

Out of court disposals

Why we need better data on offences resolved out of court, and how to get it

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1. Summary

- We recommend that the Ministry of Justice and Home Office work together to improve the current patchy data on out of court disposals (OOCs) and diversionary schemes in England and Wales. Better data is needed to understand what diversionary schemes are taking place, who receives them and how OOCs can be best used to reduce reoffending.
- OOCs are non-court resolutions issued by the police to deal with low-level offenders. Evidence suggests that they are effective and can reduce pressures on courts and prisons. But data collection and publication on them is patchy, particularly regarding diversionary schemes. This has led to questions about consistency in how OOCs are used between forces, who receives them, and their impact on reoffending.
- The Government’s current plans to reform OOCs offer an opportunity to improve the data collected and evaluate the effectiveness of the changes, providing a stronger evidence base for future reforms.

- We have studied the needs expressed by stakeholders, and the data held on OOCs by the Home Office and MoJ, and recommend that it should be possible to fill the following data gaps:
 - a. **Publish better data on diversionary schemes:** Despite requests from stakeholders, little data is published on what types of informal OOCs police forces issue, and who receives them. Recent national guidance on crime recording should create the foundation for better data to be published, which we recommend the Home Office publish alongside demographic data on who receives these diversionary measures, to allow any disparities to be identified.
 - b. **Publish better data on reoffending after OOCs:** Currently national administrative data is not collected or published on reoffending rates after OOCs. The MoJ should include OOCs in its 'Proven reoffending statistics', in order to understand how well they work at reducing reoffending.
 - c. **Strengthen the evaluation plan for OOC reforms:** The evaluation plan published by the MoJ for the new reforms is out of date and mainly focuses on how quickly the new OOCs are taken up, rather than efficacy. We suggest that an improved evaluation should set out the evidence for the reforms' impact on reoffending rates and value for money.

2. About out of court disposals

Out of court disposals (OOCs) let the police deal quickly with low-level offending without recourse to the courts. Over 200,000 OOCs are handed out annually, usually involving some form of rehabilitative, reparative or restorative intervention.¹

Confusingly, the term of OOCs is used interchangeably by different authorities, and there is no clear definition across CJS partners of exactly what it encompasses.

In this briefing we're using OOCs as an umbrella term to cover two types of disposals: formal disposals (which are defined in legislation) and informal disposals (which are not). In 2022, the Government created a new legislative framework for formal OOCs - informal disposals were untouched.² The reforms aimed to simplify the previous regime, which the Government said confused police forces and led to inconsistent responses to crime.³

Formal OOCs

The 'formal' tier consists of diversionary cautions and community cautions. Both disposals require the offender to admit guilt to the offence and must have conditions attached.

¹ Ministry of Justice, '[Criminal Justice Statistics Quarterly: June 2022](#)' (2022)

² [Police, Crime, Sentencing and Courts Act 2022](#)

³ Ministry of Justice, '[A Smarter Approach to Sentencing: Reform of the Adult Out of Court Disposals Framework](#)' (2020)

Diversory cautions do appear on a criminal record, but community cautions may not. Certain offences, such as domestic abuse, can only be dealt with through a diversory caution.⁴

Informal OOCs (diversory schemes)

Informal OOC schemes, often referred to as community diversions or diversory schemes,⁵ can refer to a range of tools to tackle low-level offending. Community resolutions (CRs) are the most common type of diversion, a non-statutory tool used when an offender accepts responsibility - this does not form part of a criminal record but may appear on enhanced background checks.

Outside of CRs, police forces use a variety of diversory tools. An internal NPCC survey shared with the Centre for Justice Innovation, found that the majority of police forces have developed or delivered diversory schemes.⁶

2.1 Are OOCs effective?

OOCs are generally seen as a way to improve efficiency and effectiveness in the CJS.⁷ They give the police a simple, swift and proportionate way to deal with less serious offences, whilst reducing the demand on courts and prisons. Experts have told us that youth diversion programmes - which are a different but comparable approach to the adult system - have expanded in use in recent years, resulting in far fewer children entering the court system, and have been crucial in reducing the youth court backlog.

The available evidence also points to OOCs reducing reoffending. Operation Cara (2011-2017), a pilot programme issuing OOCs to low-level domestic abuse offenders, found positive signs on reducing reoffending,⁸ and similar results have been replicated elsewhere.⁹ Diversory schemes can also improve victim satisfaction when implemented well¹⁰ and research shows that bypassing the more harmful and frustrating aspects of formal justice processing can have positive outcomes for low-level offenders.¹¹

But concerns have also been raised about the effectiveness of the new two-tier formal OOC system created by the reforms, and whether they represent value for money.¹² The proposals are estimated to cost an additional £109 million over the next decade, and it is

⁴ National Police Chiefs' Council, '[Out of Court Disposal National Strategy: 2022-2027](#)' (2022)

⁵ Centre for Justice Innovation, '[Strengthening community diversion](#)' (2022)

⁶ *Ibid*

⁷ Home Affairs Select Committee, '[Out-of-Court Disposals](#)' (2015); Transform Justice, '[Less is more- the case for dealing with offences out of court](#)' (2017)

⁸ Christine Christie et al., '[The CARA \(Cautioning and Relationship Abuse\): Service Theory of change, impact evaluation and economic benefits study report](#)' (2022); and

⁹ Peter Neyroud, '[Out of Court Disposals managed by the Police: a review of the evidence](#)' (2018)

¹⁰ Cerys Gibson, Sentencing Academy, '[Out of Court Disposals](#)' (2021)

¹¹ Centre for Justice Innovation, '[Strengthening community diversion](#)' (2022)

¹² Co-op, '[Breaking the Cycle](#)' (2021)

still unclear how police forces will fund the new burden of conditions.¹³ There is limited evidence that the reforms will reduce reoffending or improve victim satisfaction.¹⁴

Stakeholders have asked for greater consistency in how police forces approach and understand OOCs, and suggested that clearer guidance and regulation is needed.¹⁵ In 2022, the Magistrates' Association concluded that OOCs' "popularity has led to a rapid and largely uncontrolled expansion of their use that has not been accompanied by sufficient checks and balances".¹⁶

Some have argued that OOCs are being used "under the radar"¹⁷ by police forces, and justice stakeholders appear to disagree whether certain offences, such as hate crime and domestic abuse, should fall under the scope of OOCs.¹⁸

Stakeholders are not calling for a unified national system of OOCs - it's accepted that forces should have tailored diversionary schemes to meet local needs. But whilst the new OOC framework is still being rolled out, there is an opportunity for CJS partners to determine what data should be collected and reported to understand the use and impact of these schemes.

3. Recommendations: how the MoJ and Home Office can publish better data to support a more transparent, evidence-based OOC regime

We have studied the needs expressed by stakeholders, and the data held internally on OOCs. The rest of this briefing highlights three major data gaps that stakeholders have identified around OOCs, and recommends practical steps that the police, Home Office and MoJ can take to tackle them.

¹³ Ministry of Justice, '[A Smarter Approach to Sentencing: Reform of the Adult Out of Court Disposals Framework](#)' (2020)

¹⁴ House of Commons Library, '[Police, Crime, Sentencing and Courts Bill: Part 6, Cautions](#)' (2021)

¹⁵ Co-op, '[Breaking the Cycle](#)' (2021); Crest Advisory, '[Making the criminal justice system work better: how to improve out-of-court disposals and diversion schemes](#)' (2022)

¹⁶ Magistrates Association, '[Out of court disposals: Fit for purpose or in need of reform](#)' (2022)

¹⁷ Crest Advisory, '[Making the criminal justice system work better: how to improve out-of-court disposals and diversion schemes](#)' (2022); Nicole Westmarland, Kelly Johnson and Clare McGlynn, '[Under the Radar: The Widespread Use of 'Out of Court Resolutions' in Policing Domestic Violence and Abuse in the United Kingdom](#)' (2018)

¹⁸ Crest Advisory, '[Making the criminal justice system work better: how to improve out-of-court disposals and diversion schemes](#)' (2022)

3.1 Publish better data on diversionary schemes

The MoJ publishes useful statistics on formal OOCs. The annual ‘Out of court disposals data tool’ allows users to break down the type of disposals issued by a range of variables, such as offence committed, location, and demographic characteristics of the offender.¹⁹

But despite the vast majority of OOCs being informal, diversionary schemes, the data published on them is far more limited. The Home Office publishes the total number of uses of both informal OOCs and diversionary, educational or intervention activity, but it is not clear exactly what type of disposals comprise these outcomes or who receives them.²⁰

As stated by the Centre for Justice Innovation:

[W]hile we are aware that community diversion is happening across the country, a lack of sufficient data means that we are not yet able to determine the exact details of what kind of schemes are operating where, who is receiving it, and what the outcomes are. Our conversations with practitioners frequently characterise community diversion provision on the national level as extremely varied, with “everyone doing it differently”.²¹

We propose two steps to improve data recording and publication, that could significantly improve understanding of how informal diversionary schemes are used nationwide.

3.1.1 Publish new data on diversionary schemes based on Outcome 22

In 2022, the NPCC published welcome guidance on how police forces should record OOCs.²² All recorded crimes are assigned an outcome by the police on the Police National Computer (PNC).²³ The NPCC’s guidance notes that lots of diversionary work by the police falls outside of the current outcomes framework. Some forces have taken to using Outcome 22, which means that no further action has taken place but some form of diversionary activity has occurred.

But experts have told us there are significant inconsistencies in how this outcome is used. We’ve been told that some forces are highly reluctant to record interventions under Outcome 22, and many are classifying these offences under Outcome 8 (community resolution).

¹⁹ Ministry of Justice, ‘[Criminal Justice System statistics quarterly: December 2021](#)’ (2022) [Out of court disposals data tool]

²⁰ Home Office, ‘[Police recorded crime and outcomes open data tables](#)’ (2023) [Outcomes open data year ending March 2022]

²¹ Centre for Justice Innovation, ‘[Strengthening community diversion](#)’ (2022)

²² National Police Chiefs’ Council, ‘[Outcome 22 \(O22\) Guidance 2022](#)’ (2022)

²³ Home Office, ‘[Home Office Counting Rules for Recorded Crime](#)’ (2022)

The NPCC's new guidance is clear on which diversionary activities should be counted under Outcome 22, and lays out the distinction between Outcome 22 and Outcome 8. This should provide a clear direction for police forces' recording processes. Even better, from 2023 onwards, police forces will be mandated to pass on their data on Outcome 22 to the Home Office.²⁴ This opens up new opportunities for national data on diversionary schemes, for which there is currently very little.

We recommend that the Home Office commits to using the new data it will receive from police forces on Outcome 22, as the basis for future routine and detailed publications on diversionary schemes nationwide. This could be compiled with data collected on Outcome 8 (community resolutions) to create a complete and well-rounded picture of which informal OOCs police forces are using. This data should include the number of people who have received informal OOCs, the type of scheme offered and demographic information (discussed below).

3.1.2 Improve demographic data on who receives diversions

No national data is currently published on the demographics of people who receive informal OOCs, despite the requests of several stakeholders.²⁵

A Freedom of Information request we submitted suggests that the Home Office does hold detailed data on who receives community resolutions.²⁶ It reveals that demographic data is collected on community resolutions from police forces, by age group, sex and self-defined ethnicity, although the consistency of recording is poor. Overall, ethnicity is not recorded in more than 50% of cases, and age and sex in around 40%, but this varies wildly across forces (e.g. in 2021, Warwickshire and West Mercia did record sex in 98% of cases, while West Yorkshire did not record it more than 99%). This suggests it would be possible for the Home Office to publish some data disaggregated by these characteristics, with suitable caveats.

We recommend that all current and future data published on informal OOCs include essential demographic information on the offender, including their age and sex, and that the Home Office explores how to improve the quality of data held on ethnicity.

Without data on how different groups and minorities are impacted by OOCs, it will not be possible to understand ethnic or sex-based disproportionalities within diversionary schemes. This data is critical to ensure public trust in diversion, as well as helping police forces and the Home Office identify areas of improvement.

²⁴ National Police Chiefs' Council, '[Outcome 22 \(O22\) Guidance 2022](#)' (2022)

²⁵ National Audit Office, '[Improving outcomes for women in the criminal justice system](#)' (2022); Centre for Justice Innovation, '[Strengthening community diversion](#)' (2022)

²⁶ WhatDoTheyKnow, '[Disaggregated community resolutions data](#)' (2023)

3.2 Add OOCs to reoffending statistics

A number of studies have found that OOCs are associated with lower reoffending rates than court disposals.²⁷ Although there is evidence at the local level, there is no comprehensive national data on reoffending rates from OOCs.²⁸ The MoJ's 'Proven reoffending statistics' appear to cover only cautions and other disposals made in court.²⁹

Given the concerns raised by stakeholders about the impact of the new OOC regime on reoffending, we recommend that the MoJ extend its reoffending statistics to include OOCs. After police forces have implemented the new OOCs framework, the 'Proven reoffending statistics' should be updated to include data on the reoffending rates of offenders that have received informal OOCs (as recommended for youth diversion schemes by the Justice Inspectorates³⁰), and cautions by type. This should be possible if the MoJ extends its data sharing agreement with the Home Office to include details of OOCs recorded in the Police National Computer, and extends its linked reoffending statistics to cover these offences too.

3.3 Create a meaningful evaluation plan for the new regime

Many justice stakeholders are concerned that the new two-tier scheme for OOCs is reliant on weak evidence.³¹ Much of the Government's impact assessment of the scheme is based upon an evaluation of an earlier, slightly different pilot scheme.³² This pilot had no impact on reducing re-offending, but was "appreciably more expensive than the status quo". In fact, wider evidence suggests that the up-tariffing of OOCs by attaching additional conditions can increase re-offending rates for low-level offenders.³³

In terms of cost, independent researchers believe the Government's claim that the scheme will cost £109 million over the next ten years is likely to be an underestimate.³⁴ This analysis was based upon the initial 2014 scheme, but the current proposals will have additional costs for police forces due to conditions being attached to both formal disposals. As the Sentencing Academy suggests, a condition-centred approach could mean that rather than

²⁷ Michael Rowe, Aaron Amankwaa, Paul Biddle and Lyndsey Bengtsson, '[Streamlining out-of-court disposals: Assessing the impact on reoffending and police practice](#)' (2022); Juste Abramovaite, Siddhartha Bandyopadhyay, Zoe Stephenson and Jessica Woodhams, '[New Chance: Process and Impact Evaluation](#)' (2020)

²⁸ Centre for Justice Innovation, '[Mapping Innovation](#)'

²⁹ Ministry of Justice, '[Proven reoffending statistics: January to March 2021](#)' (2023)

³⁰ Criminal Justice Joint Inspection, '[Out-of-court disposal work in youth offending teams](#)' (2018)

³¹ Cerys Gibson, Sentencing Academy, '[Out of Court Disposals](#)' (2021); Co-op, '[Breaking the Cycle](#)' (2021)

³² Ministry of Justice, '[Adult Out of Court Disposal Pilot Evaluation - Final Report](#)' (2018)

³³ Centre for Justice Innovation, '[Conditional cautions: An evidence review](#)' (2022)

³⁴ House of Commons Library, '[Police, Crime, Sentencing and Courts Bill: Part 6, Cautions](#)' (2021)

OOCs being an efficiency saving for the CJS, the costs are simply transferred from courts to the police.³⁵

Given these concerns, it is important that future changes are based on better evidence, and evidence is gathered from early in the scheme about how well it is working. However, the impact assessment published alongside the new regime proposed only to collect data on the take-up of the new OOCs, not to evaluate e.g. whether they were used consistently across forces; whether there were demographic disparities; their impact on victim satisfaction; their relationship with reoffending rates; or whether the reforms are cost-effective.

Some of the data we propose above would help support this analysis. **We recommend that the MoJ publishes a more detailed monitoring and evaluation plan, setting out the criteria against which it plans to evaluate the new regime, and with details of the data it will collect to perform this evaluation.**

About us and acknowledgements

The Centre for Public Data is a non-partisan, non-profit research and advocacy organisation that works to improve the quality of UK public data. We have a particular interest in data gaps - areas where questions of significant public interest cannot be answered due to a lack of public data or statistics.

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³⁵ Cerys Gibson, Sentencing Academy, '[Out of Court Disposals](#)' (2021)