

Positive Justice

Executive Summary:

This guidance is designed to assist officers in making decisions as to how to resolve offences and deal with the offenders responsible: whether it be prosecution or an alternative. This guidance is generic and will underpin all disposal decisions, however dealt with by officers. It supplements and complies with all legislation in this area.

Maximising the effective use of these powers will lead to swift, fair and proportionate justice. It will also maximise our ability to reduce reoffending and thus better protect our communities.

Our approach to resolving offences and dealing with offenders will not only consider the past – the offence, its victims and its impact – but will also be forward looking: seeking to reduce crime by reducing reoffending and victimisation. Our communities and partners are essential to this and we will actively seek to include them and utilise their skills and capability.

Approved Professional Practice (APP):

*(*delete as appropriate)*

- This policy has been checked against APP. West Midlands Police has adopted the APP provisions, with supplementary information contained herein, which reflects local practice and the needs of the communities served by West Midlands Police.

Those provisions are shown in the links below and can be accessed via the home page of the APP website:

[APP CONTENT](#)

Policy Statements:

- This policy contains 6 stages to assist officers:
 - **Stage One – Information**
 - **Stage Two – Assessment**
 - **Stage Three – Working Strategy Development**
 - **Stage Four – Powers & Policy**
 - **Stage Five – Options**
 - **Stage Six – Action & Review**
- Our Statement of Mission and Values of the Police Service will underpin officers' decisions in this area.
- The National Decision Model has the above at its core and gives a structure to making these decisions. This policy will help officers apply its five steps in a fair, consistent and effective manner.
- Officers must remember that the decisions they make in this area are likely to impact significantly on the lives of both offenders and victims.
- It is expected of all officers, supervisors and managers to ensure that offence resolution decisions are made to the highest professional standards.

- It is expected by our communities and colleagues that these decisions will be carefully considered and judiciously made.
- We will uphold the law fairly and firmly and work with communities, partners and the Criminal Justice System to reduce crime and deliver justice. We will seek to use every opportunity to reduce reoffending and to support victims.
- The [Directors Guidance on Charging](#) stipulates that Police ensure that cases appropriate for a police sanction or disposal are:
 - Identified as early as possible
 - Dealt with prior to charge
 - Suspects should not be charged where the public interest in a case can be met in any other way

STAGE ONE – INFORMATION

- Decisions on offence resolution must take place after a proportionate investigation and that all reasonable lines of enquiry should have been pursued to allow for the full facts of the case to be taken into account.
- Failure to do so is unprofessional and will likely lead to evidential problems and/or complaints at a later date.
- The prosecution decision is significantly different to other decisions made by police officers – it is an executive and quasi-judicial decision made with independence from the investigation and operational matters.
- Decisions must be fair and objective, based on fact and not supposition.
- These decisions must not be affected by other factors, which relevant to operational policing, are not relevant to this particular decision, examples include;
 - Performance targets or measures
 - Intelligence information held on the individual
 - Personal feelings towards any person involved
 - Hearsay or rumour on the individual or incident
 - The suspect's attitude towards the police.
- Broad policy decisions to arrest or prosecute all offenders in any given category without references to the circumstances of the case are generally unlawful; therefore both of these decisions must be made on a case by case basis.

STAGE TWO – ASSESSMENT

- Officers will need to assess the impact of information in four key areas: COMMUNITY, OFFENCE, VICTIM and OFFENDER.

Community

- Where we can harness community activity in both supporting victims and rehabilitating offenders we are likely to be helping build strong and resilient communities.
- Decisions will always be made in the public interest and we will seek to reduce crime in our communities.
- Communities feel strongly about certain issues i.e. domestic abuse, hate crime, use/carrying of weapons, sexual offences and officers must pay particular attention to these priorities reflected in the [Ministry of Justice and Home Office guidance](#).

Offence

- The evidence available must meet the evidential test (that is providing a realistic prospect of conviction) for any police sanction or disposal to be applied.
- Care needs to be taken to ensure that all points to prove are covered and no defences have been put forward.
- In all cases (except a Penalty Notice for Disorder) a PACE compliant admission is also required.
- Use of the ACPO Gravity Matrix ([adult](#) and [youth](#) versions available) may guide/assist officers with the offence element of their decision.
- Both Conditional Cautions and Penalty Notices for Disorder have limitations in legislation on the offences they can be issued for and this must be complied with.
- Legislation stipulates that cautions can only be issued for indictable offences only within the authority of the CPS. This applies to all four types of cautions.
- Offences that are more serious or cause/risk more harm will need a more intensive disposal and they are more likely to be appropriately/proportionately dealt with by way of a prosecution.
- Regarding the offence, officers should consider the relative weight of any aggravating or mitigating factors.
- Domestic abuse requires the Police to take strong and positive action to support victims and give offenders the clear message that it is unacceptable, however, every incident is unique and officers need to ensure the action they take is proportionate to the circumstances
- Preventing further offences and safeguarding victims and the vulnerable are always the key priorities when dealing with domestic abuse.
- Officers need to remember when dealing with partner on partner domestic abuse victim's considerations will often involve crucial, life changing decisions and they are likely to need time without the offender present to make this scale of decision.

- The professional advice and support of both response and specialist officers as well as partner agencies will help victims to make the best decisions.
- Care must be taken when considering the resolution of any sexual offences – the wishes of the victim and the need to protect the public will be paramount considerations.
- There will be cases when the victim genuinely does not want formal action taken and there is no on-going threat to the public, therefore, a simple and immediate disposal may be a suitable outcome.
- For offences which are in essence sexual experimentation between consenting young people, a formal disposal will rarely be a proportionate outcome.
- Officers must ensure that there is not element of coercion or abuse involved and that we are not dealing with repeat offenders before deciding on the best outcome.

Victim/Witnesses

- It is important that the victim(s) feel supported by the police and the entire criminal justice system.
- Our victim focus does not mean that victims get to select which sanction will be chosen as we must always be mindful of the broader public interest.
- It is right however to take their views into account and for them to have an influence and we will seek outcome with their views in mind.
- Where a victim is less than 18 years old the views of their parent/guardian need to be taken into account also.
- We have a responsibility to explain our decisions, rationale and what will happen with their case, where this is done it can increase the feelings of satisfaction and safety.
- Officers need to bear in mind that the willingness of a victim or witness to attend court is crucial for any prosecution, however this is less of an issue when considering if a police disposal is suitable.
- The evidential test needs to be met on what evidence the victim would give if they were to be at court – their willingness to attend is not essential.
- Officers must bear in mind with conditional disposals that if a failure to comply will be met with a prosecution then we must have witnesses willing to support this.
- When dealing with victims with mental health issues or concerns, officers must ensure that all the necessary applicable safeguards are followed such as:
 - Appropriate adult
 - Health Care Professional (HCP) usage
 - Intermediary Service
 - Victim Support
 - Social Services

Offender

- Home Office guidance prevents the use of cautions with serving prisoners. Police disposals are therefore inappropriate with this group of offenders.
- Officers need to be mindful of not passing up opportunities to intervene in an offender's criminal behaviour.
- We now have significant powers to intervene and can require participation in a variety of interventions as part of conditional disposal.
- The level of culpability and intention of the offender will be very relevant (bear in mind how their age and mental capacity will have a direct impact on this).
- Their attitude towards the offence, the victim and making amends (if appropriate) will also be relevant.
- It is essential that full background checks are completed to enable informed decision making to take place.
- As a minimum CORVUS & PNC must be checked, as well as any other database the officer feels may contain relevant information.
- Officers must understand the previous criminal history of the offender to be able to reasonably select the best outcome for each case.
- For child abuse and domestic abuse offences the PPU Safeguarding Team must be consulted with and the name of the officer recorded.
- Where an officer is dealing with partner on partner domestic abuse, the previous history of these cases is especially relevant.
- The Offender Management Team must be consulted with for all persistent offenders prior to a police disposal decision being made. We must use every opportunity to try and stop further offending by these individuals.
- Where an offender is already on any sort of court order or conditional disposal the views of the organisation/team managing the current order should be sought before making a decision and as a minimum they should be informed of the decision.
- **Recording of intelligence and system checks and their results on reports is vital as it underpins the officer's rationale that follows.**
- The willingness of the offender to engage in interventions (voluntarily or conditionally) will be relevant as well as their history of keeping to any agreements
- Where the offender has a substance misuse (either drugs or alcohol) any police disposal should attempt to ensure they tackle this issue.

Young Offenders

- Young people will suffer a greater impact from social stigma or a criminal record, affecting their future opportunities and prospects. Effective integration of young offenders back into their communities is a key consideration.
- We must be careful, in acting positively, to take into account immaturity and to ensure we don't inadvertently damage a young person's future.
- We will be firm, fair and consistent with young offenders. We will separate the young person themselves from the behaviour they have exhibited.
- There is a need to intervene at a low level, to show that actions have consequences and that harm is being caused.
- Police disposals should assist in one or more of the following:
 - Confront young people with consequences of offending
 - Help develop a sense of personal responsibility
 - Tackle any particular factors putting young people at risk
 - Strengthen factors that reduce the risk of re-offending
 - Encourage reparation
 - Encourage the restoration of relationships of trust
 - Define, agree and reinforce the responsibilities of parents.
- Youth Offending Teams (YOTs) are our key partners in tackling youth crime and their experience and skills should be utilised to the full.
- In the interests of our communities, victims and offenders, WMP have agreed to make some decisions on offence resolution for young offenders in partnership with the Youth Offending Service (YOS).
- Joint decision making will facilitate a partnership approach and improve CJ outcomes – which are moving more towards assessment of the young person and help to resolve the drivers of offending behaviour.
- The YOS are Local Authority based and the point at which joint decision making takes place can vary. Officers are therefore, advised to familiarise themselves with the agreements in place on their NPU.
- Where the joint decision making process cannot come to an agreed way forward, the case will be referred to both line managers for a second attempt at joint decision making.
- If the situation ever occurs where this does not resolve the matter, then the views of CPS will be obtained and their advice followed.

STAGE THREE – WORKING STRATEGY DEVELOPMENT

- In making these decisions officers should be outcome focused. This means that whilst the particular disposal utilised is important, the final outcome of that disposal is more so.

- Officers should look to the end result and its impact on the community, the victim and the offender. Simple Community Resolutions will have the least impact; prosecution will be able to have the most though mobilising court powers.
- Officers need to be aware of the range of police disposals now available and be able to apply them all as appropriate.
- Consideration must be given if the desired result can be achieved from one of our conditional disposals. It will require consideration of the likely sentence of a court in a case and considering if an equivalent outcome can be achieved with a police disposal.
- Officers should use an evidence based approach to help them come to their decisions. This approach is beneficial for our communities and assists in defensible decision making.
- The effectiveness, especially at reducing reoffending, of the different options available is being increasingly researched. Results of this research will be disseminated to staff via training and made available on the [intranet](#) and it may impact on local and national policy.
- As a working strategy the following three steps are recommended:
- **Consider if a simple and immediate sanction is sufficient. These will generally be simple Community Resolutions and Simple Cautions**
This is more likely to be for minor offences, first time offenders and cases where prosecution is not possible or unlikely to succeed.
- **Consider if a more intensive/impactive police disposal would be proportionate – an enhanced Community Resolution or a Conditional Caution.**
A wide variety of standard conditions are available and others can be tailored for specific cases. These can be as demanding of offenders as some court sentences and have the advantage of being swifter and not requiring victim or witness presence at court.
- **Finally consider if the only reasonable response is prosecution.**
For guidance on whether initial charging decisions are made by police of CPS, please refer to the Statutory Charging Scheme.

STAGE FOUR – POWERS & POLICY

- Consider the resolutions available:
 - [Community Resolutions](#)
 - [Cautions & Combined Cautions](#)
- Supporting documents and guidance (i.e. ACPO Framework, APP) can also be found on the [Neighbourhood Justice intranet site](#).

STAGE FIVE – OPTIONS

- Develop suitable options using the assessment details from stage two and whether the disposal forms part of a criminal record.

- If a conditional police disposal is selected then consider the issues you want to tackle. These will generally fall in to one of the following categories:
 - Reparative Activities - the physical damage/loss caused is repaired/replaced
 - Compensation – the offender gives financially to the victim to make good the damage/loss
 - Restorative Activity – the emotional impact of their offence is faced by the offender
 - Rehabilitative/Educational Activities - the offender learns to tackle issues causing their offending
 - Controlling – Offenders to keep clear of locations, areas or persons, to observe curfews or report to certain people at set times.
 - Punitive – As a simple punishment, where no more constructive conditions are suitable or in addition to them. Generally these consist of a financial penalty or unpaid work.
- Adult Foreign National Offenders – Agrees to leave the country in return for the prosecution being suspended.
- Restorative Justice (RJ) – requires both the victim and offender to participate freely.
 - *WMP will seek to maximise the use of RJ in all offence resolutions.*
 - *This can be either a part of the decision making process (i.e. before a decision is made); as a condition of a police disposal; or as a recommendation to the court where a prosecution is commenced.*
 - *Further guidance is contained on the force website (search Neighbourhood Justice).*
- A [directory of conditional activities](#) as part of a conditional caution is available on the intranet.
- Decision makers need to be familiar with the activities available in their area so they can determine the best activity or combination of activities for each specific case.

STAGE SIX – ACTION & REVIEW

- If the outcome we can achieve is proportionate and appropriate and no advantage is served by prosecuting then police disposal ought to be our first preference.
- Every case must be judged on its own merits and rationale for each decision fully justified and recorded.
- The Policing Plan is clear that our approach to community policing and justice will have joint working with both formal and informal partners at its heart.
- The benefits of which will be better achieved through a decision making process that is less immediate, allowing time for increased consultation, assessment and intervention with partners.
- If all the information you need to make the decision is not available at this time then postpone it until you have that information
(e.g. you may want partner views, discuss the possible outcomes with victim and determine their views on RJ approach, more detailed assessment of the offenders motivations/circumstances)
- Officers should always use their professional judgement and the National Decision Making Model to come to the best decision for the set of circumstances in from of them.

- Street disposals cannot be practically made by a separate officer but the same principle of objectivity needs to be adhered to. These cases will be subject to retrospective scrutiny by line supervisors.

Delivery of the resolution

- To maximise impact, the offence resolution should be delivered by a uniformed police officer wherever possible.
- Central Justice Services will seek to develop training and guidance to assist officers in ensuring these meetings are impactful, giving the clear message that offending behaviour is unacceptable and support improvements in behaviour.

Recording decision making

- All offence resolutions resulting in a police disposal or sanction must clearly explain the information on which the disposal decision is made (all the relevant factors) on the Crimes Update Portal.
- The full criminal history of the offender or if there is none must be clearly stated.
- The rationale for the final decision should be clearly explained and recorded with the details of the decision maker
- The below key points must be recorded on the crime report before closure and any detection code can be applied (*This can be directly inputted into CRIMES or on a WC202 signed by the decision maker*):
 - The victims' views on a suitable outcome
 - Where victim consent is required (i.e. community resolutions only) this is recorded against their signature (with appropriate adult if required).
 - The offender's account of the incident is recorded and whether there is full admission, partial admission or denial. Where this is a written account it must be against their signature (with appropriate adults if required)
 - Confirmation that all appropriate intelligence checks have been completed – CORVUS and PNC as a minimum
 - For child abuse and domestic abuse offences the PPU Safeguarding Team must be consulted with and the name of the officer recorded.
 - The results of any intelligence checks recorded so that any offending history or other relevant intelligence can be taken into account in any review of the decision.
 - The decision maker clearly records the rationale for the disposal chosen, against signature. For integrity and audit purposes the actual decision maker must authenticate this entry.
 - The details of any conditional activity required by the offender, whether this has been completed
- The same principles apply whether a suspect is arrested or dealt with voluntarily.
- This will allow for meaningful supervision, independent oversight of decisions, support the drive for high quality decision making and leadership at all ranks and will allow the force to defend the decision if challenged at a later date.

Review of the decision

- Where a prosecution is possible but not commenced the [Victim Right to Review](#) can be requested to review that decision.

Accountability

- Scrutiny Panels for Out of Court Disposals will meet 3 times a year and their findings reported back into the force at a senior level as well as fed to the Office of the Police & Crime Commissioner.
- Senior Leadership Teams will nominate a Chief Inspector or Superintendent to have particular responsibility for ensuring that standards are high and accountability systems are effective. This will include:
 - Encouraging a positive environment for the use of professional judgement in resolving crime, ensuring there is visible support from leadership
 - Ensure NPU policies and practices are compatible with these principles
 - Be available to offer guidance and feedback
 - Develop partnerships and community links to ensure a full range of conditional activities are available and effective locally
 - Develop and maintain effective accountability measures
 - Oversee Victim Right to Review process
 - Engage with Press Office and partners to promote best practice and good examples of offence resolution in the media.

Definitions/Acronyms:

Quasi-judicial

CORVUS – Police Intelligence System

PPU – Public Protection Unit

CPS – Crown Prosecution Service

RJ – Restorative Justice

PNC – Police National Computer

ACPO – Now NPCC - National Police Chiefs' Council

NPU – Neighbourhood Policing Unit

PACE – Police & Criminal Evidence Act

APP – Authorised Professional Practice

Procedural Guidance Documents List:

- Supporting Documents

Publication Instructions:

*(*delete as appropriate)*

- Suitable for publication to public

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Any enquiries in relation to this policy should be made directly with the policy contact shown above.

Force Executive Approval:



CHIEF CONSTABLE

Monitoring and Review

Version	Date Reviewed	No change / Minor Changes / Major Changes (<i>detail</i>)	Amended / Agreed by	New review date