licence;</p> <p>Offences (not otherwise excluded above) to which sections 109 – 111 of the Powers of Criminal Courts (Sentencing) Act 2000 apply.</p>
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1. The following guidance sets out the factors to be taken into consideration when deciding whether an offence is suitable for diversion to the RJDP. It is directory only. Not all offences are included within the guidance. Any offences that are not shown should be dealt with in accordance with the general public interest factors set out on page 3.

2. It is important to note that the aggravating and mitigating factors should be weighed in the balance, that is to say that the presence of an aggravating factor does not automatically mean that the case should proceed to prosecution; there may be factors that mitigate the offence as well, meaning that diversion to the RJDP is appropriate.
3. In cases where no aggravating factor is present, the offence should be suitable for diversion to the RJDP. If there are no aggravating factors but substantial mitigating factors exist, it may sometimes be necessary to reconsider the original decision that the public interest justified a prosecution.
4. Remember that the final decision should take into account not only the circumstances of the offence but also the circumstances of the offender, in particular his/her previous convictions (if any) together with any other considerations that the prosecutor considers relevant to the decision.
5. In some cases the victim may already have indicated to the police that he/she would prefer the offence to be diverted to the RJDP. This must be taken into account when considering whether the case is suitable for diversion to the RJDP and will be a factor in favour of diversion. However it must be weighed in the balance with other public interest factors set out in this document before a final decision is reached.

Dangerous dogs

6. Offences under the Dangerous Dogs Act 1991 (dog dangerously out of control) may be suitable for diversion to the restorative justice diversion project. Factors to take into account are the degree of injury, any steps that the offender has taken to prevent re-occurrence (including destruction of the dog) and the degree of culpability on the part of the offender. Where no attempt was made to control or restrain the dog where the dog is clearly aggressive in nature, or where there is a history of aggression with the dog, diversion may be less suitable.

AGGRAVATING FACTORS	MITIGATING FACTORS
Serious injury. No attempt made to restrain dog.	Minor injury. Steps taken to prevent re-occurrence. Circumstances beyond immediate control of offender.

Theft/deception

- 7. Many theft cases will be suitable for diversion to the restorative justice diversion project, even where the loss may be quite substantial.. Minor offences of theft, for example, theft from a shop, should not normally be diverted to restorative processes. If diversion is appropriate a simple caution should be imposed or no further action taken.
- 8. Credit card or cheque frauds involving more than one victim ought usually to be prosecuted, especially if there is evidence of planning and sophistication. However an isolated incident could be suitable for diversion.
- 9. Historically, offences involving a breach of trust (such as theft and false accounting) have usually been prosecuted on the basis that they are too serious to caution. While prosecution should remain the norm where the offender is in a position of some authority, or the amount taken is significant, for employees with no significant authority, diversion to restorative processes should be considered.

AGGRAVATING FACTORS	MITIGATING FACTORS
Sophistication/elements of professionalism	Poverty/personal need
Part of a series of offences	Coercion from others
Property stolen to order	Low value

Motor vehicle related theft offences

- 10. Offences of taking without the owners consent (including aggravated vehicle taking), theft of motor vehicle and motor vehicle interference may be suitable for diversion to restorative processes.
- 11. Prosecutors should consider in particular the nature of any driving, any injury caused to another, any evidence of drugs/alcohol, whether or not there were elements of professionalism and the degree of damage caused (if any) when reaching a decision. If someone other than the defendant is injured as a result of the driving, diversion would usually be inappropriate.
- 12. Where diversion is deemed suitable and there are connected road traffic offences, for example, document offences such as no insurance and no test certificate, the main

offence may, at the discretion of the prosecutor, be split off and diverted while the road traffic offences should, subject to passing the evidential and public interest tests, be prosecuted. However, where there is evidence of drugs or alcohol, or the offender drove whilst disqualified, it would not normally be appropriate to divert the main offence.

Where a road traffic offence is an essential element of the offence e.g. aggravated vehicle taking where dangerous driving is alleged, the offence is excluded from the RJDP.

AGGRAVATING FACTORS	MITIGATING FACTORS
Serious risk to other people or property. Evidence that victim was targeted. Evidence of professionalism (car to be “ringed” or stolen to order). Vehicle deliberately damaged/destroyed after use. Injury caused to others. Serious damage caused to vehicle and/or other property. Confrontation or threats of violence to others.	Minor damage. No evidence of bad driving or excessive speed. The taking is a technical offence. Vehicle returned.

Burglary

13. Many non-dwelling burglaries, together with burglaries of sheds, outhouses and garages within the curtilage of a dwelling, will in principle be suitable for diversion to the RJDP unless there are aggravating features, such as elements of professionalism, evidence of targeting, ram raiding or confrontations with threats of violence.

14. Burglary or aggravated burglary of a dwelling is not suitable for diversion to restorative processes because of the inherent seriousness of the offence and the current profile of the offence.

AGGRAVATING FACTORS	MITIGATING FACTORS
Night time Owner/Occupier present	Vacant premises. Coercion from others.

Confrontation/violence. Professionalism. Ram raiding. Victim deliberately targeted or particularly vulnerable.	
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Criminal damage/arson

15. Many criminal damage cases will be suitable for diversion to the restorative justice diversion pilot. Even relatively minor offences of criminal damage that may be likely to be resolved to the satisfaction of all parties by way of a simple payment of compensation may still be suitable for diversion to restorative processes.

16. If the victim was targeted because of particular vulnerability then prosecution should normally take place. On the other hand, if the circumstances of the offence indicate some background, for example a dispute between the parties, ongoing bad feeling or a degree of provocation by the victim, diversion to restorative processes may be effective in resolving the situation and preventing further offending.

17. Offences of arson are serious because of the potential consequences. Even acts of simple arson, for example, setting light to rubbish in a dustbin outside a house, have the potential to spread to other property or endanger others. For that reason, whatever the mitigation or circumstances precipitating the offence, diversion should only be considered if the risk of the fire spreading was minimal and no life was in serious danger.

AGGRAVATING FACTORS	MITIGATING FACTORS
Potential of greater danger/ injury to others. Potential of serious damage to property.	Provocation. Impulsive. Damage not deliberate.

Assaults

18. Offences contrary to section 18 of the Offences Against the Person Act 1861 (OAP Act) are too serious for diversion to be appropriate. Similarly, any assaults under section 20 or

section 47 of the OAP Act where serious injury was caused are likely normally to require a prosecution to take place. However, diversion to the RJDP may in principle be suitable where, for example, there was an element of provocation or the action was impulsive.

19. However, many other offences of assault should be considered suitable in principle for diversion to the RJDP. There is some evidence from a similar project in Canberra, Australia that restorative processes can be particularly effective in reducing re-offending rates in relation to offences of violence.

20. If the victim was targeted because of a particular vulnerability then prosecution should normally take place. On the other hand, if the circumstances of the offence indicate some background, for example a dispute between the parties, ongoing bad feeling or a degree of provocation by the victim, diversion to restorative processes may be effective in resolving the situation and preventing further offending.

Reminder – offences of domestic violence cannot be diverted to the RJDP.

AGGRAVATING FACTORS	MITIGATING FACTORS
Serious injury caused. Weapon used. Unprovoked attack. Attack planned.	Impulsive action. Provocation. Minor injury

Harassment – Protection from Harassment Act 1997

21. Some harassment cases will be suitable for diversion to the restorative justice diversion pilot. For example, where the harassment amounts to a dispute between neighbours, and the victim is not vulnerable. These types of dispute often affect the quality of life of other members of the community and diversion from prosecution to restorative processes may be more successful in resolving the problem than prosecution through the courts.

22. However, where the victim is particularly vulnerable and where it is likely that a restraining order would have been imposed by a court, the case should not be diverted to restorative justice. Where the harassment amounts to domestic violence, diversion to the pilot is excluded in any event. Divertable cases will be ones where both parties consider that restorative processes would assist in resolving differences and reducing the risk of re-offending.

AGGRAVATING FACTORS	MITIGATING FACTORS
Persistence. Stalking of victim Use of, or threats of, violence. Victim vulnerable. Interference with employment/business. Invasion of victims home.	Initial provocation. Short duration.

Football offences

23. Offences committed in relation to a designated football match, for which banning orders may be applied, will normally be too serious for diversion to the RJDP. Any decision to do so should only be made after full consultation with the police, as there are significant issues of community confidence in relation to these offences.

Crown Prosecution Service
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