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Conditional cautions: lessons learnt from the unpaid reparative work pilot implementation

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A pilot to test the implementation of the unpaid reparative work conditional caution (RWC),¹ a type of out-of-court disposal, took place in seven Basic Command Units (BCUs) between December 2006 and September 2007. The purpose of the RWC was to enable offenders to make good any damage they had caused by carrying out up to 20 hours of specified work. There was a low take-up with only six RWCs administered by the time the pilot finished, earlier than planned, in September 2007. The research described here explored the reasons for this low take-up. The pilot was not able to produce evidence on the effectiveness of the RWC. The RWC is still available to be used as a condition of a caution at the discretion of local criminal justice areas.

assumption that the work given needed to be directly related to the offence – was criminal damage to public property. However, respondents reported that not many offenders were identified for this offence.

- The most common model in this pilot was to use probation's unpaid work schemes for the RWC. Tasks involved in these schemes included repairing and improving public parks and spaces, which could be used as a condition for offenders who had committed criminal damage to public property.
- Respondents believed that the low take-up of RWCs by custody officers and police officers was because RWCs were perceived to be time-consuming and complex.
- Multi-agency co-operation was seen to be the most successful element of the pilot implementation by respondents from all three agencies (Crown Prosecution Service (CPS), police and probation service).
- Respondents felt that the guidance they received on the RWC pilot would have been more helpful if it included: more advice on the types of offence for which the RWC could be used; how closely the work placement must be linked with the offence; clear guidance on the division of responsibility between

Key findings and implications

This paper reports on the lessons learnt from the RWC pilot implementation based on interviews, carried out four or five months after the pilot finished,² with key practitioners involved in the implementation. The main findings were:

- RWCs could only be given if the work undertaken was directly related to the offence. In practice, the offence most 'suitable' for this condition – based on an

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1 This is not the same as 'community payback', which is a court order requiring defendants to carry out between 40 and 300 hours of compulsory unpaid work.

2 Interviews were carried out in January and February 2008.

the three agencies, in particular in relation to monitoring; and the number of unpaid work hours allowed.

- Future policy development needs to identify ways that practitioners can be motivated to use the RWC when appropriate. Senior staff involved in the pilots could have played a stronger role in promoting the initiative by incentivising use of RWCs and removing identified barriers. Engagement of frontline staff in the planning stages might have identified potential incentives and barriers.

A conditional caution is an out-of-court disposal introduced through the Criminal Justice Act 2003. The basic criteria for administering a conditional caution are:

- the offender is aged 18 or over;
- the offender admits the offence in a Police and Criminal Evidence Act (PACE) compliant interview;³
- there is sufficient evidence to charge the offender.

Under the current scheme the conditions are aimed at rehabilitation (addressing the offender's behaviour) and/or reparation (making good the harm the offender has caused) and may include Restorative Justice⁴ (RJ) processes. Therefore typical conditions could include victim compensation or referral to drug or alcohol misuse counselling. Conditional cautioning was first implemented in December 2004. By September 2007 it was operating in nearly one-half of the basic command units (BCUs) in England and Wales (Office for Criminal Justice Reform, 2007b) and was fully rolled out by March 2008.⁵

3 The Police and Criminal Evidence Act (PACE) and the PACE Codes of Practice provide the core framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing detainees. PACE sets out to strike the right balance between the powers of the police and the rights and freedoms of the public. More information is available at: <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/>. On 26 January 2010 a revised Code of Practice and supporting Director of Public Prosecution's Guidance came into effect and removed the requirement for a PACE-compliant admission to the offence before a conditional caution could be administered. But the offender must admit the offence at the time the caution is administered.

4 Restorative Justice is the process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.

5 On 26 January 2010 pilots commenced in five areas to test the youth conditional caution and adult financial penalty condition.

A pilot of the implementation of the unpaid reparative work condition (RWC) took place in seven BCUs across England and Wales between December 2006 and September 2007. The Respect Task Force led by the Home Office initiated the pilot by 're-launching' the RWC in 2006 as part of its drive to tackle anti-social behaviour. The seven pilot areas were set up to test the feasibility of using unpaid work as a response to low-level offending. The idea of the RWC was that offenders made good the damage they had caused by carrying out up to 20 hours of specified work. The pilot was co-ordinated by the Ministry of Justice⁶ and administered by three statutory agencies: the Crown Prosecution Service (CPS), the police and the probation service.

Time-limited funding from the Respect Action Plan meant the RWC pilot was 're-launched' before the conditional caution had been fully rolled out nationally. Although a requirement for selecting pilot areas was that they had an established conditional cautioning scheme, two of the seven pilot areas did not meet these criteria and were not ready to begin the RWC pilot for five months. This severely limited the successful implementation of the pilots. The pilots ran for a range of four to nine months.

This research explored the perceptions of practitioners involved in the pilot, focusing on barriers to success and reasons why the RWC had been administered so infrequently. It also sought to identify lessons learnt from the implementation process and examples of good practice identified by the respondents, based on what they thought went well in the pilot.

Approach

Qualitative data were collected from 21 in-depth interviews with key respondents, with the aim of providing some explanation of why RWCs were used so infrequently. Purposive sampling was used to identify key respondents for the in-depth interviews. Representatives from each pilot area and from each of the three agencies involved (CPS, police and probation service) were interviewed, plus respondents from the two RJ agencies and

6 The Ministry of Justice (MoJ) was created in May 2007; it was formed from the Department for Constitutional Affairs (DCA) and parts of the Home Office. Before May 2007 the RWC pilot was co-ordinated by the Home Office.

one custody sergeant. The discussion guide for the interviews focused on what went well, what went badly and lessons learnt. It was developed as the interviews progressed as part of an iterative process to ensure that full use was made of the knowledge of those working on the implementation.

There were some limitations in this research. The study was small in scale and the respondents interviewed were not necessarily representative of all practitioners involved in the pilot. In particular, the sample generally excluded respondents with first-hand experience of the pilot from the custody suite environment. The interviews took place four or five months after the pilot finished and therefore perceptions of the implementation may have dimmed or been influenced by later events.

Results: Why the RWC was so little used during the pilot

Although a number of offenders were given conditional cautions during the period of the pilot (ranging from 1,109 conditional cautions to 22 conditional cautions per BCU), the RWC was used infrequently. For example, in the pilot area that administered the most conditional cautions during the pilot only one involved an RWC, while four of the seven pilot areas did not administer any RWCs. Respondents identified a number of operational and strategic issues that contributed to the low use of the RWC in this pilot.

Operational issues

Some respondents perceived conditional cautions involving compensation or a letter of apology to be more desirable to the victim than the RWC and that offending behaviour was better addressed through rehabilitative conditions, which seek to address the behaviour of offenders.

The range of alternative out-of-court disposals available to police officers and custody staff was given by some respondents as a major reason for the low take-up of the RWC. They suggested that out-of-court disposals that were simple and quick to implement were more popular types of disposals to use. Disposals such as a Penalty Notice for Disorder (PND) and a Cannabis Warning, which could be issued on the street, were the most popular.

The complexity and the time taken to administer an RWC compared with other out-of-court disposals was seen by some as a barrier to its use. Some respondents suggested that this was why custody staff and police officers responsible for identifying suitable offenders and offences for the RWC were resistant or reluctant to engage in the pilot. The RWC requires a decision on the eligibility of the offender and the offence, how many hours were appropriate for the offence, the approval of the CPS, and consultation with the probation service to make sure that a suitable scheme is available. Some pilot areas tackled the issue of the complexity of administering an RWC by forwarding potential RWC cases to Criminal Justice Units (CJUs)⁷ to deal with. One pilot area proposed that a 'reparative work champion' be based in the police custody suite to promote the use of the RWC, but this was not implemented before the pilot closed.

Some of the respondents suggested that the risk assessments involved when considering an RWC were a barrier to its widespread use as they were time-consuming and complex. Both the police and the probation service were required to screen offenders before an RWC could be administered. A study of the early implementation of conditional cautions (Blakeborough and Pierpoint, 2007) found that whether or not a disposal involves increased resources, the perception that it does is enough to make it unpopular, and "may then undermine the buy-in of key staff".

The low throughput of offenders with RWCs meant that the pilot did not gain momentum and some respondents thought this became a barrier to its increased use. They perceived that this also contributed to low morale and disappointment, especially considering the resources used in setting up the pilot.

Some respondents thought a major factor in the low take-up of RWCs was the restriction on suitable offences and offenders. The conditional caution scheme is aimed at low-level, low-risk and mostly first-time offenders. Therefore some offenders

⁷ Criminal Justice Units (CJUs) aim to assist in bringing offenders to justice and to care for the needs of victims who become witnesses in the criminal justice process. The CJU acts as the main link between operational police officers and staff, and the Crown Prosecution Service (CPS). The CJU is responsible for the administration, preparation and processing of prosecution files, from initial submission by a police officer or staff through to finalisation and disposal at court.

identified for an RWC were rejected because they had too many previous convictions. The direct link between the offence and appropriate unpaid work limited its use to criminal damage to public property and respondents reported that detections of these offences were low.

Geographical distance from a suitable work placement was also a problem. Some of the pilot areas were large or the offender lived outside the pilot area, making it disproportionate to the offence to require the offender to travel to the scheme.

Some pilot areas attempted to widen the work schemes available for an RWC through links with alternative schemes, such as anti-arson work with the local fire brigade and clearing up a notorious 'drinking area' on a Sunday morning. Further unpaid work schemes were proposed in partnership with local councils and charity shops. However, equipment requirements, health and safety issues and the irregular and low throughput of offenders made these schemes unworkable.

The RJ agencies, used in two pilot areas, utilised the RJ interview to suggest unpaid work that was acceptable to the victim and the offender. The unpaid work was tailored to each offence and included restoring church grounds and school maintenance. Consequently, the RWC was available for a wider variety of offences in these two pilot areas than in the remaining five. However, the two areas using RJ organisations did not use the RWC more frequently during the pilot, suggesting there were other limiting factors.

Strategic issues

Several strategic issues appeared to contribute to the low take-up of the RWC. Some respondents cited lack of knowledge and training, and unfamiliarity with RWCs as reasons for their low use. Training varied greatly across the pilot areas. Some custody sergeants did not attend training on RWCs, but were simply asked to read the literature. Some were trained jointly with the CPS. Visits to the probation service's unpaid work schemes by the CPS and custody sergeants were sometimes not offered or not attended.

Most pilot areas found it difficult to raise awareness and maintain momentum for this new condition among custody sergeants and police officers in a

busy custody suite environment, when it could be applied to so few cases. Some attempts to promote the RWC were reportedly met with hostility.

The timing of the RWC pilot was out of step with the ongoing development of the conditional cautioning scheme. Complex conditions such as the RWC need to be as easy to use as possible. If the RWC pilot had been run 18 months later it may have benefited from the streamlining of conditional cautioning procedures introduced in October 2007, after the end of the pilot.⁸

Respondents did not perceive the RWC to be sustainable. The probation service's unpaid work schemes were considered unsuitable for RWCs on a sustained basis and the RWC was believed to be very resource-intensive in relation to the outcome achieved.

Nearly all respondents from the probation service were concerned about one or more of the following issues:

- placements for low-level first and second-time offenders on the unpaid work schemes created tension with the probation service's principal business direction, which is to take on persistent offenders;
- using an RWC counted towards police business targets, but placements of these offenders on to unpaid work schemes did not count towards probation service targets;
- the ability of the probation service to take on supplementary clients in a service that is already stretched to capacity – several areas spoke about standing down offenders referred by the courts because their work schemes were full;
- the risk of 'contamination' to low-level offenders on RWC schemes, where they would be mixing with higher-level offenders.

8 The implementation of a revised Code of Practice for conditional cautioning and the introduction of the sixth edition of the Director's Guidance on conditional cautioning on 26 January 2010 further streamlined the referral process by removing the requirement for a PACE-compliant admission to the offence (the offender must admit the offence at the time the caution is administered); making it a requirement that referral to the CPS for a conditional cautioning decision must be by telephone (once systems have been established); and the police are only required to submit a MG5 (case summary) to the CPS to obtain a conditional cautioning decision.

Although the RJ agencies were happy to participate in the RWC pilot, both felt that the RJ approach was more beneficial to the victim and offender than the RWC on its own. They were concerned that the RWC should not be seen as an alternative to RJ.

Lessons learnt in the RWC pilot implementation

Multi-agency co-operation was commonly mentioned as the most successful element of the pilot implementation. Respondents from all three agencies (CPS, police and probation service) felt they had benefited from working together. The opportunity to understand more of each other's work within the Criminal Justice System was considered to be valuable. This is an enthusiasm that could be built on in future pilot implementations.

Respondents felt that the guidance provided on the pilot implementation would have been more helpful if it included the following:

- more advice on the types of offence for which the RWC could be used;
- clear division of responsibility between the police and the probation service;
- clear guidance on which agency was responsible for monitoring;
- clarity on the number of unpaid work hours allowed for an RWC;
- clear legal guidance for the RWC, in particular how closely the work placement must be linked with the offence;
- access to legislative documents relating to the RWC;
- specific guidance on how outside agencies, such as RJ organisations, should use the RWC.

Most pilot areas directed the funding they received to the work provider, the probation service or an RJ organisation, to pay for the reparative work placements. The police also received funds to carry out the required monitoring. Practitioners who had been involved in managing the budget felt the money had been used well.

RJ practitioners stressed that this kind of bespoke reparative work was more resource intensive than using unpaid work schemes, because each workplace needed to be health and safety checked.

They were concerned that this level of funding might not be forthcoming if the pilot was rolled out on a national basis. They were also concerned about the continued funding of RJ itself, which was already running and had good results without the RWC.

The two pilot areas that used RJ agencies felt that the few RWCs administered worked well because RJ usually works on a one-to-one basis with offenders and victims – ideal for the low throughput of RWC referrals.

One pilot area was very positive about the RWC and wanted to extend its use after the close of the pilot using the RJ process. This area had two successful referrals in the very short time they ran the pilot (between June and September 2007). They also had four potential referrals in October 2007 that they were unable to process as the pilot had finished.

As the RWC was rarely used during the pilot there was insufficient data for a robust outcome evaluation – one of the original objectives of the pilot. As a result the research focused on implementation issues. From the in-depth interviews it was found that the RWC, in the form used in this pilot, was not considered useful as a condition of a caution by many of the respondents. However, a provision within the Police and Justice Act 2006, which means that reparative work does not need to be directly linked to the offence, may make the RWC more workable.⁹

Another objective of the pilot was to see how the RWC worked in relation to community payback.¹⁰ This could not be assessed as the RWC was so infrequently used.

A number of respondents felt that this pilot achieved a very low level of success. The question in the interview regarding successful elements of the pilot received some hostile and frustrated responses. There was a perceived disparity between the effort and preparation involved in setting up the pilot in each area and the low or non-existent number of referrals achieved. Several respondents were frustrated by the lack of consultation with frontline practitioners. They felt that they were asked to implement a 'flawed' project and that, by association, they had become factors in this failure.

⁹ This provision has not been implemented yet.

¹⁰ Community payback is a court order requiring defendants to carry out between 40 and 300 hours of compulsory unpaid work.

Implications for future pilot implementations

The timing of pilots needs to be carefully considered. In this pilot, time-limited funding from the Respect Action Plan meant the RWC was 're-launched' at an inappropriate time, before an optimal stage of conditional caution development was in place and the scheme fully embedded within areas. This severely limited its usefulness.

All stakeholders need to be identified and engaged, especially those who are at the 'frontline' of the implementation. Identifying and consulting with those who would be instrumental in implementing the pilot, such as custody sergeants and police officers, at the planning stage of the pilot may have improved the outcome. It would also give policy makers information about the practicality of administering the pilot, and highlight local priorities that may take the focus away from the RWC.

The goodwill of stakeholders involved in policy pilots is invaluable and should be used wisely. The pilots that stakeholders are asked to deliver should have a good chance of being fully implemented, in terms of running to term and producing evidence that allows policy makers to assess if national roll out should take place. Many practitioners took on this pilot in addition to their normal duties and out of goodwill; this should be clearly acknowledged and recognised. In their feedback on this pilot many respondents expressed their frustration and dissatisfaction with the experience.

Policy development needs to identify how practitioners can be motivated to change their behaviour. Respondents suggested that this pilot might have enjoyed more success if high-ranking officers had been more proactive in promoting this initiative or if administering the RWC had become a business target.

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