



Date **15 April 2015**

Position statement **Out-of-court disposals**

Background

Out-of-court disposals have, in some form, existed for a very long time: simple cautions may have begun to be used in the early nineteenth century, and statistics began to be published on their use in 1928. The principle that for certain minor, first-time offences, out-of-court disposals of some kind can be used is firmly established.

From 2005, there was a significant increase in the use of out-of-court disposals (OOCs) – in 2007, not far short of 700,000 OOCs were given. Since then, the number has fallen, and 331,300 OOCs were given in 2013. This is now slightly higher than the number given in 1992, but higher than any other year before 2005.

Concerns have been raised about the use of OOCs for repeat offenders and for those who commit more serious crimes – and about offenders' lack of awareness about the potential consequences of OOCs. Concerns have also emerged about lack of scrutiny, variation in practice across England and Wales and lack of public awareness of the scope and scale of OOCs. Police officers have accepted that the statistics in this area are far from fully reliable, which is a further cause for concern.

A new approach to OOCs is being piloted in Leicestershire, Staffordshire and West Yorkshire police force areas. This would replace the existing main OOCs, in most cases, with two – a 'suspended prosecution' and a new, statutory community resolution. Fixed penalty notices would be retained, however, and the youth justice system would be unaffected. The suspended prosecution seems to be analogous to the existing conditional caution. The current pilot uses these and the existing community resolution, as the nearest equivalents to the proposed new system. The exact effect of making community resolutions statutory has not yet been clarified.

General MA position

The MA recognises that OOCs have an important role to play in addressing low-level offending promptly. However, they should be available for only a restricted number of simple offences, except in very exceptional cases. The MA would like to see both the list of appropriate offences and the criteria for making exceptions carefully listed, so the public have a clear understanding of how and when OOCs are likely to be used.

OOCs should only be used for minor, low level offences where early intervention would be an effective deterrent to further offending. The MA maintains that courts are the proper place for all other offences to be dealt with to ensure transparency and consistency of sentencing and effective monitoring. The use of OOCs for repeat offenders and for serious offences such as those involving domestic violence or violence with injury can diminish public confidence and should only be used in very exceptional circumstances. The MA would define a repeat offender as someone who has offended in the past 3-5 years. The MA has significant concerns, in particular, that OOCs are being used for offences of domestic violence.

If it is possible to identify any root causes when an OOC is issued, any available local support should be signposted to the offender, as responding to causes at an early stage improves the chance of a successful outcome. If the root causes are either identified to be more complex or not identified at point of contact, then offenders should be directed to courts. Courts receive detailed information on an offenders' background, and so are in the best position to identify root causes. Courts also have full and up to date information about available rehabilitative programmes, which can be part of a court order.

Where there is an identifiable victim, they should be consulted on the method of dealing with an offender: it is important they feel able to express any unease or fear in relation to the decision. While the MA believes the views of the victim should be taken into account, the final decision should be based on national guidelines to ensure a consistent approach.

The MA welcomes the principle of simplifying the current OOC system and is therefore following the current pilot with interest. Proper access to relevant case history on community resolutions when later offending ends up in court would be key with this new approach. It would also be important to ensure that it does not lead to an over-escalation and criminalisation of behaviour currently dealt with by informal community resolutions – the MA awaits the details of what making these statutory would mean with interest.

Restrictions on simple cautions

The MA has pushed for more oversight of OOCs for a long time, and warmly welcomed the Government's review of OOCs in 2013. Partly as a result of this, the Criminal Justice and Courts Act includes measures to restrict the use of simple cautions in the case of indictable-only offences. In these cases, a more senior police officer would have to authorise their use. Regulations made under the Act specify that a superintendent would need to decide that exceptional circumstances obtained in the case of indictable-only offences, and the Act itself specifies the need for consent from the Director of Public Prosecution.

For either-way offences specified by the Secretary of State in regulations, an inspector will have to authorise a simple caution's use. The MA would have liked a minimum rank of inspector to be specified on the face of the Bill, but welcomes the fact that this rank has been specified in regulations. The broad categories of offences involved are:

- child cruelty
- knives, offensive weapons and firearms offences
- sexual offences relating to under-16s, abuse of trust, family members, child sexual exploitation and predatory behaviour (note that several other offences of this nature are indictable-only)
- class A drugs offences
- indecent images of children
- trafficking offences.

The same requirement applies to other offences, where the offender has committed a similar offence within two years. The MA would also prefer the two-year reoffending period to be extended – perhaps to 3-5 years.

Scrutiny panels

Scrutiny panels have been or are being set up in most areas of England and Wales, and the MA believes they have the potential to ensure that OOCs are used appropriately and effectively. These panels are set up under the auspices of police forces, and can bring a whole range of different groups and agencies together.

These panels are expressly not set up to change outcomes or as a means of appeal. They look at the appropriateness of decision-making in selected cases after the fact to identify any issues and flag up any learnings for police in making decisions about OOCs. The MA is currently undertaking research to gather more detail about how different scrutiny panels are composed, but we know that magistrates are involved in many of these, as are agencies such as the CPS, and also defence lawyers.

The use of OOCs for indictable offences already has to be reviewed by the CPS. In addition to this, judicial oversight could provide the necessary experience and scrutiny to ensure OOCs are being used appropriately and in line with national guidelines. There should then be sufficient review and feedback to ensure lessons are learnt in respect to the appropriate use of OOCs.

If, as the MA would like, there were stronger central guidance, this can be balanced against the need for local discretion by ensuring senior policeman could apply for use of OOCs as a measure to deal with a specific problem in a defined area. The public must be made aware of any diversion from national guidelines. If this were to be taken forward, the current guidelines from the Senior Presiding Judge for scrutiny panels would need to be revised to allow prospective as well as retrospective comment.

The MA is carrying out research into the current operation of scrutiny panels. The MA pushed for greater scrutiny over a long period and is very pleased to see the introduction of these panels across much of England and Wales; it hopes that this will happen everywhere in due course. More information will allow the MA to make further recommendations, if appropriate.