

New Pathways through Diversion from Prosecution

Ross Gibson

Introduction

In the context of [increasing numbers](#) of children, young people and adults being offered - and taking up the option of participating in - Diversion from Prosecution (DfP), [revised guidance](#) has been published which practitioners in various agencies should familiarise themselves with. Coming into force on 10 August 2026, the guidance responds to the [conclusions of the joint inspection of DfP](#) through a number of changes that should be borne in mind when undertaking this aspect of practice. This information sheet highlights one component of the new guidance, whilst the [CYCJ practice guide chapter](#) will be of benefit to practitioners more broadly.

New pathways

One new development is the creation of distinct pathways – Pathway A and Pathway B – for accused people in line with the complexity of the accused person's circumstances. This step has been introduced in order to streamline the referral process from [Crown Office and Procurator Fiscal Services](#) (COPFS) to the relevant local authority. This ought to result in swifter delivery of interventions and supports whilst providing clarity regarding oversight of more complex or challenging circumstances.

Pathway A relates to individuals whose circumstances are more straight forward and less complex, with COPFS taking this view based on the nature of the circumstances outlined in the Standard Prosecution Report by police colleagues. Their report should – wherever possible - contain information about issues such as substance use, attitude towards the alleged offence, housing, mental health, employment and other similar features of the accused person's life.

By comparison, Pathway B referrals are likely to be those circumstances where the needs of the accused person are more acute, or where the alleged crime is of a nature that requires additional oversight from COPFS. Allegations of domestic abuse or sexual harm will always be categorised as Pathway B.

The decision over which Pathway is deemed appropriate rests with COPFS, however if – after considering the range of information available to the local authority – they believe that this should be reviewed, practitioners should speak directly to their colleagues within COPFS

Pathways process

It is envisioned that the vast majority of DfP referrals will be categorised as Pathway A. In such instances intervention or support from the local authority (or their partners within the 3rd sector) can begin as soon as the local authority assesses the accused person as suitable for DfP. There is no need, nor expectation, that COPFS provide approval to begin work through Pathway A.

Referrals categorised as Pathway B differ significantly in that the local authority must undertake an assessment of suitability and thereafter submit it to COPFS. Within that assessment an outline of the proposed, initial interventions or supports must be provided along with comments on the accused person's willingness to engage with the DfP process. COPFS then have 15 working days to consider the report before providing a definitive decision on whether or not to proceed with the DfP.

In short, the proposed interventions or supports begin immediately for Pathway A cases with Pathway B cases requiring COPFS agreement, if assessed as suitable by the relevant local authority. Further discussion regarding these new approaches to Pathways can be found on [page 10 of the revised guidance](#) and in [section 3 of Social Work Scotland's practice guidance](#).

The creation of these Pathways should lead to reduced delays stemming from communication between the local authority and COPFS, and create greater clarity over when interventions and support should begin. It therefore responds directly to a number of the recommendations of the joint inspection of diversion carried out in 2023.

Nature and duration of interventions and support

Revised guidance is clear that the nature of the interventions and support delivered during DfP should relate to both the underlying needs that have been identified within the COPFS referral and any that are identified during the course of the suitability assessment. This could take the form of housing support; alcohol counselling; employment and training opportunities; referral to mental health services; or any other suitable approach that responds to the needs that have been identified.

Whilst Pathway B referrals may relate to episodes of domestic abuse or sexual harm it is not the intention that specialist interventions such as the Caledonian System or MFMC/MF2C be used; these approaches must only ever be used following conviction. Instead, practitioners should create a tailored and bespoke intervention plan stemming from the underlying needs that have been identified, utilising suitable assessment frameworks. It is also important to note that any adult, child, or public protection concerns that come to light during the course of delivering DfP support must be dealt with in accordance with the relevant policies and procedures. More discussion of appropriate interventions for each pathway can be found on [page 12 of the new guidance](#) and within [section 4](#) of Social Work Scotland's practice guidance.

In terms of the duration of any period of DfP, revised guidance once again provides greater clarity. It is expected that Pathway A referrals would be completed within 3 months, with latitude granted within guidance to shorten this period of support when that is warranted. This could be the case when a person has made significant progress in addressing the underlying needs that contributed to them coming to the attention of police, for example.

Given the nature and circumstances of Pathway B referrals, there is acknowledgement within guidance that periods of support may go beyond the 3-month timeframe. This is perfectly legitimate but requires the local authority to continue to communicate the need for such to COPFS as the support progresses. Periods of DfP could take up to 9 months in the most complex of circumstances, but it is not appropriate for DfP to continue indefinitely.

More discussion of duration of DfP support can be found within [page 13 of the revised guidance](#) and [section 4](#) of Social Work Scotland's practice guidance.

Conclusion

Collectively, the [final report of the Scottish Sentencing and Penal Policy Commission](#), the Scottish Government's [Vision for Justice](#) and the [Recover, Renew and Transform](#) agenda encourage increased use of DfP and diversionary approaches more broadly. The introduction of streamlined Pathways into DfP provides an opportunity to do so in the swift manner that avoids the corrosive elements of the formal justice system.