**Diversion from Prosecution (DfP) in Context**

**Briefing for Victim Support Scotland - Service User Panel Consultation**

**Section 1 – Consultation with Victims of Crime**

***Why are we consulting you?***

**An explanation of who we are at** [**Community Justice Glasgow (CJG) Partnership**](https://www.glasgowcpp.org.uk/communityjustice) **and our aims are outlined in the section 3 of this briefing**. On reading further, there may seem to be a conflict between our work and the concerns and experiences of victims of crime. However, one of our key focus areas is to ensure that the views of victims affected by offending are understood and used to help shape practice in tackling re-offending.

**Your voice matters to us –** as you will see in reading further, we are mandated in legislation to provide services to those in the criminal justice system and that is our essentially our job, *but* the team members at Community Justice Glasgow and our partners believe whole heartedly in the work that we do and that the voices of victims of crime should help shape our services and systems. **Our highest goal is for safer communities for everyone to thrive in, that means reduced re-offending and, most importantly, reduced numbers of victims of crime in our communities.**

**For our work to be effective we need to build confidence in our approach** amongst the wider communities and direct groups of people, like yourselves, who are adversely impacted by criminal behaviour, or who make decisions on how people coming into contact with the justice system are dealt with. We know that to do this, your views need to be incorporated in the work that we do.

**We would appreciate it if you took the time to read through this briefing** and provide your views on the work that we are developing around Diversion from Prosecution (DfP), set out at **Section 2**.

**A separate questionnaire (Appendix 1)**, has been developed jointly between [Victim Support Scotland](https://victimsupport.scot/) and our team at Community Justice Glasgow to gather your views, ideas and concerns. We will use these to help direct and shape the work that we are doing. **Thank you in advance.**

**Section 2 - Diversion from Prosecution (DfP) Explained**

***What is Diversion from Prosecution?***

**Diversion from Prosecution (DfP) is what is known as an Alternatives to Prosecution ‘Direct Measure’**. There are a number of these Direct Measures available to the Crown Office & Procurator Fiscal Service. Generally speaking they are used for less serious offences, sometimes referred to as ‘low tariff’ offences (offences that would generally speaking attract a Community Sentence or very short-term prison sentence).

**More information on each of these can be found in the publication** [‘A Summary of Community Options’](https://www.glasgowcpp.org.uk/CHttpHandler.ashx?id=38160&p=0), an information pack jointly developed between Victim Support Scotland, Community Justice Glasgow and [Crown Office & Procurator Fiscal Service](https://www.copfs.gov.uk/) (COPFS) to promote a better understanding of prosecution and sentencing options and why offences/offenders are dealt with in certain ways and to help victims of crime understand what has happened to the perpetrator of the crime against them and what this means going forward.

***What exactly is a DfP Scheme?***

**DfP provides an option for the Procurator Fiscal to deal with someone accused of low level offences outwith the court system**. The person will be required to work with a Criminal Justice Social Worker or other agency to address the problem areas of their lives that are underlying or contributing to their offending behaviour. In such cases, the person will receive appropriate support and the opportunity to avoid a potential criminal conviction. The accused must:

• broadly accept the details of the charge against them;

• agree that there are problem areas in their life; and

• agree to work with Social Work and other agencies to address these difficulties.

**If the accused does not agree with the above**, the Procurator Fiscal may prosecute the case in the normal way.

**The main features are:**

• age 16 +;

• less serious offences;

• dealt with outside of the Court;

• participation is voluntary – can chose prosecution route;

• does not count as a conviction; and

• failure to co-operate may lead to the case being prosecuted.

***When is a DfP Scheme used?***

There are often cases when a lower tariff offence has been committed, where it could technically be prosecuted, but where the Procurator Fiscal may consider that there is ‘no overriding public interest’ in taking the case to court. Each case is assessed individually with consideration given to the:

• seriousness of the offence;

• circumstances of the offence; and

• the person’s attitude (the person may choose to opt-out i.e. go to court).

***Why is a Diversion from Prosecution Scheme used?***

DfP aims to address the underlying causes of offending behaviour through Social Work and other interventions. It also aims to prevent people entering into the formal criminal justice system too early. Evidence suggests that the earlier people enter the criminal justice system, the more likely they will be pushed towards more serious offending.

***Recent Developments around Improving the DfP Offer in Glasgow***

**Because we see DfP as a key tool** in our arsenal for reducing re-offending we have been working over the last couple of years to develop and grow the range of services available to deliver DfP Programmes outwith Social Work Services for 16 & 17 Year Olds (young offenders).

**This work has reflected the changing nature of crime types** that are being committed by young people. We have worked closely with the Procurator Fiscal Service to build confidence in the new range of services to deal with different types of crime.

**We now have a range of 3rd Sector providers to complement the range of Social Work delivered services**. New additions have included the HALT & ROSA Services (tackling sexually harmful behaviour and online harmful sexual behaviour) and SACRO’s Hate Crime Service. The new arrangements mean that the Social Worker supervising the young person, who has committed the crime, can consider a number of services that can tackle the underlying causes of their behaviour, whilst maintaining overall accountability for delivery of, and compliance with, the DfP.

**This has resulted in an increase in the number of referrals from mid-2019 onwards**, and for different types of crime that may not have been considered previously. For example the total referrals over January, February and March 2019 totalled 21, for the same 3 months in 2020 the total number was 50.

**The range of offence types this covered** were in the main what is known as Section 38 Offences which include things like threatening or abusive behaviour, resisting arrest, reckless conduct (often fuelled by alcohol misuse), with the next most substantial category being theft and shoplifting (known to be common offences that are underpinned by drug and or alcohol misuse) so tackling these issues is at the root of reducing further offending.

**It should be noted that these offences would have been unlikely to have resulted in a custodial sentence in the first instance**, more likely a community based disposal such as a fine or Community Payback Order would have been imposed, which use up resources that have a higher financial cost to the public purse. Diversion offers a more cost effective alternative which looks at the offence and underlying issues.

**A very small number were for more serious offences** such as knife carrying (5), again which needs addressing for young people to understand the danger this puts not only others but themselves in, through programmes aimed at consequential thinking and better decision making.

**An even smaller number** (3) were for sexual related offences, it should be stressed that with young people, this is mostly sharing material on social media like Snapchat and Facebook without thinking about the longer term consequences for the person whose image is being shared.

**This is just a snapshot for an understanding of the range of offences that can be much better dealt with in the community**. Given the chance to change and address their behaviour through programmes and interventions also offers young people the opportunity to go onto more positive destinations, often being signposted to educational or employment programmes that suit their needs or addressing other issues that may be driving their behaviour. We work hard to join services up so that where a need cannot be met by a particular service, they will have many partners that can step in to address different elements – provided the young person agrees to share their information with a 3rd party.

**It is still early days**, however, this approach is gaining confidence from the Fiscals and showing good successes in tackling behaviours and reducing the risk and incidences of further crimes.

**Because it is not a prosecution**, it also has the advantage of not putting additional barriers to employment, education etc. - that come with a criminal conviction - in the way of the young person going onto fulfil their potential and positively contribute to society. Should a young person complete sessions but not be viewed by those supervising the intervention to be participating in a meaningful way or showing little interest or desire to change, a report to the Procurator Fiscal could still result in a decision to prosecute.

**We are now working on a similar exercise to improve the offer for Adult DfP** and similarly increase the range of services available, confidence of the Procurator Fiscal Service to refer for DfP for a wider variety of crime types.

**Section 3 - Community Justice Glasgow & The Context for Diversion from Prosecution**

***Who We Are***

[**Community Justice Glasgow**](https://www.glasgowcpp.org.uk/CHttpHandler.ashx?id=38365&p=0) **is a small team** (4staff) within [Glasgow City Council’s Chief Executive’s Department - Community Empowerment Service](https://www.glasgowcpp.org.uk/index.aspx?articleid=2509). The team was formed as part of the wider community planning arrangements in Glasgow to co-ordinate and lead a partnership to deliver the new arrangements of the [Community Justice (Scotland) Act 2016](http://www.legislation.gov.uk/asp/2016/10/contents/enacted) (The Act).

The vision that guides our work is of:

*”Glasgow as a safer place where* ***reoffending is reduced****,* ***the impact of crime is mitigated*** *and all citizens have equal opportunity to thrive.”*

**The overriding purpose** and focus of our work is to **reduce re-offending** in the city.

***What We Do***

**We can only achieve our vision through partnership working**. Community Justice Glasgow itself does not deliver, provide or have authority over services, as such, our team work with partners across the city to promote and focus work and services on reducing re-offending.

**Some of these partners, a range of both Public & 3rd or Charitable Sector organisation, have legislated accountability** set out in The Act to work with us. Others do so because they see the benefits that this targeted approach brings (*that’s not to say that our legislated partners don’t!*) to reducing re-offending, reducing the number of victims of crime, and making communities safer for all of our citizens.

**At the start of our journey (2016) our Partnership agreed 9 Priority Themes** to focus on that they felt would have the biggest impact / were most important to achieving our purpose **based on the best available evidence**:

1. **Prevention** – Encouraging early and effective interventions.
2. **Service User Voice** – Understanding that the views of those involved in the criminal justice system are necessary for the continued improvement of community justice services.
3. **Service and Resource Alignment** – Planning and sharing resources and practices through partnership working.
4. **Families** - Working with families directly affected by offending.
5. **Victims – *Ensuring the views of victims affected by offending are understood and used to help shape practice.***
6. **Building Protective Factors** – Improving education, employment, health and wellbeing, housing and addiction services (recognised as the main drivers for offending behaviour) to reduce reoffending.
7. **Throughcare** - Supporting individuals and their families through the entire sentencing process.
8. **Communication** – Partners sharing data, information and knowledge to continually improve services.
9. **Women** – Responding differently to women involved in the criminal justice system as they face unique factors. Supporting women tackling their complex needs, which will stop the rise in the female prison population and encourage use of community alternatives.

***The Team and Partnership’s daily activity focuses on taking effective action on these key themes.***

***Why We Focus On Re-Offending – The system***

**As previously mentioned, our focus is not on preventing offending in the first instance** - this is a job for other parts of the system like Police Scotland and wider societal services such as, Education (in its broadest sense), Social Work Services that support families experiencing difficulties, Youth Work and wider community support etc. Our focus is on reducing ***re****-*offending – from the point where a person comes formally into contact with the justice system (is arrested or reported to the Police on a wellbeing concern or reported to the [Scottish Children’s Reporter Administration](https://www.scra.gov.uk/) (SCRA)).

**In Glasgow, only around 30% of court convictions are for individuals with no previous convictions**. A focus on reoffending ensures that, as people come into contact with the justice system through their own offending, the services within the system are joined up and more effective at reducing the likelihood that they will offend again.

**By focusing on those already in the justice system** from the point of arrest, through prosecution, sentencing and beyond, there is scope to work with all partners to **address the underlying causes of an individuals’ offending behaviour**, to reduce second and subsequent offences. Evidence from [What Works to Reduce Reoffending (2015)](https://www.gov.scot/publications/works-reduce-reoffending-summary-evidence/) tells us that this approach is more effective in reducing crime, and the harm that it causes, to improve community safety overall.

***Why We Focus On Re-Offending – The people***

**Broadly speaking the people from our communities who come into contact with the Criminal Justice system come from the most deprived areas of our city**, they are much more likely to have grown up experiencing many, or indeed most, of the markers used to calculate the [Scottish Index of Multiple Deprivation (SIMD)](https://simd.scot/#/simd2020_5pc/BTTTTTT/12/-4.2419/55.8958/) - access to health, housing, food, education, employment and income opportunities. There is a strong, evidenced, link between deprivation and a life involved in offending behaviour.

**We are not trying to make excuses here, just outlining the facts, people who come into contact with the justice system, will more often than not, have grown up in difficult family situations,** where one or more factors such as deprivation, domestic abuse, poor parenting, neglect, mental health issues, parental imprisonment, alcohol and/or drug misuse and much more have been a feature of their young lives – many will have been in the Care System.

**These** [**Adverse Childhood Experiences (ACEs)**](https://www.gov.scot/publications/adverse-childhood-experiences/) **leave long lasting detrimental effects**, they are known to create harmful levels of stress which impact healthy brain development resulting in long-term effects on learning, behaviour and health throughout their lives. The evidence suggests that people who have experienced 4 or more ACEs are amongst other things:

* 4x more likely to be a high-risk drinker (making them more likely to commit offences)
* 16x more likely to have used crack cocaine or heroin (making them more likely to commit offences)
* 6x increased risk of never or rarely feeling optimistic
* **15x more likely to have committed violence**
* **14x more likely to have been victim of violence in the last 12 months**
* **20x more likely to have been in prison at any point in their life**

**As previously noted, it is important that other parts of the system tackle these issues to prevent the flow of people coming into the justice system**. In Glasgow we are making good progress in tackling some of these issues, the latest SIMD figures published in January 2020 showed fewer areas of Glasgow in the 5% and 20% most deprived areas of Scotland, there has also been a year on year downward trend in the numbers of young people coming into the care system, downward trend in recorded crime and re-offending rates - all giving some indication of progress.

***Why We Focus On Alternatives to Prosecution & Community Disposals over Custodial Sentences***

**Diversion from Prosecution is only one of a package of alternatives to prosecution** available to the Crown Office & Procurator Fiscal Service. There are also a number of community disposals (alternatives to custody in prison).

**Whilst we understand and are sensitive to the fact that victims might feel that these alternatives are not ‘punishment’**, they are really important tools in tackling re-offending. Going back to earlier discussion in this briefing about ACEs and the background from which many of the people who commit offences come from, it makes sense that unless we tackle the underlying drivers or causes that lead them down the crime pathway, we will not be able to reduce or stop further offences from occurring.

**For the majority (remember only around 30% of court convictions are for first offences)** they simply go around what we refer to as the revolving door of short-term prison sentences, continually leaving a wave of victims in their’ wake.

**It is a well evidenced fact that short-term prison sentence are significantly less effective at tackling the root causes of offending when compared to alternatives such as DfP and other community options**. Our Prison Service does great work and there are many wonderful services, delivered by both Public and 3rd Sector providers accessible to those serving a custodial sentence. Unfortunately for those serving short-term sentences or on remand (untried) most of these services are not available to them. The short nature of their stay means that they are often unable to complete programmes or have the time needed for services to have an impact prior to release.

**DfP and Community options such as Community Payback Orders,** allow more opportunities for positive interventions to support a person to access the services they need to confront and deal with the root causes and underlying drivers of their behaviour, in order to move on from criminality.

**It is not about rewarding bad behaviour**, it is simply a fact of life that if we don’t give people the opportunities that they have lacked in the past to deal with these issues, then they will continue to commit offences and leave behind them increasing numbers of victims and destructed communities.

**For more information on the kind of work that is happening across the city** you can access our Annual Reports, which are in the form of digital newspapers, with lots of interesting articles that you can dip in and out of, [from the Community Justice Glasgow Website](https://www.glasgowcpp.org.uk/index.aspx?articleid=2509)