



## Out of Court Disposals managed by the Police: a review of the evidence

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**Commissioned by the National Police Chief's Council of England and Wales**

**Purpose:** *This evidence review was commissioned in order to provide evidence to National Chief Constables Council, the Director of Public Prosecutions and the College of Policing on whether the proposed two-tier framework for out of court disposals managed by the police:*

- *Is effective at increasing victim satisfaction, reducing harm and reducing reoffending*
- *Provides simplicity of process, officer efficiency and time efficiency*
- *Reduces demand on prisons, reduces the risk of serious and organised crime and terrorism/radicalisation*
- *Is positive for the public*

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## Executive Summary:

This evidence review focuses on the effectiveness of out of court or “pre-court” disposals managed by the police (OOCDS). Specifically, the questions centre on whether a reformed system with two disposals – a Community Resolution Plus (CR+) and a Conditional Caution Plus (CC+) – would be more effective than the existing system in England and Wales which has seven disposals ranging from informal resolution to conditional caution. The review explores both the history of and research on out of court disposals to provide the best available evidence to support decisions on the way forward.

The findings suggest that:

1. OOCDS are effective, compared to court prosecution, at reducing harm and reoffending and sustaining victim confidence and satisfaction;
2. This finding applies to young offenders, young adults and adults;
3. OOCDS are effective with low harm, low risk offenders but may also be effective with moderate risk offenders;
4. OOCDS with conditions appear to be promising in reducing harm, including domestic violence;
5. In order to be effective OOCDS with conditions must be implemented well and three areas require particular attention: the eligibility screening of offenders; the needs assessment to match conditions to the offender; the setting and tracking of conditions;
6. OOCDS with conditions tailored for women appear to be promising but need further testing;
7. OOCDS with conditions appear to be cost effective compared to court prosecution;
8. The two-tier OOCDS approach as piloted did not compare favourably on cost with the current model – the primary reason for this was the cost comparison between a simple caution without conditions and the OOCDS – CR+ or CC+ - with conditions model for all OOCDS;
9. The two-tier model could, however, be developed into a lower cost approach with support from decision support tools for the screening, needs assessment and condition setting. New technology such as Body Worn Cameras could enable most CR+ disposals to be dealt with by a “Street Resolution” delivered without incurring the costs for custody processing – this model should be tested;

10. There are a number of areas where the current evidence is not capable of providing reliable guidance: most particularly the effectiveness of OOCDS for hate crime – this should be formally tested before wider use could be recommended;

The decision for NPCC on whether to adopt and roll out the two-tier model is a complex one. The “top” tier OOCDS with conditions – whether a conditional caution or a deferred prosecution – appears to be effective if targeted and implemented effectively, but there has been only limited testing of the lower tier “CR+” model as part of the pilots. The two-tier as piloted does not appear to be cost effective because of the cost of replacing a simple caution or warnings with a conditional model, particularly the additional costs of the CC+. However, a direct comparison with the cost of prosecution suggests that OOCDS with conditions are more cost-effective than taking offenders to court. In addition, using more “Street Resolutions”, removing the cost of police custody for the lowest risk offenders, could enhance the cost-effectiveness of the lower tier and deserves to be tested further.

Whatever agreed version of the two-tier model emerges, this evidence review has lessons for the implementation and future development of OOCDS. Firstly, the effective use of OOCDS requires a nationally supported development in three areas: an eligibility screening tool; a needs assessment model to assist police officers with matching conditions to the offender; a condition setting and tracking tool. Secondly, there are a number of areas of OOCDS which require further testing and development: in particular, the use of OOCDS for hate crime and the use of tailored conditions for women.

## **1.0 Overview:**

This evidence review is set out in four parts:

- The context, history and research literature on pre-court disposals managed by the police
- The responses to the specific questions posed by the NPCC
- The challenges of implementation
- Conclusions and recommendations

The review starts with a short section on the methodology that has been used.

## **2.0 Methodology:**

This evidence review has been commissioned to assess the evidence on a key policy and practice question – the strength of the evidence supporting a change from an existing structure of multiple interventions for out of court disposals to a “simplified two-tier” structure. For an evidence review which is focused on the evidence on the effectiveness of a single intervention, the best practice would be to conduct a systematic review – a comprehensive search for studies against pre-defined criteria and the meta-analysis of the evaluation outcomes (Campbell Collaboration, 2014). The review questions posed for this review are, however, more complex. Firstly, they are comparative. Secondly, they concern multiple interventions. Finally, they require an assessment of both the quantitative and qualitative evidence available. Hence, we have adopted a stepped approach as follows:

- For the effectiveness questions, the evidence review will seek to answer questions by drawing on evidence from existing systematic reviews or meta-analytic studies. There are now two Campbell Collaboration international systematic reviews on the effectiveness of pre-court disposals compared to court prosecution for young offenders. Given that these studies relate to younger offenders and the questions relate to all offenders, we have drawn randomised or controlled design studies for the evidence for adult diversion. Well conducted randomised controlled studies provide the most reliable evidence on outcomes because the randomised design allows greater confidence in excluding alternative explanations. There are now a number of randomised controlled trials of pre-court disposals for young adults and adults (of which Operation Turning Point is the most recent and comprehensive). For some questions, such as the relative effectiveness of treatments for women, there are no RCTs,

but some Quasi-experimental designs or designs with a control. These designs are less reliable but, for some aspects of the questions, they are the best evidence available. Process evaluations or pre-post comparisons will only be used where there are no controlled designs available. They tend to be much weaker designs for evaluating effectiveness because the absence of a control and the difficulty of accurately assessing bias in the sample makes reliable assessment more problematic. As their title suggests, process evaluations tend to be most valuable in understanding the initial implementation of an intervention.

- For the cost benefit (and simplicity) questions, the point of reference is, as far as possible, the most recent Home Office/Ministry of Justice cost benefit models (as used by Ipsos Mori for the evaluation of the Ministry of Justice pilots). The assessment of this set of questions also benefit from the qualitative evidence from surveys and focus groups with staff.

- A key area that has received more limited attention until recently has been the challenge of implementing OOCDS. The assessment of this area draws on three years research conducted on the initiation, implementation and operation of Operation Turning Point (Neyroud, 2017) which used a combination of meta-analysis of randomised controlled trials in policing and particularly pre-court diversion studies, a case study and qualitative interview data to support the analysis.

For the purpose of this assessment, effectiveness has been judged on the following measures and through the following studies:

- reduced harm – The Cambridge Crime Harm Index (Sherman, Neyroud and Neyroud, 2016) will be used to weight the harm from reoffending. Both Operation Turning Point and the MoJ pilots have been evaluated against the CCHI. There is a high level of correlation between the CCHI and the Crime Severity Score (CSS) developed by the ONS (House, 2017 and ONS, 2017).
- reduced reoffending – Standard measures of prevalence and frequency of offending have been used in both Campbell Systematic Reviews.
- increased victim satisfaction – The Turning Point RCT provides the first randomised test of the comparison between deferred conditions managed by the police pre-court and prosecution and the confidence and satisfaction of victims. The Restorative Justice RCTs and Systematic Review also provide strong evidence.
- simplicity of process and ease of use – Turning Point and the MoJ pilots provide evidence on cost benefit and relative simplicity. There are also lessons from the systematic reviews and from the literature on police management of triage schemes, cautioning and pre-court conditional cautioning.

- speed of justice – the Turning Point and the MoJ pilots have lessons on “celerity”.
- improved public confidence/perception – there is evidence from Turning Point, Operation CARA and the MoJ pilots to support this question.

### **3.0 Context, History and Development of Out of Court disposals (OOCd) managed by the police in England and Wales**

The principal reason for this evidence review is the need to decide the future framework for OOCd’s managed by the police. The Ministry of Justice announced a review of OOCd’s in 2013, followed by a consultation (MoJ, 2014) and then the launch of a three-force<sup>2</sup> pilot of the proposed “simplified, two-tier” system. The two-tier system that was piloted involved migrating from the existing system with seven potential disposals – informal or community resolution, cannabis warning, Khat warning, simple caution, Penalty Notice for Disorder (PND) and Conditional Caution – to a two-tier structure of “Community Resolution Plus” and “Conditional Caution plus”. The intention of the new system was threefold: all offenders would be held to account (by a disposal with a conditional element attached); victims’ confidence and satisfaction would be enhanced; the new system would be simpler and more efficient to implement (MoJ, 2014).

The two-tier pilots were evaluated by Ipsos Mori and Sheffield Hallam University. The MoJ pilots were run as a quasi-experiment rather than a RCT. The analysis some problems with the control sample. However, since 2010 and in parallel with the MoJ pilots, a number of other trials have been testing different approaches to OOCd: Operation Turning Point<sup>3</sup> (2011-2014) tested a deferred prosecution with conditions (Neyroud, 2017); Operation CARA<sup>4</sup> (2011-2017) tested a group treatment for low harm domestic violence offenders as part of a conditional caution (Strang et al., 2017); Operation Checkpoint<sup>5</sup> (2015-) is testing an offender triage approach linked to deferred prosecution with conditions (Urwin, 2016). All three of these trials have been run as randomised controlled trials with research support from the Institute of Criminology at Cambridge University. The Lammy Report (2017) has recently endorsed and recommended the deferred prosecution with conditions approach tested in Operation Turning Point.

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Interest in the reform of the OOCB framework has a long history. Most recently, concern about the perceived overuse of OOCB's to meet the performance target regime of National Objectives, media coverage of the apparent misuse of OOCB's for more serious offences and a broader critique about inconsistency and lack of oversight all combined to encourage Ministers to ask for an independent inspection. In the subsequent joint Inspection of "Out of Court disposals" decided on by police and Crown Prosecutors, the joint Criminal Justice Inspectorate (CJJI, 2011) observed that there had been a substantial expansion in the use of such disposals over the previous decade. They expressed concern about the quality of the decision-making, variations in practice and the types of offences. Policy Exchange expressed similar concerns about variation and inappropriate use (Sosa, 2012). Yet the Inspectorate also acknowledged that OOCB's cost less, showed comparable levels of victim satisfaction to court disposals and appeared to result in fewer convictions.

The CJJI report provided a snap shot of a small dip sample of police disposals. The reoffending data compared those cautioned with those charged and is, therefore, likely to have a serious selection bias. Nevertheless, their report raised crucial issues for the criminal justice system in England and Wales at a time when all the agencies involved had been forced to confront significant falls in their operating budgets (HMIC, 2012). If OOCB's were less costly, at least as good from the victim's perspective and produce comparable outcomes for reoffending, then, subject to the need to address consistency, it was arguable that effective deployment of OOCB's was a cost-effective option at any time, but particularly at a time of financial stringency.

The key question that the Inspectorates left open was where the boundary should lie between the appropriate use of OOCB's and prosecution before a court? This has been a key question since the earliest studies of police cautioning (Steer, 1970). Implicit in the Joint Inspectorate analysis are a range of potentially competing principles: effectiveness in reducing re-offending; efficiency; victim's rights and confidence; the wider legitimacy of the criminal justice system.

There are compelling arguments in favour of using alternatives to prosecution. In a systematic review of the "formal system processing of juveniles", Petrosino et al. (2010) reviewed the evidence comparing the effectiveness of formally processing juveniles with alternatives including diversion or counselling. Their conclusions,

based on an analysis of 29 controlled trials were that “juvenile system processing [through court prosecution] appears to not have a crime control effect, and across all measures appears to increase delinquency” (Petrosino et al., 2010:6).

Further good reasons for exercising care in setting the boundaries for formal processing for juveniles and adults are offered by Durlauf and Nagin (2011). Their analysis, drawing on 30 years of research on sentencing and prevention, suggests that strategies that focus more on certainty rather than severity, appear to offer the greatest likelihood of a positive deterrent outcome. They have also suggested, more tentatively, that speed or “celerity” is an important component alongside certainty. Nagin and his colleagues’ analysis of the impact of short-term prison sentences suggests a ‘backfire’ effect of increased reoffending rather than a positive preventive outcome (Nagin and Cullen, 2009 and Nieuwbeerta et al, 2009).

The research on OOCDS and court-based interventions would seem, therefore, to suggest that criminal justice agencies should be very careful, on grounds of both cost and effectiveness, to consider the boundary between prosecution and ‘out of court of disposals’. The Joint Inspectorate report summed this up as the need for a “strategy” based on “what works to improve victim satisfaction, reduce re-offending and provide value for money” (CJII, 2011: 3).

#### **4.0 An overview of the literature on cautioning and diversion:**

For a disposal that accounted for up to 38% of the criminal justice outcomes in the UK (CJII, 2011), it is remarkable that there had been no randomised or quasi-experimental trials comparing OOCDS against prosecution in England and Wales until Operation Turning Point in 2011. As a result, despite more than 180 years of practice, there was no credible evidence comparing the effectiveness of the two interventions, even though there were a substantial number of studies of key aspects of the process of diversion.

The Campbell Systematic review by Petrosino et al. (2010) and the most recent review by Wilson et al. (2018) found only North American based studies and the systematic reviews were exclusively focused on juvenile offenders. However, as we will see below, they produce strong evidence in favour of considering diversion rather than formal processing.



In the UK, the early studies of cautioning by Steer (1970), Ditchfield (1976) and Giller (Jones, 1982) were based on either an analysis of official statistics or, in Giller's case, detailed work in Hampshire Constabulary comparing the cases in which deferred cautions, instant cautions or prosecutions had been administered<sup>6</sup>. Steer felt able to draw conclusions that police cautioning, which had a long history going back into at least mid-Victorian times, was "a sensible and useful way of dealing with certain types of offender, and that police discretion not to prosecute is exercised widely" (Steer, 1970: 59).

The UK based studies that have followed Steer have focused around five main issues:

- **Speed:** Giller's study of cautioning in Hampshire in the early 1980's concentrated on the process of cautioning and found that instant cautions appeared to be more effective, judged by reoffending rates, than deferred cautions.
- **Disproportionality:** Landau and Nathan's (1983) study of cautioning in London focused on the process by which offenders were selected for cautions. They found racially disproportionate practice. A key contributor to this was the requirement for the offender to admit guilt, which, in turn, required a degree of confidence in the police that was not always shared by minority defendants. The Lammy report (2017) has returned to this issue in recommending "deferred prosecutions" with conditions over cautions, because of the approach removes the requirement for an admission of guilt.
- **Inconsistency and quality of decision-making:** Mott (1983), Laycock and Tarling (1985), Giller and Tutt (1987), Sandars (1988), Evans and Wilkinson (1990) and Westmarland, Johnson and McGlynn (2017) have raised concerns about an unhelpful diversity of practice, which had, in their view, impacted on the fairness and justice of the system.
- **Net-widening and labelling of offenders:** Farrington and Bennett (1981) conducted an analysis of the police cautioning of juveniles in London and concluded

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<sup>6</sup> The review author assisted Giller with aspects of this research and then used the research to provide recommendations for changing the force's policy to emphasise instant cautions wherever possible (see Jones, 1982).

that police cautioning had both increased the number of juveniles formally processed – “net-widening” – and failed to result in better reoffending rates compared to court.

- **Restorative Justice:** In the 1990’s interest turned to the potential effectiveness of “restorative cautions”. Young and Goold (1999) carried out an “exploratory study” which identified “restorative cautions” as a “welcome shift”. Strang et al. (2013) in the Campbell systematic review of restorative justice examined the studies with randomised designs and strong implementation. They found that restorative justice conferences, whether used as a part of a diversion or as part of the court process, produced a “modest, but highly cost-effective reduction in repeat offending” (p.1). They also observed that contrary to the assumptions apparently held by many in policy roles, restorative justice appeared to work at least as well, if not better, where the offender was an adult. However, Strang et al. (2009) also found that restorative justice would be likely to be least effective with drug addicted property offenders.

Internationally, there have been a significant number of studies of diversion strategies for adult offenders with **drug offences**. Harvey et al. (2007) have provided the most comprehensive review. It covered 19 studies, which involved both pre-court and court based diversion. None of the pre-court studies had used a randomised design and the lack of high quality designs made comparisons between the studies difficult. Nevertheless, the authors concluded, “there is tentative evidence that diversion, in particular, can result in reduced criminal recidivism, drug use and possibly improved psychological functioning” (p.385). They found that more mature offenders responded better to the diversionary approaches. A new evaluation report by the Victoria Crime Statistics Agency into police led diversion of drug offenders and cannabis cautioning has found a significant reduction in reoffending compared to the treatment group (Coghlan, Sutherland and Millsted, 2016).

Two further issues have received some attention more recently: the extent to which OOC’s can be tailored to be more effective for **women**; the effectiveness of diversion for offenders with **mental health problems**:

- **Conditions for women:** Three UK based trials are worth citing. The Hull diversion trial diverted arrestees to a women’s centre for assistance to address their criminogenic needs rather than process them through the criminal justice system (Brennan et al., 2016). The study found a promising effect of the intervention on rates

of rearrest and daily risk of rearrest over a 12-month follow-up period, but a higher frequency of rearrest among those of the intervention group who were rearrested. Two further studies examined: the introduction of specific conditions for women within conditional cautioning (Easton et al., 2010); community payback conditions (Rice, 2010). Both studies found problems in the custody suite with custody officers finding the conditions complex and the task of matching suitable cases to the conditions one that they were unprepared for by training or guidance.

- **Offenders with mental health problems:** There have been a number of evaluations of mental health diversion and liaison and of triage of offenders with mental health problems. Reuland (2004) set out the lessons of a number of these evaluations for an approach centred on Crisis Intervention Teams (CIT). Taheri (2014) conducted a systematic review of CIT (from US studies) and concluded that there was no effect on rearrest rates but found that implementation issues were prevalent and problematic. Kane et al. (2017) conducted a systematic review of the UK evidence. The series of studies commissioned by the Department of Health to evaluate the Mental Health Diversion and Liaison scheme highlight many of the same implementation issues that Taheri cites. The most comprehensive study, completed by RAND (Disley et al., 2016), did, however, find that once the initial implementation difficulties had been overcome, there were indications that such schemes can have positive outcomes.

There have been two areas of particular controversy: **domestic violence** and **hate crime**. Nationally guidance on the use of OOCd for domestic violence offenders has discouraged the use of OOCd's. However, as Westmarland et al. (2017) have suggested that there is, in fact, a widespread use of OOCd "under the radar" for domestic abuse. Two studies – Operation CARA (Strang et al., 2017) and the MoJ pilots – have been authorised to test treatments for domestic violence. Operation CARA tested a group session for low harm offenders as part of a conditional caution. The results, which have been reported recently, suggest that there was a significant effect on crime harm from the treatments. The analysis of reoffending outcomes of the MoJ pilots found no significant difference in reoffending amongst those in the pilot treatments compared to the control.

National guidance on the use of OOCd's for **hate crime** also discourages diversion. Hate crime offences were included in the MoJ pilots, but there has been no specific data produced evaluating the effectiveness, because the sample size (less than 100)

was too small to produce reliable analysis. Operation Turning Point specifically excluded hate crimes at the request of the CPS. Neither this review nor Hamad's (2017) review of hate crime interventions could find any credible evaluations of OOC'D's for hate crime.

Whether the OOC'D approach is being applied to young people, adults, women, domestic violence and hate crime offenders or those with mental health problems, the choice of evidenced based treatments and their delivery to an appropriate dosage<sup>7</sup> and fidelity<sup>8</sup> for offenders for whom OOC'D may be appropriate requires a careful attention to the lessons of treatment evaluations. We have summarised these lessons in the next section and will return to the issues of implementation in the final section.

### **5.0: The evidence for treatments and conditions:**

As part of the process of developing the treatments within Turning Point experiment, the researchers<sup>9</sup> undertook an analysis of the effectiveness of programmes designed to reduce offending or rehabilitate offenders. Whilst these studies tend to focus primarily on the use of such programmes post-conviction, but there are important lessons for the use of such programmes pre-court as part of OOC'D's.

The most important meta-analyses of studies of rehabilitation programmes (Cullen and Johnson, 2011; Lipsey and Cullen, 2007; Lipsey, 2009) have found an overall average effect of between 10% and 40% reduction in reoffending. This stands in contrast to evidence that we have set out above in respect of court processing which does not, on the whole, reduce reoffending for many types of offences and offenders (Petrosino et al., 2010).

Cullen and Jonson (2011) argued that programmes work better when they are specifically and explicitly tailored to the offending or problem behaviour. Effectiveness of a specific rehabilitation program appears to depend on 3 key factors: the quality of programme implementation (Latessa and Smith, 2006); the deployment of an

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<sup>7</sup> The amount and frequency of an intervention

<sup>8</sup> Accuracy of the replication of a specified treatment intervention

<sup>9</sup> Slothower and Neyroud (2012)

approach that is tested and of demonstrable effectiveness; and the application of the intervention to the appropriate types of offenders and offenses—one intervention approach rarely fits all categories of offenders. One caution from their analysis which is particularly important for OOCDD's, is that it appears that using intensive treatments, designed for high risk or persistent offenders, with low-risk offenders may increase rather decrease offending.

We divided the programmes into three broad categories:

### **5.1 Behaviour/Mental Health/Anger Management/General Offending:**

There are a range of effective programmes that utilise cognitive behavioural therapy, defined as “programs that are based on the view that cognitions—what and how we think—are learned and affect behavioural choices, including the choice to break the law” (Cullen and Jonson, 2011: 305). Lipsey's meta-analysis (2009) demonstrated that such programmes can work exceptionally well and are supported by some of the strongest evidence for rehabilitation programs. Cognitive behaviour therapy-based programmes have been found to be effective in a variety of settings, including: anger management; drugs treatment; and programs targeted at reducing general reoffending.

Lipsey (2009) and Cullen and Johnson (2011) identified a number of other effective approaches:

- Interventions based on social learning or changing clearly identified, overt behaviours;
- Programmes oriented towards developing an offender's skills;
- Programmes targeted at changing attitudes, behaviours, and life circumstances that specifically contribute to the offending behaviour, and that can actually be changed;
- Programmes that address the multiple problems that offenders have—particularly the problems that are related to the offending—rather than just trying to “fix” one aspect of an offender's life or behaviour, and the program must be able to adapt to fit each specific offender's risk factors.

- Structured rather than loose-flowing programmes.
- Mentoring programmes for juveniles, particularly mentoring programs that include emotional support (Tolan et al, 2008).
- Restorative Justice, particularly for adults, violent offenders, and high-risk offenders (Strang et al. forthcoming);
- Enforced curfews.
- Family-based skill building counselling/therapy for juveniles.

There is also quite clear evidence on the type of programmes that do not produce effective results. The first group focuses on the individual and their identity. These include programmes based on only building an offender's self-esteem; therapies to encourage an offender to tell their secrets or talk about their childhood; psychoanalysis-oriented therapy; programmes that are targeted towards changing factors that are unrelated to the offender's offending (Lipsey, 2009).

The second group relies on deterrence and a 'shock therapy': these include programmes such as 'Scared Straight'; Boot camps; Shock incarceration. The first two, Scared Straight and Boot Camps, have been shown to increase offending levels (Petrosino et al., 2010a and MacKenzie, 2006). MacKenzie has also shown that control-oriented programmes (involving surveillance or threats of punishment) only seem to reduce to recidivism when they include treatment aspects – a potential argument in support of the two-tier approach of combining a threatened prosecution with a range of treatments. It would also appear to be important to match the severity and intrusiveness of the intervention with the offender. Thus, the evidence suggests that many intermediate sanctions (harsher than probation but less harsh than prison) are ineffective. This includes some forms of intensive supervision and many forms of electronic/home monitoring.

## **5.2 Education and Employment**

As Sampson and Laub (1993) identified, getting a *quality* job, not just any job, is one of the most effective turning points in an offender's life leading to desistance. However, simple diversion from court to short-term job training with no attention to

the other risk factors in an offender's life does not reduce repeat offending for adults, and may in fact increase reoffending for juveniles (Sherman et al., 1997).

### **5.3 Drugs and substance abuse:**

Overall, it appears that drugs treatment can be effective (Belenko et al., 2005; Boyum et al., 2011). However, the evidence for what types of programmes, and what treatment works for what type of offenders, is less convincing. Many drugs treatment programmes are hampered by understaffing, leading to an inability to put adequate time and attention into clients. Many of the same therapy/treatment characteristics that work or do not work for general reoffending also hold true for drugs: Multi-modal drugs treatment programmes that not only address drugs but also the other offending-related risk factors in an offender's life; programs targeted at changing behaviours specifically related to offending and drug use; treatment programmes that are structured as opposed to loose-flowing; etc. all appear to be more effective. Programmes involving Cognitive Behavioural Therapy, training in thinking skills using behaviour modification techniques or rewards and punishment work to reduce drugs use. (Mackenzie, 2006; Sherman et al, 1997).

For those who are dependent on cannabis, counselling interventions have some evidence of reducing cannabis use, although more studies are needed (MTPRG, 2004). Some enforced drugs treatment programmes (e.g. Project HOPE, drug courts, etc.) seem to work particularly well (Hawken, 20011; Mitchell et al 2011). Motivational interviewing does appear to reduce future substance use across a review of the current research, although much more in the short and medium term, less so in the long term, and higher quality research is needed (Smedslund et al, 2011).

## **6.0 The evidence reviews for the key questions**

Having provided the context, the history and an overview of the evidence for OOC'D's and potential treatments, this section seeks to provide answers to the specific questions that the review was commissioned to address. These have been provided in three distinct sections: the first seeks to provide an overall review of the evidence on the effectiveness of OOC'D's against each of the effectiveness criteria; the second to respond the questions on the comparative effectiveness of OOC'D's with conditions against OOC'D's without conditions

and against court prosecution; the final section deals with a set of questions about specific areas of diversion. The responses in this section need to be read in conjunction with the overview set out above and the final section on implementation.

## **6.1 The Effectiveness of Out of Court Disposals:**

**Does a two-tier framework for OOCd's disposals result in:**

### **6.1.1 reduced reoffending?**

There are two Campbell Systematic reviews, Petrosino et al. (2010) and Wilson et al. (2018) which have examined the effectiveness of pre-court disposals from different points of view. Petrosino et al. (2010) posed the question as to whether formal court processing of juvenile offenders was beneficial or harmful. Wilson et al. (2018) have focused on the question of the effectiveness of pre-court diversion managed by the police. Petrosino et al. (2010) found that formal court processing was not effective and against all their measures showed a significant backfire on offending. Wilson et al. (2018) have found a corresponding result in favour of diversion when examining the question from the other direction.

As both studies are focused on young offenders and there is yet to be a systematic review on adult offenders, we need to turn to the randomised trials for evidence on adult offenders. Operation Turning Point produced a reduction on the prevalence and frequency of offending but not at a level of significance sufficient to be confident that it was not a chance finding. However, Strang et al. (2013)'s systematic review of restorative justice did find evidence of a significant effect from well conducted RJ for adults. None of the studies – including the MoJ evaluation – is suggesting any overall increase in reoffending from OOCd. The MoJ Pilot found, moreover, that the level of reoffending was less amongst young adults and adults.

Offenders in Turning Point were restricted to one previous conviction (more than 5 years ago for an adult and more than 2 years for a juvenile) to be eligible. However, drawing the line for eligibility for conditional disposals is a delicate balance. Operation Checkpoint is testing OOCd's with moderate risk offenders or offenders who have a predicted risk of reoffending. Higher-risk offenders are more likely to reoffend in general than lowest risk offenders. On the other hand, evidence (for example from Restorative Justice experiments) suggests that treatment of higher-risk offenders is where there is the most to gain in terms of preventing future crime and reducing



further costs. This is because these offenders have more criminogenic need and, since they offend at higher rates, any reductions in their offending will have more impact (preventing more future crimes) than reducing offending among the lowest-risk offenders, who would be likely commit very few future offences to begin with. The reoffending rate amongst the low risk cohort in Turning Point was around 20%. The key is that treatment of higher-risk offenders will result in less reoffending by these higher (in this case medium) risk offenders than if they received no treatment, even if they will still reoffend more than lower-risk offenders.

Of these studies, only the MoJ pilots have focused on both tiers of the proposed two-tier system. However, there is no separate analysis of the effectiveness of the lower tier and there have been no good quality studies on the effectiveness of informal or community resolution approaches. Turley et al. (2014) carried out a process evaluation of one model – neighbourhood justice panels. They did not examine the reoffending impact, but did find substantial implementation issues.

It is a reasonable, but untested, presumption from the evidence of the effectiveness of the higher tier that, given the lower harm offences and offenders likely to be given such disposals, the reoffending rate would be low.

### **6.1.2 reduced harm?**

The Cambridge Crime Harm Index (Sherman, Neyroud and Neyroud, 2016) provides a systematic means of weighting the harm of offences by using the starting points for sentencing in the England and Wales Sentencing Guidelines. The CCHI has been applied to the two-year reoffending data for both Operation Turning Point and the MoJ pilots. In Operation Turning Point, the CCHI weighted data showed a significant reduction in harm (-36%). This was particularly associated with a reduction in the harm from violent offending. The MoJ pilots indicate a higher harm score in the pilots than the counter-factual areas. However, as we noted above, the MoJ pilot was evaluated with a weak control and the report admits the possibility that the counter factual and the pilot areas were not well matched. Turning Point was a RCT in which the samples were matched by randomisation and, in the evaluation phase, was conducted with a high degree of treatment integrity (Neyroud, 2017). Unfortunately, given the relatively recent development of tools such as the CCHI, we are not able to apply a harm weighting to the Systematic Reviews.

### **6.1.3 increased victim satisfaction?**

Slothower (2014) conducted a separate RCT on the confidence and satisfaction of victims in Turning Point. This is the only RCT that has, so far, compared the experience of victims whose cases have been resolved by OOCs with those where offenders were prosecuted. The victim data in the MoJ pilot evaluation did not produce a credible sample size from which to draw conclusions. Slothower found a significant (+43%) increase in victim satisfaction in favour of the Turning Point treatment. Her analysis identified the importance of the approach that West Midlands police adopted in using a scripted conversation with the victims. The Restorative Justice RCTs (Sherman et al., 2015) and Strang et al.'s (2013) Systematic Review also provide strong evidence for the positive impact of restorative justice on victims.

### **6.1.4 reduced cost, simplicity of process and ease of use?**

The Turning Point trial compared court prosecution and a deferred prosecution with conditions. The sample was randomised after the decision to prosecute. The analysis showed that Turning Point was more cost-effective (-45%) overall and even so when considering only the direct costs to the police. The studies of restorative justice (Shapland et al., 2010) provide corroboration of this positive finding on cost-effectiveness in respect of diversion with restorative justice.

The MoJ pilot evaluation compared the costs of the existing system with the two-tier system. As this includes comparing warnings and cautions without conditions with warnings and cautions with conditions, it was not surprising that the two-tier system was less cost effective. The key issue with the two-tier model would appear to be the comparative cost of the 40% of the disposals that were given as CC+ compared to the cost of the existing model. However, it is also notable that 60% of disposals in the pilot that were carried out by CR+, compared to simple cautions and informal warnings. It would seem highly probable that if more CR+ disposals were carried out as "Street Resolutions", reducing the costs from custody and processing, then the lower tier of the two-tier approach would be more cost effective. Given the almost universal roll out of Body Worn Cameras and the consequent potential for the type of low level offences involved in CR+ to be interviewed and processed outside the police station, there is a potential for a Street CR+ model to deliver a cost effective lower tier. As to the higher tier, CC+, there was no comparison to the cost of prosecution, which Turning Point suggests would be likely to be significantly in favour of the OOC.

The analysis of both Turning Point and the pilots suggests that the initial implementation of the conditional model was challenging. After the initial problems had been overcome, officers in both trials adapted to the new approach. As we will comment below in the section on implementation, the simplicity and ease of use could be significantly enhanced by the provision of decision-support tools.

#### **6.1.5 speed of justice?**

The Turning Point offenders were assessed and their conditions set in 48 hours. Analysis comparing the speed of Turning Point and court processing suggested that court processing took much longer (often even longer than the four-month period of the conditions). Furthermore, Turning Offenders were more likely to be held to account (+34%). Given Giller's (1982) finding on the benefits of instant cautions over deferred, it is important that decisions on disposal and conditions are as closely linked to the point of arrest as possible. Nagin, Solow and Lum (2015) have emphasised the importance of "apprehension" as the key teachable moment rather than punishment. Walters (2017) has also found that speed and certainty are correlated to reoffending rates for young adult offenders.

#### **6.1.6 improved public confidence/perception?**

Slothower's (2014) RCT with the victims in the Turning Point trial provides the clearest evidence for the benefits for confidence and perception of a well explained OOCd with conditions. Both sets of victims, those whose cases went into to Turning Point and those whose cases went to court, expressed a preference for the deferred prosecution with conditions. The importance of the police explaining the process and making a credible attempt to prevent reoffending was central to this finding.

One development in the last decade has been the introduction of oversight panels for OOCd's within force areas. There has been no substantial published research on whether such panels improve the quality of decision-making or impact public confidence or satisfaction. However, the substantial body of recent research on police legitimacy suggests that for OOCd's to be seen as legitimate, they will need to be both effective and judged to be procedurally fair (Bottoms and Tankebe, 2012). Continued evaluation, effective tracking of outcomes, transparent publication and effective scrutiny would all seem to be important in this context.

## **6.2 Comparative Effectiveness of OOC with conditions and prosecution**

This second section examines the comparative benefits of OOC and prosecution:

### **6.2.1 Are OOC's with conditions are more effective than those with none?**

Petrosino et al.'s (2010) systematic review found that the difference between formal court processing and diversion was greater when the diversion was linked to treatments. However, both Petrosino et al. (2010) and Wilson et al. (2018) emphasise the importance of the treatments being well implemented. This finding is supported by the Turning Point trial. In Operation CARA, the comparison was between a standard conditional caution and a caution with a specific treatment programme for low harm domestic violence offenders. CARA demonstrated the importance of the choice of conditions, with the treatment programme significantly out-performing the control (Strang et al., 2017).

### **6.2.2. Are OOC's with conditions are more effective than prosecution in court?**

Turning Point is the only UK based RCT to make a direct comparison between a deferred prosecution with conditions and a court prosecution. The analysis of Turning Point showed that the deferred prosecution with conditions resulted in reduced harm, at less cost and with higher victim satisfaction when applied to low harm offenders, who would otherwise have been prosecuted. The MoJ pilot compared the two-tier system to the existing system of OOC. However, the findings in Turning Point are consistent with the direction of the overall findings in the two Systematic Reviews (Petrosino et al., 2010 and Wilson et al., 2018).

### **6.2.3. Is a two-tier framework simpler for practitioners to use and the public to understand?**

For this question, we have the qualitative evidence from interviews with the practitioners in the MoJ pilots and Turning Point. This suggests that officers in both trials recognised that they were being asked to undertake a very different role: preventing crime by tailoring conditions to encourage offenders not to reoffend. After initial implementation problems, officers in both trials adapted to the new role and many appear to have found it rewarding. The ease of use was substantially enhanced in Turning Point by the development of decision-support tools to assist with eligibility screening, needs assessment and condition setting.

As to the public, Slothower's (2014) survey of the victims' suggested that, as long as the police have invested in the explanation of the process, OOCDS with conditions had the potential to enhance victim confidence.

### **6.3 Specific Questions of Effectiveness**

This final section examines the evidence on specific questions about OOCDS:

#### **6.3.1 Domestic abuse cases**

Nationally guidance on the use of OOCDS for domestic abuse offenders has discouraged the use of OOCDS. Despite this, as Westmarland et al. (2017) have suggested that there is, in fact, a widespread use of OOCDS for domestic abuse. Operation CARA (Strang et al., 2017) and the MoJ evaluation of the pilots have both been authorised to test treatments for domestic abuse. Operation CARA tested a treatment programme for low harm offenders as part of a conditional caution. The treatment consisted of two, five hour sessions in a group with a process based around motivational interviewing (Strang et al., 2017). The results, which have been reported recently, suggest that there was a significant effect on crime harm from the treatments.

The analysis of reoffending outcomes of the MoJ pilots did not find statistically significant differences between the pilot and the control areas. Operation CARA provides promising evidence of the potential effectiveness of pre-court conditional cautioning for low risk DA offenders. West Midlands Police are currently replicating CARA, but with the addition that they are testing the relative effectiveness of the approach for Sikh and Polish male offenders. The need to test the impact on offenders from different backgrounds is a key lesson of the series of RCTs of arrest in domestic violence in 1990's in the USA (Sherman, 1992).

#### **6.3.2 Hate Crime cases**

Using OOCDS for hate crime, like domestic abuse, has been discouraged by national guidance. Like domestic abuse, hate crime offenders have been given OOCDS from time to time. A review of practice in Scotland by Hamad (2017) has identified the paucity of research on risk assessments and treatment approaches. Hamad found that there had not been any RCTs or high-quality studies specifically dealing with Hate Crimes and OOCDS. However,

Hamad's review, drawing on Walter's (2014) study of community mediation and restorative approaches, encouraged consideration of approaches based on restorative justice and individually focused treatments focused on attitudes, beliefs and the impact of behaviours on communities and victims. Hamad's recommendations included a "Hate Crime and Restorative Justice pilot". Testing such conditional approaches to hate crime for lower harm and lower risk offenders would seem to be an important area for future research (Walters, 2014).

### **6.3.3 BAME offenders**

There are two key issues that need to be discussed: the effect of cautioning compared to deferred prosecution on disproportionality; the impact of pre-court disposals on BAME offenders and victims. On the first issue, the Lammy report (2017) has made a specific recommendation in favour of the adoption of deferred prosecution rather conditional cautioning, because of the potential to reduce disproportionality in the criminal justice system.

Operation Turning Point was designed with deferred prosecution for just this reason: for offenders from BAME communities, who have a lower level of confidence in the police, the requirement to admit the offence before becoming eligible for a caution may be leading to a disproportionate level of prosecution for low harm, early career offenders. Data from Turning Point suggested that the removal of the requirement to admit guilt before a decision on disposal may have resulted in a more proportionate outcome. Equally, there was no evidence to suggest a significant difference in outcome between offenders who admitted their offences before disposal decision and those who did not. If a deferred prosecution model was to be adopted, it would be necessary to change the recording processes for final disposal: in Operation Turning Point, West Midlands Police resulted cases as informal resolutions rather than findings of guilt.

On the second question, data from the MoJ pilot was analysed against ethnicity. Black offenders had a 42% higher likelihood of reoffending compared to White offenders. Although it is difficult to interpret the finding, which did not appear to be replicated in the Turning Point sample, it is clear that tracking the eligibility screening, conditions and outcomes for BAME offenders must become a key part of the police service's response to the findings in the Lammy report.

#### **6.3.4 Cases with female defendants**

We have set above the Three UK based trials on specific conditions for women. The Hull diversion trial found a promising effect of the intervention on rates of rearrest. The two studies of conditional cautioning (Easton et al., 2010 and Rice, 2010) were less persuasive because of implementation problems. Analysis of the conditions set within the MoJ pilot suggest that the reoffending outcomes were affected by the combination of gender and different types of conditions: notably, there appeared to be a differential impact of rehabilitative conditions depending on gender. This is a complex issue, which is also affected by offence type and offending history, but drawing on the lessons of the Hull study and MoJ pilots, it appears that a specific approach to conditions taking account of gender is worthy of further development and testing. Such an approach has also recently been supported by a review for the Prison Reform Trust (Guiney and Earle, 2017).

#### **6.3.5 Cases where the defendant has mental health issues**

The most significant issue with mental health and OOCd's is the early identification and diagnosis of the problem. The series of studies commissioned by the Department of Health to evaluate the Mental Health Diversion and Liaison scheme highlight the challenges of effective triage of offenders with mental health issues. The most comprehensive study, completed by RAND (Disley et al., 2016), did, however, find that once the initial implementation difficulties had been overcome, there were indications that such schemes can have positive outcomes and can form a key part of the overall approach to OOCd's.

#### **6.3.6 Cases involving possession of drugs.**

Both Harvey et al.'s (2007) meta-analysis and the most recent study by Victoria Statistics Agency (Coghlan, Sutherland and Millstead, 2016) on diverting drug offenders suggest that OOCd's can be an effective way of dealing with low harm drug offenders. Magnusson (forthcoming) has conducted a RCT in Sweden on diversion from the street to health services, which has demonstrated a significant short-term impact from officers linking the disposal to a script encouraging attendance at a health intervention (Magnusson, personal communication). Magnusson's study has highlighted the potential for simple, street resolutions (or CR+) that encourage or "nudge" an offender towards voluntary treatment.

This section has been focused primarily on the evaluation of the outcomes of research looking at O OCD's. However, many of the studies, including the Systematic Reviews, highlight the importance of the implementation as a key factor in determining whether approaches to O OCD's are effective or not. The final section of this evidence review turns to this issue.

## **7.0 The challenge of Implementation:**

The original introduction of Conditional Cautioning provided an object lesson in the failure of implementation<sup>10</sup>. The intention was Conditional Cautions would be widely used for a range of offences and provide a significant means of diverting low harm offenders from court. However, as Blakeborough and Pierpont's (2007) process evaluation of the pilots found, there were problems, right from the start, with training, consistency of decision-making and knowledge and skills to set conditions. Ten years on from their implementation, Conditional Cautions were used in a very small number of cases and almost exclusively for offences of damage with conditions which were usually confined to an apology and a sum in compensation (Neyroud and Slothower, 2014). Part of the reason for this was the requirement for conditional cautioning to be approved by the CPS, which meant that it was easier in most cases for an officer to charge and submit an abbreviated file than opt for a Conditional Caution. Although the requirement for a CPS approval has been substantially changed, the need to address training, decision support, knowledge and skills remains a substantial challenge.

In developing the Turning Point experiment, Neyroud and Slothower (2012 and 2013) undertook a careful review of these issues and Neyroud (2017) analysed the lessons from all the experimental studies in diversion since 1970. Drawing on these lessons and the analysis of Turning Point itself (Neyroud, 2017), there are four areas in particular that are critical to the successful implementation of O OCD's with conditions:

### **7.1 Eligibility Screening**

There is no tested eligibility screening tool for O OCD's. Given the findings presented here that indicate that the effectiveness of O OCD's may have a relationship with the target population of offenders selected for the disposal, it is likely to be important to ensure that the most appropriate offenders are screened in or out. The research for Turning Point identified

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<sup>10</sup> The review author was the Programme Board Chair for Conditional Cautioning



the importance of a consistent screening process that could screen out high harm offenders for whom OOCDS would be inappropriate. The current tools available to police officers in England and Wales consist of a combination of guidance and the ACPO Gravity Factors Matrix (2009). The latter, which is not consistently applied by forces, was developed to match the starting points within the Magistrates Courts Sentencing Guidelines. Its use has not been evaluated.

In Operation Turning Point, an online screening tool was developed as part of the randomisation process. Evaluation of the tool (Hobday, 2015) suggested that, as the trial developed the tool was able to support increasingly consistent decision-making. In Operation Checkpoint in Durham, an algorithmic risk assessment tool is being tested, which is designed to screen offenders into “high”, “moderate” and “low” harm categories as a pre-screen before the final disposal condition.

## **7.2 Needs assessment**

The evidence presented above has identified the importance of tailoring conditions for the offence and the offender. Implicitly, such a process requires a needs assessment process which supports an assessment of both. There is no such tested tool in place to support the use of OOCDS with conditions. The lower tier – CR+ - disposal may not merit such this, because keeping this disposal simple would appear to be both good use of resources and the best interpretation of the evidence. However, the CC+ or deferred prosecution tier does appear to need such a tool. In Turning Point, officers were provided with a tailored version of the LS-CMI needs assessment tool which was developed by Andrews and Bonta (2010). LS-CMI, when used by trained staff, has been linked to improved outcomes for reoffending. Baglivio et al. (2018) have demonstrated that matching of treatments to subjects is a key determinant of effectiveness in reducing reoffending for juvenile offenders. Andrews and Bonta (2010) suggest that this principle extends more generally.

## **7.3 Condition setting**

The crucial component of a strategy based on OOCDS with conditions is the process of setting the conditions. In Operation Turning Point officers were initially entrusted with using their discretion and experience to set conditions. The result (Slothower, 2014) was a significant degree of inconsistency and a substantial number of inappropriate and un-evidenced conditions. Whilst the provision of further training and more guidance improved

the situation somewhat, the cost of such an investment within a more general implementation of OOC'D's with conditions would be prohibitive and, in any case, did not completely resolve the problems. It was only once the Offender Managers devised a "prescribing tool" to support condition setting and allow for more effective tracking of the process by their supervisors that the problems of inconsistent and inappropriate conditions were resolved (Slothower, 2014).

#### **7.4 Training, Tracking and Feedback**

A consistent theme from diversion studies, the evaluations of liaison and diversion and from studies on the implementation of innovation and change in policing is the over reliance on procedural training and the absence of consistent tracking and management oversight. As Ames et al. (2017) identified in the MoJ evaluation, implementing a change to a two tier strategy based on OOC'D's with conditions is a significant shift which requires more than a short session briefing on the process or, worse still, an online training package.

The analysis in Operation Turning Point has identified the importance of a combination of developing the decision support tools for eligibility screening, needs assessment and condition setting with an approach to training, tracking and feedback to officers which develops their understanding of the research ("why are we doing this?"), challenges their own decisions ("why did you make this decision?") and feeds back progress ("how well are we doing?").

### **8.0 Summary, Conclusions and Recommendations for policy, practice and future research and evaluation.**

In the summary and conclusions, we have provided a short statement which is designed to summarise the evidence on each of the key questions, based on the detailed analysis in this review. The final section sets out a number of recommendations that follow on from the evidence reviewed.

#### **8.1. Summary and Conclusions:**

The findings suggest that:

1. OOC'D's, whether with conditions or without, are effective, compared to court prosecution, at reducing harm and reoffending and sustaining victim confidence and satisfaction. This finding applies to young offenders, young adults and adults;
2. OOC'D's are effective with low harm, low risk offenders but they may also be effective with moderate risk offenders;
3. OOC'D's with conditions appear to be promising in reducing harm, including domestic violence;
4. In order to be effective, OOC'D's with conditions must be implemented well and three areas require particular attention: the eligibility screening of offenders; the needs assessment to match conditions to the offender; the setting and tracking of conditions;
5. Making a direct comparison between OOC'D's with conditions and OOC'D's without conditions is difficult: none of the research makes this direct comparison. In the MoJ pilots the comparison was made between a mixed regime with some conditions and a two-tier regime with conditions for both tiers.
6. The research does suggest that OOC'D's with conditions are effective and appropriate for offenders who might otherwise have been considered for prosecution (Operation Turning Point) and that, in these circumstances, a "deferred prosecution" model is promising;
7. The two-tier OOC'D approach as piloted did not compare favourably on cost with the current model – the primary reason for this was the cost comparison between a simple caution without conditions and the OOC'D – particularly the CC+ - with conditions model for all OOC'D's;
8. The two-tier model could, however, be developed into a lower cost approach with support from decision support tools for the screening, needs assessment and condition setting. New technology such as Body Worn Cameras could enable most CR+ disposals to be dealt with by a "Street Resolution" delivered without incurring the costs for custody processing – this model should be tested;
9. There are a number of areas where the current evidence is not capable of providing reliable guidance: most particularly the effectiveness of OOC'D's for hate crime – this should be formally tested before wider use could be recommended;
10. It is difficult to compare the relative effectiveness of pre-court disposals applied to men and women because the offending patterns are different. The better question is whether it is more effective to tailor conditions for men and women. Tailored conditions for women appear to be a promising approach that deserves further exploration and testing.

## **8.2 Recommendations:**

It is beyond the terms of reference for this evidence to make recommendations about the future direction of OOC'D's, but, whatever those decisions might be, the following recommendations are made:

1. The NPCC should commission the development of decision-support tools to support: the eligibility screening of offenders; the needs assessment to match conditions to the offender; the setting and tracking of conditions.
2. The NPCC should support the testing of OOC'D's for hate crime, further development of testing of tailored conditions for women and further testing of OOC'D's to divert offenders with mental health problems.
3. The NPCC should explore and test lower cost approaches to "Community Resolutions", including with support from new technology, such as Body Worn Cameras, to "Street Resolutions" to reduce the need for custody processing prior to disposal decision.

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