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# Joint Working Protocol for Lincolnshire's Joint Diversionary Panel (JDP)



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## **BACKGROUND and CONTEXT**

Preventing children and young people from formally entering the Youth Justice System is central to Lincolnshire's approach to tackling youth crime; with a strong emphasis on understanding the underlying causes of behaviour in order to achieve long term positive outcomes.

Lincolnshire Police and Lincolnshire Children Services have an overarching belief in utilising restorative principles within the Joint Diversionary Panel to underpin this aim. The panel in partnership seeks to ensure that children and young people are offered quality assessment and timely intervention and support to meet their individual needs. The duty to victims is embedded within the panel and seeks to ensure that it provides support to victims and create positive opportunities for restorative justice.

There is a critical need to ensure there is on-going confidence in the decision making of the panel for all key stakeholders including victims of crime and communities. The panel will therefore act in a transparent manner at all times and utilise the opportunities that exist through out of court disposals and diversion to make a direct contribution in our efforts to reducing crime and therefore creating fewer victims in Lincolnshire.

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## **JOINT DIVERSIONARY PANEL (JDP) PROTOCOL**

### **SECTION 1 – AIMS AND OBJECTIVES OF THE JOINT DIVERSIONARY PANEL**

1. To increase transparency, consistency and proportionality in the use of Out of Court Disposals through a holistic multi-agency approach.
2. To develop the commitment of partners to dealing with children at the lowest appropriate level, and to diverting them from formal involvement in the criminal justice system at the earliest appropriate opportunity.
3. To ensure that through robust oversight children and young people are not unnecessarily criminalised.
4. To reassure the public and stakeholders that the use of Out Of Court Disposals for under 18s are robust and proportionate to crime.
5. To empower victims by giving them a voice; both through having their views fed into the decision-making process and providing them with the opportunity to engage in a range of restorative opportunities.
6. To facilitate a reduction in offending by providing a platform through which appropriate and early intervention is identified and delivered to young people.



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7. To introduce Joint decision making, for all but initial police-led community resolutions, that considers both offence circumstances and victim wishes, and gives priority to what is most likely to cause the child/young person to desist from offending.
8. To support child safeguarding by seeking to improve wellbeing, empower and protect all children.

## **SECTION 2 – OUT OF COURT DISPOSALS IN LINCOLNSHIRE**

**Out of Court Disposals:** The current framework is laid out and justified in the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012. There are two statutory out-of-court disposals for children – the youth caution and the youth conditional caution. There is also a non-statutory option commonly referred to as a community resolution (this includes the Youth Restorative Intervention disposal detailed below). The term out-of-court disposal includes all three of these. An out of court disposal does not involve trial or sentencing in a court. Instead, the aim is to divert the child from future involvement in the criminal justice system which is in the best interests of both the child and justice.

### **Lincolnshire standards for children in the youth justice system:**

These standards define the minimum expectation for all agencies that provide statutory services in order to ensure good outcomes for children in the youth justice system. With regard to out of court disposals Youth Offending teams are required to have mechanisms in place which provide assurance that:

- Local strategies and services are in place to ensure positive outcomes for children, including sustainable desistance from crime and to prevent children from becoming involved in crime and/or anti-social behaviour.
- Point of arrest diversion is evident as a distinct and substantially different response to formal out-of-court disposals.
- There is effective multi-agency partnership working arrangements for timely information-sharing, planning, decision making and monitoring with key agencies. Actions happen within agreed timescales and the help and protection is provided to reduce risk and meet need.
- Out of court disposals are prompt, robust and deliver targeted and tailored interventions for sustainable desistance.
- All action should be taken to promote diversion into more suitable child-focused systems, and the promotion of positive constructive behaviour.
- Police services and YOT's have a joint protocol setting out locally agreed practice for out-of-court disposals and a suitable means of joint decision-making.
- Quality assurance is evident and all decisions are recorded and reviewed.
- Analysis and action planning is in place to tackle any disproportionality.
- Improvement is achieved in the quality of pre-court work.



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Youth Offending Teams are required to:

- Undertake a timely and accurate, suitable and sufficient assessment of risk and of need for all children referred to the Youth Offending Team.
- Formulate all intervention plans based on that assessment with a focus on promoting a pro-social identity and aiding desistance from crime.
- Involve children and their parents/carers in assessment, planning and reviewing of individual programmes.
- Ensure specific attention is given to protecting the child and others from harm.
- Make sure that they work closely with the police (and Crown Prosecution Service where relevant) for the out-of-court disposal system to be effective.
- Build supportive relationships and deliver prompt, proportionate and effective interventions.

**Range of Out of Court Disposals:** The following Out of Court Disposals are used within Lincolnshire.

- **Community Resolution:** Defined as an alternative way of dealing with less serious crimes which allows the Police to use their professional judgement when dealing with a child who has committed an offence. A Community Resolution would normally seek to resolve the offence in an informal way that brings closure for the victim, where one is identified, in a timely manner. It may involve the offender doing something that 'puts right' the offending to the satisfaction of the victim and should take account of the victim's views. Initial Community Resolutions can be delivered directly by the investigating Police Officer without the child having been arrested. Within Lincolnshire there is an agreement that a Police Officer can issue a Community Resolution in instances where the young person has not had a Community Resolution previously; if the child has had a previous Community Resolution then the matter must be referred to the Joint Diversionary Panel (where a Community Resolution outcome could still be given). Receipt of a Community Resolution is recorded in local police systems but is not recorded on the Police National Computer (PNC) system and does not form part of a formal criminal record. Community Resolutions may include any of the following elements: up to four 1:1 offence focussed intervention sessions, community reparation, victim conferencing, completion of apology letter, referral to other services.
- **Youth Restorative Intervention (YRI):** Lincolnshire has developed the Youth Restorative disposal which is a form of **Community Resolution**. The YRI is a disposal that can be given by the Joint Diversionary Panel and can be adapted to meet the needs of the young person and offence at hand. The Youth Restorative Intervention has a great deal of flexibility in terms of the elements it may contain but at its core will consist of up to 12 weeks of 1:1 offence focussed intervention. A Youth Restorative Intervention may also contain any number of the following elements: referral to universal services such as Young Addaction, direct victim conferencing, community reparation work, writing an apology letter and attendance at



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offence-focussed group work sessions. All YRI's must have some restorative element whether this is direct or indirect to the victim.

- **Youth Caution (YC):** A youth caution is a formal notice, issued by a Police Officer and accepted by the child, once a child has admitted an offence, which cautions them not to reoffend and warns them of the potential consequences of doing so. A youth caution does not contain any element of intervention for the young person to undertake and does not have any restorative element. A youth caution is recorded on the Police National Computer and forms part of the child's criminal record.
- **Youth Conditional Caution (YCC):** A YCC is similar to a YC but in addition has specific conditions attached that the child is required to adhere to for a period of up to three months. If the child does not comply with the conditions then the police may choose to recommend prosecution. Often one of these conditions will be to work with the Future4Me team who will deliver offence-focussed intervention. Again, a youth conditional caution is recorded on the Police National Computer and forms part of the child's criminal record.

**Criminal Records:** There is a stark difference between some of the disposals given at Panel in relation to whether these criminalise the young person. These implications are explained to the young person at the time the disposal is given by the Police Officer and also by the allocated worker in cases where the young person is engaged in 1:1 offence focussed intervention work.

Receipt of a community resolution does not lead to a formal criminal record. Details are, however, recorded in local police systems and may be disclosed at the police's discretion – for example, in response to an enhanced Disclosure and Barring Service (DBS) check linked to a job application for which the behaviour is considered relevant. Youth Cautions and Youth Conditional Cautions are also recorded on the Police National Computer and thus criminalise the young person. Out of court disposals aim to divert children from the criminal justice system; but, in view of the potential for disclosure, it is important to remember that they could have future consequences nevertheless.

### **SECTION 3 – JDP CRITERIA and REFERRAL PROCESS**

**Referral Criteria:** Any Lincolnshire offence committed by a child/young person must be referred into the Joint Diversionary Panel as long as there is an admission of guilt from the young person and that the young person hasn't since turned 18 (youth disposals would no longer be applicable). The only exceptions to this are:

- Incidents where the Police are not looking to take any further action.
- Incidents where the Police feel the matter could be dealt with by Community Resolution **and** the young person committing the offence has not previously had a Community Resolution.



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- Sexual offences – these are dealt it via the specialist Sexually Harmful Behaviour Panel.
- Where the offence is Indictable-Only.

JDP cases are referred via the Police case management system, NICHE. Referral forms are completed by the investigating Officer before being passed to a supervisor for endorsement and referral. The JDP co-ordinator checks the NICHE referral pot every Thursday, and referrals are listed for the JDP Panel to be held 13 days later.

**Consent:** The JDP referral form requires the referring Officer to confirm that either the young person or parent/carer have given permission for the young person's information to be shared with other agencies. Without this consent cases cannot be heard at Panel as it is this consent which allows the JDP Co-ordinator to gather the holistic range of background information on the young person (in such a case decision making would remain with the Police).

**Referrals which have previously been heard at Panel** – There is no restriction on the number of times that a youth can be referred into the Joint Diversionary Panel. The Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012 does not place any limits on the number of community resolutions a young person can have. However, Lincolnshire Future4Me team and Lincolnshire Police fully understand that each and every decision to give a community resolution must be robust, carefully considered and defensible. To this end, any referrals to the Joint Diversionary Panel will be screened to see if they meet the trigger point of having had two Lincolnshire Community Resolutions containing an element of 1:1 intervention work within the previous 24 months. If this trigger point is met then the matter will still be listed at Panel but this will necessitate the following key points being discussed at Panel:

- Has the young person gone on to commit an offence of similar type despite the fact that they have already had a community resolution for the previous behaviour?
- Has the young person received offence focussed intervention relevant to the offence?
- Has the young person committed a further offence against a previous victim?
- Given these, and other, factors – is it appropriate and defensible for the young person to be issued with a further Community Resolution?
- Has there been any significant change in regards to the young person's personal/home environment?
- Is there current intervention in place which addresses the offence concerns?

**Knife offences:** The ACPO Youth Offender Case Disposal gravity factor system recommends the police forces follow a national agreement in interpreting knife-crime offences. The guidance states that:

- The first arrest of a youth under 16 for possession of an Offensive Weapon or Sharp Pointed Article, with no aggravating factors, will result in the first instance with a Youth Conditional



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Caution. This must be supported by an appropriate YOS intervention, preferably with elements focussed on anti-knife. A youth aged 16 or over will normally be charged.

- The second arrest of a youth under 16 for simple possession of an Offensive Weapon or Sharp Pointed Blade will result in charge.

Within Lincolnshire there is an agreement that all first-time knife offences can be considered on their own merits within the JDP. This is supported by the fact that we are able to offer bespoke knife-intervention and awareness work under the Youth Restorative Intervention or Youth Conditional Caution. However – if a young person is referred to Panel and has already had a knife-related disposal then they will not be considered for a Youth Restorative Intervention. The Panel would then consider the nature of the offences, period of desistance and intervention delivered before considering whether a Youth Conditional Caution or charge to court would be appropriate.

**Offences of having a corrosive substance in a public place will be treated in the same way.**

#### **SECTION 4 – THE PANEL PROCESS**

**Panel Representation:** All Joint Diversionary Panels have the following core attendees; a Panel would not go ahead without these core roles being present:

- JDP Chair (Oversees discussions and facilitates analysis and assessment discussions, key role to play when Panel members are split in terms of a disposal decision)
- JDP Co-Ordinator (Presents cases to the Panel, advises on points of policy/procedure as needed)
- Lincolnshire Police – Police Sergeant.
- Early Help team Practice Supervisor.

In addition to this Panel will be supported by representation from the following teams as appropriate:

- Education representative (at present this could be from the Inclusion and Attendance, LAC, SEND or Pupil Re-integration team).
- Antisocial Behaviour teams.
- Positive Futures.

**Information presented to Panel:** Prior to the matter being heard at Panel the JDP co-ordinator will have undertaken a holistic range of information gathering so that the following pieces of information are included in Panel analysis and assessment:

- Details of the referral offence.





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- Details of previous convictions and Out Of Court Disposals that the young person has had. Checks will be undertaken using the local Police system (NICHE) and also the national system PNC. The only information Panel would not have sight of would be any Community Resolutions issued out of area.
- The views of the victim in relation to impact of the offence and how they feel the matter could be resolved (to include whether they would be willing to engage in any form of restorative outcome).
- Any current or previous Childrens Services involvement either with the young person or family.
- Any offence-focussed intervention undertaken with the Youth Offending Service.
- An update from the local ASB and/or Neighbourhood Policing Team with regard to any local issues pertaining to ASB.
- A health validation confirming any involvement with either CAMHS (Child and Adolescent Mental Health Services) or Community Paediatrics.
- An update from the current educational placement regarding attendance as well as details of any input from the SED, LAC or Pupil Re-integration teams.
- Voice of the child – to include the young person's views on the offence, support they feel they may require and the factors which they feel may enable them to avoid further offending.

#### **Analysis and Assessment of cases:**

The Panel process serves as a joint-decision making forum and in order for these decisions to be holistic, considered and defensible it is vital that the information presented is analysed and assessed by the Panel as part of the decision making process. The JDP Co-ordinator will present the case to the Panel, following this the JDP Chair will lead the analysis and assessment process by facilitating discussion between all panel members in each of the following assessment areas:

- Underlying triggers and causality behind offending behaviour.
- Impact of offence, range of victims.
- Recurring factors within young person's offending history.
- Periods of desistance.
- Strengths identified.
- Risk of re-offending.
- Risk of Harm to others.
- Safety and Wellbeing concerns identified.
- Intervention to be delivered as part of this disposal.
- Disposal outcome – why is this appropriate and what is the justification for this disposal?
- Other actions to be taken forward.

The case outcome sheet for each case will document the full range of discussion and exploration of each if these core areas.



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### Range of Panel Outcomes:

There are a number of disposal outcomes which can be given at Panel:

- NFA (No Further Action) – Most likely to be given if offence is not considered to be made out or if it is not considered to be in the Public Interest to pursue the matter.
- Community Resolution – Tasked back to the Officer in Case to deliver.
- Youth Restorative Intervention (still falls under Community Resolution banner). Need for involvement of other agencies and form of restorative element will be decided on a case-by-case basis.
- Youth Caution.
- Youth Conditional Caution.
- Charge to Court.

**Restorative element of disposal:** Any Community Resolution, Youth Restorative Intervention or Youth Conditional Caution must contain a restorative element. The restorative element given as part of any disposal will depend upon the nature of the offence and the views of the victim towards direct reparation. Following analysis and assessment of the information at hand the Panel may decide to give more than one option of methods in which the restorative element could be fulfilled; this is particularly likely if there is lack of clarity as to whether the victim wishes for anything directly restorative to be put in place.

**Other actions arising from Panel:** Due to the holistic nature of information which is analysed and assessed at Panel there will often be additional needs or concerns identified which will not necessarily be addressed by the offence disposal given. However, the Panel have a clear and recognised responsibility to ensure that any further needs or concerns are addressed. As appropriate the Panel Chair and Panel Co-Ordinator be tasked with actions to carry forward; these may include liaising with other services, feeding information into other forums such as MACE (Multi Agency Child Exploitation) or identifying challenges that need to be made to schools or other agencies by the Team around the Child team. Such actions will be fully documented within the case sheets to ensure accountability.

**Voice of The Child** – Any views represented by the young person during Police interview will be captured on the case sheet and presented to Panel. The JDP Panel Co-ordinator will endeavour to speak to every young person by phone prior to the Panel process in order to capture their views around the offence, support needs and potential disposals. Where a young person is already working with a professional then the professional involved will be tasked with gathering the views of the young person (the rationale being that they will already have an established relationship with the young person).

**Victim Engagement** – The views of the victim are captured by the referring Police Officer who will ask their views with regard to the incident and a potential restorative outcome and ask if they are happy to be contacted by the Youth Offending Service. Prior to Panel a YOS Victim Liaison Officer will



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make contact with the victim to thoroughly explore their views on the offence, the impact it has had and their willingness to engage in any potential restorative outcome. All of this information will be relayed to the Panel so that they can ensure any disposal made is victim focussed; the views of the victim will always be taken into consideration but are not binding. Following Panel the Victim Liaison Officer will contact the victim to relay the decision of the Panel. If the offence is a crown offence with no direct victim then the Panel will seek to explore the likely community impact of such offences and will factor this into any decision making process.

**Lincolnshire Looked After Child (LAC) Protocol:** Within Lincolnshire there is a joint protocol between Lincolnshire Police, Lincolnshire Childrens Services and the Youth Offending Team which states that in all encounters with children in care, their complex needs should be recognised, given due consideration and be treated as children first. The protocol aims to strike a proportionate balance between the right and needs of the young people, the rights of victims, staff and carers and the decision to involve the Police in such incidents. The overarching aim of the protocol is to reduce the prosecution and potential for unnecessary criminalisation of children in care wherever possible. The protocol seeks to reinforce a tiered approach towards negative behaviours within care settings:

- Tier 1 incidents – It is an expectation that relatively minor incidents will be addressed by using routine internal policies and procedures, such as the residential unit behavioural policy.
- Tier 2 incidents – Such incidents may include those where no immediate police response is required, for example, where assault or damage has occurred and there is no risk of reoccurrence/significant harm to people, or incidents of theft. The children's homes should follow the internal policies and procedures to notify the appropriate management with responsibility of identifying the appropriate course of action. It is important to consider if it is appropriate to involve the police (consulting the standard list of aggravating and mitigating factors specifically created for such cases) which may influence the decision. If following consideration of this the appropriate manager decides and/or the victim wishes that formal police involvement is necessary, where possible this should be through ongoing liaison with local Neighbourhood Policing Teams and the identified police link Officer. Restorative approaches can range from internal mediation within the children's homes between young people and staff without involving the police, to Community Resolution which does involve the police but does not require a formal criminal sanction (if young person has already had an initial Community Resolution then the matter would come to JDP).
- Tier 3 incidents – Incidents requiring an immediate police response where children, young persons or staff are at risk of (a) immediate serious physical harm, (b) substantial damage to property or (c) significant disorder within the home or placement. In such situations the staff should call 999.

When dealing with a case involving a Looked After Child the Panel will review whether the protocol has been adhered to; if it is identified that this is not the case then these will be raised with the



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Police SPOC for the placement concerned. In such cases the Panel may decide to defer the matter or to NFA the matter if it is apparent that the protocol has not been adhered to. If the panel are still required to make a disposal decision they will proceed with a clear recognition of the complex needs of this cohort and of the overarching need to avoid the unnecessary criminalisation of all young people in Lincolnshire; particularly those who are Looked After.

**Decision making at Panel** – Following analysis and assessment of the information the JDP Chair will ask core Panel members for their recommended outcome decision and rationale; if there is a favoured outcome amongst members then that will be set as the disposal decision. In the event of a tied vote the Panel Chair would have the over-riding vote and the case sheet would reflect the fact that this had been necessary due to a split Panel.

Should any Panel member/agency disagree with a Panel decision, whether this is one where the Chair has had to resolve a split vote or not, this will be discussed within the panel. If following these discussions and rationale the panel member has concerns about the decision made then this would be escalated post-panel to senior manager level within their own organisation and discussion/review undertaken at that level.

**Relaying the Panel Decision** – It is the responsibility of the Police Officer in Case to relay the Panel outcome to both the victim(s) and young person. In addition to this a letter will be sent by the JDP Business Support informing the young person of the outcome of Panel and detailing what they can expect. In any instances where a Victim Liaison Officer has had contact with a victim pre-Panel they will relay the outcome back to the victim.

## **SECTION 5 – NON-ENGAGEMENT**

Typically a case would need to come back to Panel if a young person misses 3 appointments although each case needs to be looked at and considered on its own merits. If a case come back to Panel for non-engagement then the Panel would expect to see that the following measures have been undertaken to try and engage the young person:

- Contact has been attempted through a number of methods including phone call, text, letter and unannounced visit.
- That appointments have been offered at an alternate venue if there is an indication that the young person does not want to be seen at home.
- That the worker has liaised with family members as appropriate in order to try and engage with the young person.
- That the worker has sought to liaise with any other agencies (including schools) already involved with the young person in order to arrange joint-visits, seeing the young person at school etc.
- The worker has contacted the JDP coordinator to request a check of the police system for alternate contact numbers.
- Case-worker has had a discussion with their line-manager to ensure all reasonable measures have been exhausted.
- Have contacts been arranged in a manner suited to the young person's needs?



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If the Panel are satisfied that the above criteria have been adhered to and the young person has not engaged then they will need to look at whether a new disposal is required in order to outcome the offence. The Panel is not required to escalate a young person through the youth justice system following non-engagement although there will be times when non-engagement with a disposal would lead to a criminalising outcome or even a charge to court. The Panel will take into consideration the nature and seriousness of the offence, the disposal, if the young person has completed any of the disposal, if there has been any further offending and if there have been any significant changes for the young person since the disposal was given. Updated outcomes and rationale for these would be clearly updated on the case sheet in order to show a clear audit trail of the rationale behind the amended disposal. Any disagreement on outcome within the Panel would be addressed and recorded as detailed in '**Decision Making at Panel**'.

## **SECTION 6 – PANEL SCRUTINY AND DEVELOPMENT**

**Police Single Points Of Contact** – The JDP Coordinator will regularly liaise with the two designated divisional Police SPOC's. The aim of this relationship is to continually develop practice and procedure within both the Future4Me team and also within Lincolnshire Police. In addition to this any cases where procedure has not been followed (i.e. not referred into JDP by the Officer) will be flagged for further analysis and re-routing as appropriate.

**Quarterly Review Meetings** – All core Panel agencies will meet on a quarterly basis in order to explore trends and themes, address any issues in terms of process/procedure and seek to continually develop the JDP process. At each review meeting we will explore the most recent data with regard to referrals and outcomes, share positive case examples, and explore opportunities to improve both process and awareness.

**Scrutiny panels** – JDP outcomes will now be scrutinised at the Out Of Court Scrutiny Panel; this is a multi-agency forum that meets on a bi-monthly basis and seeks to review a sample of out of court disposals in order to ensure that decisions are appropriate and defensible. At least five JDP outcomes will be discussed at each meeting with the Panel including representatives from Future4Me, Lincolnshire Police, the Crown Prosecution Service, Probation and Magistrates.

**Case Audits** – Case audits will be undertaken on at least a quarterly basis; these will be undertaken by members of the Future4Me leadership Team and will review the decision making process and also the assessment, planning and intervention elements of any work done by the Future4Me team. The Panel Coordinator will then analyse these audits in order to identify any development opportunities in terms of both procedure and also staff training.



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**SECTION 7 – AUTHORISATION**

This protocol has been authorised by each of the participating agencies as set out below.

Mark Kirwan.....Signed on behalf of Lincolnshire Police

Print Name & Role - Mark Kirwan T/Det Supt Crime Standards      Date 26/4/20

..... Signed on behalf of Lincolnshire County Council Children Services

Print Name & Role – Andy Cook, Service Manager, Future4Me      Date 27/4/20