

Deflect and divert: a common sense approach to dealing with low level crime

The criminal justice system is like a manual transmission car. We need to use all available gears to best effect. If we overuse the top gear – imprisonment – the car won't work effectively, efficiently or economically.

Diversion and out of court approaches – the first and second gears of the justice system – have proven to be effective in preventing reoffending and in addressing the needs of victims. They have also had a crucial role to play in slowing the spread of covid-19. The confined spaces of police custody, courts and prisons increase the risk of infection spreading. Prosecutors have been advised to opt for out of court disposals such as cautions or community resolutions for less serious crimes.

This booklet outlines the case for diversion and out of court approaches – the first and second gears of the justice system.

**Transform
Justice**

The problems of going to court

Prosecution and court-imposed sanctions are neither effective nor cost-effective for many crimes and those who commit them:

- Most court convictions result in a fine (78%) or a conditional/absolute discharge (3%)¹ neither of which involve rehabilitation or making amends.
- Very few of those convicted in the magistrates' court are sentenced to a sanction which involves rehabilitation and/or actively making amends. Only 7% receive a community sentence. **And only 1% of those convicted complete a rehabilitation programme in the community or in prison.**
- Victims are rarely involved in magistrates' court hearings, and may not even be informed as to what happened in court. Most victims receive nothing in the way of compensation as a result of the court process.
- A prosecution in a magistrates' court is likely to take much longer than an out of court disposal. **On average it takes 169 days from the offence happening to the conclusion (summary offences).**² Victims can forget the details of what happened or just decide they want to move on – which means they withdraw from the court process.

What needs to go to court

For some crimes and victims, out of court approaches are not suitable. Those who are accused of committing serious violent or sexual crimes, or of being involved in organised crime, should almost always be charged and prosecuted. The public needs to be protected, and victims of serious crime often want their "day in court" and to see those who harmed them receive a public sanction.

If the defendant/suspect is adamant they didn't commit the crime, or that they have a viable legal defence, they should maintain their innocence and stand trial.

Why out of court approaches make sense

1) They satisfy victims

Many victims would rather not go to court - record numbers are withdrawing from the court process. Out of court approaches offer victims a speedy resolution to the crime they suffered, an opportunity to get an apology and assurance that the person who committed the crime will get support to turn their life around.

A recent deferred prosecution pilot in Birmingham³ reported 43% greater victim satisfaction,⁴ compared to those victims whose cases went to court.

2) They are popular with the public

In a major survey commissioned by the government⁵, out of court disposals were favoured over court for minor offences. **Only one in ten people preferred prosecution for minor offences.** On balance, rehabilitative approaches to out of court disposals were the most favoured - particularly for second offences.⁶

3) They reduce reoffending

Desistance from crime is promoted through stable housing, good health, employment and strong family relationships, all of which can be hampered by prosecution and imprisonment.

There is no silver bullet to reduce reoffending. But evidence shows that **diversion and out of court disposals are usually more effective than court disposals in reducing offending.**⁷ The best reoffending rates are for cautions; in the last quarter of 2018, 14% of those who received a caution reoffended compared to 24% of those who were asked to pay a fine by the court. Out of court approaches also don't entail a long criminal record which can be a barrier to employment, housing and education.

4) They are cost-effective

We need to reduce crime as cost-effectively as possible. This means targeting police resources to the most harm. Any crime that is prosecuted takes a huge amount of police time. Of course this is necessary in the case of serious crime. But police can save resources by making better use of the lower gears in our justice system. An Australian study found that **out of court diversion schemes for low level drug offences cost 84-94% less than formal charging.**⁸

The Birmingham deferred prosecution pilot, Turning Point, achieved a saving of c £1,000 per case, including all the costs of the intervention programme.

Conditional cautions in practice

Hampshire's Project Cara offers those who have admitted to domestic abuse two workshops as part of a conditional caution. The workshops aim to address the issues underpinning the offending behaviour. An evaluation found significant positive outcomes for offenders randomly assigned to the workshop group. In the 12 month follow up period, they were estimated to have caused 27% less harm than the offenders assigned to the control group who received no treatment.⁹

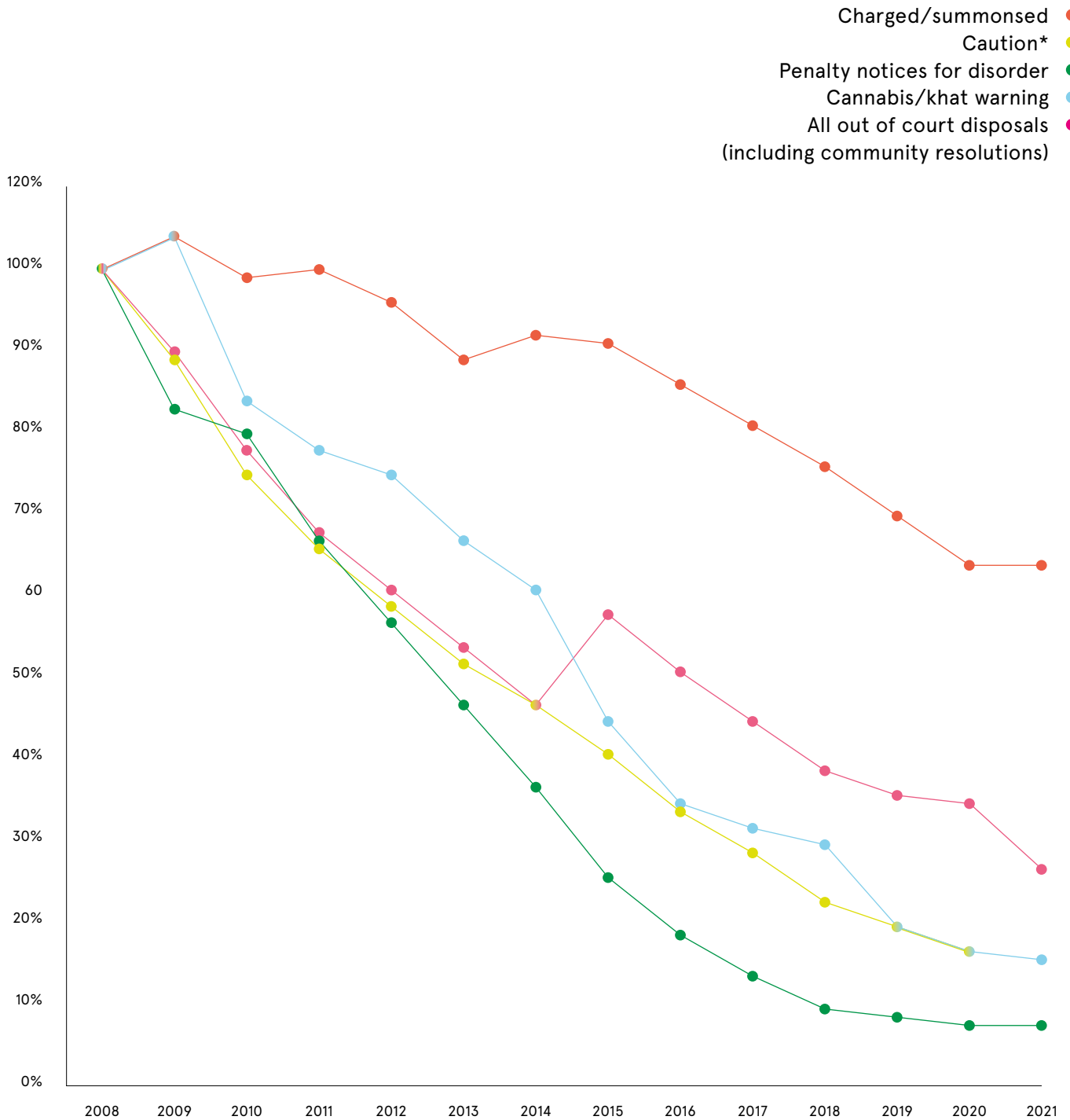
What out of court approaches can police use?

<p>Diversion from the criminal justice system</p>	<p>Many people who commit low level crime have had a momentary lapse of judgment in an otherwise law abiding life. Others have mental health problems or learning difficulties. Particularly for those in trouble for the first time, the best approach may be to ensure the suspect understands the harm done and refer them to services that might help them.</p>
<p>Community resolution (may include restorative justice)</p>	<p>Used for crimes which are more effectively dealt with swiftly and informally, often "on the street". The person who committed the crime agrees to make amends in some way – whether by apologising or clearing up any damage done. Can include restorative justice, which brings those who commit crime into communication with those they have harmed.</p>
<p>Penalty notice for disorder</p>	<p>A quick way of dealing with low level, antisocial and nuisance offending by issuing a fine. No rehabilitation activities are involved and the person does not need to admit guilt. Penalty notices are being phased out of many police force areas and use has dropped significantly in recent years.</p>
<p>Cannabis and khat warning</p>	<p>Given to people found in possession of a small amount of cannabis or khat. The person must admit guilt. The drug is confiscated and a record of the warning will be made on local systems.</p>
<p>Simple caution</p>	<p>Given to people who admit to committing relatively low level offences where prosecution would not be effective or proportionate to the circumstances. Though no conditions are attached, the caution is a formal criminal justice sanction and includes a criminal record. This "simple" caution was used throughout England and Wales but is now only available in certain police force areas.</p>
<p>Conditional caution</p>	<p>Similar to a simple caution, with the addition that all those on whom they are imposed have to meet conditions such as taking part in a rehabilitation activity or paying compensation for damage. Conditional cautions are now available in most police forces.</p>
<p>Deferred prosecution</p>	<p>A recently trialled approach to reducing crime involves deferring prosecution if the accused agrees to undergo a rehabilitation programme. If the accused does not complete the programme, they are prosecuted. Deferred prosecution may be particularly effective at reducing racial disparity in the criminal justice system – BAME defendants are less likely to plead guilty to crimes but deferred prosecution does not require a formal admission of guilt. Now used in 7 police force areas.</p>

Trends in court and out of court disposals 2008-2021

Source: Ministry of Justice – Criminal justice statistics quarterly March 2021

In the last thirteen years, the use of out of court disposals appears to have declined significantly, more so than court disposals.



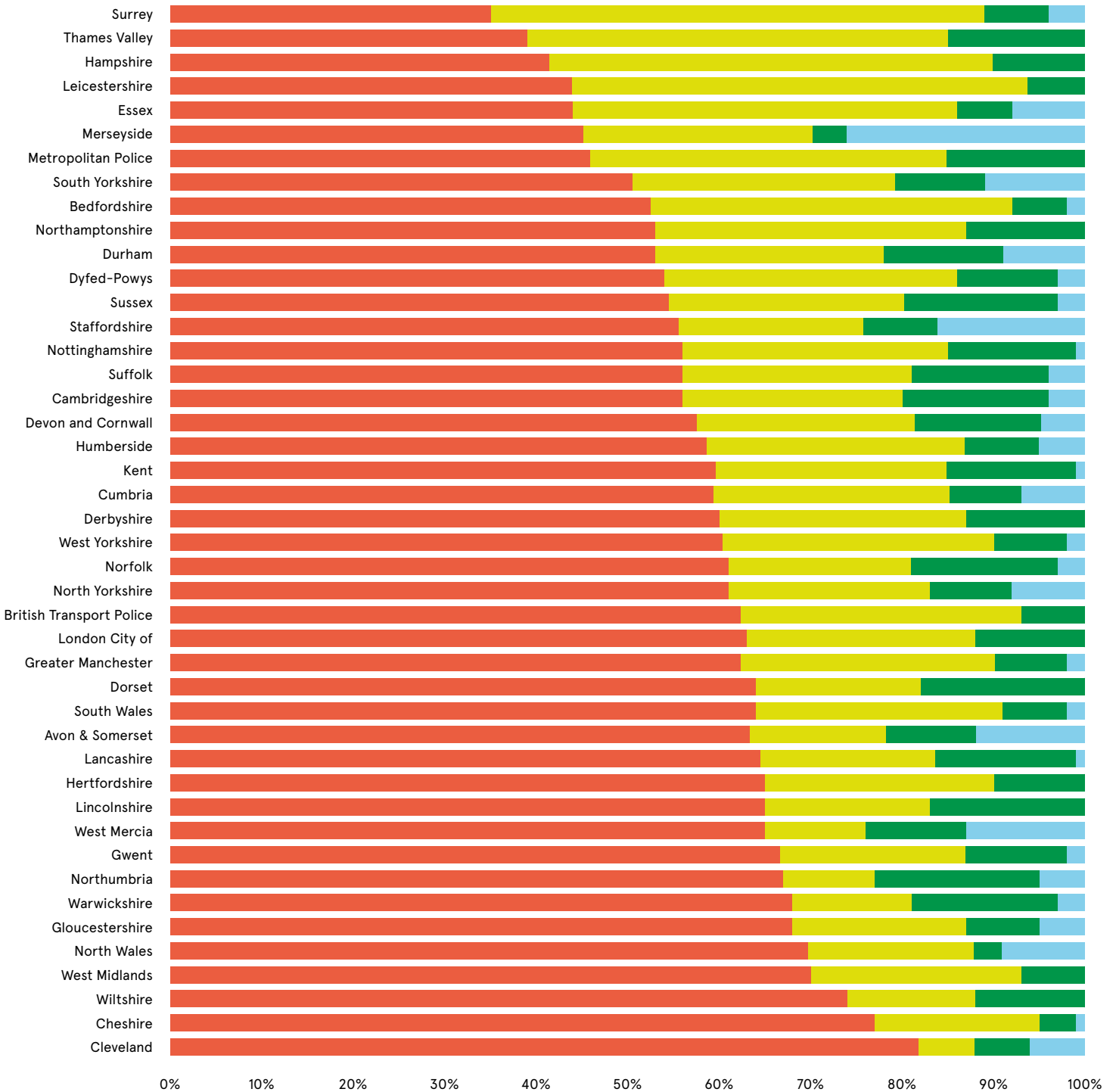
*Caution data for 2021 has not yet been published

How much are out of court approaches used in your area?

Source: Home Office - Police recorded crime and outcomes open data tables

The graph below shows what proportion of low level crimes (i.e. excluding violent and sexual crimes) ending with a positive outcome were dealt with using out of court approaches in year ending March 2022.

Prosecution ●
 Community resolution ●
 Formal caution or fixed penalty notice ●
 Outcome 22* ●



*Diversionary, educational or intervention activity

Deferred prosecution in practice

Durham Police's Checkpoint programme offers people in line to be prosecuted an alternative – a four month contract based on an individual needs assessment with a requirement not to reoffend. Conditions can include interventions to address underlying problems, voluntary work or monitoring by a GPS tag.

A man with alcohol and mental health issues was referred to Checkpoint following three shoplifting offences. He completed 18 hours volunteering at the local foodbank, and continued after the end of the contract. Following referral to a drug and alcohol agency for counselling, he significantly reduced his alcohol usage and, at the end of the contract, was looking to come off his medication for depression after 10 years.

Conclusion

Out of court disposals are a hidden success story in policing in England and Wales. They give police discretion to offer an individualised response to victims and those who have committed crime. Out of court approaches are swift, cost effective and offer good opportunities to reduce offending. Some offences, and some who commit offences, need to be prosecuted, but much of what is currently dealt with in magistrates' courts could be better dealt with out of court. We need to use out of court approaches more and promote why they are a smart and common-sense approach to much offending.

To discuss strategies for increasing your use of alternatives to prosecution, contact us at penelope@transformjustice.org.uk

End notes

- 1 <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2020>
- 2 <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2020>
- 3 <https://www.npcc.police.uk/Publication/NPCC%20Out%20of%20Court%20Disposals%20Evidence%20assessment%20FINAL%20June%202018.pdf>
- 4 As long as they received a phone call to explain what was happening
- 5 Initial findings from a review of the use of out-of-court disposals, Office for Criminal Justice Reform, 2010
- 6 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217353/out-of-court-disposals-june2011.pdf
- 7 Harvey, E., Shakeshaft, A., Hetherington, K., Sannibale, C. and Mattick, R.P. (2007). The efficacy of diversion and aftercare for adult drug-involved offenders: a summary and methodological review of the outcome literature. *Drug and Alcohol Review*, 26, 379-387
- 8 Shanahan et al (2017) <https://aic.gov.au/publications/tandi/tandi532>
- 9 Strang, H., Sherman, L., Ariel, B. et al (2017) <https://link.springer.com/article/10.1007/s41887-017-0007-x>