

# Pre-court diversion for adults

A toolkit for practitioners

## About the Centre for Justice Innovation

The Centre for Justice Innovation seeks 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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# Summary

**This toolkit is for any practitioner who is involved in, or considering creating, a pre-court diversion scheme for adults in contact with the criminal justice system.**

## What is pre-court diversion?

Pre-court diversion seeks to offer a swift and meaningful response to low-level offending. Pre-court diversion operates in two ways: first, people who are arrested and likely to receive a formal out of court disposal can be *diverted* into either a less serious out of court disposal or an informal disposal; second, people who have been arrested and are likely to be prosecuted in court can be *diverted* into either a formal out of court disposal or an informal disposal. These schemes operate in a variety of different models across the country.

## The evidence base on pre-court diversion

Our briefing, on the [evidence for pre-court diversion for adults](#) (published in April 2019), outlined 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;**
- however, there is only **limited evidence that pre-court diversion can reduce criminal justice processing times**, however 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 people**, most notably vulnerable women, young adults, and people with substance misuse and mental health problems. However, there is little UK-specific evidence that isolated the impact of pre-court diversion on these groups.

The practice we have witnessed, alongside an understanding of the evidence, offers some clues as to why pre-court diversion is likely to work better than the alternative of a more serious sanction (e.g. conditional caution, prosecution):

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- **Pre-court diversion is likely to de-escalate:** Pre-court diversion is a mechanism which de-escalates people's criminal justice trajectories. In its best forms, people who would have gone to court and people who would have got a formal out of court disposal will receive a lesser sanction.
- **Pre-court diversion is likely to avoid 'overdosing':** Key to pre-court diversion is providing lower dosages of intervention, especially compared to court prosecution;
- **Pre-court diversion may be experienced as more procedurally fair:** People participating in pre-court diversion may better understand what is happening to them than they would at court and may feel that they have a stronger voice;
- **Pre-court diversion is likely to be swifter:** The response from the justice system to the original offending is likely to be swifter for people participating in pre-court diversion than more formal sanctions, especially court prosecution; and
- **Pre-court diversion is likely to accurately target its interventions:** It is likely that pre-court diversion, in which skilled practitioners are identifying people's risks, needs and assets, are able to place and refer participants into targeted (albeit light touch) interventions.

### Promising practice principles

As the evidence base on pre-court diversion for adults provides only limited guidance on what practice works best, there is not a settled consensus on which specific pre-court diversion models and strategies are most effective. Nonetheless, we seek to offer practical advice that is (i) evidence-led regarding promising practice, and (ii) based on advice and lessons learnt from existing schemes.

Our promising practice principles are grouped in the following order:

- **Eligibility criteria:** Schemes should set eligibility criteria as broadly as possible to ensure they receive adequate referrals and must include safeguards against net-widening. Consideration should be given to the impact of formal admissions of guilt on eligibility and participation.
- **Referral into diversion:** Schemes must ensure that referral decisions are 'bounded' i.e. decision making is within clearly set parameters, complete with sufficient discretion and that the referral process itself is swift and simple.

- **Procedural fairness:** Participants in a scheme need to have a clear understanding of the process and its conditions, including the implications of participation, e.g. impact of a criminal record.
- **Officer training:** Schemes should deliver effective and ongoing training for police officers.
- **Case work:** Skilled navigators should be involved from the outset, once a person has been referred in to the scheme, and then throughout the delivery of interventions. They should promote informed choices about desistance and respond appropriately to non-compliance.
- **Programming:** Schemes should take steps to guard against overdosing and deliver responsive and needs-focused interventions, including tailored programming for specific groups i.e. women and young adults. Successful completion of programming should be positively marked and robust exit strategies should be developed.
- **Victim involvement:** Schemes should emphasise procedural fairness in their work with victims, ensuring they understand the aims of the scheme and are updated throughout the process.
- **Partnership working:** A scheme's vision and aims should be shared by all partners. Mapping the provision of local support services is key to a scheme's success.
- **Monitoring and evaluation:** Schemes should implement effective data collection and feedback processes from the outset.

We know that practice in this area is constantly evolving - this toolkit is a working document and will be updated to take into account emerging evidence and best practice as it comes to our attention. Please get in touch to contribute to this process.

## SECTION 1

# Background to the toolkit

## Defining pre-court diversion

The term ‘diversion’ describes a wide range of models across the criminal justice system, from initiatives that aim to keep ‘at risk’ people out of the criminal justice system altogether, to those that provide an alternative to custody. As we define it, pre-court diversion offers a swift and meaningful response to low-level offending by reducing the intensity of the criminal justice response. Pre-court diversion includes:

- Schemes ‘diverting’ people who are arrested and likely to receive a formal out of court disposal<sup>1</sup> into either a less serious out of court disposal or an informal disposal;
- Schemes ‘diverting’ people who are arrested and likely to be prosecuted in court into either a formal out of court disposal or an informal disposal (this diversion from court is sometimes called ‘deferred prosecution’).

In either model, as long as the participant complies with the conditions of their disposal, they will receive a lesser criminal justice disposal than in standard processing, 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 within our definition of pre-court diversion. Our definition of pre-court diversion therefore excludes three other important models of diversion:

- Pre-arrest preventative projects which seek to avoid people being drawn into the criminal justice system in the first place. While valuable, these schemes work with people who have not been arrested and so are not currently facing any imminent criminal penalties from which they can be diverted.
- Support service referral schemes such as NHS Liaison and Diversion and Community Advice and Support Services. Although useful in referring people to support services (primarily from police and court custody cells), these schemes do not provide opportunities for their cases to be either stopped or significantly de-escalated.

- Prison diversion programmes which divert people from custody into community sentences. While clearly important, prison diversion schemes tend to be available at court, not pre-court.

## Policy and practice context

Pre-court diversion has been long recognised as a significant part of the youth justice system in England and Wales and has also been used for a number of years across Scotland.<sup>2-3</sup> There has been growing interest in pre-court diversion for adults: a 2019 survey by the National Police Chiefs’ Council (NPCC) revealed that a vast majority of police forces across England and Wales are developing or delivering these schemes.<sup>4</sup> The survey also found both a wide variety in practice and in the terminology used to describe pre-court diversion.

While the approach has been explored before, many of those forces developing schemes have taken their lead from the perceived success of both Operation Turning Point in the West Midlands<sup>5</sup> and Checkpoint in Durham.<sup>6</sup> The Lammy Review recommendation of trialling of new forms of ‘deferred prosecution’ has also influenced schemes and has been taken forward by the Ministry of Justice through their Chance to Change pilots.<sup>7</sup>

In an effort to make it easier for police to record and monitor their use of pre-court diversion, the Home Office and the NPCC jointly introduced a new reporting mechanism – Outcome Type 22 – with effect from 1st April 2019. Police can record an Outcome 22 where ‘Diversions, educational or intervention activity, resulting from the crime report, has been undertaken and it is not in the public interest to take any further action’. The accompanying NPCC briefing note ([a copy of which can be found on our resources page](#)) makes it clear that it ‘can be used where the diversion is used also as an alternative to prosecution.’ It is already used by a number of schemes, including the Ministry of Justice’s Chance to Change pilots.

Following the Ministry of Justice’s commencement of pilots of a new ‘two-tier’ framework for out of court disposals, a number of police forces are also reforming their use of out of court disposals. The Ministry of Justice 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 NPCC.<sup>8</sup>

### Our work on pre-court diversion

Since 2014, the Centre for Justice Innovation has provided support to over 40 point-of-arrest youth diversion schemes (for those aged under 18), including: cost avoidance analysis, regional practice-sharing workshops, enhanced one-to-one support, toolkits and evidence and practice briefings, and in-depth consultancy projects.

Since 2018, the Centre has increasingly worked with practitioners aiming to create and expand pre-court diversion for adults. As part of that work, we have published two evidence and practice briefings on pre-court diversion. The first focused on the [evidence base for pre-court diversion](#) (published in April 2019) and the second on [pre-court diversion for women](#) (published in February 2020).

In October 2019, we held four practice-sharing workshops across England and Wales (in Birmingham, Cardiff, London and York) which were attended by 22 police forces. What we learnt from these workshops is that while there are a handful of established schemes across the country, on the whole, adult diversion practice is piecemeal. Many practitioners were unaware of practice in other areas, or how schemes could be integrated into wider criminal justice reforms, especially out of court disposals. We wanted to address this by ensuring that diversion is better understood and better informed by evidence.

### Who the toolkit is for

This toolkit is for any practitioner who is involved in, or considering creating, a pre-court diversion scheme for adults in contact with the criminal justice system.

As we worked with areas, we encountered a demand for more detailed guidance on the particulars of how schemes should operate to maximise their efficacy. Many practitioners told us that they were interested in learning more about what the research base says about more granular aspects of practice.

This toolkit aims to fill some of these gaps. In writing it, we are aware that there are many ways to design and run a pre-court diversion scheme, and the wide array of projects encompassed by the term 'diversion' makes it difficult to disentangle the evidence and to generalise about effective practice. Although the evidence base does not point to prescriptive recommendations, we believe that it can help you decide how to best develop practice in your schemes.

### Further support

Accompanying the toolkit is an offer of one-to-one support for your scheme. Practitioners who might benefit from this enhanced support are those considering creating new adult diversion schemes, or those running existing schemes in need of development. More details regarding our support can be found in section four.

 [For pre-court diversion resources and templates, visit our resources page.](#)

## SECTION 2

# The evidence for pre-court diversion

## Does pre-court diversion work?

Due to the renewed interest in pre-court diversion and the apparent diversity of practice, the Centre for Justice Innovation undertook a rapid review of the published research in this area. In [Pre-court diversion for adults: an evidence briefing](#), we sought to answer the following questions: What is the evidence that pre-court diversion works? Does pre-court diversion work specifically for particular groups of people? We found the most commonly measured outcomes are: reoffending; criminal justice processes and costs; and victim satisfaction.

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

- There is **strong evidence internationally, and moderate evidence from the UK, that pre-court diversion reduces reoffending**. We have identified studies that look at forty sites across the US of which the majority showed a significant reduction in reoffending compared to prosecution.<sup>9</sup> We also found one study in the UK which looked at diversion for domestic abuse which showed reductions in crime harm.<sup>10</sup>
- There is **moderate evidence that pre-court diversion reduces the costs to the criminal justice system**. We identified two studies which looked at a total of eight projects in Australia and the US.<sup>11</sup> All sites were shown as reducing costs compared to prosecution, in some cases by up to 94%. However, analysis of the Ministry of Justice's two-tier framework showed that it actually increased costs by replacing the simple caution with a more expensive conditional caution.<sup>12</sup>
- There is **promising evidence on the impact of pre-court diversion on victim satisfaction**. A study on Operation Turning Point reported 43% greater victim satisfaction than prosecution.<sup>13</sup> Many diversion schemes also make use of restorative justice, which has a strong evidence base pointing to positive impacts 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 found a single study on this issue in which lawyers commenting on an Alaskan diversion scheme reported significant time savings.<sup>14</sup>

## Who is likely to benefit from pre-court diversion?

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 people**, most notably vulnerable women, young adults, and people 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.

## Why is pre-court diversion likely to work?

While the evidence base on pre-court diversion in England and Wales is promising but limited, wider reflection on the practice we have witnessed and documented, alongside an understanding of the evidence base of what works to reduce reoffending, offers some clues as to why pre-court diversion is likely to work better than the alternative of a more serious sanction (e.g. conditional caution, prosecution):

- **Pre-court diversion is likely to de-escalate:** There is considerable evidence that reoffending is higher when people are drawn further into the criminal justice system than they otherwise would have been (a process known as 'net-widening'). This has the possibility of subjecting people to greater criminal justice intervention, more enforcement, and more punitive consequences if they do not comply. Instead, pre-court diversion is likely to be a mechanism which instead de-escalates people's criminal justice trajectories. In its best forms, people who would have gone to court and people who would have got a formal out of court disposal will receive a lesser sanction;
- **Pre-court diversion is likely to avoid 'overdosing':** Pre-court diversion cohorts will, in most cases, primarily be made up of people 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.<sup>15</sup> It is likely that pre-court diversion schemes provide lower dosages of intervention, especially compared to court prosecution where going to court itself can often involve people in a long, complicated, stressful process within a punitive environment (including the use of remand in custody and restrictions to liberty while on bail) even before the final sentence is made;

- **Pre-court diversion may be experienced as more procedurally fair:** Research has highlighted that whether people feel fairly treated in their interactions with the justice system can have a significant impact on both their perceptions of legitimacy and on their willingness to comply with the law.<sup>16</sup> Participants' perceptions of fairness are shaped by four elements: (i) understanding the process and the outcomes arrived at; (ii) having a voice in the process; (iii) being treated with dignity and respect; and (iv) trusting the neutrality of the process.<sup>17</sup> It is likely that people participating in pre-court diversion are likely to understand the process better than a court process and may feel that they have a stronger voice;
- **Pre-court diversion is likely to be swifter:** A simple and swift referral process is important because research suggests that celerity (i.e. swiftness) in responding to offending is more important to desistance than severity.<sup>18</sup> It is likely that the response from the justice system to the original offending is swifter for people participating in pre-court diversion than more formal sanctions, especially court prosecution. 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.'<sup>19</sup> There is also 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.<sup>20</sup> 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; and
- **Pre-court diversion is likely to accurately target its 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 responsiveness).<sup>21</sup> It is likely that pre-court diversion, in which skilled practitioners are identifying people's risks, needs and assets, are able to place and refer participants into targeted (albeit light touch) interventions.

### Further research

With the burgeoning development of pre-court diversion schemes in England and Wales, we expect to see the evidence base significantly added to in the near future. For example, the Ministry of Justice are working with two police forces to pilot their Chance to Change model of deferred sentencing. The Barrow Cadbury Trust have commissioned Manchester Metropolitan University to conduct an evaluation of these pilots, the remit of which includes the effects of removing the requirement for an admission of guilt.<sup>22</sup> Similarly, while the interim results of the first phase of Durham's Checkpoint model of diversion have been published,<sup>23</sup> the results of a fuller study by the University of Cambridge, due to be released in 2022, will contribute to our understanding of the longer-term outcomes of such schemes.



## SECTION 3

# Promising practice principles

**From our review of existing practice, we have identified a number of promising practice principles which we consider will foster effective practice. These principles, which draw on both the evidence base and the insights of frontline practitioners, are a ‘first draft’: intended to be a useful guide but to be adapted and amended as more research becomes available.**

## ✓ Eligibility criteria

### Implement safeguards against net-widening

As we have seen, one of the reasons pre-court diversion is likely to produce better outcomes than more formal sanctions is that it avoids net-widening. It is worth highlighting that the Ministry of Justice’s two-tier out of court disposal pilot evaluation highlighted the dangers of net-widening within out of court disposals.<sup>24</sup> It showed that, contrary to the principle of de-escalation, people who would have received simple cautions were given conditional cautions instead. Conditional cautions involved people having to complete more interventions than they otherwise would and came with the threat of enforcement in the case of non-compliance.

To avoid this, practitioners should make it clear in their eligibility criteria that the scheme provides an alternative to a more serious sanction (e.g. conditional caution, prosecution). This will underline to officers that a threshold of offending has to be met. Some schemes have included another layer of scrutiny: a staff member will act as ‘gatekeeper’ and will review all referrals for suitability. It is important that these gatekeepers are empowered not just to reject referrals deemed too high risk, but also those that do not meet the threshold and require a lighter touch disposal (e.g. a community resolution) or in some cases nothing at all (e.g. no further action - NFA).

### Keep eligibility criteria broad to ensure referrals

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. One scheme reported that this put its funding and support from stakeholders in jeopardy. As such, when setting your eligibility criteria, reach out to other schemes that are more

embedded to learn what worked and what did not. This will provide the reassurance of criteria already effectively operationalised elsewhere, and avoid resources being spent on launching your scheme with eligibility criteria that are unsuitable from the outset. The Pathfinder scheme in Devon and Cornwall advised drawing on data on local arrest patterns when determining eligibility criteria. This enables you to estimate the numbers, offence types and demographics of potential participants, meaning your eligibility criteria will respond to local throughput.

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. Indeed, hate crime and domestic violence were excluded from Operation Turning Point from the outset on the basis that they were too ‘politically sensitive and professionally challenging.’<sup>25</sup> In a similar vein, Checkpoint’s eligibility criteria and decision-making process were set by a multi-agency Governance Board, including representatives from police, probation, health, youth offending and others.<sup>26</sup>

[Examples of eligibility criteria from operational schemes can be found on our resources page.](#)

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

As outlined in the Lammy Review, 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.<sup>27</sup> The Ministry of Justice responded to this by introducing Chance to Change, a deferred prosecution pilot, which does not require participants to make an admission of guilt.<sup>28</sup> Pre-court diversion schemes that do not require a formal admission of guilt 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. Rather than not a requiring a formal admission of guilt, some schemes we have had contact with are more comfortable requiring an acceptance of responsibility, this still provides a more flexible alternative and could reduce the number of people unnecessarily escalated further into the criminal justice system.<sup>29</sup>


## Referral into diversion

### Ensure the decision to refer is 'bounded'

Practitioner discretion in determining eligibility for diversion may lead to inconsistency and therefore undermine the fairness and legitimacy of the scheme. Indeed, there is international evidence to suggest that such discretion may be inappropriately exercised resulting in racial disparities. Our work with youth diversion schemes suggests that what is needed is bounded decision making, i.e. decision making within clearly set parameters, complete with sufficient discretion. For example, scrutiny panels are widely used in the context of youth diversion and allow for more robust and structured decision-making, an important check on the exercise of police discretion.

In order to ensure bounded decision making and a process that is consistent in its application, practitioners told us of the importance of producing clear guideline documents and protocol when starting a diversion scheme. Two of the established schemes that we spoke to both reported that inconsistency in referrals and offence types was an early issue they encountered during the introduction of their scheme. As a result, they produced easy-to-follow flowcharts that map the potential referral and outcome process for all eventualities.


One force also changed its referral process and introduced a scrutiny panel to achieve greater consistency. Initially requiring custody sergeants to refer eligible people onto their diversion scheme, they found that a combination of practitioner discretion, staff turnover, and the perceived additional workload for these officers was detrimental in achieving consistency. They revised their process so that the custody sergeant completes a simple, drop-down option box and instead a 'gatekeeper' within the navigator team makes the decision as to whether a person should be offered diversion or not. By essentially opting all relevant people into the diversion scheme and then screening those not appropriate out, they have reported greater consistency and parity in their diversion offer.

 Examples of a number of the documents detailed above can be found on our [resources page](#).

### Ensure referral processes are swift and simple

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 initially 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. To encourage referrals, some schemes work on a screening out, rather than in, basis. Practitioners report that, as a consequence, the referral process remains in the mind of officers, becoming 'second nature', as they are expected to think about diversion in every case. Schemes certainly recognise the importance of speedy referrals, with most ensuring that, once a participant is accepted onto the scheme, a meeting with the navigator (or equivalent) is scheduled within 24-72 hours.

 Examples of referral forms from operational schemes can be found on our [resources page](#).

## Procedural fairness

### Ensure participants understand pre-court diversion processes and conditions

In order to encourage compliance, schemes should take all reasonable steps to ensure participants understand the process of pre-court diversion. We found examples whereby schemes made efforts to ensure the pre-court diversion process was clearly and simply explained to participants. Operation Turning Point had a police script, which custody officers were trained to deliver, to fully explain the scheme to participants.<sup>30</sup> Some schemes have found that using SMART (Specific, Measurable, Attainable, Relevant and Time-bound) conditions linked to diversion will help provide clarity to participants and practitioners. In one scheme offender managers and other partners came together to identify a set of recommended standard conditions. This streamlined conditions while still allowing for a degree of professional discretion.

Promoting clear understanding of the process should extend to breach too: in other justice system settings, a clear and understood set of expectations with known consequences for non-compliance has been shown to improve compliance.<sup>31</sup>

### Ensure participants understand the implications of participation, especially on their criminal record

Schemes should also explain the full criminal record implications of participation in pre-court diversion to people. It is important that the implications of the de-escalated outcome are understood as well as the outcome in the case of non-compliance. For example, although Outcome 22 has a less serious implication than, say, a caution, it is

still potentially disclosable in an enhanced Disclosure and Barring Service (DBS) check (which is at the discretion of the chief police officer dealing with the request). Potential consequences of a criminal record (extending not just to employment but also, for example, housing, immigration, international travel and insurance) should be made clear in writing and discussed with the scheme participants at the outset. We would also advise including contact details of specialist advice services such as [Unlock](#) in participants' plans where appropriate.

## Officer training

### Deliver effective and ongoing training for police officers

We found schemes worked well when police officers were offered training which introduced the diversion scheme and its processes clearly and practically with locally-specific information on situations where diversion schemes might be appropriate. In some of the examples of good practice we saw, initial case management and police system training provided to new officers showed how to refer adult offenders and record referral outcomes as a positive outcome so diversion activity did not result in undetected recording (it may be necessary for e-learning platforms to be updated to reflect this). Some schemes suggested that training should be particularly directed to response and neighbourhood teams (as they have the most interaction with low-level offenders) and should include sessions from police and police staff who work in diversion as a way of strengthening partnership working and understanding local need.

Where possible, training should be as interactive and immersive as possible as 'learning by doing' has been found as a successful method for police training and education.<sup>32</sup> Immersive training such as Hydra simulation sessions could feature diversion schemes as an option for working with vulnerable and low-level offenders.<sup>33</sup> Updated morning briefings featuring regular low-level offenders should mention if they are on a diversion scheme, to ensure that all teams are aware of current orders on an offender in case of any breach.

Another scheme found that providing an example crime entry log for officers to refer to helped ensure consistent recording. The same force has also developed a script to be read by any officer offering a person the option of diversion, as well as a frequently asked questions document for officers. One criticism the force faced from their officers before the introduction of their scheme was a concern that diversion would increase their workload. They found that by developing these guidelines and resources they

could not only outline the clear expectations necessary for a consistent approach, but they could demonstrate the reduced impact that their scheme could have on officer workload. Other helpful documents that forces have produced prior to starting their scheme are: initial meeting and initial processes checklists, a triage table, agency referral forms, and template letter proformas.

 For examples of briefings used to train police colleagues, see our [resources page](#).

## Case work

### Promote informed choices about desistance through navigators

Research suggests the need for high-quality relationship and structuring skills in criminal justice staff. The former result in relationships that are 'respectful, caring, enthusiastic, collaborative, and valuing of personal autonomy', while the latter include prosocial modelling, effective use of authority, problem solving and motivational interviewing.<sup>34</sup> Many police forces that have successfully established a diversion scheme have credited the role of the navigator to provide this practical and emotional support for participants.

A careful recruitment process and robust training programme are therefore vital. Crucially, all of these schemes that we spoke to also highlighted the importance of investing in skilled navigators and valued their continued professional development and training in cognitive behaviour techniques such as motivational interviewing, person-centred care, neurolinguistics programming, and mindfulness. One force told us that, as a result of the skillset of their navigators, they are now able to offer some interventions in-house, negating the need to always rely on external services.

### Involve navigators early and continuously through the intervention

Effective schemes that we have worked with all commonly involve their navigators at the earliest opportunity in order to prioritise the importance of building pro-social relationships from the offset. Recognising that a continuous, positive relationship between the participant and the navigator supports desistance,<sup>35</sup> one scheme has strategically only employed civilian staff in its navigator roles. They have found that an element of perceived independence from operational police officers has been crucial for building trust and developing the pro-social relationships that are essential for empowering change. However, another scheme employs a mix of both specialist, independent navigators and police officers with offender management experience. They have found that having a combination of this expertise complements the skillsets

of their navigator staff and provides a wider range of knowledge and experience. Additionally, one force has introduced a more relaxed vetting process when employing navigators, valuing the involvement of those with lived experience of the criminal justice system within their navigator team.

### **Respond to non-compliance**

Most schemes report having a policy of two strikes after which the participant is expelled from the programme. In reality, we have seen that the 'breach threshold' is quite flexible, with keyworkers and support officers given discretion to report on engagement levels. Most speak of having a common sense/pragmatic approach towards breach. Decisions are often made in partnership and are not down to individual officer decision making. One scheme has a step-by-step guide to breach in their protocol. It includes agreeing a method for contacting the participant, how and when (with a timeline) to chase and what do if there is no response from the participant. It even contains examples of acceptable reasons for absences.

However, common among schemes is that where a breach does occur, the participant risks being charged with the original offence. Further consequences can also include automatic exclusion from entering a scheme of this nature again or, if appearing at court, the bench may take a dim view of non-engagement/non-compliance.

## Programming

### **Provide light touch needs assessments to target interventions**

Once a participant has been accepted on to the scheme, we found many schemes used the navigator (or equivalent) to undertake an assessment of their risk and support needs so as to appropriately develop the intervention and referral programme. Schemes we have spoken with use a variety of tools for this, including using 'critical pathways' and 'needs wheel'. The needs that tend to be covered when using these tools include: mental and physical health; drug and alcohol issues; accommodation; finances; employment and training; and relationships. Where a need is highlighted, schemes should do their utmost to ensure there is a referral pathway to help address it. Some schemes provide training and guidance for staff on what to do if a participant discloses any trauma (e.g. sexual or domestic abuse) that requires immediate safeguarding and/or ongoing intervention.

In a number of schemes, staff will agree a contract based on the needs assessment, which contains conditions, which usually lasts for up to four months. This allows sufficient time for the file to be prepared and the participant prosecuted within the six-month deadline in the case of non-compliance. One scheme allocates the required level of support using the following scale: green for low need, amber for some identifiable needs, and red for a wide range of complex needs. Alongside this scale are examples of the kinds of indicators which may determine where the participant sits; finally, it includes guidance on the level of support/contact the participant may require.

### **Guard against over-dosing**

As set out above, 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. There exists a potentially damaging (and often well-meaning) tendency that pre-court diversion schemes could be used to extend criminal justice contact and enforceable requirements to meet a person'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 people into services, but care should be taken to proportionately tailor and limit the number and intensity of the interventions that people are required by the criminal justice system to complete. For example, it is unrealistic to expect that a participant with a chronic alcohol problem will be sober after four months and inappropriate to make addressing this need enforceable through the criminal justice system. Instead, facilitating referral to a service for support is a more appropriate expectation that does not set the participant up to fail.

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.<sup>36</sup>

### **Deliver responsive and need-focused interventions**

The contracts and its conditions will vary for each participant, but usually include an offending condition (not to reoffend for the duration of the contract); a victim condition (to take part in a restorative justice activity where the victim consents); intervention conditions (to attend session(s) to address offence-associated needs highlighted in the assessment e.g. meet with a drug support worker); and a community condition (to

engage in a reparation activity or voluntary work). Schemes clearly take a lead from the research when designing their programming, with the most common interventions/signposting offered as follows:

- Accessing/maintaining accommodation;
- Managing finances, including access to benefits;
- Accessing substance and alcohol abuse services;
- ETE/skill development;
- Accessing mental health support;
- Programming
- Referrals to local Women's Centres/support services; and
- Accessing family support.

With regards to intervention conditions, the Pathfinder scheme in Devon and Cornwall highlighted to us the significance of their database of local services in ensuring navigators can skilfully match people to the most appropriate intervention. They told us this ensures that navigators can effectively manage expectations by avoiding promising help for a need when the service to address it does not exist. They also suggested that where there has been a gap in a service to address a particular need, or where an intervention has a long waiting list or it is too far away for the participant to travel, they have had some success with free, online national courses, particularly with regards to cognitive behavioural therapy, and have included some of these within their database when considering available services appropriate for a participant's intervention condition.

A recent review of the evidence on out of court disposals identified a number of effective interventions, including skill development; social learning; changing relevant attitudes, behaviours, and life circumstances; restorative justice; and enforced curfews.<sup>37</sup> The review also highlights two categories of interventions which were found to be ineffective: first, those that hone in on the person 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.

### **When working with women, provide tailored/gender responsive interventions**

As summarised in [Pre-court diversion for women: Evidence and practice briefing](#), there is considerable evidence in the literature that desistance from crime is different for women than it is for men, and that women require different interventions to help assist this process.<sup>38</sup> Interventions could be informed by the seven 'priority needs' identified in the 2015 National Offender Management Service (NOMS) paper, Better Outcomes for Women Offenders, which address the factors which drive women's offending. These include, for example, substance misuse, mental health and emotion management.<sup>39</sup> Similarly, the Tavistock Institute has identified a number of key features of women-specific services – including values-driven, gender and trauma-informed approaches – which may be relevant to designing interventions to accompany diversion schemes aimed at women.<sup>40</sup> 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.<sup>41</sup>

Also found in the briefing mentioned above are case studies which outline how two women's schemes, in Surrey and Dorset, operate.

### **When working with young adults, provide tailored interventions**

As highlighted in the Justice Committee report on young adults in the criminal justice system, there is promising evidence that work with young adults who offend should be distinct and recognise their differing levels of maturity.<sup>42</sup> Diversion programming for young adults could be informed by the priority issues for intervention with young adults identified by the NOMS paper, Better Outcomes for Young Adult Men, namely: develop a stable, pro-social identity; build resistance to peer influence; develop self-sufficiency and independence; increase future orientation; and strengthen bonds with family and other close relationships.<sup>43</sup> The following 'dos' for reducing reoffending amongst young adults in the criminal justice system can help achieve these: provide young adults with cognitive behavioural programmes covering criminal thinking and behaviours; match young adults with appropriate mental health and substance use treatment providers; and establish a 'career pathways' approach.<sup>44</sup>

One scheme for young adults focuses its attention on interventions/activities that address needs often deemed significant for this age group. These include accessing education, training and employment and skills development, e.g. opening a bank account and managing finances.

See the [Transition to Adulthood \(T2A\) website](#) for a wealth of information on working effectively with young adults.

### **Victim involvement**

#### **Emphasise procedural fairness in your work with victims**

Published findings on victim satisfaction from the randomised control trial of Operation Turning Point found higher levels of victim satisfaction with pre-court diversion participants (contrasted with victim satisfaction found within the court-bound control group). The trial reported that increased victim satisfaction rested on police clearly explaining the process and why Turning Point might better prevent reoffending -- ‘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.’<sup>45</sup> The higher levels of victim satisfaction recorded in this study were linked to victim conversation scripts, ensuring the explanation of pre-court diversion to victims is consistent, regardless of who explains the programme. Clear explanations of why the police believe that pre-court diversion is best for reducing offending behaviour with the person concerned have been shown to be important for fostering the feeling that the police are being proactive about fighting crime. Lastly, there is evidence that meeting the victim’s request regarding their desired level (and timeframe) of follow-up contact was found to be an essential requirement.<sup>46</sup>

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’.<sup>47</sup> In addition, the Association of Police and Crime Commissioners put emphasis on the ‘integral role’ PCCs play in helping victims of crime and in ensuring that the victim is at the heart of the criminal justice system.<sup>48</sup> Therefore it is crucial that PCCs and police prioritise victims of crime in pre-court diversions schemes and ensure they are appropriately supported and receive their entitlements under the Victims’ Code.<sup>49</sup>

An additional important practice point is that staff who engage with service users should not also engage with the victims. This will avoid perceptions of a conflict of interest and lack of neutrality (a core component of procedural fairness), and will help ensure best practice in regards to the Victim’s Code is maintained (e.g. to ‘keep victims’ personal data securely and separate from data relating to offenders’ in the case of restorative justice).<sup>50</sup>

 [Examples of victim process maps can we found on our resources page.](#)

### **Partnership working**

#### **Ensure the scheme’s vision and aims are shared by all partners**

Police are unable to create pre-court diversion schemes on their own. Schemes must ensure that all the agencies involved share the aims of the scheme and a vision of how it should be delivered. 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.<sup>51</sup>

Practitioners also talked to us about the importance of transparency with partners and told us it was crucial to devise key policies to support this, including: a clear complaints and escalation procedure, information sharing protocols and safeguarding guidance.

#### **Map and develop relationships with local support services**

Forces that we spoke to regarding the implementation of their pre-court diversion scheme all championed the importance of establishing key partnerships as a crucial first-step in developing their scheme. The Pathfinder scheme in Devon and Cornwall told us that prior to launching, they invested valuable time mapping the support services and interventions available in their area. Pathfinder reported that by establishing strong working relationships with their local services and by spending time understanding what the different services offer, they have avoided the costly and complex approach of commissioning or spot-purchasing placements. Instead, by creating a database for their navigators that outlines: available local services, referral processes, types of intervention, and eligibility criteria, they are able to broker suitable intervention places for participants by utilising their existing local services.

The mapping of services not only helped schemes to understand the provision available in their local area, it also aided information-sharing. Rather than service-level or partnership agreements, one scheme valued the importance of establishing information sharing agreements and close working relationships with their partners to ensure they are informed of a participant's engagement with a service when it is necessary for successful completion of their contract. They found that establishing these partnerships has been a cost-effective and practical solution to engaging their clients in meaningful services that are relevant and appropriate for their individual needs.

Practitioners have also consistently advised that the mapping of services should be regularly reviewed and updated as part of an ongoing process. One scheme told us that, now their scheme is established, part of their navigators' role is to continue to engage with their local services to ensure that their database is current and that their working relationships are strong. One tip for starting to map all available support services in your area is to engage with local voluntary sector consortiums or your Citizens Advice Bureau.

## Monitoring and evaluation

### Implement effective data collection

Effectively monitoring and evaluating your pre-court diversion scheme is crucial for both making the case for continued investment as well as for ensuring consistency and avoiding disparity. The evidence base for pre-court diversion in England and Wales is emerging and collecting data on the impact that your scheme is making could be significant not just for the sustainability of your local scheme, but also to strengthen the case nationally. Some areas have engaged their local university to undertake an independent evaluation of their scheme, and the Ministry of Justice, supported by the Barrow Cadbury Trust, has commissioned an evaluation of its Chance to Change pilot schemes.

Regardless of independent evaluations, it is crucial to consider the data needed for monitoring the impact of your scheme before commencement. Reoffending rates and cost benefits are critical measures for any 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 can be equally valuable

for monitoring and evaluating your scheme. For example, the output measures collected for the evaluation of Operation Checkpoint were: re-arrest and reoffending rates (the prevalence and frequency of arrests and offences taken primarily from the PNC); offending harm (harm caused by those who reoffend, calculated using the ONS Severity Score); cost savings (calculated on reducing arrests and reoffending, that is, the saved cost based on the reduction on the number of times the offenders were processed through custody); self-efficacy (self-assessment survey results).<sup>52</sup>

### Formalise a feedback process

One force also talked to us about the importance of relaying outcome measures and the effectiveness of their diversion scheme to frontline officers and staff not directly involved in its operation. Not only do they inform the arresting officer of the progress and outcome of the participant once they have completed the programme, but they also highlight overall statistics and successes in their quarterly internal newsletter and staff briefings. They explained how they have found it effective to not only communicate and publicise their diversion scheme during establishment and implementation, but that regular and ongoing communication of their success measures is essential to achieving cultural change, ensuring diversion is fully integrated into business as usual.

## SECTION 4

# How we can help

**We know that practice in this area is constantly evolving - this toolkit is a working document and will be updated to take into account emerging evidence and best practice as it comes to our attention. Please get in touch to contribute to this process by contacting Bami, our Innovative Practice Officer, at [bjolaoso@justiceinnovation.org](mailto:bjolaoso@justiceinnovation.org). In the meantime, accompanying the toolkit is an offer of one-to-one support for your scheme. Practitioners who might benefit from this enhanced support are those considering creating new adult diversion schemes, or those running existing schemes in need of development.**

## Practice support to existing schemes

We can provide direct, targeted support for up to 10 days to a limited number of new or existing pre-court diversion schemes. This can include:

- **Multi-agency workshops:** Facilitating a range of practitioners to come together and share practice and expertise;
- **Engaging partners:** Helping to identify and facilitate conversations with relevant partners and organisations;
- **Explaining the evidence:** Talking you through the research and what it tells us about the benefits of pre-court diversion;
- **Reviewing protocols and documents:** Helping you to formalise procedures and paperwork for your scheme according to best practice;
- **Data collection and analysis:** Support with analysing your existing data and developing your data collection and reporting approach;
- **Preparing communications:** Guidance on how to use your results to develop appropriate messages for internal and external communications;

- **Preparing to evaluate:** Support with identifying outcomes and activities, devising a theory of change, and advice on how to set up an evaluation.

## Join our community of practice

All existing schemes, as well as those interested in setting up a new scheme, can become a member of our community of practice. Those interested in learning more about pre-court diversion will receive:

- **Access to resources:** Including evidence summaries, template documents and presentations;
- **Networking opportunities:** Helping you to build contacts of experts in pre-court diversion;
- **Practice sharing workshops:** Facilitating experts and interested parties to come together to encourage new schemes and share best practice;
- **Invite to national conference:** One-day specialist forum bringing together practitioners, advocates and policymakers;
- **A spot on our innovation map:** Exposure for your pre-court diversion work on our map of innovative projects across the UK.

For further information about our practice support offer, please contact Bami, our Innovative Practice Officer, at [bjolaoso@justiceinnovation.org](mailto:bjolaoso@justiceinnovation.org)



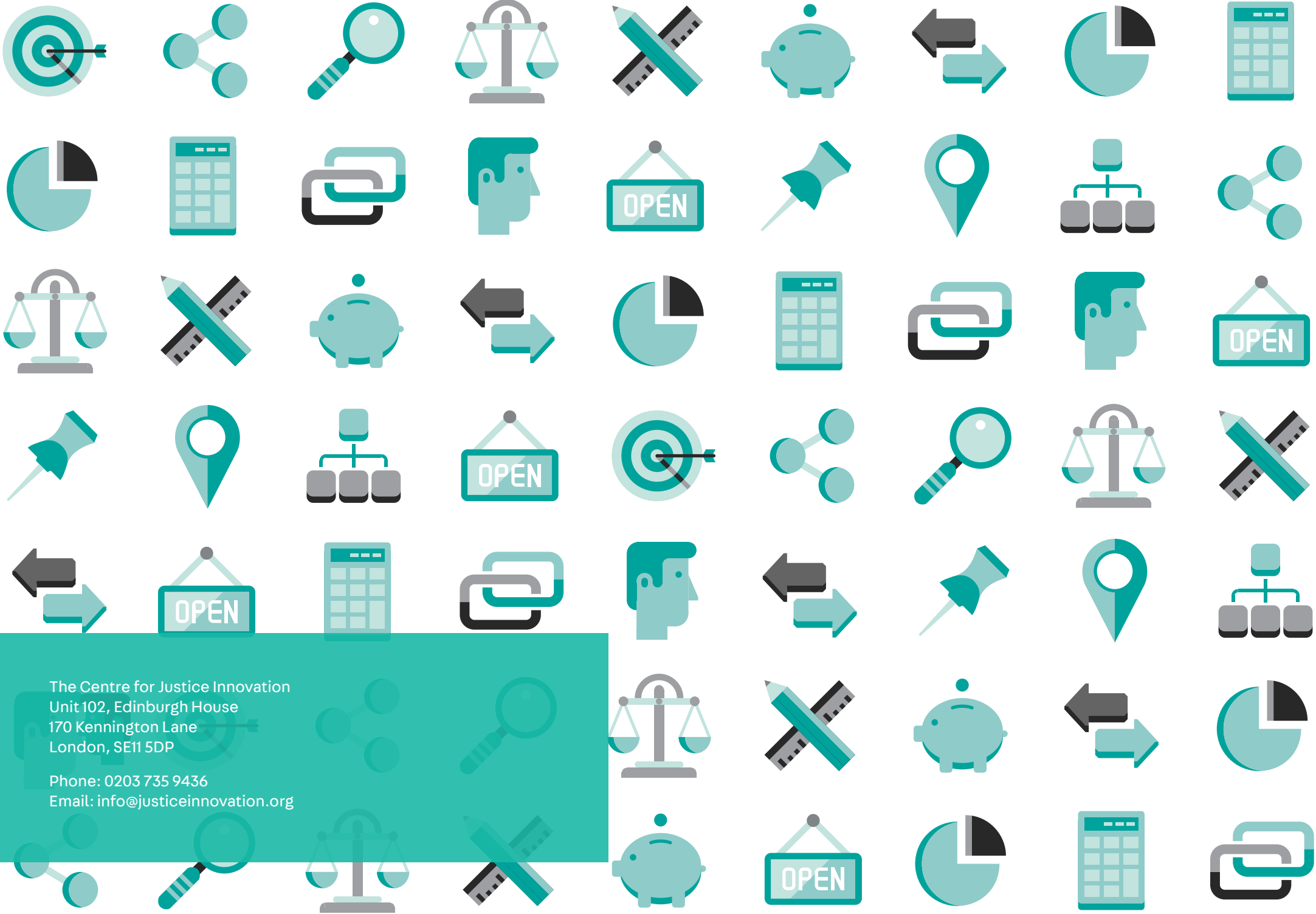
# Endnotes

- 1 For adult offenders, there are seven potential disposals: informal or community resolution, cannabis warning, Khat warning, simple caution, Penalty Notice for Disorder (PND) and Conditional Caution.
- 2 The focus of this toolkit is adults. For information on point-of-arrest youth diversion, see the Centre for Justice Innovation's extensive publication list, including: Valuing youth diversion: a toolkit for practitioners (2016); Why youth diversion matters: A briefing for Police and Crime Commissioners (2017); Mapping youth diversion in England and Wales (2019); and Strengthening Youth Diversion (2020).
- 3 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.
- 4 Internal NPCC survey shared with the Centre for Justice Innovation.
- 5 See: Operation Turning Point, College of Policing [https://whatworks.college.police.uk/Research/Research-Map/Documents/TP\\_Storyboard.pdf](https://whatworks.college.police.uk/Research/Research-Map/Documents/TP_Storyboard.pdf)
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- 15 See for example: Public Safety Canada (2009). What To Do With Low Risk Offenders? Research Summary. Vol. 14 No. 4 July 2009.
- 16 Tyler, T. (2006) *Why People Obey the Law* (Princeton NJ, Princeton University Press).
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