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**Title**

**Could conditional cautions be used as a suitable intervention for certain cases  
of domestic violence ?**

**A feasibility study for conducting a randomised controlled trial in Hampshire.**

Submitted in part fulfilment of the requirements for the  
Masters Degree in Applied Criminology and Police Management

December 2011

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## **Acknowledgement**

There are many people who have contributed to this piece of research. I would especially like to thank Chief Constable Alex Marshall who, in the twilight period of my career, has allowed me the opportunity to study at Cambridge and provided the necessary strategic leadership to secure national approval for the proposed RCT.

My thanks and appreciation are also extended to Ian Johnston and Derek Barnett the former and current President of the Superintendents' Association of England & Wales who kindly supported my nomination for the award of the Sir Anthony Bottoms Scholarship from Cambridge University. I also wish to convey my sincere appreciation to University of Cambridge, Institute of Criminology especially Professor Lawrence Sherman and Dr Heather Strang for the scholarship and for their encouragement, guidance and support with this research.

On a more practical level, I would like to acknowledge the assistance of Mr Asa Thorpe who collected the data and produced charts to assist with explanation. Similarly, all the members of the multi-agency LCJB steering group, particularly Christine Murray (Chair), John Montague (CPS), Sergeant Melanie Morgan, Chantal Hughes (Hampton Trust) and Emma Robertson (LCJB), also, Superintendent Scott Chilton who has agreed to take on the onerous task of implementing the RCT.

Finally, I would like to thank my family, especially my wife Nicky and our four children for their patience and support.

## **Abstract**

In the UK, the comparatively recent requirement for 'positive action' policing of reported incidents of domestic violence has led to a substantial increase in arrests. However, research reveals ongoing dissatisfaction amongst many victims. A high volume of 'minor' incidents are being resolved with 'No Further Action' being taken or the offender being given a simple police caution. In addition, for various reasons, victims are also withdrawing their support for prosecution. Arguably, the criminal justice system is struggling to constructively support victims, deter offenders or reduce reoffending by means of an effective early intervention.

The recent introduction of conditional cautions as an out-of-court disposal offers up a potential solution to some of these problems. Following an acceptance of guilt it is possible for rehabilitative, reparative and restrictive conditions to be imposed. National guidance currently prevents usage of this disposal for cases of domestic violence, however, in January 2011 the Chief Constable of Hampshire Constabulary formally requested permission from the Director of Public Prosecution (DPP) to conduct a trial use of this intervention. The preferred experimental method is a randomised controlled trial (RCT).

Following negotiations the Local Criminal Justice Board (LCJB) has agreed that simple police cautions will be suspended for eligible domestic violence cases in the test area and that via random assignment a control and treatment group will be created for conditionally cautioned offenders.

A literature review explores policing developments from the 1980's to present day which is followed by examination of the national guidance, use and available research concerning out-of-court disposals, particularly simple police cautions and conditional cautions. The paper then considers the potential 'conditions' of Restorative Justice and Treatment Programmes. A feasibility section details the personal journey of the author in securing approval for the RCT. The proposed process, eligibility criteria, likely pipeline of cases and 'field' issues are then discussed with a view to providing clear implementation guidance for the experiment.

## **Chapter 1: Introduction**

Domestic violence was, until relatively recently, 'untouched by law' and regarded as a private family problem. It took until the 1970's when the voices of feminists finally began to be heard that domestic violence gradually became recognised as a public issue. This triggered legal reforms, women's support groups, research studies, government reports and public awareness campaigns (McWilliams & Spence 1996). Further research (Pahl 1985, Hanmer&Saunders 1984, Edwards 1989, Dobash&Dobash 1992 and Buzawa&Buzawa 1993) began to reveal the prevalence and failures of the state, especially the police, in dealing with the problem. Eventually a 'positive action' response was introduced. This has led to an increase in arrests and prosecutions but not necessarily improved outcomes for the parties involved. Many victims are dissatisfied and for various reasons are choosing not to report or are withdrawing their support for prosecution before the case reaches the court (Paradine&Wilkinson 2004).

The 2001 British Crime Survey found that 64% of women who had been subject to domestic violence in the previous year did not name their experiences as a 'crime' and only 23% reported it to the police. (Harne& Radford 2008). Arguably, these facts and figures do not reveal the true scale of the problem, they represent, as Sherman graphically describes, the 'mere tip of an ice-berg' (Sherman 1992).

In support of this, a Canadian study discovered that on average women have been assaulted 35 times before contacting the police (Jaffe et al 1986). This statistic is an important one for policing, as Dobash et al (1985) observe " ...it may not be the severity of a particular attack that leads a woman to seek help. Rather it may be a cumulative effect of persistent violence and intimidation..." (Dobash et al 1985:154)

There are, of course, many reasons why victims choose not to report. They may be frightened, they may fear further assault, and they may still care for the offender. Indeed, McCarry and Williamson

(2009) found that female victims of domestic violence are more likely to go to a refuge than to the police. An observation supported by a government advisory body the Women's National Commission who claimed that many women had little confidence in the criminal justice system (CJS) and were unlikely to report violence. They linked involving the CJS to a reduction in safety (Women's National Commission 2009). Such reporting concerns are further exacerbated when considering race, language differences, poverty, bad housing and unemployment (McWilliams & Spence 1996). By many facing these circumstances the police are often seen as a threat rather than a support (Paradine & Wilkinson 2004), views which the police have struggled to positively influence.

Recently, a study conducted by the national domestic violence advisory group "Respect" entitled *What Counts as Success* (Westmarland et al 2010) found that many women do not want their offenders to be punished. They view success differently from those in the CJS and want outcomes linked to improvement of the relationship, including enhanced parenting. They want a reduction or ending of the abuse and their men to understand the impact of their actions. Being arrested or attending court did not feature in their main concerns. This finding may surprise many criminal justice practitioners who are increasingly frustrated at the lack of victim support yet insist on continuing to pursue a robust prosecution policy.

During 2009, 14.1% of domestic violence prosecution cases (post charge) failed in England and Wales specifically because the victim withdrew support or refused to give evidence. This means a total of 10,176 victims and offenders walked away with little or nothing positive from their engagement with the police or broader criminal justice system. The risks posed were not addressed and levels of perceived confidence in the criminal justice system can only have been damaged. The added waste of public funds spent during the investigation and prosecution process is a further concern (details obtained from Hampshire Chief Crown Prosecutor).

The efficiency of the present system is undoubtedly a contributory factor. In 2007, a study in Northumbria of 2,402 domestic abuse incidents led to offenders being arrested, charged and



convicted in just 120 incidents (5%) (Hester & Westmarland 2007). Of course, minor domestic assaults are never 'minor' for the victim but research suggests courts will often view them as such. Offenders pleading guilty, on first conviction, invariably attract lenient sentences such as bind overs, conditional discharges or fines (McWilliams & Spence 1996). These outcomes lead many victims to question the value of prosecution. A point verified in a study in 2004, (HMPCSI) which concluded that some survivors regarded criminal prosecution as "not worth a candle" with respect to the deterrent effect or ability to protect them from further violence.

Despite these difficulties the positive action police policy has led to a dramatic increase in arrest and detention but the majority of cases are not prosecuted. The decision to take 'No further Action' (NFA) is commonplace and this is often influenced by a lack of evidence in the form of a formal victim's statement. A further consequence of the policy and one that is contrary to Association of Chief Police Officer guidance (ACPO 2008), has been the increasing use of the simple police caution as a disposal. This consists of a 'telling off' and in terms of offering support and protection for the victim, or, acting as an early intervention deterrent for offenders is arguably somewhat limited.

Thus it appears that a problem exists at the gateway to the criminal justice system. The high volume of relatively 'minor' domestic incidents and 'positive action' policy has generated an increase in police arrests. Thereafter, the criminal justice system is struggling to constructively support victims, deter offenders or reduce reoffending.

The conditional caution introduced by the Criminal Justice Act 2003 and recently rolled-out across police forces (2007/08) as part of a range of out-of-court disposals to divert minor cases away from the courts, may offer an opportunity to resolve some of these identified concerns. In essence, the conditional caution provides for the agreed imposition of 'conditions', such as reparation or rehabilitative treatment or restrictions, which must be complied with in order for the caution to be administered. Unlike simple police cautions, they present greater flexibility to tailor conditions to the

needs and circumstances of each case. However, the existing guidance issued by the Director of Public Prosecution (DPP) currently prevents their usage for domestic violence cases (Starmer 2010).

The Hampshire and Isle of Wight Local Criminal Justice Board (LCJB) are keen to address the identified problems and in January 2011, the Chief Constable of Hampshire Constabulary, in his capacity as Chair of the LCJB, formally wrote to the DPP requesting permission to conduct a trial to test the use of conditional cautions for certain eligible cases of domestic abuse (Appendix 'A').

The Chief Constable of Hampshire Constabulary supports the concept of evidenced-based policing and agrees with Sherman that "police practices should be based on what works best" (Sherman 1998:2). He has expressed a desire to conduct a randomised controlled trial (RCT) recognising that it is assessed as the 'gold standard' for testing cause and effect and having the highest level of efficacy for evaluating experimental criminology (Braga & Bond 2008). He commissioned the author of this paper to explore the feasibility of conducting such a trial.

On the 8<sup>th</sup> July 2011, two formal letters of reply, from the DPP and Home Office, arrived in Hampshire (see Appendix 'A'). The DPP granted permission for the trial use of Conditional Cautions for domestic violence offences but clarified a few points of restriction and focus:

*"...the objective of the pilot should be to improve justice outcomes for victims by addressing offender behaviour...I would also seek assurance that the pilot seeks to achieve a reduction in the use of simple cautions rather than in the number of prosecutions..." (see Appendix 'A')*

These same points were reiterated in the letter from the Home Office and curtailed a broader experimental approach to the current prosecution problems. Notwithstanding this, throughout 2010 Hampshire Constabulary dealt with 1500 domestic violence incidents by way of a simple police caution. The opportunity to trial the use of conditional cautions potentially opens the door for both restrictive and rehabilitative 'conditions' to be imposed. The requested focus to address offending behaviour brings into consideration concepts such as Restorative Justice (RJ) and offender treatment

programmes, both of which have been utilised in the UK but not as an early intervention for offences linked to domestic violence.

During the spring and summer months of 2011 a multi-agency LCJB steering group was formed and tasked with bringing forward workable proposals. Following careful deliberation a consensus was reached. The required focus on reducing simple police cautions led to the decision to recommend suspension of their use in the test area and for this to be replaced with conditional cautions. It is proposed that the offenders who meet the eligibility criteria will then be randomly assigned to one of two groups: a control group with the sole 'condition' of "behave yourself for 4 months" and a treatment group which will be assigned the mandatory 'condition' of attending two treatment workshops and any other additional 'conditions' felt appropriate for the individual case. Following data analysis the western area of Hampshire (Southampton & New Forest) was identified as the preferred test area.

The author played a vital role in negotiations and presented the recommendations to the LCJB. On Monday 19<sup>th</sup> September 2011, the proposals were formally approved by the board and the DPP and Home Office have since been advised of the intended plans. A randomised controlled trial has been designed with a view to testing the hypothesis that conditional cautions are a suitable intervention for reducing recidivism in certain cases of domestic violence. The effectiveness and cost efficiency of this approach will also be measured outcomes.

To clarify, this paper is divided into two primary sections. The first provides a literature review of salient material which is followed by a feasibility section examining, in some detail, the necessary components for operationalizing the proposed RCT.

The literature review incorporated a combination of methods and explored relevant topics: searches of reference material held by the National Police Library at Bramshill College and online searches using various search engines and applying a variety of key words ( e.g. Domestic Violence, Policing

Domestic Violence, Conditional Cautions, Out of Court Disposals, Prosecuting domestic violence, investigating domestic violence, Domestic Violence Treatment, Restorative Justice, Batterer Intervention Programmes, Treatment Programmes for Domestic Violence etc ). This led to the discovery and realisation of the immense breadth and depth of related subject matter. For the purposes of this paper only four salient areas will be discussed in the **Literature Review**:

- **Policing development:** covering the 80's, 90's and the past decade.
- **Out of Court Disposals, Simple Police Cautions and Conditional Cautions:** considering the law, national guidance, there usage and research findings.
- **Restorative Justice:** discussing relevant theory, general practice, international use for domestic violence and consideration as a potential 'condition' in this trial.
- **Treatment Programmes:** exploring treatment models, international research findings and the current UK situation.

This followed by a **Feasibility Section** which provides a detailed account of the author's personal journey in securing formal approval for conducting the RCT. It identifies and details the role played by key individuals and explores all the issues concerned with implementation. This includes a thorough explanation of the proposed process, the eligibility criteria and likely pipeline of future cases. It also considers the treatment workshop and other potential 'conditions'. The statistical power of the planned RCT is assessed and the potential obstacles and 'field' issues which may be encountered during implementation are also discussed. This includes logistical and investigative advantages and disadvantages, ethical issues, threats to internal validity, analysis and measurement recommendations. Ultimately, this section seeks to provide the required detail for successful implementation of the planned RCT.

The findings of the proposed RCT could provide vital evidence to influence national policy and possibly provide improved outcomes for domestic abuse victims, offenders and the criminal justice system across the whole of the UK.

## **Chapter 2: Literature Review**

### **2.1: Policing Development: The 80's**

Historically, in the USA and UK, the police adopted a passive non-interventionist response to domestic violence. By the 1980's competing views on how to handle cases had crystallised and legal changes in the USA enabled arrests for misdemeanours. This opened the door for what is now regarded as the most influential research in this field: the Minneapolis Domestic Violence Experiment (Sherman & Berk 1984). This study was the first randomised controlled test of the effectiveness of arrest for any offence. The experiment, for several reasons, became a catalyst for rapid change. Despite the reservations of the researchers, the 'arrest works' finding echoed across the States of America and beyond (Sherman 1992).

Meanwhile, in the UK, the policing of domestic disputes continued to be almost non-existent and ineffective. There were, of course, many reasons for this, legal, organisational and cultural. Indeed, it could be argued that policing was merely reflecting society in general, which, at that time, still regarded violence in the home as a private 'family' matter.

Despite new supportive laws being enacted during this decade (Domestic Violence and Matrimonial Proceedings Act 1976 and Domestic Proceedings and Magistrates Courts Act 1978) which provided protection, injunctions and exclusion orders against violent partners and the right to occupy the marital home, there were no major changes in traditional police practices (McWilliams & Spence 1996). The reality was that police officers did not enjoy dealing with 'domestics' ; they were not seen as real 'crime ' (Richards, Letchford & Stratton 2008) and this attitude prevailed throughout the service. In 1983, Commissioner Newman of the London Metropolitan Police compounded such thoughts when he reportedly suggested that such disputes " should be hived off to the social services" (Hague & Malos 2005:67).

Notwithstanding this, the re-awakened feminist movement and a series of influential research studies concerning the policing of domestic violence emerged in the UK. The police were heavily criticised for their failure to respond effectively (Hanmer&Saunders 1984). In 1985 the Women's National Commission also criticised the police for their reluctance to intervene and highlighted their failure to arrest and prosecute offenders (Harne& Radford 2008).

This combined body of research, pressure from interest groups and the emerging developments in the USA undoubtedly contributed to the production of Home Office Circular 69/1986 which requested chief officers to review their local approach. Whilst generally regarded as representing a significant national step towards improving the policing of domestic violence, the circular was then left to the discretion of individual Chief Officers to decide "the extent to which the Recommendations of the Women's National Commission may appropriately be implemented in their area" (Hague &Malos 2005:70).

The tenor of language used serves to highlight the politics involved with policing at this time. The tripartite arrangement of Home Office, Chief Constable and Police Authority significantly diluted central influence and many, if not all Chief Constables, ruled over all local policing matters. They were often referred to as 'kings of their own fiefdoms' (Reiner 1992). This influenced the levels of compliance and response. The new policy direction conflicted with the traditionalist masculine culture of the police and was not overwhelmingly popular (Harne and Radford 2008). The observation that a change in national or local policy does not always mean a change in frontline practice was correct on this occasion.

Arguably, some police forces were more progressive than others. The London Metropolitan Police, who had been monitoring international developments, especially in the USA, embraced the 1986 circular with a pro-arrest policy and introduced specialist domestic violence units. They set about improving recording practices and introduced training with a view to changing entrenched attitudes.

The new mantra was “an assault which occurs in the home is as much a criminal act as one which may occur in the street” (Hague&Malos 2005:71).

However, beyond the metropolitan area, the impact of this particular circular was proven to be piecemeal at best. In terms of an explanation it is, perhaps, worth reflecting on the societal context and remembering that it took until 1992 for the House of Lords to rule that there was no longer a rule of law that a wife was deemed to have consented permanently to sexual intercourse with her husband (R v.R 1992 1 AC 599 (HL)).

Several commentators have offered views for this major change in policy direction. Whilst the efforts of Women’s Aid and other organisations contributed to the national debate, on the international level the British Government had committed itself to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Having failed to formally implement or respond during the 80’s, it is possible that the subsequent Home Office Circulars and funded research answered an international political obligation. European pressure may also have contributed at this time (Hague &Malos 2005). Other commentators point to significant national events during the early 80’s, such as the miners’ strike and inner city riots, which arguably led to a ‘crisis in policing’and accompanying loss of public confidence. In turn, this possibly stimulated a wider policy of re-establishing public support by recognising the demands of the Women’s Aid and others (Harne& Radford 2008). Whatever the tipping point, this change in direction was truly cemented via the production and dissemination of a further Home Office Circular: 60/1990.

## **2.2: The 90’s**

In essence, this circular encouraged a pro-arrest and pro-prosecution approach. It called for a speedy and effective response to calls of domestic violence and promoted the usage of other support agencies for the protection of victims and children. In addition to the detailed guidance on expected

procedures the introduction of specialist Domestic Violence Officers and Units were also encouraged.

By 1991, every police force had produced policy statements on domestic violence, encouraging 'positive action' to be taken. The introduction, in some areas, of dedicated police domestic violence officers improved victim support, but, once again, the local delivery of policing across the country had led to a postcode lottery of service (Harne& Radford 2008). In 1995, a Home Office study discovered only 50% of the 43 forces had introduced such Units and interviews with frontline officers presented mixed understanding of the new policy. Moreover, half of those who had received new guidelines stated that it was still a low priority issue (Harne& Radford 2008: 128).

The appointment of domestic violence officers had made little difference in some areas. They were marginalised and provided with little guidance and support. A further Home Office evaluation, conducted in 1998, remained highly critical of the lack of specialist training, poor policing standards and weakness in supervision and management (Plotnikoff&Woolfson 1998). Whilst acknowledging improved victim support, the report recommended enhancement of the domestic violence officer role to incorporate multi-agency working and an investigative capability. It was apparent that, whilst considerable efforts had been made to improve policing policy and practice, as the country slipped into the new millennium, the quality of service experienced by victims of domestic violence was still inconsistent.

### **2.3: The Past Decade**

To address these continuing problems a further Home Office circular was introduced; 19/2000. Importantly ten years later power had shifted centrally towards the Home Office, it was no longer a case of requesting compliance. Amongst the directions it required officers to justify any decision *not* to arrest if there was sufficient evidence. It also made reduction of 'repeat victimisation' a police



performance indicator. Further improvements such as risk assessments and the introduction of specialist domestic violence courts have since followed.

The past decade has witnessed enormous change and improvement. Today, the presence of specialist Domestic Violence Officers operating within wider Public Protection Units is the norm. They are no longer marginalised and sit as part of a broader service of offender risk management. The majority have developed strong links with statutory and voluntary support agencies, a point evidenced by the study of Hague and Malos who interviewed 112 women. Overall the police were viewed as having improved their response in 54% of cases, however, this increased to an impressive 96% when specialist domestic violence officers were involved. They found the officers “had been helpful, often beyond the bounds of duty” (Hague & Malos 2005:77)

Unfortunately other studies have continued to find inconsistencies in arrest rates, recording of crime and poor investigation standards (Hester et al 2003, HMCPSP, 2004, Cook et al 2004, Hester & Westmarland 2005). In addition, the government has also expressed concern at the comparatively high rate of attrition of prosecuted cases compared with most other crimes (HMCPSP 2004).

A lack of a comprehensive study to establish the overall impact of these changes in police policy and practice prevents a definitive statement. Clearly, in terms of focus and response, the policing of domestic disputes has improved. The use of preventative arrest is now commonplace and represents a complete turnaround in police policy and practice since the early 80's. Of course, as we have already discussed, the reality is that reported cases represent only a minority of the domestic incidents taking place across society.

As previously discussed, there are many reasons for this, but arguably a contributory factor is that victims of domestic violence do not necessarily consider the criminal justice system an appropriate option for resolving their conflict. The introduction of specialist domestic violence courts has improved understanding across the criminal justice system but a study in 2006 of five specialist

courts discovered that 59% of offenders were fined, 30% were issued with a conditional discharge, 29% were ordered to attend perpetrator programmes, 10% received a community order and just 4% were imprisoned (Travis: The Guardian 15<sup>th</sup> April 2006). New sentencing guidelines have since been issued (2006) but have also been criticised for failing to take into account the need for victim protection (Harne& Radford 2008).

The positive action policy has led to a considerable increase in arrests but the majority of these cases are disposed of by way of no further action (NFA). By way of example, during 2010 the Western area disposed of approximately 2150 cases out of a total of 3269 domestic offences via NFA . However, if the offender has already admitted the offence the option of administering a simple police caution is often, depending on the individual circumstances, available to the police. Research indicates that the police are increasingly utilising this sanction. It is one of a number of disposal options collectively known as 'Out-of-Court disposals'.

### **Chapter 3: Out-of-Court Disposals**

The purpose of out-of-court disposals is to 'offer a proportionate response to low-risk offending and to reduce the amount of time courts spend listening to minor and undisputed matters' (CJI 2011 :9).

The two relevant disposals of interest are:

**Simple Police Caution** – a formal warning given by a police officer following an admission of guilt

**Conditional Caution** – a caution with conditions attached, authorised by the Crown Prosecution Service (CPS) and administered by the police.

(Penalty Notices for Disorder and Cannabis Warning for Possession also fall into the out-of-court disposal framework)

Recently, following the reduction of centrally driven targets and welcome return of operational police discretion a further disposal option has been increasingly used, specifically, 'Restorative Interventions'. The potential of a restorative approach is explored later in this paper.

In 2009, 38% of the 1.29 million offences 'solved' by police were dealt with by way of 'out-of-court disposals' (CJI 2011) and between 2003-08 their usage increased by 135%. This exponential rise has not gone unnoticed and has drawn both statements of concern and criticism from some quarters:

*'The growth in the number of out-of-court disposals represents a fundamental change in our concept of criminal justice and raises a number of concerns about consistency and transparency in the application of punishment'* (6<sup>th</sup> August 2009 House of Commons: Justice Committee cited in CJI 2011: 12)

A few weeks later the national Chair of the Magistrates Association went public with a vitriolic condemnation of their increasing use by the police:

*'the growth of out of court disposals is failing the public and "dumbing down" the criminal justice system...[the police] cannot be relied upon to handle them appropriately...there is inconsistency of their use, there is inappropriate use...'* (Daily telegraph 19<sup>th</sup> August 2009 cited in CJI 2011: 12)

The shift in delivering justice 'outside the court' was bound to generate a reaction from those directly involved, however, recent research by the CJI (2011) actually revealed no change in the number of cases being convicted in the courts. This finding arguably supports the contention that out-of-court disposals were a net-widening tactic introduced by the government.

Whilst the sample size was limited (190 cases compared against 50 court cases across 5 Force areas) the recent CJI research (June 2011) does provide a useful contemporary picture. Their findings again highlighted a variation in usage across the country. The research focused in on the suitability, effectiveness and efficiency of out-of-court disposals.

In terms of re-offending rates, over a 12 month period from the time of issue, such rates were lowest for Restorative Justice (RJ) disposals, 9 out of 40 cases, compared with 18 out of 50 cases for conditional cautions, and 21 out of 50 for simple cautions. Understandably, given the probable character and type of offender they all performed far better than the court sample which resulted in 40 out of 50 reoffending (CJI 2011).

The CJI victim satisfaction findings should be interpreted with the caveat that due to the passage of time many victims could not be traced. A total of 53 out of 64 victims interviewed reported being 'satisfied' or 'extremely satisfied' with the out-of-court disposal, compared with 14 out of 22 of cases which went to Court. Indeed, for simple cautions, 12 out of 17 victims were satisfied or extremely satisfied. For conditional cautions this was even higher, 10 out of 11 cases (CJI 2011).

### **3.1: Simple Police Caution**

In essence a Simple Police Caution amounts to a 'telling off' by the police and is used for low-level offences where the *public interest* (my emphasis) can be met by a simple caution. The aims are to deal quickly and simply with less serious cases, to divert offenders, where appropriate, from appearing before the criminal courts and to reduce the likelihood of offending. It is a formal procedure and recordable, in that details are held on the Police National Computer. Under the terms of the Rehabilitation of Offenders Act 1974 a simple caution becomes 'spent' immediately upon issue. An admission of guilt and consent to be cautioned is required from the offender.

In cases of domestic violence, this form of disposal is not encouraged by ACPO:

#### **ACPO Guidance on Adult Cautions for Domestic Violence (2008)**

- There is some evidence that it is a first domestic abuse offence and there have been no other reports or intelligence of previous abuse to the victim or previous partners/family members.
- The defendant has no previous police record for violence
- *The case has been reviewed by the CPS and they have taken the decision not to progress a prosecution (my emphasis)*

- The investigation has been reviewed and the Investigating Officer is satisfied that there is no further potential for investigation development
- Any other criminal justice sanctions have been examined and progressed.

Home Office Circular 16/2008 provides further guidance for the Simple Cautioning of adult offenders. It states: 'the police retain the authority to issue a simple police caution in all cases other than cases involving indictable-only offences' (HO 16/2008 :1).

Thus, it appears, the current ACPO guidance which advises a CPS review of such cases is at odds with the Home Office circular. Arguably, the complexities involved in some cases and the risks posed probably contribute to the conservative ACPO policy. Despite this the current Crown Prosecution Service guidance is in accord with the Home Office circular. In practical terms this is an important point; understandably, the ease with which police officers can operate will invariably determine their practice. As it stands today, the police do **not** refer domestic violence cases to the CPS for authority to simple police caution.

In addition, the economic pressure on police budgets has led to considerable efforts to reduce bureaucracy. It follows that any future efforts to trial or test new methods must be cognisant of the drive for efficiency and effectiveness. Not surprisingly, the recent CJI research (2011) discovered that the Simple Police Caution, which is often administered on the day of arrest, was a swifter form of justice compared with Conditional Cautions and Court cases. Whilst attractive to the police officer it provides little, if any, comfort for the victim and does not necessarily address offending behaviour.

Interestingly, in 1990 a study conducted by Buchan and Edwards trialled the concept of deferred Simple Police Cautions for minor domestic assaults. They concluded that most victims expressed satisfaction with the procedure and felt that their safety was a major consideration. Importantly, 52% reiterated that they would not have supported a prosecution in court if the offender had been charged. In terms of the offender, 28% claimed the process had helped them change their behaviour and 85% did not come to police attention again during the monitoring period (6 months).

The researchers also felt that some offenders could be deterred from committing further crimes by the salutary effect of arrest, police detention, the taking of fingerprints and the administering of the actual caution (Buchan& Edwards 1991). This trial has not influenced national ACPO policy but it does offer up a potential way in which we could improve the use of simple police cautions and outcomes for domestic violence victims and offenders.

During 2010, 1500 domestic violence cases in Hampshire were dealt with via a simple police caution. As we have seen this form of disposal is currently a somewhat limited intervention and beyond a 'telling off', unlike the conditional caution, does not offer any form of rehabilitation for the offender.

For the purposes of the proposed trial, following careful consideration of possible ways forward, the Local Criminal Justice Board working group has recommended that simple police cautions are suspended for eligible domestic violence offences in the test area. The primary rationale for this step relates to the randomised process. Key members of the group would not permit simple police cautions to be used as a control group. They felt they would quickly face legal challenges if they attempted to do so. The proposed compromise is to solely use conditional cautions and to randomly assign participants to one of two treatment groups with different conditional caution characteristics. This will be discussed further in the feasibility section.

### **3.2: Conditional Caution**

The primary purpose of a conditional caution is to act as a diversionary disposal in order to free the courts from having to administer minor cases. This was seen as a natural development of the simple police caution and amounts to the agreed imposition of 'conditions', such as reparation or rehabilitative treatment which must be complied with in order for the caution to be administered. Importantly, when enacted, (2003), their use was restricted to certain offences and specifically excluded cases of domestic violence. Whilst not stipulated in relevant guidance, it is surmised that this was primarily due to the complexities, sensitivities and risks concerned with domestic violence.

Equally, when first introduced, it was always likely that testing of the disposal would lead to future consideration of wider usage. The precise terms of use are detailed in the DPP's guidance:

**Factors which will determine if a Conditional Caution should be offered**

3.2 Where the Custody Officer is considering whether to charge an offender and establishes that:

a) The offence is one specified in Annex A , and

*(The DPP has provided written consent to include domestic violence offences for the purposes of this trial)*

b) During interview, the offender has admitted the offence or ***made no comment (my emphasis)*** or no interview has taken place, and

c) The Police consider that instead of charging the offence, a conditional caution with suitable conditions may provide reparation to the victim or community; be effective in modifying behaviour; or provide an appropriate penalty,

The offender should not be charged. The case should be referred to a Crown Prosecutor who will determine whether a Conditional Caution is appropriate or whether the offender should be charged.

The Prosecutor must be satisfied that there is a realistic prospect of conviction and that the *public interest* is served by the offender receiving a conditional caution instead of being prosecuted. It should be noted that the condition imposed must also be appropriate and proportionate. To do otherwise would undermine the disposal and potentially lead to Judicial Review ( O'Doherty 2005).

The conditional caution is a relative newcomer to the criminal justice system and apart from the recent CJI study little research exists to show impact or progress with reoffending and victim satisfaction rates. In 2005, the Ministry of Justice commissioned a review of 13 pilot areas (Blakeborough&Pierpoint 2007). They found that out of 305 cases, 221 (72%) were administered and a proxy measure indicated that completion took 65 days less than a prosecution in a guilty plea case. For cases referred by police but not given a conditional caution the most common disposal was a charge. However, they highlighted the fact that 33 cases were dealt with via a disposal lesser than charge. This demonstrated the potential for up-tariffing to occur.

Unlike simple police cautions, the national guidance for conditional cautions requires authorisation from the CPS. This means additional paperwork has to be prepared and submitted. This is estimated to equate to an additional one hour of 'time spent' by officers (CJI 2011). This extra work is seen by many officers and lawyers as an unnecessary step for minor cases and in recognition of representations, following consultation (Green Paper December 2010), the government is now planning to amend the law to enable police officers to authorise and issue conditional cautions. The estimated timeframe for legislative enactment is late 2012 (personal communication with MoJ). In the meantime, police officers must continue to refer such cases to the CPS.

The impact of this procedural requirement should not be underestimated. Police Officers view the requirement as an unnecessary bureaucracy and anecdotally many are deterred from pursuing this disposal option.

It should be noted that in precise legal terms a simple police caution is considered the same level of disposal as a conditional caution. The disposal is recorded on the Police National Computer and under the Rehabilitation of Offenders Act 1974 becomes spent after 3 months. The key differences from a simple police caution is that a conditional caution offers greater flexibility and options for tailoring 'conditions' to the specific needs and circumstances of each case. It must also be authorised by the CPS.



### **3.3: Potential Conditions**

The national guidance produced by the DPP (Starmer 2010) provides clear expectations of the 'conditions'. Wherever possible, the decision to administer a conditional caution should be made while the offender is still in custody. If for any reason, this is not possible, the offender may be released on bail, with or without conditions, under section 37(7) PACE for a period not exceeding 21 days, unless there are operational reasons or other circumstances relating to the victim or offender justifying a longer period, or further information is required relating to the consideration of any specific condition.

The existence of a history of convictions does not necessarily rule out the possible use of a conditional caution and similarly, previous simple cautions do not preclude their use. Before it can be issued there must be sufficient evidence available to meet the Full Code test as set out in the Code for Crown Prosecutors. Thus, it is clear that the CPS will play a vital role in the decision making process.

In the feasibility section of this paper the possible 'conditions' for the proposed trial are discussed together with practical issues such as the agreement, monitoring and breach process. However, as stipulated by the DPP, the trial should focus on 'addressing offending behaviour' and this paper now proceeds to examine the evidence and explores, in some depth, two possible 'conditions' which may be included in the trial: Restorative Justice and Treatment Programmes.

## **Chapter 4: Restorative Justice (RJ)**

### **4.1: Relevant Theory**

For many years the quest of UK government policy has been to put the victim at the heart of the criminal justice system (Bednarova 2011). Few people would argue against this noble desire but achieving this goal will be difficult. Unless legally challenged, a victim plays little, if any, role in the adversarial court proceedings. Arguably the victim becomes a spectator to the retributive process which is concerned with the crime committed against the state and how to punish and deter the offender.

Today the needs and desires of the victim are nowhere near the centre of consideration. Nils Christie neatly describes this reality as victims having their 'criminal conflicts stolen from them by the state' (Christie 1977:4) which in turn denies them participation in what is an important matter to them. He posits the concept of a 'victim-orientated' court, placing victims at the centre of events and following a determination of guilt is focused on how the offender could repair the harm done to the victim (1977). Whilst Christie contributed to the development of RJ, the work of Howard Zehr (1985) is regarded by many as the first to create an integrated model of Restorative Justice (Marshall 1999). Initially limited to a form of private mediation involving victims and offenders he proposed RJ as an 'alternative justice paradigm' which challenged the traditional retributive model. His later work acknowledged the wider issues such as community and public interest (Zehr & Mika 1998).

Other criminological theories related to RJ include neutralisation (Sykes & Matza 1957), reintegrative shaming (Braithwaite 1989), defiance (Sherman 1993) and procedural justice (Tyler 1990).

### **4.2: Neutralization Theory**

Neutralization theory focuses on the offender and how the individual comes to terms with the shame generated by the commission of the crime. By using 'techniques of neutralization' the offender justifies their actions without damaging their self-image (Sykes & Matza 1957). They identify

five forms of neutralization: denial of responsibility, denial of injury, denial of victim, condemnation of the condemners and appeal to higher loyalties (Sykes & Matza 1957:667-669). Arguably, the lack of victim participation in the present UK model enables the offender to neutralise their criminal conduct. The offender rarely faces the victim and/or accounts for their conduct, whereas a RJ approach would challenge such issues and seek explanation.

#### **4.3: Reintegrative Shaming**

In terms of reintegrative shaming, Braithwaite observes that commitments to shaming are key to controlling all types of crime. He argues that shaming takes two distinct forms: stigmatising, which causes the individual to become an outcast from the community, and reintegrative, which allows reacceptance back into the community (Braithwaite 1989:55). In addition, Braithwaite submits that shaming imposed by agencies other than the community is less effective than being shamed by friends or relatives. It follows that shaming without reintegration can stigmatise. Again the current UK model potentially stigmatises many offenders in the courtroom, whereas, many RJ approaches incorporate the principles of reintegrative shaming.

#### **4.4: Defiance**

A further linked theory is that of defiance, which connects 'the prevalence and seriousness of future offending by a proud, shameless reaction of an offender to the administration of a criminal sanction' (Sherman 1993:445). Thus the punishment and reaction it triggers within the offender to commit further crimes arguably represents defiance. In their work 'restorative justice: the evidence' (2007) Sherman and Strang use defiance theory as a means of highlighting a central principle of RJ which counters such defiance, specifically the goal of persuasion (Sherman & Strang 2007: 15). The RJ process would involve a discussion concerning the crime and then seek to persuade acceptance by the offender of the immorality of his behaviour. Further to this, the inclusive and participative

nature of the RJ process also counters the 'conditions' and 'unfairness', which are recognised as required ingredients of defiance (Sherman 1993).

#### **4.5: Procedural Justice**

Finally, Tyler's theory of procedural justice (1990) is also relevant. He proposed that people obey the law when they believe the law and its implementation are just. Tyler identified seven elements which influence such beliefs. These include: the opportunity to present and have their side of the story heard; an unbiased decision maker; participants that are fair and honest; the need to be treated in a respectful manner; the need to have a relationship with authorities; and the need for a fair outcome (Tyler 1990:163). A restorative approach arguably embraces all of these key elements.

#### **4.6: RJ in General Practice**

A literature review of RJ conducted by Edwards and Sharpe (2004) highlights the problems with defining RJ recognising that it is both a philosophy and a practice. A definition often used is that of Marshall's:

'restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future' (Marshall 1999:5).

In a practical sense RJ usually, but not always, brings the victim and offender together. Other stakeholders who may be present can be family members, supporters of both victim and offender, as well as possible wider community involvement. The RJ conference is usually facilitated by a trained independent who focuses discussion on the crime, its impact, why it occurred and seeks resolution between the parties. This often involves the offer of an apology.

The further work of John Braithwaite (2002) highlights the potential benefits of RJ. He submits that it restores and satisfies victims, offenders and communities better than current traditional approaches. His research also demonstrates higher levels of compliance with agreements or

contracts reached. Offenders identify with the fairness of the restorative process. Further studies corroborate these observations (Umbreit et al 2006). Indeed, an assessment of RJ practices in Leeds (1996) found an 84% satisfaction rate among victims (Umbreit et al 1996). In addition, a meta-analysis conducted by Latimer et al (2005) discovered higher victim satisfaction ratings when compared to a comparison group in all but one of the 13 programs examined (Burkemper& Balsam 2007).

In 2001, seven RJ schemes were evaluated in the UK (Miers et al 2001). The findings were supportive, although some victims felt that offenders were 'getting off lightly' (Miers 2004:32). They reported that two-thirds of victims felt the intervention had positively impacted on the offender but only half felt that the offender had made sufficient amends for the crime (Miers et al 2001). There was no statistical evidence that RJ prevented reoffending, however, there were several problems with the study. These included: data collection, sample sizes and resources. In addition, they only interviewed 23 victims for all the schemes (Miers et al 2001).

Further evidence in support of RJ was found in another Home Office study (Shapland et al 2007). The evaluation of three RJ schemes revealed 85% of victims and 80% of offenders were very or quite satisfied with RJ Conferencing. The levels of satisfaction increased for direct mediation compared against indirect mediation and 62% of victims felt that the RJ process had helped them come to terms with the crime, in fact 39% said they felt more secure ( Shapland et al 2007). In terms of reoffending, those who participated in the RJ process committed statistically fewer offences in the 2years following compared with those in the control group, although, there was no statistical difference in relation to the likelihood of conviction (Shapland et al 2008).

In addition to this evidence, a comprehensive study of every RJ research project published in English between 1986 and 2005 was produced by Sherman and Strang in 2007. In total, they looked at 36 studies covering Australia, New Zealand, the US, Canada and the UK (Wachtel 2007). The findings were both persuasive and promising. In terms of reoffending they found that RJ works differently on

different kinds of people. Interestingly, and perhaps challenging current thinking, a further related finding was that in general RJ seemed to reduce crime more effectively with more, rather than less, serious crimes. Indeed, the results suggested that RJ works better with crimes involving personal victims than for crimes without them (Sherman & Strang 2007:8). This evidence raises the question: Could RJ offer an alternative way forward for domestic violence offences?

#### **4.7: RJ and Domestic Violence**

On an international level consideration of the benefits and pitfalls of restorative approaches becoming involved with domestic violence has generated a lively debate. A great deal of opposition from domestic violence professionals concerns the safety and power imbalance issues connected with RJ. The thoughts of several commentators are articulated in 'Restorative Justice and Family Violence' (Strang & Braithwaite 2002) which openly acknowledges the risks, dangers and sensitivities of operating in this domain. Nonetheless, it is argued that RJ offers something which the courts do not, or, as Braithwaite more eloquently describes RJ offers "...a justice that heals the hurt of crime, instead of responding to the hurt with more hurt" (Braithwaite 1999:1728). Research indicates that different RJ practices have been applied in this area, this includes: victim-offender mediation, family group conferencing, circles and victim impact panels (Edwards & Sharp 2004).

#### **4.8: Victim Offender Mediation**

A study conducted in 1982 by Bethel and Singer revealed an 80% satisfaction rate with mediation leading them to conclude that it was a suitable form of intervention for less serious forms of domestic violence (Wemmers and Canuto 2002). This should be contrasted with the findings of Smith who found no significant difference when comparing the views of victims whose cases were handled in court with those handled through mediation. Broadly speaking the victims were satisfied if the violence stopped and dissatisfied if it did not (Wemmers and Canuto 2002). A further related qualitative study was completed in Austria by Christa Pelikan (2000). Whilst the mediation took a

different approach she found a positive effect in reducing violence. However, this was tied to the prior decision by the victim and the offender to stop the violence. In addition and perhaps more persuasive was a study conducted by Amanda Dissel in South Africa (2003). Following interviews with 21 female victims who had participated in a mediation process some 6 to 18 months earlier, they reported that the abuse had stopped and their partner's behaviour and attitude had improved. Importantly, the victims expressed positive effects from the process which had afforded a sense of safety, an opportunity to speak on an equal basis and the option to speak privately or with elected support (studies cited Edwards and Sharp 2004).

#### **4.9: Family Group Conferencing**

The evidence presented by Sherman and Strang in 2007, included analysis of an important study conducted in Newfoundland and Labrador by Pennell and Burford. This study demonstrated that family group conferencing can stop family violence. The results were impressive, a 50% reduction in frequency of offending compared against a 27% increase for the control group families. Whilst the overall total number of families involved was modest (63) the evaluation methodology verified that the results were statistically persuasive (Strang & Braithwaite 2002).

#### **4.10: Victim Impact Panels**

This RJ practice is somewhat different and involves a group of victims meeting a group of offenders unknown to them. The victims then disclose how the domestic violence has affected them and impacted upon their family. Sometimes these panels allow offenders then to discuss their views with the victims. A study conducted in Arkansas (Fulkerson 2001) discovered that of the 26 victims who participated, 80% found it worthwhile and 85% would recommend the panels as a way forward. Of the 40 offenders, 57% found it worthwhile; 53% would recommend the future use of the panels against 45% who would not answer or were undecided. Importantly, Fulkerson reported that several

offenders disclosed greater empathy for their victims and that the experience had prompted reflection ( Fulkerson 2001).

#### **4.11: Circles**

The Community Holistic Circle Healing Process in Hollow Water, Manitoba has been operating since 1984 to 'heal the effects of family violence in the community' (Edwards and Sharp 2004:7). A research study conducted in 2001 led to the discovery of considerable criticism both within and without the community. The main criticisms were that the process focused too much on offenders, put pressure on victims to participate and did not necessarily reflect the values held across the community (Edwards and Sharp 2004). Notwithstanding this criticism the approach was found to deliver positive results in various terms including lower rates of domestic violence, recidivism and the general improvement in community quality of life.

The dangers of this community based approach were highlighted by Griffiths and Hamilton (1996). They found a similar project in South Vancouver Island had a lack of credible participants, feuding, political unrest and a difference in cultural values. Many victims were pressurised into dropping charges and some community members felt that nepotism was leading to serious offenders avoiding court. The project closed after two years (Edwards and Sharp 2004).

A similar approach in Navajo entitled 'Peacemaking circles' was studied by Coker (1999). She found many positive benefits from the process but also highlighted the negatives which again included coerced participation and cultural rather than shared values dominating decision making and outcomes.

#### **4.12: RJ Summary**

Whatever RJ process is used it is recommended by Burkemper and Balsam (2007) that all parties are volunteers and that offenders are sufficiently screened to prevent re-victimisation; this is especially important for domestic violence cases. The offender should also be willing to accept responsibility



for their conduct (Burkemper& Balsam 2007). This final point raises the spectre of 'self-selection bias' in that those who volunteer are less likely to commit further offences, which in turn frustrates the evaluation of RJ in terms of impacting upon reoffending rates unless a randomised research design is employed.

As we have seen a number of different RJ models are in use across the world but many professionals in both the domestic violence and restorative justice arenas express strong reservations or just plain opposition. Those in support acknowledge the difficulties and urge caution as to how and when RJ should be used (Edwards and Sharpe 2004). A paper by Kay Pranis (2002) is also contributory and makes the point that given the presence of 'power imbalance' in some domestic violence cases that the general face-to-face RJ processes may not be suitable. She points to the central concept within RJ of mutual responsibility and interdependence, observing that communities as a whole and relationships contained therein should carry a shared burden of responsibility. Without such inclusiveness, participation and acceptability by the community she argues that responses to family violence will be inadequate (2002). The evidence found in the community 'circles' approach (above) suggests that this model is far from ideal.

It is clear that the complexity and dynamics of domestic violence produce challenges for restorative justice practices. The key issues of safety, voluntary participation, need for adequate screening and skills of the facilitator are concerns that are shared by many commentators (Edwards and Sharp 2004). A paper by Kathleen Daly (2005) highlights further potential issues that have been identified by Stubbs (1997,2002,2004), Coker (1999,2002), Goel (2000), Presser and Gaarder (2000), Shapland(2000), Lewis et al (2001), Busch (2002), Acorn (2004) and Hopkins et al (2004). These include: manipulation by the offender in that offenders may trivialize the violence or look to shift blame; the role of the 'community' in that community norms may support the offender; also, the danger of mixed loyalties in that friends and family may not wholly support the victim. A further

concern is the actual impact on offenders given the process may not affect behaviour and finally that RJ may be perceived as too lenient or an easy option (Daly 2005).

In contrast, Daly also captures the potential benefits of RJ that have been identified by Braithwaite and Daly (1994), Martin (1998), Morris and Gelsthorpe (2000), Presser and Gaarder(2000), Daly (2000), Pennel and Burford (2002), Koss et al (2003) Hopkins et al(2004) Daly and Curtis-Fawley (2005); which include: Victim voice and participation, RJ facilitates the victim's story being told and heard. It also enables the offender to be challenged and victim participation in deciding any outcomes. Another benefit is seen as the victim's account can be validated with no blame attached. Offenders also accept responsibility for their behaviour and in the process the victim is further vindicated. The RJ process is generally less formal and more flexible, responsive to individual needs and finally, if desired, the process can assist with healing (Daly 2005). Ultimately, whether the benefits outweigh the risks is an empirical question.

While RJ has never been tested with domestic violence in the UK what is clear from the evidence is that in many cases RJ does offer improved satisfaction for victims and offenders in other kinds of crime. Indeed, Sherman and Strang make the valid point that other innovations in criminal justice have already been introduced without such supportive empirical research. They promote a roll out of RJ, '... on a 'continue-to-learn-as-you-go basis' (2007:8).

#### **4.13: RJ as a 'condition' ?**

In the UK, the recent reduction of central targets and focus upon 'common sense policing' has seen most police forces encouraging the use of restorative interventions, especially at a neighbourhood level. It is important to note that whilst 'restorative' these low level interventions invariably consist of an officer immediately brokering resolution between a victim and offender at the scene of an incident. This approach has, understandably, become very popular with frontline officers. It's speedy, involves very little paperwork and keeps the officer out on the streets. By definition, it is a

simpler intervention than RJ conferencing and other established models which are appropriate for more complex situations. Nonetheless, it is a form of RJ working in the community which is proving valuable and gathering support from all involved. The understanding and social acceptance of RJ at this grass roots level could greatly assist with future broader developments.

In their evidence Sherman and Strang (2007) refer to the use of RJ in a domestic violence setting, specifically, the 'Dove Project' in Hampshire in 2002 . This project is still running, primarily in the town of Basingstoke, North Hampshire. The police are not involved; it is run by a company called Daybreak who offer a number of Family Group Conferencing programmes in the South of England. The focus is primarily child welfare but they are trained to work with domestic violence referrals. Little is known about the project; it appears somewhat isolated and has not integrated with relevant CJ agencies in Hampshire.

The failed attempt to introduce conditional cautioning with RJ in London in 2004-05 is a related concern. Sherman and Strang (2007) point to the statutory requirements in the Criminal Justice Act 2003 as the primary cause of failure. The requirement of a *full admission of a crime* (my emphasis) in order for an offender to become eligible for a conditional caution and subsequent planned RJ intervention had, in their view, failed to acknowledge that such admissions are rarely made in the early stages of investigation (Sherman & Strang 2007). In consequence, the CPS, whose hands were tied by the legislation, approved fewer than 10 cases in a whole year.

The author of this paper takes a slightly different view; the legal point presents a challenge but a *full admission of a crime* is not necessary before a conditional caution is **offered** (see DPP's Guidance quoted above). It is proposed for the purposes of this trial that the only out-of-court disposal available will be the conditional caution. Therefore, if the offender makes 'no comment' during initial interview but the evidence is present (from the victim/officer), provided the case fits the eligibility criteria and evidence test is met, the offender could be offered a conditional caution. Thereafter, whether they accept their guilt and the terms of the caution offered is for them to

decide. This will be discussed further in the feasibility section of this paper. Ultimately, the conditional caution process has the legal scope to introduce a restorative justice condition. Whilst there are justifiable concerns there are also clear benefits.

However, recent research by Braddock (2010) probably highlights the biggest obstacle to this condition working in practice. He explored the primary purpose of the conditional caution and considered its potential for expanding the use of restorative justice (RJ) as a 'condition' of the caution for volume minor crime. Despite government rhetoric supporting such development, he found that beyond a letter of apology or compensation award, practitioners currently regard the disposal as being primarily orientated towards improving the efficiency of the criminal justice system by keeping minor cases out of court. The costs involved with delivering a RJ condition, specifically time and staff, were seen as obstacles (Braddock 2010).

Whilst it has yet to be decided, in the author's opinion, the time and resources, especially the need for skilled RJ facilitators will be linked with the complexity of the subject and probably prevent development of an RJ 'condition' in this particular trial.

## **Chapter 5: Treatment Programmes**

In terms of the planned RCT and in contrast to the RJ option, the LCJB has already commissioned the production of two unique treatment workshop sessions for the offenders assigned to the conditional caution treatment group. We should explore the available evidence.

In the USA, a direct consequence of the 'arrest works' approach led to pressure on the courts to effectively deal with a growing number of offenders. In turn this led to the expansion and development of Batterer Intervention Programmes (BIPs) which, by 1991, existed in every US state (Harrell 1991). The content of these programmes varies but were heavily influenced by the women's shelter movement and are thus orientated towards feminist perspectives. A group treatment model focused on psychoeducation and known by many practitioners as the 'Duluth Model' (Pence &

Paymar 1993) is a feminist based approach which uses the 'Power and Control Wheel' to illustrate how men use various tactics to control women and offers up alternative strategies for men to apply to avoid domestic violence. In the US such programmes vary in length, from 8-36 weeks. A second popular approach is group cognitive-behavioural treatment (CBT) which attempts, via a therapist, to highlight the 'pros and cons of violence' and provides skills training in relevant areas such as communication, stress and anger management. Over time, in some locations, the two models have become mixed disciplines, perhaps revealing the uncertainty that exists in regard to effectiveness (Stover, Meadows and Kaufman 2009). Determining which approach works best has been the focus of many researchers.

The early literature consists of studies which examine *only* batterers assigned to treatment programs and they reported significant impact and success. This early 'evidence' has since attracted closer scrutiny and criticism, "While the first wave of evaluation research consistently indicated high rates of success, their findings probably reflected the methodological shortcomings of the research rather than the programs' actual effectiveness in reducing violence" ( Feder, Wilson & Austin 2008:3).

Further, more rigorous research followed in the form of quasi-experiments. Whilst variable in quality they revealed inconsistent conclusions. For example, Dutton (1986) and Gondolf (1999) found court-mandated counselling led to significant less recidivism. This was confused by Chen et al ( 1989) who found no difference between the treated group and comparison no-treatment control group (Feder et al 2008). Further to this a study by Harrell (1991) contributed disturbing findings which suggested that treatment actually increased recidivism rates.

In many ways these diverse findings served to expose the methodological shortcomings of the studies. This included: a lack of consensus on how to measure program effects, varying intervals of follow-up measurement, differing use of statistical interpretation, the type of offender population tested, interpretation of attrition rates, and low response rates from victims (Davis, Taylor & Maxwell 2000). However, the primary problem, as identified by Palmer et al (1992), is that quasi –

experiments cannot be relied upon to create unbiased results. A point verified in the studies of Dutton (1986) and Harrell (1991) which demonstrated selection bias by allocating likely recidivists to the control group and thus enhancing the likelihood of improved treatment effects ( Davis, Taylor& Maxwell 2000).

The best way to eliminate bias is through random assignment and this type of experiment is now recognised as the 'gold standard' for determining cause and effect. Several true experimental studies have since been conducted in this particular field.

### **5.1: Palmer Experiment**

The first randomised experiment to test the effectiveness of batterer treatment was conducted by Palmer et al (1992). They randomly assigned offenders to either a ten session psychoeducational group or a no treatment control group. An examination of police reports six months after treatment found recidivism rates for the treatment group to be 10% compared with the control group rate of 31%. This difference was statistically significant but unfortunately, only 59 offenders were randomly assigned and a number of these failed to complete the batterer program (30% failed to attend at least 7 of the 10 sessions). This attrition rate would affect comparison of the two groups because the experimental design requires 'dropouts' to be treated as though they had completed the program. Further to this the small number of participants and a low response rate of interview surveys with victims and offenders weaken the study in terms of representation and wider generalisation (Moyer 2004). The fact that official reports (police data) are relied upon is a further concern, they are widely recognised as capturing a small percentage of this form of abuse (Dutton 1988).

### **5.2: Davis Experiment**

In 1994, due to the lack of randomised experimental evaluation the National Institute of Justice funded further research in Brooklyn (Davis et al 2000). This study randomly assigned participants into one of two groups. The treatment group received 40 hours of the Duluth model program and

the control group were required to complete 40 hours of community service, a standard sentence from the court. On this occasion, the actual timing and the process of random assignment became an issue. The design required assignment to be made during sentencing 'after the judge, the prosecutor, the treatment program representative and the defendant all agreed to accept the batterers treatment as a sanction if it was available based on random assignment' ( Davis et al 2000:135). This brings into consideration the level of motivation of participants and potentially raises the spectre of selection bias. The treatment programme began as a 26 week program but for a number of reasons this was changed during the study to a condensed 8 week version. To measure recidivism the study utilised police data, victim reports of violence and batterer self-reports. A total of 376 adult males were randomly assigned and the recidivism rates reported by victims at both 6 and 12 months (after treatment) for both 8 week and 26 week programs was lower than the control group victims. In terms of generaliseability the authors of the study urged caution with the results. This was because none of the reductions in abuse were statistically significant which was primarily due to the low response rate from victims at either the 6 or 12 month follow up. The victim survey completion rates were 48% and 50% respectively. A total of 131 victims were unable to be contacted by the researchers (35%). Underlining the need for differing forms of measurement in experiments is that, on this occasion, the police data findings for the 26 week group revealed a statistically significant reduction in recidivism rates, 26% for control group compared with 10% in the treatment group.

A number of field issues surfaced during the study which also affected the outcomes. It transpired that those offenders who failed to attend the treatment program were rarely pursued by the authorities for breach. In contrast, a warrant was quickly issued for those who failed to comply in the community service group. This clearly sent different messages to the participants and generated further differences within the two groups. Moyer describes this as a 'serious violation of the requirements of a true experiment' (2004:5) and also identifies a further problem which manifested during assignment. A total of 14% of the offenders were subject of 'judicial overrides' which led to

them, following random assignment, being transferred to the treatment group from the control group. The subsequent data analysis failed to take this into account, rendering the treatment effect more difficult to discern.

### **5.3: Dunford Experiment**

This experiment, conducted in San Diego, suffered fewer methodological problems but was focused on a small population group, specifically 861 legally married Navy couples living within a structured community (Moyer 2004). The experiment randomly assigned eligible cases to one of four treatment groups: a 26 week CBT program, 26 weeks couples counselling, close monitoring via monthly calls to victim and a fourth control group which just received a safety plan for victims. The victims and batterers were interviewed every six months over a two year period and police data was also monitored. All groups reduced recidivism rates and the findings revealed no evidence that any of the four treatments was statistically more effective. A subsequent paper by Dunford (2004) is instructive in terms of the critical need for a randomised research design. This study showed that prior to placing the control group results alongside the other three treatment groups that all three approaches revealed significant reduction in recidivism rates. In many ways this replicates the position of earlier nonexperimental studies and possibly accounts for the past mistaken conclusions. In this experiment the presence of the control group, which had the sole treatment of a victim safety plan, generated similar reductions in recidivism. Despite the experimental rigour, owing to the specific population targeted by this study and their apparent 'stakes in conformity' (naval employees/community) it is argued that the results are not generaliseable across society (Moyer 2004).

### **5.4: Feder Experiment**

This experiment was conducted in 1997 in Broward County, Fort Lauderdale, Florida and encompassed two court areas where Judges randomly assigned offenders to either 1yr probation



and mandated to attend a treatment program or the control group which was just the 1yr probation. Again various measures were employed. Each batterer was interviewed at the time of sentence and 6 months after, the victims also over the same period and additionally at 12months. The police records and Probation data were also used. Interestingly, the study sought to test two hypotheses. The first was that men exposed to the treatment program would display a lower likelihood of repeat violence and the second was that men with a high 'stake in conformity' will have a lower likelihood of recidivism than others.

The random assignment process was methodologically sound and the integrity of experimental and control conditions maintained. Despite this the experiment suffered difficulties in the field. Feder explained that several criminal justice practitioners felt that the experiment, which correctly prevented the control group members from participating in the treatment program, was compromising victim safety. This created a 'hostile environment' with the researchers being portrayed as the villains and compromised the experiment "...we had to deal with actions taken by various courthouse personnel aimed at thwarting the study. So, for instance, we would begin speaking with a victim about the interview when one of the assistant prosecutors would come over to the woman and explain that we were the reason that the judge was not placing her partner into counselling. That it was our study that was responsible for placing her in danger" ( Feder& Forde 2000:125).

The impact of such behaviour led to serious problems with victims refusing to assist the study. The response rates for offenders were 80% at point of sentence and 50% six months later. They were worse for victims: 49% on sentence, 30% for six months and 22% for 12months. These small numbers led the authors of the study to conclude that they limited the study. Further to this the timing of the offender surveys were arguably far too early. At the point of sentence and six months afterward meant that those on the treatment program had completed an average of 22 weeks of the mandated 26 weeks (Moyer 2004). The results from the offender surveys covering attitude, beliefs

and propensity to self report further violence revealed little difference between the groups. Interestingly, further analysis did suggest that stakes in conformity were important in accounting for variation. They found that younger men with no stable residence were significantly more likely to self-report acts of severe physical violence ( Feder& Dugan 2004:147).

The victim reports were challenging low, however 14% reported suffering severe acts of violence. Using regression analysis the study highlighted again the role of stake in conformity issues in predicting recidivism. On this occasion, the offenders age and marital status achieved statistical significance which was further supported by a strong relationship with their employment situation. They found that stake in conformity predicted both likely recidivism rate and complying with treatment mandates. The police data indicated that 24% of men in both groups were rearrested on one or more occasion during their period of probation. The study concluded that the 'researchers cannot with certainty answer whether such treatment programs reduce recidivism rates' (Feder& Dugan 2004).

### **5.5: Meta Analysis**

The volume of experiments and quasi-experiments in this field combined with the lack of clarity deduced on an individual basis has subsequently led to three meta-analyses being conducted. This approach amounts to a systematic evidence-based review of relevant studies (Hart 2005). Davis and Taylor (1999) considered five quasi-experimental studies using non-equivalent matched group design and two randomly assigned experiments. They concluded that "among the handful of quasi and true experiments there is fairly consistent evidence that treatment works and that the effect of the treatment is substantial" (Davis and Taylor 1999:69). They reported a mean effect size (*d*) of 0.412 for experimental studies and 0.416 for quasi-studies.

In 2003, Babcock, Green and Robie conducted a larger study incorporating 17 quasi-experimental studies and 5 randomly assigned experiments. The quasi –experiments included studies where

completion of the treatment program was compared to treatment dropouts/no shows. They discovered a small range of impact on recidivism rates, pointing to a 5% less likelihood. Feder et al later argued that the inclusion of all the quasi-experiments and failure to separately analyse effect sizes could lead to positive selection bias (Feder et al 2008)

More recently, a further and arguably more comprehensive systematic review and meta-analysis of the subject was conducted by Feder et al (2008). Following extensive research they discovered the existence of 57 related studies. These were subjected to detailed scrutiny by the researchers and compared against carefully constructed eligibility criteria. This covered the type of study, forms of intervention, type of participants and measurements used. Unlike Babcock et al (2004), they restricted their inclusion criteria to studies that had addressed the selection bias problem (either by way of match group design or statistical controls). Ultimately, in terms of the best available valid evidence, they selected ten studies conducted in North America. This included the four experimental studies (already outlined above) and a further six quasi-experimental studies. All of the studies had evaluated psychoeducational or cognitive behavioural programs. The researchers reported the following:

“The mean effect for official reports of domestic violence from experimental studies showed modest benefit whereas the mean effect for victim reported outcomes was zero. Quasi-experimental studies using a no-treatment comparison had inconsistent findings indicating an overall small harmful effect. In contrast, quasi-experimental studies using treatment dropout showed a large, positive mean effect on domestic violence outcomes. The latter studies suffer, we believe, from selection bias.”  
(Feder et al 2008 :2)

A detailed analysis of these ten experiments and quasi-experiments, interpreted as offering the most reliable and valid of evidence available led Feder et al to conclude that the findings raise doubts about the effectiveness of the treatment programs in reducing recidivism. Meanwhile, in the US, courts continue to mandate attendance on such programs.

## 5.6: Treatment Programmes in UK

In the UK, there are currently two types of programme which are based upon the USA Duluth and CBT models. The Probation Service deal with convicted offenders and this course can only be accessed via the Courts or Probation. A community based voluntary sector offer a different programme which takes self-referrals as well as referrals from relevant agencies (Relate, NHS). With the support of government an accreditation system for the community based programmes was introduced in 2008 by Respect. However, the provision of community-based programmes is 'patchy' and funding as well as sustainability is always a concern (ACPO 2009).

In 2009, the UK government published *Together We Can End Violence Against Women And Girls* (Home Office 2009). This triggered the commissioning of a review by ACPO to consider whether additional powers or laws may be required by the criminal justice system. In turn, following broad consultation they produced their paper (ACPO September 2009). The document contains a review and assessment of ten specific proposals. One of them (proposal 8) concerns the possible use of Conditional Cautions which arose from the consultation process and a call for a "near-Criminal Justice disposal that rehabilitates, preserves the parties relationship, but retains the potential for sanction" (2009:65).

The ACPO review steering group were not persuaded to recommend the proposal which, interestingly, they linked to the delivery of the community perpetrator programme as a rehabilitative condition of the caution. Their primary objection was a lack of clear evidence of benefits to justify the cost of a perpetrator program project. They did, however, accept the possibility and recommended review in the medium term following detailed and co-ordinated evaluation of 'what works' in terms of perpetrator programmes (ACPO 2009).

To date there has not been a systematic review of these programmes in the UK. A review has been commissioned (by Respect) which is expected to report in 2012 (ACPO 2009).

In terms of being offered as a potential 'condition' for this trial, the cost and course availability are the primary problems. The length of the course is also a restricting factor. Any conditions attached to a caution must be monitored for breach which owing to the statute of limitations means that any breach must be brought before the court within 6 months.

Despite these difficulties, the LCJB working group has approached the Hampton Trust who have agreed to develop a two day session workshop which will embrace components of the Duluth and CBT models of treatment. Respect are currently working with the Hampton Trust with regard to their national accreditation status and are interested in this unique development.

Despite the current lack of supportive empirical evidence the LCJB are keen to develop and introduce a bespoke educational workshop for offenders. Whilst available resources restrict the course length and content, it is proposed that the RCT will randomly assign offenders to one of two groups. The treatment group will receive this mandatory workshop 'condition' and any other conditions felt necessary and suitable for their individual circumstances. It is further proposed that the control group will solely have a 'behave yourself for four months', sword of Damocles type condition imposed. Whether all of this is feasible now requires exploration.

## **Chapter 6: Feasibility Section**

### **6.1: Context**

The county of Hampshire rests on the south coast of England and is currently policed by some 3,817 officers, 2,681 police staff, 331 police community support officers, 446 special constables and 39 volunteers. Hampshire Constabulary is the second largest non-metropolitan police service in England and Wales serving an estimated population of 1.8 million in some 730,000 households covering an area of 1,600 square miles (Annual Plan 2010).

This year the constabulary has restructured into three large Operational Command Units (OCUs): Northern, Western and Eastern. The two major urban areas are the Cities of Southampton (West) and Portsmouth (East) which are surrounded by beautiful countryside, the New Forest in the West and Meon Valley to the East and North. The historic City of Winchester is at the heart of the county which is also comprised of rural villages, several market towns and larger urban developments in the north, such as Basingstoke, Aldershot and Farnborough.

Domestic violence permeates across the whole of the county and accounts for approximately 22% of all annual reported crime. The Chief Constable of Hampshire Constabulary is keen to do more to prevent recidivism and provide more effective earlier intervention. He wants to establish 'what works' and tasked the author of this paper to explore the feasibility of running a RCT in order to test whether conditional cautions could be used as a more suitable intervention.

As previously stated, on Monday 19<sup>th</sup> September 2011, all members of the Hampshire & Isle of Wight Criminal Justice Board (Chaired by the Chief Constable) approved the RCT proposals and seek to commence running the experiment in the New Year. The following account describes how agreement was brokered between the key stakeholders and describes the proposed process. The potential obstacles and issues that may be encountered in the 'field' are also discussed.

## **6.2: Social Elements**

As identified by Sherman (2009) the key to delivering a cohesive successful experiment is “understanding a cognitive map of its social elements” (2009:13). He identified individuals who would need to participate, whilst not exclusive, these included: the executive leadership, the funders, and a mid-level operating liaison person (Sherman 2009). Utilising these descriptions the author now tells his story of how the RCT was negotiated and approved.

## **6.3: Agency Executive**

To date the Chief Constable has fulfilled this role displaying excellent leadership. As a graduate of the Cambridge University MSt course, he is wholly familiar with the concept of evidence-based policing. Indeed, he is a strong supporter of efficient and effective policing, which in many ways is reflected in the goals of experimental criminology. The notion of applying scientifically proven methods to improve policing outcomes is difficult to argue against, especially in an economic climate which demands cost- efficient services. His personal interest in criminal justice, understanding and strong commitment combined with his strategic role as the Chief Constable and Chair of the LCJB made him an ideal person to initiate, lead, articulate the vision and, when necessary, to deal with national and local politics. He tasked the author to work across the partner agencies and to bring forward proposals for a workable RCT.

## **6.4: The Funders**

The Local Criminal Justice Board under the chairmanship of the Chief Constable represent the funders. The membership of the board includes the Head of Wessex Area CPS, Head of Court Services, Head of Probation Trust, a Liaison Judge and Head of Youth Offending. Prior to 2009, this LCJB probably reflected most, if not all, LCJB’s across the country. The phrase ‘toothless tiger’ or ‘talking shop’ were frequently mentioned to describe the experience. However, in recent years, this LCJB, driven especially by the Chief Constable and the Head of CPS has sought to change that image.

They wanted to be seen to be making a difference and actually delivering something useful. By way of example, unlike many other areas, this LCJB stepped forward and accepted local strategic leadership for the development of the national Integrated Offender Management approach. Similarly, they redesigned their organisational structure and introduced themed sub-working groups, which created a far more dynamic and responsive approach. Indeed, it was from one of these sub-groups that the initial seed of the proposed RCT emanated. The Performance sub-group had challenged their members to report performance and issues associated with domestic violence. In response, the CPS highlighted the high prosecution attrition rate and the police identified the increasing use of arrest, the spiralling rate of “No Further Action” and reliance upon the simple police caution as a form of disposal. They were all keen to improve this situation. But how ?

#### **6.5: The Mid-Level Operating Liaison**

The author of this paper has fulfilled this role and has held the post of Head of Criminal Justice for Hampshire Constabulary for the past four years. As a former detective, experienced police officer and graduate of Law he has represented the Constabulary at various CJ forums. This has included monthly meetings with senior CPS staff, Judiciary, Magistrates, Probation Trust, Prison, local authority and the third sector. The Chief Constable has relied upon him to forge positive working relations across all partner agencies and to strive to improve the delivery of justice across the CJ system. In this role the author has (hopefully) established a credible reputation and over the years developed a strong ‘can do’ working relationship with other senior representatives from CJ partner agencies. The mutual trust and respect built up over the years, was, in the authors opinion, a significant factor in securing CJ partners eventual support and consent for the RCT proposals. He reported directly to the Executive lead and was ideally placed to utilise his knowledge, experience and contacts.

In December 2010, following discussion with his Chief Constable and the Head of CPS, a formal paper was tabled to the LCJB proposing that the DPP be approached with a view to trialling the use of



conditional cautions for certain cases of domestic violence. They unanimously supported the concept. On the 11<sup>th</sup> January a formal letter was sent to the DPP (see Appendix A). In addition, the Chief Constable communicated with the national ACPO lead for violence. Months passed without reply but corridor conversations at a national level indicated favourable approval would be forthcoming. With this in mind, in early spring of 2011, the author sought approval to commission an LCJB steering group with a view to brokering local agreement and bringing forward proposals. This signalled the beginning of local 'politics' and hard negotiation with key stakeholders. Fortunately, all were personally known to the author.

#### **6.6: LCJB Multi-Agency Steering Group**

As a formal member of the main Board and chair of the Performance sub-group, the Head of Court Services was invited to chair the meetings. The following agencies also provided senior representatives: CPS (Deputy Crown Prosecutor for Wessex Area) , Hampton Trust (Chief Executive), Women's Aid, Independent Domestic Violence Aid (IDVA), Defence Solicitor, Southampton Magistrate and member of Police Authority, Hampshire Probation Trust. Also, several members of Hampshire Constabulary: Head of Criminal Justice, Force Head of Public Protection, Crime & Operations Commander for Western OCU, Head of Southampton Domestic Violence Unit, Force Criminal Justice Performance Manager, Force Conditional Caution Co-ordinator and the LCJB (Business Manager).

During the spring and summer of 2011 this group met on four occasions. The meetings enabled detailed discussions to take place, research to be undertaken and agreement to be brokered in regard to the proposed trial. However, whilst all parties were keen to do the right thing, opinions understandably differed, especially when the subject of conducting a RCT was tabled. In fact, during the first two meetings, in recognition of potential difficulties, the author made a conscious decision not to openly discuss the desired RCT approach. He separately briefed the Head of Courts and CPS lead. In early August 2011 the time had arrived to formally open this debate. It was imperative for

the purposes of conducting a RCT that these two key stakeholders supported the approach and a separate meeting was arranged. Neither had been exposed to the discipline of experimental criminology and the merits of a randomised controlled trial. Bluntly, they took some convincing.

This meeting began with the author explaining his preferred way forward. The DPP's requirement to reduce the use of simple police cautions led him to suggest an RCT which compared the use of simple police cautions with conditional cautions. Both parties immediately objected to this approach. They argued that the random assignment of an individual to the conditional caution group would generate the potential for prosecution if the offender breached, whereas, those randomly assigned a simple police caution would evade such risk. They felt that a legal challenge would quickly be instigated and potentially frustrate the wider goals of the LCJB. A lively debate ensued and a compromise was reached. Thinking on his feet, the author proposed an alternative option of suspending the use of simple police cautions and only administering conditional cautions in the test area. This eliminated the possibility of using a simple police caution group and created a more legally acceptable and defensible position of randomly assigning offenders to two different conditional caution groups. It was suggested that one group could be 'conditioned' to "behave for 4 months" and the other group assigned mandatory treatment workshop session(s) along with any other 'conditions' felt appropriate for their individual case. The CPS and Court leads agreed to this but cleverly negotiated a further concession from the Police.

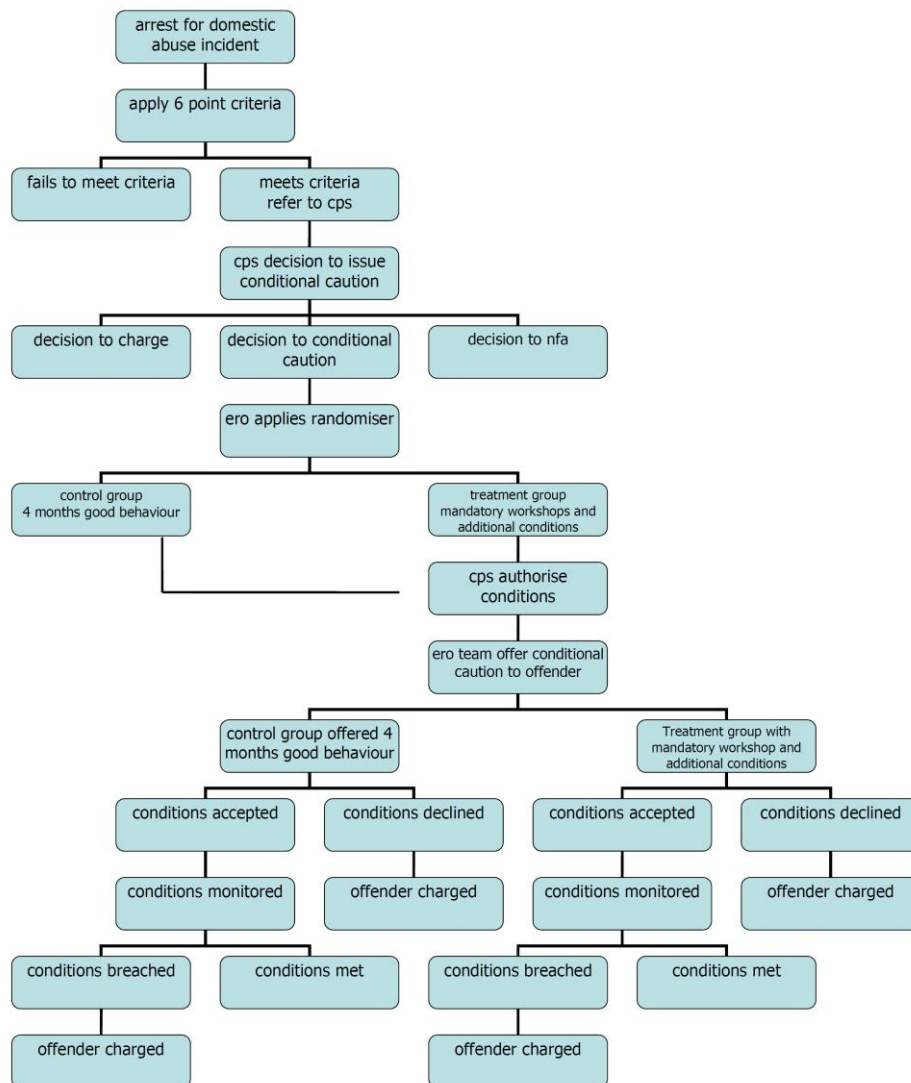
Understandably, their primary interests rested in the prosecution and court arena. They were keen to reduce the attrition rates and felt similarly frustrated by the constraints imposed by the DPP. However, recognising that this was a local LCJB domestic violence initiative they requested, in addition, but separate to the RCT, that they would like the police to introduce a 'cooling off' bail period for more serious cases that are subject to a 'charging' decision today. They felt this would provide opportunity for victim reflection and in due course lead to fewer withdrawals of complaint after charge. The consequence was more work for the police; bailing, victim liaison, charging or

NFAs. Despite this it is clear that on a broader level the CJ system is wasting a great deal of time and effort on cases which are withdrawn due to a lack of support for prosecution. At the time of writing, this concession has proved to be a cost the Chief Constable is prepared to accept.

At the next full meeting of the LCJB steering group the outlined proposals were tabled and discussed. The author was particularly concerned about the possible reaction from the Defence solicitor. To his surprise he supported the randomised approach and agreed that the present use of simple police cautions could be improved upon. The proposals were supported and as already explained were subsequently approved by the LCJB. The Home Office, DPP and ACPO lead have since been advised of the planned approach.

#### **6.7: The Proposed Process**

The schematic (below) describes the RCT process approved by the LCJB.



## 6.8: Eligibility Criteria

A number of points require clarification. Following consultation with the LCJB multi-agency group and detailed consideration of national guidance (DPP 2010, ACPO 2008, CPS 2009) the following six-point eligibility criteria were agreed:

### Eligibility Criteria for Domestic Violence Conditional Caution

**1) Adult:**

Offenders must be aged 18 years or over.

**2) First Offence of a Domestic Violence concern:**

Offences to include minor assaults categorised by law as Common Assault & Battery, Criminal Damage, Harassment, Threatening Behaviour, domestic burglary and theft related offences.

Offenders have not previously been arrested for any offence linked to domestic violence.

The relationship between offender and victim is restricted to cohabiting partners, or, those who have previously cohabited within the past 2 years. It does not include wider inter-familial disputes.

**3) Admission or CPS agree that overwhelming evidence is present:**

Offender admits to committing a related domestic violence offence or following submission of evidence to the CPS, for example, a victim's statement, other witness statements, 999 emergency call transcript, photographic evidence, police body worn video extract, it is accepted that overwhelming evidence is present

**4) Past minor convictions permitted but not for violence and/or currently serving a community based sentence/order:**

The offender must not be on police or court bail for any other unrelated matters or currently serving an existing sentence/order.

**5) Victim supports this form of action/disposal:**

Prior to submission of evidence to the CPS the victim's views in relation to prosecution and possible disposal by way of conditional caution are sought by the police.

**6) Risk Assessment within parameters of Low and Medium:**

Police risk assessment comes within these measures.

These criteria will be applied to persons detained and in turn determine the eligible cases. Today, in terms of the likely pipeline such cases fall within two categories: those being dealt with by way of a simple police caution and potentially some of the cases being disposed of NFA. The latter category will be discussed in greater detail later.

### 6.9: Step Guide

The schematic is useful but the following step guide adds further instructional detail:

### Step Guide for RCT Conditional Caution Process:

Step 1: Following the arrest and detention of the offender in police custody (Southampton or Lyndhurst custody centre) the investigating officer will assess the character of the offender and individual circumstances of each case. Does the case meet the six point eligibility criteria?

Step 2: Victim broadly consulted over possible conditional caution outcome (but not precise 'conditions'). Views sought for CPS consideration.

Step 3: Offender interviewed whilst in police custody: Admits offence or, makes 'no comment' but does not deny the offence.

Step 4: Investigating officer prepares evidence (MG3 summary form, victim statement, other witnesses, record of call to police, police body worn video, photographs, previous convictions and any other supporting papers). E-mailed to the CPS.

Step 5: CPS immediately review evidence (Wessex Daytime or if 'out-of-hours' national CPS Direct service). CPS agree or disagree with police recommendation for conditional caution.

Step 6: If agreed as suitable for a conditional caution, CPS advise police officer on telephone (usually within one hour of police submission).

Step 7: Details are then entered onto Cambridge IT randomiser by the Evidential Review Officer (available 24 hours a day).

Step 8: Random assignment to one of two groups (outlined above)

Step 9: To comply with law assigned 'Conditions' are then immediately discussed with CPS (on telephone) and authorised by CPS for the offer of conditional caution. E-mail confirming authorisation is sent by CPS to Evidential Review Officer.

Step 10: Investigating Officer then offers conditional caution to offender in accordance with random assignment (no negotiation over 'conditions' offered).

Step 11: If the offer is refused, the offender is charged. If the offer of a conditional caution is accepted, the offender signs forms accepting 'conditions' and is released.

Step 12: Domestic Violence Specialist (victim) and Force Conditional Co-ordinator (offender) monitor 'conditions' imposed on both groups in accordance with terms and compliance requirements.

Step 13: If the conditional caution is breached; the case is reviewed by the Force Co-ordinator and decision whether to refer to CPS is made.

#### **6.10: Victim**

The victim will be spoken with by frontline officers and then in the immediate aftermath dealt with by the dedicated investigation team. The victim will be consulted with over the possible use of a conditional caution but not in a detailed manner. It will be a broad discussion covering the potential use. Their views will be required by the CPS as part of the authorisation process. The specialist domestic violence officers will take over liaison with the victim (when they are available) and become the single point of contact.

#### **6.11: Offender**

The offender must fit the eligibility criteria (outlined above) and once authorised by the CPS will be offered the conditional caution in accordance with the random assignment. They will not be informed that they are participating in a RCT. If they accept the 'conditions' offered they will have to sign a form of agreement and their compliance will be subsequently monitored by the Force Co-ordinator for conditional cautions in liaison with the domestic violence officers.

#### **6.12: 'Conditions'**

The flexibility of the conditional caution disposal may generate difficulties for the RCT. The randomly assigned treatment group whilst all required to attend a mandatory treatment workshop may also, on a case by case basis, have additional 'conditions' offered. This was a practical concession which may confuse outcome measures (group not treated identically) but if analysed on an 'intention to treat' basis should reveal the effectiveness or otherwise of the RCT.

A menu of tactical options has been developed by the multi-agency group and the intention is for the investigators or, if available, the specialist domestic violence officers to liaise with the victim and determine if any are suitable or desirable. At the time of writing this menu consists of the following 'conditions':

<b>Restrictive</b>	<b>Reparative</b>	<b>Rehabilitative</b>
Geographical exclusion	Sorry letter	Treatment Workshop
Contact with victim	Repairing damage	Alcohol/Drugs Programme
Non- Molestation	Compensation	To behave for 4 months (not to be charged)

During discussions it became apparent that the policing of ‘conditions’ attached to conditional cautions has presented practical problems for the Force co-ordinator and frontline officers. For example, the ‘repairing of damage’ is difficult to quantify accurately and becomes a subjective judgment. The author takes the view that the practical policing implications of any additional ‘conditions’ needs to be carefully considered. A breach would potentially trigger prosecution for the original conditional caution offence which could lead to the ‘conditions’ coming under close scrutiny in terms of proportionality and justification for breach.

At the time of writing, despite the evidence to support a RJ ‘condition’, for the reasons already discussed it is not proposed to offer this as a conditional option.

### **6.13: Treatment Workshop**

In the UK, the treatment programmes accredited by Respect suggest a minimum of 60 hours contact for behavioural change to take place. The timescale available for the conditional caution RCT and resources do not enable this level of intervention. Following consultation with the Hampton Trust, they have agreed to develop an alternative two session workshop with the aim of raising awareness with the offender of their abusive behaviour, particularly in relation to the safety of their partner (and children). Assessments for accessing treatment programmes are between 2-3 hours and as a stand alone intervention can often be significant in shifting the offender from a position of denial and minimisation to one of starting the process of taking responsibility for actions. Whilst a limited



intervention it will also be possible to provide opportunities for offenders to explore strategies for resolving conflict within an intimate relationship in a way that does not compromise safety. The second workshop session would facilitate feedback over the possible use of strategies and to cover additional techniques and strategies for change. In order to 'police' the condition a template detailing the expected behavioural requirements has been produced and this will be issued to the offender in advance of the first workshop session.

Worthy of note is a gender issue. Last year the number of females subject to a simple caution in Western OCU represented 22% (73) of the overall total (321). This compares with a 13% rate for the wider charge and prosecution group. Research is taking place to determine whether this is because of counter allegations and officers choosing to arrest both male and female partners at the scene of the incident and then using the simple caution as a suitable disposal. However, for the purposes of the workshop this will create practical difficulties. The Duluth model and CBT programmes are designed to address male abuse. The Hampton Trust have offered to produce a female only course but politically this could generate interest or criticism from the wider national audience and feminist interest groups.

#### **6.14: Summary of the Design**

The experimental design is to test the hypothesis that conditional cautions are a suitable intervention for reducing recidivism in certain cases of domestic violence. The suspension of simple police cautions in the test area prevents a direct comparison against the conditional caution groups, but the creation of a control 'condition' group, specifically "behave yourself for 4 months" (not charged) will enable comparison against the treatment group who will receive two mandatory workshop sessions plus any other additional conditions felt appropriate for their individual circumstances. The participants will be measured at six and twelve month intervals via police records as well as victim and offender self reports. The independent researcher will maintain close liaison with police staff engaged on the RCT. The force co-ordinator will keep careful records of all

conditions attached to conditions for both the control and treatment groups. Having agreed and described the process we now consider where to undertake the trial.

### 6.15: Where to Test ?

The analysis of Hampshire Constabulary 2010 data provides a useful overview, a total of 9049 domestic offences were recorded. Of these offences, 70% are defined as 'partner/spouse abuse'. Not surprisingly the two Cities dominate activity and a more detailed understanding is provided via examination of individual police districts:

District Code	District	Population	Total number of all DV offences	Offences per 1000 Population
Y	Shirley	70766.58	608	8.59
A	Bitterne	82935.11	700	8.44
S	Southampton Central	67508.3	564	8.35
P	Portsmouth	188499.98	1537	8.15
T	Test Valley	48459.37	390	8.04
J	Havant	111545.47	842	7.54
G	Gosport	74532.62	558	7.48
F	Fareham	54520.29	376	6.89
R	Rusmoor	58634.6	382	6.51
L	IOW	138370	697	5.03
H	Hart	34706.79	173	4.98
O	East Hampshire	61363.35	242	3.94
W	Winchester	102720.84	387	3.76
B	Basingstoke and Deane	161596.71	586	3.62
N	New Forest	171404.56	601	3.50
E	Eastleigh	117024.8	406	3.46

This shows that Shirley, Bitterne and Southampton Central districts, all located within the City of Southampton (Western OCU), had the highest number of offences **reported** per 1000 population compared with all other Districts in 2010. Overall, during 2010, Western OCU dealt with 3269 domestic violence offences.

It is clear that the Western OCU suffers the highest reporting rates of domestic violence. This OCU covers the City of Southampton and is also coterminous with the New Forest District and the Eastleigh and Test Valley Borough local authority boundaries. It covers an area of more than 620 square miles, with a population of more than 663,000. Western OCU has 980 police officers serving the community from 16 operational police stations. The area offers, City, urban and rural policing

challenges. For the purposes of the RCT the important question is whether there will be sufficient cases?

#### 6.16: The Pipeline

Across the force area, of the domestic offences reported, the vast majority (around 83%) are violence offences and the proportions have remained consistent throughout the past three years.

DW7 Group	2008	Percentage of Total	2009	Percentage of Total	2010	Percentage of Total
1. Violence	7239	83.79 %	7390	82.52 %	7578	83.74 %
2. Burglary	54	0.63 %	53	0.59 %	57	0.63 %
3. Theft & Handling Stolen Goods	152	1.76 %	194	2.17 %	224	2.48 %
4. Fraud & Forgery	11	0.13 %	21	0.23 %	34	0.38 %
5. Criminal Damage	1012	11.71 %	1110	12.40 %	988	10.92 %
6. Drugs	0	0.00 %	1	0.01 %	4	0.04 %
7. Other Offences	171	1.98 %	186	2.08 %	164	1.81 %
<b>TOTAL</b>	<b>8639</b>		<b>8955</b>		<b>9049</b>	

More detailed analysis of the violence offences reveals that actual bodily harm (ABH) has consistently remained the most common physical violence offence type from 2008 -2010. However, whilst most common, it is decreasing across the three year period. The only offence type that has risen across this same period is Common Assault and Battery, which is less serious than ABH. In fact, 30% of the domestic offences are classified as ‘minor’ assault and would, for the purposes of the RCT, dependent on the eligibility criteria, attract consideration of the conditional caution disposal option. It is proposed that all crime types listed above should be considered on a case by case basis as to their suitability for inclusion in accordance with the agreed eligibility criteria. However, given the restrictions and focus imposed by the DPP, the nature and gravity of offence(s) will be minor and not affect prosecution rates.

Therefore, the primary pipeline of future cases for the proposed RCT will be those investigations which are currently attracting a disposal of a simple police caution in the Western OCU. The data for

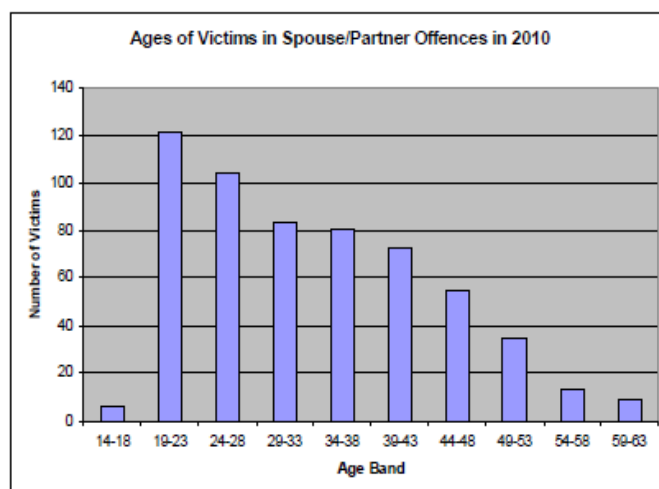
2010 reveals a total of 320 cases, of which 19 are ineligible due to the age of offender. This leaves a total of 301 eligible cases. The offence types are shown in the below chart:

Arrest offence type by HO 13 Group		
Violence	266	82.9%
Burglary	2	0.6%
Theft	1	0.3%
Criminal Damage	47	14.6%
Other Offences	3	0.9%
Not stated	2	0.6%

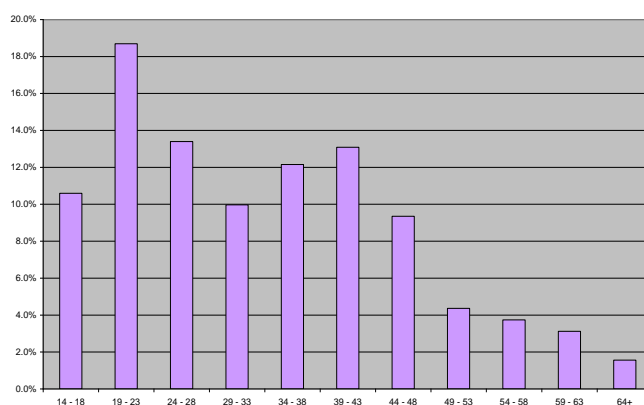
The majority of cases fall within the violence category and this would include minor assaults amounting to common assault & battery as well as threats of violence and harassment. Third party complaints are investigated in the same way as victim reports.

#### **6.17: Age**

The peak victim age for all domestic offences reported is between 19-23 years old. This could be because younger people may be more aware of domestic violence as a public issue and be less inhibited about coming forward as a victim. In contrast, older generations are least likely to report abuse possibly due to historic social stigma surrounding domestic violence.



The most common age of offenders is 21 years old reflecting the peak victim age, however, in terms of simple police cautions in Western OCU a different, more balanced distribution is found. This possibly reflects the universal impact of domestic violence offending behaviour.



Age Profile for Simple Police Caution Western OCU

## 6.18: Ethnicity

The data available suggests that ethnicity is not a factor in the simple police caution arena. The figures reflect the makeup of the local population.

Nationality		
British	298	92.8%
EU	12	3.7%
Non-EU	9	2.8%
Not Stated	2	0.6%

Self defined ethnicity		
W1 White British	281	87.5%
Other	40	12.5%

Of course, as observed earlier, the police may not be aware or informed of cases, especially where there are language or cultural barriers or where the victim fears the consequences of engaging with police.

#### **6.19: Alcohol and Substance abuse ?**

A 2004 Home Office study into the link between alcohol and domestic violence found 32% of such instances were committed 'in drink'. More recent figures from the British Crime Survey (2008/09) quoted a national contributory factor of 38%. This figure is broadly replicated in Hampshire but should be treated with caution owing to data accuracy problems. However, in terms of simple police cautions the Western OCU figures revealed a much lower percentage:

"In Drink or Drugs" at time of arrest		
Drink	34	10.6%
Drugs	1	0.3%
Neither	286	89.1%

There are considerable data accuracy concerns with these findings. Despite this, the multi-agency group has considered the introduction of a potential 'condition' offering treatment for alcohol or substance abuse. This would only be available to the assigned treatment group and be additional to the mandatory workshop sessions.

#### **6.20: Analysis of Statistical Power**

It is essential to conduct power analysis before an experiment is conducted to ensure that the sample size is large enough to detect intervention effects with statistical confidence (Cohen 1998). It is proposed that at least 300 participants will be used in this experiment. This creates a study with medium statistical power. Statistical power was defined by Cohen (1988) as the probability of

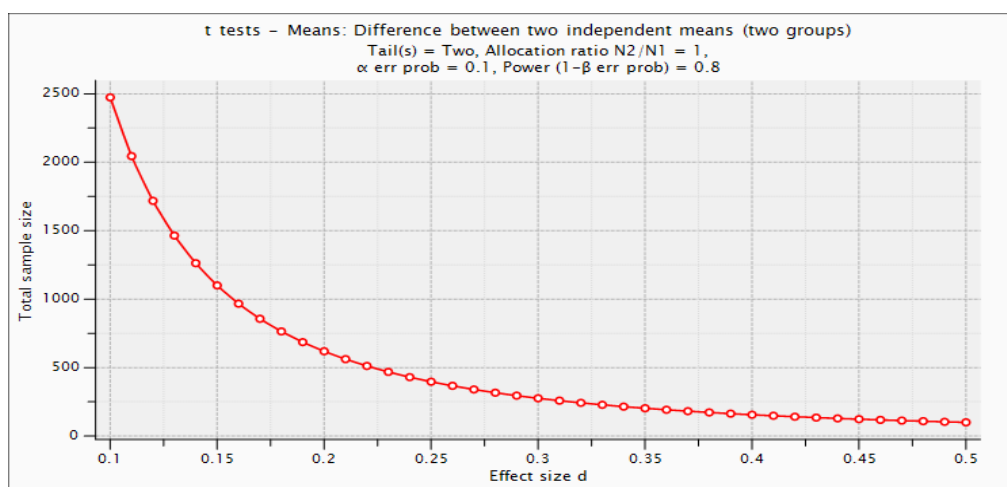
detecting a statistically significant outcome in an experiment, given the true difference between the treatment group and the control group. Using *G\*Power 3* (Faul et al., 2007), it is estimated a sample size of 1289 would be needed to detect small effects (Cohen, 1988), in which the significance level is .01, the hypotheses are assumed to be non-directional and the estimated power is .95. However, it is quite unlikely that a sample of this size would be feasible for this experiment. It is more reasonable to assume that 300 cases would be available, on a trickle flow basis, spread over 12 months. Therefore, with a sample size of 300 it would only be possible to detect small-to-medium effects (Cohen, 1988), in which the significance level is .05 with a two-tailed assumption and an estimated power of .80.

**tests – Means: Difference between two independent means (two groups)**

**Analysis:** A priori: Compute required sample size

<b>Input:</b>	Tail(s)	=	Two
	Effect size d	=	0.288
	Significance level	=	0.1
	Power	=	0.80
	Allocation ratio N2/N1	=	1
<b>Output:</b>	Critical t	=	1.6499830
	DF	=	298
	Sample size group 1	=	150
	Sample size group 2	=	150

**Total sample size = 300**



Those experienced with conducting RCTs urge caution when estimating the number of prospective cases. They recommend halving the number, however, on this occasion, due to various positive contributory factors, the author believes there is real potential for increasing the pool of eligible cases beyond 300. The explanation for such a bold claim lies within the planned logistical and investigative arrangements. These could significantly reduce the current volume of No Further Action (NFA) disposals.

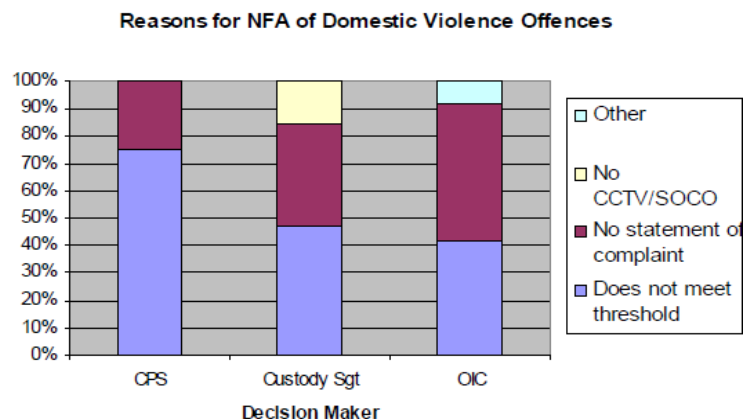
#### **6.21: Logistical& Investigative**

A new police station in the City of Southampton has recently opened (April 2011) providing a modern 36 cell complex. The timely opening of this new police station combines with a radical overhaul of business processes across the whole force area. This new custody provision means that **all** persons arrested in this OCU for domestic violence will be detained in either Southampton or Lyndhurst custody centres. In addition, a new Evidential Review Officer (ERO) role and dedicated prisoner investigation team is to be introduced. This team of officers will provide 24/7 operational cover for all the domestic violence investigations at both locations and address many of the concerns in relation to investigation standards and random assignment control. From November 2011, the frontline officers who attend domestic incidents and arrest offenders will no longer have responsibility for the subsequent investigation and gathering of related evidence. The offender will be conveyed to Southampton or Lyndhurst and passed to the dedicated investigation team. Further to this the specialist domestic violence unit is based within the same new building. This will enable victim and offender issues to be closely managed as well as the training and process requirements for the RCT to be focused on one specific site and targeted to an identifiable group of staff. This approach will support requirements of communication, monitoring procedures and accountability. It is felt these arrangements will prevent many of the potential logistical obstacles experienced during past experiments emerging (Sherman 1992).



## 6.22: NFAs

Last year in the Western OCU approximately 2,150 cases were disposed of by way of NFA. A dip sample of 100 cases revealed the following reasons:



This chart reveals that the most common reason for NFA is due to the evidential threshold for charge not being met. The second most common reason was that the victim did not provide a statement of complaint. Often police attend an incident and it is not appropriate to take a formal statement, the victim may be intoxicated, in distress or injured. It is also clear that many of the NFA decisions are being made by the Custody Sergeant and the officer in the case (OIC). The new Evidential Review Officer (ERO) will be of the same rank and working in the same environment. They will be steering and supervising all investigations. They will also receive prior RCT training and will be monitored in regard to their compliance with expected procedures and handling of domestic cases.

The evidence discussed by Sherman and Strang (2007) highlighted the legal difficulties encountered when attempting to trial the use of conditional cautions with a RJ 'condition' in non-domestic violence cases. They faced the problem of offenders not making admissions during interview and the CPS 'having their hands tied'. There is a real danger that this problem could be resurrected with this proposed RCT. However, the conditional caution guidance does not necessarily require an admission for consideration as a disposal. It is quite probable and usual that defence solicitors will advise their

clients to say nothing during the early stages of an investigation. Nonetheless, it is proposed that a dedicated team of investigators, who will be subject to necessary RCT training, will be dealing with **all** these cases. They will understand the importance of the need for gathering crucial evidence, such as the victims statement, arresting officers notes, recording of the emergency call to police and critically the increasing availability of officer body worn video capturing recordings of the scene, damage, injuries, behaviour of individuals etc. Arguably, when combined and presented professionally by a consistent team this could lead to the evidence threshold being more frequently met and a great deal more offers of conditional cautions being authorised by the CPS. Of course, the offender will still have to accept the 'conditions' or face prosecution. Thus, it is argued that this planned approach could potentially reduce the number of NFA disposals and enhance the pipeline of future eligible cases.

Whilst optimistic of securing a suitable pipeline of cases, in the event of too few cases, consideration could be given towards extending the test area. This would add to logistical and training requirements and hopefully will not be necessary.

It should be noted that the suspension of simple police cautions in the test area may frustrate some officers. There are clear differences between the workload and administration of the two disposals. As we have discussed, the simple caution is a decision made by police without referral to the CPS whereas a conditional caution must be authorised by them. This means the investigating officer has to prepare and submit, via e-mail, the available evidence to the CPS. However, it is believed that with strong local leadership and the delivery of targeted training to the evidential review officers and their dedicated group of investigating officers this will overcome any resistance. The continued display of local leadership and commitment to the RCT will be vital. It will need to be a convincing 'pitch' to gain their support and the fact that the planned trial will provide evidence of what works best has to be a primary selling point. Police officers are constantly subjected to new initiatives and

changes in policy without supporting evidence. This trial is offering them an opportunity to reverse that trend.

### **6.23: Cost-Effective ?**

In these pressing economic times it is even more important for services to be lean and efficient. Generally, RCTs are more expensive to run in the 'field' (Sherman 1992) and this planned trial is attracting additional costs. The LCJB has agreed to provide £30K to cover the development and delivery of the mandatory workshop sessions. Further to this, the Chief Constable has agreed to fund an independent researcher at an annual cost of £25K. In terms of staff engaged in the trial, these are regarded as existing on costs, however, the change in procedures will generate additional workload for the police. By way of example, the difference in time spent during investigation and police custody is and will be greater for a conditional caution compared with a simple police caution. Nationally, the recent CJI report indicated just one hour difference, however, the data from Western OCU currently indicates an additional 3 hours. The average time in Custody for detainees based on disposal type is shown below (period covered August 2009 – July 2010).

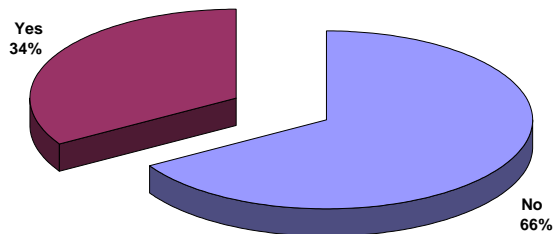
Average time in Custody: Conditional Caution	545 mins
Average time in Custody: Caution for Domestic	366 mins

At the time of writing research is ongoing to discern the precise costs of investigation, referral and disposal by way of conditional caution and simple police caution. In due course these will be valuable measurements for consideration by the LCJB and wider audience. The control group 'condition' is in any case a far cheaper to administer than the treatment group workshops.

In addition to the actual financial costs, is the issue of repeat victimisation. Research into overall domestic violence offence data indicates that the number of reported repeat crimes is averaging at 43%. However, the 2010 simple police caution data for Western OCU revealed a healthier outcome, 12 months after the issue of the caution.

#### Reported DV reoffending within 12months of Simple Police Caution

no other domestic incidents subsequently reported 12 months after date of original caution



This shows a 66% deterrent effectiveness of the simple police caution. The proposed RCT will provide a useful comparison to be made against the effectiveness of the conditional caution. Both the Northern and Eastern OCU's will continue to use simple police cautions and whilst not of the randomly assigned 'gold standard', according to the Maryland scale of scientific measure the comparison will lend itself to a level 3 type experiment. However, in terms of the future analysis further concerns over the different geography, disposal type, processes and systems will also need to be taken into account.

#### 6.24: Ethical Issues

Ethical issues seem to be an expected subject when considering the potential obstacles to conducting randomised controlled experiments in the 'field' (Sherman 1992). The need and argument for conducting randomised controlled trials is quite straight forward. As caring human beings we want to do the right thing. The problem is that we currently do not necessarily know what that right thing is and equally important whether we are doing the right thing in the right way (Millenson 2000). That is why we need to conduct randomised experiments. We need to find out what works best.

An ethical objection to randomised trials is that we are dealing with people differently and that is unfair. This comment assumes prior knowledge of what works best and is succinctly answered by

statistician Frederick Mosteller who observed “the only alternative to experimenting with people is fooling around with people” ( Sherman 1992:71).

The world of medicine has embraced randomised controlled trials as a means of establishing what works as a form of treatment. The point is well made by the example of using oxygen-enriched air for premature babies, where nurses considered it unethical to have a control group. Before the experiment was conducted and the practice stopped, over 10,000 pre-mature babies were blinded by an untested treatment (Sherman 1992:71). Today, the general public are familiar with the phrase ‘medical trials’ and experimental criminologists are merely seeking to utilise this tried and tested methodology. Interestingly, many of the members of the LCJB sub-group encouraged the use of the word trial rather than ‘experiment’, perhaps revealing their wariness. A point verified by Sherman (1992) who observed that ‘attorneys’ held strong perceptions that RCTs were unethical. Given that the CPS lawyers will be vital players and decision makers in authorising conditional cautions this is something that needs to be borne in mind. However, the Wessex Area CPS executive fully support the RCT and will have line management responsibility for the six lawyers who deliver the ‘Wessex daytime’ local CPS service to the police. The national out-of-hours service , ‘CPS Direct’, will need to be advised and encouraged to support the planned process. Their regional manager would be a suitable starting place for negotiations. The executive lead and Head of Wessex CPS may need to formally request their support.

#### **6.25: Internal Validity**

The true strength of experimental research is located within the internal validity of a study and there are many known threats (see Weisburd,Lum&Petrosino 2001, Sherman 1992, Farrington & Walsh 2005, Gartin 1995). The ability to experiment in laboratory conditions clearly enables tight control to be established over the implementation of random assignment and subsequent treatments allocated. Regrettably, the same cannot be said for experiments conducted in the “field” or real life, which brings into play numerous complexities, not least the geography and its people, their frailties

and uniqueness. The design, implementation and delivery of an experiment over sustained periods, become critical components and can generate threats to the internal and external validity of experiments and their findings (Sherman 1992).

Confidence in the findings of any randomised controlled experiment hinges upon the internal validity of the study. A primary concern is the method and accuracy of the random assignment. In a recent article Sherman reflects upon his early Minneapolis Domestic Violence Experiment experience; “ saving money on random assignment costs is penny wise and pound foolish” (Sherman 2010 :418). Today, Sherman recommends an independent random assignment system which provides a complete firewall between the treatment deliverers and the random assigners (Sherman 2010). In this planned RCT the evidential review officer will access, via computer, a newly created IT randomiser based at Cambridge University. Once details are entered the computer determines the random assignment group. Of course, thereafter, the officer must be authorised by the CPS to offer the assigned ‘conditions’ to the individual who may or may not accept and who may at any subsequent stage breach their ‘conditions’ (see schematic above).

This introduces a further related concern, specifically the degree to which treatments assigned are actually delivered, a problem of so called ‘treatment dilution’. Gartin observes that postrandomization attrition may weaken validity “especially when it occurs with differing rates across treatment groups” (Gartin1995:428). The failure to measure treatment delivery is one of the most common in experimental criminology (Sherman 2010), It is important that procedures are introduced to cover this requirement.

Ultimately, how the results of the experiment are analysed will affect their broader understanding and acceptance. Sherman recommends keeping such analysis simple, using Intention-To-Treat (ITT) and keeping the emphasis on policy testing rather than treatments applied. In this case that will relate to the general effectiveness of conditional cautions and specifically the added value of the

treatment programme in the experimental condition. The obvious cost-effectiveness findings will also be important (Sherman 2010).

#### **6.26: Experimental Protocol**

It is planned that this RCT will be overseen by Cambridge University and in accordance with registration requirements a **draft** Criminological Protocol on Operating Randomised Trials (Crim-PORT) has been produced. It is noted that a number of issues need to be addressed prior to registration and this will now fall to Superintendent Chilton who is taking up the task of implementing the RCT (Appendix B).

#### **6.27: Future Implementation**

Importantly, the LCJB have approved the appointment of a researcher from Cambridge University to oversee and monitor the RCT thus providing independent academic rigour. On a local basis the LCJB members and Chief Constable will provide strategic leadership which will be supported in the field by the Western OCU Crime Commander (currently studying at Cambridge University). A local Chief Inspector will also act as the internal delivery project manager providing a vital day-to-day link between the strategic, operational and research issues. It is believed this arrangement will address many of the field concerns highlighted by Sherman(1992). It is further proposed that a formal launch and training session involving key stakeholders, multi-agency partners, the EROs and investigation team is arranged for January 2012 with a view to commencing the Phase 1 run-in period and the RCT within a month.

### **Chapter 7: Conclusion**

The historical indifference of society and policing towards domestic violence has been replaced with a robust retributive model of deterrence by the state. This is seen, by many victims of domestic violence, as a blunt ineffective response to a complex, sensitive and emotional issue. The evidence

suggests that many victims are choosing to continue to suffer rather than report to police (Westmarland et al 2010, Women's National Commission 2009).

The police are wrestling with the complexities. A positive action policy has led to a dramatic increase in arrests but thereafter many victims are refusing to support a prosecution. The high rates of NFA and an accompanying increase in the use of simple police cautions reveal the operational difficulties being encountered by investigating officers.

The arrival of the conditional caution on the statute books potentially offers a solution to some of these problems. It enables rehabilitative, restorative or restrictive 'conditions' to be imposed and provides for the flexible tailoring of a police response without the need for a court hearing.

The Chief Constable of Hampshire Constabulary recognises the problems faced by his staff, the broader CJS and victims. He also knows that any policing response must be efficient and effective. A RCT will provide best evidence of 'what works' and whilst the broader goals of addressing prosecution attrition rates was prevented by the DPP, approval has been given to utilise conditional cautions in the domestic violence arena.

Notwithstanding the international evidence of RJ and its potential to assist with domestic violence, at the present time it is unlikely to feature as a 'condition' in this trial. The LCJB prefer the unproven option of bespoke treatment workshops which will be a mandatory condition for the treatment group.

This RCT is timely, the present government and ACPO have recently considered the possibility of conditional cautions being used for domestic violence and linked the proposal to the delivery of community perpetrator programmes. They engaged in a broad consultation process which led to a call for a "near-Criminal Justice disposal that rehabilitates, preserves the parties relationship, but retains the potential for sanction" (2009:65) but decided to await the outcome of research into the treatment programmes (research expected 2012). As we have seen, there is little research in the



field of out-of-court disposals and the proposed trial will provide evidence as to the effectiveness of conditional conditions in this sensitive area of policing. Moreover, it will also enable a unique, shorter and less expensive treatment programme to be tested in the field.

The planned RCT has been negotiated across a complex multi-agency environment and represents a unique opportunity to truly test the efficacy of a disposal linked to domestic violence for the first time. Whilst a thorough, carefully designed process has been approved, its future implementation in the 'field' will demand commitment and leadership of those involved. Ultimately, the findings could influence national policy and improve outcomes for victims, offenders and the criminal justice system.

# Appendix 'A'

Draft Letter from Chief Constable to Director of Public Prosecutions

Dear

## **Trial use of Conditional Cautions for minor offences of domestic abuse**

I am writing in my capacity as Vice Chair of the Local Criminal Justice Board (LCJB) for Hampshire and the Isle of Wight and as Chief Constable of Hampshire Constabulary, with a view to formally requesting your support for a carefully monitored trial use of Conditional Cautions for crimes which are linked to domestic abuse.

As you know, the present guidance does not permit this form of disposal to be used in cases of domestic abuse. It is, however, clear that our present approach to dealing with such matters is less than effective. In recent years the police service has adopted a 'positive action' approach to such incidents. In turn, this has led to a huge increase in related arrests and prosecutions. It also appears that simple police cautions are increasingly being used as a form of disposal, especially where the victim will not support a prosecution. Whilst this amounts to a recorded conviction it is not necessarily viewed as a desirable criminal justice outcome as there is no sanction attached and it does not enable conditions to be imposed. The ability to use Conditional Cautions would provide such opportunity and in my view considerably enhance the delivery of justice for victims.

Worthy of note is the national attrition rate of prosecutions for domestic abuse. During 2009, 14.1% of such cases failed because the victim withdrew support for the prosecution or would not give evidence. This amounts to 10,176 victims and offenders who walked away with nothing positive from their engagement with the criminal justice system. Confidence in the judicial system can only have been damaged. The waste of public money is an obvious and further concern.

In addition, feedback from victims reveals a lack of faith in the system and inability of the police to control behaviour of the alleged abuser. In terms of applying an outcome which is more beneficial to the victim there seems to be a wasted opportunity. The ability to Conditionally Caution would provide an opportunity for imposing restrictions as well as introducing measures which focus on the behaviour of the perpetrator.

We recognise the sensitivities involved in this area and local experts, with practical knowledge and understanding, have applied their minds to how a Conditional Caution trial could work. We are keen to ensure the protection of the victim and to manage the associated risk factors and would therefore like to draw your attention to the following when making your deliberations as to whether to support this trial.

### **Desired Outcomes:**

Enhanced protection of the victim

- Reduce re-offending and associated costs

- Reduce escalation of risk
- Reduce serial perpetration
- Improved safeguarding of victim
- Improved Criminal Justice outcomes

#### **Proposed Cohort and Offence category:**

First time only offenders (arrested) who admit their guilt for domestic abuse related offences of criminal damage, violence to secure entry, minor harassment or misuse of telecommunications or minor assault.

#### **Victim:**

Assessed by dedicated police specialist as up to and including medium risk using the Domestic Abuse Stalking Harassment and Honour based Violence ( DASH) risk assessment tool. In advance of issuing a Conditional Caution the options available would be discussed with the victim who will help inform a package of meaningful and enforceable conditions..

#### **Potential Conditions**

- Contract of Engagement with Offender
- Mandatory attendance at pre-designed group workshop(s). This will facilitate airing of external inhibitors with a view to stimulating development of internal inhibitor(s) against future offending.
- Possible Restrictions: Non-Contact orders. Geographical areas of exclusion, place of residency. Behavioural restrictions addressing triggers such as drugs and alcohol. These could be policed via dedicated police specialist.
- Possible Reparations: These could be developed during the workshop(s) and include, if appropriate, paying/repairing for damage, letters of apology etc.

#### **Single Point of Contact**

One specialist officer becoming point of contact for both victim and offender.

#### **Children Related Issues**

The involvement of a child as the victim in a related domestic abuse offence would prevent the use of a Conditional Caution disposal option.

In accordance with conditions imposed contact with children would be addressed with a view to accommodating the wishes of all parties and not frustrating any prior arrangements either formal or informal. The use of a third party to arrange contact may be necessary.

#### **Evidence-based approach**

If approved, the University of Cambridge have kindly offered to oversee a trial use of Conditional Cautions in Hampshire. This will provide academic rigour to the experiment and support subsequent validation of the findings.

Finally, I believe that the introduction of an ability to impose conditions which protect the victim and rehabilitate the offender appears persuasive. The trial attrition rate and lack of confidence held by victims in the police to make a measurable difference are key influencers. A carefully constructed and monitored trial would provide validated evidence of the likely benefits or problems associated with wider implementation. I am keen to trial this and have approached the Association of Chief Police Officers (ACPO) national lead for her views. However, whilst I await a formal response and in order to advance the concept, I request your permission to operate a geographically defined trial within Hampshire. It is possible that a few of my colleagues, in other Force areas, may also be interested.

If you would like to meet in order to discuss this proposal please do not hesitate to contact me. I look forward to receiving your reply.

Chief Constable



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## APPENDIX 'B'

# Crim-PORT 1.0:

## *Criminological Protocol for Operating Randomized Trials*

@ 2009 by Lawrence W. Sherman and Heather Strang

**INSTRUCTIONS:** Please use this form to enter information directly into the WORD document as the protocol for your registration on the Cambridge Criminology Registry of EXperiments in Policing Strategy and Tactics (REX-POST) or the Registry of EXperiments in Correctional Strategy and Tactics (REX-COST).

### **CONTENTS:**

1. Name and Hypotheses :
2. Organizational Framework
3. Unit of Analysis
4. Eligibility Criteria
5. Pipeline: Recruitment or Extraction of Cases
6. Timing
7. Random Assignment
8. Treatment and Comparison Elements
9. Measuring and Managing Treatments
10. Measuring Outcomes
11. Analysis Plan
12. Due Date and Dissemination Plan

### **1. Name and Hypotheses**

A.. **Name of Experiment** \_\_\_\_ Could conditional cautions be used as a suitable intervention for certain cases of domestic violence. \_\_\_\_\_

B. Principal Investigator (Name) \_\_\_\_\_ To Be Appointed \_\_\_\_\_

(Employer) Cambridge University \_\_\_\_\_

C. 1st Co-Principal Investigator : Supt Scott Chilton \_\_\_\_\_

Employer: Hampshire Constabulary \_\_\_\_\_

D. 2d Co-Principal Investigator (Name) ? \_\_\_\_\_

(Employer) \_\_\_\_\_

E. **General Hypothesis:** The use of conditional cautions reduces recidivism rates, and the treatment group (mandatory educational workshop sessions) are more or less effective than the control group condition (behave yourself for 4 months)

**F. Specific Hypotheses:**

1. List all variations of treatment delivery to be tested.

Treatment Group will have mandatory 2x workshop sessions plus any other conditions felt appropriate for their individual case.

Control Group will have sole condition of 'behave yourself for 4 months'

2. List all variations of outcome measures to be tested.

3. List all subgroups to be tested for all varieties of outcome measures.

**2. Organizational Framework:** Check only one from a, b, c, or d

- A. **In-House** delivery of treatments, data collection and analysis \_\_
- B. **Dual Partnership:** Operating agency delivers treatments with independent research organization providing random assignment, data collection, analysis\_\_

Name of Operating Agency\_Hampshire Constabulary\_\_\_\_\_

Name of Research Organization Cambridge University\_\_\_\_\_

- C. **Multi-Agency Partnership:** Operating agencies delivers treatments with independent research organization providing random assignment, data collection, analysis\_\_

Name of Operating Agency 1\_Hampshire Constabulary\_\_\_\_\_

Name of Operating Agency 2 Crown Prosecution Service\_\_\_\_\_

Name of Operating Agency 3 Hampton Trust – delivers workshops\_\_\_\_\_

Name of Research Organization Other members of Local Criminal Justice Board\_\_\_\_\_

- D. **Other Framework** (describe in detail).

### 3. Unit of Analysis

Check only one

\_\_A. People (describe role: offenders, victims, etc.)Eligible DV Offenders and their Victims  
\_\_\_\_\_

\_\_B. Places (describe category: school, corner, face-block, etc)\_\_\_\_\_

\_\_C. Situations (describe: police-citizen encounters, fights, etc.)\_\_\_\_\_

\_\_D. Other (describe)\_\_\_\_\_

#### **4. Eligibility Criteria**

##### **A. Criteria Required (list all) Eligibility Criteria for Domestic Violence Conditional Caution**

**1) Adult:**

Offenders must be aged 18years or over.

**2) First Offence of a Domestic Violence concern:**

Offences to include minor assaults categorised by law as Common Assault & Battery, Criminal Damage, Harrassment, Threatening Behaviour, domestic burglary and theft related offences.

Offenders have not previously been arrested for any offence linked to domestic violence.

The relationship between offender and victim is restricted to cohabiting partners, or, those who have previously cohabited within the past 2years. It does not include wider inter-familial disputes.

**3) Admission or CPS agree that overwhelming evidence is present:**

Offender admits to committing a related domestic violence offence or following submission of evidence to the CPS, for example, a victim' statement, other witness statements, 999 emergency call transcript, photographic evidence, police body worn video extract, it is accepted that overwhelming evidence is present

**4) Past minor convictions permitted but not for violence and/or currently serving a community based sentence/order:**

The offender must not be on police or court bail for any other unrelated matters or currently serving an existing sentence/order.

**5) Victim supports this form of action/disposal:**

Prior to submission of evidence to the CPS the victim's views in relation to prosecution and possible disposal by way of conditional caution are sought by the police.

**6) Risk Assessment within parameters of Low and Medium:**

Police risk assessment comes within these measures.

##### **B. Criteria for Exclusion (list all)**

#### **5. Pipeline: Recruitment or Extraction of Cases (answer all questions)**



A. Where will cases come from? Western OCU, Hampshire Constabulary

B. Who will obtain them? Hampshire Constabulary

C. How will they be identified? Following arrest and detention, eligibility criteria will be applied by dedicated investigation team of officers based in custody centres at Southampton and Lyndhurst.

D. How will each case be screened for eligibility? Supervised by Evidential Review Officer and legally screened by CPS

E. Who will register the case identifiers prior to random assignment? Evidential Review Officer (available 24/7) Based in the two custody centres.

F. What social relationships must be maintained to keep cases coming? Police investigators, Evidential Review Officers and CPS (Wessex daytime and CPS Direct for out-of-hours service). Executive leads of LCJB also need to be kept informed.

The Force- Conditional Caution Co-ordinator, members of Domestic Violence Unit and Hampton Trust will also need to be kept informed of developments.

G. Has a Phase I (no-control, “dry-run”) test of the pipeline and treatment process been conducted? If so, Not attempted.

- how many cases were attempted to be treated
- how many treatments were successfully delivered
- how many cases were lost during treatment delivery

**6. Timing:** Cases come into the experiment in (check only one)

- A. A trickle-flow process, one case at a time X \_\_\_\_
- B. A single batch assignment\_\_
- C. Repeated batch assignments\_\_
- D. Other (describe below)\_\_\_\_

## 7. Random Assignment

A. How is random assignment sequence to be generated?

Cambridge IT randomiser will be accessed by Evidential Review Officer who will input details and advise CPS of random assignment decision.

(coin-toss, every Nth case, and other non-random tools are banned from CCR-RCT).

*Check one from 1, 2 or 3 below*

1. Random numbers table → case number sequence → sealed envelopes with case numbers outside and treatment assignment inside, with 2-sheet paper surrounding treatment\_\_

2. Random numbers case-treatment generator program in secure computer\_\_x

3. Other (please describe below)\_\_

B. Who is entitled to issue random assignments of treatments?

Role: CPS Lawyer must legally authorise assigned 'conditions' after Randomiser allocates

Organization: CPS

C. How will random assignments be recorded in relation to case registration?

Name of data base: Not certain at this stage. Could be placed on Police RMS against offender.

Location of data entry:

Persons performing data entry:

## **8. Treatment and Comparison Elements**

### **A. Experimental or Primary Treatment**

1. What elements must happen, with dosage level (if measured) indicated.

Element A: Mandatory 2x Workshop sessions

Element B: Any other 'conditions' felt appropriate

Element C:

Other Elements:

2. What elements must **not** happen, with dosage level (if measured) indicated.

Element A:

Element B:

Element C:

Other Elements:

### **B. Control or Secondary Comparison Treatment**

3. What elements must happen, with dosage level (if measured) indicated.

Element A: Must comply with 'condition' of Behave yourself for 4 months. Defined as Not charged with another offence.

Element B:

Element C:

Other Elements:

4. What elements must not happen, with dosage level (if measured) indicated.

Element A:

Element B:

Element C:

Other Elements:

## **9. Measuring and Managing Treatments**

### **A. Measuring**

1. How will treatments be measured? Treatment Group attendance compliance. Victim and Offender impact via questionnaires at 6 and 12 month intervals
2. Who will measure them? Force Conditional caution Co-ordinator ( workshop attendance) DV Unit – Victim and Offender impact questionnaires. Overseen by Supt Chilton and Independent Researcher
3. How will data be collected? To be determined for all the below by Independent researcher and Supt Chilton.
4. How will data be stored? As above
5. Will data be audited?
6. If audited, who will do it?

7. How will data collection reliability be estimated?
8. Will data collection vary by treatment type?

If so, how?

#### B. Managing

1. Who will see the treatment measurement data? Independent Researcher and Supt Chilton
2. How often will treatment measures be circulated to key leaders? Not Known
3. If treatment integrity is challenged, whose responsibility is correction? Supt Chilton

### 10. Measuring and Monitoring Outcomes

#### A. Measuring

1. How will outcomes be measured? Recidivism rates – police records, victim reports and offender self-reports.
2. Who will measure them? DV Unit staff and Independent researcher
3. How will data be collected? TBConfirmed
4. How will data be stored? TBConfirmed
5. Will data be audited? TBConfirmed
6. If audited, who will do it? TBConfirmed
7. How will data collection reliability be estimated?
8. Will data collection vary by treatment type?

If so, how?

#### B. Monitoring

1. How often will outcome data be monitored? Six monthly and at 12 months from issue of Conditions

2. Who will see the outcome monitoring data? LCJB and Cambridge University
3. When will outcome measures be circulated to key leaders? TBC
4. If experiment finds early significant differences, what procedure is to be followed?

LCJB steering group will continue to meet and report to LCJB. Executive lead, Chief Constable will be kept informed by way of exception reporting by Supt Chilton

## 11. Analysis Plan

- A. Which outcome measure is considered to be the primary indicator of a difference between experimental treatment and comparison group? Recidivism rates over 12month period from time of disposal.
- B. What is the minimum sample size to be used to analyze outcomes? 300
- C. Will all analyses employ an intention-to-treat framework? Yes
- D. What is the threshold below which the percent Treatment-as-Delivered would be so low as to bar any analysis of outcomes? Unknown ?
- E. Who will do the data analysis? Independent researcher employed by Cambridge
- F. What statistic will be used to estimate effect size? Cohen's D
- G. What statistic will be used to calculate P values? T Test
- H. What is the magnitude of effect needed for a  $P = .05$  difference to have an 80% chance of detection with the projected sample size (optional but recommended calculation of power curve) for the primary outcome measure.  $D=0.2$

## 12. Dissemination Plan The below is to be determined by Supt Chilton and the Independent Researcher.

- A. What is the date by which the project agrees to file its first report on CCR-RCT? (report of delay, preliminary findings, or final result).
- B. Does the project agree to file an update every six months from date of first report until date of final report?
- C. Will preliminary and final results be published, in a 250-word abstract, on CCR-RCT as soon as available?
- D. Will CONSORT requirements be met in the final report for the project? (See <http://www.consort-statement.org/> )
- E. What organizations will need to approve the final report? (include any funders or sponsors).
- F. Do all organizations involved agree that a final report shall be published after a maximum review period of six months from the principal investigator's certification of the report as final?

- G. Does principal investigator agree to post any changes in agreements affecting items 12A to 12F above?
- H. Does principal investigator agree to file a final report within two years of cessation of experimental operations, no matter what happened to the experiment? (e.g., “random assignment broke down after 3 weeks and the experiment was cancelled” or “only 15 cases were referred in the first 12 months and experiment was suspended”).

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