Whole Systems Approach to Youth Justice in Aberdeenshire
Diversion from Prosecution Approach

1. Approaches to dealing with young people aged 16 and 17 years involved in offending behaviour.

1.1 When a young person aged 16 or 17 years old commits an offence in Aberdeenshire, Police Scotland Officers have discretion to address this behaviour through a number of options, including:

- Early and Effective Intervention processes (please see section 2 below);
- Issuing the young person with a formal adult warning (a ‘direct measure’);
- Issuing the young person with a Fixed Penalty Notice (a ‘direct measure’);
- Submitting the case to the Procurator Fiscal for consideration for prosecution

Further information on each of these disposal options is provided below.

2. Early and Effective Intervention processes for 16 and 17 year olds.

2.1 Following agreement with the local Procurator Fiscal and in line with the Crown Office and Procurator Fiscal Service Framework, Police Scotland in Aberdeenshire have introduced a process to allow Early and Effective Interventions to be available for 16 and 17 year olds who are not subject to a Compulsory Supervision Order through the Children’s Hearings System.

2.2 When a young person aged 16 or 17 has been cautioned and charged and a method of disposal has been applied to the offence committed, the Police Officer will advise the Police Scotland Youth Justice Management Unit (YJMU). On receipt of the information, the YJMU will consider whether the most suitable method of disposal has been identified for the offence, or whether an alternative method of disposal may be more appropriate for the young person, taking account of:

- the offence type,
- any previous offending history,
- any documented wellbeing concerns for the young person,
- whether the young person is known to or has an open referral to Social Work,
- any previous diversions from prosecution.
2.3 If, after the above checks have been carried out, the YJMU believes that the young person would benefit from Early and Effective Intervention, it can overturn the original disposal and refer the young person on to partner agencies, such as Social Work or Barnardos Aberdeenshire Youth Initiative. Early and Effective Intervention for 16 and 17 year olds increases the opportunity for these young people to access appropriate services and supports to reduce the likelihood of reoffending and in some cases, prevents them from obtaining a criminal record, which could have a detrimental impact on their future career options. Further, Early and Effective Intervention will give the young person closure to the offence, prevents them from having to appear in court and will reduce the amount of time Police Officers and Social Workers will have to spend writing reports.

2.4 If the young person is on a Compulsory Supervision Order, they can be diverted through the Youth Justice Management Unit processes, or if there is an open referral to the Children’s Reporter in relation to the young person, the case must be referred to the Reporter. Some cases may also be jointly reported to the Procurator Fiscal and the Children’s Reporter, depending on the seriousness of the offence committed.

2.5 It is anticipated that only a small number of low-level offences (such as shoplifting, vandalism, minor assaults or incidents of threatening or abusive behaviour) will be appropriate for Early and Effective intervention and as such, diversion from prosecution will still be available for young people aged 16 and 17 years.

2.6 If an offence involving a young person is to be reported to the Procurator Fiscal, the report from the Police will now include details of any juvenile offending, any previous diversions from prosecution and any documented wellbeing concerns. This will allow the Procurator Fiscal to see the bigger picture of the young person and so allow them to make a more informed decision in relation to the offending behaviour.

2.7 As part of the introduction of Whole Systems Approach in Aberdeenshire, all cases of criminal behaviour involving 16 and 17 year olds that are considered suitable for prosecution are now being marked centrally by one Procurator Fiscal and potential suitability for diversion from prosecution is now being identified through ‘diversion from prosecution’ meetings.

3. Diversion from prosecution for young people in Aberdeenshire aged 16 and 17 years

3.1 Although diversion from prosecution has been available as an option for dealing with offending behaviour for some time, it was not used routinely in Aberdeenshire. This new format of diversion from prosecution considers the wider needs of the young person and keeps them away from the formal criminal justice process wherever possible, giving them the opportunity to make positive changes to their lives and ultimately enabling
them to improve their longer term outcomes. Diversion from prosecution can apply to those young people who are already on a Compulsory Supervision Order or any Court orders, as well as those who are not. However, as one of the aims of the whole system approach is to keep young people out of the adult system where possible, if there is already a Compulsory Supervision Order in place then it may be more appropriate that the matter is dealt with via the Reporter rather than the Procurator Fiscal. In practice, it is unlikely that a matter deemed serious enough to be dealt with by the Procurator Fiscal, rather than the Children’s Reporter, could then be diverted from prosecution.

3.2 In some cases, a considerable period of time may have passed between the offence having been committed and the case being referred for discussion at a diversion from prosecution meeting - although the actual length of time involved can vary greatly from case to case. This is because the timescale is dependent on a number of variable factors, such as when the offence came to light, the evidence available, when the case is reported by the police to the Procurator Fiscal, etc. However, it is intended that a young person will be discussed and dealt with through the diversion from prosecution process within 4 months of the offence having been committed.

3.3 The Youth Justice Management Unit will ensure that all offences involving 16 and 17 year olds that are not considered suitable for Early and Effective Intervention or direct measures are reported to the Procurator Fiscal, who will then decide how the case should be marked. The Procurator Fiscal will separate out the cases that need to be dealt with through the court process from those that can be considered via the diversion from prosecution process. There are some cases that, due to the seriousness of the offence committed, will have to be dealt with through the court process; however this will depend on the circumstances of the case. Each case is considered individually when deciding whether it is appropriate for discussion at the diversion from prosecution meeting. However, cases where the Procurator Fiscal is contemplating petition proceedings are not considered suitable for diversion. In addition, road traffic offences (with the exception of contravention of section 178 Road Traffic Act 1988, which involves taking a car without permission), will not be brought to diversion from prosecution meetings.

3.4 If a case is considered suitable for diversion, then it will be brought to the diversion from prosecution meeting, which is attended by the Procurator Fiscal, representatives from the Police Scotland Youth Justice Management Unit, an Aberdeenshire Council Criminal Justice Team Manager and a representative from Barnardos Aberdeenshire Youth Initiative. Information on the young people to be discussed is circulated to group members approximately one week prior to the meeting taking place. Upon receipt of the list, the Criminal Justice Team Manager will check Carefirst and make contact with any worker that is listed as having had prior or current involvement with the young person (this will include previous or current Children and Families and Throughcare and Aftercare
workers, etc.). The Criminal Justice Team Manager may also make contact with representatives from the Health Service, Education Service, etc., to obtain information about the young person, where relevant. It is important that those working with the young person provide sufficient, accurate and relevant information to the Criminal Justice Team Leader prior to the diversion from prosecution meeting, to aid decision making and ensure that the most appropriate disposal is applied to the young person’s case.

3.5 At the meeting, the Procurator Fiscal will provide details of the charge(s) and will give an overview of the circumstances surrounding the offence(s). Any partner organisation that has information that they consider to be relevant to the case will also share this at the meeting (for example, details of any previous offences, previous involvement with Social Work, any Orders that are in place, etc.). None of the supports or Orders that are already in place for the young person will come to an end as a result of them being diverted from prosecution.

3.6 Following discussion, any of the following decisions may be made in respect of the young person:

- No further proceedings;
- Procurator Fiscal Warning Letter;
- Procurator Fiscal Fine;
- Compensation Order;
- Combined Offer;
- Social Work Diversion from Prosecution;
- Decision to Prosecute in Court.

3.7 The Procurator Fiscal can issue a fine, a compensation order or a combined offer. The fines range from £75 to £300. The maximum compensation order is considerably greater, at £5,000. Where diversion is not considered appropriate and the offence is too serious for a direct measure, the decision can still be taken to prosecute the case in court after discussion at a diversion from prosecution meeting (please see section 4 below for further information).

3.8 If the case is considered suitable, the young person will be diverted to Social Work. The Procurator Fiscal will write out to the young person advising them that the Police have reported them in relation to an alleged incident, for which it is felt the young person would benefit from some additional support from / targeted work with Criminal Justice Social Work. The Criminal Justice Social Worker will then write out to the young person offering an appointment to see them, once the young person’s contact details are confirmed. Copies of the standard letter templates are available in Appendix A. Diversion will start once the young person
begins to engage with Social Work, rather than at the point of referral: this is because it may take some time to make contact with the young person, particularly if their lifestyle is chaotic. Consideration should be given to the venue for any meeting with the young person, to ensure that it is suitable.

3.9 At the initial meeting, the Criminal Justice Social Worker will assess the suitability of the young person, discussing what has gone before, what work can be done and to secure buy-in from the young person. The assessment period can take up to 4 weeks and the diversion intervention is for 12 weeks. The ‘diversion’ is flexible and can be tailored to suit the individual needs of the young person. The young person may be referred to other services or organisations so that their needs can be met. Where a referral to the Barnardos Aberdeenshire Youth Initiative is considered appropriate, a referral will be made by Criminal Justice Social Work.

3.10 Where a young person between the ages of 16 and 19 years requires additional support to achieve a ‘positive destination’, a referral can be made to the Opportunities for All Coordinator for an Activity Agreement for the young person. Activity Agreements are intended to formalise any individual provision that is put in place for young people who are at risk of not achieving a positive destination and can provide additional resources for travel / expenses incurred and benefits through Educational Maintenance Allowance payments. This gives the young person the opportunity to make positive changes to their lives and will ultimately enable them to improve their longer term outcomes. For further information about Activity Agreements, please contact the Aberdeenshire Council Opportunities for All Coordinator on 01346 587005 / Opportunitiesforall@aberdeenshire.gov.uk

3.11 For further examples of what diversion can look like, please see the case studies listed in Appendix B. Information on the activities that are available locally for young people can also be found on the Youth Opportunities Database Aberdeenshire (Y.O.D.A) - http://aberdeenshire.youthinfo.info/

3.12 Once the young person has completed the diversion, the Criminal Justice Social Worker will compile a completion report which will be sent to the Procurator Fiscal. In cases where other agencies, such as Barnardos, have been working with the young person as part of the diversion, these agencies will provide any information required by the Criminal Justice Social Worker to allow them to produce the report. The young person will also be issued with an Exit Questionnaire (Appendix C) and any feedback obtained from this will be used to evidence whether the young person has experienced improved outcomes as a result of being diverted from prosecution. Feedback can also be used to make improvements to the process, to ensure that it is effective.

3.13 The number of young people diverted from prosecution to Criminal Justice Social Work will be reported to the Youth Services Strategic Group on a quarterly basis for performance monitoring purposes.
3.14 In the event that the young person fails to engage with the Worker who has been allocated their case, or declines to work on the areas identified through the assessment described at paragraph 3.9 above, the Criminal Justice Social Worker should advise the Procurator Fiscal, who will then decide how this should be addressed. The decision regarding the stage and circumstances in which to refer the case back to the Procurator Fiscal will be at the discretion of the Criminal Justice Social Worker, giving due consideration to the details of the situation and the individual needs of the young person involved. However, if there is evidence of non engagement and the level of risk surrounding the young person is increasing, then the case should be referred back to the Procurator Fiscal.

3.15 Should the young person commit a further offence or offences while on diversion, consideration should be given as to whether this offence can also be dealt with through the existing diversion or whether further action requires to be taken by the Procurator Fiscal. The commission of a further offence will not lead to automatic termination of the diversion process; however consideration will need to be given to the nature and seriousness of the subsequent offence(s) committed.

3.16 A flow chart setting out the Diversion from Prosecution process is attached at Appendix D.

4. Cases not considered suitable for Diversion from Prosecution

4.1 In the event that a case involving a young person is not considered suitable for diversion from prosecution, the young person may need to appear in court.

4.2 For those young people who do find themselves in the adult Criminal Justice process, a Court Support Worker has been appointed to provide support to the young person, and their family, throughout this experience. This can include intensive outreach, ensuring that the young person understands and is prepared for what will happen to them at Court, that they attend Court on the date and time required and that they conduct themselves appropriately while in the court setting.

4.3 Children and Families, Criminal Justice and Throughcare Aftercare workers should contact the Court Support Worker direct if any young person they are working with is given an undertaking to appear in court or a court date, as the Court Support Worker may be able to provide additional support and assistance to these young people. The Court Support Worker can also check whether any young person has been given an undertaking to appear in court, which can be useful in cases where the young person is unsure how their offending is to be dealt with.

4.4 Further information on options that are available for young people aged 16 and 17 who are prosecuted through the Courts can be found in the ‘Remittal from Court to a Children’s Hearing’ guidance note.
Version Control

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Produced By: Kathleen Mowat, Strategic Development Officer (Whole System Approach)

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Sample Letter to Accused regarding Diversion from Prosecution

Crown Office and Procurator Fiscal Service
Procurator Fiscal’s Office, ATHOLL HOUSE, 84-88 GUILD STREET, ABERDEEN, AB11 6QA
GRAMPIAN AREA

ANDREW RICHARDSON, PROCURATOR FISCAL, ABERDEEN

ADDRESS

Telephone: 01224 578 965
RNID Typetalk prefix: 18001
Fax: 01224 578 952
Rutland DX: DX AB67
Your ref:
Our ref: REFERENCE

DATE

Dear Miss / Mr …..

The police have submitted a report in respect of an incident of….

I consider that there is enough evidence to justify a prosecution and normally I should take proceedings.

The circumstances of the offence, however, suggest that instead of being prosecuted you might benefit from some assistance from the Social Work Department. I have therefore arranged for a local social worker to see you to discuss this matter.

If I do not hear from you by [DATE 2 WEEKS HENCE] I shall assume that you agree to this arrangement. If you do not wish the Social Work Department to be involved, please contact me before then.

Enclosed is a note which explains about Social Work referral.

Yours faithfully

Procurator Fiscal Depute
APPENDIX B

Diversion Case Examples

1) Karen

At the age of 16, Karen and five other friends went on a trip to Aberdeen. One of the friends went on a planned shoplifting spree. Karen was in her company on some of the occasions when her friend was shoplifting. They were all caught and charged with Theft by Shoplifting.

Karen, now 17 is unemployed and living between her mother and boyfriend’s house. She has no previous convictions or pending charges. No agencies are involved with her. Karen was assessed as a potential candidate for diversion from prosecution and was referred to Social Work for assessment of suitability. Karen was assessed as suitable on the basis of her acceptance of her actions, her acceptance of support to re-engage with college, agreement to engage in work around consequences, peer relationships, self confidence, assertiveness and employability. One to one sessions over an initial 4 weeks period took place with a Criminal Justice social worker and then Karen was referred onto Barnardos Aberdeenshire Youth Initiative who worked with her to increase self confidence and employability skills.

At the end of the 12 week diversion period, Karen was in college, had formed an improved structure in her lifestyle, had a healthy perspective on her peer relationships, had a better understanding of consequences of offending and was actively seeking part-time employment having been given support in letter writing, interviewing and self confidence. Importantly, she avoided a Court appearance and criminal conviction which may have affected her career pathway and motivation to integrate into the community.

2) Simon

Simon is 16 and had been charged with unlawful sexual intercourse having had consensual sex with his 15 year old girlfriend. Within the account of the charge, it appeared that Simon held discriminatory and oppressive views in relation to females and sexual relationships. He was considered a potential candidate for diversion less on the basis of the sexual act but more so due to his views of women and manliness. Simon was still at school and lived at home with his family. No other agencies were involved. He had no previous or pending offences. Criminal Justice social work assessed him as suitable for diversion and he was referred onto the Joint Sex Offender Project to undertake some work around gender perceptions, sexual identity and respectful relationships.

In Simon’s case, diversion avoided a Court appearance, potential registration onto the Sex Offender Register and improved his capacity to have safe and respectful relationships with women in his future.
3) Brian

Brian is 16 and set out to attend a party with some friends. They were uninvited and were refused entry. Along with these friends he later committed an assault against the person who had refused them entry to the party and was subsequently charged. Brian lives in homeless accommodation, is estranged from his mother and is unemployed. He also had other pending charges from before he turned 16. A Barnardos Worker, Children and Families Social Worker and the Throughcare team were all involved with Brian. He was considered as a potential candidate for diversion, this being his first charge as an adult and the pending charges appearing to relate to the instability in his lifestyle. Criminal Justice social work assessed him as suitable for diversion.

Brian required support around many practical areas in the first instance such as housing, benefits and structuring his time. He also accepted that he needed some help around the impact of his family relationships, peer associates, alcohol misuse and related offending behaviour. Because three agencies were already involved, the Criminal Justice worker liaised with the workers to identify who should undertake which area of work. Children and Families social work were in the process of transferring over to Throughcare, therefore, the Children and Families worker ended his contact with Brian but the other agencies continued. Throughcare focussed on helping resolve some of the practical issues and Barnardos used assertive outreach to maintain Brian’s engagement with Criminal Justice.

Brian sadly accrued numerous other charges which catapulted him onto the custody list and straight into the Sheriff Court and criminal justice system. However, because of the engagement which he already had established with agencies through diversion, Brian was supported through this process. Although Brian did end up on a short statutory Order through the Court, he experienced a seamless transition and the work identified at the beginning of the diversion process is continuing with those people who were known to him, offering him a level of consistency and continuity.
APPENDIX C

DIVERSION EXIT QUESTIONNAIRE

This is a survey about your experience of diversion from prosecution.

We are always trying to improve our service, and it would very helpful if you tell us how your experience was. Please be as honest as you can.

Anything you say will be confidential and you are not asked for your name. It should take about 10 minutes to complete.

Thank you.

1. What age are you?

2. What date did you complete your work with the service?

3. How long were you on diversion? Please answer in months.

4. Look at the list of issues below.

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<thead>
<tr>
<th></th>
<th>Tick if any of the following have caused you difficulty before or during diversion</th>
<th>Has this problem now improved? (Only tick this if you have ticked the first column)</th>
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<td>Housing</td>
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<td>Alcohol</td>
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<td>Personal Relationships</td>
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<td>Self Esteem</td>
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<td>Mental Health</td>
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<td>Physical Health</td>
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<td>Money Issues</td>
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<tr>
<td>Coping Skills</td>
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</tbody>
</table>
5. If you have ticked any of the issues in question 4, tell us how they have improved.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Improvement</th>
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<td>Housing</td>
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<td>Coping Skills</td>
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6. What did you find most useful about diversion?

7. Have your thinking and behaviour changed during diversion?
   - Yes
   - No

8. If your answer to question 7 is ‘yes’, how has your behaviour or thinking changed?

9. Has diversion helped you to stop/reduce your offending?
   - Yes
   - No
10. Did you link into other supports or services in the community?

- [ ] Yes
- [ ] No

11. If the answer to question 10 is ‘yes’, which supports or services were they?

12. Any other Comments?
APPENDIX D

Diversion from Prosecution process for 16 & 17 year olds Flowchart

1. Police inform Procurator Fiscal of offence committed.

2. Police Scotland Youth Justice Management Unit (YJMU) identifies cases that may be suitable for Diversion from Prosecution.
   Procurator Fiscal selects the cases that he/she thinks may be suitable for Diversion.
   If petition proceedings are being considered by the Procurator Fiscal then the case will not be considered suitable for Diversion.
   Road Traffic Offences (except contravention of section 178 of the Road Traffic Act 1988 - taking a car without permission) will not be brought to Diversion from Prosecution meetings.

3. The YJMU sends suitable cases to Diversion from Prosecution meeting.
   Attendees include Criminal Justice Team Manager, Police Scotland, Barnardos.
   The group discusses each of the referred cases. Prior to the meeting, the Criminal Justice Team Manager will contact any relevant partners to obtain any relevant background information/information about current circumstances of the young person.

4. Diversion from Prosecution meeting will decide if the case should be dealt with by:
   (a) No further proceedings;
   (b) Procurator Fiscal Warning Letter;
   (c) Procurator Fiscal Fine;
   (d) Compensation Offer;
   (e) Combined Offer;
   (f) Social Work Diversion from Prosecution;
   (g) Decision to Prosecute in Court.

5. If (f)
   Criminal Justice will pick up the case and write to the young person offering them an appointment.
   Young person and Criminal Justice Social Worker meet.
   Assessment carried out as to the young person’s needs and suitability for diversion.
   Assessment identifies any specific needs (i.e. housing, education/employment, etc.).

6. If (h)
   Criminal Justice Social Work representative to notify the Aberdeenshire Council Court Support Worker.

   Criminal Justice Social Worker creates a plan for the young person, setting out who does what, when and how.
   Where a referral to a specialist service is required, this should be included in the plan.