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**Making the criminal justice
system work better: how to
improve out-of-court disposals
and diversion schemes**

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Introduction

Out-of-court disposals and diversion schemes are a vital part of the criminal justice system, providing quick and straightforward alternatives to prosecution. This project investigated whether and how the use of such disposals could be expanded to help ease pressure on the system.

A system under pressure

In 2020, Crest conducted research on the effect of the Covid-19 pandemic on the criminal justice system in England and Wales. Our main conclusions were that court caseloads could quadruple by 2024 and that there was a desperate need to find better ways to manage offenders at the 'front end' - before they are prosecuted and go to court.

Expansion and improvement

The main aim of this project was to identify whether there is scope for expanding the use of out-of-court disposals and diversion programmes - in part to ease pressure on the criminal justice system. We also consider ways to improve the effectiveness of such disposals and enhance public understanding of them. We set out our key findings, principles for reform and specific recommendations.

Five stages of analysis

There were five main strands to our research: (1) analysing public data on out-of-court disposals, (2) researching the use of out-of-court disposals and their effectiveness, (3) gathering insight from national and local stakeholders, (4) carrying out an in-depth study in the Thames Valley Police force area and (5) consulting the public via a nationally representative survey.

Acknowledgements

The authors would like to thank the Hadley Trust for their generous support.

We would also like to thank everyone who shared their insight throughout the course of the project, including Thames Valley Police.

About Crest Advisory

We are crime and justice specialists - equal parts research, strategy and communication. From police forces to public inquiries, from central government departments to tech companies we help all these organisations (and more) to play their own part in building a safer, more secure society.

Executive Summary (1/7)

The 'front end' of the criminal justice system (CJS):

- The proportion of crimes which lead to an outcome such as a charge or caution has been in long-term decline. The charge rate has fallen in the past seven years to 8% of offences recorded by police; the rate of out-of-court disposals has also dropped - to 4% of offences. At the same time, the percentage of cases in which victims have withdrawn support for police action or a prosecution has trebled.
- The majority of out-of-court disposals used are community resolutions and are used mainly for drugs offences - but in over a-quarter of cases they are issued for crimes of 'violence against the person'. The majority of disposals are given within a month of the offence; suspects and victims face a much longer wait if their case goes to court.
- During the COVID-19 pandemic, court hearings - jury trials in particular - were severely curtailed adding to case backlogs and delays. Evidence from police suggests out-of-court disposals were used more - in some areas to ease pressures on the criminal justice system and the courts. Data suggest community resolutions in particular increased during the pandemic.
- Given the problems caused by the pandemic and a projected increase in demand on the courts, a key question is whether pressures on the criminal justice system can be relieved by making better use of out-of-court disposals and diversion schemes. This report sets out the conditions for expansion and improvement in their use by police forces.

Executive Summary (2/7)

Data collection and evidence:

- One key measure of the effectiveness of out-of-court disposals is the proportion of offenders who commit further crimes. But meaningful comparisons with re-offending rates of court-imposed sanctions are not possible because the characteristics of the pools of offenders are different.
- There is evidence that out-of-court disposals which involve diversion programmes are successful in cutting reoffending, reducing harm and keeping costs down. Examples include 'Checkpoint' and 'Operation Turning Point'. But schemes like this, under which cautions or prosecutions are deferred or suspended, are not available in most police force areas. A big push is needed to expand their use.
- Victims of crime appear to be more satisfied when an offender receives an out-of-court disposal and takes part in a diversion scheme than when there is a prosecution. Keeping victims informed about the progress of cases and explaining what is happening are crucial.
- Criminal justice stakeholders generally supported the use of out-of-court disposals but they had concerns about the evidence base and called for more rigour in evaluating outcomes for offenders, victims, the criminal justice system and the public.

Executive Summary (3/7)

Oversight and standards:

- The use of out-of-court disposals varies considerably, with the proportion of disposals issued four times greater in some police force areas than in others. Innovative approaches which tackle specific problems affecting a local area should be encouraged but wide disparities between neighbouring forces are hard to explain.
- Out-of-court disposals are issued for a wide spectrum of crimes, from drugs possession to robbery and sexual offences, raising concerns about whether their use is always appropriate and if it is being monitored properly.
- There is a lack of consensus among stakeholders as to whether certain offences, such as hate crimes and domestic abuse, should be 'off limits' to out-of-court disposals.
- There is inconsistency and confusion about whether suspects must admit guilt or take responsibility for the crime they're suspected of in order to qualify for some types of out-of-court disposals and diversion schemes.

Executive Summary (4/7)

Tailored diversion:

- Out-of-court disposals which involve diversion schemes tailored to the needs of offenders present real opportunities for tackling reoffending and promoting rehabilitation. Most criminal justice practitioners and experts that took part in this research agree there is merit in expanding their use.
- Tailored diversion requires up-front investment. Different ways of funding such programmes should be found to create incentives for police forces and Police and Crime Commissioners to provide the necessary resources.
- Assessing young people aged under 18 so they attend diversion schemes tailored to their needs is at the heart of out-of-court disposal work conducted by Youth Offending Teams (YOTs), providing a possible model for adult offenders. Use of tailored diversion varies across police force areas, with best practice including the ASCEND approach in Avon and Somerset and programmes specifically designed for female offenders.
- Speed is vital. Youth Offending Teams (YOTs) should engage quickly and in a meaningful way with the people they're responsible for but this is made more difficult by police delays in notifying YOTs and investigations which take a long time. Fixing this problem should become a priority.

Executive Summary (5/7)

Transparency:

- **Most** police forces should be more open and transparent about their use of out-of-court disposals and diversion schemes.
- Crest analysis of police force websites reveals that only **14%** provide a basic definition of what an out-of-court disposal is.
- The websites of **24** forces require significant improvement as they have no basic information about out-of-court disposals.
- There was good practice in openness, transparency and accountability about the use of out-of-court disposals in **five** forces.
- **Avon and Somerset** was judged as the top performing force.
- Police should use their websites and social media to promote **success** and best practice around out-of-court disposals.

Executive Summary (6/7)

Public perceptions polling:

- *Awareness:* Polling carried out for Crest suggests that most people **cannot accurately define the term ‘out-of-court disposals’**, and are **unfamiliar with different types of sanction**, including community resolutions - even though they are the the most commonly used disposal.
- *Support:* Given more information about out-of-court disposals and diversion schemes, those surveyed support using them for **low-level and first-time offending**. There is backing for a **justice ‘escalator’** approach - where offenders can be given an out-of-court disposal if they have committed a minor offence and haven’t done anything before, but not where they have already had such a disposal and/or if they have been to court before.
- *Vulnerability:* There is strong support for using diversion programmes **where offenders are vulnerable**. The greatest backing is for those who have been **victims of domestic abuse** or who are **at risk of suicide**. The public also appear to support diversion schemes for **pregnant women and mothers**, as well as people with **health, alcohol addiction and housing problems**, and **young offenders** who are in care, at risk of exploitation and struggling with education.
- *Youth Justice:* On average, respondents say young offenders should be **treated by police as adults** when they are 17-and-a-half years old. But when informed that brain development continues until the age of 25, 20% of those surveyed **changed their minds**, opting for an older age.

Executive Summary (7/7)

Public perceptions polling:

- *Victims*: Our polling suggests **the public's support is conditional**: most people feel that out-of-court disposals do not do enough to take into account the **views of the public**. Three-quarters of respondents say **victims' views should be taken into consideration** when police issue an out-of-court disposal.
- *Offences*: People are against using out-of-court disposals for offences such as **rape, sexual assault, serious assault, supplying drugs and burglary**; a significant proportion view such penalties as a **'soft option'**, even for first-time, low-level offenders. The survey suggests the public is divided about whether out-of-court disposals should be used for **hate crimes**, but more support than oppose using them in less serious **domestic abuse** cases. .
- *Effectiveness*: Most people believe that sentences imposed by the courts, including jail and community penalties, are **effective at cutting crime and reoffending**. Only a minority think cautions work. But a majority say out-of-court disposals and diversion schemes are **quicker than going to court**, though they think these sanctions **cost taxpayers** more.
- *Court backlogs*: Less than half of those polled say police should impose **more out-of-court disposals to reduce the backlog** of cases in the criminal courts; backing is higher among those who are very satisfied with policing. Other measures command greater support: enabling **magistrates to hear more cases** by raising their sentencing powers; providing **extra funding** to the criminal justice system and the courts; and **limiting jury trials** to the most serious crimes.

This report contains five principles that underpin our recommendations for improving the effectiveness of out-of-court disposals and expanding their use

Data driven

Local and national data should be gathered and published on the use of out-of-court disposals and diversion programmes in order to analyse compliance, reoffending rates, victim satisfaction levels and financial costs. Statistics should be compiled on each type of intervention to ensure weaknesses can be identified and rectified.

Evidence-based

Any change in the use of out-of-court disposals and diversions should be based on evidence of their impact on (1) reoffending, (2) future contact with the criminal justice system and (3) improved life outcomes, particularly in comparison with offenders who are sentenced by the courts.

Oversight and standards

There should be greater oversight of the use of out-of-court disposals and diversion schemes to ensure greater consistency within and across police forces and Youth Offending Teams. National standards and closer monitoring will reduce the risk that some groups of offenders are disproportionately affected and that interventions are used which don't work; scrutiny panels are key stakeholders in upholding national standards.

Tailored

Out-of-court disposals and diversion schemes should be tailored as far as possible to the individual. Measures to keep people out of the criminal justice system and steer them away from crime work best when they are targeted at the specific problems that underpin their offending behaviour.

Open, transparent, accountable

Police forces should be more open, transparent and accountable in their use of out-of-court disposals and diversion schemes. Extending the use of such disposals in order to divert people from the criminal justice system will succeed only if the public understand what they entail and have confidence in them.

Summary of Recommendations (1/2)

Data driven

Police forces, the Home Office and the Ministry of Justice should collect and publish data on:

1. Compliance levels, reoffending rates and victim satisfaction rates for each specific out-of-court disposal and diversion programme.
2. The number and type of out-of-court disposals issued per offender - and the costs of each disposal to various parts of the criminal justice system.
3. The use of out-of-court disposals broken down by age, gender, ethnic background and police force area.

Evidence-based

The Home Office should:

The College of Policing should:

Police and Crime Commissioners should:

4. Commission analysis to compare reoffending rates & victim satisfaction levels between each type of out-of-court disposal & sanctions imposed by the courts.
5. Commit to strengthen the evidence of 'What Works' on out-of-court disposals and diversion schemes and ensure best practice is shared as widely as possible, in a similar way to its Crime Reduction Toolkit.
6. Set up systems to track the use and effectiveness of out-of-court disposals and diversion schemes in their local area and improve coordination between police forces and providers of diversion services.
7. Monitor referrals, completion, engagement, reoffending, future contact with the criminal justice system and life outcomes of out-of-court disposals and diversion schemes.

Oversight and standards

The Ministry of Justice and Home Office should:

8. Set out a national framework of standards around the use of community resolutions including which offences they are appropriate for.
9. Commission research to understand and find ways to address wide variations between police forces in their use of out-of-court disposals and diversion.
10. Ensure each force has an effective independent panel to scrutinise the use of out-of-court disposals, in particular community resolutions.
11. Set clear national guidelines for out-of-court disposals on (1) admitting guilt, taking responsibility for offences and 'no comment' interviews and (2) ensuring victims views are taken into consideration and reparation/ restorative justice opportunities are sought.

Summary of Recommendations (2/2)

Tailored

The Home Office and the Ministry of Justice should:

12. Set up a joint Home Office-Ministry of Justice innovation fund for new tailored diversion programmes.

13. Extend the Youth Offending Team model to 18 to 25 year olds so diversion schemes can be tailored to the problems underlying their behaviour.

Youth Offending Teams and police forces should:

14. Agree a joint protocol to ensure tailored diversion programmes are arranged and delivered promptly.

15. Set up a joint research team to monitor and evaluate out-of-court disposals and diversion programmes with a focus on reoffending rates, victim satisfaction levels and improved life outcomes for young people.

**Open,
transparent,
accountable**

Police forces should:

16. Explain on their websites what out-of-court disposals are, which ones they use and what crimes they are used for.

17. Set out what diversion programmes offenders may be sent on and what they involve.

18. Publish statistics on the use of out-of-court disposals and diversion in the force area, including gender, age, ethnicity, offence type and average number of previous offences per offender.

19. Strengthen the role of 'Scrutiny Panels', which oversee the use of out-of-court disposals and diversion programmes in each area.

Findings

1. The 'front end' of the criminal justice system



a) Background and trends



Out-of-court disposals have been a feature of the 'front end' of the criminal justice system since Victorian times - but the range and nature of them has changed hugely, particularly in the past 25 years. Our research shines a light on their use across the 43 police forces of England and Wales

One way the police can resolve crime is by using out-of-court disposals

When police deal with people suspected of committing crimes they have a range of options. They can initiate criminal proceedings by charging suspects; refer more serious cases to the Crown Prosecution Service to determine whether or not charges should be brought; or resolve cases themselves by issuing an "out-of-court disposal", for example, by giving a caution. The **offender must usually accept responsibility** for the offence and the **views of the victim**, if there is one, should be taken into account. Some disposals have **conditions attached** designed to prevent further crimes, repair the harm caused or tackle the behaviour which underpins the offending. That might involve attending a drugs misuse, anger management or victims awareness course: these are known as **diversion programmes**.

Rationale

The advantage of an out-of-court disposal is that it is a relatively **straightforward and quick** way of responding to low-level and first-time offending, avoiding the bureaucracy and delays associated with taking cases to court and freeing up time for officers on the frontline. They can also provide a tailored and prompt remedy for victims of crime and address offending behaviour at an early stage.

History

The principle of dealing with routine, low-level or undisputed offences without going to court - particularly those involving first-time offenders - is well established. The history of these disposals can be traced back to the **19th century** when the police formally began warning people, or cautioning them, about their conduct. For 150 years, **cautions were the only out-of-court disposal**; their use expanded in the 1970s and 1980s.

In the early 2000s, the **youth cautioning system was reformed** and as the Labour government set targets to increase the number of offenders brought to justice, a variety of different disposals was introduced: penalty notices for disorder, cannabis warnings and conditional cautions.

In 2008, some police forces began piloting lighter-touch disposals, known as "**community resolutions**"; they were later made available nationwide. In some areas, action against an offender can be suspended as long as they adhere to various conditions and complete a rehabilitation programme: these are known as a deferred caution or deferred prosecution.

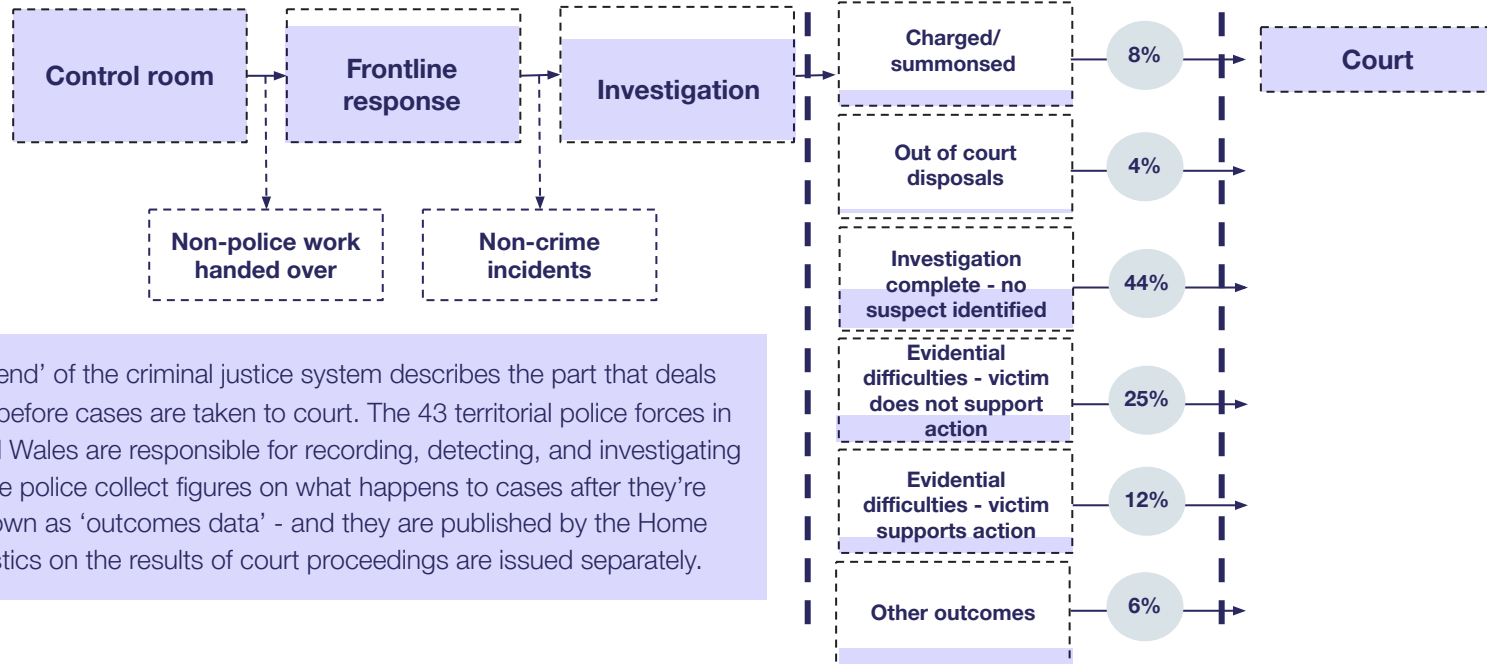
Existing out-of-court disposals

- Adult caution
- Adult conditional caution
- Youth caution
- Youth conditional caution
- Community Resolution
- Cannabis warning
- Khat warning
- Penalty Notice for Disorder

- Deferred caution
- Deferred prosecution

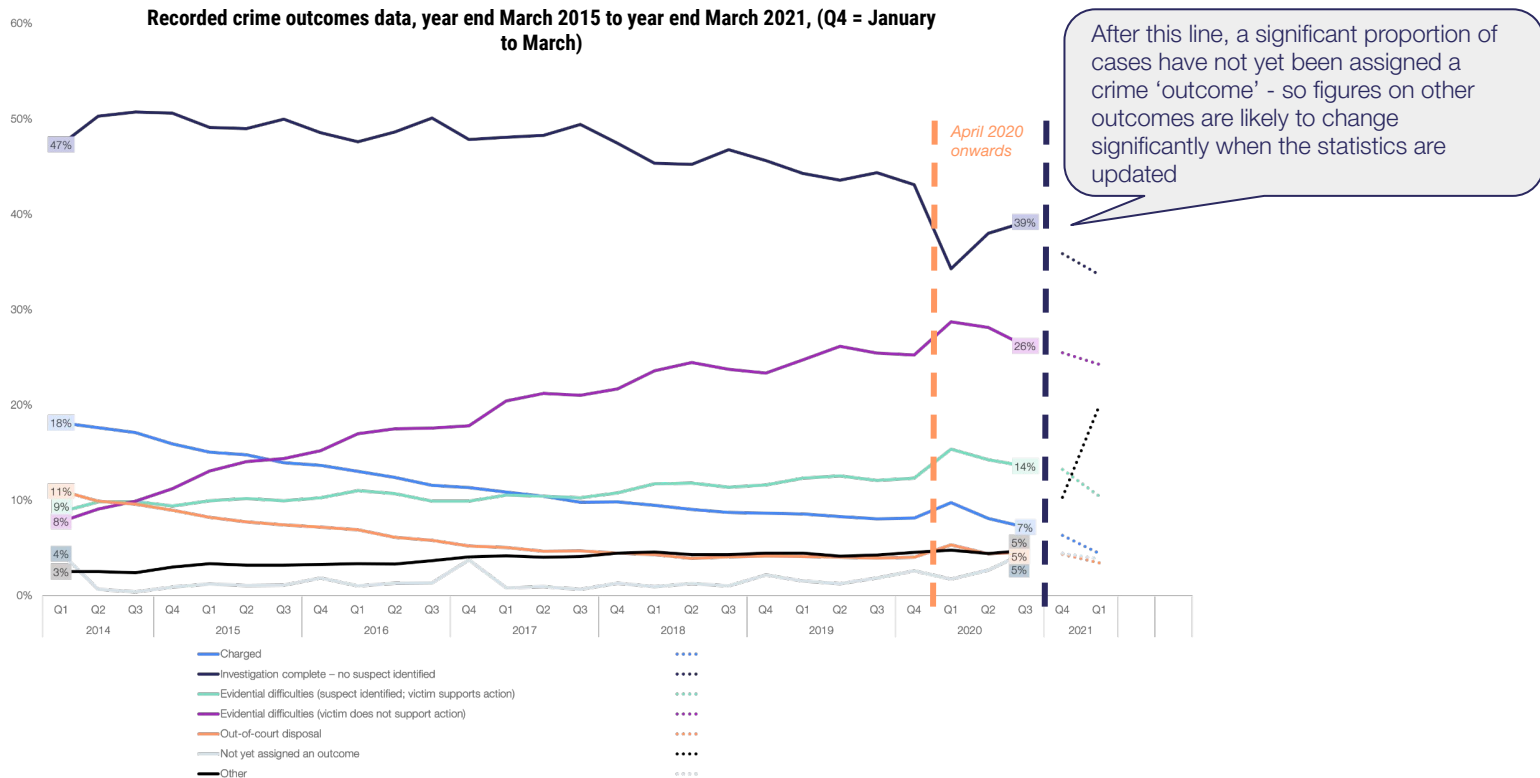
At the 'front end' of the criminal justice system, the police are responsible for detecting and investigating crime. In 2020, 8% of offences they recorded led to a charge or summons to appear in court and in a further 4% they issued an offender with an out-of-court disposal

Process map: the 'front end' of the CJS*



* The 'front end' of the criminal justice system describes the part that deals with crimes before cases are taken to court. The 43 territorial police forces in England and Wales are responsible for recording, detecting, and investigating offences. The police collect figures on what happens to cases after they're logged - known as 'outcomes data' - and they are published by the Home Office. Statistics on the results of court proceedings are issued separately.

The proportion of crimes in which a suspect is charged (charge rate) has fallen in the past seven years; the rate of out-of-court disposals has also dropped. At the same time, the percentage of cases in which victims have withdrawn support for police action or a prosecution has trebled



There are different types of out-of-court disposal available for police in England and Wales, with separate sanctions for young people, aged 10 to 17, and adults, aged 18 and over

	Youth caution	Youth conditional caution	Adult caution	Adult conditional caution	Community resolution	Cannabis warning	Penalty notice for disorder
Actual offence	In public interest, based on ACPO youth gravity matrix (see page 24)	Offence set out in CPS (2013) guidance	In public interest, based on adult offender gravity matrix (see page 23)	Offence set out in CPS (2013) guidance	In public interest to offer a community resolution	Possession of a small amount of cannabis consistent with personal use	29 offences where offence is not too serious
Evidential standard	Sufficient evidence for realistic prospect of conviction	Sufficient evidence for realistic prospect of conviction	Sufficient evidence for realistic prospect of conviction	Sufficient evidence for realistic prospect of conviction	Clear crime occurred, reasonable suspicion offender is responsible	Reasonable suspicion offence has occurred, sufficient evidence for realistic prospect for conviction	Reasonable suspicion that penalty offence committed, sufficient evidence for realistic prospect for conviction
Admission of guilt	Must admit offence	Must admit to committing the offence*	Must admit to committing offence	Must admit to committing the offence*	Must accept responsibility	Clear and reliable admission to all elements of offence	Not required
Offender consent	Offender is not required to accept	Offender must explicitly accept the conditional caution and conditions	Must explicitly consent to accepting caution	Offender must explicitly accept the conditional caution and conditions	Must agree to participate in community resolution	Offender is not required to consent	Not required
Offender history	Between 10 and 17 years old, previous offending should be considered	Between 10 and 17 years, previous offending should be considered	18 years or over, previous offending should be considered	18 years and over, previous history should be considered	No relevant offending history. If there is, referred to supervisor	18 years or over, with no evidence of possession with intent to supply	18 years or over, offending history should be assessed
Victim check	Views should be sought, final decision remains with police	Views should be sought, but no right to insist on outcome	Views should be sought, but no right to insist on outcome	Views should be sought, but no right to insist on outcome	Victim should be consulted and agreement sought	N/A	Views should be sought, as removes possibility of compensation order to victim
Implications	Criminal record as a result of youth caution	Referral to youth offending team; prosecution if fail to comply with conditions	Criminal record as a result of an adult caution	Prosecution if fail to comply with conditions	Does not form part of criminal record, can be disclosed during DBS check	Can be used as bad character evidence, or disclosed during DBS check	Criminal record as a result of a PND

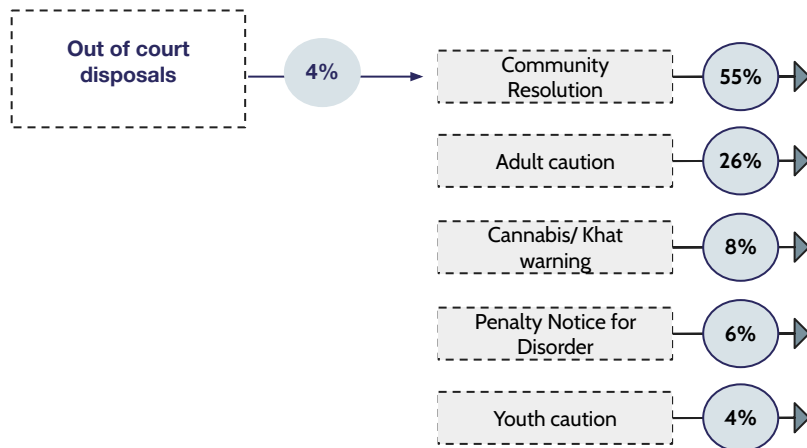
Source: College of Policing (last modified 5 February 2020), Authorised Professional Practice content: Prosecution and case management - Possible justice outcomes following investigation.

*Reflects guidance from the Ministry of Justice rather than the College of Policing. See: Ministry of Justice (March 2013), Code of Practice for Youth Conditional Cautions and Ministry of Justice (January 2013), Code of Practice for Adult Conditional Cautions.

More than half of the out-of-court disposals administered by police in England and Wales are community resolutions. Out-of-court disposals are used mainly for drugs offences - but in over a quarter of cases they are issued for offences involving 'violence against the person'

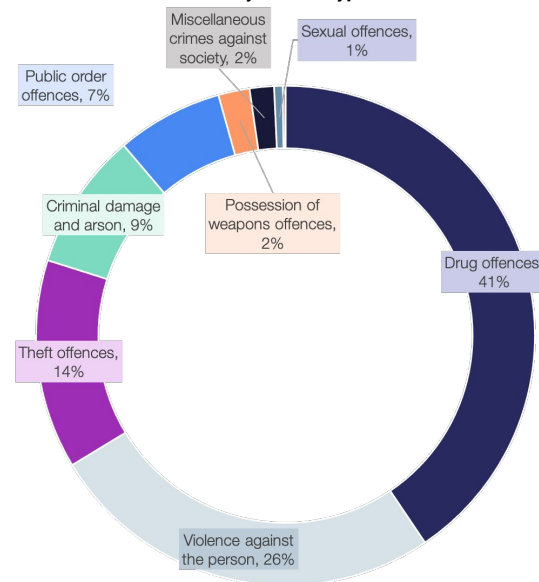
Community resolutions make up more than half of all out-of-court disposals and diversionary activity.

Out of court disposals outcomes year end March 2020, broken down by category and type of outcome



Drug offences (the vast majority of which are possession offences) are the most common offences subject to out-of-court disposals and diversionary activity, followed by violence against the person offences.

Out of court disposals outcomes year end March 2020, broken down by offence type



When police decide whether to charge a suspect or issue an out-of-court disposal, they must consider: the seriousness of the offence; the individual's offending history; and elements which increase or lessen the degree of criminal culpability - aggravating and mitigating factors

National Police Chiefs' Council 'gravity matrix' guidelines for selected assault offences committed by adults

Offence	Aggravating factors	Mitigating factors	Outcome
Grievous bodily harm/wounding with intent	Always referred to the CPS. Only CPS can authorise a conditional caution.		Always charge. Conditional caution not usually appropriate but could be considered in exceptional circumstances.
Actual bodily harm	<ul style="list-style-type: none"> - Weapon used - More than one blow - Victim vulnerable or defenceless - Domestic abuse - Hate crime 	<ul style="list-style-type: none"> - Impulsive action - Provocation - Minor injury 	Normally charge. Conditional caution can be considered based on consideration of circumstances.
Common Assault	<ul style="list-style-type: none"> - Deliberate aggression without provocation - Vulnerable victim - Weapon used - Domestic abuse - Hate crime 	<ul style="list-style-type: none"> - Impulsive action - Trivial nature of action - Injury very minor 	Normally conditional caution. Charge or community resolution can be considered if appropriate.
			Community resolution. Conditional caution can be considered if justified. <i>Note: there is no assault offence in the gravity matrix where the presumed outcome will be a community resolution.</i>

Police use a similar decision-making process when dealing with offenders who are under 18. Age is also an important factor that is taken into account.

Association of Chief Police Officers 'gravity matrix' guidelines for selected sexual offences committed by 10 - 17 year olds

Offence	Aggravating factors	Mitigating factors	Outcome
Rape	Defer decision to CPS		Normally charge. Conditional caution not usually appropriate but could be considered in exceptional circumstances.
Sexual assault	<ul style="list-style-type: none"> - Force used - Elderly/ younger victim - Group action - Abuse of position 		<p>Normally youth caution. If the offending behaviour cannot be satisfactorily addressed by a caution consider a Youth Conditional Caution. If neither of these options apply, support a charge.</p>
Sexual activity with child, victim under 16	<ul style="list-style-type: none"> - Facilitated by drugs/ alcohol - Force used - Group action 	<ul style="list-style-type: none"> - Offender and victim of similar age - No element of coercion or corruption present 	
			<p>Always the minimum response applicable to the individual offender, i.e. community resolution, youth caution, youth conditional caution or charge. Note: there are no sexual offences in the gravity matrix where the presumed outcome will be a community resolution.</p>

The use of out-of-court disposals and diversion schemes is scrutinised by independent panels which operate in a number of police force areas. They check a sample of cases to assess whether the measures are being applied appropriately

Adult Community Resolution: Dorset Police

A young adult offender was found in possession of cannabis. The offender was considered vulnerable; there was also a young child living at their address. The offender was given a community resolution with two conditions attached - to attend a Druglink course and not to re-offend.

Adult Community Resolution: Avon and Somerset Police

An adult offender was given a caution for racially or religiously aggravated assault and assault occasioning actual bodily harm. The offender punched the victim causing a visible injury and used racially aggravated language.

Youth Community Resolution: Dorset Police

A young offender caused criminal damage to a vehicle; there was no previous offending. It was agreed they would be given a Youth Restorative Disposal, which is a form of community resolution, and write a letter of apology to the victims.

Youth Community Resolution: Avon and Somerset Police

An adult offender was given a community resolution for sexual assault on a female. The offence was carried out on a stranger; the case identified risk factors for future offending. There was no discussion with the victim to show that they had supported the use of a community resolution.

The scrutiny panel concluded that in both cases the use of an out-of-court disposal was **appropriate** and consistent with Dorset Police policies, Crown Prosecution Service guidelines and the Victims Code.



The scrutiny panel concluded that in both cases the use of an out-of-court disposal was **inappropriate**. Out of 29 out-of-court disposals for serious sexual offences and hate crime examined by the panel, five were considered to be inappropriate.

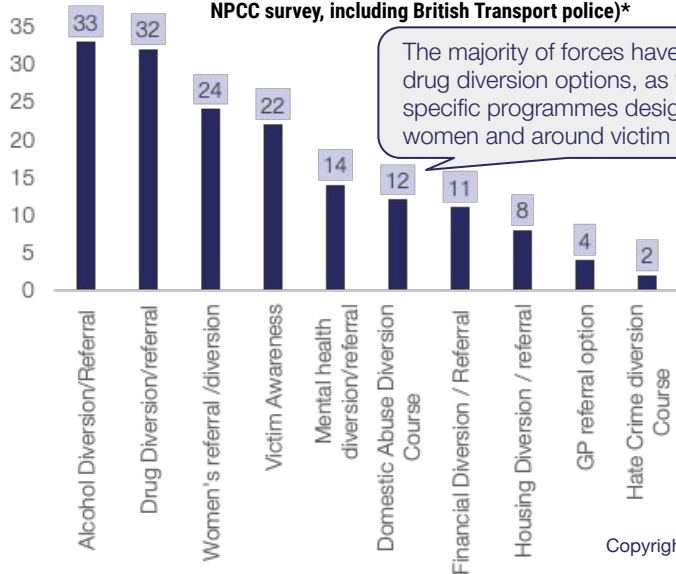
More forces are using out-of-court disposals to refer offenders to different diversion schemes. In certain areas, the offender must pay for the course, while some programmes are funded by the force, Police and Crime Commissioner or local authority

Increasingly the police are commissioning or referring to services to divert people away from the criminal justice system. A diversion programme is aimed at offenders who have committed minor offences.

Rather than facing prosecution and court proceedings, offenders are issued with an out-of-court disposal by police and are required to attend or are referred to a rehabilitation scheme.

These are the current diversion options in Thames Valley police force (Thames Valley was the location of the depth study conducted for this project):

Diversion programme offered by police force in 2020 (respondents to NPCC survey, including British Transport police)*



The majority of forces have alcohol and drug diversion options, as well as specific programmes designed for women and around victim awareness.

Alana House	Trauma-informed approach to support female offending pathways	
Prince's Trust	Securing employment or training for under 30s	
Keep it Calm	Emotional awareness for anger-motivated offences - delivered by RISE Mutual	
Druglink	Drugs and alcohol diversion scheme - support to make an informed choice	
Victim Awareness	Taking responsibility and understanding impact on others - delivered by Victim Support	

Source: Data provided by the National Police Chiefs' Council. * does not include Liaison and Diversion services; Deep dive in Thames Valley police force - see methodology on page 108.

A number of forces run deferred caution or prosecution schemes where the sanction is suspended as long as the offender complies with conditions. These might include working in the community, taking part in a rehabilitation course or meeting their victim as part of 'restorative justice'

1. North Wales: [Checkpoint Cymru](#)

A voluntary deferred prosecution scheme for adults. Specialist offender managers, known as 'navigators', draw up a bespoke 4-month contract for each individual to help tackle the causes of their offending. If they don't comply with the conditions they face prosecution.

2. Surrey: [Checkpoint](#) and [Checkpoint Plus](#)

Checkpoint is a deferred prosecution scheme for low-level offenders, based on the Durham model. Checkpoint Plus is targeted at female offenders with complex and multiple needs and problems.

3. Devon and Cornwall: [Pathfinder](#)

A 4-month programme similar to Checkpoint for adults aged 18 to 30. There are two strands, based on the seriousness of the offence: deferred caution and deferred prosecution. Some cases may involve a restorative justice meeting between offender and victim. Delivery relies on Pathfinder Keyworkers who deliver interventions and coordinate referrals to other local organisations.

4. Durham: [Checkpoint](#)

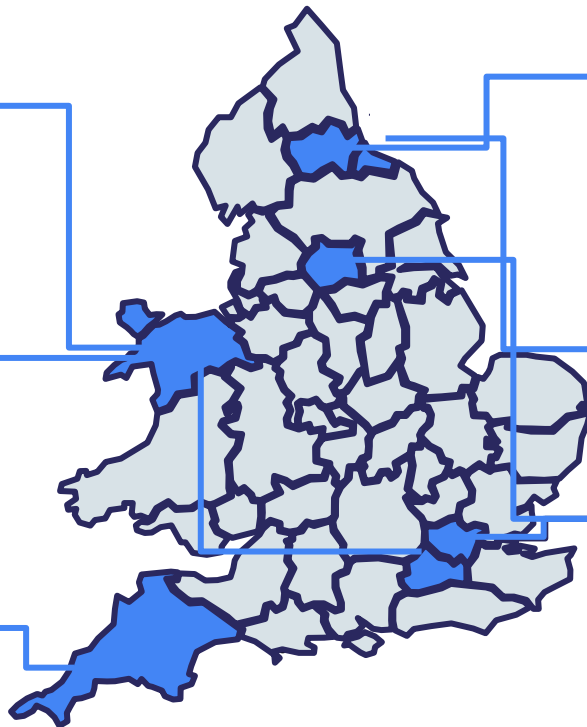
A pioneering voluntary deferred prosecution scheme for adults. When they agree to take part they must comply with the conditions of a 4-month contract, or face court action. More details on page 43.

5. Cleveland: [Divert scheme](#)

Operates in a similar way to Checkpoint: aimed at first-time and low-level offenders, Divert provides a range of support 'pathways', such as help with mental health, drugs, alcohol, education or housing problems; each participant is allocated a Divert Support Officer, a number of which specialise in working with people with specific needs.

6. Metropolitan Police and West Yorkshire: [Chance to Change pilot schemes](#)

The Chance to Change (C2C) pilots are deferred prosecution schemes for young people, set up by the Ministry of Justice after David Lammy's report on race and the criminal justice system. They're designed to steer 10-17 year olds away from the courts by helping them address problems which underpin their offending behaviour. The schemes are currently being evaluated.

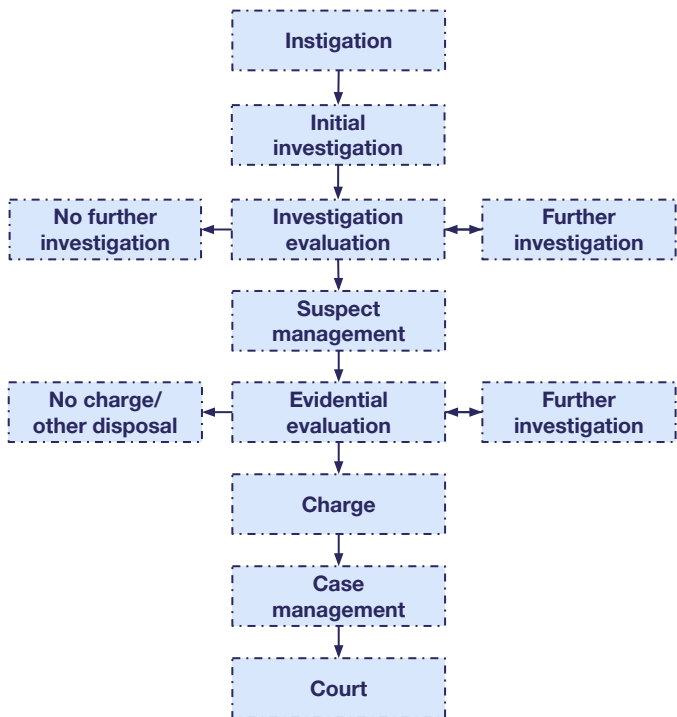


b) Recent history and the Covid-19 pandemic



The processing of suspects through the criminal justice system is increasingly slow. The problem is chiefly because resources in the police and Crown Prosecution Service have been stretched and investigations are more complex with specialist skills in short supply

Process map: investigations



There are many reasons for delays in the investigative process, including:

- (1) **resource constraints** (capacity to prepare, review and authorise a case file)
- (2) **growth in complexity** (evidence gathering required to prepare a case file)
- (3) **skills shortages** (capability to prepare, review and authorise a case file)
- (4) **structural problems** (poor partnerships between the police and CPS)
- (5) **national focus** (policy failures, such as limits to pre-charge bail which meant many suspects were released under investigation without conditions or an end date)

"The problem is you've got vast, vast caseloads for police officers and they're dealing with so many complex things now that really aren't necessarily police issues ... you've got officers who are very young and inexperienced ... you've got inexperienced supervisors, you've got investigations that are taking a year, 18 months, now." - YOT police officer in Thames Valley.

"28-day bail was a joke. It's under review again, isn't it? It's all going to be changed."
"It's the most pointless thing. You either have to increase it or get rid of it [reference to releasing them under investigation]. I don't think I've ever had anything back in 28 days."
- Conversation between police officers in Thames Valley.

"The worst experience of my life, every officer absolutely hates it. I'd say it probably takes me a good two or three shifts to do a proper file ... it's waiting two months to hear back from the CPS that then drags out that investigation for the victim, for the suspect, and we keep that job on our screen for four months." - Police officer in Thames Valley.

"It was a summary only offence and it was two days prior to the STL [statutory time limit] before we could charge for the CPS to actually charge and we had to escalate it to the highest person possible ... and the file was submitted within 27 days but it took them so long to process it." - Police officer in Thames Valley.

In 2020 and 2021, the Covid-19 pandemic led to a series of lockdowns and months of restrictions on travel, social activities and gatherings. Recorded crime dropped - but more community resolutions and penalty notices for disorder were used than the year before

Outcomes	All crime outcomes	Charged	Cannabis/ khat warning	Caution - adults	Caution - youths	Community resolution	Diversions, educational or intervention activity	Penalty Notices for Disorder
Volume (year end March 2021)	4,332,873	339,565	14,282	46,848	6,209	121,650	21,517	12,451
1-year change	- 13%	- 18%	- 16%	- 11%	- 31%	+ 9%	+ 156%	+ 11%
5-year change	+ 11%	- 39%	- 61%	- 53%	- 66%	+ 3%	-*	- 48%

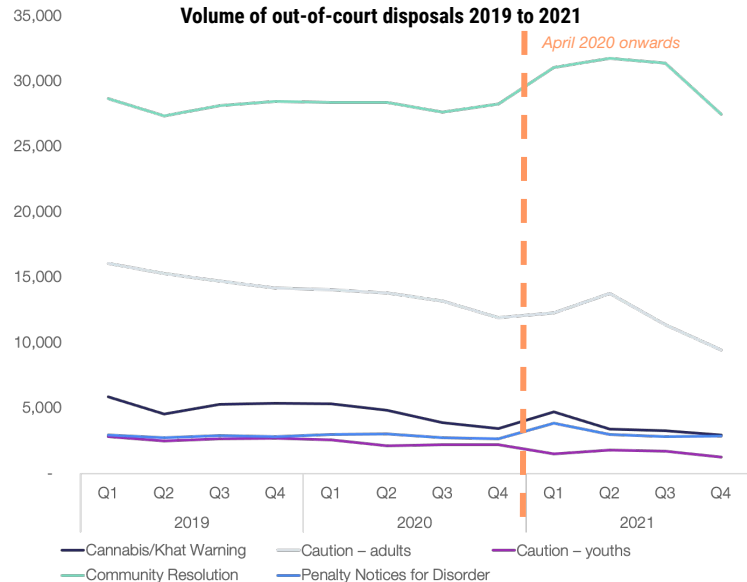
The policing watchdog, HMICFRS, said in some forces during the pandemic there appeared to be a “shift away from charging” towards the increased use of out-of-court disposals. It said sometimes there was tension between police and the Crown Prosecution Service, who were “more frequently” advising that an out-of-court disposal was appropriate even though the police thought the offence was serious enough to warrant a charge.

Source: Home Office, Police recorded crime and outcomes open data tables - outcomes open data to December 2020. Home Office (July 2020), Crime outcomes in England and Wales: Technical Annex. *cannot make comparison as outcome introduced after the start of the period.

Source: HMICFRS (20 April 2021), Policing in the pandemic - The police response to the coronavirus pandemic during 2020.

During the Covid-19 pandemic, court hearings - jury trials in particular - were severely curtailed adding to case backlogs and delays. Evidence from police suggests out-of-court disposals were used more - in some areas to ease pressures on the criminal justice system and the courts

Compared to the previous quarter, April to June 2020 saw a spike in community resolutions, adult cautions, cannabis/ khat warnings and penalty notices for disorder. That was in spite of a drop in crime due to lockdown and other public health measures.



- Various forces reported changing the way out-of-court disposals were issued to reduce demand on the courts by allowing some repeat offenders to be given a community resolution or conditional caution, rather than being prosecuted. Among those making changes were Avon and Somerset, British Transport Police, Dorset and Lincolnshire.
- Warwickshire Police tried to “encourage a higher rate of use of out-of-court disposals” so there’d be fewer suspects released under investigation awaiting charging decisions.
- West Midlands Police put procedures in place to make it easier for officers to complete out-of-court disposals.
- In terms of diversion, Surrey Police said Checkpoint Navigators were being asked to be “inventive” with how they get offenders to complete their interventions and were encouraged to do so online as much as possible.

Interim CPS Charging Protocol: In March 2020, the National Police Chiefs’ Council and the Crown Prosecution Service (CPS) issued a protocol outlining how the investigation of crimes would be prioritised by police (‘immediate’, ‘high priority’, ‘other’) to manage the flow of cases into the criminal justice system.

Interim CPS Case Review Guidance: In April 2020, the CPS introduced new guidance allowing prosecutors to take account of the ‘ongoing impact on the criminal justice system of the Covid-19 pandemic’ when deciding whether it was proportionate to bring charges against a suspect. It’s thought in some cases out-of-court disposals were issued where previously prosecutions would have been brought.

Many diversion services moved online during the pandemic. Although virtual courses have benefits, some stakeholders are concerned they do not convey the sense of gravity that an out-of-court disposal should carry and are not appropriate for young or vulnerable offenders

During the Covid-19 pandemic, police & diversion services have had to adapt, including delivering courses online. That ease of access has led to better attendance & engagement - but there are concerns that virtual meetings do not convey the sense of gravity a disposal should have.

"With the use of Zoom, we've almost been able to fully replicate what we would deliver in a face to face session online in a group by using the chat functions, having two facilitators, breakout rooms, sending out manuals with FAQs and guides for delegates as well" - *Diversion Service Provider in Thames Valley.*

"Drug Link offered E-Learning courses during the pandemic to resolve the reasons why the individual was in possession of cannabis and whether it pointed to a wider problem they had" - *Police staff responsible for administering diversion in Thames Valley.*

"I think a lot of young people, the people who are experimenting with drugs who get caught, they're quite relieved that it's just a Zoom meeting" - *Diversion Service Provider in Thames Valley.*

"What is an hour on Zoom compared to what is was before ... maybe half a day in court? I think we've reduced it maybe too much and made it too easy" - *Police Officer in Thames Valley.*

Youth Offending Teams have found that young people respond very differently - mainly in a positive way - to virtual engagement. But their biggest learning from the pandemic is that meetings with young people should take place where they feel most comfortable, particularly if they have specific needs that make virtual engagement difficult.

"We went virtual and have done things online, and they've coped really well with that" - *Youth Offending Team in Thames Valley.*

"Some young people have engaged far better than expected over Teams or over the phone, and could have been a bit more willing to have a more open and honest conversation about difficult topics as opposed to having them face to face" - *Youth Offending Team in Thames Valley.*

"I think they were more than happy to adjust to it ... I don't think it affected my practice of out-of-court disposals in any way" - *Youth Offending Team in Thames Valley.*

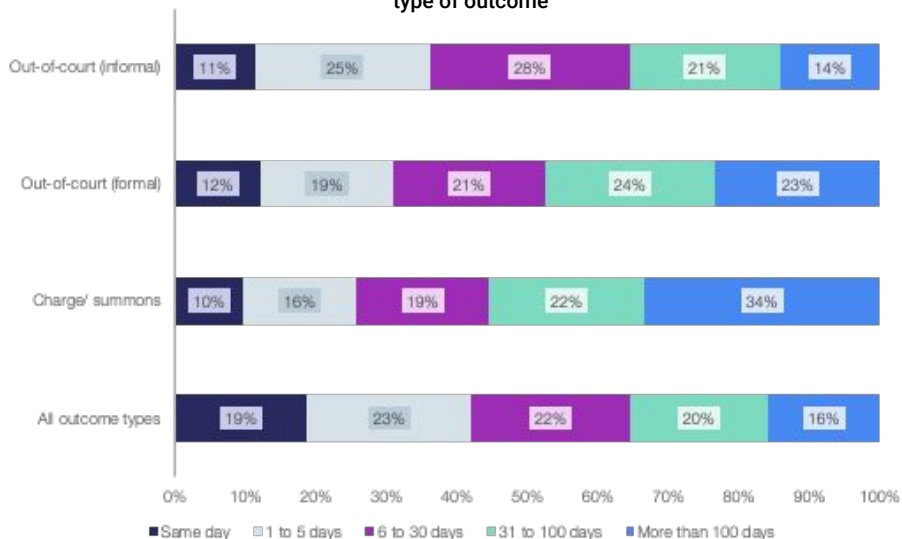
"I think it's easier to build a relationship with someone when you're seeing them in person rather than online" - *Youth Offending Team in Thames Valley.*

Most out-of-court disposals are issued to offenders within a month; suspects and victims face a much longer wait if their case goes to court. The delays have become worse since March 2020, when measures to stop the spread of Covid-19 led to court closures, adding to a backlog of cases

The majority of out-of-court disposals are issued within a month of the offence being committed. Just 14% of informal out-of-court disposals, such as community resolutions, and 23% of formal out-of-court disposals are given after 100 days - compared to 34% of charging decisions.

In the last ten years, defendants and victims have been forced to wait longer than ever for justice to be delivered. Across all courts, the average time from offence to completion is now over 6 months, and well over a year in Crown Courts.

Length of time between offences and outcomes being recorded year end March 2021, by type of outcome

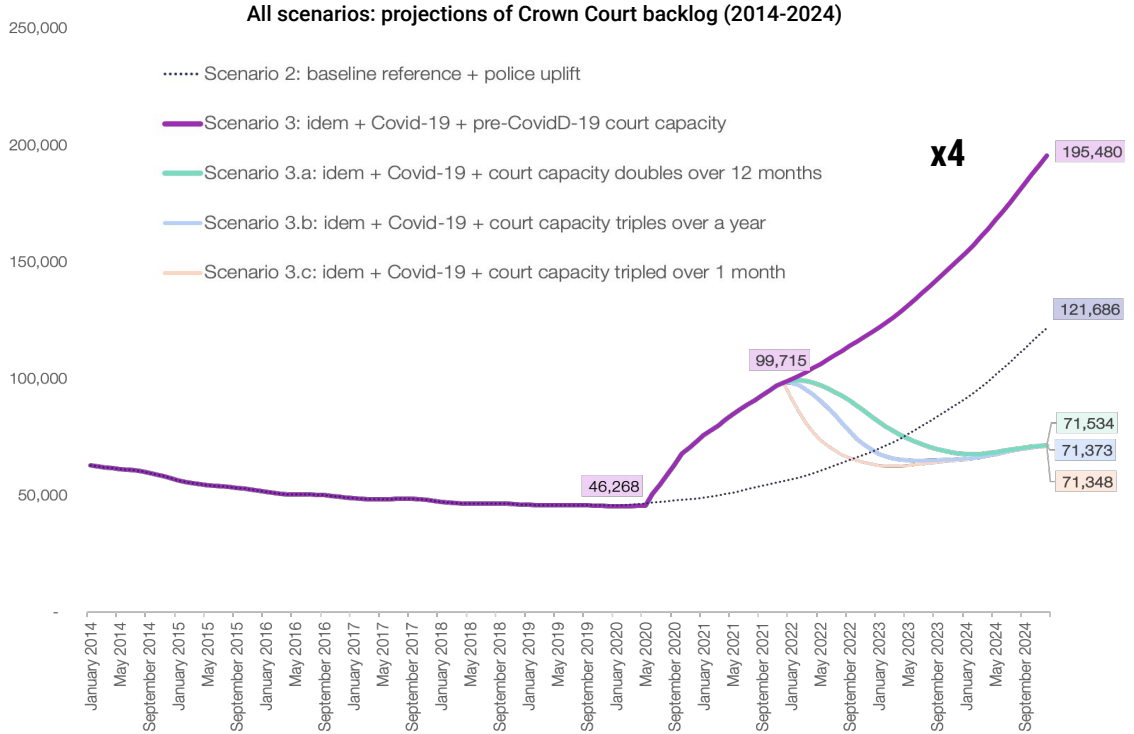


Mean time (days) from offence to completion (2010 v. 2019)

	All courts (1)		Magistrates Court (2)		Crown Court (2)	
	2010	2019*	2010	2020*	2014**	2020*
Days	157	188	139	202	442	452
Weeks	22	27	20	29	63	65
Months	5.2	6.2	4.6	6.6	14.5	14.9

Sources: (1) Ministry of Justice, Criminal court statistics quarterly: January to March 2020; (2) April to June 2021. *last year of available data, ** first year of comparable data.

Modelling in 2020 indicated that Crown Court capacity in England and Wales would need to double to bring down and stabilise the backlog of cases. Without such an increase, other measures, such as extending the use of out-of-court disposals, should be considered



In the Crown Courts, which hear the most serious criminal cases, there was a pre-Covid baseline backlog of around 39,000 cases (February 2020). The backlog is the number of cases that have yet to be concluded.

In September 2021, the backlog was 59,730, similar to the 2021 average of over 60,000, indicating measures to reduce the backlog have not had the desired effect.

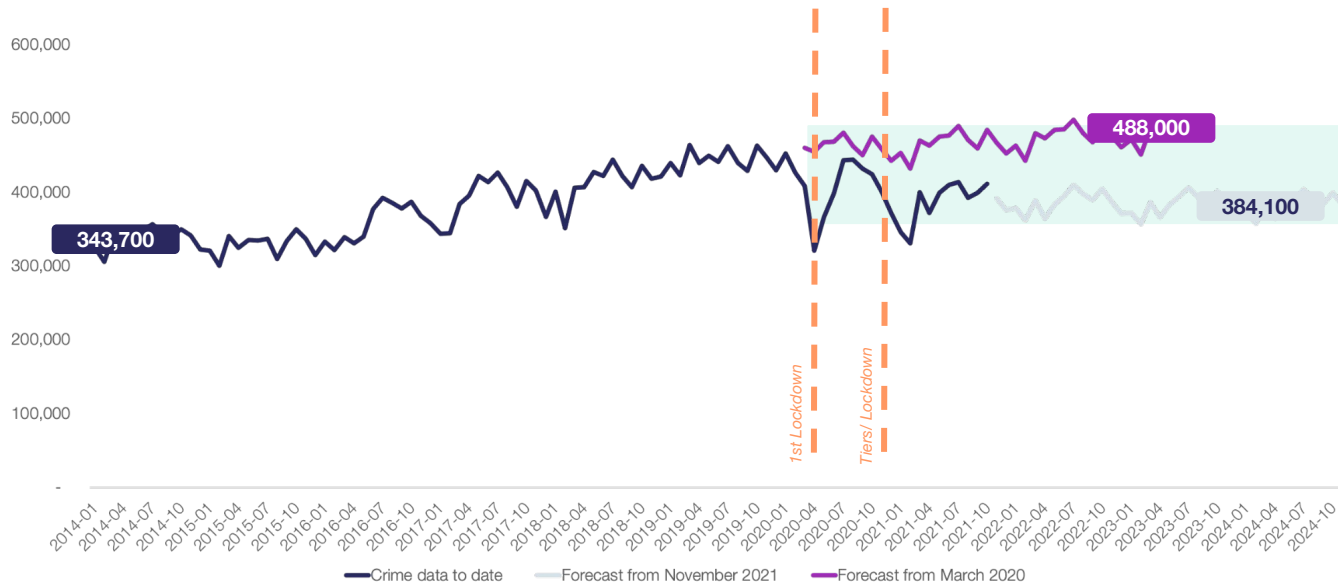
The Ministry of Justice says extra Treasury funding will bring down the backlog to 53,000 by March 2025 - still well above the baseline.

As part of [previous research](#) on the impact of the pandemic on the criminal justice system, also funded by the Hadley Trust, Crest developed a 'stock and flow' model that looked at the criminal justice system as a whole, tracking how major offence cases flow and the impact on the 'stock' and projecting the impact on capacity and/or outcomes 'flow'.

Source: A perfect storm, Crest Advisory, 2020; see detail of assumptions [here](#); HMCTS Management information - (1) September 2020 (12 November 2020), (2) September 2021 (11 November 2021).

Before Covid-19, crime was forecast to increase substantially. The pandemic has affected overall crime levels and the rise is now expected to be smaller. But there is still scope to consider how expanding the use of out-of-court disposals and diversion schemes could deal with caseloads

Case volumes for total crime in England and Wales, including forecasts from March 2020 and June 2021



Pre-pandemic, police-recorded crime in England and Wales was forecast to reach 488,000 offences in March 2023, compared to 343,700 in March 2014.

But taking the impact of the pandemic into account, the forecast is now much lower - 386,600 cases in March 2023 and 384,100 cases in March 2024. The true number of cases is likely to be somewhere between these two forecasts.

Poliscope is a methodology and interactive tool devised to support UK policing (and related organisations). The data are collected from data.police.uk and are subject to a number of limitations. Please see [this note](#) for more details on the methodology and tool. Poliscope uses hybrid or ensemble forecasting methods.

Source: Poliscope (National subscription version - RC 1.2.1), Crime and anti-social behaviour - historical trends and forecasts: England and Wales.

c) New system of out-of-court disposals



The system of out-of-court disposals in England and Wales is undergoing significant change. After a long period of consultation, the Government is legislating to streamline the way disposals and diversion schemes operate for adults - but community resolutions are likely to stay

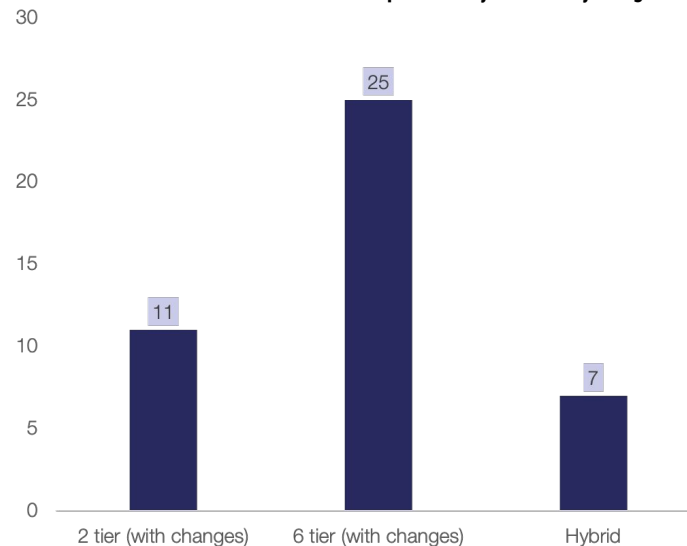
In 2014, a joint government and police review set out plans to simplify the system of adult out-of-court disposals by replacing them with two new sanctions: the **community caution** and the **diversionary caution**.

The Ministry of Justice said the changes would remove inconsistencies between police force areas and ensure there were “stricter repercussions for offending behaviour”. Three forces piloted the new two-tier model and although the transition to it has been voluntary a number of other constabularies have since adopted it. Once rolled out, it’s expected to cost £110 million over ten years - but a government impact assessment found no evidence it’ll lead to a reduction in re-offending rates.

Discussions are continuing with forces so they can continue with a third, lighter-touch option of a **community resolution**. It’s unclear where deferred caution and deferred prosecution schemes fit into the new model, but there is no move to scrap them.

As of April 2020, only 11 forces had adopted the two-tier framework.

“Which framework for out-of-court disposals are you currently using?”



Under the new system, conditions would be attached to both formal out-of-court disposals with penalties for offenders who don't comply. The changes are being considered by Parliament and are expected to become law in 2022

Proposed changes in the Police, Crime, Sentencing and Courts Bill	
Community Caution	Diversionsary caution
Aged 18 and over	
Any offence other than an excluded offence	Any offence
Sufficient evidence to charge the offender	
Admits having committed the offence	
Consents to being given the caution	
Must have one or more conditions attached to them	
Must make reasonable efforts to obtain views of any victim(s) and take those views into account.	
Breached could lead to a financial penalty	Breach could lead to prosecution, if failure to comply without reasonable excuse

Like a conditional caution, a **community caution** is intended to be a formal warning issued by police with conditions attached; it'll appear on an offender's criminal record. It can be used only for the type of cases which are routinely dealt with by magistrates. Those who fail to comply with the conditions may be fined.

A **diversionsary caution** represents a step-up in seriousness from a conditional caution. Those who don't comply face arrest and prosecution and it can be used for any offence. However there are restrictions for serious crimes and repeat offenders - it can be applied only in "exceptional circumstances" and with the Director of Public Prosecutions' consent for Crown Court-trial offences.

The framework will be put on a **statutory footing** if, as expected, the 'Police, Crime, Sentencing and Courts Bill' is passed by Parliament.

Data collection and evidence



If the use of out-of-court disposals and diversion programmes is to be expanded, and public confidence maintained, the criminal justice system must improve the way it collects data and gathers evidence about their impact, particularly on reoffending

A principle for reform is that any change in the use of out-of-court disposal and diversion schemes should be based on evidence of their impact on (1) reoffending, (2) future contact with the criminal justice system and (3) improved life outcomes, particularly in comparison with offenders who are sentenced by the courts.

Key Findings

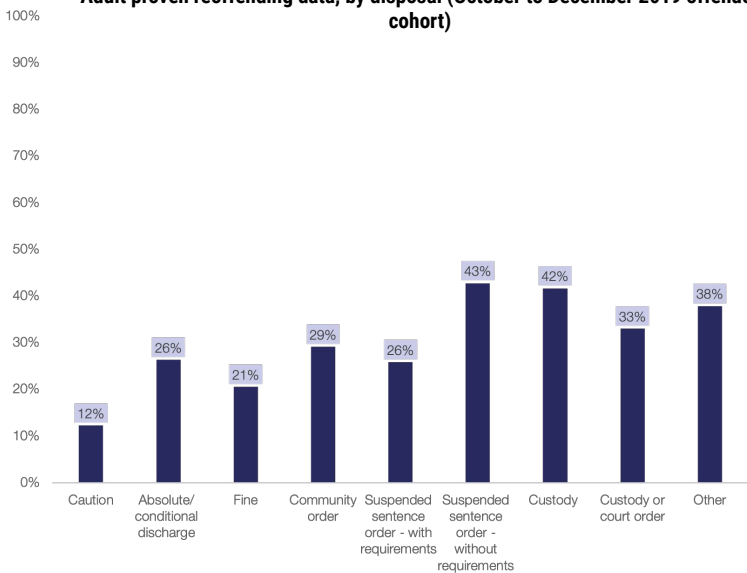
- One key measure of the effectiveness of out-of-court disposals is the proportion of offenders who commit further crimes. But meaningful comparisons with re-offending rates of court-imposed sanctions are not possible because the characteristics of the pools of offenders are different.
- There is evidence that out-of-court disposals which involve diversion programmes are successful in cutting reoffending, reducing harm and keeping costs down. Examples include 'Checkpoint' and 'Operation Turning Point'. But schemes like this, under which cautions or prosecutions are deferred or suspended, are not available in most police force areas. A big push is needed to expand their use.
- Victims of crime appear to be more satisfied when an offender receives an out-of-court disposal and takes part in a diversion scheme than when there is a prosecution. Keeping victims informed about the progress of cases and explaining what is happening are crucial.
- Criminal justice stakeholders generally supported the use of out-of-court disposals but they had concerns about the evidence base and called for more rigour in evaluating outcomes for offenders, victims, the criminal justice system and the public.

One key measure of the effectiveness of out-of-court disposals is the proportion of offenders who commit further crimes. But meaningful comparisons with reoffending rates of court-imposed sanctions are not possible because the characteristics of the pools of offenders are different

12% of adult offenders who received a caution went on to reoffend, ie, they were convicted or cautioned for an offence committed within 12 months. 42% of offenders released from custody reoffended.

24% of young people aged under 18 who received a youth caution went on to reoffend. 62% of offenders released from custody reoffended.

Adult proven reoffending data, by disposal (October to December 2019 offender cohort)

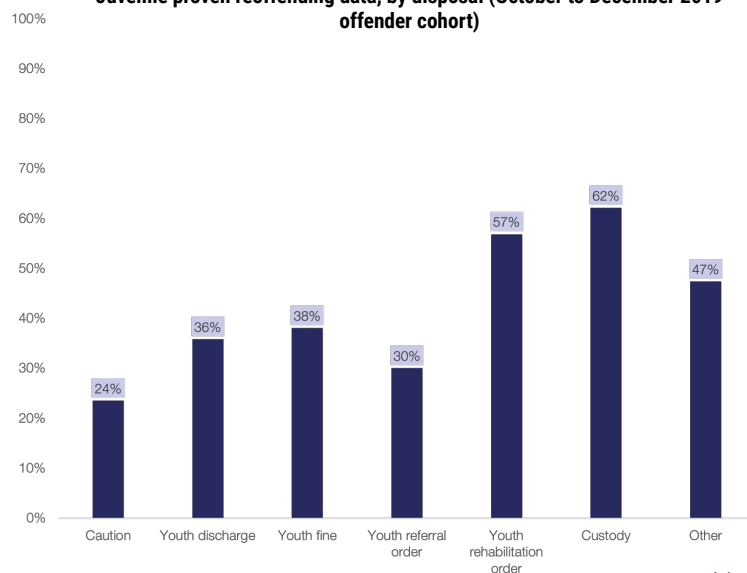


Short custodial sentences?

62% of adult offenders released from custody for a sentence of less than or equal to 6 months went on to reoffend.

63% of young offenders released from custody for a sentence of less than or equal to 6 months went on to reoffend.

Juvenile proven reoffending data, by disposal (October to December 2019 offender cohort)



There is evidence that disposals which involve diversion programmes are successful in cutting reoffending and reducing harm - but further research is needed which will require supporting forces to evaluate programmes using the most robust scientific methods

The combination of de-escalation and the characteristics of low-level offenders is likely to contribute towards out-of-court disposals having lower levels of reoffending. However, more research is required to compare outcomes across the criminal justice system.

One reason why it is difficult to compare across out-of-court disposals and court outcomes is that the offenders who are likely to be given an out-of-court disposal are **unlikely to repeatedly come into contact with the criminal justice system in the first place** - in effect, it is not clear how much the reoffending rate is related to the type of offender as much as giving the sanction. There is a lack of evidence of the comparative impact of out-of-court disposals and court outcomes on adult reoffending. However, aside from the conditions attached to an out-of-court disposal, these outcomes, as opposed to sending offenders to court, **prevent harmful contact with the criminal justice system** - evidence suggests that more contact with the criminal justice system, including for low-level and first-time offenders, makes reoffending more likely (de-escalation). This idea is a crucial one in the youth justice system and female offending.

"If you get a Durham University student who wants to be a barister, and they get drunk one night and do something stupid, they're always going to comply with Checkpoint, because why wouldn't they? ... My son, if he'd done something stupid under the provisions of what I said earlier on, he would have walked over broken glass to avoid getting any sort of conviction."

There is a growing body of persuasive evidence that demonstrates the effectiveness of diversionary out-of-court disposals, especially with regards to reoffending. However, more work could be done to develop the evidence base.

Data on a number of diversionary out-of-court disposals, mainly deferred prosecution schemes, suggests that **there is a positive impact on reoffending and harm**. Analysing evaluations of twenty diversion and deferred prosecution schemes operating in the United States, United Kingdom and Australia between 1976 and 2017, Cordis Bright found that **thirteen of the twenty programmes had a positive impact on reoffending rates [1]**. Admittedly, none of these programmes were evaluated using the most robust scientific methods - namely a randomised control trial, or an intervention group with pre- and post- intervention data (and matched comparison group). Research into Durham's Checkpoint programme found that the reoffending rate for the programme was 14.6%, lower than the 21.9% reoffending rate in a 'control' sample of 300 offenders who received other out-of-court disposals. Of those who committed further crimes, their offences were less serious than those in the control group and their custodial sentences were shorter [2]. In West Midlands, Operation Turning Point evidenced a 36% reduction in harm using the Cambridge Crime Harm Index but not a significant result with regards to reoffending [3].

In terms of youth justice, a joint report into the work done by Youth Offending Teams to divert young people away from prosecution was a "success story", but that it was **"difficult to prove the success empirically"** because there was no systematic national monitoring of the number of community resolutions used for young people, and how many children went on to receive further disposals or court outcomes following a community resolution [4].

Sources: [1] Cordis Bright evidence reviews: *What works in delivering diversion and deferred prosecution schemes?*; [2] Kevin Weir, Gillian Routledge, Stephanie Killi, *Checkpoint: An Innovative Programme to Navigate People Away from the Cycle of Reoffending: Implementation Phase Evaluation, Policing: A Journal of Policy and Practice*; [3] Peter Neyroud, *Out of Court Disposals managed by the Police: a review of the evidence*; [4] March 2018 - *An inspection by HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire & Rescue Services*.

Operation Turning Point and Checkpoint demonstrate how diversion programmes - as part of a deferred prosecution approach - can help cut reoffending rates and reduce harm

Operation Turning Point, West Midlands

Operation Turning Point was a deferred prosecution scheme, run by West Midlands Police, under which first or second time offenders were randomly assigned to court or given the choice to engage in the turning point programme. Turning point participants had to agree to comply with formal conditions that addressed the root cause of their offending behaviour. To be eligible, offenders must have been assessed as 'low risk' - that is, the offence would not have been likely to result in an instant prison sentence and they either had no previous convictions or one conviction from at least five years prior if they're an adult (two years prior if they were under 18). If the offender failed to comply, they were prosecuted for the offence that they were arrested for.

Of 414 Turning Point participants in a randomised control trial (RCT) 65% received a condition relating to restoration or reparation, 58% relating to rehabilitation and 33% relating to restrictions on their movements. Those who fail to attend the initial meeting, reoffend or fail to meet the terms of the Turning Point contract face prosecution.

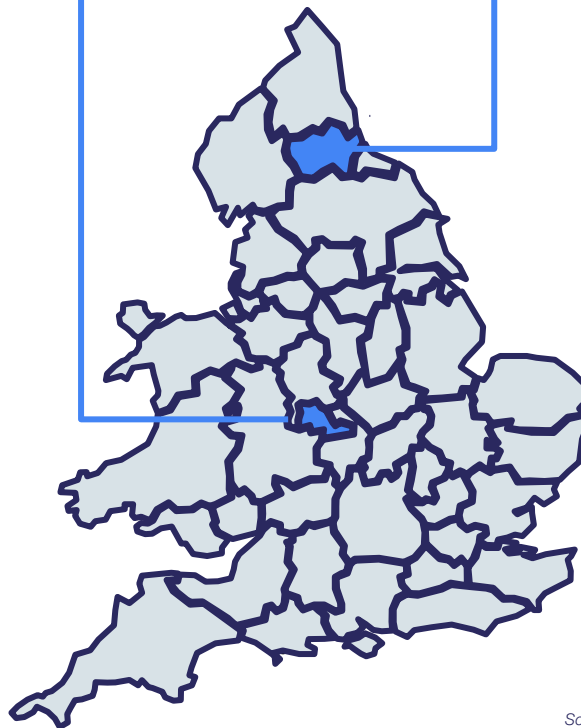
The Operation Turning Point RCT achieved 36% reduction in crime harm in the two years following initial arrest compared to a control group of people who were prosecuted.

Checkpoint, Durham

Launched by Durham Constabulary in 2015, the Checkpoint programme is a multi-agency out-of-court disposal diversion scheme for adults suspected of committing 'low-level' crimes. It is offered as an alternative to prosecution to tackle the underlying causes of offending. The suspect must agree to and complete a four-month contract containing up to five conditions (offending, victim, two pathway conditions, voluntary work/ tags) or face prosecution.

If they break the terms of the contract or reoffend, they will be prosecuted and the courts will be informed about their failure to comply. Not all crimes are eligible for Checkpoint.

The Institute of Criminology at Cambridge University conducted research into the scheme, analysing results for 519 participants, mainly men under the age of 30 with up to three previous offences; 90% of them completed it successfully. The reoffending rate was 14.6% - lower than the 21.9% reoffending rate in a 'control' sample of 300 offenders who received other out-of-court disposals. The reoffending rate includes rates for those who failed their contract due to a lack of engagement or because they reoffended.



There is also evidence that out-of-court disposals involving diversion schemes have helped cut costs and reduce demand on the police and criminal justice system. Key to their success is tailoring a diversion programme to the needs of the offender

A number of schemes have demonstrated that reductions in the costs to the police and the wider criminal justice system can be made.

Diversion may have an impact on aspects of police demand where the offenders are particularly vulnerable, especially if the diversion is tailored to the needs of the offender.

Eight of 20 programmes analysed by Cordis Bright were found to benefit the criminal justice system in terms of demand and costs. For example, Operation Turning Point was assessed to produce a 45% reduction in the costs of justice to the courts, Crown Prosecution Service and the police [1]; the Checkpoint scheme was found to have the potential to save Durham Constabulary £160,000 in its first year [2] and IOM Cymru Women's Pathfinder in Wales found that for every £1 spent, more than £2 was saved in policing costs alone [3].

The analysis also found that a consistent theme among successful diversion programmes was tailored diversion (this aspect is considered as well in the section on tailored diversion) [1].

Evaluation of research studies by the Centre for Justice Innovation found wider evidence suggesting pre-court diversion may be of value for vulnerable women, young adults, substance-abusing individuals and those with mental health illnesses. Female offenders often have high levels of need which are likely to increase if they are taken to court - prosecutions also adversely affect their children and other family members who depended on them [2].

Evidence from the Office for the Criminal Justice Reform in 2010 suggested prosecution to be more expensive than any out-of-court disposal [4]. However, it is not clear to what extent this has changed in the last decade, especially to take into account the growth in diversion opportunities across England and Wales.

In Thames Valley, Alana House takes out-of-court disposals referrals for women and offers support along the nine offending pathways identified by the Corston report. The force also manages referrals to the Prince's trust which offers support for securing employment or training for offenders under 30.

Out-of-court disposals and diversion schemes targeted at domestic abuse perpetrators are controversial. But there are signs they can work; an evaluation of the CARA programme showed it helped cut the number of further crimes and the level of harm caused by those who did re-offend*

According to the most recent data from the National Police Chiefs' Council, 21 police forces in England and Wales have some form of domestic abuse diversion scheme.

One such programme is Operation CARA (Cautioning and Relationship Abuse). It's aimed at domestic abuse offenders who have received a conditional caution.

CARA was evaluated during a weekend-long rehabilitative workshop for men who'd assaulted their partners but were assessed as 'low-risk'. Offenders were allowed onto the scheme only if it was their first domestic abuse offence and they'd admitted to committing the offence. Of those eligible to take part, 154 were selected at random. The remainder, 139, formed a control group. Each participant's record of police contact was recorded for the 365 days following the course; every police contact was assigned a code based on the Cambridge Crime Harm Index.

Offenders who had attended the workshop and were later rearrested committed crimes with a total CHI value 27% lower than those in the control group. Workshop participants were also 35% less likely to be rearrested than offend in the control group.

"This reduction in harm that we can point to for Operation CARA, and those are all really, really positive things, but unfortunately, only for one crime type. So again, going back to the research, I think it would be helpful to extend that research to involve more crime types, for example, hate crime, would be good, and to open our innovation to look at other crime types as well and what's possible there."*

"We're talking about sort of standard medium risk, domestic abuse, we're not talking about your high risk stuff that should be charged and go to court. And we're not talking about elements of domestic abuse with clear coercion and control offences being committed."

There is some evidence that victims of crime are more satisfied when an offender receives an out-of-court disposal and takes part in a diversion scheme than when they go to court. Keeping victims informed about their case and explaining what is happening are crucial

A randomised control trial (RCT) was carried out to compare victims' experiences of Operation Turning Point with those whose cases went to court. The RCT found that victims in the Turning Point group were 43% more satisfied than those whose cases went to court. The study found that this was largely because victims felt Turning Point was more likely to stop someone from reoffending. Victim satisfaction improved when Turning Point was explained to them. A 2011 Joint Inspectorate report into out-of-court disposals found the level at which victims of crime were satisfied about the outcome of their case hinged largely upon the extent to which they had been kept informed and updated.

However, particularly discussing victim satisfaction with the Youth Offending Teams in Thames Valley, the quality of engagement with victims by all agencies in out-of-court work could be improved. Especially where youth justice may encourage the use of out-of-court disposals for offences which had previously been dealt with at a higher level; one example was a community resolution for an assault which had resulted in the victim having a fractured cheekbone.

Other issues such as delays in police investigation also hinder victim engagement.

"I think the key to it is victim engagement, getting them on board, explaining what the process is and having that meaningful outcome." - *Frontline Police Officer in Thames Valley.*

"I feel like our victims are a lot happier because some of these investigations, we can investigate for six months and then others, a lot longer. Being able to deal with an incident within the first time of seeing someone or within a week period or even a month, I think there's a lot more victim satisfaction." - *Frontline Police Officer in Thames Valley.*

"Victim views are always the things I guess we struggle with." - *Youth Offending Team in Thames Valley.*

"By the time I make the initial contact, very often the victim, if the victim contact details are still correct for them they would have moved on. So they would say, "yeah, well that was a long time ago" ... so the scope to do any effective RJ [restorative justice] work has reduced significantly and it does show." - *Frontline Police Officer in Thames Valley.*

"I've had to contact people for some really nasty, serious offences that would previously have been a gravity score four offence that would have been charged or at least a youth conditional caution." - *Youth Offending Team in Thames Valley.*

In our interviews with senior criminal justice stakeholders, there was consensus and support around the use of out-of-court disposals, but there were some concerns about the evidence base

In the words of an official from the Ministry of Justice, who didn't want to be named, out-of-court disposals are a **“no brainer”**. But Sam Doohan, policy officer at the charity Unlock, which helps ex-offenders, said it was **hard to determine how effective** out-of-court disposals are and which types work best.

Similarly, senior staff at the College of Policing said that while there had been some **“spectacular” results** anecdotally, it was harder to pinpoint among other factors how much out-of-court disposals contributed to falls in reoffending and to quantify the impact over a long period of time. Other interviewees expressed concerns about the **lack of data on reoffending rates**.

Some stakeholders were particularly uneasy about the extent to which out-of-court disposals are used in the youth justice system. Jon Collins, who until March 2021 was chief executive of the Magistrates' Association, said some young offenders were **reaching the justice system too late**. “We're getting more concerned {about} seeing people in court and thinking they should have been here earlier on in their offending history and this has been allowed to drift for too long,” he told us, adding that the use of out-of-court disposals for young people had gone far enough. Justin Russell, Chief Inspector of Probation, said there'd been a **“massive” decline in the number of 10-17 year olds being prosecuted** or issued with a formal out-of-court sanction. That may partly be due to a strategy to divert young people away from the criminal justice system. But Russell said there was a **“slight concern”** that as a result **opportunities to pick up on factors affecting a young person's life were being missed** and the harm they were causing was **“escalating”**.

“Again, more research, I think, in testing the theories is needed in order to support the effectiveness of out of court disposals at cutting reoffending.”*

“There needs to be an evidence based case for it, as well as a sort of pragmatic 'courts can't handle this number of cases anymore', to make it run with the public.”

“I mean, there's a reasonable amount of evidence to say that they do work, but it's quite hard to determine how much they work and which kinds of them work better or worse.”

“The evidence is actually quite sparse. We do have some international evidence, it's given us some idea of what is possible. But most of that has been on the effects of diversion from prosecution on young offenders. So for adults, it's very, very limited.”

In our in-depth research in the Thames Valley police force area, there were concerns about using out-of-court disposals and diversion programmes to deal with adult offenders - especially if schemes were not adequately evaluated and awareness of them was low

A lack of knowledge of the options, and their effectiveness, open to police officers when they are administering an out-of-court disposal could be improved. Otherwise, there is a risk of poor buy-in into the concept of diversion and low referrals to services. One diversion provider helping 16 to 30 year old prepare for employment, received just one referral from the police in six months - an individual who failed to make contact or take part in the programme.

"We don't know how effective it actually is - we send people to it and get them to engage with it but we don't even know how it is." - *Frontline Police Officer in Thames Valley.*

"In relation to the services and what they provide, we've been given no training" - *Frontline Police Officer in Thames Valley.*

"We feel like the defendants who meet that criteria are coming through the doors but they are just not being referred." - *Police staff responsible for administering diversion in Thames Valley.*

Often, the sole option for diversion providers to evaluate the success of their scheme was via attendee feedback forms upon completion of the diversion schemes.

"If we had some sort of evidence base to underpin what we're thinking and feeling and hoping is the case." - *Diversion provider in Thames Valley.*

Measuring attendance and completion rate likely masks true levels of engagement by offenders on the course. The quote below refers to a drugs diversion scheme; the course offers six sessions and attendees are required to pass with a mark of 88% to complete the course.

"I've had a couple this week where they've only partially done the course, but they've completed the assessment at the end and they've scored 88% on the assessment, but they've only done a third of the course ... Both the officers in the cases concerned have agreed to mark it as 'completed' on the PNC". - *Police staff responsible for administering diversion in Thames Valley.*

Recommendations

Data driven

A principle for reform is that local and national data should be gathered and published on the use of out-of-court disposals and diversion programmes in order to analyse compliance, reoffending rates, victim satisfaction levels and financial costs. Statistics should be compiled on each type of intervention to ensure weaknesses can be identified and rectified.

Police forces, the Home Office and the Ministry of Justice should collect and publish data on:

1

Compliance levels, reoffending rates and victim satisfaction rates for each specific out-of-court disposal and diversion programme. Our research has shown that data collection in this area is extremely patchy, particularly for informal sanctions such as community resolutions. Without recording such information it is almost impossible to know what measures work and where they may be failing. Victims should be surveyed to find out their responses to different approaches so they can be adjusted accordingly.

2

The number and type of out-of-court disposals issued per offender - and the costs of each disposal to various parts of the criminal justice system. People should be directed towards diversion services that tackle their underlying offending behaviour and not left on an out-of-court disposal 'merry-go-round' - aggregate data on the crime outcomes, including out-of-court disposals, linked to offenders over time should be published. A cost-benefit analysis should be commissioned and published to understand the strengths and weaknesses of different system responses to offending.

3

The use of out-of-court disposals broken down by age, gender, ethnic background and police force area. The risk of not having reliable data about an approach intended to steer people away from prosecution and the courts is that unfairnesses, disparities between police forces and possible racial bias are not spotted and addressed. This was an issue highlighted by the 2017 Lammy Review. All forces should begin collecting data in a uniform way with publication coordinated nationally every six months.

Recommendations

Effective

A principle for reform is that any change in the use of out-of-court disposal and diversion should be based on evidence of their impact on (1) reoffending, (2) future contact with the criminal justice system, (3) victim satisfaction and (4) improved life outcomes, particularly in comparison with offenders who are sentenced by the courts.

The Home Office should:

4

Commission analysis to compare reoffending rates & victim satisfaction levels between each type of out-of-court disposal & sanctions imposed by the courts. Once a system for collecting data is set up (see page 49), The Home Office, with the College of Policing, should support forces to measure the effectiveness of out-of-court disposals & diversion schemes by issuing guidance on robust evaluation options and ring fencing money for such evaluation. These should be carried out regularly to ensure changes in the delivery of programmes are monitored.

The College of Policing should:

5

Commit to strengthen the evidence of 'What Works' on out-of-court disposals and diversion schemes and ensure best practice is shared as widely as possible, in a similar way to its Crime Reduction Toolkit. Some police force projects assessed to be successful, such as Checkpoint, have been adopted by other constabularies but the College of Policing should be far more proactive about encouraging greater use of such approaches.

Recommendations

Effective

A principle for reform is that any change in the use of out-of-court disposal and diversion should be based on evidence of their impact on (1) reoffending and harm reduction, (2) future contact with the criminal justice system, (3) victim satisfaction and (4) improved life outcomes, particularly in comparison with offenders who are sentenced by the courts.

Police and Crime Commissioners should:

6

Set up systems to track the use and effectiveness of out-of-court disposals and diversion schemes in their local area and improve coordination between police forces and providers of diversion services. Differences in approach within a police force area risk causing confusion and unfairness; quality of services is undermined when police & providers don't work together - Police and Crime Commissioners should make it a priority to get this right.

7

Monitor referrals, completion, engagement, reoffending, future contact with the criminal justice system and life outcomes of out-of-court disposals and diversion schemes. Police and Crime Commissioners have a duty to hold their local force to account for their approach to crime so they should build an evidence-base on which to do so. They should publish a report each year on their findings.

Oversight and standards



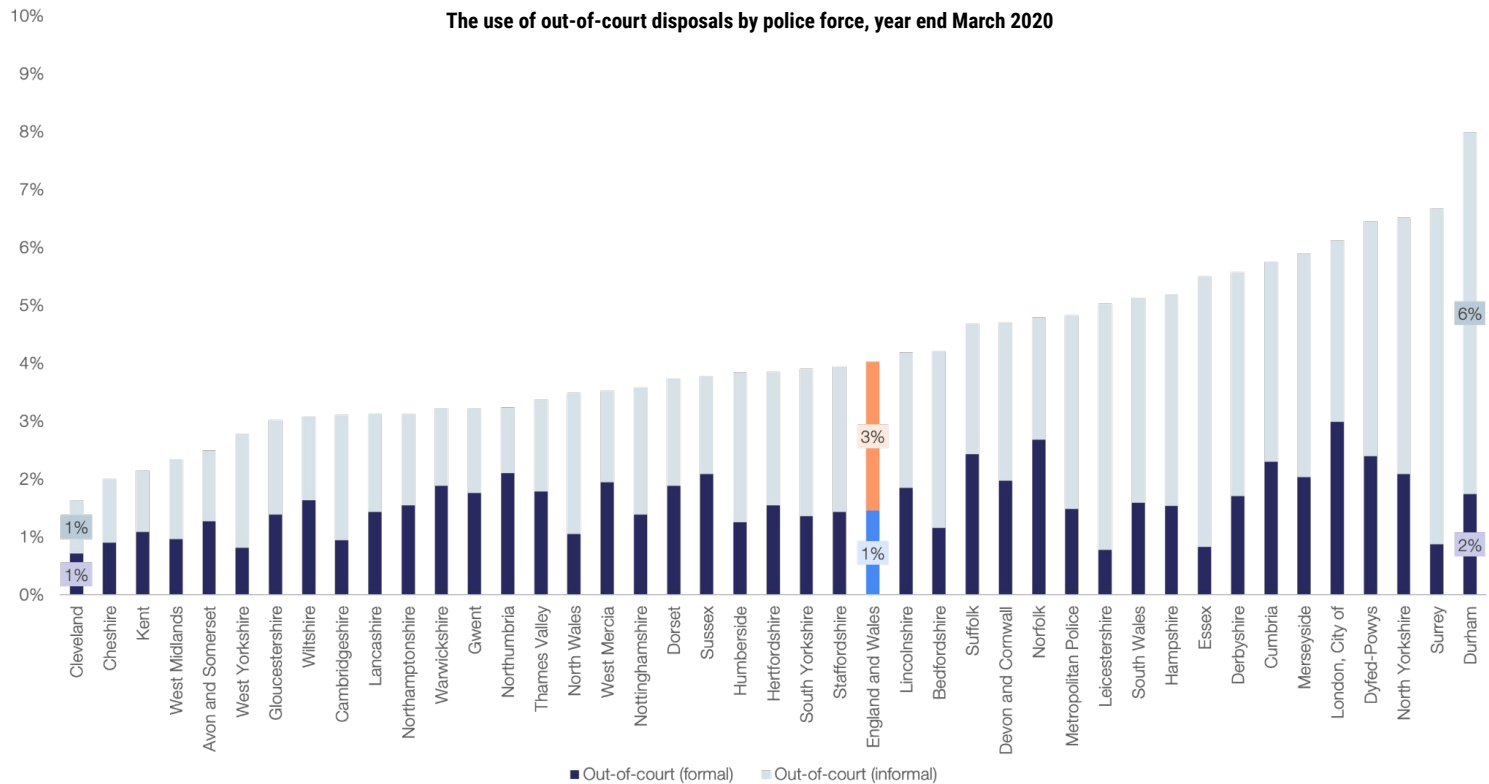
Although it is right that Police and Crime Commissioners and chief constables decide how out-of-court disposals are used locally, a stronger system of oversight and national standards is needed to iron out inconsistencies and confusion that risk undermining public confidence

There should be greater oversight of the use of out-of-court disposals and diversion schemes to ensure greater consistency within and across police forces and Youth Offending Teams. National standards and closer monitoring will reduce the risk that some groups of offenders are disproportionately affected and that interventions are used which don't work.

Key findings:

- The use of out-of-court disposals varies considerably, with the proportion of disposals issued four times greater in some police force areas than in others. Innovative approaches which tackle specific problems affecting a local area should be encouraged but wide disparities between neighbouring forces are hard to explain.
- Out-of-court disposals are issued for a wide spectrum of crimes, from drugs possession to robbery and sexual offences, raising concerns about whether their use is always appropriate and if it is being monitored properly.
- There is a lack of consensus among stakeholders as to whether certain offences, such as hate crimes and domestic abuse, should be 'off limits' to out-of-court disposals.
- There is inconsistency and confusion about whether suspects must admit guilt or take responsibility for the crime they're suspected of in order to qualify for some types of out-of-court disposals and diversion schemes.

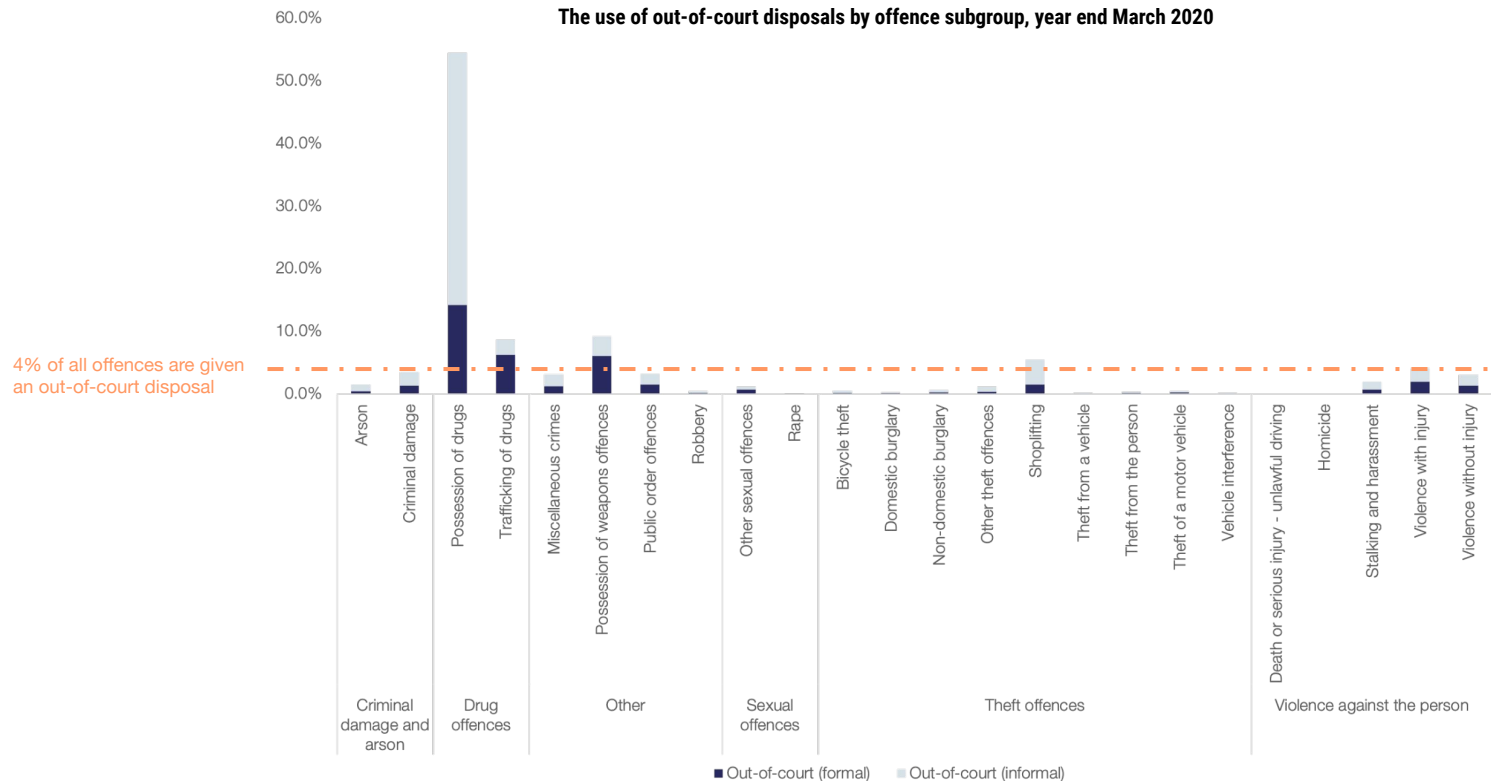
The use of out-of-court disposals varies widely between police forces. For example, in the Durham police force area 8% of crimes result in an out-of-court disposal compared to 2% in neighbouring Cleveland



Source: Home Office, Police recorded crime and outcomes open data tables: Outcomes open data year end March 2020.

Out-of-court disposals are issued for a range of offences, some of which are serious crimes, raising questions as to whether their use is always appropriate. Over half of drugs possession cases lead to an out-of-court disposal - more than any other crime

The use of out-of-court disposals by offence subgroup, year end March 2020



Source: Home Office, Police recorded crime and outcomes open data tables: Outcomes open data year end March 2020.

There is little consensus among those working in the criminal justice system as to whether the range of offences for which out-of-disposals are issued is too broad. Opinion is sharply divided about using out-of-court disposals and diversion schemes for hate crime and domestic abuse

The question of the limits on the use of out-of-court disposals is particularly difficult to find common ground on. Although most interviewees said out-of-court disposals **should not be available for the most serious offences**, there was a lack of agreement about which crimes fall into that category.

Detective Superintendent Kevin Weir, from Durham Police, said out-of-court disposals should not be used for rape or other sexual offences, apart from ‘sexting’. Stephanie Killili, who is the Policy and Commissioning Officer for Durham’s Police and Crime Commissioner, said **hate crime offences also weren’t suitable** without conditions or effective interventions, while Jon Collins, who worked at the Magistrates’ Association for four years, added to the list of exclusions people with “very long strings of criminal convictions”, and Justin Russell, Chief Probation Inspector, said **people suspected of sexual or domestic abuse needed to be prosecuted**.

However, an official from the Ministry of Justice, who didn’t want to be named, was in favour of greater use of conditional cautions for domestic abuse, hate crime and young first-time knife offenders: **“We need to be a little bit bolder in our thinking,”** he said.

Others proposed different ways of deciding when to use out-of-court disposals. Commander Alison Heydari, who leads on the issue for the National Police Chiefs’ Council, said the test should be whether there was a **“risk to public safety”**, solicitor-advocate Stuart Nolan, from DPP Law, said **“harm and culpability”** were the key factors, and Desmond Brown, independent chair of the Avon and Somerset Lammy review group, said the **victim’s views** should be taken into account. Several participants accepted that each case should be considered on its own merits. Sam Doohan, policy officer at Unlock, was alone in not wanting any “formal boundaries” for maximum flexibility.

“Things that involve teenage relationship abuse or domestic abuse cases involving boys and their girlfriends [should be prosecuted], which can be quite disturbing sometimes.”*

For young people, out-of-court disposals and diversion schemes have been used as an alternative to prosecution and as part of a drive to reduce the numbers going into custody. Some stakeholders are concerned the trend may have gone too far

In March 2018, a joint report by HM Inspectorate of Probation, the probation watchdog in England and Wales, and HM Inspectorate of Police, Fire and Rescue Services was complimentary about the work done by **Youth Offending Teams** to divert young people away from prosecution.

But Justin Russell, who became Chief Inspector of Probation in 2019, said he had a “slight concern” that, as a result of efforts to steer young people away from the courts, **opportunities to pick up on factors affecting a young person’s life were being missed** and the harm they were causing was “escalating”. Jon Collins, reflecting the views of the Magistrates’ Association where he used to be chief executive, said some **young offenders were reaching the justice system too late**. “We’re getting more concerned {about} seeing people in court and thinking they should have been here earlier on in their offending history and this has been allowed to drift for too long,” he told us, adding the use of out-of-court disposals for young people had gone far enough.

Others disagreed: Thames Valley Police Detective Chief Inspector Jason Kew, who has led a diversion scheme for drug offenders, said out-of-court disposals involving such schemes helped to **prevent young people from committing more serious offences** due to their focus on a “wider, trauma-informed lens”. And although Durham Police’s ‘Checkpoint’ programme is not used for under 18 year olds, Detective Superintendent Kevin Weir and Stephanie Killili, Policy and Commissioning Officer for Durham’s Police and Crime Commissioner, pointed to “robust figures” indicating that young adults, aged 18 to 25, had stopped offending after involvement with the scheme.

“What my team are about is being able to engage and spend a bit more time with them, and it be a bit more meaningful in the hope that we can prevent them from going on to commit crime or from coming to any harm themselves. I have seen community resolutions authorised by inspectors on area for quite nasty offences. I’m thinking ... this is missing the point.” - *Youth Justice Unit, Thames Valley**

“We’re not saying it’s not a community resolution. But have you done enough to prevent him from doing it again.” - *Youth Justice Unit, Thames Valley**

There is inconsistency and confusion about whether offenders should admit guilt or accept responsibility before being issued with an out-of-court disposal. Criminal justice experts say the system should be flexible - but there is an urgent need for clear guidelines

For most kinds of out-of-court disposal, the offender must admit guilt or accept responsibility for what they've done. But there is confusion among practitioners which is not helped by contradictory official guidance. For example, when it comes to conditional cautions, both the [Sentencing Council](#) and the [Ministry of Justice](#) code of practice say the offender "must admit" the offence. But the [Crown Prosecution Service](#) and the [College of Policing](#) say a conditional caution can be imposed as long as the offender has "not denied" the offence. Under some diversion and deferred prosecution schemes, such as 'Checkpoint' and pilot programmes in West Yorkshire and three London boroughs, offenders don't have to make any admissions - a point which is not widely understood.

Our interviewees emphasised the need for **flexibility**. Desmond Brown, independent chair of the Avon and Somerset Lammy review group, said some people from ethnic minority groups had lost trust in the criminal justice system and refused to admit guilt, hence the **need for deferred prosecution schemes**. Commander Alison Heydari, the National Police Chiefs' Council lead, said such schemes should be extended as a way of producing a "firmer evidence base" that the requirement to admit guilt disadvantages some ethnic minorities.

Sam Doohan, from Unlock, pointed to the approach in the United States where suspects can plead "no contest"; Jon Collins, formerly of the Magistrates' Association, said adults should admit guilt to qualify for an out-of-court disposal but the **situation with young people was more "nuanced"** with the need only for a "shared agreement of what's happened".

"If we use a power, it's really important for me that we've got that scrutiny in place to ensure that we have that mechanism that feeds into the trust and confidence of communities but also allows police officers to have some self legitimacy around the use of that power. That's very important."*

Our study of the Thames Valley police force area found that when dealing with young people there were different approaches to admissions of responsibility and 'no comment' interviews. National standards are needed on this to prevent ethnic disproportionality in the justice system

A Centre for Justice Innovation report found that the requirement for young people to admit guilt in order to qualify for an out-of-court disposal and diversion scheme may act as a **barrier for ethnic minority offenders**.

According to the report, some practitioners suggested those from Black, Gypsy, Roma or Traveller backgrounds were less likely to admit offences because they **distrusted the criminal justice system**. As a result they **missed out on rehabilitation programmes** designed to cut reoffending and avert prosecution and court proceedings.

Among Youth Offending Teams (YOTs) in Thames Valley, **different approaches emerged around the controversial issue of 'no comment' interviews**, where suspects refuse to answer questions put to them by police.

In **one area of Thames Valley**, if a suspect says 'no comment' police are not permitted to issue an out-of-court disposal because it's considered the young person has not admitted the offence. **Elsewhere**, officers and staff in YOTs believe a 'no comment' interview indicates the suspect is simply not denying the offence or putting forward a defence. They believe the suspect should be eligible for an out-of-court disposal - as long as there is some sort of acceptance of responsibility when the sanction is administered.

It means that for the same offence, a young person is sent to court in one part of Thames Valley - but given an out-of-court disposal in another area, **risking disproportionate outcomes** for individuals from certain backgrounds. **National standards** must be set to avoid such disparities within forces and across force boundaries.

"'No comment' is really difficult for YOTs ... they give a 'no comment' interview because they're very fearful ... so if you want us to assess whether it's a youth conditional caution, this young person isn't actually admitting guilt." - *Youth Offending Team in Thames Valley*.

"I feel that young people who haven't been through the system are a little bit more to trusting professionals." - *Youth Offending Team in Thames Valley*.

"There is also a question around do young people understand in terms of what admission of guilty is, what responsibility is what could happen as a result of that, how the police may be managing those sort of situations, especially when we know the majority of young people in the youth justice system do have additional needs." - *Youth Offending Team in Thames Valley*.

"What we've decided to do from a YOT point of view is that where there are 'no comment' interviews that are coming through for consideration for out of court, we are no longer assessing for a youth conditional caution ... So actually you need to look at this, go through the CPS and look at a charge or an NFA." - *Youth Offending Team in Thames Valley*.

Victims should not be able to veto the use of an out-of-court disposal in their case, but they must have more opportunities to be involved in the process. There is also further scope to address their needs by the greater use of 'restorative justice', as part of diversion schemes

The views of victims are an important consideration in issuing out-of-court disposals and are not incorporated enough into the process. But criminal justice practitioners and experts agreed that this should not extend to a 'veto' on whether the disposal is given.

"We always must take the voice of the victim into consideration."

"You don't want to start to undermine public confidence because they think people are perceived to be getting away with it, or victims get increasingly unhappy with that happening."

"[Victims] shouldn't have a veto on it but they should be in the sort of loop, I think, when these sort of decisions are made. And the sort of restorative justice aspects of out-of-court work are important."

"I don't think we hear enough also about the victim's voice in discussing this issue. So the victim-led crimes - surely the victim wants to hear someone who's owned up to what they've done."

"I think the key to it is victim engagement, getting them on board, explaining what the process is and having that meaningful outcome." - *Police Officer in Thames Valley.*

"Victim views are always the things I guess we struggle with." - *Youth Offending Team in Thames Valley.*

Victims do not always approve of the decision to give an out-of-court disposal. But it is not right to say that victims will always object to an out-of-court disposal because the case is not going to court; sometimes the disposal is satisfactory in terms of justice being served.

"Sometimes we do get regular contact from the victims about how they feel - perhaps they've been let down by the process, they weren't aware when they were told by the officer that this was what was going to happen. 'Oh I just feel like the person's had a slap on the wrist. This is not what I wanted.'" - *Police Staff in Thames Valley.*

"I feel like our victims are a lot happier because some of these investigations, we can investigate for six months and then others, a lot longer. Being able to deal with an incident within the first time of seeing someone or within a week period or even a month, I think there's a lot more victim satisfaction." - *Police Officer in Thames Valley.*

"If they don't do the diversion courses, the likelihood is that they end up going to court, they might get a fine, but they won't have learnt anything... They're there to learn, to see the impact of their actions on the victim, on themselves, on their family." - *Diversion provider in Thames Valley.*

Restorative Justice focuses on repairing harm done, a form of conflict resolution involving all parties.

Recommendations

Oversight

A principle for reform is that there should be greater oversight on the use of out-of-court disposals and diversion schemes to ensure there's a more consistent approach within and across police forces and Youth Offending Teams. National standards and closer monitoring will reduce the risk that some groups of offenders are disproportionately affected and that interventions are used which don't work; scrutiny panels are key stakeholders in upholding national standards.

The Ministry of Justice and Home Office should:

8

Set out a national framework of standards around the use of community resolutions including which offences they are appropriate for.

Despite the changes proposed in the Police, Crime, Sentencing and Courts Bill 2021, police forces will still be allowed to use community resolutions. The framework needs to find the balance between an appropriate light-touch response to low-level and first-time offending and the opportunity to address offending behaviour at the earliest opportunity, especially for young offenders.

9

Commission research to understand and find ways to address wide variations between police forces in their use of out-of-court disposals and diversion. This research should examine in particular whether current capacity and capability in forces limits their use of out-of-court disposals and diversion to address crime, especially studying the awareness and availability of diversion options. Findings from this research should inform the transition to the statutory proposals outlined in the Police, Crime, Sentencing and Courts Bill 2021.

10

Ensure each force has an effective independent panel to scrutinise the use of out-of-court disposals, in particular community resolutions. As well as considering the appropriateness of the disposal for the offence and offender, these multi-agency panels should also review the appropriateness of the conditions attached to the disposal with a view to ensuring effective offender rehabilitation and victim reparation. These panels should be able to request data to review the effectiveness of these disposals against key metrics; reoffending, harm reduction, victim satisfaction and improved life outcomes.

11

Set clear national guidelines for out-of-court disposals on (1) admitting guilt, taking responsibility for offences and 'no comment' interviews and (2) ensuring victims views are taken into consideration and reparation/ restorative justice opportunities are sought.

Independent panels should be able to review police force compliance with procedural justice for offenders and victims, alongside the appropriateness of the disposal for the offence and offender.

Tailored diversion



There is evidence that out-of-court disposals can be effective when they involve diversion programmes targeted at the underlying causes of an individual's offending behaviour. But agencies in the criminal justice system are not yet fully geared up to this approach

A principle for reform is that out-of-court disposals and diversion schemes are tailored as far as possible to the individual. Measures to keep people out of the criminal justice system and steer them away from crime work best when they are targeted at the specific problems that underpin their offending behaviour.

Key findings:

- Out-of-court disposals which involve diversion schemes tailored to the needs of offenders present real opportunities for tackling reoffending and promoting rehabilitation. Most criminal justice practitioners and experts who contributed to this research agreed that there is merit in expanding their use.
- Tailored diversion requires up-front investment. Different ways of funding such programmes should be found to create incentives for police forces and Police and Crime Commissioners to provide the necessary resources.
- Assessing young people aged under 18 so they attend diversion schemes tailored to their needs is at the heart of out-of-court disposal work conducted by Youth Offending Teams (YOTs), providing a possible model for adult offenders. Use of tailored diversion varies across police force areas, with best practice including the ASCEND approach in Avon and Somerset and programmes specifically designed for female offenders.
- Speed is vital. Youth Offending Teams (YOTs) should engage quickly and in a meaningful way with the people they're responsible for but this is made more difficult by police delays in notifying YOTs and investigations which take a long time. Fixing this problem should become a priority.

There has been a drive across England and Wales to steer young people away from the courts and custody - towards out-of-court disposals involving diversion programmes tailored to their individual needs. Youth Offending Teams (YOTs) say it's a growing amount of their work

YOTs work with young people who get into trouble with the law. They are typically made up of police officers, probation staff, social workers, education and health specialists. YOTs are taking on more out-of-court disposal and diversion work, an increase which may be linked to the growing use of community resolutions. In a 2018 inspection, YOTs estimated 30% to 80% of their workload involved out-of-court work.

"Since the introduction of the LASPO Act, there's definitely been a shift. So you would see less young people in court. I remember when I first started the job, and we would have a board in our room and it was just full of reports, court reports ... that's completely changed." - Youth Offending Team.

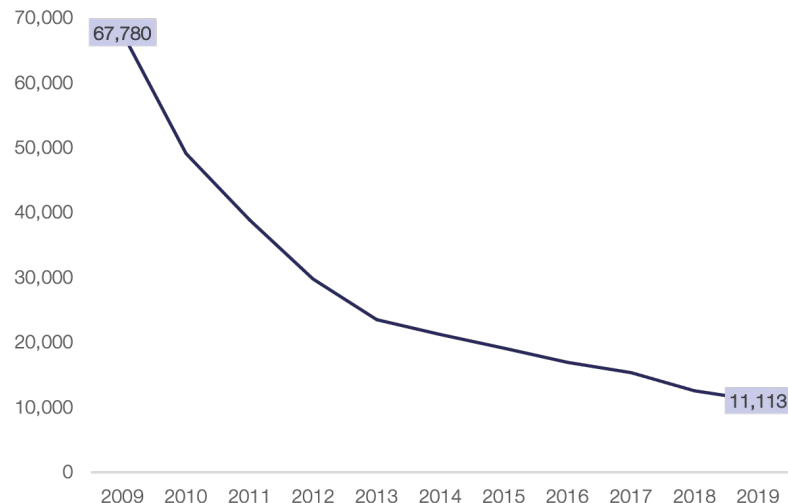
"We will do our utmost as a youth offending team to work with that young person and their family to keep them out of custody." - Youth Offending Team.

"I think there's a big drive in education to identify lower level cases that are suitable to be dealt with swifter [sic], by way of a community resolution, which I think is the positive." - Youth Offending Team.

"[moving to the Youth Justice Unit] was quite a change in approach really compared to what I've been used to. Because in previous roles, I've been in CID and it's all about capturing convicts and locking these bad people up, whereas now it's much more rehabilitative." - Youth Justice Unit.

Between 2009 and 2019, the number of children aged 10 to 17 who received a youth caution or who were sentenced by the courts for the first time fell by 84%. This group of young offenders are known as 'first time entrants to the criminal justice system'.

Number of first time entrants to the criminal justice system in England and Wales, years ending December 2009 to 2019

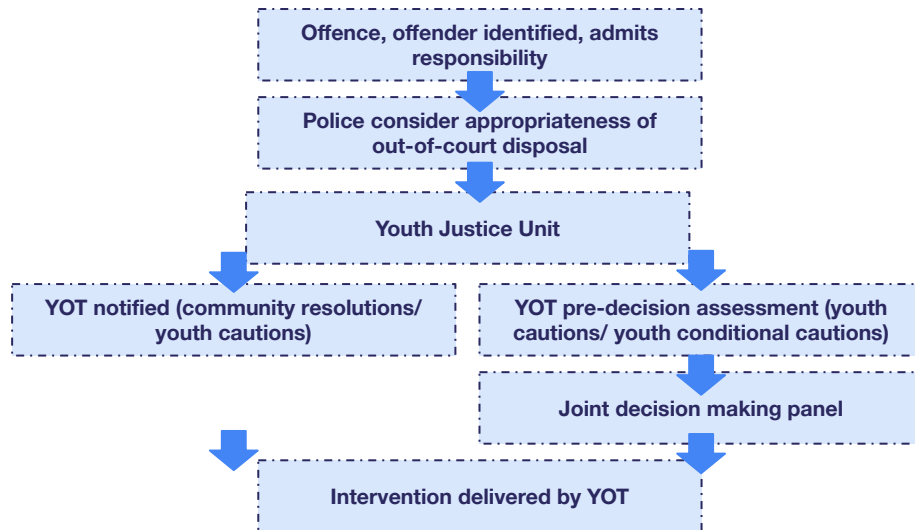


We conducted a 'deep dive' in the Thames Valley Police force area to find out how out-of-court disposals are used - in particular, the use of tailored youth diversion programmes. Our findings highlighted commendable practice as well as areas for improvement

Youth Offending Services in Thames Valley police force area



When a young person in Thames Valley aged 10 to 17 is suspected of a crime, their case is dealt with by the police Youth Justice Unit (YJU), comprising two sergeants, officers and staff. Three types of out-of-court disposal may be used: community resolution, youth caution and youth conditional caution, as well as diversion schemes. Decisions are made by the YJU, usually after consulting one of the nine Thames Valley Youth Offending Teams (YOTs). We carried out focus groups with all of them.



Youth Offending Teams in the Thames Valley area place great emphasis on engaging quickly and in a meaningful way with the young people they're responsible for. That can be challenging during procedural delays and lengthy police investigations - YOT support at these times is crucial

Relationships between the police-led Youth Justice Unit (YJU) and Youth Offending Teams (YOTs) were broadly positive; the 'child-first' approach of YOTs informed and challenged police decision making. But the aims of the YJU and YOTs sometimes appeared in conflict, with those on the police side primarily - unsurprisingly perhaps - focused on enforcing the law. For example, police do not consult YOTs when delivering community resolutions.

"Sooner or later, everyone [in the police] will have got that same message. That message is if you've got a young person who has already received an outcome, send it to us to make that decision, because we can make a more informed decisions in partnership with the YOT and other professionals." - *Youth Justice Unit*

"Then we get to the other critical point which is the community resolution doesn't allow for any, and the process does not consider in any part of the country, actually, that there should be consultation, because it's more of an on the spot resolution and I have my views about whether that's a decision that it's right for the police to make." - *Youth Offending Team.*

Investigations involving young people are expected to be dealt with speedily. When there are delays, the quality of work that Youth Offending Teams are able to carry out with those they are responsible for is affected.

"I think the biggest bugbear that we have ... is just the length of time sometimes it takes for cases to be processed to the point that then the information can come through for a disposal to be made." - *Youth Offending Team.*

"Some our young people have been through actual community orders before they've come through. So this offence may predate a community order that has been issued." - *Youth Offending Team.*

"I've noticed there's lots of out-of-court disposals coming through for consideration that are 12 months, 18 months old." - *Youth Offending Team.*

"If we can actually get in there and deal with them, as soon as possible after the offence, it has more effect on them. Because in a 14 year-old child's mind, what happened five or six months ago is years ago." - *Youth Offending Team.*

YOTs in Thames Valley have come up with solutions to help support young people during investigations. For example, the police might send a 'prevention letter' on behalf of the YOT to a young person before they are given an out-of-court disposal.

Assessing young people aged under 18 so they attend diversion schemes tailored to their needs is at the heart of out-of-court disposal work conducted by Youth Offending Teams. Young adults would benefit from such an approach to avoid a 'cliff edge' of loss of support after they turn 18

Youth Offending Teams complete a comprehensive assessment of each young person who is referred to them before decisions are made about issuing an out-of-court disposal and recommending a diversion scheme. Assessments are completed with the young person's involvement and with input, if possible, from parents. The assessments often uncover needs that have not been identified or dealt with by other services.

Research suggests the brain continues to develop well into adulthood and does not reach maturity until the age of 25 to 30. Following a literature review by the University of Edinburgh, the Scottish Sentencing Council recommended in 2020 that brain development should be taken into account during sentencing. But in England and Wales, young offenders are treated very differently after they turn 18, with the National Probation Service assuming responsibility from Youth Offending Teams. For adults, there is less emphasis on out-of-court disposals and tailored diversion programmes with fewer schemes available.

"You see the child before the offender." - *Youth Offending Team.*

"We have a very good offer for young people in terms of trying to identify underlying needs. But until you get to us, if you haven't had the benefit of that type of support, then those needs may be unknown." - *Youth Offending Team.*

"This is part of what makes it more complex. So we're going through the assessment stage identifying additional needs that perhaps haven't been picked up at school or at home." - *Youth Offending Team.*

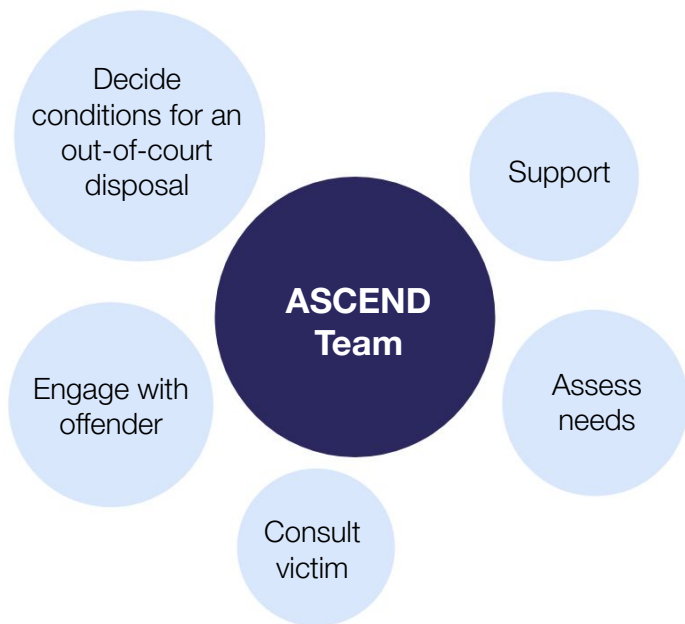
"If I wasn't there with him and his mum at the time, I wouldn't really have know that." - *Youth Offending Team.*

"There is a knife edge. Once they turn 18, there isn't any of that transitional work that takes place ... in terms of diversion, there is no handover, there is no transfer. So a 17 year old receiving diversion in YOT to them receiving diversion at 19 is a very different story." - *Youth Offending Team.*

"It's not the best system ... without being disrespectful for probation officers who are very overworked." - *Youth Offending Team.*

"So before I worked in the YOT, I was a probation officer and so I was on the receiving end of young people coming through to probation and I hated getting them because the service that is provided is so very different because youth offending is more welfare-based" - *Youth Offending Team.*

The ASCEND service for tailored diversion programmes in the Avon and Somerset police force area operates in a similar way to a Youth Offending Team. It is a model for how adult offenders who receive out-of-court disposals could be dealt with



In order to tailor diversion programmes to the needs of adult offenders, Avon and Somerset Police set up the ASCEND service (Avon and Somerset Constabulary Engage Navigate and Divert).

An ASCEND worker meets the offender to assess their needs and draw up conditions which the offender must comply with as part of their out-of-court disposal. They may also be ordered to attend a scheme to tackle the problems underlying their criminality. As part of the assessment, the victim of the offence is consulted.

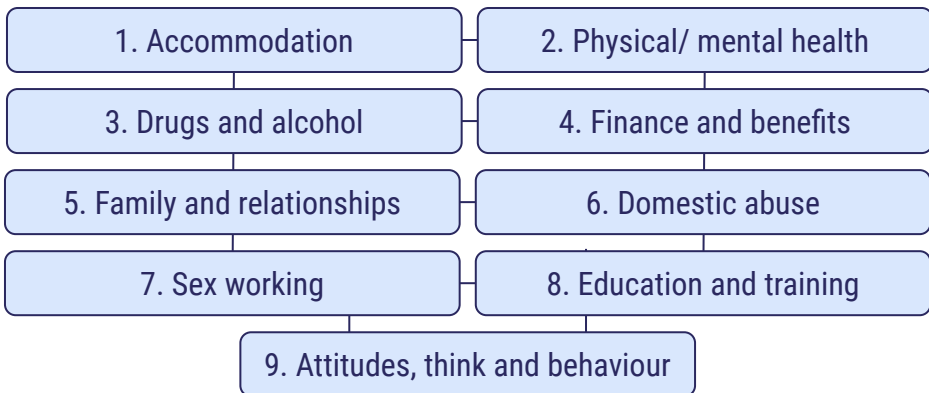
The service is open to cases where a community resolution or community caution is being considered.

"The ASCEND team have really contributed to the success of Avon & Somerset" - Police staff in Thames Valley police force responsible for administering diversion.

There are also good examples of tailored diversion programmes designed specifically for women who have received an out-of-court disposal. The schemes are structured around nine 'pathways' out of crime and provide a model that could be more widely used

The government's 2018 Female Offender Strategy aims to reduce the number of women coming into contact with the criminal justice system partly through better use of out-of-court disposals. The Strategy suggests boosting the number of rehabilitative conditions attached to disposals and ensuring they address the underlying causes of female offending.

Women's diversion schemes are often structured around nine resettlement pathways identified by Lady Corsten in her landmark 'Review of Women with Particular Vulnerabilities in the Criminal Justice System', which was published in 2007:



24 police forces operate women's diversion schemes*

Enrich Project at [Alana House](#), Thames Valley - if a crime is suitable for an out-of-court disposal, a referral will be made through NHS Liaison and Diversion targeting three categories of vulnerability: (1) domestic violence (childcare issues, single parenthood, intergenerational offending), (2) mental health (substance misuse) and (3) socio-economic factors (poverty, unemployment, isolation, offending behaviours). A police officer issues a community resolution with a condition to attend and engage with the Enrich Project.

[Project SHE](#), Avon and Somerset - if a crime is suitable for a community resolution or conditional caution, a woman will be referred to Project SHE run by the Nelson Trust.

[WONDER project](#), Norfolk - if a crime is suitable for a conditional caution, a woman will be referred to WONDER. All women are allocated a project link worker who will assess individual needs and produce a plan to address those needs.

Sources: Ministry of Justice (June 2018), Female Offender Strategy; Corston, J. (2007). The Corston Report: A review of women with particular vulnerabilities in the criminal justice system. Home Office. *Data provided by the National Police Chiefs' Council.

Most criminal justice practitioners and experts agree there is merit in expanding the use of diversion schemes as part of a drive to increase take-up of out-of-court disposals. But they warn that providing meaningful and effective rehabilitation programmes requires extra resources

Almost all of the stakeholders we interviewed believed **out-of-court disposals should be used more widely**. David Lloyd, from the Association of Police and Crime Commissioners, said they provided better outcomes for victims and perpetrators and could help tackle the backlog of criminal cases: “Based on the current crisis we face in the courts we may have to look better at how to use diversion to **keep more cases from entering into the court system**.” Jason Kew, from Thames Valley Police, said it would tie in with a **‘public health approach’ to violence**, allowing young people to be steered towards rehabilitation. Desmond Brown, from Avon and Somerset Criminal Justice Board, said **every opportunity should be taken to rehabilitate, not punish**. Solicitor-advocate Stuart Nolan, from DPP Law, said it would be possible to broaden the use of out-of-court disposals by adding **requirements and conditions of “substance”**.

But a Ministry of Justice official questioned if **resources would be made available**, while Justin Russell, chief probation inspector, warned that **investment in services for adolescents** would be needed. Metropolitan Police Commander Alison Heydari said expansion would entail explaining the benefits to front-line officers; working together with Police and Crime Commissioners; and **evaluating the impact** of the measures.

Jon Collins, who used to lead the Magistrates Association, was the only expert to raise **doubts about expansion**, saying although it might reduce the number of cases in magistrates’ courts, it wouldn’t have much effect on Crown Courts, where backlogs and trial delays were more severe.

“So that I think that kind of very specialists caution can do an enormous amount of good to people with complex needs.”*

“Those conditions where it does require somebody to actively do something such as going on a course, or some sort of intervention, I think, we’ll naturally see an increase in that once the new legislation comes into play.”

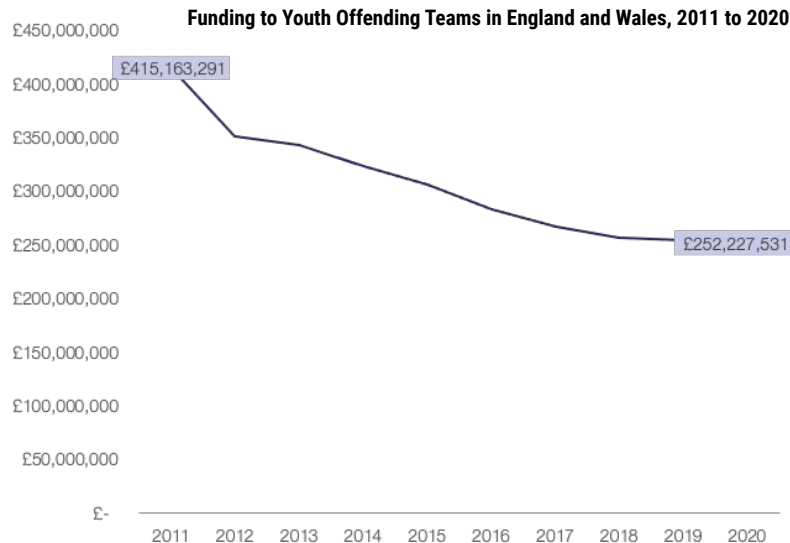
“Parallel to [proper processes] we need to be properly investing in services for adolescents, that identifies and deals with their needs.”

“Deferred prosecution and diversion programmes are their own magisteria, and we would certainly suggest that they should be used as much as there is funding to use them in a successful manner.”

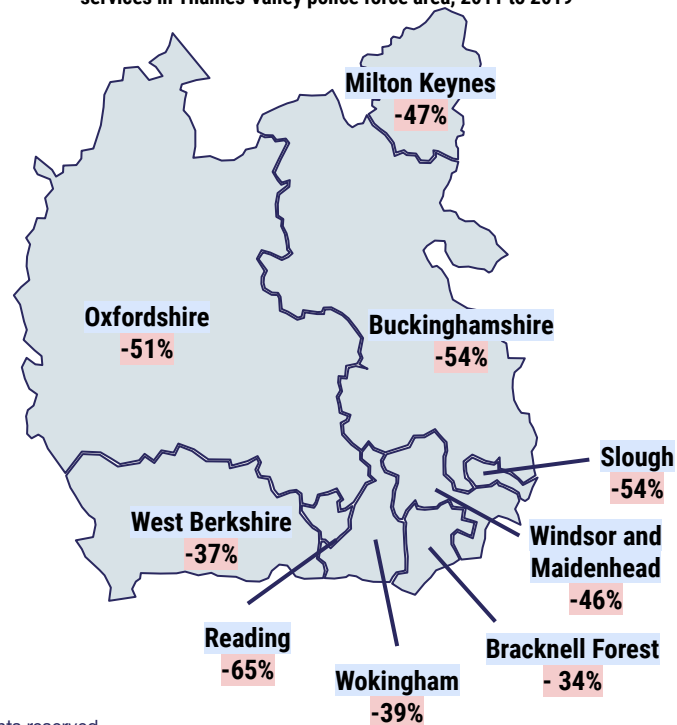
“There needs to be a bit more investment in some of these out of court disposals to achieve what you want to achieve.”

A squeeze on resources over the past ten years has affected the provision of tailored diversion programmes in the youth justice system across England and Wales. In the Thames Valley police force area, funding for some youth offending services was cut by half

Between 2011 and 2020, funding for youth justice services in England and Wales fell by 39%, from over £415 million to under £255 million. That included Youth Justice Board (YJB) grants and funding from local authorities, police forces, Police and Crime Commissioners, probation and health. Funding from the biggest contributors, the YJB & local authorities, dropped by 50% & 30%.



Percentage change in Youth Justice Board grant funding to youth offending services in Thames Valley police force area, 2011 to 2019



Recommendations (1/2)

Tailored

A principle for reform is that out-of-court disposals and diversion schemes are tailored as far as possible to the individual. Measures to keep people out of the criminal justice system and steer them away from crime work best when they are targeted at the specific problems that underpin their offending behaviour.

The Home Office and the Ministry of Justice should:

12

Set up a joint Home Office-Ministry of Justice innovation fund for new tailored diversion programmes. When the Police, Crime, Sentencing and Courts Bill becomes law, all formal adult out-of-court disposals will be required to have conditions attached, expanding the scope for tailored diversion schemes. The Home Office and Ministry of Justice should offer Police and Crime Commissioners incentives to provide tailored diversion projects that are proven to work by agreeing to match funding for at least three years. This fund should support the autonomy of police forces to develop diversion options where evidence clearly demonstrates impact on reoffending, harm reduction, victim satisfaction and improved life outcomes.

13

Extend the Youth Offending Team model to 18 to 25 year olds so diversion schemes can be tailored to the problems underlying their behaviour. Young people need greater support to tackle the causes of their offending after they turn 18. Youth Offending Teams (YOTs) are well placed to do that. Crest Advisory's report in November 2019, "Examining the youth justice system", considered the costs required if responsibility for supervising young adults, aged 18 to 25, was switched to YOTs from the National Probation Service. It estimated the unit cost per child in YOTs was £1,530 compared to £1,440 for an adult being monitored by probation staff.

Recommendations (2/2)

Tailored

A principle for reform is that out-of-court disposals and diversion schemes are tailored as far as possible to the individual. Measures to keep people out of the criminal justice system and steer them away from crime work best when they are targeted at the specific problems that underpin their offending behaviour.

Youth Offending Teams and police forces should:

14

Agree a joint protocol to ensure tailored diversion programmes are arranged and delivered promptly. The shorter the gap between the offence and the diversion scheme, the greater the prospect it has of tackling the behaviour and issues that underpin the offending. Police should prioritise investigations involving young offenders and reduce investigative delays by setting up teams dedicated to such cases. YOTs should be supported to begin work with young people while they are waiting for investigations to be concluded so that tailored diversion isn't put at risk by delays.

15

Set up a joint research team to monitor and evaluate out-of-court disposals and diversion programmes with a focus on reoffending rates, victim satisfaction levels and improved life outcomes for young people. If out-of-court disposals and diversion schemes are to command confidence they should be monitored regularly. Our 'deep dive' in Thames Valley provided several best practice examples: a Youth Offending Team commissioned a yearly evaluation of the diversion and prevention service, including employing an independent researcher to support data collection and analysis. A number of Youth Offending Teams conduct reoffending audits: if a young person commits a further crime, staff will look at what lessons can be learned and how they can improve professional practice.

Transparency



To increase understanding and bolster confidence in out-of-court disposals, it is vital that information about their use is easily accessible. Crest analysed police force websites to find out what details are available - the results suggest there is huge room for improvement

A principle for reform is that police forces should be more open, transparent and accountable in their use of out-of-court disposals and diversion schemes. Extending the use of such disposals in order to divert people from the criminal justice system will succeed only if the public understand what they entail and have confidence in them.

Key findings:

- **Most** police forces should be more open and transparent about their use of out-of-court disposals and diversion schemes.
- Crest analysis of police force websites reveals that only **14%** provide a basic definition of what an out-of-court disposal is.
- The websites of **24** forces require significant improvement as they have no basic information about out-of-court disposals.
- There was good practice in openness, transparency and accountability about the use of out-of-court disposals in **five** forces.
- **Avon and Somerset** was judged as the top performing force
- Police should use their websites and social media to promote **success** and best practice around out-of-court disposals.

Analysis of police force websites found that a definition of out-of-court disposals is provided by only six out of 43 forces across England and Wales. Where information is available, it is located on web-pages with different headings, making it hard to search for and access

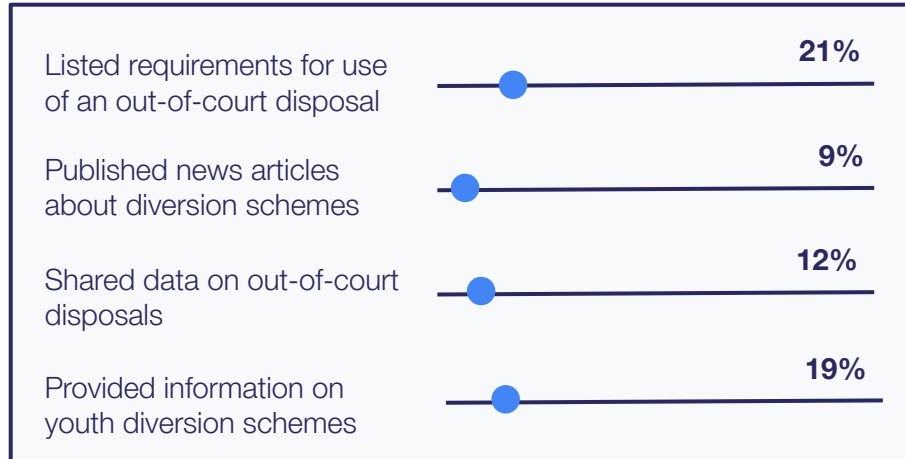


Crest’s findings reveal only 14% of police force websites provide at least **a basic definition** of what an out-of-court disposal is

“Not all offences are dealt with by the courts. Police officers and the CPS have powers to issue a caution, warning or fixed penalty as an alternative to prosecution”

Definition provided by Cambridgeshire Constabulary

There is no consistency on where information on out-of-court disposals is located on police force websites. Examples include ‘information and services’, ‘victim information’, ‘our priorities’ and ‘public safety and welfare’ pages. Moreover, **51% of forces presented no information** on the topic.



Out of 43 police websites examined by Crest, 24 failed to provide any basic information on out-of-court disposals: these forces require significant improvements. 13 other constabularies were judged as needing to make some improvements so that more information is available online

Forces were categorised based on their need to improve the information they share on out-of-court disposals.*

Requires **significant** improvement: forces which do not currently describe out-of-court disposals as an umbrella term or individually or list types of intervention available.

Requires **some** improvement: forces which outline why one type of out-of-court disposal is used or the requirements for use. Forces in this category refer to one or more types of out-of-court disposals, rather than holistically.

- Bedfordshire Police
- City of London Police
- Cleveland Police
- Dyfed-Powys Police
- Essex Police
- Gloucestershire Constab.
- Gwent Police
- Hampshire Constabulary
- Hertfordshire Constabulary
- Humberside Police
- Kent Police
- Leicestershire Constab.
- Lincolnshire Police
- Merseyside Police
- Met. Police Service
- Northamptonshire Police
- South Wales Police
- South Yorkshire Police
- Surrey Police
- Sussex Police
- Warwickshire Police
- West Mercia Police
- West Yorkshire Police
- Wiltshire Police

- Cheshire Constabulary
- Cumbria Constabulary
- Derbyshire Constabulary
- Devon & Cornwall Constab.
- Dorset Police
- Lancashire Constabulary
- Norfolk Constabulary
- North Wales Police
- North Yorkshire Police
- Northumbria Police
- Suffolk Constabulary
- Thames Valley Police
- West Midlands Police

Five of the six police forces which provide a definition of out-of-court disposals were examples of best practice. They contain pages dedicated to explaining what out-of-court disposals are and the types of sanctions available

Best practice websites:

Avon & Somerset Police

Cambridge Constabulary

Durham Constabulary

Nottinghamshire Police

Staffordshire Police

Crest's findings revealed **Avon & Somerset** as the top performing force website on communicating out of court disposals to their community, with features including:



Current interventions

- Victim awareness course
- Change course
- Drugs education
- Project SHE
- Restorative Justice



Force changes

Featured a page to update the public on changes to align with NPCC recommendations



ASCEND Model

Avon & Somerset Constabulary; Engage Navigate Divert: a local needs service surrounding offending behaviour

Best practice forces*: all had a page dedicated to defining out-of-court disposals and listing the types available, plus requirements for use and other features.

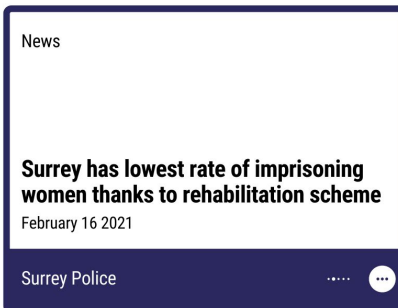
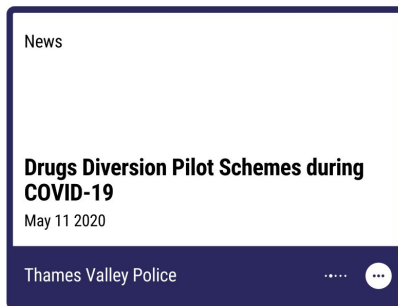
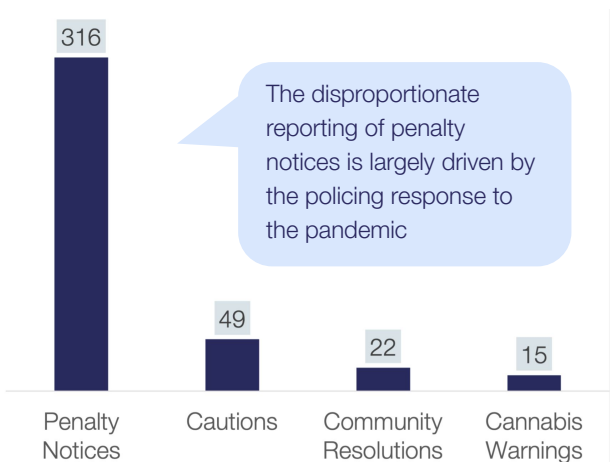
Note - Northumbria Police was one of the six to provide a definition of out-of-court disposals but was not assessed as a 'best practice force'

Note - some forces in the 'requires some improvement' category also presented aspects of 'best practice' forces, though did not meet the threshold in relation to all criteria as listed above.

Using the 'News' section of police force websites provides an opportunity to promote positive outcomes of out-of-court disposals, including the use of diversion schemes

One channel for engaging the public on out-of-court disposals adopted by police forces is via their news and media pages. Here, out-of-court disposals are most commonly mentioned as a consequence of crime. However, a handful of forces (10%) have reported on the introduction or successes of their diversion schemes since 2019.

Number of police force news articles in which an out-of-court disposal was mentioned as a consequence of crime or as part of an offender's history, 2019 - July 2021



Recommendations

Open, transparent, accountable

A principle for reform is that police forces should be more open, transparent and accountable in their use of out-of-court disposals and diversion schemes. Extending the use of such disposals in order to divert people from the criminal justice system will succeed only if the public understand what they entail and have confidence in them.

Police forces should:

- 16** ***Explain on their websites what out-of-court disposals are, which ones they use and what crimes they are used for.*** Each force should have a dedicated website page to provide clear information and data on out-of-court disposals with 'good practice' examples from cases they've handled as part of their news feed and on social media accounts.
- 17** ***Set out what diversion programmes offenders may be sent on and what they involve.*** This information should be on the same webpage along with details of research on the effectiveness and costs of such programmes. Police should use social media to highlight positive cases and encourage local newspapers, online and broadcast outlets to feature 'success' stories, for example of offenders who've turned their lives around.
- 18** ***Publish statistics on the use of out-of-court disposals and diversion in the force area, including gender, age, ethnicity, offence type and average number of previous offences per offender.*** The proposed out-of-court disposals page on the police force website should contain a link to the latest data, with a clear explanation about what the statistics mean and why they are compiled.
- 19** ***Strengthen the role of 'Scrutiny Panels', which oversee the use of out-of-court disposals and diversion programmes in each area.*** Members of the public should have greater involvement in the work of scrutiny panels to promote confidence in the provision of out-of-court disposals and to bring a different perspective. A broad mix of criminal justice experts should also be involved. Each Panel should publish an annual report.

Public perceptions on out-of-court disposals and diversion schemes



Crest commissioned an opinion survey of over 2,000 adults in England and Wales. It is a concern that most did not know exactly what out-of-court disposals are. But when given more information, people supported using them for low-level crimes, first-time offenders and vulnerable individuals

Key findings:

- **Awareness**: Polling carried out for Crest suggests that most people **cannot accurately define the term ‘out-of-court disposals’**, and are **unfamiliar with different types of sanction**, including community resolutions - even though they are the most commonly used disposal.
- **Support**: Given more information about out-of-court disposals and diversion schemes, those surveyed support using them for **low-level and first-time offending**. There is backing for a **justice ‘escalator’** approach - where offenders can be given an out-of-court disposal if they have committed a minor offence and haven’t done anything before, but not where they have already had such a disposal and/or if they have been to court before.
- **Vulnerability**: There is strong support for using diversion programmes **where offenders are vulnerable**. The greatest backing is for those who have been **victims of domestic abuse** or who are **at risk of suicide**. The public also appear to support diversion schemes for **pregnant women and mothers**, as well as people with **health, alcohol addiction and housing problems**, and **young offenders** who are in care, at risk of exploitation and struggling with education.
- **Youth Justice**: On average, respondents say young offenders should be **treated by police as adults** when they are 17-and-a-half years old. But when informed that brain development continues until the age of 25, 20% of those surveyed **changed their minds**, opting for an older age.

The Crest survey suggests there are limits on the use of out-of-court disposals. Before they're issued, people want police to consider the views of victims. Most believe out-of-court disposals shouldn't be applied in cases of rape, burglary, supplying drugs and serious assault.

Key findings:

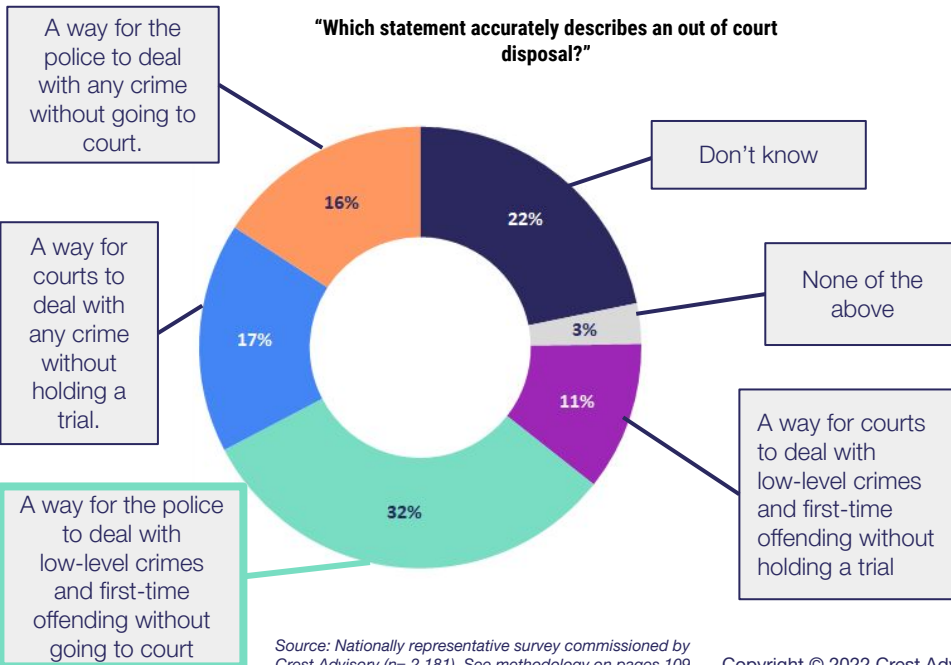
- **Victims:** Our polling suggests **the public's support is conditional**: most people feel that out-of-court disposals do not do enough to take into account the **views of the public**. Three-quarters of respondents say **victims' views should be taken into consideration** when police issue an out-of-court disposal.
- **Offences:** People are against using out-of-court disposals for offences such as **rape, sexual assault, serious assault, supplying drugs and burglary**; a significant proportion view such penalties as a **'soft option'**, even for first-time, low-level offenders. The survey suggests the public is divided about whether out-of-court disposals should be used for **hate crimes**, but more support than oppose using them in less serious **domestic abuse** cases.
- **Effectiveness:** Most people believe that sentences imposed by the courts, including jail and community penalties, are **effective at cutting crime and reoffending**. Only a minority think cautions work. But a majority say out-of-court disposals and diversion schemes are **quicker than going to court**, though they think these sanctions **cost taxpayers** more.
- **Court backlogs:** Less than half of those polled say police should impose **more out-of-court disposals to reduce the backlog** of cases in the criminal courts; backing is higher among those who are very satisfied with policing. Other measures command greater support: enabling **magistrates to hear more cases** by raising their sentencing powers; providing **extra funding** to the criminal justice system and the courts; and **limiting jury trials** to the most serious crimes.

Over two-thirds of people we surveyed did not know what an out-of-court disposal is or gave a wrong answer. Less than half were familiar with 'cautions' and only one-third were aware of the most widely-used disposal - community resolutions.

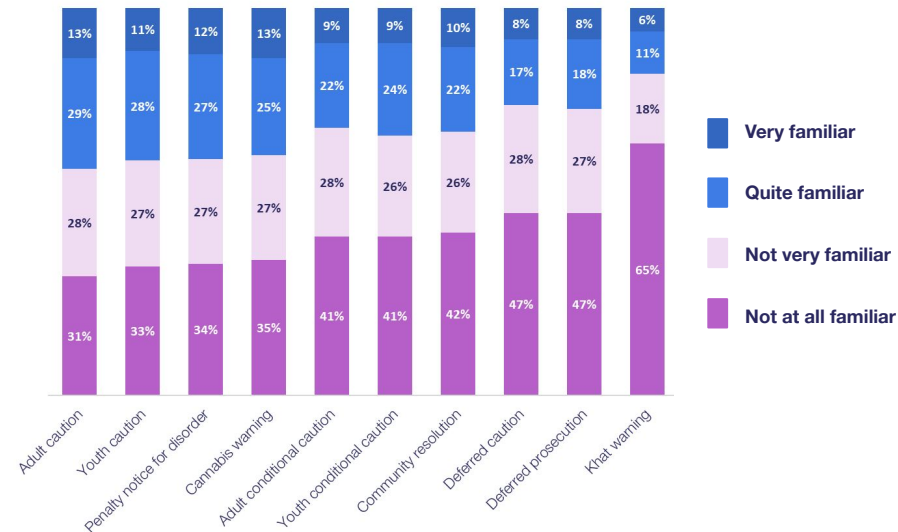
Overall, 47% of respondents to our survey gave an inaccurate definition of an out-of-court disposal, 22% said they did not know. Only 32% selected the right answer.

There was a lack of awareness about specific out-of-court disposals among those who took part in the survey - particularly community resolutions, deferred cautions & prosecutions and Khat warnings.

"Which statement accurately describes an out of court disposal?"



"How familiar are you with the following out-of-court disposals?"



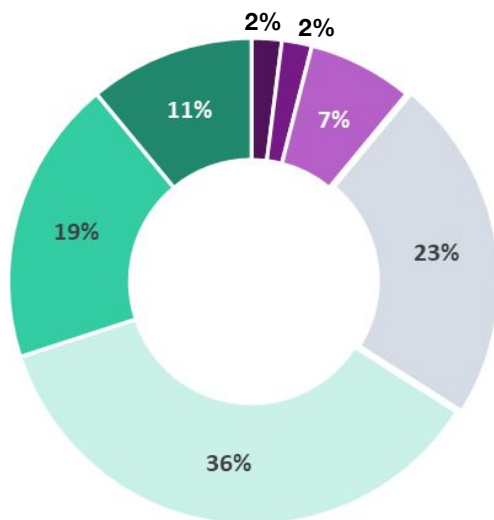
Source: Nationally representative survey commissioned by Crest Advisory (n= 2,181). See methodology on pages 109 - 111.

When people were given more information about out-of-court disposals, such as cautions, they were mostly supportive: two-thirds of those polled backed their use for low-level crimes and for first-time offenders. This highlights how important it is to improve public understanding

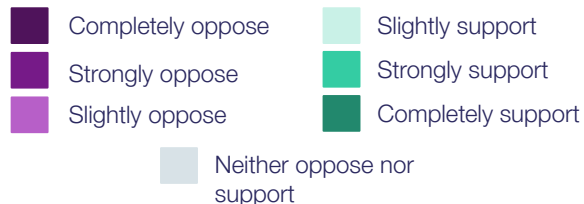
After reading a short description of out-of-court disposals, 66% of respondents said they supported their use as an approach to low-level offending.

People gave similar responses when asked about using out-of-court disposals for offenders who were being dealt with for the first time, with 67% giving their backing.

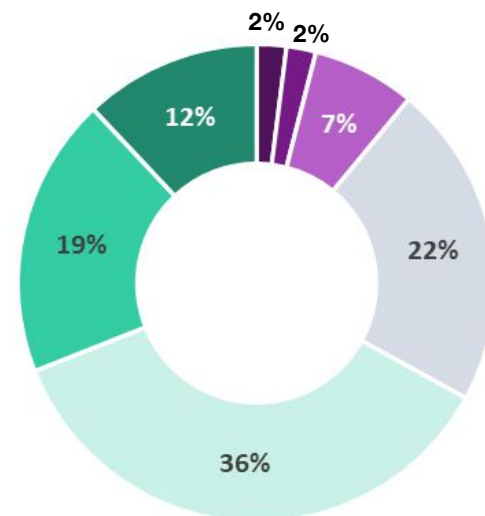
"Based on this description, how supportive are you of this approach to low-level offending?"



Police are able to give out-of-court disposals to offenders in limited circumstances rather than charging the offender and going to court; one example is a caution. The offender must usually accept responsibility for the offence and if there is a victim, their views must be taken into account. Some disposals have conditions attached which are designed to punish the offender, repair the harm done and/or tackle offending behaviour, such as drugs and victims awareness courses - this is called diversion.



"Based on this description, how supportive are you of this approach to first-time offending?"

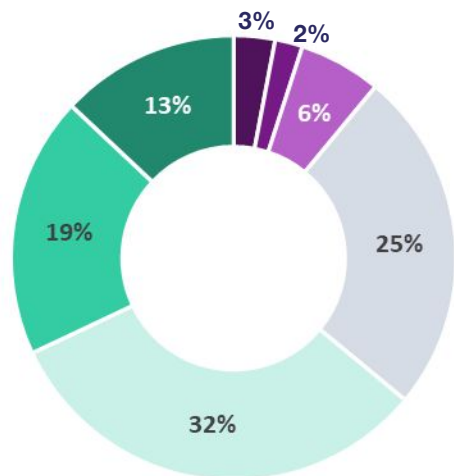


There were similar results on diversion programmes linked to out-of-court disposals. When people were provided with information about them, nearly two-thirds said they supported their use for low-level crimes and first-time offenders

After reading a short description about diversion schemes, 64% of respondents gave their support for using them to tackle low-level offending.

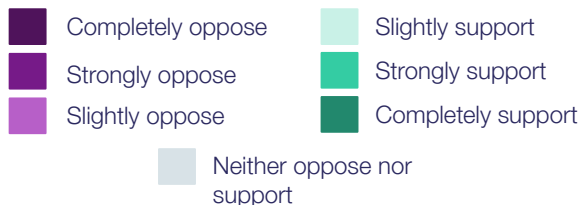
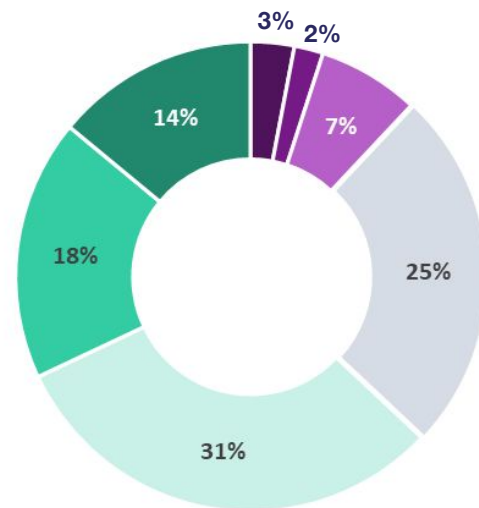
For first-time offenders: 63% of those polled said they'd back delivering diversion programmes.

"Based on this description, how supportive are you of this approach to low-level offending?"



A diversion programme is aimed at offenders who have committed minor offences. Rather than facing prosecution and court proceedings, offenders are issued with an out-of-court disposal by police and required to attend a rehabilitation scheme.

"Based on this description, how supportive are you of this approach to first-time offending?"



According to the Crest survey, factors police should consider before issuing an out-of-court disposal include the seriousness of the offence and whether the individual has committed the crime before. There was also strong support for police to act in a 'consistent' way

Of those polled, 65% said it was 'important' for police to consider whether the offence was 'less serious' than others, before issuing an out-of-court disposal; 66% said another important factor was if the offender had never committed the offence before.

There was clear support for a standardised approach: 70% of respondents said it was important that out-of-court disposals should be given 'consistently for the same sorts of offences'.

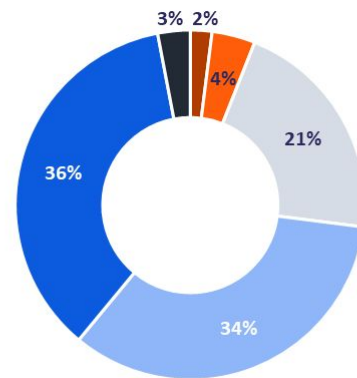
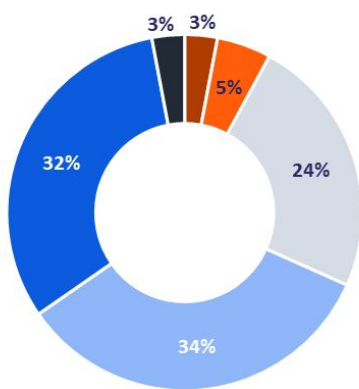
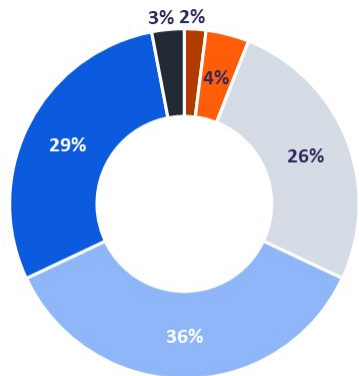
"How important do you think the following are for the police to consider when they are giving an out-of-court disposal?"

"How important do you think the following are for the police to consider when they are giving an out-of-court disposal?"

The offence is less serious than others

The offender has never committed that offence before."

The disposal is given consistently for the same sorts of offences."



Very unimportant Somewhat unimportant Neither important nor unimportant Somewhat important Very important Don't know

Most of those polled believe out-of-court disposals are 'appropriate' for those who've committed a minor offence and haven't been in trouble before; most think offenders who have already been sanctioned or prosecuted should be taken to court. This is known as the 'escalator' approach

Of respondents to the Crest survey, 63% thought it was 'appropriate' to issue an out-of-court disposal to an offender who had committed a minor offence and who hadn't done anything wrong before.

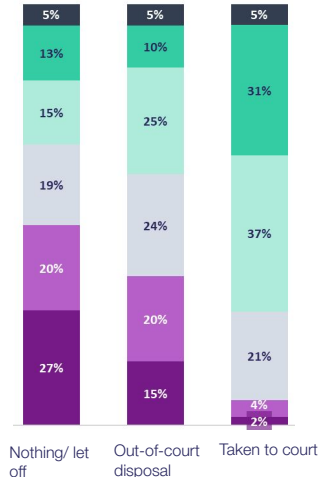
But only 35% considered an out-of-court disposal 'appropriate' for a person who'd received such a disposal previously or been taken to court before. In both scenarios, 68% said the individuals concerned should be prosecuted.

"How appropriate or inappropriate do you think each of the following types of penalty are for adults?"

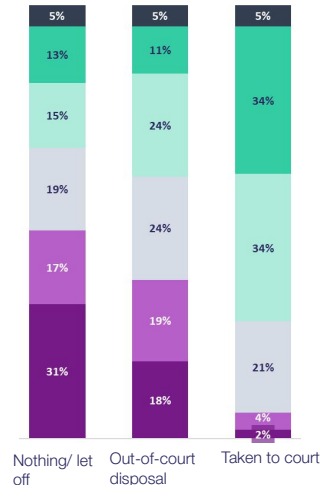
The offender has committed a minor offence and hasn't done anything wrong before



The offender has received an out-of-court disposal before



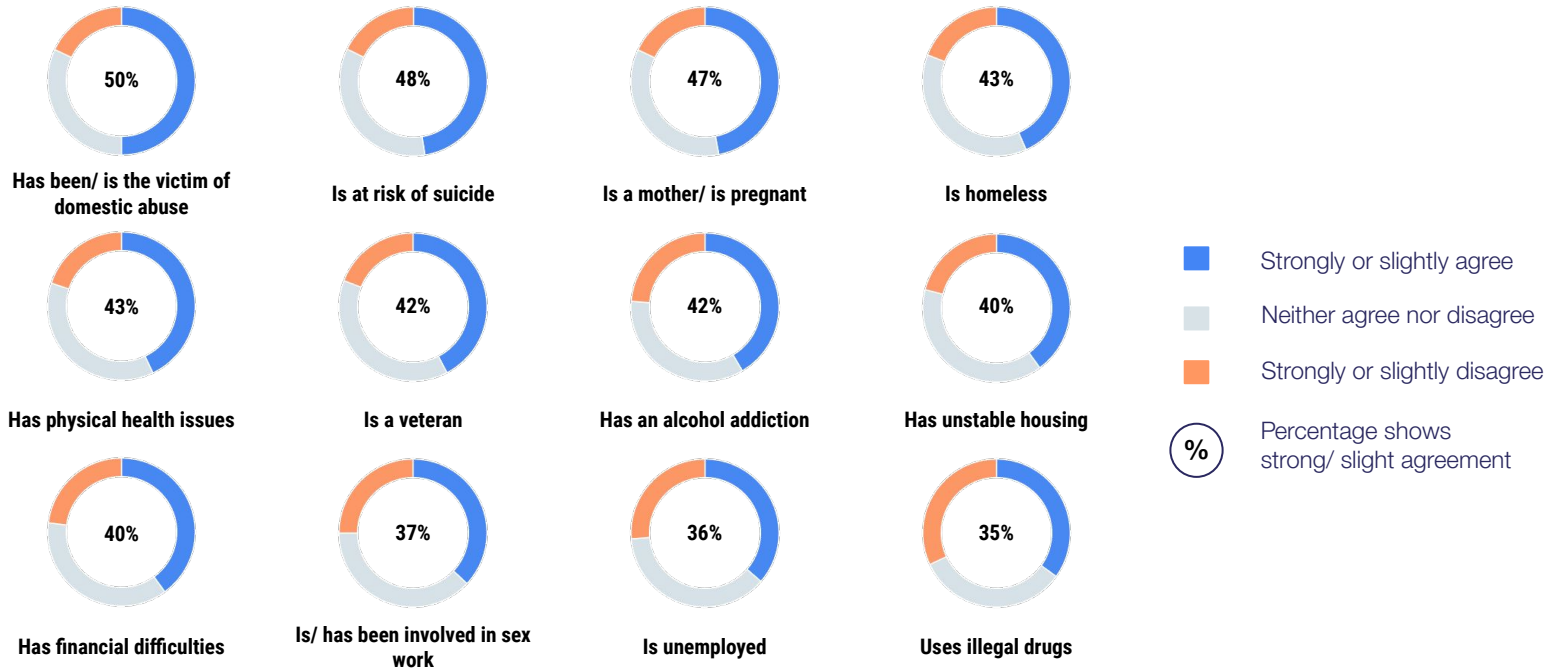
The offender has been summoned to appear in court before



- Don't know
- Very appropriate
- Quite appropriate
- Neither appropriate nor inappropriate
- Somewhat inappropriate
- Very inappropriate

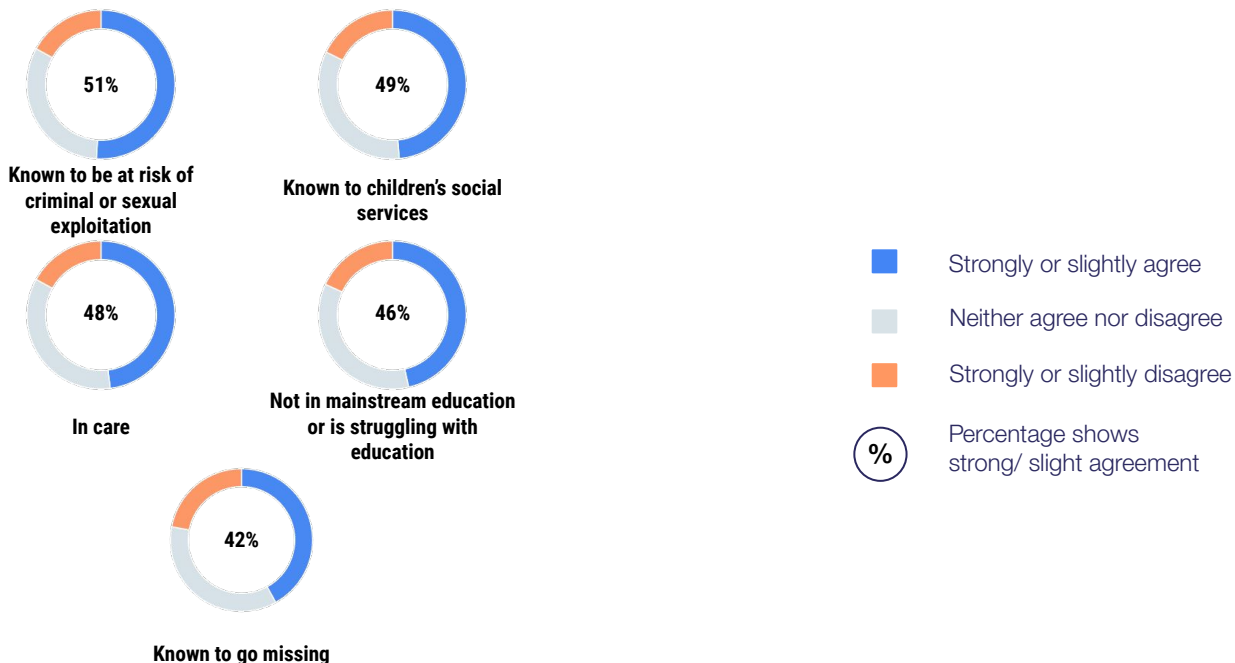
There is strong support for using out-of-court diversion programmes where offenders are vulnerable, particularly for: victims of domestic abuse, people at risk of suicide, mothers, pregnant women and those with health, housing, alcohol addiction or financial problems

"How much would you agree or disagree that the police should use diversion programmes to resolve crimes in the following circumstances? The offender: "



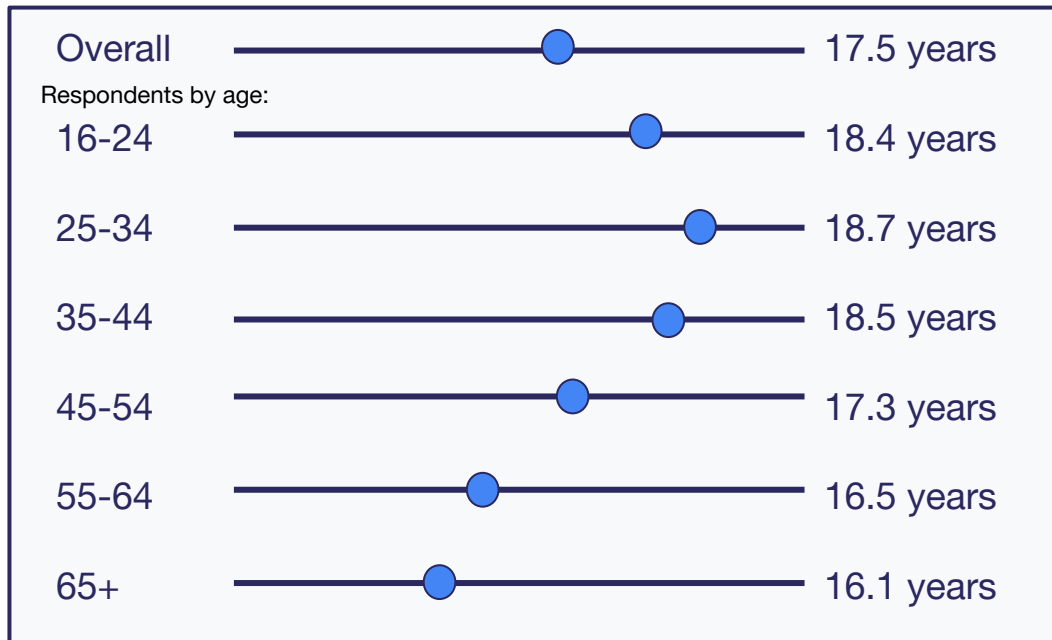
There also appears to be significant public support for using out-of-court disposal diversion schemes for young offenders who are: at risk of criminal or sexual exploitation, on the records of social services, in care, known to go missing or struggling with their education

"How much would you agree or disagree that the police should use diversion programmes to resolve crimes committed by those under 18 years of age in the following circumstances?"



The Crest survey suggests people believe that when out-of-court disposals are issued young offenders should be treated the same as adults before they turn 18. But when given information about how long it takes for the brain to fully develop, some respondents said they should be older

Age at which survey respondents said police should treat young offenders the same as adults when using out-of-court disposals



Respondents were then told: “Evidence suggests that a person’s brain does not fully develop until they are 25”. They were asked if this information had changed their opinion about the age young offenders should be treated as adults: 20% of those surveyed said their view had changed.

We asked those whose views had altered what age they now believed it was appropriate to treat young offenders as adults. From their responses, the average (mean) age was calculated to be:

22 years old



Most respondents to the Crest survey did not think that out-of-court disposals or diversion programmes take account of people's views. This is a worrying finding: if the use of such sanctions is to be expanded then greater efforts must be made to involve the public

Of respondents to the survey, 53% agreed that out-of-court disposals do not take into account the views of the public. Only 11% disagreed with that statement.

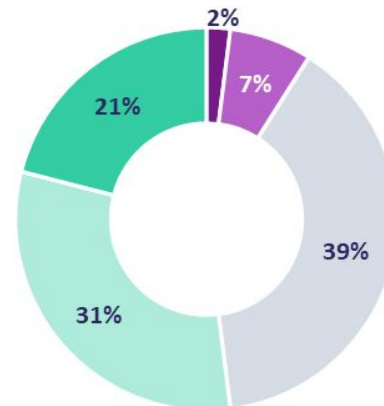
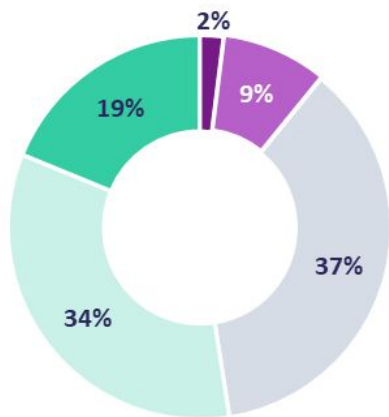
There were similar results when people were asked if diversion schemes take into account the views of the public: 52% said they do not; 9% said they do.

"To what extent do you agree or disagree with the following statements?"

"To what extent do you agree or disagree with the following statements?"

These disposals do not take into account the views of the public.

Diversion does not take into account the views of the public.

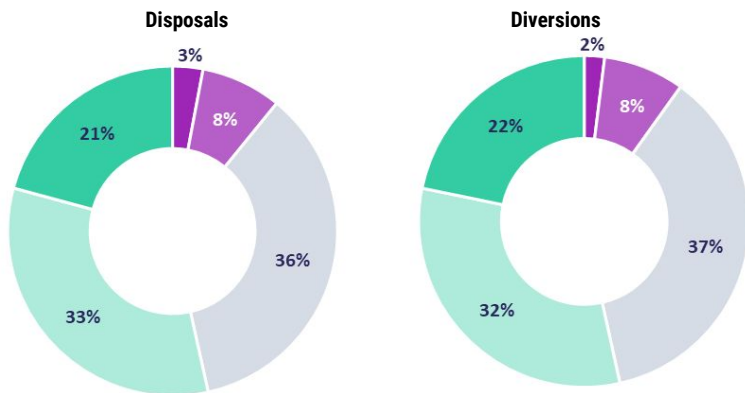


Most people polled doubted that out-of-court disposals and diversion schemes did 'enough' to deliver justice for victims- a large majority said the views of victims should be considered when police issue an out-of-court disposal. To command confidence, it is vital to get this right

Of those surveyed, 54% said out-of-court disposals and diversion schemes do not do enough to get justice for victims.

"To what extent do you agree or disagree with the following statements?"

"These disposals/ diversion programmes do not do enough to get justice for victims."

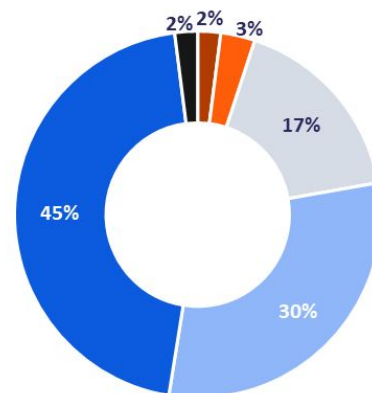


■ Strongly disagree ■ Slightly agree
■ Slightly disagree ■ Neither agree nor disagree
■ Strongly agree

When police are considering issuing an out-of-court disposal, 75% thought it was important that victims' views should be taken into consideration.

"How important do you think the following are for the police to consider when they are giving an out-of-court disposal?"

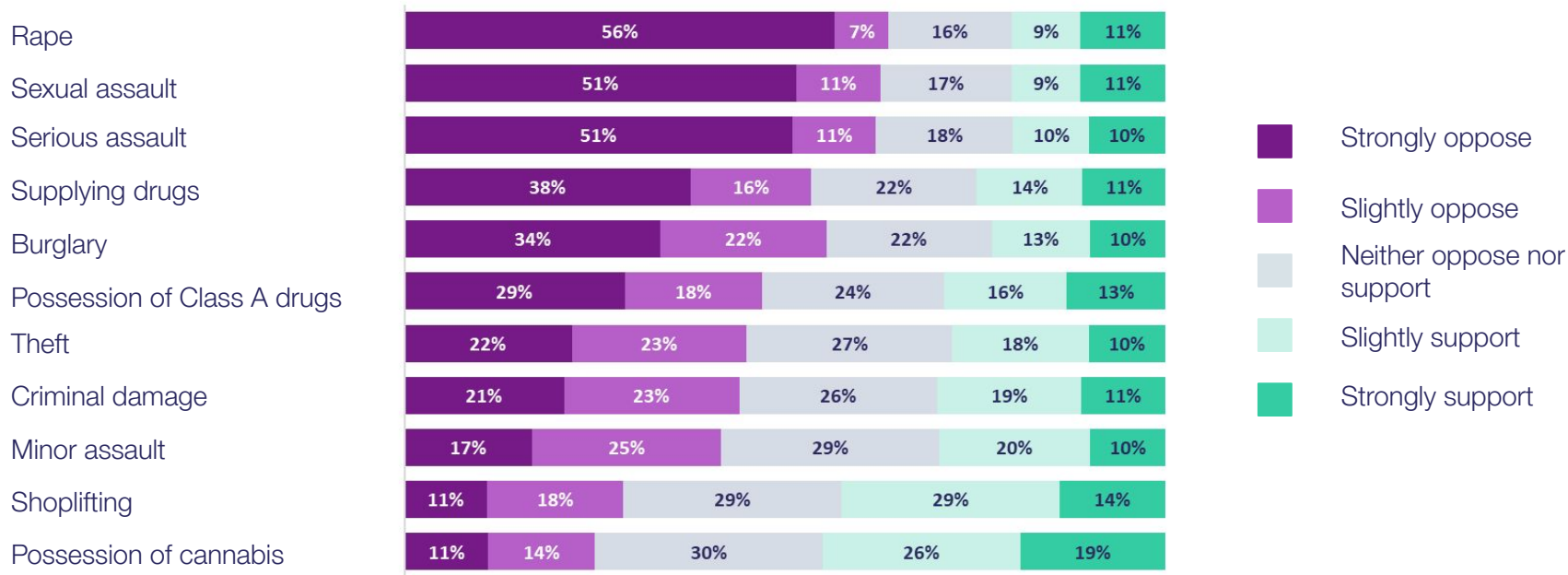
"The victim should have their views taken into consideration."



■ Very unimportant ■ Somewhat important
■ Somewhat unimportant ■ Neither important nor unimportant
■ Very important
■ Don't know

The public appear to be against issuing out-of-court disposals to adults in crimes of rape, sexual assault, serious assault, drug supply and burglary. But, based on the survey results, more people support than oppose their use in cases of shoplifting and cannabis possession

To what extent would you support or oppose the police using out-of-court disposals if they were used for adults who had committed the following types of crime?



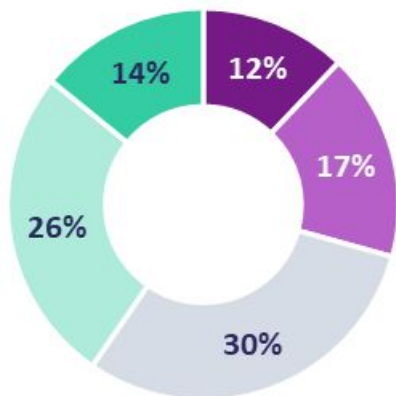
The Crest survey indicates a significant level of support for using out-of-court disposals in less serious cases of domestic abuse, though many were neutral or opposed to the idea. The poll suggests the public are divided as to whether such disposals should be applied to hate crimes

Asked about issuing out-of-court disposals to 'low-level', first-time domestic abuse perpetrators, 40% of respondents said they supported the idea; 29% opposed it; 30% said they were neither in favour or against.

Of those surveyed, 37% backed the use of out-of-court disposals for hate crime offences; 33% were against; 31% neither supported or opposed it.

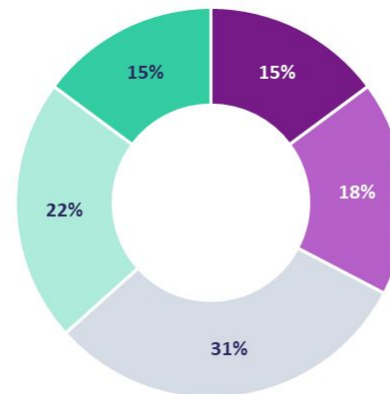
"To what extent would you support the police using out-of-court disposals if

They were used for low level domestic abuse perpetrators with no previous convictions or cautions for violence."



"To what extent would you support the police using out-of-court disposals if

They were used for hate crime perpetrators."



- Strongly oppose
- Slightly oppose
- Neither oppose nor support
- Slightly support
- Strongly support

Overall, it seems many people view out-of-court disposals and diversion schemes as 'soft' - even for those committing low-level crimes for the first time. Most believe that offenders given an out-of-court sanction should be punished, possibly through a fine, and receive a criminal record

Of those who responded to our survey, 44% said out-of-court disposals were 'too soft' for first-time, low-level offenders; 42% agreed diversion programmes were also a soft option.

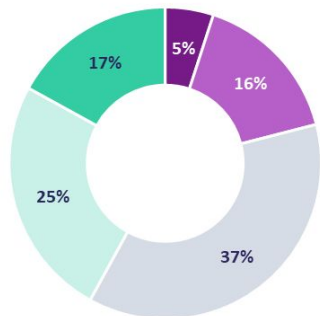
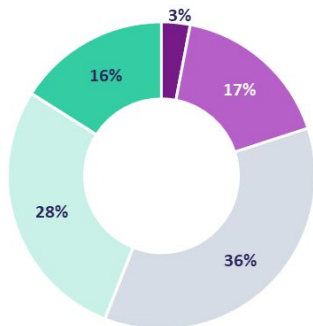
58% of respondents thought it 'important' that an offender should receive a criminal record for an out-of-court disposal, ie that it is logged on the Police National Computer and can be disclosed to employers; 70% said disposals should carry a punishment

"To what extent do you agree or disagree with the following statements?"

These disposals/ diversion programmes are too soft for first-time low-level offenders."

Disposals

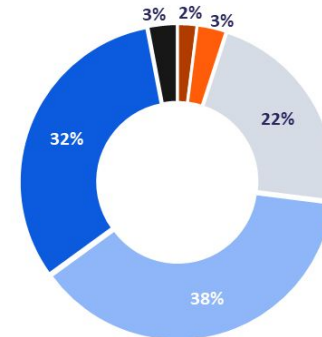
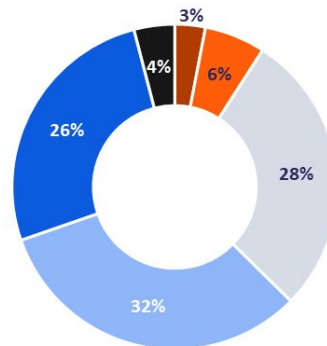
Diversions



"How important do you think the following are for the police to consider when they are giving an out-of-court disposal?"

Offender should receive a criminal record

Offender is punished, .e.g with a fine



Almost two-fifths of people polled said cautions help to cut crime and reduce reoffending. But the survey suggests penalties imposed by the courts - such as imprisonment, suspended jail terms and community sentences - command greater confidence among the public

How effective are the following outcomes in cutting crime and reducing reoffending?



The Crest survey offers reassurance about the perceived benefits of out-of-court disposals and diversion schemes. About two-fifths of people polled believe they can help reduce the risk of harm to others and cut reoffending - twice as many as those who are sceptical

Of those surveyed, 40% agreed that out-of-court disposals can reduce the risk of harm to other people; 44% said diversion schemes can have such a benefit.

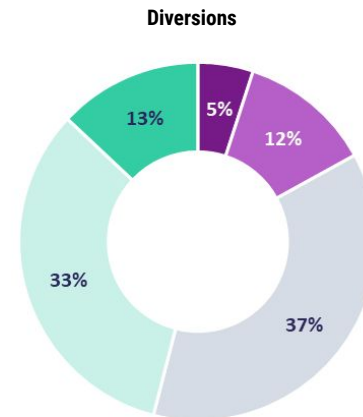
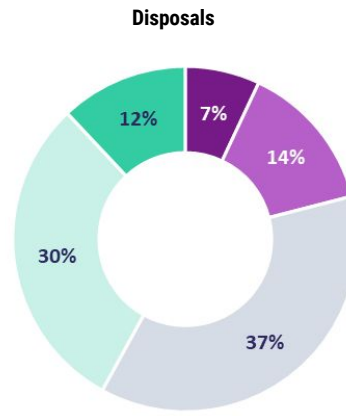
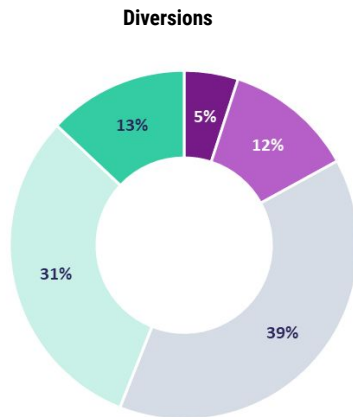
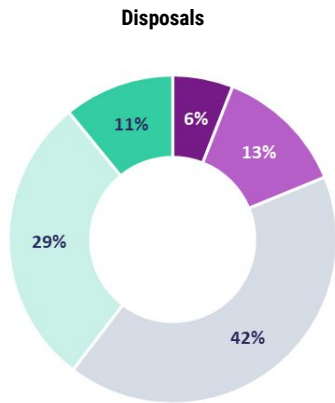
When asked about measures that can help cut reoffending, 42% agreed that out-of-court disposals can help; 46% said diversion programmes may achieve it.

“To what extent do you agree or disagree with the following statements?”

“To what extent do you agree or disagree with the following statements?”

These disposals/ diversion can help reduce the risk of harm to others.”

These disposals/ diversion can help to cut reoffending.”



Strongly disagree
 Slightly disagree
 Neither agree nor disagree
 Slightly agree
 Strongly agree

An advantage of out-of-court disposals and diversion schemes is their speed - and according to the survey most people agree. But it appears the public aren't sure about whether there are also cost benefits for taxpayers, suggesting the evidence for that needs to be made clearer.

Of those participating in the Crest survey, 70% said out-of-court disposals were quicker than going to court; 64% said diversion programmes were faster than court proceedings.

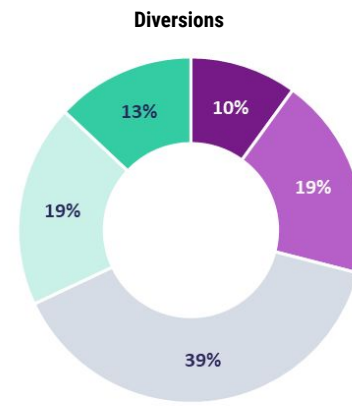
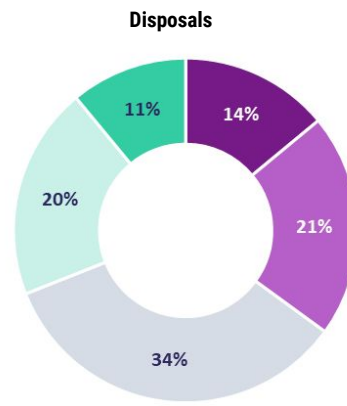
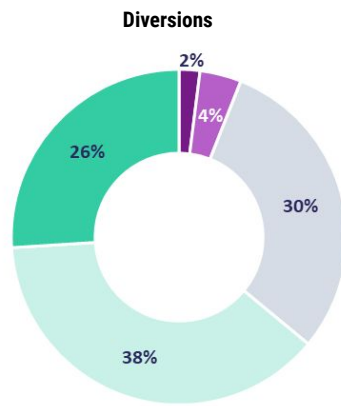
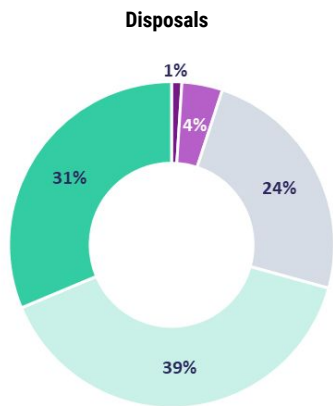
31% said the cost for taxpayers of an out-of-court disposal was likely to be more than going to court; 35% disagreed. Regarding diversion schemes, 32% thought costs would be greater than court; 29% didn't agree. A large proportion neither agreed nor disagreed.

"To what extent do you agree or disagree with the following statements?"

"To what extent do you agree or disagree with the following statements?"

Receiving these disposals/ diversion is usually quicker than going to court."

The cost of disposals/diversion to the taxpayer is likely to be more than compared with going to court."



Strongly disagree
 Slightly disagree
 Neither agree nor disagree
 Slightly agree
 Strongly agree

Victims and defendants face long delays due to a big backlog of court cases. Almost half of those polled said using out-of-court disposals more could help cut the backlog. But there was greater support for other ideas, such as extra funding and changing jury trials and magistrates' hearings

Survey participants received the following information about court backlogs in England and Wales: Over the past two years, the number of criminal cases which has yet to be dealt with has grown significantly. There are about 366,000 outstanding cases in magistrates courts and 60,000 in Crown Courts. Cases are taking on average over six months from the time of the offence to the end of the court process.*

"To what extent do you agree or disagree with the following statements about reducing this backlog?"

69% of respondents who are very satisfied with policing agree with the use of out-of-court disposals to reduce the court backlog

The police should resolve more crimes without going to court by using out-of-court disposals



Jury trials to be reserved for only most serious cases and other cases tried by a panel headed by a judge

Extra funding should be made available to courts and the criminal justice system

Magistrates should have greater sentencing powers so they can deal with more cases rather than having to send them to Crown Courts

Conclusions

Conclusions (1/3)

Out-of-court disposals are a valuable component of the criminal justice system. Without them, there would be no way for low-level offending to be dealt with swiftly and the courts would be even more clogged with cases than they are at the moment. Indeed, our year-long research has highlighted the many benefits of using out-of-court disposals and diversion schemes; we were particularly struck by some of the projects that are in place for young offenders. There is clear support for the use of out-of-court disposals and diversion programmes among key stakeholders in the criminal justice system and, it appears from our survey, qualified backing from the public. Crest also believes there are powerful arguments for expanding their use - but there is much work to do before that can happen.

Even though out-of-court sanctions have been around for some 200 years there is a paucity of information about how they operate and a lack of data about whether they are effective. Our trawl through a mass of reports and studies revealed that there is not enough robust evidence to demonstrate the impact on reoffending rates, victim satisfaction and costs of the most widely-used disposals in England and Wales. There is an urgent need for that to be remedied. If police are to have confidence in using out-of-court disposals, if Youth Offending Teams and probation staff are to have confidence in sending offenders onto diversion schemes, and if the public are to have confidence that they are an appropriate alternative to prosecution then their use must be rigorously and continually monitored so that their effectiveness can be evaluated.

Some tailored diversion schemes linked to out-of-court disposals, such as Checkpoint in Durham, have been shown to work well, and it is encouraging to see that these successful initiatives are serving as models for adoption in other areas. But there is a danger that when small-scale interventions are expanded their quality is diluted. We urge providers and police to track the delivery and outcomes of such interventions with great care using independent analysts and researchers.

Conclusions (2/3)

The findings from Crest's survey, which suggest that most people don't really know what out-of-court disposals are, bolsters the case for improving the information available to the public - especially on police websites. We were shocked about how little detail was made available by most forces; again, that is an issue which needs immediate attention. If Police and Crime Commissioners (PCCs), mayors and Chief Constables opt to use out-of-court disposals and diversion schemes - and wish to expand their use - they must ensure people in their communities know what they entail and are given a say in how they are managed.

The survey also revealed that it will be a challenge to persuade the public that out-of-court disposals and diversion schemes are not a 'soft' option, even for first-time offending and low-level crimes, such as criminal damage and theft. But it is not an insurmountable task. People undoubtedly support their use for offenders who are vulnerable. As we observed during our 'deep dive' in the Thames Valley police force area, that is an approach commonly deployed by Youth Offending Teams (YOTs). There has been some success in steering under-18s away from the courts and we believe that developing a YOTs-style framework for young adults must be on the agenda.

The public also demand consistency. It is right that there is flexibility for PCCs and Chiefs to innovate and respond to localised patterns of crime, but when it comes to out-of-court disposals and diversion schemes they ought to do so within a clear boundary of legislation, standards and guidance, set by the Home Office and Ministry of Justice (MoJ). Our research and interviews uncovered confusion around the issue of 'admitting the offence'. In fact, it was recently brought to our attention that the Crown Prosecution Service and College of Policing guidance on conditional cautions contradicts the correct legal position, as outlined in the MoJ code of practice and by the Sentencing Council, that an offender must admit the offence for a conditional caution to be issued.

Conclusions (3/3)

The principal aim of this project has been to identify whether there is scope for expanding the use of out-of-court disposals and diversion programmes - in part to ease pressure on the criminal justice system. Our conclusion is that there is certainly scope to do so, building on pockets of good practice across England and Wales; the measured work of Youth Offending Teams; and an acknowledgment by the public that it is a viable approach to deal with offending by people who are vulnerable.

But there are limits on how far out-of-court disposals and diversion schemes can be used - that is crystal clear from our stakeholder interviews and the opinion survey. The impact on the backlogs in the criminal courts, therefore, is likely to be limited, particularly because the vast majority of offences which might result in an out-of-court sanction are cases which would have been handled by magistrates, where the problems are easing. The worst backlogs are in Crown Courts which deal with serious crimes that would rarely incur an out-of-court penalty.

Nevertheless, the advantages of a timely out-of-court disposal or a meaningful diversion programme cannot be underestimated - for offenders, victims and the wider, congested criminal justice system. That is why it is so important that the new 'two-tier' arrangements, which are expected to be enshrined in legislation this year, are accompanied by the clearest possible guidance for police; a commitment to involve victims at every step; and an engagement and communications strategy to raise awareness and support among communities.

The new system represents the chance for a new beginning for out-of-court disposals. Government ministers, PCCs and Chief Constables must grab it with both hands.

Annex

Methodology



Stakeholder Interviews: During the first half of 2021, we conducted a number of interviews with senior stakeholders from across the criminal justice system to discuss out-of-court disposals and diversion

Interviewees

- Dame Vera Baird QC, Victims' Commissioner for England and Wales
- Desmond Brown, Independent Chair of the Avon and Somerset Lammy Group and Founder/ Director at Growing Futures
- Jon Collins, former chief executive, Magistrates' Association
- Sam Doohan, Policy officer at Unlock
- Commander Dr Alison Heydari, Metropolitan Police, National Police Chiefs' Council lead on out-of-court disposals
- Jason Kew, Thames Valley Police Violence Reduction Unit lead for drugs, exploitation and harm reduction
- Stephanie Kilili, Policy and Commissioning Officer for Durham's Police and Crime Commissioner
- David Lloyd, Police and Crime Commissioner for Hertfordshire, Association of Police and Crime Commissioners' lead on criminal justice
- Stuart Nolan, Managing Director at DPP Law
- Justin Russell, HM Chief Inspector of Probation for England and Wales
- Kevin Weir, Detective Superintendent, Durham Police
- An official from the Ministry of Justice, who didn't want to be named
- Three officials from the College of Policing, who didn't want to be named

We would like to thank everyone who gave their time to be interviewed for our research project.

Deepdive in Thames Valley Police Force: we conducted a qualitative deepdive in Thames Valley to understand the current landscape of out-of-court disposals and diversion, both for adult and youth offending

Thames Valley Police

3 x interviews with police officers

3 x focus group with police officers

1 x focus group with police staff

Thames Valley diversion programmes

6 x interviews with diversion providers

1 x focus group with a diversion provider

2 x interviews with local authority commissioners

Thames Valley Youth Justice System

1 x interview with Youth Justice Unit sergeant

1 x interview with Youth Offending Teams manager

9 x focus groups with Youth Offending Teams

Our qualitative engagement in Thames Valley police force was organised and conducted between July and September 2021. An initial set of contacts were provided by Thames Valley police force to Crest Advisory; we then scheduled interviews and focus groups with these contacts and others that were provided to us during the course of our engagement.

We would like to thank everyone who gave their time to engage in our research.

Nationally (England and Wales) representative survey (n=2,181): We commissioned a survey with the aim of considering public awareness of out-of-court disposals and diversion and the extent of their support for their use

The survey was open between 27th October 2021 and 5th November 2021. **2,181** members of the public responded to our survey. See the following pages for a breakdown of demographics.

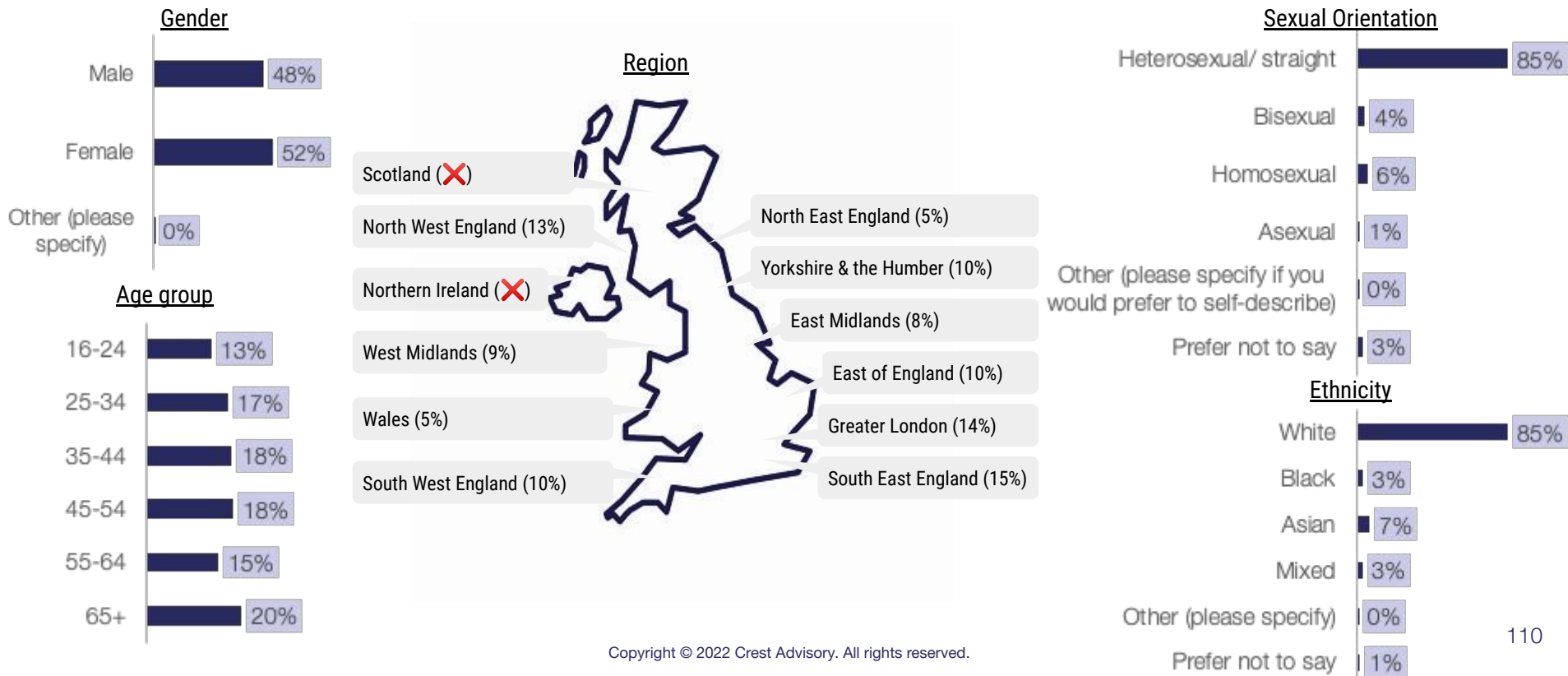
Awareness of out-of-court disposals: They were asked about their knowledge of the term 'out-of-court' disposal and their familiarity with different types of disposal.

Support for the use of out-of-court disposals: They were also asked about their support for out-of-court disposals, including the most important factors of their use and concerns about their use (including the input of victims and the public, the seriousness of offending, their impact on police demand and resources, and their effect on reoffending/ risk of harm to others). They were also asked about their support for the use of out-of-court disposals to respond to the court backlog.

Support for diversion: They were finally asked about their support for diversion programmes, including concerns about their use and whether certain risk factors would make diversion more appropriate when dealing with offending behaviour.

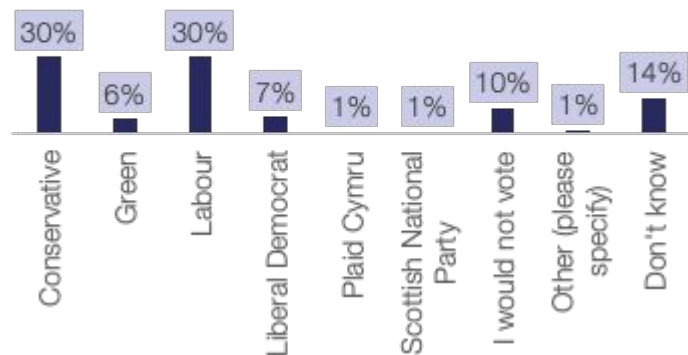
They were also asked at different points to distinguish between adult and young offenders, including answering questions on the age at which adults and children should be treated the same.

Nationally (England and Wales) representative survey (n=2,181): the sample was recruited to match the demographics of England and Wales in terms of age, gender and region in which they live. Ethnicity and sexual orientation was not used to recruit participants

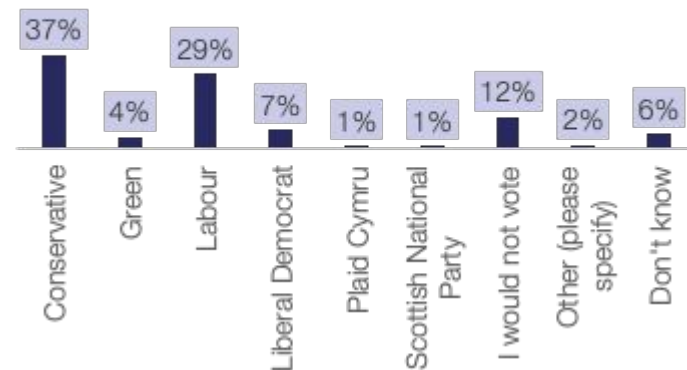


Nationally (England and Wales) representative survey (n=2,181): At the end of the survey, we also asked about voting intention and voting history

"If there was a general election held tomorrow, which party would you vote for?"



"Who did you vote for in the last general election?"



Transparency analysis: we conducted analysis of police force websites in England and Wales to find out how much information they make publicly available

To assess police force transparency about out-of-court disposals, we devised a method to estimate how much information was shared on force **websites**:

Out-of-court disposals



01

Search conducted using the search engine on 43 police force webpages

02

Search terms:
“Out-of-court disposal”
“Diversion (scheme)”
“Cannabis warning”
“Community resolution”
“Penalty notice”
“Cautions”

03

The presence of information under various categories was tallied e.g. ‘definition’. Categories were ‘requires significant improvement’, ‘requires some improvement’ and ‘best practice

04

This numerical indication allowed us to collect data on the types of information shared on police force websites and compare force performance

Thank you

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