



WEST YORKSHIRE POLICE AND CRIME PANEL

10th March 2017

OUT OF COURT DISPOSALS

The Police and Crime Panel requested inform on the Out of Court Disposal pilot in West Yorkshire, the report below aims to provide this. The PCC received an update from the Chief Constable towards the end of 2016

Summary

On the 24th November 2014 West Yorkshire together with Leicestershire and Staffordshire commenced a pilot for the reduction of adult Out of Court Disposals (OoCD) from six:

- Simple Cautions (SC)
- Conditional Cautions (CC)
- Community Resolutions (CR)
- Cannabis Warning (CW)
- MKat Warning (MW)
- Penalty Notice for Disorder (PND)

to two:

- Conditional Cautionsⁱ
- Community Resolutionsⁱⁱ

Whilst the pilot concluded on the 23rd of November 2015 pending ministerial consideration and decision, the pilot forces were permitted to continue the follow the pilot guidelines. West Yorkshire has continued.

Whilst it is fair to say that the in the initial stages of the pilot, as with any new process staff took time to adapt to the new system to overcome cultural challenges. The Criminal Justice team provided advice, guidance and training support throughout the pilot in order to support officers. Condition setting proved challenging especially around the rehabilitation of offenders. However, as time has progressed each district has improved its approach and the introduction of the domestic abuse *Choices* perpetrator programme has enabled a force-wide approach to dealing with offenders. There is still work to do in relation to rehabilitation in order to bring a more consistent approach across West Yorkshire.

The general feeling within West Yorkshire and the other two Forces is that the pilot has been successful. There is a difference in the service provision for rehabilitation courses across the county, this is mainly due to financial constraints from service providers, and a general lack of overall provision. There was no funding provided for rehabilitation by the MoJ however, there was an expectation on pilot Forces to maximise the use of this type of condition wherever possible. (See Appendix 1 for rehabilitation available in each district). West Yorkshire has recognised that there are some significant gaps in rehabilitation for

sexual offences and hate crime and this will be discussed further together with general rehabilitation provision with the OPCC and five district OoCD SPOCs during February 2017.

Since the introduction of the pilot a decrease in the number of OoCDs has been seen, this trend has also been replicated by the other two pilot Forces, whereas nationally an increase has been recorded.

- September 2013 to August 2014 14459
- September 2014 to August 2015 11595
- September 2015 to August 2016 11990

However in the 12 months August 15 to September 16 there has been a 3% increase in the overall OoCDs issued. No analytical work has been undertaken to understand the reasons for this change, however anecdotally it has been felt WYP that this is due to applying the principles of the pilot which has led to a more ethical approach to the use of OCDs, e.g. offenders not being permitted to have numerous OoCDs.

As part of this report, the WYP Criminal Justice Team has undertaken a number of dip sampling exercises to establish compliance, proportionality and appropriateness in line with the pilot guidance. A total number of 1249 cases were examined ensuring cases were selected from each of the five districts. The dip sampling revealed the following;

Total Crime

Community Resolution

- 75.7% Appropriate and proportionate
- 81.3% Complied with conditions set
- 19.6% Reoffended

Conditional Caution

- 78.8% Appropriate and proportionate
- 88.3% Complied with conditions set
- 25.9% Reoffended

Up to date statistics are attached to this report separately.

West Yorkshire Out of Court Disposal Scrutiny Group

A quarterly scrutiny panel of criminal justice partners has been set up to review a sample of these disposals. The intention of the panel is to provide transparency and accountability and increase public understanding, confidence and trust in how West Yorkshire Police use out of court disposals. There is a particular focus on the delivery of appropriate and proportionate justice, ensuring redress for victims of crime as well as addressing the root causes of offending behaviour.

The following sit on the Panel:

- Independent Chair from the Office of the Police and Crime Commissioner (OPCC)
- West Yorkshire Police Chief Inspector with responsibility for criminal justice
- Police representative with expertise in out of court disposals
- Police representative(s) with expertise in the themed case(s) as required for sexual, domestic or hate crimes at the request of the Chair
- Two adult and two youth Magistrates

- HM Courts & Tribunal Services (HMCTS), Legal Advisor
- Crown Prosecution Service (also currently serving as deputy chair)
- Youth Offending Team
- National Probation Service
- West Yorkshire Probation Community Rehabilitation Company
- Victim Support

There is a particular focus on the delivery of appropriate and proportionate justice, ensuring redress for victims of crime as well as addressing the root causes of offending behaviour. It provides constructive scrutiny at an organisational and individual level to promote best practices, identify potential policy or staff development needs and more effective working practices between agencies.

It also works to ensure the voice of victims is heard through the out of court disposal process and provide challenge where it appears not to have been considered.

The scrutiny panel has no referral or appeals capability and is not intended to re-judge cases. It will assess the relevant processes, interactions and decisions to identify any continuous organisational learning.

The panel reviews a random selection of cases and makes a judgement that the out of court disposal was:

1. Appropriate and consistent with relevant organisational policy and procedures; or
2. Appropriate with observations; or
3. Inappropriate and/or inconsistent with policy and procedures.

The panel can also fail to reach a conclusion, which can occur due to lack of information available at the time the case was considered by the panel or due to a difference of opinion amongst panel members.

The public summary for meeting held in October 2016 is attached separately to this report. The summary for the January meeting will be published in late March 2017. Further information and public summaries of each meeting are available on the PCC's website <https://www.westyorkshire-pcc.gov.uk/our-business/out-of-court-disposals.aspx>.

Rehabilitation Courses

Leeds

- Mabgate Mills – drugs and Alcohol – male offenders – there is scope to offer wider services in the future.
- Together Women's Project – all female offenders.

Kirklees District

- Foundation – Any crime type, tend to related to housing, benefits, education, employment type issues, but will take anyone.
- Women Centre – all female offenders
- Home Start –parents who commit crime when it's connected to children
- Restorative Justice Hub
- Support to Recovery – Providing a mental health course/intervention (resilience and self-esteem).
- Purple Futures/CRC – Will be providing a funded 'community payback' type scheme (funds held by me and Purple Futures working on the programme).
- Home Group – Provide a support to people with MH issues (assist with applications, housing, benefits, education and employment).
- On Track/Lifeline – Provide an alcohol awareness course.
- DIP – Provide a Cannabis course **and** 3 sessions for people dependant on drugs/alcohol (as opposed to On Track who provide the short intervention).
- Commines – Anger management course

Wakefield District

- Turning point – alcohol
- Evolve Well Women Centre – all female offenders
- Liaison and diversion Unit
 - Alcohol issues
 - Recreational Substance misuse
 - Mental Health Issues
 - Vulnerabilities that are causing difficulties

Calderdale

- Together women project – all female offenders
- DIP – drugs and alcohol
- Restorative Justice Intervention

Bradford

- Restorative Justice Hub

ⁱ **Conditional Caution 18+ years only**

This is a disposal which enables officers to deal with low-level offending outside of the formal court system, for cases which would be suitable for prosecution but where the public interest is better served by the offender complying with suitable conditions. Further information on conditional cautions can be found in the statutory Code of Practiceⁱ and the Director of Public Prosecution's Guidance on Conditional Cautionsⁱ.

The purpose of the CC is to formally record the offender's behaviour and impose conditions that the offender must comply with within a specified period. The CC should be used when the offence requires a more formal outcome than that delivered through the Community Resolution Plus. This may be because of previous offending history and/or the severity of the offence.

The conditions applied to the CC must be either, rehabilitative and/or reparative and/or punitiveⁱ.

- **Rehabilitative conditions** could include, for example, attendance at a treatment course.
- **Reparative conditions** could be, for example, taking part in a RJ process, apologising to the victim, paying compensation and/or repairing any damage caused.
- **Punitive conditions** could include a financial penaltyⁱ.

The conditions must always be appropriate, proportionate (in comparison to what may be received in court for the particular offence) and achievable, recognising the views of victims; however their views should not be the deciding factor.

CC disposals are available for all offences. It is not necessary for the police to refer a CC for an either way or summary offence to the CPS, although certain specified either way offences must be approved by a senior police officer determined by each force. In exceptional circumstances, a CC may be given for an indictable only offence, but this must be referred to the CPS by a Superintendent using an MG3 form.

For offences involving hate crime and domestic violence and abuse, the DPP has granted the three pilot forces an exemption to the conditional cautions guidance to allow a CC to be used for such offences in certain circumstances. Further guidance can be found at **Annexes A and B**.

If there is no reasonable excuse for non-compliance with conditions attached to a conditional caution a prosecution for the original offence may be initiated. There may be some circumstances where the unmet conditions may be varied or removed; however the decision to do either of these must be recorded.

Conditional Caution - Operational Considerations

The following should be taken into account when police officers are deciding whether to administer an adult conditional caution:

- **The offence** – the conditional caution is not generally suitable where, if prosecuted, the offender would be likely to receive a significant community sentence or imprisonment.
- **Evidential stage** – There must be sufficient evidence to provide a realistic prospect of conviction.
- **Public Interest stage** – Where there is sufficient evidence to provide a realistic prospect of conviction, the decision-maker must go on to consider whether it is in the public interest to offer a CC. In most cases a CC should not be given where a court, if the offender were convicted, would be likely to impose a significant community sentence or a period of imprisonment for the offence, unless there are "exceptional circumstances" as set out in the DPP's Guidance on Conditional Cautions.

-
- **Admission of guilt** – The whole premise of the CC procedure is to provide an appropriate, alternative disposal to charging in cases where the suspect admits the offending behaviour and the use of a CC would provide an appropriate outcome for the victim and better serve the public interest. By its nature, the offender needs to demonstrate acceptance of the offending and a measure of compliance. The decision-maker must be able to determine whether there is a likelihood that the offender will comply with the conditions set. The CC is not designed for offenders who do not, ultimately, admit the offence. The MG14 has a specific wording which accepts culpability and by signing the MG14, the offender accepts their offending behaviour and this is an admission of guilt. The concept of a 'full' admission in interview is not required, but the suspect signing the MG14 is a full admission even if that admission was not immediate. The CC process allows for the full admission in interview, provided the offender has made a clear and reliable admission to the offence and has said nothing that could be used as a defence. Where however there has been no interview (for instance a drunk and disorderly offence) or no admission, the decision to offer a CC can still be made, but the offender must not have denied the offence or otherwise indicated it will be contested. In these circumstances the commission of the offence and the identification of the offender must also be established by reliable evidence or the offender must be seen clearly committing the offence on a good quality visual recording. These provisions were designed to incorporate cases where there is no interview or no admission, but a subsequent acceptance of the offending. If the offender makes no admission and the offender signs the admission on the MG14, then that is sufficient. It must however be made clear that CCs are not designed to, in any way, pressurise suspects into accepting them. They are designed for those who accept their culpability and the remorse element is an aspect which may make the CC suitable in terms of appropriate disposal as far as the victim is concerned. If there is any doubt that the suspect admits the offending behaviour in full whether in interview, during the MG14 procedure or indicates they are not willing to comply with the conditions, then a CC would, clearly, not be suitable; all cases must be viewed on their merits.
 - **Offender consent** – the offender must consent to being given the conditional caution plus and consent to the conditions attached to that caution.
 - **Offender history** – any previous offending should be assessed. The ACPO Gravity matrix should be taken into consideration and a CC issued only where considered appropriate to prevent re-offending and make reparation for harm caused. A second conditional caution should not generally be given for the same or similar offence unless there are exceptional circumstances indicating that it may be appropriate; for example, where the previous conditional caution was more than two years earlier. The police officer should also be satisfied that the proposed conditions are likely to be effective in modifying offending behaviour and securing desistance.
 - **Victim check** – reasonable efforts should be made to obtain the views of the victim and whether the offender should carry out any of the actions in the community remedy document. Unless considered inappropriate to do so, the action in the community remedy document should be attached as a condition to the CC. If appropriate, a victim can be awarded compensation or reparation in the form of a reparative condition attached to a CC.
 - **Bail to enable appropriate conditions to be identified and set** – conditions should be agreed and set at the earliest opportunity whilst the offender is in custody. There is however provision within 37 (7) (b) of PACE should further enquiries with service providers and victims be required.
 - **Implications** – if the conditions are not complied with or the offender withdraws from the CC, the offender may be prosecuted for the original offence. A CC forms part of a criminal record and may, in some circumstances, be disclosed in future proceedings or to an employer (or for voluntary work) as part of a standard or enhanced disclosure provided by the Disclosure and Barring Service. If the offence(s) is listed on schedule 3 of the Sexual Offences Act 2003 the offender will be placed on the Sex Offenders Record.
 - **Non-compliance with conditions** - in the event that an offender fails to comply with the conditions, there is no requirement for a PACE-compliant interview to establish whether the offender has a reasonable excuse for this. The offender should be given an opportunity to indicate

the reason why they have failed to comply with a condition(s). Enquiries should then be made into any reason provided or representation made in order to establish whether this is a reasonable excuse. The opportunity provided and any subsequent enquiries should be outlined on the MG6 in the event of a prosecution. (See **Annex D** for further guidance.)

- **Explain the implications of receiving a conditional caution** - the implications of prosecution, criminal record and the consequences of further offending detailed above must be outlined. The decision-maker administering the CC must ensure the offender fully understands that they are admitting the offence and agreeing to the conditions being set. The offender must also understand that the MG14 becomes a document which is admissible as evidence of an admission in any subsequent court proceedings

- ⁱⁱ **Community Resolutions 18+ only**

Community Resolutions should be used by officers and police staff to secure desistance from offending behaviour as an outcome. They should also be used to make good any harm caused by an offender (recognising the wishes of a victim where they may be involved).

A CR is a non-statutory disposal. It is a method of dealing with low-level crime in a way which is proportionate and appropriate, when it is not in the public interest to prosecute. The purpose of the CR is to divert the offender away from their offending behaviour, encourage them to face up to the impact of their behaviour and to take responsibility for the outcomes.

A CR must only be used when an officer or member of police staff is confident that the outcome will prevent further offending and the offender is likely to comply with the actions agreed as part of the CR.

A CR can be offered when the offender admits the offence or accepts responsibility and, in cases where a victim is identified, where the victim does not want more formal action taken.

The most appropriate offences to warrant a CR (which can be administered on the street or in a police station) are likely to be low-level criminal damage, low-value theft, minor assaults (without injury), low-level public order and drug possession (including khat and cannabis). Community resolutions can also be used to tackle incidents of anti-social behaviour which constitute offences which are not notifiable and thus outside the scope of the NCRS/HOCR.

Resolutions can include the offender being given advice about their behaviour, apologising in person or by sending a letter to the victim, or making some form of reparation, such as repairing or paying for any damage done or taking part in a restorative justice process.

Community Resolutions - Operational Considerations

The following should be taken into account when deciding whether to administer a CR:

- **Actual Offence** – based on the circumstances and **gravity** of the offence, it must be in the public interest to offer this disposal.
- **Evidential Standard** – it must be clear that a crime or incident has occurred, and there are reasonable grounds to suspect that the offender is responsible.
- **Acceptance of responsibility** – the offender must accept responsibility for the crime/incident.
- **Offender Consent** – the offender must explicitly consent to accepting the CR+.
- **Offender History** – the offender must be capable of understanding the CR process and implications of accepting a CR. They should have no relevant offending history. For example

the offender should not have received a CR for the same or similar offences within a 12 month period unless there are exceptional circumstances (those exceptional circumstances must be fully documented). As community resolutions are recorded on local force systems, checks should be made with other forces if there is any indication that the offender resides or has previously lived in another force area. If they have previously offended, the officer or police staff member should record the details and refer the decision on suitability of a CR to a supervisor. Final decision rationale must also be recorded.

- **Victim Check** – before deciding what action the offender/perpetrator should be invited to carry out, the officer or member of police staff must make reasonable efforts to obtain the views of the victim and in particular the victim's views on whether the offender should carry out any of the actions listed in the **community remedy document**. A CR can proceed without victim consent but (where a victim is present and does not consent) the rationale for issuing the CR must be recorded. This does not apply to offences where there is no identifiable victim (e.g. drugs or public order).
- **Implications** – a CR does not form part of a criminal record but where relevant it may be disclosed in an enhanced disclosure and barring service (DBS) check.

Community Resolutions - administrative considerations

Where the offence is victimless (e.g. public order) the officer should:

- Confirm the offender accepts responsibility
- Explain and document the CR process and the implications of accepting the disposal to the offender considering any appropriate restorative elements.
- Ensure the CR is recorded appropriately. Where the offence relates to a notifiable crime, a crime report must be completed. The offence and the outcome must be recorded in accordance with the NCRS and HOCR for crime.

Where a victim is identified, you must also:

- Document how the offender will rectify the harm caused to the victim.