

Title: Police, Crime, Sentencing and Courts Act: Reform of the Adult Out of Court Disposals Framework IA No: MoJ071/2020 RPC Reference No: Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies:	Impact Assessment (IA)			
	Date: 28/04/2022			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: Katie Dougal <Katie.Dougal@justice.gov.uk>				

Summary: Intervention and Options	RPC Opinion: N/A
--	-------------------------

Cost of Preferred (or more likely) Option (in 2021/22 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£104.86m	N/A	N/A	Not a regulatory provision

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

Out of court disposals (OOCs) allow the police to deal quickly with low-level offending without recourse to the courts. While there are currently six adult disposals (Simple Cautions, Conditional Cautions (CCs), Penalty Notices for Disorder (PND), Cannabis and Khat Warnings, and Community Resolutions (CRs)), the National Police Chiefs' Council's OOC Strategy, 2017-2021, promoted a two-tier model using only two OOCs (CCs and CRs). While all police forces have agreed to move towards the two-tier model, as of August 2021 only 17 have fully adopted it. Government intervention to legislate for the two-tier model is required because there is a lack of consistency across forces and it is overly complex and confusing for the public. It also means that in some forces there is an emphasis on disposals which are 'warnings' and simple cautions which do not provide opportunities for referring people into intervention services, which could help to address the underlying issues contributing to criminal behaviour.

What are the policy objectives of the action or intervention and the intended effects?

The policy objectives are:

- To provide a straightforward process for OOCs, making it simpler for the public and practitioners to understand.
- To allow police to attach conditions or actions to OOCs, so that there are stricter repercussions for offending behaviour rather than simple warnings or PNDs. Where appropriate, police should refer people to intervention pathways, such as substance misuse services, to help address the underlying causes of the offending behaviour before it escalates into more serious offending.

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

- Option 0: Do nothing** - maintain the current voluntary approach where police forces have the flexibility to determine their transition to a two-tier model.
- Option 1:** Legislate to establish two OOCs in statute and remove the other disposals currently available to police.

The preferred option is Option 1 as it meets the policy objectives. The voluntary take-up by forces of the two-tier system is slow and not anticipated to accelerate without legislative reform.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			N/A		
Is this measure likely to impact on international trade and investment?			No		
Are any of these organisations in scope?		Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

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: Legislate to establish two OOCs in statute and remove the other disposals currently available to police.

FULL ECONOMIC ASSESSMENT

Price Base Year 21/22	PV Base Year 21/22	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -£104.86

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	11.86	15.93	117.28

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

Police: There would be implementation costs for training and increased operational costs due to an increase in the use of Community Cautions (CCs), which are more expensive to administer than the more commonly used simple cautions.

The Crown Prosecution Service: There will be an increased cost of prosecuting CC breaches.

Treatment Costs: There would be an increased cost of funding treatment providers as the greater use of CCs is expected to result in greater demand for the services underpinning rehabilitative conditions.

PND Revenue: Loss of PND Revenue as PNDs no longer part of OOC model.

Fine and VS Revenue: Reduction in fine and Victim Surcharge revenue as there would no longer be cases of non-payment of PNDs.

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

HMCTS: It is currently unknown whether the cost of enforcing any court fines that are imposed as a result of CC non-compliance under a two-tier model will be significantly different to the cost of enforcing court fines imposed as a result of PND non-payment under the six-tier model.

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	N/A	1.87	12.42

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

HMCTS: There would be a reduction in costs as they would not be incurred for proceedings for PND non-payment.

CC Reparations: As the number of CCs administered under the new framework would increase, the revenue raised through reparative conditions on CCs would also increase.

CC Penalties: As the number of CCs administered under the new framework would increase, revenue raised through punitive conditions on CCs would increase.

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

Simplification and national consistency in the OOC framework will create a more straightforward process for both the public and police. Reoffending might be reduced by placing a greater emphasis on outcomes in reforming offenders and by enabling police officers to take a more tailored approach to addressing underlying causes of reoffending. Victim engagement and satisfaction with the criminal justice outcome would be enhanced as both types of OOC would provide opportunities for police to consult victims on the nature of the actions to be attached to the disposals.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
--	--------------------------	------

The analysis is based on a 2014/15 MoJ pilot of a two-tier model. As a result, there are several caveats:

- In some cases, the latest available data is now quite old and goes back to 2013/14. Police processes may also have changed since the pilot, but it has not been possible to account for this.
- As of August 2021, 17 forces were using the two-tier model. Analysis assumes that all the remaining forces would be moving from a six-tier to a two-tier model (despite some currently using hybrid models).
- Under the Do Nothing/Option 0, it is assumed that the number of forces using two-tier model (i.e. 17 police forces) would remain unchanged.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence Base

A. Background

1. Out of court disposals (OOCs) allow the police to deal quickly with low-level offending (in terms of a low level of seriousness and frequency) without recourse to the courts. For most OOCs, the offender must admit guilt and agree to the disposal. There are currently six common adult disposals: Simple and Conditional Cautions, Penalty Notices for Disorder (PND), Cannabis and Khat Warnings, and Community Resolutions. Fixed Penalty Notices are not within scope of this reform.
2. The National Police Chiefs' Council's OOC Strategy, 2017-2021¹, promoted a two-tier model comprising only two disposals: Community Resolutions (for the lowest level offences) and Conditional Cautions (for other low-level offences). Both these options allow the police to attach some form of activity to the disposal, which requires action by the recipient and a greater focus on the views of victims.
3. This strategy followed a joint government and police review of OOCs including a public consultation which ran from November 2013 to January 2014.² This sought views from the public, as well as practitioners within the criminal justice system, including the police, the judiciary and the Sentencing Council.
4. All forces agreed to move towards this two-tier model but as of August 2021 only 17 have fully adopted it. Some police forces use two of the options, others use all six and some a hybrid in between. This creates a lack of consistency across forces and is overly complex and confusing for the public.
5. A lack of referral pathways and operational priorities have been cited as reasons for the delay. This slow progress perpetuates the confusion and inconsistency across forces.
6. It also means that in some forces there is an emphasis on disposals that are 'warnings' and simple cautions. These do not provide opportunities for referring people into intervention services which could help to address the underlying issues contributing to criminal behaviour.

B. Policy rationale and objectives

7. The conventional economic approaches to government intervention are based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).
8. The rationale for intervention in this case is both efficiency and equity. Voluntary transition to the two-tier model has stalled and the inconsistency in OOC frameworks across police forces means the current system is overly complex and inefficient. The inconsistency also leads to geographical discrepancies in the disposals individuals receive for the same behaviour.
9. The associated policy objectives are:
 - To provide a straightforward process for OOCs, making it simpler for the public and practitioners to understand, and with a focus on consultation with victims.

¹ Link to NPCC Strategy

² <https://consult.justice.gov.uk/digital-communications/out-of-court-disposals>

- To allow police to attach conditions or actions to OOCs, so that there are stricter repercussions for offending behaviour rather than simple warnings and PNDs. Where appropriate, police should refer people to intervention pathways, such as substance misuse services, to help address the underlying causes of the offending behaviour before it escalates into more serious offending.

C. Affected stakeholder groups, organisations and sectors

10. The following groups would be most affected by the options presented in this IA:

- Police, including the British Transport Police
- HM Courts and Tribunals Service (HMCTS)
- The Crown Prosecution Service (CPS)
- Offenders
- Treatment providers
- Police and Crime Commissioners (PCCs)
- Victims

D. Options under consideration

11. To meet the policy objectives, the following options have been considered:

- **Option 0: Do nothing; maintain the current voluntary approach where police forces have the flexibility to determine their transition to a two-tier model.**
- **Option 1: Legislate to establish two OOCs in statute and remove the other disposals currently available to police.**

12. The preferred option is Option 1 as it best meets the policy objectives. The voluntary take-up by forces of the two-tier system is slow and not anticipated to accelerate without legislative reform.

Option 0

13. All Chief Constables across the forces signed up in 2017 to adopt the two-tier framework on a voluntary basis pending operational and funding viability. However, as of August 2021, only 17 forces had moved to the two-tier model. Under this option, and given the slow transition to date, it is assumed that these figures would remain the same. While it is possible that some forces could still move to the two-tier model in the future, it is assumed that under this option it would remain as is for the purposes of the analysis in this IA.

Option 1

14. Under this option, the number of OOCs would be reduced from six to two, which would be established in legislation. The two OOCs would be an 'upper-tier' disposal (along the lines of the current statutory Conditional Caution) and a 'lower-tier' disposal (along the lines of the current informal Community Resolution). The new legislation would come into force from 2023/24 in order to give police forces enough time to transition.

15. Primary legislation is required to establish two OOCs in statute:

- An 'upper-tier' disposal (along the lines of the current statutory Conditional Caution, to be referred to as a "Diversionary Caution") which allows police to set enforceable conditions to be met within 16 weeks or, in exceptional cases, within 20 weeks. Non-compliance could lead to prosecution for the original offence. Conditions could be

rehabilitative (e.g. engagement with mental health or substance abuse services), reparative (e.g. financial compensation, restorative justice process, formal apology), restrictive (e.g. curfew), or punitive (e.g. fine). Receiving this would form part of a criminal record.

- b. A 'lower-tier' disposal (along the lines of the current informal Community Resolution, to be referred to as a "Community Caution") intended for less serious offences. Receiving this would not form part of a criminal record.

16. The other disposals currently available for police would be removed (Penalty Notice for Disorder, Simple Caution, Cannabis and Khat warnings). As noted above, Fixed Penalty Notices are not within scope of this reform.
17. The legislation will allow time for police forces to adapt operational policies to fulfil the legislative requirements. Transition to the two-tier framework would need to take account of concerns about the lack of provision in many areas, and lack of engagement from local providers. Many services and pathways are not currently mature enough to divert offenders. Developing pathway initiatives would require resource and cultural change in some forces.
18. Recognising the need for flexibility on timing to allow forces to adapt to the changes, the reform would come into effect from 2023/24.

E. Cost and Benefit Analysis

19. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the Her Majesty's Treasury Green Book.
20. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in Great Britain with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
21. The costs and benefits of the options are compared to Option 0, the counterfactual or 'do nothing' option. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
22. The impacts in this IA have been estimated as follows:
 - Price base year of 2021/22
 - 10-year appraisal period with a base year of 2021/22

Data Limitations

23. The analysis in this IA is based on an MoJ pilot launched in 2014 to test the impact of a simplified OOC framework that is easier for the public to understand and for practitioners to implement and which requires offenders to act to comply with their disposals. The pilot framework was tested in three police force areas for a year. The simplified pilot framework meant that only two OOC types were available in the pilot area, namely Community Resolutions (CRs) and Conditional Cautions (CCs). As a result, the analysis below refers to CRs and CCs, although the two new disposals under Option 1 will be referred to as Community Cautions and Diversionary Cautions respectively.

24. The data from the pilot is the most recent information available on the potential impacts of a simplified OOC framework. Given that the economic analysis of the pilot is now several years old, inputs and assumptions, particularly on unit costs and volumes, have been updated where possible. It has not been possible, however, to update the detailed underlying information gathered during the pilot on police processes and behavioural changes under the simplified framework. This work was not deemed proportionate for the purpose of this IA.
25. The assumptions behind the analysis are detailed further in the Risks and Assumptions section (section F) of the IA below.

Option 1: Legislate for all police forces to move to a two-tier OOC framework.

Costs of Option 1

Monetised costs

Police – implementation costs

26. There will be implementation costs for police forces to ensure both police officers and their police staff equivalents have a good understanding of the new framework.
27. The implementation costs for the three pilot areas varied, with one area having implementation costs which were noticeably lower than those in the other two police forces. This area reported that, with the benefit of hindsight, they would have chosen a different model of training provision which reached more police officers and was more intense. This analysis therefore only takes average cost of the other two areas, to give average implementation costs of £0.42m per police force.
28. As of August 2021, 17 forces use a two-tier framework, leaving 27 forces³ which would be transitioning to the new framework. This gives total implementation costs to the police of £11.86m. It is assumed that these implementation costs would be incurred in 2022/23 prior to the legislation coming into force in 2023/24.

Police – operational costs

29. There will be additional operational costs to the police under this option as data collected during the pilot suggested that the operation of the two-tier framework appeared to be appreciably more expensive than the six-tier framework. This was because while there was a large increase in the use of CCs, the offenders' 12-month reoffending rates were not significantly different. The evaluation data indicated that nearly all the simple cautions were 'converted' into CCs, which are more expensive for the police to administer because they require more actions, other things being equal.
30. Applying the data and assumptions collected as part of the pilot to the total number of OOCs across the 27 relevant police forces suggests an annual operational cost to the police of £10.59m.

CPS

31. It is assumed that there is a constant CC breach rate under both a two-tier and six-tier framework. Given the much larger number of CCs issued under a two-tier framework (as demonstrated in the pilot), the constant breach rate would produce a large increase in the total number of CC breaches. Around two-thirds of breaches are assumed to result in prosecution, leading to additional costs for the CPS. This annual cost is estimated to be £1.20m.

³ Includes British Transport Police

Treatment Costs

32. There will be an increased cost of funding treatment providers as the greater use of CCs results in greater demand for the services underpinning rehabilitative conditions. This additional cost is estimated to be £2.58m annually. Currently services are funded by a mix of routine sources (e.g. NHS and local authority for mental health and drugs services), Police and Crime Commissioner procurement, offender funding (e.g. some forces charge a modest fee to cover the cost of a victim awareness course) or use of pre-existing services provided by the voluntary sector.

Fine and PND Revenue

33. As a PND will no longer be an available OOC under the new framework, there will be a loss of PND revenue. This is estimated to be £1.14m per year. PND revenue currently goes towards a combination of Victims Services and the MoJ.

34. As PNDs will no longer be administered, there will be no individuals prosecuted for non-payment of PNDs. While there will be individuals prosecuted for breach of CCs, this does not completely outweigh the impact from the removal of PNDs. There will therefore be an estimated loss in fine and VS revenue of £0.42m. Fine revenue currently goes to the MoJ and VS revenue goes to Victims Services.

Non-monetised costs

HMCTS

35. It is unknown whether the cost of enforcing court fines imposed as a result of CC non-compliance under a two-tier model will be significantly different to the cost of enforcing court fines imposed as a result of PND non-payment under the six-tier model.

Benefits of Option 1

Monetised benefits

HMCTS

36. There will be a reduction in HMCTS costs as these will no longer be incurred for court proceedings for PND non-payment. While this will be partially offset by the cost of the increased number of court proceedings related to CC non-compliance, there will be an overall reduction in costs for HMCTS. This is estimated to be £0.58m per year.

CC Reparations

37. As the number of CCs administered under the new framework will increase, revenue raised through reparative conditions on CCs will also increase. This is estimated to be £1.15m per year and will go to victims.

CC Financial Penalties

38. As the number of CCs administered under the new framework will increase, revenue raised through punitive conditions on CCs will increase. This is estimated to be £0.13m per year.

Non-monetised benefits

39. Option 1 will simplify the OOC framework, creating a more straight-forward process for the public and police officers to understand.

40. Option 1 will bring about a national consistency across all forces, with all forces using only the two OOCs available under the reform. This means individuals will receive the same disposals irrespective of the geographical area in which the criminal behaviour occurred.
41. The new two-tier framework could help to reduce reoffending by placing a greater emphasis on outcomes in reforming offenders and enabling police officers to take a more tailored approach to addressing underlying causes of reoffending. While the 2014/15 pilot showed no impact on 12-month proven reoffending for cautions, it may be that reoffending results may mask variations in effectiveness of individual conditions, since international evidence suggests that certain rehabilitative programmes (e.g. drugs, mental health, anger management initiatives) can reduce re-offending.
42. Victim engagement and satisfaction with the criminal justice outcome will be enhanced as both OOCs will provide opportunities for police to consult victims on the nature of the actions to be attached to the disposals.

Summary of Option 1

43. The table below summarises the total costs and benefits of option 1 in 2020/21 prices over a 10-year appraisal period.

£m	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31
COSTS										
Police		11.86	10.59	10.59	10.59	10.59	10.59	10.59	10.59	10.59
CPS			1.20	1.20	1.20	1.20	1.20	1.20	1.20	1.20
Treatment			2.58	2.58	2.58	2.58	2.58	2.58	2.58	2.58
PND Revenue			1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14
Fine & VS Revenue			0.42	0.42	0.42	0.42	0.42	0.42	0.42	0.42
Total Costs		11.86	15.93	15.93	15.93	15.93	15.93	15.93	15.93	15.93
BENEFITS										
HMCTS			0.58	0.58	0.58	0.58	0.58	0.58	0.58	0.58
CC Reparations			1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15
CC Financial Penalties			0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
Total Benefits			1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87
Net Benefits		-11.86	-14.06	-14.06	-14.06	-14.06	-14.06	-14.06	-14.06	-14.06

44. When discounted in line with the HMT Green Book discount factor of 3.5% with a base year of 2021/22, this option presents a **Net Present Value (NPV)** of **-£104.86m**. The negative NPV is due to it not being possible to monetise the key benefits associated with this option.

F. Risks and assumptions

Assumptions

45. As described above, the analysis is based on data collected during an MoJ pilot launched in 2014 to test the impact of a two-tier OOC model. The model was tested in three police forces for a year.
46. Given the economic analysis of the pilot is now several years old, the inputs and assumptions, and particularly those on unit costs and volumes, have been updated where possible. It has not been possible, however, to update the detailed underlying information gathered during the pilot on police processes and behavioural changes under the simplified framework.
47. There are therefore several caveats to the analysis presented in this IA:
- While volumes and unit costs have been updated to reflect latest data where possible, in some cases the latest available data is quite old and goes back to 2013/14.
 - The analysis is based on the 2014/15 pilot and therefore uses information on timings and processes during that period. Police processes may have changed since then, but it has not been possible to account for this.
 - The analysis does not take into account the fact that some police forces are currently using a hybrid model. Given that, as of August 2021, 17 forces were using the two-tier model, it assumes that all of the remaining forces would be moving from a six-tier to a two-tier model. The estimated costs can therefore be considered an upper bound.
 - Similarly, while it is possible that some forces could still move to the two-tier model in the future under Option 0, it is assumed that the situation would remain as is for the purposes of the analysis.
48. There are also several caveats to the pilot evaluation itself regarding data limitations – these are described in detail in the *Adult Out of Court Disposal Pilot Evaluation – Final Report (2018)*⁴. Any conclusions drawn from the pilot can only be indicative, particularly when scaling up findings from three police forces to the majority of police forces.

Risks

49. Currently the conditions which police can set as part of an OOC are very dependent on which services are available locally and are open to taking on this cohort of offenders. Reforming a two-tier framework is likely to raise pressure on these services and highlight surface gaps in provision.
50. We also recognise that forces will need time to develop referral pathways, where required. NHS, local authorities and Police and Crime Commissioners (PCCs) are likely to have a key role working with forces to support referrals to relevant local services. We will work carefully and closely with police forces and PCCs to ensure that these important changes are implemented in a sensible timeframe that does not impact on operational delivery.
51. The MoJ evaluation of findings from the original pilot in 2014/15 (published June 2018) showed no impact on 12-month proven reoffending for cautions from moving to a two-tier model. However, we recognise that the reoffending results may mask variations in effectiveness of individual conditions, since international evidence suggests that certain rehabilitative programmes (e.g. drugs, mental health, anger management initiatives) can reduce re-offending.
52. In support of this new legislation, the MOJ have been granted £1.5 million in total over three years to conduct research which will provide new insight into how police use out of court disposals to support adults with mental health and other health related vulnerabilities. This is currently known as 'The Study' and is aimed at identifying current practice by way of a rapid evidence assessment and qualitative interviews to understand how police forces access

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718947/adult-out-of-court-disposal-pilot-evaluation.pdf

local intervention services, as well as identifying gaps in available provision. The programme will also provide guidance for forces on how to access services and improve data capture to better inform future policy. The MoJ is working with a range of partners to achieve this including the Department for Levelling Up, Housing and Communities (DLUHC), the Department for Health and Social Care (DHSC) and the Home Office (HO).

G. Wider Impacts

Equalities

53. An Equalities Impact Statement has been completed and has been published alongside this IA.

Better Regulation

54. These proposals are exempt under the Small Business Enterprise and Employment Act 2015 and will not count towards the department's business impact target.

H. Monitoring and Evaluation

55. The MoJ will work with key stakeholders (NPCC and the HO) to track the progress of each force in its operational switch to the two-tier model. The National Police Chiefs' Council (NPCC) are committed to the reform and will be active partners in supporting the transition. We will work with NPCC and the College of Policing to help ensure that training and communications materials are cascaded to forces. The NPCC will assist with tracking and monitoring of this.

56. We are beginning a 3-year research programme, part of which works with police forces to improve their data collection around OOCs. We will use this data, together with the current national recorded statistics to monitor and evaluate levels of take up of the reform.