

**Conditional Cautioning in England & Wales: A Socio-legal
Analysis of Policy and Practice**

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**Thesis submitted to the University of Nottingham for the degree of
Doctor of Philosophy**

June 2021

ABSTRACT

Using a mixed methodology, this thesis empirically examines how police officers in England & Wales use their discretion when making decisions on the use of conditional cautions. After explaining why this is an important topic for research, and setting out the research questions posed, the study begins with a basic quantitative analysis of original statistical data to reveal how often conditional cautions are administered in England & Wales, where, to whom, and for what offences. Drawing on original qualitative data from case studies and interviews with relevant stakeholders and decision-makers in three police force areas, and forming the bulk of the thesis, the research then turns to a systematic and probing critical analysis of the conditional caution in action. More specifically, I examine how the stated policy aims and legal rules underpinning the conditional caution have been operationalised at an organisational level; how these have been interpreted within police working cultures and working rules; and how decisions are made in practice. The key finding of this research is that the aims of rehabilitation have been foregrounded in decision-making, both at the organisational and the individual level. Finally, I explore the advantages and risks of this operational focus on rehabilitation, and their implications for current understandings of police discretion, culture and professionalisation and the balance between rehabilitation and proportionality and restorative justice.

Acknowledgements

Many have made this project possible and have kept me through my PhD marathon in uncountable big and small ways. A strict word count prevents me from singling out all those who have supported me, but thanks are due to

- the police forces, Strategic Leads, authorisers and officers who were enthusiastic and encouraging of my work and willing to take time out of their busy days to explain their decision-making
- the ESRC for seeing the potential in my project and funding my PhD, and the DTC team at the University of Nottingham for their support and encouragement
- my supervisors, Candida Saunders and John Jackson for helping me see the big picture and being on my side throughout the process
- all those who read and commented on my work and gave me space to bounce ideas around. Plagiarism is stealing ideas from one person, but research is taking ideas from many, and my research would be a lot weaker without discussions with individuals in the police, College of Policing, EU Agency for Fundamental Rights, Independent Custody Visiting Association and staff at the School of Law and Sociology at the University of Nottingham and Sheffield. Particular thanks to Mike McConville, David Hayes and Peter Neyroud who provided invaluable advice
- all the support staff at the University of Nottingham, who made the process easier and were an unfailing source of smiles and encouragement
- my friends and family, and those who are both, who rallied around when I needed it, providing coffee breaks, wine sessions, Park Runs, Ceilidh dances and board game evenings to get through what could otherwise be a lonely journey.

List of abbreviations

ACPO	Association of Chief Police Officers
APP	Authorised Professional Practice
CARA	Conditional Cautioning and Relationship Abuse
CGL	Change Grow Live
CJI	Centre for Justice Innovations
CJSSS	Criminal Justice: Simple, Speedy, Summary
CPS	Crown Prosecution Service
DBS	Disclosure and Barring Service
DCC	Deputy Chief Constable
DPP	Director of Public Prosecutions
FOC	Foreign Offender Condition
FOI	Freedom of Information
FPN	Fixed Penalty Notice
ICV	Independent Custody Visitor
IOM	Integrated Offender Management
L&D	Liaison and Diversion
LASPO Act 2012	Legal Aid, Sentencing and Punishment Act 2012
MoJ	Ministry of Justice
NCRS	National Crime Recording Standard
NPCC	National Police Chiefs' Council
PCC	Police and Crime Commissioner
PCSO	Police Community Support Officer
PNC	Police National Computer
PND	Penalty Notice for Disorder
UWC	Unpaid Work Condition
WG	Working Group

List of figures

Figure Number	Title	Page number
1	Number of conditional cautions administered by the police and CPS between 2010/11 and 2016/17	84
2	National police use of out-of-court disposals between 2011/12 and 2015/16, year ending June	85
3	Number of conditional cautions administered in CPS areas 2016/17	87
4	Number of conditional cautions administered per 1,000 adult cautions in each force area between 2013/14 and 2016/17, year ending December	89
5	Total number of conditional cautions per 1,000 cautions between 2013/14 and 2016/17	90
6	Total number of conditional cautions per 1,000 cautions between 2013/14 and 2016/17, excluding the three pilot forces	90
7	Conditional cautions used for summary-only and triable either-way offences by the CPS between 2010/11 and 2016/17	92
8	CPS use of conditional cautions for summary offences 2016/17	93

9	Police use of conditional cautions for offence categories 2016/17	94
10	Percentage use of conditional cautions by CPS for males and females between 2010/11 and 2016/17	96
11	Types of conditions administered by the CPS 2010-2017	97
12	Types of conditions administered in 3 police forces between 2013/14 and 2016/17	99
13	CPS decisions following a breach of conditional caution 2010/11-2016/17	101
14	Structure of Central Team in Airedale	110
15	Structure of conditional caution decision-making across Beauxvale and Cherryvale	112
16	Decision-making structures in the three police forces	144

Contents

Acknowledgements	iii
List of abbreviations.....	iv
List of figures	v
Chapter One: Introduction	1
1.1 Introduction.....	1
1.2 Wide and conflicting policy aims.....	2
1.2.1 Substantive policy aims	2
1.2.2 Wider criminal justice aims	5
1.2.3 Is the conditional caution effective in achieving these aims? ..	9
1.2.4 Balancing the aims of the conditional caution.....	10
1.3 The current system of out-of-court disposals.....	12
1.3.1 A condition-centred system of out-of-court disposals	14
1.4 Police discretion in administering conditional cautions	18
1.4.1 What is discretion?	18
1.4.2 Lazy cop-outs and soft on crime?	21
1.4.3 Discrimination and disparity	23
1.5 My research questions	25
1.6 Thesis outline	26
Chapter Two: Laws, rules and policies	27
2.1 Introduction.....	27
2.2 The first decision: whether to administer a conditional caution... 29	
2.2.1 The evidential test	30
2.2.2 The public interest test.....	31
2.2.3 Conclusion: a permissive framework for determining whether to administer a conditional caution.....	39
2.3 The second decision: which conditions to attach	40
2.3.1 Substantive condition types	40
2.3.2 Victim consultation and the Community Remedy	42
2.3.3 Three guiding principles.....	43
2.3.4 Conclusion: An all-singing, all-dancing disposal?	45
2.4 The third decision on what to do in the event of a breach	45
2.4.1 The three available options.....	45
2.4.2 Conclusion: a process of determining non-compliance	47
2.5 Conclusion: permissive rules and priorities.....	48

Chapter Three: Researching decision-making	50
3.1 Introduction: mixed methods research.....	50
3.2 Quantitative analysis	50
3.2.1 A new data set.....	50
3.2.2 Limitations to Freedom of Information data	51
3.3 Qualitative analysis.....	53
3.3.1 Interviews with national Strategic Leads.....	54
3.3.2 Case study analysis in three police force areas.....	55
3.3.3 Access negotiations.....	55
3.3.4 Researching force structure.....	57
3.3.5 Researching police culture and decision-making.....	59
3.4 Data analysis	70
3.5 Ethical considerations.....	72
3.5.1 Malfeasance	72
3.5.2 Anonymity	74
3.5.3 Reciprocity.....	76
3.6. Limitations of this methodology	77
3.6.1 Sampling.....	77
3.6.2 Interviews as a method.....	78
3.6.3 Research in a time of change	79
3.7 Conclusion: a naturalistic insight into decision-making.....	80
Chapter Four: Quantitative overview.....	82
4.1 Introduction.....	82
4.2 How many conditional cautions are administered each year?	83
4.3 Where are conditional cautions administered?	86
4.3.1 CPS	86
4.3.2 Police.....	88
4.4 For which offences are conditional cautions administered?	92
4.4.1 CPS	92
4.4.2 Police.....	94
4.5 To whom are conditional cautions administered?	95
4.6 What condition types are used?	97
4.6.1 CPS	97
4.6.2 Police.....	98
4.7 What is the compliance rate of conditional cautions?	100

4.7.1 CPS	100
4.7.2 Police.....	102
4.8 Conclusion: a varied picture of conditional cautions	103
Chapter Five: Organisational structures to guide decision-making	
106	
5.1 Introduction.....	106
5.2 Strategic Leads' motivation for rehabilitation	106
5.2.1 National strategy for out-of-court disposals	107
5.2.2 Strategic Leads as change-makers	108
5.3 Organisational structure to increase the use of conditional cautions	110
5.3.1 The structure of decision-making.....	110
5.3.2 Streamlined process to administer conditional cautions	112
5.3.3 Forcewide training on conditional cautions	115
5.3.4 Training resources.....	119
5.3.5 Ongoing support and guidance.....	120
5.3.6 Administrative support to monitor compliance	125
5.3.7 Conclusion: a co-ordinated approach to embed the disposal	127
5.4 Organisational structures to administer rehabilitative conditions	128
5.4.1 Offender Needs Assessment.....	128
5.4.2 The Community Remedy document	130
5.4.3 Conditions to support offender rehabilitation	131
5.4.4 Conditions for victim reparations	135
5.4.5 Conditions to punish the offender	137
5.4.6 Conclusion: A map of rehabilitative conditions	140
5.5 Organisational structure to secure compliance with the conditional caution	141
5.6 Conclusion: embedding rehabilitation.....	144
Chapter Six: A culture of compassion guiding decision-making	146
6.1 Introduction: what is police culture?.....	146
6.2 Job satisfaction.....	149
6.2.1 Making a difference	149
6.2.2 Ownership of police work.....	153
6.2.3 Officers' perceptions of organisational expectations.....	155

6.3 Confidence in the success of rehabilitation through conditional cautions	161
6.3.1 Data on the effectiveness of rehabilitation	162
6.3.2 Data on the effectiveness of victim satisfaction	164
6.3.3 Individual success stories	166
6.3.4 Cautious optimism in the success of conditional cautions ..	169
6.3.5 Conclusion: experience as a form of evidence	171
6.4 The role of officers' feelings in decision-making	173
6.4.1 Categorisation of offenders.....	173
6.4.2 Sympathy with the vulnerable offender.....	175
6.4.3 Giving a chance to a good offender.....	176
6.4.4 Antipathy and the bad offender.....	177
6.4.5 Conclusion: mitigating feelings	181
6.5 Conclusion: evidence of a culture of compassion.....	182
Chapter Seven: Deciding whether to administer a conditional caution.....	187
7.1 Introduction.....	187
7.2 Evidential test	187
7.2.1 Admission of guilt.....	188
7.2.2 Conclusion: interpreting safeguards in the interests of the offender	190
7.3 Public interest test	192
7.3.1 Offence seriousness	193
7.3.2 Offending history	195
7.3.3 Victim consultation.....	198
7.3.4 The role of the authoriser.....	202
7.3.5 Conclusion: a permissive public interest test	205
7.4 Consequences of a rehabilitative approach i) Diversion from court	207
7.5 Consequences of a rehabilitative approach ii) up-tariffing and net-widening	211
7.5.1 Inherent up-tariffing in the two-tier system of out-of-court disposals	212
7.5.2 Up-tariffing in the interest of the offender.....	215
7.5.3 Reluctant net-widening for school fights	217
7.6 Conclusion: rehabilitation results in both diversion and (often well-meaning) up-tariffing.....	219

Chapter One: Introduction

1.1 Introduction

Adult conditional cautions are one of six types of out-of-court disposal. They enable the police and prosecutors to attach, sometimes onerous, conditions to the offender which, if not complied with, can result in him being charged for the original offence.¹ It is therefore the most impactful form of out-of-court disposal, as it strongly encourages offenders to comply with such conditions. This system of out-of-court disposals is undergoing seismic changes, which will likely result in conditional cautions being one of only two types of out-of-court disposals available. Despite the rapidly rising importance of the conditional caution, there is a dearth of research in this area, particularly around police decision-making. This thesis aims to better understand how the police decide how to use the disposal and the structural and personal factors affecting this decision-making.

This Chapter introduces the adult conditional caution before analysing the policy objectives behind their use (Chapter 1.2) and sets them into the context of the wider, and changing, system of out-of-court disposals (1.3). As the police take the centre stage in this decision-making and have a wide discretion in the use of conditional cautions, I then focus on the police use of discretion and the factors influencing their decision-making (1.4). This Chapter then sets out my research questions (1.5) and maps how these will be answered in my thesis (1.6).

A brief introduction to conditional cautions is first required, though is comprehensively addressed in Chapter Two. Conditional cautions for adult offenders, created by the Criminal Justice Act 2003, are the latest type of out-of-court disposal.² Police and prosecutors are empowered to dispose of a case by means of a conditional caution and must also follow the Code of Practice for Conditional Cautions and the Director of Public

¹ In this thesis, offenders and victims are referred to as 'he' and decision-makers are referred to as 'she' to ensure clarity.

² The system of out-of-court disposals for juvenile offenders, including the youth conditional caution, falls outside the scope of this thesis.

Prosecution's Guidance on Conditional Cautions. Conditional cautions are intended to offer a proportionate response to low-level offending (Code of Practice: s.1.4). The police or prosecutor may administer them for summary-only³ or triable either-way offences,⁴ and in exceptional circumstances, for indictable offences.⁵ Conditional cautions may be used where the offender has admitted guilt for the offence and accepts the disposal (Criminal Justice Act 2003: s.23). They empower the decision-maker to attach conditions, which if not complied with, may result in the offender being charged for the original offence.

1.2 Wide and conflicting policy aims

These conditional cautions, and out-of-court disposals more widely, are intended to fulfil varied, and in some cases conflicting, policy aims. Decision-makers facing these contradictory policy aims have no clear guidance as to which to prioritise in the individual case, as demonstrated below.

1.2.1 Substantive policy aims

The substantive policy aims of the conditional caution were identified through an analysis of the policy justifications for the creation of adult conditional cautions in relevant Home Office and Parliamentary debates, and National Police Chiefs' Council (NPCC) and College of Policing documents. The analysis of these sources reveals the four overarching aims of the conditional caution: rehabilitation, reparation, punishment and the departure of foreign offenders. While the discussion below focuses on the adult conditional caution, references to the wider policy aims of out-of-court disposals are made where appropriate.

Firstly, one core aim of the conditional caution is to rehabilitate the offender. The Home Office stated that one of the advantages of out-of-court disposals generally is that they allow the offender to avoid the publicity and stigma surrounding a court appearance (Home Office, 2002: 71). The Home Office further identified that conditional cautions

³ Minor offences normally dealt with in the Magistrates' Court such as common assault or battery.

⁴ More serious offences that may be tried at the Magistrates' or Crown Court.

⁵ The most serious offences, such as rape and murder, can only be tried at a Crown Court and are generally considered unsuitable for an out-of-court disposal.

facilitate the police tackling offending behaviour at an early stage and provide a greater opportunity to steer individuals from future offending. This rehabilitation is achieved through providing individual-focused, correctional-based interventions as well as a more integrative approach in helping the offender resettle in society (Raynor and Robinson, 2009).

When piloting a new approach to conditional cautions, explained in Chapter 1.3.1, the government emphasised the need to adopt a 'meaningful approach with real consequences for offending behaviour' (HM Government and College of Policing, 2014). In the recent White Paper on sentencing, the government argued that out-of-court disposals were 'an opportunity to provide intervention and support to potential offenders at the early stages in criminal behaviour, diverting them into rehabilitative services to help reduce escalation of offending' (2020: 161).

The NPCC seized upon this focus on rehabilitation. In its strategy on out-of-court disposals, it emphasised that the system of out-of-court disposals aims to support vulnerable people in society by providing 'rehabilitative opportunities to offenders to turn their life around at the earliest opportunity' (2017: 4). Such rehabilitation, the NPCC argued, should address complex issues presented by the offender using a 'whole systems approach.' The NPCC thus signalled the need to look beyond individualistic causes of offending behaviour and work with partners to provide support (2017: 4).

Secondly, conditional cautions are intended to facilitate victim reparation through the payment of compensation and restorative justice strategies. Victim reparation, as a conditional caution outcome, sits within the government's repeated promises to put victims at the 'heart of the criminal justice system' (Home Office, 2002; Jackson, 2003). The 'Strategy on Restorative Justice', later released, made it clear the needs of the victim, and efforts to improve restorative justice, were encouraged throughout the criminal justice system, where appropriate (Home Office, 2013b). The new approach to out-of-court disposals, set out in Chapter 1.3.1, aimed at 'putting victims at the heart of the system' (HM

Government and College of Policing, 2013). Such reparative strategies, while focusing on restoring the rights of the victim, can also contribute to the rehabilitation of the offender, who is shown the effects of his offending behaviour (Strang et al., 2013). The latest iteration of the Code of Practice for conditional cautions states that victim reparation is, in certain circumstances, to take priority over costs associated with other conditions (s.2.43).

Clamp and Paterson provide useful classifications to consider how this victim focused process and outcomes sits within wider literature of restorative justice. They classify a reformist approach to restorative justice as one that seeks to transform criminal justice practice from the inside-out, in adopting processes of restorative justice within the traditional system, rather than as a replacement or supplement to it (2016: 19). This can be seen in the government's strategy to adopt a more restorative justice approach within the formal criminal justice process. The use of reparations and apologies as a condition attached to the caution can be perceived as a maximalist approach to restorative justice, in focusing on the outcomes to be reached, rather than the process itself (Clamp and Paterson, 2016: 20-21). Proponents of a maximalist approach to restorative justice argue that the process of criminal justice can become more restorative by increasing reparative opportunities for victims, as well as sanctions that will hold some meaningful value for the offender. Rather than focusing only on processes that bring parties together, maximalists would argue that restorative justice occurs when steps are taken to repair the harm caused. In this way, the emphasis on victim consultation and the use of some restorative and reparative conditions can be perceived as a narrow interpretation of restorative justice practices.

Thirdly, conditional cautions can be used to punish the offender. Until the introduction of the Police and Justice Act 2006, punishing the offender was not considered a distinct aim of the conditional caution. Prior to this Act, conditional cautions nevertheless incorporated some intrinsically punitive consequences, such as the effect on the individual's criminal

record and the need to comply with conditions. However, it was only after the 2006 Act that conditions could be attached for the explicit purpose of punishing the offender. Currently, the only punitive condition available is a fine up to £250 (Criminal Justice Act 2003: s.22(3A)), which should only be attached where the other two conditions are insufficient as a response to the offending behaviour (Code of Practice: s.2.25).

The fourth substantive aim of the conditional caution is the removal of foreign offenders. The foreign offender condition (FOC), introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s.134, empowers the decision-maker to bring about the departure of a foreign offender with no legal right to remain in the United Kingdom and ensure that they do not return for a certain period. This condition can be given on its own or in conjunction with another condition (Code of Practice: s.2.19). However, the Director's Guidance requires that, if relevant, the FOC should be given priority, and although other conditions may be used, they should not delay the removal of the offender (s:15.2.4). This aim of conditional cautions therefore only manifests in relation to one group of offenders, yet when it so manifests it takes priority over the other stated objectives of the disposal.

1.2.2 Wider criminal justice aims

In addition to these substantive, individual-focused aims of the disposal, conditional cautions facilitate wider criminal justice aims of efficiency, proportionality and improving victim satisfaction. The recent focus and development of the conditional caution fits within a wider paradigm shift in the perception of the central importance of the criminal trial. Zedner suggests that one of the reasons behind the development of the system of out-of-court disposals was a feeling of 'frustration' with the criminal justice paradigm of prosecution-trial-conviction-sentence, perceived by the public as slow, cumbersome and ineffective (2016: 8). This paradigm is challenged as courts are seen as not cost-effective, preventative, necessary, appropriate or effective (Ashworth and Zedner, 2008: 25). Ashworth and Zedner reason that this paradigmatic change is the result of a cluster of fiscal and managerial pressures, as the state needs to

concentrate limited resources to reduce the overall pressure of the court system and minimise delays.

Such a shift can be traced through policy changes since 2001. In 2001, New Labour announced its approach to reduce the 'Justice Gap' and ensure more offences were dealt with by a formal sanction, whether prosecution or out-of-court disposal (Labour Party). New Labour progressively moved away from the norm of prosecution-court-sentence-release and instead created disposals designed to more quickly 'bring offenders to justice' (Solomon et al., 2007: 36-40). This was one part of a real drive towards improving the efficiency of the criminal justice system, for the purported benefit of the victim, the offender and wider community (Brogden and Ellison, 2012). Victims benefit from a speedy resolution as their rights are vindicated at an earlier stage and they are spared the experience of appearing in court, while the offender is spared the human costs, such as stigmatisation, of prosecution. Finally, the community benefits as diverting cases from courts reduces the courts' workload and promotes the smooth functioning of the criminal justice system (Allen, 2017: 13). The need to respond efficiently to offending behaviour meant the police were given new powers and more tools in their toolbox to do so effectively.

Conditional cautions were introduced by the Criminal Justice Act 2003 as one of these tools. It sat within the government's aims of improving the criminal justice system as communicated in the 'Justice for All' strategy (Home Office, 2002) and later emphasised in 'Criminal Justice: Simple, Speedy, Summary' (CJSSS) (Constitutional Affairs, Home Office and Attorney-General, 2008). The then Lord Chancellor envisaged a simpler criminal justice process, dealing with cases transparently and in a way that prevented reoffending without using the court process; faster, in speeding up the court process for those who needed it; and facilitating a more proportionate approach to the use of summary justice while protecting due process rights.

The conditional caution was piloted in six police force areas before national rollout. The evaluation found that, of the 201 cases resolved through conditional caution, just under half (48%) were resolved on the same day or within 14 days of the offence being committed (Blakeborough et al., 2007: 3). The researchers concluded that, even including the lengthier restorative justice conditions, the average time from offence to the administration of conditional cautions was 48 days, approximately 65 days faster than a prosecution. In 2007, the Home Office rolled out conditional cautions across all police forces in England and Wales (Constitutional Affairs, Home Office and Attorney-General, 2008). It was anticipated that conditional cautions would enable 30,000 cases to be diverted from court, creating capacity for the courts to tackle more serious cases (2008: 241). In a report released two years after the nationwide rollout of conditional cautions, the disposal was identified as a pragmatic response to operational challenges, giving police officers a quick and effective means of dealing with less serious offences, while supporting the rehabilitation of the offender and victim reparation (Office for Criminal Justice Reform, 2010). The recent White Paper on sentencing argues that out-of-court disposals 'allow the police to deal promptly with low-level offending without recourse to the courts. They can maximise the use of officer time, achieving a satisfactory outcome for the public while allowing officers to spend more time on frontline duties tackling more serious crime' (Ministry of Justice 2020a: para 161).

In addition to these efficiency aims; the conditional caution is also aimed at achieving proportionality in sentencing and criminal justice response. Proportionality, or just deserts, requires that a criminal justice outcome should be based on the seriousness of the offence (von Hirsch, 1992). It applies at a policy level and for individual decision-makers. The principle serves to limit the excess of criminal justice penalties by setting an upper limit on what is considered a fair punishment (Hayes, 2019: 164-201). A potential consequence of rehabilitation is that the individual can be sentenced based on his needs, rather than the offence he has committed. Hayes proposes that the principle of proportionality should

act as a 'critical friend' against the excesses of a rehabilitative ideal (2019: 185-187). In this way, rehabilitation, when coupled with proportionality, can support penal minimalism: the belief that punishment should inflict the least harm possible on the offender (2019: 88-100). An offender can be offered support, while ensuring that such well-intentioned support does not result in a disproportionate sentence.

The principle of proportionality can also be applied at an abstract level. Court proceedings should generally be reserved for cases of moderate or greater seriousness, permitting considerations of cost and speed to be considered when diverting offenders from court (Council of Europe, 1987). A proportionate, out-of-court response to low-level offending is therefore linked to the need to improve the efficiency of the criminal justice process. According to Ashworth, the 'compromise' that conditional cautions make with normal standards of procedural fairness, in being disposed out of court, can be understood with reference to the proportionality principle, and that such compromise is a 'matter for regret and is justifiable only on pragmatic economic grounds' (2015: 11-12).

Finally, conditional cautions are aimed at improving victim satisfaction in the criminal justice system. This is a process-related aim which complements the outcome-related victim reparations set out in Chapter 1.2.1 above. It is part of the government's attempts to foreground the victim in the criminal justice system (Ministry of Justice, 2019a; 2012), a movement ongoing since at least the 'Justice for All' Report in 2003 (Jackson, 2003: 311-312). The legislation on conditional cautions requires the decision-maker, where appropriate, to consult the victim on whether to administer the disposal and the conditions to attach. This requirement was clearly emphasised by the Crown Prosecution Service (CPS) in the consultation on the national implementation of the disposal. In 2007, the CPS submitted evidence that 'central to this new procedure' will be 'much more' consultation with the victim who will be canvassed wherever possible and must be consulted where the condition will affect him in some way (2007).

As part of this consultation, each Police and Crime Commissioner is required to publish a community remedy document (Anti-social Behaviour, Crime and Policing Act 2014: s.101(1)). This document informs the public about the available out-of-court conditions that may be used as part of a community resolution or conditional caution. Prior to setting conditions, the police are required to make reasonable efforts to obtain the views of victim(s) as to whether the offender should carry out any of the actions listed in this document (s.103). The Code of Practice for conditional cautions states that the victim's views are important but not conclusive, and that the decision-maker must take his views into account wherever possible but must make the decision herself (Code of Practice: s2.48). However, the use of out-of-court disposals does not automatically result in improved victim satisfaction with the criminal justice system. Sanders observed that victim consultation does not involve victims of all crimes, and victims' views are rarely instrumental in decision-making, which can increase dissatisfaction with the criminal justice process (2001).

1.2.3 Is the conditional caution effective in achieving these aims?

The effectiveness of the conditional caution in achieving these aims is an important backdrop to decision-making and is briefly summarised here. Neyroud conducted a meta-analysis on the effectiveness of police-managed out-of-court disposals, combining the results of multiple scientific studies (2018). He found that, compared to prosecution, out-of-court disposals are more effective in reducing harm and reoffending and sustaining victim confidence and satisfaction. In addition, disposals with conditions appear to be more cost-effective than prosecution (Neyroud, 2018: 17-19). Neyroud's conclusions are echoed by the Centre for Justice Innovation (CJI): that there is evidence that pre-court diversion: reduces reoffending; reduces the cost to the criminal justice system; improves victim satisfaction and may reduce criminal justice processing times (Robin-D'Cruz and Whitehead, 2019). The CJI also found pre-court diversion may be particularly applicable for specific groups of individuals,

notably vulnerable women, young adults and individuals with substance misuse problems and mental health illnesses.

The need to consider the effectiveness of interventions is an important facet of evidence-based and professional policing. This professionalism is an important context of the policing landscape affecting police decision-making at the policy and individual level (Sherman, 2013). This evidence-based approach drive is part of a wider move to professionalise the police. Such a change has various strands, such as the creation of the Code of Ethics and an emphasis on high standards of professional and intellectual excellence (Green and Gates, 2014). As professional decision-makers, the police are expected to be led by the evidence in what works in rehabilitating the offender and ensuring victim satisfaction.

1.2.4 Balancing the aims of the conditional caution

Conditional cautions may therefore be as effective, or more effective than court, at achieving the aims set out in Chapter 1.2. However, although there is evidence that, on balance, conditional cautions achieve the aims stated, how should they guide individual decision-making? The aims of rehabilitation, reparation and punishment and broader justice aims are typically presented as mutually beneficial (Home Affairs Committee, 2015: 4). However, there are underlying conflicts between these aims, which decision-makers must balance on a case-by-case basis. Ashworth concluded that the sentencing principles set out in the Criminal Justice Act 2003 are a 'shopping list' without a clear delineation of priorities (2015: 99). Specific aims are not given clear priorities and can in some cases, detract from each other.

Braddock questions whether there is a conflict between the 'intended beneficiaries' of conditional cautions as there is incoherence of these aims as 'the conditional caution suffers somewhat from an identity crisis' (2011: 206). This identity crisis is most striking when considering how the efficiency aims of the disposal should be achieved while supporting the rehabilitation or punishment or deportation of the offender, victim reparation, or a mixture of these conditions. Braddock underlined the sometimes mutually exclusive nature of these aims as, for example, the

successful use of restorative justice requires a 'significant investment of resources' (2011: 206). He argues that an effective diversion that supports the offender and victim typically requires additional resources to be made available to the police and course providers and may therefore result in additional costs not immediately apparent. These additional resources are particularly pertinent given that the conditional caution is one of only two out-of-court disposals in which conditions can be attached to the disposal (Gibson, 2020a; 2020b).

The disposal may be a genuine diversion in the sense that it removes the offender from the court process. In diverting cases from court, the conditional caution can be a more proportionate, effective and thoughtful approach to low-level offending behaviour. However, out-of-court disposals have also been shown to expand the reach of the criminal justice system to include low-level offences or incidents that previously would not have resulted in any formal sanction (Cohen, 1985).

Such a discussion of alternative, community-based punishments sits within Cohen's net-widening and mesh thinning metaphors. Net-widening describes how more individuals are brought into the criminal justice system, expanding the net of social control to include more individuals who would not previously have been processed. A 2010 report on the system of out-of-court disposals suggests that the availability of cannabis warnings and Penalty Notices for Disorder resulted in an increased number of individuals brought into the justice system between 2004 and 2008 (Office for Criminal Justice Reform: 9).

Far from being a benevolent approach to support individuals, Cohen warns that community support should be considered sceptically as more individuals are brought into some means of control which supplements, rather than replaces, previous forms of punishment (1985: 44). In addition, Cohen illustrated the concept of mesh thinning linked to up-tariffing, the concept by which the intensity of the intervention aimed at the individual increased. Such rehabilitative efforts can result in an offender receiving a conditional caution rather than a simple caution and,

potentially, later being prosecuted for failure to comply. Although out-of-court disposals are presented as a more proportionate response to offending than court, the focus on rehabilitation and bringing more offences to justice can result in a disproportionate outcome for offenders and increased costs for the criminal justice system.

1.3 The current system of out-of-court disposals

The system out-of-court disposals has grown organically in response to certain offending behaviours and government initiatives. It is not a tiered system, as there is no required progression through the available disposals. However, the individual disposals are set out below in order of punitiveness in terms of their effect on the offender's criminal record, based on the College of Policing out-of-court disposal framework (2020).

The **community resolution** is an informal, non-statutory disposal for dealing with less serious crime and anti-social behaviour, particularly for first-time offenders. The offender must accept responsibility for the offence and consent to the community resolution. Community resolutions normally include elements of restorative justice, such as offender-victim conferencing or apologising to the victim or reparative, such as repairing or paying for any damage caused. There are no legal consequences for failing to comply with the conditions and a community resolution does not enter on an individual's criminal record. However, the disposal will be recorded on the Police National Computer (PNC) and thus may be disclosed in an enhanced Disclosure and Barring Service (DBS) check.

The **cannabis warning** and related **khat warning** are non-statutory disposals introduced in 2004 that may be administered for a first-time offence of simple possession of these drugs, if the offender has made a clear and reliable admission to the offence. The warning will not form part of the offender's criminal record but will be recorded on the PNC and may be disclosed on an enhanced DBS check.

The **Fixed Penalty Notice** (FPN) was created by the Road Traffic Act 1988. It may be used for low-level traffic offences and certain non-traffic offences such as littering, dog fouling or fly-tipping. Several public bodies

are authorised to administer an FPN, including the police, Police Community Support Officers (PCSOs) and local authority authorised officers. FPNs may only be issued if an offence has been committed, an FPN is a proportionate response and there is evidence to support prosecution if the offender does not pay the fixed penalty. Penalties range from £50 to £80 and must usually be paid within 14 days. There is no requirement to accept guilt or consent to receive an FPN. It will be recorded on the PNC so may appear on an enhanced DBS check.

The **Penalty Notice for Disorder** (PND) is a specific type of FPN established by the Criminal Justice and Police Act 2001 to respond to disorderly behaviour. This disorderly behaviour includes 29 specified penalty offences such as drunken behaviour in designated no-drinking areas, as well as criminal damage (for property up to the value of £300) and theft (up to a retail value of £100) (Guidance for Penalty Notices for Disorder 2014: s.7). PNDs can be issued by police officers, PCSOs and accredited persons, depending on the offence type. PNDs may only be given where the decision-maker has reason to believe an adult has committed a penalty offence, the police have sufficient evidence to support a successful prosecution, and it is in the public interest to issue a PND. The offender must pay an immediate fine set at either £60 or £90. Offenders may also complete a PND-E, discharging his liability to be convicted of a penalty offence by paying for and completing an educational course relating to the penalty offence. A PND does not form part of a criminal record but is recorded on the PNC and may appear on enhanced DBS checks.

The **simple caution** may be used for a range of offences but is intended for low-level offending (Ministry of Justice, 2015a). Similarly to the conditional caution, the offender must admit his guilt and accept the caution. There must be sufficient evidence to provide a realistic prospect of conviction, but that it is not in the public interest to prosecute the offence. Unlike previously discussed disposals, simple cautions form part of an offender's criminal record and may be disclosed as part of a standard or enhanced DBS check.

To facilitate a simplified comparison between the existing out-of-court disposals, the following table has been adapted from the College of Policing Prosecution and Case Management information (College of Policing, 2020). The adult conditional caution is in bold.

Disposal Type	Offence Type	Evidential Standard	Admission of guilt required?	Offender consent required?	Forms part of a criminal record?
Community Resolution	Lower-level crime	Reasonable suspicion	x	✓	Disclosable on enhanced DBS check
Cannabis/ Khat Warning	First offence of cannabis/ khat possession for personal use	Reasonable suspicion	x	x	Disclosable on enhanced DBS check
Penalty Notice for Disorder	29 Penalty offences of low-level offences	Reasonable suspicion	x	x	Disclosable on enhanced DBS check
Simple Caution	Any offence (but aimed at low-level or first-time offences)	Realistic prospect of conviction	✓	✓	✓
Conditional Caution	Summary and either-way offences (police) and indictable offences (CPS)	Realistic prospect of conviction	✓	✓	✓

1.3.1 A condition-centred system of out-of-court disposals

In 2011, the Criminal Justice Joint Inspection published a report criticising the ‘piecemeal’ approach to the current system of out-of-court disposals (2011: 4). Following further research and scrutiny (Home Affairs Committee, 2015) the Ministry of Justice, College of Policing and NPCC developed a new two-tier system of out-of-court disposals to

replace the current model (2014). This new approach, piloted in 2015-16 in West Yorkshire, Staffordshire and Leicestershire, consists of only two forms of out-of-court disposals:

- **Community Resolution**
- **Conditional Caution**

This new two-tier system of out-of-court disposals, would require every out-of-court disposal to have some form of condition attached, aimed at rehabilitating the offender, providing reparations to the victim or punishing the offender. It will radically change the landscape of out-of-court disposals by removing the previously used disposals identified above. Eleven forces have thus far adopted the two-tier system, but this has resulted in inconsistency between forces (Ministry of Justice, 2020b). In the recent White Paper on sentencing, the Ministry of Justice moved from supporting the two-tier system of out-of-court disposals on a voluntary basis to proposing putting this change on a legislative footing, ensuring that all police forces use the same framework for out-of-court disposals (Ministry of Justice, 2020a: para 163). This will make the move to a two-tier system mandatory, though such a step had not been taken when my research was conducted.

This two-tier out-of-court system has been modified again to allow for only two disposals: the conditional caution and the community caution (Gibson, 2021b). Both disposals have a similar form to the conditional caution examined in this thesis, underlining the need to analyse this decision-making.

The Impact Assessment of the move to legislate the two-tier system of out-of-court disposals concluded that the implementation and ongoing costs of moving the remaining 32 forces to the two-tier model will be £600k. These costs will be incurred for the police in implementation costs for training and operational costs in increased use of conditional cautions, which take longer to administer; costs for CPS in charging more offenders following breaches of conditions; treatment costs of funding Pathways and loss of PND revenue (Ministry of Justice, 2020b). The

rationale for supporting this move is based on efficiency and equity. The Ministry of Justice outlined that 'voluntary transition to the two-tier model has stalled and the inconsistency in OOC frameworks across police forces means the current system is overly complex and inefficient. The inconsistency also leads to geographical discrepancies in the disposals individuals receive for the same behaviour' (Ministry of Justice, 2020b: para 8). The move to legislate the two-tier system also aims to provide a straightforward process of out-of-court disposals, focus on consulting victims and attaching conditions to ensure stricter repercussions for offending behaviour than is facilitated by simple cautions. By setting the intention to legislate for this change, the Ministry of Justice appears to be foregrounding the substantive aims of conditional cautions, rather than the aims of reducing costs to the criminal justice system and saving police resources.

This new two-tier approach to out-of-court disposals is not the only innovative approach to out-of-court disposals in England and Wales. Between 2011 and 2013, West Midlands Police conducted Operation Turning Point, a randomised control trial to analyse the relative effectiveness and cost of prosecution compared to a deferred prosecution (Neyroud and Slothower, 2013). This deferred prosecution is similar to a conditional caution as offenders are diverted from court to complete rehabilitative or reparative conditions. The offender may be charged for the original offence in the event of non-compliance. Unlike the conditional caution, however, there is no requirement for the offender to admit his guilt. This is crucial for suspects who may have less trust in the police, such as BAME individuals, who can still receive an out-of-court disposal without admitting guilt in police custody (Lammy, 2017). The evaluation of the Turning Point project found the interventions reduced future crime harm by 36% and reduced the cost of justice by 45% (Neyroud, 2018: 17-18). The government piloted this deferred prosecution approach, now known as 'Chance to Change', in three forces since 2019, which will run for 12 months (Ministry of Justice, 2017: 14)

and confirmed it continues to support these projects (Ministry of Justice, 2020a: para 165).

In addition, Durham Constabulary and Devon and Cornwall Police operate diversion schemes broadly similar to the system of adult conditional cautions. Durham Constabulary's 'Checkpoint' diversion scheme launched in 2015 (Durham Constabulary, 2021; Channel 4, 2020), while Devon and Cornwall launched their pilot 'Pathfinder' programme in 2017 (Devon and Cornwall PCC, 2017: 22). Through these schemes, offenders are offered a four-month contract with conditions to address the underlying causes of their offending behaviour, which acts as an alternative to prosecution. Unlike conditional cautions, successful completion of this contract results in the offender receiving a community resolution. The evaluation of the Checkpoint system reported a lower re-arrest and reoffending rate compared to other out-of-court disposals used in Durham (Weir, Routledge and Kilili, 2020).

Finally, Hampshire Constabulary have had dispensation from the Director of Public Prosecutions (DPP) to administer conditional cautions for cases of domestic violence and pioneered project CARA: Conditional Cautioning and Relationship Abuse. CARA was piloted in 2012, diverting appropriate domestic violence offenders to workshops to show offenders the impact of their domestic abuse (Hampton Trust, 2021). This project was evaluated through a randomised control trial (Strang et al., 2017), with similar projects launched in Dorset Police, Avon and Somerset and West Midlands Police.

These initiatives demonstrate how the system of out-of-court disposals is moving from a system of warnings and cautions without conditions, to one in which the police are more involved in working with the offender to offer appropriate support. Such initiatives are further evidence of the paradigm shift identified in Chapter 1.2.2 in the police taking centre stage in managing low-level offences outside court.

1.4 Police discretion in administering conditional cautions

Conditional cautions are therefore one of two out-of-court disposals that permit the police to attach conditions. As demonstrated in Chapter 1.2.4, these conditions are intended to serve a range of substantive policy and justice aims. It is therefore vital to learn how individual decision-makers interpret and apply the aims of conditional cautions in their decision-making. As the conditional caution has such important consequences for the offender, it accentuates the role of police discretion in this decision-making.

1.4.1 What is discretion?

This thesis focuses on the police constable and sergeant's discretion when making conditional caution decisions⁶ in balancing these aims and conforming to the legal framework. The research focuses on three key decision-making points: whether to administer a conditional caution; which conditions to administer; and what to do in the event of a breach.

When the conditional caution was first placed on a statutory footing, it replaced a similar, but informal 'caution plus' administered by police officers (Home Office, 2002: 71). The Criminal Justice Act 2003 codified this conditional caution and replaced the police with the CPS as the authorised decision-makers. However, this decision-making power, for the majority of cases, eventually returned to the police in 2012 (Legal Aid, Sentencing and Punishment of Offenders Act 2012: s.133). One of the reasons behind this change was, as the then Home Secretary, Theresa May stated, it demonstrated to the public that the government trusted the police, and so the public could too (Home Office, 2010). The change also reduced the time taken to administer conditional cautions as the evaluation of the implementation of conditional cautions found that police officers perceived that consulting with the CPS required 'an unreasonably large amount of preparatory work' (Blakeborough et al., 2007: 43).

⁶ See Chapter 3.3.5c. on this shared decision-making role.

The power of the police to act as a gatekeeper to the criminal justice system fits within longstanding research on police discretion. Gelsthorpe and Padfield observed that it is the decisions of the police that are ‘the stuff of justice’ in applying the legal rules on the ground (2011: 3). Dworkin famously illustrated discretion as the hole in the middle of a doughnut, bound by the rules around it (1977: 52). As a doughnut cannot exist without this space, so discretion is needed in decision-making. Rules cannot predict every situation the decision-maker will face, nor how the law should be applied to ensure the underlying policy is met (Davis, 1971: 4). Davis notes that while some cases should clearly be decided in a particular way, many cases fall within the grey area of legal guidelines and require officers’ discretion to choose between courses of action or inaction. Decision-making is fettered by policies or guidelines which differentiate between appropriate and inappropriate courses of action but permit the decision-maker to decide between two or more acceptable options (Bronitt and Stenning, 2011). Discretion is thus an inevitable and important feature of policing, faced with the inexhaustible variety of incidents in their work and empowers decision-makers to adapt to individual cases to mitigate some of the harshness of the law (Criminal Justice Joint Inspection, 2011).

Police discretion can be perceived as a positive element as it facilitates officers being sensitive to individual differences, rather than rigidly applying the same rules in all cases. In its recent Charging and Out-of-Court Disposals Strategy, the NPCC stated:

You cannot address vulnerability solely by the way of prosecution, it requires a more sophisticated and effective whole system approach where the Police Service are trusted as professional decision-makers who are able to access a range of partnerships from early intervention pathways, out-of-court disposals and where necessary, prosecution (2018: 1).

However, the re-establishment of the police as the primary decision-maker for conditional cautions resulted in a perceived vacuum of external accountability, as the police act as investigator, prosecutor and judge. In

addition, Wilson identifies that it is the lowest-ranking officer who is almost solely responsible for enforcing those laws which are the least precise and the most ambiguous (1968: 279). While conditional cautions must be authorised by an officer of at least the rank of a sergeant, it is the police constable who will investigate the case, speaking to the offender and victim to suggest a course of action.

Some external oversight is provided by the creation of Out-of-Court-Disposal Scrutiny Panels in 2015 (Home Affairs Committee, 2015: 13). Panels in each force, comprised of representatives from local magistrates, CPS, Victim Support, Youth Offending Teams and laypersons, analyse a sample of cases disposed through an out-of-court disposal (Gross, 2013). These Panels evaluate whether decision-making was appropriate and feed lessons to be learned back to the force. Reports should be published online to increase public confidence in the system of out-of-court disposals (Easton, Dowell and Hutchinson, 2015). Panels therefore provide some external accountability mechanism over this decision-making by the police.

As the gatekeepers to the criminal justice process, discretion also allows police officers to do nothing, and therefore to not pass cases to prosecutors, courts, prisons and probation (Goldstein, 1960: 543-94). Goldstein warns that police decisions not to invoke the criminal justice process tend to be invisible, as there is no outcome, and therefore difficult to monitor, challenge and control (1960: 552-554). This invisibility was highlighted in my research as I only focused on formally disposed cases, as do the out-of-court scrutiny Panels. Goldstein's cases, which never enter the system, therefore remain invisible in my research.

This police-controlled disposal also raises questions on whether the offender is free to consent to the disposal. Such consent must be voluntary and reliable, based on full information about the options available and not subject to explicit pressure to accept the conditional caution (*R v Durham Constabulary and another* [2005] UKHL 21: para 36). Yet, as there is a considerable imbalance between the powers of the

police and the suspect, the 'consensual basis of diversion is, at least in some cases, open to doubt' (Ashworth and Zedner, 2008: 26). There is a real danger that offenders will feel pressured to accept a conditional caution when this is an inappropriate decision, which may result in net-widening and up-tariffing in individual cases. Police decision-making in this area has also been criticised for allowing officers to take the easy shortcut in dealing with offences and can result in discrimination and disparity of decision-making, as demonstrated below.

1.4.2 Lazy cop-outs and soft on crime?

The conditional caution was introduced amid a climate of political discontent around the system of out-of-court disposals. In 2002, the Ministry of Justice introduced 'Offences Brought to Justice' targets (Home Office, 2005). These targets were designed to encourage officers to dispose of more offences with a positive outcome. However, these targets resulted in a perverse incentive to administer more out-of-court disposals to demonstrate police effectiveness, as the number of positive disposals administered demonstrated the police force's success (Sosa, 2012). While these offences brought to justice targets were eventually removed, there may be ongoing public concern that the police use out-of-court disposals as a lazy alternative to charging offenders (Drury, 2015). The then Minister for Policing, Criminal Justice and Victims emphasised that 'it is essential that the public do not think that offenders are "let off" when they receive an out-of-court disposal and that where the offender or the offence requires the powers of the court, it is the court process which is applied' (HM Government and College of Policing, 2013: 3).

There were also public concerns that out-of-court disposals are too soft on crime. This soft on crime rhetoric dogged the simple caution and surrounded other out-of-court disposals (Ministry of Justice, 2014). The new-two tier system of out-of-court was, in part, designed to 'overhaul the system of police cautions, and ensure that offenders always have conditions, such as victim redress, attached to their punishment' (Conservative Manifesto, 2015). In this way, conditional cautions were

marked as being distinct from simple cautions as they had real consequences for the offender. However, the CJI reported that 'the expression 'out-of-court disposals' perpetuates a sense that they are much less important than a disposal in court – in effect a soft option. If there is to be a real change in this perception a greater understanding about what amounts to a proportionate response to offending will be necessary (Criminal Justice Joint Inspectorates, 2011: 7).

Building on Braddock's 'identity crisis', we can recognise that conditional cautions are used to communicate disparate presentational messages to different groups. Officers need to balance making the right dispositive decision that is proportionate to the offending behaviour, considers the views of the victims, meets the government's requirements for an efficient, cost-effective criminal justice system, communicates that conditional cautions are tough while encouraging offenders to engage with the police and identify the causes of their offending behaviour. At the same time, the conditional caution sits within the government's approach to have a robust response to offending behaviour beyond the 'slap on the wrist' culture of the caution.

The recent Black Lives Matter protests and destruction of statues of persons with links to slavery bring this identity crisis to light. On the 7 June 2020, protestors pulled down a statue of Edward Colston in Bristol because of his links to the slave trade, causing £3,750 worth of damage (Avon and Somerset Police, 2020). Four people have been referred to the CPS to decide whether to charge the offenders. However, five individuals involved were considered suitable for a conditional caution. The conditions attached were thoughtful and targeted for the offence type:

1. Complete a questionnaire from the History Commission, in which they set out their reasons for their actions, as well as their concerns going forward.
2. Pay a fine of £100 to Nilaari, a Bristol-based charity supporting BAME communities.

3. Take part in two hours of environmental improvement work such as painting or the removal of rubbish/graffiti.

However, while this is a tailored approach to offending behaviour, and will likely require more of the offenders than the eventual court sentence, the media criticised it as being soft on crime. It comes as no surprise that the Daily Mail ran the headline that the 'Colston 'topplers' get slap on wrists: Five BLM activists quizzed after slave trader's statue was dumped in Bristol Harbour are let off with police cautions' (Paget, 2020).

This thesis does not set out to identify the public opinion on conditional cautions and out-of-court disposals, though such research would be timely. This example serves only to highlight how the police must balance the aims and messages of the conditional caution. They need to administer robust disposals that reduce reoffending, respecting offender's due process rights and encouraging them to accept the conditions, working with partners and making efficiency savings, while also demonstrating to the public that conditional cautions are a serious disposal and are not a lazy cop-out or soft on crime. This public perception and scrutiny are part of the wider policy context in which decision-makers must exercise their discretion.

1.4.3 Discrimination and disparity

In addition to considering how conditional cautions are perceived by the public, we must consider how the individual decision-makers perceive the disposal. Gelsthorpe and Padfield identify that discretion leaves professionals the space to engage in discriminatory activities and subvert policies with which they do not agree (2011: 1). Police discretion permits subjective views to come to the fore and inappropriately guide decision-making (Baumgartner, 1992). Such discriminatory decision-making occurs when decision-makers have regard to inappropriate criteria, such as gender, social class, disability or ethnicity, when making decisions. The Office for Criminal Justice Reform reported a disproportionate use of out-of-court disposals by gender, age and ethnicity (2010: 7). The report also warned that incomplete data on the use of out-of-court disposals meant they could not identify the extent of possible

discrimination occurring in practice. Disparity, on the other hand, occurs when discretion results in different decision-makers, or even the same decision-maker, coming to different conclusions about seemingly similar cases, or the same outcomes for different cases. The Office for Criminal Justice Reform found there was variation in how different police forces exercised discretion on out-of-court disposals. While some of the difference could be explained by local offender profiles and the crime mix, the variation also depended on training and guidance, quality assurance, performance management and the extent and nature of local and national strategic oversight (2010: 13-14).

This question of disparity and discrimination highlights the range of factors that influence police decision-making. Schneider (1992) emphasises that while rules are mandatory, other pressures act upon a decision-maker's discretion. Such informal demands can be organisational and social. Examples include the socialisation and training of the decision-maker and the internal dynamics within an institutional structure, including efficiency concerns. Feeley (1972) also identifies the role of the individual, and the social group, in interpreting these organisational and social pressures. He emphasises that individual decision-makers are not perfect representatives of the organisations in which they work. Instead of adhering to the rational-choice model of decision-making, which assumes legal actors will follow the organisational rules, Feeley argues that actors adapt to their environment and workload and have their own goals within organisations. When these personal goals come into conflict with formal organisational goals, organisational goals may be displaced, violated or ignored. Feeley argues for a functional-systems approach, focusing on rational individuals following the informal rules of the game within their organisation.

Drawing on these theories, I adopt a naturalistic approach to decision-making, perceiving organisational goals as merely one factor in decision-making, as individuals cannot be expected to comply with these rules merely because of their membership to that group (Orasanu and Connoll,

1997). It is not sufficient to identify the rules surrounding police decision-making; we must analyse the context in which these decision-makers operate. Naturalistic decision-making emphasises that knowledgeable decision-makers make small, everyday decisions to achieve a broader goal, such as reducing crime (Orasanu and Connoll, 1997: 6-7). The decision-maker may work within an uncertain, dynamic environment and need to balance between competing goals with a limited feedback loop on the success of reaching this goal. At the same time, the organisational pressures she works within may result in time stresses, high stakes, multiple players and organisational rules.

Rather than perceiving decisions as distinct, self-contained events, my research seeks to understand how these factors interplay and affect individual decisions (O'Keefe, Brown and Lyons, 2009: 229; Hoyle, 1998). This naturalistic approach will help understand how decision-making is structured and carried out at an organisational and individual level, before considering how these pressures interact with the legal framework for conditional cautions. In so doing, this research will focus on the conditional caution as a disposal but will also shed light on the wider aims of conditional cautions, the nature of police discretion and police culture.

1.5 My research questions

My research therefore seeks to understand how police decisions to administer adult conditional cautions are made in practice. This has three components:

- 1) How is decision-making structured in each force? What organisational pressures and resources act upon individual decision-makers?
- 2) What do individual decision-makers want to achieve through their use of the conditional caution?
- 3) How are individual decisions to administer a conditional caution then made in practice?

1.6 Thesis outline

To answer these research questions, Chapter Two first outlines the rules on the use of adult conditional cautions. Chapter Three then sets out the research methodology I used to answer my research questions. Chapter Four presents my original quantitative data on the current use of conditional cautions across England and Wales, discerning patterns in their use. Chapter Five then investigates how three police forces involved in my study structured conditional cautions within their force to guide decision-making in this area. Chapter Six explores how individual officers perceive the conditional caution and how the disposal fits within their working culture and working rules. The thesis then scrutinizes cases disposed through a conditional caution. Chapter Seven examines how police officers applied the legal rules in deciding whether to use a conditional caution. Chapter Eight then studies how officers decide which conditions to attach before Chapter Nine details the actions taken by the officer in the event of a breach of conditions. Finally, Chapter Ten pulls together these findings to conclude that at an organisational and personal level, the police prioritise the rehabilitation of the offender in their decision-making, will also considering the needs of the victim to some extent. This has positive outcomes in supporting offenders and may result in diversion from court. However, my research demonstrates this focus on rehabilitation also results in up-tariffing and net-widening of the offender and raises questions about the role of the state and police in offering this rehabilitation.

Chapter Two: Laws, rules and policies

2.1 Introduction

The first step to understanding conditional caution decision-making is to analyse the relevant laws, rules and policies. This Chapter first discusses the need to identify the rules governing criminal justice decision-making, and the limitations of such an analysis (Chapter 2.1). The laws, rules and policies for conditional caution decision-making are presented and analysed to understand how decision-makers should determine whether to administer a conditional caution (2.2), the conditions to attach (2.3) and what to do in the event of a breach of conditions (2.4).

Laws, rules and policies set boundaries on police actions and guide their decision-making. They both limit police behaviour and signal to the police what behaviour is expected. Dixon remarked that 'a crucial assumption of policy- and law-making has been that, once rules have been clearly formulated, the police will act in accordance with them' (1997: 5). However, Hoyle lists multiple reasons why laws and policies do not translate directly into practice (1998: 12-14). Firstly, laws and policies are permissive, leaving gaps in which there are no clear rules to follow and decision-makers must rely on their discretion. Secondly, laws and policies can be manipulated, while thirdly, they can be followed by the letter but not the spirit, complying with them in an empty way that does not lead to the intended results of the policy. Finally, Hoyle warns that the police can ignore or break laws and policies, if they do not agree with them. Although laws and rules are mandatory, *how* the law affects practice is contingent on the nature of the law, the type of policing and the social and political context within which it operates (1998: 318). Hoyle therefore emphasises that there is a false dichotomy of law in the books versus law in action (1998: 14). Hoyle argues that formal rules are interpreted by individual police forces into working cultures and finally impact on individual decisions. Rather than focusing exclusively on books or action, we need to understand the interaction between the two. The first, essential step of this research is therefore to analyse the rules

and policies surrounding conditional caution decision-making. This Chapter focuses on the three main sources of guidance for police officers: statutory guidance, Authorised Professional Practice (APP) and operational guidance (Brown, 2020).

The primary legislation on conditional cautions is the Criminal Justice Act 2003. This is translated into mandatory guidance which police officers and prosecutors must follow. The Code of Practice 2013 is mandated by the Criminal Justice Act 2003 s.25 and focuses on the condition types which may be attached. The Director of Public Prosecution's (DPP's) Guidance is required by the Police and Criminal Evidence Act 1984 s.37A and concentrates on whether a conditional caution is an appropriate disposal for the given case. In addition, both the Code of Practice and the DPP's Guidance require the decision-maker to apply the Full Code Test for Crown Prosecutors. This Full Code Test is the two-pronged test that Crown Prosecutors must apply when deciding whether to charge an offender (Code for Public Prosecutors, 2018). It must be possible to charge the offender for the offence before a conditional caution may be administered (Code of Practice, 2013: s.2.2; DPP's Guidance, 2019: s.10.1). The first prong is that there is sufficient evidence for a realistic prospect of conviction upon charge. The second prong is that it is in the public interest to charge the offender, but that the public interest can best be served by the offender complying with suitable conditions.

The second form of rules operating on police decision-making is the Authorised Professional Practice (APP) Guidance. APPs were created by the College of Policing and advise the police on how to use their powers lawfully. These APPs were designed to support the training and development of staff and simplify legislation and rules for police officers to follow. While police officers and staff are expected to have regard to these APPs, there may be circumstances in which it is 'perfectly legitimate' to deviate from them if a clear rationale is provided (College of Policing, 2020).

Finally, these rules are complemented by non-mandatory documents setting out the policy behind the rules. Such policy documents direct police actions by reminding officers of their power and providing non-binding rules to apply in specific situations (Hoyle, 1998: 12). In this research, the most important of such policy documents is the charging guide published by the National Police Chiefs' Council (NPCC), College of Policing and Ministry of Justice (NPCC, 2017). This document encourages decision-makers to consider how to use out-of-court disposals to rehabilitate offenders and improve victim satisfaction. It urges officers to adopt a problem-solving approach to decision-making to ensure 'offenders always have conditions attached to the outcome, focusing on rehabilitation and victim reparation' (2017: 8). This policy document is not binding on decision-makers but presents normative guidance on the spirit of out-of-court disposals.

These rules form the legal framework which guides and limits conditional caution decision-making. The rules and policies are important for what they permit as well as the emphasis they place on aspects of decision-making. This Chapter focuses on the three conditional caution decisions: whether to administer a conditional caution, which conditions to attach and what to do in the event of a breach.

2.2 The first decision: whether to administer a conditional caution

The Criminal Justice Act 2003 s.23(1-5) sets out five requirements for administering conditional cautions:

- 1) The decision-maker has evidence that the offender committed the offence
- 2) a) The decision-maker decides there is sufficient evidence to charge the offender with the offence
b) a conditional caution should be given
- 3) The offender admits to committing the offence
- 4) The decision-maker explains the effect of the conditional caution
- 5) The offender signs a document, admitting to the offence and consenting to receive the conditional caution.

The first three subsections are directly relevant to decision-making: that there is sufficient evidence to charge the offender, a conditional caution should be given, and the offender has admitted the offence. These requirements form the basis of the evidential and the public interest tests, the foci of this Chapter. The latter two subsections relate to the due process rights of the offender. Although these are important safeguards for the conditional caution, they do not relate directly to decision-making and so will not form part of my analysis.

2.2.1 The evidential test

The decision-maker must have sufficient evidence to charge the offender with the offence. The Code of Practice ss.2.3 and 2.4 restate that the decision-maker must apply the evidential stage of the Full Code Test, reminding the decision-maker that she must be 'satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of each offence'. The DPP Guidance s.10.1 also reiterates that there must be sufficient evidence to provide a realistic prospect of conviction in accordance with the Full Code Test. However, my legal analysis pinpoints one area where there is uncertainty in the law: whether an admission of guilt is required.

A clear and reliable admission of guilt is an important component of the evidential test. However, there is conflict in the rules on whether an admission is required before a conditional caution may be administered. The Criminal Justice Act s.23(3) mandates that the offender must admit to the authorised person that he committed the offence before a conditional caution can be administered. The Code of Practice s.3.5 also clearly emphasises this requirement, highlighting in bold that 'a conditional caution **cannot be given** to an offender who does not make a clear and unambiguous admission to committing the offence when the conditional caution is administered'. However, this is contradicted by the DPP Guidance s.10.2, which states that the authoriser may offer a conditional caution where the offender has made a clear and reliable admission *or* where the offender has not made an admission but has not denied the offence, when the offence and identification of the suspect

can be established by reliable evidence. The APP Guidance echoes the DPP Guidance, stipulating that there must be sufficient evidence for a realistic prospect of conviction and that the offender must not have denied the offence (College of Policing, 2020).

These guidance documents therefore communicate different messages to the decision-maker on whether an admission of guilt is required to administer a conditional caution. This ambiguity could result in inconsistent applications of the rules in different police forces. It is not clear how this tension should be resolved in practice, which will be further analysed in my research.

2.2.2 The public interest test

In addition to the evidential test, it must be in the public interest to administer a conditional caution. This is an important requirement as the conditional caution will have long-term effects for the offender in terms of both his criminal record and the conditions attached, which can be onerous to complete. In the standard case, if the offender complies with the conditions, the conditional caution will appear on his criminal record but will be spent after three months, after which the individual shall be 'treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence' (Rehabilitation of Offenders Act 1974: Schedule Two). It therefore cannot be used in judicial proceedings as evidence of bad character and does not have to be disclosed to other bodies, such as employers, who ask whether the individual has a criminal record and will not be included in a basic Disclosure and Barring Service (DBS) check. An unspent conditional caution will be seen on a basic DBS check. It cannot be proper grounds for dismissing an employee or prejudice him in any way in his employment.

However, a spent conditional caution may be disclosed for a standard or enhanced DBS check for excepted professions such as medical practitioners or traffic wardens (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975). While conditional cautions are filtered (removed) from the DBS system six years after the date of issue, the

government may identify the offence as one that will never be filtered (Home Office, 2013a). This staggering 30-page list includes offences such as genocide, murder and rape but also offences of affray and outraging public decency. Offenders who have committed such offences will never have their criminal record wiped clean.

These serious consequences of the conditional caution underline the need to ensure that it is in the public interest to administer the disposal. However, the legal guidance focuses on setting an upper limit to the public interest test to help decision-makers decide whether the offence is so serious that the offence should be charged, rather than whether the offence is so serious that a conditional caution should be used. The Criminal Justice Act 2003 s.23(2)(b) stipulates that, in addition to the evidential requirement, the prosecutor must decide that a conditional caution should be given to the offender in respect of that offence. The Code of Practice ss.2.6 and 2.7 repeat this requirement, clarifying that a conditional caution should not be given where, upon conviction, a court would be likely to impose a significant community sentence or a period of imprisonment. Chapter 2.8 then sets out various factors that the decision-maker should take into account when deciding whether to administer a conditional caution. These factors include the seriousness of the offence, circumstances of the case, views of the victim, background and offending history of the offender, willingness of the offender to comply with conditions, the likely effect of the conditional caution and the likely outcome if the case proceeded to court. These factors are identical to those set out in the Revised Code of Practice for Conditional Cautions - Adults 2009, s.5.3. The Code therefore allows the decision-maker to consider a wide range of factors. It does not set a presumption in favour of either charging or administering a conditional caution. The Code also does not explicitly require that it must be in the public interest to charge the offender before administering a conditional caution.

The DPP Guidance ss.7.1-7.2 state that decision-makers should 'ensure that a conditional caution is considered in any case for which it is

permitted and provides an appropriate outcome for the victim, community and offender.’ Where a conditional caution with suitable conditions may provide reparations to the victim or community, modify the offender’s behaviour or provide an appropriate penalty, then the offender ‘should not be charged’ unless it is determined that the case is too serious for a conditional caution to be appropriate. The wording of the DPP Guidance therefore expresses a preference for a conditional caution rather than a charge in suitable cases. In cases where the decision-maker believes the public interest requires a prosecution in the first instance, s.5.1.1A of the DPP Guidance encourages her to consider whether the ‘interests of the victim, community or offender are better served by the offender complying with suitable conditions’. This language guides the decision-maker to divert offenders from court where it may be in the public interest to charge the offender. The DPP Guidance’s s.11.1 also stipulates that, in any case, before a conditional caution is considered, the public interest should require a prosecution as the decision-maker ‘must also be satisfied that a prosecution will continue to be necessary, and could go ahead, should the offer of a Conditional Caution be declined, or the offender does not complete the conditions.’ The DPP Guidance therefore requires the decision-maker to only administer conditional cautions where it is in the public interest to charge the offender and sets out a presumption that a conditional caution should be considered where appropriate.

Finally, the Full Code Test for Crown Prosecutors, from which the public interest test is derived, states that ‘in every case where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.’ It then reiterates the famous statement that ‘It has never been the rule that a prosecution will automatically take place once the evidential stage is met.’ This statement is quickly qualified by the presumption that ‘A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some

cases, the prosecutor may be satisfied that the public interest may be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.’ The Full Code Test therefore emphasises that a prosecution should be the presumed outcome, unless there is a reason why an out-of-court disposal may be a suitable disposition in ‘some’ cases.

Campbell, Ashworth and Redmayne remarked on the increasingly pro-prosecution language of the Full Code Test. They highlighted how, in 1986 and 1992, the Code for Crown Prosecutors emphasised that a prosecution should only be brought if the ‘public interest requires it’ (2019: 206). This wording set a clear presumption in favour of diversion from court rather than prosecution. However, Campbell, Ashworth and Redmayne point out how the emphasis of the Code changed over time, with the result that section s.4.10 of the 2018 Code for Crown Prosecutors states ‘A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.’ This change in emphasis indicates a presumption in favour of prosecution rather than diversion from court when interpreting the public interest test.

Taken together, the Criminal Justice Act, Code of Practice, DPP Guidance and Full Code Test place an upper limit on the public interest test for when a conditional caution may be administered. A conditional caution should not be administered where the court is likely to impose a significant community sentence or a period of imprisonment for the offence. The DPP Guidance is the only instrument that sets a lower boundary on when it is in the public interest to administer a conditional caution, rather than another form of out-of-court disposal or no further action. It requires the decision-maker to determine that it is in the public interest to charge the offender before deciding that a conditional caution will better serve the interests of the public. This is an important public interest requirement as it facilitates the officer charging the offender for the original offence if the conditional caution is not complied with.

However, this is the only document specifically requiring that it be in the public interest to charge before a conditional caution is administered. Together, these instruments present a confused message on whether it must be in the public interest to charge the offender before administering a conditional caution, or whether the public interest for a conditional caution lies somewhere beneath that of a charge. In addition, the guidance documents place different emphasis on the public interest test. The Code for Prosecutors sets a preference for charging the offender, while the DPP Guidance encourages officers to instead consider diverting the offender from court. How decision-makers interpret this public interest test will be examined in my research.

The subsections below set out the relevant factors when deciding whether the case is in the public interest to administer a conditional caution or charge. Three factors are given emphasis in the legislation and Guidance: offence seriousness, offending history and the victim's views.

2.2.2a Offence seriousness

The guidance documents detail how decision-makers must determine whether the offence is so serious that a conditional caution should not be administered. The Code of Practice s.1.4 repeats the aims of the conditional caution as offering a proportionate response to low-level offending. Section 27 then states that a conditional caution should not be given where a court would be likely to impose a significant community sentence or a period of imprisonment on conviction, though in exceptional circumstances it can be administered for more serious offences. The DPP's Guidance s.12.1 reiterates that the more serious the offence, the less likely it will be suitable for a conditional caution. The more likely it is that the offender would receive an immediate custodial sentence or high-level community order upon conviction, the less likely it will be that a conditional caution would be appropriate. The DPP Guidance s.12 mandates that the likely outcome at court must be estimated with reference to the Magistrates' Court Sentencing Guidelines

and the Association of Chief Police Officers (ACPO)'s¹ gravity matrix. The APP Guidance simply refers the decision-maker to read the DPP guidance when determining offence seriousness.

The NPCC created a gravity matrix guidance document for those forces piloting the two-tier system of out-of-court disposals (NPCC, 2019). Forces that have not adopted the two-tier system are instructed to continue using the ACPO gravity matrix. This gravity matrix is a decision-making tool detailing how to calculate 'outcome scores' for each case. These outcome scores indicate the appropriate course of action: a score of 4 suggests a charge, while a score of 1 indicates a community resolution. A score of 2 or 3 would indicate a conditional caution. This NPCC Guidance document sets out the general rule that 'summary only offences are a 1 or 2, either-way offences are a 2 or 3, indictable-only offences are a 4,' with this score able to change by one point by considering any aggravating and mitigating factors. Aggravating factors include, for example if a weapon was used, or if the offence was against a public servant, such as a police officer. Mitigating factors include if a prosecution is likely to have detrimental effect on the victim's physical or mental health or if the offender is unlikely to reoffend. These factors must be balanced together to guide the officer on the appropriate disposal of the case.

Decision-makers should therefore consult the Magistrates' Court Sentencing Guidelines and either the ACPO Gravity Matrix or the NPCC Guide when determining the offence seriousness. These guidance documents set an upper limit when the offence would be too serious to administer a conditional caution: if the court would be likely to administer an immediate custodial sentence or high-level community order on conviction. Only the NPCC Guide sets a lower limit for when a conditional caution will no longer be appropriate, and a community resolution should instead be used. All the Guidance documents emphasise that it will be the decision-maker's interpretation of the circumstances of the case that

¹ Now the National Police Chiefs' Council (NPCC).

will determine the extent to which aggravating and mitigating factors will vary the final gravity score. These rules therefore give decision-makers a wide discretion in determining whether the seriousness of the offence will mean it is in the public interest to administer a conditional caution.

2.2.2b Offending history

In addition to the offence seriousness, the decision-maker must determine whether the individual's offending history precludes an offender receiving a conditional caution. The Code of Practice s.2.11² permits conditional cautions to be administered where:

- the offender has previous convictions, simple cautions or other out-of-court disposals and there has been a *sufficient lapse of time* following a previous caution or conviction for a similar offence
- the current offence is low-level
- the conditional caution is likely to be the best outcome for the victim
- the offender has previously complied with another form of out-of-court disposal.

The Ministry of Justice held a public consultation before creating the updated version of this Code of Practice. Respondents advised that the phrasing a 'sufficient lapse of time' should be replaced with a more concrete 'two years'. However, the government refused this suggested modification as it wanted to give the decision-maker discretion in this area (Ministry of Justice, 2013b: para 52). The only timeframe suggested by section 2.13 of the Code is that a second conditional caution should not be given for the same or similar offence unless exceptional circumstances apply, for example, where the previous conditional caution was administered more than two years previously. The DPP Guidance also directs the decision-maker to consider the totality of any history of convictions and cautions, particularly any that are recent or of a similar nature. As in the Code, s.13.1 of the DPP Guidance instructs decision-makers not to rule out a conditional caution because of previous

² My emphasis added.

offending, especially where there have been no similar offences during the last two years, or the conditional caution is likely to change the pattern of offending behaviour.

Unlike the Code of Practice and DPP Guidance, the APP sets out a presumption against using a conditional caution if there is any offending history. It stipulates that 'Any previous offending should be assessed, and a conditional caution dispensed only if considered appropriate to modify offending behaviour or make reparation for harm caused.' Here, the wording suggests a presumption that any offending history will normally preclude an offender from receiving a conditional caution. The Code and DPP Guidance, on the other hand, encourage officers to administer a conditional caution even where there is offending history, but set an indicative limit that an additional out-of-court disposal is less likely to be appropriate if the offender committed a similar offence in the previous two years.

2.2.2c Victim Consultation

Finally, the decision-maker must consider the views of the victim. This consultation is an important element of improving victim satisfaction in the criminal justice process (see Chapter 1.2.1). Although the Criminal Justice Act 2003 requires the police to consult the victim when deciding which conditions to administer, it does not state that victims must be consulted when deciding whether to administer the conditional caution. However, the Code of Practice s.2.7 clearly states that the views of the victim and the interests of the victim should be considered when determining whether it is in the public interest to administer a conditional caution. Section 2.48 of the Code stresses that, while the views of the victim are important, they 'cannot be conclusive' as the decision on whether to administer a conditional caution lies with the decision-maker. The DPP's Guidance, s.11.1, requires the decision-maker to consider the interests of the victim when deciding whether to administer a conditional caution. While this does not necessarily require consulting the victim, the DPP Guidance (s.16.4) later requires the decision-maker to record the views of the victim if they are transferring the case to the CPS, presuming

that the victim has been consulted. The Full Code Test for Crown Prosecutors s.4.14(c) instructs the decision-maker to consider the views of the victim of the impact of the offence against them when determining what the public interest requires. Finally, the NPCC Strategy for out-of-court disposals identifies victim consultation as a critical success factor for improving victim satisfaction, requiring that the views of the victim should always be considered when determining the disposal to be used (2018: 16-18).

It is therefore mandatory for the decision-maker to consult the victim when deciding whether to administer a conditional caution. However, the Code of Practice s.2.48 and NPCC Strategy document (2018: 24) emphasise that the views of the victim cannot be determinative of the final decision in whether to administer a conditional caution, which must rest with the authorised decision-maker. Indeed, the Code of Practice warns against raising the expectations of the victim during this consultation. While the APP Guidance states that the views of the victim should be considered in decision-making, it reiterates that victims cannot insist upon a particular outcome, referring to victim consultation as a 'victim check'. This implies that decision-makers will only consult with victims to check a decision already made.

The rules and policies therefore require that the victim is consulted, and his views considered when deciding whether it is in the public interest to administer a conditional caution. This supports the wider aim to improve victim satisfaction with the criminal justice system. However, while this consultation should take place, the guidance clearly states that the decision-maker, not the victim, should be determinative of the outcome.

2.2.3 Conclusion: a permissive framework for determining whether to administer a conditional caution

My analysis demonstrates the permissive nature of the public interest test, a characteristic previously identified by Hoyle (1998: 12). As illustrated, decision-makers can have regard to a wide range of factors when determining whether a conditional caution will be in the public

interest. The three critical criteria of offence seriousness, offending history and victim's views are deliberately broad, allowing police discretion. Although there are cases clearly in the public interest to charge or carry out no further action, many cases encountered by the police may fall somewhere on this spectrum. For such cases, the public interest test permits officers to consider a wide range of factors in decision-making.

The DPP Guidance clearly states that it must be in the public interest to charge the offender before a conditional caution can be administered. While this requirement is not clearly stated in the other guidance documents, it ensures that the offender may be charged for the original offence if he does not comply with the conditional caution. This requires that conditional cautions should act as a diversion from court, where this better meets the interests of the public, rather than a form of up-tariffing. My research will explore how decision-makers perceive and apply this public interest test in practice.

2.3 The second decision: which conditions to attach

2.3.1 Substantive condition types

Conditions attached to the conditional caution may be aimed at the rehabilitation of the offender (Criminal Justice Act 2003: s.22(3a)), victim reparation (Criminal Justice Act 2003: s.22(3b)), the punishment of the offender (Police and Justice Act 2006: s.17(2)) or to bring about the departure of an offender illegally remaining in the United Kingdom (Legal Aid, Sentencing and Punishment of Offenders Act 2012: s.134(b)).

The Code of Practice (ss.2.14-18) and the Criminal Justice Act 2003 (s.23A) provide examples of each condition type. As the name suggests, rehabilitative conditions aim to reintegrate the offender into society, stop or modify offending behaviour such as by requiring attendance at drug or alcohol misuse programmes. Reparative conditions aim to make good the loss sustained by the victim or community and repair relationships, such as paying compensation or personally repairing the damage caused. The only punitive condition is the payment of a financial penalty.

This must not exceed one-quarter of the amount of a maximum fine which an offender may receive in court or £250, whichever is the lower. Finally, foreign offender conditions entail the removal of a foreign national with no legal right to remain. The Code (ss.2.23-25) stipulates that the decision-maker should prioritise conditions that rehabilitate the offender and provide victim reparation. Financial penalty conditions should only be used where these two condition types are not available or are not a proportionate response to offending behaviour.

The DPP's Guidance Annex B similarly defines each condition type. It provides general guidance that a rehabilitative condition should aim to stop offending behaviour or integrate the offender into society, such as attending a referral programme. The Annex reiterates that punitive conditions should be used where there are no other appropriate conditions, or those conditions do not provide an appropriate and proportionate response to offending behaviour. The DPP Guidance (s.15.3) also sets limits on the financial penalty payable for summary, either-way and indictable offences.

The APP Guidance does not provide further information on the types of conditions that may be used but reiterates that condition types should be rehabilitative or reparative and does not mention the financial penalty condition. The NPCC Strategy document does not list the condition types that should be used but emphasises that the conditional caution aims at improving victim satisfaction through victim engagement and victim reparations, as well as providing early intervention to prevent reoffending and address complex issues (NPCC, 2018: 4).

Decision-makers therefore have a wide discretion in which conditions to attach, though must prioritise reparative and rehabilitative conditions. The Guidance documents do not detail the conditions which should be attached. Instead, they require all police forces to create a Community Remedy document detailing the conditions available in their area, explained in Chapter 2.3.2 below.

2.3.2 Victim consultation and the Community Remedy

As in the decision on whether to administer a conditional caution, victims must be consulted on the conditions to be attached (Criminal Justice Act 2003: s.23ZA). In particular, the decision-maker should ask the victim whether they seek a condition set out in the Community Remedy document (Anti-social Behaviour, Crime and Policing Act 2014: s.101). This document must be published in each police force and detail the community remedies available in that area (see Sussex PCC, 2014). The Anti-social Behaviour, Crime and Policing Act 2014: s.23ZA(2) carries a strong presumption that where the victim expresses a view that a condition from the Community Remedy document should be used, the authorised person 'must' attach that condition unless it would be inappropriate to do so.

However, the Anti-social Behaviour, Crime and Policing Act, which introduced the Community Remedy, was enacted after the last iteration of the Code of Practice. The requirements that victims are consulted on their preferred Community Remedy condition, and that the decision-maker uses the conditions requested by the victim, have therefore not been transferred to the Code of Practice. While the Code of Practice requires that the victim is consulted on the condition to be attached, it does not include the same presumption that the victim's views will be followed. Instead, section 2.48 states 'the views of the victim will be important but cannot be conclusive. The decision as to whether to give a conditional caution and the conditions to be attached lies with the decision-maker who will consider the views of the victim wherever possible.'

Police forces are therefore required to decide which conditions to use in their force and create a Community Remedy document to publicise these for the victim. This force-level Community Remedy document enables forces to make use of local resources in planning their criminal justice approach and allows flexibility for local implementation but results in variation in the number and type of conditions available in each police force (Heap and Paterson, 2019: 3-16). Heap and Paterson conducted a

document analysis of the 37 available Community Remedy documents and found that the number of remedies available varied between three and 13 and were phrased in broad terms (2019: 12). For example, the Sussex Community Remedy document details conditions of 'A local rehabilitative or diversionary activity; Rehabilitation, acceptable behaviour contract, diversionary activity and educational assignment' (Sussex PCC, 2014: 8). The ambiguity of the conditions may therefore prevent a meaningful victim consultation. As the police officer or prosecutor remains the decision-maker, this victim consultation may therefore be aimed at improving victim satisfaction, rather than affecting decision-making in practice.

2.3.3 Three guiding principles

In addition to the type of conditions that can be used, the Guidance documents list three guiding principles for condition-setting: conditions must be appropriate, proportionate and achievable (Code of Practice: ss.2.21-2.29). Firstly, the Code of Practice requires decision-makers to choose appropriate conditions and 'apply a problem-solving approach aimed at changing an offender's behaviour and, if possible, providing redress to the victim of the offence.' This problem-solving approach encourages decision-makers to be adaptive and use their discretion in responding to the case. The Code restates that an appropriate condition will prioritise rehabilitating the offender and providing victim reparation, rather than punishing the offender.

Both rehabilitative and reparative conditions are prioritised by the Code, yet neither is given a clear preference. However, the Code (s.2.26) includes an additional subsection reminding the decision-maker to consider setting reparative conditions. This final subsection on appropriateness could lend itself to decision-makers focusing on reparative rather than rehabilitative conditions. This tension in the aims of the conditional caution was first identified in Chapter 1.4, as the conditional caution suffers an 'identity crisis' in trying to be all things for all people. How decision-makers interpret the policy and rules behind

which conditions are considered appropriate will be further analysed in my research.

The second guiding principle is proportionality. The Code of Practice (s.2.27) reminds the decision-maker to consider the totality of the conditions and seek to achieve proportionality to the offending behaviour, and that the objectives should be achieved by the minimum number of conditions. This proportionality fits within retributive discourse that the State should adopt the most humane and least intrusive forms of social interventions (von Hirsch, Ashworth and Roberts, 2009: 3). However, this focus on proportionately may result in conflicts with the other requirements for decision-makers to focus on ensuring rehabilitative and reparative outcomes.³ This balance will be further explored in my research.

Finally, the Code requires that the conditions attached must be achievable within a reasonable time period. When making this judgement, decision-makers should take into account the offender's circumstances, physical and mental capacity, religious beliefs and times at which he normally works or attends an educational establishment (Code of Practice: ss.2.27-2.28). The offender may be expected to pay the reasonable costs associated with a condition, if the offender has the means to pay. Where a condition cannot be given to an offender because they cannot afford to pay, alternative conditions should be used. Conditions must be completed within a reasonable time, generally considered to be within 16 weeks of a summary offence. This enables any criminal proceedings to take place within applicable time limits in the event of non-compliance. This principle of achievability requires that decision-makers are responsive to the offender's circumstances when setting conditions. The conditional caution should not result in a two-tier system where individuals who can afford the cost of conditions get a conditional caution, while those without funds are charged. This principle, and the principle of proportionality, limits the reparative and rehabilitative

³ This tension is also identified in Chapter 1.2.4.

aims from being overly ambitious in their scope and could reduce the likelihood of offenders being set up to fail the conditional caution.

2.3.4 Conclusion: An all-singing, all-dancing disposal?

The Code of Practice is the key document for decision-makers to use when deciding which conditions to attach. Each force can decide how to operationalise these condition types through the creation of Community Remedy documents. This document details the conditions available in each force, allowing forces to adapt to their local resources and offender needs. The decision-maker is required to consult the victim on which conditions they wish to be attached to the disposal, based on the Community Remedy document.

The Code prioritises the use of rehabilitative and reparative conditions to try to support both the offender and the victim. Yet these aims must also be balanced against the guiding principles: conditions must be appropriate, proportionate and achievable. These principles limit the rehabilitative, reparative and punitive aims of the conditional caution, which could result in disproportionate decision-making based on the harm suffered by the victim or the needs of the offender.

The decision-maker therefore has a wide discretion in which aims to prioritise in condition-setting. The Code of Practice encourages officers to adopt a 'problem-solving' approach to this disposal. However, it is unclear whether decision-makers will have the time or knowledge of local services to adopt such an approach. In addition, this wide discretion can result in decision-makers prioritising aims they feel are appropriate, such as reparation or rehabilitation, with their own interpretation of what will be a proportionate outcome. This discretion could result in inconsistent decision-making between and within a force.

2.4 The third decision on what to do in the event of a breach

2.4.1 The three available options

Finally, decision-makers must determine what to do in the event of a breach of the conditional caution. The Code of Practice (s.3.17) identifies that, before the offender breaches the conditions attached to his caution,

there is a period in which he is 'failing to comply with one or more conditions.' The Code encourages the decision-maker to establish whether there is a reasonable excuse for non-compliance, allowing the offender to explain any delay and demonstrate compliance.

If the offender, without reasonable excuse, fails to comply with any of the conditions, the decision-maker has three options (Code of Practice: ss.3.22-3.24). Firstly, if the decision-maker determines that there is a reasonable excuse for non-compliance or there has been substantial partial compliance, the conditional caution may be regarded as completed or as incomplete but that the public interest test requires no further action. Secondly, the decision-maker may set a new time limit for completing the original conditions or revise the original conditions. Finally, if the decision-maker determines that there is not a reasonable excuse for non-compliance, criminal proceedings 'may' be instituted against the person for the original offence (Criminal Justice Act 2003: s.24(1)).

The Code of Practice, adopting a stricter approach than the Criminal Justice Act, emphasises that a 'prosecution for the original offence should usually follow' non-compliance, in the absence of a reasonable excuse (s.3.17). This discretion was a conscious decision by the Ministry of Justice. In the consultation on the Code of Practice 2013, some respondents sought to change the language so that a prosecution 'must', rather than 'should' follow non-compliance (para 30). However, the government kept the facilitative language of 'should' as 'it must still be considered in every case whether a prosecution is in the public interest and so it [a prosecution] must not always follow' (para 51).

The DPP Guidance (s.16.7) also states that the decision-maker must determine whether there is a reasonable excuse for non-compliance. The decision-maker may then accept the caution as completed, vary conditions or prosecute the offender for the original offence. As with the Code of Practice, the decision on whether to charge the offender is left to the officer's discretion. However, whilst the Code of Practice states

that prosecution should normally follow non-compliance, the DPP Guidance does not offer any presumption to guide decision-making.

Finally, the APP Guidelines state that an offender 'may' be prosecuted for the original offence following non-compliance. This language does not carry the same emphasis that the offender 'should' be prosecuted as seen in the Code. As with the DPP's Guidance, it provides little direction for the officer in this decision-making.

2.4.2 Conclusion: a process of determining non-compliance

The Guidance documents demonstrate that this final decision on what to do in the event of non-compliance is not a straight-forward binary choice of either charging or not charging the offender. While the possibility of a charge is expected to hang over the offender like the 'Sword of Damocles' (Neyroud and Slothower, 2015) to ensure compliance, the legislation mandates that decision-makers first ascertain the reasons behind non-compliance. This final conditional caution decision is a process by which the officer engages with the offender to encourage compliance. It is only after such encouragement fails, and the offender has no reasonable excuse for non-compliance, that the decision-maker will decide whether to charge the offender for the original offence.

When deciding whether to charge the offender for the original offence, the decision-maker must reapply the public interest test. This requirement underlines the importance that it was in the public interest to charge the offender with the original offence when the conditional caution was first administered. The decision-maker has discretion when reapplying this public interest test. While the language of the Code of Practice indicates a preference in favour of a charge, this is not seen in the other guidance documents, which attach no weight to charging the offender.

My research will seek to identify whether decision-makers engage with the process of determining non-compliance and encourage offenders to comply with the conditional caution. It will also analyse whether there is

a presumption that the offender should be charged following non-compliance, as is alluded to in the Code of Practice.

2.5 Conclusion: permissive rules and priorities

My analysis demonstrates that decision-makers have a wide discretion at each stage of conditional caution decision-making. This permissiveness can make decision-making difficult as it is not clear what standards apply, or what should be given priority. Firstly, it is not clear whether the initial decision to administer a conditional caution requires that it must first be in the public interest to charge the offender, or whether there is some lower level of public interest that is sufficient for a conditional caution. This is important as if decision-makers use a lower level of public interest, offenders can be up-tariffed to an out-of-court disposal that may eventually result in them being charged for the original offence, which would not have occurred if they had a lower out-of-court disposal.

Secondly, while the two condition types of reparation and rehabilitation are prioritised, individual forces must decide how these will be operationalised in their area. This can result in disparity of conditions, and cost of conditions, between forces. This discretion could result in a postcode lottery in the conditions used. The individual decision-maker must also decide how to balance the substantive aims of the conditional caution with victim consultation and the three guiding principles of setting appropriate, proportionate and achievable conditions.

Finally, while the Code of Practice attaches some weight to charging offenders following breach of the conditions, officers are given a wide discretion on whether to charge the offender, alter conditions or accept partial compliance. Such a decision rests again on the decision-maker's interpretation of the public interest test.

This permissiveness can be of benefit for the decision-maker, who can have regard to a wide range of factors when making such decisions. They are encouraged to adopt a problem-solving approach in deciding the appropriate disposal for the victim and offender, with conditions that can

address complex offending needs. This problem-solving approach fits within a broader debate on police professionalism, as officers draw on their own knowledge and experience and are trusted with the discretion to make appropriate decisions in each case.

This research focuses on how such decisions are made in practice. In addition to the wider research questions identified in Chapter One, this research focuses on case analysis of individual decision-making to answer the following questions:

- Do officers interpret the public interest test to administer a conditional caution as a similar level to that of a charge?
- How do decision-makers weigh up the substantive aims of rehabilitating the offender and providing victim reparations, while also following the proportionality principle?
- In the event of delayed compliance, is there a process of encouraging offenders to comply with the conditional caution before charging them for the original offence? How do officers reconsider the public interest test when deciding whether to charge the offender following a breach of conditions?

Chapter Three: Researching decision-making

3.1 Introduction: mixed methods research

This Chapter outlines out how I will address my research questions identified in Chapter One and Two. I first introduce my mixed-methods approach (Chapter 3.1) and summarise my quantitative methodology (3.2). The bulk of this Chapter then presents the core qualitative methodology of my study (3.3), detailing the research methods of interviews, observations, document and case reviews and how they were analysed (3.4). The Chapter then identifies the ethical considerations (3.5) and strengths and weaknesses of this research (3.6).

This study is underpinned by a constructivist approach to knowledge; that the social world is real, but we can only understand it through the experiences of others and the sense they make of that world (Spencer, Price and Walsh, 2014: 85-88). This ontological approach is coupled with a pragmatic epistemology that we need to understand how individuals perceive reality and values within their environment (Holmes and Marcus, 2008b: 673). Pragmatists also argue that researchers should cease the traditional separation of quantitative and qualitative methodologies and instead combine such methodologies where most suited to answer the research question and create a fuller view of the world (Bryman, 2006).

I therefore adopted a complementary mixed-methods approach to explore decision-making of adult conditional cautions. I adopted a sequential design in first using quantitative research methods to understand the current patterns in the use of conditional cautions. This informed my qualitative research exploring how individual decisions are made in practice (Bryman, 2015: 448).

3.2 Quantitative analysis

3.2.1 A new data set

On beginning my research, I observed there are no data available on the use of adult conditional cautions in England and Wales. The Home Office counting rules stipulate that simple cautions and conditional cautions are

recorded together (Home Office, 2019a). This is a worrying dearth of data, considering the changes to the system of out-of-court disposals, as we do not know how many conditional cautions are currently used nationwide or in each force. The first stage of my study was therefore to create a dataset to understand the nationwide use of the disposal.

I lodged Freedom of Information (FOI) requests in each of the 43 police forces and British Transport Police, asking for the number of conditional cautions administered, offence type, conditions used and the compliance rate of the disposal in each force. These data were asked for the years 2014- 2015, 2015-2016, 2016-2017. I observed that the CPS continued to administer a small number of conditional cautions, but since 2014 had stopped publishing these data. All data relating to CPS use of conditional cautions have since been removed from the CPS site to modernise their website, so I requested similar data from the CPS.

This series of FOIs generated a new dataset of previously unseen data for both the police and CPS to identify trends and changes over time and between police force areas. These original data also facilitated the selection of the research sites for my qualitative analysis.

3.2.2 Limitations to Freedom of Information data

There are important caveats to consider when reading my new dataset. The first is that not all police forces responded to the FOI, citing that the burden of the request could not reasonably be complied with within the time period (Kingston, Elliott and Thomas, 2019). Where this refusal occurred, I reduced the request to only ask for data on the number of conditional cautions administered and the offence types for these disposals. This reduced request was not always successful. Of the 43 forces contacted, 27 gave a full breakdown of the number of conditional cautions administered each year, while five gave a partial response, omitting data for some years. As almost one-third of police forces did not provide a yearly breakdown of their use of conditional cautions, this data analysis is a conservative sketch of the real use of conditional cautions administered by the police.

In addition, not all police forces recorded their data in the same way. Although there are Home Office Counting Rules for the recording of crime, there is some subjective interpretation of how forces may record crime (HMIC, 2012: 7). Police computers are designed to be operational rather than facilitate later analysis, and forces use different operating systems. Forces provided differing levels of detail of the offence categories they used. For example, while one force might record a violent offence, another might record an assault. I mitigated this inconsistency by using the most abstract offence codes when collating data to ensure consistency across forces, though this resulted in losing some of the offence details provided. It was impossible to retrospectively implement a consistent approach to the number of conditional cautions counted in each force, and so I had to accept these data at face value.

An additional problem with these data is they are only available as free-standing data entries. This resulted in siloed datasets for the offender type, the offence type and the condition type. This separation means we cannot follow a type of case through the decision-making process to see for example, if particular offence types are more likely to receive a rehabilitative condition. Instead, my data only display a snapshot of the use of conditional cautions. This dearth of data is problematic, given the proposed changes to the system of out-of-court disposals.

Yet even with these limitations, my original dataset is invaluable in facilitating a better understanding of the use of conditional cautions between police forces and between police and CPS decision-making and the condition types used. These data are presented in Chapter Four. These quantitative data also guided the qualitative component of my research in identifying questions to ask decision-makers and selecting forces to involve in my research. Nonetheless, in a position of more power and resources, the Ministry of Justice, which collates data on out-of-court disposals, should systematically record conditional caution data to monitor the progress and effects of the dramatic change in the new two-tier system of out-of-court disposals.

3.3 Qualitative analysis

These quantitative data, while facilitating an overview of *what* and *where* conditional cautions are administered, do not lend themselves to an in-depth exploration into *how* decision-making is carried out in practice. My qualitative research therefore analysed the structure of decision-making and the culture operating within the police to help explain individual decision-making. I adopted the interactionist decision-making model created by Hoyle (1998) and recently applied by Myhill (2019), both in the context of police decision-making in cases involving domestic violence. These researchers highlighted how police decision-making is 'a dynamic interaction between structure and culture' (Hoyle, 1998: 82). Hoyle draws on structuralism to understand the structure of decision-making and interactionism to perceive the meaning rules and this organisational structure are given by decision-makers.

My research similarly seeks to understand the structural and cultural forces acting on decision-makers. I adopt a pragmatic methodological triangulation (Hoyle, 1998: 26) of available sources to create a fuller understanding of these pressures. I begin by analysing the police organisational policies on conditional cautions at a national level through interviewing national leads in this area (3.3.1). I then focus on how these organisational policies and processes are implemented in three police forces (3.3.2 and 3.3.3) to structure decision-making through limiting officer discretion (3.3.4). The interpretation of this structure and the culture surrounding the use of conditional cautions are then explored through interviews and observations with officers (3.3.5). My research uses these in-depth interviews with officers and case analysis to understand how individual decision-making occurs within this interaction between structure and culture (3.3.5).

All interviews were conducted face-to-face in various locations. I was flexible in meeting with interviewees at a time and place most convenient for them, including voluntary interview rooms, briefing rooms and force Headquarters. Interviews were conducted at different times of the day but were usually during shift work, with all interviews conducted between

7am and 9pm. Interviews took between 45 minutes and 2 and a half hours but were generally between one hour and one hour and a half in length. This gave enough time to talk through the case while not taking the officer from their duties for an extended period of time. For each interview, a semi-structured interview guide was created and used, included in Appendix II and III. At the beginning of each interview, a consent form was discussed with the interviewee and signed. Interviewees were given a blank copy of the consent form to take with them for their information. Completed consent forms were stored at the University of Nottingham in a secure locker and securely shredded after the period for withdrawing consent had passed. A blank consent form is included in Appendix IV.

3.3.1 Interviews with national Strategic Leads

I first sought to identify how the police, at a national level, interpreted the policies and legal guidance on out-of-court disposals. This national overview was particularly important given the ongoing changes to a two-tier framework of out-of-court disposals. As this change was led by the College of Policing and the National Police Chiefs' Council (NPCC), I conducted semi-structured interviews with individuals from these organisations. Semi-structured interviews took place with one individual from each of these organisations, with one taking place by telephone and the other conducted face-to-face. Consent was obtained from both of these interviewees, either by e-mail or signing a consent form. Questions focused on the change to the system of out-of-court disposals, the aims of conditional cautions and how these were communicated to forces. When these interviews took place, the two-tier structure had not yet been approved by the NPCC. Although questions focused on adult conditional cautions, the participants also identified how the disposal fit into broader changes within policing and thus helped contextualise my research. I also conducted a document analysis of College of Policing and NPCC external communications to triangulate the interviews.

3.3.2 Case study analysis in three police force areas

To understand how the organisational expectations of the College of Policing and NPCC were then translated into practice by individual forces, I conducted case study analysis of three police force areas. Three police forces were chosen to identify how forces with varying use of conditional cautions, identified through my quantitative analysis, structured the disposal and guided officer decision-making. This comparative approach was required to be able to identify and contextualise differences to develop a nuanced understanding of decision-making.

Firstly, Airedale had moved towards adopting the two-tier system and had a high use of adult conditional cautions. It is a predominantly urban, metropolitan force with an ethnically diverse population as well as many students and visitors. Secondly, Beauxvale was initially chosen as a police force with a low use of adult conditional cautions. However, before conducting my qualitative analysis, the number of conditional cautions administered had recently increased dramatically as a result of the work of the out-of-court disposal Strategic Leads. While unexpected, this change was an interesting example of how Strategic Leads could significantly affect officer decision-making. Beauxvale is a mixture of an urban and rural force with some large cities, smaller towns and large rural areas. The force has a large student population as well as tourists visiting the area. Finally, Cherryvale was an early adopter of the two-tier system but had a low number of conditional cautions administered each year. Cherryvale is a primarily rural force with some larger towns. As with the other two forces, it has a large student population and visitors to the area. The force had recently restructured to focus on neighbourhood policing, with officers taken away from custody and into these teams. This restructure fitted within the force's commitment to rehabilitation and a proactive, problem-solving police force.

3.3.3 Access negotiations

Having identified possible sites, my next step was to gain access to conduct my research. Access to research the police is notoriously

challenging (Loftus, 2012: 202; Wise, 2010) as forces can be wary of permitting researchers in to observe their practices and have limited resources to be involved in such research. Such access depends on the individual relationships with the police force and key personnel within that force. Yet such relationships sit in the context of a wider policing and academic relationship.

With some exceptions (Waddington, 1999; Chan, 1996; Goldsmith, 1990), academic writing has historically been critical of the police, particularly of police culture. Waddington explains that this is because police exercise discretion in how they enforce the law, with this discretion guided by the values and beliefs shared by the police (1999: 287-309). These beliefs and values are 'widely regarded as having a malign influence upon criminal justice, being responsible for many of the routine injustices that are perpetrated against vulnerable people and also mobilizing the lower ranks to resist enlightened change' and so police sub-culture is often invoked by academics to condemn a wide range of police practice. Chan also remarked that, 'police culture has become a convenient label for a range of negative values, attitudes and practice norms among police officers' (1996: 110). While academic research has tended to be condemnatory of police culture, there have therefore been voices arguing for a critical approach to the usefulness of this academic emphasis on police culture, and in seeing police culture in predominantly negative terms.

In addition, the police and academic relationship has been argued to be experiencing wider improvements in recent years (Bacon, Shapland, Skinns et al., 2021). These have been ascribed to changes in the police, including the emphasis on evidence-based policing initiatives, and related professionalisation agenda (Holdaway, 2017) and concurrent value attached to doing research with real-life impact in academia. The improved relationship has also been ascribed to a growing sense of reciprocity between academia and the police and a shift in the way academics engage with the concept of police culture, moving from a condemnatory approach and towards more helpful representations of the

police and their work (Cockcroft, 2019: 24). However, some academics advise caution in being overly optimistic about this relationship as issues remain in tensions between police and academic occupational cultures, unreliable funding streams and the movement of key personnel (Bacon, Shapland, Skinns et al., 2021: 101-102).

With this context in mind, and wary of whether I would be able to conduct my research at all, I was fortunately able to access my police forces through communicating with various individuals during my research cycle. In Airedale, I secured access through personal correspondence with the police research department. In Beauxvale I had been in contact with the Police and Crime Commissioner who supported my research. In Cherryvale I contacted the Strategic Lead on out-of-court disposals through LinkedIn. In each force, following this initial contact, I was invited to submit details about my research, attend an interview with the out-of-court disposal Strategic Lead, as well as, in one instance, a representative from the force's research team. It is the academic who will tell the narrative about the police practice to the wider audience. Police forces must therefore consider the risks inherent in engaging with academia against any potential benefits.

There were therefore several hurdles to overcome to secure formal access. However, compared with Loftus' experiences in 2012, I found the police were generally encouraging of researchers and enthusiastic about being involved. An essential requirement in each force was that my research would benefit them in some way and so I agreed to provide a summary of my findings and share future research outputs, as explained in Chapter 3.5.3.

3.3.4 Researching force structure

Within each force, I analysed how the organisation implemented policies and rules to shape officer decisions in organisational settings (Marvasti, 2004: 59). As identified in Chapter 1.4, individuals do not necessarily follow the rules within an organisation. Instead, those seeking to bring about changes within an organisation must engage in a process of negotiation to encourage decision-makers to adopt their rules, through

achieving the 'buy-in' of officers. To understand the rules of the organisation and how they were communicated to decision-makers, I interviewed Strategic Leads, analysed strategic documents and training manuals and observed out-of-court disposal scrutiny Panels.

Within each police force, one or more Strategic Lead was responsible for leading the force's change to the system of out-of-court disposals. In Airedale I interviewed one Inspector and one supervisor from Cherryvale, both from Criminal Justice Services and responsible for leading the force's approach to out-of-court disposals. In Beauxvale, three Strategic Leads shared this responsibility, including one chief inspector, one sergeant and a manager in the Police and Crime Commissioner's Office. I therefore interviewed all three of these Leads. These leaders had to communicate their expectations on the use of conditional cautions to officers and convince officers to want to fulfil these expectations (Brunetto and Farr-Wharton, 2005: 224). Strategic Leads created training packages, trained officers, offered advice and support to team leaders and decision-makers, monitored compliance and represented the force at out-of-court disposal scrutiny Panels.

The Strategic Leads were also the primary gatekeeper to access the force for my research. I contacted them early in the research cycle, which led to informal discussions while the research progressed. I was also able to observe the Strategic Leads carry out their role as they escorted me to custody suites to conduct my interviews. These informal interactions were complemented by a formal semi-structured face-to-face interview with each Lead, in which I focused on their interpretation of the aims of conditional cautions and how they communicated these aims to decision-makers.

In each force, I analysed the strategic documents, training manuals and visual aids circulated to decision-makers. I also analysed external documents available on force and Police and Crime Commissioner websites. This document analysis revealed how the conditional caution was presented to individual officers to encourage buy-in of the disposal.

Finally, I observed out-of-court disposal scrutiny Panel meetings. As identified in Chapter 1.4, these Panels scrutinise a sample of cases disposed by an out-of-court disposal and are made up of local Magistrates, CPS, Victim Support, youth offending and laypersons. These Panels presented an invaluable opportunity to observe how the Strategic Lead presented their work on out-of-court disposals, justified decisions made in this area and sought improvements in their use of the disposal. It also facilitated a glimpse into how the disposal was perceived by other practitioners working within the criminal justice system and the concerns and successes the Panels observed over time.

3.3.5 Researching police culture and decision-making

After identifying the structures surrounding decision-making in each force, I sought to understand the working culture in each force. Enquiries into police cultures are typically conducted through ethnographies, involving a wide range of methods to explore the lived experiences of the group (Souhami, 2020). My research sought to adopt a similar strategy, relying on multiple sources to better understand the officers' working rules and customs. However, as demonstrated from my quantitative data, police forces do not administer a high volume of conditional cautions, and so the traditional observation of police officers would not facilitate many observations of conditional cautions.

I therefore carried out a form of para-ethnography, through which officers describe and critically engage with their own experiences and decision-making (Holmes and Marcus, 2008a: 595-597). Officers were actively involved in professional, ethical, political and personal discourses surrounding their decision-making, which my research interviews explored. Officers were invited to describe and explain the working rules that informed their decision-making, and how these interplayed with legal rules and their force's expectations. This para-ethnographic approach fitted within my constructionist epistemology in recognising the active role both the researcher and interviewee have in creating the research data (Mason, 2002: 36). This analysis of police culture required several methods, including observations (Chapter 3.3.5a), case file analysis

(3.3.5b) and interviews with decision-makers and authorisers (3.3.5c,d and e).

3.3.5a Observations of officers responsible for administering conditional cautions

In Airedale, the force had created a Central Team of officers responsible for administering conditional cautions. To understand the culture of the Central Team in Airedale, I observed police working in this unique team dynamic and their interactions with other teams in their naturalistic setting (DeWalt and DeWalt, 2010: 13). I joined officers at the start of the shift when they checked the custody record for any offenders who may be appropriate for a conditional caution and how this work was allocated around the Team. I observed the sergeant discussing cases with officers, authorising conditional cautions and briefing the Team of any changes to the disposal. I also witnessed handovers between arresting officers and the Central Team and how the Team managed ad-hoc requests that came through each day.

To facilitate this observation, I sat at an empty desk in the Central Team's open plan office. Officers, particularly the sergeant, would come to talk to me about their work and the approach they had taken. I wrote my notes in my field notebook that I did not share with the participants I was observing, though I openly wrote notes throughout the shift. These notes were then fully written up once the shift had concluded so I was able to think critically about the events I had seen. These fieldnotes, and the analysis of them, were essential to ensure I was reflective about what I had seen by introducing a layer of critical distance and engagement from the officers I observed (DeWalt and DeWalt, 2010: 138-139).

These observations were invaluable to understanding the pace of out-of-court disposals decision-making and the Central Team's caseload. It also allowed me to watch interactions and gain a deeper insight into how individuals working together impacted decision-making. For example, I observed handovers between arresting officers and the Central Team, watched officers ask their sergeant to authorise their decision-making and overheard officers interact with victims, both to consult them before

making decisions and inform them of changes in their case. This observation informed my understanding of how individuals explained their work to others, including their peers, their line managers, and victims.

Such observations were impractical in Beauxvale and Cherryvale as conditional caution decision-makers worked in various roles across the force. As officers administered so few of the disposals each year, I determined I was unlikely to encounter such natural discussions immediately following a case. Instead, I observed the central Administrative Team, which monitored officers' use of the disposal and offenders' compliance. Although they were not the key decision-makers in the case, this observation was a useful exercise as they fed back to the administering officers to guide further decision-making and were heavily involved in the third decision on what to do in the event of a breach.

3.3.5b Case analysis of cases disposed through a conditional caution

I analysed cases disposed through a conditional caution in each force to identify the characteristics of the case and the decision-maker's justifications for the disposal. This case analysis was intrinsically important in investigating the formal rationale for decision-making and facilitating a comparison between cases. It allows us to see how individual decision-makers act out their motives in administering conditional cautions and are therefore invaluable data (Silverman, 2011: 41). These case analyses were also instrumental in selecting police officers to interview. I contacted the officer who had administered the conditional caution in each of these cases, using the case as the basis for the interview. The case analysis provided a real-life example of a conditional caution which facilitated a naturalistic interview to understand the factors the officer had considered in their decision-making, including each case's individual complexities.

The method of case selection depended on the data collection agreements with the force and was based on a purposive, convenience

sampling of cases. In each force, I sought to analyse at least six cases disposed by a conditional caution in the previous six months. This timeframe was to increase the likelihood that officers would recall their decision-making in our interview. My selection criteria focused on the decision-maker, selecting officers from different teams within the force to facilitate a variety of experience levels, training and areas of policing to emerge. The cases chosen for analysis were therefore based on the role of the decision-maker, rather than offender, offence or victim characteristics.

In Airedale, the force granted me access to their computer, so I carried out this case selection. I filtered cases by this six-month time frame and selected the twelve most recent cases disposed through a conditional caution, excluding cases if they involved the same decision-maker. Using the Police National Computer (PNC), I created a chronological overview of the events leading to the decision to administer a conditional caution including the PACE interview recording. I analysed the recorded rationale for the decision to administer a conditional caution and the conditions attached. I contacted officers directly to explain my research and invite them to attend an interview. This contact allowed me to begin to build a rapport with officers through e-mail as we discussed the research and a suitable time to meet.

In Beauxvale, I did not have access to the PNC and so the gatekeeper selected cases for me using the sampling method set out above. However, when I arrived at the force, staff absences meant I was unable to interview the identified officers. I instead had to quickly select teams I wished to speak to, which my gatekeeper and I visited to ask if anyone had recently administered a conditional caution. If an officer said they had used a conditional caution and agreed to be interviewed, they had the opportunity to quickly reread their case notes to refresh their memory before our interview. This opportunistic sampling meant I was unable to prepare for the interview in the same way as in Airedale and had to rely on the interviewee informing me about the details of the case, which I later verified. Similarly, in Cherryvale, the gatekeeper sent an e-mail out

to all teams to request officers to attend an interview with me about a case they had recently disposed of through a conditional caution. Again, officers brought the case details with them to interview, describing a case I did not have prior knowledge about.

In Beauxvale and Cherryvale, therefore, the case analysis occurred after the interview, when the gatekeeper gave me full details of the case. This delayed case analysis meant I was unable to identify characteristics of the case for further exploration, or challenge officers based on my interpretation of the case, as I had done in Airedale. However, it meant the officer presented the case in their own words, concentrating on factors they felt to be most important that could be later triangulated with reference to the case file.

I analysed a total of 21 cases across all three forces (see Appendix I). The majority of offenders in the case analysis were white males, with the most common age brackets 36-40 and 18-25, as presented in Table 1.

Table 1: Offender characteristics

Gender	
F	8
M	13
Ethnicity	
White British	9
White (other)	9
Asian	3
Age	
18-25	6
26-30	0
31-35	2
36-40	10
41-45	1
46-50	2

Table 2 details the predominantly low-level offences of theft, criminal damage and assaults occasioning ABH, included in the case analysis.

Table 2: Offence characteristics

Offence type	Number of cases
Possession of drugs	7
Criminal Damage	5
Theft	4
Assault occasioning ABH	3
Child Neglect	1
Importing weapons to UK	1

Although my case analysis facilitated understanding the formal rationale for decision-making, this tended to be a brief, superficial explanation for decision-making. Focusing on this rationale would therefore have concentrated on skills relating to *reporting* decision-making, rather than decision-making itself. I therefore complemented case analysis with interviews with decision-makers to analyse how they described their decision-making.

3.3.5c Identifying the decision-maker

Before conducting interviews, I first had to identify the decision-maker. Conditional cautions must be authorised by an officer of the rank of at least a sergeant but are administered by a police constable. Both officers are therefore the decision-maker in the case. It is the police constable who investigates the case, interviews the offender, consults the victim and asks the sergeant to authorise their decision. The police constable records the justifications for her decision-making and is responsible for any further action in the case. I focused my research on the police constable as the decision-maker, being the expert in each case, but also interviewed one authoriser from each force as the officer with the final responsibility for the decision made and the expert in the legal rules to be applied.

This is a similar approach to Hoyle, who argued that outcome decisions are made by arresting officers (1998: 147). Hoyle accounts for this with

reference to Hawkins, who took a 'serial view of discretion'. This means that where cases are processed over time, effective power to decide the outcome of the case is frequently assumed by actors other than the person allocated formal authority to exercise discretion. This is echoed by McConville, Sanders and Leng, who argued that these previous decisions shape the eventual outcome in the case (1991: 122). In addition, Hoyle observed it is practically difficult to interview busy custody sergeants and so there are pragmatic reasons for focusing on the police constable in my research (1998: 147).

3.3.5d Interviews with police constables who administered a conditional caution

I conducted semi-structured interviews with 17 police constables in three police forces. Interviews allowed individuals to recount events and decisions as they perceived them to be. Both the researcher and the interviewee are inevitably affected by their previous experiences and will adapt to how they perceive the other, with the knowledge gained being, to some extent, a product of the two individuals meeting (Rapley, 2004: 26-7). It was therefore important that I fully informed officers about my research to encourage them to be involved in the study to consider conditional caution decision-making together.

Although I had formal, one-off authorisation to research each force, access is a 'process of continuous negotiation and explanation' and had to be achieved with each interviewee (Rowe, 2007). In Airedale, this access was through direct messages between myself and the decision-maker, setting out my research and inviting them to participate. As I conducted observations in Airedale, I had usually met the officer before the interview. By the time of interview, I was therefore known to the interviewer and had established some degree of rapport. In Beauxvale and Cherryvale, on the other hand, the gatekeeper communicated with the decision-makers on my behalf, sending my research invitation to officers and managing the interview timetable. I therefore did not have any contact with these individuals before meeting them at the interview

and had to secure access at this stage, explaining my research and inviting them to take part.

This individual access was successful and officers, once they had decided to take part in my study, were engaged and critical of their own decision-making. Officers generally responded positively to being interviewed as they perceived that out-of-court disposals had been subject to little external study or attention and were proud of their work and wanted to tell others about it. One officer expressed, 'it's good that someone's come and is interested in what we do.'

In each force, I was an outside outsider (Reiner and Newburn, 2000: 205). Although officers knew the Strategic Lead supported my research, and it was safe to discuss cases with me, they were aware I was not in the police. Where relevant, I disclosed that I volunteered as an Independent Custody Visitor (ICV) so was familiar with some policing terms. This familiarity was helpful in interviews as it meant officers did not have to explain acronyms to ensure I understood them. However, I did not frequently refer to my role with the ICVs as I did not know what experience the officers had with their local custody visiting scheme and did not want to cause tension in the research interview inadvertently. Over the research cycle, my knowledge of the working practice of the police increased. I was therefore able to refer to earlier discussions to probe answers based on their colleagues' experiences. This knowledge helped me gain confidence and trust in the process as a more knowledgeable researcher.

I chose not to ask officers to provide their characteristics in the interview. The gatekeeper already knew who I was interviewing in each force, and I did not want officers to feel more guarded in responding to my questions by asking for their personal characteristics during the interview. This need to be seen to protect confidentiality meant I was unable to determine patterns in decision-making based on age or ethnicity, which may be considered as important for other researchers. However, I decided that benefits of a more open interview outweighed the loss of

this breakdown. Instead, I recorded the team within which the decision-maker worked and their length of service in the police (Table 3). Six interviews with police constables were carried out in Airedale, six in Beauxvale and five in Cherryvale.¹

Table 3: Officer characteristics

Gender	
F	6
M	11
Length of service	
Less than 5 years	3
5-10 years	2
11-15 years	7
15 years +	5
Role	
Central Team	6
Neighbourhood	4
Response	3
Response Support	2
Child Protection	1
Youth Offending	1

As interviews took place during working hours, I adapted to the competing demands on the officer. The nature of their role meant some interviews had to be cut short, or interviewee's attention was taken by phone or radio updates. One interview was interrupted by 20 officers entering the room for a team meeting, meaning our interview concluded in the corridor outside. I had to be flexible in my timings and wait for officers to complete tasks, particularly in the busy custody environment, before they were available to be interviewed, resulting in some late-night interviews. However, as I was able to be flexible in my approach and understanding of the other pressures on their time, such limitations did

¹ Note that one officer working in the Youth Offending Team volunteered to be interviewed, but her case was not included in the case analysis in Appendix I.

not overly affect the research. Interruptions and delays also meant I could bring in elements of their current working day into the interview and helped build trust with interviewees.

Semi-structured interviews were carried out with officers and lasted approximately one hour. I began each interview by asking officers to give an overview of their career and why they had moved to their most recent role. This introduction helped put officers at ease and provided invaluable contextual information. I asked officers to describe the case in their own words and set out the reasons for their decision-making. We then discussed conditional cautions more widely on a semi-structured basis and so each interview was dependent on officers' responses. The topics also changed depending on the stage I was at in the research cycle. Interviews with decision-makers informed later interviews, as I identified new lines of inquiry or disagreement. In this way, interviews were influenced both by the focus of the interviewees and the interviewer.

3.3.5e Interviews with officers responsible for authorising conditional cautions

In addition to interviewing police constables who administered conditional cautions, it was important to interview individuals responsible for authorising them. For pragmatic reasons, I could not interview as many authorising sergeants as administering officers as there were fewer of them, and they had greater demands on their time. However, as the authoriser of these decisions, and to some extent, the co-decision-maker, and the link between the Strategic Leads and the decision-maker, it was vital to interview one in each force.

My method of selecting these authorisers depended on the force and was based on opportunistic sampling. Sergeants were not chosen based on their involvement in one of the same cases as the police constables identified at Chapter 3.3.5b, as the purpose of the study was not to compare the narratives between constables and officers. In Airedale, I selected a case authorised by a sergeant and carried out the case analysis before interviewing the sergeant. In Beauxvale I, together with my gatekeeper, went to the custody support team and asked which

sergeant had recently authorised a conditional caution. In Cherryvale, I pre-arranged an interview with an authoriser selected by the gatekeeper. All three authorisers were male, and each had over 15 years' service within the police. These semi-structured interviews took a similar approach to interviews with police constables but with an additional focus on the process of authorisation, training and communication between Strategic Leads and their team.

3.4 Data analysis

These methods presented in Chapter 3.3 were used to explore conditional caution decision-making. I used a thematic analysis (TA) approach to code the data (Braun and Clarke, 2017). This TA tool provided a systematic procedure for generating codes and themes to interpret my findings. TA can be used in both a theory-driven, deductive approach in using existing theory to provide a lens to analyse the data. TA can also be used in a data-driven, inductive way to be grounded in the data, while considering theoretical and ontological assumptions, though will inevitably be a combination of these two approaches.

I began my data analysis of the first force, Airedale, after conducting a literature review of naturalistic decision-making. My literature review on police decision-making (Chapter 1.4) demonstrated the need to consider its naturalistic setting of organisational pressures and individual interpretations. I initially drew on Hawkins' naturalistic framework of decision-making to guide my analysis (Hawkins, 2003). Although Hawkins used this tool to analyse prosecution decision-making for health and safety inspectors, I considered it applicable in other settings as it set out a structured way in understanding naturalistic decision-making (Fairclough, 2018: 457-485). I coded the Airedale data into the wider, socio-political context (Hawkins' 'surround'), the context of the force (Hawkins' 'field') and by Hawkins' five 'frames' of decision-making. Hawkins' approach was invaluable for ensuring I structured my analysis around the macro, micro and meso factors at play in police decision-making.

However, as I researched the two subsequent forces, I felt I needed to depart from Hawkins' structure. Hawkins' field, the context of the force, was a critical part of my research in understanding both the organisational and culture pressures acting on decision-makers. This police culture is a growing field in its own right and was not easily married with the prosecution symbolism discussed by Hawkins. While conducting my analysis, I found significant overlap between Hawkins' frames, particularly as I analysed the three key decision-making points by officers. Eventually I felt that, as new data was created in the subsequent two forces, I was trying to make Hawkins' structure fit my data, rather than support my analysis. I therefore adopted a more flexible approach in being guided by Hawkins while also being grounded by the data. I adapted his codes to better reflect the policing context, such as 'wider police culture' as a theme comprised of various codes, including sympathy, compassion and cynicism.

Throughout this coding process, I coded the data manually. This was done through printing off transcripts and reading my observation journal and highlighting relevant sections into codes, which were then pulled into a separate thematic document, which acted as a template that forced me to justify why I was including the code within it (Nowell, Norris and White 2017). This helped me better understand the data and remember the context of each force, officer and case as I analysed each piece of data and continued reviewing the themes as they emerged and iteratively adapt the coding system. Supervision meetings were useful opportunities to check the codes as they developed and relate them to wider themes. This analysis could have been done through using NVivo coding software. However, I felt that manual coding ensured I was familiar with all my data, which I felt to be crucial as it emerged in different forms such as transcriptions of interviews, fieldwork diary and case file analysis, and at different points throughout my PhD as I engaged with different research sites.

3.5 Ethical considerations

Ethical approval was secured at the School of Law at the University of Nottingham before commencing the research. However, ethical considerations are not a single occurrence but are instead an ongoing engagement as new complications arise while in and after leaving the field (Wolcott, 1999: 283; Davidson, 2008). Although there were a range of ethical concerns to consider relating to my participants and the individuals involved in each case, this section focuses on my three primary concerns of avoiding malfeasance (3.5.1), ensuring anonymity (3.5.2) and reciprocity (3.5.3).

3.5.1 Malfeasance

Malfeasance, or not causing harm to participants, is an important principle of research ethics (Silverman, 2013: 161). Research should not harm participants, either deliberately or accidentally and researchers have a responsibility to ensure this does not occur. My participants were professionals working in their field on concluded, typically low-level offence cases. Interviews were therefore unlikely to be distressing for the interviewee. In addition, they were conducted in the officer's work environment at a convenient time, when the officer was likely to feel at ease. Avoiding malfeasance in my research therefore centred on two considerations: ensuring free and informed consent and not adversely affecting the outcome of cases.

Free and informed consent is a longstanding requirement in research (Davidson, 2008; Rowe, 2007) and continually arose in my research as I sought to ensure officers had freely chosen to be involved in the study. In the first force, I contacted officers directly, facilitating their refusal to be involved in the research by simply not responding to my message, as some did. Officers who replied expressed enthusiasm to be involved. As this decision was made on an individual basis, outside a team dynamic with no obvious organisational pressures, I perceived this was a genuine agreement to be involved with the research.

However, the issue of consent was thornier in Beauxvale and Cherryvale. Here, officers were contacted by the gatekeeper, who acted as the

intermediary between the interviewees and me. This intermediary meant there was additional pressure to be involved in the study as they were asked to take part by a ranked officer in their force. One interviewee nervously reported, 'I put my name forward because no one else wanted to do it' as the sergeant had required someone to be involved. Such pressure is an unavoidable feature of conducting research in a hierarchical organisation. I mitigated against possible coercion by giving officers another opportunity to remove themselves from the study. As I met with each interviewee in a separate interview room away from the ranked officer, I reminded them that they did not have to be involved if they preferred not to and reassured them there would be no negative repercussions. In such a situation, I imagine officers would have felt able to withdraw their consent. Still, all officers expressed willingness to be involved and appeared to enjoy the interview process in discussing their case and work in greater detail. I also emphasised that consent was continual rather than a one-off, so invited them to contact me if they had later concerns and wanted to withdraw up to two months after the interview (Silverman, 2013: 162).

As interviews focused on concluded cases, my study did not affect the outcomes of the case for the offender or victim. This ethical consideration was another reason why I did not conduct ethnographies with officers when administering conditional cautions. Early conversations with decision-makers revealed solicitors rarely attended the needs assessment carried out by the officer. This absence was partly because they perceived the solicitor may prevent individuals from being open about the underlying causes of their offending, a deeply personal subject involving previous victimhood, substance addiction or other issues. It was important that individuals felt they could be open with the decision-maker, so the right support was made available to them. I decided that data from interviews and, where possible, observing decision-makers return from their interviews, would sufficiently answer the research question, without affecting the outcomes in such cases.

3.5.2 Anonymity

My second ethical concern was to ensure the anonymity of the forces studied, individuals involved in the case and the interviewee. Anonymity is an ongoing concern in qualitative research as the rich data generated make identification easier than in quantitative research (Ransome, 2013: 40). It was difficult, if not impossible, to ensure the anonymity of the forces involved in the study. This anonymity is a delicate balance in providing sufficient information to contextualise the research but preventing the general reader from identifying the force. Gatekeepers were aware that the details of how conditional cautions were structured were so specific to the force that they could be identified by others working in the area. However, one Strategic Lead highlighted that the possible benefits resulting from my research, and research in general, were more important than any risks attached to the force being identified:

There isn't anything that can't be shared, in the policing community, it's for the greater good of everybody. If we're doing something that means another force doesn't have to spend ages doing because they can either pick it up, have a look at it and say, "well we want that bit, we don't want that", I'm all for that. And they might then improve it. Come back to me if you improve it, and we'll revisit ours. I'm not into keeping [things secret].

I agreed with each Strategic Lead that I would share the location of the force with other forces involved in my research to make best possible use of the research. Other forces may be able to identify forces involved, but I have anonymised them, so they are not identifiable to the public.

The offenders and victims in the cases were not the subjects of the study themselves and I did not record their identifiable information in my transcripts. When conducting case analysis, I also removed any identifiable features of the case. This ensured any details about the case were sufficiently anonymised.

Finally, while I gave each interviewee a pseudonym to protect their anonymity, it was difficult to ensure they would not be recognised in their

force. In Airedale, although the gatekeeper was not involved in requesting individual officers to be involved in my research, officers I contacted had to ask permission from their line managers to be absent from duties for one hour to be interviewed. In Beauxvale and Cherryvale, the gatekeeper contacted the decision-maker on my behalf and so knew who I had interviewed. The possible identification of officers by Strategic Leads therefore had to be carefully considered when presenting my findings. Although it would be useful to break officer characteristics down by force and team, such data would have facilitated the identification of each officer and authoriser to the gatekeeper, even if not to the general reader. As the gatekeepers are more likely to read this thesis and be able to bring about any negative consequences for my participants, this identification had to be avoided. This concern underlined the need not to collect data on the characteristics of the interviewee.

I used pseudonyms to give participants a sense of active identity, an important message underlining my research. Pseudonyms also facilitated the reader following the analysis and connecting cases across my thesis Chapters. Each police constable and authoriser therefore have a pseudonym with the first letter of the force in which she works, for example, PC Abbott in Airedale. Authorisers are given similar pseudonyms such as Authoriser Brookes. As I only interviewed one authoriser in each force, where sensitive arguments are made, I have been ambiguous about the authoriser's force, to make best possible use of data while protecting the anonymity of participants. Strategic Leads have pseudonyms based on their force, for example Strategic Lead Beech. Strategic Leads may therefore be recognised by Strategic Leads from other forces. However, these individuals accepted this identification as part of their involvement with the research as it would be obvious that I interviewed them in their capacity as Leads. As they sought to learn from other forces, this possible lifting of anonymity within the police was accepted.

All interviews were audio-recorded on a PIN-protected Dictaphone. Audio files were uploaded onto a password-protected folder on the

University Research drive and removed from the Dictaphone. I then transcribed these files, ensuring they were fully anonymised by removing all reference to any person, place, or other characteristic which would make the participant, offender, victim or force identifiable. These anonymised transcripts were stored on the secure University Research drive and the recordings deleted.

3.5.3 Reciprocity

In addition to not causing any harm, I sought to feedback the results of my research to benefit those involved. This reciprocity was an ethical requirement to thank those involved in my research for giving me their time and recounting their experiences to me (Crow, 2008: 739-740) and ensure the public that funded my research also benefited from the work (Ransome, 2013: 32; Iphofen, 2011: 124). It also helped gain trust from individual officers as part of ongoing access negotiations. One officer asked me 'Are you hoping to actually achieve anything... I mean, you know, your grade, getting your degree, but do you think the research is going to be used to improve...?' It was important to her that my work was fed back to the force to make improvements. Being able to carry out this feedback and facilitate a dialogue between officers and Strategic Leads therefore improved the trust between myself and interviewees.

I discussed with Strategic Leads the form of feedback that would be most beneficial to them. The first form of feedback was a written overview of my findings in each force after concluding that stage of data collection. The second was keeping forces up to date with my research outputs and offering to present my research to forces. In Airedale, I was invited to present my research at a 'lunch and learn' session for the Strategic Lead, data analysts and an officer who had worked in the Central Team. The force was able to learn from my research, ask questions and correct any of my findings. This feedback was also important as the officers were critical subjects who sought to improve their own practices through responding to problems identified in my data and their own experience. It was therefore a discussion in which we came together to analyse broader difficulties and make comparisons between forces.

3.6. Limitations of this methodology

This research methodology was created to understand police decision-making, a sometimes-unconscious phenomenon affected by organisational and personal factors and bound by a facilitative set of legal rules. I used a range of methods to try to pull apart what is happening within this black box of decision-making. However, as with all research projects, there are limitations to this study. I have focused on the three most important limitations I considered when designing and implementing the project, but which cannot be fully mitigated. These are challenges with sampling (3.6.1), interviews (3.6.2) and conducting research in a time of change (3.6.3).

3.6.1 Sampling

There are two levels of my research sampling: the forces involved in the research and the cases analysed, and therefore the officers interviewed. Firstly, only three forces of the 43 forces were sampled and so this research only gives a snapshot of how decision-making is carried out within these forces. In addition, these three forces were chosen because of their difference from each other, rather than attempting to analyse decision-making in forces that administered a similar number of conditional cautions or adopted a similar approach. My research therefore does not aim to provide a blueprint for how conditional caution decision-making is carried out in all forces in England and Wales. However, sampling three forces facilitated a more in-depth understanding of each individual force to understand the organisational structures and wider aims of each force.

In addition, the cases sampled are inherently limited in only analysing cases disposed through a conditional caution. This sample means the analysis is focused on where a conditional caution is deemed to be appropriate, rather than where it is not. I accepted this as a necessary limitation of my methodology, as sampling a similar number of cases with a different outcome would have made the research practically unfeasible. This sampling was mitigated during research interviews by asking officers to illustrate why other cases they had worked on had not resulted

in a conditional caution to identify factors perceived by officers as rendering a conditional caution an unsuitable outcome.

The sampling of cases by date parameters, focusing on the variety of decision-makers rather than the offence or offender type, meant a range of cases was included in the analysis, covering some of the breadth of police work. However, this sampling means comparisons cannot be easily drawn between offence or offender types as these were not specifically selected and analysed in the research.

3.6.2 Interviews as a method

The key component of this research was interview data. This method has inherent limitations as data were created by both the researcher and participant. The data generated were affected by my own values, as researchers do not enter the field value-free, instead bringing their own personal and political views (Ogden, 2008: 60-61). The participants were also asked about their own professional decision-making and so may have presented a particular version according to what it was perceived I wanted to know, or what it would be beneficial to communicate. To see beyond this single viewpoint, I drew upon a range of sources to facilitate an in-depth, multi-angled analysis of the data. While I do not seek to apply quantifiable expectations of validity to my research, I sought to ensure the trustworthiness and credibility of my research by being as transparent as possible throughout, so my reader can follow the research process (Miller, 2008: 909). This process of triangulation in using a range of sources within each force results in a greater level of confidence in the data than would have been achieved if relying solely on the officer interviews (Myhill, 2019).

When I began my research, as an active Independent Custody Visitor, I thought I would research the due process rights of offenders and ensuring they were protected throughout the process. However, as I engaged in my literature review and began my interviews, I realised that the real story I wanted to research was officers' decision-making and the legal, organisational and cultural context in which this occurred. In this way, I moved from being on the offender's side, to being on the police

side (Becker, 1967). However, by focusing on the superordinates, those wielding the power to administer conditional cautions, I missed the voices of the subordinates, those subject to these powers, and the victims, those closely affected by decisions made. I spent many hours in police stations, listening to officers talk to me, their colleagues and superiors, and reading how they recorded their decision-making. Over this time, I sympathised with the police role and what they were trying to achieve through their use of conditional cautions. Spending time with the Strategic Leads, who were so enthusiastic about the potential of conditional cautions, could not help but enthuse me about their aims. Thinking of the future too, as a police researcher, I needed to build good relationships with the police and demonstrate my work could be of benefit to them and so there were self-interested reasons to take their side.

Yet in my research both conducting it and analysing and writing it up, I have tried to be doubly loyal to the police, in fairly presenting my data, and to social scientific research (Cohen, 1998: 99). Researching different teams within different forces and at different levels, I also attended out-of-court disposals meetings, attended by victim support services and members of the community. These activities allowed me to take a step back and scrutinize what I was told, by comparing it to other experiences. I took a fieldnote diary of my experiences and critically engaged with my writing when removed from the field. I cross-referenced interviews with case file rationale and legal guidance documents. In addition, as part of the research process, I regularly met my supervisors, not engaged in the field, to retain some 'persistent scepticism' of what I was told (Cohen, 1998: 119). As Liebling argues, this helped me remain on the side of 'prudent, perhaps reserved engagement' (Liebling, 2001: 483).

3.6.3 Research in a time of change

Finally, my research was conducted when the NPCC considered and confirmed they were adopting the two-tier framework of out-of-court disposals. Indeed, my data collection in Airedale took place before this decision was made. This was a changing time for the police as they undertook a large-scale remodel of the system of out-of-court disposals

without legislation or additional resources. This transformation resulted in some uncertainty at the strategic and operational levels as they adapted to this new system and what it meant for their force.

As a result, officers interviewed frequently reported they were experiencing a period of change and were not always sure of the new requirements in place. In some instances, I identified issues in how conditional cautions were administered, or the types of conditions being used and was reassured by Strategic Leads that solutions were currently being developed. Some of my findings may therefore be due to teething issues as this new approach to out-of-court disposals is rolled out across England and Wales. Of course, the nature of policing means change is the only constant, but this research comes at a time of systemic changes to out-of-court disposals. This context should be considered when reading the analysis. Yet research needed to be carried out at this time as it can go on to influence this changing landscape and identify difficulties that may arise, as well as understand how organisational changes affect day-to-day decision-making.

3.7 Conclusion: a naturalistic insight into decision-making

This research is a mixed-methods approach exploring how one type of police decision-making is carried out in practice. The quantitative overview first identified patterns and trends in the use of adult conditional cautions across police forces and the CPS, as presented in Chapter Four. These data guided the second, larger component of the research, the qualitative research. Case studies of three police forces allow in-depth explorations of how organisational and individual factors feed into decision-making of conditional cautions. This analysis draws upon a range of sources including policy and training documents, interviews with Strategic Leads, observations of out-of-court disposal scrutiny Panels, case analysis and interviews with authorising and administering officers.

Although this research has some weaknesses borne out of its methodological design and the resource limitations of any research, the range of sources used allows a unique, naturalistic insight into how

decision-makers are made in practice. My research is useful for our understanding of the disposal itself, but also wider learning about police discretion and police culture.

Chapter Four: Quantitative overview

4.1 Introduction

This Chapter presents quantitative data on the use of conditional cautions by the police and CPS across England and Wales. These data enable us to identify patterns in the use of conditional cautions over time and between police force areas. This is particularly critical given the national policy context in which conditional cautions and community resolutions are likely to become the only types of out-of-court disposal. Despite the clear need for these data, a comprehensive breakdown of the use of conditional cautions is not publicly available. In 2013, the Ministry of Justice (MoJ) stipulated that police forces should separate their conditional cautions and simple cautions when inputting data to the national MoJ database (2013c: 7-8). However, the Home Office currently only requires that all forces submit data on 'outcome 3: caution- adults' which include both caution types (2016: 10). This makes it impossible to ascertain the current use of conditional cautions in England and Wales.

To fill this gap in knowledge, I sent a series of Freedom of Information Act requests to the 43 territorial police forces, and British Transport Police, to request their data on adult conditional cautions. I also requested the CPS provide their data up to 2017, three years beyond what is publicly available. These data create an indicative, albeit fragmented, picture of the national use of conditional cautions to answer the following questions:

- 1) how many conditional cautions are administered each year (4.2)?
- 2) where are they administered (4.3)?
- 3) for which offences are they administered (4.4)?
- 4) to whom are they administered (4.5)?
- 5) which condition types are administered (4.6)?
- 6) what is the compliance rate for conditional cautions (4.7)?

4.2 How many conditional cautions are administered each year?

For the first time, this thesis brings together data on conditional cautions administered by the CPS and police each year.

Table 1: Total number of conditional cautions administered by the CPS and police between 2010/11 and 2016/17

Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
CPS	6,931	6,041	3,773	501	333	315	387
Police	0	0	0	5,937	7,659	11,396	11,636
Total	6,931	6,041	3,773	6,438	7,992	11,711	12,023

These data demonstrate a trend of an increased use of conditional cautions each year since 2013/14. In the four years for which police data are available, their use of conditional cautions increased from 5,937 to 11,636, an increase of 95.9%. Due to data collection issues, this number does not represent the total adult conditional cautions administered by the police. Yet it is already 4,705 (68%) higher than the number administered by the CPS in 2010, the year which saw the highest use of conditional cautions by the CPS.

These data demonstrate the changing decision-maker in cases of conditional cautions. It was established in Chapter One that the police were authorised to make conditional caution decisions by the Legal Aid, Sentencing and Punishment (LASPO) Act 2012. These data reveal that it has become the norm for the police to administer conditional cautions, as visualised in Figure 1 below.

Figure 1: Number of conditional cautions administered by the police and CPS between 2010/11 and 2016/17

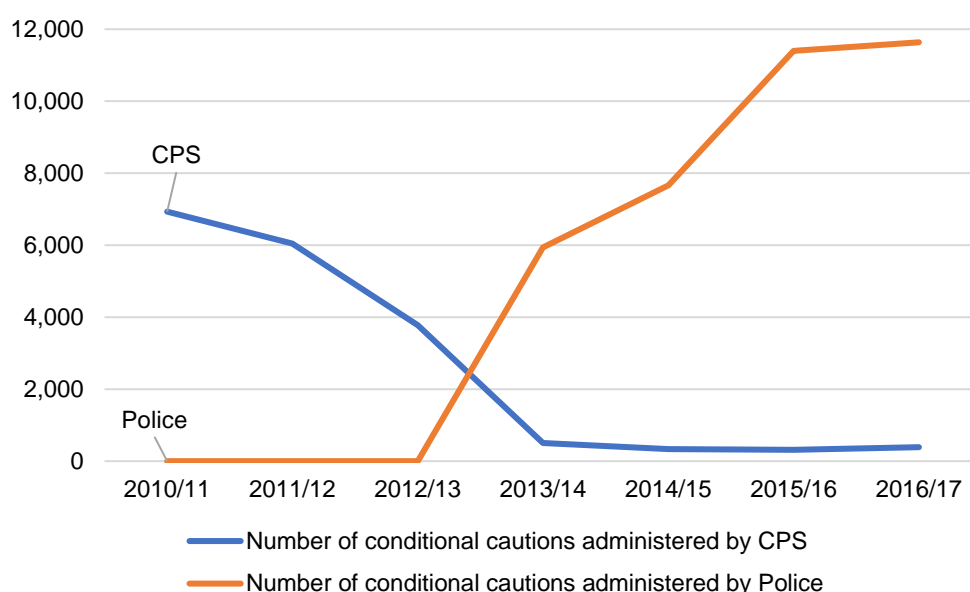
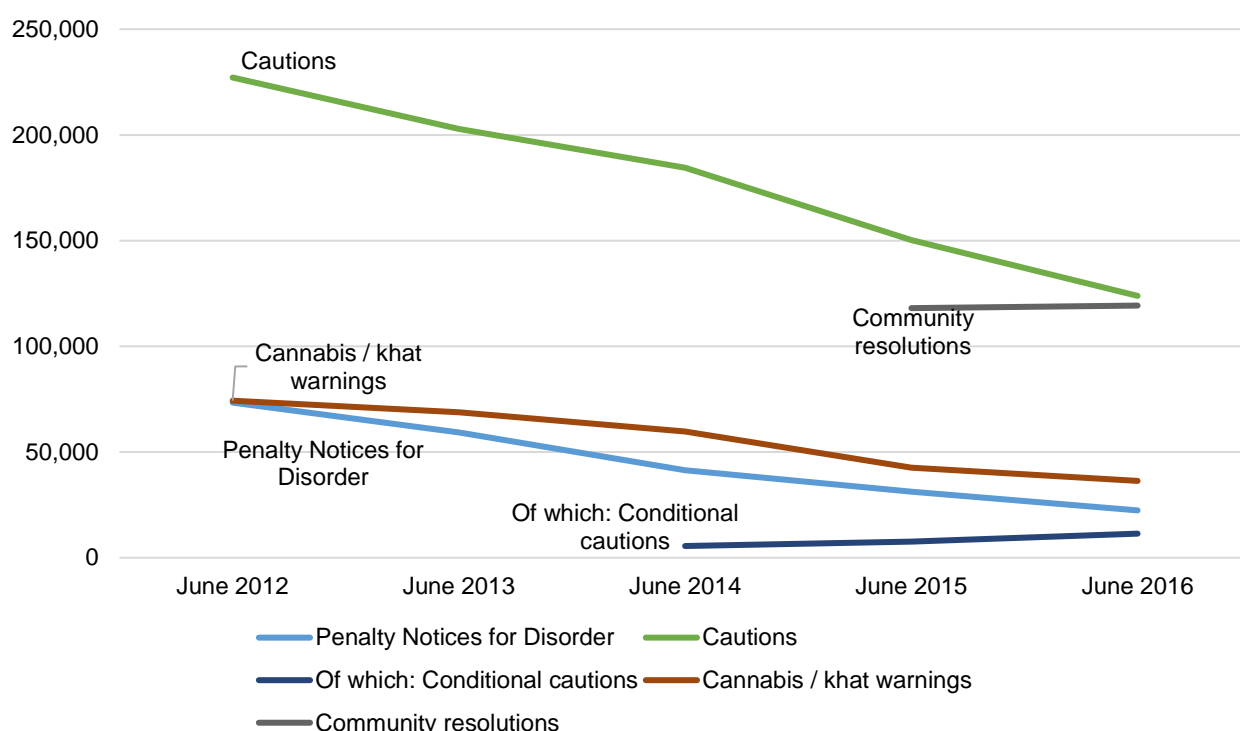


Figure 1 immediately demonstrates a complete inversion in who administers conditional cautions as the police became the chief decision-makers. The CPS has become irregular conditional caution decision-makers, administering approximately 300 conditional cautions for summary and either-way offences each year.

The number of conditional cautions administered by the police can be put into the context of other out-of-court disposals administered by the police each year between June 2012 and June 2016, as seen in Figure 2 below.

Figure 2: National police use of out-of-court disposals between 2011/12 and 2015/16, year ending June



As Figure 2 demonstrates, conditional cautions constitute a very small proportion of the total number of out-of-court disposals administered each year. Of the total 182,573 out-of-court disposals administered by the police in the year ending June 2016, only 11,396 (6%) were conditional cautions. Given the limitations of this dataset, this proportion is likely to be higher. Figure 2 also demonstrates that, of the combined 123,857 simple and conditional cautions administered in 2016, 9% were conditional cautions. This percentage has been growing each year as the number of conditional cautions has been steadily increasing, while the number of cautions has decreased dramatically.

Although the use of conditional cautions is increasing each year, it may be, depending on the missing data, the least-used type of out-of-court disposal. With the proposed two-tier system permitting only community resolutions and conditional cautions to be administered, we may soon see a marked rise in the use of these disposal types, with a concurrent decrease in other disposals. This will dramatically change the landscape of out-of-court disposals.

4.3 Where are conditional cautions administered?

Analysing where adult conditional cautions are administered gives an overview of the different force usage of the disposal. This enables a later investigation into possible factors which may explain differences between forces. These data must not be used as a league table to rank forces on the number or percentage of conditional cautions they administer, which would ignore the complexities behind such data. This is an important caveat as different police force areas have different population sizes and types of populations, and have various resources, policies and Local Planning Authorities (CJJI, 2011: 17). Instead, these data demonstrate the variation in the use of conditional cautions across England and Wales.

4.3.1 CPS

Data available from the CPS spans from 2010, when the CPS were still solely responsible for administering conditional cautions, to 2016/17. Data for 2016/17, the most recent year for which data are available, are presented in Figure 3 below.

Figure 3: Number of conditional cautions administered by CPS in CPS areas, 2016/17

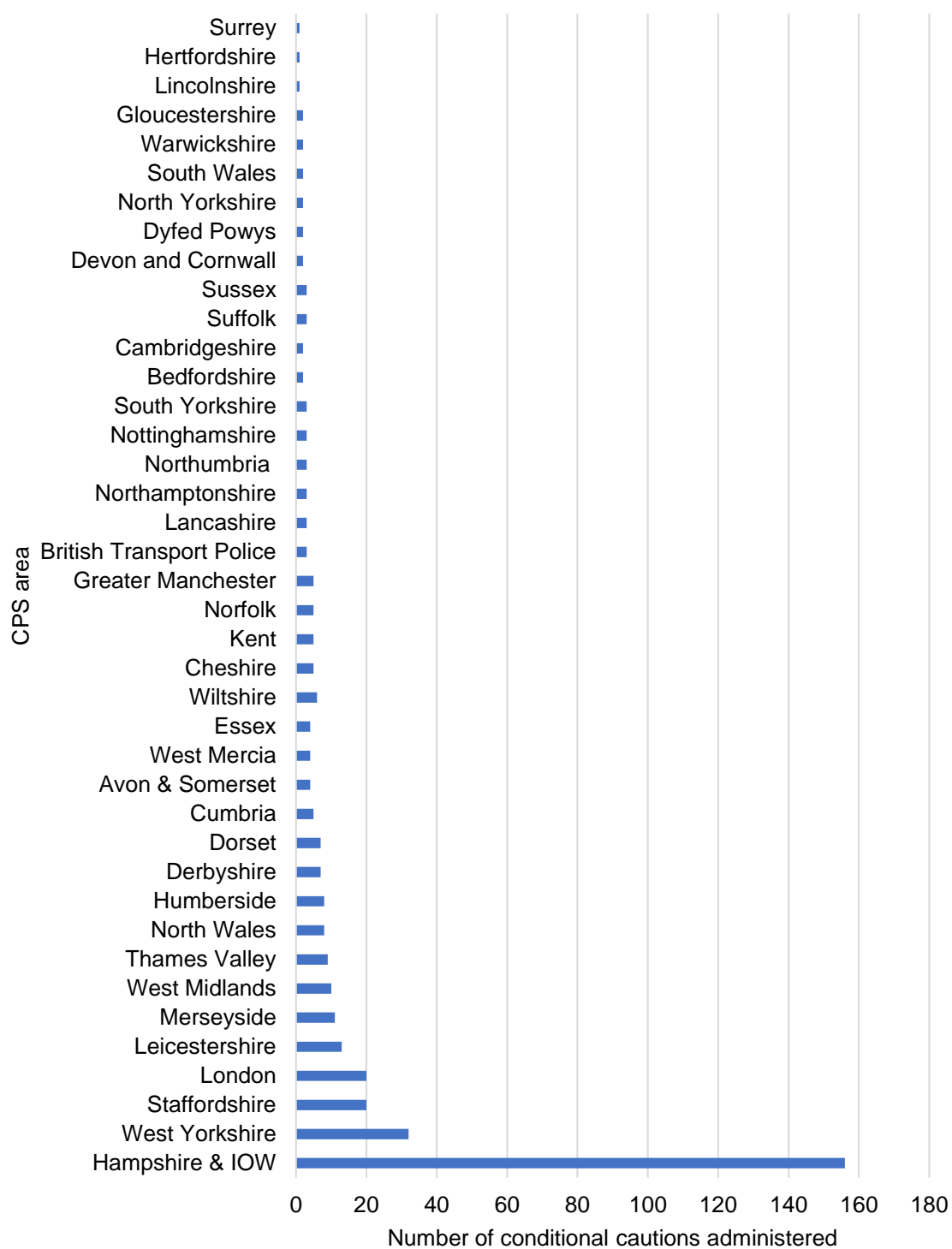


Figure 3 demonstrates that certain CPS areas, such as Cleveland, Lincolnshire, Surrey and Warwickshire, have almost wholly stopped administering conditional cautions, administering no more than 2 per year in 2016/17. Yet the more common pattern is for CPS areas to continue to administer a small number, approximately five, of such disposals each year, as seen in Avon and Somerset, Cheshire, Essex, Kent, Norfolk, Northamptonshire, Sussex and Wiltshire. In addition, some geographical areas see a comparatively large number of conditional cautions administered by the CPS, including Leicestershire, London, Merseyside, North Wales, Staffordshire, the West Midlands and West Yorkshire. The bulk of conditional cautions administered pre-charge by the CPS in 2016/17 was in Hampshire and IOW. This is likely due to Project CARA, in which conditional cautions may be administered for cases of domestic violence but must be administered by the CPS. This example demonstrates how the policy in place in certain areas will have a significant impact on the statistics in that area.

4.3.2 Police

To facilitate a useful overview of the use of police conditional cautions, the number of conditional cautions administered in each force have been correlated with the number of total cautions administered by that force (Ministry of Justice, 2021). These data are presented in Figure 4. Figures 5 and 6 then pull together the total proportion of conditional cautions administered for forces that provided data, per 1,000 adult cautions for forces that provided data.¹

¹ Note that the statistical bulletin "Crime Outcomes in England and Wales 2013/14" reflected the transition from the old detections to the new outcomes framework. As this was a transitional year, with a fuller, more detailed outcomes framework introduced subsequently in April 2014, the outcome data available for the year 2013/14 are based on broadly similar outcome types to those presented in 2012/13. This information should be considered when drawing comparisons across years. Comparisons should be done with caution given the changes in outcome recording practices over time (see Ministry of Justice, 2013c).

Figure 4: Number of conditional cautions administered per 1,000 adult cautions in each force area between 2013/14 and 2016/17, year ending December

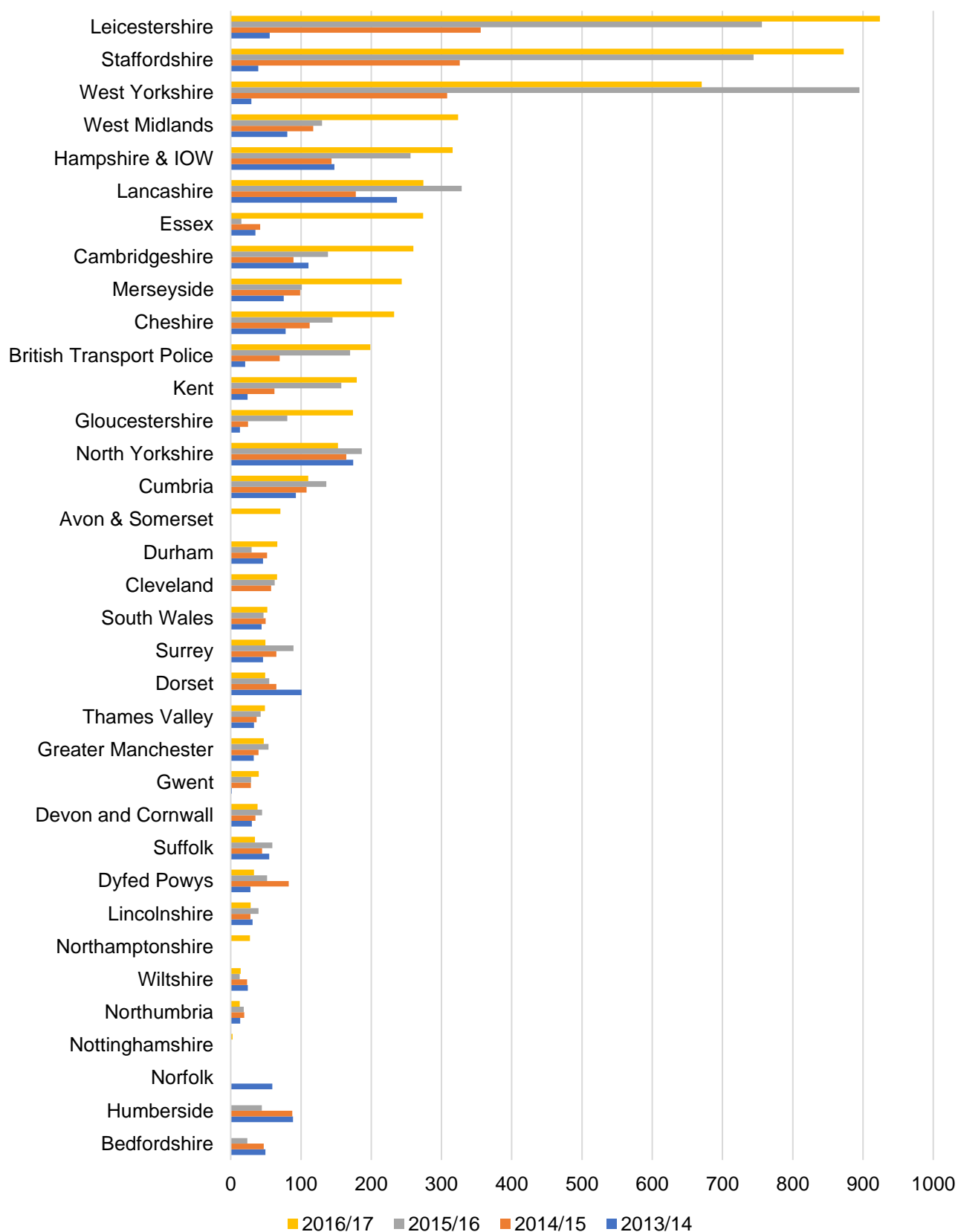


Figure 5: Total number of conditional cautions per 1,000 cautions between 2013/14 and 2016/17

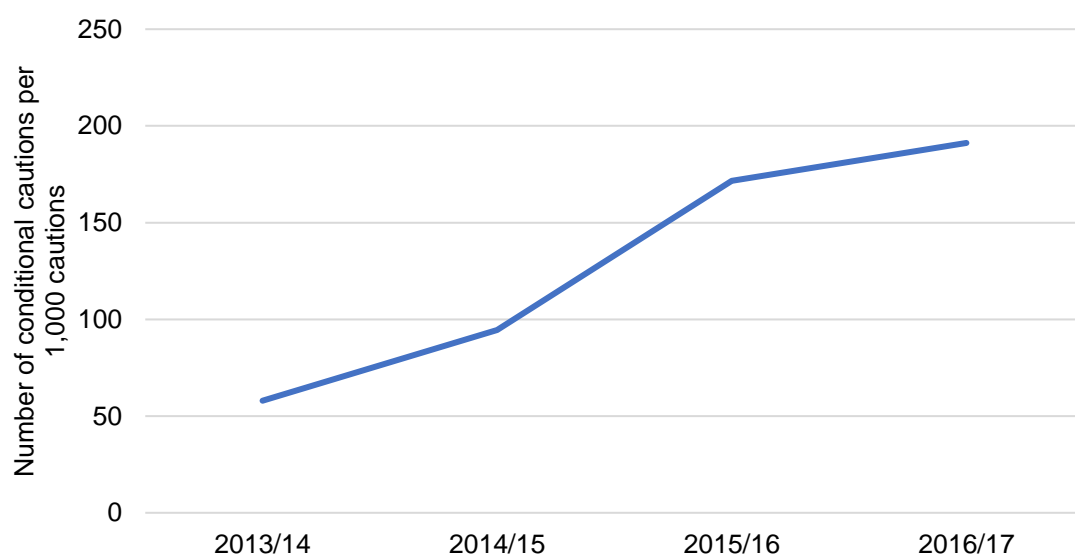
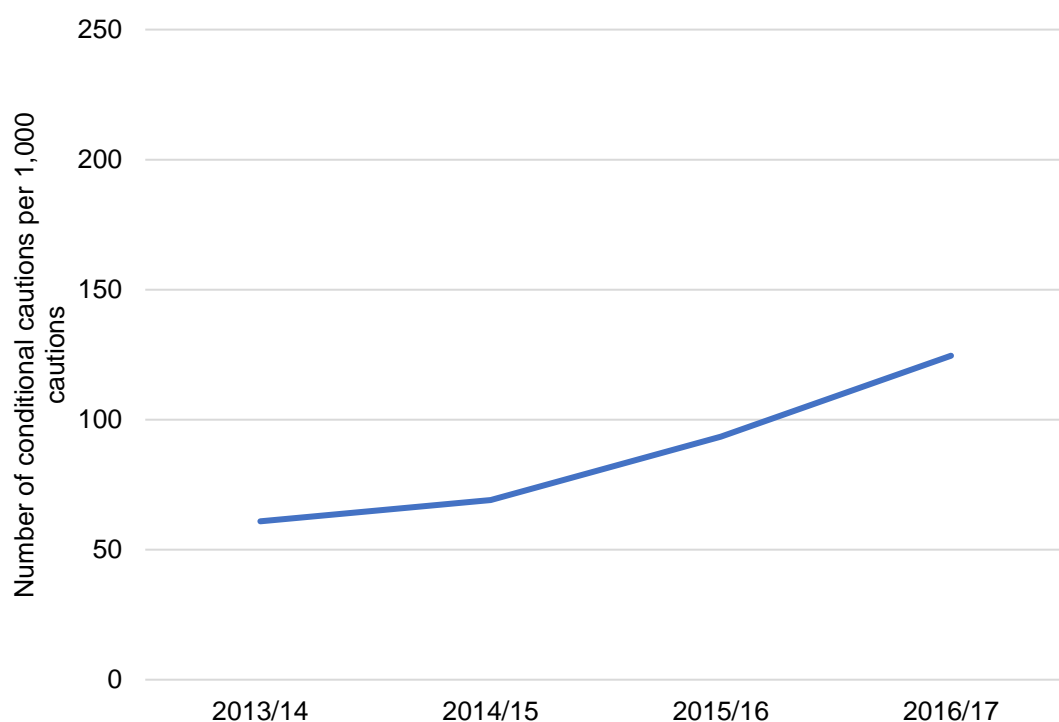


Figure 6: Total number of conditional cautions per 1,000 cautions between 2013/14 and 2016/17, excluding the three pilot forces



These data demonstrate the considerable range in the proportion of conditional cautions administered in each force. This supports a previous Criminal Justice Joint Inspection report, which found a wide variation in

the use of out-of-court disposals between police forces (2011: 17-18). While there is an overarching pattern of an increasing use of conditional cautions, these data evidence that this trend does not apply to all police forces. Instead, we should consider the context of this increase and the notable exceptions to this trend.

Unsurprisingly, the three pilot forces that provided data administer the greatest proportion of conditional cautions to all cautions. In 2016/17, the majority of cautions administered in Staffordshire and Leicestershire were conditional. These two forces saw an increase in the number of conditional cautions in 2015/16 of 533% and 583% respectively. However, interestingly, West Yorkshire saw a decrease in the proportion of conditional cautions administered in 2016/17, compared to 2015/16. Turning to look at the number of adult conditional cautions administered, the new pilot system had a substantial effect on the national data as over two-fifths (4,848 or 42%) of conditional cautions administered in 2016/17 were administered in these three police force areas. Although Figure 5 shows a total increase in the proportion of conditional cautions administered, this is bolstered by the pilot forces. Indeed, eleven forces, including North Yorkshire and Lancashire, saw a drop in the proportion of conditional cautions to adult cautions between 2015/16 and 2016/17.

Figure 6 shows the total increase in the proportion of conditional cautions per 1,000 cautions, excluding the pilot force data. It demonstrates that without these forces, there is a more gradual increase in the proportion of conditional cautions administered. As additional police forces adopt the new two-tier system, we are likely to see the number of conditional cautions, as well as community resolutions, administered each year sharply increase as other out-of-court disposals decline.

The overall pattern of increasing conditional cautions is therefore not general practice, but instead a more complicated picture likely to be affected by other local factors. This variation underlines the need to conduct case study analysis in forces to understand the reasons behind any increase or decrease in use. These data also helped identify forces

to include in the qualitative analysis: one force that had adopted the two-tier system for some time, one force with an increased use of conditional cautions in 2016/17, and one force with a decreased use of conditional cautions in 2016/17.

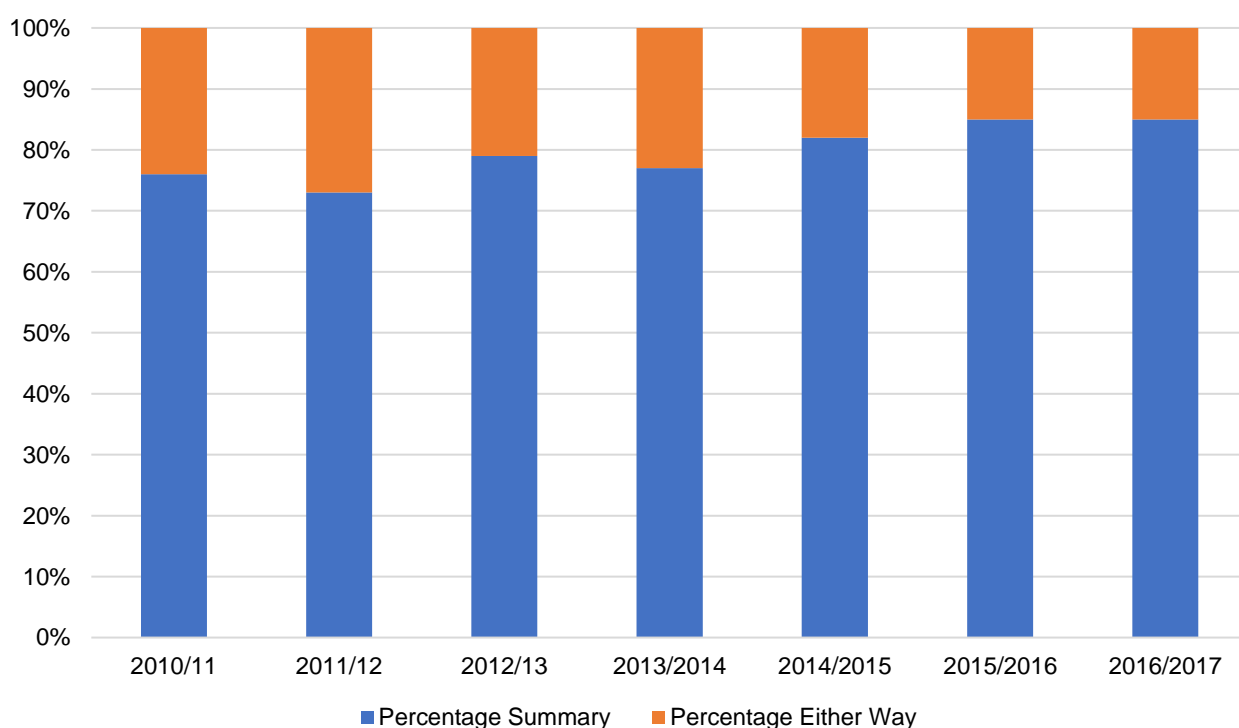
4.4 For which offences are conditional cautions administered?

Conditional cautions may be administered for almost all offences. The more serious the offence, the less likely it will be that a conditional caution is appropriate. For serious either-way offences and indictable offences, a conditional caution should only be offered in exceptional circumstances and must be referred to the CPS. In addition, conditional cautions cannot generally be used in cases of domestic violence or hate crime. This analysis sets out the types of offences most commonly disposed of by conditional cautions by the CPS and the police.

4.4.1 CPS

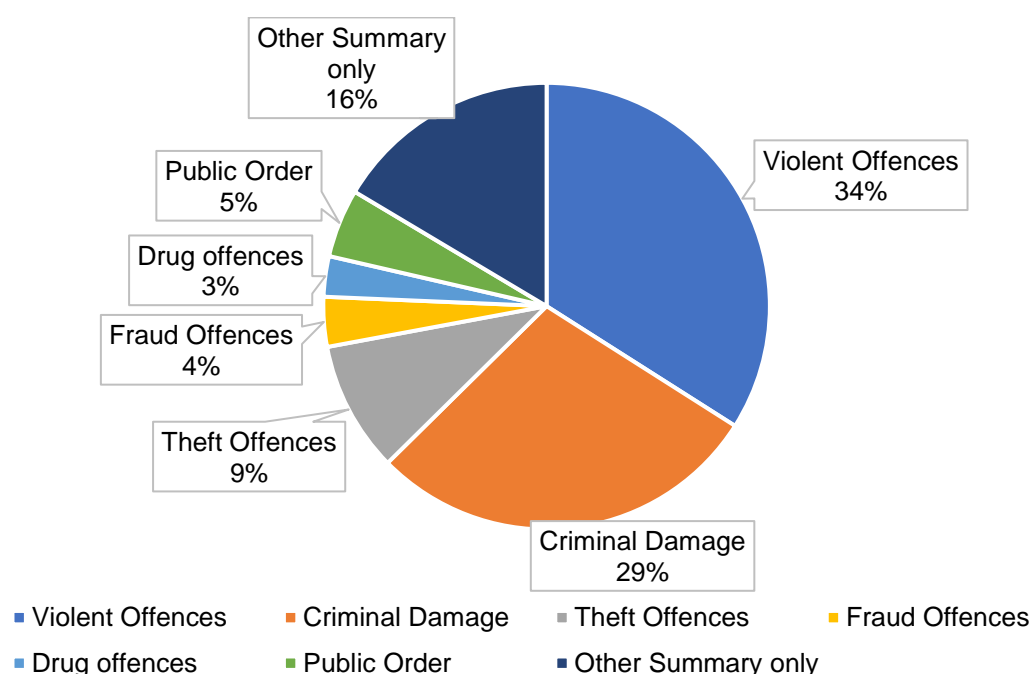
Data from the CPS illustrate the percentage use of summary-only and either-way offences disposed through a conditional caution as set out in Figure 7 below.

Figure 7: Conditional cautions used for summary-only and triable either-way offences by the CPS between 2010/11 and 2016/17



A more detailed outline of the offence categories disposed by a conditional caution in 2016/17 is presented in Figure 8.

Figure 8: CPS use of conditional cautions for summary offences 2016/17



In 2016/17, the CPS administered 387 pre-charge conditional cautions to 444 offenders, with 186 administered in Hampshire & IOW. Of these 387 conditional cautions, 85% were summary-only offences and 15% were for either-way offences. The most common summary offences to be disposed by a conditional caution were violent offences, criminal damage, other summary-only offences and theft offences.

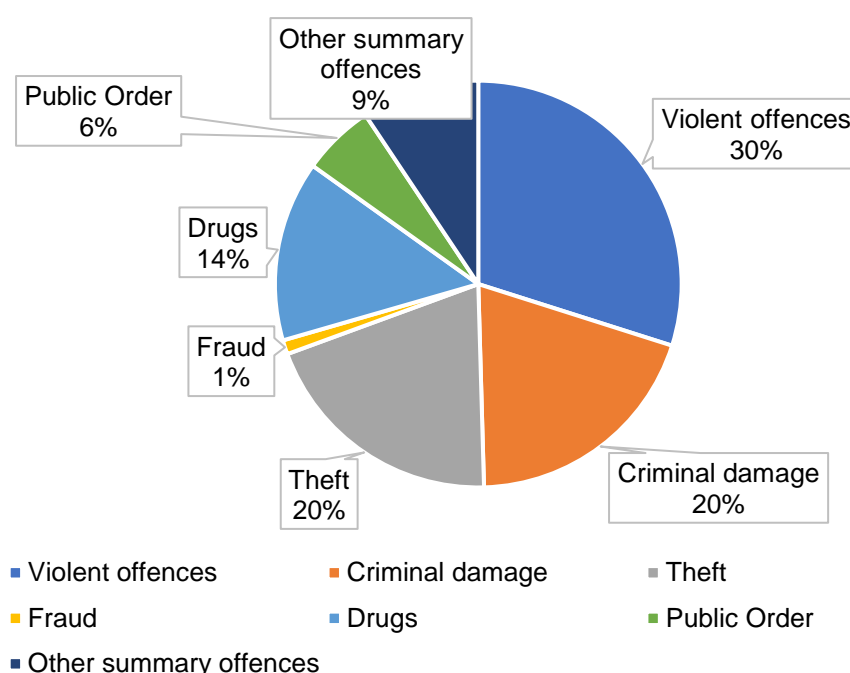
Since 2010/11, the CPS administered over 70% of their conditional cautions for summary-only offences. Since the passing of the LASPO Act 2012, the CPS proportionately increased their use of conditional cautions for summary-only offences. This pattern is surprising. While we might have expected the police to make decisions for summary cases and to refer serious either-way offences or indictable-only offences to the prosecutors, that does not appear to be the case, with the CPS continuing to make such decisions. At the same time, the number of conditional cautions administered by the CPS decreased, amounting to 387 in 2016/17. The high proportion of conditional cautions administered

for summary offences by the CPS is likely to be due to the high proportion of conditional cautions they administered in Hampshire & IOW, for domestic violence related offences as part of CARA. This is the Hampshire & IOW initiative through which perpetrators of domestic violence and referred to the Hampshire Trust for workshops to reduce their reoffending. The force has dispensation from the DPP to administer conditional cautions for domestic abuse, with authorization from the CPS, which explains their increased use of the disposal.

4.4.2 Police

Police data, on the other hand, do not facilitate a separation of summary-only and either-way offences. However, through collating all data provided by the police forces, I identified the offences for which conditional cautions are more frequently used, as shown in Figure 9.

Figure 9: Police use of conditional cautions for offence categories 2016/17



In 2016/17, the police administered 11,636 conditional cautions. Of these, 30% were for violent offences, 20% were for criminal damage, 20% were for theft offences, with a further 14% for possession of drugs offences. The police use of conditional cautions reflects the CPS in

administering almost a third of conditional caution for violent offences. The second offence type most commonly disposed through a conditional caution is also for criminal damage. However, the police then see a greater proportionate use of conditional cautions for theft and drugs offences than the CPS.

These data evidence that the CPS administer the majority of their conditional cautions for summary-only offences. As we do not know the seriousness of the offences disposed by a conditional caution by the police, the same cannot be said for the police. However, it appears that the police administer conditional cautions for similar offence categories as the CPS, with an increased use of conditional cautions for theft and drug offences.

4.5 To whom are conditional cautions administered?

There is little data on who receives conditional cautions. There are no data available on the offending history of those who receive the disposal, and little data on their personal characteristics, such as their gender, ethnicity, or social status. Protected by the Equality Act 2010, these should not affect whether a conditional caution will be administered. However, as there are limited data on the use of conditional cautions, we do not know the characteristics of the offenders who receive conditional cautions to determine whether this occurs in practice (Office for Criminal Justice Reform, 2010). The only comprehensive data available, provided by the CPS, are for the gender of offenders, as presented in Figure 10.

Figure 10: Percentage use of conditional cautions by CPS for males and females between 2010/11 and 2016/17

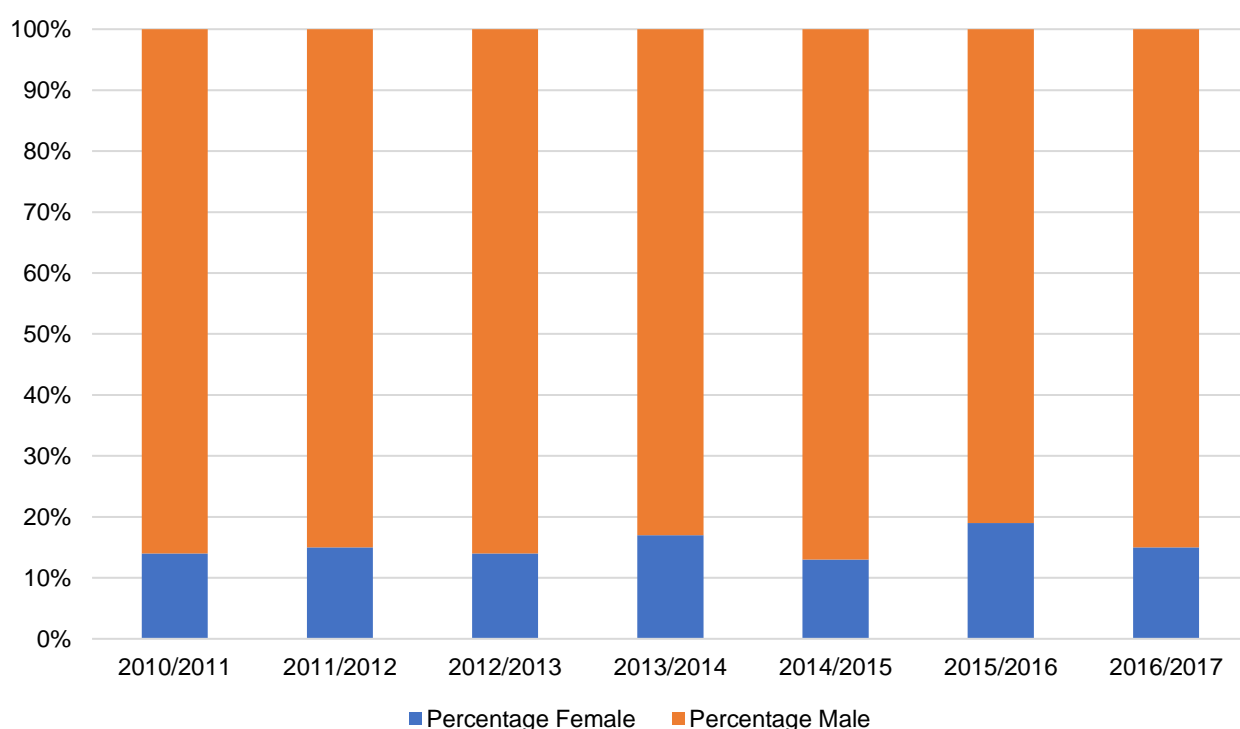


Figure 10 demonstrates that each year between 2010/2011 and 2016/17, the CPS administered conditional cautions more frequently to males than females. This finding reflects other statistics on women in the criminal and justice system. In 2010/2011, 16% of the total arrests made in England and Wales were of females (Ministry of Justice, 2011) with later statistics supporting a similar representation of genders throughout the criminal justice system (Ministry of Justice, 2015).

Data on the characteristics of offenders given a conditional caution administered by the police are not available. This means we are unable to identify whether particular groups are more or less likely to receive a conditional caution or the types of conditions which may be administered for them. This is an important gap in data that should be corrected as it would help indicate whether discriminatory decision-making occurs in practice.

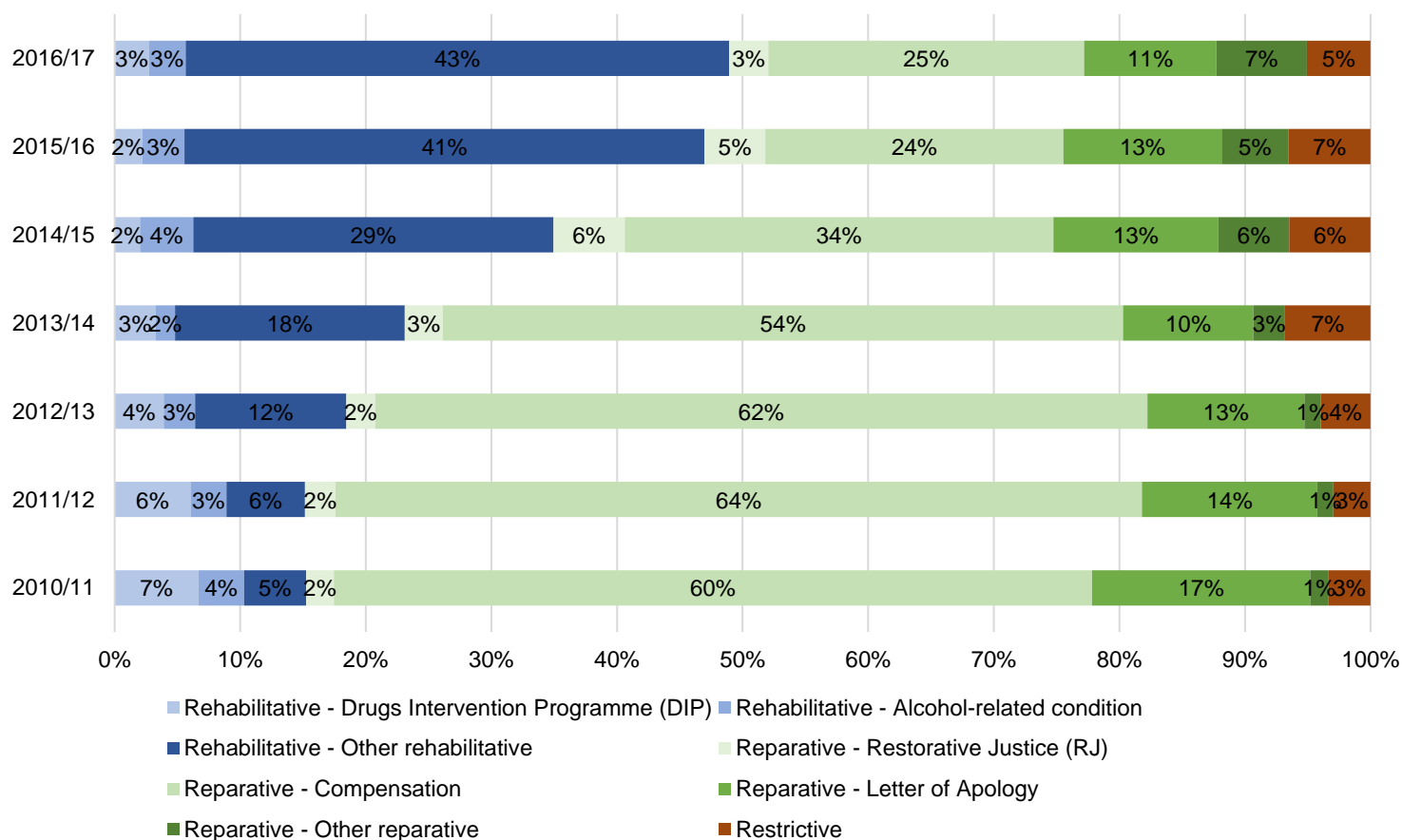
4.6 What condition types are used?

The second conditional caution decision is which conditions to attach to rehabilitate the offender, provide victim reparations or punish the offender. This section collates the limited data on the condition types administered by the CPS and the police. Note that more than one condition type may be offered as part of a single conditional caution.

4.6.1 CPS

The CPS provides a comprehensive breakdown of the condition types for each year, illustrating how the conditions are used to achieve the stated aims of conditional cautions, as shown in Figure 11 below. The CPS uses a category of 'restrictive' conditions that may be punitive or rehabilitative or for the victim's protection. Examples of restrictive conditions include not reoffending and not going to certain locations, such as where the offence occurred.

Figure 11: Types of conditions administered by the CPS 2010-2017²



² Data for Q4 2012/2013 is unavailable

Figure 11 demonstrates that, between 2010 and 2015, reparative conditions were the most commonly used condition type. Since 2011/2012, the proportionate use of reparative conditions has reduced each year, eventually falling to 46% in 2015/2016. Concurrently, the percentage use of rehabilitative conditions increased each year, growing from 15% in 2010/2011 to 49% in 2016/17. The rate of this shift from reparative to rehabilitative conditions is particularly pronounced after the LASPO Act 2012.

Compensation was the most commonly used reparative condition each year. In 2010/2011, compensation accounted for 60% of all conditions administered, increasing to 64% in 2011/12.³ However, following the introduction of the LASPO Act, the proportion of the CPS use of this condition type reduced to 54% in 2013/14, 34% in 2014/15, 24% in 2015/16 and 25% in 2016/17. The most commonly used rehabilitative condition is the 'other' rehabilitative condition. In 2016/17, this accounted for 43% of all condition types. This is compared with alcohol and drug-related conditions, which accounted for 3% each in the same year.

The conditional caution, as identified in Chapter 1.2, was also intended to act as a vehicle for restorative justice. However, the data demonstrate that such condition types are infrequently used by the CPS. Before the introduction of the LASPO Act, the CPS saw a consistently low use of this condition type, which comprised of 2% of all condition types. After the introduction of LASPO, this proportion increased to 6% in 2014/15 but decreased to 5% in 2015/16 and 3% in 2016/17.

The CPS data demonstrate that conditional cautions are predominantly used to provide victim reparations and offender rehabilitation. These data indicate a trend of increasing use of rehabilitative conditions.

4.6.2 Police

The police, on the other hand, do not collate data on the condition types used. Only three police forces were able to provide this information and so we do not know which conditions are used for the majority of

³ A full breakdown is not available for the year 2012/13.

conditional cautions. Data available on the types of conditions used in three police force areas between 2013/14 and 2016/17 are illustrated in Figure 12.

Figure 12: Types of conditions administered in 3 police forces between 2013/14 and 2016/17

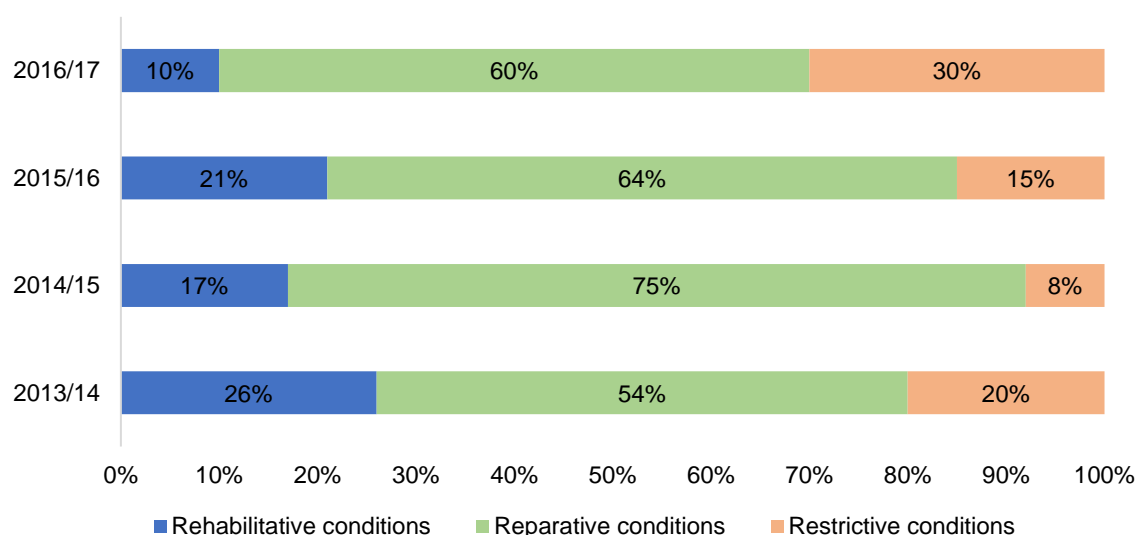


Figure 12 indicates that reparative conditions are the most frequently used condition type by the police. Unlike the CPS, which saw a move from reparative conditions to rehabilitative conditions, these three police forces saw a sporadic decrease in the use of rehabilitative conditions. In addition, while rehabilitative conditions were the second most used condition type for the police in three out of the four years, in 2016/17, restrictive conditions became the second most used condition type. This use of restrictive conditions contrasts the CPS use of the disposal, which consistently used restrictive conditions for fewer than 10% of all conditions. The relationship in the police use of reparative and rehabilitative conditions saw more fluctuation than the more apparent pattern in the conditions used by the CPS. This is likely to be an effect of the smaller sample size.

The most used condition type by these three forces was victim compensation, accounting for 56% of all conditions administered in 2016/17. This condition type, to a varying extent, has been the most used condition type by these three forces over the four-year period. It was also

the most frequently used condition type by the CPS. As with the CPS, the three police forces also saw a low use of restorative justice conditions, with no use of a restorative justice meeting seen in any force.

Unlike the CPS, it has not been possible to identify the exact conditions within these categories of conditions. However, the three forces demonstrated a range of rehabilitative conditions used. These varied in the level of engagement required by the offender. One force demonstrated the variety of condition types that could be used. The guiding principles identified in Chapter 2.3.3. are that conditions should be achievable, proportionate and completed within a reasonable time. My data demonstrate that these principles were not always followed in these forces. My analysis found an example of an offender who had the requirement to 'make efforts to enter into a treatment programme for this issue' which is an achievable, if not specific, condition to fulfil. Yet another offender had the condition 'to fully engage with and comply with the requirements of Addaction for a minimum period of 3 months' and to 'become free of your dependency on heroin.' This condition is an impossible requirement to meet in the three-month period of the conditional caution. Another condition in the same force, following a common assault, was to meet with a grief counsellor to 'assist with your recent loss'. These conditions indicate the wide range of conditions that can be administered, and the level of engagement required by the decision-maker.

4.7 What is the compliance rate of conditional cautions?

Finally, we consider the compliance rate of conditional cautions and the third conditional caution decision: what to do in the event of non-compliance.

4.7.1 CPS

The CPS provides a percentage breakdown of the compliance rate of conditional cautions administered pre-charge between 2010-2016, presented in Table 2. These data are discrete and not linked with condition types.

Table 2: Compliance rate for conditional cautions administered by CPS
2010/11-2015/16

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Compliance rate	85%	81%	82%	56%	65%	67%
Non-compliance rate	15%	19%	18%	44%	35%	33%

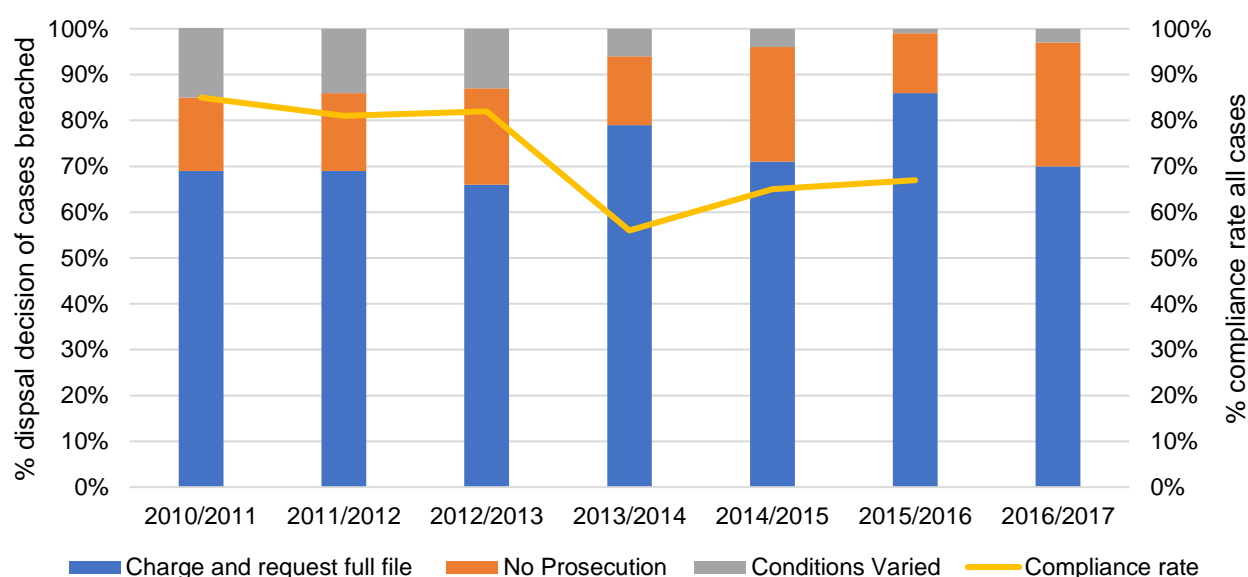
These data demonstrate that every year, over half of all conditional cautions were complied with. Before the introduction of the LASPO Act 2012, the compliance rate for conditional cautions administered by the CPS was consistently over 80%. Following the implementation of the LASPO Act, this compliance rate saw a dramatic drop to 56% before slowly rising each subsequent year. From data already analysed, we know the number of conditional cautions administered by the CPS following the LASPO Act dropped from approximately 6,000 in 2011/12 to 300 in 2014/15. These conditional cautions were more likely to be used for summary offences and have more rehabilitative conditions attached. These factors may explain why the compliance rate dropped over this period.

Data showing the course of action taken by the CPS following non-compliance are presented in Table 3 and Figure 13.

Table 3: Disposal decisions taken by the CPS in the event of non-compliance 2010/11-2016/17

Non-Compliance Disposal Options	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
Charge	69%	69%	66%	79%	71%	86%	70%
Conditions Varied	16%	14%	13%	6%	4%	1%	3%
No Prosecution	16%	17%	21%	15%	25%	13%	27%

**Figure 13: CPS decisions following a breach of conditional caution
2010/11-2016/17**



These data demonstrate that the CPS consistently prosecute offenders in over two-thirds of non-compliance cases. Before the introduction of the LASPO Act, the decision to charge was taken in almost 70% of cases of non-compliance. Following the LASPO Act, this rate became more variable, with spikes in whether the offender would be charged. While there is ongoing variation in the decision to charge or for no prosecution, the frequency of the decision to vary conditions decreased and remained low since the introduction of the LASPO Act.

4.7.2 Police

Unfortunately, such a comprehensive overview of the compliance rate in police forces could not be obtained as only two police forces were able to supply this data. Wiltshire reported a 100% compliance rate for all their conditional cautions (35, 29, 15 and 17 conditional cautions administered in 2013/14, 2014/15, 2015/16 and 2016/17 respectively). This impressive compliance rate may be linked to its low numbers of conditional cautions. Dyfed-Powys had a compliance rate of 93% (60 conditional cautions), 89% (105), 80% (55) and 66% (32) for 2013/14, 2014/15, 2015/16 and 2016/17 respectively. These, albeit limited, data indicate a similar trend in a high compliance rate of conditional cautions that reduces each year.

There are no data available on police actions following a breach of a conditional caution. This third decision will be further explored in the qualitative element of the research to spotlight the factors considered when deciding whether to prosecute, change conditions or accept partial completion.

4.8 Conclusion: a varied picture of conditional cautions

The data generated in this Chapter draw a picture of the actual use of conditional cautions. They show a proportionately low use of conditional cautions compared to other out-of-court disposals, though this proportion is increasing each year. The ratio of conditional cautions compared to simple cautions is also increasing each year, though this is led by forces that have implemented the two-tier system of out-of-court disposals. Since the introduction of the LASPO Act 2012, the police have replaced the CPS as chief decision-makers for this disposal type. However, the CPS continue to administer a low number of non-indictable pre-charge conditional cautions in certain geographical areas.

The data remind us not to treat the CPS or the police as one amorphous entity. The number of conditional cautions administered by both the CPS and the police varies between geographical areas, and whilst we can identify national trends in their use, these trends belie a more complicated reality. Certain forces, including the pilot forces, have a high use of conditional cautions as a proportion of cautions and positive outcomes. These data pull up the mean average use of conditional cautions, indicating a rapid growth in use not echoed at a national level. These data suggest that the number of conditional cautions administered each year may substantially increase if the new two-tier system is adopted in other police forces.

These data also establish the offence types for which conditional cautions are more commonly used. For the CPS, these are summary-only offences, with the greatest number of conditional cautions administered for offences of theft, criminal damage and violent offences. The police also use conditional cautions more frequently for violent

offences, criminal damage and theft, with an additional category of drug offences. The most commonly used condition types used by the CPS were reparative and rehabilitative, with punitive conditions infrequently used. Since 2015/16, the CPS administered an increasing proportion of rehabilitative conditions, with a decrease in reparative conditions. Although comprehensive data are not available from the police, the limited data suggest the police use reparative and rehabilitative conditions more frequently than restrictive conditions. However, we do not know if this is a general trend in the police, the specific condition types to be used for different offences and offenders, nor how the officer makes such a decision.

The low volume of data available from police forces means we do not know which condition types are used by the police, who, as we have seen, have become the primary decision-makers in this area. However, the data reveal the CPS and the three police force areas for which there are data, prioritise rehabilitative and reparative conditions over punitive conditions, as recommended by the Guidance. My qualitative data therefore need to explore how decision-makers choose the conditions in practice and ensure these are proportionate to the offending behaviour while achieving the aims of the conditional caution.

Finally, the data demonstrate the compliance rate of conditional cautions and the decision of what to do in the event of a breach. The CPS had a compliance rate consistently over 50%: in four out of the six years for which data was available, over 70% of conditional cautions administered by the CPS were complied with. Each year, the CPS charged the offender in cases of non-compliance in at least two-thirds of cases. Incomplete data from the police make it difficult to identify the compliance rate in police cases, though data provided by two police forces suggest a similarly high compliance rate, decreasing each year.

The quantitative data pinpointed areas requiring further study to explore how officers make decisions on whether to administer a conditional caution, the conditions to attach and what to do in the event of a breach.

Before focusing on these individual decisions, the data have emphasised the importance of understanding the organisational context in which these decisions are made, as these are likely to affect force use of the disposal. Chapter Five therefore analyses how each of the three police forces have communicated the aims of conditional cautions and structured decision-making.

Chapter Five: Organisational structures to guide decision-making

5.1 Introduction

This Chapter focuses on how organisational pressures and strategies, created by Strategic Leads for out-of-court disposals, were created to guide decision-making. Various scholars, such as Holland (2007) and Skogan (2008) have demonstrated that the process of reform, particularly the central roles played by middle-level trainers and leaders, is as essential for success as the activities of senior leadership. This Chapter analyses the Strategic Leads and middle-level trainers and leaders' roles in implementing the new approach to conditional cautions.

These Strategic Leads are members of the meso-level mid-upper ranks, not senior leaders within their organisation. They were perceived to have a particular skill set that could help to initiate change as part of a specific reform initiative within the force. These Leads were encouraged by the nationwide movement towards a two-tier system of out-of-court disposals and their personal motivations to use conditional cautions to support the rehabilitation of offenders (Chapter 5.2). Strategic Leads implemented organisational structures to encourage officers to strive for a greater use of conditional cautions (5.3), use rehabilitative conditions (5.4) and urge offenders to comply with conditions (5.5). As Schneider recognised, while police officers must follow rules governing their actions, they are also subject to other organisational demands that constrain their discretion, so it is crucial we understand these demands (1992).

5.2 Strategic Leads' motivation for rehabilitation

Although this Chapter focuses on institutional structures, we should not lose sight of the individuals who put these in place. Cockcroft reminds us that police leaders in the UK have typically passed through the lower ranks and do not operate on an island, detached from the culture of the force (2019). Cockcroft advises us to think in terms of 'differing cultural orientations rather than belong(ing) to different cultures' (2019: 32). This is important as police leaders, particularly those with an operational remit, are both influenced by and actively shape police culture. This

section outlines the national Strategy for out-of-court disposals and how the Strategic Leads are part of a national working group in which they are encouraged to adopt a rehabilitative approach to conditional cautions. This national strategy resonated with the Strategic Leads' motivations to rehabilitate offenders and encourage their officers to adopt this rehabilitative ideal.

5.2.1 National strategy for out-of-court disposals

At the national level, there is a clear signal for a rehabilitative approach to managing offenders out of court. The National Police Chiefs' Council (NPCC) Lead for out-of-court disposals created the 2017 NPCC Strategy for out-of-court disposals. This guidance document encourages the gradual implementation of the two-tier system of out-of-court disposals. It emphasises that out-of-court disposals support vulnerable people in society through providing 'rehabilitative opportunities to offenders to turn their life around at the earliest opportunity' by addressing complex issues with a 'whole systems' approach (NPCC, 2017: 4). This rehabilitative approach is rationalised as 'we cannot call ourselves a civilised society' if we do not reduce the risk to vulnerable people in our communities. At a national police level, rehabilitation is focused on restoring the offender to society through local support services, built on the principle that states have a duty to support the most vulnerable in society.

The NPCC guidance was complemented by the creation of an Out-of-Court Disposal Working Group (WG) (NPCC, 2017: 16). The WG is comprised of Strategic Leads in each of the 43 police forces responsible for out-of-court disposals. The WG meets regularly to discuss their work, resolve problems arising and share promising practices. In our research interviews, Strategic Leads singled out the WG as an essential catalyst for the move towards a rehabilitative two-tier system of out-of-court disposals. The WG connected Strategic Leads with colleagues in other forces with whom they could share support and encouragement, so they did not feel isolated bringing about these changes. Representatives from partner agencies, such as the CPS, were also members of the WG and so Strategic Leads could seek immediate advice to resolve issues. One

of the three Strategic Leads in Beauxvale, Strategic Lead Beech explained 'it's networking on a huge scale, so I've got a group of people that I could access around criminal justice matters and issues, just to have a sounding board.' A team within this WG is also developing a guide for how to move forces towards a two-tier system. The WG therefore encourages and motivates Strategic Leads to adopt the two-tier system of out-of-court disposals in their forces, without legislation or resources.

In research interviews, Strategic Leads observed that the NPCC Lead for out-of-court disposals, DCC Sara Glenn, was motivational to work with and had a real passion for boosting the use and impact of conditional cautions across England and Wales. Strategic Lead Chord explained that DCC Glenn was a 'passionate individual, she wants to see things taken forward' and had been before the Home Affairs Select Committee 'to really push the programme'. The force had seen a 'lot more *keenness*' over the last few months for this project at the national political level. Her enthusiasm for the project filtered down to the Strategic Leads, who felt inspired and supported to act within their own forces.

Airedale was not a pilot force but had recently chosen to implement the two-tier system. Beauxvale had not yet decided to implement the two-tier system but wanted to prepare themselves for this change. Cherryvale had adopted the two-tier system a few years before my research began. Strategic Leads were therefore reinvigorating their process of administering conditional cautions to encourage a greater use of conditional cautions, focusing on diverting cases from court.

5.2.2 Strategic Leads as change-makers

The Strategic Leads interviewed in this study were members of this WG, but also acted individually in leading their forces to develop their structure of out-of-court disposals. As Neyroud observed, these officers work in the middle of the organisation, between the Chief Constables and police officers, making key operational and personnel decisions (Neyroud, 2019: 10). They acted as change-makers who redeveloped the system of out-of-court disposals and brought about a cultural change in how the conditional caution was perceived.

These Strategic Leads had a clear commitment to, and enthusiasm for, the potential of conditional cautions and the need to encourage officers to buy into the disposal. Strategic Leads reported that conditional cautions satisfied the needs of three groups: the offender, in diverting them to support; the victim, who is engaged in the process and may benefit from reparative conditions, or the knowledge that the offender is being rehabilitated; and the police and wider criminal justice system, which benefit from a more efficient disposal, particularly necessary in a period of austerity. Strategic Leads observed that the key benefit of the conditional caution was that it satisfied these tripartite aims and was a 'winner' for all three interested groups.

Nevertheless, it was the rehabilitation of the offender that stood out as the principal aim of the disposal for each of the Strategic Leads. As Strategic Lead Almos explained:

Traditionally, our job has been to take a reported crime, investigate it, find the person responsible, send them to court, they get punished. What we're now trying to think is: we'll investigate the crime, interview the offender, we'll try and work out why they committed that offence and then try and put something in place that will prevent that from happening again. It not only prevents further victims, it will also reduce our demand in the long run.

Without exception, these individuals were motivated and enthusiastic about the potential of this disposal to support these three parties. Interviews with Strategic Leads were longer as they sought to ensure I had fully understood the disposal they dedicated so much of their time to researching and promoting. Indeed, Strategic Lead Beech professed:

I do get quite evangelical about it. After 24 years in policing of bringing someone into custody, doing a file, sending them to court, it is an opportunity to break that kind of cycle, it really, really is.

This dedication went beyond working hours but included following news items and documentaries of other forms of rehabilitation by the police and wider society.

5.3 Organisational structure to increase the use of conditional cautions

Although Strategic Leads were supportive of the disposal, they recognised that their primary role was to encourage officers to be motivated to use it. This fits within the transformational approach to leadership, which emphasises ‘participation, consultation and inclusion’ in a bid to get subordinates to buy into the ‘vision’ that they wish to implement (Silvestri, 2007: 39). Strategic Leads emphasised the importance of creating a decision-making structure to entrench the disposal and demonstrate the force’s support of it. This structure varied between forces, as set out below (NPCC, 2017: 16).

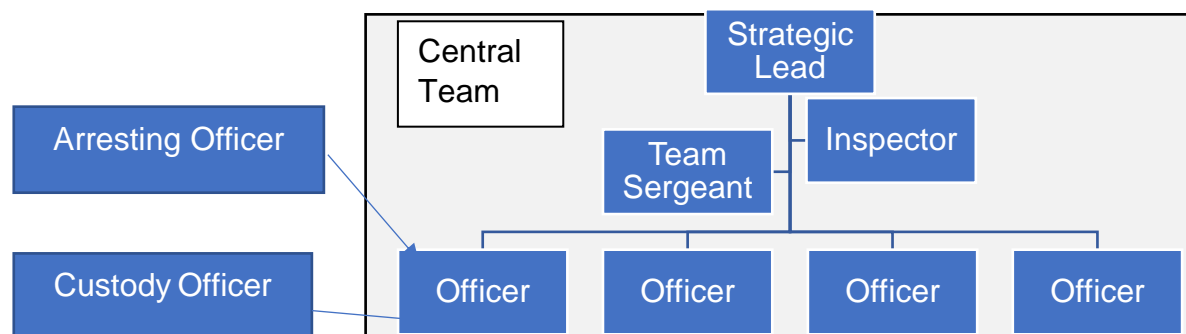
5.3.1 The structure of decision-making

5.3.1a Specialised teams to administer conditional cautions

Strategic Lead Almos created a Central Team to manage the caseload of detainees in each custody suite, focusing on diverting individuals to a conditional caution. Almos explained that the Central Team was intended to act as a ‘catalyst’ to increase the force’s use of the disposal as officers became specialists in the disposal.

The structure of the Central Team is shown in Figure 14. Strategic Lead Almos spoke directly with the Inspector, who communicated with team sergeants responsible for the day-to-day management of their teams and the authorisation of the majority of conditional caution decisions in the force, brought in by arresting and custody officers.

Figure 14: Structure of Central Team in Airedale



This core team focused on administering conditional cautions. Founding officers and authorisers in these Teams were selected based on their experience and motivation for rehabilitating offenders. Subsequent members then had to apply to join the team. Crucially for Strategic Lead Almos, this meant officers 'were all recruited or were people who wanted to be there.' Officers explained that they had asked to join the Central Team because they wanted a change in their policing careers. Others had heard about the aims of the new Team and thought it was a good opportunity to develop conditional cautions and be part of an 'impactive' approach to policing. This created a core team that fully supported the aims of the disposal. New members could then be transferred to the Team to join the entrenched team culture.

This sub-culture was supported by the Strategic Leads, who encouraged the use of conditional cautions. Airedale was very advanced in adopting the two-tier framework for out-of-court disposals. This meant that decision-makers generally only administered community resolutions or conditional cautions. PC Adely explained:

They want *every* caution to have an intervention and prevention tag on it to try to stop people from doing things again. So, if we hadn't been able to do the conditional caution, the only option is court.

Officers in the Central Team, based in the custody block, observed that offenders they encountered would not generally be suitable for a community resolution, because of the offence seriousness or their behaviour, and so usually decided between a conditional caution or a charge. Officers examined cases by assuming that a conditional caution would be the appropriate outcome and then questioning whether this was the right decision in the case. PC Ambler reported:

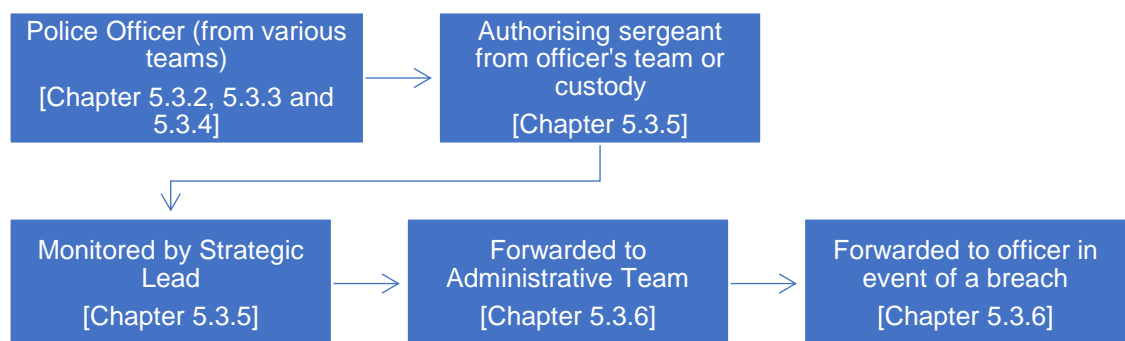
Every prisoner we are looking at, obviously not the lot here for murder, start with conditional caution then work out why they shouldn't have it, if they shouldn't.

I returned to Airedale after my data collection and discovered the Central Team had been disbanded, with officers moved to other teams. Data analysts reported that this disbandment resulted in a significant decrease in the number of conditional cautions administered. It was hoped that conditional caution numbers would begin to increase again as officers from the Central Team encouraged their new teams to administer the disposal. This finding underlines the significant influence of this working sub-culture within the Central Team in encouraging officers to administer conditional cautions, as developed in Chapter Six.

5.3.1b Dispersed decision-making

In contrast to Airedale, Beauxvale and Cherryvale did not have a Central Team that administered conditional cautions. Instead, decision-making was spread across the force, though both forces had response support teams that received and disposed of additional case files from response teams. As conditional caution decision-making was dispersed, Strategic Leads in Beauxvale and Cherryvale adopted different strategies to encourage officers to administer this disposal, as outlined in Figure 15.

Figure 15: Structure of conditional caution decision-making across Beauxvale and Cherryvale



5.3.2 Streamlined process to administer conditional cautions

As officers in Beauxvale and Cherryvale administered conditional cautions as part of their wider police roles, Strategic Leads emphasised the importance of streamlining the process of administering the disposal.

They explained that unless the disposal met the needs of the police in being a straight-forward, efficient disposal, it was unlikely to be used. Strategic Lead Birch conducted focus groups with officers in advance of redeveloping the force's conditional caution approach. She reported being warned by an officer that 'you don't stand a cat in hell's chance unless you can prove it saves officers' time.' This observation was echoed in my research interviews, in which officers reported that, before the new streamlined approach was introduced, they rarely considered administering conditional cautions which were little understood and perceived to take a long time. Officers admitted that they used to automatically tick the box on the charge form to confirm they had considered a conditional caution. This is evidenced by the force's previously low use of the disposal, as identified by the quantitative analysis in Chapter Four.

When applying the public interest test in each case, there was therefore previously a strong presumption *against* the use of conditional cautions. PC Bennett explained:

Before this new system came in, they were just very mysterious. You were filling your paperwork in, it would say "conditional caution considered?" and it would always just be "no" because I didn't know what was involved going into one and I didn't really know anything about them, but I think it's a good idea. From a selfish point of view, it's less paperwork, as in almost zero. A couple of screens to fill in on the computer which are really straightforward and easy to follow.

Strategic Leads had therefore aimed to increase usage by simplifying the process of administration. Birch explained the new process was 'an electronic MG14 process,¹ it's *really* straight-forward, it's a really *simple* delivery mechanism.' In this new simplified system, officers complete two electronic screens: one setting out whether the case is suitable for a conditional caution, the second identifying the most appropriate

¹ The form required to administer a conditional caution.

conditions. Once the officer enters the details into the electronic MG14, it is automatically sent to their supervisor to authorise, returning to the officer to print and be signed by the offender. Once signed, the MG14 sits with the Administrative Office to monitor, requiring no further action by the officer, except in the case of a breach. Strategic Lead Browne compared this new streamlined approach that could be completed in fifteen minutes to the previous process, in which conditional cautions 'were just an absolute nightmare to manage', requiring more work than a charge. Adjustments to the process were therefore seen as critical in encouraging officers to use the disposal.

A similar approach to streamlining the process was carried out in Cherryvale. Strategic Lead Chord reported that, even with the rehabilitative and reparative benefits of the conditional caution, he still had to demonstrate to officers that the police benefitted from the disposal through saving resources. Chord had built-in as much as he could to help the officer in making this decision in his conditional caution guidance pack. As in Beauxvale, once administered the conditional caution would then sit with the Administrative Team to monitor, reducing the ongoing workload on the officer. PC Caulfield reported that the process was quick, as a conditional caution could be administered in under an hour and completed in 10 days. He concluded that 'Used in the right circumstance it is one of the most efficient methods of disposal.' Authoriser Coates similarly recounted the simplified process, which, in light of the busy working day of the police, was a straight-forward, quick disposal to use where appropriate:

We have had significant financial cuts. That does not take away from decision-making; we have to make the right decisions. You have a lot of people who have been in overnight where decisions have to be made, so when you've got disposal methods which are as good as this, I am a great fan of this!

The streamlined process of administering a conditional caution in Beauxvale and Cherryvale, in terms of the paperwork to be completed

and the ease of administration, was intended to increase its popularity amongst officers who had to juggle administering the disposal within a busy working day.

5.3.3 Force wide training on conditional cautions

The Strategic Leads' central purpose was to bring about a cultural change within their forces and encourage officers to support the disposal. Strategic Lead Almos highlighted the importance of this encouraging officers to understand and internalise the benefits of administering the disposal as unless 'they both understand what they're doing *and* start to see that it is the right thing to do, they'll just ignore it. Totally.' This was a force-wide move to 'get them to think of crime and rehabilitation, rather than crime and punishment.' Strategic Lead Chord explained his role was to 'steer the ship' from charging offenders to diverting them to conditional cautions:

One of the issues we have in our force, and nationally, is reinforcing that training, making sure it works, culturally, ethically: changing mindsets. Can I get police officers to rethink what they do with offenders? To understand *why* they should do it? And to believe that it was the right disposal to use?

In all three police forces, face-to-face training was identified as the most effective method of achieving buy-in to the potential of the conditional caution. Leads reported this was a massive undertaking, taking approximately six months to roll out to all officers in all teams. The training was led by the Strategic Leads and supported by experienced, knowledgeable officers. They taught officers about the reinvigorated process of administering conditional cautions and the Pathways put in place to support offenders in their force.

This training was also intrinsically important as an opportunity for Strategic Leads to communicate directly with officers to encourage the use of the disposal, dispel myths and answer questions. This communication was intended to embed new working rules to administer conditional cautions with rehabilitative conditions. Strategic Lead Almos

explained that face-to-face training was decisive in increasing the use of the disposal, as high-ranking staff are not always present when daily operational decisions are made:

You've just got to keep pushing it, because unless they feel comfortable with it, unless they get used to it as business as usual, they just won't do it. And you're not going to be there at 2 o'clock in the morning making these decisions.

This face-to-face training was a crucial step in changing culture across the force. This was important for all forces, but particularly in Beauxvale and Cherryvale where decision-making took place at the peripheries of the organisation, as neighbourhood and response officers worked outside of the direct supervision of ranked officers, and without a team experienced in administering conditional cautions.

Face-to-face training also allowed Strategic Leads to dispel old myths about conditional cautions. Such myths included the erroneous belief that officers still had to prepare a file for court and therefore required a similar amount of work as a charge. There was also a related myth, held from when conditional cautions were first introduced, that this file needed to be passed to the CPS for their decision, resulting in delays. These myths, ongoing after a period of low usage of the disposal, were dispelled in training.

The Strategic Leads also had to dispel the myth that a charge was a panacea for offending behaviour. Leads reported that officers traditionally perceived the aim of the police as processing a case to charge an offender. Each Strategic Lead observed that the most effective part of the training was demonstrating what happened to offenders who were charged. Leads gave real-life examples of offenders who had been charged and sentenced to an unconditional discharge or fine. Officers were presented with statistics on the proportion of cases that resulted in a fine and encouraged to consider the likely effect on the offender and victim. Finally, officers were shown the alternative outcomes that could be achieved by the police in diverting offenders to pre-arranged

Pathways, saving court time and money, increasing victim satisfaction and with a real potential for offender rehabilitation.

PC Boldwood confirmed that this comparison between what the police and the courts were able to achieve was the key impetus that improved support for the disposal:

They were sort of really pushing it...As a recipient of the training, that's what it seemed to be. You've got this lad, he's going to court, you know it's a waste of time, you know he's going to get a small fine or he's going to get a conditional discharge. There's no point wasting the court's time with that, we can get a better outcome with a conditional caution.

Achieving this buy-in required a nuanced approach, dependent on the force. Strategic Lead Chord explained that, although there was a clear rehabilitative aim of the conditional caution, he had to demonstrate that it was a serious disposal with teeth:

We do case studies in the training and normally it takes me about an hour and a half to convince people it's a good idea. By the end of the session, they think "oh yes, I see what you mean," once I start to describe to them that all the old rules for charge still apply, if they breach it, they go to court anyway. Once you start to talk about it in those terms, you start to get the officer to realise that we need to do more with the offender. Victim satisfaction potentially can be increased. If the offender doesn't comply, they go to court.

In Airedale, the training on conditional cautions focused on the Central Teams, where officers administered the majority of these disposals. However, my data evidenced that wider training was required for three reasons. Firstly, although the Central Team had a strong sub-culture towards administering conditional cautions, this brought them into conflict with the custody team in the same suite (See Chapter 6.4.4). Secondly, Strategic Leads were uncertain if the force would continue with this Central Team structure or eventually disband the Team, and so needed

to train other officers to administer conditional cautions. Finally, my interview data revealed that response and neighbourhood officers were raising the expectations of victims to expect a charge. This resulted in the Central Team having to disappoint the victim and explain the disposal before any meaningful consultation could take place. Strategic Lead Almos therefore arranged for a series of training measures to improve the coherence of the force's approach to conditional cautions.

This training took three forms. The first was to require all new entrants to the force to work in the Central Team to understand the benefits of the conditional caution, gain experience in the disposal, and take these lessons to their eventual working teams. The second was to ensure other officers understood the conditional caution disposal, even if they were not administering them, through a series of 'informative PowerPoints'. The third was using the Central Teams themselves to spread the conditional caution culture across the force. As PC Ambler explained, 'we are sort of an open house. And that's really important' as they encouraged officers to consult them and divert appropriate offenders to them.

In all three forces, Strategic Leads therefore used face-to-face training to teach officers about the disposal and encourage officers to understand why the conditional caution was a better outcome than a charge, foregrounding its rehabilitative potential. This aimed to achieve buy-in to the disposal to increase the use of the disposal and rehabilitative conditions.

This training was therefore perceived as crucial to try to embed a new way of working. However, research into police training has shown that there is an attrition in the longevity of police training when officers return to their established ways of doing things on the job. The importance of socialization, by which officers informally learn the values and informal rules of an organisation, will depend on the training and operational experience (Fielding, 1986: 328). This has meant that Strategic Leads

needed to provide ongoing training to continue to nudge police officers to adopt use this new way of working, as detailed below.

5.3.4 Training resources

Face-to-face training was supplemented by a range of training resources to support decision-making. These were designed by Strategic Leads to remind officers to use the conditional cautions and focus on rehabilitation and victim engagement.

In Airedale, officers worked in a Central Team and were repeat decision-makers, administering conditional cautions regularly in a supportive, focused environment, with a sergeant overseeing decision-making. Officers joining this Team had a training session on the process of administering conditional cautions and details of the available Pathways. This team dynamic meant officers could ask colleagues for advice and quickly gained experience in administering the disposal. They did not need simplified training resources to support their decision-making.

In Beauxvale, where decision-making was spread across the force, the Strategic Leads produced a glossy, easy-to-follow training pack. This pack included a flowchart to guide officers in determining whether to use a conditional caution and a clear summary of the Pathways available. The pack contained pamphlets to be given to the offender explaining what the conditional caution was, the offender's legal rights and a summary of the Pathway to which they had been diverted and how to contact the Pathway provider. The pack was a practical tool to support officers and improve the consistency of decision-making. Strategic Lead Birch explained that the training was 'all around the pack because we wanted them to open the pack and we wanted them to get used to what was in the pack.' These training resources were well-received by police officers in Beauxvale, who explained they contained all the information required to make conditional caution decisions. The packs were supplemented by posters around the custody suites and voluntary attendance rooms with the same flowchart guiding decision-making as provided in the training pack. The pack contained limited information on the services provided by Pathways. As the Strategic Leads explained,

this ensured the pack was as streamlined and user-friendly as possible. These Pathways are further explored in Chapter 5.4.

Finally, in Cherryvale, Strategic Lead Chord developed a pack that set out the aims of the conditional caution before identifying some frequently appropriate Pathways, such as drug and alcohol rehabilitation courses. The pack also identified atypical offence types, such as assault on police and football offences, suggesting Pathways that could be used. Strategic Lead Chord explained that he had designed the pack to 'build in as much as we can to *help* the officer do the work'. This included a letter of apology letterhead on A4 paper, to ensure any letters were of appropriate formality and length; a financial enquiry form to help calculate offender's resources for paying reparations, and a letter of consent to permit officers to speak with the offender's GP, if required.

Officers interviewed in Cherryvale reported the pack supported their decision-making. PC Caulfield emphasised that he rarely made decisions on whether to use a conditional caution but felt the guide walked him through the process when required:

I think there's an idiot's guide printed on the back basically. We don't do them very often, so sometimes it does take a little while to get back into the swing of things.

These different training resources reflected the distinct needs of the structural organisation of decision-making in individual forces. In Airedale, a small Central Team of repeat decision-makers did not need a prescriptive training resource on how to administer conditional cautions and could research their own conditions to use. In Beauxvale and Cherryvale, dispersed decision-making meant the Strategic Leads provided a clear training pack to guide decision-making in this area.

5.3.5 Ongoing support and guidance

To supplement these physical guides, Strategic Leads ensured ongoing support and guidance was available to increase the use of the disposal. Such strategies included the Leads themselves being available for advice, ensuring that Authorisers provided ongoing training and

monitoring the use of the disposal. These strategies were needed in all forces, but particularly in Beauxvale and Cherryvale where Leads sought to change the mindset of officers across the force.

5.3.5a Availability of Strategic Leads to offer advice

All Strategic Leads reported being available to offer advice to officers across the force. Leads stressed that it was difficult to rescind a conditional caution and so wanted officers to get it right first time. The availability of the Strategic Leads was particularly pertinent in Beauxvale and Cherryvale, where officers could not rely on their colleagues having experience of administering the disposal. Strategic Leads were approachable and knowledgeable about the disposal. In many cases, they were already known to the officer as they had been involved in the force-wide training.

For example, in Beauxvale, I was escorted around the force by Strategic Lead Browne, known as the conditional caution go-to, with officers frequently approaching her to update her about recent conditional cautions administered. During our interview, PC Briscoe explained that she called Strategic Lead Browne several times when administering her first conditional caution as she was the first one in the team to use the disposal and 'Nobody else knew how to do it.' She then advised her colleagues in their future disposal decisions. In Cherryvale too, all officers interviewed reported that Strategic Lead Chord and the central Administrative Team were supportive in encouraging officers to ask questions about the appropriate decision to make. This advice increased the likelihood that appropriate disposals followed the correct procedure and was an opportunity to nudge officers to use the conditional caution.

5.3.5b Ongoing training by authorisers

The Strategic Leads' communication is supported by other leaders within the police, including the Inspectors and Sergeants who authorise decisions. The police have historically been a rank-driven organisation based on transactional styles of leadership. However, with the focus on professionalism in the police, academics have identified a growth of

transformational and ethical-based leadership (Neyroud, 2019) with emphasis on the development of collaborative and participatory leadership (Davis, 2020). Rather than ranked officers telling constables the appropriate decision to make, they may engage officers in a dialogue over which decisions could be made, to collaboratively determine the outcome together. These leadership types, and their impact on police culture, are more complicated than a binary distinction between transformational and transactional leadership (Cockcroft, 2014) but provide a useful framework for enquiry.

This collaborative decision-making was reported to occur in each force. Authorisers emphasised an important element of their role was not just to authorise decision-making, but to continually train officers on the benefits of the conditional caution to achieve a long-lasting buy-in to the disposal. Authoriser Coates used authorisation as a training exercise, allowing officers to put forward their views and challenging them where appropriate:

This is a democratic decision. I'm here to make the decision, but I want to know what you think, I want to know what work you've done and how this will play out. It gets them thinking, it gets their view, these are the options available to us, what would you do, what do you think?

Authoriser Coates acknowledged that the police could be a formal organisation that could result in a 'yes ma'am, no ma'am style attitude', but sought to pull away from this militaristic approach to encourage officers to think through their own decision-making. This was particularly important as Coates would not be involved in the subsequent decision on whether to prosecute the offender for a breach of the conditional caution, so the officer had to be confident to make this alone.

However, this ongoing guidance to administer conditional cautions was only possible if the authoriser supported the use of the disposal. This was the case for two of the three authorisers interviewed. However, one authoriser reported a particularly negative experience of administering a

conditional caution. As an authoriser, he saw more cases than a police constable and explained:

There's that much paperwork involved, and it goes wrong so many times. I've seen other cases where it's gone wrong as well, a similar sort of thing where it's unachievable or they don't turn up for their appointments then have to be summoned to court.

At the end of the interview, the authoriser reported that he would only use the disposal again in limited circumstances. He preferred to charge the offender to avoid going backwards and forwards processing the case.

My research data demonstrate that authorisers had a pivotal role in encouraging officers to administer the disposal appropriately. They worked closely with officers to challenge their views and take ownership of the outcome. However, we cannot assume that authorisers will have the same opinions as the Strategic Leads and support the organisational approach. Authorisers have their own views on the value of the disposal, based on their experiences. As the authoriser is required in all conditional caution decision-making and is likely to be the constant source of guidance for officers working within the team, the views of the authoriser are key to achieving cultural change. This emphasises the importance of the transformational style of leadership in encouraging officers to support the force's policy, rather than requiring particular outcomes based on their rank.

5.3.5c Monitoring the use of the disposal

The third component of ongoing support and guidance implemented by Strategic Leads is to monitor all conditional caution and charge decisions to check the appropriateness of the decision-making and provide ongoing training. This tracking is recommended by Neyroud as it facilitates the force monitoring outcomes and giving feedback to improve future decision-making (2019: 13). This strategy was particularly needed in Beauxvale and Cherryvale with their dispersed decision-making model.

The primary function of this monitoring is to check all conditional cautions are appropriately administered and communicate mistakes to officers to improve their future decision-making. Strategic Lead Browne explained that monitoring was introduced after the new conditional caution system had gone live as officers encountered unexpected problems and made mistakes. The Leads 'very quickly realised that we needed a lot more monitoring and a more structured monitoring process.' Browne reported that this monitoring required finesse in ensuring that lessons were learned and would be adopted by officers, but that officers would still be encouraged to use this disposal in the future:

You don't want to go back and be a bit of a lecturer, or give a telling off, because you want people to do them. But if they've made an error they need to be told. So, it's about encouragement as well as, "but actually, don't do this, you need to check this, but keep doing it [administering conditional cautions].

Similarly, Strategic Lead Chord initiated quality checks as he did not want officers to overuse his new efficient process for administering conditional cautions, but that decision-making was thought-out, and the conditions properly considered:

The only danger is that some officers might see it as a quick win, "we'll put these conditions and get that person out of the door." That's why we have a quality check in here, sometimes we'll say, "this isn't enough" and we'll rewrite them. So, I will get my team to rewrite the conditions and send it back out to them; "you need to do this with this person". That's generally accepted [by the officer and offender].

The second form of monitoring is identifying cases that had been charged but could potentially have been disposed by a conditional caution. Strategic Leads in Beauxvale and Cherryvale found that between 30-40% of guilty pleas may have been suitable for a conditional caution, because of the offence type, offending history and the offender's acceptance of guilt. This audit became an ongoing monitoring exercise

as Strategic Leads scrutinised all such cases and raised any missed opportunities with the officer involved. Strategic Lead Browne explained:

If I feel as though someone's been charged when they could have had a conditional caution, then I speak to the officer and ask why they didn't give a conditional caution. Obviously, once they're charged, we can't do anything about it, but this is ongoing training.

This meant officers would have a one-to-one discussion with a ranked officer if they charged an offender when they could have administered a conditional caution. This discussion was to understand why a charge had been used and encourage officers to use a conditional caution in appropriate circumstances in the future.

5.3.6 Administrative support to monitor compliance

In Airedale, the Central Team was responsible for monitoring compliance of the conditional caution they administered, with the same officer generally responsible for her own cases. While shadowing the Team, I observed that each officer working in the office environment had approximately two cases in custody to manage at any given time, as well as up to ten cases on her case file management system of offenders in the process of completing the conditions attached. Officers communicated directly with offenders if they did not attend their Pathway. As they had generally administered the conditional cautions, and had already been in contact with these offenders, they were able to cajole offenders to attend the Pathway or, where appropriate, extend the time limits of the conditional caution to allow later compliance. If necessary, and after such attempts had proved fruitless, they could charge the offender for breach of the conditional caution.

In Beauxvale and Cherryvale, however, officers administered conditional cautions as part of their wider role. All conditional cautions were then sent to an Administrative Team of civilian police staff to ease the burden of monitoring compliance. This Team monitored whether an offender complied with the conditional caution and communicated directly with the offender to determine the reason for any lack of compliance, encouraging

compliance through, for example, rebooking an appointment. It was only after this attempt failed that the case would be returned to the original officer decision-maker to try once more to secure compliance or consider whether to charge the offender. This support meant that officers did not need to check the outcome of their cases continually. As PC Barke explained, once she administered a conditional caution, she quickly forgot the details of the case as she had other duties to attend. The Administrative Team was therefore an invaluable resource in reducing officers' workload after the conditional caution was administered.

However, some officers complained that this support was limited as police staff were not able to charge the offender following a breach of conditions. This meant that the additional work could return to the officer at a later date, in contacting the offender to encourage compliance or, eventually in some cases, arranging a postal charge. PC Barke explained that securing compliance could result in 'chasing your tail' and wasting time in ongoing communication with the offender. She acknowledged that this was a 'selfish' perspective, but felt that:

When you're already juggling everything, and someone doesn't do it, and you're like *why!?* It's the most frustrating thing ever so I wouldn't do it again.

PC Barke summarised she would prefer to start each day with a blank slate and so would avoid using a conditional caution in the future as it felt that it would come back to her another day.

In Beauxvale and Cherryvale, the administrative support for monitoring compliance therefore further streamlined the process for administering a conditional caution, reducing the ongoing workload of decision-makers. However, this function was perceived as limited by some officers, as they could still be involved in cases, which could discourage them from using the disposal in the future.

5.3.7 Conclusion: a co-ordinated approach to embed the disposal

In Airedale, the Central Team structure created a sub-culture with a particularly rehabilitative outlook. Officers were regular decision-makers administering conditional cautions, with authorisers who supported the disposal providing direct oversight over this decision-making. In Beauxvale and Cherryvale, officers from across the force were encouraged to administer conditional cautions through a co-ordinated approach to embed the disposal. This included streamlining the process to reduce the time required to administer the disposal, and ongoing support and guidance provided by the Strategic Lead and authorising officers. Administrative Teams were created to monitor compliance and communicate directly with offenders to encourage compliance.

In each of the three forces, there was a clear organisational expectation that a conditional caution should be considered in appropriate cases. This was not presented as a numerical target but through placing a clear emphasis on the value of conditional cautions through training, streamlined process and ongoing support and guidance. In these ways, the Strategic Leads communicated to officers that the force as an organisation recognised the value of this police work. This is a similar finding to Hoyle, who found that organisational expectations in how the force responds to behaviour will contribute to how officers will follow organisational rules (Hoyle, 1998: 96). Here, the Strategic Leads query decision-making that does not conform to the new organisational rule of administering conditional cautions.

This focus on the need to train officers fits within the policing literature that the success of training will depend on those entrusted with its delivery and enforcement (Hoyle, 1998: 87). The NPCC made clear that training was required to ensure changes would be implemented in practice (2017: 38), while the pilot evaluation emphasised the need for a well-considered training approach and implementation period (Ames et al., 2018: 17-18). While training on new policies do not immediately translate into action, Hoyle argues that training is likely to influence

working rules slowly (1998: 89). This is seen in my data as the training was focused on both the process of administering conditional cautions, but also achieving cultural buy-in to the disposal.

5.4 Organisational structures to administer rehabilitative conditions

Thus far, this Chapter analysed how Strategic Leads restructured the process of conditional caution decision-making to increase the use of the disposal. This section explores how the Leads implemented organisational structures that shaped the second decision on which conditions to use. At a policy level, conditional cautions are intended to achieve several aims, including offender rehabilitation, victim reparation and offender punishment (Chapter 1.2). This section demonstrates how Strategic Leads prioritised rehabilitative conditions at an organisational level. This priority is manifested through introducing a Needs Assessment, creating a Community Remedy document, and mapping out principally rehabilitative Pathways to which offenders may be diverted.

5.4.1 Offender Needs Assessment

A decision to administer a conditional caution is made after the PACE interview. The officer then carries out a separate Needs Assessment with the offender, in which the officer identifies the offender's underlying needs which led to his criminal behaviour. The offender is encouraged to speak openly about his needs by reassuring him that the discussion is not intended to investigate any other criminal misconduct and switching the audio recorder off. As PC Ambler explained, this was important, as the recorder could be an obstacle to an open discussion:

People don't necessarily want really personal stuff recorded, and sometimes really personal stuff does come out. Bereavement, loss of children, you know that's led them to a horrible lifestyle, and you don't want that played out to anyone, it's so personal.

In Airedale, officers in the Central Team are provided with a Needs Assessment questionnaire, which guides officers to consider the established drivers of offending behaviour used by the force's pre-

existing offender management scheme. These drivers are in turn based on the Home Office desistance theories of compliance of why individuals offend (2004). The theory, built upon by the probation service and integrated offender management, identifies nine drivers behind offending behaviour: accommodation; education; training and employment; health, drugs and alcohol; finance, benefit and debt; children and families; attitudes, thinking and behaviour. Using this framework, officers can then determine to which Pathway type to divert the offender. As officers' experience in conducting this Needs Assessment grew, they reported they did not need to refer to this guidance document but could instead have a free-flowing conversation with the offender. Officers working in Airedale's Central Teams could also tap into additional resources in custody, such as Liaison and Diversion (L&D) (NHS, 2020). This L&D service is run by the NHS and identifies individuals who have mental health, learning disability, substance misuse or other vulnerabilities when they first come into contact with the criminal justice system, diverting them to appropriate health or social care. PC Adely reported that the L&D team had special training and experience in recognising medical and mental health needs. This specialism filled the gap in the Central Team's knowledge, as specific mental health or medical issues are 'difficult for us, because we're not medically trained to see that, which is why it's great to have L&D to assess that.'

In contrast, officers in Beauxvale did not have a guide to help identify the needs of the offender. Instead, they identified the core characteristics of the individual, i.e., female; veteran; or substance misuser. If these categories did not apply, they considered whether there was a direct victim in the case or not. Officers then diverted offenders to one of the six core Pathways designed by the Strategic Leads, as outlined in Chapter 5.4.3. These officers also considered the offender's needs when considering attaching additional conditions.

Officers in Cherryvale also conducted a Needs Assessment with offenders. Strategic Lead Chord explained that he had trialled a system where all conditional cautions were sent to the central Administrative

Team to determine appropriate conditions. However, this resulted in a two-week delay in administering conditional cautions, which went against the interests of the offender, victim and police. This decision-making role of the Administrative Team was discontinued, with officers instead trusted to set conditions. Chord had created some guidance to support officers in conducting this assessment. On the MG14B form, on which conditions are written, he created an entry for offenders to report their own needs. This was to encourage the individual to be an active agent in his own rehabilitation and be involved in the decision-making process. The MG14B also requires the officer to record the victim's views on the most appropriate conditions for the offender, involving the victim in this process. Officers could therefore divert offenders to required support as identified by the offender, victim and officer.

This Needs Assessment is the crucial determinant in the conditions to administer in each case. My interview data revealed that the solicitor would usually leave the interview room to facilitate the officer and offender speaking openly with each other. The withdrawal of the solicitor underlines the importance attached to this Needs Assessment in understanding the offending behaviour, distinct from the dispositive decision-making of administering a conditional caution.

5.4.2 The Community Remedy document

Each force is required to consult the public and create a Community Remedy document, listing the conditions that may be attached to conditional cautions (Criminal Justice Act: s.23ZA). In each force, these Community Remedy documents described themselves as broad and non-specific. This was to ensure that victims could choose a broad condition type that they felt would be useful, without needing a detailed understanding of the offender's needs. Community Remedy documents are public-facing and used to support victim consultation.

My analysis of the Community Remedy documents in each force revealed a clear focus on reparative conditions. To protect the anonymity of forces, I have not referred to these documents (see for an example, Nottinghamshire PCC, 2014). In Airedale's Community Remedy

document, victims were able to choose between restorative justice, the offender being warned by an officer about the impact of his offending behaviour or receiving reparations for the harm caused. In Beauxvale, the Community Remedy document offered the same condition types as Airedale but also included community, educational or rehabilitation activities or an acceptable behaviour contract. In Cherryvale, victims can choose between a reparative outcome, the offender signing an Acceptable Behaviour Contract or restorative justice mediation. This victim consultation will then feed into condition-setting decision-making, along with the outcome of the Needs Assessment.

5.4.3 Conditions to support offender rehabilitation

In addition to these Community Remedy documents, Strategic Leads created internal documents to support officer decision-making. These documents listed the concrete conditions available in each force that may, and in Beauxvale, must, be used. Strategic Leads emphasised the need for the police to work with other organisations to provide Pathways in the community. This could be through using public services such as local Women's Centres. Police forces could also commission Pathways or develop relationships with Pathway providers to provide services freely at the point of contact for offenders. Finally, offenders could be diverted to Pathways they had to pay to attend themselves.

Across the forces studied, core Pathways were mapped out by Strategic Leads, ranked officers or the Police and Crime Commissioner. Strategic Leads allowed officers varying levels of discretion in deciding which conditions were most appropriate for the offender. Officers in the Central Team in Airedale had a wide discretion in which Pathways they could use and carried out their own research in this area. Officers in Beauxvale, where decision-making was spread across the force, had a rigid choice of six Pathways they had to use in each case, although they could attach supplementary conditions if required. This rigidity was aimed at simplifying decision-making and ensuring consistency across the force. Finally, in Cherryvale, where decision-making was also dispersed,

officers had a wide discretion in the conditions they used. How each force structured this decision is set out below.

5.4.3a Airedale

In Airedale, Strategic Leads mapped out key Pathways that addressed offenders' core needs. On joining the Central Teams, officers were provided with a list of possible Pathway providers which varied by geographical locations and exact form of support offered. Officers could also refer to pamphlets provided by more established providers or conduct their own research on Pathways. One officer reported proactively visiting the Victim Awareness Course and the Women's Centre to understand the services they provided. In addition, my research observations revealed that individuals from the Anger Management Course visited the custody suites to conduct Needs Assessments with offenders and improve awareness of their services amongst officers. The Central Team therefore had initial training on the use of the disposal with ongoing information readily provided, thanks to their smaller size and focus on the disposal.

As a predominantly urban force, officers pointed to a range of courses available in their area provided by the NHS and third sector organisations. This meant there was a large variety in the size, experience and specific support available from providers. Indeed, PC Abbott explained that, once he had determined the needs of the offender, he had over 150 different Pathways he could use, including larger Pathways as well as more bespoke Pathways discovered through his research. For PC Abbott, this breadth of choice underlined the importance of the Needs Assessment. With such diverse providers available:

You can't just say a conditional caution for that course, everybody is different, and that Needs Assessment is important to find out *exactly* what they need.

Officers interviewed had worked in different teams within the force and were therefore often aware of wider support available. They also

recommended Pathways to each other based on their own experiences or searched for relevant support online.

The intensity of the Pathway depended on the provider. Some were single interventions, such as the in-depth Needs Assessment provided at the Women's Centre. Following this assessment, the condition of the conditional caution, offenders were able to attend further support within the Women's Centre on a voluntary basis. At the other end of the spectrum, the Anger Management Course required attendance for ten sessions over a 10-week cycle. These attendance requirements were set by the Pathway and communicated to the offender by the officer, who ensured the offender's consent.

5.4.3b Beauxvale

In contrast to Airedale, Strategic Leads in Beauxvale created a systematic Pathway structure through which to divert offenders. Officers broadly identified the offender's characteristics in the Needs Assessment, resulting in an almost automatic referral to one of the six standardised Pathways. Female offenders go to the Women's Centre, veterans to the Veteran's Pathway, those with drug misuse would go to one of two levels of a drug rehabilitation programme, the correct level determined by a questionnaire on the seriousness of the addiction. If an offender did not fit any of these categories, the decision-maker chose whether to divert him to the Unpaid Work Condition or Victim's Awareness Course. Indeed, once the decision-maker had filled in the first electronic MG14 screen with the offender characteristics, the second screen of the conditions to attach would be automatically filled in with the Pathway details. As Strategic Lead Birch explained:

Some of them pick themselves. So, if you're a woman offender, you go to the women's Pathway, simple as, there's no variation on that. If you're a male veteran, you go to the veteran's Pathway.

The characteristics of the offender were therefore determinative of the conditions administered. The rigid nature of condition-setting was intended to simplify decision-making for officers and improve consistency

of conditional cautions across the force. The Strategic Leads acknowledged this meant officers could not make use of local, smaller providers. However, they had been able to evaluate the effectiveness of each provider in supporting the offender and sufficiently robust to be a longstanding partnership. Strategic Lead Beech emphasised these Pathways had been thought-out:

Specific providers with *significant* degrees of knowledge in their areas of business. For us, it's an awful phrase but the 'best bang for our buck' in terms of preventing reoffending, victim satisfaction and timeliness, was with those providers. Because we'd really thought about it.

In the training pack, each Pathway was labelled as offering rehabilitative support for the offender.² Pathways were designed as single interventions, meaning offenders were required to attend one session. This made it easier for the offender to complete the condition and for the Administrative Team to monitor compliance. Offenders could then choose to continue to engage with the Pathway outside the scope of the conditional caution.

5.4.3c Cherryvale

Strategic Lead Chord previously worked with the Integrated Offender Management team and observed they had real success in achieving rehabilitation by taking people out of their environment as part of the Good Lives approach (Ward and Brown, 2004). To draw on this rehabilitative approach, Chord created a training package which listed several possible Pathways, including an alcohol/ drug diversion scheme and Victim Awareness Course. Officers were also encouraged to use their own experiences and local knowledge and be innovative in choosing Pathways that met offender needs.

At a wider level, the force had created multi-agency support hubs where police officers worked with youth offending teams, local authorities,

² The conditions also included some reparative and punitive characteristics identified in Chapter 5.4.4 and 5.4.5 respectively.

housing agencies and mental health services. PC Canavan and PC Clipper, as Neighbourhood officers with strong links to these hubs, relied on them to identify the relevant Pathways. As PC Canavan conjectured, it would be 'a nightmare dealing with some people when you just don't know how you'll solve it, so you've *got* to work with your partners, you've got to.' As these neighbourhood officers worked in an open plan office alongside other agencies, they could easily seek advice and identify available support for an offender based on his identified needs. As in Airedale, these Pathways varied in length, intensity and cost for the offender.

5.4.4 Conditions for victim reparations

Each Strategic Lead also designed processes for reparative conditions. The payment of compensation and a letter of apology were the most commonly reported reparative conditions. These could be freestanding conditions or, as more frequently observed in case file analysis, in conjunction with other conditions. Officers supported these reparative conditions as a useful means of engaging the victim and improving their satisfaction with the conditional caution. Reparative conditions may also rehabilitate the offender as he understands and repairs the harm caused. My data demonstrate that reparative conditions tended to be secondary to rehabilitating the offender.

5.4.4a Airedale

Strategic Lead Almos explained that victims were often concerned with ensuring that the offender did not reoffend. This meant that rehabilitation was the primary focus of the Strategic Lead, though the need to offer victim reparation, primarily through compensation, was an important consideration. Officers in the Central Team were responsible for liaising between the offender and the victim in transferring this payment. As observed in Chapter 5.3.1, these officers had the resources to manage this process.

When calculating the level of compensation to be paid, Almos required officers to use a similar amount recommended by the Magistrates' Court

Sentencing Guidelines. These Guidelines take into account financial loss sustained as a result of the offence and any pain and suffering caused by the injury, as set out by the Criminal Injuries Compensation Authority (Ministry of Justice and CICA, 2020). These guidelines improved the consistency between what the victim is likely to receive in and out of court, though Almos emphasised that out-of-court disposals are intended to accelerate this payment.

Officers may also attach reparative conditions for offenders to write a letter of apology to the victims while in custody. These letters are written on force stationery and delivered by the officer. While shadowing the Central Team, one officer reported that they would not always deliver these letters as it meant the victim would be reminded about the offence in a few days' time, when they would prefer to move on and forget about the incident. In some situations, officers would call the victim and read out the letter to them to ensure they were communicated to the victim within a reasonable time.

5.4.4b Beauxvale

In Beauxville, one of the Strategic Leads had a role in both prosecution and victim services. Straddling these two areas made her more aware of the need to support both aims of the conditional cautions. She noted that conditional cautions were able to meet the needs of the victim, offender and the wider criminal justice system, and officers would have to 'balance all the time the outcome for the victim and the outcome for the offender.'

Although officers had to use one of the six Pathways identified in Chapter 5.4.3, they could attach supplementary rehabilitative or reparative conditions. According to Strategic Lead Birch, these had to address the 'root cause of offending and prevent reoffending' and be SMART: Specific, Measurable, Achievable, Realistic and Timely. Birch reported that the compensation condition was the most commonly used reparative condition in the force, featuring in approximately half of all conditional cautions. She explained that this was important for the officer as they

would have the victim on the phone who sought compensation, which the officer naturally wanted to secure for him. The force had a system for compensation through which an offender repays to the police account number. Once the correct level of compensation had been accrued, this would be transferred to the victim. This process meant the decision-maker was not responsible for managing this transfer, reducing the burden on the officer.

As in Airedale, the Strategic Leads in Beauxvale discouraged officers from perceiving reparative conditions as a means of restoring the victim to the position they were in before the crime was committed. Offenders may be unable to pay such an amount, which could exacerbate a complicated situation. Instead, officers were encouraged to calculate an appropriate amount to go towards, for example, the insurance premium. The payment therefore acted symbolically as a form of reparation between the offender and victim.

5.4.4c Cherryvale

In Cherryvale, the Guidance pack labels paying compensation as reparative and punitive. It reminds officers to 'make sure that the offender has the means to pay, and that the request for an amount to be paid is reasonable - we cannot set offenders up to fail.' The pack includes a financial incomings and outgoings form to be completed by the offender to ensure an affordable payment schedule. Offenders must save the required amount themselves and pay it to the Administrative Team to transfer to the victim, reducing the administrative burden on the officer. The letter of apology is identified in the Guidance as a reparative and rehabilitative condition. The training pack includes a letter template on force stationery to ensure the letter is of an appropriate length and formality. Strategic Lead Chord reported that he had added this after seeing some poorly written letters of apology.

5.4.5 Conditions to punish the offender

Conditions were rarely identified as purely punitive, either by Strategic Leads in research interviews or their Guidance documents. Indeed,

research interviews with Strategic Leads revealed some aversion to discussing the punitive nature of conditional cautions. However, two elements of punishment emerged in the rehabilitative conditions. The first was that rehabilitative interventions required offenders to engage in difficult, personal support and secondly, in Airedale and Cherryvale, offenders were required to pay for this rehabilitation.

5.4.5a Airedale

Strategic Lead Almos did not identify any expressly punitive conditions but observed the intrinsic punitive element of the rehabilitative conditions. She remarked that the public perceived the conditional caution as a soft outcome for offenders (See Chapter 1.4.2). However, she felt this perception was misconceived and somewhat ironic, given the disposal required a challenging level of engagement by the offender in confronting the causes of his offending behaviour. As she explained, sometimes a conditional caution would be refused 'because the *offender* thinks they'd rather go to court because it's *easier*.' She observed the:

Victim Awareness Course is three hours, but three hours where they have to engage, acknowledge the harm they've caused to people and talk about themselves.

Offenders in Airedale had to pay for this rehabilitation. Strategic Lead Almos compared this to a Speed Awareness Course, in which offenders had to pay to attend the course but in doing so, avoided points on their license. However, this meant that there was an additional punitive feature of the rehabilitative conditions and required that the offender had the resources available to attend the Pathway.

Officers also commented on the wider punitive elements of these rehabilitative Pathways. This included the administration of the conditional caution in the first place, as encountering the police in custody or voluntary interview could be a shock for offenders. Offenders would have to take time out of their day to attend the Pathways, have the potential embarrassment of letters reminding them to attend, and face the causes of their offending behaviour with strangers. The punishment

of offenders was therefore seen as an intrinsic part of rehabilitation but was not expressly provided as a stand-alone condition in Airedale.

5.4.5b Beauxvale

In Beauxvale, all the Pathways were described in the Guidance in rehabilitative terms. However, the Guidance also acknowledged the demanding elements of this rehabilitation. For example, the victim's Pathway is described as 'interactive and challenging'. Similarly to Strategic Lead Almos, Birch explained that the interventions in Beauxvale were not easy to complete. Although they would all be finished in one day, she felt that they were 'not necessarily as light as they appear' as it is important to peel away the numbers and remember that the offender had to challenge their offending behaviour in a group setting.

The Unpaid Work Condition (UWC) was the only Pathway in Beauxvale not described as rehabilitative. It requires offenders to work seven hours in one day on a community project while wearing 'community payback' jumpers. However, while this condition is labelled as a punishment in the Guidance, the Guidance elaborates that it provides reparative "payback" to the community' while the offender learns valuable practical and life skills. The force therefore defines the UWC as primarily punitive, but also reparative and rehabilitative, expressly acknowledging that Pathways can serve multiple aims of the conditional caution. The Strategic Leads explained that the UWC would likely disappear, as offenders tended to be diverted to one of the other five conditions. The UWC was only used where the offender had no obvious underlying needs that could be addressed. As the Community Rehabilitation Company running this Pathway had to pay an annual insurance rate for a low number of offenders, it was not financially feasible to continue.

Thanks to the remarkable partnership work carried out by the Strategic Leads, five of the six Pathways were provided freely for the offenders, at no cost to the police. According to Strategic Lead Birch, this prevented a two-tier system of justice, as all individuals could access the same

support and criminal justice outcome. In addition, Strategic Lead Birch felt that the Pathway would be taken more seriously if it were the sole condition to be complied with, rather than the secondary condition of paying for attendance. The exception to this was the Alcohol Behavioural Course for low-level alcohol misuse, for which offenders had to pay £45. Strategic Lead Browne explained this was similar to the Penalty Notice for Disorder but provided some support for the offender, so was an acceptable compromise for the force.

5.4.5c Cherryvale

In our interview, Strategic Lead Chord referred to a longstanding debate surrounding 'punishment versus rehabilitation', with the conditional caution able to provide both. Chord felt that solely punitive conditions were not appropriate as they did not tackle the root causes of offending and undermined the conditional caution aim of reducing reoffending. The only expressly punitive condition identified in the training manual was the payment of fines, with the maximum fine for summary offences £50 and £100 for triable/ either-way offences.

In Cherryvale, as in Airedale, the offender had to pay to attend rehabilitative courses as the force did not have resources to pay for offenders to attend the Pathways. The cost ranged between £35 for the alcohol diversion course to £300 for the recently introduced Change programme, aimed at re-educating predominantly men who had approached women for sex for payment. Officers had to consider whether the offender was able to pay to attend the Pathway before administering the disposal. This worried Chord, as a lack of funds to pay for these Pathways could be a barrier to individuals accessing support. Chord therefore continually applied for funding to cover these costs so these rehabilitative Pathways would be available for all.

5.4.6 Conclusion: A map of rehabilitative conditions

In addition to creating organisational structures to increase the use of the conditional cautions, my research demonstrates that Strategic Leads mapped out predominantly rehabilitative conditions to attach to the

disposal. In all forces, officers carried out a Needs Assessment to identify the core needs of the offender as an integral part of the decision-making process. Offenders were then diverted to a previously mapped Pathway, or a Pathway identified by the officer, to provide rehabilitative support.

Conditional cautions were also designed to improve the victim's satisfaction in the process. Forces are required to create and publish a Community Remedy document to give victims a voice in condition-setting (Anti-social Behaviour, Crime and Policing Act 2014: s.101). However, these Community Remedy documents tended to be vague and did not include the various rehabilitative Pathways in the area. Instead, forces assumed that victims would be supportive of the offender's rehabilitation to reduce reoffending or paying towards victim reparation. Decision-making was instead structured by internal documents and officers' research, rather than the Community Remedy document.

5.5 Organisational structure to secure compliance with the conditional caution

This Chapter has thus far considered the organisational structures scaffolding the two decisions on whether to administer a conditional caution and which conditions to administer. Strategic Leads also created structures around the decision on what officers should do in the event of non-compliance with a conditional caution. As discussed in Chapter 2.4, the decision-maker may choose to charge the offender for the original offence, alter the conditions or accept partial completion of the conditional caution.

As with the previous two conditional caution decisions, this decision was structured to emphasise the rehabilitative aims of the disposal. Each force had structures to encourage either the officer, in Airedale, or the Administrative Teams, in Beauxvale and Cherryvale, to seek compliance with the conditional caution before charging the offender. Strategic Leads perceived individuals who had recently committed criminal offences as often leading chaotic lives and forgetting appointments or feeling too nervous to attend. Encouraging compliance was therefore perceived as

facilitating the rehabilitation of the offender. More pragmatically, encouraging compliance reduced the resources of the police as they would not need to charge the offender. A high compliance rate also indicated the conditional caution was a successful police disposal.

There were, however, limits on how many opportunities to comply would be offered to the offender. Strategic Leads reported that while they sought to rehabilitate offenders, they also needed to send a clear message to the offender and victim that the conditional caution was a serious disposal. Leads were also wary of the continuum between leaving the offender unsupported to comply with the conditions and forcing attendance through pressurising offenders with ongoing reminders. As the disposal is based on the offender's consent and the conditions require the individual to engage in his own rehabilitation, there were limits to this encouragement.

In Airedale, this process of checking compliance was carried out by the officer who first administered the conditional caution. They already knew the offender and any reasons he may have initially struggled to engage with the Pathway, so was well placed to encourage compliance. The Strategic Lead explained that any check-ins took place shortly after the offender was expected to attend his first appointment. This process meant alternative appointments could be made within the conditional caution timeframe.

In Beauxvale, the central Administrative Team set themselves reminders to check compliance within two months of the administration of the conditional caution. If the offender had not complied by this time, the Administrative Team, who had had no previous contact with the offender, would call the offender to encourage compliance. They were instructed by the Strategic Lead to make several attempts to secure compliance, particularly if they felt the conditions were particularly stringent. For example, while observing the Administrative Team, a member of staff reviewed a conditional caution with a high amount of compensation. The Strategic Lead advised the member of staff that, if the offender could not

pay this amount but completed the rehabilitative conditions, the force should accept this as partial completion.

If attempts to secure compliance were unsuccessful, the Administrative Team would forward the case to the officer who administered the conditional caution. As this officer had previously met the offender, she might have a higher likelihood of encouraging compliance. Finally, if the offender did not engage, the officer would decide whether a charge was appropriate.

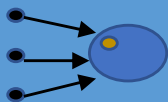
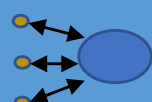
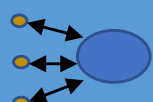
In Cherryvale, as in Beauxvale, the central Administrative Team is responsible for monitoring compliance with conditional cautions. As in Beauxvale, this Team makes several attempts to contact the offender to secure compliance before passing the case to the officer to make one last attempt at securing compliance. This means that the offender is contacted several times before the case is returned to the officer, sometimes without the knowledge of the officer. This is important as, as discussed in Chapter 5.3.3, Strategic Lead Chord had underlined the strength of the conditional caution to officers and encouraged them to see it as a disposal with teeth.

In all three forces, Strategic Leads created a structure whereby offenders are contacted to encourage compliance several times before deciding what to do in the event of a breach. In this way, before considering what to do in the event of a breach, the force would determine whether there had been a delayed compliance, in which the offender struggled to attend, or non-compliance, where the offender refused to attend the Pathway. If the former, processes were in place to contact the offender to identify and resolve any difficulties to ensure offenders benefit from rehabilitative Pathways. In Beauxvale and Cherryvale, this work was carried out behind the scenes, and so officers would be unaware of the extent to which the Administrative Team had worked to ensure compliance before the case was returned to them. It was only after the officer made a final attempt at securing compliance that they reapplied the public interest test to decide whether to charge the offender.

5.6 Conclusion: embedding rehabilitation

My research data demonstrate how the Strategic Leads foregrounded rehabilitation in conditional caution decision-making. Leads had identified the challenge involved in bringing about this change of mindset to a traditional police culture that favoured charging the offender. They therefore deliberately scaffolded decision-making to administer more conditional cautions, attach rehabilitative conditions and encourage the offender to comply with them. In this way, they cascaded their rehabilitative aim to frontline officers. This is a similar finding to de Maillard and Savage, who argued that senior officers ‘transmit pressure’ to frontline officers to ensure compliance with targets (de Maillard and Savage, 2018: 323). Similarly to senior officers in de Maillard and Savage’s research, Strategic Leads did not set numerical targets to be achieved but instead adopted an indirect and diffuse pressure in which ‘there is no clear obligation to attain individual targets, but an increased, recurring, questioning and challenging of decisions made by individual officers’ (de Maillard and Savage, 2018: 324). Each Strategic Lead developed her own structure of conditional caution decision-making, as summarised in Figure 16 below.

Figure 16: Decision-making structures in the three police forces

	Airedale	Beauxvale	Cherryvale
			
Administrative team to monitor or Central Team to administer?	Central Team	Administrative Team	Administrative Team
Conditional caution decision-making spread out across force	N	Y	Y
Officer discretion in Pathways to use?	Y	N	Y

This Chapter answered how decision-making is structured in each force and the organisational pressures and resources acting upon individual decision-makers. My research reveals that rehabilitation is built into the very structure of decision-making. This organisational focus on rehabilitation was evident in Airedale, where there was a presumption towards administering a conditional caution by the Central Team, and Beauxvale, where the offender's characteristics, rather than the seriousness of the offence, was the decisive component in where to divert offenders. In Cherryvale, officers were encouraged to choose the most appropriate rehabilitative support for the offender, and the Administrative Team was proactive in supporting offender compliance.

Yet creating a structure to support rehabilitation was identified as unlikely to bring about a change in decision-making without a corresponding change in culture. Strategic Leads reported the importance of achieving genuine buy-in to the rehabilitative approach when administering conditional cautions supporting offenders, rather than continuing the arrest and charge mentality described in all forces. Strategic Leads therefore carefully considered how to encourage officers to adopt this approach as a new working rule, guiding daily decision-making. This is a remarkable undertaking for the Leads in demonstrating how conditional cautions could support offenders and, less altruistically, save police time. The Leads therefore created a convincing narrative to tap into existing police culture to encourage officers to choose to use this disposal in a rehabilitative way, as examined in Chapter Six.

Chapter Six: A culture of compassion guiding decision-making

6.1 Introduction: what is police culture?

In Chapter Five, I demonstrated that Strategic Leads in each police force that I studied had implemented organisational changes to steer officers to administer more conditional cautions, prioritise rehabilitative conditions, and seek compliance with these conditions. This Chapter examines how individual decision-makers perceive the conditional caution within their organisational context and how this interacts with the working culture and rules of their force.

Chan argued that the concept of police culture has historically been poorly defined and of little analytic value. She drew on Bourdieu's relational theory to situate culture in the social and political context of police work. Chan thus presented a model of police cultural change that emphasizes the relationship between the social, legal, organizational and cultural context of policing, rather than seeing either in isolation (1996: 131). It is therefore important to perceive police culture in this wider context.

This Chapter first explores the term police culture, drawing on both long-standing and recent research into this phenomenon, identifying the characteristic of compassion in police culture. I then focus on how conditional cautions, in both the legal framework and organisational expectations fit within this culture of compassion through contributing to officers' job satisfaction (Chapter 6.2), confidence in the success of rehabilitation through conditional cautions (6.3) and the role of officers' feelings in decision-making (6.4). The Chapter then concludes by positioning my research in wider work on police culture (6.5).

Police culture is an inevitable part of policing. External, formal rules, identified in Chapter Two, insufficiently address police work and are complemented by internal, informal working rules which guide police action (Shearing and Ericson, 1991). These working rules can be structured at an organisational level through policies and processes, as identified in Chapter Five. Yet even these organisational policies and

processes cannot always guide police action. Police culture is essential as it contributes to how the police view the world, their place in it and the appropriate action to take in their jobs (O'Neill and Singh, 2007). The combination of organisational structure and police culture give officers a 'working rule book': a set of values and beliefs shared by the organisation to guide their response in specific situations. This is important as, although rules govern police action, the police role requires spontaneity and negotiation in decision-making (Shammas and Sandberg, 2015). Charman defines police culture as a tool of 'legal vacuum packing' as it guides police behaviour at times where the law is ambiguous on the right course of action to take (2017).

As police culture helps officers determine their course of action, it is perceived as both an object of and barrier to policing reforms (O'Neill and Singh, 2007). McConville, Sanders and Leng argue that legal reform alone cannot significantly alter police culture if such reform cuts across well-established cultural norms (1991: 200). They emphasise that officers will act according to their own working rules in exercising their discretion. National and force-specific policy changes are therefore only likely to be effective if they do not clash with existing police culture and working rules.

In addition to disagreements over the existence and weight of police culture, there is some disagreement on the continuity and homogeneity of this working culture. Continuous characteristics of the police culture were summarised by Reiner, who observed that the police have an exaggerated sense of mission towards their role, crave work that is crime-oriented and promises excitement, celebrate masculine exploits, show willingness to use force and engage in informal working practices (2000). Reiner also reported that police culture is characterised by cynicism and pessimism as officers are suspicious of victims and offenders, lead socially isolated lives and display defensive solidarity with colleagues. Loftus argues that the police role has essentially remained unchanged and thus, these characteristics of police culture have remained stable (2010: 1). She suggested that long-standing features of

the role, in responding to emergency situations, facing danger and dealing predominantly with victims and offenders in society and seeing the worst of humanity, results in ongoing cultural characteristics of cynicism, an 'us v them' mentality and machoism. However, Loftus also notes that traditional cop culture may be weakened by recent developments and reforms within policing (2010).

The orthodox approach tends to perceive characteristics of police culture in a negative light. Yet there have been voices that have argued for a more appreciative approach. Waddington advocated for an appreciative understanding of police talk, to understand its purpose in giving meaning to experience and sustaining occupational self-esteem (1999: 295). He argued the defining characteristic of policing is the exercise of coercive authority, a trait which puts the police in a vulnerable position in the margins of a liberal democracy. He hoped that this recognition of the police position enables an empathetic understanding of even the most disagreeable features of the police sub-culture (1999: 302).

In addition, a growing body of academics have argued that, even if core police characteristics have been seen to be negative, we should recognize that they change over time as the role of the police changes and allowing for different policing duties and working teams (Reiner, 1992: 761; Chan, 1996: 106). Researchers, most notably Charman, reported that there is not one homogenous, unchanging, police culture (2017). Rather than focusing on one culture within street patrol work, academic literature has sought to account for variations between roles, ranks and location, as officers work on a wide range of tasks, including social welfare (Fielding and Innes, 2006: 127). Charman urges us to resist what Sklansky calls 'cognitive burn-in' of accepting the orthodox view of a homogeneous, unchanged police culture (Sklansky, 2007). As Charman explains, the police operate in multiple policing fields with their own values, attitudes and beliefs. These can vary by role and are co-created by those working within this field (Charman, 2017). Rather than assuming that old characteristics are still dominant, or even that new characteristics have wholly supplanted the old, Charman encourages us

to see police culture on a continuum (2017: 322). She contends that, as recruits join the police and the policing landscape changes, the police culture will develop in a sedimentary nature, with new layers of cultural characteristics diminishing the prevalence of older characteristics (2017: 339).

Although there are long-established characteristics of police culture, it therefore appears that these can change over time and in different police contexts. Charman adapts these characteristics in line with her research findings to identify six characteristics: cynicism, communication, comradeship, code of self-protection, categorisation and compassion (2017: 322). This compassion is an important foundation in new working rules of how to manage the offender by officers working in the custody suite, neighbourhood police, child protection and response teams. I draw on Charman's little-recognised characteristic of compassion, demonstrating how it is evident in all three police forces and was central to the success of the Strategic Leads in reinvigorating conditional cautions in their force. The trait of compassion underlined how officers saw their role, responded to organisational expectations and perceived offenders, and thus guided their actions.

6.2 Job satisfaction

In my research interviews, officers reported that their ability to make a difference for the offender and victim and a sense of ownership over their work gave them a sense of job satisfaction. These elements interacted with the organisational expectations identified in Chapter Five, which either complemented officers' motivations to rehabilitate offenders or exerted less-altruistic pressures on officers to offer rehabilitation.

6.2.1 Making a difference

The majority of officers and authorisers whom I interviewed identified 'making a difference' as a particularly satisfying responsibility of their police role, and, indeed, their reason for joining the police. While this desire to make a difference was evidenced across the authorisers and officers in all three forces, it was particularly marked in Airedale. Here,

the Central Team worked in a defined, specialist role to administer more conditional cautions and divert offenders to community support. PC Ambler illustrated:

Since coming on here [the Central Team], I feel I'm *offering* more to people, and helping. The stuff I do is more impactful... predominantly what we do, I really enjoy. I find it more satisfying than what I've done in the job for a while.

All officers interviewed in the Central Team reported a sub-culture distinct from their previous policing teams. PC Ambler observed a different side to policing in the Central Team:

Because before you were just dead intent on getting them to court, now obviously we're trying a different approach, so it's been interesting to try and change mind-sets...including my own and people in the custody blocks, people who are dealing with them out on the streets, so it's a new culture really.

PC Ambler reported that Airedale's new organisational structure in mapping out rehabilitative Pathways gave her the opportunity and enthusiasm to make a difference in offenders' lives:

Before, if they were eligible, they just got a simple caution, you chucked them out of the door and never gave a thought to what happened next, whereas *now*, obviously with everything we can offer them and the support. It's well needed, it's been needed for many, many years, but we never had anywhere to send anyone really. So, all the contacts, all the know-how, it's good, if you can help someone.

All officers and authorisers within the Central Team experienced this enjoyment of working within a team that had the organisational support and structure to rehabilitate offenders. For example, PC Applegate outlined Case A5 of a female offender with whom he had a great deal of sympathy and tried hard to find a Pathway that would benefit her, summarising that 'it's nice in a funny way to get things in place for her.'

Officers and authorisers within these Central Teams responded positively to the opportunities to divert offenders to meaningful interventions as it increased their job satisfaction in making a difference to offenders' lives.

In contrast, officers and authorisers interviewed in Beauxvale and Cherryvale came from a variety of policing teams and did not focus predominantly on conditional cautions. Instead, their police tasks included, amongst many other tasks, responding to emergency calls, managing ongoing child protection cases and neighbourhood engagement. Beauxvale and Cherryvale's organisational changes to the system of out-of-court disposals therefore only affected a small proportion of their work. Nevertheless, officers and authorisers interviewed in these forces reported that the rejuvenation of the conditional caution fitted within a perceived wider shift towards a proactive, rehabilitative approach to policing. This force-wide movement promoted a problem-solving approach to offending behaviour to tackle underlying causes of crime and divert offenders to support.

Officers in Beauxvale reported a sense of satisfaction in administering conditional cautions to divert offenders to support. I asked officers whether they wanted a Central Team similar to that in Airedale to reduce their workloads. However, officers were reluctant to lose their capability to administer conditional cautions and met this suggestion with uncertainty. PC Bell imagined that being able to divert cases to a (hypothetical) Central Team would reduce his case management responsibilities and enable him to concentrate on response work. However, he feared this might be a 'double-edged sword' as he would 'lose that personal touch' in being able to help offenders. In administering conditional cautions, under the existing structure, he felt able to sit with offenders and speak with them in detail about the underlying causes of their offending behaviour. He valued this role and the opportunity to provide help and support.

Finally, in Cherryvale, the force had recently moved towards a proactive model of policing, moving officers from custody suites into neighbourhood policing. Strategic Lead Chord explained that this redirection of resources aimed to manage offending behaviour at an earlier stage to eventually reduce the number of offenders brought into custody. Three of the five officers interviewed in Cherryvale had recently moved to a Neighbourhood Policing role, which they reported to be more problem-solving orientated than response or custody. Although, as in Beauxvale, officers administered few conditional cautions each year, they observed that it was a useful tool to support this problem-solving approach. They perceived that the streamlining of the conditional caution, coupled with the marked restructure of the police force, emphasised the force's focus on rehabilitating offenders, where appropriate. This force-wide move corresponded to interviewed officers' stated perceptions of the police role and increased their job satisfaction, as PC Canavan described:

I did like response but neighbourhood I think is more me, I've come to find that out because the way you deal with jobs, I quite enjoy it... actually helping people, which is nice, it is why I joined, that's why I think every police officer joins, isn't it?

PC Canavan was motivated by this feature of his role as he could make a real difference to offenders' and victims' lives. Yet Canavan reported that while he valued this rehabilitative people-focused role, it was secondary to the real police job of responding to emergencies:

We're police officers at the end of the day, if a burglary comes in, everyone wants to go to it, so police officers all know what the job is, so at the minute we just deal with a lot of the lower stuff.

Although PC Canavan gained personal satisfaction from working supportively with people in the community, he was ready to respond to more traditional crime-fighting policing tasks and derived satisfaction from responding to both the fast and the slower tasks of the policing role.

6.2.2 Ownership of police work

Officers in all three forces felt they were in a unique position to respond to offending behaviour and, with the transformation of the conditional caution, had resources in place to rehabilitate offenders. As reported in Chapter 5.3.3, officers compared Pathways with the likely court sentence for the offender, typically perceived to be a fine or unconditional discharge. Officers were careful to declare in research interviews that they would progress appropriate cases to court, such as when the offending behaviour was particularly serious or there was recent offending history. However, they knew that the likely sentence for low-level offending behaviour would be unlikely to target the underlying causes of offending behaviour, protracted for both the victim and offender, and costly for the criminal justice system. Officers therefore felt that they were in a better position than courts to offer rehabilitative outcomes for the offender and engage with the victim.

Officers were therefore reluctant to lose ownership of their cases to other criminal justice agencies. This reluctance was particularly evident in Airedale, where, after charging an offender following non-compliance, officers in the Central Team received automatic e-mails detailing the court sentence. Interview data with officers demonstrated that such sentences were usually fines or conditional discharges and perceived negatively by the decision-makers. This ongoing, direct feedback disillusioned decision-makers of the courts' ability to pass meaningful sentences. This resulted in a stronger reticence to charge offenders if a conditional caution could be administered.

While officers in Beauxvale and Cherryvale, were not routinely updated on court sentences in individual cases, they had received training, and experienced, the limitations of such sentences. Officers in these forces were therefore also reluctant to lose control in passing their case to the CPS and courts, perceived as having limited time and sentence options available. PC Briscoe worried, 'we don't know, once it's out of our hands, the CPS make a decision for us'. Working in child protection, she recently dealt with Case B6, a complicated case involving a mother who had

neglected her child. Through her ongoing involvement with the case, PC Briscoe had secured the trust of the child and family members. She felt the conditional caution offered immediate support, rather than risk how later decision-makers might act.

In addition to seeking to control the outcome of the case, interview data demonstrated that officers were proud of being able to divert offenders from court. Officers perceived courts as over-burdened and unable to manage the number of offenders brought before them. While officers acknowledged that any savings made from a reduced number of prosecutions were unlikely to be returned to the police, they had a sense of professional pride in acting as a robust gateway to the criminal justice system and reducing the demands upon it. This pride was most vividly reported in my interview with PC Abbott, who remembered a recent visit to his local Magistrates' Court. He observed that the public waiting area had been quiet, though he remembered it as a bustling place. He recounted a conversation with an usher when he asked why there were fewer people in court and was told:

"It's your lot, you're not bringing enough people in!" And I said, "No, it's because we're dealing with them on our own with out-of-court disposals!" Because all the people we used to bring in here are now resolved without coming to court... So, I think what they're realising is, what the Magistrates do, *we can do*, which is what we're all doing, but we're not getting any extra money for doing that!

PC Abbott's anecdote attests to the pride officers had in offering more to offenders in the number of cases disposed of out-of-court and the conditions attached. There was a feeling that their police force had confidence in them to divert these cases and they were trusted to do more work that would once have gone before a Magistrates' Court. This resulted in a desire to retain control over these cases, rather than risk the uncertainty of charging the offender and permitting another criminal justice actor to make decisions in the case.

6.2.3 Officers' perceptions of organisational expectations

The organisational structures identified in Chapter Five resonated with this police culture of compassion in which officers wanted to, and were proud of their ability, to make a difference. The organisational changes reassured officers that the police role was rehabilitative and preventative and provided well-structured frameworks to carry this out. However, in research interviews, officers also perceived unwanted organisational pressures to administer more conditional cautions, in Airedale or to administer particular condition types, as in Beauxvale. Finally, in Cherryvale, where the new two-tier system of out-of-court disposals had been introduced four years before the research took place, officers reported an alignment between the organisational pressures and their motivations and felt trusted to do what was right.

6.2.3a Airedale

Officers working in the Central Team reported a strong organisational pressure to increase their use of conditional cautions. Officers were aware that the Central Team configuration had been created to increase the use of conditional cautions and was being evaluated on whether it was an efficient use of resources. PC Abbott reported that a senior management officer had visited the Team to observe how busy they were. As a result of this ongoing evaluation, the Team was required to carry out more investigation work, rather than focusing solely on conditional cautions, to increase the Team's productivity.

Officers sought to demonstrate the Team's success and value for money to senior management to preserve the Central Team structure. In addition to the altruistic reasons outlined in Chapter 6.2.1 above, officers revealed self-interested reasons to continue working in the Central Team. Interview data revealed physical, emotional and financial reasons for officers preferring to work in custody suites, not streets.

At a spatial, physical level, working in the custody suite, a stable working environment, allowed officers to exert more control over their working day than is possible when responding to emergency calls or dealing with members of the public. The office environment was also less physically

demanding. During my observations, I saw that one officer had been injured while on frontline duties, wearing heavy armour plating, and another was still on restricted duties but could manage investigation work in the office. Officers working in this office environment were therefore able to carry out the policing role in a manner that suited their needs.

The Central Team structure also met officers' emotional needs. One officer had previously worked in a domestic violence team, a distressing environment as the risk-based, emotional work meant she felt unable to disengage in the evenings. She emphasised that the Central Team was a more supportive, slower-paced environment, and crucially, she felt able to make a difference to offenders' lives through the role, rather than repeatedly trying to minimise harm to vulnerable persons.

Finally, one officer gave a financial reason for wanting to stay on the Team. He explained that if the Central Team closed and he was reposted to another area of the force, he would face a significant increase in travel expenses. He expressed frustration that he had been moved around the force multiple times and that he now wanted to stay within this role primarily so that he would not have to move again, as such a move would not be compensated by the force and the additional cost of fuel amounted to a pay cut.

While officers were supportive of Airedale's altruistic aims behind the creation of Central Team, my research data therefore reveal more personal, self-interested motivations for officers to comply with organisational priorities to increase the use of conditional cautions. This was a strong, shared desire to continue working in the Central Team, a job they enjoyed, after physical injury, or after an emotionally challenging role, or even to reduce the financial cost of commuting around the force. Although there were no direct sanctions for not administering a conditional caution, officers were aware that their team structure was under scrutiny and worked to increase their use of out-of-court disposals to demonstrate the efficiency of the team configuration. As observed in Chapter 5.3.1, this Central Team was eventually disbanded. Officers had

therefore been working under the real threat of losing the team structure they enjoyed.

6.2.3b Beauxvale

In Beauxvale, officers felt supported to administer conditional cautions but did not report a strong pressure to do so. Officers had a wide discretion in whether to use a conditional caution or other out-of-court disposals such as the simple caution. However, officers expressed frustration that their discretion in the second decision, which conditions to attach, was restricted. As discussed in Chapter 5.4.3, officers had to direct offenders to one of the six Pathways mapped out by the Strategic Leads, with this choice effectively made for them.

All officers in Beauxvale reported that they had a limited knowledge of these Pathways and the support they provided, particularly the Women's Centre. Yet there was a divide in how officers responded to this limited discretion. For some, the structured Pathways took the pressure out of decision-making, simplifying this process for them. These rigid Pathways meant officers unfailingly diverted offenders to approved Pathways recognised as effective. For example, PC Briscoe was not sure what the Women's Pathway entailed but trusted the Strategic Leads to have carried out research to map out appropriate Pathways:

There must be some reason why women only have one Pathway. It makes it very simple for us, so it's great, but I just wondered whether, if women do have problems with drink or drugs, why weren't they allowed to go on a different Pathway that addresses that specific need, and they must go through the Women's one? There's obviously a reason for it, and as long as they're getting some help, then that's fine.

For these officers, the rigid Pathways met their altruistic motivations in supporting offenders, but also fitted their pragmatic concerns in having a streamlined decision-making process. However, other officers felt the Pathways overly constrained their decision-making. The Strategic Leads reported there had been a great deal of 'feedback' around the Women's

Centre condition, with it being 'the most contentious issue on the training'. Sergeant Brookes felt that, with the strict categories of offenders set out by the force and the limited discretion available to him, he was unable to divert an individual to suitable Pathways he identified:

One of the most annoying things is, there's all these different Pathways but if you're a woman then you've got to go down the Women's Pathway. But there might be a woman with alcohol issues so why can't we send them on the alcohol Pathway instead? It would be more beneficial than the Women's Pathway.

This sentiment was echoed by other police constables who felt they were well-placed, after conducting the Needs Assessment, to identify suitable Pathways for the offender, but were prevented from doing so because of the rigid structure in place. PC Boldwood felt this fixed process was overly prescriptive in curtailing the officer's choice:

It's almost like you drop down - is this a woman - yes, that's that way, is it a veteran – no - has he got problems with drugs or problems with alcohol...

The regimented Pathway options appeared to act contrary to officer's desire to identify the offender's needs themselves, rather than be dictated by the offender characteristics. Officers felt conflicted as they were expected to adopt a rehabilitative approach in dealing with offenders, but the organisational structure prevented them from engaging in the choice of where to divert offenders. As officers did not know what support was available on these Pathways, they did not feel involved in this part of decision-making but felt the Strategic Leads had made the decision for them.

6.2.3c Cherryvale

Finally, officers in Cherryvale did not report any strong expectations to administer conditional cautions. The force had implemented the two-tier system of out-of-court disposals four years prior to my data collection. Strategic Lead Chord declared that the two-tier system had been accepted as 'part of the psyche.' This restructure had been embedded

as the accepted norm by officers involved in my research. One officer interviewed had never experienced a different system of out-of-court disposals and not administered a simple caution. Of the four officers and one authoriser who had experienced this changed system to out-of-court disposals, three observed that the new two-tier system simplified their decision-making, removing the need to deliberate between similar and overlapping out-of-court disposals. PC Canavan voiced:

Your decision-making is *easier* because you've only got three decisions to make, and if you're ruling out the one [community resolution], you've only got a conditional caution or a charge, it makes the decision-making a better process. Whereas if you've got six different out-of-court disposals, how do you decide which one is the right one?

PC Canavan felt the two-tier framework meant decision-making was more consistent across the force and each out-of-court disposal would have a rehabilitative requirement attached. There was therefore a congruence in the organisational structure and police culture. All parties had something to gain from the use of this disposal at an altruistic and pragmatic level. Although the two-tier system constrained officers' discretion on which out-of-court disposal to administer, officers did not feel organisational pressure to increase their use of conditional cautions. As PC Caulfield articulated, as a police constable, he 'can quite clearly justify using them, and, on the same level can quite clearly justify not using them,' a foreshadowing of the permissive public interest test described in Chapter Seven.

Officers also reported they had a wide discretion in which conditions to attach. While relevant conditions were mapped out by Strategic Lead Chord, officers were able to draw on their own experience and local knowledge to choose appropriate conditions. PC Caulfield reported:

There's more *discretion* given to officers to deal with incidents. I think the options open available to us, we've got all we need to be

able to do the job efficiently and give victims a good enough service.

PC Caulfield perceived this discretion was primarily linked to the amount of single crewing in the force as there was a greater feeling 'of self-responsibility knowing that we are the officer dealing with the incident, we know what needs to be done.' The small force, making efficient use of all available officers, had to trust individual officers to choose the most appropriate outcome. Officers working in various policing roles, particularly neighbourhood officers, reported feeling encouraged and supported to tap into their local knowledge when deciding which conditions to administer and take responsibility for determining which conditions to attach in the case. They therefore felt empowered to use their discretion.

However, while officers felt trusted to make these decisions, this was within the context of having several disposal options having been taken away from them. Officers could only choose between a community resolution, conditional caution or charge. In addition, while they had discretion in which conditions to administer, my case analysis indicate that officers use the same rehabilitative conditions; in four out of seven cases, the same drug rehabilitation Pathway recommended by Strategic Lead Chord was used. While officers felt trusted with a wide discretion, in practice, the structure of decision-making imperceptibly constrained decision-making.

6.2.3d Conclusion: tapping into police officer compassion

My research data demonstrate that officers took pride in being trusted and encouraged to use their discretion to rehabilitate offenders. This was part of the police role that officers reported as important to them, but they had not previously had the resources in place to act on. Officers were altruistically motivated to 'make a difference' in the offender's life and identified an organisational change that encouraged them to do so.

This compassionate element of police culture was facilitated, or tapped into, by the Strategic Leads in how they promoted the conditional caution

in training. However, although Leads sought to achieve the buy-in of officers to rehabilitate offenders, they were also aware of the context in which officers worked. Leads had to ensure the disposal met the altruistic motivations of some officers but was also in officers' personal interest for them to administer and were used consistently across the force. There was therefore a balance between tapping into existing police culture to encourage officers to implement new measures to administer conditional cautions and creating organisational restrictions so officers would have to comply with these new rules. In this way, Strategic Leads had to limit officers' discretion while encouraging them to feel trusted to rehabilitate offenders.

However, my research identified instances of perceived constraints on officer discretion, causing tension between the organisational structure and police culture. In Airedale, officers were generally supportive of the Central Team dedicated to administering conditional cautions. However, they reported this team dynamic resulted in pressure to administer conditional cautions to demonstrate the Team's productivity. In Beauxvale, officers felt constrained in the conditions they could administer in following the rigid Pathway structure. Finally, in Cherryvale, officers reported having discretion in whether to administer a conditional caution and the conditions to attach but did not appear aware of the wider constraints on this discretion.

6.3 Confidence in the success of rehabilitation through conditional cautions

My data demonstrated a real drive amongst officers to rehabilitate offenders at a time when other criminal justice agencies were perceived as unable to offer the same support. Yet, in addition to recognising that the police were well-placed to rehabilitate offenders, officers also needed assurance that such rehabilitation was effective. Measuring the success of rehabilitation is complex, as any analysis must be sensitive to the circumstances of the case and changes in the type and seriousness of offending (Tiwana, Bass and Farrell, 2015). This section focuses on the formal data on the effectiveness of the conditional caution available to

officers, the individual success stories identified through case file analysis, and recollected by officers, and how this resulted in a general feeling of cautious optimism in the success of conditional cautions.

6.3.1 Data on the effectiveness of rehabilitation

National Leads on out-of-court disposals shared the results of several studies on the effectiveness of conditional cautions with force Strategic Leads. This research demonstrated that pre-court diversion can be successful in rehabilitating offenders and the types of conditions found to be effective (Neyroud, 2018). Strategic Leads also conducted research on the effectiveness of the disposal in their force. This analysis used compliance and recidivism rates to create an overview of the effectiveness of the disposal over a short-term period. These measurements guided the development of the disposal in commissioning new Pathways, training officers and applying for additional funds to support the conditional caution project.

Data are therefore available on the overall effectiveness of conditional cautions as well as limited data on compliance rates for Pathways in each police force. However, Strategic Leads reported that it was difficult to share this nuanced data with officers. It was perceived to be of limited usefulness to operational decision-making and would result in an overload of information. This was particularly the case for officers in Beauxvale and Cherryvale, where officers balanced administering conditional cautions with other operational duties. Authoriser Ammil highlighted this divide in duties:

I don't know how they're scrutinising the data, how it's being analysed or shared, I hope it is, but I come in and deal with prisoners... It's a question of roles and remits, you can't have the macro and micro focus.

The level of formal feedback in individual cases was also necessarily limited. Providing such data on effectiveness could detract from this effectiveness, as offenders needed to feel able to confide in support services to get the help they need. Any feeling that the provider was

reporting back to the police could undermine the individual-provider relationship. PC Atchinson astutely remarked:

Feedback would be nice, but at the same time it is about giving people that support. For a drugs course, I think it's good to be able to say to people, "whatever you discuss with them is completely confidential," all we need to know is that you attend, we don't need to know anything else. Because you don't know what their problems are, if there was stuff coming back to us, it may not help them, because they might be unwilling to disclose stuff to the drugs workers and not get the level of support they need.

Officers accepted they had to step back and trust that once they had signposted the offender to the Pathway, the provider would engage with the offender.

In addition, officers did not have the organisational resources to facilitate ongoing engagement with the offender. PC Adely compared the limited ongoing contact the Central Team had with offenders with the ongoing support provided by the Integrated Offender Management (IOM) team, which works with more serious offenders over time to achieve desistance. Although PC Adely wanted the Central Team to have a continued presence in the offender's rehabilitation, this was prevented by the force's resources:

If you ask the people in our Team, we would like to do more of the offender manager side of things. To follow things up: so, they've done a course, how are they now getting on - is there anything else that we can give you, that next step? But our workload is so much that we can't do that. Unfortunately, this is the follow-up that we don't have. So, I don't know what he's doing now, because we move on to the next one and the next one and the next one.

There were therefore multiple reasons for why officers could not receive direct feedback in their case. This was generally accepted by officers, though caused some frustration as they did not see the value of their work. PC Bell explained:

Some people don't want to know, and some people do, I'm quite interested in whether it was actually worth doing in the first place.

This feedback was needed to demonstrate to officers that the conditional caution was working and guide future decision-making in this area. With limited feedback from the Strategic Leads and Pathways providers, officers' primary formal measure of success therefore consisted of their own compliance rates. Officers interviewed could approximate their own success/failure rates for breach of conditional cautions. PC Abbott estimated 'I've dealt with 30 prisoners, I think I've only done 3 or 4 breach files... so if you took my percentages, I would say it's working.' Similarly, in Cherryvale, officers estimated they administered an average of four conditional cautions a year, with a low breach rate. Yet such compliance data are limited in demonstrating to the officer that their work has had a real positive impact on the offender's life, demonstrating only that the offender has done what was required.

6.3.2 Data on the effectiveness of victim satisfaction

In each force, the MG14A form on which the conditional caution is administered, includes a box for the officer to confirm they had consulted with the victim. However, this self-reporting does not demonstrate how successful the victim consultation was in ensuring the victim was involved in the decision-making and informed about his case. I asked Strategic Leads whether additional work on monitoring of victim satisfaction was taking place.

Although Strategic Leads in each force generally focused on offender rehabilitation in their research interviews and training products, they highlighted the need to monitor victim satisfaction with conditional cautions to ensure victims felt properly consulted and informed about the conditional caution and the conditions attached. Strategic Lead Almos explained:

Obviously, the thing that we are most interested in is the recidivism rate; but we're tracking victim satisfaction as well.

Part of Airedale's work on ensuring victim satisfaction was pre-emptive in encouraging officers to manage the expectations of victims from the first conversation with the victim. As Almos explained, it was hoped that the arresting officer, as the person 'that can actually influence and manage the expectations of victims' would explain the process of the criminal justice system both in and out of court. This was important as, with the central team structure in Airedale, this officer would often be different to our conditional caution decision-maker, who would have to later consult the victim.

In Beauxvale, the Strategic Leads focused on bringing conditional cautions down from a charge, rather than up from another form of out-of-court disposal. Strategic Lead Beech explained that this approach meant the disposal could be a 'harder sell for officers' than a charge. However, Beech noted that the conditional caution was easier to explain than the simple caution, which 'doesn't seem fair' and was perceived as 'a slap on the wrist'. Officers could explain to victims what the offender would have to do, such as the Unpaid Work Condition, and thereby improve the victim's satisfaction in the process that there would be some outcome and their views had been listened to. As Beech explained, updating the victim of the outcome of the disposal could be a good part of the job for the officer:

...If it was successful - of which the vast majority are. Which is a fabulous thing because they then go back to the victim and inform them of that positive outcome. That's a good job to do, isn't it?

Beech outlined the work the force's evaluation of whether the conditional caution enhanced victim satisfaction. An officer from the public insight team contacted each victim immediately following the administration of the conditional caution to determine whether they felt they had been properly listened to and consulted in the decision-making. As this officer was separate from the investigation, it was hoped such consultations would be more open and less biased than if

they were carried out by the same officers. However, data from this survey was not yet available.

Finally, Strategic Lead Chord explained that Cherryvale carried out its own victim satisfaction surveys with a reasonable response rate. He identified a 50% satisfaction rate for court with a 75% satisfaction rate for out-of-court, which he sought to improve.

Strategic Leads were therefore able to monitor that officers had documented they had consulted with victims in each case and conduct some evaluative analysis of victims' satisfaction with conditional cautions. However, this was limited by their resources, and the fact that, as the police who were responsible for administering conditional cautions, it was difficult for them to carry out this evaluation in an unbiased way.

6.3.3 Individual success stories

Decision-makers therefore predominantly used compliance rate data when considering the success of the disposal. Officers hoped that compliance was indicative of deeper levels of success in addressing offending behaviour. This more holistic view of success was possible as these data were complemented by more in-depth individual success stories. Officers in Airedale and Beauxvale reported receiving informal, direct feedback from offenders who contacted officers to express gratitude for the support they received through the disposal.

Almost all officers interviewed in Airedale cited an example of an offender proactively contacting the officer to thank them for helping him turn his life around. These good news stories were shared around the teams and more widely by e-mail updates around the force. In our interview, PC Applegate enthusiastically set out his success story in which the offender contacted Applegate to tell him that he had saved his life by getting him the support he needed. In this way, the decision-maker heard of the long-term impact of the Pathways on the offender's life and shared this update with the Team. This helped reinforce the sub-culture promoting the use

of conditional cautions and demonstrated to other Teams that the Central Team was successful in their work with offenders.

Success stories were less commonly reported in research interviews in Beauxvale. This was likely related to the newness of the disposal and because individual decision-makers administered fewer of these disposals than Airedale's specialist teams. Yet stories did emerge and were shared in research interviews. In one case, PC Buchanan described a chance encounter with an offender he had previously diverted to a drug and alcohol rehabilitation course. The offender expressed his gratitude in being able to see his children again, which PC Buchanan reported had a deep impact on him:

To see that proof in the pudding that he's really learned and improved his life, which is quite *rare*, especially prior to the conditional cautions coming in, I was quite happy.

One officer also reported positive feedback from the victim's family. A woman had been the victim of sexual harassment at a bar, and the offender had completed his condition. On informing the victim of this outcome, the victim's father, who was a police officer, contacted PC Bennett with an e-mail of thanks for his efforts. PC Bennett explained this was important feedback, as the victim and an officer in a different police team supported the disposal:

So, the fact that that's coming from someone within the force shows, not just the public are agreeing, I think massively in house, we're for it [conditional cautions] as well.

However, unlike in Airedale, positive messages regarding the disposal did not travel around the force. PC Buchanan was reluctant to tell his colleagues about the success of his case as that would constitute bragging and he would have to pay a 'cake fine.' As the conditional caution fitted within their wider roles, officers in Beauxvale did not speak about the disposal as a unifying feature of the team, and instead felt they should not be shared.

In Cherryvale, as in Beauxvale, officers interviewed had only administered a small number of conditional cautions. Although officers felt that their high compliance rates demonstrated success, they hoped the disposals would go further to make a difference for that offender but had limited direct experience of seeing this. In Case C1, PC Carraway diverted an offender to a drug rehabilitation course and hoped:

It's beneficial for the offender, because you never know, perhaps that drugs course could have been *really good* and could have changed that guy's life. It might have done, we don't know.

None of the officers interviewed in Cherryvale identified an anecdotal success story in which an offender had thanked them for their support.

Although positive anecdotes were not shared amongst colleagues in Beauxvale and Cherryvale, the inverse is not true. Instances where the conditional caution was perceived to be unsuccessful, because a flawed administration meant the disposal had to be withdrawn or changed, or the conditions were breached, were shared between teams. PC Barke reported she had initially been enthusiastic about the possible benefits of the conditional caution, but negative experiences had been shared and more experienced officers had expressed scepticism on the effectiveness of the disposal. She reported, 'I think a couple of people have tried it and it probably hasn't gone that well. I wouldn't even discuss it as an option now.' PC Barke doubted she would use the disposal again as she felt it was a waste of her resources.

Individual success or failure stories were therefore an important part of how officers perceived the success of the disposal and had a more emotive impact than statistics. Successful cases could be an important motivator to use the disposal, but were typically not shared widely by individuals, while those that dragged on would be shared between teams. There was a different perception of the success of rehabilitation between teams within the same force, dependent on the types of stories shared. Success was therefore not always perceived by officers in a rigid quantitative form but instead included the overall impressions as officers

perceived it, as particularly rewarding or challenging experiences would stay in officers' minds.

6.3.4 Cautious optimism in the success of conditional cautions

My research data demonstrate that officers had limited feedback on whether conditional cautions in general, and in specific cases, were successful in rehabilitating officers. Officers in Beauxvale and Cherryvale tended to only receive formal feedback if disposals were not complied with, and officers had to decide whether to charge the offender. Officers in these forces also did not have direct, individual feedback from courts on the sentence imposed if a case was charged following a breach. They therefore had more limited and predominantly negative feedback than their counterparts in Airedale.

Some officers were wary about using compliance and reoffending rates as a proxy for long-term rehabilitative change in the offender. PC Abbott remarked:

Even though we might have done the job by making them not reoffend, whether we're helping them with their issues, that's a completely separate assessment you'd have to do. You'd have to go and visit these people and say, "Have you beaten your drug addiction that you had when you were arrested?"

Although officers could encourage offenders to comply with the conditions, they could not force compliance. Offenders needed to be willing and able to change, which officers identified could be an important barrier in achieving long-term rehabilitation. A frequently repeated phrase by all ranks in all forces was 'although you can bring the horse to water, you cannot make it drink.' Authoriser Coates perceived that:

People have got to *want* to do it, you can't force people. Most experts would agree that they've got to be at that stage in their life where they want to help themselves to some degree, otherwise you're trying to drag the horse to the water and it's not going to work.

Although the officer might identify the needs of the offender and match him with an appropriate Pathway provider, if the offender wanted to do the bare minimum to comply with the conditional caution and not engage in further support then there was nothing further the officer could do. In such cases, although the conditional caution would be completed, the offender would not have been rehabilitated. It is therefore difficult to celebrate such a conditional caution as successful. PC Abbott set out a hypothetical case of an offender who complied with a condition to attend the Job Shop, a Pathway to assist the offender in finding a suitable job, but 'still haven't been asked to get a job.' The police may put the offender in contact with support services, but they were not responsible for, and could not measure, the impact of such services on the offender's life. These concerns demonstrate the complexity in measuring the success of the disposal.

Nevertheless, despite these limitations, officers across the three forces hoped the conditional cautions worked in making a real difference for the offender and supporting the victim. My data demonstrated a general sense of optimism in the potential for conditional cautions to rehabilitate offenders. Even at the most cynical, officers reported that a conditional caution was not worse than a court sentence in rehabilitating the offender. As a cheaper and faster disposal to administer than a charge, the conditional caution represented a better outcome for the public purse. The conditional caution was therefore perceived as at least preferable to a charge, in a cost-benefit calculation, and could offer a lot more for offender rehabilitation.

For example, PC Bennett identified that he had taken great pains to secure late compliance for a conditional caution he had recently administered. When I asked him why he had done so, he reported that, although he recognised the limitations of the conditional caution, it was a disposal with real potential to effect positive change:

I don't know what the stats are, but the idea is to prevent someone going to court and getting them the help. I fully believe that they've

got to want the help and want to address what's making them offend, but if it's worked for 5 out of a 100 people, at least it's worked for 5.

This uncertain hope in the potential for the conditional caution to bring about sustained, positive change for the offender was shared across all officers, authorisers and Strategic Leads. Even officers who reported later becoming cynical about the process of administering the disposal identified that the disposal initially seemed like an opportunity to make a real difference to vulnerable peoples' lives and divert them to much-needed support.

6.3.5 Conclusion: experience as a form of evidence

My research data demonstrate the importance that individual officers give to on-the-job learning and advice from within their teams, rather than formal indicators of success. This fits into wider research on the importance of 'craft' for police officers, rather than the 'science' of police training and evidence-based practice (Charman, 2017: 321-322). As officers regularly interact with those of the same rank as themselves, officers therefore play a key role in shared learning. This is particularly true when, as seen in my research findings, officers do not tend to share good practices outside of their immediate team. Teams can become siloed in their approach to the conditional caution, either supporting or rejecting it as one team.

My research emphasizes a bifurcation between the evidence required by Strategic Leads and frontline decision-makers. Strategic Leads need quantitative and qualitative robust scientific evidence on the effectiveness and efficiency of conditional cautions. These data facilitate activities to improve its use, whether encouraging partner agencies to provide Pathways or applying for additional funding to commission Pathways. Decision-makers, on the other hand, were not involved in this review of the evidence as they did not have the time, or felt it was beyond their responsibility to do so. Instead, they relied on experiential evidence in guiding decision-making on whether a conditional caution was appropriate and the conditions to administer.

How police officers understand and use evidence has been a long, and recently growing, area of study. Sherman argued that it is a false dichotomy to compare experience with formal evidence, as both are used for different purposes in evidence-based decision-making (2013: 377). However, while he accepted that both were needed, he saw them as distinct elements of decision-making. He perceived evidence, created through systematically targeting, testing and tracking police initiatives, as an objective element that sat alongside other concerns, such as policy considerations. However, Fleming and Rhodes argue for a deeper understanding of evidence as more nuanced, with overlap between experience and evidence (2018: 3). They argue that we should not artificially separate evidence from experience, as officers use experiential evidence to weave varieties of knowledge together. My research data demonstrate the importance of both official data on the effectiveness of conditional cautions and the lived experiences of decision-makers, which contribute to how officers will perceive the effectiveness of the disposal.

As von Hirsch, Ashworth and Roberts observe, 'In reality, the vitality of rehabilitationism and of 'what works' may continue to depend as much on the enthusiasm of its practitioners and promoters as on the results of the evaluations' (2009: 8). Whether officers feel they are rehabilitating offenders plays an essential role in whether they administer a conditional caution, which will go on to impact the vitality of rehabilitationism in an ongoing cycle. If officers feel they are making a difference by administering conditional cautions, they are more likely to administer them and thus more likely to hear success stories of helping offenders.

This feedback cycle underlines the difficult tension between evidence-led policy, and policy-led evidence. Guided by some evidence, Strategic Leads need to implement their own innovative approach to conditional cautions. However, they cannot evaluate effectiveness until sufficient conditional cautions have been administered. To do this, they need to enthuse officers about the success of the disposal, even as they begin to evaluate this success. They therefore needed to demonstrate its success

to make it more successful and had to provide evidence to access funds and encourage decision-making. Strategic Leads frequently referred to their 'hope' that their approach would make a difference and that they were 'taking a leap of faith' until the evidence supported what they felt was the right solution to offending behaviour.

6.4 The role of officers' feelings in decision-making

This Chapter demonstrates that even with limited data on the effectiveness of conditional cautions in rehabilitating offenders, officers' central motivation for administering conditional cautions was their compassionate desire to make a difference for the offender. However, this culture of compassion interplayed with a culture of cynicism within the police as not all offenders were perceived as deserving of this compassionate response. How the officer categorised and felt about the individual offender in the case was therefore crucial to this dispositive decision-making.

6.4.1 Categorisation of offenders

Officers' feelings about cases can be based on unconscious categorisations of offenders. As officers regularly deal with offending behaviour, they begin to characterise offenders they encounter. Such classification devices are well-established in policing literature and result in informal working rules on how the police will treat individuals based on that person's demeanour (Reiner, 2000). This is related to the 'attitude test' in which offenders may have a differing criminal justice outcome depending on the respect they show the police (Choongh, 1997). As Henderson identifies in her work on probation officers, professionals do not live in a 'valueless vacuum' but are susceptible to the same influences, beliefs and values as the rest of society (2013). These categorisations create shortcuts for decision-making as officers quickly identify the type of offender in the case and determine the most appropriate outcome (Hawkins, 2003).

My research data demonstrated that these categorisations were an important part of conditional caution decision-making. PC Applegate

explained 'you get a judgement call when you meet everybody: it's what you do, it's what everybody does.' These categorisations arose based on how offenders presented themselves at interview, the offence type, and information gained during investigations. There was some difference in the terms used to categorise offenders, but my research data classified three overarching types of offenders as the good, the bad and the needy.

- 1) Good offenders. Individuals who had a 'blip' in an otherwise law-abiding life, for example, by committing low-level assault during an alcohol-infused night out. In general, this group was not considered as having underlying needs the conditional caution could support. Contact with the police acted as a sufficient shock to deter future offending. PC Abbott reflected:

You're 95% certain they're going to complete their [conditional caution], because they're *grateful* for it. I had one guy, he was an accountant, he was so apologetic and ashamed of himself... that's the ideal person. That's the one category, I would say, who's never been in trouble with the police and never intends to again, and he's ashamed.

- 2) Bad offenders. Individuals perceived as stuck in a cycle of offending and likely to reoffend in the future. This type could be classified by previous offending history, or by their behaviour in custody such as exhibiting anger or indifference to the officers. PC Bell explained that:

You sort of get a feeling of whether they're going to comply. If they've got previous for failing to appear at court hearings, there's a good chance they won't.

- 3) Needy offenders. Individuals who genuinely needed help for some part of their lives. AC Adely distinguished this group as 'the more worthy' group whom the officers could really support:

The majority are happy to accept some kind of help and to *try*, a lot of people who take drugs genuinely don't want to, certainly the

alcoholics don't *want* to be living the life that they're living, those are the two really that you can say we're getting them *help*.

While these three categories served as general guides to decision-making, officers reiterated that offenders did not always fit inside one of these three categories. In addition, officers observed that their own role affected the interaction they had with offenders and therefore their perception of the individual. PC Boldwood reflected how, working in Response Support investigating the case:

We'll speak to the victim, and we'll see the effect it's had on the victim, so we see the monster, and the custody sergeant will see the person who's just in the cells.

Officers were therefore aware of making categorisation decisions and tried to consider cases objectively to determine whether offenders were suitable for a conditional caution and the conditions to attach. This was supported by the authoriser, who was expected to be more detached from the case, reducing the likelihood that categorisations resulted in discriminatory decision-making. However, there were offender types and offences which evoked particular sympathy or antipathy in officers, bringing these categorisations to the fore. These offender types interplayed with officers' compassion (6.4.2; 6.4.3), or cynicism (6.4.4).

6.4.2 Sympathy with the vulnerable offender

Officers sympathised with offenders in need and tried to divert them to support. In Case A6, PC Abbott perceived criminal behaviour as a 'cry for help' by an offender who did not know where to go for support in her community. The offender had been upfront about the offence and identified several problems in her personal life. This meant that PC Abbott could 'tell the kind of *person* you're dealing with' and sought to divert the offender to support for her mental health.

This sympathy was evident in the terminology officers used to discuss their cases. When discussing Case A5, PC Applegate referred to the offender as 'a very nice lady, in a particularly good job as well' and, at several points, as a victim of society, rather than an offender. PC Briscoe

also disliked the term 'offender' in such cases, as she felt that this term alienated the individual who needed support, not censure.

Officers frequently perceived this needy group as the individuals they could most support through conditional cautions in diverting them from court towards rehabilitation. The conditional caution was compared to the likely sentence at court, perceived by officers, and supported by the training (Chapter 5.3.3), as a fine or conditional discharge, which offered no rehabilitation and could worsen a complicated situation. The identification of the individual as a needy offender was therefore important when deciding whether to administer a conditional caution and which conditions to use. Throughout my research project, in each police force, officers shared countless examples where they perceived that the offender needed support. Officers felt that, with the rejuvenated conditional caution, they were able to offer this support, giving officers a sense of satisfaction in their policing role (Chapter 6.2). This is similar to Brennan et al.'s finding that officers involved in the diversion of female offenders labelled them as 'troubled' rather than 'troublesome' women and sought to divert them to support (2018: 573-574).

6.4.3 Giving a chance to a good offender

Good offenders were perceived as unlikely to have underlying needs that the conditional caution could address. However, these offenders needed the police to give them a chance, rather than a charge, and administer a conditional caution, which would have a lesser impact on their criminal record. As these offenders were generally in employment or looking for work, they had a lot to lose in being charged and officers sought to prevent this where appropriate. PC Barke candidly described how her perception that the offender 'seems like an alright lad' affected her decision-making. As a new recruit, she felt a little naïve and optimistic about offenders and overly led by her feelings in the case:

They're as nice as pie so I'm like "well okay" do you know what I mean? I'm probably quite softish when it comes to *certain* people obviously.

The officer felt that, after her negative experiences of using a conditional caution, she would now only administer a conditional caution if ‘they’re a really good character’ based on how they presented in custody.

An important part of this presentation was whether the offender had apologised for his actions and appeared to show genuine remorse. While offenders are required to admit guilt to receive a conditional caution, there is no requirement for them to apologise. The apology, and other indicators of the individual being a good offender, demonstrate to the officer that the offence was a genuine mistake and that they have already learnt from it (Smith, 2014). This can encourage officers to administer a conditional caution, rather than a charge.

6.4.4 Antipathy and the bad offender

The third category of offenders were bad offenders, perceived as choosing to engage in criminal behaviour and unlikely to leave this offending cycle. In a similar way to classifying vulnerable and good offenders, officers made common-sense judgements on whether these offenders were likely to complete the conditional caution, based on the offence, offending history and offending behaviour.

6.4.4a Taking a chance on a risky offender

However, this type of categorisation risks offenders not receiving a conditional caution because of how they present in custody or their offending record. Strategic Leads and officers reported that they sought to minimise the impact this categorisation had on decision-making. For example, Strategic Lead Bridge expected officers to administer a conditional caution even if the offender is a ‘bit truculent’, encouraging officers to take a risk with such offenders rather than seeking a 100% compliance rate of conditional cautions. As she remarked, the offenders who were most distrustful of the police, such as black and ethnic minority offenders, were most likely to present as ‘resolute’ offenders in custody. Administering conditional cautions for these groups would therefore have the most significant impact in improving trust with the police and reducing harm in society by individuals causing the most serious harms.

This approach was evidenced in the research data with officers, who reported trying to administer a conditional caution for such offenders if this fitted within the legal guidelines. PC Caulfield was particularly firm in his belief that the police should take a chance on these riskier offenders as:

You've got to give someone the opportunity, you can't say "I don't think you're going to keep to it, so we're not even going to try" - you've got to try. It makes a whole lot of sense to give someone a chance, if it's applicable to give them a chance.

Officers were aware that there was a danger of taking a risk-averse approach to administering conditional cautions and consciously sought resist this approach. Officers took pride in administering conditional cautions in perceived risky cases, demonstrating they had taken a chance on an offender who needed support.

However, officers also reported a more cynical approach to administering conditional cautions in cases where they felt compliance was unlikely. PC Buchanan explained:

At least it's something that we can say to the courts, or to anyone thinking of an alternative way of dealing with this individual. Actually, we have tried *numerous* things to try and improve his offending behaviour and unfortunately in this particular case it hasn't been successful. However, I have had cases where it has been successful so ... it definitely doesn't deter me; I'm not disappointed by other people's behaviour.

My research data demonstrate that, even where the officer is not confident in the likelihood of an offender complying with the conditional caution, they may continue to administer the disposal. This can be a proud demonstration that the police were willing to help more challenging offenders to demonstrate that they are not cynical and risk averse. It can also be a means of communicating to subsequent decision-makers that they had tried to engage with the offender and a more punitive approach was now needed.

However, although officers claimed that they tried not to be led by their feelings in the case, my research data identified one example where this was difficult to maintain. This was where the new working rule to administer more conditional cautions conflicted with the pre-existing working rule to charge offenders for an assault on police.

6.4.4b Assault on police

Officers reported an internal conflict when faced with cases involving assault on police, their colleagues. They sought to administer conditional cautions consistently for such offenders, to demonstrate that they did not think there should be different rules for police officers. Yet officers had strong feelings of loyalty to their assaulted colleague and worried about how the victim would perceive the conditional caution. Offenders who assaulted the police were also seen as particularly bad offenders as they had already shown disregard for the law and were therefore unlikely to comply with the disposal. Officers therefore hesitated to administer such disposals for these cases as they felt antipathy towards the offender.

This tension was particularly pronounced in Airedale, where the Central Team administering conditional cautions was not out on the streets and had minimal risk of being assaulted themselves. The Central Team's sub-culture of supporting conditional cautions through a more compassionate approach to the offender resulted in a tension between the Central Team and the wider force, accentuated by this offence type. PC Abbott recounted a recent case in which he administered a conditional caution for an offence of assault police:

We cautioned him and then the next day there were e-mails flying round from his sergeant to mine, "What are these officers doing?" Basically, berating us for doing it, like the actual words they used were "They went for the easy fix!" So that really annoyed me, because it was like [pause] I was pulled in both directions. I was thinking, it is an assault on my colleague and quite right he is a bit angry because the next day, he's come on duty and looked at the results and "Oh, they've cautioned him" so he's complaining to his

sergeant who's blasted an e-mail off to my Inspector, who stood her ground and e-mailed his supervisor, said "right, look, you need to get your head around [our approach]."

PC Ambler also reported that there was a working rule across the force that, for cases involving assault on police, there's 'almost an assumption that they shouldn't get a conditional caution' as the police officers should support their own team. However, this working rule came into conflict with the Central Team's working rule that they should administer more conditional cautions to rehabilitate offenders and do so fairly:

Yeah, if that prisoner is suitable for a conditional caution, regardless of whether it's a police officer or a member of the public being assaulted, it *has* to be considered and administered if it is suitable.

This was a particular concern in Airedale, with tension arising between the working rules of the police to protect their own, and the sub-culture and working rules of the Central Team, operating with organisational pressures to increase the number of conditional cautions administered. Although officers continued to administer conditional cautions in such cases, this caused personal angst and conflict with other policing teams, which had to be resolved through the support of their authorisers.

This tension between working rules emerged to a lesser extent in Beauxvale and Cherryvale, where all officers shared conditional caution decision-making. As Strategic Lead Chord described, the use of conditional cautions for assault on police officers was 'controversial'. Although there was a working rule to charge such offenders, the police needed to show that they were using the same disposal 'for their own kind' and were not dispensing another form of justice in such cases. However, such decision-making evoked strong feelings in the victim who had been assaulted. This emerged when interviewing PC Carraway, who had unfortunately recently been assaulted. Despite administering conditional cautions for other offenders, he immediately knew what disposal he wanted for the offender: 'He's played up - charge him.'

Carraway reported returning to work the day after the assault to hear that the offender had been given a conditional caution. He accepted this outcome but felt he would have been too biased to reach the same conclusion as he had already had experience with this 'nasty guy' who had 'played up' during the arrest. The offender's behaviour demonstrated to PC Carraway that he did not deserve a conditional caution and should be charged. PC Carraway's experiences indicate the strength of the officer's feelings in such cases, that by assaulting a police officer, the offender had shown himself unworthy of a conditional caution.

The offence of assault on police illustrates how a decision-maker must balance her desire to administer a conditional caution, the formal organisational pressures to do so, and the emerging working rule to administer more conditional cautions, with her empathy with the victim, her colleague, and the unspoken organisational rules to protect their own. This balancing act could most clearly be seen in Airedale, where a new, stronger sub-culture of compassion towards the offender, and a belief in the value of conditional cautions, resulted in conflicts between working rules and police teams.

6.4.5 Conclusion: mitigating feelings

My research data demonstrate how officers use categorisations to quickly intuit offenders and decide on the appropriate course of action. This is a decision-making device which interviewed officers were aware of and tried to mitigate against through challenging their working assumptions, particularly in the case of bad offenders. If individuals were perceived as good or needy, they tended to appeal to the officer's compassion and would be diverted to support. If, however, individuals were perceived as bad, the officer would have to consciously suppress her cynicism to administer a conditional caution.

It is impossible to say to what extent these critical reflections were effective, or generally used in day-to-day decision-making. My methodology required officers to stop and reflect on their decisions and how they had been reached, so may have elicited a more critical reflection than would normally occur. However, officers are also required

to explain their decision-making to the authoriser, reflecting on their decision-making and considering the objective, legal criteria for administering conditional cautions. This final check on decision-making was therefore expected to mitigate against officers being overly led by their feelings. However, this check not a fail-proof safeguard as the authoriser will inevitably have her own feelings about the case. The authoriser will also be informed about the case by the original officer, who may convincingly describe characteristics to encourage the authoriser to support this outcome.

6.5 Conclusion: evidence of a culture of compassion

This Chapter has answered what individual decision-makers want to achieve through their use of the conditional caution, and whether they believe this can be effective. My research data demonstrate the importance of police culture in deciding whether to administer a conditional caution. Within organisational structures encouraging officers to increase their use of the disposal, individual support of the disposal is key to their use in practice. Such support depends on the officer's personality, experiences and the team in which she works. The majority of officers interviewed in my research reported they were glad to have a disposal that enabled them to offer some form of rehabilitation to offenders and make a real difference in their lives. They felt that, as police officers with a good knowledge of the case, they were well placed to carry out this intervention and did not like to pass it on to other criminal justice actors for fear that they worsened the case for the individuals involved. In this way, officers' personal motivations for administering a conditional caution married up with those of their organisation and their Strategic Leads, who sought to increase the rehabilitative focus of decision-making.

My data emphasize the relationship between organisational structures and police culture. To bring about lasting change in police practice, leaders need to tap into existing police cultures and working rules. Organisational attempts to increase the use of conditional cautions have, for the majority of officers interviewed, been welcomed as a move away

from arrest and charge decision-making, being trusted with the discretion and resources to make a difference through out-of-court disposals. Strategic Leads tried to root their organisational changes, identified in Chapter Five, in existing police cultures and working rules and demonstrate that conditional cautions could be more effective at rehabilitating offenders than a charge. This narrative fitted within, or fed, officers' frustration with the courts, and officers' desire to help the people they encountered. Officers were encouraged to do more to rehabilitate offenders in administering conditional cautions and to want to adopt this as a working rule.

However, my research data brought out instances where the organisational pressures jarred with pre-existing working rules. This occurred in Airedale, where considerable pressure to increase the use of conditional cautions meant officers felt compelled to administer out-of-court disposals in circumstances they did not think appropriate. Specific examples of this will be identified in Chapter Seven. Meanwhile, officers in Beauxvale felt their discretion had been overly constrained in the second decision in which conditions to attach to the disposal. This was intended to improve the consistency of decision-making but resulted in officers administering rehabilitative conditions without fully understanding the Pathways mapped by the Strategic Leads. This meant officers did not feel ownership over this decision. There was therefore a balancing act between encouraging officers to adopt the rehabilitative ideal and curtailing their discretion so they would have to administer conditional cautions as intended by the Strategic Leads.

Strategic Leads therefore needed to tap into the existing police culture of compassion and accentuate this characteristic as a key part of the policing role. My research supports Charman's recognition of a police culture of compassion (2017: 322). Charman observed that the officer's compassion for making a difference and supporting vulnerable victims in society emerged as an important characteristic in the officer's first four years in service. This identification of compassion as a core trait of the police is a significant step from previous 'condemnatory' academic

portrayals of police culture (Cockcroft, 2019), which tends to portray officers as cynical and suspicious of others. As a former Police Commander and eloquent writer, stated:

Police officers are sometimes portrayed as cynical, world-weary types, ground down inevitably by years of dealing with the very worst that humanity has to throw at them. But I don't recognise that as a description of so many of the remarkable people I worked with during my career. And I don't recognise it as a description of myself either. I know that I have my scars, but I also have my hope (Sutherland, 2020: 256).

Building on Charman's research, which focused on police compassion to victims, my data demonstrate how this compassion is directed towards the offenders themselves. Officers spend time with these individuals at the Needs Assessment and have a good understanding of the underlying drivers, often including some form of vulnerability or victimhood, that led them towards criminality. Officers empathised with these individuals and offered them support, rather than charging them.

We need to consider police culture holistically, both appreciating the positives and being aware of possible negative aspects. My research data provides evidence that officers were hopeful of being able to improve offenders' and victims' lives and proud to do their job, however broadly defined, well at a time of austerity. While other public services are withdrawing and there is a sense of frustration in the ability of courts to impose meaningful sentences, the police are trying to step forward to bring about positive changes in individuals' lives. My research demonstrates how officers fostered a 'social welfare' culture as opposed to a 'prosecution' culture, aided by a lack of faith in the criminal justice system. As in Hoyle's work, officers took pride in carrying out this work in a sensitive way (1998: 78-82).

However, although there appears to be either a movement towards or a recognition of a movement towards, a more rehabilitative, compassionate approach to policing, academics have advised caution in

discussing substantive cultural changes. Cockcroft suggests that if these more positive trends do not represent a wholesale cultural change, they at least indicate a 'broadening of the cultural palette of police work' (2019: 36). My research findings should also not be naively interpreted. Similarly to Charman, my research demonstrates the long-standing police characteristic of cynicism (2017: 322). Charman suggests that this cynicism is a coping mechanism for the officer to manage not just the dangerous and unpredictable nature of the job, but the inaction of public services upon which they often rely. While the majority of Charman's recruits identified that 'making a difference' was their motivation for joining the police, as time passed, Charman found police officers felt less strongly that policing can have an impact on the community it serves. This is an example of 'emotional hardening' (Chan, 2007: 147) in officers distancing themselves from the effectiveness of their work.

A similar cynicism could be seen amongst my police officers, some of whom detached themselves from the outcomes of the conditional caution, doubting that the offender would engage, and that any engagement would have a long-term benefit for the offender. As information about the success of conditional cautions did not tend to travel beyond teams, pockets of the force were either supportive or derisory of the conditional caution's rehabilitative potential. Sergeants, with their additional experience and power to authorise decisions, are likely to have a great impact on their team's culture.

However, my research data also revealed that officers hoped this disposal would make a difference in offenders' lives. It was this hope that encouraged them to continue to administer conditional cautions and push the boundaries on when this disposal was considered acceptable, to ensure they gave a chance to offenders who needed it most. As officers received limited information about the long-term effects of the disposal, Strategic Leads and officers expressed words of hope and faith in the potential of the disposal, proud that they were trying to make a difference. My research data therefore demonstrate the need to understand police characteristics on a continuum. Officers are not always cynical with all

offenders and try to challenge their own cynicism. At the same time, officers do not offer the same compassionate response to all offenders, as they will naturally respond to how individuals present themselves.

This thesis has thus far concentrated on general trends in the three police forces in the organisational expectations and resources affecting police decision-making and decision-makers' own personal motivations for administering conditional cautions. Chapters Seven, Eight and Nine analyse the effect of these two influences on police decision-making as evidenced by case file analysis and interviews with decision-makers.

Chapter Seven: Deciding whether to administer a conditional caution

7.1 Introduction

This thesis has set out the rules governing conditional cautions (Chapter Two), how these rules were interpreted and operationalised by Strategic Leads to encourage officers to administer more conditional cautions (Chapter Five), which fitted within a police culture of compassion in which officers sought to, and were proud of, supporting offenders (Chapter Six). This thesis now analyses how these combined organisational and cultural drivers for rehabilitation shape police decision-making in practice. It draws on case file analysis of 22 cases disposed through a conditional caution, as well as interviews with those decision-makers, to demonstrate how officers administer more conditional cautions (Chapter Seven), more rehabilitative conditions (Chapter Eight) and give the offender the opportunity to complete a late compliance with the disposal (Chapter Nine).

This Chapter analyses how the organisational structure and police culture interact with the rules and policies to guide decision-making in whether to administer a conditional caution. The Chapter analyses how the evidential test (Chapter 7.2) and public interest (7.3) are applied in decision-making. It then exposes the consequences of the identified rehabilitative approach to administering conditional cautions in both diverting more offenders from court (7.4) and up-tariffing and net-widening (7.5).

7.2 Evidential test

As identified in Chapter 2.2.1, the evidential test for a conditional caution is similar to that of a charge: there must be sufficient evidence for a realistic prospect of a conviction. This was a rule that officers had experience in applying and my case analysis demonstrated that there was sufficient evidence for a charge in each case. However, as identified in Chapter 2.2.1, there is conflicting guidance on whether an admission of guilt is required before a conditional caution may be administered. The

Criminal Justice Act s.23(3) and the Code of Practice s.3.5 require an admission of guilt, while the DPP Guidance s.10.2 does not, if the offender has not denied the offence. Decision-makers, driven by a desire to rehabilitate the offender, could interpret these rules in a way that allowed them to administer more conditional cautions, as demonstrated in my case file analysis and interviews.

7.2.1 Admission of guilt

In research interviews, officers emphasised the need to have an admission of guilt before administering a conditional caution. Officers and authorisers were keenly aware of the need to ensure detainees were not pressured into admitting their guilt. Authoriser Ammil emphatically clarified:

We might not be in the arena of an out-of-court disposal of any kind if we're not going to receive a full admission. And we must not, should not, and on my watch, we do not, pressurise people to admit into things they haven't done just to get an out-of-court disposal.

However, I discerned two types of cases where the offender did not admit his guilt, but the officer still administered a conditional caution. Decision-makers wanted to offer a conditional caution, and the chance of rehabilitation, to offenders who had forgotten his actions or did not know the possible consequences of admitting guilt. In these circumstances, officers perceived that the rules designed to protect the offender went against his interests, and so did not apply this rule.

7.2.1a Inebriated offenders

Interviewees observed that individuals who were inebriated at the time of committing the offence would often not remember exactly what they did and were unable to give a clear admission of guilt. Yet officers did not want to prevent such individuals from benefiting from a conditional caution, particularly as they may benefit from a rehabilitative substance misuse course. PC Ambler explained that such offenders may have unconsciously pushed the memory away:

Sometimes people find it easier just to say, “I can’t remember what happened, I appreciate what they’re saying, I’ve got no reason to disbelieve them”, but inside it’s hard to admit that actually I was that violent and horrible. He did accept it, but he had a bit of a cloak to say, “I can’t really remember, that’s not normally me.”

Officers were therefore understanding of why an offender may be unable to give a clear admission of guilt. Where this occurred, and there was corroborating evidence, officers did not want to deprive offenders of the opportunity of rehabilitation because of their inebriation. Administering a conditional caution in such circumstances was compliant with the DPP Guidance, if not the Code, if, as PC Applegate reiterated, the conditional caution was used in cases where the offender ‘wouldn’t challenge the assumption of guilt’. My research indicates that offenders who did not fully remember their actions and so could not make a full admission, may thus still receive a conditional caution. While this arose in research interviews, it was not evidenced in my case analysis.

7.2.1b Unrepresented offenders

The second occasion on which officers circumvented the rules requiring an admission of guilt was where offenders refused legal representation. Officers in Airedale clarified that in cases where the offender has legal advice, the solicitor knows about the system of out-of-court disposals and can advise the offender to admit guilt. Officers worried that unrepresented offenders are unlikely to know about this disposal option and are therefore at an even greater disadvantage than their represented counterparts. Officers believed they ought to inform offenders about the disposal option but worried this fell into the grey area between informing the offender about the disposal system and pressuring them into accepting the disposal. Authoriser Ammil, who so emphatically defended the requirement to ensure the offender was not subject to undue pressure, quoted above, outlined how this conversation with an offender occurred in practice, with safeguards in place to protect against pressuring offenders and convenience admissions:

We will sometimes have that conversation with a person, even if they haven't chosen to have a legal representative. We may, with custody sergeant's permission, speak to that person, but we have to make it clear that we are not asking someone to admit anything they haven't done....And if we have an informal conversation about possible out-of-court disposals, I direct my officers to remind the suspect that they can speak to a solicitor before interview should they wish, if they're in any doubt. Because they [conditional cautions] are for genuine admissions, not for convenience admissions. That [convenience admissions] creates all sorts of complications and potential abuses. But because we will be upfront about the system of out-of-court disposals if they have got legal representation, we also will have discussions of that nature with offenders if they've chosen not to have a solicitor.

My interview research evidenced that some officers felt they needed to mitigate against any disadvantages the unrepresented offender may have. Indeed, in Cherryvale, Strategic Lead Chord wanted a system in which all suspects had a solicitor, so the police could have an open, honest conversation with the solicitor who advised their client accordingly without placing undue pressure upon him.

7.2.2 Conclusion: interpreting safeguards in the interests of the offender

The uncertainty in the rules on whether an admission of guilt is required to administer a conditional caution resulted in officers circumventing rules with which they did not agree. An overly strict adherence to the Code would result in these offenders being unable to benefit from a conditional caution. Ironically, in trying to protect the offender's rights to avoid undue pressure, the legal rules can result in unrepresented offenders being less informed about the system of out-of-court disposals, making worse decisions in custody or voluntary interview. This could result in a discriminatory use of conditional cautions, as revealed by the Lammy Report on the treatment of minority ethnic groups in the criminal justice system. According to that report, BAME offenders are less likely to trust

the police and admit guilt in police custody (2017: 27). Lammy approved of the use of deferred prosecutions, which are similar to conditional cautions, except that they do not require the admission of guilt to be administered. Lammy argued that the increased use of these deferred prosecutions would therefore increase the likelihood that BAME individuals would accept an out-of-court disposals and reduce inherent discrimination in the system (2017: 28). The Ministry of Justice must decide how its new guidance documents on the two-tier system can minimise the discrimination that may arise from a system of out-of-court systems that require distrustful individuals from BAME communities to admit guilt to the police.

The requirement of an admission of guilt aims to prevent officers applying undue pressure on the offender. My research demonstrates that the police follow the spirit of these rules, if not the letter. Officers reported that on such occasions, protecting offenders from undue influence could result in the offender not benefiting from the less severe criminal justice outcome and the Pathways of the conditional caution. If officers perceive that a conditional caution would be in the best interests of the offender, they may circumvent the legal rules and follow their own local rules. This is to ensure that offenders can still benefit from the conditional caution, even where they have not admitted guilt, if the officer considers there are sufficient safeguards in place.

However, although this approach can support the offender, the reliance on working rules to circumvent the strictness of the legal rules raises its own problems. The incongruence between the formal and informal rules risks that officers will be unsure about the correct course of action. Officers may feel unable to administer conditional cautions in such cases or conversely, well-meaning police officers may stray too far into the grey area in informing the offender without sufficient safeguards in place. The legal rules must be explicit on whether an admission of guilt is required to administer a conditional caution. The Criminal Justice Act and Code of Practice should be amended to reflect the DPP's Guidance that a conditional caution can be administered where there is no admission of

guilt, but the offender has not said they are not guilty, as long as safeguards are in place. Such a change may benefit groups that are unlikely to trust the police in custody, and build upon these community relations, rather than excluding them from the rehabilitative potential of the conditional caution. This change would increase the likelihood that the protective spirit of the rules applies effectively and non-discriminatorily in practice.

7.3 Public interest test

Officers in my research also evidenced a wide interpretation of the public interest test to facilitate their rehabilitative approach. As my legal analysis in Chapter 2.2.2 evidenced, there is uncertainty about the public interest standard required to administer a conditional caution. The DPP Guidance requires that it must be in the public interest to charge the offender, but the interests of the victim, offender and community would be better served by a conditional caution. The Criminal Justice Act and Code of Practice, however, do not clearly state that it must be in the public interest to charge the offender to administer a conditional caution. My research sought to unpick how officers perceived the public interest requirement, before analysing how it was applied in specific cases.

My case analysis and interviews demonstrate that officers perceived this public interest test as complex, with no clear standards to follow. Officers knew they may have to charge the offender and so considered the public interest requirement of administering a conditional caution as a high standard. In some instances, officers pushed their interpretations of the upper boundaries of the public interest test to administer conditional cautions where they would previously have charged the offender.

On the other hand, the conditional caution was one of only two out-of-court disposals in Airedale and Cherryvale and was therefore considered as a low bar to pass for cases where the public interest demanded more than a community resolution, but not a charge. For example, in Case C4, PC Canavan administered a conditional caution for an offender for possession of a Class A drug:

He was never really going to get charged for a straightforward personal use possession, first-time offence. We were told if it's something where potentially they're going to go to court and they're going to get something like a conditional discharge or a very small fine then we'd look at doing a conditional caution as an alternative.

PC Canavan's description communicates a low public interest threshold for the cases that can be administered by a conditional caution for a case that *could* have been charged, rather than *should* have been charged. Such an interpretation goes against the spirit of the public interest test, which is designed to make decision-makers consider whether a case should go to court, as 'It has never been the rule that a prosecution will automatically take place once the evidential stage is met' (Full Code Test s.4.10). If any case could be charged, then any case could be disposed through a conditional caution. This makes the public interest test a consideration in name only and renders it useless as a restriction on the use of conditional cautions.

The public interest test is therefore perceived as an upper limit for administering conditional cautions if the case could be diverted from a charge or a low requirement to be met. Rather than viewing the public interest test as a whole, officers tended to break this test down into offence seriousness and offending history, as detailed in the legal guidance and seen in practice.

7.3.1 Offence seriousness

The rules on the offence seriousness set an upper limit on which offences are suitable for a conditional caution: the greater the likelihood that the courts would impose a significant community sanction or imprisonment, the less likely the offence would be suitable for a conditional caution. My research data demonstrate that practice reflects this guidance, with officers considering the likely outcome at court before administering the conditional caution. However, as the rules require decision-makers to administer conditional cautions in cases where it is in the public interest to charge the offender, officers had to question their previous

assumptions about which cases should be charged. When making this assessment, Strategic Leads in each of the three forces encouraged officers to consider offence seriousness holistically.

Officers interviewed in Airedale's Central Teams reported being encouraged to administer conditional cautions for more serious offence types. PC Applegate observed that when the Central Team was first created, the force had to 'put a stake in the ground' of which offences would previously have been charged but would now better serve the interests of justice to administer a conditional caution. PC Applegate remarked that this remit had been expanding since the creation of the Central Teams to include more serious offence types to 'get the same results.' PC Applegate felt encouraged by his Strategic Lead to carry out this more in-depth investigation to assess the seriousness of the offence and administer a conditional caution, rather than assume a serious-sounding offence code required a charge.

Strategic Leads in Beauxvale also sought to expand the use of conditional cautions to include cases that would previously have been charged. They encouraged officers to adopt a nuanced approach to offence seriousness. Two officers interviewed in Beauxvale reported making 'common sense' decisions on whether a case is suitable for a conditional caution. Although they both referred to the gravity matrix to support this decision-making, PC Boldwood clarified 'I don't think it's quite as regimented as that' as there was no 'black/ white line in the sand.'

Finally, in Cherryvale, Strategic Lead Chord observed that they had dispensation to administer conditional cautions for almost any offence except indictable offences, which 'gives us a lot of leeway in the sort of middle-tier offence.' Chord encouraged officers to consider the rehabilitative potential for the offender in administering a conditional caution and to administer them for an expanding range of offences previously perceived as too serious to be disposed of out-of-court.

My case analysis and interviews demonstrate that the interpretation of the public interest test for conditional cautions can be a high threshold in diverting offences that would previously have been charged. Officers were adapting to a new working rule in which they considered the detail of offending behaviour, challenging their previous working assumptions that serious offences should immediately be charged. However, my research data demonstrated that the opposite is also true: that officers administered conditional cautions for offences they did not feel were in the public interest to charge, resulting in up-tariffing. Examples of both are presented in Chapters 7.4 and 7.5.

7.3.2 Offending history

The second element of the public interest test is offending history. A conditional caution can be administered for cases where there is offending history, but there has been a 'sufficient lapse of time' following a previous offence (Code of Practice s.2.12). This is a deliberately vague term to give officers discretion to determine what will be a sufficient lapse of time in each case. The Code of Practice and DPP Guidance suggest that where a previous conditional caution was administered at least two years earlier for the same or similar offence, then another conditional caution can be administered.

Decision-makers therefore have some discretion to determine whether an individual's offending history precludes a conditional caution. Strategic Lead Almos encouraged officers to investigate the likely causes of the recent offending history to understand why the offence was committed and whether any patterns of offending behaviour could be broken. The Central Team, with its additional training and sub-culture, adopted this nuanced approach (Chapter 5.3.1). PC Abbott reported how, since joining the Central Team, he embraced the flexible mindset of the Team to understand the wider context of offending history:

It was such a *complete* change of thinking for all of us really because we were all of the opinion that if he's been done 20 times for burglary, whether or not that was ten years ago, he should be charged, and that's the way we would go. So, it's only when you've

been told *why* they're going down this route, that you do start to think. I can see the logic of it, because if they're proving 10 years they've kept out of trouble and they've just had one little blip, then it has to be [a conditional caution] obviously.

Officers within these specialised Central Teams gradually changed their conservative perception of the offending history element of the public interest test to favour a pro-diversion approach, supported by Airedale's organisational structure and the team's working culture.

A similar, flexible approach to offending history was evidenced in Beauxvale. Strategic Lead Birch reported that the force had one of the highest reoffending rates in the country, as she estimated that almost half of the local adult population had some offending history. This meant officers had to be 'quite brave in their decision-making' and not 'risk-averse' in using conditional cautions for cases where there had been offending history. Beauxvale's Strategic Team encouraged officers to administer conditional cautions for offenders with some offending history, as the disposal was likely to have the greatest impact on these offenders in reducing harm.

Beauxvale officers generally supported this 'brave' approach to offending history. PC Buchanan described holistically assessing the offending behaviour to determine whether the conditional caution was a possible means of breaking the cycle of offending, while not being overly lenient:

It's all good sending him to court for every offence he may have committed, but if he's not learning from that, then what's the point? Because he'll just keep reoffending. So, we are a little more lenient when it comes to previous convictions, in relation to conditional cautions, but we're not just going to hand them out willy-nilly.

In contrast to this planned expansive approach in Beauxvale, officers in Cherryvale had a stricter interpretation of offending history. Strategic Lead Chord emphasised the conditional caution was not a 'one-stop-shop' as the offender would only be permitted one. This approach was delivered in training to encourage officers to perceive it as a serious

disposal and encourage them to use it. Interview data confirm that officers in Cherryvale were reluctant to administer conditional cautions in cases where there had been some previous offending and adopted a stricter interpretation of the offending history test than suggested by the Code of Practice and DPP Guidance.

PC Caulfield reported that offending history was frequently the main barrier to administering a conditional caution. He observed that most people they encountered already had a criminal record and were therefore not eligible for the disposal. It was only rarely that they came across someone with a 'sort of completely clean record and options are fully open'. When I asked him what kind of offending history an offender might have and still receive a conditional caution, PC Caulfield replied:

I don't think there's anything *set*, it's discretionary. Personally, a conditional caution I'd probably be looking at anything less than three years, I would say, is a reasonable amount of time.

This stricter approach to offending history was also referred to by PC Canavan:

If they've already had a caution, that's out of the window, they can't have another one. If they've offended before or they've committed offences whilst on bail or on caution, then it takes it out of our hands as to how to deal with them.

This strict approach was indicated in the case analysis, where only one of the offenders in the case file analysis had any offending history.¹

Officers in Airedale and Beauxvale therefore demonstrated an interrogative approach to offending history and were encouraged to, and wanted to, question what would be the best outcome in the case, even if the offender had some offending history. Officers were careful to point out this did not mean that conditional cautions are handed out to everyone, but that officers used their discretion to determine whether the current case presented an opportunity to support offenders in ending a

¹ This was not a representative sample and therefore only indicates a stricter approach.

cycle of offending behaviour. Officers in Cherryvale, on the other hand, reported a stricter approach to administering a conditional caution if the offender had any offending history.

7.3.3 Victim consultation

The Code of Practice s.2.7 and DPP's Guidance s.11.1 require that the victim is consulted before administering a conditional caution, but that victims cannot dictate the outcome of the case. My research data demonstrate that victim consultation is an established mandatory step in the process of administering a conditional caution. Authorisers and Strategic Leads monitored cases of conditional cautions to ensure victims were consulted and this was recorded. However, although it was straightforward to monitor whether this consultation took place, it was difficult to determine the extent to which victims felt engaged in the decision-making process. My case file analysis included eight non-commercial direct victims and four commercial victims. It is therefore important to identify how their views were considered.

Officers in all forces reported that victim consultation was a complicated process, as victims needed to be informed about the system of out-of-court disposals before a meaningful discussion could take place. For example, in Case A3, the offender assaulted the victim while intoxicated and the victim asked for the offender to be charged. However, PC Ambler reported that, although the victim 'did mention court', before accepting the victim's views, she informed the victim about the system of out-of-court disposals and demonstrated how the conditional caution would be a better outcome for the victim and offender in getting immediate compensation of £50 and diverting the offender to support. PC Ambler reported that, once victims were made aware of the reality of criminal justice outcomes, they often prefer the conditional caution:

Convincing probably sounds like we're being sneaky, and we're not, because we genuinely believe it is the right thing and it offers more than charging to court, but sometimes getting the victim on board is difficult, and somebody might feel let down, because in effect what they're hearing is the word 'caution'.

PC Ambler recognised that there was a limit to this persuasion as she emphasised that 'We won't get into an argument with them; otherwise we're not doing our job properly. They're entitled to their opinion at the end of the day.' This consultation was therefore nuanced in explaining the disposal to the victim to allow a proper consultation, without pressuring the victim.

In Case A7, the offender smashed a window of a parked car, harming the father in the front seat, and in full sight of the victim's children. PC Angler, who I interviewed, had not been the decision-maker in the case but had signed off the case for another officer. She explained how, for her, the fact that the victim's small children had seen the offence weighed against the use of an out-of-court disposal. Angler felt they should consider the overall mental and physical impact on the victim and witnesses. However, Angler explained that it had not been her decision to make and so she had to support the decision-maker, who thought the conditional caution was the appropriate outcome. PC Angler stressed that although a conditional caution could be given which the victim might not support, the victim had the right to review or private prosecution.

It does give the victim the power, if they feel that they've not received *justice*, it's something we can point out to the victim, particularly if they're not happy with the way it's been dealt with. Because they're not always happy with conditional cautions, we try to take victim's opinions into account; what they want, but we also have to be guided by the fact that if they [the offenders] are suitable for a conditional caution, then that's something that we should be first considering, and then we consider other factors as to why they shouldn't have it, but the predominant thing is assume that they should [have a conditional caution].

Although PC Angler would not have administered a conditional caution in this case, given the mental harm caused to the victim's family, she was reassured that the victim had other avenues open to him if he was unhappy with the conditional caution. This was the only time that these

avenues were raised in my research. How many victims, who do not know about the system of out-of-court disposals, will know about their right to review, and feel confident engaging with this process, especially knowing the process would be carried out within the police force? Angler's rationale also highlights the presumption given to administering a conditional caution in Airedale. It would be for the police officer, or the victim, to counter this presumption to show why an offender should instead be charged, an expectation which may be difficult to rebut.

Yet the decision-maker cannot be overly guided by the victim, as PC Atchinson remarked that the victim could 'demand court or hanging or anything in between!' This victim consultation is therefore a difficult balancing act, as decision-makers are guided by their organisational expectations, the victim's needs, and their own feeling of what is right in the case.

This consultation was also shown to be difficult because of the language surrounding out-of-court disposals. Some officers worried that out-of-court disposals sounded to victims like a lesser outcome than court, and a conditional caution sounded like the unpopular simple caution. PC Bennett explained that victims tended to perceive the disposal as a slap on the wrist as victims hear the word 'caution' and officers first had to emphasise the value of the conditional caution. PC Boldwood expressed a preference to charge the offender, based on concern for how the conditional caution would be perceived by the victim:

I think it looks better from our perspective and the public's opinion if something's done about it. Like if there's some sweet old dear and you're like "yeah, we gave him an alcohol thing." I just feel like it looks rubbish.

She worried that 'to the victim it looks like we're being lazy to be honest or being soft, too soft.' Decision-making can therefore be affected by concerns about how the victim would perceive the disposal, and the message that individual officers wanted to communicate to victims they consulted.

This consultation could take a different form for commercial victims. In Airedale, three of the cases involved a commercial victim. In Case A2, the offender had had a hammer on show in a café. The café was supportive of the matter being dealt with out of court and diverting the offender to support. PC Adely explained that the size of the enterprise could impact on their approach to criminal justice outcomes, with bigger stores tending to want a harsher outcome as:

They tend to want to pursue civil actions as well for time wasting, we'll get civil actions from TKMaxx for man hours, for security staff, we've seen that a bit recently.

Similarly, in Case A5, PC Applegate explained that, for commercial victims, she focused on what the offender needed for her rehabilitation as 'generally with stores, they are happy to go with whatever we say.'

In Case B1, the offender had also stolen from a shop. PC Bennett outlined how this affected the victim consultation:

I didn't see them at the time, because they were shut, so I went back to see them the next week, whereas the wheels were already in motion for the conditional caution. I spoke with them then, probably not getting their views as much as advising them - this is what we're doing. With businesses and large companies - it's not having a real personal impact on anyone. If it were a person, a victim of an assault or theft from a person, it would be a proper conversation to have before any decisions were made, basically.

These cases give some support to Braddock's finding that consultations with commercial victims may focus more on informing the victim than consulting with them (2011).

My research data evidenced that, although victim consultation is an important part of the process of administering conditional cautions, the victim's views were not the key determinant in deciding the public interest test. Instead, the victim consultation was an important means of communicating directly with individual victims about the system of out-of-

court disposals and encouraging them to see the benefits of this disposal. Officers must balance properly informing victims with not pressuring them to support a conditional caution. Officers perceived this was a grey area as they could unintentionally persuade the victim of their own views while informing them of the system of out-of-court disposals.

It should be noted that my research only focused on cases disposed of through a conditional caution. Cases where the victim had demanded a charge and made these feelings clear, not being persuaded of the benefits of conditional cautions, and where the offender had been charged, are therefore not included in my study. Cases which are disposed through a conditional caution may be those where the victim has accepted that a conditional caution would be the most appropriate outcome, either through his own knowledge of the criminal justice system, or after being informed about the system by the police.

7.3.4 The role of the authoriser

My data demonstrate that officers had a wide interpretation of the public interest test as either a high or low threshold over which to pass. The majority of officers interviewed explained they did not fully understand the public interest test themselves and instead trusted the authoriser to check their decision complied with the public interest test. Officers perceived the authoriser as the expert in the rules to follow, through previous experience and training, and able to affirm the officers' judgement. However, the officer was the expert in individual cases and presented her preferred outcome to the authoriser and so had an important input into the decision-making. This results in co-decision-making by the authoriser and the constable (Hoyle, 1998: 147).

PC Bell highlighted the importance of this co-decision-making. He explained that officers had an in-depth understanding of the individuals involved in the case, but this risked that their feelings clouded their judgement as the offender may have 'given us a sob story, it seems quite genuine'. PC Bell therefore felt it was important to have a sergeant's authorisation as:

I think it helps to have someone who's outside the case cast an eye over it, because, as police officers, you can get sucked in sometimes.

Conversely, PC Birch demonstrated how the police constable might be negatively affected by their feelings, as she was more likely to see the bad than the good in the offender:

But obviously we'll see the initial [impact] so you'll feel a lot more strongly about it and maybe you've seen the injuries or how horrible they've been with everyone, and they seem like a really vile individual.

The authoriser therefore helps ensure that the officers' sympathy or antipathy for the offender does not result in inappropriate uses, or refusals to use, the conditional caution.

The balancing role of the authoriser became evident during my observations of the Central Team in Airedale. Two Response officers approached the Central Team for advice on the appropriate outcome for a schoolteacher with no offending history, arrested for possession of Class A drugs. Some officers sought to administer a community resolution for this teacher, who fitted into the category of a good offender. He had a good job and was well-spoken and polite in custody. The offender's youth and the unlikelihood of him continuing to teach with a conditional caution meant they supported a community resolution, as this was felt to be less harmful to his career prospects. However, the authoriser reminded the officers not to be overly led by their perceptions of the offender as the law should be applied fairly to all offenders. She reminded them that the gravity of possessing a Class A drug meant a community resolution was not suitable. She also encouraged them to consider whether they would want a teacher who recreationally used Class A drugs to teach their children and therefore to consider the potential victims in the case. The debate was resolved by the officers agreeing with the sergeant's arguments and administering a conditional caution.

The incident demonstrates how individual decision-makers apply their own categorisations based on their preconceptions and beliefs on the purpose of the conditional caution, and for whom they should be used. Decisions can be made in a collaborative sense as, although the decision-maker does not require the formal approval of colleagues in making decisions, in practice, cases are discussed amongst the team and occasionally with other officers from investigation teams. This can result in tensions if different perspectives emerge, as occurred for the teacher using Class A drugs. The outcome of these conflicts will be determined by the persuasiveness of the individuals involved, which will depend on their charisma and rank. In the example above, while the authoriser could have mandated a conditional caution, she took the time to persuade the officers why a conditional caution was appropriate. This was to encourage officers to challenge their feelings in the case and maintain some objective distance from the offender.

The authoriser therefore plays a pivotal role in providing a more objective assessment of the case. This was clearly stated by PC Carraway:

As an officer, you form your own opinion as to the truth of what's actually happened. So, speaking to a supervisor and going through the filter and going to your sergeant and the Inspector and the prosecutor, I think it's necessary because they're detached from the investigation, whereas I would say, you become emotionally invested in the case, if you care about the case, which you would hope the police officer cares about the case.

However, it would be a mistake to assume that the authoriser applies the public interest test objectively in each case. They are presented with the facts as the officer perceives them to be, with the officer already having made a decision in such cases. Officers try to persuade authorisers to approve their decision, which was based, according to PC Boldwood, on 'how you sell it sometimes'.

Authorisers will also have their own interpretations of the public interest test as a concept and in each case. PC Ambler observed that, even with

sergeant's authorisation, the wide discretion in applying the public interest test resulted in inconsistent decision-making:

Sometimes you think, is it objective enough to be *fair*? Is the process fair if you've got someone that's looking at all the factors, a sergeant predominantly, is it a fair process? Because if two different sergeants dealt with the same PIC [person in custody], or say you had ten sergeants and gave them the same scenario, I don't think you'd get ten of the same decisions and I think they're trying to put more clarification into *what* is suitable....there's work to be done around conditional caution decisions to make it that *little* bit more objective, how that decision is made.

7.3.5 Conclusion: a permissive public interest test

PC Ambler's quote above emphasizes the permissive nature of the public interest test. The public interest test is a key determinant of whether the police may use a conditional caution but is written in such broad terms that it can be used to justify a decision an officer has already made.

In their seminal work on police relations with the populace of London, Smith and Gray set out three kinds of rules governing police actions (1983). The first are working rules, are informal principles internalised by police officers and guide their conduct. These have been previously referred to in Chapter Three and Six. The second are inhibitory rules, which are not internalised, but which police officers consider when deciding how to act and which can discourage them in acting in certain ways. Finally, there are presentational rules, designed to give an acceptable appearance to the way that police work is carried out. These allow a police officer to present the case to her authorising officer couched in a language of legality to justify her decisions.

The public interest test acts as an inhibitory rule in very clear, black and white cases. However, in most cases, they allow officers to justify the decisions they have already made to their authorising officer. The public interest test sets the presentational aim of limiting the circumstances in which conditional cautions can be administered, to reduce the likelihood

of up-tariffing offenders, thereby expressing due process values. Yet by allowing a wide discretion, they permit decision-makers to have regard to a range of factors when interpreting the public interest and make decisions based on their force's organisational expectations (Chapter Five) and officer's personal motivations (Chapter Six).

My analysis in Chapter Two demonstrated there is a lack of clarity over whether it must be in the public interest to charge the offender before a conditional caution may be administered. The DPP's Guidance s.11.1 requires that it must be 'necessary' to charge the offender, but that a conditional caution may be used where the interests of the public can best be served by the offender complying with suitable conditions. The DPP's Guidance s.2.1 also states that a conditional caution should not be administered where a court would be likely to impose a significant community sanction or period of imprisonment. These rules therefore set inhibitory limits for clear cases in which it will be in the public interest to charge or to administer another form of out-of-court disposal. However, between these clear-cut cases, there is a grey area of whether it is in the public interest to administer a conditional caution: when the offence is serious, or the offending history extensive, but that a conditional caution would serve the interests of the public.

Officers perceived the public interest test as a flexible test, allowing them to have regard to a range of factors when making, or justifying, the decision they had made. This is not a neutral, objective process but as McConville, Sanders and Leng have argued, a construction of the facts as the individual believes them to be (1991). Officers make judgements on the seriousness of the case based on their perception of the offender, victim and the outcome they feel to be appropriate.

How decision-makers interpreted the public interest test standard for conditional cautions varied between cases. In some cases, the decision-maker perceived the public interest standard for a conditional caution as the same level as a charge and used the conditional caution as a genuine alternative to court, diverting an individual who they would otherwise

have charged (see Chapter 7.4). This is in accordance with the DPP's Guidance that it must be necessary to charge the offender before a conditional caution can be administered. However, in other cases, the decision-maker administered a conditional caution and explicitly stated it would not have been in the public interest to charge the offender. In this way, they perceived the public interest test for administering a conditional caution as below that of a charge. My research data indicates that officers can perceive the public interest test as a low threshold and administer conditional cautions where it *could* be in the public interest to charge, rather than it *should* be in the public interest to charge. This interpretation is certainly not in line with the DPP's Guidance that a prosecution should be 'necessary'. Arguably, any crime is in the public interest to charge, but such an approach goes against the spirit of the Full Code Test for Prosecutors, which was created to require decision-makers to limit the number of prosecutions brought. This resulted in up-tariffing, as discussed in Chapter 7.5, and made subsequent decision-making on whether to charge the offender in the result of a breach very difficult, as shown in Chapter Nine.

7.4 Consequences of a rehabilitative approach i) Diversion from court

This Chapter examines how individual decision-makers interpreted the public interest test to divert more cases from court, in line with the organisational expectations and changing police culture identified in Chapters Five and Six. At a strategic level, all three forces focused the use of conditional cautions on diverting cases from court. This aligned with officers' perceptions that courts do not work, and the police can save resources for the criminal justice system and do more for the offender and victim in the case than prosecuting the offender. A presumption to divert from court in appropriate cases, if diversion supports the rehabilitation of the offender, emerged from research interviews with officers and case file analysis.

In all seven of the cases in Airedale, officers had initially considered charging the offender but instead diverted the offender to a conditional

caution. For example, in Case A2, the offender damaged public property with a hammer, causing alarm. PC Adely reported that, although the offender had carried an offensive weapon, he was suffering from mental health issues and had had a recent relapse. PC Adely therefore decided it would be more beneficial to put the offender in immediate contact with his mental health team through a conditional caution, rather than charge him.

In Beauxvale, in four out of the eight cases analysed, the decision-maker reported she was diverting the case from court. In Case B3, PC Buchanan explained his decision-making as based on his sympathy for the offender and his own motivation to divert the offender to support. The offender was arrested for possession of a Class B drug. Within the past two years, he had received a simple caution for a similar drug possession offence, with 15 other charges or out-of-court disposals between 2000 and 2014. The offender therefore had an extensive offending history, which for PC Buchanan pushed the boundaries of the disposal. Yet PC Buchanan reported that the offender needed support and therefore administered a conditional caution as:

On *this* particular incident, I could see in his face, the fact that I found drugs on him, he looked at me like, "Oh god, this is going to make the situation worse. I've not helped myself and I hold my hands up and I really apologise." He showed remorse and I could also see a bit of desperation there. He was thinking "well I want to improve my life, but I don't know what to *do*."

For PC Buchanan, with an offender asking for help, he had the choice between 'do we *punish* him, or do we try to help him?' He concluded, in this instance, it was 'obvious' that he had to administer the conditional caution to help the individual. When I asked whether the offending history precluded a conditional caution, PC Buchanan illustrated that with the conditional caution, 'we can give people sort of a second, second chance almost. Because with his previous history, he's had quite a few chances.' Despite a long and recent offending record, PC Buchanan felt able, and

motivated, to offer the offender a conditional caution as the offender had asked for help.

Another case of diversion in Beauxvale is particularly interesting as it demonstrates the importance of police discretion in categorising offences. PC Barke administered a conditional caution for a low-level offence of criminal damage to an offender with no previous offending history in Case B5. As it was not a serious offence and there was no offending history, PC Barke reported it would have been permissible to administer a simple caution. However, she perceived the offence as including some form of domestic violence as it occurred in a shared house in front of the offender's partner, and so decided not to administer a simple caution. She did not want to label the offence as domestic violence as such a label would mean that, with the policy of not using conditional cautions for cases of domestic violence (DPP Guidance, s.3.1), she would have had to charge the offender. Instead, PC Barke diverted the offender to an Alcohol Diversion Course through a conditional caution to put some form of rehabilitative support in place, rather than administer a simple caution, perceived as ineffective, or a charge, perceived as inappropriate:

Obviously, you don't want to do nothing because it *is* domestic violence, so my intention was, he's smashed a cup, it's not his usual behaviour, there's nothing on him other than that, so we'll give him a positive outcome in the fact that he'll have someone to talk to his alcohol about, I think that's more in the public interest than taking him to court over a smashed cup.

The case demonstrates how an officer's interpretation and naming of the offence are important determinants of the outcome. The discretion afforded to them allows officers to avoid rules with which they do not agree. In the face of a nationwide policy that all instances of domestic violence should be charged to demonstrate that such behaviour is not accepted, PC Barke did not want to label the offence as domestic violence and be forced to follow this rule (HM Government, 2016: 45).

She also did not want to follow the rule that it must be in the public interest to charge the offender to administer a conditional caution, as she felt a simple caution would not address the causes of offending behaviour. Instead, she sought to administer a conditional caution, following the new working rule that the force should administer more conditional cautions, and PC Barke's own belief that such actions would support the rehabilitation of the offender. In this case, these organisational and personal motivations trumped the legal rules and so PC Barke administered a conditional caution, when the rules required a charge or a simple caution.

Finally, in Cherryvale, in four of the six cases analysed, the officer reported she diverted the case from court. For example, in Case C3 the offender assaulted a police officer, who suffered no injury, and the offender had no offending history. PC Clipper reported that, because the victim was a police officer, he felt it was in the public interest to charge the offender. This corresponded to the working rule that the police should protect their own, as identified in Chapter 6.4.4. However, this rule to charge the offender conflicted with the new working rule to administer more conditional cautions, and PC Clipper's belief that a conditional caution could rehabilitate the offender and offer more to the victim. PC Clipper eventually administered a conditional caution with conditions to pay £50 compensation and attend a rehabilitative alcohol Pathway. In this case, with no injury and no offending history, such diversion appears to be in the interests of the public. Yet it was a change in approach for PC Clipper and demonstrates how his personal motivation and the new organisational rule to administer conditional cautions trumped the old working rule that an offender should be charged for assaulting the police.

These case file examples demonstrate how officers challenged their previous assumptions of which cases should be charged. Officers reinterpreted what would be in the public interest, diverting offenders to local Pathways, challenging legal rules that certain offence types, such as domestic violence, or previous working rules on assault on police officers, should be charged. Officers referred to organisational

expectations and local guidance, as well as their personal motivations to support the offender and victim, as encouraging them to divert more cases from court. The previous paradigm of arresting and charging the offender, identified in Chapter 1.2.2, was slowly being challenged in real decision-making. While charging the offender was previously seen as the best outcome for a case, officers were encouraged to question whether a conditional caution could better serve the interests of justice than a charge. This resulted in a change in working rules on the appropriate outcome in each case, with diversion from court slowly becoming a more accepted decision.

7.5 Consequences of a rehabilitative approach ii) up-tariffing and net-widening

Although my research distinguished examples of diversion from court, there were also examples of up-tariffing and net-widening in practice. Here, up-tariffing is when offender is given a conditional caution where another form of out-of-court disposal may previously have been used. In addition to having to complete sometimes onerous conditions, it is less likely that an offender receiving a conditional caution will be able to receive another in the next two years. Further, the breach of a conditional caution may result in the offender being charged for the original offence, which would not occur if another out-of-court disposal had been used. Sanders warns that such up-tariffing can be a waste of time and energy or expansion of State control (1998: 513). Related to up-tariffing, net-widening arises when individuals are brought into the criminal justice system for actions which would previously have had no intervention at all. This extends the reach of the criminal justice system and can have serious implications for individuals, particularly young adults, in bringing them through the revolving door of the criminal justice system (Borysik, 2020). The two processes of up-tariffing and net-widening result in individuals being brought into the criminal justice system at a faster rate and increase the criminalisation of anti-social or low-level offences (Ashworth and Zedner, 2008: 26). Individuals may be tempted to admit an offence if there is a great disparity in the likely out-of-court disposal,

compared to if they are charged, particularly where there may be intolerable pressure to escape the police station (2008: 25).

This section demonstrates how organisational expectations and police culture combined to encourage officers to administer more conditional caution. This resulted in cases where offenders were up-tariffed from other out-of-court disposals. It first sets out how the very nature of the two-tier system of out-of-court disposals can result in up-tariffing from no-longer-used disposals. The section then focuses on specific cases of up-tariffing and net-widening identified in the case analysis. These are grouped together by whether the officer was motivated to up-tariff the offender to divert them to support or felt obliged to widen the net because of the organisational expectations acting upon her.

7.5.1 Inherent up-tariffing in the two-tier system of out-of-court disposals

In Airedale and Cherryvale, the introduction of the two-tier system meant the forces removed four of the six out-of-court disposals: officers were required to choose between a community resolution or conditional caution. This structure means that individuals committing offences in these two-tier forces may be more likely to receive a conditional caution than a simple caution, based on the force area and its policies. This can result in offenders progressing through the system at an accelerated rate, as conditional cautions make it less likely that offenders will receive other out-of-court disposals in the future.

In Airedale, my interview data suggest that such up-tariffing occurred in cases where the officer would previously have used a Penalty Notice for Disorder. Interview data with PC Atchinson demonstrate how the two-tier structure, and the strong organisational sub-culture results in up-tariffing:

I think the one area I struggle with a little bit is drunk and disorderly. Because we used to give tickets [PNDs] for drunk and disorderly, but then we seem to be giving someone a conditional caution, which obviously means that they can't have a comm resolution [in the future], whereas if they've got no previous

convictions then surely we could do it as an enhanced community resolution?

This up-tariffing is particularly interesting as, when PC Atchinson worked in another team in Airedale, still within the increasingly two-tier system, she felt able to administer community resolutions for more cases than was accepted in the Central Team, with its strong organisational pressures and working culture to administer more conditional cautions. Her experiences demonstrate the importance of the working culture within each sub-team of the police in interpreting and applying the legal framework.

Similar up-tariffing because of the two-tier system emerged in Cherryvale. In Case C2, the offender was arrested for possession of Class A drugs. PC Caulfield clarified that, although this was a serious offence, he felt he could have administered a community resolution. However, he decided not to as, although the offender stated that he did not have a drug addiction issue, PC Caulfield wanted to offer support to deter him from future recreational drug use:

He might not have been fully upfront with me at the interview. If we can try and help someone to get off the drugs, even if it's recreational use, it can only be a good thing. So, by putting that in as a condition, we've obviously done that.

As PC Caulfield foregrounded, 'It's all about obviously trying to rehabilitate people to some extent.' This approach can be described as pre-habilitation as, although the offender denied having dependence issues, Caulfield nonetheless wanted to divert him to support that might help him reduce his drug use, which he felt unable to do with a community resolution.

PC Caulfield's case is indicative of a wider reason to up-tariff offenders identified in the research interviews in Cherryvale. As the force had adopted the two-tier system, officers could only choose between a community resolution or conditional caution. While both disposals enable the officer to attach conditions to rehabilitate offenders, the majority of

officers interviewed in Cherryvale expressed a strong preference for the conditional caution as it gave the police greater leverage in making the offender comply with conditions through the threat of prosecution. This discontent with the community resolution was most clearly expressed by PC Carraway, who preferred not to use a community resolution as any conditions attached to it are voluntary for the offender to complete. He preferred to use the conditional caution, as otherwise 'you're just not really doing anything.' This element of enforcing rehabilitation in Cherryvale demonstrates that officers do not just want to benevolently offer rehabilitation to offenders but want to ensure such rehabilitation takes place. Complying with the conditions was perceived by officers as also part of the offender's punishment and demonstrated to victims and wider society that the conditional caution is a serious disposal. For these reasons, officers preferred conditional cautions, with consequences for non-compliance, rather than community resolutions, where officers could only ask offenders to comply.

In Airedale and Cherryvale, the two-tier system meant conditional cautions were frequently the only appropriate out-of-court disposal, as community resolutions are more restricted in their applicability in terms of the offences and offending history. My research data demonstrate that officers in Cherryvale also preferred to use the conditional caution as it enables them to enforce compliance to ensure the rehabilitation of the offender.

This concern of automatic up-tariffing dissuaded Strategic Lead Birch from implementing the two-tier system:

Most forces who've gone to the two-tier system, or are going, have moved simple cautions up to conditional cautions. And there is a view that they're all cautions, they've got the same implications for DBS [Disclosure and Barring Service] for employment. I'm not sure we *entirely* accept that view here because actually, if you fail, you can be prosecuted.

Strategic Lead Birch was therefore waiting for the results of a local University, who were evaluating their new system of out-of-court disposals, to determine if the conditional caution rehabilitated offenders before adopting the two-tier approach. In the meantime, she sought to rejuvenate the community resolution to encourage officers to use the disposal more frequently and consistently, to eventually mitigate the up-tariffing effect of the two-tier system.

7.5.2 Up-tariffing in the interest of the offender

In addition to the up-tariffing necessarily entailed by the two-tier system of out-of-court disposals, up-tariffing occurred in Beauxvale, which had not implemented the two-tier system, and in some circumstances in Airedale and Cherryvale. This section analyses cases where up-tariffing was motivated by the desire to support the offender.

The decision on whether to administer a simple caution or conditional caution rests on the officer's perception of what is in the public interest. As with a conditional caution, to administer a simple caution, the offender must normally admit his guilt, accept the caution and there must be sufficient evidence to charge the offender (Ministry of Justice, 2015a). This public interest test is permissive, as demonstrated in Chapter 7.3, allowing officers to consider a wide range of factors. My research revealed that officers could decide that it is in the public interest to administer a conditional caution, rather than another out-of-court disposal, to support the interests of the offender. This was to facilitate attaching conditions to a disposal.

As I concluded in Chapter Six, officers had a generally rehabilitative approach to administering conditional cautions and sought to attach conditions to support offenders. In Airedale and Cherryvale, officers could not administer simple cautions and so generally did not intentionally up-tariff offenders to a conditional caution to provide this support. Such up-tariffing was a consequence of the force adopting the two-tier system, as identified in Chapter 7.5.1. Yet in Beauxvale, although the focus was on diverting cases from charge to conditional caution, my research identified three of the eight cases (B3, B4 and B6), where

officers up-tariffed offenders from a simple caution to a conditional caution to attach rehabilitative conditions.

An example of this altruistically motivated up-tariffing occurred in Case B6, involving the neglect of a child by a woman with some offending history. PC Briscoe narrated deliberating between a simple caution and a conditional caution:

She [the offender] was eligible for just a simple caution. But I didn't choose that option because then it would have just been into the police station, sign the form and that would have been it.

Instead, PC Briscoe administered a conditional caution to ensure the offender had support in place for the future. This would also benefit the victim, her child, and was in the child's wishes, who didn't want:

Anything bad happening to her mum and wanted to see her mum again. So this again then fitted because there's something on her record to say "this is what's happened" but the child's wishes were then agreed on, really, because she didn't want her to go to court.

As PC Briscoe was involved in the case and had spoken to all parties concerned, she felt personally motivated to bring about real change for the family through a conditional caution, which she felt a simple caution could not deliver. This decision was therefore based on the desire to support both the woman and child, the victim in the case. Although the conditional caution would be written on the offender's record, PC Briscoe did not feel that this up-tariffing would impact on the offender's employment opportunities in the future. As the offence was neglect of a child, it can never be filtered from a DBS check, and so the woman would have had either a simple caution or conditional caution on her record for life (Home Office, 2013a). PC Briscoe felt that the potential benefits of a conditional caution outweighed the possible disadvantages of such up-tariffing as, for the offender, there would be little difference between the disposals.

PC Bell similarly declared that he was driven by a need to help the offender. In Case B4, a woman had been in possession of a Class B drug to help her son pay off debts to a drug-dealer. My case analysis demonstrated the offender was eligible for a simple caution due to the low-level nature of the offence and her lack of offending history. This eligibility was confirmed by PC Bell, who reflected that he chose to administer a conditional caution instead as he wanted to ensure she received additional support for her chaotic situation. PC Bell described the offender as 'ultimately in a right mess' and 'distracted' by the whole process. He determined that the best interests of the offender, perceived as a good person unlikely to offend again, was to divert her to professional, neutral support outside her family unit and therefore administered a conditional caution, rather than a simple caution.

7.5.3 Reluctant net-widening for school fights

This section has thus far analysed cases in which the officer and authoriser up-tariffed to administer a conditional caution to support the offender. However, my research data also revealed that the strong organisational expectations to administer out-of-court disposals also resulted in net-widening in bringing children involved in school ground fights into the criminal justice system.

Working in the Central Team in Airedale, PC Abbott reported feeling undue organisational pressure to increase the number of out-of-court disposals the Central Team administered to demonstrate the Team's effectiveness and continue the Central Team structure. An example of this pressure arose with regards to schoolground fights, an increasingly common police issue. PC Abbott recounted that schoolground fights were previously dealt with informally by the school but were now frequently reported to the police by parents and teachers and categorised as assaults. Once the matter had come to the police, the Team felt compelled to take decisive action, rather than be seen to file a victim's complaint. As these were minor offences, and the 'offenders' had no or minimal offending history, they were typically resolved through a community resolution. However, this made PC Abbott feel

'uncomfortable' as it brought children into the criminal justice system. PC Abbott reported that 70% of his workload at times focused on children and that the organisational pressures to increase the number of positive outcomes by the Central Team was an important driver for this expansion in remit:

I don't know whether that's just to build up figures up to show we're doing quite a bit. Since our remit's widened over the pressure of us not having enough work, I think they're finding the jobs that, if it was just left to investigation, they'd have been filed for that reason, they're not proportionate. But because they're trying to find us work to do, and it sort of fits our remit, we're dealing with all these low-level school jobs that really should just be left filed.

I asked PC Abbott whether he could refuse to use out-of-court disposals in these situations, but he felt there was too much pressure on his Team to say 'no'. He identified cases where he had written on the file that he did not think a community resolution was proportionate and that the victim did not want to pursue the matter, yet was still met with instructions to administer a community resolution:

It's *us* trying to push for that. Usually we're victim-led and if the victim says he doesn't want to make a complaint, we'll just file it. But instead, we say "okay, you don't want to make a complaint, does that mean you don't want to go to court?" "No, I don't want to..." "Okay, so this community resolution...", and in some cases that's fine, if it's something the offender really does need, because you're letting the offender off by saying you don't want to make a complaint, but when it's 12-year-olds and 12-year-olds, I think it is best [quietly] left bloody filed.

Although the disposal administered was a community resolution, not a conditional caution, PC Abbott's experiences demonstrate the strength of the force's organisational pressures in day-to-day decision-making. This is a combined pressure to demonstrate to the public that the police are carrying out their role and demonstrate to senior management that

the Central Team is an efficient use of force resources. This pressure, as identified in Chapter Five, created a strong sub-culture within the Team. This had positive outcomes in encouraging officers to buy-in to and use the conditional caution disposal, rather than charge the offender. However, PC Abbott's experiences call attention to the negative consequences of this pressure in constraining officer discretion, resulting in net-widening as officers may need to find more work to meet their targets, drawing more individuals into the criminal justice system (Cohen, 1985). This was an organisational pressure experienced by the officer, which he felt obliged to comply with to demonstrate the team's effectiveness and efficiency, for the survival of the team.

7.6 Conclusion: rehabilitation results in both diversion and (often well-meaning) up-tariffing

My data demonstrate how the central role of rehabilitation in decision-making can result in both increased diversion from courts and up-tariffing of offenders. An organisational expectation and culture supporting rehabilitation encourage officers to interpret and apply the public interest test, and to some extent, the evidential test, to rehabilitate offenders. This can result in new working rules to reinterpret legal rules and divert offenders away from court and towards support.

Previous studies have established that legal rules rarely mandate decision-making but can allow officers to justify decisions they have made. Hoyle (1998: 142) and Myhill (2019: 64) recognised that, in cases of domestic violence, the criminal law does not determine arrests, but merely facilitates them, if the working rules also point to that outcome. Campbell, Ashworth and Redmayne support this finding, observing that while rules clearly require a certain outcome in some cases, police decisions are an 'amalgam' of some clearly justifiable cases and others that turn on disposition, pride or self-image (2019: 157).

My research data also demonstrate that the force's organisational structure and the officer's working culture are important forces when making decisions in these ambiguous cases. The permissive public

interest test gives the decision-maker a wide discretion on the appropriate outcome in each case. Officers' desire to do more to support offenders resulted in cases in which offenders were diverted from court towards support in the community. However, this compassionate approach also results in up-tariffing, as officers administered conditional cautions, rather than other out-of-court disposals, to provide support for the individual. It may also result in net-widening in feeling organisational pressure to administer more out-of-court disposals and bring more individuals into the criminal justice system.

Officers have a wide discretion in balancing sometimes conflicting legal rules and working rules to determine the best outcome in each individual case. In cases analysed, there was no clear, definitive 'right answer' and the officer could use various characteristics of the case to justify her decision. This wide discretion does not mean to say that police officers use their discretion capriciously. Officers are still constrained by the rules and the organisational expectations around them. These organisational expectations manifested in communicating new working rules, as seen in Chapter Five, to encourage officers to challenge their previous conceptions of which cases should be charged. These expectations generally fitted within the police narrative of making a difference. When such congruence occurred, officers adopted the new rule to administer more conditional cautions through diverting more offenders or up-tariffing offenders.

My data demonstrate that the organisational structures promoting rehabilitation and force cultures of rehabilitation play a central role in the decision on whether to administer a conditional caution. This focus on rehabilitation can increase the number of diversions from court. Diversion has clear advantages as it facilitates a proportionate response to offending behaviour that may be as effective or more effective in reducing reoffending (Campbell, Ashworth and Redmayne, 2019: 188). Sherman and Neyroud argue it is important to target scarce resources on predictable concentrations of harm and use the least intrusive means where harm is low (2012: 24). Promoting diversion encourages the police

to use low-intensity alternatives to prosecution for low-level offences, saving police resources for more harmful offences (Neyroud, 2019). Diversion can also be an effective means of preventing future reoffending as it reduces the stigma on the offender in having to attend court and have a charge on his criminal record (Ashworth and Zedner, 2008: 22-23). Conditional cautions, in particular, may be preventative of future criminality by attaching rehabilitative conditions. Where the conditional caution is used as a genuine diversion, in removing an individual from the court system (Cohen, 1979: 349), it is a form of rehabilitation that may support penal minimalism (Hayes, 2019: 88-100). This penal minimalism is the belief that punishment should inflict the least harm possible on the offender. In diverting cases from court, the conditional caution can be a more proportionate, effective and thoughtful approach to low-level offending behaviour.

However, my data evidence that the focus on rehabilitation also results in up-tariffing. Rather than diverting *from* court, cases can be diverted *into* the criminal justice system. Such up-tariffing can be purported to be in the interests of the offender, as eloquently explained by several police officers. Yet this well-intentioned approach results in offenders entering the criminal justice system at a higher level, by-passing lower out-of-court disposals to receive a conditional caution. Such up-tariffing is one of the key dilemmas of rehabilitation, as individuals who are most in need may be up-tariffed and receive a disproportionate sentence (Carlen, 2013). This rehabilitative approach therefore extends State control over certain groups (Campbell, Ashworth and Redmayne, 2019: 188) with a drift to well-intentioned measures being unduly onerous (von Hirsch, Ashworth and Roberts, 2009). Conversely, offenders with lesser needs, such as those in employment, may receive a lesser criminal justice outcome to facilitate them continuing their employment.

Similar criticisms have also been levelled with regards to net-widening. My data demonstrate that the organisational structure in Airedale, so important in creating a sub-culture of rehabilitation, carries a negative consequence in pressuring officers to administer more out-of-court

disposals to demonstrate the effectiveness and viability of the Central Team configuration. Indeed, when I returned to Airedale to feedback my results, I discovered the Team had been disbanded, with officers moved to other Departments experiencing high demands or staff shortages. The data analysts identified that, since moving away from this Central Team configuration, there had been a significant drop in the number of conditional cautions administered by the force, underlining the role that organisational pressure and team sub-culture play in decision-making. While this Team structure led to a stronger sub-culture of rehabilitation and an enthusiasm to divert more cases from court, it also skewed decision-making in up-tariffing and net-widening to fulfil a perceived performance target.

A more fundamental organisational change has also been evidenced to result in up-tariffing for offenders. The new two-tier system of out-of-court disposals is intended to make the system clearer for the public and decision-maker (NPCC, 2017: 5). However, it adds its own opaqueness as the two disposals, particularly the conditional caution, may be administered for a wide range of offence types and permit the officer to consider a wide range of factors in decision-making. This is particularly problematic as the changes to the system of out-of-court disposals have not been rolled out nationwide and not communicated widely by the media to future employers or other decision-makers. Any up-tariffing caused by the two-tier system of out-of-court disposals is therefore unlikely to be known by these third parties. This could result in additional collateral consequences of the conditional caution in such individuals not getting employment in the future. Empirical observations of these further consequences of up-tariffing fall beyond the scope of this thesis: they were not part of my initial research questions and therefore I have no data available (Unlock, 2018; Henley, 2019). However, the wider context of the possible effects of up-tariffing for the offender should be borne in mind.

This Chapter has analysed how officers interpret the public interest test, outlined in Chapter Two. Some officers have perceived it as a similar

level to that of a charge, requiring that it must first be in the public interest to charge an offender before administering a conditional caution. Yet others have perceived it as a lower threshold to pass, allowing for up-tariffing and net-widening, in some cases in the interests of the offender. The aims of rehabilitation are crucial to this decision-making, though it brings both positives of diversion and negative consequences of up-tariffing and net-widening. Chapter Eight turns to focus on how rehabilitation affects which conditions are attached to the disposal.

Chapter Eight: Deciding which conditions to attach

8.1 Introduction

Chapter Seven reported how the legal rules, organisational structure and police culture interplayed in the decision whether to administer a conditional caution. This Chapter turns to analyse the second decision in which conditions to attach. As outlined in Chapter Two, these conditions should aim to rehabilitate the offender and/or offer victim reparations. If these are not a proportionate response to the offending behaviour or are inappropriate, the conditions can aim to punish the offender. These conditions should be appropriate, proportionate and achievable for the offender to complete.

Strategic Leads in each force mapped out various Pathways that could be attached to a conditional caution (Chapter 5). These Pathways were drawn from the Community Remedy document, local partnerships and additional research by the Leads. In Airedale and Cherryvale, officers were also able to conduct their own research and choose Pathways they felt would be appropriate. In Beauxvale, the Strategic Leads created six rigid Pathways that had to be used, though officers could supplement these with their own conditions. Officers generally reported that they sought to use the conditional caution to rehabilitate the offender and drew upon their experiences and resources to identify how this could be done (Chapter 6).

This Chapter analyses how decision-makers decide which conditions to administer within this organisational and cultural context, and the guiding principles of the conditional caution identified in Chapter Two. The Chapter analyses case files and interviews to determine whether the conditions are appropriate in prioritising the rehabilitation of the offender and reparation of the victim (Chapter 8.2), whether conditions are proportionate to the offence committed (8.3) and whether the conditions are achievable for the offender (8.4).

8.2 Appropriate

The Code of Practice s.2.23 prioritises the use of rehabilitative and reparative conditions over punitive conditions. It does not mandate which conditions should be used, though the Criminal Justice Act 2003 s.23ZA requires police forces to create a Community Remedy document listing the conditions available in their force. The victim may choose a condition from this document and request that this is attached to a conditional caution. Decision-makers are then encouraged to adopt a problem-solving approach to condition-setting (Code of Practice, s.2.23).

Conditions should therefore focus on the rehabilitation of the offender or the reparation of the victim. Although the Community Remedy documents focus on reparative conditions, victims will not always request reparation. As Strategic Lead Almos reported, victims are often primarily concerned with ensuring individuals did not reoffend, rather than reparation. Concentrating on the needs of the offender is therefore often in the interests of the victim and was the focus of the Pathways in each force.

Conditional cautions can have more than one condition attached, and therefore serve multiple aims. A rehabilitative condition was used in 18 of the 22 conditional cautions in my case analysis. A reparative condition was used in seven cases while a punitive condition was used in only one conditional caution. Restrictive conditions, in not reoffending in the next three months, were used in six cases. In Airedale, all but one of the seven conditional cautions included a rehabilitative condition, with three of these conditional cautions also having a reparative condition attached. In Beauxvale, all eight conditional cautions had a rehabilitative condition while just one had an additional reparative condition. Finally, in Cherryvale, four of the six cases had a rehabilitative condition while three had a reparative condition. A punitive condition, in the form of a fine, was only used once in Case C6.

8.2.1 Airedale

Officers in Airedale with a rehabilitative approach to administering conditional cautions considered the offender's needs holistically to

answer the crucial question, which was, according to PC Ambler: 'What's actually caused or driven you to commit crime?' She perceived criminality as almost a 'cry for help' from members of the public who did not know where to turn for support. Officers in Airedale explained that most offenders they saw in custody were struggling with some difficulty in their lives. Identifying this difficulty was crucial to offering appropriate support.

PC Applegate explained that, once he had determined the needs of the offender, he had to choose between 150 course providers available in Airedale. My data demonstrate that officers had a range of approaches for deciding which of these Pathways to use. Officers had access to leaflets detailing the support available in each Pathway and could decide which would be most beneficial for the offender. Officers could also advise each other on Pathways they had used. For example, when discussing Case A2, in which the offender was referred to his pre-existing mental health team, PC Adely explained:

You discuss it with other people on the team - what should I do with this? And it really is a case of, I had a good result with [Pathway name], or that sounds perfect for [the Women's Centre], and it's sharing information, across teams as well. So, if you don't know, ask, and someone will say "try these guys".

Other officers reported that they had been able to visit the Pathway providers to gain an in-depth understanding of the support offered. PC Atchinson detailed her visit to one Pathway provider to look around the workshop and see the products offenders could learn to make:

It's nice to actually go in there, feel what they do, see what support they offer. I've sat down and gone through it with one of the managers and she's gone through things they can offer.

Officers in Airedale could also attach the condition to write a letter of apology to the victim. Although no cases in my analysis included this condition, it was used during my observation of the Central Team. In the case, the condition had not been requested by the victim but chosen by an officer to supplement rehabilitative conditions. The officer explained

that she did not usually send the letters to victims as they tended to be poorly written and, by the time they reached the victim, could bring back memories of the offence to the victim. Instead, the letters were used to encourage the offender to think about the consequences of their offending behaviour. In the case I observed, the officer called the victim and read out the brief letter of apology to him, so this was received in a timely fashion and supported the aims of rehabilitating the offender and engaging with the victim.

Officers in Airedale therefore prioritised the use of rehabilitative conditions for offenders. This was through diverting offenders to the Pathways mapped by Strategic Leads and engaging in their own problem-solving in identifying local support.

8.2.2 Beauxvale

In Beauxvale, the Strategic Leads mapped out six appropriate Pathways to which offenders must be diverted. As set out in Chapter Five, this included the Women's Centre, Veteran's Pathway, two types of substance misuse Pathways, victim condition and unpaid work condition. These Pathways focused on the rehabilitation of the offender in diverting them to support based on his characteristics. The Needs Assessment, which facilitated officers categorising the offender into one of these groups, determined the conditions attached. On the first screen on the electronic MG14, the form officers use to administer conditional cautions, the decision-maker must record the characteristics of the offender, for example, if the offender is female. On the second screen, which details the Pathway, the Women's Centre condition is then automatically generated. Condition-setting decision-making in Beauxvale is therefore often automated for the officer.

Officers could also attach additional conditions for victim reparation, restorative justice, or to impose restrictions on the offender. These bolts were necessary as, Sergeant Brookes reported:

Although it [the conditional caution] was sold in a way that the victim would prefer the individual to go on this course, I think they would also prefer being compensated for what they've lost.

This reparation was used in only one of the eight cases analysed in Beauxvale,² though all officers stated they would use reparative conditions in the future if required.

Officers reported feeling frustrated that they were unable to engage in problem-solving when deciding the conditions to be attached to the disposal as the Pathways were too rigid to allow officer discretion. This frustration appeared to be linked to a lack of information about the support provided about the Pathways and their effectiveness in rehabilitating offenders. This was particularly true for the Women's Centre condition, which officers stated they did not understand. PC Bennett felt that, while there was a list of options for male offenders, the force was 'sending all female offenders down the one Pathway [which] when not everyone's the same'. Strategic Lead Birch had also detected this frustration with the Women's Pathway but explained that she had circulated information about the effectiveness of the Pathway to officers, such as the Corston Report, but officers did not want to listen.

Officers in Beauxvale therefore also prioritised the use of rehabilitative conditions, as required by the Pathway structure created by the Strategic Leads. Officers could also attach their own reparative conditions to complement the core Pathways, but this was only seen once in my case analysis. As will be seen in Chapter 8.4, this condition was also not successful. Officers in Beauxvale reported feeling frustrated that the choice of which conditions to set were essentially made for them, preventing them from problem-solving in the case.

Whether there was a direct, non-commercial victim in the case could also affect the conditions attached. PC Briscoe explained she eliminated some options such as veteran's pathway or drug rehabilitation Pathway based on the characteristics of the offender. This left either the victim's

² Case B8, explored in more detail in Chapter 8.4.2.

Pathway or the Unpaid Work Condition. She would then choose the victim's Pathway for cases where there was an identifiable victim and the Unpaid Work Condition for victimless offences. This was aimed at rehabilitating the offender by confronting him with the impact of his offending on others, to reduce reoffending against future victims.

PC Bell outlined how he would consider which conditions fitted with the victim's wishes in the case. He identified that they could attach the condition which followed the:

Restorative justice approach where the victim and the offender will meet to talk about what's going on. I've often found that the vast majority of victims aren't willing to go for that, which is obviously something that you can't force them in to, I think I've only had that 2 or 3 times in my career really.

Bell explained that victims imagined the offender as a 'big nasty hardened criminal' who they did not want to have further dealings with. As the victim needed to consent to take part in restorative justice meetings, this could mean that such conditions were not appropriate. Instead, PC Bell stated he would be more likely to attach conditions to pay compensation or send a letter of apology.

8.2.3 Cherryvale

In Cherryvale, officers also prioritised the rehabilitative aims of the conditional caution when deciding which conditions to attach. The training manual created by Strategic Lead Chord included a list of possible Pathways considered useful for officers, including substance misuse interventions and the Women's Centre. Officers were also encouraged, in the manual and training sessions, to use their local knowledge in diverting offenders to support. Officers could choose one of the mapped Pathways or be innovative in which Pathways to include. Officers interviewed in my research predominantly worked in Neighbourhood Policing. As PC Carraway reported, this meant that he worked in a community hub in an open-plan office with other agencies, who were able to make suggestions on local support. Although officers

were not repeat decision-makers like officers in Airedale, they had a good knowledge of the Pathways and what they entailed.

Strategic Lead Chord also introduced measures to ensure victims' views were considered in condition-setting. The first page of the MG14 had a box for the officer to write down the conditions the victim thought should be attached to the disposal, based on the Community Remedy document. This reminded officers to consult the victim. In addition, the MG14 included a force headed A4 page so any letter of apology would be sufficiently formal and lengthy. However, this condition was not seen in my case analysis.

While the majority of the cases analysed in Cherryvale included rehabilitative conditions, in one case, the victim's views on the appropriate condition were prioritised over offender rehabilitation. Case C5 involved an offender who had stolen from his employer's shop. In our interview and PC Canavan's recorded rationale, it emerged that the employer had requested the offender repay the stolen £5,000 but were happy for this to be managed out of court. It transpired during the research interview that the offender had stolen to fund his gambling addiction, of which PC Canavan had been aware at the time. However, in our research interview, PC Canavan reported that he did not attach any rehabilitative intervention for the offender for his gambling addiction and instead focused on victim reparation. PC Canavan explained that this was because the commercial victim had already shown itself to be understanding of the offender's position and willing to deal with the matter out of court, when the offence seriousness meant it could have been in the public interest to prosecute:

In effect the conditions were thrust upon us to give out, because the company wanted this, and to be honest, it's probably the outcome we'd have come up with anyway, which he [the offender] agreed to.

This case demonstrates how the officers will have regard to the victim's wishes when determining the conditions to attach. Importantly for PC

Canavan, this would only occur where these conditions were similar to what the police would have used. Such conditions were appropriate within the definition of the Code of Practice as, whilst they did not focus on the rehabilitation of the offender, they ensured victim reparation. This was the only case in Cherryvale involving only victim reparation. In other cases, officers would try to combine reparative and rehabilitative conditions or prioritise the rehabilitation of the offender.

8.2.4 Conclusion: priority given to offender rehabilitation

My data demonstrate that in each force, the decision on which conditions to administer is motivated primarily by the need to rehabilitate the offender and secondly to provide victim reparation, where appropriate. The Needs Assessment, whether at an in-depth level as in Airedale and Cherryvale, or through the categorisation of the offender in Beauxvale, was the key determinant of the conditions to be attached. This meant that conditions were appropriate in prioritising the aims of rehabilitation and reparation, as required by the Code of Practice.

The Code also requires the officer to adopt a problem-solving approach to attaching conditions. This was done by officers in Airedale and Cherryvale, where officers had a list of possible condition types they could attach but were also encouraged to consider local support based on their own experience and partner agencies. In Beauxvale, on the other hand, the Strategic Leads, and not the officers, were engaged in this problem-solving approach. As seen in Chapter 5, Leads had identified and mandated the Pathways to use, though officers could attach supplementary conditions. The Strategic Leads in Beauxvale had therefore balanced a problem-solving approach with the need to ensure consistent use of conditional cautions across the force and use Pathways they considered effective. This meant that all individuals in Beauxvale accessed the same support provided freely by the force. However, the case in Cherryvale demonstrates how, if the victim sets out a clear preference, victim reparation can take priority over offender rehabilitation.

8.3 Proportionate

The second guiding principle for condition-setting, as set out by section 2.27 of the Code of Practice, is that conditions must be proportionate to the offending behaviour. The Code further requires that the aims of the conditional caution should be achieved through the use of the minimum number of conditions. Yet a small number of conditions does not itself guarantee proportionality. My quantitative and qualitative data demonstrate that we must also analyse what is required of the offender. Some conditions can be completed within a day while others require a series of interventions. My research also identified the collateral consequences of attending such Pathways. Across the three forces, the cost of attending the Pathway for the offender varied between £0 and £1,500. Attendance itself could also be challenging for offenders. Some Pathways mandated physical attendance, others could be completed by telephone, some were a considerable distance from the offender's home and the majority required the individual to confront personal issues in front of strangers. These pains of rehabilitation were not the focus of my research. As such, I did not interview offenders to understand whether they felt their condition was proportionate to the offence (Hayes, 2017). Instead, this section focuses on how decision-makers in each force were guided by proportionality in condition-setting.

8.3.1 Airedale

As seen in Chapter 8.2.1, officers in Airedale may choose from a range of identified Pathways or choose other providers in the community. These Pathways varied in length, cost and level of engagement required by the offender. Officers reported that they usually used one condition in each case, which was borne out in the case analysis. Five of the seven case files analysed in Airedale featured only one condition, whether rehabilitative or reparative. The remaining two cases, A3 and A4 included two conditions: one rehabilitative and one reparative. This analysis excludes the restrictive condition not to commit any additional offences for the period of the conditional caution, which is an additional restrictive condition, but is a reiteration of the law and so does not affect

proportionality. However, although the number of conditions attached to the disposal can appear equal between two cases, my analysis demonstrates that the requirements of each set of conditions varied based on the needs of the offender rather than the seriousness of the offence. This can be most vividly seen by contrasting Case A1 with Case A5.

Case A1 involved a female offender who had stolen goods under the value of £30 from a shop. Officer Atchinson attached the condition to attend the Victims Awareness Course, costing the offender £75. Atchinson reported that the offender did not have evident underlying needs but had committed the offence without thinking of the consequences of her actions, so the Victims Awareness Course supported her rehabilitation. Case A5 involved a female offender who had stolen goods to the value of over £100 from a shop. Yet while the value of the objects stolen was greater, the woman in Case A5 had the condition to attend the Women's Centre, which was a free session for the offender. Officer Applegate explained that this was because the offender was felt to be a vulnerable woman with financial difficulties, and so was referred to the Women's Centre for support.

These two cases demonstrate that, although each offender had only one condition attached, there was a significant disparity in the cost for the offender in having to pay for the treatment, with the offender who had stolen goods to a higher value having a lesser amount to pay. The needs of the offender, rather than the offence seriousness, were a crucial determinant in which conditions were attached. The discretion allowed to the officers in this decision-making permits officers to adapt the conditions to the offender's needs and means (see Chapter 8.4).

8.3.2 Beauxvale

In Beauxvale, the force used one of six Pathways for all conditional cautions, regardless of the offence seriousness. These fixed Pathways ensured consistency of condition types across the force. Strategic Lead Browne emphasised that the Leads had created SMART (Specific, Measurable, Achievable, Realistic and Timely) Pathways so officers did

not need to consider the proportionality in the conditions (Chapter 5.4.3). All offenders in Beauxvale received a single, one-off condition. This condition was clearly defined to ensure the offender understood what was required and facilitate the force monitoring compliance. This single intervention approach complied with the Code of Practice that condition numbers should be kept to the minimum necessary to reach the goals of the conditional caution. Each of the six Pathways were provided freely for the offenders at no charge to the police. This arrangement was as a result of the strong relationships that the police and Police and Crime Commissioner (PCC) had developed.

The characteristics of the offender as male/female, veteran, with substance misuse issues, or whether there was a direct victim in the case were therefore paramount to deciding which conditions to attach. The Strategic Leads created the conditions to be proportionate to the conditional caution disposal, rather than the offence. If a conditional caution were determined as a proportionate response, then the conditions that followed would be presumed to be proportionate. In the cases analysed in Beauxvale, one case of possession of cannabis (B4), one case of fraud (B8) and one case of assault and neglect (B6), all had the conditions of a Women's Centre attached. As they were all women offenders, officers did not have a choice in the type of condition to be used. Officers did not refer to the offence type or seriousness when discussing the conditions. This emphasised the centrality of the offender characteristics in choosing from these pre-defined rehabilitative conditions.

In addition to these rigid rehabilitative conditions, officers in Beauxvale could attach reparative, restorative justice or restrictive conditions to the disposal. These supplementary conditions enabled officers to focus on the seriousness of the offence. Although officers were supportive of the discretion to attach these additional conditions, my case analysis in Beauxvale identified only one example of these supplementary conditions. In Case B8, the offender had defrauded a total of £1,000 from her victims. In addition to the referral to the Women's Centre, Sergeant

Brookes decided to set the additional reparative condition of repaying £1,000. This was calculated to be directly proportionate to the offence. However, as will be set out in Chapter 8.4.2, this meant the condition was not achievable for the offender, emphasising that officers need to balance proportionality with achievability.

8.3.3 Cherryvale

Finally, in Cherryvale, Strategic Lead Chord's training manual detailed a range of rehabilitative Pathways to which the offender may be diverted. Officers could use one of the conditions Chord had identified, or attach their own condition based on their knowledge of support services. In four of the seven cases analysed in Cherryvale, the offender was diverted to the substance misuse Pathway identified by Strategic Lead Chord. Chord's mapping of conditions is therefore likely to have improved the likelihood of consistency across the force, with the same condition type used for three cases of personal possession of crack cocaine. These offenders all had a condition to attend one support session.

Only one case in Cherryvale had an expressly punitive condition attached in which the decision-maker focused on achieving proportionality with the offence, rather than the needs of the offender. In Case C6, the offender had ordered an offensive weapon to be imported to the United Kingdom. Authoriser Coates reported that the offender had not understood the gravity of his actions and, after coming into contact with the police, would be unlikely to commit future offences. As the offender did not have any identifiable needs and there was no direct victim, Coates sought to attach a punitive condition that would be proportionate to the offence. This was equated to the cost of the UK Border Agency's involvement in the case. Case C6 was the only case in which the decision-maker referred expressly to proportionality as a key determinant in condition-setting. In the other cases analysed in Cherryvale, officers reported that they were led by the offender or victim needs.

8.3.4 Conclusion: proportionality to the disposal, not offence type

My research data demonstrate that officers prioritise rehabilitation over proportionality when considering the conditions to be administered. Officers used the offence seriousness to determine whether it was in the public interest to administer a conditional caution, but then focused on the needs of the offender when deciding which conditions to administer. In all three forces, this condition-setting aims at supporting the offender and reducing reoffending. However, this rehabilitative approach can result in instances where offenders have more demanding conditions with which to comply, based on their needs, rather than the gravity of the offence. As a failure to accept or comply with conditions can result in a charge, this disparity may also result in a different criminal justice outcome for offenders who have committed a low-level offence but have a high level of need.

8.4 Achievable

The final guiding principle set out in the Code of Practice section 2.28 is that conditions should be achievable for the offender. Decision-makers should take into account 'the offender's circumstances, physical and mental capacity, and ensure that any financial conditions are commensurate with the means of the offender.' The importance of this principle was vividly seen in my quantitative analysis, in which one offender had the condition to rid himself of his heroin addiction within three months. Fortunately, such a blatantly unachievable condition was not seen in my case file analysis. Instead, officers in each police force emphasised they should not 'set offenders up to fail'. This principle was emphasised in police force guidance documents and training packs. It was said so frequently in research interviews in all the three forces that it appeared to be a mantra ingrained in condition-setting decision-making.

8.4.1 Airedale

In Airedale, the mantra to 'not set offenders up to fail' was frequently articulated by the Central Team. However, officers reported that while

they did not want to set offenders up to fail, they also wanted to ensure the condition would be useful for them. This was a grey area in ensuring the conditions were sufficiently robust to make a difference in the offender's life, while also being achievable.

For example, in Case A4, PC Applegate diverted an offender to a drug rehabilitation course, which required the offender to attend two short sessions. PC Applegate used the Pathway identified by the training document but was sceptical that the condition would be sufficient to stop the offender's drug addiction. 'You can't tell me that means they're not addicted anymore; it just means that they've complied by coming to the two 20-minute sessions.' However, PC Applegate emphasised that they could not give a conditional caution to become 'unaddicted' as this was unachievable and would be counter-productive to the rehabilitative aims of the conditional caution. Instead, officers balanced effectiveness with achievability by attaching conditions that would ensure offenders began treatment or sought support, without requiring a long-term change.

One means of ensuring this balance was to attach one mandatory condition for the offender as part of the conditional caution and supplement it with additional voluntary conditions managed by other groups. PC Adely reported that the Central Team works closely with Liaison and Diversion (L&D) teams already in place. These L&D teams were rolled out by the NHS from 2010 (NHS England, 2020) and map out local Pathways for individuals with mental health issues or other vulnerabilities. The Central Team also liaised with Change Grow Live (CGL), the group of alcohol and drug support workers based in custody (CGL, 2020). Referrals to these teams were voluntary and did not have to be attached to a criminal justice disposal. In this way, officers could signpost offenders to additional support, without requiring a particular result within a fixed time.

The Central Team could also liaise with these teams for advice on which conditions to attach to the disposal, as they had the training to identify mental health issues. PC Adely sought to work with these diversion

teams within custody to fill the gaps in his knowledge and get ‘information that we need to *help* make that informed decision on what’s best to do with them.’ This ensured the force had a coordinated approach in giving offenders one condition, or set of conditions, to comply with, rather than referring the offender to a confusing range of local services with which to engage. Such conditions would be achievable for the offender, but ensured ongoing support was available for the individual.

8.4.2 Beauxvale

In Beauxvale, as in Airedale, the conditional caution training packs clearly stated officers ‘should not set offenders up to fail.’ Officers worried that attendance at the Strategic Leads’ pre-defined one-off Pathways would not help offender rehabilitation and so encouraged offenders to make use of additional, voluntary support beyond the conditional caution. For example, in case B3, PC Buchanan reported that he diverted an offender to the substance misuse course, requiring only one attendance session. Doubtful that this would reduce the individual’s drug use, PC Buchanan explained, ‘I knew at the time he only had to attend one, however when I spoke to the individual, I *urged* him to try and take as much help as he can.’ Even within these rigid rehabilitative conditions, officers could encourage offenders to seek additional support provided by the Pathway, while not requiring this as part of the conditional caution.

Officers could also attach conditions to supplement core Pathways. Strategic Lead Browne reported that the most commonly used supplementary condition was victim reparation. She explained that it was ‘drummed into’ officers that they had to ensure such reparative conditions were achievable. However, the one case in my analysis with an additional reparative condition demonstrated that officers may not have sufficient information to know if such conditions are achievable for the offender.

In Case B8, an offender had defrauded victims out of £1,000. The offender had the core rehabilitative condition to attend a Women’s Centre and a reparative condition to repay £1,000. However, Authoriser Brookes reported that a lack of knowledge on how the compensation condition

was managed resulted in the disposal going a bit 'Pete Tong'. When the conditional caution was first administered, he and the officer gave the offender nine months in which to repay the £1,000 as they were not aware that conditions had to be completed within 20 weeks and the offender had said this payment plan was achievable. However, the Administrative Team refused such a prolonged condition and changed it to £500 to be paid within 20 weeks, with the offender duly updated on the changed condition. However, the Administrative Team contacted Authoriser Brookes again to say the offender already had fines outstanding from a court order and therefore even this reduced repayment was unachievable for the offender.

The case demonstrates the difficulty of the police determining the achievability of the conditions attached to the conditional caution, particularly where this is a newly developed disposal, and they are not familiar with the process required. Authoriser Brookes emphasised, 'we have *no way* of checking to see if people have got fines outstanding' and so were unable to factor this into their decision-making. Brookes explained:

We don't know what their history is, what their background is, what they get at court, and it's only when you get this e-mail saying, "you're going to have to summons this person." We've messed this person around from the start.

As will be reported in Chapter 9, the offender in Case B8 was not charged after not completing the conditional caution. However, the case demonstrates how an officer, believing he is acting in the best interests of the offender or victim, can create an unachievable condition which could result in the offender being charged. This can result in up-tariffing of offenders, who may feel unable to argue that a condition is unachievable, especially if they are unrepresented in custody. It was only the intervention of the Administrative Team that spotted that this condition was unachievable.

8.4.3 Cherryvale

As in Airedale, Strategic Lead Chord also encouraged officers to use their 'own ideas and innovation, provided it's achievable.' Again, a commonly repeated refrain that emerged in research interviews with officers was that they should not set the offender up to fail, but also that the officers wanted to use the disposal to make a real difference in the offender's life. PC Canavan set out this balance:

You need some sort of stringent measures, but you don't want to be giving them something they're going to break, because you're going to be setting them up to fail.

Similarly to Airedale and Beauxvale, officers in Cherryvale offered additional, voluntary support for offenders to complement the mandatory conditions. As in Airedale, this culture of referrals was ingrained within custody suites, where support services were based, and in Neighbourhood Police teams, where officers worked with other agencies and had a good understanding of wider support available. PC Caulfield observed that he frequently used a GP-related condition as a mandatory condition for the offender to speak to his doctor about his substance addiction. He also made voluntary referrals to offer more comprehensive support. He aimed to:

Get to the root of the problem for, say, a habitual thief stealing to fund a habit. You peel all the layers back and you look at the core issue - drug use. So, putting the condition of a drug diversion scheme in place or would probably - or may - deal with the issue. The other stuff about the people he hangs around with, we can deal with, but I wouldn't necessarily put in a conditional caution.

Such wider work was not included in the conditional caution itself and so was not seen in my case analysis. However, interview data demonstrated that officers complemented conditions attached to a conditional caution with voluntary diversions to agencies such as housing support or gave informal advice to the individual. In this way, the offender could get

support to get a house, but would not be in breach of a conditional caution if rehousing was not achieved within a short period of twelve weeks.

As identified in Chapter Five, Cherryvale had had some experiences of officers attaching unachievable reparative conditions. Strategic Lead Chord therefore created a means assessment form that officers completed with the offender to help ensure repayments were achievable. Chord also worried that the cost of completing the Pathway for the offender could be prohibitive. Cherryvale did not have funds or partnerships in place to ensure the free delivery of support, as seen in Beauxvale. Chord worried that this cost for offenders could result in a two-tier system, in which only the rich could afford to pay for the support they needed. This could mean that those unable to fund Pathways may not get a conditional caution, or only have free conditions that would not be effective in addressing offending behaviour. Interview data demonstrated that officers checked with offenders that they were able to pay for the Pathway before attaching conditions. None of the case files in Cherryvale involved offenders who were unable to pay the costs of the conditional caution. This may have been because the conditions were set to be achievable for the offender, or perhaps because offenders without sufficient means were not administered a conditional caution.

8.4.4 Conclusion: don't set the offender up to fail

My research data demonstrate that officers were aware of the need to ensure that conditions usually focused on rehabilitation and were achievable for offenders. Interviewees explained that while they sometimes wanted to administer a more robust condition to ensure individuals engaged in long-term support, they could only refer them to low-level, achievable conditions. To complement these lower-level mandatory conditions, officers referred offenders to support in the community, including diversionary services based in custody, on a voluntary basis. Such strategies ensured that officers took the opportunity of seeing the offender in custody to refer them to support without giving the offender unachievable conditions that could result in them being charged.

However, the financial cost of the condition can be a critical barrier to the achievability of the conditions for offenders. Such expenses can arise when decision-makers require the offender to pay unaffordable victim reparations. This was pre-emptively countered through training to remind officers to consider the means of the offender when calculating reparations. It was also countered retrospectively through monitoring by the Strategic Leads. As will be seen in Chapter 9, such conditions could be varied or removed from the conditional caution, if they were felt to be unachievable.

Of greater concern to Strategic Leads and officers in Airedale and Cherryvale was the offender-pays structures of their Pathways. This required offenders to pay for their own rehabilitation, which could vary from £0 to £1,500. My data demonstrate that officers ensured the offender had the means to pay the costs of attending his own rehabilitative course before setting such a condition. However, as my case analysis focused on cases disposed through a conditional caution, it is not clear whether offenders were charged because they could not afford the conditions. As Strategic Lead Chord articulated, these costs could result in a two-tier form of justice in which poor offenders are prosecuted for the offence if they cannot pay. This would result in differential treatment based on the offender's socio-economic status. This financial obstacle did not arise in Beauxvale, where five of the six Pathways were provided free at the point of delivery for all offenders, regardless of their socio-economic status. This meant officers in Beauxvale did not need to consider the financial means of the offender and could instead administer conditions on an equal basis to all offenders.

8.5 Conclusion: The centrality of the offender's needs

The second decision on which conditions to administer again demonstrates the centrality of the needs of the offender in conditional caution decision-making. The Code of Practice prioritises rehabilitative or reparative conditions. While reparative conditions are used, my data demonstrate that rehabilitative aims take precedence in condition-

setting. This is seen through the centrality of the Needs Assessment, used in each force after the PACE interview. The Needs Assessment focuses the officer on how the offender can best be supported and reduce the likelihood of future offending.

It is useful to categorise the types of rehabilitation used. Raynor and Robinson set out correctional and resettlement approaches to rehabilitation (2009: 1). Correctional rehabilitation provides training and support for the offender to address his individual deficiencies. Resettlement is a wider, social approach, attempting to restore the individual to his former position in society. My research demonstrates that officers adopted a mixture of these two approaches. In 14 of the 22 cases analysed, Pathways focused on the treatment of the offender, such as through alcohol and drug rehabilitation courses, anger management and victim awareness courses. This aligns with the correctional approach to rehabilitation. Some conditions also correlate to the resettlement of offenders in requiring the offender to go to a jobcentre to find suitable employment. This was particularly the case for the Women's Centre condition, used in all three forces, where the support was a holistic approach to improving the women's social and economic standing (see for example, North Wales Women's Centre, 2020). The Women's Centre condition was used in four of the cases analysed.

Raynor and Robinson argue resettlement rehabilitation is likely to be perceived as beyond the scope of correctional agencies, such as the police (2009). Although offenders may need help, officers need to respond to offending behaviour and reduce reoffending and so such help must be, if not coerced, at least controlled (McNeill, 2006). One surprising finding of my research is that Raynor and Robinson's belief that officers would not be involved in resettlement support was not evidenced in practice. Though working within a correctional agency, officers sought to offer individuals non-coercive rehabilitation outside the conditional caution by diverting offenders to support in the community on a voluntary basis. My data demonstrated that this could be for housing, employment or mental health support. This is a sociological approach to

rehabilitation in addressing the wider causes of offending behaviour. Officers acted as both correctional agencies, in attaching measurable conditions that must be complied with, and as sign-posters, linking the individual with support in the community. The custody suite, with its range of support workers based within it, acts as a useful opportunity for catching individuals in need and referring them to support. However, this police role as a sign-poster must be subject to scrutiny. Such additional referrals should be clearly stated to be voluntary, and officers should resist adding additional mandatory conditions purporting to support the offender, as a focus on rehabilitation can result in disproportionate sentences.

The use of the conditional caution as a tool for resettlement rehabilitation also raises questions on the coercive nature of this support. While the conditional caution, and the conditions attached, must be voluntarily accepted by the offender, the individual has some pressure to comply as the police monitor his compliance, and any breach can result in him being prosecuted for the original offence. This is particularly the case for the condition to attend the Women's Centre. Hine argues that this 'coercive offer of help' is antithetical to the voluntary ethos of most Women's Centres (2019: 13). Brennan, Green and Sturgeon-Adams analysed a pilot approach of diversion of women to Women's Centre in 2016 (2018). However, in their pilot, women were not obliged to attend the Women's Centre, as in the conditional cautions. Officers interviewed in my study stated that women they had diverted to this support engaged in additional voluntary support at the Women's Centre. While this is encouraging, there is little empirical data to analyse whether coercive rehabilitation is effective when it overlaps with the empowerment ethos of Women's Centres.

A focus on rehabilitation can also result in disproportionality. My case analysis demonstrates that individuals can be given a more onerous condition based on their needs, rather than their offence. Although all individuals with a conditional caution will have the same criminal justice outcome, their experience of the disposal will depend on the duration and

cost of the programme (von Hirsch, Ashworth and Roberts, 2009: 8). For example, the Victim Awareness Condition was a one-day intervention in all three forces, while the Anger Management sessions in Airedale took place over ten days. Conditions also varied in the extent to which individuals had to engage with them, the personal nature of problems discussed, and the cost of such interventions. While a conditional caution can result in offenders being diverted from court, this did not necessarily mean that they experience a less punitive outcome. My data demonstrate the inherent pains of these conditions, which may be more demanding for the offender than an appearance in court and an unconditional discharge or fine. We should therefore be careful not to assume that a diversion from court is an example of penal minimalism as it may require the completion of demanding conditions by the offender.

These conditions frequently require offenders to pay for their own rehabilitation. With the exception of some conditions, such as the Women's Centre, which was provided freely, in Airedale and Cherryvale, the offender had to pay to attend most Pathways, while in Beauxvale the majority of conditions were provided freely. It must be stressed that this was not because the Strategic Leads or officers in Airedale and Cherryvale did not want to provide the support freely for the individual. Indeed, my research evidenced examples of Strategic Leads applying for various funds to provide these Pathways freely. However, the partnerships and long-term funding were not available for these projects and so offenders often had to pay attendance fees. The offender-pays model indicates the type of rehabilitation offered by the conditional caution. As identified in Chapter 8.2.4, rehabilitation focused on the correction of the individual through training and therapy and, to some extent, resettlement, in restoring the individuals' place in society. Carlen developed this resettlement form of rehabilitation to a reparative justice approach (2013). Carlen argues that rehabilitation is something that the State owes to the individual to compensate for his social disadvantage in society. If the offender must pay to correct his own disadvantage, as in Airedale and Cherryvale, then this reparative justice approach is not met.

In Beauxvale, on the other hand, the force appears to be adopting this reparative approach as Pathways are provided freely for the offender. Individuals who were identified as having an underlying need which may have contributed to them committing an offence, were diverted to support provided and funded through a partnership by the police, PCC and local bodies. Officers in Beauxvale could therefore help the offender combat any disadvantage without requiring the individual pay for this support. The force is therefore an example of how a correctional agency could adopt Carlen's reparative approach in the State offering the support needed to compensate the individual.

This Chapter answered the question of how officers balance the substantive aims and guiding principles of the conditional caution in condition-setting. Officers follow the guiding principles in seeking to rehabilitate the offender and offer reparations to the victim. Yet while the Code of Practice places these aims as equal priorities, my research data evidence that the rehabilitation of the offender is usually of central concern to the officer. This takes the form of correctional rehabilitation, in focusing on the underlying causes within the individual, as well as resettlement rehabilitation, in seeking to restore the individual to society. While this focus on rehabilitation could result in disproportionate and unachievable conditions attached to the disposal, officers and Strategic Leads try to limit their rehabilitative zeal to attach achievable conditions to the disposal.

Chapter Nine considers how officers made the third decision on what to do in the event of a breach of conditional cautions. This decision depends, to some extent, on which condition is in breach. This third decision therefore helps us understand which conditions were perceived by officers and Strategic Leads as the core of conditional caution requirement.

Chapter Nine: Deciding what to do following a breach of conditions

9.1 Introduction

This Chapter turns to the final conditional caution decision: what to do in the event of a breach of conditions. The possibility of a charge is expected to hang over the offender like the 'Sword of Damocles' to ensure compliance (Neyroud and Slothower, 2015). However, before deciding whether to charge the offender, the Code of Practice requires decision-makers first to ascertain the reasons for non-compliance. The decision-maker then has discretion to accept partial compliance, change the conditions, extend the time period or charge the offender (Chapter 2.4). This Chapter focuses on the seven of my 22 cases in which the offender did not comply with the conditional caution. This Chapter also covers those cases where individuals were failing to comply with conditions and had to be encouraged to do so by the officers.

My data demonstrate that, as set out in the Code of Practice, this decision of whether to charge the offender for a breach of the conditions, is a three-stage process. Once an offender has entered the period of 'failing to comply with one or more conditions' (Code of Practice, s.3.16), this process begins with officers attempting to secure compliance (Chapter 9.2). If this fails, the decision-maker will then reconsider the conditions she attached to the conditional caution (9.3). The decision-maker will determine which conditions were an essential part of the conditional caution and must be complied with, and which were supplementary and do not require compliance. She may decide to vary the conditions attached. Finally, if the decision-maker determines the breached conditions form the essential component of the conditional caution, she will decide whether to charge the offender (9.4). My research demonstrates that charging the offender took place as a last resort.

9.2 First steps to secure compliance

In the event of non-compliance with conditions, the Code of Practice s.3.16 encourages decision-makers to engage with offenders to secure

compliance. It sets out a period within which the offender is struggling to comply but has not yet breached the conditional caution. My data demonstrate that this is an important stage before deciding whether to charge an offender, with officers genuinely seeking compliance. The need to first engage with the offender is promoted at the organisational level as each force had a process in place to encourage compliance, whether this was by the officer in the case or the Administrative Team. Officers interviewed also explained their altruistic and personal motivations to secure compliance, similar to their original motivation to administer a conditional caution.

9.2.1 Airedale

In Airedale, the Central Team was responsible for monitoring their own conditions. Officers were already connected to the case, having usually spoken with the offender and victim, so individual officers could have an open discussion with the offender they had already met to identify whether the offender still wanted this support, and was genuinely having difficulties in accessing it. In research interviews, officers reported the measures they took to ascertain the reasons for non-compliance. In Case A3, PC Ambler perceived that the offender was enthusiastic about engaging with the Pathway when the conditional caution was administered. However, the substance misuse Pathway provider reported to PC Ambler that the offender had not contacted them to arrange a course date. In our interview, Ambler described how this had surprised her and she called the offender and visited his house to give the individual a last opportunity to engage with the course, which he eventually did.

This delayed compliance was perceived as more beneficial for the offender than a charge. Officers explained that there could be several reasons why the offender had not engaged with the Pathway. For example, he could be too embarrassed or nervous to make the initial call and needed support in reaching out to the Pathway. Authoriser Ammil stated:

It [the conditional caution] is meant to help, we don't want to charge people, we want them to go through the [conditional caution] process and hopefully it will have a positive effect and reduce reoffending, so charge is a last resort.

There were therefore altruistic reasons, related to the police culture of compassion, to guide the offender to access this support. My research also evidences other more practical, less altruistic reasons for officers to seek late compliance rather than charge the offender. Officers had spent time and effort administering the conditional caution, and were already emotionally invested in the case, as seen in PC Ambler's case above. Charging an offender would mean these efforts were wasted and would take more time than calling the offender to encourage compliance. Additional resources put into securing compliance could therefore save officers time in the long run.

Finally, although officers did not have fixed targets in achieving a particular compliance rate, officers were encouraged by their team sergeant to gain compliance in each case. While observing the Central Team in Airedale, an officer reported to her sergeant that an offender had not engaged with the Pathway, and she therefore had to charge him. The sergeant first confirmed that the officer had tried on numerous occasions to contact the offender and then tried once more to contact the offender herself to ascertain the reasons for non-compliance. She spoke directly with the offender and encouraged him to sign up for another course. There was a clear expectation that officers should contact offenders, multiple times if required, to encourage compliance and rebook courses for them where needed. Officers in the Central Teams always quoted their estimates of compliance rates and took pride in having a low rate of charge. PC Applegate explained:

I'm happy it doesn't come *back* to me as a breach. They did not attend, and I think, what did I do wrong? So, you assess. Can you get them back on the course? Why didn't you attend? Sometimes

people have got reasons why they didn't go, they need a little push
... We don't like breaches. Could be a bit of a failure on your part.

PC Applegate demonstrates how a breach of a conditional caution can reflect badly on the officer and was looked down on by the rest of the Central Team. As identified in Chapter 6.3, a high compliance rate was perceived as a marker of success of the disposal, and their own work with the offender. These non-altruistic reasons may have encouraged officers in the Central Team to take greater steps to secure compliance.

9.2.2 Beauxvale

In Beauxvale, where decision-making was dispersed across the force, the Administrative Team, not the officer in the case, initially contacted the offender following late compliance. Offenders were instructed to attend a Pathway within a week of the conditional caution. The Administrative Team had a reminder system to check if there had been compliance within a month of the administration of the conditional caution. This timeframe meant the Administrative Team could contact the offender, organise another session with the Pathway and then check again if there had been compliance. Strategic Lead Birch clarified the force had built in 'at least two or three opportunities to complete' the conditional caution into the system as:

We don't write it off just because they fail the first time, it's in everybody's interest to try and get compliance, but there is a clear cut-off. And if they don't complete, it goes back to the officer who must then reconsider with the victim, has there been partial compliance? Or do we need to go to court?

The Administrative Team therefore had some dialogue with offenders to encourage attendance. By the time officers had to make decisions on what to do in the event of a breach, the offender would usually have been contacted multiple times to seek compliance by the Administrative Team, working closely with the Strategic Teams. Interviews demonstrated that the officer would usually be aware of this system of engagement. However, there was a clear separation of duties in encouraging this

compliance, with the Administrative Team working behind the scenes in particular cases, which could be unknown to the officer.

Even when the case returned to the original decision-maker, the officer was still expected to contact the offender to secure compliance. In Case B5, PC Barke explained she had perceived that the offender was eager to engage with the conditional caution and was surprised when he did not comply. PC Barke contacted him twice to rearrange the Pathway before contacting the Administrative Team to ask whether she could give the offender a third chance to comply. 'Obviously, I'd done two, which is already more than you'd normally do, but I was being probably a bit soft.' PC Barke felt her efforts to secure compliance with the offender went beyond what the force, or her working team, would typically do, but felt motivated to try to support the offender.

The Administrative Team therefore acted as the first guide to support the offender in complying with the conditional caution. If this were not successful, the case would be returned to the officer for one last attempt to secure compliance. This referral to the officer could be successful as the officer already had a relationship with the offender and may be able to understand the reasons why the offender had not yet complied. If it were not successful, the officer could then decide whether to charge the offender.

9.2.3 Cherryvale

Finally, in Cherryvale, the Administrative Team also acted as the first stage in securing compliance. Strategic Lead Chord explained it was standard practice for the Administrative Team to make three attempts to encourage compliance. It was only after this third attempt failed that the Administrative Team would contact the officer in the case and instruct her to contact the offender to secure compliance or potentially charge the offender.

In a similar way to Beauxvale, the Administrative Team acted as the first point of contact in encouraging offenders to comply with the conditional caution. However, unlike in Beauxvale, officers were less aware of the

work carried out by their Administrative Team colleagues in securing compliance. This meant the officer would perceive the conditional caution as a robust measure that would typically result in a charge for non-compliance. This strong message was reiterated in the training pack, in which Strategic Lead Chord wrote that the government considered conditional cautions as 'suspended prosecutions' and reaffirmed the offender would normally be charged following non-compliance. The Administrative Team's role in supporting compliance therefore helped Strategic Lead Chord to encourage buy-in by officers, while still allowing for struggling offenders to be guided to compliance.

This separation of responsibilities arose most vividly in Case C5. PC Canavan reported that the offender did not comply with the condition to repay £5,000. Canavan reported that the Administrative Team had alerted him that the offender had breached the conditions. PC Canavan perceived that the next step would be to charge the offender:

I assume it's more to the officer's discretion on whether to give him that second chance, to say 'you've got these conditions', you need to keep to them, we shouldn't have to keep telling them, they've got conditions and they should keep to them because otherwise it's just a pointless waste of our time. In my opinion.

PC Canavan therefore perceived that it was for the officer to decide whether to give the offender a second chance. In his research interview, PC Caulfield similarly set out a strict approach to charging the offender in the event of non-compliance, noting that there had been compliance in his case. However, unbeknownst to him, in Case C2, the Administrative Team had contacted the offender three times to encourage attendance at the rehabilitative Pathway. This separation of roles meant the Administrative Team could continue the rehabilitative approach, while officers were encouraged to adopt a more robust approach to non-compliance. This demonstrated to these officers and their colleagues, victims and offenders that the conditional caution was a robust disposal.

9.2.4 Conclusion: a (sometimes hidden) process to secure compliance

While offenders could be supported to attend Pathways, this encouragement had to be limited. Compliance had to be the offender's own decision and they could not be coerced, through unceasing support, to engage in rehabilitation. Yet some assistance was often necessary to help individuals access support they genuinely wanted. Interview data with decision-makers illustrated how the period immediately after the offender had committed an offence was often the lowest point of the individual's life. Any underlying issues were likely to have made the individual lose control and resort to some form of criminal activity to manage, or as a cry for help. It was therefore considered to be a difficult time for the individual to engage with services, with the result that decision-makers gave them additional opportunities and support to engage.

In each police force, there is a clear structure in place to encourage offenders to comply with conditions. Strategic Leads created processes to respond to the period in which an offender had not yet completed the conditional caution but was not yet in breach. This process of securing compliance fitted within the organisations' aims to rehabilitate the offender, recognising that offenders could live chaotic lives and may need support to access rehabilitation. The approach also reduces the likelihood that the officer would eventually have to charge the offender and may therefore be an important factor in achieving buy-in by the officers, who would have less work in not having to charge the offender.

Interestingly, the Strategic Leads adapted their narrative around the conditional caution based on the structure in place. In Airedale and Beauxvale, the narrative around conditional cautions, as seen in Chapter Six, was that they offered officers the possibility of meaningfully engaging with offenders and offering support. In Cherryvale, on the other hand, although these rehabilitative aims were articulated by the Strategic Lead, Chord also introduced the narrative that the conditional caution was a robust disposal, and not a soft option (see Chapter 1.4.2). A working rule

appeared to have emerged in Cherryvale that officers should charge offenders following a breach of conditions, rather than seeking offender engagement. Chord had pre-empted the development of this working rule, based on how he described the disposal, and introduced the Administrative Team to ensure offenders would still get encouragement to comply with conditions. By responding to and pre-empting the sub-cultures and working rules in individual teams, Chord created a system that would give offenders a chance, but also helped achieve buy-in from officers, who did not know about this work behind the scenes.

9.3 Consideration of the key components of the conditional caution

If these steps to encourage a delayed compliance failed, the decision-maker must then consider whether the breached condition was an essential component of the conditional caution. Officers could then decide to accept partial compliance with the conditional caution, as stated in the Code of Practice s.3.21. In my data analysis, there was only one case where the offender had complied with one condition but was in breach of another. This case illustrates how the decision-maker will reconsider which were the main conditions to be achieved through the disposal.

Case B8 was an example of the police foregrounding the rehabilitative aim of the conditional caution. The offender had a rehabilitative condition to attend the Women's Centre and reparative condition to repay £1,000 she defrauded from her victims. The offender completed the Women's Centre condition and engaged in further, voluntary support. However, she was unable to pay the £1,000 and therefore risked being charged with the original offence. The officer in the case, rather than Sergeant Brookes who had authorised it, contacted the Strategic Leads to determine the appropriate course of action. Strategic Lead Birch reported that she and the officer were reluctant to charge the offender as this would undermine the good work done in the rehabilitative condition of the Women's Centre. In explaining their rationale for accepting partial completion, Strategic Lead Birch observed that the woman had attended the Women's Centre and attended further sessions and so had engaged

with rehabilitative support. Birch noted the reparative cost of £1,000 was unachievable for the offender to pay and should not have been set as a condition. She also reported that all the victims had been insured, so were not out of pocket from the offence. However, Birch believed the woman should have to pay something, as repayment was a requirement of the conditional caution and the offender needed to 'show willing'. Birch therefore decided the offender should pay a donation to a charity, the Air Ambulance, which had a collection tin on the police front desk. Birch reported that she and the officer in the case had communicated this decision to the offender. The offender had gratefully accepted this variation of the conditions and donated £10 in the charity box, thereby completing her conditional caution.

Case B8 demonstrates how at an organisational level, Beauxvale attached central importance to the rehabilitative condition. The reparative condition was not perceived as the key element of the conditional caution, particularly in this case where the victims received their compensation from other sources. The case also indicates how the Strategic Leads in Beauxvale prioritised the completion of the conditions they had created as the core element of the conditional caution. Case B8 is also interesting as the compliance and alteration of the conditional caution was decided jointly between the Strategic Lead, Administrative Team and offender, with the officer updated on the outcome. This shows the capabilities of the Administrative Team to alter conditions to support the rehabilitative aims of the conditional caution. Case B8 also demonstrates how these actions can take place without the involvement of the authoriser. In his interview, it emerged that Authoriser Brookes had not been involved in this ongoing decision-making and believed the offender had been charged with the offence.

9.4 The reapplication of the public interest test

Finally, once the first two stages of securing compliance have been exhausted, the decision-maker can turn to the final conditional caution decision: whether to charge the offender. The Criminal Justice Act s.2.24(1), Code of Practice s.3.16 and DPP's Guidance s.16.7 allow the

officer discretion in deciding whether a charge following non-compliance may be in the public interest. The Criminal Justice Act and DPP's Guidance are neutral in their language as to whether the offender will be charged, while the Code of Practice s.3.17 sets the expectation that 'prosecution for the original offence should usually follow.'

While the organisational expectations of the force, as set out in Chapter Five, encourage officers to seek compliance, there is no clear emphasis at an organisational level in Airedale or Beauxvale on what officers should do if compliance has not been secured. Officers have discretion to reapply the public interest test and decide if it would now be in the public interest to charge the offender. In Cherryvale, on the other hand, there was an organisational expectation that the offender would now be charged for the offence, as the conditional caution was labelled a 'suspended prosecution', implying the offender should be prosecuted. My analysis demonstrates that officers typically perceived their compliance rates as indicators of success of the disposal and their own work (Chapter 6.3).

This decision also depended on the officer's perception of the offender (Chapter 6.4). Offenders seen as needy and vulnerable, or good and unlikely to offend, may need additional support to comply with conditions. On the other hand, a charge for a breached compliance sent a clear message to victims, offenders and other policing teams that the conditional caution was a robust disposal and not a soft option. This was particularly true of bad offenders considered to be in a cycle of offending behaviour, who the officer had taken a chance on in originally administering the conditional caution. This third decision illustrates the identity crisis of the conditional caution first outlined in Chapter 1.2.4. Officers were understanding of needy offenders, but also had to communicate internally and externally that conditional cautions were robust disposals. How they managed this conflict depended on what the officer aimed to achieve through the conditional caution, and how she perceived the offender.

As in the first two decisions relating to conditional cautions, my research data evidenced this third decision was primarily guided by the need to rehabilitate offenders. A common saying that emerged from research interviews was ‘you can take the horse to water, but you can’t make him drink’. While decision-makers could direct individuals to support, if the offenders chose not to use it, the officers could not force engagement. The offender did not comply with conditions in 7 out of the 22 cases analysed. Where this occurred, the decision-makers referred to their original public interest test and considered whether anything had changed in the offender’s circumstances or the victims’ views. Decision-makers also referred to the type of offender in the case, as set out in Chapter 6.4, to guide their decision-making.

9.4.1 Airedale

In two cases in Airedale, the offender was eventually charged for failure to comply with the conditional caution. In Case A4, the offender had a conditional caution to pay £85 to the police force for damage he had caused in the custody suite. As PC Applegate explained, he had taken a chance on the offender when first deciding whether to administer a conditional caution and was not surprised that the offender had breached it. This categorisation of the offender as a ‘bad’ offender, on whom the officer had taken a chance, made it a more straightforward decision to charge the offender, as well as the fact that the offender had gone on to commit another offence:

I’ve got to say, that was a finger in the air, try it, and I had this feeling, we’ve got to try it, but I think he’s going to breach, and he committed a likewise offence not long afterwards, so, it wasn’t even a case of trying to get him back on the Pathway. He was summons to court.

PC Applegate spoke of this case in terms of blame and fault. He was keen to emphasise that it had been the offender, and not the police, who had failed the conditional caution. ‘It wasn’t a failure on our part, it was a failure to engage, to take our offer of help.’ PC Applegate demonstrated pride in not giving up on the offender and offering him help through the

conditional caution. It was only when the offender clearly demonstrated he did not want to comply that PC Applegate charged him. As the offender had committed another offence and had therefore also breached the restrictive condition not to commit any offences, PC Applegate felt he had no choice but to charge the offender.

In Case A6, the offender had assaulted her neighbour and was required to attend a Victim's Awareness Course and pay the cost for this course. The Pathway provider, Victim Support, had to involve PC Abbott again when the offender did not arrange a course:

Victim Support e-mailed me to say they'd sent her dates, and she'd literally just completely ignored them. So she [Victim Support caseworker] asked me if I would go to the address or make contact with her, and I have and she's just ignored my attempts to contact her, so there's nothing more we can do.

As PC Abbott had taken steps to secure compliance and the offender had failed to engage or give a reasonable excuse for non-engagement, it had been a straightforward reconsideration of the public interest test and the offender was charged.

The previous categorisation of the offender therefore had an important role in subsequent decision-making. As described in Chapter 6.4, officers tried not to be overly led by their perception of the offender when administering a conditional caution. However, if an offender who had seemed unlikely to comply with the conditions then did not comply, the officer appeared willing to charge.

9.4.2 Beauxvale

There were two cases of non-compliance in Beauxvale. In Case B1, the offender did not comply with his condition to attend the Alcohol Behavioural Course. PC Bennett reported he had had a call from the Administrative Team asking him to 'gee up' the offender to encourage compliance. PC Bennett reported physically visiting the offender to encourage compliance as:

I just thought it would be more likely to get a result. Plus, I knew I could then give him the phone number to put in his hand, although he'd already had it, to ring right then.

PC Bennett had therefore tried to secure compliance, but this had failed. He then had to briefly reconsider the public interest test to determine whether to charge the offender. Bennett explained that, from the beginning of the process, the offender had not seemed enthusiastic about engaging with the conditional caution, and similarly to PC Applegate above, he had taken a chance on an offender. This impression was reinforced when PC Bennett visited the offender:

He just didn't seem that bothered if he went to court, and he was under the impression that he'd just get let off - he was really ballsy about it.

PC Bennett had perceived the individual as being a bad offender and had originally thought it was risky to administer a conditional caution for him, as he doubted the offender would comply. When he did not appear motivated to comply, PC Bennett was ready to charge him. In this way, the initial attitude test and categorisation of the offender continued to play a role in decision-making.

In Case B5, PC Barke had identified the case as involving domestic violence, as the offender had smashed a cup in front of his partner in their house (discussed in Chapter 7.4). However, PC Barke did not attach a domestic violence tag to the offence, so she was able to administer a conditional caution. The original decision that it was in the public interest to charge the offender was therefore complicated. PC Barke detailed that the offence itself was minor in smashing a cup, and so she could have administered a simple caution, yet felt that something more needed to be done as the incident could lead to further domestic violence. Barke attached the condition to attend a drug rehabilitation course and made great efforts to encourage the offender to comply. After the Administrative Team had failed to secure compliance, PC Barke called

the offender and booked him onto another course, which he again failed to attend.

After these efforts, PC Barke described how she decided whether to charge the offender. She first contacted the victim to check whether she still wanted the offender to be prosecuted for the original offence, as she had done when the conditional caution was first administered. The victim said she did not want the offender, her partner, to be prosecuted as they were still living together and that a prosecution would 'ruin everything'. PC Barke decided that a prosecution would be contrary to the wishes of the victim and the rehabilitation of the offender, who had moved to a new house and started a new job:

Because I think they were trying to get custody back of their children, so they were really putting effort in, and I don't want to go undoing peoples' good work.

PC Barke therefore decided not to prosecute the offender as she believed a prosecution went against the rehabilitative aims she had initially strived to fulfil and against the victim's wishes. Following the breach of conditions, the conditional caution was changed to a 'No Further Action' as it was no longer in the public interest to prosecute for the original offence.

The case emphasizes the dynamic nature of the public interest test, which had to be revisited when deciding whether to charge the offender. PC Barke explained that, as offenders typically led chaotic lives, a lot could change in the offender's life between the administration of a conditional caution and a subsequent breach. PC Barke also considered the public interest test to charge would be harder to reach after a delay in trying to secure compliance as:

By the time you leave it, should it go to court? I feel like the court are less bothered, but I could be wrong, but they might not care the same than if it's done initially.

As in the first decision on what was in the public interest, PC Barke considered the likely court sentence. In addition to considering the six-month limitation of bringing cases before the Magistrates' Court (Magistrates' Courts Act 1980: s.127), she was also aware of how such cases would be perceived by the courts some months down the line, and whether it would be in the public interest to charge.

PC Barke's experiences also demonstrate the iterative learning process of administering conditional cautions. In our research interview, PC Barke expressed regret at her decision-making. She felt dissatisfied that after all her work in the case, nothing had been achieved, and she should have charged the offender, rather than administer a conditional caution. She emphasised that her dissatisfaction in the case was preferable to detracting from the positive work the offender had done in achieving his own desistance but stated that the efforts undertaken by her and the Administrative Team to achieve nothing meant she was unlikely to use the disposal again. PC Barke's experience demonstrates this final decision can cause feelings of frustration in the officer, which may affect future use of the disposal.

9.4.3 Cherryvale

As identified in Chapter 9.2.3, the Administrative Team in Cherryvale, rather than the officer in the case, was primarily responsible for securing compliance with the conditional caution. This left officers free to adopt a strict policy of charging offenders following non-compliance, as encouraged by Strategic Lead Chord. Interview data demonstrated that officers in Cherryvale were more willing to immediately charge the offender if the initial appointment was not attended by the offender. For example, whilst PC Caulfield had not yet had a case of non-compliance, he set out his strict approach if this were to occur. He explained that if an offender did not comply 'this person has breached the condition- we go and lock them up. Simple'.

In my case analysis, three of the seven offenders were charged following non-compliance. In Case C1, the offender had a condition to attend a drug rehabilitation course in Cherryvale, though he lived far from the

force area, a complicated issue that arose in my research. PC Carraway explained that, when he administered the conditional caution, he did not know the offender would have to complete the condition in Cherryvale, rather than his own force area. PC Carraway reported that he called the offender to encourage compliance and found out that the offender could not drive nor afford the train to attend the session:

In one sense I can understand where he's coming from, but on the other side, I'm like "well you're the one who has committed the offence, it was on *you* to get this sorted" so I said to him "well, unfortunately, mate I'm going to have to send you a postal charge now."

PC Carraway was surprised the rehabilitative course had been booked in Cherryvale rather than the offender's own place of residence and sympathetic to the offender in having to travel to attend the course. However, he concluded it was the offender's responsibility to engage or to proactively communicate with the police if he was struggling to do so. In this way, the previous rhetoric of not setting the offender up to fail conflicted with the officer's aversion to admitting he, or the force, had made a mistake in setting this condition. As the offence was a victimless possession of drugs offence, PC Carraway did not need to consult a victim and so automatically reapplied the public interest test and charged the offender.

In Case C5, PC Canavan also emphasised the offender's personal responsibility to comply. Here, the offender did not comply with the condition to repay £5,000 stolen from a commercial victim. PC Canavan reported that he had administered a conditional caution to give the offender a chance in not having a charge on his record when applying for future employment positions. When he did not comply, PC Canavan contacted him and found:

He's getting back on the straight and narrow. Which is good, it's not helping if he then goes and gets charged. But we've given him

the option already, so it's up to him, what he does next, it's his own destiny, I suppose.

As in PC Carraway's case, PC Canavan sympathised with the reasons for non-compliance and understood that charging the offender would not support his rehabilitation. Yet PC Canavan also reasoned that it was the offender's responsibility to comply. There appeared to be a presumption that once the case had been forwarded to them, the offender would be charged in the event of a breach of the conditions. As PC Carraway's Case C1 and PC Canavan's Case C4 were for serious offences of possession of a Class A drug and theft of £5,000 respectively, the officers had originally been sure that it would have been in the public interest to charge but a conditional caution would be more appropriate. There was therefore no tension in reapplying the public interest test at this later date and charging the offender.

Officers interviewed in Cherryvale had a stricter approach to charging the offender following a breach. Interviews with officers who had not had a breach file also demonstrated that they would prosecute the offender if they did not comply. This stricter approach is at odds with the mantra of not setting the offender up to fail, identified in Chapter 8.4. It may be that officers were wary of being blamed for the failure of the conditional caution and so wanted to emphasise that it had been the offender who had failed, rather than the officer who had set the conditions. This approach may have resulted from Strategic Lead Chord's training in encouraging buy-in to the disposal, by demonstrating a failure to comply should be taken seriously. This may have been an essential part of training as Cherryvale had adopted the two-tier system some time ago, and the Strategic Lead needed to continue to motivate officers to use the disposal, as the vitality of the training may have reduced over time. Yet at the same time, the Administrative Team worked to encourage and support the offender to comply, performing the rehabilitative approach to this third decision seen in Airedale and Beauxvale.

9.4.4 Conclusion: re-evaluating the first decision to administer a conditional caution

Of the 22 cases analysed in my research, only seven required the officer to decide whether to charge the offender following a breach of conditions. This was done through reapplying the public interest and consulting the victim. This decision is related to the level of confidence in whether it was in the public interest to charge the offender. This underlines the need to ensure it is first in the public interest test to charge the offender before a conditional caution is administered. In Case B5, it was questionable whether it was ever in the public interest to charge the offender for smashing a cup. This, combined with the victim's request not to charge the offender, meant PC Barke had to decide on No Further Action, which was a frustrating outcome, making her lose faith with conditional cautions. It also demonstrates that her original decision to administer a conditional caution had been an up-tariff. It was only because the offender did not comply that he avoided this appearing on his criminal record. The Code of Practice and national and local police forces should clearly state that it must be in the public interest to charge the offender before a conditional caution can be administered. This would help reduce instances of up-tariffing which runs counter to the rehabilitative ethos embraced by Strategic Leads and officers.

In addition, my data analysis demonstrates this final decision to charge the offender is not subject to the same review as the initial decision to administer a conditional caution. This third decision does not need to be authorised by a sergeant but may be made by the original decision-maker alone. Officers again apply the public interest test, in slightly different circumstances, but this time are not required to seek guidance or authorisation from a more experienced officer. The requirement for an authoriser to again check the public interest test may help mitigate against the risks of up-tariffing of the conditional caution.

9.5 Conclusion: supporting compliance

As required by the Code of Practice, the first step taken by the decision-maker or Administrative Team when deciding what to do in the event of

non-compliance is to determine whether there has been a refusal to comply, or delayed compliance by an offender who still seeks to complete the conditional caution. My research data demonstrate that in cases of delayed compliance, the officer or Administrative Team will take steps to encourage the offender to attend his Pathway. This is particularly the case if the offender has been categorised as needy, as officers wanted these individuals to access support by reorganising appointments or cajoling offenders to engage. In addition to these altruistic reasons, such actions decreased the additional work for the officer, as she would not need to charge the offender for the original offence. A high compliance rate was also a source of professional pride for the officers.

In Beauxvale and Cherryvale, the Administrative Team carry out a series of actions to encourage compliance, of which the original decision-maker may not be aware. In Beauxvale, the actions of the Administrative Team allow officers to take some steps to encourage the offender to comply, knowing that the Administrative Team had already tried to do so. In Cherryvale, the actions of the Administrative Team meant officers could be rigid in their decision to charge the offender following breach of conditions. Although officers in Cherryvale were not always aware of the steps the Administrative Team had taken to secure compliance, the actions of the Administrative Team meant offenders with a delayed compliance were still given the opportunity and encouragement to engage with their conditions. This separation of roles may have helped Strategic Lead Chord achieve buy-in to the disposal, while still giving offenders similar encouragement seen in Airedale and Beauxvale.

If these steps to secure compliance were not successful and it was determined the offender was in breach of the conditional caution, the decision-maker must reconsider the public interest test. This third decision highlights the problematic nature of the public interest test in deciding whether to administer a conditional caution. The public interest test for administering a conditional caution is similar to a charge, though this is not clear in all guidance documents. Officers must be ready to

charge the offender for the original offence in the event of a breach. My research data demonstrate that the officer may be in a position of feeling pressured to charge the offender for cases where the original decision to administer a conditional caution was questionable, as the alternative is to have No Further Action. As there are no requirements for authorisation on this subsequent decision, this can result in up-tariffing of offenders as an original misapplication of the public interest test remains unchecked. This third decision gives weight to the DPP's Guidance that conditional cautions should be used where it is in the public interest to charge, but it is in the interests of the public to instead administer a conditional caution. This requirement should be more clearly stated and could be strengthened by the third decision on whether to charge the offender being subject to an authorisation requirement by a different authoriser to the one involved in the original decision.

The conditional caution is portrayed as a robust disposal, with the Code of Practice encouraging officers to charge the offender following non-compliance. This fits within the government narrative that the conditional caution is more than the slap on the wrist of the simple caution (Ministry of Justice, 2014). However, although this narrative sets out the presentational rule that an offender will be charged following non-compliance with a conditional caution, my data reveal that working rules operate very differently in practice. The third decision on what to do in the event of a breach of a condition is recognised in each police force as the last opportunity officers have to engage with the offender. This Chapter emphasises that the key aspect of decision-making in the event of a breach remains rehabilitating the offender as officers foregrounded the question of what would best support the offender's rehabilitation. This is unsurprising as it follows a chain of decisions in which the officer has put the offender's needs at the forefront of decision-making.

My data establishes that, contrary to the government narrative, we should not perceive this third decision on securing compliance as operating under the threat of the Sword of Damocles. Instead, officers interacting with offenders, whether as officers in the case or the

Administrative Team, guided offenders towards rehabilitation. A better analogy for this work is a shepherd and his sheepdog. We can conceptualise the Administrative or Central Team as the shepherd, patiently guiding the offender to comply with the conditional caution. Eventually, if compliance cannot be secured, the shepherd will refer to the sheepdog, the original officer. This sheepdog is still able to guide the offender but has more teeth than the Administrative Team. This officer will try again to secure compliance before considering more robust action. The Sword of Damocles metaphor demonstrates the strength of the disposal and can help achieve buy-in from the public and police. However, this metaphor should not cloud our perception of decision-making in practice, which is more rehabilitative in the approach adopted in each force.

Having considered the three conditional caution decision-making in detail, Chapter Ten pulls together the wider lessons learned from this thesis and the implications of the identified police focus on rehabilitation.

Chapter Ten: Conclusion

10.1 Introduction

This Chapter summarises the findings of my research (Chapter 10.1), demonstrating the central role given to rehabilitation in decision-making. It then discusses the wider implications of my research into conditional cautions on police culture (10.2), professional decision-making (10.3), restorative justice (10.4) and proportionality (10.5). Finally, I recommend further research that should be done in this area, particularly given that a form of the two-tier system will be put on a legislative footing, underlining the urgency of this work (10.6).

10.1.1 Summary of main findings

Chapter Two demonstrated that the legal framework governing conditional cautions gives police a wide discretion to determine whether conditional cautions should be used, which conditions to attach and what to do in the event of a breach. The rules and policy encourage decision-makers to prioritise offender rehabilitation, and victim reparation, while also punishing the offender, if required, and ensuring that this decision-making is efficient, proportionate and improves victim satisfaction. These wide aims of the conditional caution allow police forces to interpret and embed processes to prioritise particular aims and allow police officers to prioritise policies in individual cases. My study of three police forces has shown how the police have prioritised rehabilitation in their decisions on conditional cautions. The police, the 'street-level bureaucrats' (Lipsky, 1980; Bittner, 1967) who make these micro policy decisions on a daily basis, decided that the main aim of conditional cautions is the rehabilitation of the offender.

In addition to these aims, the decision-making criteria for the use of the disposal has been seen to be permissive (Chapter Two). The public interest test, in particular, refers to a wide range of factors to be considered, giving officers a wide scope to determine which outcome they believe is most appropriate in each case. This permissive framework emphasises the importance of police discretion in decision-making. This

wide discretion means that officers needed to be encouraged or compelled to buy-in to the disposal to increase its use.

The organisational changes to stimulate this buy-in originated at a national level. The National Police Chiefs' Council (NPCC) reinvigorated the conditional caution and encouraged police forces to move towards a two-tier system of out-of-court disposals, using community resolutions or conditional cautions with some form of rehabilitative 'tag' attached. The NPCC sought to embed the problem-solving approach emphasised in the Code of Practice for conditional cautions and encourage officers to use local resources to support the offender and victim. This rehabilitative approach was seized upon by Strategic Leads in each of my three police force areas. Each Lead was enthusiastic about the possibilities of diverting offenders to local support in their community and thus adopt a more proactive approach to managing offenders than prosecution allows. Strategic Leads carefully considered how they would bring about a cultural change in the use of the conditional caution, and a wider change in officers' perceptions of their role in rehabilitating offenders. This is a seismic change from officers assuming a charge would always be the best outcome, to nudging officers to prioritise the use of conditional cautions instead and take greater ownership of their role as gatekeepers to the criminal justice system. This change was brought about through face-to-face training sessions, streamlining the process of administering conditional cautions, monitoring cases, mapping Pathways and creating specialised teams to replace or support decision-making in this area.

These organisational changes were met with varying levels of success in the three police forces. My data demonstrate that the majority of officers were appreciative of having the encouragement and Pathways to offer rehabilitative support to offenders. This fitted within their desire to make a difference, both for the victim and for the offender, borne out of their compassion for both. This compassionate culture was particularly directed at offenders perceived as vulnerable or 'good' offenders who needed a chance, rather than a charge. With these new processes in place, officers perceived that they were more able to make a difference

in individuals' lives than they could by prosecuting the offender. Officers valued having the opportunity and trust to carry out this diversionary work. This was particularly the case in Airedale's Central Team, where a strong sub-culture supportive of the use of the disposal resulted in clashes with other police teams.

However, bringing about this cultural change was not always successful. Officers could be unwilling to use conditional cautions as they were perceived as too soft on the offender or required more work for them in the long run, in monitoring compliance and potentially charging the offender. Two officers reported that they were unlikely to use the disposal again in the future and may discourage others in their team from using it. While good news rarely travels in the police, bad news spreads as officers share their negative experiences. My data indicate that there may be pockets of support for the disposal within policing teams. However, this support is dependent on the shared experiences of the team. If the team perceived that the disposal was successful, primarily interpreted through high compliance rates, they were more likely to continue to use it. Anecdotal evidence of individual success stories invigorated officers to see the long-term benefits of the disposal and continue their use, though these were rarely shared beyond the team. Working rules emerged in teams to either presume that a conditional caution would be the most appropriate disposal or assume that it would not. This working rule also depended on the officer's categorisation of the type of offender before them - whether they were perceived to need support or punishment.

Organisational and structural forces thus combined to encourage officers to prioritise rehabilitation in making decisions to administer conditional cautions, attach rehabilitative conditions and support offenders to comply. In the first decision in whether to administer a conditional caution, officers were emboldened to reinterpret the offence seriousness and offending history of the offender in a way that permitted them to administer a conditional caution, thereby diverting the case from court. Yet this focus on rehabilitation also resulted in instances of up-tariffing

the offender. Cases arose in which officers knowingly up-tariffed an offender from a simple caution to a conditional caution with the altruistic aim of supporting the offender. The organisational pressures to administer more conditional cautions also resulted in cases of up-tariffing and net-widening in officers feeling compelled to administer more disposals to demonstrate the effectiveness of their team.

The second decision on which conditions to administer is also shaped by the processes created by the Strategic Leads. These Leads mapped out predominantly rehabilitative Pathways to which offenders could be diverted. This signalled to decision-makers which Pathway types they should be using and simplified decision-making for officers in being able to select recommended appropriate Pathways. Officers also had a working knowledge of the support available in their community, through engagement with partner agencies and wider neighbourhood knowledge. They were therefore able, and motivated, to divert offenders to rehabilitative Pathways based on the offender's needs, rather than offence seriousness.

Finally, the third decision of whether to charge the offender following a breach of the conditions was grounded in these rehabilitative aims. Each Strategic Lead created a structure whereby, in the event of delayed compliance, an officer or member of staff engages with the offender and encourages him to comply. In Airedale, this is carried out by the Central Team, while in Beauxvale and Cherryvale, the separate Administrative Team carried out this work behind the scenes. If this initial steer by the Administrative Team failed to ensure compliance, it was referred to the original decision-maker to try to engage with the offender. If this failed, the decision-maker then considered whether the breached condition was an essential component of the conditional caution, or if the officer would accept partial compliance. My data indicate that, at this decision-making point, officers would again prioritise the completion of rehabilitative conditions. Finally, if this process of encouraging compliance was not successful and it was clear that the offender would not engage, the officer would decide whether to charge the offender. This was a reapplication of

the public interest test and tended to correspond to the decision-makers' earlier application of the test, resulting in a charge for the offender. The exception to this was where there had originally been some doubt about whether a charge was in the public interest, or the views of the victim had changed since this original decision was made.

10.1.2 What can this study tell us?

This research demonstrates how structural and cultural pressures interact with legal rules to provide officers with working rules to guide decision-making. Further, it identifies how there is a growing movement within the police, both at an organisational and cultural level, to try to engage with offenders and offer them more in the way of rehabilitation through out-of-court disposals.

Yet it could be argued that this study is a limited basis from which to make such assertions, and indeed this has been acknowledged in my thesis (Chapter 3.6). This was a primarily qualitative study that sought to understand how decision-making is carried out in practice. I conducted document reviews of policies and training resources in three police forces and interviewed Strategic Leads who had directed the move to administer more conditional cautions. I analysed 22 cases disposed through a conditional caution and interviewed 18 officers and authorisers about their decision-making. The study's findings are therefore necessarily exploratory and seek to understand decision-making, rather than predict it.

Yet it would be a mistake to discount such findings. The media paint the police use of out-of-court disposals as being a self-interested means of saving police resources (Chapter 1.4.2; CJI, 2011), while being either soft on crime (HM Government and College of Policing, 2013: 3) or unfairly up-tariffing individuals (Sosa, 2012). My research demonstrates the shallowness of such stereotypes through evidencing the nuanced, and often well-intentioned, motivations behind this decision-making. That is not to say that officers are always altruistic when they administer conditional cautions. My research has found instances where officers will seek the easier, less resource-intensive course of action, or will be

affected by their perception of the offender. Yet my research demonstrates that the underlying motivations in decision-making are officers' desire to help offenders in society and divert them to support. This can have negative consequences, in up-tariffing offenders, net-widening the criminal justice system or focusing on particular offences or offender types. Yet we need to understand the motivations behind this decision-making before we can try to prevent these negative consequences. This thesis is an important contribution to this understanding.

My research is not alone in underlining the compassionate culture of the police. While other researchers have focused on how officers are compassionate to victims (Charman, 2017), my research foregrounds how officers are compassionate to offenders, recognising their sometimes-difficult situation and drivers to offending behaviour. My research also builds on previous work on police decision-making in emphasising the importance of considering the interaction between legal rules, police force structures and police culture (Hoyle, 1998). We need to work with legislation as well as consider structural and interactionist strategies to bring about any changes in police forces, considering how these factors interact together. Building on this previous research, my findings tentatively shed light on wider discussions in this area. In highlighting how organisational structures promote rehabilitation and working cultures of rehabilitation play a central role in the three conditional caution decisions, my thesis has wider implications for police culture (Chapter 10.2), professional police decision-making (10.3) and proportionality in decision-making (10.4).

10.2 Rehabilitation and police culture

10.2.1 My research findings

My data demonstrate that the Strategic Leads sought to achieve 'buy-in' to the conditional caution amongst officers to encourage use of the disposal and rehabilitative conditions. This was through both adapting structural processes and organisational pressures to encourage its use, as well as tapping into the police culture narrative. Strategic Leads

sought to demonstrate the benefits of the disposal so officers would be personally motivated to use it. Leads knew officers generally joined the police to 'make a difference' and so wanted to prove to officers that conditional cautions made more of a difference for offenders and victims than a charge. The majority of officers reported that they wanted to do more to help the offender, perceiving them as a person in need, committing crime as a cry for help.

This finding was, of course, not true for all offenders, nor for all officers interviewed. In some cases analysed, decisions to administer conditional cautions were motivated by the need to save resources, comply with organisational expectations, or administered to an offender who was perceived as unlikely to try to comply. However, it gives added weight to Charman's finding that there is a culture of compassion in the police, as officers want to help victims and offenders (2017). We should not lose sight of this positive trait of policing in our research or discussions of the police.

10.2.2 Organisational expectations interacting with police culture

My research builds upon previous findings that emphasise the importance of considering both structural and cultural factors in decision-making (Orasanu and Connolly, 1997; Hoyle, 1998). Strategic Leads set out how they sought to change the structure of decision-making around conditional cautions in a way that tapped into existing police culture. As experienced officers who were still part of this culture, they were aware of narratives within policing teams and could use these narratives to foreground the disposal. This was a deliberate, planned effort to encourage buy-in so that the conditional caution was genuinely believed to be a better outcome than a charge and a new working rule to use it would emerge.

Strategic Leads knew this working rule to use more conditional cautions had to fit alongside previous working rules of resource management to ensure they could complete all their various tasks and manage their caseloads. They therefore promoted the disposal as efficient for the

police while also effective in achieving rehabilitation. Strategic Leads created streamlined processes, face-to-face training, myth-busting information packs and supportive Administrative Teams, to encourage the use of the conditional caution. This conscious tapping into existing narratives was seen in Cherryvale, where Strategic Lead Chord emphasised in his officer training that the conditional caution was a tough disposal, and offenders should be charged following a breach, to encourage officers to use it. Yet, at the same time, Chord created an Administrative Team trained to offer support to offenders if they were struggling to comply, so the rehabilitative ideals of the disposal could still be achieved.

Bringing about a change in police policy in their use of the disposal therefore required that the organisational structure encouraging an increased use tapped into existing police culture and working rules, so they became embedded in practice. For the majority of officers interviewed, the promotion of a working rule to administer more conditional cautions complemented their desire to offer rehabilitation to offenders and make a difference in their lives. However, my research also identified cases where officers initially accepted these changes, but then found that the disposal entailed long-drawn-out work with the offender. The new disposal therefore clashed with the pre-existing working rule of reducing future workloads and so two officers reported that they would be unlikely to use the disposal again. In such cases, the new working rule to increase the use of conditional cautions had not won out in the clash of working rules.

Organisational encouragement to use conditional cautions did not always correspond with how officers perceived the disposal should be used. This resulted in tension if officers felt that organisational pressures conflicted with their own interpretation of the rules and the right thing to do in a situation. This could be seen in Airedale, where officers felt compelled to up-tariff offenders to demonstrate the utility of their working team to retain their Central Team structure. A tension was also seen in Beauxvale, where Strategic Leads created six rigid Pathways to ensure

offenders would be diverted to consistent support across the force. These rigid Pathways resulted in officers feeling disconnected from condition-setting, unsure about the value of these Pathways.

These organisational strategies to increase the use of conditional cautions and ensure consistency of decision-making can therefore result in officers disengaging from the rehabilitative potential of the disposal. A balancing act is required: Strategic Leads must set clear expectations and incentives for decision-making but, at the same time, encourage officers to feel that they have discretion to make the right decision.

Strategic Leads tapped into police culture and working rules to achieve buy-in to their new approach. Leads are familiar with the narratives used by police officers and can tap into this to guide decision-making while allowing officers to use their discretion to make individual decisions. This planned interaction helps explain how rules and policies are translated into practice in individual decision-making. Organisational changes within the police can, or cannot come about, based on how they are communicated to lower ranks. This supports Chan's argument that police culture can be both an obstacle and a target for police reform (1996). However, we must have a nuanced understanding of this culture to recognise the culture of compassion that guides decision-making.

10.2.3 Conclusion: The interaction between formal rules and working rules

My research gives weight to the argument that we need to consider the interaction between legal rules, structural pressures and police culture, rather than focusing on any one element alone (Hoyle, 1998: 23). Conditional cautions were created in 2003, with police authorised as decision-makers in 2013. However, my quantitative analysis demonstrates that the police use of the disposal remained low in 2013, increasing every year since this date. This increase is likely to be the result of the two-tier pilot and wider ongoing strategies to encourage police officers to use this disposal. Although officers in all forces could administer conditional cautions, they followed their pre-existing rules of preferring to charge the offender. My qualitative data traces how legal

rules can become part of the police informal working rules through a process of ongoing negotiation and monitoring. This takes the form of training, ongoing support and feedback to encourage officers to adopt the disposal. With these measures in place, a new informal working rule may be created to administer more conditional cautions and attach rehabilitative conditions. The origin of this rule may be legal, and the decisions to administer conditional cautions are, generally, made within the framework set out by the Code of Practice and DPP Guidance. Yet to change police practice, the rules must be interpreted and embedded within police forces and teams, in a way that fits within pre-existing working rules.

My data demonstrate the need for changes in policing to involve the police at an early stage. The conditional caution is a good example of how changes in police policy were initiated and implemented by the police, both at a national level, steered by the National Police Chiefs' Council, with support from the College of Policing and the Ministry of Justice, and at a force level, with Strategic Leads in individual police forces identifying how they could bring about changes. Strategic Leads interviewed knew the working rules in their force and emphasised the need to secure buy-in from officers to change police practice. To do this, they tapped into existing police narratives relating to their frustration with the length of time and sentences given by courts, the officers' desire to do more to help offenders, and officers' concerns about their own high workloads. In this way, the Strategic Leads encouraged officers to adopt these formal rules as informal rules. The police took ownership of this rehabilitative change and implemented it according to their aims and resources.

10.3 Rehabilitation and professional police decision-making

This ownership of rehabilitative decision-making can also be understood in the context of police professionalism. This section summarises my research findings before relating these to wider work on the role of the police, the professionalisation of the police and how we can fairly measure police effectiveness in rehabilitating offenders.

10.3.1 My research findings

Officers in Airedale, Beauxvale and Cherryvale adopted a problem-solving approach to administering conditional cautions. They considered the likely outcomes they could achieve through the disposal and compared this to what the offender would likely receive in court. Officers diverted offenders from court, or up-tariffed offenders, if they felt this supported their rehabilitation. Decision-makers in Airedale and Cherryvale also had a wide discretion in condition-setting, choosing between a range of Pathways to which to divert the offender.

However, although officers had a wide discretion in which Pathways to use, they tended to choose Pathways identified by the Strategic Leads or that they had previously used. My data demonstrated that it was difficult for officers to know which Pathways would be effective in supporting offenders in each case. While some officers had carried out independent research into the Pathways, or had links with local support services, this was not always the case. Officers in Beauxvale were unsure about the support provided on the Women's Pathway, while the support provided on the Victim Awareness Course was not always understood by officers in Airedale and Cherryvale. In addition, officers rarely received feedback on the effectiveness of these Pathways in individual cases or as a high-level summary of their effectiveness. Officers had to be detached from the Pathway provider and could not receive updates on individual cases. This was to ensure offenders could openly engage in support without fearing criminal justice sanctions. There was therefore a necessary separation between the police in signposting offenders to support and Pathway providers, with limited information shared between the two.

Officers acted professionally in making what they felt to be the best decision from the choices available to them, focusing on both reducing crime and supporting individuals. However, officers made these decisions based on limited evidence and so their ability to act as professional decision-makers was necessarily limited.

10.3.2 The police role

Officers in all forces perceived their role stretched beyond the traditional police crime-fighting role but also includes signposting offenders and victims to support. Officers sought to engage with these groups and use their unique position and experience to offer some form of rehabilitation. This support aimed at reducing reoffending but also making life better for these individuals. My research supports a wider body of work on the role of the police and their partnership work. It has long been established in policing literature that the police role is not primarily crime-fighters but providers of a 'staggering' number of services and consensual peacekeeping (Reiner, 2013: 165). Millie argues that the police have expanded into the role of offender supervision in the 'policification of probation' as officers are expected to adopt social service and a caring function as part of their police work and their wider role of reducing reoffending (2013: 149).

The police must typically work with their partners to offer this support. At a time of austerity, the third sector has contracted as reduced funds mean they are unable to continue their work to the same scale (Slay and Penny, 2013). The police must step in to cover these areas or work with remaining service providers to provide support. This expansion of the police role resulted in increased partnership work with other agencies from both within and outside the criminal justice system (Barton and Johns, 2013: 84). This thesis evidences this expanding role and partnership work performed by the police. In diverting offenders to local support through conditional cautions, police officers work with local partners to create a safety net for individuals in society who do not have access to the support they need. A period of austerity has meant other public services are withdrawing and so emergency professions must expand to cover crises and shortages elsewhere in society (McCann and Granter, 2019: 214). The police see the offenders and their underlying issues on a regular basis, and are the 24/7 service that, even in challenging times, continues to serve the public. Rather than continuously charge offenders for them to be fined or discharged and

commit more offences in the future, it is no surprise the police want to do more to offer them help and support. This support is for the benefit of offenders, victims, and for the police themselves in eventually, hopefully, seeing a reduced footfall of offenders. Yet the negative consequences of the police acting as this bulwark to the vulnerable in society must not be forgotten and are discussed in Chapter 10.4.

This partnership work rests on the interdependence of these organisations. In diverting offenders to Pathways in the community, the police depend on third parties to provide support in an effective manner that meets the conditions of the disposal and have a robust process in place for monitoring compliance. As police officers act as signposts to organisations, the police wield a great deal of power over which providers will receive more individuals and thereby can make claims for more funding, or the police themselves commission Pathways in the area. This thesis did not focus on the police partnership with these agencies and did not include interviews with these providers, as this was out of the scope of the decision-making focus of my research questions. However, one instance arose in my data collection that demands further research in this area. One Pathway provider visited the custody suite of the force to set out the services they provided, conducted interviews with offenders and generally sought to keep officers well-informed about their services. It emerged later that this provider had been unable to continue operating due to a reduced footfall of offenders being diverted to them. This Pathway provider was therefore unable to apply for additional funding and eventually closed. Their efforts to support the officers' decision-making were therefore likely to be borne out of a business need to secure more clients in the future. The influence the police have in diverting offenders to such groups, the evaluation of their performance, how groups communicate their work to individual decision-makers and the relationship between the police and Pathway providers' working culture are therefore important areas that require additional research.

10.3.3 The professionalism of the police

The problem-solving approach advocated by the Code of Practice for conditional cautions and valued by officers in my research resonates with wider findings on the professionalisation of the police (Neyroud, 2008). This section brings together the contested meaning of professionalisation, and how it applies in the policing and conditional caution context.

The professionalisation of public services is a growing field in academia, policy and practice (Wilensky, 1964). Emergency services face increased, more complicated demands, greater public scrutiny and must demonstrate their efficiency in a restrained funding environment (Noordegraaf, 2015). This context requires public services to use evidence-based practices to increase the effectiveness of their work while minimising the costs. This entails a move away from command-and-control structures and towards working with discretion and judgement in being held to account for decision-making.

The professionalism of the police was eventually advocated by the House of Commons Home Affairs Committee in their Landscape Review of Policing (2011) and recommended by Neyroud in his Review of Police Leadership and Training in 2013. Neyroud summarised evidence-based policing as 'doing the right thing for the right reasons' (2008: 686). This professionalism was argued to improve police decision-making, give the police greater autonomy in using their discretion appropriately, and demonstrate that the police could be trusted in this decision-making process. In its Strategy on out-of-court disposals (2018: 10), the NPCC emphasised:

There is a strong case to make that, as we professionalise our policing response and become accredited practitioners, policing should have more autonomy to make decisions in all appropriate cases which are to be dealt with out of court.

This fits into the NPCC Policing Vision 2025:

The police service will attract and retain a workforce of confident professionals able to operate with a high degree of autonomy and accountability and will better reflect its communities.

Professionalism therefore carries an element of pride in the police being responsible for leading the changes to out-of-court disposals with the autonomy to make these decisions in practice. In the consultation on out-of-court disposals, Damien Green, the then Minister for Policing stated that the use of rehabilitative measures attached to out-of-court disposals is 'consistent with the Government's rehabilitation revolution' (HM Government and College of Policing, 2013). However, my research demonstrates that the police have seized upon the opportunity to adopt a professional approach to decision-making, focusing on the rehabilitation of offenders. The police have been at the forefront of these changes at a national and police force level, taking pride and ownership over these changes.

However, although the professionalisation of the police can be a source of pride, the term 'professional' is contested and can have negative connotations. It can be imposed from above to exert control and regulation, bring about occupational change and self-discipline employees (Evetts, 2006). Moves to professionalise services from above can result in a target-driven, performance-based culture in which discretion is curtailed and treated with suspicion by those working in such organisations (Wesiburd and Neyroud, 2013). Lumsden's research into police professionalisation found that police officers view professionalisation as linked to top-down governmental reforms, entangled with new public management principles and used to control and discipline workers (2017: 10). Officers in Lumsden's research perceived that the top-down imposition of professionalism implied that officers on the ground were not currently acting professionally and acted instead as 'buffoons in uniforms.' Lumsden found this cynical approach to government reflected a police attitude in taking in pride in their work and internal professionalism in not being told what to do by politicians but doing the right thing in each case.

Changes in working practices and cultural changes may therefore be more likely effective if they are felt to originate from the police, rather than the government. If we want the police to take responsibility for their decision-making and use their discretion appropriately, then we must trust them to do so. My research evidenced a balancing act in Strategic Leads seeking to change the culture of their force to administer more conditional cautions and administer rehabilitative conditions, while also encouraging officers to feel responsible for these decisions and empowered to use their discretion. Over-restrictive controls on this discretion can result in frustration by officers and turn them away from this disposal, while allowing officers complete discretion would be unlikely to change the use of the disposal or bring about a wider cultural change towards the rehabilitation of offenders. This is a balance in maintaining the advantages of performance management and consistent decision-making while facilitating officers' discretion and their phenomenology of discretion - the feeling that they are entrusted with this decision-making.

My research demonstrates that middle-level managers, or authorisers, played an important role in facilitating this balance. Vinzant and Crothers argue such officers should act as street-level leaders in implementing new approaches to policing, in their case, of community policing (1994). Authorisers can encourage officers to take ownership of their decision-making while serving as a check on this decision-making. These authorisers were situated between the Strategic Leads and officers, working with officers regularly and encouraging them to consider appropriate disposal options in line with force policy. Authorisers therefore promote the organisation's rules while supporting the officer to feel she has discretion in decision-making.

Consideration of the professionalisation of the police also requires us to return to the role we expect the police to fulfil in modern society. If we have a wide interpretation of the role of the police as problem-solvers, managing vulnerable individuals in society, then it follows the police should be trained to develop their soft skills of problem-solving,

leadership and judgement (Charman, 2017: 66). Police training has traditionally been behaviourist and militaristic. Recruits are taught what the law is, rather than considering the consequences of its application. Yet training all police officers to complete all police tasks is not feasible. In Airedale, officers in a team predominantly involved in supporting offenders underwent additional training and created a sub-culture of rehabilitation that stood apart from the rest of their force. This central, specialised team approach for diverting offenders to conditional cautions appears to be a growing trend in the police. These central sub-teams, seen in Airedale and identified in other forces such as the Navigators in Durham, Hampshire and North Wales Police, indicate that sub-teams within police forces may be becoming more specialised and experienced in diverting offenders, compared with their response colleagues. This specialisation may result in pockets of police experts, learning the best evidence-based practice for supporting offenders, but not necessarily engaging in wider police work. This could be a means of ensuring that conditional caution decision-making, similar to offender management, is sustainable and evidence-based, even if it is concentrated within one part of the police force.

10.3.4 Measuring effectiveness

This evidence-based approach has seen a recent surge, with universities and police forces working more closely together to research what works in preventing offending and reducing reoffending, for example through collaborations such as The East Midlands Policing Academic Collaboration (EMPAC). Yet even in specialised teams, this evidence-based approach is far from straight-forward. My research highlights the need to introduce a sensitive means of measuring success to support officers in their decision-making as part of their wider police role, without detracting from what is measured. These data on effectiveness then need to be communicated to officers to guide decision-making without requiring significant additional work by the officer.

My research demonstrates that Strategic Leads analysed the effectiveness of the Pathways and the conditional caution to reduce

reoffending. Yet although Strategic Leads had conducted their own research into the effectiveness of Pathway providers, this evidence base was limited. Data consisted of compliance rates, reoffending rates within 6 and 12 months for individual offenders and the providers' measurements of success. As with all innovations, there were limited data to evaluate and limited resources to conduct such evaluations. Strategic Leads generally hoped the disposal would be effective in reducing reoffending rates and facilitating long-term changes to the offenders' lives and improving victim satisfaction with the criminal justice system. Even with a limited data source, this ongoing evaluation was needed to inform force policy, guide decision-making and apply for Home Office and other funds to secure the future of the conditional caution project (Home Office, 2015).

In contrast, when officers considered whether their use of conditional cautions had been effective, they referred to their own compliance rates and, in some cases, anecdotal evidence of success (Chapter 6.3). Officers relied on their own experiences, and those informally shared by their colleagues, when making decisions on whether to administer a conditional caution and the conditions to attach. More detailed, objective feedback is difficult to provide in such a context. Offenders need the privacy to engage with the Pathways without feeling they are being monitored by the police. In addition, officers need a streamlined approach to continue their work on a day-to-day basis, without being inundated with updates for concluded cases. Even if a case was found to be successful, the range of factors that contribute to this success is virtually impossible to tease apart, particularly when one seeks to do so efficiently. Manning argues that we can only measure effectiveness while considering qualitative factors, rather than quantitative analysis alone (2011). The type of offender, type of support and wider changes in the offender's life may have more of a role in reducing reoffending than the officer's decision.

My research underlines a bifurcation between the evidence required by Strategic Leads and front-line decision-makers. Strategic Leads need

quantitative and qualitative evidence of the effectiveness and efficiency of conditional cautions to demonstrate the success of the disposal. This justifies the use of resources in administering it, encourages partner agencies to facilitate Pathways, officers to administer it and gives weight to funding applications to create more Pathways, and where possible, provide them freely for offenders. Decision-makers, on the other hand, were not involved in this review of the evidence as they did not have the time, or felt it was beyond their responsibility to do so. Instead, they rely on experiential evidence to guide decision-making on whether a conditional caution was appropriate and the conditions to administer. Officers rely on their own experiences, including anecdotal evidence, to guide their decision-making.

This identified bifurcation fits within longstanding policing literature. Officers typically portray policing as a craft through which they continually learn through their own experiences (Bayley and Bittner, 1984). Fleming and Rhodes argue we need to accept both police experience and formal evidence as overlapping forms of evidence (2018). My research underlines that we must measure what works without stopping that thing from working, and in a way that supports day-to-day decision-making. We must consider the types of evidence used by officers at different levels, and how we can best bridge this gap between these strands of evidence.

10.3.5 Conclusion: considering professional rehabilitation

My research data demonstrate that conditional cautions fit within a wider police role beyond crime-fighting to also include reducing offending in society. This fits within the development of professional policing, in which officers are expected to adopt an evidence-based approach to decision-making, seeking to do the right thing based on their knowledge and the resources available. However, my research also demonstrates there are fundamental and practical limitations in the amount of evidence that officers have to guide their decision-making in this area. Further research is required to understand how Strategic Leads can best provide information to officers to ensure such decision-making is based on the

available evidence. This requires that nuanced evidence is disseminated to officers in an efficient manner that makes use of different evidence sources to guide decision-making.

10.4 Rehabilitation and restorative justice

10.4.1 My research findings

As shown, the national and force-specific guidelines for conditional cautions require that the victim is consulted with, where appropriate, and decision-makers prioritise the use of rehabilitative and reparative conditions. My data show that Strategic Leads monitored whether victims were consulted, and decision-makers regularly engaged with non-commercial direct victims to hear their views on appropriate outcomes. In the majority of cases, decision-makers then attached conditions for victim reparations and letters of apology and/or rehabilitative conditions to address the offenders' underlying motivations for offending. In this way, officers gave attention to the victim and offender and tried to bring about tangible benefits to both from engaging in the process.

However, my data demonstrate that decision-makers found it difficult to give balanced attention to the victim and the offender. In many cases, officers had to wrestle with the needs of both and often prioritised the rehabilitation of the offender. Focusing on the needs of the offender was felt at a strategic and individual decision-maker level to also be in the interests of the victim. This sits within long-standing literature that the victim often seeks rehabilitation as well as, or instead of, their own reparation (Strang, 2002). Without national guidance on which group to prioritise, Strategic Leads and decision-makers generally sought to make decisions that were in the interests of both the victim and the offender. This flexibility was seen as a strong advantage of the conditional caution in allowing conditions to be attached which met all parties' needs.

However, clear cases emerged in my research in which conditional cautions did not meet the needs of both victim and offender. For example, in Case B8, in which the offender defrauded victims out of £1,000, the decision-maker tried to follow the force policy and give

priority to both victim reparation, with the condition to repay the money, and offender, with the condition to attend the Women's Centre. However, when the victim's compensation eventually fell through, the force was willing to accept the conditional caution as completed because the offender had engaged with her rehabilitative condition of attending a Women's Centre and the victims were insured, so were not out of pocket. On the other hand, in Case C5, theft from a place of work, the balance swung in favour of the victim. PC Canavan set the condition to repay the commercial victim £5,000 but did not attach any conditions to address the causes of offending behaviour, though the offender had a reported gambling addiction. These cases highlight the difficult balancing act in how the decision-maker uses the conditional caution as a tool for restorative justice and rehabilitation. I set out below how this balancing act fits within wider discourses on restorative justice.

10.4.2 Definitions of restorative justice

As set out in Chapter 1.2, conditional cautions are intended to facilitate victim reparation through the payment of compensation and restorative justice strategies and aimed at 'putting victims at the heart of the system' (HM Government and College of Policing, 2013).

It may appear that discussions of restorative justice are misplaced, as none of my cases files used a restorative justice conference. However, restorative justice is a broad term that, while perhaps best epitomized as a restorative conference, in which the offender and victim come together and the victim explains the impact of the offence and the offender apologises for her actions, is a wider concept than this one practice.

Clamp and Paterson usefully pull together what distinguishes restorative justice (2016: 22). The first is that there is a general focus on putting right the harm caused by responding to needs, rather than culpability. The second is that the community, victim and offender should receive balanced attention and tangible benefits from engaging in the process. While the victim and/or community has the right to some form of reparative redress, there needs to be a focus on the offenders' accountability, wellbeing and underlying motivations for offending.

Finally, the process behind these outcomes should be inclusive and non-coercive, with those most directly involved having the opportunity to participate fully in the response if they so choose. In the next section, I consider whether conditional cautions, as seen in my research, meet these restorative justice characteristics.

10.4.3 Conclusion: Victims' needs within sight of the decision-maker, not the heart of the system

My research findings indicate that conditional cautions *can* fulfil these characteristics of restorative justice, at least in a narrow, outcome-focused way. My data evidence that decision-makers prioritised putting right the harm caused by responding to both victim and offender needs. In the majority of applicable cases, the victim and offender received attention and tangible benefits from engaging in the process.

However, the two cases identified in Chapter 10.4.1 underline how conditional cautions suffer from Braddock's 'identity crisis' (2011: 206). In national guidance documents, victim reparation and offender rehabilitation are given equal weighting. Yet in each force, the Strategic Leads created Pathways focused on offender rehabilitation and encouraged officers to consider how to rehabilitate the offender. This made it difficult for individual decision-makers to give a balanced consideration to victim and offender needs or consider the wider community needs, beyond reducing reoffending.

In addition, the tensions behind ensuring that the outcomes were inclusive and non-coercive were identified in Chapter 7.3.3. As my research focused on decision-making, I did not speak with victims and offenders to understand how they perceived this consultation. Yet difficulties were highlighted by officers, as before a meaningful consultation could take place, decision-makers first had to inform the victim about the system of out-of-court disposals, and explain the process, and delays, in having the case resolved in court. Without this information, victim consultation would be an empty process. However, officers outlined the risk that they could be seen as persuading victims to agree with the preferred police outcome. While Strategic Leads ensured

victim consultation had been completed, they had limited capacity to check victims felt included and non-pressured during this process. Indeed, my research data included case files in which outcomes would be told to commercial victims, rather than discussed with them.

This is a longstanding conflict in the police managing restorative justice approaches. The operational environment in which officers work creates the potential that they can coerce victims and offenders to participate in restorative disposals (Clamp and Paterson, 2016: 83). For offenders, this is exacerbated as conditional cautions carry the threat of prosecution if they do not accept the conditions. Further work, independent of the police, is therefore needed with both groups to understand the extent to which the outcomes reached were inclusive and non-coercive.

On a more positive note, in all three forces, officers identified a wider change in their forces, as they were expected to regularly engage with victims throughout the conditional caution process. This was supported at an organisational level by Strategic Leads monitoring that this consultation had taken place and engaging with officers to remind them to do so where necessary. One officer observed that, while they were not victim-centred, their force had become victim-focused. Conditional cautions therefore appear to be a step forward in paying attention to victim and offender needs.

My research shows that the underlying ethos of the decision-makers' use of conditional cautions was seeking to repair harm caused through paying reparation and addressing underlying motivations for offending. This is not putting the victim at the heart of the process, as promised by the government as my data show that the police focus appears to be very much on the offender's needs. Instead, the conditional caution can be seen as a move to adopt more restorative justice values within the formal criminal justice process, in ensuring that the victim's needs are at least within sight of the decision-maker.

Drawing on Clamp and Paterson's work, we can identify that in requiring victim engagement, and the use of reparative conditions, the government

has adopted a reformist approach, adopting restorative justice processes within the traditional system, rather than as a replacement or supplement to it (Clamp and Paterson, 2016: 19). The use of reparative conditions of compensation and apologies is an outcome-focused approach to restorative justice by increasing reparative opportunities for victims, as well as sanctions that will hold some meaningful value for the offender. This is not a new form of restorative justice working to complement or replace the criminal justice system and is instead merely an improvement of the old system of out-of-court disposals within a formal criminal justice system.

However, upcoming changes to the system of out-of-court disposals, including the strengthening of a community resolution to a community caution, is likely to move all forms of police restorative justice into the formal out-of-court disposal framework. While ensuring that all out-of-court disposals will have conditions attached for victim reparation and offender rehabilitation, this may remove the possibility of police facilitating informal restorative justice outcomes. This change is likely to have an important impact on restorative justice in the future, limiting informal restorative justice processes and instead requiring restorative justice to take place within the formal criminal justice system. We may therefore see more of this narrow, outcome-focused approach to restorative justice within the police in the years to come.

10.5 Rehabilitation and proportionality

Finally, my research highlights the tension between rehabilitation and proportionality, first identified in Chapter 1.2. Rehabilitation can be seen positively in supporting offenders to overcome the underlying causes of their offending behaviour. However, rehabilitation can result in the state focusing on the needs of the individual, rather than the offence they have committed, when determining the appropriate level of punishment. This section summarises my research findings before identifying two key concerns with police forces focusing on rehabilitation: net-widening and over-criminalising vice crime. I then conclude with suggestions on how

this tension between rehabilitation and proportionality can be resolved in this area by aiming for penal minimalism.

10.5.1 My research findings

As discussed in Chapter One, the conditional caution appears to be suffering from Braddock's 'identity crisis' (2011). It aims to do all things for all people in rehabilitating the offender, providing reparation to the victim and punishing the offender, while being proportionate, efficient and supporting victim satisfaction. While Braddock identified the tension between substantive aims and efficiency (2011), my research identifies in particular the conflict between proportionality and rehabilitation. Proportionality is central to just deserts, or retributive penal theory. This theory posits that we should punish the offender based on the seriousness of the crime committed. This fits within deontology, that we should treat each individual as an individual first and foremost (Von Hirsch, 1992: 55-98; Dearing, 2017). Rehabilitation, on the other hand, prioritises reducing reoffending, usually through treating the offender. This can result in sentences based on the needs of the offender, rather than the seriousness of the offence, which can result in disproportionate sentences. This focus on rehabilitation is a consequentialist approach to punishment, justifying the use of a disproportionate sentence where it will result in a reduction in offending for the wider society (Robinson and Crow, 2009).

Where consequentialist aim of punishment focuses on rehabilitating the offender for the benefit of the public, without considering the needs of the individual offender, can result in up-tariffing. Officers have been shown to administer a conditional caution rather than another form of out-of-court disposal in order to attach conditions to support the offender. Conversely, offenders with lesser needs, such as those in employment, have been shown to receive a lesser criminal justice outcome to facilitate them continuing their employment. This means certain groups of offenders can have a more lenient sentence than is proportionate for their offence, or a higher sentence based on their needs. The decision as to which conditions to attach was again based on the need to rehabilitate

the offender. The Needs Assessment conducted with the offender, rather than the offence, was central to the decision on which Pathway to use. Such attempts to base criminal justice decisions on rehabilitation, rather than proportionality, can result in offenders receiving a disposal that is not appropriate for the offence they have committed.

10.5.2 Net-widening and up-tariffing

A focus on rehabilitation in the form of diverting offenders from court may have advantages for the offender, victim and wider criminal justice system. My data demonstrate that it is because officers care and want to improve criminal justice outcomes that they foreground rehabilitation. Diversion from court has clear advantages as it facilitates a response to offending behaviour that may be as effective or more effective in reducing reoffending (Campbell, Ashworth and Redmayne, 2019: 188). It reduces the stigma on the offender in having to attend court and have a charge on his criminal record. The use of a conditional caution also ensures offenders are diverted to appropriate community support, of which they may have been unaware.

However, we should not assume a rehabilitative approach will reduce criminal sanctions. Von Hirsch and Maher warn it is a fallacy that acting as though we care about others, and administering treatment as though we care about others, results in a more humane criminal justice system (1992: 28). A focus on rehabilitation without robust limitations such as proportionality can result in offenders being punished based on their needs rather than their offences. This creates a façade of treatment behind which the decision-maker can act as he chooses (1992: 29).

My research illustrates that police officers do increase the penalties for vulnerable offenders by up-tariffing individuals to divert them to support. Such up-tariffing is purported to have the offender's interests at heart, as eloquently explained by several police officers. However, this up-tariffing means these offenders bypass lower out-of-court disposals to receive a conditional caution. These offenders will be unlikely to receive other out-of-court disposals in the future and would instead be escalated to court. This is one of the key dilemmas of rehabilitation, as those who are most

in need will receive a disproportionate sentence (Carlen, 2013). This rehabilitative approach therefore extends State control over certain groups (Campbell, Ashworth and Redmayne, 2019: 188) with a drift to well-intentioned measures being unduly onerous (von Hirsch, Ashworth and Roberts, 2009).

In addition, my research indicates that forces that have adopted the two-tier system are more likely to administer a conditional caution to offenders. Decision-makers in these forces must choose between a community resolution, conditional caution or a charge. As the focus of the move to a two-tier system of out-of-court disposals has been on diverting cases down from a charge to a conditional caution, limited consideration has been given to the community resolution. The community resolution is perceived by officers as a restricted disposal, only useable in cases of minimal offending history and for low-level offences. Further research is needed into these forces' use of the community resolution to analyse whether these disposals are still used appropriately. The two-tier system risks offenders in these areas being up-tariffed from a simple caution or PND to a conditional caution. As this system is not universally rolled out across England and Wales, this up-tariffing is not uniform and may result in a postcode lottery of justice for offenders. When this change to the system of out-of-court disposals is legislated, as was recently announced by the Ministry of Justice (2020a: para 163), forces that are not ready in having trained officers, prepared Pathways and explored their use of community resolution, could see patchy implementation. The Ministry of Justice has acknowledged that these important changes need to be implemented within a sensible time frame, which could span several years, and need to work closely with police forces and PCCs (2020b: para 167). They will need to work with the NPCC and College of Policing and use the groundwork already laid in this area, drawing on best practices and issues identified to support forces with this change. Even with the promised adoption time, the move to legislate the two-tier system of out-of-court disposals is likely to result in widespread up-tariffing. As other disposals, such as simple cautions,

are removed, officers will need to choose between the community resolution and the conditional caution. As conditional cautions have been shown to be used for a wide range of offences and offenders with offending history, it is likely that more conditional cautions will be used in the future. Data is needed on force use of these disposals and ongoing monitoring is needed to reduce the likelihood of up-tariffing through the new two-tier structure of out-of-court disposals. I hope my research can feed into this ongoing, and substantial, change in the landscape of out-of-court disposals.

As explained in Chapter 10.3.2, following a period of austerity, the police have a greater role in diverting offenders to the third sector. However, as the police step in to fill this vacuum in public services, they bring with them their unique characteristic as gatekeepers to the criminal justice system. While the police diverting offenders to local support services enables individuals to access support, such actions also result in individuals having a criminal record. This record can have long-term effects for the individual in securing future employment and other opportunities. The police, in rehabilitating the individual, can unintentionally create more barriers for him.

10.5.3 Over-criminalising vice crimes?

In addition to potential up-tariffing, the conditional caution can result in police officers focusing on low-level offences rather than on crimes of the powerful, which cause more harm to society. Campbell, Ashworth and Redmayne warn that rehabilitative up-tariffing is problematic as rehabilitation tends to focus on vice crimes, those crimes that offend a society's morals, rather than cause harm, committed by individuals of a lower societal standing (2019: 159). They compare police decision-making for prosecuting low-level offenders to Keith Hawkins' study into health and safety inspectors' decision-making for prosecuting of company directors (Hawkins, 2003). Campbell, Ashworth and Redmayne observe that while the inspectors used prosecution as a last resort, police officers resorted to prosecution more readily (2019: 159).

This disparity raises the question of social justice. Offenders with less power cannot benefit from alternative, non-criminalising approaches used in corporate crime. Husak suggests we convert low-level criminal offences to violations that are sanctioned, with individuals offered some form of rehabilitation, but not a criminal record (2008). This would free up time and resources for more careful and fair processing of the remaining low-level offences and reduce the societal focus on the criminalisation of vice. Such an approach may result in fewer marginalised people in the criminal justice system whose lives are degraded by their encounters with it (Lippke, 2018: 234-235).

10.5.4 Conclusion: Conditional cautions as a possible means of penal minimalism

Penal minimalism is the argument that punishments should be administered in a way that ensures the least punishment, and therefore harm, to those being punished (Hayes, 2019: 185-187). Conditional cautions could act as a form of penal minimalism in diverting offenders from court and towards community support. However, my data warn that although the disposal can appear to divert offenders from court, in practice it also results in net-widening and up-tariffing. This is based on police officers seeking to support offenders and using this redeveloped tool to do so. Yet this tool is a criminal justice sanction and carries the consequence of a criminal record and the disadvantages this can bring for the individual in securing housing and employment.

Other initiatives, similar to the conditional caution, have been developed which allow the police to divert individuals to support in line with the principle of penal minimalism. Such movements towards police-led rehabilitation without the creation of criminal records has been seen in the Navigation and Checkpoint approaches identified in Chapter 1.3. These initiatives enable officers to divert offenders to a rehabilitative Pathway and administer a community resolution, rather than a conditional caution, on successful completion. This community resolution will not usually show up on a DBS check and is a means of rehabilitating the offender without also criminalising them. However, although these

initiatives are examples of how the police can rehabilitate the offenders in a way without punishing them, supporting penal minimalism, they accentuate the challenge of geographical variation.

Campbell, Ashworth and Redmayne recognise that variation can be positive as it facilitates worthwhile initiatives to develop from local attempts to address local problems (2019: 178). The two-tier system, Checkpoint, Navigation, Turning Point and the CARA project are all examples of such innovative approaches. These innovations mean forces are not prevented from developing their own programmes while waiting for national policy to be updated. Instead, forces can be adaptable and flexible in their approach. However, these innovative approaches, which may be a solution to the tension between rehabilitation and proportionality, are not seen in all police forces. They require additional resources in providing one-to-one support for offenders over time and therefore cannot be easily translated to all forces. However, the principles behind these approaches in making greater use of community resolutions to support offenders should be considered more closely to help mitigate the well-meaning up-tariffing effects of the two-tier system of out-of-court disposals. This would help ensure that socio-economically disadvantaged individuals receive the support of the state, rather than a disproportionate censure by the state for their actions.

10.6 Conclusion: Next steps

Enthusiastic Strategic Leads and police officers used the conditional caution to achieve rehabilitation on a case-by-case basis. We should acknowledge and support their efforts to try to stop the revolving door of offending behaviour and further entrench a culture of compassion to victims, as well as offenders, amongst the police. We must move away from the old condemnatory approach that perceives police culture as cynical and instead focus on police strengths and the wide range of services they provide. This research helps us understand the ongoing paradigm shift within the police in more proactively considering how they

can support offenders out of court. Police officers genuinely want to support offenders and reduce the likelihood that they will reoffend.

However, this rehabilitative focus can result in up-tariffing and net-widening for the offender who may feel unable to resist the pressures in the police station and may accept a conditional caution that is not in his best interests. Millie advises that the government use the period of austerity to pause and reconsider what we expect the police role to be. This goes beyond the question of value for money but also to decriminalise social policy, in diverting individuals to support while also giving them a criminal record (2013: 155). We should strengthen the public interest test around conditional cautions to emphasise that the disposal should only be used where it is in the public interest to charge the offender. This should go beyond the minimal interpretation that the case *could* possibly be charged to whether the case *should* be charged. This may help reduce up-tariffing. Police forces also need to consider the use of community resolution and the limitations around its use, so officers feel this is a viable alternative to the conditional caution, particularly when the two-tier system is rolled out nationally. This thesis also underlines that we should consider how such changes are implemented in forces, rather than trust that legislation will necessarily bring change.

My research demonstrates the case-by-case rehabilitative approach can result in a postcode lottery of criminal justice, as forces have different outcomes, different levels of support and different requirements on whether offenders must pay for their support. Whilst forces must adapt to the expectations and resources of their communities, there should be greater consistency of approach in the system of out-of-court disposals in England and Wales, and clear communication of this approach. The recent Police, Crime, Sentencing and Courts Bill 2021 to legislate this new two-tier system may help reduce this inconsistency between police forces.

However, this legislation will require police forces, who have so far not adopted the two-tier system, to implement it over several years. If the

police are expected to carry out this rehabilitative work in a sustained way, forces or providers should have the resources required to offer Pathways to offenders. Requiring the offender to pay for his own rehabilitation may act as a great deterrence to engagement and could result in a two-tier system of justice. Further, instead of requiring police forces to compete for short-term Innovation Funds, the police should have the required resources to fund this work for the long-term. The rehabilitative focus of the conditional caution, whilst being police-led, should be government-supported so that these aims can be achieved in practice.

In addition, further research is needed to understand whether offenders understand the consequences of accepting this disposal and feel able to refuse the conditions, or the disposal, and instead be charged. As with Hayes' research on the pains of probation, we need to understand the offender's subjective experience of the conditional caution and the conditions attached (Hayes, 2017). As the conditional caution can have long-term effects on the offender's criminal record, depending on the offence type and job type, additional research is needed to recognise how potential employers respond to an individual with a conditional caution, particularly as the two-tier system is likely to result in more individuals with such a record.

There has also been limited research on victim satisfaction with both the process and the outcome of these disposals. As the conditional caution is touted as a means of putting victims at the heart of the criminal justice system, it is crucial that further research, with a greater number than the six victims involved in the pilot evaluation (Ames et al., 2018), be carried out. Conditional cautions are also intended to improve public confidence in the system of out-of-court disposals, yet there has been no systematic analysis of whether the public are even aware of, let alone support, these changes to the structure of out-of-court disposals. Research could usefully be conducted on the effectiveness of out-of-court disposal scrutiny Panels to determine how effective they are in scrutinising out-of-court disposal decision-making and reassuring the public.

Finally, as the police press on in their move to roll-out the two-tier system of out-of-court disposals, we still do not have data available on the use of conditional cautions. My quantitative data is the most up-to-date analysis of the use of conditional cautions and these data are, frankly, in a pitiful state. We only have full conditional caution data for one third of all forces, and only three forces were able to provide data on the conditions they attach to their disposals. The government or police, through the NPCC, should create a publicly available database of these disposals, including a breakdown of offender characteristics, to allow scrutiny and help improve public confidence in this system.

Further research is needed on the system of out-of-court disposals as innovative approaches are piloted across England and Wales. They hold the potential to genuinely support the rehabilitation of offenders and improve the satisfaction of victims in the criminal justice system. However, out-of-court disposals are administered by the police, the gatekeepers to the criminal justice system and as such can result in pressure on offenders to accept up-tariffing, net-widening and conditions which may not be proportionate to the offence. My research explored how conditional caution decision-making occurs in practice and the interplay of organisational expectations and working cultures and rules that operate on decision-making. Yet more research is needed in this area to further guide other forces and the Home Office in developing and implementing policy into practice on out-of-court disposal decision-making.

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Appendices

Appendix I: Table of cases

Case Number	Officer	Offence	Offending history	Conditions	Outcome
Airedale					
A1	PC Atchinson	Theft from a shop (Value under £30) Commercial victim	Previous caution for shop theft 2014	Victims Awareness Course and not to commit any offences during time period	Completed
A2	PC Adely	Criminal damage to property valued under £5000 and Possession of an offensive weapon in a public place Commercial victim	Caution for theft in 2005 and offences against the person in 2009.	Offender already under a community mental health team who arranged to visit him next day to assess him and have a meeting later that week. These appointments were used as the conditions	Completed
A3	PC Ambler	Assault a person thereby occasioning	None	Pay the injured person £50 compensation, attend a drunk and	Delayed completion

		<p>them actual bodily harm and assault by beating</p> <p>Non-commercial Victim</p>		<p>violent offenders' programme and to be of good behaviour</p>	
A4	PC Applegate	<p>Drunk and disorderly in a public place and an assault which happened shortly afterwards</p> <p>Non-commercial victim</p>	None	<p>Pay the injured person £50 compensation, attend a drunk and violent offenders' programme</p>	<p>Breached and charged</p>
A5		<p>Theft from a shop (Value £100-120)</p> <p>Commercial victim</p>	None	<p>1. To be of good behaviour 2. To engage with Women's Centre and attend any subsequent appointments, that are deemed necessary</p>	<p>Completed</p>
A6	PC Abbott	<p>Assault a person thereby occasioning them actual bodily harm</p>	None	<p>Victims Awareness Course</p>	<p>Breached and charged</p>

		Non-commercial victim			
A7	PC Angler	Criminal damage to property valued under £5000 and malicious wounding Non-commercial victim	None	Pay £95 to the injured person	Completed
	Authoriser Ammil	Did not have a case file to discuss so spoke of general experiences of conditional cautions			
Beauxvale					
B1	PC Bennett	Theft from shop Commercial victim	Simple caution for similar offence in 2014	Substance misuse in the triage assessment (lower option- attend alcohol course costing £45)	Breached and charged
B2	PC Buchanan	Possession of Class B drug (amphetamine) 'Victimless' crime	Charged for driving while disqualified in 2007	Substance misuse in the triage assessment (higher option)	Delayed completion

B3		Possession of Class B drug (cannabis) 'Victimless' crime	Charged 2017 for interference with a motor vehicle. Previous to that- 17 positive disposal between 2000-2014	Substance misuse in the triage assessment (higher option)	Completed
B4	PC Bell	Possession of Class B drug (cannabis) 'Victimless' crime	None	Engage with Women's Centre (by telephone)	Completed
B5	PC Barke	Criminal damage Non-commercial victim/ 'Victimless' crime	None	Substance misuse in the triage assessment (lower option- attend alcohol course costing £45)	Breached and No Further Action
B6	PC Briscoe	Assault occasioning actual bodily harm (malicious wounding) and neglect of child Non-commercial victim	Penalty notice for shoplifting in 2012 No Further Action for receiving stolen goods in 2011 Simple caution for possession of Class B drug (Amphetamine) in 2011	Engage with Women's Centre	Completed

B7	PC Boldwood	Having possession of a controlled drug Other Class 'A' 'Victimless' crime	None	Substance misuse in the triage assessment (higher option)	Completed
B8	Authoriser Brookes	Fraud Non-commercial victim	Simple caution for theft in 2017 (same year)	Engage with Women's Centre and repay £1000 to victims	Completed Women's Centre but did not pay £1000. Accepted partial completion in paying £10 into charity box
Cherryvale					
C1	PC Carraway	Possession of Class A drug (cocaine) 'Victimless' crime	Some previous acquisitive offences	Not to be found in possession of drugs, attend a drug rehabilitation course and not to commit any further offence during the compliance period	Breached and charged
C2	PC Caulfield	Possession of Class A drug (cocaine) 'Victimless' crime	No previous	Not to be found in possession of drugs, attend a drug rehabilitation course and not to commit any further offence during the compliance period	Completed

C3	PC Clipper	Common assault against police Non-commercial victim	None	Pay a £50 fine to officer, attend an alcohol diversion and not to commit any further offences during the compliance period	Completed
C4	PC Canavan	Possession of Class A drug (cocaine) 'Victimless' crime	None	Drug rehabilitation course	Breached and charged
C5		Theft Non-commercial victim	None	Repay £5000	Breached and charged
C6	Authoriser Coates	Import offensive weapon 'Victimless' crime	None	Pay costs	Completed

Appendix II: Interview schedule for decision-maker

Introduction: Introduction to self, talk through consent form and have it signed. Interview about an hour, start the recording (check comfortable with this). Any questions before we begin?

Overview of interview: career, why working in current role. Then discuss the recent case of a conditional caution for you to explain your decision-making. Then talk more widely about how you make decisions, what you are aiming to achieve through the use of conditional cautions

Career so far: First, please can you tell me about your career in the police so far? And how did you come to be in your current role?

Your case: Can we talk about case X, in which you administered a conditional caution?

Can you talk me through the case?

Why did you decide a conditional caution was appropriate for the case?

How did you decide on which conditions to use?

What was the outcome of the case? Did the offender comply?

Moving to wider questions...

Decision to administer a conditional caution

- How do you decide whether to impose a conditional caution- what guidance do you use?
- How do you use this guidance?
- What other factors might affect your decision? Prompts (if needed: resources, time, training, local priorities?)
- How much discretion do you feel you have in this decision-making?
- So far we've been focusing on conditional cautions, but do you still use simple cautions? What would make you decide to use a simple or a conditional caution?

Conditions to attach

- How do you then decide which conditions to use? What mapping is available to you?
- What do you know about these courses?
- Are you updated on resources in the area? How are new courses identified and then communicated?
- Do you feel that any courses are missing- things that you feel could be useful to have available? How can you communicate this to the strategic oversight?

Training and support

- What training did you have for this role? And then what ongoing training is made available?
- Does this include formal training and ongoing training, e.g. from your sergeant?
- Do you feel that there is sufficient training for you in making these decisions?
- How would you improve this?
- Do you work with other teams when making these decisions? Can you describe how this works in practice?

Wider aims

- What do you hope to achieve through the use of conditional cautions? What are they designed to do?
- What would make you choose one type of condition over another? What priority do you attach to these conditions?

Appendix III: Interview schedule with Strategic Lead

Introduction: Introduction to self, talk through consent form and have it signed. Interview about an hour, start the recording (check comfortable with this). Any questions before we begin?

Over view of interview: career, why working in current role. Then discuss how conditional cautions are used in your force (e.g. how teams are structured, whether you have two-tier system of out-of-court disposals), what you hope to achieve through conditional cautions, the training/ guidance provided to decision-makers, and scrutiny over decision-making.

Career so far: First, please can you tell me about your career in the police so far? And how did you come to be in your current role?

Aims of conditional cautions:

- What do you hope to achieve through the use of conditional cautions? What are they designed to do?
- What do you perceive is the main benefit of using conditional cautions?
- Do you have a local policy on the use of conditional cautions?
- If so, what is this designed to achieve?
- Do you feel that they are successful?
- How is success identified and, if appropriate, measured?
- Do you feel that conditional cautions could be improved? If so, how?

Training and guidance

- What guidance is given to decision-makers to help them in their decision-making?
- What training/ support is provided?
- What resources are available for administering conditional cautions both within the police (e.g. time, personnel) and outside (e.g. courses available)?
- Are they sufficient?
- How are you updated, and do you keep the decision-maker updated, about these resources?
- Why was the Central Team/ Administrative Team first developed? Could you set out the process of its creation?
- How do you manage training and support of decision-makers to ensure that they buy-in to these aims?
- Do you feel that there is buy-in?

Scrutiny

- Are these decisions scrutinised?
- How is this done in practice?
- Does your force have an out of court disposal scrutiny Panel?
- What do the scrutiny Panels focus on?
- Do you feel it is effective?
- Why/why not?

Any other comments you want to make?

Thank you for your time. Remind them of anonymity and how data will be used. Any questions about the research or anything covered?

Appendix IV: Consent Form

Each participant was given the following sheet to sign and one copy to keep as their information sheet.



School of Law University of Nottingham Information Sheet and Participant Consent Form

How are adult conditional cautions administered in practice?

This research aims to understand how decisions to administer adult conditional cautions are made in practice, and the policy considerations behind such decisions and is funded by the Economic and Social Research Council. You have been asked to take part in this interview based on your involvement with a recent case disposed of by an adult conditional caution. The aim of this interview is to discuss the case and to ask you more general questions based on your experiences of adult conditional cautions.

Your participation in this interview is entirely voluntary and you are free to withdraw at any time during the interview. After the interview, you are able to withdraw from the research up to one month after the date of the interview.

Information gained during the interview may be published as part of my PhD, any report, publication or training materials. No information that could lead to the identification of any individual will be disclosed in any oral or written outputs, or to any other party.

The interview will be recorded and this data will be securely stored, the recording being deleted upon completion of the research project. Please see attached information sheet relating to this storage.

If you have any further questions about the research or wish to discuss issues raised, then please get in touch with me at cerys.gibson1@nottingham.ac.uk. If you wish to make a complaint about the way the research was conducted then please contact the Research Ethics Committee, by e-mail Kobie Neita at kobie.neita@nottingham.ac.uk.

Please sign below to show that you have understood the above and consent to being interviewed.
