



ACS Submission: Out of Court Disposals Review

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Ministry of Justice's review of out of court disposals (OOCd). ACS represents 33,500 local shops across the UK including the Co-operative Group, Spar UK, Costcutter Supermarkets, Nisa Retail and thousands of independent retailers.

Crime against the retail sector represents a significant cost burden for our members. The latest figures estimate that retail crime costs the sector a total of £1.6 billion, which is equivalent to 135,000 full time jobs¹. Both retail industry figures and Home Office data show that the bulk of crime against the sector is the result of theft by customers that are dealt with by out of court disposals. The Home Office Commercial Victimization Survey² found that 94% of all incidents against the retail and wholesale sector were from theft of stock. The British Retail Consortium (BRC) Crime Survey showed that 83% of retail crime incidents were incidents of shop theft³. ACS' data on shop theft shows that in the last 3 months 75% of retailers have experienced it⁴. Annex A contains the full breakdown of convenience retailer experience of shop theft violence and abuse.

Retailers are familiar with the use of OOCd for managing crime against their business but are often not satisfied with the delivery of sanctions, in line with existing guidance, or have confidence in their deterrent effect. There has been a decline in the number OOCds used for shop theft under £200, from 47,408 in 2010 to 26,819 in March 2013. This trend is not matched by retailers' experience of shop theft with only an average of 16% of convenience retailers experiencing no shop theft since February 2012.

Retailers understand the need for OOCd for the management of high volume crime types and that not all shop theft can result in custodial sentences. However, the current system is failing to deal with persistent repeat offenders. OOCd should be reserved for first time offenders only and where they are issued should be done so in consultation with the victim. There is concern that shop theft is seen as victimless crime and that the extensive use of OOCd disposals has exacerbated this further.

Current changes in the Anti-social behaviour, Crime and Policing Bill are also concerning as shop theft offences under £200, where a guilty plea is given, will be dealt with via post not with the offender attending court. This again reduces the business community's confidence that the justice system properly manages offenders that damage their business.

ACS has answered the following relevant consultation questions:

Question 1: Do you think the OOCds regime needs to be made simpler? If so, how?

The OOCds regime does need to be made simpler in terms of the range of sanctions, their application to different offences and the number of times they can be applied. Retailers want to see a clear hierarchy of sanctions used for shop theft i.e. Cautions or Penalty Notice for

¹ BRC Crime Survey 2011-12

² Home Office: Commercial Victimization Survey

³ BRC Crime Survey 2011-12

⁴ ACS Voice of Local Shops Survey November 2013

Disorders for first time minor offenders, and conditional or custodial sentences for persistent offenders. For many retailers it is unclear how sanctions used for offenders escalate over time. There should be a clear flow chart that shows how out of court disposals escalate and actively manage an offender's activity overtime.

Question 2: Do you think the current OOCB framework deters people from committing crimes?

No. Feedback from our members is clear that OOCBs are not a deterrent to people to prevent shop theft. The extensive use of OOCBs for shop theft, particularly repeat offenders, has devalued any deterrent affect that these penalties had.

Nationally collected data also shows that financial penalties issued through Penalty Notices for shop theft often go unpaid⁵. In 2011 34,688 penalties notices were issued for retail theft and only 18,411 were paid in full. The system for collecting these fines must be improved considerably to promote confidence in the impact of financial penalties for shop theft.

Question 4: Should the consequences of accepting or being given an OOCB be clearer?

Yes. Increasing communication activities around the implications of OOCBs would be valuable to ensure that people understand the full implications of the penalty. However, this must be supported by proper and consistent enforcement of the policy.

Question 5: What type of punishment should OOCBs deliver? An example might include financial penalties.

As outlined above, financial penalties have not always proved to be an active deterrent and have often left victims feeling underserved by the OOCB system. We would support greater use of financial penalties where there is a direct link to the victim. So where goods are stolen the OOCB fine goes towards direct compensation for victims.

The Ministry of Justice stated in the 'Breaking the Cycle' consultation they wish make the justice system "victim led" and increase direct compensation. Shop theft is one area where this should be improved. There is not a clear system or form for retailers to apply and claim compensations from offenders. Magistrates will give priority to compensations over fines but are unable to order compensation unless an application has been submitted.

ACS is open to work with the Ministry of Justice to develop a claims form for shop theft offences and communicate it to the retail community.

Restorative Justice measures can also have a positive impact where it is used in consultation with a businesses and where there is clear guidance. It would be inappropriate, for example, to have a shop thief repaying for goods by working in a store. A revision of Restorative Justice for shop theft offences and alike would be valuable.

Question 6: What sort of offences do you think OOCBs are appropriate for?

There is a place for OOCBs in dealing with shop theft but this should be reserved for first time offenders only. Where there is violence, excessive criminal damage, and drug or alcohol abuse penalty notices for disorder should not be used. A Magistrate Court should look at the offenders overall offences and not group and separate the penalties by type i.e. violence and shop theft.

⁵ Parliamentary Question, Nick de Bois: [Civil Disorder: Fixed Penalties](#)

The existing, and recently updated guidance⁶ for Penalty Notices for Disorder for shop theft requires updating to stipulate that it is not appropriate to issue PNDs where drug or alcohol abuse are involved or any form of violence or aggression against staff or other customers.

Question 10: What sort of OOCd, if any, is appropriate for repeat offenders?

Where there are repeat offenders it is unlikely that an OOCd is going to have an impact on their behaviour. For repeat offenders an intervention from the justice system will be required and stringent conditions can be enforced to intervene and tackle the source of their behaviour. For retailers it would be useful if this included an enforceable ban preventing them from entering an individual store or primary or secondary shopping location.

Question 11: Do some crimes or offenders need more significant consequences if the terms of their disposal are not met? For example, if they are asked to pay a fine but do not.

Yes. Enforcing fines is important to ensure that OOCd deliver some form of meaningful punishment to offenders but also provides the public and victims with confidence.

Question 12: When a practitioner (for example, a police officer) is deciding on an out of court disposal, how should victims be involved in that decision?

Victim consultation is imperative for shop theft incidents as the retailer is likely to have a far greater idea of the offenders' background and supporting evidence. Moreover, Home Office data shows that the retail and wholesale sector are far more susceptible to incidents of repeat victimisation: "thefts by customers against premises in the wholesale and retail sector showed the highest repeat victimisation rate in the whole survey"⁷

Retailers or the responsible member of staff at the store should be consulted directly on the use of OOCd. This will support the practitioner to determine wider factors such as repeat victimisation, violence and aggression and criminal damage. If these factors are present then an alternative course of action to an OOCd should be considered.

Question 20: Do you think there is more information that should be shared?

Yes. More information should be published locally on the number and location of OOCds issued. This will allow the public and Police and Crime Panels to hold forces to account on the number of OOCds that are issued and if they are given to the same offenders repeatedly.

The police.uk website is valued source of local information on crime issues. Some mechanism to host information on the number of OOCds and other sanctions such as restorative justice could have a positive impact on the public perception of the justice system.

Question 26: How should the role of central guidance be balanced against the need for local choice?

Central guidance is an important reference point for practitioners and the public in how OOCds should be applied. Retailers want consistency and central guidance for all police

⁶ [Penalty Notice for Disorder Guidance July 2013](#)

⁷ [Home Office Commercial Victimisation Survey 2012](#)

forces is very important. The recently updated guidance appears to be reviewed again with a full consultation and explicitly reference that PNDs are not appropriate where violence, alcohol or drug abuse or excessive criminal damage are present

Local choice is important and there are other examples such as the Community Remedy under development in the Anti-social Behaviour, Crime and Policing Bill that could be used in the out-of-disposal system. The Community Remedy will allow the community to consult on the range of sanctions that can be used for low level anti-social behaviour offences via the Police and Crime Commissioner. The Community Remedy is not applicable to shop theft but a separate scheme could be created with higher sanctions.

ACS is committed to supporting the Ministry of Justice and the review of OOCs. We would be happy to support the Ministry of Justice to speak directly with small convenience retailers about their experience of the OOC system. ACS can also commit to supporting with communications with the business community following the findings of the review.

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ANNEX A

