

GOOD PRACTICE GUIDE

For the use of Out of Court Disposals (OOCs) and Restorative Justice to assist COVID 19 court backlogs

Why me?

Defendants, victims and witnesses are having to wait **up to four years** from the time of an alleged offence to the case reaching crown court trial because of delays caused mainly by Covid. The number of outstanding crown court cases has risen to 53,000 and the caseload in the magistrates court is above 400,000. Those figures represent **increases of more than 40%** compared with the previous year. The time from offence to completion at the magistrates' court increased by 25% on the previous year.

This research, funded by The Rank Foundation Covid 19 Recovery fund, seeks to highlight the "quick wins" and good practice Forces have implemented in the use of Out of Court Disposals (OOC) and Restorative Justice (RJ) to reduce the backlog. We have used the information provided to Hampshire Police as part of a national OOC audit and also direct interviews with Forces.

We welcome further information to add to this guide – please contact **trevor.watson@why-me.org**

Quick Win Initiatives:

Expand criteria for OOCs to include offenders with more than one offence

Review age criteria for OOCs

Allow Conditional Cautions to be administered remotely

Change authority level for cautions – Insp to Custody Sgt.

Identify Magistrates as RJ champions and provide RJ awareness

Extend period for completion of conditional activities



Cumbria

Youth Cautions and Conditional Cautions continue to be administered, but via telephone and other electronic means. Assessments of young people are still conducted by Youth Offending Services (YOS), just not face to face. Intervention activity is either conducted by telephone, WhatsApp, or workbooks that are well established resources utilised by YOS and police staff. Community Resolutions and Outcome 22 disposals in some instances involve use of workbooks, or telephone conversations with the YOS Constable regarding victim impact and consequences of crime. Where victims wish to engage in a restorative approach, Remedi staff go through the process over the telephone to gain an understanding of the impact, and utilise that information in telephone contact with the offender who is asked to produce a letter that Remedi either quality assure and pass on to the victim, or merely receive on behalf of the victim if the victim does not wish to receive the letter. Reparative conditions are not being considered in OOCs at this time (youth or adult) to comply with social distancing guidance, movement restrictions, etc

In Cumbria Youth Cautions and Conditional Cautions continue to be administered, but via telephone and other electronic means.

Cleveland

Cleveland operates a Divert scheme which is a multi-agency scheme between the Community Rehabilitation Company (CRC) and Police dealing with offenders via OOCs. The team works closely with other agencies including Restorative Cleveland. Restorative Justice is always offered to both the victim and offender. The scheme would generally operate for 1st time offenders only but greater flexibility has been allowed to enable police officers to make judgments on appropriateness based upon individual circumstances. Where the offender disengages this is fed back to Officer in Charge and the victim is kept informed. Of particular note is the early consultation between custody, Prisoner handling teams, the Divert team and RJ Unit to identify appropriate use of this OOC option. Members of the Divert team have played an active role in supporting the facilitation of restorative interventions, delivered as part of an agreed support plan, aiming to reduce the likelihood of further offending and diversion away from prosecution. Integrated working between Restorative Cleveland, Divert and Cleveland Police has enhanced the quality of risk assessments. Also they are using restorative approaches to repair the hidden harm caused by offences such as Drunk & Disorderly, where victims may ordinarily be missed.

The use of restorative processes within Community Resolutions is also well embedded, enabling proportionality in matching disposals to the identified level of risk and need and the effective use of professional judgment in policing.

Lancashire

Lancashire have carried out a review of Mags court backlog cases to identify and remove from the list cases which, in view of the COVID related backlog, could be more suitably resolved via OOC. In this first phase they were able to remove 2.6% of the overall court backlog through this process.

2.6% of cases removed from court backlog in Lancashire

Devon and Cornwall

Devon & Cornwall have reverted back to Adult Simple Cautions in the current circumstances.

They have removed the age restriction on Deferred Charges to now include all adults.

An innovation has been the use of video recording of an explanation of Restorative Justice which is used by the pathfinder team with offenders as part of the caution condition. This has led to increased referrals to the RJ unit. The Restorative Justice Service, Make Amends continue to provide case support and now have experience of on-line conferences.

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Avon & Somerset

Avon & Somerset force policy is to not issue a second Community resolution or conditional caution if someone has received one within the last two years for the same or similar offence. They have now removed this 2 years element to reduce the number of offenders having to go through the court process. The decision making is still both offender and victim focussed and the criteria for issue (gravity matrix) is the same.

West Mercia

West Mercia Police are using all of the OOC options; community resolution, simple caution, conditional caution, Penalty Notice for Disorder, cannabis warning, khat warning, youth caution and youth conditional caution.

The main diversionary activities used with OOC for both adults and youth are offered through NHS provision (Drug Awareness Courses), Youth Justice Services (reparation), Victim Support (Restorative Justice) or other agencies (e.g. children services). All of these services are continuing to provide a service but in a different format to usual as all have taken on a much more digital approach where possible. RJ is being offered digitally where possible or alternatively maintaining telephone contact in the interim and children services are following a similar approach.

Of note is the attendance at the Force OOC scrutiny panel of RJ representatives. A recent meeting identified 7 out of 10 cases as a possible RJ opportunity. Also of note is the identification of 14 RJ champions including 2 Magistrates who have had RJ awareness training.

A recent meeting identified **7 out of 10 cases** as a possible Restorative Justice opportunity in West Mercia

Leicestershire

Leicestershire have stopped asking for signatures for Conditional Caution through custody as this was proving to be a contentious issue among staff and visitors. They imposed restrictions to safeguard and protect detainees and staff. The decision was considered to be a sensible 'local decision' and 'pragmatic approach' in line with the NPCC guidance at the time. Signing is verified either by CCTV or if necessary by witness account from an officer.

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Northamptonshire

Northamptonshire received authority to issue Conditional Cautions in low level domestic abuse offences. Northamptonshire are encouraging officers to continue to refer both adult and youth offenders for an OOC but with extended end-dates.

Dorset

Dorset have introduced the 2 tier OOC model and initially introduced Restorative Justice as a mandatory condition. They have now combined this with the letter of apology condition and the Restorative Hub now decide what's the best intervention. This works to take pressure off the Police. Initially they were worried about capacity but it's worked well as the 10 volunteers deal with low level offences and the two staff deal with more specialised cases.

This also means that the victim is better prepared as before, the letter of apology was seen as a 'soft option' when explained to the victim by the police. Now Restorative Dorset can properly explain the Restorative intervention to the victim.

There's been approximately a 30% increase in RJ uptake in Dorset.

Dorset have a structured decision process for access to diversionary schemes based upon a vulnerability led model. In essence 2 types of diversionary conditions – Educational which are paid for by offender and Vulnerable Offender pathways which are unpaid – eg Footprints (Females). They also have public health pathways for access to drug and alcohol face to face sessions

Dorset adopted a flexible approach to breaches throughout COVID period, decisions are made by officers with reference also to Victim wishes – Face to face contact has been adapted during COVID to include telephone support for vulnerable offenders and the use of e-learning courses and online virtual classes for the educational courses.

Dorset have decision maker training for OOCs as well as training for case file managers to pass cases back to officers where OOCs do not appear to have been considered.

30% increase in Restorative Justice uptake in Dorset

Kent

There have been some temporary local policy changes for Kent, specifically around authority levels for authorising adult cautions. Previously an Inspector had to review and authorise all cautions. However, where this authorisation is not required under legislation Kent have included Custody Sergeants as authorising officers. Officers are also not being encouraged to include diversionary activity within Community Resolutions or Conditional Cautions due to the pandemic and availability of service providers.