

# **Less is more- the case for dealing with offences out of court**

By Rob Allen  
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# About Transform Justice

**Transform Justice** is a national charity campaigning for a fairer, more humane, more open and effective justice system.

**Transform Justice** was set up in 2012 by Penelope Gibbs, a former magistrate who had worked for five years to reduce child and youth imprisonment in the UK. The charity will help create a better justice system in the UK, a system which is fairer, more open, more humane and more effective. **Transform Justice** will enhance the system through promoting change – by generating research and evidence to show how the system works and how it could be improved, and by persuading practitioners and politicians to make those changes. **Transform Justice** has produced reports on unrepresented defendants, on criminal appeals against sentence, on justice reinvestment and on magistrates and diversity.

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# About Rob Allen

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# Foreword

In the old days people would talk of the neighbourhood bobby giving a boy a clip round the ear when they got into trouble. Those days are thankfully over, but have we moved from action which was too informal and unregulated to a world where police no longer have the confidence to make the best use of their powers to use out of court disposals or to take no formal action at all. Sometimes less is more – a quiet word of warning may be all that is needed to prevent a teenager committing another crime. In more serious cases, police should be able to use cautions, warnings and penalties to both mark wrongdoing, and avoid unnecessary court hearings.

In recent years, the use of these out of court remedies has declined, much more so than have offences prosecuted in court. And this decline has been met with deafening silence, including from the police. It is hard to pin down quite why out of court disposals have declined, but Rob Allen has made some suggestions in this report.

One of the key reasons for the decline is a mostly “behind closed doors” campaign by judges and magistrates against out of court disposals. They warned of a “cautions culture” in which out of court disposals were being misused by gung-ho, unregulated police. They contrasted these nontransparent deals between police and offender with the open court where justice was both done and seen to be done. Lawyers were also critical of out of court disposals suspecting that, in the absence of legal advice, people too often admitted to offences they may not have committed, and in so doing acquired a criminal record.

Out of court disposals were left with few champions and the police reacted to the political signals. The confusion surrounding government policy on out of court disposals (which has been in flux for three years) undoubtedly encouraged police to think twice about imposing them, as did a lack of funding for them.

One of most stinging criticisms of out of court disposals is that they do not command public confidence and, by implication, do not satisfy victims. In fact, the public seem no less confident in out of court disposals than in court processes, and victims are often more satisfied. All the evidence points to well targeted out of court disposals being more effective than sentences in reducing reoffending, and they are a good deal cheaper. With local courts closing altogether, and with resources limited, it makes sense for us to champion out of court disposals, and to reverse their decline.

*Penelope Gibbs*  
*Director, Transform Justice*

# Executive summary

England and Wales has a long-standing tradition of diverting first time and minor offenders from prosecution. While the practice is most fully developed for children who commit crime, a wide range of out of court disposals exists for adults too. A community resolution, simple or conditional caution, drug warning or penalty notice can be administered quickly, cheaply and locally, allowing the police to concentrate on more serious crime. Diversion can work better than prosecution at reducing reoffending, and is generally acceptable to victims as long as they are kept properly informed.

Some judges, magistrates and lawyers think that offenders may accept a caution in circumstances when they are not guilty of an offence, or do not understand the implications for their criminal record. They are concerned that too many cases are diverted which should properly come to court. Yet many people who do go to court get low level penalties such as fines which could, in effect, be imposed out of court and which do nothing to help tackle any underlying problems an offender may have. So it seems there is scope for greater use of diversion.

Recent years have however seen a large decline in the use of diversion. More than half of first time offenders now go to court rather than receive a caution, compared to 1 in 5 ten years ago. The decline partly results from a desire to end a "cautions culture" by restricting the availability and use of out of court disposals. Alongside measures to limit diversion for serious and repeat offenders, the government intends to replace the existing range of options with just two – a community resolution and conditional caution.

Three police forces have been piloting the two tier system and, while the evaluation is yet to be published, it seems clear that, if diversion is to fulfil its potential, a number of measures will need to be taken. These include :

- Encouraging police to use their discretion and professional skills to resolve minor problems and disputes at the lowest level locally without the need to take formal action
- Making sure that more first time offenders and cases which are likely to be dealt with by an absolute or conditional discharge or small fine are instead dealt with outside court – including many cases currently dealt with under the "single justice procedure".
- Extending the approach to diverting children away from the courts to young adults, so that they are given a greater opportunity to grow out of crime.
- Identifying and promoting the best models for scrutinising diversion arrangements.
- Funding a suitable range of treatment options (including restorative justice) to be attached to community resolutions and conditional cautions.
- Developing a justice reinvestment approach which uses the savings which diversion brings to police, prosecutors and courts to fund local programmes designed to further reduce crime and prevent offending.<sup>1</sup>

# Chapter 1: Introduction

**1.** What's the best course of action when there is evidence that a person has committed a criminal offence? In a serious case, the answer seems obvious. The suspect should be charged and, if they are found guilty or admit guilt in court, given an appropriate sentence. But what about minor misbehaviour or an offence resulting in little harm – a theft for example when the goods are returned? Or wrongdoing linked to mental health or family problems? Or anti-social behaviour when those responsible show remorse and those suffering from it have no wish to press charges? In such cases, and many besides, a prosecution may be neither proportionate, necessary nor desirable. Often, informal action or more formal out of court disposals (OoCDs) can offer a quicker, simpler and more appropriate response than a prosecution. What is collectively referred to as diversion can be more effective than a court appearance at reducing reoffending and repairing the harm that has been done.

**2.** In England and Wales there is a long tradition of diverting away from the courts offences and offenders which in the words of a former Chief Inspector of Constabulary can be “better dealt with in a different way”.<sup>2</sup> The practice is most strongly established for children who break the law. International research has consistently found that giving children formal criminal justice sanctions increases rather than reduces delinquency. Processing is less effective than “doing nothing”, and is even more negative when compared to diversion coupled with some type of intervention. Diversion lies at the heart of international and national norms and standards on youth justice.<sup>3</sup>

**3.** It is however the use of diversion in cases involving adults that is the focus of this report. The police and prosecutors have various options for dealing with adults outside court when prosecution is not in the public interest. In the most minor cases the police may simply take no further action. A Friday night

scuffle with little damage done to any of those involved may not require anything more than informal words of warning about future conduct. If there's a clear aggressor, some words of apology to the victim – either in person or in writing – may be called for. In this case a so-called “community resolution” may be applied. While a record may be kept, this is essentially an informal measure and is recorded as such in the police outcomes framework.

**4.** The Police can deal with other low level, particularly first time, offenders using a simple caution if they admit the offence. The person who commits the crime is not prosecuted or convicted, but nevertheless will often obtain a criminal record. People in possession of cannabis or khat can be given specific warnings and, in minor cases of disorder, penalty notices can be imposed which require the payment of a fine or completion of an educational course. Conditional cautions are more than simply a warning. They require an offender to actually do something – whether it's to pay their victim back, or attend a course designed to help them stay out of future trouble. If they don't fulfil the conditions, they can end up in court.

**5.** The current diversion arrangements are usually thought to be over complicated. There is no clear hierarchy among the various courses of action the police can take, and the way the different options are classified, used and measured varies not only between police forces, but within policy documents produced by government. It is little wonder that, since 2010, successive governments have been trying to simplify and clarify the arrangements so that they are better applied by the police, and better understood by the public.

**6.** While this may be a sensible objective, it has been pursued alongside an emerging government policy of limiting the use of diversion and, when it is used, of encouraging much more in the way of enforceable

consequences for the offender. Government ministers, senior judges and the Magistrates' Association have waged a campaign against the so-called "caution culture" arguing that, while out of court disposals have a role to play, too many cases are diverted rather than prosecuted, thereby potentially eroding public confidence in criminal justice.

**7.** Partly as a result of this criticism, the last ten years have seen a substantial decline in the use of diversion. The numbers receiving police cautions fell from 340,000 in 2006 to 110,000 in 2016. Those receiving penalty notices fell from 188,000 to 38,000 in the same period. While the number of prosecutions has fallen over this period too, reflecting falls in recorded crime, the cautioning rate has declined even more. The proportion of offenders who were cautioned has fallen from 30% to 13% over the last ten years. Conditional cautions, introduced in 2003, have been relatively little used.

**8.** For summary offences (which, if prosecuted, are dealt with in the magistrates' court), the caution rate has almost halved since 2006. Defendants with no previous convictions and cautions are now more likely to go to court and, if guilty, be convicted (52%) than to receive a caution. Only 22% of these offenders were convicted in court 10 years ago.<sup>4</sup>

**9.** This decline in diversion followed a period which saw a large increase in the use of out of court disposals in the mid 2000's. The increase did not, for the most part, serve to reduce prosecutions. Rather it was a response to a central government target to bring offenders to justice, which in turn formed part of a policy of "narrowing the justice gap". Large numbers of cases which would previously have received no formal attention at all from the police were instead processed, recorded and sanctioned.

By the end of the decade, the explosion in the use of out of court disposals had come to an end. Some people who might have been given a formal out of court disposal in the mid 2000's may nowadays receive no formal action or a community resolution. Others however may face prosecution.

**10.** Following a review of the options, since 2014, three police forces have been piloting a new two tier approach to diversion in which the only out of court disposals available are community resolutions and conditional cautions. Every offender given such a disposal is expected to do something as a result, either to make amends or address the cause of their behaviour.

**11.** The evaluation of the pilots has not yet been published, but it is clear that a number of questions need to be answered before the simplified system is rolled out nationally:

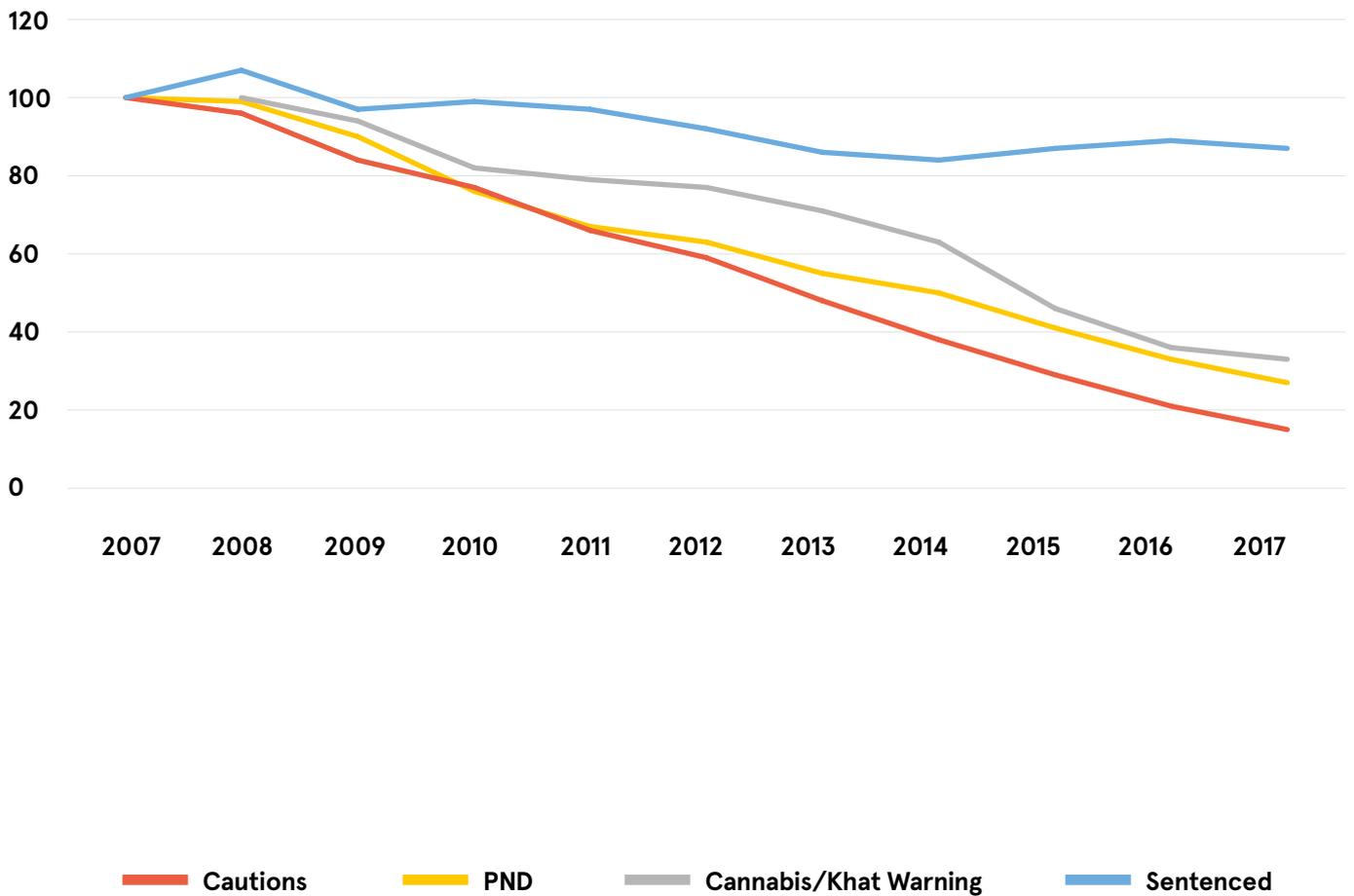
- a) Has the negative approach to diversion resulted in cases unnecessarily being prosecuted?
- b) Who should fund and organise the rehabilitation and reparation measures required as part of community resolutions and conditional cautions?
- c) What systems of accountability and scrutiny should be in place for decisions to divert?
- d) Are there models of good practice which could be replicated?

**12.** With continuing cost pressures on the Ministry of Justice and a programme of court closures, it makes sense to ensure that cases are not prosecuted when they could be effectively dealt with out of court. This paper shows how that can be done.

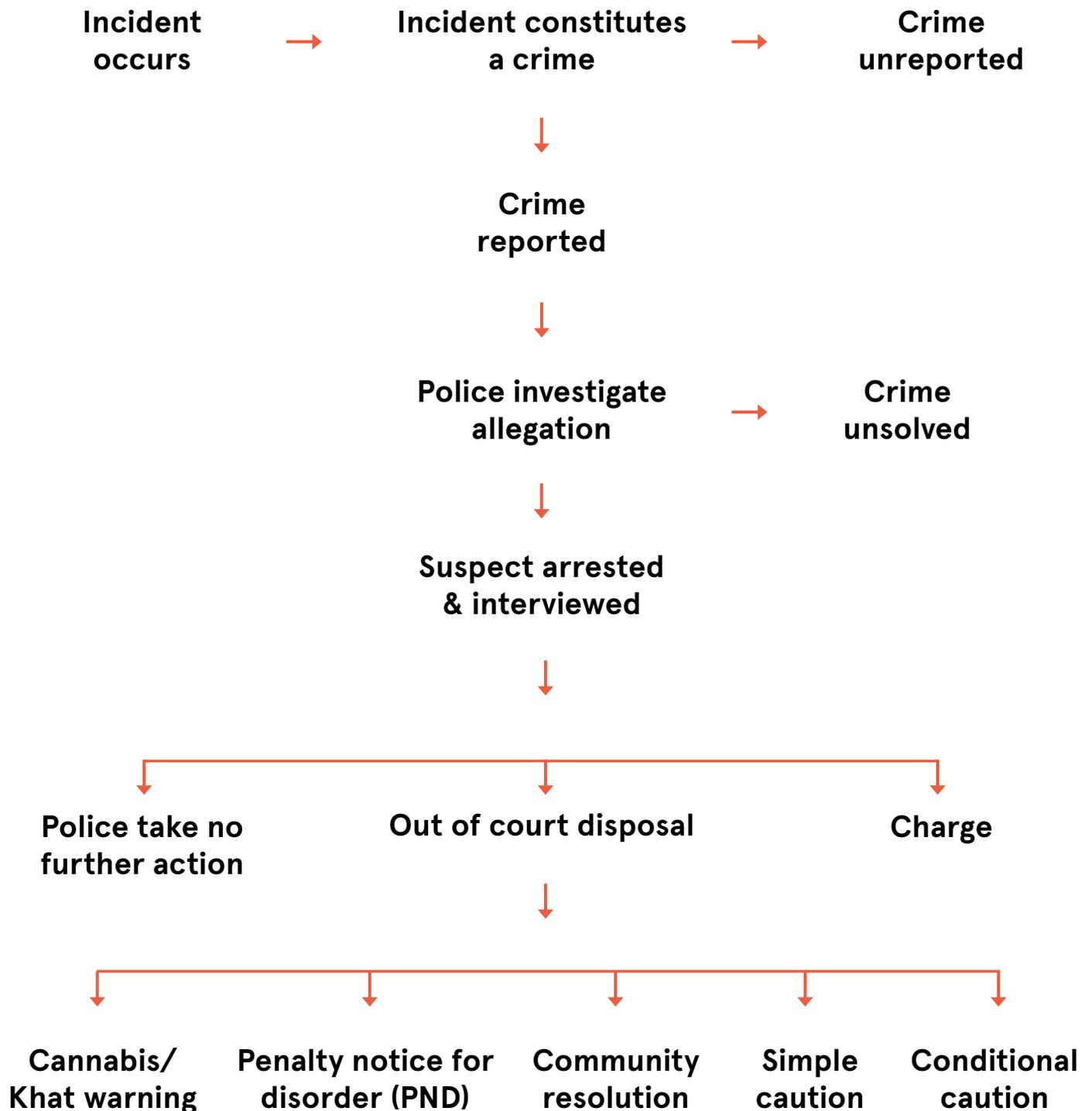
**Figure 1**

**Trends in court and out of court disposals 2007-17**

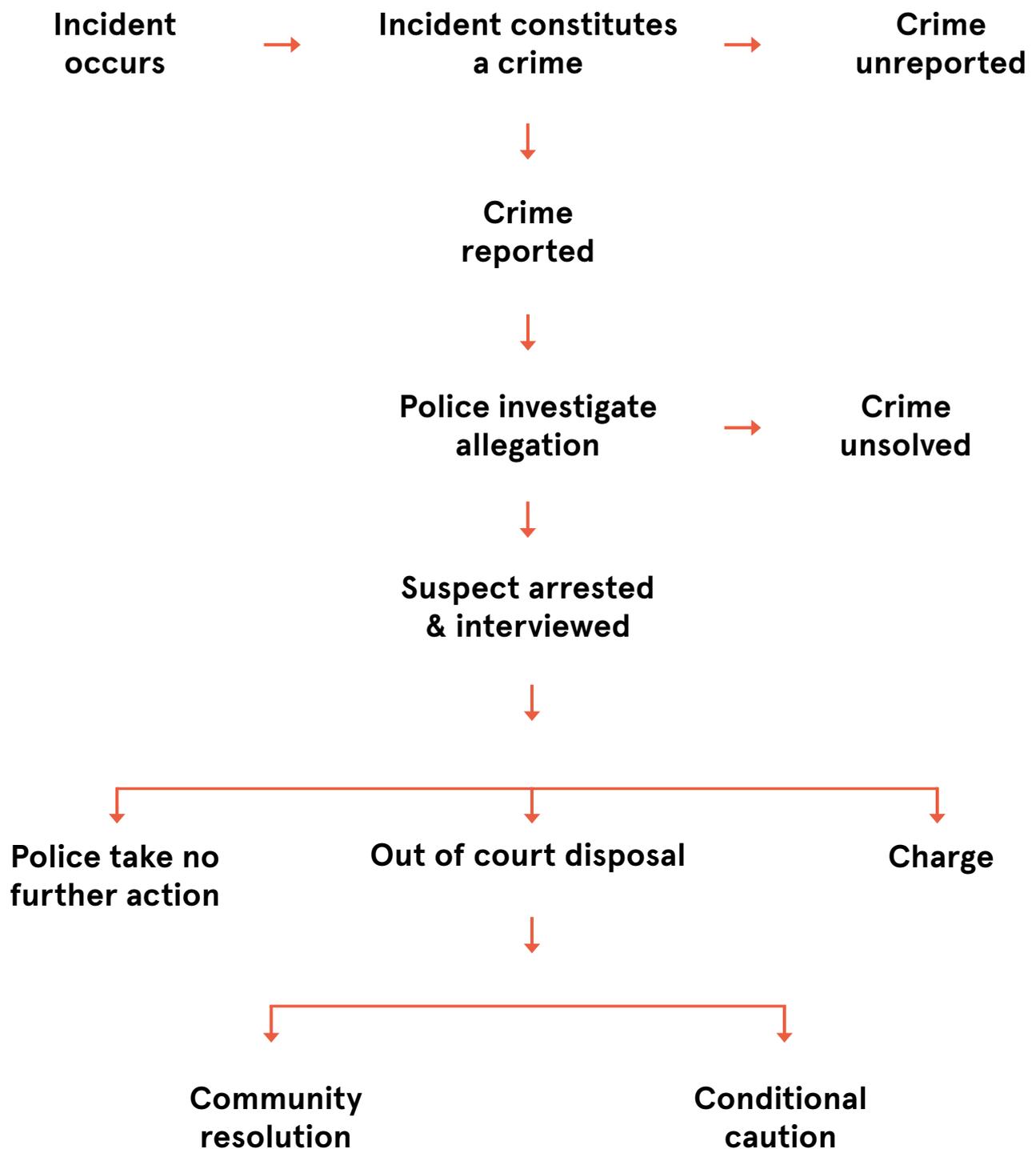
Source: Calculated from Ministry of Justice Criminal Justice System Statistics Quarterly March 2017 and earlier editions



# Out of court disposals flowchart of current system



# Out of court disposals flowchart of future system (as proposed in 2014)



# Chapter 2: The case for diversion

**13.** Where the police can sort out a minor incident quickly, simply and to the satisfaction of the victim and perpetrator, there can be little benefit and considerable cost in taking it further into the formal criminal justice system. As the 2010 Green Paper “Breaking the Cycle” put it, out of court disposals “can provide swift and effective outcomes for victims and a proportionate response to misbehaviour that, although criminal, is not serious enough to prosecute or would result at most in a low-level penalty in court. Prosecuting such cases would use a disproportionate amount of resources to achieve a similar outcome, and would often entail delay for victims”.<sup>5</sup> In 2016 it took on average five to six months from the time of an offence to its completion in the magistrates’ court.<sup>6</sup>

**14.** In 2016, more than 450,000 cases which went to court resulted in the offender getting a discharge or a fine<sup>7</sup> (Table 1). This number does not include motoring offences, which resulted in the same number again of low level penalties. Some at least of these cases (where there was an admission of guilt) could arguably have been diverted from court.<sup>8</sup> This is particularly true of the almost 6,000 people who had no previous cautions or convictions. Many of the cases which are handled by the so-called “single justice procedure”, and for which it is proposed automatic online conviction will in future be available, may also be suitable for diversion from court.<sup>9</sup>

**15.** What’s common to these low level penalties imposed in court is that neither the offender nor the victim get much from them. Such sentences do nothing to address problems such as addiction, mental illness or poverty, which often drive this offending. In many cases too the victim will not get an apology, let alone compensation. They may not even find out what happened in court. Of the 1.2 million offenders sentenced in 2016-7, fewer than 5,000 were ordered to pay compensation.<sup>10</sup> Can out of court disposals do better?

## Deferred prosecution

Durham Police’s Checkpoint programme offers a new approach. People in line to be prosecuted are offered an alternative – a 4 month contract based on an individual needs assessment and always including a requirement not to reoffend. Conditions can also include participation in a restorative justice activity, interventions to address underlying problems, up to 36 hours voluntary work or monitoring by a GPS tag. A man with alcohol and mental health issues was referred to Checkpoint following three shoplifting offences. He completed 18 hours volunteering at the local foodbank, and continued after the end of the contract. He was referred to a drug and alcohol agency for counselling. He significantly reduced his alcohol usage and, at the end of the contract, was looking to come off his medication for depression after 10 years.<sup>11</sup>

**Table 1**

**Offenders receiving low level court penalties 2016/17**

Source: MoJ: Offenders sentenced to Absolute and Conditional Discharges and Fines at all courts, by offence group 12 months ending March 2017

	<b>Absolute Discharge</b>	<b>Conditional Discharge</b>	<b>Fine</b>
<b>Summary non motoring</b>	1829	27398	365963
<b>Either way</b>	893	24678	41703
<b>Indictable</b>	13	37	25
<b>Total</b>	2735	52113	407691

## Positive impact of out of court disposals on offenders

**16.** People who receive a caution reoffend less than people who go to court. 15% of those cautioned in 2015 were known to reoffend within a year, half the proportion of those who received a conditional or absolute discharge in court. 27% of those fined by a court reoffended. Those given a caution who did reoffend committed fewer offences than those reoffending after any court imposed orders.<sup>12</sup> In fact, people given most forms of out of court disposal reoffend less than those who go to court, particularly when restorative justice approaches are used.<sup>13</sup>

**17.** Of course, it's likely that those getting cautions (mainly first time low level offenders) are less prone to reoffend than more experienced or serious offenders who are selected to be charged. But the better results for diversion are found – albeit to a lesser extent – even when the differences between the offenders are taken into account.<sup>14</sup> The Police Inspectorate consider the comparative success rates of out of court disposals to be “an important finding”.<sup>15</sup>

**18.** One reason for the success is that research has long shown that the certainty of being caught acts as a much more powerful deterrent than any punishment. A speedy and simple response to wrongdoing by the police can often make more of an impact than a sentence meted out months later in court.

**19.** A second reason may be that diversion avoids the negative “labelling” effects which can arise from a court appearance. This argument has, for the most part, been accepted in the youth justice system which facilitates the use of out of court approaches for those under 18 who commit crime. There is a growing recognition that the developing maturity of young adults up to the age of 25 makes them highly

suitable for a similar approach. The Justice Committee has recently argued in their report on the treatment of young adults in the criminal justice system that “developmentally appropriate responses” are feasible within the existing system—including through conditional cautions.<sup>16</sup>

**20.** A number of police services have developed specific initiatives for young adults, including the South Wales young adult triage scheme. This aims to extend measures which work in the youth justice system (up to age 18) to the next age group up. The project has a restorative justice focus and interventions are victim focussed and led in most circumstances. Community based interventions include workshops exploring the consequences of crime; activities designed to help offenders understand the consequences of their actions; interaction with victims in appropriate cases; and a wide range of groupwork programmes covering health and social care issues such as substance and alcohol misuse, mental health problems and internet crime such as sexting and revenge porn.

**21.** A third reason may be the way “out of court disposals can also help offenders understand the impact of their crime, make reparation to the victim and community, and divert people into treatment for drug, alcohol and mental health problems”.<sup>17</sup> The case for diversion is arguably stronger when, in appropriate cases, the opportunity is taken to help an offender to address the problems which may underlie their criminal behaviour.

**22.** There are two groups for whom this may be particularly true. The first is women offenders, many of whom can end up being prosecuted for minor offences without receiving treatment for the underlying problems.

## Could a community based rehabilitation programme have enabled this woman to be given an out of court disposal?

A homeless mother-of-five who wrote a letter to a court asking to be jailed saw her wish granted by magistrates in Kent in October 2017. It was reported that the 36 year old punched a shopkeeper and then kicked a police community support officer after stealing a packet of chocolate biscuits worth 99p from Costcutter in Dover. The woman, who the court heard has a heroin habit and a serious drink problem, wrote a letter asking to be sent to Bronzefield prison, where she had previously been imprisoned, so that she could continue a rehabilitation programme.

**23.** Women's centres have been established around the country to support women at various stages of the criminal justice process - including pre-court. Women diverted from prosecution through a triage project in Hull were 46% less likely to be rearrested than a control group of similar female offenders.<sup>18</sup> Despite the promising results, funding for women's centres has been uncertain and recent trends suggest that police have been "cracking down" on petty offences committed by women.<sup>19</sup> The Prison Reform Trust has proposed that a national network of women's centres and services should be funded to support early intervention, so that women committing minor offences do not get more and more severe punishments.<sup>20</sup>

**24.** The second group for whom early intervention outside the criminal justice system may be particularly valuable are people with mental health problems. A recent survey indicated that 12% of offenders had a mental illness or long-standing depression, while 20% reported needing help with an emotional or mental health problem. In recent years a successful alternative approach has been adopted with offenders with mental health problems and learning disabilities. Liaison and diversion (L&D) programmes try to keep offenders with these issues away from prosecution, remand or a sentence, and towards treatment. The vast majority of respondents to a stakeholder survey "were of the opinion that information provided by the L&D service had affected decisions about whether to charge or issue a warning, caution or take no further action".<sup>21</sup>

**25.** Diversion may also improve outcomes for black and minority ethnic offenders. David Lammy's 2017 review found a substantial lack of trust made "BAME defendants less likely to cooperate with the police or trust the advice of legal aid solicitors, who can be seen as part of the 'system'".<sup>22</sup> By initially refusing to admit guilt, they can end up being treated more punitively. To avoid this, Lammy recommended the greater use of a deferred prosecution model along the lines of Operation Turning Point, an experimental programme piloted in the West Midlands.

## **Operation Turning Point (OTP)**

This was piloted from 2011 to 2014 and involved people with no more than one conviction, who were facing prosecution. Individuals were randomly allocated either to prosecution as normal (the control group) or to a deferred prosecution (the treatment group). The latter agreed to an individualised programme designed to tackle drug or alcohol problems or other factors underpinning their offending. Those who completed the programme saw their prosecution dropped, while those who failed to comply went to court. Early results show less reoffending among the treatment group, particularly in the case of the small number of violent offenders. While the programme is similar to conditional cautioning, the participants in Operation Turning Point are not required to admit the offence, but must of course agree to undertake the activities which form part of their contract.

## Positive impact on victims and on the criminal justice system

**26.** From a victim's point of view, an immediate apology and a meaningful effort at reparation can often prove more satisfying than involvement in a lengthy and uncertain court process. In some cases, the victims of crime may be unwilling to support a prosecution. A 2011 study found that 53 out of 64 victims reported being 'satisfied' or 'extremely satisfied' with the out of court disposal, compared to 14 out of 22 of those where the offender went to court.<sup>23</sup> 12 out of 17 victims were satisfied with a simple caution – which places no obligations at all on an offender. For conditional cautions, the satisfaction rate was 11 out of 12. The Police Inspectorate who did the study "found that the level of victim satisfaction hinged largely upon the extent to which they have been kept informed and updated".<sup>24</sup>

**27.** A similar picture emerges from the much more significant Turning Point study (see above) which found that, in a sample of more than 140, victims whose cases were processed through the diversion programme were 43% more satisfied than in those whose cases went to court.<sup>25</sup>

**28.** Part of the reason may be that victims are more likely to receive compensation (and to receive it quicker) via out of court disposals than through the court. Research suggests that victims are likely to be content with out of court disposals as long as they feel the police respect them, care about them, and are doing something in their interest. The way in which the police explain the outcome of investigations is important for victims. Victims feel that it is legitimate to take the action which is most likely to reduce reoffending.<sup>26</sup>

**29.** From the perspective of the criminal justice system as a whole, diverting minor cases from prosecution can bring more cases to justice. Diversion increases the amount of time police officers can spend on more serious crime, and reduces hours spent completing paperwork and attending court. In 2014, it was estimated that administering a simple caution cost the police £260 whereas a charge cost £320. The cost of a court appearance was estimated at £1170 per case. Court prosecution costs even more if an offender is given a community or short prison sentence.<sup>27</sup>

**30.** With both police and courts struggling with cuts to their budgets, prioritising the most serious cases has become increasingly important. Operation Turning Point achieved a saving of around £1,000 per case, including all of the costs of the intervention programmes.<sup>28</sup> These are the kind of savings which would enable the Ministry of Justice and the Home Office to live within their budgets in coming years – although some at least of the funds should be reinvested into local programmes which can further reduce crime and prevent reoffending.<sup>29</sup>

**31.** It has recently been proposed that the criminal justice system's mission should be to reduce the harm caused by crime and strengthen communities.<sup>30</sup> This echoes Sir Robert Peel in 1829: "the basic mission for which the police exist is to prevent crime and disorder as an alternative to the repression of crime by military force and severity of legal punishment".<sup>31</sup> Diversion seems to have an important role in meeting that objective. As Lord Justice Leveson said: "cautioning has a long and distinguished record as a tool available to the police to deal with certain types of criminal behaviour committed in circumstances that it was not necessary or indeed proportionate, to take an offender to court". Given the benefits it can provide to victims, offenders and taxpayers, there is considerable scope for increasing its use.

# Chapter 3:

## The case against diversion

**32.** Some object to diversion in principle. Some lawyers dislike the imposition of what amount to penalties in a non-judicial setting. Out of court disposals, they say, can impose serious long term consequences on people suspected of breaking the law, without sufficient safeguards governing their use. Simple cautions are not a statutory measure and are governed by administrative guidance issued periodically by Home Office or Justice Ministers.

**33.** It is true that as far as a criminal record is concerned, a caution is often treated in a similar way to a conviction. The details of some cautions are retained by the police for future reference, and can be taken into account by a magistrate or a judge in the event of a future conviction. While a simple caution becomes "spent" immediately, cautions retained on the police national computer may be disclosed on DBS checks to employers if the person is applying for certain roles such as traffic warden or child-minder.

**34.** There is certainly a case for putting diversion measures on a firmer legal footing and requiring that the police provide a full, tailored explanation in person and in writing, about the consequences of agreeing to an out of court disposal. These are matters of good practice. A cooling off period should also be introduced to allow a person time to consider whether they wish to accept a caution. And out of court disposals should be removed from a person's criminal record after a certain period of time.

**35.** Some magistrates tend to be hostile to the basic idea of diversion. In 2013, those who responded to a government consultation about the "community remedy", the menu of sanctions the police should apply in cases of low level crime and anti-social behaviour, "were not in favour of out of court disposals in general...and considered anti-social behaviour and low-level crime should be dealt with

by the courts". The Magistrates' Association told the review that "the removal of judicial supervision combined with the informality of the application of an ever-widening scope of the use of out of court disposals will lead to more, not less offending."<sup>32</sup> The evidence does not support such concerns.

**36.** A more common objection is that, while diversion may be acceptable in limited circumstances, in practice it is used too much. In 2011, then Home Office Minister Nick Herbert told the Magistrates' Association that he knew many of them "will share my unease about the way out-of-court disposals have been used".<sup>33</sup> In 2013 the Chairman of the Magistrates' Association called for an inquiry into the police use of cautions, saying that the practice had "got out of hand."<sup>34</sup> Concerns include a lack of oversight, transparency and consistency and the fact that diversion is "robbing victims of their chance for compensation and to see the offender in court".<sup>35</sup> Some people take the view that out of court disposals are simply too soft an option when used for serious crimes or repeat offenders.

## The seriousness of offences

**37.** The seriousness of the offence is one of the main factors taken into account when deciding whether diversion is appropriate. There is a variety of guidance available to the police, in particular the gravity matrix. Originally drawn up by the Association of Chief Police Officers (ACPO), it lists the most common offences and allocates a gravity score, together with aggravating and mitigating factors which make a particular offence more or less serious. Some of these factors apply in all cases; any offence is made more serious if the offender was a ringleader, or abused a position of trust for example; and made less serious if the offender is vulnerable, or prosecution is likely to have a detrimental effect on a victim's physical or mental health. Other factors apply to specific crimes: for example, a threat to kill is more serious if calculated, and less if made in the heat of the moment.

**38.** The Police have been criticised for the way they have applied the matrix in practice. The Police Inspectorate found in 2015 that the right decision was made in four out of five cases where the police had taken no further action or imposed an out of court disposal. Problems arose primarily from police "under assessing the gravity of the offence and deciding an out of court disposal was appropriate in cases which they should have charged or referred to the CPS for a charging decision."<sup>36</sup> However this represents a marked improvement on a 2011 study which found decisions in a third of the cases examined by inspectors were not up to scratch.

**39.** Concern about cautions being given in very serious cases may also reflect mistakes in the way offences are recorded. The initial report of a very serious offence may be downgraded during an investigation to a lower level offence, for which an out of court disposal is quite properly given. Yet the

records may falsely show it was given for the original offence. The Home Affairs Committee who looked at out of court disposals in 2015 thought that better recording should "assuage fears that this tool is being inappropriately used for serious crime".<sup>37</sup>

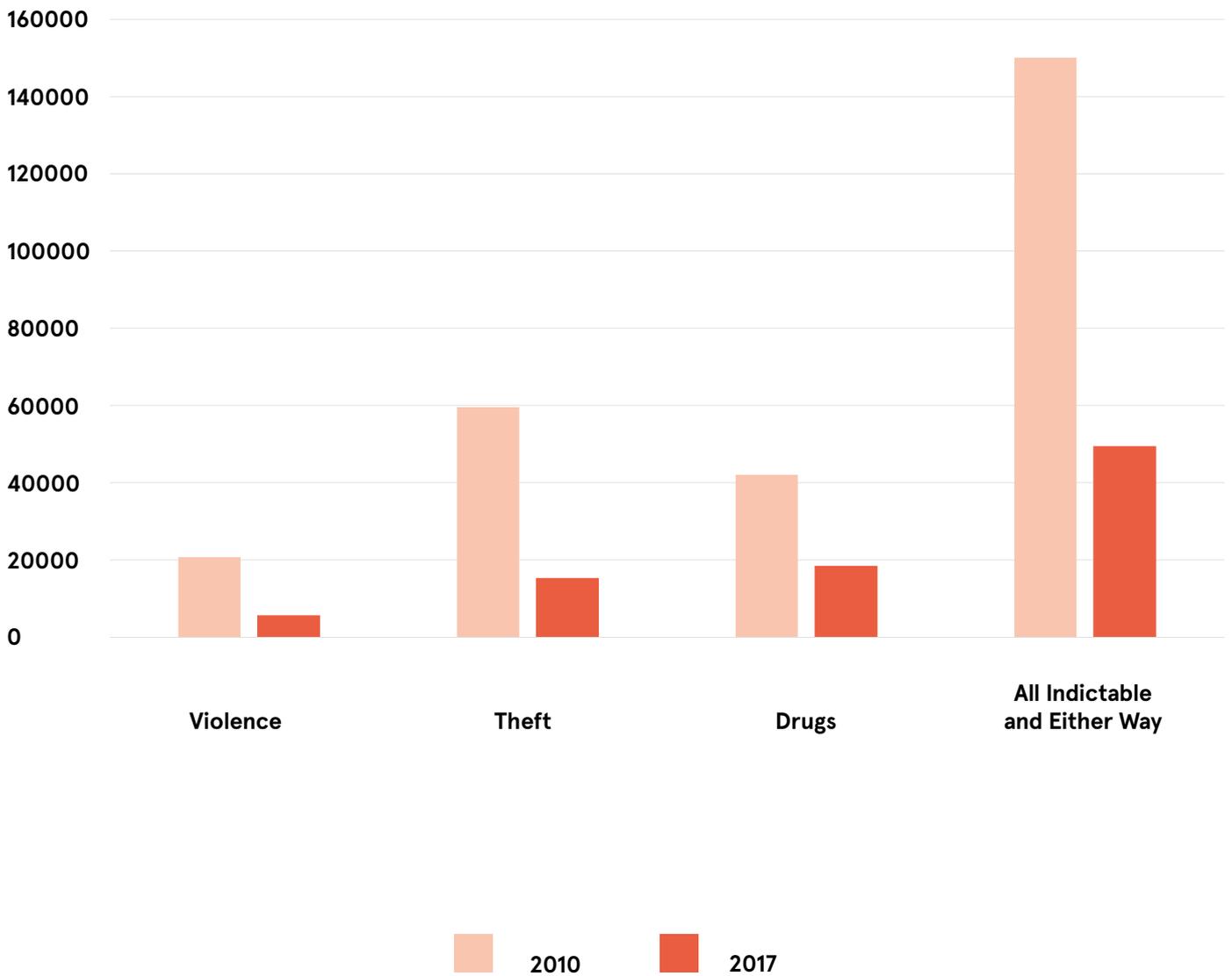
**40.** The law and revised guidelines on the use of cautions fall short of an outright prohibition of their use even for the most serious offences. This is because there will always be cases of serious wrongdoing where the individual circumstances relating to an offence, an offender and/or a victim which will make a prosecution an unnecessary, inappropriate or even harmful option. The Crown Courts, which deal with the most serious offences which normally attract a prison sentence, imposed 50 absolute or conditional discharges in 2016.<sup>38</sup> It is likely that some at least of these cases could have been dealt with out of court.

The last few years have seen greater restrictions placed on the use of cautions. While a simple caution may in theory be given for any offence, the law now prohibits the police from giving a **simple caution** to an offender for cases which, if prosecuted, must be tried in the Crown Court, unless the CPS agree.<sup>39</sup> Such offences considered by the police as suitable for a **conditional caution** must be referred to a prosecutor.<sup>40</sup> For less serious offences, an offender can only in exceptional circumstances be given a simple caution if, in the two years before the offence was committed, the offender has been convicted of, or cautioned for, a similar offence, unless a police officer of at least the rank of Inspector determines that there are exceptional circumstances relating to the offender, the present offence or the previous offence.<sup>41</sup>

**Figure 2**

**Cautions for selected crimes  
2009/10 and 2016/17**

Source: MoJ: Numbers of cautions given for indictable and either way offences of violence, theft and drugs and all indictable and either way offences 12 Months to 31 March 2010 and 2017



## Repeat offenders

**43.** When police inspectors looked at out of court disposals in 2011, they were concerned about their use for repeat offenders. Although HMIC found that this may sometimes result from the circumstances (for instance, if a witness is reluctant to attend court), “within our small sample we found obvious examples of unexplained and unchallenged overuse”.<sup>42</sup> The study seems to have prompted the Lord Chief Justice to say “a degree of unease developing in my mind at the number of cases of criminal behaviour which are not brought to court when perhaps they should be”.<sup>43</sup>

**44.** Figures show that about half of cautions are given to people with no previous cautions or convictions, and a further quarter to people with one or two. The proportions have remained fairly stable. Despite guidance which discourages the use of cautions for repeat offenders, the proportion with more than seven previous cautions or convictions grew slightly between 2010 and 2016 – from 9.3% to 11.8% in indictable and either way offences, and from 6.9% to 8.8% in summary cases. However because of the declining use of cautions during this period, the absolute numbers halved.<sup>44</sup>

**45.** The unease about cautions for repeat offenders presumably arises from a view that an out of court disposal gives a person a chance to avoid prosecution; that, if that chance is spurned, and they commit a further offence, a prosecution must follow. While this escalation approach may have common sense appeal, it cannot always do justice to the complexities of individual cases. It’s not the kind of approach which is always used by the courts when sentencing low level crime. A total of more than 20,000 people convicted in court with more than 7 previous cautions or convictions received the lowest possible penalties. This is despite the law requiring courts to treat each

previous conviction as an aggravating factor. This suggests that in many cases courts are content to impose low level penalties on repeat offenders. Some at least of these cases could be more effectively dealt with out of court.

## Interventions which accompany out of court disposals

**46.** A final area of concern has been about what out of court disposals actually entail in practice. While simple cautions, penalty notices for disorder and drug warnings are straightforward and easily understood, community resolutions and conditional cautions, the two disposals which the government wishes to retain in a reformed framework, mean little in themselves. What they amount to depends on the action that is taken in individual cases. The meaning of community resolution is particularly unclear. The term is sometimes wrongly used interchangeably with restorative justice (RJ) but studies have suggested that the discretion inherent in street level RJ responses “has enabled police officers to stretch the concept of ‘restorative justice’” to such an extent that it does not adhere particularly closely to RJ’s key principles such as the centrality of dialogue between victim and offender.<sup>45</sup>

**47.** Apart from RJ, police currently have too limited a range of measures to apply when an out of court disposal is imposed. In 2014, PCC’s were required to publish a community remedy document, a list of rehabilitative, reparative and punitive measures for low level offenders drawn up after a process of community consultation in 2014.<sup>46</sup> But many of these documents are framed in very general terms.

**Merseyside PCC's Community Remedy List includes, for example:**

- Mediation
- A written or verbal apology
- The perpetrator signing an acceptable behaviour contract not to behave anti-socially and to face more formal consequences if they breach.
- Restorative justice resolution
- Participation in structured activities that are either educational or rehabilitative.<sup>47</sup>

**48.** Other forces' documents use phrases such as "structured diversionary activity" or "referral to supportive services". It is difficult to see how victims are able to propose appropriate interventions for low level offenders (which they are supposed to be able to do) when the remedies, particularly rehabilitative ones, are so vaguely described. Greater Manchester's document is honest enough to say that "structured activities and measures to assist in rehabilitation of offenders will be determined locally, depending on capacity and availability".<sup>48</sup>

**49.** Some police forces have developed specific programmes which can be used as conditions in out of court disposals. In Cleveland, community remedy options have been developed which include drug and alcohol intervention, reparation or unpaid work, mediation and anger management programmes. But such specifically designed options for use at the diversion stage are the exception rather than the rule.<sup>49</sup> When conditional cautions were first introduced, it was expected that the probation service might be able to provide some supervision but, as things stand, neither the National Probation Service nor Community Rehabilitation Companies have the remit or funding.

**50.** In order to extend the use of out of court disposals, the police will need access to a suitable range of interventions to attach to them. Justice reinvestment offers a good model for funding such interventions by transferring resources away from the often meaningless court processing of low level cases into constructive programmes and activities designed to reduce crime, and repair harm in the community. At central government level this would mean the MoJ and Attorney General's Office passing savings from averted prosecutions to the Home Office.

**51.** Greater opportunities to incentivise diversion would be created in a more devolved system of criminal justice. If, for example, the Mayor in London or Manchester had responsibility not only for the police but for the resourcing of prosecutors, courts, probation and prison services, increased diversion could lead to funds being transferred into creative community based responses to crime.<sup>50</sup>

**52.** There are some legitimate concerns about the improper use of diversion but not sufficient to justify the reduction in its use in recent years. As the Police Inspectorate argued back in 2011, "the application of sound common sense principles should go a long way in remedying some of the difficulties we have identified". While a significant minority of cases in their study may not have fitted the criteria in place at the time, the overall conclusion of their 2011 report was that the out of court disposal regime in place at the time was "a legitimate and time-efficient option for dealing with less serious crimes".

**53.** Despite this vote of confidence, the Coalition government was swayed by the concerns of the magistrates and the Lord Chief Justice and started an overhaul of the system aimed at "putting an end to soft option cautions".<sup>51</sup>

# Chapter 4:

## Policy development since 2010

### 2010–2012

**54.** The 2010 Coalition’s programme for government promised to introduce “effective measures to tackle anti-social behaviour and low-level crime, including forms of restorative justice such as Neighbourhood Justice Panels”.<sup>52</sup> Early steps included a commitment to the national liaison and diversion arrangements for people with mental health problems, and the relaxation of a hitherto rigid system of out of court disposals for under 18’s. The prospects for diversion therefore looked bright.

**55.** The Coalition’s 2010 criminal justice green paper “Breaking the Cycle” proposed using restorative approaches to keep low level problems out of the formal criminal justice system altogether. In more serious cases, the green paper suggested that, where a court case is likely to lead to a fine or community sentence, restorative justice could be used at the charging stage. “Here, restoration would be delivered as part of an out of court disposal, for example as a condition attached to a conditional caution. This could result in the offender paying compensation to the victim, or making good their offence in other ways determined by the victim. This could prevent distress to the victim and deliver a suitable punishment.”<sup>53</sup>

**56.** Alongside the proposals to increase both what might be called pure diversion, dealing with many of the most minor cases informally, and the use of out of court disposals as an alternative to prosecution, the government embarked on a plan to simplify the range of options available to the police and prosecutors. The government felt that the system of out of court disposals needed to be simpler for practitioners and the public to understand, and more effective at enforcing penalties, helping to change offenders’ behaviour and harnessing the power of communities to tackle local problems themselves. Meeting all of these objectives has proved a slow process.

**57.** Paradoxically, the Coalition’s Legal Aid Sentencing and Punishment of Offenders Act further complicated the diversion landscape by introducing a penalty notice for disorder with an education option, and providing for conditional cautions to be given without the need to refer the case to the relevant prosecutor. Alongside these legislative changes, neighbourhood justice panels were piloted in fifteen areas to test methods of pure diversion, and a commitment was made to expand RJ.

**58.** The tide soon began to turn again. In the first of a series of restorative justice action plans published in 2012, Justice Minister Jeremy Wright said that “restorative justice is not an alternative to sentencing; a way of an offender getting a lighter sentence by expressing insincere remorse. I’m very clear that restorative justice will not lead to offenders escaping proper punishment”.<sup>54</sup> This reflected a harder line in diversion policy which followed the 2011 riots, the replacement of Kenneth Clarke by Chris Grayling as Secretary of state for Justice in 2012, and the growing criticisms by the judiciary and magistracy of the inappropriate use of cautions.

## 2013–2015

**59.** The mounting criticism of “soft option cautions” led to a government review which reported in November 2013. This recommended that restrictions on the use of simple cautions be introduced either through legislation or guidance, and that a wider review of OoCDs be conducted. The government published revised guidance on simple cautions in November 2013 and introduced legislative restrictions on their use in the Criminal Justice and Courts Act 2015.

**60.** The legislation was designed to prevent the use of simple cautions for indictable only and certain serious triable either way offences specified in secondary legislation (e.g. possession of an offensive weapon, child prostitution and pornography or procuring or supplying Class A drugs), other than in exceptional circumstances. Cautions for these offences requires authorisation by a senior police officer, as well as a prosecutor in the indictable only case. The provisions also prevent the use of simple cautions where offenders have received a conviction or caution for a similar offence in the last two years, again unless there are exceptional circumstances.

**61.** The wider review of out of court disposals took place in 2014 and, following consultation, the government decided on a bold refashioning of the out of court disposal framework. The existing range of out of court disposals were to be replaced with just two.<sup>55</sup> First, a suspended prosecution/conditional caution designed to tackle more serious offending, such as theft, violence or drug offences where there is sufficient evidence to prosecute, but the public interest is better served through the offender complying with appropriate conditions. Those who chose not to comply with these conditions may be prosecuted for the original offence. Second, a new, statutory community resolution aimed at lower-level and/or first-time offending, such as minor incidents

of criminal damage or low-value theft. This disposal would allow the police to apply a wide range of approaches to tackling offending, ranging from an apology to the victim through financial compensation or rehabilitative measures. The new measures were unveiled as “plans to scrap the use of cautions in England and Wales, and replace them with a system of suspended prosecutions”.<sup>56</sup> Grayling said “It isn’t right that criminals who commit lower-level crime can be dealt with by little more than a warning. It’s time we put an end to this country’s cautions culture”.

**62.** Before doing so, the new framework for out of court disposals was piloted in three police force areas but the evaluation of these has not been published. Even though the results of the pilots were not available, the 2015 Conservative manifesto pledged to “overhaul the system of police cautions, and ensure that offenders always have conditions, such as victim redress, attached to their punishment”.<sup>57</sup>

**63.** The likely impact, including cost, of the changes may become clearer with the evaluation. Obviously, more upfront costs are required to invest in the activities, programmes and treatments provided, although these could bring about net savings if they succeed in reducing demand for court appearances and produce a positive impact on reoffending.

**64.** Diversion policy has been incoherent since 2010. A desire to see greater use of neighbourhood justice and to restore discretion to front line policing has been tempered by concerns not to appear over lenient. Enthusiasm for RJ has waxed and waned. Responsibility has been shared uneasily between the Home Office, Ministry of Justice and, from 2012, with Police and Crime Commissioners. In the absence of a comprehensive legislative framework for diversion, a myriad of guidelines and advice documents have been produced by government departments, police bodies and the CPS.

# Chapter 5: Recent trends and developments in diversion practice

## Overall trends

**65.** Since 2010, the numbers of convictions and out of court disposals have both fallen sharply; but while the former have gone down by 12%, the latter have declined by 47%. Out of court disposals fell from 27% of disposals in 2009/10 to 18% in 2016/17.<sup>58</sup> The fall in diversion is likely to be related to measures that have restricted the use of out of court disposals and the negative climate of opinion generated by ministers and some members of the judiciary.

**66.** There has been a change in the share of disposals in the courts. With fewer low level cases being diverted, the percentage of summary non motoring offences rose from 80% in 2010 to 85% in 2017. The proportion of either way offences dealt with in this way stayed the same at about 30%. For indictable-only offences, the proportion receiving fines, discharges or otherwise dealt with is obviously much smaller. But since 2013, the proportion dealt with in this way has doubled from 2% to more than 4%. While numbers are small, given the costs of Crown Court hearings it would be worth examining whether some at least of this increase has resulted from prosecutions which could have been avoided. It also seems plausible that the increasing share of fines and discharges in the lower courts reflects a rise in the number of cases which could have been better dealt with out of court.

**67.** The police appear to have become more compliant with restrictions on use of OoCDs. The Inspectorate found fewer than one in five cases were given an inappropriate out of court disposal in 2015 compared to almost one in three in 2011.

## Domestic abuse

**68.** One area where there has been growing concern is the use of out of court disposals in cases involving domestic abuse. The use of diversion in these cases has been very strongly discouraged since 2010. The College of Policing and HMIC say that cautions should not generally be used in domestic abuse cases; and the IPCC consider that restorative justice is rarely appropriate and not recommended in cases involving intimate partner abuse.<sup>59</sup> A conditional caution is generally not considered suitable by the CPS, although following a High Court ruling in 2016 there may be exceptional cases in which one may be offered.<sup>60</sup>

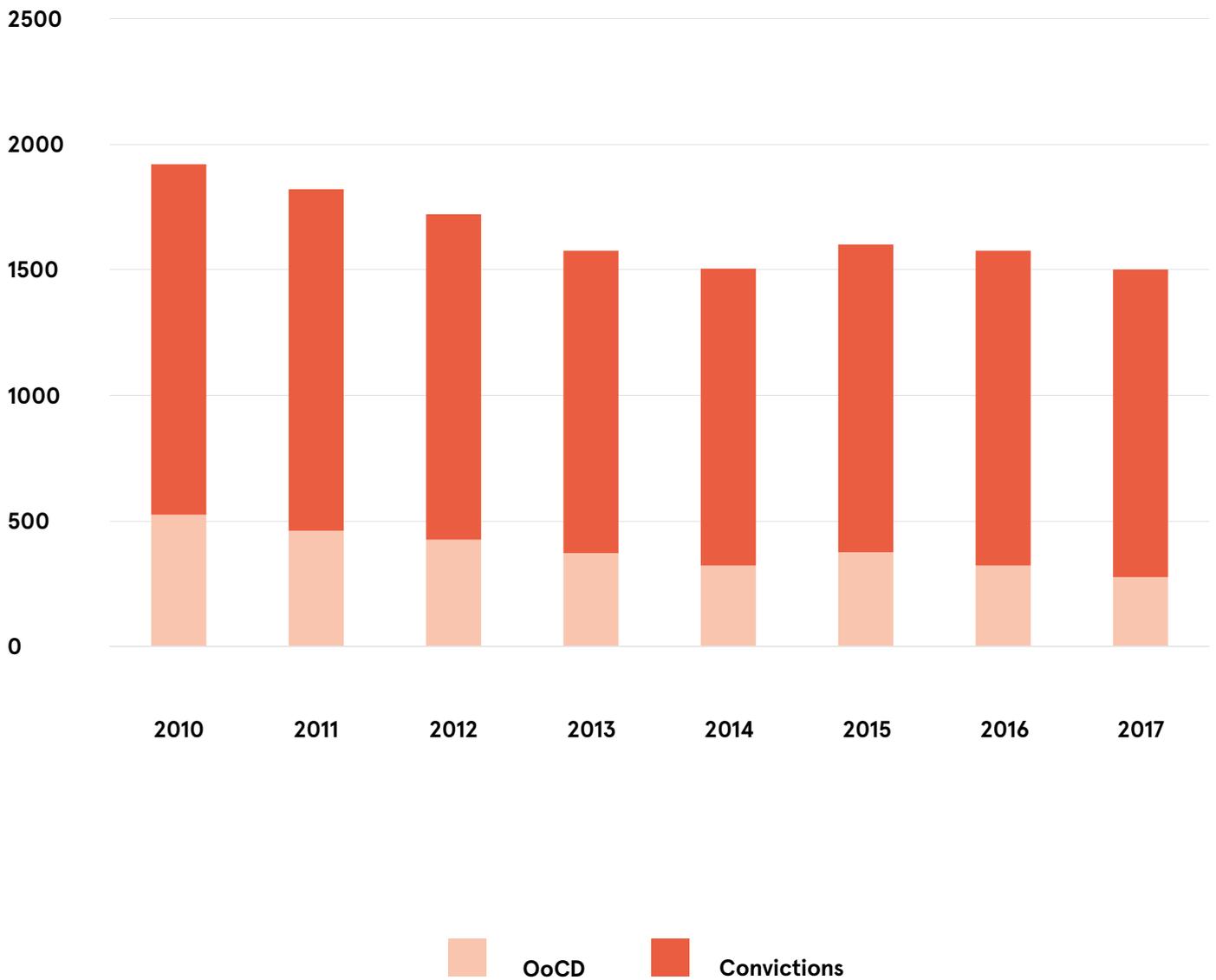
**69.** On the other hand, the Victims Code says that victims should not be denied RJ because of the offence committed against them and, given the limitations of court proceedings as a way of dealing with these cases, even critics concede that carefully prepared RJ conferencing can play a positive role.

**70.** The value of a diversionary approach has been shown in a pilot programme in Hampshire. Project Cara offers two treatment workshops to domestic abuse offenders as part of conditional caution. The workshops aim to address the issues underpinning the offending behaviour. An evaluation found significant positive outcomes for offenders randomly assigned to the workshop group. In the 12 month follow up period, they were estimated to have caused 27% less harm than the offenders assigned to the control group who received no treatment.<sup>61</sup>

**Figure 3**

**Changing ratio of convictions to out of court disposals 2009/10-2016/17**

Source: [MoJ: Criminal Justice System Statistics](#)



## Scrutiny Panels

**72.** Domestic abuse apart, the increasing compliance by police with national and local policies may have resulted from the developing role of scrutiny panels.<sup>62</sup> These are bodies set up by PCCs to provide external and independent feedback on the way in which the police divert cases from prosecution. One of the aims of the panels is to ensure that the use of OoCD's is appropriate, proportionate and consistent with national and local policy. They also bring a measure of transparency to the use of OoCDs in order to increase understanding and confidence in their use.

**73.** An analysis of minutes of scrutiny panels from a number of forces has found that in the large majority of cases, out of court disposals were considered appropriate.

**74.** Scrutiny panels play an important role in assuring local stakeholders, such as magistrates, that out of court disposals are not being misused. But there has been no comprehensive evaluation of the work of the panels and this needs to be done in order to maximise their impact.

## Chapter 6: The way forward

**75.** The diversion debate is usually framed in terms of whether too many cases are dealt with out of court, but the evidence suggests that this might well be reversed to ask how many cases which are prosecuted could instead be dealt with out of court.

**76.** Informed debate is hampered too by a lack of empirical research and even conceptual clarity. For the Ministry of Justice, someone receiving a community resolution is formally dealt with by the criminal justice system.<sup>63</sup> For the Home Office, the College of Policing and many forces it is an informal disposal “opposed to progression through the traditional criminal justice process”.<sup>64</sup> The term “community resolution” is often wrongly used interchangeably with restorative justice.

**77.** Perhaps not surprisingly, as a result, policy on diversion has for many years been muddled. This partly reflects the number of cooks stirring the policy pot, but also substantive differences of view about the kinds of cases that should be brought to court, and the level of discretion that police officers should be allowed to use. As ever in criminal justice, policy making falls under a shadow of concern, often misplaced or misunderstood, about public confidence and attitudes.

**78.** The evidence summarised in this paper suggests that there is substantial scope for increasing the use of diversion but there is no guarantee that the government’s proposed reforms in this area will have that effect. In the government’s words “the new framework will give a clearer and simpler route of escalation from the new community resolution to the suspended prosecution and then on to immediate prosecution, where appropriate”.<sup>65</sup> But what could easily become a “two strikes and you’re out” approach is too rigid. It could resemble the arrangements introduced in 1998 when under 18’s were allowed only a reprimand and final warning

before prosecution. That system of automatic escalation was replaced in 2012 with a more flexible approach which has allowed police and prosecutors greater discretion, putting “trust in the professionals who are working with young people on the ground”.<sup>66</sup> In drug possession cases for example, the new arrangements could see a quicker resort to prosecution. It is also questionable whether requiring all of those who are diverted to undertake some form of activity as a consequence is either necessary or affordable.

**79.** For young adults, there are strong arguments for extending the kind of approaches used for under 18’s given the growing recognition of the developing maturity of young people beyond their 18th birthday. Young adults would benefit from: a non-escalatory process with any of the range of diversion options applied at any stage, where it is the most appropriate action; joint decision making between Police and Youth Offending Teams, in some areas through structured triage or bureau arrangements; and widespread availability of restorative justice.<sup>67</sup>

**80.** For all age groups, there is an urgent need to expand the range of measures and services which can be made available to those given out of court disposals. Whether these are provided by probation, voluntary organisations, or the police themselves, sufficient funds, replenished by the savings made to police and court budgets, should be provided for quality services.

**81.** While many out of court disposals purport to offer restorative justice, in reality only a small number involve planned conferences or structured meetings between offender and victim; Despite a commitment to expand RJ, the proportion of incidents where victims were given the opportunity to meet the offender halved from 2010/11 to 2016/17.<sup>68</sup> There is considerable scope for expanding RJ – in almost a quarter of incidents victims would have accepted

an offer to meet the offender. The problem appears to be developing timely mechanisms for organising genuine RJ activities, for example organising an RJ conference the outcome of which can be included in conditions attached to a caution. It is hoped the Government's next RJ Action Plan to be published in March 2018 will provide welcome clarity for the police on the most effective use of restorative conferences with perpetrator and victim.<sup>69</sup>

**82.** In reaching decisions about the appropriate use of RJ and indeed all diversion decisions, police must be aware of the then Lord Chief Justice's warning that "we must be very careful about the creation of two separate systems of providing summary justice: the one in the hands of the magistrates, and the other in the hands of the police, who effectively act as prosecutor, and jury, and judge. Just as judges are not police officers, so police officers are not judges".<sup>70</sup> These criticisms of out of court disposals were perhaps overblown, but there may be questions to be answered about the way police officers are trained and equipped to reach decisions about whether to charge and, if not, the appropriate out of court disposal, and the actions or conditions to be attached to it.

**83.** Evidence from Operation Turning Point is that police can deliver very consistent decisions with the right decision support tools. Nationally, current guidance about decision-making is highly fragmented in documents from the Home Office, Ministry of Justice, Crown Prosecution Service, and ACPO, although the College of Policing has done good work to try to consolidate it.<sup>71</sup>

**84.** The government wants to ensure that previous out of court disposals are made known to the courts in any prosecution for subsequent, similar offences, where this is appropriate.<sup>72</sup> The government plans to work with the police and CPS to consider how this information should be made available to the courts

at the point of sentencing, and with the Sentencing Council and the judiciary to ensure that the relevant sentencing guidelines reflect this. This risks making court sanctions ever more punitive. While there is an argument for allowing courts to see whether an offence forms part of a pattern of behaviour, the weight attached to previous out of court disposals and responses to them should reflect the relative lack of legal safeguards around their imposition.

**85.** The scrutiny panels established by police forces and PCCs have provided a welcome mechanism of transparency in what is a largely hidden part of the system. But research is needed to identify the most effective models, with a view to increasing and expanding their role. Panels could do more to ensure that out of court disposals are being used wherever possible, and that the actions and conditions imposed as part of them are provided and monitored effectively.

**86.** Back in 2011, HMIC concluded that "the expression 'out-of-court disposals' perpetuates a sense that they are much less important than a disposal in court – in effect a soft option. If there is to be a real change in this perception a greater understanding about what amounts to a proportionate response to offending will be necessary".<sup>73</sup> Plans to reform the structure of out of court disposals have largely been intended to boost public confidence in their use, although there is little evidence of a lack of public confidence. Greater efforts should be made to communicate the positive benefits of diversion, particularly by ministers, PCCs, Police and the judiciary. In particular it is important to emphasise how evidence shows that dealing with many low level cases out of court can, compared to prosecution, be quicker, more satisfying for victims and more effective at reducing reoffending.

# Recommendations

- 1.** Police should be encouraged to use their discretion and professional skills to resolve minor problems and disputes at the lowest level, without the need either to prosecute or impose an out of court disposal.
- 2.** There should be a presumption that first time offenders and cases which are likely to be dealt with by an absolute or conditional discharge or small fine should be dealt with outside court, where it is the most appropriate way of repairing any harm caused, preventing reoffending or punishing the offender.
- 3.** The Government should reconsider its policy of allowing only two forms of out of court disposals. A simple caution can be appropriate for first time offenders, and penalty notices and drug warnings have a role too.
- 4.** The approach to diverting children in trouble away from the courts should be extended to young adults so that they are given a greater opportunity to grow out of crime.
- 5.** Central government and Police and Crime Commissioners should fund a suitable range of actions and conditions to be attached to community resolutions and conditional cautions in each police force area; and identify the most appropriate agencies and organisations to implement them.
- 6.** A justice reinvestment model should be explored whereby local agencies could be financially incentivised to use the best value disposal for each offence. This would involve delegating court budgets to local areas so that local agencies could use the savings made when offences were (appropriately) diverted from court.
- 7.** Police and Crime Commissioners and Chief Constables need to review the availability of RJ in their areas and the College of Policing should consider whether a national model of RJ intervention should be developed for use with out of court disposals.
- 8.** A clear consolidated code of practice should be produced by the College of Policing for police, with a comprehensive training programme on diversion from prosecution.
- 9.** A record of a defendant's previous out of court disposals should not be routinely considered by courts. The presence of an out of court disposal on an offender's record should not automatically mean an increase in the severity of a subsequent sentence. All out of court disposals should be removed from a person's criminal record after a certain period of time.
- 10.** Research should be conducted on the work of scrutiny panels in order to identify the most effective models, with consideration given to enabling panels to look not only at cases given out of court disposals but the decision to prosecute in a sample of cases resulting in a discharge or small fine.
- 11.** Government ministers and criminal justice stakeholders should communicate the positive advantages of diversion and make efforts to show the benefits of measures taken to deal with low level offenders away from the courts.

# Annex: Current range of out of court disposals for adults

<b>Disposal</b>	<b>Community Resolution</b>	<b>Cannabis/ Khat warning</b>	<b>PND</b>	<b>Simple Caution</b>	<b>Conditional Caution</b>
<b>Offence</b>	Lower level crime or incident	Possession for personal use	29 specified offences	Any: statutory restrictions on some	Any: generally unsuitable for domestic abuse/hate crime
<b>First Time Offender?</b>	No relevant offending history	Yes	No	No similar offending within 2 yrs unless exceptionally	Previous offending should not rule out
<b>Who Decides?</b>	Police	Police	Police	CPS in indictable only	CPS in indictable only, domestic violence or hate crime
<b>Evidence Required</b>	Reasonable suspicion	Reasonable suspicion	Reasonable suspicion	Realistic prospect of conviction	Realistic prospect of conviction
<b>Admission Required</b>	Acceptance of responsibility	Yes	No	Yes	Yes
<b>Offender Consent</b>	Yes	Explicit consent not required	Explicit consent not required	Yes	Yes explicit consent to conditions

<b>Disposal</b>	<b>Community Resolution</b>	<b>Cannabis/ Khat warning</b>	<b>PND</b>	<b>Simple Caution</b>	<b>Conditional Caution</b>
<b>Victim Consent</b>	Highly desirable but can proceed if rationale and supervisor agreement	N/A	For theft and damage if value exceeds threshold	No	Yes where direct reparation or restorative justice processes being considered
<b>Restorative Justice Possible</b>	Yes	No	Yes	Yes	Yes
<b>Criminal Record</b>	May be disclosed as part of enhanced DBS check but rarely	May be disclosed as part of enhanced DBS check but rarely	May be disclosed as part of enhanced DBS check if deemed 'relevant'	Yes	Yes

# End notes

1. Justice Reinvestment is explored in two reports by Transform Justice <http://www.transformjustice.org.uk/wp-content/uploads/2015/12/TRANSFORM-JUSTICE-REHABILITATION-DEVOLUTION.pdf> and [http://transformjustice.org.uk/main/wp-content/uploads/2014/02/Transform-Justice-Justice-reinvestment\\_Feb14.pdf](http://transformjustice.org.uk/main/wp-content/uploads/2014/02/Transform-Justice-Justice-reinvestment_Feb14.pdf)
2. Ronnie Flanagan The Review of Policing [http://webarchive.nationalarchives.gov.uk/20080901215130/http://police.homeoffice.gov.uk/publications/police-reform/Review\\_of\\_policing\\_final\\_report/](http://webarchive.nationalarchives.gov.uk/20080901215130/http://police.homeoffice.gov.uk/publications/police-reform/Review_of_policing_final_report/)
3. Petrosino et al 2013 <https://ric-zai-inc.com/Publications/cops-p265-pub.pdf>
4. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/638225/cjs-statistics-march-2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638225/cjs-statistics-march-2017.pdf)
5. <http://webarchive.nationalarchives.gov.uk/20111206103817/http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf>
6. Average number of days taken from offence to completion for all criminal cases at the magistrates' courts, including those committed to the Crown Court T2 Criminal Courts statistics bulletin Main Tables April to June 2017 <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2017>
7. Discharges are given for the least serious offences such as very minor thefts. The court may give an absolute discharge, which means it decides not to impose a punishment because the experience of going to court has been punishment enough. However, the offender still gets a criminal record. A conditional discharge can also be given – this means that if the offender commits another crime, they can be sentenced for the first offence and the new one.
8. Table Q6.1 – Proportion of all sanction occasions (cautioned or sentenced) for indictable(1) and summary offences, by disposal and previous criminal history, 12 months ending March 2007 to 12 months ending March 2017. Off <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2017-ending-history-tables>
9. <https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/results/transforming-our-justice-system-government-response.pdf>
10. Table Q5.1a – Offenders(1)(2) sentenced at all courts, by offence group and outcome, 12 months ending March 2007 to 12 months ending March 2017 (3)(4) <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2017>
11. <https://www.durham.police.uk/Information-and-advice/Pages/Checkpoint.aspx>
12. Table C1a: Adult proven reoffending data, by index disposal1<https://www.gov.uk/government/statistics/proven-reoffending-statistics-quarterly-october-2014-to-september-2015>
13. When Her Majesty's Inspectorate of Constabulary looked at the effectiveness of Out of Court Disposals in 2011, they found 12 month reoffending rates were considerably lower among offenders dealt with outside court than those who were prosecuted. In an admittedly small sample, HMIC found that reoffending rates were lowest for disposals which involved the use of Restorative Justice, at nine out of 40 cases; levels ranged from 18 out of 50 cases for conditional cautions to 22 out of 50 for Penalty Notices for Disorder. 40 out of 50 charged in court reoffended within 12 months
14. Between 2005 and 2007 proven reoffending rates for those receiving cautions were up to 2.7 percentage points lower than for those offenders receiving a fine or a conditional discharge after controlling for differences between offenders <https://restorativejustice.org.uk/sites/default/files/resources/files/Green%20paper%20evidence%20report.pdf>
15. <https://www.justiceinspectors.gov.uk/hmicfrs/media/exercising-discretion-the-gateway-to-justice-20110609.pdf>
16. <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/169.pdf>
17. <http://webarchive.nationalarchives.gov.uk/20111206103817/http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf>
18. Brennan et al 2015 An experimental evaluation of an adult female triage pilot project for Humberside Police. <http://library.college.police.uk/docs/Police-Female-Triage-Report-Hull-University-2015.pdf>
19. <http://www.telegraph.co.uk/news/2017/03/17/number-women-arrested-leaps-50-per-cent-year-police-told-crack/>
20. PRT<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Fair%20Cop.pdf>
21. RAND 2016 [https://www.rand.org/pubs/research\\_reports/RR1283.html](https://www.rand.org/pubs/research_reports/RR1283.html)
22. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643001/lammy-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf)
23. <https://www.justiceinspectors.gov.uk/hmicfrs/media/exercising-discretion-the-gateway-to-justice-20110609.pdf>
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