

# OUT OF COURT DISPOSALS

**Ethics, Transparency & Audit Panel**  
**September 2018**



Review number 17003

## About ETAP

The Ethics, Transparency and Audit Panel (ETAP) is made up of members of the public, who play a significant and central role in ensuring effective accountability and governance is delivered.

ETAP is about much more than fulfilling statutory Audit Committee responsibilities, it has used its wide-ranging and rigorous powers to scrutinise crime recording, forensics, Taser use and stop and search to make sure decisions made by the police are correct and in the best interests of the public.

ETAP was set up by Matthew Ellis the Staffordshire Commissioner for Police, Fire and Rescue and Crime to make policing in Staffordshire the most open and transparent in the country.

To find out more about ETAP and see previous reports, go to <https://staffordshire-pfcc.gov.uk/ethics/>

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# Out of Court Disposals

## Objective

An Out of Court Disposal (OoCD) is a procedure where local police may decide to resolve low-level crime committed by adults (over 18 years) or youths that would otherwise have gone through the court process. Its' intent is to deal with crime in the best interests of the victim and offender. Through suitable offender management, it can also help reduce repeat offending especially amongst younger offenders. This paper concentrates on OoCD for adults.

The concept of OoCD, and the relevant outcomes, is available for every police force in England and Wales; however, procedures may vary. Most forces will utilise the use of OoCD in the form of fixed penalty notices, community resolutions, simple cautions and street warnings which offer little or no resolution for the victim. Furthermore, fine recovery rates are generally poor, administratively demanding and offer poor rehabilitation opportunities to offenders.

In November 2014, Staffordshire Police in conjunction with two other Forces commenced a pilot scheme to simplify Out of Court Disposals. The pilot scheme is still running and has reduced the options for disposal (listed above) to 'Conditional Caution'<sup>1</sup> or 'Community Resolution'<sup>2</sup> removing all others. Within the pilot group, further agreement has been given for special dispensation of Conditional Cautions for certain domestic abuse cases.

As Staffordshire Police are participating in the pilot, ETAP wish to establish:

1. if the pilot scheme is been successful,
2. the impact of administrating OoCD on force resource,
3. that OoCD's are equally and consistently applied across Staffordshire Local Policing Teams,
4. the way forward in the application of OoCD when the pilot phase ends.

## Executive Summary

OoCD are a positive way of dealing with low level crime and provide local officers with the authority to deal with local issues as and when they occur. The inclusion of the victim in the decision process helps build confidence in the police and improve victim satisfaction. There is support within the force for OoCD and training is given to new or recently transferred officers. Since the inception of the pilot, the Justice Services Support Unit (JSSU<sup>3</sup>) have achieved good recovery rates of fines and have strengthened offender's attendance at clinics designed to overcome their issues. This goes a long way in helping to reduce reoffending. This is being achieved by deploying staff to follow up on fines and compliance with clinic attendance. A good working relationship exists between the JSSU and support agencies.

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<sup>1</sup> **Conditional Cautions** are regarded as 'Suspended Prosecutions'. If someone is in breach of the condition(s), or commits another crime, then he/she would be charged with the original offence and taken to court.

<sup>2</sup> **Community Resolution** is suitable for lower level crimes when the offender admits to the offence, has no relevant offending history and the victim doesn't want more formal action to be taken.

<sup>3</sup> **Justice Services Support Unit (JSSU)** is located at force headquarters in Stafford and consists of a team of dedicated administrators who are responsible for reviewing, updating, disseminating and removing data from PNC (Police National Computer) relating to a variety of business areas.

Clarity is required on the pilot OoCD which seems to have dragged on without any decision being taken on the next phase. The pilot has been favourably received but a potential weakness exists in dealing with some types of anti-social behaviour which, whilst not unlawful, cause public concern and/or anxiety. This is something ETAP feels requires further investigation in order to address this specific shortfall.

If the success of JSSU is to be maintained, continuity of funding is needed, and a strategy should be developed to consider how best it can be supported.

A number of low to medium level recommendations are put forward for consideration:

#### Low priority

- Clarity is required on the continuation of the pilot.
- The force reviews their internal processes for assessment of OoCD decisions to ensure appropriateness and proportionality.
- Regular review of the training content and attendance.

#### Medium priority

- Explore the advantages/disadvantages in including Fixed Penalty Notices.
- Investigate if support is available to part fund this service, or if a percentage of the money recovered and sent to Her Majesty's Court and Tribunal Service (HMCTS) could be retained.
- The Staffordshire Commissioner's Office should continue to lead on regular monitoring by the independent panel, with regular and consistent support from other agencies.
- A strategy needs to be developed to consider the long-term benefits of OoCD and how it needs to be supported.

## Current Procedure

A **Community Resolution (CR)** is made by the local officer and ratified by a supervisor. This is often issued at the scene of the disturbance. It requires a signed admission, is recorded in the Crime Management System (CMS2) but does not result in a criminal record. The local officer monitors compliance of a Community Resolution.

Under the supervision and authority of any officer of at least sergeant rank, or designated police staff member, the local officer can issue **Conditional Cautions (CC)**. These require a formal interview under caution and the crime is recorded on CMS2 but will also be recorded on the Police National Computer (PNC), constituting a criminal record for the offender.

## Conditions for issuing an Out of Court Disposal

There are certain conditions which must apply when issuing an OoCD

- The offender is positively identified and fully admits the offence.
- Identified victim has been appraised of the OoCD process and contributes to the decision making.
- Whether the offender has a previous crime recorded on CMS2 or an incident recorded on STORM. (System for Tasking and Operational Resource Management)

Two separate audits in Staffordshire indicate that between 30% and 40% of guilty pleas in respect of non-serious cases could have been dealt with by OoCD which lowers pressure and costs on the Criminal Justice System (CJS) and reduces the number of

people held in custody.

**Review Process**

In conducting this review, the panel had meetings with force personnel at different levels of authority; were given published documents from the Association of Police and Crime Commissioners (APCC), details of the national pilot scheme and training notes provided to all new recruits, transferees and promoted sergeants. We also received progress reports on the pilot scheme sent to a National Operational Working Group consisting of members from the Ministry of Justice, Ipsos Mori and Sheffield Hallam University. This group ensured a constant monitoring and evaluation regime throughout the pilot period.

We also referenced the output from OoCD Scrutiny Panel’s quarterly meetings where independent representatives from ETAP, probation services, magistrates and youth offending review a random sample of cases which have been resolved by use of OoCD. In conjunction with the Force, each case is considered in detail and while the panel cannot change the outcome of the case it does assess the appropriateness of the action taken. The aim of the resulting feedback is to promote best practice and identify potential policy development or training needs.

We consider this approach gave us balanced opinions on the benefits or otherwise of the pilot scheme and an understanding of any operational difficulties in adhering to the new procedure.

**Advantages of OoCD**

- OoCD allow victims to be involved in the decision made and conditions set. It will help in their satisfaction on steps taken for closure.
- Conditional OoCD can offer a timely end to an incident and provide rehabilitation for offenders.
- Prisons may expose new offenders to an environment of hardened, accomplished criminals. This is avoided.
- Rehabilitative opportunities for offenders at an early stage can change lives before they are embroiled in the CJ system and court process.
- If adult offenders only received a fine through the court, this can be deemed as wholly ineffective for the offender.
- High levels of offenders suffer from mental health issues and many have alcohol/substance misuse problems. A different approach is required to tackle this type of offender.
- If low-level offending is dealt with through OoCD, additional time is available to focus on more serious and complex crimes.

Number of OoCD issued during the period 04/11/2014 – 15/02/2018 are as follows:

Category	Number
Total Adult CC	5070
Total Adult CR	6830

Overall compliance for adult CC exceeds 85%

Other recorded information over the same period and considered relevant:

Topic	Number	Performance	Factor
Recidivist sample test for Domestic Abuse.(DA)	266	80% compliant	13 offenders committed further DA offences.
Adult CC fines recovered	£24,379		Revenue direct from police to HMCTS
Adult CC finance recovered (compensation)	£114,903.45		Monies recovered for victims.
Offences: suspect identified, victim does not wish to proceed. (to nearest 1000)	49,000	Approx. 13% of total crime	The crime categories are deemed suitable for a CC or CR but would be dependent on the offender profile.

### Justice Services Support Unit (JSSU)

The function of the JSSU is to monitor compliance of Conditional Cautions and to act as the conduit to progress all matters of diversion/rehabilitation for the offender. There is a range of support available from national companies, such as Druglink<sup>4</sup> and the Victim Awareness Course (VAC)<sup>5</sup> through the Victim Support Service (VSS)<sup>6</sup>. These provide a fast, robust solution for first time offenders, or offenders having not been in the criminal justice system for some time. Many of these offenders are willing to attend the courses to address their criminal behaviour and are required to pay for the course cost.

As can be seen from the above table, the JSSU have been successful in recovering £139,282 of fines which should be complimented. We understand this recovery percentage is above that achieved by the courts and not replicated by all forces. We consider this is something which needs reinforcing as it ensures payment of fines, can improve victim satisfaction and helps avoid reoffending. This can only be achieved by having adequate staff to follow-up and monitor offenders which is costly. To support ongoing costs, we consider that investigations should be made to determine if support is available to part fund this service, or if a percentage of the money recovered and sent to HMCTS could be retained.

Good use of support agencies is used which include:

- **General Practitioner (GP):** Utilising the GP services throughout the county.
- **Lucy Faithful Foundation:** for first-time non-contact sex offenders.
- **Change Programme:** for offenders soliciting the services of a sex worker.
- **CARA project:** for first time domestic abuse perpetrators.

Current costs of providers (April 2018)

Provider (actual)	Course	Type	Cost
Druglink	Alcohol/drug	Half day	£45
Victim Support Service	Victim Awareness	Half day	£60
“Change”	Sexual activity	One day	£300

<sup>4</sup> For detailed information access <https://www.druglink.co.uk/>

<sup>5</sup> For detailed information access <https://www.victimsupport.org.uk/>

<sup>6</sup> For detailed information access <https://www.victimsa.org/>

Lucy Faithful Foundation	Sexual activity	12 sessions	£800 - £1,000
GP Services	As directed	Mental health/behavioural provision	Free - £40
<b>Provider (available)</b>			
RISE/VSS	Domestic Abuse	2 x half day	£150
CARA	Domestic Abuse	2 x half day	£150

The following table represents the actual figures and cost for the three main courses provided for offenders through the OoCD referrals. The cost of each course is borne solely by the offender.

Course	Period	Referrals	Attendees	Compliance	Cost
Drug and alcohol rehabilitation through Druglink	2016 -2017	586	396	68%	£12,775
Drug and alcohol rehabilitation through Druglink	2017-2018	351	287	82%	£10,045
Victim Awareness Course (VAC) through the VSS:	2016	57	Figures not	available	
Victim Awareness Course (VAC) through the VSS:	2017	58	Figures not	available	

## Local Application

The national pilot started in November 2014 so has been running for almost four years. This seems an extraordinary long period for a pilot scheme. There seems to be general confusion as to whether the pilot has ended and what happens next. Given the lack of alternative guidelines Staffordshire Police are sensibly continuing to operate according to the pilot guidelines as originally specified.

Although county cumulative figures are provided, ETAP wished to establish if there was consistency of penalties issued through individual local commanders. So, for example if an offender was issued an OoCD in one area, would the penalty be the same if that crime was conducted in a different area. We were assured that guidelines are provided in the form of a Training Pack and generally adhered to.

New recruits and transfers in from other forces undertake the same OoCD training. All Community Resolution decisions are ratified by a sergeant or above and all Conditional Cautions are made under caution and are supervised and authorised by an officer of sergeant or above. In this way, the process is managed and controlled. We had no reason to challenge this.

There was an admission that flexibility is used to address local issues. For example, if an area is subject to high levels of a particular crime such as cycle theft, then perpetrators may receive an 'enhanced' penalty to send out 'a message' to others carrying out a similar crime. ETAP felt this was appropriate as each local commander has to manage local crime levels and take appropriate steps to prevent further offending, whilst at the same time aware of the need to ensure high levels of victim satisfaction in the way crime has

been dealt with.

An opinion expressed by some of the officers interviewed was that the removal of 'Fixed Penalties' diluted their efficiency to resolve certain behaviours which don't constitute crime. As an example, the assembling of rowdy groups in city centres causing low level antisocial behaviour and/or verbal abuse of police officers. Under previous OoCD conditions, a fine via a fixed penalty notice could be issued often to the perceived ringleader, which usually diffused the situation and was often instrumental in dispersing the group. This was felt to be an area which needs reviewing.

### **Scrutiny Panel**

When the scrutiny panel meet to review individual cases, they allocate a category to each case from the following four options:

1. Appropriate and consistent with Staffordshire Police policies/the CPS Code for Crown Prosecutors
2. Appropriate with observations
3. Inappropriate and inconsistent with policy
4. Panel fails to reach a conclusion

In the last four sessions, 16 cases were reviewed resulting in 8 agreed at category 1 and 8 agreed at category 2. Since its formation no cases have been given 3 or 4 ratings which suggests a fairly healthy picture but with room for some improvement and ongoing training.

Regardless of any national directive we felt the Staffordshire Commissioner's Office should continue to lead on regular monitoring by the panel, albeit with wider and more consistent support from other agencies.

### **Financial Considerations**

Although good fine recovery rates are being achieved, this revenue does not form part of any income stream for Staffordshire Police. This means that all costs incurred by JSSU are met from existing budgets. With ongoing pressure for financial prudence, it could jeopardise continuation of this success if support is removed or reduced. We consider funding streams need to be established and stabilised.

### **Summary Findings**

OoCD are a positive way of dealing with low level crime and provide local officers with the authority to deal with local issues as and when they occur. The inclusion of the victim in the decision process helps build confidence in the police and improve victim satisfaction. There is support within the force to issue OoCD and training is given to new or recently transferred officers. Since the inception of the pilot, the JSSU have achieved good recovery rates of fines and have strengthened the attendance of certain offenders at clinics designed to overcome their issues, helping to reduce reoffending.

Clarity however is required on the pilot scheme which seems to have dragged on without any decision being taken on the next phase. The pilot has been favourably received, but a potential weakness exists in dealing with some types of anti-social behaviour which whilst not unlawful, constitute public concern and/or anxiety. This is something ETAP feels further investigation is necessary to address.

Funding is a concern as if the success of JSSU is to be maintained, continuity of funding is needed. A strategy needs to be developed to consider the long-term benefits of OoCD and how it can be supported.

## Recommendations

Recommendations put forward for consideration are:

### Low priority

- Clarity is required on the continuation of the pilot.
- The force reviews their internal process for assessment of OoCD decisions to ensure appropriateness and proportionality.
- Regular review of the training content and attendance.

### Medium priority

- Explore the advantages/disadvantages in including Fixed Penalty Notices.
- Investigate if support is available to part fund this service, or if a percentage of the money recovered and sent to HMCTS could be retained.
- The Staffordshire Commissioner's Office should continue to lead on regular monitoring by the independent panel, with regular and consistent support from other agencies.
- A strategy needs to be developed to consider the long-term benefits of OoCD and how it needs to be supported.

## Contributors to the Report

We wish to thank the following for their assistance and cooperation:

Assistant Chief Constable Emma Barnett - Investigations & Operational Support  
Chief Superintendent Wayne Jones - Contact & Response directorate  
Karl Bohanan - Out of Court Disposal Manager (JSSU),  
Sergeant Steven Eden - Cannock Resolution Centre

## Documents and/or Systems used in the scrutiny process

The panel was given copies of the following documents:

- Charging and Out of Court Disposals a National Strategy 2017 – 2021 issued by DCC Sara Glen
- Staffordshire Police Out of Court Disposal report to DCC Sara Glen
- Association of Police and Crime Commissioners - Draft Strategy dated 12 June 2017
- Out of Court Disposals Domestic Abuse–Framework for Adult Conditional Cautions - 16 April 2018
- Training Pack OoCD 2017 (Supplied to new Recruits)

## Declaration

The conclusions and recommendations made by ETAP are on an independent basis and will not be changed unless by factual challenge or based on new information provided.