

## How can police forces make better use of diversion and out of court disposals?

### Introduction

Diversion and out of court disposals provide effective means to prevent reoffending<sup>1</sup> and help victims move on.<sup>2</sup> The public and police are also supportive of these options,<sup>3,4</sup> seeing them as sensible responses to crime.

Despite this, out of court disposal use has dropped by 75% since 2008. A Transform Justice survey of 746 police officers and staff found three main barriers to their greater use:

1. low awareness of diversion and out of court disposal options amongst officers and staff.
2. restrictive eligibility criteria (or at least, criteria that are perceived to be restrictive).
3. in the case of conditional cautions, the process was considered too complicated and bureaucratic.

In 2023, a new out of court disposals framework for adults will come into force. This presents challenges to police forces in terms of updating systems and training officers. But it also provides the opportunity for a step change in the use of out of court disposals.

While overall use has declined, some forces make better use of diversion and out of court disposals than others. In March and April 2022, Transform Justice interviewed out of court disposal leads in six police forces whose use of diversion and out of court disposals compared to charge was high (referred to in this report as high-OOCD use forces). The interviews aimed to find out how they have achieved this high performance, how they tackled the barriers, and whether there were any common factors or good practice that could be adopted by other forces looking to improve their use of diversion and out of court disposals.

This document summarises the findings of these interviews. Where relevant we refer to issues with out of court disposal use raised in the wider police workforce survey, which we ran in forces where OOCD use was lower overall.

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<sup>1</sup> According to government reoffending data, 15% of people who received a caution in 2018 went on to reoffend, compared to 30% of those who were asked to pay a fine by the court.

<https://www.gov.uk/government/statistics/proven-reoffending-statistics-april-to-june-2020>

<sup>2</sup> A deferred prosecution pilot in Birmingham reported 43% greater victim satisfaction compared to those victims whose cases went to court.

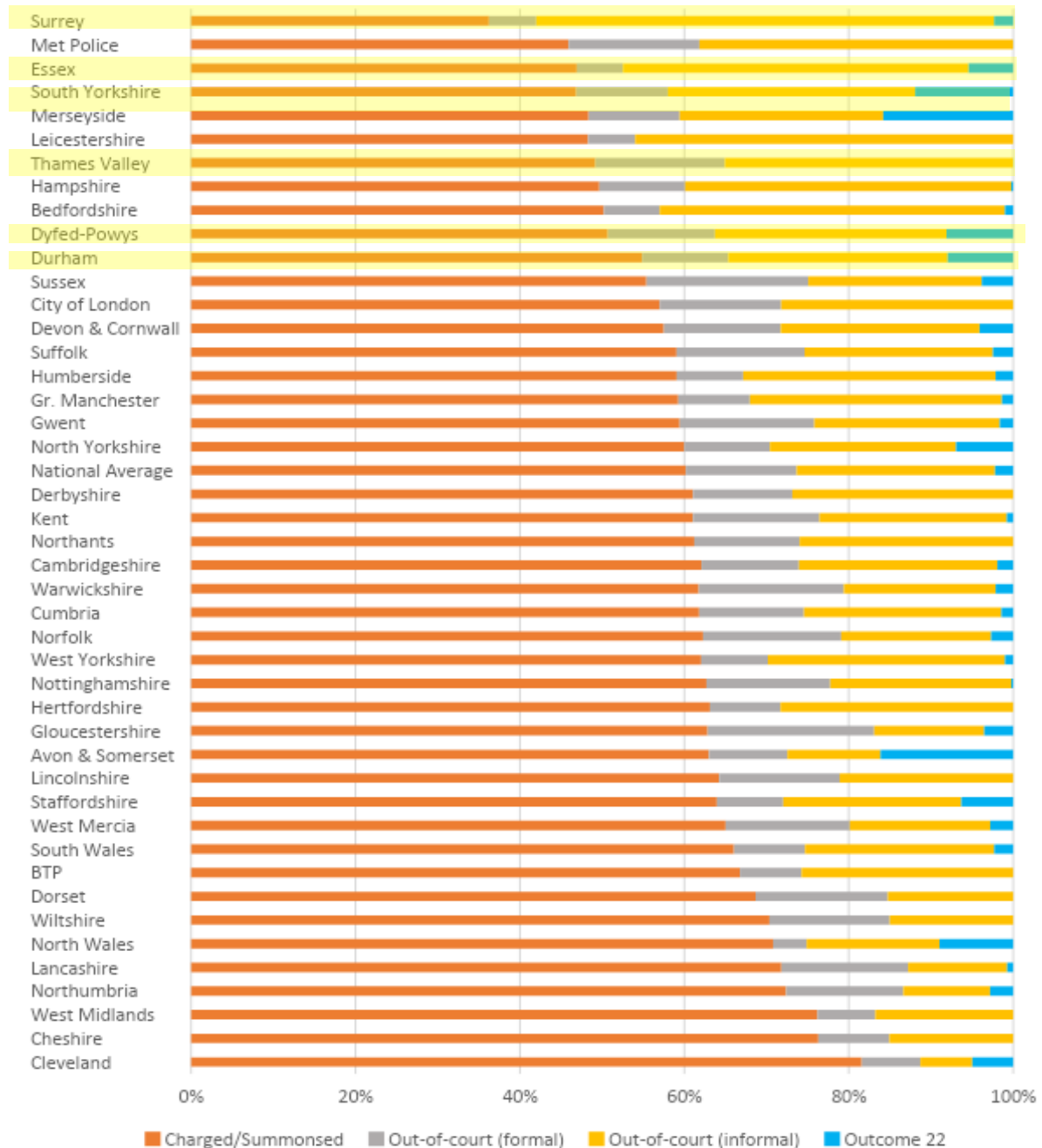
<sup>3</sup> In a nationally representative survey of 2,000 members of the public, 58% supported policies to resolve more crimes without going to court, compared to only 17% who opposed. <https://www.transformjustice.org.uk/wp-content/uploads/2021/07/Resolving-crimes-without-going-to-court-a-messaging-guide.pdf>

<sup>4</sup> In a Transform Justice survey of 746 police officers and staff conducted across seven police forces between autumn 2020 and summer 2021, most felt that out of court disposals should be either used more often in their force (45%) or are used about the right amount (26%). Very few (9%) considered them to be used too much. A quarter of all respondents were unsure.

About the interviewed forces

The six forces interviewed<sup>5</sup> all had high use of diversion and out of court disposals vs charge for non-violent offences in the year ending March 2021 (based on Home Office crime outcomes data – see chart below).

Use of out of court disposals for non-violent offences by force: y/e March 2021



<sup>5</sup> Surrey, Essex, South Yorkshire, Thames Valley, Dyfed Powys, Durham

A range of approaches and operational systems were in use by these high-performance forces (see table below). Three forces had moved to the two-tier framework (community resolutions and conditional cautions), although some still used simple cautions in limited circumstances, for example domestic abuse. Two forces had deferred prosecution schemes in place.<sup>6</sup>

The six forces had different ways of deciding and setting conditions for conditional cautions. One consistent approach of all forces was that the administration of conditions, including follow up to ensure compliance, was conducted by a central team (or third party provider).

<b>Surrey</b>	<b>Essex</b>	<b>Thames Valley</b>
<p>Community resolutions, conditional cautions and deferred prosecution (Checkpoint).</p> <p>Centralised team of navigators assesses needs, sets conditions, support and follow up for CCs and DPs</p> <p>Wide range of Interventions/support provided by navigator or external provider: victim awareness, DrugLink, consequences of crime/thinking skills, employment support, parenting skills, anger management, restorative justice, healthy relationships, knife crime, counselling, housing support, mental health support, women’s centre courses, group work</p>	<p>Community resolutions, (some) simple cautions and conditional cautions.</p> <p>Officer sets conditions, central team administers. Plan to shift to central condition-setting this year</p> <p>Limited range of interventions – victim awareness, anger management, drug and alcohol, letter of apology, pay for damage</p>	<p>Community resolutions, simple cautions, conditional cautions, fixed penalty notices.</p> <p>Officer sets conditions, central team administers. Reviewing whether conditions better set by central team.</p> <p>9-10 interventions: DrugLink, victim awareness, anger management, Cara, Princes Trust, women</p>
<b>Durham</b>	<b>South Yorkshire</b>	<b>Dyfed Powys</b>
<p>Community resolution, simple caution, deferred prosecution (Checkpoint).</p> <p>Centralised team of navigators assesses needs, sets conditions and follows up for DPs. In new framework, cautions will be dealt with by centralised team.</p> <p>Interventions range from short educational course to four-month contract with support from navigator to tackle e.g. housing issues.</p>	<p>Community resolutions, cannabis warnings and PNDs (phasing out), simple cautions, conditional cautions.</p> <p>Officer sets conditions, central team administers. Intervention provider conducts the needs assessment.</p> <p>Interventions - Women (12-week, trauma informed, holistic), substance misuse, mental health diversion to NHS, crime and consequences group work, victim awareness 1-to-1, restorative justice, domestic abuse (not for CCs), compensation, apologies, restrictive conditions</p>	<p>Community resolutions, simple caution (DA and hate crime only), and conditional cautions.</p> <p>Diversion schemes for CRs and CCs run by third party provider who assesses needs and decides interventions. Officer decides on any other conditions e.g. compensation. No specific OOC team.</p> <p>Interventions include drug and alcohol support, mental health, finance, accommodation, relationships, and work, training and education.</p>

<sup>6</sup> Deferred prosecution schemes involve delaying sending someone to court while they undergo a rehabilitation programme and/or comply with certain conditions. The conditions are agreed in advance as part of a contract which usually lasts four months. If the person does not complete the conditions, they may be prosecuted.

## How have forces increased their effective use of diversion and out of court disposals?

The interviews identified five common factors to some or all of the six high-OOCD use police forces:

1. A simple out of court disposals process
2. Good repeated communications and training
3. Scrutiny to provide reassurance
4. A flexible approach to eligibility criteria
5. A diversion culture set from the top

### A simple out of court disposals process

*“Conditional cautions are a fantastic idea in principle, but the processes involved together with the authorisation from CPS puts almost every officer off using them.”* (survey respondent)

*“If the conditional caution could be streamlined or maybe have a department to process that for us, the officers may be more inclined to consider it – it comes across as cumbersome”* (survey respondent)

One barrier to greater out of court disposal use identified in our survey was officers perceiving the conditional caution to be particularly bureaucratic and “a faff”. Officers felt it was not always clear what interventions were available to use as conditions. They were also put off by the time it takes to refer cases to interventions run by external providers, to check that conditions are adhered to, and to take action when conditions are breached.

High-OOCD use forces recognised the importance of making the process “incredibly simple” for the front line. Some took almost all of the conditional caution process out of the hands of frontline officers – once an officer decided a conditional caution was suitable, the case is referred to a central team who conduct the needs assessment, set conditions, and follow up to check the conditions are complied with. The case only returns to the original officer if conditions were breached, following an investigation from the central team to understand the reasons for the breach. This approach was in place in two forces (Surrey and Durham) and a further two interviewed forces (Essex and Thames Valley) were looking at moving to a similar model of setting conditions centrally.

In other high-OOCD use forces, officers set conditions themselves but systems were put in place to make this decision-making process as straightforward as possible, for example adding prompts which appear on the officer’s mobile data terminals (see box).

### **Diversion prompts and signposts on the crime recording system**

Dyfed Powys has installed prompts on their crime recording system so that when a crime is recorded, a question pops up asking the officer if it is suitable for diversion and directing them to potential diversionary schemes. If the officer selects yes, an e-form is automatically generated to be sent to the third party provider with the contract for the conditions, saving the officer work.

South Yorkshire police uses an app created by Leeds University (the Law Enforcement Public Health Portal) where police could input a person's needs and see local support services available to use as part of a diversionary disposal. A Microsoft Office form also asked officers a series of questions in order to inform suggestions about the most suitable conditions to include in a conditional caution. This simplified the process for officers as well as helping with consistency across the force.

Checking compliance with conditions was viewed as particularly time-consuming by officers responding to our survey: *"If the suspect does not comply with the OOCd it creates more work and it would have been simpler to charge"*. High-OOCd use forces had all taken a similar step to reduce this burden. The task of checking compliance with conditions was carried out centrally, rather than by individual officers, significantly reducing the administrative burden on frontline police. Durham recognised the initial cost of setting up a centralised team to manage OOCds with conditions but felt this was small compared to the cost of frontline officers managing cautions with conditions themselves. In its last HMICFRS inspection, Durham was ranked as "outstanding" on value for money.

Thames Valley countered officer concern about having to spend lots of time following up on conditions, by promoting suspects' high compliance rate (85%). This makes it clear that if officers give a conditional caution, they most likely won't have to complete a court file because the vast majority of conditions are complied with.

### Good repeated communications and training

*"It's not realistic to expect 1500 frontline officers to completely understand what's on offer in their local area."* (survey respondent)

*"I came to Force CID 2.5 years ago and have never had any input on what OOCds are available, who is eligible and how to make referrals. I have only learnt as I have come across situations where one is suggested, this has either come from colleagues or supervision"* (survey respondent)

*"We keep getting emails from bosses telling us to use out of court disposals but no-one has bothered to properly train us in its use...we need real training from a real person"* (survey respondent)

Perhaps the most significant barrier to increasing effective use of out of court disposals is getting the message out to the workforce.

Our survey found that police officer awareness of available diversion interventions and conditions was low. Less than a third of respondents had heard of their local victim awareness course. In five out of six forces, less than half of respondents knew about their local alcohol and drug diversion schemes.

The high-OOCd use forces we interviewed recognised the importance of wide-reaching training and repeated communications to introduce a new out of court disposal regime. Durham and Surrey ran a major face-to-face training programme for all officers when they rolled out their respective

Checkpoint programmes (both programmes introduced a centralised team for OOCB needs assessment and case management). The face-to-face approach was needed to raise awareness about the new system and encourage culture change. In Durham this involved group training with 30-40 people at a time attending a 2-3 hour training session, led by the chief constable: a “*massive job at the time but diversion is mainstream now*”.

Several of the interviewed forces had introduced a module on OOCBs into the initial training for new officers and staff. In Durham this involved a day’s worth of training. In Dyfed Powys the training was delivered by the OOCB lead. South Yorkshire’s comprehensive training programme is outlined in the box below.

While awareness appears to be the biggest barrier, police scepticism about the efficacy of out of court disposals can also be a deterrent to use.

#### **A multi-pronged approach to training officers and staff in out of court disposals**

South Yorkshire trains all its frontline staff in out of court disposals, with tailored inputs for certain teams and ranks.

Out of court disposal training forms part of the compulsory continuous professional development training for all front line staff. Some front line staff are also trained to carry out restorative justice conferences for lower level offences as part of a community resolution. Because many OOCBs require authorisation from a supervisor of sergeant or inspector rank before they can be used, the force also provides additional training to these key decision makers.

Alongside this the force produced bitesize training videos on each OOCB which are delivered at shift briefings and available online, as well as a dedicated intranet page for OOCB with one-page guides, FAQs and other reference materials.

In our survey, police were overall supportive of diversion and out of court disposal use as a sensible response to crime and a way to provide satisfactory resolution for victims. But they were less convinced that OOCBs help to reduce reoffending or tackle the root causes of crime.

Some high-OOCB use forces have taken steps to promote the benefits of diversion and out of court disposals to police officers. For example, Surrey gathers regular data on impact of their diversion programme and publishes this on the force intranet (see box).

#### **Sharing evidence on the impact of diversion with officers**

Surrey’s Checkpoint team produces regular performance reports for the diversion scheme posted on the intranet. These showed reoffending rates, demographics of participants, any returned for non eligibility, interventions used, feedback from participants, and results from the victim survey. This is a useful way to reassure officers who are sceptical about the impact of diversion options, as in this survey response from another force: “*If more officers knew what the success rate was they may be more inclined to use conditional cautions as they could see the chance to make a positive change.*”

Other ongoing training and communications approaches included:

- Video “snap guides” on interventions and how to use them on the intranet “how to” page (Thames Valley)

- A podcast on OOC use and updates to interventions and procedures (Dyfed Powys)
- A focus on training custody officers in diversion and OOC options, so they are equipped to propose it to investigating officers for cases coming into custody (Durham)
- Shift briefings led by the OOC lead in particular areas where an issue with OOC use/referrals has been identified (Durham)
- A comms video of the chief constable, reiterating that there is no pressure to achieve certain outcomes over others, is included in compulsory training and on the intranet. (South Yorkshire)
- Visits from diversion service providers to talk through their intervention and answer questions from officers (Thames Valley)
- Regular, specific comms via local service improvement teams highlighting key themes from recent reviews (Thames Valley – see box on page 8)

### Scrutiny to provide reassurance

Getting the right level of scrutiny for out of court disposal use is difficult. Forces want enough scrutiny in place to reassure themselves, and the public, that out of court disposals are not being used inappropriately. But if the scrutiny mechanisms are too onerous, or the repercussions for officers of doing it wrong too serious, this can deter officers from using OOCs in the first place, even when suitable:

*“Ridiculous levels of scrutiny around decisions then being checked on every level to undermine the decision - it is not necessary- allow those charged with making decisions to do what they do!”* (survey respondent)

Scrutiny mechanisms can include requiring sign off from a more senior officer for certain decisions (e.g. in Durham, diversion of hate crime offences requires sign off from a superintendent), dip sampling OOC cases to review decision-making (see below on OOC scrutiny panels), and ongoing reviews of OOC decision-making by a centralised team.

Concern that out of court disposal use was not being scrutinised enough, and a concern about lack of public trust in their use, led to the introduction of OOC scrutiny panels, now in place in all police forces. These panels are made up of police, magistrates, other criminal justice agencies and often members of the public too. The panel meets a few times a year to review a small number of youth and adult out of court disposal cases and decide if the disposal was appropriate. Where the findings are well-publicised these panels can help improve transparency and trust in out of court disposal use. However the small number of cases reviewed means the panels are unlikely to be able to identify patterns or common issues in use of OOCs. Any feedback from the panel often goes direct to the individual officer involved in the case rather than informing wider communications (although we have heard of examples where it has informed wider force policy).

South Yorkshire use their public website to increase transparency around OOC use. Their [OOCD page](#) provides recent data on OOC use in the area, broken down demographically (by gender, age, ethnicity) and by offence type. Officers are encouraged to direct victims and people who have received an OOC to this page to find out more.

## How does South Yorkshire Police use OOC?

The most common offence types where South Yorkshire Police used an OOC in 2021 were:

- assaults (accounting for around 43% of all OOC)
- drugs offences (accounting for around 21% of all OOC)
- public order offences (accounting for around 12% of all OOC)
- criminal damage and arson (accounting for around 11% of all OOC)
- theft or other acquisitive crime (accounting for around 8% of all OOC)

Of all OOC issued by South Yorkshire Police in 2021 (where age, ethnicity and/or gender is recorded on our crime system):

- 69% were given to offenders who identified as male
- 31% were given to offenders who identified as female
  
- 90% were given to offenders who identified as White or White British
- 10% were given to offenders who identified as an ethnicity other than White or White British
  
- 23% were given to Youth Offenders (17 years of age or under)
- 77% were given to Adult Offenders (18 years of age or older)

*All data shown above is from a live recording system and is therefore subject to change.*

*Except from South Yorkshire's out of court disposals public webpage*

Most of the high-OOC use forces we interviewed had multiple levels of scrutiny in place in order to provide reassurance about OOC use, and provide feedback and reminders to officers about use. One excellent approach was used in Thames Valley, where regular reviews of local OOC use informed tailored feedback to officers (see box).

### **A regular local feedback loop of scrutiny and communication**

Thames Valley police force is split into twelve local policing areas (LPAs). Every week, the OOC lead reviews all out of court disposal decisions from a different LPA. The review checks that the disposal was appropriate and that there was sufficient victim consultation ahead of the disposal decision. Any key themes and narrative feedback – good and bad - are talked through with the local area's service improvement inspector who then communicates it to the officers in that area. This means that officers hear regular feedback about their out of court disposal use. It also gives the OOC lead an accurate, up to date (every three months) picture of how OOCs are being used across the force to be able to identify any common issues that required an adjustment to force-wide comms or policy.

Although several of the forces had solid scrutiny processes in place, one chink in the armour was understanding of the effectiveness of different diversion programmes. OOC leads were unsure how to know whether different intervention programmes were working to change behaviour and reduce reoffending, and provide satisfactory resolution to the victim. Several third party providers produced reports on numbers of referrals and completions, and self-reported feedback from participants on their experience of the programme. However, data on impact on reoffending and victim satisfaction was limited or non-existent. Some third party intervention providers have commissioned their own evaluations of their diversion programmes, with results to come. Other forces were engaging with local universities around conducting research and evaluation on their out of court disposals system.

### A flexible approach to eligibility criteria

Officers surveyed said the biggest barriers to OOC use instead of charge were cases not being eligible due to offence history, lack of admissions/ acceptance of responsibility, or offence type.



*“I have tried and failed on a number of times where victim and suspect support out of court disposals but have ended up having to close using some other outcome because of a minor procedural issue; we are too rigid in refusing to accept these disposals.”(survey respondent)*

Many of the high-OOCD use force leads advocated for an approach that encourages officers to think for themselves about how best to deal with that particular case, based on the victim’s views and the circumstances of the case. The gravity matrix provided a guide or a starting point but there were “no hard and fast rules”. Forces encouraged critical thinking by officers:

*“We have eligibility criteria but there’s a level of flexibility depending on whether it’s the right thing to do.”*

In Thames Valley the OOC lead focuses on giving officers a framework to make their own decision: *“Don’t want to give officers a tick box to complete because it removes the officer’s ability to think – give them a framework to make their own decisions.”* In the force’s most recent HMICFRS inspection Thames Valley was credited with a *“good use of measures outside court proceedings, such as cautions, to obtain justice for victims and divert offenders”*.

In Essex, where two thirds of officers have less than five years’ experience, the OOC lead promotes the use of a “mum test” for younger officers – this asks officers to consider whether their mum would be happy with the way the crime is being dealt with.

Some high-use forces were more permissive regarding which offence types could be dealt with via diversion, and to good effect. For example, Durham accepts hate crime and low level sexual offence cases as long as the victim agrees, the person makes a full admission and it is signed off by the superintendent. Surrey accepts weapons offences and intimate partner domestic abuse offences by women onto Checkpoint. Surrey dealt with the controversy around OOC use for these cases by bringing partners in to show them how diversion could be beneficial (see box).

Several police officers responding to our survey felt greater flexibility around offence history would allow them to use out of court disposals for cases where prosecution was unlikely to be effective:

*“I see a lot of repeat offenders for relatively minor offences and the current CJS process doesn’t seem to be doing much to divert these type of offenders away from crime....we [should] look to use OOC to dissuade and divert the ‘frequent flyers’ away from continual court appearances that do little to address the root cause of their offending.” (survey respondent)*

Recognising that some people with several previous offences on their record would benefit from diversion, Durham has introduced a “Checkpoint Plus” programme. This accepts all women, and any men with multiple needs, onto the diversion scheme, regardless of offence history. In Thames Valley, people found in possession of class A drugs, irrespective of a previous conviction, can take part in a diversion scheme.

In terms of admissions, deferred prosecution schemes such as those set up in Durham and Surrey allow officers to divert cases even when the person doesn’t admit to the offence (they just need to not deny it). Thames Valley, influenced by the Lammy Review, has also started allowing conditional cautions to be used for children who give no comment at interview. They use a document spelling out the child’s rights and entitlements and explaining what it means to accept a conditional caution. It is not delivered under caution but with a legal framework around it.

### **Getting buy-in to diversion use for domestic abuse and weapons offences**

When Surrey wanted to include women accused of committing domestic abuse in their Checkpoint diversion programme, they met resistance from some within and outside the force who were concerned that this was an inappropriate use of diversion. The Surrey Checkpoint team invited local partners, such as domestic abuse and refuge charities, in to see for themselves how the scheme worked, how diversion decisions were made, what sort of cases came through, and the latest reoffending rates. For the first few months of the scheme, the Checkpoint team made decisions on female domestic abuse cases jointly with domestic abuse charity leads. A similar approach defused resistance from the CPS with regards to taking weapons offences on through the diversion scheme. According to their last HMICFRS inspection, the public has more confidence in Surrey Police than in any other force in the country (84%).

### Diversion culture set from the top

*“All of this has been driven from the top and that's what forces basically need - somebody to champion it.”* (OOC lead, high-OOC use police force)

Several of the interviewees explained their high use of diversion and out of court disposals as down to a pro-diversion and pro-problem solving culture set from the top of the force. One force lead said there was no pressure from the chief constable and senior officers to drive up use of particular outcomes or to hit certain performance targets. This differs from what was heard in some other forces, where officers perceived they were discouraged from using out of court disposals:

*“We are criticised by senior officers if OOC are used, they do not feel this is positive action or people are scared to use them through fear that senior officers will chastise them.”* (survey respondent)

*“Some out of court disposals are not actually classed as a “positive outcomes” e.g. outcome 20 and 21. Therefore I am reluctant to use these outcomes as SMT [Senior Management team] are pushing for more positive outcomes.”* (survey respondent)

High-OOC use forces circulated the pro-diversion message from the top in different ways. South Yorkshire has a video of their chief constable on their intranet emphasising that there is no pressure to charge or drive up formal justice outcomes: *“I want to make it very clear that there is no performance pressure to achieve a certain outcome, nor is there any weighting or preference as to which outcome should be used.”* (excerpt from video of chief constable). The chief constable goes on to say that the right outcome depends on several factors including the circumstances of the offence and the needs of the victim.

In Durham, the chief constable led the face-to-face training with all police officers and staff when they rolled out their new diversion approach.

### Recommendations for OOC leads

The following recommendations for force OOC leads emerge from the interview findings:

- In preparing for the launch of the new OOC framework, don't underestimate the importance of good training. Face-to-face training is resource-intensive, but better use of diversion and out of court disposals requires culture change which can't be achieved through written guidance alone. The benefits of diversion for victims, people who commit crime, the police and the courts are significant and warrant the additional training resource.

- Include a module on diversion and out of court disposals in training for all new recruits – ideally this should last a day.
- Consider how you can involve your chief constable or other senior police officers in promoting a message about diversion and out of court disposals to staff, like South Yorkshire did with a video of the chief constable. If your chief constable has concerns about diversion use, what evidence can you show them to provide reassurance?
- If there is resistance to using diversion for particular offence types, consider bringing concerned partners in to see the systems and options in place.
- Look beyond the dip sample of cases conducted via scrutiny panels for other ways to provide reassurance to senior officers/the public and regular feedback to frontline officers on OOCB use. For example, Thames Valley reviewing OOCB use in local areas on a rotating weekly basis.
- Review how to make the OOCB process simpler for frontline officers as this is a significant barrier to use in many forces. A first step could be moving the administration of conditional cautions from frontline officers to a central team, as in all forces we interviewed. Consider introducing other mechanisms to streamline the process such as prompts on the officer's mobile data terminals (Dyfed Powys) and a centralised team setting conditions as well as administering them (Surrey, Durham).
- Identify mechanisms to provide regular feedback and updates, ideally in person, to officers and staff on OOCB use
- Identify who the key decision makers are on diversion, what their concerns are/barriers are to use, and address through training and evidence provision. For example, in Thames Valley they target custody officers for training and engagement around OOCBs.