

## Strengthening community diversion

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### Purpose of the briefing

*“Instead of kicking me when I was down and charging me, I was supported instead. It has completely changed my life” - a participant of Durham’s Constabulary’s Checkpoint diversion scheme.*

Community diversion involves an adult, involved in a low-level offending incident, being offered short, simple programmes of rehabilitative, reparative or restorative interventions in exchange for avoiding a statutory out of court disposal or a prosecution. A 2019 survey by the National Police Chiefs’ Council revealed a significant majority of police forces across England and Wales are developing or delivering a community diversion scheme for adults. However, a consistent national approach has yet to emerge. As a result, there is wide variation in practice, funding and support for community diversion, and this inconsistent means that, in some places, people who would benefit from diversion are not offered it all.

Our vision is for community diversion to operate everywhere in England and Wales— a vision grounded in the evidence of what works to reduce crime, as well as reducing demand on an overstretched court system and reducing the costs to the taxpayer. And now is the time to realise that vision, as a new statutory out of court disposal framework is being implemented by all police forces in England and Wales in 2023. This new framework changes how police forces will deliver statutory out of court disposals, which will be delivered alongside community diversion, often by the same officers and using similar services and interventions. We therefore believe now is the time to deliver a more consistent coverage of community diversion across the country.

### What do we mean by community diversion?

For a considerable time, there has been a range of activity taken by the police in response to low-level offending which does not involve taking cases to court. We use the term pre-court disposals as an umbrella term for all this activity. Currently, there are three main types of disposals within this pre-court activity:

**Community diversion** describes police-led, non-statutory disposals, most commonly community resolutions or activity recorded as an Outcome 22. Community diversion involves an individual involved in a low-level offending incident being offered short, simple programmes of rehabilitative, reparative or restorative interventions in exchange for avoiding being formally processed. These disposals can take place either pre-arrest or at the point of arrest.

**Out of court disposals** describes those disposals which are set out in legislation. England and Wales is currently moving from an existing six tier statutory framework to a statutory two tier framework. From 2023 onwards, this statutory framework includes a lower tier disposal, the community caution,<sup>1</sup> and an upper tier disposal, the diversionary caution.<sup>2</sup>

**Deferred prosecution** refers to a programme of rehabilitative interventions which a person can opt to participate in when they have committed a low-level offence. Enrolling in the programme pauses the prosecution of the offence, and depending on the scheme, the offence is either revoked, or the participant receives a less serious disposal. If the scheme is not completed, they are charged in court. The Chance to Change pilot, a deferred prosecution scheme, has recently finished, and the evaluation outcome will soon be published.

## What does the evidence say about community diversion?

As we have written previously in our evidence reviews in this area, there is strong international and domestic evidence that suggests that effective use of community diversion can both reduce reoffending and improve wider outcomes for people in contact with the justice system.<sup>3</sup> Especially where community diversion is used as an alternative to a more intensive disposal, community diversion is likely to reduce the negative consequences of formal criminal justice processing.<sup>4</sup> These consequences include the disruption to an individual's life, education and employment brought on by prosecution, court sentencing and the ongoing and long term consequences of a criminal record.<sup>5</sup> Community diversion, by providing a shorter but effective response, also enables practitioners to focus limited resources on addressing the root causes of offending.<sup>6</sup>

There is emerging evidence that community diversion can also increase victim satisfaction, where community diversion places an emphasis on victim involvement and information provision. Research has found that victims often care most about the rehabilitation of the person who has caused them harm, and preventing the same thing happening to another person.<sup>7</sup> A number of community diversion schemes also include restorative justice programmes which are strongly associated with better outcomes for victims, such as a greater sense of satisfaction with the handling of their cases, receiving an apology that is considered meaningful and a decreased likelihood of experiencing symptoms of post-traumatic stress.<sup>8</sup>

There is also promising evidence that community diversion can reduce costs to the criminal justice system, by processing cases more quickly, and saving time and resources by avoiding the substantial work involved in prosecuting low level matters undertaken by frontline police officers, the Crown Prosecution Service and the court system.<sup>9</sup>

### Case study of good practice: New Chance

New Chance is a diversion scheme for women, funded by the West Midlands Police and Crime Commissioner. Participants are referred by the police into a system of tailored support delivered by non-profit organisations, such as Women's Aid, which seeks to address long-term issues, ranging from trauma to homelessness, and provide practical help to resolve more immediate issues, for example around managing debt and health concerns. Engagement with the scheme allows participants to avoid receiving a criminal record. An evaluation found the scheme reduced reoffending rates for participants with substance misuse issues by more than 50 percent.<sup>19</sup>

Jacqui (not her real name) from Birmingham explains the impact New Chance has had on her life:

*"I started a relationship with a man who became very controlling and violent. With no money and noway of feeding my children, I regret to say I took to stealing food from shops. Before long I got caught. I explained to the police officers what was happening at home and before long I was receiving the right kind of help. Without New Chance I would have either ended up in prison or dead."*

## Strengthening community diversion

The 2019 survey by the National Police Chiefs' Council revealed the majority of police forces across England and Wales are developing or delivering a community diversion scheme. Some deliver more than one, with different schemes focusing on different issues or groups. The most commonly used model was drug diversion, which was in place in 27 of the 35 responding forces.<sup>10</sup> Alcohol diversion, victim awareness courses and diversion for women were also in place in more than half of the forces.<sup>11</sup> However, while we are aware that community diversion is happening across the country, a lack of sufficient data means that we are not yet able to determine the exact details of what kind of schemes are operating where, who is receiving it, and what the outcomes are. Our conversations with practitioners frequently characterise community diversion provision on the national level as extremely varied, with "everyone doing it differently". There is a crucial role that a new national policy framework can play in putting effective community diversion practice on a firmer footing across the country.

## Developing consistent practice

The approach taken by community diversion schemes across the country is varied. Police forces exercise great autonomy over the structure and delivery of their community diversion. This is often shaped by the local context, funding availability and political priorities. As a result, community diversion can operate with different referral processes, eligibility criteria, approaches to data collection and even the disposal outcome that participants are diverted into, even within forces let alone between them. This means that the experience of someone participating in a community diversion scheme in Devon could be very different to someone in Northumbria who is involved in similar behaviour.

While we recognise the strength of local innovation, especially when it draws on available resources and ways of working to respond to local challenges and need, the current variation in community diversion practice means that there is also substantial divergence from the evidence base of 'what works'. For example, different schemes have different interventions and eligibility criteria outcomes, which can significantly who gets diverted and who does not.

Moreover, there are clearly areas of the country in which there is no provision. Recent efforts to chart community diversion practice in England and Wales show that there are pockets of well-established diversion provision, alongside diversion deserts which lack any scheme at all, and where populations miss out on the benefits that we know diversion can deliver. Moreover, where a scheme does exist in an area, additional barriers can prevent the equal participation of the local population - such as the proximity of the programme and interventions to the person's home, and whether there are feasible and affordable transport links. This is a particular issue for schemes operating in areas with high levels of social deprivation.

Moreover, the way that community diversion schemes engage with victims is similarly varied. Some schemes limit victim involvement to informing them of the outcome of the incident, some require participants to send a letter of apology to the victim, while others make good use of restorative justice practices. This means that the experience of the victim, as well as the person who has been diverted, can be extremely different depending on how the scheme operates in their area. It is important that community diversion schemes get this work right, and consistently involve and respond to victims in a way that is in line with existing guidance on effective victim engagement, particularly the Victims Code, as increased victim satisfaction is one of the key gains to be made from investing in this approach to low level offending.

Data recording practices is an additional area that suffers from inconsistent implementation amongst community diversion schemes. Some police areas demonstrate an exemplary commitment to collecting in-depth quantitative and qualitative data on key indicators of their scheme's effectiveness, such as participant recidivism and victim satisfaction.<sup>12</sup> While examples of this good practice does exist, many other schemes do not record even the most basic information about who is being diverted, the intervention that has taken place and the impact on the participants. Comprehensive data collection is essential for forces to be able to scrutinise their practice, identify where it diverges from the evidence base and respond with a plan of improvement. For example, we can only begin to address the issue of racial disproportionality affecting diversion referrals, if we have a full understanding of how many people from ethnic minority communities are being offered diversion.

Unsurprisingly, the present monitoring and evaluation mechanisms do not robustly engage with this important area of police work. Community diversion activity is currently examined by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) thematic inspections on innovation, which are conducted irregularly and infrequently. Insufficient external monitoring, combined with a lack of national-level guidance, has enabled diversion practice to develop inconsistently in England and Wales, diminishing the impact of what can be an extremely effective approach to reducing crime in our communities.

## Recommendations:

### 1. Increase the attention given to diversion activity by the police inspectorate

Community diversion should be inspected as part of HMICFR's annual Police Effectiveness, Efficiency and Legitimacy (PEEL) assessments. This would create an impetus for forces to regularly monitor their practice and reflect on specific areas for improvement, in line with the evidence.

We propose creating a new section of the PEEL assessment framework under section 5: 'How good is the force at investigating crime?', which currently reviews out of court disposals. The new section would be titled 'The force makes effective use of out of court disposals and diversion', and would be followed by these new subheadings:

5.5.1 'The scheme commissions a comprehensive range of evidence based interventions, within the options available to them';

5.5.2 'The scheme has robust eligibility criteria';

5.5.3 'The scheme is aware of and takes steps to redress racial disparity';

5.5.4 'The scheme actively involves victims';

5.5.5 'The scheme makes use of a scrutiny panel';

5.5.6 'The scheme enforces good data practices'.

### 2. Develop data collection guidance and standards

Community diversion schemes should be supported to conduct regular data collection. The accompanying guidance to the new out of court disposal framework is an opportune moment for the Ministry of Justice to develop good practice guidance on how forces can build up an accurate picture of the demographics of who is being diverted. This should include basic information on each participant's age, race, offence type and offending history.

In addition, a record should be kept of how many people are referred into the scheme, which interventions they are referred into, what form of victim engagement took place, how many people successfully complete it and if they have been previously offered diversion before. This data should be specific and disaggregated on community diversion. Currently, there is no way to differentiate between the data that is collected on those who engage with diversion, and those who receive a formal out of court disposal, which folds important information on their demographic make-up and outcomes into the general picture of how out of court disposals are used. More regular HMICFRS inspections of diversion activity would also help to kick-start better data practices.

### *Fostering support for community diversion*

The support of individual police officers is key to the operational success of community diversion. Schemes rely on frontline officers to make referrals for eligible participants instead of opting to process them through the courts. Like many areas of police activity, the appetite for supporting diversion can vary significantly within police forces. Some officers are fully supportive of the aims of community diversion, and exhibit a real passion and commitment for making it happen, while other officers can be reluctant. This reluctance may result from personal doubts about the effectiveness of community diversion as an alternative approach to addressing low level offending, viewing it as a "soft option" which lets the person "get away" with their crime without any real consequence. Low referral rates are also driven by a lack of capacity from busy frontline officers who may be fully supportive of the aims of community diversion, but are deterred by the extra resource and time burden associated with the referral process. This means that even when diversion provision exists, eligible people are missing out on the opportunity to participate in a scheme and circumvent the damaging consequences of being processed through the courts.

In addition, as most police forces operate without a dedicated team for their community diversion work, the responsibility of overseeing the successful running of the scheme and delivering training often falls to the out of court disposal lead, who typically juggle this responsibility alongside a busy workload and other competing priorities. This is an unsustainable approach to embedding diversion practice in the long-term, as it leaves good work that has been taking place vulnerable to stalling when this person, and their accrued knowledge and enthusiasm for community diversion, moves on to a different area or

team. A high turnover of police officers creates additional challenges to fostering a pro-diversion culture as individual officer understanding and buy in can be quickly lost.

## **Recommendations:**

### **3. Include Outcome 22 within police detection rates**

Outcome 22 is a Home Office administration code which is used by the police to indicate that no further action has been taken in response to an offence, but some form of diversionary or educational activity has taken place. It is used by some diversion schemes as an effective way to acknowledge the work undertaken by the police to address an individual's offending behaviour where a No Further Action is the appropriate final outcome. The Home Office should adapt their counting tool to include Outcome 22 as activity that counts towards an officer's sanctioned detection rate and give police teams performative 'credit' for making referrals into diversion. This would incentivise officers to make these referrals, by creating positive reinforcement for undertaking the extra work and time involved, and promote its status as valuable police work. The National Police Chief's Council have also supported calls for this change. We welcome the new Outcome 22 Guidance from the NPCC, which goes some way towards this, by setting out that the use of Outcome 22 should be recorded to "allow for forces and others to be able to accurately identify all crimes dealt with by a diversionary activity".

### **4. Incorporate community diversion into regular officer training**

A regular and comprehensive training programme can build up individual officers' trust in community diversion and develop their understanding about the importance of their role. The College of Policing should include community diversion as a separate learning objective of their national policing curriculum, which outlines what forces are expected to cover when they deliver their own training, and provide detailed training material.

Police teams should also incorporate a module on community diversion into their regular in-house training programme, which is tailored to local trends in offending and need and includes examples of good practice. This would lift the burden from the busy out of court disposal lead and take a more structured and efficient approach to developing trust with new officers. The training programme should emphasise how community diversion offers a better use of police time and resources than repeatedly and ineffectually processing individuals for the same crimes. Police officers will also be more likely to support community diversion if they are confident in the diversionary options available to them when attending to an incident, are comfortable with the referral process and what they are referring the individual into. Therefore, the training programme should also cover how the scheme operates in the area, and how the individual frontline officer fits into its work.

### **5. Develop training for Police and Crime Commissioners on community diversion**

Additional barriers that can undermine the commitment to community diversion in a particular force area are typically insufficient funding, a lack of resources and time and political resistance from senior commissioning levels. Drug diversion is one area of practice where ideological resistance has undermined efforts in England and Wales to implement evidence based approaches to dealing with possession charges. The full support of a Chief Officer or a Police and Crime Commissioner (PCC) increases the importance of diversion on the relevant police force's agenda, creating a ripe environment for trialling new schemes and securing crucial financial backing.

The Association for Police and Crime Commissioners should include a segment on community diversion within their training programme for new commissioners. This should cover the evidence base on how community diversion effectively reduces reoffending, leads to better outcomes for victims, creates safer communities that suffers from less crime, reduces police time spent arresting those who prolifically commit low level offences and makes savings on criminal justice costs in the long term. This would help foster support for community diversion from the outset of the PCC's tenure, and challenge political concerns that community diversion is a "soft option" which does not bring justice for victims, and is not political tenable with the public.

## **Building a stronger footing for funding arrangements**

As community diversion is non-statutory police work, funding arrangements vary between schemes. Where diversion practice has become embedded in an area, schemes tend to benefit from direct and long-term funding from the local Police and Crime Commissioner office or police innovation funding. Other forces self-fund their community diversion work out of their own budget, which is often limited and constrained by other competing priorities, or they rely on charities and third sector organisations to fill funding shortfalls. As a result, for many schemes, funding streams are often patchwork and short term. This lack of reliable and consistent funding is a contributing factor to the inconsistency of diversion provision across the country. In this funding climate, even when schemes have been able to secure funding for a pilot and have begun to see successful outcomes, they have been forced to cease their operations when the seed funding runs out.

Moreover, the fragile nature of funding for community diversion creates particular challenges for schemes trying to evaluate their long-term impact. Impact evaluations are an essential resource to justify the required investment in time and money, but they rely on assured funding on a multi-year basis to operate long enough to measure long-term outcomes.

The growth of 'offender pays' schemes is another troubling outcome of community diversion schemes' lack of access to secured funding. This refers to practice where participants themselves are required to pay for their interventions, in a similar approach to taking part in a speed awareness course. This passes the cost of community diversion onto the people in the justice system, with extreme implications for the equality of access to justice. It effectively limits participation to only those who can afford it, who are permitted to pay their way out of being processed through the courts. This creates wealth-based inequalities within the criminal justice system by excluding individuals from lower socio-economic backgrounds who will disproportionately suffer worse outcomes from the consequences of a court hearing and a criminal record, compared to those with the ability to pay.<sup>13</sup> Yet without access to sufficient funding, more schemes are being tempted to increase the diversion opportunities they can offer in this way.

### **Recommendations:**

#### **6. Commission a review into the full costs of diversion interventions**

Our long-term hope for community diversion is a system where sustained formal funding arrangements cover the full costs of intervention providers, enabling everyone who could benefit from it to be able to access it.

The Home Office should conduct an independent review of the associated costs of delivering high quality and long-term interventions to evidence the true cost of this important work. A review of this nature would evidence the unsustainable nature of current community diversion funding provision and the challenges police forces face in making space for it in already overstretched police budgets. The outcomes of this review would also be useful to inform future funding decisions around diversion, and to help make the case for investing in evidence-based interventions - which are time resilient and diverse in nature - to accommodate different offending types and need. Interventions are sourced from extremely diverse pools with varying degrees of quality and are commissioned using government funded police budgets. It is important to understand how this commissioning process works and how it can be sustained. Drug interventions are a particular area which would benefit from this extra attention.

## **Building a stronger evidence base**

While the case for community diversion is based on strong evidence, there is still more we need to know. This includes whether specific schemes work better than others, which intervention work best and for whom and, particularly, what works best for young adults, the most represented group who receive community diversion.

Impact evaluations are important tools which enable individual schemes to understand where inconsistencies in their practice exist and begin to identify solutions to address them. While there is an emerging evidence base on community diversion for adults, more recent evaluations are needed of a

greater number of schemes. Evaluations are often funded and delivered in an ad hoc way, with the third sector and academic institutions filling the gap where statutory services may not have commissioned one.

While the drivers of crime have been extensively researched,<sup>14</sup> much less is known about the effectiveness of community diversion interventions, particularly around which approaches work well for particular types of offences. Interventions aimed at people who commit domestic abuse is one particularly under researched area. In addition, an evidence review that we conducted on what works to reduce reoffending found that despite the particular applicability of community diversion for specific groups of people, most notably vulnerable women, people with substance misuse issues and people with mental health illnesses, there is little specific UK evidence that isolates the impact of community diversion on these groups.<sup>15</sup> Therefore we welcome the research commissioned by the Ministry of Justice looking at the support offered by the police to people experiencing mental health crises, which is set to be released in early 2023. Research projects such as this are a positive step towards developing a better understanding of which approaches can effectively promote desistance from crime and reduce the associated harms for certain types of offending and need.

Finally, our evidence review also found a lack of research on the impact of diversion interventions on young adults, despite the fact that we estimate community diversion to make up nearly a quarter (24%) of all disposals received by 18-24 year olds in the justice system.<sup>16</sup> In addition, while community diversion can offer an effective approach to addressing the un-met needs of young adults who commit repeat low-level offences early on in the criminal justice process,<sup>17</sup> research makes it clear that procedures and interventions should be distinct, and recognise their differing levels of need and maturity, which can develop well into a person's mid-20s.<sup>18</sup>

## **Recommendations:**

### **7. Commission more research on the long term impact of community diversion**

The Ministry of Justice and the Home Office should commission an independent and systematic review of the research that has been produced on community diversion, and invest in a series of high quality research projects, which can evidence its long-term impact. These evaluations should be longitudinal, use a good sample size and be properly funded to measure long-term outcomes, such as the impact on participant's reoffending rates, including the nature, frequency and length of time between offending. Reoffending rates and cost benefits are critical measures for any community diversion scheme, but other indicators of effectiveness such as victim and participant satisfaction, engagement in services, swiftness of justice, and reduction in officer processing time are equally valuable for monitoring and evaluating the effectiveness of a scheme.

### **8. Commission more research on effective diversion interventions, with a particular focus on young adults**

To add to this growing evidence base, the Ministry of Justice should commission an evaluation of diversion interventions, to empower police forces delivering community diversion to commission responsive and needs-focused interventions for specific groups.

## **Conclusion**

It has been heartening to see the positive and rehabilitative approach of community diversion, become an established part of the police's response to repeat low-level offending. Despite this welcome progress, a lack of national oversight and guidance has enabled community diversion to be implemented on an inconsistent basis, with varying outcomes for the people who stand to benefit from participating in a scheme, as well as the victims of their crimes. The new out of court disposal framework, and the attention and appetite for reform that it brings, presents the perfect opportunity to address these inconsistencies on a national level. The incremental but important policy changes outlined in this briefing presents a path that policymakers can take to improve the provision, impact and sustainability of community diversion, and strengthen this growing area of police work in England and Wales.

## Endnotes

1. The community caution will involve an individual involved in a low-level offending incident admitting to the offence, and being given a community caution with one or more conditions attached to it. These conditions can be either rehabilitative or reparative. If these conditions are not complied with, it could result in a financial penalty.
2. The diversionary caution, will involve an individual involved in a low-level offending incident admitting to the offence, and being given one or more conditions. These conditions can be rehabilitative, reparative, financial or for foreign nationals. If these conditions are not complied with, it could result in court prosecution.
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## About the Centre for Justice Innovation

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