

Title: Wider Out of Court Disposals (OCCD) Review IA No: Lead department or agency: Jointly led by MoJ and Police in partnership with AGO, HO and CPS Other departments or agencies: Home Office, Attorney General's Office, Police, CPS	Impact Assessment (IA)		
	Date: 26/09/2013		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Andrew McNeill (T) 020 3334 3608			
Summary: Intervention and Options		RPC Opinion: Not Applicable	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
Not available	Not available	Not available	Not applicable

What is the problem under consideration? Why is government intervention necessary?

The OCCD landscape has developed organically and in response to a need to deal with first time and low level offending effectively. As a result, the landscape is complex, making OCCDs difficult for practitioners to administer and hard for the public to understand. There is a need for a shared understanding of OCCDs, both in terms of their purpose and a process for administering them which reduces bureaucracy; facilitating police officers to spend more time on the front-line. There is concern that OCCD are used to tackle serious and repeat offending and this has been heavily publicised in the media in recent times. The review will seek to address this, building on the findings of the recent simple cautions review.

What are the policy objectives and the intended effects?

To simplify the system and make it easier for the public to understand and for practitioners to administer facilitating them spending more time on the front line. The review aims to understand how OCCDs operate across the spectrum of criminal behaviour; it will seek to improve public confidence and will support practitioners in delivery of OCCD, largely by simplifying the landscape and guidance. Any reforms that stem from the consultation would aim to ensure that the right decision is made by the right person at the right time and ensure that appropriate accountability and scrutiny mechanisms are in place and that victims' views are considered. The resultant reforms would also aim to make sure that sanctions fit the offender and the offence. The review will explore options around disclosure and understand how any changes impact on the youth landscape.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The consultation will invite public and practitioner views on a wide range of themes (largely reflecting, but not exclusively based on) the shared outcomes of the CJS; rather than proposing policy options. The themes are likely to include

- Simplification
- Reducing crime and protecting the public
- Disclosure of OCCDs
- Punishing offenders (with consideration of serious and repeat offending and DV and hate crime)
- Making reparation
- Reducing reoffending
- Improving public confidence

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: Zero	Non-traded: Zero	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: Date:

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Not available

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A		

Description and scale of key monetised costs by 'main affected groups'
 Consultees are invited to offer views and comments, supporting evidence and associated costs, whether quantitative or qualitative. We will take account of the evidence gathered throughout the consultation in developing policy options. This consultation seeks to elicit unrestricted views from consultees so prescribed options have not been included. The option of 'do nothing' – i.e., the status quo – remains as a baseline.

Other key non-monetised costs by 'main affected groups'

Magistracy - may increase/decrease workload and impact in terms of involvement in scrutiny. Judiciary - may become involved in scrutiny though no envisaged impact on workload. Defence community - changes could impact on workload and revenues. LAA - could increase the cost of legal aid to the LAA. HMCTS - could impact positively or negatively on workload. CPS - will impact upon CPS workload. LAs/DCLG- may impact on revenues in terms of FPNs. HMT - could affect revenue. DfE - could impact - FPNs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Consultees are invited to offer views and comments, supporting evidence and associated benefits, whether quantitative or qualitative. We will take account of the evidence gathered through the consultation to support policy development. This consultation seeks to elicit unrestricted views from consultees so prescribed options have not been included. The option of 'do nothing' – i.e., the status quo – remains as a baseline.

Other key non-monetised benefits by 'main affected groups'

Police - reduced bureaucracy, increased flexibility and simplification of administration.
 BTP - increased simplification could relieve resource pressures.
 Victims - increased victim involvement through reparative measures, increased victim satisfaction.
 Commercial victims of crime - any reduction in reoffending and low-level crime would positively impact.

Key assumptions/sensitivities/risks

Risk of increased workload in CPS, HMCTS, defence community and Magistracy.
 Risk to revenue in LAA, defence community, LAs and HMT.

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	N/A	N/A

Evidence Base (for summary sheets)

Problem under consideration;

Out of Court Disposals (OOCs) are intended to be a proportionate alternative to court and may support our shared CJS outcomes: to reduce crime, reduce re-offending, punish offenders and provide victims with reparation. We know that if all the cases that are dealt with by way of an OOC were to go through court it would significantly increase cost and delay in the criminal justice system.

OOCs have developed organically; the landscape is complex. Using the right OOC may be confusing for practitioners and hard to understand for the public. Simplifying OOCs could start to address these issues. What appears to be needed is an agreed understanding of what OOCs are for and a simple process through which they can be applied.

The Government has supported restorative justice (RJ) but RJ has recently been conflated with – and tarnished by – criticism of OOCs. In considering OOCs we should work out how they fit with RJ practically and where there are shared objectives. We should also consider disclosure of OOCs and the revenues generated from OOCs for victim services.

Rationale for intervention;

OOCs play a key role in the public confidence of the criminal justice system. Over time, OOCs have evolved organically as perceived operational need has arisen since their introduction, which makes the current landscape overly complex. This complexity makes it difficult for the public to understand and for practitioners to implement.

In order to increase public confidence in the use of OOCs we need to find a way of describing better the range of behaviours for which OOCs may be appropriately given, especially when given for violent and sexual offences. We also need to ensure that there is greater accountability for the use of OOCs through exploring with PCCs what their role could be in scrutinising and publicising the use of OOCs. We should also explore with Chief Constables to what extent they should publish a range of data broken down by key demographics and set out how OOCs are used across their area.

The complex nature of OOC also causes confusion amongst frontline practitioners about how these disposals fit together, the circumstances in which one should be used rather than another and the processes for administering different disposals.

The Government's Green Paper 'Breaking the Cycle' set out a number of proposals to reform the use of OOCs. These include a commitment to work with practitioners 'to produce a clearer national framework for the use of OOCs which promotes the professional discretion of police officers while ensuring that OOCs are used appropriately, proportionately and affectively'.

Implementation of the OOC provisions in the Legal Aid Sentencing and Punishment of Offenders Act (LASPO), revised the guidance and the national framework on out-of-court-disposals, on 8th April 2013. The Act made changes to adult and youth conditional cautions, enabling police to authorise an adult conditional caution without reference to the CPS, making conditional cautions available for all offences in the same way as simple cautions and youth cautions.

Most recently on 3rd April 2013, the Secretary of State for Justice, together with the Home Secretary and the Attorney General launched a review of simple cautions. This review examined the way in which simple cautions are currently used, and considered the need for any changes to policy or practice to ensure that there is transparency, accountability and public confidence in the use of simple cautions as a disposal.

Following the conclusion of the simple caution review, there is appetite amongst ministers and practitioners to review the whole of the OOC framework. We are taking this opportunity with trilateral agreement and support from the Police to conduct this formal consultation on how fundamental improvement can be made to the way OOCs operate.

Policy objectives;

There are two clear policy objectives to the work of the Wider Out of Court Disposals Review:

- 1) To simplify the OOCs landscape to enable the public to understand
- 2) To make OOCs easier to deliver for front line practitioners

Simplicity is key to achieving both objectives. Both for the high level structure of the OOCs landscape and the way that they are delivered.

A Simplified Landscape

If, as the Government believes, public confidence in the criminal justice system is undermined by a lack of understanding of the current way that OOCs operate; one way to address this would be to simplify the current process.

There are currently 6 ways in which offences can be addressed by the police and other agencies, without the matter proceeding to court (excluding no further action). These are:

- cannabis warnings,
- Fixed Penalty Notices (FPNs),
- Penalty Notices for Disorder (PND),
- Simple Cautions,
- Conditional Cautions and
- Community Resolutions.

These are explained in full in the consultation paper.

The distinctions may not be understood by a large proportion of the public. Nor will the complexities of individual cases which need to be addressed by practitioners.

A simplified landscape for addressing minor offences (for which it is not appropriate to bring court proceedings) would help to address public concern about the current system. It could also help support public scrutiny of the process, further improving public confidence.

Making delivery easier for front line practitioners

In advance of the consultation, there has been some work with front line practitioners. One of the key issues of concern for police practitioners is the amount of guidance which a front line officer is required to understand in relation to OOCs. This guidance reflects the complexity of the current landscape and the Wider Out of Court Disposals Review will look to see what can be done to make the operation of these disposals accessible and straight forward.

Description of options considered (including do nothing);

This consultation seeks to elicit unrestricted views from consultees so prescribed options have not been included. The option of 'do nothing' – i.e., the status quo – remains as a baseline.

Monetised and non-monetised costs and benefits of each option (including administrative burden);

As policy details are yet to be finalised, this Impact Assessment contains no detailed quantification of costs and benefits. These impacts are sensitive to the final design details of the policy proposals on which the Government is consulting and may be commercially sensitive. We will provide a fuller estimate of the impact on costs and benefits in a subsequent edition of the Impact Assessment.

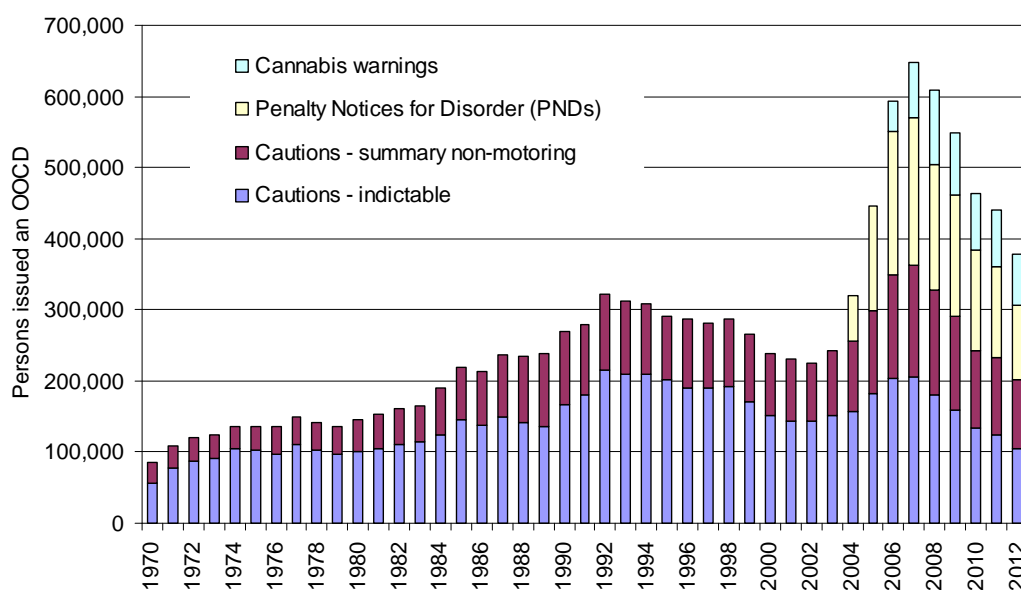
Consultees are invited to offer views and comments, supporting evidence and associated costs and benefits, whether quantitative or qualitative. We will take account of the evidence gathered through the consultation in developing final policy proposals and the final Impact Assessments.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);

Since the 12 months ending March 2003, the use of out of court disposals increased rapidly and peaked in the 12 months ending March 2008, before decreasing year on year – with 363,800 individuals issued an out of court disposal in the latest year.^{1,2}

The increase to the 12 months ending March 2008 coincided with the introduction in 2001 of a target to increase offences brought to justice, and the decrease coincided with the replacement in April 2008 of the target with one placing more emphasis on bringing serious crimes to justice. The latter target was subsequently removed in May 2010.

The use of OOCs decreased by 14% in the latest year (2012-13), with each type of disposal used less than in the previous year. The biggest decreases were in the use of PNDs (101,100 issued compared with 122,800 in the previous year) and cautions for indictable offences (101,300 issued compared with 119,600 in the previous year).²



The long term trends in OOCs are set out in the table above

¹ The Ministry of Justice publishes data on out of court disposals as part of the Criminal Justice Statistics. This data includes cautions, PNDs and Cannabis Warnings. It does not include Fixed Penalty Notices for motoring, for which the Home Office publish separate data.

² 'Criminal Justice Statistics Quarterly Update to March 2013 England and Wales', MoJ Statistics Bulletin August 2013, www.gov.uk/government/publications/criminal-justice-statistics-quarterly-march-2013

Key Statistics on the use of OOCs by type of disposal:

Cautions

There were 201,000 cautions administered in 2012, a decrease of 13 per cent compared with 2011, and a 45 per cent decrease from the peak of 363,000 cautions in 2007³.

Almost half (47%) of all offenders cautioned in 2012 were for summary offences, with the remaining cautions administered for other offences. Five offences accounted for just over half of all cautions administered in 2012, namely: common assault and battery, shoplifting, possession of cannabis, causing summary criminal damage and possession of cocaine³.

Half of offenders cautioned in 2012 were first time offenders⁴ and 3 per cent of offenders cautioned had 15 or more previous convictions, cautions, reprimands or warnings.

Cautioning rates⁵ were much higher for offenders aged 10-17 than offenders aged 18 or over. For offenders aged 10-17, the 2012 cautioning rates were 56% for females and 39% for males. For offenders aged 18 or over, the 2012 cautioning rates were 21% for males and 16% for females. The number of offenders cautioned was much higher for offenders aged 18 and over, with a total of 168,000 offenders cautioned, than for offenders aged 10-17 years, with a total of 32,000 offenders cautioned. This reflects the offending population in general.³

18% of adults and 25% of juveniles cautioned in 2010 re-offended within 12 months⁶. A MoJ comparison of cautions, fines and conditional discharges between 2005 and 2007 showed that cautions were slightly more effective at reducing one-year proven reoffending rates when compared with similar offenders who received a fine or a conditional discharge. The one-year proven reoffending rates were up to 2.7 percentage points lower for those offenders receiving a caution⁷.

PNDs

There were 106,000 PNDs issued in 2012, a decrease of 17 per cent compared with 2011 and a 49 per cent decrease from the peak of 208,000 PNDs issued in 2007.

Four offences accounted for almost 90% of PNDs issued in 2012, namely: low level shoplifting; drunk and disorderly; behaviour likely to cause harassment, alarm or distress; and cannabis possession.

In 2012, 53% of PNDs were paid in full before enforcement action commenced (in the form of the registration of a fine by the court). This payment rate has fluctuated only slightly since their introduction in 2004, between 51% and 55%.

Cannabis Warnings

Cannabis warnings for adults were introduced in April 2004. The use of cannabis warnings peaked in 2008, when 108,300 first time offenders received a warning. Since 2008, cannabis warnings have decreased, with 70,100 issued in 2012, a 12 per cent decrease since 2011³.

³ Criminal Justice Statistics Quarterly Update to December 2012, England and Wales, Ministry of Justice Statistics bulletin, May 2013, www.gov.uk/government/publications/criminal-justice-statistics-quarterly-update-to-december-2012

⁴ First time offenders refers to offenders who have no previous convictions, cautions or juvenile reprimands or warnings recorded on the Police National Computer (PNC).

⁵ Cautioning rates present the proportion of offenders either cautioned or convicted that are given a caution. This gives a measure of the share of all offenders either admitting guilt or being found guilty in a given year who are dealt with by a caution out of court as opposed to being processed through the courts.

⁶ Proven Re-offending Statistics Quarterly Bulletin Jan-Dec 2010, Ministry of Justice October 2012, www.gov.uk/government/publications/proven-reoffending-earlier-editions

⁷ Compendium of reoffending statistics and analysis, Ministry of Justice November 2010, www.gov.uk/government/publications/compendium-of-reoffending-statistics-and-analysis-2010

Prior to 2012, the use of out of court disposals for those in possession of cannabis remained stable, but with an increased usage of PNDs rather than formal cannabis warnings. However, in the latest year, we have observed decline in both PNDs issued and warnings³.

Fixed Penalty Notices for Motoring Offences

Motoring FPNs are not included in MoJ data, and are not included in the total OOCOD figures shown in this assessment.

Home Office published data shows there were 1.5 million FPNs for motoring offences issued by the police (including police-employed traffic wardens) in 2011, an 18% fall on 2010. Since peaking at 3.5 million in 2003 there have been year-on-year decreases in the total number of FPNs issued.⁸

In 2011, half of all motoring FPNs (778,600) were given for speed limit offences⁸.

89 per cent of the FPNs issued by the police in 2011 were paid, while a fine was automatically registered at court for a further 8%. The proportion of both of these outcomes has remained stable since 2005⁸.

Conditional Cautions

Conditional cautions are not recorded separately on the Police National Computer, and are therefore included in the general cautions data shown elsewhere in this assessment. However, since 2009, the CPS have published some separate data on conditional cautions.

The CPS data shows that there were 4,600 conditional cautions administered in 2012, as compared to 8,500 in 2009 (the earliest available data), a decrease of 46%⁹.

70% of conditional cautions administered in 2012 were for summary only offences, with the remaining administered for either way offences (conditional cautions were not available for indictable only offences in 2012). Around half of all conditional cautions were administered for summary destroying or damaging property⁹.

In 2012, the compliance rate for conditional cautions was 83%, and 67% of the offenders who did not comply were charged with the offence⁹.

All affected groups

- Police
- Magistracy
- Judiciary
- Defence Community
- Victim
- Offenders (in a non-monetarised context)
- HMCTS
- CPS
- Local Authorities
- Commercial victims of crime
- British Transport Police
- Legal Aid Agency (LAA)

⁸ Police powers and procedures England and Wales 2011/12, Home Office, April 2013, www.gov.uk/government/publications/police-powers-and-procedures-in-england-and-wales-2011-12/police-powers-and-procedures-in-england-and-wales-2011-12#fixed-penalty-notices

⁹ CPS conditional cautioning data by quarter, www.cps.gov.uk/publications/performance/conditional_cautioning/index.html

- Transport for London
- The Care Quality Commission
- The Vehicle Operator Services Agency (VOSA)
- HM Treasury
- DCLG
- DfE
- DfT
- DEFRA

Police

A simplified landscape may lead to reduced bureaucracy, increased flexibility, and simplification of administration. Any reduction in complexity may free up police time. It may also reduce the burden on custody areas. In view of the scale of OOCs, this could have a high impact. Similarly if the reforms were to result in increased complexity, then a high adverse impact may be experienced by the police on the efficiency of their processes and therefore on the use of their time.

Impact: High

Magistracy

The consultation will raise questions around the scrutiny of OOCs and the involvement of Magistrates in the scrutiny process. Changes to the OOCs landscape may also increase/decrease the workload of magistrates' courts.

Impact: Medium

Judiciary

The judiciary may be involved in the scrutiny of OOCs, it is unlikely that any change would have an impact on workload for the higher courts.

Impact: Low

Defence Community

Changes to the OOCs landscape may impact on the workload of solicitors. In some instances people may be eligible for legal aid, if they are to receive an OOC. Changes to OOCs could therefore impact on the revenues of solicitors (and in some cases barristers if more cases came to court and defendants were represented by barristers).

Impact: medium

Legal Aid Agency (LAA)

In some instances people may be eligible for legal aid, if they are to receive an OOC. Changes to OOCs could increase the cost of legal aid to the LAA. Any risk of increase in legal aid costs will need to be mitigated, therefore the risk is actual impact of any changes is likely to be low.

Impact: medium

Victims

The improved use of OOCs could increase the involvement of victims and also the reparative and restorative elements used. This could increase satisfaction with the outcomes of crime.

Impact: medium

Offenders

Increased use of rehabilitative interventions as part of the application of OOCs could help offenders avoid reoffending and entering the CJS further. Changes to disclosure provisions could significantly impact on outcomes for recipients of OOCs.

Impact: high

HMCTS

Any change in OOCs which led to more cases going to Court would result in increased workload for HMCTS. However, any changes which meant more cases were dealt with out of court would reduce HMCTS workload. The risk of increased workload will need to be mitigated therefore the actual impact is expected to be low.

Impact: Low

CPS

Any changes to OOCs which will require CPS consideration of more or less cases will affect the workload of the CPS.

Impact: Medium

Local Authorities

Local Authorities currently use FPNs e.g. environmental officers can apply them for littering. Changes to FPNs would require consultation with the CLG, to better understand what the impact will be, however, any risk to revenues for Local Authorities will have to be mitigated against.

Impact: Medium

Association of Convenience Stores

Any reduction in reoffending particularly around low level acquisitive crime (often addressed through OOCs) would positively impact on shop owners.

Impact: Low

Association of Business Crime Partnerships

Any reduction in reoffending particularly around low level acquisitive crime (often addressed through OOCs) would positively impact on business owners.

Impact: Low

British Transport Police

Increased simplification of administration could relieve pressure on resources.

Impact: Medium

Transport for London, The Care Quality Commission, The Vehicle Operator Services Agency

These organisations use OOCs in enforcing their rules.

Impact: Medium

HM Treasury

Revenue from some OOCs currently goes to HMT. Changes to OOCs would require consultation with HMT, however, any risk to revenues will have to be mitigated against.

Impact: Low

DCLG

Local Authorities currently use FPNs e.g. environmental officers can apply them for littering. Changes to FPNs would require consultation with the CLG, to better understand what the impact will be; however, any risk to revenues for Local Authorities will have to be mitigated against.

Impact: Low

DfE

FPNs can be used for crimes by parents around truancy. Changes to FPNs would require consultation with the DfE, to better understand what the impact will be

DfT

Changes to OOCs would require consultation with the DfT, to better understand what the impact will be on the way crime is addressed on the transport system.

DEFRA

Changes to OOCs would require consultation with the DEFRA, to better understand what the impact will be on the way crime is addressed in rural areas.

Risks and assumptions

Risks and assumptions will be revisited following the consultation when policy options are developed.