

OUT-OF-COURT RESOLUTIONS IN THE YOUTH JURISDICTION

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SUMMARY

Out-of-court resolutions (OOCRs), previously known as out-of-court disposals, are an important tool for meeting the youth justice system's principal aim: preventing reoffending. OOCRs is an umbrella term for outcomes given to children as alternatives to being charged with a criminal offence and are sometimes called 'diversions'. These outcomes can be formal (statutory) or informal (non-statutory).

OOCRs are used in both the adult and youth jurisdictions. The MA reported on their use in 2022¹ – predominantly focussed on the adult jurisdiction – and has made eight recommendations for that jurisdiction in a position statement published alongside this one². The recommendations made here are to be read in addition to those eight focussed on the adult jurisdiction.

Whilst there are some shared concerns between the two jurisdictions, the function and use of OOCRs in the youth justice system is different to the adult jurisdiction. Their use in the youth jurisdiction also warrants specific attention and gives rise to specific concerns.

OOCRs, when used appropriately, prevent the unnecessary criminalisation of children and thereby prevent reoffending. Their use aligns with the Child First approach to youth justice to which the Youth Justice Board (YJB), police and Crown Prosecution Service (CPS) have committed.

However, youth magistrates have expressed concerns about:

1. the consistency of OOCR practice and scrutiny across England and Wales,
2. bypassing of judicial oversight, and
3. current transparency practices surrounding the use of OOCRs, especially the collection and publication of data.

CONSISTENCY OF PRACTICE AND OVERSIGHT

In principle, OOCRs can be used for any offence, where two requirements are met: 1) there is sufficient evidence to prove the offence and 2) it is not in the public interest to prosecute.³ Factors impacting the public interest requirement include the seriousness of the offence, harm caused to the victim and community impact. The NPCC's Child Gravity Matrix includes a Gravity Score Table and Disposals Table which outlines the likely outcomes, disposal requirements, and implications of a given Matrix score.⁴ Decisions on OOCRs should be made in relation to the Matrix. YJB case management guidance recognises that "diversion is not appropriate in all cases and the serious nature of an offence, or actual or potential harm, means that formal criminal justice processes are

¹ <https://www.magistrates-association.org.uk/wp-content/uploads/2023/08/MA-ar-outofcourtdisposalsfitforpurposeorinneedofreform-2023.pdf>

² <https://www.magistrates-association.org.uk/publication/out-of-court-resolutions-adult/>

³ <https://yjlc.uk/resources/legal-guides/out-court-resolutions>

⁴ <https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/publications-log/criminal-justice/2023/child-gravity-matrix-v2.2---september-2023.pdf>

Out-of-Court Resolutions in the Youth Jurisdiction

necessary.”⁵ Previous convictions or previous OOCRs does not prevent the use of another OOCR although “excessive” use of OOCRs is to be avoided.⁶ There is specific mention that a second caution or conditional caution should not be issued for knife-related offences. OOCR practice is to be locally agreed between Youth Justice Services (YJSs) and the police, including arrangements for repeated use of diversions, eligibility criteria, and scrutiny and monitoring arrangements.⁷

Our members have reported OOCRs being used for very serious cases or for repeated offending which, in their view, is not appropriate. They only become aware of this use in the event that reoffending leads to a case coming before the court. They have also reported OOCRs not being used and cases brought before the court which, in their view, would have been appropriate for an OOCR. There is inconsistency between regions in the way OOCRs are used with variation in the application of the Child Gravity Matrix.

Where the court believes an OOCR would be appropriate, it can ask for – but not require – the CPS to reconsider whether an OOCR can be used. In some areas this is common, particularly where there has been no initial admission of guilt by the child at the police station. No-comment interviews represent a major barrier to children receiving appropriate OOCRs. Matters can only be reconsidered where there is agreement between the CPS prosecutor in court and the Youth Justice Service (YJS) in court on the day. The process can be stalled where CPS make use of agents. In most cases the OOCR is reconsidered and the child does not return to court. However, where YJS have not supported reconsideration, some members report this has not always been satisfactorily explained. In several areas the current practice is to retain the case on the court lists whilst the OOCR is reconsidered with the expectation that it will have resolved by the time of the next court appearance. The child does not need to come to court on the following occasion if an OOCR has been agreed and administered.

These concerns are exacerbated by inconsistent use and practice of scrutiny panels, which should provide a level of oversight in lieu of judicial oversight. Because – like OOCR practice – this is locally agreed, consistency is currently impossible. In the MA’s 2022 report, we highlighted concerns that few areas have child-specific scrutiny panels – cases being mixed with adults – and that the composition of non-child-specific panels may limit the efficacy of these panels for children.⁸ There is no national guidance on the operation, meeting frequency, or membership of OOCR scrutiny panels. We recommend that every area should have a youth specific OOCR scrutiny panel, which meets regularly, with judicial representation that includes youth magistrates, conducting a robust sampling and review process of youth OOCR use.

Recommendation 1: National guidance on the use of OOCRs for children should be issued emphasising the requirement to make use of the Child Gravity Matrix and the importance of consistency across England and Wales.

Recommendation 2: National guidance on the operation, meeting frequency and membership of OOCR scrutiny panels should be issued. Correct application of the Child Gravity Matrix should be assessed at these meetings.

⁵ <https://www.gov.uk/guidance/case-management-guidance/how-to-use-out-of-court-resolutions>

⁶ <https://yjlc.uk/resources/legal-guides/out-court-resolutions>

⁷ <https://www.gov.uk/guidance/case-management-guidance/how-to-use-out-of-court-resolutions>

⁸ <https://www.magistrates-association.org.uk/wp-content/uploads/2023/08/MA-ar-outofcourtdisposalsfitforpurposeorinneedofreform-2023.pdf>

Recommendation 3: Specific youth OOCR scrutiny panels should be established in every area.

Recommendation 4: A defined, nationally consistent mechanism for courts to refer particular cases for review by the local OOCR scrutiny panel for consideration of the appropriateness of cases where an OOCR was used or not used.

TRANSPARENCY AND DATA

For OOCRs to be optimally effective as tools to prevent reoffending, they must work collaboratively with other areas of the criminal justice system. This includes the courts. Magistrates receive information about previous use of OOCRs with the child when they ask for it and where reports are prepared for the court this should be included. Statutory OOCRs appear on the Police National Computer and magistrates can use this information at sentencing. Members report that information on previous OOCRs is becoming more readily available in court, either through pre-sentence reports or by asking the YJS during sentencing. This is welcome.

Scrutiny panels ought to publish their findings. The MA's 2022 report found only nine police forces regularly published minutes of scrutiny panel meetings, with a further ten producing an annual report.⁹ For the public to have confidence in OOCRs, which operate without direct and immediate judicial oversight, embracing an open justice approach and pursuing transparency is essential. Forces should publish data on the volumes and outcomes of OOCRs for youths, and this data should be nationally comparable between police forces. This data would also benefit from recording reoffending rates, which are not currently routinely captured. Doing so would complement ongoing data gathering and efficacy monitoring by YJSs. The YJB "cannot currently report on the number of children receiving OOCRs and informal diversions", and although information is now being gathered ahead of a publication in 2026, this will be confined only to those cases where the YJS is involved; police-led OOCRs will not be captured.¹⁰

Recommendation 5: All police forces should publish quarterly reports on OOCR scrutiny panel meetings with specific reporting on the youth jurisdiction. This reporting ought to include – at a minimum – minutes of previous meetings and data on OOCR volumes and outcomes for children. Data produced should be nationally comparable between police forces.

⁹ <https://www.magistrates-association.org.uk/wp-content/uploads/2023/08/MA-ar-outofcourtdisposalsfitforpurposeorinneedofreform-2023.pdf>

¹⁰ <https://yjresourcehub.uk/wp-content/uploads/2026/02/Youth-Justice-Annual-Insights-Report-2024-25.pdf>