

OUT OF COURT DISPOSALS

What is an out of court disposal?

An out of court disposal (OCD) is a method of resolving an investigation for offenders of low-level crime and anti-social behaviour such as graffiti and low-level criminal damage, when the offender is known and admits the offence. An OCD can only be used in limited circumstances. A driving principle for OCDs is to reduce re-offending by enabling restorative¹ and reparative² justice. Nationally, there are a number of methods for dealing with suspects in this way. These are universal and include community resolutions³ (a sanction used with the aim of diverting offenders away from their offending behaviour, encouraging them to face up to the impact of their behaviour and to take responsibility for the outcomes), conditional cautions (a police caution⁴ which formally records the offender's behaviour and imposes conditions that the offender must comply with within a specified period), simple cautions (a caution that does not have a condition attached), cannabis warnings and penalty notices for disorder.

An out of court disposal may be considered by the police in consultation with the victim as their preferred option for the offender. While the victim's wishes will be sought, they have no obligation to take part in the process, and the officer looking into the case will have the final say on how to deal with the offender. The offender must also admit their guilt and agree to the offence being dealt with via an out of court disposal.

Who will decide what disposal the offender will receive?

The officer dealing with the case must make reasonable efforts to obtain the views of the victim as to whether the offender should be given an out of court disposal. While the victim's wishes will always be carefully considered, the officer looking into the case must also take into account the seriousness and circumstances of the offence, the impact of the offence on the victim, the previous history of the offender and the appropriateness of any potential conditions to be attached to the disposal. Therefore the final decision rests with the professional judgement of the officer.

What currently happens in West Yorkshire?

The Ministry of Justice is working with three volunteer police forces (West Yorkshire, Staffordshire and Leicestershire) to explore the use of a limited number of out of court disposals. The purpose is to achieve greater simplicity and transparency, creating a framework that is easier for the public to understand and for practitioners to implement. On 24 November 2014 West Yorkshire Police partially commenced implementation of a new simplified, two-tier model; the pilot only permits the use of conditional cautions and community resolutions. The rationale for limiting the method of disposal is to ensure the availability of:

- An entirely non-criminal process (community resolutions)⁵
- A more significant (comply or fail) method of dealing with offenders that are not prosecuted (conditional cautions)

A community resolution allows for the victim and investigating officer to determine the appropriate means of dealing with an offender. Most frequently, this is by means of an apology. A conditional caution allows an offender to receive either a punitive, restorative or reparative element to a caution. This might include as an example an apology to a victim, a small fine, a financial penalty to repair damage etc. The caution will be issued on the basis that the condition must be complied with; in circumstances where a condition/s are not complied with, an offender will be dealt with by a court for the original offence for which they were cautioned and, supplementary, for breaching the condition/s of the caution.

The pilot commenced on 24 November 2014 in Leeds, 8 December 2014 in Kirklees, 16 January 2015 in Wakefield, 26 January 2015 in Calderdale and 9 February 2015 in Bradford.

¹ Restorative justice focuses on rehabilitation of offenders through reconciliation with victims and the community at large.

² Reparative justice serves to make amends and repair the harm caused to victims.

³ A community resolution is the nationally recognised term for the resolution of a less serious offence or anti-social behaviour incident, where an offender has been identified, through informal agreement between the parties involved as opposed to progression through the traditional criminal justice court process. It may be used for both youth and adult offenders. A community resolution is used to enable the police to make a decision about how to deal more proportionately with lower level crime and is primarily aimed at first time offenders where genuine remorse has been expressed and where the victim has agreed that they do not want the police to take more formal action.

⁴ A caution (simple or conditional) is used to offer a proportionate response to low level offending where the offender has admitted the offence, to deliver swift simple and effective justice that carries a deterrent effect, to record an individual's criminal conduct for possible reference in future criminal proceedings to reduce the likelihood of re-offending, to increase the amount of time the police spend dealing with more serious crimes and reduce the burden on other criminal justice agencies.

⁵ Although a community resolution does not result in a criminal record for that offence it can be disclosed as part of an enhanced police record check.

How appropriate is it for offences to be dealt with out of court?

Out of court disposals are usually used in situations where the offence is perceived to be low-level. The aim is to divert offenders away from their offending behaviour, encouraging them to face up to the impact of their behaviour and to take responsibility for the outcomes. It would not usually be used in situations of repeat offending however any decision to issue a further out of court disposal is carefully considered, taking into account the length of time between offending, the seriousness of the offence and its impact on the community, the victims wishes and the offender. The decision to issue a further disposal of this type should be agreed by a supervisory police officer and not the officer dealing with the case.

Who ensures that out of court disposals are being given to offenders appropriately?

A quarterly West Yorkshire scrutiny panel has been set up to look at use of OOCs, chaired by the Office of the Police and Crime Commissioner.

Locally, for a community resolution the victim has to sign the community resolution form. Community resolutions are given at the discretion of the investigating officer and this is in the current guidelines set by the National Police Chief's Council. Conditional cautions are signed off by the investigating officers Sergeant and can only be authorised by a rank no lower than a Sergeant.

West Yorkshire Police also undertake dip sampling of offences to pick up whether victims are properly consulted on the use of such disposals. The investigating officer must write on the incident/crime log that the victim has been consulted.

Nationally there is a board overseeing the pilot approach with a view to determining its validity.