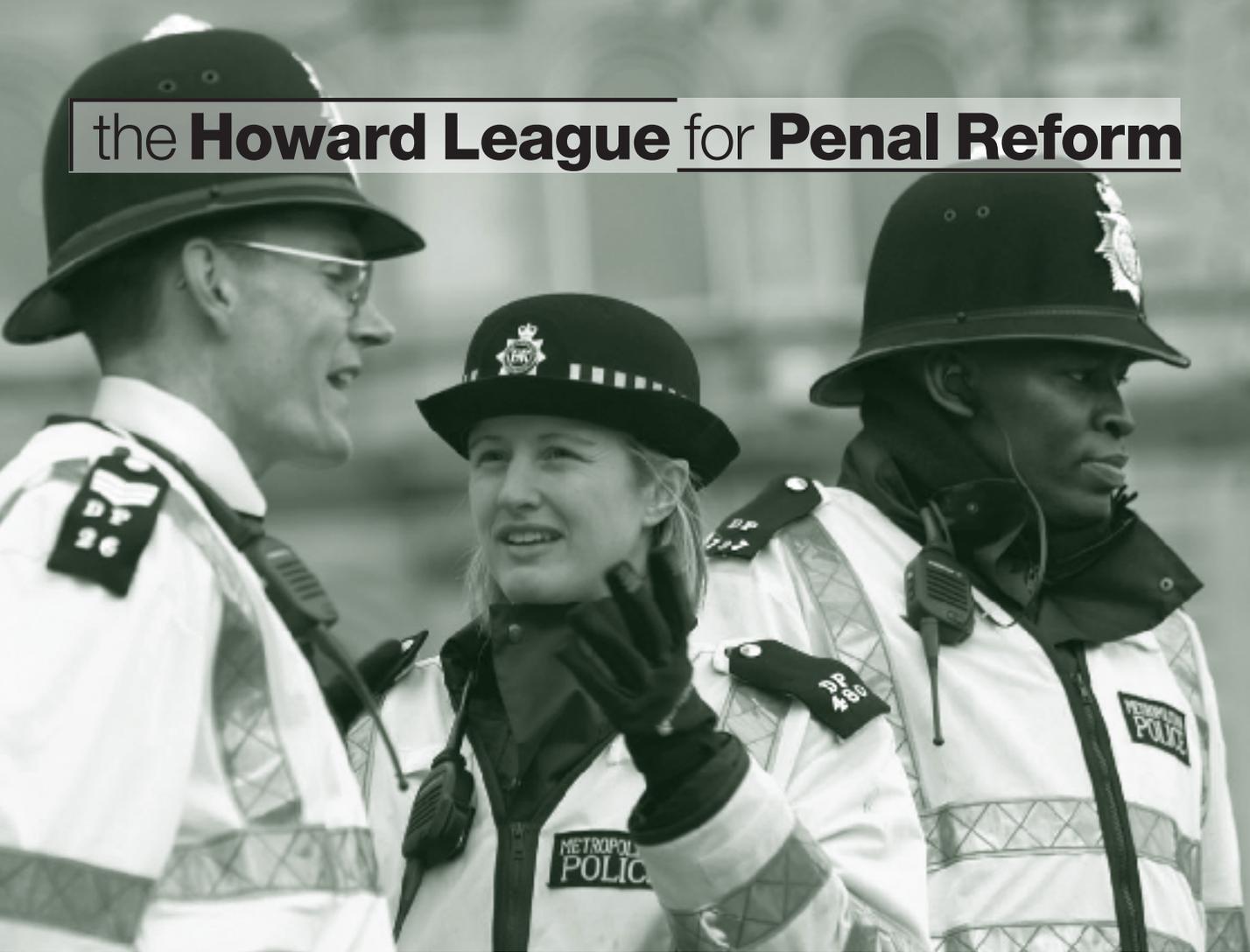


the **Howard League** for **Penal Reform**



## **Rethinking the Gateway: Using evidence to reform the criminal justice system for victims and people who offend**

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What if...? Series of challenging pamphlets



Mannheim Centre for  
**CRIMINOLOGY**



# **Rethinking the Gateway: Using evidence to reform the criminal justice system for victims and people who offend**

A pamphlet for the Howard League for Penal Reform by Peter Neyroud CBE QPM, Institute of Criminology, University of Cambridge

**the Howard League** for Penal Reform



### Foreword

The Howard League for Penal Reform and the Mannheim Centre at the London School of Economics are working in partnership on the 'What if?' pamphlet series with the aim of challenging conventional thinking on penal and criminal justice issues. We have been working with established thinkers, academics and practitioners to develop innovative, and perhaps controversial, ideas that can work as a stimulus to new policy initiatives and ultimately achieve change. In this edition of the series, Peter Neyroud CBE QPM proposes a radical redesign of the 'Gateway' to the criminal justice system, in order to develop a more effective approach to preventing offending and supporting victims.

The paper focuses on decision-making processes in the police custody suite, the 'Gateway' to the formal criminal justice system. Peter Neyroud argues that these decisions are critical to the operation of the system as a whole, and should be underpinned by evidence. The paper considers the use over the last 40 years of alternatives to prosecution, and explores how decisions to release without charge or divert a suspect can be made more effectively. Within this process, Peter Neyroud stresses the importance of listening to victims, who need to be convinced that the criminal justice system has taken their crime seriously and made a credible effort to prevent it recurring. In making his case for an evidence-based approach to decision making, Peter Neyroud presents the findings of the experiment Operation Turning Point, which has tested some of the options for redesign in an operational context.

The changes proposed in the paper would be a significant development from current practice: a front end supported by triage based on predicted harm; professional discretion supported by new decision tools and new services supported by practice developed and tested in the field. Peter Neyroud argues that for the proposals to work, the police, in partnership with other stakeholders in the criminal justice system, need to commit to a continuing process of development and testing of their practice. This new approach will enable the police to be more effective in their efforts to reduce reoffending and support victims.

The proposals take as their starting point the research evidence that we should avoid, where possible, putting suspects into the formal criminal justice system. This supports the Howard League's commitment to reducing the flow of people into the penal system as a whole, an objective that is currently being developed through our symposium 'What is justice? Re-imagining penal policy' (<http://www.howardleague.org/what-is-justice/>). We hope this will become a vehicle to influence the underpinning beliefs, ethics, and shape of the future criminal justice system.

We would like to thank all those who attended the seminar that preceded this pamphlet where Peter Neyroud expounded his ideas. In particular we would like to acknowledge the contribution of Professors Gloria Laycock and Paul Ekblom, for their helpful comments on the ideas contained in this pamphlet.

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### *Introduction*

The operation of the 'Gateway' to the criminal justice system is a critical aspect of its effectiveness. The Gateway or entry to the formal criminal justice system in England and Wales centres on decisions taken in the police custody suite. Dependent on the decision of the custody officer, a suspect will be released without charge, diverted or prosecuted. In making their decision, the custody officer needs to filter out cases where there is insufficient evidence or no public interest in prosecution, while focusing increasingly scarce resources on harmful and persistent cases, on prevention and on protection for victims.

Making these decisions in the Gateway requires the best evidence available, from either research, witness testimony or forensics, rather than reliance on precedent, experience, prejudice and assertion. The research evidence is clear that we should, if possible, avoid putting suspects, particularly young people, into the formal criminal justice system (Petrosino et al., 2010). However, in considering alternatives, we need to listen to victims, who need to be convinced that the criminal justice system has taken their crime seriously and made a credible effort to prevent it recurring.

In this context, Out of Court Disposals (OOCs) have become a key area for policy and political focus. Every decade for the last 40 years there has been a see-sawing between expansion of the use of OOCs and a policy panic about their use and potentially their abuse. This decade has been no exception. On the one hand, in 2014, the Justice Secretary announced efforts to restrict their use for indictable offences and the National College of Policing and the Ministry of Justice commenced a process of consultation with a view to producing legislative and procedural changes.<sup>1</sup> On the other hand, in April 2013, the same government had changed the previous requirement that the Crown Prosecution Service must decide on the suitability of cases for conditional cautions, devolving the decision to the custody officer in the police station. Furthermore, the Anti-Social Behaviour Act 2014 created a new 'community remedy' – a conditional warning process. Both the attempts to restrict OOCs and the proposals to expand them rely on assumptions about the effectiveness and cost-effectiveness of prosecution and alternatives to prosecution, on the ability of the police to set and manage conditions for people who offend and on the acceptability of OOCs to victims.

This paper will explore whether the time has come, after decades of incremental and largely untested tinkering, for a radical redesign of the Gateway based on the best evidence available. Starting with a review of what is already known, it will draw on recent research on risk prediction, deterrence and desistance to look afresh at the processes that determine the route that individuals take once they enter the criminal justice system. It will draw heavily on a recently completed experiment, Operation Turning Point, which has tested some of the options for redesign in an operational context.

<sup>1</sup> See <https://consult.justice.gov.uk/digital-communications/out-of-court-disposals>

## *What do we know about out of court disposals?*

The joint Criminal Justice Inspectorate report on OOCs (CJJI, 2011) observed that there had been a substantial expansion in their use over the previous decade. The report stated that OOCs, ranging from informal resolutions to conditional cautions, accounted for just under 40 per cent of all disposals in 2010. The Inspectors expressed concern about the quality of the decision-making, variations in practice and the types of offences for which OOCs were used. However, it was acknowledged that the OOCs cost less, showed comparable levels of victim satisfaction to court disposals and appeared to result in lower reoffending.

This report by the Inspectorate drew on a very small and potentially unrepresentative sample of cases, but there are wider and more compelling arguments in favour of using alternatives to prosecution. In a systematic review of the formal system processing of children and young people, Petrosino et al. (2010) compared the effectiveness of formally processing with alternatives including diversion or counselling. Their conclusions, based on an analysis of 29 randomised controlled trials in the USA, were that ‘juvenile system processing appears to not have a crime control effect, and across all measures appears to increase delinquency’ (Petrosino et al., 2010: 6). There is good reason to think that this conclusion can be extended to young adults as well (Criminal Justice Alliance, 2013).

Further good reasons for exercising care in setting the boundaries for formal processing for children and adults are offered by recent work on deterrence by Durlauf and Nagin (2011). Their analysis, drawing on 30 years of research on sentencing and prevention, suggests that strategies that focus more on certainty rather than severity appear to offer the greatest likelihood of a positive deterrent outcome. They also suggest that speed is an important component alongside certainty. They observed that research on the impact of short-term prison sentences suggest a ‘backfire’ effect of increased reoffending rather than a positive preventive outcome (Durlauf and Nagin, 2011 and Nieuwbeerta et al., 2009). It would appear, therefore, that acting quickly and certainly and taking steps to prevent early escalation to prison are key qualities of an effective Gateway.

Whilst the international evidence may be persuasive, there have been very few high quality studies of the relative effectiveness of OOCs against prosecution in England and Wales. Early UK studies of cautioning by Steer (1970), Ditchfield (1976) and Giller (Jones, 1982) were based on either an analysis of official statistics or, in Giller’s case, detailed work in Hampshire Constabulary comparing the cases in which deferred cautions, instant cautions or prosecutions had been administered. Steer was able to draw conclusions that police cautioning, which has a surprisingly long history going back to at least mid-Victorian times, was ‘a sensible and useful way of dealing with certain types of offender, and that police discretion not to prosecute is exercised widely’ (Steer, 1970: 59). Giller concentrated more on the process of

cautioning and found that instant cautions appeared to be more effective, judged by reoffending rates, than deferred cautions.

UK research over the last 30 years has tended to concentrate on a number of critical themes about OOCd:

- The potential for discriminatory impact: Landau and Nathan's (1983) study of cautioning also focused on the ways in which people were selected for cautions. They found what they judged to be racially disproportionate practice.
- Inconsistency of decision-making: Mott (1983) Laycock and Tarling (1985) Giller and Tutt (1987), Sandars (1988) and Evans and Wilkinson (1990) raised concerns that the expansion of cautioning through the 1970s and early 1980s had created an unhelpful diversity of practice and impacted on the fairness and justice of the system. However, given that 41 Police and Crime Commissioners were empowered in 2014 to consult and set local frameworks for one OOCd, the community remedy, policy seems to have shifted in favour of diversity as a positive benefit. There does not currently appear to be any official programme to test the merits of this argument.
- Net-widening: Farrington and Bennett (1981) conducted an analysis of the police cautioning of children in London and concluded that police cautioning had both increased the number of children formally processed, 'net-widening,' and failed to result in better reoffending rates compared to court.

However, there have also been some more positive themes:

- Cost-Effectiveness: The only UK randomised controlled trial, conducted by Rose and Hamilton (1970) in the 1960s, tested the effectiveness of a simple caution against a caution 'plus' model delivered by police juvenile liaison officers. They concluded that there were additional benefits from the 'plus' model but they were probably not cost-effective at the time.
- Restorative Justice: Young and Goold (1999) carried out an 'exploratory study' which identified 'restorative cautions' as a 'welcome shift'. Strang et al. (2013) examined the restorative justice studies with randomised designs and strong implementation. They found that restorative justice conferences, whether used as part of a diversion or as part of the court process, produced a 'modest, but highly cost effective reduction in repeat offending' (Strang et al., 2013: 1). They also observed that contrary to the assumptions apparently held by many in policy roles, restorative justice appeared to work at least as well, if not better, with adults.
- Conditional cautioning: Piloted in 2003, Blakeborough and Pierpont (2007) were able to show that attaching conditions to cautions had some promise, although there have been no subsequent outcome evaluations.

Our analysis (Neyroud and Slothower, 2013) of the more recent data on the use of conditional cautions suggested that the offence types are narrow (overwhelmingly for criminal damage), and the conditions usually restricted to financial compensation (Neyroud and Slothower, 2013). This appears to show that, while promising, conditional cautions present significant implementation challenges to the police, which would appear to have lessons for other initiatives such as the community remedy.

- Adult diversion schemes: Harvey et al. (2007) reviewed 19 studies that involved both pre-court and court based diversion. They concluded, ‘there is tentative evidence that diversion, in particular, can result in reduced criminal recidivism, drug use and possibly improved psychological functioning’ (Harvey et al., 2007: 385). They found that older people responded better to the diversionary approaches.

Overall, there is evidence that well designed and implemented cautioning and diversionary approaches can be effective, particularly where they incorporate restorative conditions and provided that careful attention is paid to consistency, proportionality and net-widening. The studies also provide some pointers that the approach to OOCs has to be capable of tailoring for the crime type, the individual and the drivers of their offending.

### *Turning evidence into practice*

Turning this evidence into a redesigned Gateway presents a series of challenges that Sherman and Neyroud (2012) addressed in their paper *Offender Desistance Policing and the Sword of Damocles*. Three key steps were identified:

#### **Step 1: Triaging suspects at point of entry into the Gateway**

The Gateway in the UK has two basic tests: the sufficiency of evidence and the public interest. Both of these are fleshed out in the Crown Prosecution Service (CPS) Code of Practice and the Charging Standards (Moreno and Hughes, 2008). The police should also use the Gravity Factors Matrix, which was adopted by the Association of Chief Police Officers (ACPO) and links with the Magistrates Courts Sentencing guidelines (ACPO, 2009). This framework of guidance tends to focus on legal definitions of offence type and the individual’s past cautions or convictions, rather than any structured assessment of the potential for serious harm or reoffending that the individual presents.

To some extent this is not surprising. Until recently even efforts to identify those people who commit the most serious offences have been disappointing. Advances in event-forecasting methods have, however, greatly improved the accuracy of such forecasts (Berk et al., 2009). In contrast to the 1960s and 1970s when such approaches were last advanced, there are now, in databases such as the Police National Computer (PNC), very large samples of criminal records, with tens of thousands of cases over multiple years. Richard Berk’s model in Philadelphia and

Maryland was built using 30,000 cases or more using super-computers and non-linear methods to identify the most accurately predictive combinations of facts in the actuarial patterns of repeat offending.

Cosma, Sherman and Neyroud (2013) have applied the same techniques to the PNC in the UK, with a degree of predictive accuracy capable, subject to proper testing, of being used as an effective triage tool in custody suites. The aim would be to identify those people with a high probability of committing a high harm crime (around 2% of the PNC sample) and those with a very low probability (more than 60%). The high harm group can then be directed to Integrated Offender Management teams. In contrast, triaging those assessed as low harm offers the opportunity to consider whether there are OOCs, which might prevent future offending.

In Philadelphia the triage approach has been applied to decisions about whether intensive or low intensity supervision is needed after release from prison. Barnes et al. (2010) were able to show in a randomised trial that this approach worked at least as well as applying more general intensive conditions. Sherman (2011) and Sherman and Neyroud (2012) argued that the approach can and should be applied in policing and the potential benefits of doing so at the Gateway to the system may be much greater than post sentence.

### **Step 2: Designing an evidence-based approach to low harm cases**

Whether triage is applied or a more conventional decision-making approach counting convictions and the seriousness of the instant offence, the second step is vital. As we have suggested above, much of the received wisdom about cautions and OOCs remain untested assumptions. Yet, there is a substantial body of evidence on what should work including for example the type of conditions that might work best to prevent reoffending.

Among the 90 or so randomised controlled trials (RCTs) conducted in policing to date are two studies carried out in Omaha, Nebraska in the late 1980s (Dunford, 1990a and Dunford et al., 1990). These experiments centred on the way that arrest policies in cases of domestic violence were implemented. In the first experiment, where the suspects were present when the police arrived, the suspects were randomly allocated to either arrest or non-arrest and a warning. In the second experiment, where the suspects had left the scene, the police either advised the victims how to seek a warrant or the police themselves sought the warrant. Overall, there was little difference in the outcome between arrest and non-arrest, but there was a significant reduction in recidivism where the police sought a warrant, whether subsequently executed or not. Sherman and Neyroud (2012) have argued that this suggests that the threat to punish may be a more powerful deterrent than an actual punishment. Holding the 'sword of Damocles' over an individual offers both control and an incentive to future behaviour.

Combining the lessons of Dunford's RCTs with the wider literature on deterrence and desistance would suggest that an effective approach would hold a potential future

punishment over an individual (deterrence) that would be conditional on completion of a simple programme of activities matched to the individual's pathways to crime (desistance). Completion of the conditions and avoidance of reoffending would be essential to avoid prosecution (deterrence) (Neyroud and Slothower, 2013)

Durlauf and Nagin (2011) have shown that such a process should be designed to be both quick and certain: the time from arrest to the start of the intervention needs to be very short; the likelihood of breach and its consequences need to be clear and the process transparent. Similar principles have been applied and tested in the Operation HOPE model of post-release supervision (Hawken, 2011). Critically, HOPE has been tested and replicated in a number of different test sites in the USA. The third step is, therefore, to test a redesigned Gateway.

### **Step 3: Testing the approach: Operation Turning Point**

Operation Turning Point was a randomised controlled trial, which was set up to develop and test a redesigned Gateway. Turning Point compared the effectiveness of court prosecution for low harm cases with a structured diversion to a deferred prosecution linked to a 'Turning Point Contract'. Turning Point was implemented in phases from November 2011 through to the completion of the data-gathering phase in June 2014.

The experiment started with people whom the custody officer had decided that it was in the public interest to prosecute, informal warning and cautions having already been discarded. At that point custody officers entered the case into the Cambridge Gateway (an internet based randomiser tool), which took them through a series of questions that excluded individuals with multiple convictions, a high likelihood of prison and a serious offence: effectively a triage designed to exclude higher risk and more serious cases. Eligible cases were then randomised into either prosecution or a Turning Point treatment.

Those people given Turning Point were asked to attend a meeting within 48 hours with an offender manager or Youth Offending Service officer (depending on whether they were adults or children). They were warned that non-compliance with this requirement, reoffending or failure to meet the terms of the Turning Point contract would result in prosecution. They agreed the contract as a result of a structured conversation at their meeting. The contract was voluntary, but backed up by the threat of prosecution. The incentive was that successful completion of the contract would result in no further action.

The experiment was implemented in stages:

- Stage 1 (November 2011) was preceded by training custody staff and offender managers and then switching the Gateway on, but with every case set to prosecution, so that custody officers would get used to it and would road test it
- Stage 2 (December 2011 to May 2012) saw the Gateway set to Turning Point treatment only, so that offender managers could build up their practice and, through regular debrief meetings, share it and debate it

- Stage 3 (started 1 June 2012) the Gateway went to full randomisation. During this stage the experiment was expanded to include two further local policing areas
- Stage 4: (started March 2013): the Gateway was amended in the light of operational experience and with the addition of a block randomisation of the victims (personal or otherwise).

This was one of the first experiments to randomise the prosecution decision so ethical considerations were high on the agenda:

- Randomisation only occurred after the decision to prosecute had been made, so that no one suffered a potential worsening of their treatment
- The Gateway carefully excluded serious offences and potentially high harm individuals
- The accuracy of custody officers' decisions on Turning Point cases was independently reviewed by the CPS and then monitored by supervisors and the research team throughout the experiment in real time using Cambridge Gateway data.

Ultimately, the key justification for such an experiment is that the question: How effective is prosecution compared with diversion? is a critical one for the criminal justice system (Shadish, Cook and Campbell, 2002), and we do not know the answer.

### *Turning Point – lessons from the field*

It will be 2016 before the research team have a full two years reoffending data for the whole sample from Turning Point. However, there are already significant lessons for the redesign of the Gateway. Moreover, these lessons are important whatever the analysis of the reoffending data shows, because it seems that OOCs with conditions are here to stay, given the legislation providing for community resolutions and conditional cautions, let alone the spread of informal and neighbourhood resolutions.

As we have seen above, there are a number of well rehearsed criticisms of OOCs, of which the inconsistency of decision-making is the most repeated, both academically and by organisations such as the Magistrates' Association. Indeed, in setting out guidance for Magistrates to participate in scrutiny of OOC practice in police forces, the Magistrates' Association has stated 'Out-of-court disposals are often criticised for a lack of consistency and transparency, and because there is a perception that they are used in cases that should have gone to court' (Magistrates' Association, 2013: 1). Any redesign of the Gateway would need to respond to these criticisms, incorporate as much of the best evidence into OOCs as possible and meet victims' needs and expectations. Some key initial findings from Turning Point have been set out below in order to deal with these points.

### *The demographics of Turning Point*

The demographics of the Turning Point project are fairly standard for offending populations: the majority being young, male, and unemployed. However, it is worth

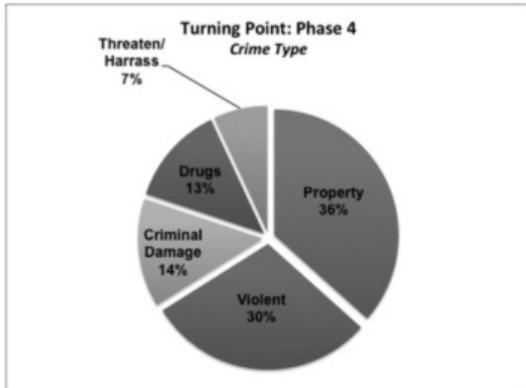


Figure 1

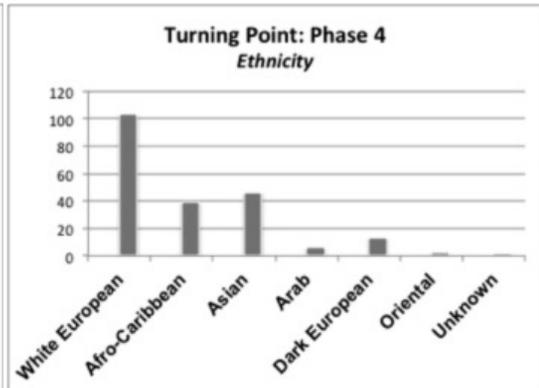


Figure 2

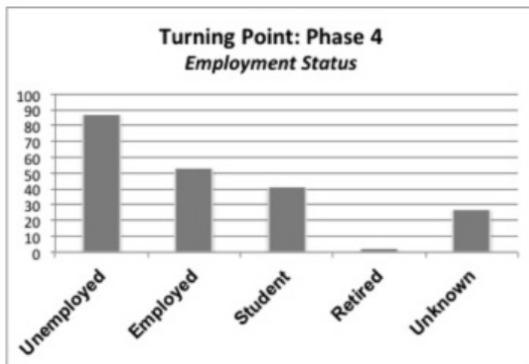


Figure 3

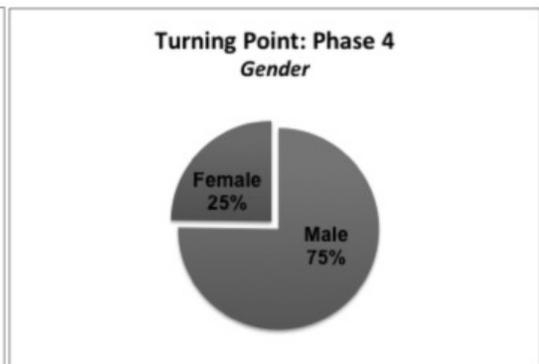


Figure 4

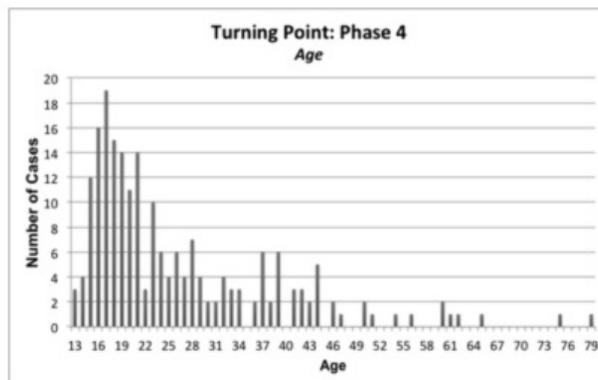


Figure 5

Figures 1 to 5: Demographic data from Stage 4 of Operation Turning Point (from Neyroud and Slothower, 2013).

noting that Turning Point was designed to cover both children and adults and both genders. The figures here are taken from Stage 4. The key differences between Turning Point and the existing conditional cautioning regime is the spread of offence types. The spread is much broader in Turning Point than in conditional cautioning, where the majority of offences have been criminal damage (Neyroud and Slothower, 2013). It is possible that, following changes to the authorisation process to conditional cautioning, practice will evolve and broader offences will be included. However, it seems just as likely that the practice of using conditional cautioning, primarily as a means of resolving criminal damage by seeking an apology and, where appropriate, compensation, will persist.

### *Turning point conditions and conditional cautioning*

Just as the offence types in Turning Point are more varied, so the conditions that have been set are broader. Figure 6 shows a breakdown of the conditions set during the first half of Stage 3 and beginnings of Stage 4 of the experiment. However, the breakdown of figures for conditional cautioning show that 75 per cent of conditional cautions in 2011 resulted in simple compensation or a letter of apology. This pattern appears to have been fairly consistent since the pilot (Blakeborough and Pierpont, 2007). By contrast, nearly 60 per cent of Turning Point contracts contained rehabilitative conditions and there were also a wider range of restrictive conditions.

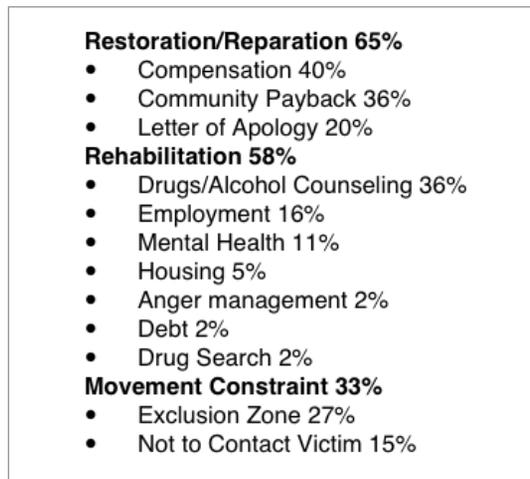


Figure 6: Breakdown of Turning Point conditions in Phase 4 (from Neyroud and Slothower, 2013)

### *Consistency of decision-making*

The analysis of early decision-making in Stage 1 and 2 found that the findings of earlier research on substantial risks from inconsistency and inappropriate conditions were also evident in Operation Turning Point. As an *Inspection of Integrated Offender Management* found, police officers are not routinely trained in the setting of plans and conditions

for those who offend (CJJI, 2014). The police force and the research team had to develop ways to build practice and support decision-making. As with other areas of policing practice (Fox, 2012), the debate about achieving consistent standards has tended to be framed as a choice between two extremes. Firstly, low discretion and micromanagement, where strict guidelines define which disposal should be used in each situation, and secondly, a loose and open-ended professional discretion model.

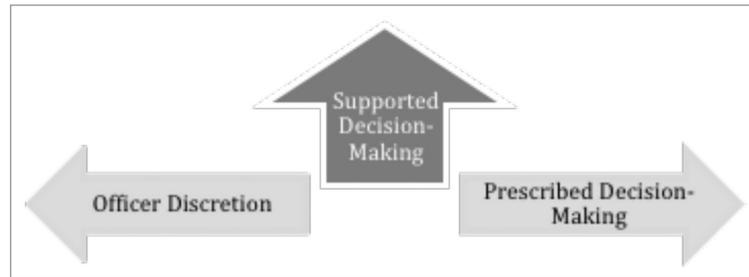


Figure 7: Decision-making models (from Neyroud and Slothower, 2013)

However, as the experiment has developed, the Turning Point project developed a supported decision-making model, providing officers with sufficient expert support to achieve conditions that are more consistently matched to offending pathways and victim's needs (Slothower, 2014a).

Moreover, in analysing 'consistency', it became clear that there are several dimensions that need to be considered:

- Victims: does the approach meet victims needs and expectations?
- S.M.A.R.T.: are the conditions set in a SMART way?
- Pathways: can officers match individuals to appropriate pathways?
- Restorative justice: is restorative justice used wherever it is appropriate?

Each will be examined in turn.

### *Victim satisfaction*

As part of the pilot development for the experiment in Stages 1 and 2, the research team conducted a short survey with personal victims. Even from such a small sample (less than 50), it became apparent that there were some significant problems for victims of crime and some victims were highly dissatisfied. Less than half of the victims interviewed in stage 2 were satisfied with the handling of their cases in Turning Point. From the responses, the researchers identified a number of potential reasons, including: poor explanations of the purpose of the Turning Point project; officers apologising for cases being 'let off'; and victims being told that Turning Point was a 'cost-cutting measure'.

Given that Blakeborough and Pierpont (2007) had not done a similar exercise with victims whose cases had been conditionally cautioned, it seemed entirely possible that such concerns were of wider application to OOCs. There has been some research that suggests victims can feel satisfied with diversion to interventions aimed at reducing reoffending. However, these studies make clear that victims must feel that police care about them, respect them, and are working in their interest (Slothower, 2014b; Shapland et al., 2011; Strang, 2002). Although they differ in terms of whether they focus on punishment or rehabilitation, the overwhelming goal of victims is to ensure that the person who offended does not do it again (Slothower, 2014b).

Drawing on the lessons of these studies, a Turning Point Victim Contact Team was set up to test a different approach, centred around explaining better to victims the motivation and process of Turning Point with the aim of increasing satisfaction. The Cambridge Gateway was set up in Stage 4 to block randomise cases with or without personal victims so that the research team could follow up and survey the personal victim cases. Slothower's analysis (Slothower, 2014b) suggests that most victims were satisfied with Turning Point when it was described to them with a compassionate and structured explanation. Most victims' responses tended to suggest that they felt the police were diverting people for the right reason.

The Turning Point model seems, therefore, to have key lessons for a redesigned Gateway. It would appear that building in a better approach to victims is a critical component. That approach, from this research, should include some key elements (Neyroud and Slothower, 2013):

- Using the restorative justice preparation script to exhibit compassion and care by asking victims about the incident impacts.
- A discussion that focuses on both the motivation of the police in trying to stop future offending, and Turning Point as a victim-oriented outcome (using compensation, swift outcomes, restorative justice and community payback). The discussion structure covers what the victims want out of their case handling, and how to meet their end goals.
- A key component is giving victims a more realistic view of likely court outcomes. So far, 24 per cent of victims surveyed with cases in Turning Point thought that the perpetrator would have received prison time if their case had gone to court. As none of the cases assigned to court in Phase 4 received a prison sentence, this is a considerable overestimation.
- When victims talk about punishment, the officers explore this desire further, ask 'Why?' and seek to connect victims' larger goals with likely court outcomes, and explore further how end goals can be met in other ways.

This might seem to be a heavy requirement on the police, given the time and cost pressures that forces are under. However, the research has shown that the conversation

does not need to be face-to-face at all times, a phone call with the offer of personal visit seems to be acceptable. There are however training and logistical issues for police forces. Getting enough staff trained and making sure they are responsible for the majority of victim contacts is undoubtedly challenging.

### *Setting S.M.A.R.T. conditions*

The analysis of Turning Point cases and the progressive development of practice through the experiment suggest that any OOC approach which centres on conditions – whether conditional caution or community remedy – needs to take account of the lessons for police decision-making that this research has identified. The decision support tool that has been developed has proved to be significantly more effective in ensuring consistency and appropriate conditions than other methods. Given that almost all police cautioning relies on a high discretion model with low decision support, we consider that this has very considerable implications for police pre-court disposal standards and practice.

Turning Point tested four different approaches to setting conditions: individual officer professional discretion; training and development; paper guidance with recommended conditions; and a decision support online IT solution. With the first three, which were deployed in Stages 1, 2 and 3, S.M.A.R.T. (specific, measurable, attainable, relevant, time-bound, Doran, 1981) conditions were not consistently applied. Neither training nor guidance with recommended conditions appeared to be sufficient to address the problem of consistency. While some components showed statistically significant improvements, others did not, and statistically significant drops in quality were also observed over time among some components of the conditions.

The research team coded the first 202 conditions designed to reduce reoffending set by officers. Even in the period with recommended conditions and training:

- Only 61 per cent of conditions clarified the quantity of action
- 60 per cent were clear what proof of compliance was required
- 78 per cent were clear on what action was required
- 87 per cent were clear on how the requirement was to be met (Slothower, 2014a).

Working with the sergeants leading offender management delivery, a simple online decision-support system was developed to provide recommended conditions, but also allow for officer adjustment of recommended conditions if deemed necessary. Subsequent examination of the conditions showed that they were consistently S.M.A.R.T. when the portal was used (Slothower, 2014a). The decision-support IT developed for Turning Point was explicitly designed with the wider conditional caution/ out-of-court disposal framework in mind. The approach needs wider testing to see whether it is replicable in other contexts. However, the Turning Point experiment points to the feasibility of creating a Turning Point ‘App’ capable of assisting officers in the field, where an increasing number of Gateway decisions are being taken as police forces and case law encourage reduced arrest and use of custody.

## Identifying appropriate pathways

It is important that decisions about conditions are made in a SMART way, but it is also important that the most appropriate SMART conditions are matched to the individual. A key part of the purpose of the interview between an offender manager and an individual in Turning Point is to identify the risk factors driving the offending behaviour and then to match the conditions to the individual's needs. In practice, given that this is not part of routine police officer training (CJJI, 2014), key areas of criminogenic need can be missed or conversely treatment plans can be overloaded with excessive conditions.

In Stages 1, 2 and 3 the officers were reliant on a template produced by the research team and a group of offender managers to guide the discussion. The pathways within that template were largely adapted from Integrated Offender Management. Analysis of Stage 3 plans suggested that the template could be improved, therefore the research team carried out a review of potential need and risk assessment tools. The Level of Service-Case Management Inventory (LS-CMI) (Bonta and Andrews, 2007) and its family of risk/needs assessment tools were identified from published evaluations as among the most accurate tools available for assessing people in order to identify criminogenic needs. LS-CMI had not previously been used in pre-court need and risk assessment. It was only deployed in the latter part of Stage 4, but showed enough promise for this approach to be considered for further testing and evaluation.

## Activating restorative justice

In the early stages, Turning Point had similar problems implementing restorative justice (RJ), as was apparent from the conditional cautioning data. In line with the wider approach to supporting victims, the research and programme team drew on the best evidence of effective implementation to develop practice. The key change made was to ensure that a trained member of staff made the offer of restorative justice. The Turning Point Victims Team was identified with the intention that they would handle all cases with personal victims in the initial stages. They were encouraged to direct cases to experienced RJ facilitators whenever possible. Most of the Turning Point Team members were facilitators with a history of running multiple RJ conferences.<sup>2</sup> The advent of the Turning Point Victims Team saw restorative justice take-up increase substantially and the number was approaching a standard RJ take-up rate (Strang et al., 2013).

The Turning Point Victims Team aided the police force in conducting a review of the various approaches to restorative justice integration across the force to see how this could improve RJ take up. This review identified some key learning points:

- The facilitator matters – a poor offer severely diminishes the likelihood of a case going to conference

<sup>2</sup> Restorative justice conferences provide an opportunity for a victim to meet the person who offended against them. A facilitator supports and prepares the people taking part, leads them during the conference and makes sure that the process is safe. Sometimes, when a face to face meeting is not the best way forward, the facilitator will arrange for people to communicate via letters, recorded interviews or video. For any kind of communication to take place, the person who offended must have admitted to the crime, and both people must be willing to participate. Restorative justice can be used for any type of crime and at any stage of the criminal justice system, including alongside a prison sentence (see [http://www.restorativejustice.org.uk/what\\_is\\_restorative\\_justice/](http://www.restorativejustice.org.uk/what_is_restorative_justice/)).

- It is not enough to train facilitators and let them get on with it. Clear structure needs to be built around supporting and mainstreaming restorative justice, including:
  - Combining wide-spread low-level training and small, tight team focused training;
  - Measurement matters from both the facilitator and management perspectives, but a simple count of RJ conferences is not enough;
  - Accountability must go through normal police force hierarchy, not through an outside management system;
  - Some form of marker to alert staff to the potential for RJ is needed for RJ cases;
  - Communication is key: managers to motivate, peers to persuade. It was found that the actual buy-in comes in large part from peers who have found restorative justice an effective tool in their work.

The research found that the structure around RJ is critical for maximising the use of RJ in police out-of-court disposals like Turning Point. This also appears to be a more generalisable lesson for the Gateway.

### *Conclusions: What if we could redesign the Gateway?*

Applying evidence to improve the Gateway, as in increasing the level of restorative justice, is not simply a matter of a dose of training or making improved guidance available. There has to be a determined and purposeful strategy, implemented with care and with learning from each stage incorporated in the next. Implementation, as Fixsen et al. (2005) have shown, is tough and quite a few of the problems that have been identified with the existing Gateway are problems of implementation. However, many others are the product of a woeful approach to policy development in this area, which has seen one layer laid upon the next without proper and systematic testing and learning.

In 1988 the author and a colleague were tasked by their police force, as part of a wider drive to improve value for money in the police service, to conduct a review of 'community relations'. The review included examining the police force's approach to youth justice and OOCs. It was found that the force, which had been one of the pioneers of youth and adult cautioning, had introduced three waves of policy change on diversion but had never adequately implemented any of them (Hampshire Constabulary, 1989). As Lipsky (2010) observed, street-level bureaucrats like police constables and custody sergeants make decisions about their practice that are often only loosely informed by departmental policy, because they have to manage the interface between the clients (victims and people who commit crime), the resources and the policy and processes surrounding them. It is perhaps unsurprising, therefore, that there is inconsistency in delivering OOCs when the waves of policy change since 1989 have been many (at least three in 2014 alone), the commitment to testing has been limited (one RCT (Rose and Hamilton, 1970) and few other outcome evaluations since) and the law and order rhetoric long, loud and often conflictual.

This paper has set out to show that it is possible to consider a radical redesign of the Gateway to the criminal justice system underpinned by evidence. The Gateway proposed here would be a significant development from current practice: a front end supported by triage based on predicted harm; professional discretion supported by new decision tools and new services supported by practice developed and tested in the field. The aim of the redesigned Gateway would be a more effective approach to preventing offending and supporting victims.

Just as important as the detail of the new Gateway is the way in which it is developed and tested. Operation Turning Point has been built within the type of research partnership Sherman (1998) advocated in his seminal paper Evidence-based policing and which Weisburd and Neyroud (2011) have advanced in their paper Police Science: Toward a new paradigm. The police have demonstrated a deep commitment to the value of scientific inquiry and development of their practice. Turning Point took more than three years to complete and required a consistency of approach that is not often achieved in experiments in policing. Equally, the research team committed to an embedded programme in which field researchers contributed directly to development at each stage.

A further key issue was that the research for the experiment was independently funded over a period of three years by the Monument Trust in a way that has allowed the model being tested by the experiment to mature. This has meant that the Stage 4 data that will support the outcome evaluation has compared an implemented change with an existing practice rather than merely the implementation challenges of an innovation.

Building evidence-based practice in such a key area as the Gateway to the criminal justice system is critical to the effectiveness of the system as a whole. It requires a very different approach from the one pursued for the last half century. The police, supported by the new professional body, the College of Policing, and in partnership with other stakeholders in the criminal justice system need to commit to a continuing process of development and testing of the practice that provides the foundation of the criminal justice system. As Dunford (1990b: 126) put it in describing the debate about whether to conduct a randomised control trial in the 1980s 'the need to know if the court was less effective in reducing delinquency than lecture and release or referral to community-based youth service eventually took precedence over the concern about the ethics of random assignment.'

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