

Pre-court diversion for adults: an evidence briefing

Summary

Pre-court diversion seeks to offer a swift and meaningful response to low-level offending. The approach has been long recognised as a significant part of the youth justice system. Recently, interest in pre-court diversion for arrested adults has been re-awakened, with the Lammy Review recommending trials of new forms of ‘deferred prosecution’ and recent high-profile projects such as Operation Turning Point in the West Midlands and Checkpoint in Durham. A 2018 survey by the National Police Chiefs’ Council revealed that a majority of police forces across England and Wales are engaged in using or developing pre-court diversion for adults as well as finding both a wide variety in practice and in the terms used to describe pre-court diversion.

Pre-court diversion, as we define it, operates in two ways: first, individuals who are arrested and likely to receive a formal out of court disposal are ‘diverted’ into either a less serious out of court disposal or an informal disposal; second, individuals who are arrested and likely to be prosecuted in court are ‘diverted’ into either a formal out of court disposal or an informal disposal (this diversion from court is sometimes called ‘deferred prosecution’).

What is common to both of these diversion routes is that an individual who complies with the conditions of a pre-court diversion should receive a lesser criminal justice disposal than they would have otherwise received, reducing the negative consequences of formal criminal justice sanctions (a process we call de-escalation) and allowing practitioners to focus resources on addressing the root causes of offending. Diversion schemes which do not de-escalate formal criminal justice sanctions do not fit under our definition of pre-court diversion.

The purpose of this briefing is to summarise the evidence to date on the impact of pre-court diversion for adults and to draw out some promising practice principles for those working in pre-court diversion schemes.

The evidence on pre-court diversion

We reviewed the available research on pre-court diversion from a number of common law countries. We found that, when implemented properly:

- There is **strong evidence internationally, and moderate evidence from the UK, that pre-court diversion reduces reoffending;**
- There is **moderate evidence that pre-court diversion reduces the costs to the criminal justice system;**
- There is **promising evidence on the impact of pre-court diversion on victim satisfaction;**
- There is only **limited evidence that pre-court diversion can reduce criminal justice processing times, though this is primarily due to a lack of research;**
- We also found wider evidence on what works to reduce reoffending that suggested that **pre-court diversion may be particularly applicable for specific groups of individuals**, most notably vulnerable women, young adults, and individuals with substance misuse and mental health illnesses, although there is little specific UK evidence that isolated the impact of pre-court diversion on these groups.

Promising practice principles

Drawing on the specific evidence base on diversion, and on the body of research around effective practice with offenders, we have identified a number of promising practice principles which we consider will foster effective practice. These principles are a 'first draft': intended to be a useful guide but to be adapted and amended as more research becomes available. Pre-court diversion schemes should:

- **Avoid net-widening** drawing individuals further into the criminal justice system than they otherwise would have been;
- **Keep eligibility criteria broad** thereby working with all those suitable and avoiding unnecessarily low referral numbers;
- **Consider the impact of formal admissions of guilt on eligibility and participation** especially on people from groups which tend to have less trust in the criminal justice system;
- **Ensure the referral process is quick and simple** so that practitioners are not discouraged from referring and because evidence shows that swift responses build future compliance;
- **Prioritise victim satisfaction and procedural fairness** for the benefit of both specific victims and to ensure that the process commands public trust;
- **Avoid 'overdosing' with overly intensive interventions** which offenders may struggle to complete;
- **Deliver responsive and need-focused interventions** on the basis of assessed risk and to address the needs which are driving reoffending;
- **Work in partnership** to ensure that all the agencies involved share the aims of the scheme and a vision of how it should be delivered.

Our support

The Centre for Justice Innovation is working to support the development of pre-court diversion schemes for adults. We are working with areas currently delivering, and interested in developing pre-court diversion to create a community of practice, deliver practice-sharing opportunities, and codify evidence-led practice. Please get in touch with Carmen Robin-D'Cruz at cdcruz@justiceinnovation.org or Claire Ely at cely@justiceinnovation.org if you want to be involved.

Background

Policy and operational context

A recent National Police Chiefs' Council survey has highlighted that a majority of police forces across England and Wales are currently piloting or developing new pre-court diversion schemes for adult offenders.¹ The most commonly used model was drug diversion, which was in place in 27 of the 35 responding forces. Alcohol diversion, victim awareness courses, and women's referral / diversion were also in place in more than half of the forces. While pre-court diversion has been trialled before, many of those forces developing pre-court diversion schemes have taken their lead from the perceived success of both Operation Turning Point in the West Midlands² and Checkpoint in Durham.³ Pre-court diversion has also been used for a number of years across Scotland.⁴

There are a number of reasons for this renewed interest in pre-court diversion. There is frustration with the delays and costs of prosecution at court for low-level offences. In 2017, it took, on average, 175 days to resolve criminal cases from the original offence to case completion.⁵ Advocates for pre-court diversion claim not only can it hear cases more quickly but that it is a less intensive use of critical resources: for both frontline police officers (by allowing them to hand over eligible low-level cases more quickly and concentrate on core policing); and for Crown Prosecution Service and courts (by avoiding the substantial work involved in prosecution of low level matters).⁶

Its proponents also argue that pre-court diversion can reduce reoffending by focussing on addressing the needs that underpin offending. In designing interventions to target the underlying factors driving a person's offending and facilitating access to support services, pre-court diversion is said to be designed to tackle reoffending, a position supported in the Ministry of Justice's 2010 *Green Paper Evidence Report* which suggested that those receiving an out of court disposal showed lower reconviction rates than similar individuals sentenced to a fine or conditional discharge in court.⁷

Supporters of pre-court diversion also argue that schemes deliver greater levels of restitution and restorative justice than court prosecution. Transform Justice's report *Less is more- the case for dealing with offences out of court*, for example, suggests that in many prosecution cases 'the victim will not get an apology, let alone compensation.'⁸

Moreover, David Lammy MP's review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic (BAME) individuals in the Criminal Justice System urged the Government to pilot pre-court diversion, styled as deferred prosecution, to test whether offering disposals without a formal admission of guilt can address racial disparity.⁹ The Ministry of Justice are responding to this recommendation by developing pilots of this model.

Alongside these initiatives, a number of forces are also reforming their use of out of court disposals, following the Ministry of Justice's consultation and subsequent 2014-15 'two-tier' out of court disposal pilots. The pilots reduced the range of out of court disposals available from six to two: conditional cautions and community resolutions (fixed penalty notices were excluded). A number of forces are now opting to emulate this two-tier framework following guidance from the National Police Chiefs' Council.¹⁰

Purpose of this briefing

Due to the renewed interest in pre-court diversion and the apparent diversity of practice, the Centre for Justice Innovation has undertaken a rapid review of the published research. In this evidence briefing, we seek to answer the following questions: What is the evidence that pre-court diversion works? Does pre-court diversion work specifically for particular groups of individuals?

Our intention is to provide practitioners and policymakers with a summary of the evidence base to help them plan new, and enhance existing, pre-court diversion schemes.

We also offer up a set of promising practice principles, based on the specific and generalisable evidence of what works, that pre-court diversion schemes should adopt. These principles are intended to be a useful guide and to be adapted and amended as more research becomes available.

Defining pre-court diversion

The term 'diversion' is used to describe a wide range of models across the criminal justice system, from initiatives that seek to keep 'at risk' individuals out of the criminal justice system altogether to those that provide an alternative to custody.

As we define it, pre-court diversion seeks to offer a swift and meaningful response to low-level offending. Our definition of pre-court diversion schemes only includes:

- Schemes working with individuals who are arrested and likely to receive a formal out of court disposal¹¹ who are 'diverted' into either a less serious out of court disposal or an informal disposal;
- Schemes working with individuals who are arrested and likely to be prosecuted in court who are 'diverted' into either a formal out of court disposal or an informal disposal (this diversion from court is sometimes called 'deferred prosecution' and includes the Chance to Change pilots being led by the Ministry of Justice).

What is common to both of these is that an individual who complies with the conditions of a pre-court diversion should receive a lesser criminal justice disposal than they would have otherwise received, reducing the negative consequences of formal criminal justice sanctions (a process we call de-escalation) and allowing practitioners to focus resources on addressing the root causes of offending. Diversion schemes which do not de-escalate formal criminal justice sanctions do not fit under our definition of pre-court diversion.

Our definition of pre-court diversion therefore excludes three other important models of diversion. The first are pre-arrest preventative projects which seek to avoid individuals being drawn into the criminal justice system in the first place. These purely preventative schemes are valuable and should be encouraged. They do not, however, meet our definition as the people they work with have not been arrested and are, therefore, not currently facing any imminent criminal penalties from which they can be diverted.

Our second exclusion is models such as NHS Liaison and Diversion and Community Advice and Support Services. These models refer individuals into support services (primarily from police and court custody cells) but they do not provide ways for their cases to be either stopped or significantly de-escalated. While these services can be valuable in connecting people to support, and can ultimately be argued to 'divert' individuals by stopping their offending so they do not come back into the criminal justice system later on another case, they do not have the ability to de-escalate the current case from one criminal justice disposal to a lesser one.

Third, we distinguish pre-court diversion from prison diversion programmes which divert offenders from custody into community sentences. While we acknowledge their value, prison diversion schemes tend to be from court and, therefore, also do not fit within our definition of pre-court diversion.

As our focus in this evidence briefing is on adults, diversion schemes for children and young people are not in scope. For information on point-of-arrest youth diversion, including a summary of the extensive evidence base, see the Centre for Justice Innovation's *Valuing youth diversion: a toolkit for practitioners*; *Why youth diversion matters: A briefing for Police and Crime Commissioners*; and *Mapping youth diversion in England and Wales*.¹²

Assessing the evidence on pre-court diversion

Methodology

Search strategy

We conducted a rapid assessment of the research literature on pre-court diversion to assess what is known about the impact of the approach. To undertake this task, we searched the Web of Science Social Sciences Citation Index and Google Scholar for articles matching the following search terms: 'adult diversion', 'prosecutor-led diversion', 'prosecutorial diversion', and 'police diversion'. We also included articles which included the term 'early intervention' in combination with either 'crime' or 'justice'.

We excluded articles more than 25 years old, studies not written in English, studies from non-common law countries, and evaluations of schemes that did not fit with our definition of pre-court diversion or which worked with under-18s. We considered all available studies, regardless of their findings. We then screened the studies for quality.

We supplemented our sample with other relevant material provided by contacts and identified via citation, including looking at surrounding literature on what works in criminal justice to discern whether there are promising avenues to pursue.

Strength of evidence

We have attempted to systematically codify the evidence we found to give the reader a clear understanding of the relative strength of the studies we have assessed.

Term	Description
Strong evidence	A programme or practice that has been tested in an intended population with multiple randomised and/or statistically controlled evaluations, or one large multiple-site randomised and/or statistically controlled evaluation, where the weight of the evidence from a systematic review demonstrates sustained improvements in outcomes of interest.
Moderate evidence	A programme or practice that has been tested with a single randomised and/or statistically controlled evaluation demonstrating sustained desirable outcomes; or where the weight of the evidence from a systematic review supports sustained outcomes.
Promising evidence	A programme or practice that, based on statistical analyses or a well-established theory of change, shows potential for meeting the 'evidence-based' or 'research-based' criteria.
Poor evidence	A programme or practice that has been tested in an intended population with multiple randomised and/or statistically controlled evaluations where the weight of the evidence from a systematic review demonstrates poor (undesirable) effects on outcomes of interest.

In interpreting our findings, readers should bear in mind that the impact of any intervention is determined by the context in which it is implemented. We should be cautious about assuming that research findings in one country will directly transfer to another, even where, as in this review, the international jurisdictions included have a legal system similar to that of England and Wales.

Findings

Does pre-court diversion work?

In reviewing the research literature on pre-court diversion, we found the most commonly measured outcomes are: reoffending; criminal justice processes and costs; and victim satisfaction.

Reoffending

Overall, we found strong international evidence and moderate evidence from the UK that, when implemented properly, pre-court diversion can reduce reoffending.

We identified two relevant international meta-analyses. Harvey et al (2007) looked at 19 high-quality North American and Australian studies covering a range of pre-court diversion approaches of which 10 fit within our definition. It found that 74% of studies demonstrated a statistically significant reduction in reoffending.¹³ Lange et al (2011) reviewed 24 American pre-court diversion schemes which sought to divert people with mental illness from the criminal justice system to the mental health care system. It found evidence of moderate effectiveness in reducing reoffending.¹⁴

We also found robust outcomes evaluations on a further six pre-court diversion sites in the USA.¹⁵ Four of the six sites demonstrated a statistically significant reduction in reoffending compared to a matched comparison group.

In the UK, we identified one published study in this area which met our criteria: a randomised control trial evaluation of the CARA project which diverts low-risk, first-time domestic abuse perpetrators into a workshop as an alternative to prosecution. The study found that that the project produced a significant reduction in crime harm¹⁶ driven by reductions in domestic abuse.¹⁷

Alongside the formally published studies described above, and given its prominence in the discussions and current development of pre-court diversion in England and Wales, early findings from the randomised control trial of Operation Turning Point (a deferred prosecution scheme), suggest that it has produced a statistically significant reduction in the crime harms caused by violent crime.¹⁸ However, as the evaluation itself has yet to be published, we have not included it in our evidence assessment.

Criminal justice processes

Overall, we found only limited evidence that, when implemented properly, pre-court diversion can reduce criminal justice processing times.

We found one published study which explored processing times for pre-court diversion cases. An evaluation of a pre-court diversion scheme in Alaska looked at both the time taken to disposal and the workload for the lawyers managing the case, and concluded that 'case diversion is a much quicker process, for both the offenders and more importantly for attorneys.'¹⁹

Criminal justice costs

Overall, we found moderate evidence that, when implemented properly, pre-court diversion can reduce the costs to the criminal justice system.

A number of studies tested the hypothesis that pre-court diversion could create savings (i.e. that pre-court diversion delivers a cheaper resolution of a case than its alternative). This can take the form of either delivering cashable savings or, more likely, avoiding costs.

We identified two studies looking at the cost of pre-court diversion compared to traditional processing. One Australian study of four pre-court diversion schemes for low-level drug offenders found that diversion cost between 84% and 94% less than formal charging, depending on the model used.²⁰ A US multi-site study which looked at four prosecutor-led diversion projects concluded that all the sites studied reduced costs by a statistically significant amount.²¹

However, analysis of the Ministry of Justice pilot of a two-tier framework for out of court disposals noted that the increased use of the conditional caution option as a replacement for the simple caution meant that overall costs increased.²² This highlights that the savings in pre-court diversion are achieved by diverting offenders away from more intensive, and therefore expensive, disposals.

However, we note, despite the caveats mentioned about the lack of a full publication of the evaluation, that early findings from Operation Turning Point indicate that costs are 45% lower than formal processing.²³

Victim satisfaction

Overall, we found promising evidence on the impact of pre-court diversion on victim satisfaction. A published study on the impact of Operation Turning Point on victim satisfaction, recorded that victims whose cases had been diverted reported 43% greater satisfaction than the control group (who went to court).²⁴

Given that many pre-court diversion programmes include restorative justice, it is worth noting that there is moderate evidence that restorative justice can have a positive impact on victim satisfaction (as well as reoffending). A systematic review of the use of restorative justice conferencing (RJC) in the criminal justice system from 2012 which included evaluations of their use in pre-court diversion schemes found that 'comparing those whose cases were assigned to RJC with those assigned to standard criminal justice, those taking part in face-to-face RJC express higher levels of satisfaction with the handling of their cases, are more likely to receive an apology from offenders and rate these apologies as sincere, be less inclined to want to seek revenge, and suffer less from post-traumatic stress symptoms.'²⁵ These conclusions mirror findings from a separate systematic review that found participation in restorative justice is associated with a statistically significant increase in victim satisfaction compared to standard processes.²⁶

However, our evidence review found no specific evidence that isolated the impact of restorative justice within pre-court diversion on victim satisfaction.

Does pre-court diversion work specifically for particular groups of individuals?

In reviewing the research literature on pre-court diversion, we looked at whether pre-court diversion works specifically for particular groups of individuals. From our review, we found the evidence most commonly highlighted the following groups: vulnerable women, young adults, substance-abusing individuals, and those with mental health illnesses.

Vulnerable women

There is considerable evidence in the literature on what works in reoffending that desistance from crime is different for women than it is for men, and that women require different interventions to help assist this process.²⁷ Women offenders often present with higher levels of need and are likely to have been victims of serious crime themselves.²⁸ There is moderate evidence that family-based interventions focusing on family processes (such as 'attachment', 'affection', and 'supervision'), anti-social associates, and personal criminogenic needs were most effective in reducing reoffending.²⁹ Conversely, prosecution is unlikely to address the underlying drivers of their offending and may heighten their needs and negatively affect their dependents.³⁰ There is reason to believe, therefore, that pre-court diversion may be particularly effective for women with particular vulnerabilities and that specific interventions delivered within pre-court diversion should be tailored to their needs and likely circumstances.

However, our evidence review found no specific evidence that isolated the impact of pre-court diversion on vulnerable women offenders. One study on the impact of Women's Community Services, to which a number of women were sent as part of pre-court diversion schemes, found positive feedback from service users, but did not identify an impact on reoffending due to data collection and monitoring issues.³¹

Young adults

There is considerable research on brain development in young adulthood which suggests that impulse control, reasoning, and decision-making capacities are in formation through the mid-20s.³² There is strong evidence that young adult exposure to the criminal justice system inhibits desistance, a process that, as the age-crime curve demonstrates, otherwise accelerates during young adulthood.³³ There is promising evidence that the processes and interventions for young adult offenders should be distinct and recognise their variable maturity.³⁴ Taken together, this evidence suggests that specific interventions delivered within pre-court diversion should be tailored to young adults' needs and likely differential maturity.

However, our evidence review found no specific evidence that isolated the impact of pre-court diversion on young adults.

Substance misuse

There is considerable evidence in the literature on what works in reoffending that offering drug treatment programmes to individuals with substance misuse issues has been shown to have a positive impact on reoffending. A recent meta-analysis of drug-treatment programmes, for example found that treatment reduced reoffending in drug-using offenders significantly.³⁵ However, there is also evidence that more intensive interventions that focus on the multiple problems of medium-to-high risk drug-using offenders are more likely to reduce reoffending and that men benefit more than women and young people benefit more than older people.³⁶ There is evidence that suggests that routing Class A drug users into treatment via early intervention may reduce reoffending.³⁷ Therefore, pre-court diversion may be particularly effective for individuals with substance misuse issues and schemes should consider routing drug users into treatment as early as possible.

However, we found no specific evidence that isolated the impact of pre-court diversion on the reoffending of individuals who used illegal substances, although we note that there is evidence that it reduces criminal justice costs.³⁸

Mental health

We found an American study on pre-court diversion schemes for people with mental illness which found evidence of moderate effectiveness in reducing reoffending. However, we found no specific UK evidence that isolated the impact of pre-court diversion on the reoffending of individuals who have mental health illnesses.

A Ministry of Justice summary of what works to reduce reoffending states that there is 'currently insufficient evidence to determine the impact on reoffending of diversion-based approaches for offenders with mental health problems,' although this primarily cited court-based alternatives rather than pre-court diversion. Nonetheless, it states that 'qualitative evidence has highlighted aspects of effective diversion approaches, including the importance of early intervention and access to services when needed, multi-agency commitment and collaboration, and the importance of training to raise awareness and understanding among staff.'³⁹ This suggests that where individuals with mental health illnesses are eligible for pre-court diversion, they should be given access to the appropriate mental health services.

Promising practice principles

In reviewing the research literature on pre-court diversion, we have developed promising practice principles that pre-court diversion schemes should adopt. These principles are intended to be a useful guide and to be adapted and amended as more research becomes available.

Avoid net-widening

Practitioners and policymakers should avoid creating pre-court diversion schemes that net-widen, i.e. that draw individuals further into the criminal justice system than they otherwise would have been. The Ministry of Justice two-tier out of court disposal pilot evaluation showed that, contrary to the principle of de-escalation, people who would have received simple cautions were given conditional cautions instead. Conditional cautions involved individuals having to complete more interventions than they otherwise would and came with the threat of enforcement in the case of non-compliance. This has the possibility of subjecting individuals to greater criminal justice intervention, more enforcement, and more punitive consequences if individuals do not comply.

Keep eligibility criteria broad

At present, there is not enough evidence for us to comprehensively state for which offences pre-court diversion is and is not effective. However, there is some evidence from existing schemes that overly strict eligibility criteria regarding the number and types of offences can lead to very low referral numbers.

We recognise that, in the absence of a strong steer from the evidence, eligibility criteria are partly determined by what is publically acceptable to divert from prosecution and/or formal out of court disposals. This may go some way to explaining the tendency to exclude, for example, domestic abuse offenders from certain pre-court diversion schemes. However, we would encourage those establishing diversion schemes to ensure that their eligibility criteria will not unnecessarily stifle referral numbers.

Consider the impact of formal admissions of guilt on eligibility and participation

There is reason to believe that pre-court diversion schemes which do not require people to admit guilt to be eligible for diversion may help address disproportionate outcomes for those from Black Asian and Minority Ethnic (BAME) backgrounds.⁴⁰ Pre-court diversion schemes that do not require a formal admission of guilt and only require individuals to 'accept responsibility' may encourage the participation of people from groups which tend to have less trust in the criminal justice system and therefore may be more reluctant to make a formal admission.

Ensure referral is simple and swift

To ensure pre-court diversion is offered in all appropriate cases, referral into a scheme should be made as simple and straightforward as possible for practitioners. A number of the pre-court diversion schemes we are in contact with reported having much lower referrals than forecasted, potentially due to a convoluted or unknown referral process. Some schemes have had success with developing a simple, visual representation of how they operate, and running scheme awareness training for all potential referring practitioners. Formalising the referral process into a written protocol can also be helpful.

This is important because research suggests that certainty and celerity in responding to offending are more important determinants of desistance than severity.⁴¹ A recent review of the evidence on out of court disposals recommends that 'decisions on disposal and conditions are as closely linked to the point of arrest as possible.'⁴²

We also found qualitative evidence that the speed of processing can have a material effect on the overall number of referrals into pre-court diversion. In a 2010 pilot of unpaid work within a conditional caution in England and Wales, the complexity of making referrals was identified as an important cause of low referral numbers.⁴³ Having a quick process immediately following arrest also helps diversion deliver efficiency benefits: frontline police time is saved by shortening processing and accelerating turnaround time.

Prioritise victim satisfaction and procedural fairness

Prioritising victim satisfaction is important both to specific victims and to the integrity of pre-court diversion in general. Rather than being punitive-minded, research has shown that victims tend to be focused on rehabilitation, with their primary concern being to stop the offender from reoffending.⁴⁴

Published findings on victim satisfaction from the randomised control trial on Operation Turning Point found that the higher levels of victim satisfaction with pre-court diversion (contrasted with victim satisfaction found within the court-bound control group) rested on police clearly explaining the process and why they believed Turning Point might be a better option to prevent reoffending.⁴⁵ This study emphasises that ‘the quality of procedural factors about the way a case is handled (fair and respectful treatment, etc.) influence victim satisfaction more than the outcome of cases’ and that ‘it is likely that how out of court disposals are structured and communicated to victims is crucial for victim satisfaction. It should not be assumed that if a police force diverts all of the low-level cases they would normally charge, they will have more satisfied victims, even if the results are generalizable to other populations of victims.’ The higher levels of victim satisfaction recorded in this study is potentially linked to the conversation scripts and other victim communication improvements included in the Turning Point Model as a small group of Turning Point clients who did not receive the enhanced communication support showed significantly lower satisfaction.⁴⁶ The suggestion that communication practice is an important determinant of victim satisfaction is supported by a 2011 Joint Inspectorate report into out of court disposals which found that the ‘level of victim satisfaction hinged largely upon the extent to which they have been kept informed and updated’.⁴⁷

As the review of evidence shows, the use of restorative justice within pre-court diversion schemes is also worth bearing in mind. It is clear that, when used appropriately, restorative justice can both reduce reoffending and improve victim satisfaction. Of course, the applicability of restorative justice conferencing rests on consent: both the offender and the victim have to be willing to participate. The authors of the 2012 systematic review note that ‘RJs... appear likely to reduce future detected crimes among the kinds of offenders who are willing to consent to RJs, and whose victims are also willing to consent. The condition of consent is crucial not just to the research, but also to the aim of its generalizability...The conclusions are appropriately limited to the kinds of cases in which RJs would be ethical and appropriate.’⁴⁸

Avoid ‘overdosing’ with overly intensive interventions

The pre-court diversion cohort will, in most cases, primarily be made up of individuals with a relatively low risk of reoffending. It has been repeatedly demonstrated that employing intensive treatments intended for high-risk or persistent offenders on low-risk offenders (‘overdosing’) may backfire, leading to further offending. The principle of proportionality guards against the well-meaning, but potentially damaging, tendency that pre-court diversion schemes can have in extending criminal justice contact and enforceable requirements to meet an individual’s welfare needs, when these are better addressed by welfare agencies. This is not to say that pre-court diversion should not be used as an opportunity to refer individuals into services, but care should be taken to proportionately tailor and limit the number and intensity of the interventions that individuals are required by the criminal justice system to complete.

It is worth noting that these lessons are already underpinned by the requirement in the Code of Practice for Adult Conditional Cautions that conditions must be ‘appropriate, proportionate and achievable’ and have the objective of rehabilitation, reparation, and/or punishment.⁴⁹

Deliver responsive and need-focused interventions

Major systematic reviews have found strong support for calibrating interventions on the basis of assessed risk and especially for addressing criminogenic need (what is known in the literature as risk need responsivity).^{50,51,52} As we have already stated, there is promising evidence that interventions ought to be specifically tailored for vulnerable women and young adults and that pre-court diversion schemes should have access to mental health and substance misuse services where necessary. While this briefing does not cover youth cases, we note that there is strong evidence that the benefit of youth diversion over prosecution is more marked where diversion involves interventions.⁵³

In a recent review of the evidence on out of court disposals, a number of ‘effective interventions’ are listed, including those centred on: skill development; social learning; changing relevant attitudes, behaviours, and life circumstances; restorative justice; and enforced curfews.⁵⁴ It also highlights two categories of interventions shown to be ineffective: first, those that hone in on the individual and their identity (e.g. psycho-analysis); and second, those that hinge on deterrence and shock therapy (e.g. scared straight programmes). While the studies drawn on include post-conviction interventions, many of the lessons are likely to apply.

Work in partnership

Unsurprisingly, successful pre-court diversion requires agreement of all partners as to the underlying philosophy of the scheme and the resulting interventions. For example, in the context of drug diversion, we found evidence that where there is no such agreement on philosophy (say harm minimisation rather than abstinence), the effectiveness of the scheme is risked.⁵⁵ We note that in the area of pre-court diversion the police are most often the lead agency and it is beholden on them to ensure that partners are involved *actively* not simply in the execution of the pre-court diversion scheme but in its planning and ethos.

Support

The Centre for Justice Innovation is funded to support the development of adult pre-court diversion schemes. We are working with those currently delivering, as well as interested in developing, pre-court diversion. We help support schemes and spread effective practice. Briefly, we are:

- **Creating a community of practice**, by mapping existing schemes, identifying areas interested in developing initiatives, and creating opportunities for members of the community to share ideas and lessons with each other;
- **Delivering practice sharing opportunities**, including workshops with practitioners and commissioners to provide an overview of the available evidence, identify common challenges, and explore good practice;
- **Codifying evidence-led practice**, by developing two in-depth good practice briefings, creating practical cost avoidance and messaging tools, and publishing and promoting a toolkit.

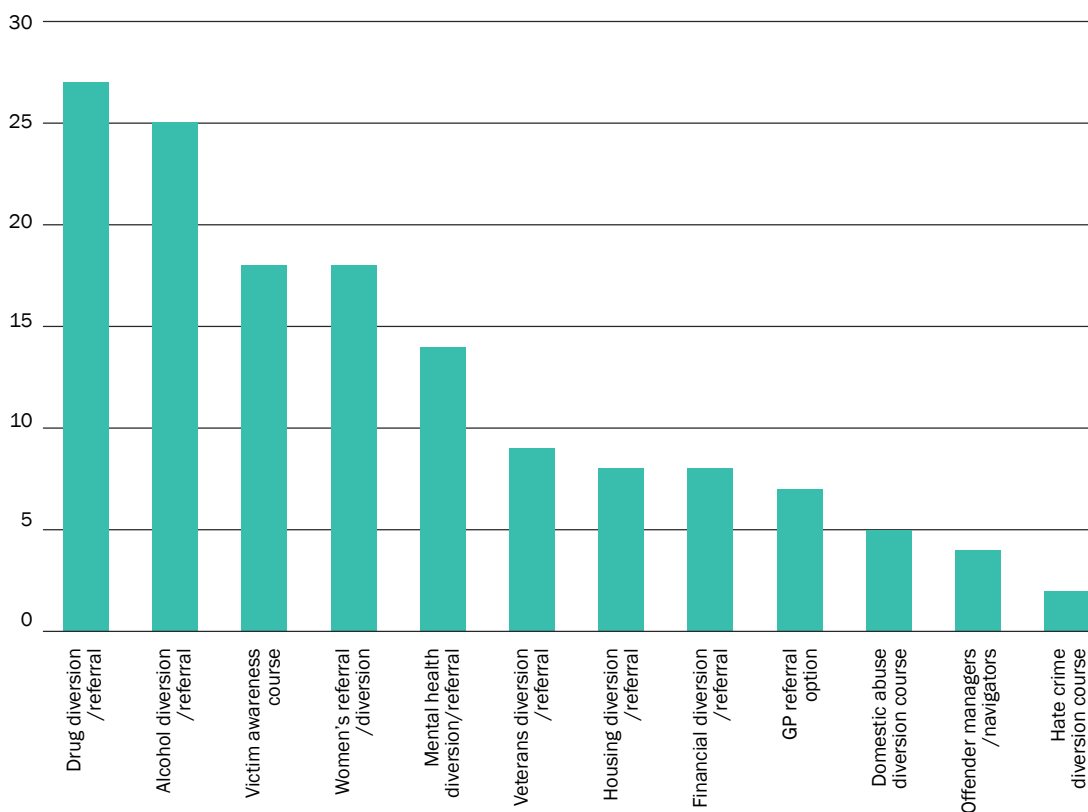
Please get in touch with Carmen Robin-D'Cruz at cdcruz@justiceinnovation.org or Claire Ely at cely@justiceinnovation.org if you want to be involved.

Annex A: Pre-court diversion in England and Wales

Some forms of diversion are widely used across England and Wales, but the picture varies widely from region to region. In 2018, the National Police Chiefs' Council (NPCC) surveyed every police force in England and Wales to better understand their use of pre-court diversion. They received responses from 35 of the 42 police forces of England and Wales, of whom 33 reported having at least one model of diversion in operation. The median number of types of diversion in use in each force was four.

The most commonly used model was drug diversion, which was in place in 27 of the 35 forces. Alcohol diversion, victim awareness courses, and women's referral / diversion were also in place in more than half of the forces.

Chart: Number of police forces employing different forms of diversion⁵⁶



Endnotes

1. See Annex A.
2. See: *Operation Turning Point*, College of Policing. Available at: https://whatworks.college.police.uk/Research/Research-Map/Documents/TP_Storyboard.pdf
3. See: Operation Checkpoint, Durham Constabulary, available at: <https://www.durham.police.uk/information-and-advice/pages/checkpoint.aspx>
4. The Crown Office and Procurator Fiscal Services refer a case to criminal justice social workers and partners to address the underlying causes of the alleged offending without requiring the case to proceed through court. The Procurator Fiscal's final decision regarding prosecution is held in abeyance while support and services are delivered. However, practice in this area varies considerably across Scotland.
5. Figures taken from all cases commenced at the magistrates' courts in England and Wales (including those committed to the Crown Court. Ministry of Justice (2019). *Criminal Courts statistics bulletin: Main Tables April to June 2018: Table 2*. Available at: <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2018>
6. Neyroud, P. (2018). *Out of Court Disposals managed by the Police: a review of the evidence*. National Police Chiefs Council. Available at: <https://www.npcc.police.uk/Publication/NPCC%20Out%20of%20Court%20Disposals%20Evidence%20assessment%20FINAL%20June%202018.pdf>
7. Ministry of Justice (2010). *Green Paper Evidence Report: Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/185947/green-paper-evidence-a.pdf
8. Allen, R. (2017). *Less is more- the case for dealing with offences out of court*. Transform Justice. Available at: http://www.transformjustice.org.uk/wp-content/uploads/2017/12/November2017_Less-is-more.pdf
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About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.

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