

Ten takeaways for resolving crime without going to court

1 On conditions, less is more

A light touch criminal justice intervention can be more effective than one with lots of complicated conditions. Attaching conditions risks labelling and stigma, which are counterproductive to reducing reoffending. And cautions with more conditions cost more to administer and monitor.

For many low-level and first-time crimes, it's being caught by the police that makes the difference, regardless of the sanction applied. The simple caution, which has no conditions attached, has the lowest reoffending rate of any sentence or sanction. In a 2014 evaluation, the conditional caution was effective in reducing reoffending, but no more so than the simple caution. While we still don't know what difference most conditions make to reoffending and victim satisfaction, take a "less is more" approach to setting conditions.

2 Always ask: what works?

Only a small number of out-of-court interventions have been proven to work to reduce reoffending and provide resolution for victims. These include Cara (the domestic abuse perpetrator programme), deferred prosecution schemes (Checkpoint and Turning Point) and restorative justice. Before introducing a new intervention or condition, ask: what is the evidence that this will improve outcomes?

If the intervention is provided by an external provider, ask how they know that their programme works. The best evaluations go beyond whether or not the person attended the course and participant self-reporting, to look at impact on reoffending and victim experience. If no evaluation data exists, consider how your police force can collect data to understand impact.

Where you have good evidence that an intervention or disposal is making a positive difference to reoffending, share this with police officers. Officers are generally supportive of resolving crime without going to court, but can be sceptical about whether it works to change the behaviour of the person who committed the crime. Share data and stories to help address these concerns. To improve your understanding of victim experience, ask your performance and insights team to survey victims by disposal type, rather than just crime type.

3 Respond to need, not offence

When building your force's menu of options for resolving crime without going to court, it can be tempting to focus on finding conditions to match particular crime types. But evidence suggests that conditions that respond to people's needs and vulnerabilities, such as drug or alcohol use, housing, or mental health, are more effective.

Most police forces do not routinely assess health needs and vulnerabilities when making decisions for out of court disposals. Those that do approach it very differently. If you don't have a process in place, consider introducing a needs assessment before a disposal decision is made. This could involve your liaison and diversion service which has expertise in this area.

4 Consider lower tier options first

Many police officers like being able to offer a rehabilitative response to people who commit a crime; something tailored and constructive to do rather than send them to court. But evidence shows that this can lead to "up-tariffing" – giving cautions with conditions for low-level offences when lighter touch options such as a community resolution or outcome 22 are more appropriate.

Formal criminal justice sanctions can be counter-productive. Research suggests that if a child who commits an offence is swept into the formal criminal justice system, they are more likely to reoffend than their peer who is dealt with informally. Cautions bring with them more significant criminal record implications, as well as the prospect of prosecution (for diversionary cautions). Encourage officers to consider lower-tier options first – starting with full diversion or a community resolution.

5 Open eligibility criteria

Avoid blanket exclusions of any either-way or summary only offences where possible. A particular offence type can include a broad range of seriousness, and sometimes diversion is favoured by the victim. Add caveats to mitigate risk. Read more in our good practice guide.

The route to a crime-free life is not a linear path, and sometimes the best option is to do the same thing more than once. The effectiveness of one caution with conditions could be very different to the next. Strict criteria around repeat offences can also exacerbate racial disparities in diversion. Avoid tight restrictions around offence history; give officers the licence to judge whether another caution, with different conditions, would be more in the public interest than charge.

Wider eligibility criteria also allows you to build an evidence base on the impact of different cautions and conditions for a range of offence types and histories.

6 A simple process for officers

Police in our workforce survey said they found conditional cautions to be “a faff” – sometimes more so than charging. They were put off by the time it takes to work out which interventions are available, to refer cases to external providers, to check conditions are adhered to, and to follow up when conditions are breached.

Having a diversion centre of expertise is one way to reduce this burden on frontline officers. Once an officer decides a conditional caution is suitable, they refer it to a central team who conducts the needs assessment, sets conditions, and follows up. The case only returns to the original officer if conditions are breached.

7 Head off racial disparities in diversion

Diversion provides opportunities to keep people out of the formal criminal justice system. But are the benefits of diversion experienced equally? Out of court disposals usually require some admission or acceptance of responsibility. But Black, Asian and Minority Ethnic people have significantly lower trust in the justice system than White people, and are therefore less likely to admit an offence. Work around this lack of trust by introducing a deferred prosecution scheme (which does not require an admission).

Overly strict criteria around repeat offending may also contribute to racial disparities in access to diversion, due to inequalities in how different communities are policed.¹ Police can also be clearer with lawyers and defendants before the interview about the potential for a caution. This may reduce how many defendants give no comment interviews but then go on to plead guilty in court. Wording such as “this offence is cautionable, but our decision depends on what your client says in interview” indicates a caution is possible without being an inducement to confess.

8 Communicate with victims, before and after

Victims want to feel listened to, and for steps to be taken to make sure what happened to them does not happen again. There is not enough evidence about victims’ experiences of out-of-court options, but what exists is promising. A deferred prosecution pilot in the West Midlands reported 43% greater victim satisfaction, compared to victims whose cases went to court. This was mainly because victims felt that the deferred prosecution approach was more likely to stop the person who committed the crime from reoffending. Victim satisfaction improved when the programme was explained to them.

Research has shown that not all victims are treated equally. Views of victims of retail crime are often not obtained because the business is closed when the officer makes contact. This means some victim groups may be regularly overlooked, impacting on their experience of the process and their trust in the justice system.² Take a look at your approach to communicating with victims. Are your decisions always explained clearly to victims? Are there particular victim groups who receive less communication than others?

9 Restorative justice

Restorative justice is proven to be one of the most successful interventions available in the criminal justice system. It has been shown to reduce repeat offending by 14%, and deliver satisfaction for 85% of victims of crime who participate.

Despite these benefits, the Crime Survey for England and Wales shows that many victims are still not offered a restorative justice process. Make the most of this opportunity to provide meaningful resolution for victims, by making sure restorative justice is available for all disposal types, offered to victims in a clear and sensitive way.

10 A pragmatic approach to non-compliance

If someone doesn't comply with the conditions attached to their caution, the police have the option to prosecute them. Breach of conditions is uncommon; the evaluation of the conditional caution pilot found that only 8% of conditional cautions were breached.

It's not necessarily a failure if someone does not comply with their conditions. We don't know what difference compliance makes to victim satisfaction and future reoffending. Many forces take a pragmatic approach to non-compliance. If something isn't working, consider changing the condition as the first port of call, especially if no further offence has been committed.

Resolving crime without going to court...



...SATISFIES VICTIMS

A recent deferred prosecution pilot in Birmingham reported 43% greater victim satisfaction, compared to those victims whose cases went to court.



...IS POPULAR WITH THE PUBLIC

58% of the public support policies to resolve more crimes without going to court, compared to only 17% who oppose. Read more in Transform Justice's messaging guide.



...REDUCES REOFFENDING

In 2020, 13% of adults who received a caution reoffended compared to 19% of those convicted and sentenced to pay a fine by the court. Diverting children from court reduced their reoffending by 13% compared to prosecution.



...IS COST-EFFECTIVE

An Australian study found that diversion schemes for low-level drug offences cost 84-94% less than formal charging. The West Midlands deferred prosecution pilot, Turning Point, achieved a saving of c £1,000 per case, including all the costs of the intervention.

- 1 <https://justiceinnovation.org/publications/children-and-young-peoples-voices-youth-diversion-and-disparity>
- 2 <https://eprints.nottingham.ac.uk/65708/1/Cerys%20Gibson%20PhD.pdf>